

Before Calling an Attorney, Discuss USERRA Violations With Employer

I work for a company that employs 23 people. I was deployed for 18 months. I feel my employer has violated USERRA. Should I hire a local attorney?

I don't recommend hiring an attorney except in cases of the most egregious violations of the Uniformed Services Employment and Reemployment Rights Act, or if time is of the essence — for example, you are not given your job back when you return from deployment and have limited financial resources to survive on.

If you had a disagreement with your spouse over household chores, would you call a divorce lawyer or try to work it out by talking to your spouse? The same applies to work relationships — getting an attorney involved is like getting a call from a divorce lawyer to determine whether you or your spouse will do the dishes.

It'll be tough to repair the relationship after that. However, unlike your spouse, your employer may not, by law, retaliate against you because you exercised your rights.

I recommend that employees try to educate their employers about USERRA. Simply explaining that the law exists and applies to your situation will resolve quite a few problems. I believe that many employers do not purposely violate USERRA and that most violations are a result of ignorance of the law.

If explaining USERRA doesn't work, try to find something in writing that supports your position. For example, the Labor Department has easy-to-read regulations on USERRA online at <http://www.dol.gov/vets/programs/userra>.

One of the law's authors, retired Navy Capt. Sam Wright, has written hundreds of articles on USERRA. They're online at http://www.roa.org/site/PageServer?pagename=law_review_archive. If you have a unique situation that isn't addressed in those articles, Wright can be reached by calling toll-free (800) 809-9448, ext. 708. He provides free basic legal assistance courtesy of the Reserve Officers Association. Of course, I am also available to respond to your questions in future "Ask the Lawyer" columns.

If your providing a written opinion still doesn't satisfy your employer, the Defense Department has created an entity called Employer Support for the Guard and Reserve.

ESGR specializes in helping reservists informally resolve problems with their employers (although it has no ability to enforce USERRA). ESGR's Web site is <http://www.esgr.mil> and ombudsmen can be reached Monday through Friday, 8 a.m. to 5 p.m. Eastern time, by calling toll-free (800) 336-4590.

If ESGR does not or cannot help, the Labor Department — specifically, the assistant secretary of labor for veterans' employment and training services — is charged by law with

investigating allegations of USERRA violations.

The assistant secretary has many investigators across the country who look into USERRA violations daily. They have the power to subpoena and compel the testimony of your employer and others if necessary.

The main number for DOL VETS is (202) 693-4700, where you can get the name of an investigator who handles complaints in your area.

If DOL VETS determines an allegation has merit, it can refer the allegation to the Office of Special Counsel for federal employees (<http://www.osc.gov/userra.htm>) or the Justice Department's Civil Rights Division for all other employees (<http://www.usdoj.gov/crt/military/faq.htm>) to enforce your rights at no charge to you.

Notwithstanding everything I just wrote, you have the right at any time to retain an attorney and initiate legal action against your employer; you don't have to contact ESGR or DOL VETS first.

If you're unemployed because of your employer's improper conduct, or if your employer already has an attorney involved, you should consider immediately contacting your own attorney.

I highly recommend that you contact an attorney who has experience with USERRA cases. Many attorneys are willing to represent you at no cost because they can collect their fees and other expenses when they establish that your employer violated USERRA.

Others will provide pro bono (free) services out of respect for your service to our country. The American Bar Association has a Standing Committee on Legal Assistance for Military that offers free legal assistance on USERRA and other issues. It's online at <http://www.abanet.org/legal/services/lamp>.

The National Employment Lawyers Association also has a list of attorneys who can handle USERRA cases. NELA is online at <http://www.nela.org>. These attorneys may ask you to pay for legal services, so I'd recommend checking out the free services before contacting NELA.

The information in this column is provided for informational purposes only and is not intended to constitute legal advice. Readers are encouraged to seek the advice of an attorney or other professional when an opinion is needed.