

LAW REVIEW¹ 18062

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USERRA Requires Employers To Post a USERRA Rights Notice

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[Update on Sam Wright](#)

1.0—USERRA generally

1.3.1.2—Character and duration of service

Section 4334 of the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires employers (federal, state, local, and private sector) to post a prescribed notice about USERRA rights and obligations. Here is the text of that section:

(a) Requirement to provide notice. Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. *The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.*

¹ ¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1600 "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 very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1400 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. For 42 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.

(b) Content of notice. The Secretary [of Labor] shall provide to employers the text of the notice to be provided under this section.³

Section 4334 was not in the original version of USERRA, as enacted in 1994. This section was added a decade later.⁴ The legislative history of the notice requirement is as follows:

Section 211 of the bill is derived from H.R. 4477 and would require employers to provide notice to employees of the rights, benefits and obligations under USERRA. Section 211 would also require the Department of Labor to make available to employers, within 90 days after the date of enactment of this provision, the text of the notice.

Since fiscal year 2002, the number of USERRA complaints filed with the Department of Labor has increased each year by approximately 10 percent. According to testimony received by the Committee [House Committee on Veterans' Affairs], many problems emerge because employers and employees do not know the legal rights and duties associated with USERRA. This section is intended to raise awareness among employers and employees, as well as reduce workplace conflicts related to USERRA issues. The Committee believes that this provision would decrease inadvertent violations of the law by providing timely and accurate information to both employers and employees.⁵

The Department of Labor (DOL) did promulgate the text of the required notice, and for almost 14 years employers have had a legal obligation to post this notice. The notice is necessarily brief and general and not particularly helpful. USERRA requires employers to post this notice but provides no penalty for employers who fail to do so.

Many federal statutes require employers to post notices, and most employers meet their posting requirements by posting large laminated pages sold by office supply companies. You can find the USERRA notice in the laminated page, but you will likely have to hunt for it. I believe that notice posting requirements are of only limited utility because very few employees and even fewer employers read these boilerplate notices, which are usually posted in the employee break room.

I invite the reader's attention to this sentence of section 4334(a): "The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily post notices for employees." I interpret this sentence to mean that the employer's only requirement is to post the notice. The employer has no legal obligation to explain USERRA to employees or to respond to employee questions about their legal rights.

³ 38 U.S.C. 4334 (emphasis supplied).

⁴ Public Law 108-454, Title II, section 203(a), 118 Stat. 3606 (December 10, 2004).

⁵ 2004 Amendments, House Report, September 13, 2004, H.R. Rep. 108-683, 2004 WL 3044785 (Leg. Hist.); reprinted in Appendix B-6 of *The USERRA Manual*, by Kathryn Piscitelli and Edward Still. The two quoted paragraphs can be found at pages 869-70 of the 2017 edition of the *Manual*.

For example, I have often heard of disputes between employees who are away from their jobs for active military duty and employers about whether the period of service counts toward or is exempt from USERRA's cumulative five-year limit on the duration of the period or periods of uniformed service that the employee may perform, with respect to that employer.⁶ The employer is not required to answer your questions or to agree or disagree with your assertion that a specific ongoing period of service is exempt from the limit. If the employer agrees that the period is exempt, but in fact it is not exempt, and if that period causes you to exceed the five-year limit, the employer can deny your application for reemployment based on your having exceeded the five-year limit. Getting into an argument with the employer about the five-year limit during your period of service is pointless.

You need to research and understand your USERRA rights, especially the five-year limit. Do not expect the employer to explain USERRA to you. The employer and the personnel director probably do not understand this law, and they are not on your side.

I hope that our collection of more than 1600 published "Law Review" articles available at www.roa.org/lawcenter will help you in understanding, acting upon, and enforcing your rights under USERRA and other laws that are especially pertinent to those who serve our country in uniform. We have a detailed Subject Index, to help you find an article about a very specific topic.

⁶ Please see Law Review 16043 (May 2016) for a detailed discussion of the five-year limit and the nine exemptions—kinds of service that do not count toward exhausting the limit.