

LAW REVIEW 17085¹

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New York City Expands its Human Rights Law To Protect Uniformed Service

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Update on Sam Wright

1.1.3.5—USERRA does not apply to NOAA service

1.2—USERRA forbids discrimination

1.8-Relationship between USERRA and other laws/policies

In late August 2017, New York City Mayor Bill de Blasio signed an amendment to the New York City Human Rights Law (NYCHRL). The amendment goes into effect on November 19, 2017. For an excellent summary of this amendment and its implications, I invite the reader's attention to an article by Evandro Gigante, Esq. and Laura M. Fant, Esq., two lawyers with the New York City office of the law firm Proskauer Rose LLP. You can find the article at <https://www.natlawreview.com/nyc-human-rights-law-amended-to-prohibit-discrimination-against-uniformed>.

The New York City Human Rights Law forbids discrimination in employment, housing, and many other areas based on race, color, sex, sexual orientation, religion, national origin, and many

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1500 "Law Review" articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index, 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.

² 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 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 35 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 or by telephone at 800-809-9448, ext. 730. I will provide up to one hour of information without charge. If you need more than that, I will charge a very reasonable hourly rate. If you need a lawyer, I can suggest several well-qualified USERRA lawyers.

other bases. As of November 19, 2017, employers in New York City are forbidden to discriminate based on “uniformed service” which is defined as current or past service in:

- a. The United States Army, Navy, Air Force, Marine Corps, or Coast Guard, including the Reserve Component of one of these services.
- b. The Army or Air National Guard.
- c. The commissioned corps of the Public Health Service or the commissioned corps of the National Oceanic and Atmospheric Administration.³
- d. The organized militia of New York *or any other state*, territory, or possession of the United States.⁴
- e. Any other service designated as part of the “uniformed services” under federal law.

As I have pointed out in many of my “Law Review” articles, the federal Uniformed Services Employment and Reemployment Rights Act (USERRA)⁵ is a floor and not a ceiling on the employment and reemployment rights of those who are serving or have served our country in uniform. Section 4302 of USERRA provides:

- (a) Nothing in this chapter [USERRA] shall supersede, nullify or diminish any Federal or State law (*including any local law or ordinance*), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.
- (b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.⁶

³ The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to the commissioned corps of the Public Health Service but not to the commissioned corps of the National Oceanic and Atmospheric Administration. Please see Law Review 15002 (January 2015).

⁴ New York law protects the civilian jobs of members of the New York Army or Air National Guard and members of the New York Naval Militia and other state military organizations when they are on state active duty. The New York state law does not protect the reemployment right of a member of the National Guard of another state who has a civilian job in New York and who is called to state active duty by the Governor or another state. For example, Alexander Hamilton lives in Weehawken, New Jersey and is a Captain in the New Jersey Army National Guard. Hamilton commutes daily across the Hudson River to Manhattan, where he is an associate at Dewey Cheatham & Howe (DCH), a major New York City law firm. Hamilton is called to state active duty by the Governor of New Jersey. At the end of this state active duty period, Hamilton does not have a legally enforceable right to reemployment at DCH, under New York state law as currently written. Please see NY-2015-NG, available in the New York section of our State Laws portion of www.roa.org/lawcenter. After November 19, 2017, a person in Hamilton’s situation, in New York City, will have some legal protection under New York City law.

⁵ USERRA is codified in title 38 of the United States Code, at sections 4301 through 4335 (38 U.S.C. 4301-35).

⁶ 38 U.S.C. 4302 (emphasis supplied).

State and local laws and ordinances, like the New York City Human Rights Law, can give those who are serving or have served our country in uniform *greater or additional rights*, beyond the rights conferred by USERRA. State and local laws cannot take away federal USERRA rights and cannot impose additional prerequisites upon the exercise of federal USERRA rights.

State and local laws can be very valuable, because they can provide additional remedies (like punitive damages) that are not provided by USERRA. I invite the reader's attention to Law Review 17079 (August 2017), concerning the New Jersey Law Against Discrimination.