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Can the Employer Sue Me Under USERRA?

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Q: I recently returned from a year of active duty and made a timely application for re-employment. The employer rejected my application, and I have complained to the Veterans' Employment and Training Service (VETS), U.S. Department of Labor. Today, I was served with process. The employer has sued me in Federal District Court, asking for a declaratory judgment that he is not required to re-employ me because changed circumstances make it "impossible or unreasonable" to re-employ me, according to the employer. Is such an employer-initiated lawsuit permissible?

A: No. The Uniformed Services Employment and Reemployment Rights Act (USERRA) contains a provision that forbids an employer from initiating such a lawsuit: "Standing. An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter under subsection (a) or by the United States under subsection (a)(1)." [38 U.S.C. 4323(f).]

USERRA's legislative history includes a short paragraph explaining the purpose and effect of this subsection: "Section 4322(d)(5) [later renumbered 4323(f)] would provide that only persons claiming rights or benefits under chapter 43 may initiate an action, i.e., no declaratory judgment actions by employers, prospective employers or other entities (such as pension plans or unions) can be filed." House Rep. No. 103-65, 1994 United States Code Congressional and Administrative News 2449, 2472.

Section 4323(f) was enacted with exactly this sort of situation in mind. Your lawyer should bring this subsection and this legislative history to the attention of the judge, and the judge should summarily dismiss the employer's lawsuit.

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