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USERRA's Final Section Requires Federal Agencies To Train Human Resources Personnel on USERRA

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[Update on Sam Wright](#)

1.1.1.8—USERRA applies to the Federal Government

I invite the reader's attention to USERRA's final section:

- (a) Training required. The head of each Federal executive agency shall provide training for the human resources personnel of such agency on the following:
 - (1) The rights, benefits, and obligations of members of the uniformed services under this chapter.
 - (2) The application and administration of the requirements of this chapter by such agency with respect to such members.
- (b) Consultation. The training provided under subsection (a) shall be developed and provided in consultation with the Director of the Office of Personnel Management.

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.

(c) Frequency. The training under subsection (a) shall be provided with such frequency as the Director of the Office of Personnel Management shall specify in order to ensure that the human resources personnel of Federal executive agencies are kept fully and currently informed of the matters covered by the training.

(d) Human resources personnel defined. In this section, the term "human resources personnel", in the case of a Federal executive agency, means any personnel of the agency who are authorized to recommend, take, or approve any personnel action that is subject to the requirements of this chapter with respect to employees of the agency.³

Here is the 2008 legislative history of section 4335:

Section 304 of the Committee [Senate Committee on Veterans' Affairs] bill would require human resources personnel employed by Federal executive agencies to receive training regarding USERRA.

Background. USERRA, which is codified in chapter 43 of title 38, United States Code, protects the public and private sector civilian job rights of veterans and members of the Armed Forces, including National Guard and Reserve members. USERRA also prohibits employer discrimination due to military obligations and provides reemployment rights to returning servicemembers.

In October 2007, the Committee conducted an oversight hearing regarding USERRA. According to testimony provided at that hearing, when Federal executive agencies violate USERRA, it is often due to a lack of knowledge or understanding about the law. In fact, The Honorable Charles Ciccolella, Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, testified that "about half the USERRA cases that we do in the Federal government is where the Federal hiring manager just doesn't understand the law or the [Office of Personnel Management] regulations that spell out how to implement the law."

Committee Bill. Section 304 of the Committee bill would amend chapter 43 of title 38 to add a new section 4335, which would require the head of each Federal executive agency to provide training for human resources personnel on the rights, benefits, and obligations of members of the Armed Forces under USERRA and the administration of USERRA by Federal executive agencies. It would require that the training be developed and provided in consultation with the Office of Personnel Management. The training would be provided as often as specified by the Director of the Office of Personnel

³ 38 U.S.C. 4335. This section was added to USERRA by Public Law 110-389, Title III, section 313(a), October 10, 2008, 122 Stat. 4166.

Management in order to ensure that the human resources personnel are kept fully and currently informed about USERRA.⁴

Although section 4335 was enacted almost a decade ago, most federal agencies have not taken this training requirement seriously. Federal agencies are among the worst violators of USERRA.

⁴ S. Rep. 110-449, 2008 WL 4149915, 2008 U.S.C.C.A.N. 1722 (legislative history). This report is reprinted in Appendix B-7 of *The USERRA Manual*, by Kathryn Piscitelli and Edward Still. The quoted paragraphs can be found on page 877-78 of the 2017 edition of the *Manual*.