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The Definitive Reference on USERRA—2019 Edition

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[About Sam Wright](#)

1.0—USERRA generally

The USERRA Manual: Uniformed Services Employment and Reemployment Rights, by Kathryn Piscitelli and Edward Still, published by Thomson Reuters Publishing Co. For ordering information go to <http://tmsnrt.rs/2qBFUPp> or call 800-328-4880.

This is the definitive reference book on the Uniformed Services Employment and Reemployment Rights Act (USERRA). The authors are Kathryn Piscitelli and Edward Still, two distinguished attorneys with experience representing service members and veterans in employment litigation.

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1900 "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 1700 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 43 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.

The 2019 edition was published recently, and this is the 12th annual edition—the book was first published in 2008. The book is updated annually with a replacement volume, rather than a “pocket part” supplement. While somewhat wasteful of paper, this practice makes the book much easier to use. Each year, the book gets thicker. The 2019 edition has 1809 pages, 76 more than the 2018 edition.

Each year, Ms. Piscitelli and Mr. Still discuss new cases that have been decided since the last edition was published. The Table of Cases in the 2019 edition has 40 pages, two more than the 2018 edition.

The book includes a detailed and well-conceived Table of Contents, facilitating finding discussion and authority on very specific legal topics. The most helpful Appendices include the text and legislative history of USERRA (enacted in 1994) and each major USERRA amendment, the USERRA Regulations promulgated by the Department of Labor, and the text of related federal and state laws and regulations, etc. Perhaps most helpful to lawyers are Appendices I-P, which provide sample pleadings, motions, discovery, voir dire questions, jury instructions, verdict forms, and post-trial motions.

This is a reference book for lawyers. Human relations professionals will also find it most useful. The individual veteran or service member may not find it helpful unless he or she has some legal training and a lot of time and patience.

What is new in the 2019 edition:

- a. Expanded treatment of USERRA’s coverage of joint employers (section 2:5).
- b. Additional material on employee coverage under USERRA—reflection of *Mace v. Willis* (USERRA covers employees who lack guaranteed shifts) (section 2:12).
- c. Further cases and materials on liability of individuals under USERRA (section 2:6).
- d. Additional cases regarding pay during military service (section 3:5).
- e. Revision of discussion on military service protected by USERRA (section 4:3).
- f. Updated citations regarding exemptions from USERRA’s five-year limit for certain kinds of active duty performed by Coast Guard members—reflecting section redesignations enacted in 2018 (section 4:11 and Appendix A-2).
- g. Expanded discussion regarding sufficiency of applications for reemployment under USERRA—including discussion of *Scudder v. Dolgencorp, LLC* (veteran had no obligation to use the employer’s preferred method of seeking reemployment through the employer’s leave coordinator) (section 4:17).
- h. New cases on reemployment rights of veterans with disabilities—including discussion of *Scudder v. Dolgencorp, LLC* and *Jackson v. City of Birmingham* (application for or receipt of Social Security benefits does not bar veteran from seeking and obtaining reemployment under USERRA) (section 5:2).

- i. Revision of discussion on promotions of reemployed employees, including discussion of *Jackson v. City of Birmingham* (probationary period that is not bona fide under USERRA cannot be extended to make up for time missed for military service) (section 5:5).
- j. Further cases and materials on qualifications for reemployment position (section 5:9).
- k. Expanded discussion and cases on persons protected from service-related discrimination under USERRA (section 7:1).
- l. Added cases and discussion on proof of discrimination and retaliation claims under USERRA (sections 7:8, 7:11 to 7:14, and 7:16).
- m. Updated and expanded treatment of jurisdiction and venue in USERRA lawsuits (section 8:5).
- n. Added material on proof of willfulness in support of claims for liquidated damages under USERRA (section 8:11).
- o. Expanded discussion and cases on award of attorney fees under USERRA (section 8:12).
- p. Further cases and discussion on whether arbitration of USERRA claims under collectively bargained dispute resolution procedures can be compelled (section 8:15).
- q. Discussion of new procedures for enforcement of congressional employees' rights under USERRA—reflecting 2018 amendments to the Congressional Accountability Act (section 9:12).

This treatise is not cheap, but it is essential for lawyers who advise and advocate for veterans and service members under USERRA.