

If it Is Not in the Written Settlement Agreement, You Are Not Getting it.

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[About Sam Wright](#)

1.8—Relationship between USERRA and other laws/policies

Q: I am a First-Class Petty Officer (E-6) in the Coast Guard Reserve and a member of the Reserve Organization of America (ROA).³ I have read with great interest several of your “Law

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2000 “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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 1800 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 44 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 (VRRRA—the 1940 version of the federal reemployment statute) for 38 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 VRRRA 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 VRRRA 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.

³ At its September 2018 annual convention, the Reserve Officers Association amended its Constitution to make all service members (E-1 through O-10) eligible for membership and adopted a new “doing business as” (DBA) name: Reserve Organization of America. The full name of the organization is now the Reserve Officers Association DBA the Reserve Organization of America. The point of the name change is to emphasize that our organization represents the interests of all Reserve Component members, from the most junior enlisted personnel to the most senior officers. Our nation has seven Reserve Components. In ascending order of size, they are the Coast Guard Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Air National Guard, the Army Reserve, and the Army National Guard. The number of service members in these seven components is almost equal to the number of personnel in the Active Components of the armed forces, so Reserve Component personnel make up almost half of our nation’s pool of trained and available military personnel. Our nation is more

Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA).

On the civilian side, I work for a city government as a police officer. My civilian career was interrupted by a recall to active duty for one year, from June 2011 to June 2012. During that year, I missed the opportunity to take a promotion exam, for promotion to Sergeant in the police department. If I had taken the exam, I likely would have scored well and would have been promoted to Sergeant on 1/1/2013. When I returned to work in June 2012, I requested the opportunity to take a make-up exam, but the city refused my request. My next opportunity to take the promotion exam came in September 2017. I took the exam and passed with flying colors, and I was promoted to Sergeant on 1/1/2018.

I filed a complaint with the Veterans’ Employment and Training Service of the United States Department of Labor (DOL-VETS), claiming that the city violated my USERRA rights when it denied my request to take a make-up exam. I demanded a retroactive adjustment of my seniority date as a Sergeant, from 1/1/2018 (when I was promoted) to 1/1/2013 (when I should have been promoted). I also demanded back pay for that five-year period, for the difference between what I should have been paid and what I was paid.

DOL-VETS investigated my complaint and found it to have merit. The DOL-VETS investigator presented a long, complicated agreement with a lot of legal mumbo-jumbo and asked me to sign it, which I did. The city manager also signed. My seniority date was adjusted, but I never received a dime of the back pay. What gives?

Answer, bottom line up front:

I have reviewed the settlement agreement—you provided me a copy. The agreement states you accepted the retroactive adjustment of your seniority date as “full and final satisfaction” of your USERRA claim. The agreement says nothing about back pay. The written settlement agreement, which appears to be comprehensive, controls over oral statements that the employer or someone else may have made during the negotiation of the agreement. You are not entitled to back pay because you waived your back pay claim in exchange for a retroactive adjustment of your seniority date.

Explanation:

dependent than ever before on the Reserve Components for national defense readiness. More than a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

The federal reemployment statute is a great law, and it is to be “liberally construed for he who has laid aside his civilian pursuits to serve his country in its hour of great need.”⁴ But USERRA cases are not exempt from the application of general legal principles that apply to civil disputes generally. One important legal principle is the parol evidence rule, which the Judicial Education Center (JEC) has defined as follows:

In general, the parol evidence rule prevents the introduction of evidence of prior or contemporaneous negotiations and agreements that contradict, modify, or vary the contractual terms of a written contract when the written contract is intended to be a complete and final expression of the parties’ agreement. A merger clause strengthens the presumption that the written document is complete and final by expressly stating that the written document is the final and full expression of the parties’ agreement. Thus, even if the parties later agree that they had a conversation creating, for example, a “side agreement” that was not included in the original written contract, and the side agreement contradicts the written contract (e.g., by changing the delivery date or price of a purchase), the additional or different terms included in the side agreement may not be enforced by the court when there is a merger clause in the written contract.⁵

My advice to you, going forward, is that you should never sign a document that you do not fully understand. You should get legal advice before you sign an important document, not after. Do not rely on advice from the attorney for the other party to the negotiation.

Please join or support ROA

This article is one of 2200-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs. Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we have sought to educate service

⁴ *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946).

⁵ <http://jec.unm.edu/education/online-training/contract-law-tutorial/the-parol-evidence-rule>.

members, military spouses, attorneys, judges, employers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight⁶ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20, or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

⁶ Congress recently established the United States Space Force as the eighth uniformed service.