

## **LAW REVIEW<sup>1</sup> 26056**

**September 2026**

**Employers: Please Don't Bother the Employee  
While he or she Is Serving in the Armed Forces.  
By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>**

### **1.0—USERRA generally.**

### **1.3.2.4—Status of the returning veteran.**

In 1997, the Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated the “Law Review” column in *The Officer*, ROA’s monthly magazine. In 2000, we added the “Law Review” articles to our website, [www.roa.org](http://www.roa.org). Starting in

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<sup>1</sup> I invite the reader’s attention to [Law Center | ROA](#). You will find more than 2,300 “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 Spouses’ Protection Act (USFSPA), the title 38 chapters that provide for veterans’ benefits administered by the Department of Veterans Affairs (VA), 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 90% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

<sup>2</sup> 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. I have dealt with USERRA and the Veterans’ Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 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. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an “of counsel” role. You can reach me by e-mail at [samuel@maherlegalservices.com](mailto:samuel@maherlegalservices.com) or by telephone at (708) 468-8155.

September 2001, when 19 terrorists killed almost 3,000 Americans in the terrible Tuesday morning, ROA started adding new articles each month. We now have more than 2,000 articles on our website, along with a detailed subject index, to facilitate finding articles about specific topics.<sup>3</sup>

In 2004, we published Law Review 134. Because this is an important topic, and because 22 years have passed since we published the article, we are republishing the article now.

### **LAW REVIEW 134**

**October 2004**

**Employers: Please Don't Bother Them in Iraq!**

**By CAPT Samuel F. Wright, JAGC, USNR\***

**Q: I am a Marine Corps Reserve lieutenant colonel, recalled to active duty in February 2003 and serving in Iraq. I left a job as a manager of a department for a major corporation. I recently received an e-mail from my immediate supervisor at the corporation, telling me that it was “urgent” that I call him right away. I traveled 100 miles, at considerable risk, to get to a place where I could call him.**

**When I reached him, he told me that the company has held my position open for 18 months and cannot afford to hold it open any longer. He told me that I will be reemployed, but not as a manager.**

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<sup>3</sup> I am the author of more than 80% of the published “Law Review” articles, but I am 75 and will not be around forever to author and update these articles. We are always looking for “other than Sam” articles by other lawyers.

**I damn sure did not need this extra stress right now. I go to bed every night praying that my efforts have been enough. I pray that no Marine will die because I couldn't get something accomplished. I pray that no Marine will die today because I couldn't spend five more minutes stringing wire and emplacing tank traps. I begrudge myself any down time, enjoyment, or personal luxuries, like focusing on my civilian job back home.**

**I do not know what the company expected me to do or say over the phone. I am in a combat zone, and these guys back home are expecting me to calmly accept that the department I built, the department I trained, is going to be headed up by somebody else and that I get to fall back in the ranks and lose my lead position.**

**What did they expect me to say? What could I say? I have to run. I am heading out on patrol. I will be hanging off the skid of a Huey doing low-level recon over the local area.**

**A:** I have decided to reprint your e-mail verbatim because you make the point so eloquently. Employers: If you are going to communicate with recalled employees in the war zone, please offer support and reassurance. Please do not add to their burdens, as this employer has done.

The whole point of the Uniformed Services Employment and Reemployment Rights Act (USERRA), as well as the Servicemembers Civil Relief Act (SCRA), is to take these civilian concerns off your mind, so that you can devote your full attention to your military duties. I also invite your attention to Law Review 125, by Captain Charles Baisley,

USMC, and particularly to the following sentence: “Indeed, the overarching mission of military legal assistance is to maximize the ‘operational readiness’ of the unit by allowing service members to focus on their duties—not personal concerns half a world away.” Your situation is the best example I can think of in support of Captain Baisley’s point.

Please go to ROA’s Web site, [www.roa.org](http://www.roa.org). Click on “Legislative Affairs,” then “ROA Law Reviews.” I invite your attention specifically to Law Review 77, titled “I Am Being Demobilized. What about My Civilian Job?”

If you meet the USERRA eligibility criteria, and I am sure that you will meet them, the civilian employer has the legal obligation to reemploy you in the position that you would have attained if you had been continuously employed (almost certainly the position you left) or another position of like seniority, **status**, and pay for which you are qualified.

With regard to “status,” I invite your attention to Law Reviews 8, 79, and 129. It is clear that your employer does not understand USERRA and is planning to reemploy you in a position of lesser status.

When you return to CONUS, please call the National Committee for Employer Support of the Guard and Reserve (ESGR) at 1-800-336-4590. ESGR is the DoD organization whose mission is to assist Reserve and National Guard personnel with exactly this sort of problem.

The employer is free to fill your position during your absence, but upon your return the employer may be required to displace the replacement in order to accord you your USERRA rights. The fact that the position has been filled does not make it “impossible or unreasonable” to re-employ the returning veteran. I invite your attention to Law Review 81. I hope that you find this information reassuring. You be careful out there.

\*Military title used for purposes of identification only. The views expressed herein are the personal views of the author and should not be attributed to the U.S. Navy, the Department of the Navy, the Department of Defense, or the U.S. Government.

*Law Review 134 contained this disclaimer because, at the time, I was not yet retired from the Navy Reserve. I retired 4/1/2007.*

### **End of reprint of Law Review 134.**

I also invite the reader’s attention to our Law Review 21006 (January 2021). That article is about a reservist who was recalled to active duty and deployed to a classified location many time zones away from home. His civilian employer demanded that he provide detailed information about an industrial accident that happened at his civilian job on his last day of work before he reported to active duty, and threatened him with firing if he did not respond immediately to the employer’s inquiry.

**The point is this. Employers: Please understand that while your employee is away from work for military training or service, he or she**

**needs to devote his or her entire attention to the immediate military duties and must not be distracted from those duties by civilian job concerns. This applies during the individual's drill weekend at the local Reserve Center or National Guard Armory, and it applies with special force when the individual is deployed to combat on the other side of the world.**

**Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?**

**A:** As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an "of counsel" role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

## **Join the Organization That Fights for You**

This article is one of more than 2,000 "Law Review" articles available at [Law Center | ROA](#)— a free legal resource that the Reserve Organization

of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files *amicus curiae* ("friend of the court") briefs in the Supreme Court and other courts and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

## **Your membership makes the mission possible.**

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. Spouses, widows, widowers, ancestors (parents or grandparents), and lineal descendants of past or present service members are also eligible to join, so families can stand with those who serve. Join online at [Reserve Organization of America - ROA](#) or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

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