

LAW REVIEW¹ 16047

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Maryland Law Adds Two Critical Protections For Veterans

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On May 11, 2016, Maryland Governor Larry Hogan signed legislation authorizing private sector employers to establish voluntary preferences in hiring and promotion for veterans and spouses. (HB 306 / SB 245) Eight days later, Governor Hogan signed legislation authorizing members of the Maryland National Guard, whose employment and reemployment rights have been violated to bring a civil action for economic damages, including lost wages and benefits. (HB 249 / SB 561).

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

The House version of both bills was introduced by Delegate William Smith, who is an officer in the Navy Reserve. The Senate version of the bill authorizing private sector veterans' preferences was introduced by Senator Roger Manno. The Senate version of the bill authorizing National Guard personnel to file suit for employment discrimination was introduced by Senator John Astle, a retired Marine Corps Reserve officer.

Like many states, Maryland law provides preferences in state employment for veterans and spouses of disabled or deceased veterans. Maryland private sector employers who wish to implement a veteran preference system are vulnerable to discrimination suits by non-veterans under Title VII of the Civil Rights Act of 1964.

However, Title VII, Section 11 of the Civil Rights Act of 1964 allows states to pass laws authorizing private sector employers to implement an employment preference for honorably discharged veterans. Private sector veterans' preferences enacted pursuant to Title VII are not subject to Equal Employment Opportunities Commission challenge.

Twenty-nine states have passed laws allowing voluntary private sector veteran preferences, thereby protecting private employers from discrimination suits.

The Pentagon's USA4MilitaryFamilies website listed private sector veterans' preferences as its second most important state legislative initiative.

The law adds Section 3-714 to the Labor and Employment Article which authorizes an employer to grant a hiring and promotion preference to an eligible veteran, the spouse of an eligible veteran who has a service-connected disability, or the surviving spouse of a deceased eligible veteran. An eligible veteran is defined a veteran of any branch of the U.S. Armed Forces who has received an honorable discharge or a certificate of satisfactory completion of military service, including the National Guard and the military reserves. The bill specifies that granting this preference does not violate any State or local Equal Employment Opportunity law.

When members of the Maryland National Guard are ordered to federal active duty or training duty under Title 10 or Title 32 of the United States Code, the Uniformed Services Employment and Reemployment Rights Act (USERRA) protects them from discrimination with respect to civilian employment and guarantees job-protected time off to perform duty. 38 U.S.C. ¶ 4301-4335. If an employer violates USERRA, a member of the National Guard under federal Title 10 orders can file a lawsuit or file a complaint with the U.S. Department of Labor to seek reinstatement, lost wages and attorneys' fees.

Members of the Maryland National Guard routinely are ordered to perform "State Active Duty" to respond to state emergencies. Several hundred were on state active duty orders earlier this year in response to a severe snow storm. Several thousands were on state orders last year in response to civil unrest in Baltimore.

Maryland Public Safety Code §13-704 provides that USERRA applies when members of the Maryland National Guard are ordered to perform military duty under Title 10, Title 32 or the Maryland Public Safety Code. In other words, the Maryland National Guard members are guaranteed job protection when they perform state active duty.

Unfortunately, Maryland law is silent on what Guard personnel can do if they lose their jobs after performing state active duty. Nothing in Maryland law gives Guardsmen and women the right to file suit for back pay or to gain reinstatement to their jobs. In the absence of a statutory provision guaranteeing a cause of action, Guard personnel are left with a right but no remedy to vindicate that right.

The new law fills this gap in Maryland law by authorizing members of the National Guard who suffer employment discrimination to file a civil action for damages, fees, costs and other relief. The Department of Defense supported creating a private right of action for members of the National Guard on state active duty. The Pentagon's USA4MilitaryFamilies website lists this initiative as number seven among its current top legislative issues.²

These two legislative victories represent significant new benefits and opportunities for Maryland veterans and National Guard members.

Update – May 2022

There are now more than 29 states that have passed laws allowing voluntary private sector veteran preferences. At least 37 states that have enacted legislation allowing private employers to give preference in hiring to honorably discharged veterans.³ You should check your state's laws for each state different eligibility requirements.

Please join or support ROA

This article is one of 1800-plus "Law Review" articles available at <https://www.roa.org/page/lawcenter>. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

³*Veterans Hiring Preference Overview*, NATIONAL CONFERENCE OF STATE LEGISLATURE (Jan. 2017), http://www.akleg.gov/basis/get_documents.asp?session=30&docid=12240.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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