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Does USERRA Apply to Foreign Employers in the United States?

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CATEGORY: USERRA Coverage

Q: I have read with interest your "Law Review' articles on the ROA website, www.roa.org. I read Law Review 24, about the applicability of the Uniformed Services Employment and Reemployment Rights Act (USERRA) to U.S. employers operating outside the United States. My question is different—does USERRA apply to foreign employers operating in our country. I work for a French company, managing a 10-employee office in Chicago. I am an Army Reservist, and I have been notified of my imminent mobilization. I notified my supervisor, at the company headquarters in Paris. He told me that USERRA does not apply to the company, because it is not an American company. Is that correct?

A: No. The USERRA regulations (recently promulgated by the Department of Labor) state: "USERRA applies to foreign employers doing business in the United States. A foreign employer that has a physical location or branch in the United States (including United States territories and possessions) must comply with USERRA for any of its employees in the United States." 20 C.F.R. 1002.34(b). In a pamphlet entitled *Employee Rights When Working for Multinational Employers,* the U.S. Equal Employment Opportunity Commission stated: "Employees who work in the U.S. or its territories are protected [by U.S. civil rights laws] whether they work for a U.S. or foreign employer."

Q: The 10-employee office in Chicago is the company's only facility in the U.S. The company contends that it is exempt from U.S. law as long as it does not have at least 15 employees in the United States. Is that correct?

A: Some other federal laws don't apply to employers with fewer than 15 employees, but USERRA and its predecessor statutes have never had such a threshold. You only need one employee to be an employer for purposes of this law. See *Cole v. Swint,* 961 F.2d 58 (5th Cir. 1992). Dr. Swint had one employee at his ranch, and that employee (Mr. Cole) joined the National Guard and wanted time off from work for military training. Dr. Swint argued that the law did not apply to him because he had only one employee. The district court and the court of appeals rejected that argument.

Cole was decided two years before Congress enacted USERRA in 1994, but USERRA's legislative history mentions this case with approval. It is clear that the lack of a threshold, based on a

minimum number of employees, is not an oversight—Congress clearly intended that this law would apply to the smallest as well as the largest employers.

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