

Legal Loophole: Some Contracts Skirt Protections for Service Members

Congress acted in February to end forced arbitration for survivors of sexual harassment and sexual assault, and the VFW firmly believes veterans and service members deserve the same choice

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The following is an Op-ed by VFW National Commander Tim Borland, published by [Military Times](#).

WASHINGTON – When a recruit joins the U.S. military, they have a lot of tasks to complete — paperwork and ID cards, physicals, boot camp, and training for their military occupational specialty — all responsibilities they accept as part of wearing the uniform. In return for accepting these responsibilities, and the sacrifices that come with them, our service members are rightfully afforded special federal statutory legal protections.

However, these special protections afforded to service members are being undermined by a legal trap buried in the fine print of contracts and click-through agreements: forced arbitration. This legal trap means that active duty, Guard or reserve members and veterans are unable to take their case to court when big corporations break the law and violate their rights.

Two of the most important of these special protections provided by Congress are the Uniformed Services Employment and Reemployment Rights Act, or USERRA, and the Servicemembers Civil Relief Act, or SCRA.

USERRA provides protection to service members from employment discrimination due to their military service. Under USERRA, the civilian jobs of deployed Guard and reservists are legally protected. Upon their return home, they are to be reemployed in a similar or comparable job and are entitled to any promotions and seniority benefits they would have received if not for their deployment.

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SCRA provides financial and legal protections for active duty personnel and their families, as well as Guard and reservists while on active duty orders. Service members regularly confront challenging circumstances that civilians do not, such as limited access to internet or banking services while deployed, reduced household income and increased costs necessary to keep a one-parent home going. SCRA is meant to prevent predatory actions by unscrupulous banks, companies, and other financial institutions, such as arbitrarily raised interest rates, exorbitant late payment fees, and illegal foreclosures. Forced arbitration clauses buried in the fine print make it difficult to enforce this important law.

Forced arbitration has become so commonplace in employee and financial contracts that more and more service members find themselves unable to hold employers and corporations responsible for violating their rights. Forced arbitration requires nondisclosure of the details of the proceedings and is held at a location selected by the corporation with an arbitrator hired and paid for by the corporation whose decision is binding and unappealable to any impartial judge or jury. This lopsided “legal proceeding” unsurprisingly favors the defendant corporation most of the time and circumvents Congress’ intent for passing USERRA and SCRA in the first place.

Congress acted in February to end forced arbitration for survivors of sexual harassment and sexual assault. These survivors now can choose if their claim is heard by a judge and jury or through arbitration. The Veterans of Foreign Wars firmly believes veterans and service members deserve the same choice, and 31 other veteran and military service organizations do too.

Thankfully, we have great allies in Congress who have joined us in this fight. In the House, Reps. David Cicilline, D-R.I.; Mark Takano, D-Calif.; Guy Reschenthaler, R-Pa.; Jared Golden, D-Maine; Brian Fitzpatrick, R-Pa.; and Conor Lamb, R-Pa.; sponsored the Justice for Servicemembers Act (HR 2196). This bill’s protections and language were included in the House passed version of the 2023 National Defense Authorization Act, or NDAA. We thank Sens. Richard Blumenthal, D-Conn., and Lisa Murkowski, R-Alaska, for being steadfast champions on this issue and we hope the Senate maintains this language in its version of the NDAA.

The Veterans of Foreign Wars calls upon Congress to honor the intent of the laws they passed to protect service members — SCRA and USERRA — and give these laws back their enforcement power. To continue to ignore doing so only sets a bigger legal trap for our troops. Congress must act now to close this loophole in the law.

Timothy M. Borland currently serves as Commander-in-Chief of the Veterans of Foreign Wars of the U.S. Tim served in the U.S. Army from 1979 to 2007, last serving with the 101st Airborne Division. He earned his VFW eligibility serving in Korea and Iraq and currently maintains his Gold Legacy Life membership at VFW Post 9972 in Sierra Vista, Arizona, Tim is also a member of AMVETS, American Legion, and a life member of Disabled American

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