

## LAW REVIEW 16069<sup>1</sup>

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### **USERRA Applies all over the World to American Corporations and Institutions**

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Update on Sam Wright

1.1.1.5—USERRA applies to employers outside the United States

1.2—USERRA forbids discrimination

**Q: I am a Major in the Marine Corps Reserve (USMCR) and a member of the Reserve Officers Association (ROA). I have read with great interest many of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA).**

**There is a major American private university—let’s call it the University of Nerdy Surfers (UNS). The headquarters and main campus was established in the United States more than 150 years ago. About 20 years ago, UNS established an overseas campus in Southwest Asia.**

**I learned of a vacant teaching position at the UNS overseas campus and applied. The university offered me the position, with a start date of September 6 (the day after Labor**

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<sup>1</sup> I invite the reader’s attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find more than 1500 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), and other laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1300 of the articles.

<sup>2</sup> BA 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. I have dealt with USERRA and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 34 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 at Tully Rinckey PLLC (TR), 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 (May 2015), concerning the accomplishments of the SMLC. After ROA disestablished the SMLC last year, I returned to TR, this time in an “of counsel” role. To arrange for a consultation with me or another TR attorney, please call Ms. JoAnne Perniciaro (the firm’s Client Relations Director) at (518) 640-3538. Please mention Captain Wright when you call.

**Day), which is the start of the fall term. The offer was unambiguous, and I unambiguously accepted it on July 1.**

**Today, in a surprise, I received word that the Marine Corps is recalling me to active duty on September 1, so I will be unable to start with the university on September 6. I have not yet informed the university that I have been called up, but I will be doing that very soon.**

**When I inform the university, it is very likely that the university will withdraw the offer and offer the position to another qualified candidate. If the university does that, would that violate my USERRA rights? Does USERRA even apply to decisions made by the personnel office of an overseas campus of an American university?**

**A:** The answer is yes to both questions. Under section 4319 of USERRA,<sup>3</sup> this law applies all over the world to U.S. corporations and institutions and to foreign corporations and institutions that are controlled by U.S. corporations and institutions. The law can be enforced by a lawsuit against the American corporation or institution at its location here in the United States.

When the university made you an unambiguous job offer, with a start date, and you unambiguously accepted it, you became an employee, even though the start date had not yet arrived. But even if you had not yet become an employee, denying you *initial employment* based on your *obligation to perform service* violated section 4311 of USERRA.<sup>4</sup>

You need to notify the university right away that you have been recalled to active duty and that the recall starts just before your scheduled start date at the university. When you are released from the upcoming active duty period, you need to notify the university. If the university refuses to allow you to start the job at that time, the university will then be violating USERRA.

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<sup>3</sup> 38 U.S.C. 4319.

<sup>4</sup> 38 U.S.C. 4311. *See also McLain v. City of Somerville*, 424 F. Supp. 2d 329 (D. Mass. 2006); *Beattie v. Trump Shuttle*, 758 F. Supp. 30 (D.D.C. 1991).