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Employers-Please Don't Bother Them in Iraq, Part 2

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I am still receiving comments about Law Review 134 (September 2004), "Employers-Please Don't Bother Them in Iraq." You will recall, or you can look it up on the ROA Web site, Law Review 134 involved a Marine Corps Reserve lieutenant colonel, mobilized and on active duty in Iraq, who received an e-mail from his civilian supervisor back home, telling him that it was "urgent" that he call. He traveled 100 miles, at considerable risk, to get to a place where he could call. He reached the supervisor, only to be told, "We have accommodated your military service long enough. We are filling your position, and you will not have that position when you return." Just what he needed to hear in Iraq!

I thought, "Nobody can top this story." But I was wrong. I have heard from an Army Reserve major, also in Iraq. Before he was called to active duty, he worked for the Community Support Association (CSA) of a U.S. embassy. He notified the CSA's officers and board of directors when he learned that he was being mobilized. The CSA board of directors fired him five days after he gave this notice. After he deployed to Iraq, the CSA sent the major a certified letter, to his home in Europe, telling him that there will be no job for him when he returns. His wife read the letter, and of course this only added to her worries-it's not enough that she has to worry about bullets and bombs. If he survives he is unemployed.

The officers and directors of the CSA apparently believe that the Uniformed Services Employment and Reemployment Rights Act (USERRA) does not apply to them and their association, but they are wrong. USERRA applies to "employers" and that term is defined in USERRA. The definition expressly includes "the federal government." [38 U.S.C. 4303(4)(A)(ii).] USERRA also defines "federal government" and the definition expressly includes "any federal executive agency." [38 U.S.C. 4303(6).] USERRA defines the term "federal executive agency," and the definition expressly includes "any nonappropriated fund instrumentality of the United States." [38 U.S.C. 4303(5).]

The CSA is a nonappropriated fund instrumentality of the U.S. Department of State. It is in the same legal category as an officers' club at a military base. Thus, the CSA is an employer and a federal executive agency. It is subject to USERRA enforcement under Section 4324, 38 U.S.C. 4324. That means that the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB) have jurisdiction. I invite the reader's attention to Law Reviews 12, 34, 67, 93, and 148, with respect to USERRA's enforcement mechanism relating to federal executive agencies.

It should also be noted that Section 4319 (38 U.S.C. 4319) makes USERRA applicable all over the world to U.S. and U.S.-affiliated employers. Congress added Section 4319 in

1998, specifically to cover situations like this. I invite the reader's attention to Law Review 24, "Enforcement of Re-employment Rights Outside the U.S."

* Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government. The best way to reach Captain Wright is by e-mail, at samwright50@yahoo.com.