

The Uniformed Services Employment and Reemployment Rights Act¹

Reviewed by *Lieutenant (Retired) Gary R. Brown**

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is the federal law governing the relationship of civilian employers with those serving in the military. George R. Wood and Ossai Miazad as Editors-in-Chief have compiled a well written series of reviews by various authors in analysis of USERRA for the ABA Section of Labor and Employment Law. Each review covers a different section of the Act and together provide an excellent resource for practitioners in this area.

For this reviewer, an understanding of USERRA (pronounced “you sa’rah”) is not only important to employers and employees affected directly by its terms, but broadens all citizens’ understanding of how important a role the reserve military forces currently play in the defense structure of the country. Protecting one’s right to a job when returning from service allows the military member to focus on his military mission.

Though not addressed in the book, it is important to understand how the history of the nation has made this Act and therefore this book of such great significance. Although USERRA in its various forms has provided protections for military members in various iterations since 1940, the change in the military component structure and strategy following the Viet Nam War has expanded its application by numbers and by amendment of the law. To understand how this has occurred, a basic understanding of the changed military structure and strategy is helpful. Following Viet Nam the military adopted an all-volunteer force still in place today. In addition to that change, the forces adopted a Total Force Policy which involves treating the three components of the Air Force and Army (the Active Duty, the Reserve, and the National Guard) as a single force. The Navy, Coast Guard, and Marines have a similar reliance on their reserve forces. Much of the military capability was placed in the Reserves and National Guard by the Army and Air Force, thus requiring them in any major operation.

The Reserve forces (now an operational reserve rather than a strategic reserve) have participated in the Gulf War, peacekeeping in Kosovo, and the 2003 invasion of Iraq. These members continue as key participants in the ongoing War on Terrorism. Since 9/11 through April 2010 the Department of Defense reported 762,806 reserve activations. Citizen soldiers are frequently being called upon to leave their homes and jobs for deployments and training. Employers now see more than just weekend and annual two week tour orders, but multiple and longer deployments by their employees. Thus the understanding of both the employer’s and employee’s rights as defined by USERRA are important.

USERRA is the key federal legislation addressing the employer relation to its employee who is also in the military. The Wood and Miazad book begins with a short history of the Act and its predecessors showing how the provisions developed and continue to develop. Support for the military in our ongoing effort has resulted in ongoing supportive legislation. The section also includes legislative history speaking to key provisions of USERRA.

Chapters 2 through 11 discuss USERRA provisions and implications by subject matter, a useful format for employers, employees, and legal counsel. This results in some duplication of information throughout the book when read in its entirety, but for the person looking up information on a specific topic, having the information repeated under each topic is helpful. For example, the escalator principle is discussed several places within the book, but applied to the subject under discussion. Although not mentioned in the book, in the employers handbook or employment manual, the labor contract (if any), and the employer’s past customary practice can be used to evidence employer practice. When looking at an individual case, these additional sources can give leverage to either side when reviewed along with the Act itself.

The importance of the five year rule, and particularly its exceptions, is a very frequent concern, especially considering the number and duration of current operations utilizing the Reservist. The rule provides that an employee may not use cumulative military leave longer than 5 years

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¹ GEORGE R. WOOD & OSSAI MIAZAD, THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (George R. Wood & Ossai Miazad eds., 2009) (Reproduced by permission, © 2011 Colorado Bar Association, 40 The Colorado Lawyer 116). All rights reserved.

with any one employer and maintain their reemployment and related rights under the Act. The exceptions (those periods not counting towards the five years) are important to understand. Chapter 3 at page 3-3 lists those exceptions set forth in the statute. The important exception under 4 is military service under a national emergency. Since 9/11, most orders are a result of the declared national emergency. Therefore, they cannot be counted against this five year maximum period. In this reviewer's experience it was found that in general only orders placing an individual on Active Guard and Reserve (AGR) tours did not possibly fall into one of the exceptions. Although the orders themselves indicate the authority for the order, members and employers concerned about the particular service as it counts towards the five years can get confirmation from the member's servicing personnel office or command.

Chapter 4 discusses very well the notice provisions of the Act and exceptions. Because military service may trigger obligations of the employer, it is not unreasonable for the employer to seek authoritative verification of the service. If the member does not provide the orders (or in cases where the orders don't look official) the employer should check with the member's command to validate the service.

Chapters 5 and 8 briefly mention the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. App. 521 et seq). To understand the entire picture of federal rights afforded mobilized reserve members, one must be aware of SCRA. As pointed out in the book, there is some overlap in the area of health care with USERRA. However SCRA's focus is much broader and multifaceted than the employer/employee relationship of USERRA.

In summary, this text provides a valuable tool for human relations offices, Judge Advocates, employers, employees and their attorneys. USERRA is but a recognition of the importance of military service to the nation, and provides a balance of employer and employee interests when that service comes into play. This book provides an excellent succinct guide to this important legislation.