

LAW REVIEW 14016
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**Class Action USERRA Lawsuit against American Airlines
Concerning Insufficient Pension Contributions for Pilots
Returning to Work after extended Military Leave**

By Captain Samuel F. Wright, JAGC, USN (Ret.)

1.3.2.3—Pension credit for service time

1.4—USERRA enforcement

Summary of the Lawsuit

On January 17, 2014 American Airlines pilots filed an action under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Employee Retirement Income Security Act (ERISA) against an American Airlines pension plan and fiduciaries of the plan for failing to make pension contributions for periods of military leave in compliance with ERISA and the terms of the plan document and for failing to take any action to ensure compliance with USERRA and the terms of the plan.

The action, *Allman v. American Airlines, Inc. Pilot Retirement Benefit Program Variable Income Plan, et al.*, 1:14-cv-10138 (D. Mass.), was filed on January 17, 2014, and is pending in the federal district court in Boston, Massachusetts.

The lawsuit was filed by the following law firms: Cohen Milstein Sellers & Toll PLLC, the Law Office of Thomas G. Jarrard, Crotty & Son PLLC, Robert Mitchell, and Block & Leviton LLP.

Summary of the Claims

This lawsuit was filed against the American Airlines, Inc. Pilot Retirement Benefit Program – Variable Income Plan (“the Plan”), State Street Bank & Trust Co., a fiduciary of the Plan, as well as other fiduciaries of the Plan, on behalf of pilots who took leave from American Airlines to serve in the United States Armed Forces since 1997 and received less than the amount of pension contributions that they were entitled to receive under the USERRA and under the terms of the Plan.

The Complaint alleges that the Plan failed to provide pilots with, and the fiduciaries of the Plan failed to ensure that pilots received pension contributions for periods of military leave based on each pilot’s own 12-month average earnings before the period of military leave, as required by USERRA and the terms of the Plan Document. As a result, the Complaint alleges that these American pilots did not receive the full amount of pension contributions that they were entitled to receive. The Complaint also alleges that the fiduciaries failed to ensure that the Plan

received the proper contributions under the terms of the Plan, and failed to take any action to collect the pension contributions owed by American Airlines.

Under USERRA, 38 U.S.C. § 4318, employees who take military leave are entitled to receive (upon reemployment) pension contributions covering the periods when they have served in the United States Armed Forces. When an employee's compensation is not "reasonably certain," USERRA requires that pension contributions be based on the employee's average earnings for the 12-month period preceding any military leave. The Complaint alleges that the earnings of the American pilots were not reasonably certain and their pension contributions should have been based on their own average earnings from the 12-month period prior to their military leave. The Complaint alleges that the terms of the Plan incorporated these provisions of USERRA, but in practice the Plan and its fiduciaries failed to follow USERRA or the terms of the Plan.

The Complaint seeks a determination that the policy or practice by which the Plan calculated pension contributions for pilots on military leave violated USERRA and the terms of the Plan. In addition, the Complaint requests that the fiduciaries of the Plan who implemented this policy and failed to collect properly the pension contributions be required to restore the losses to the Plan as a result of their failure to require American Airlines to make the proper contributions and that such amounts recovered be allocated to the accounts of the members of the Class.

Class Action Allegations

This lawsuit is brought as a class action on behalf of all current and former American Pilots who are or were participants in the American Airlines, Inc. Pilot Retirement Benefit Program (or beneficiaries of such participants):

- (1) who, after becoming an American Airlines, Inc. employee, completed a period of qualified military service that lasted 30 days or more and ended on or after January 1, 1997; and
- (2) who did not receive a pension contribution into the Variable Income Plan based on the pilot's own average rate of compensation during the 12 months prior to the commencement of the pilot's period of qualified military service (or, if shorter, the period of employment immediately preceding such period of qualified military service); and
- (3) whose average rate of compensation during the 12 months prior to any period of qualified military service that lasted 30 days or more (or, if shorter, the period of employment immediately preceding such period of military leave) exceeded the monthly rate of compensation that was actually used to determine the pension contribution for the pilot's period of qualified military service; and
- (4) who received a pension contribution for a period of qualified military service of 30 days or more that ended on or after January 1, 1997.

Excluded from the Class are: (a) all former or current pilots who previously reached settlements with or judgments against American resolving or releasing any claims arising during the Class Period under USERRA and/or ERISA related to inadequate pension contributions for periods of military leave; and (b) any person who served as a fiduciary of the Plan and their beneficiaries under the Plan and any member of the immediate family of and any heirs, successors or assigns of any such person.

Status of the Litigation

The Complaint was filed on January 17, 2014. Defendants have not yet responded to the Complaint.

Whom To Contact for More Information

If you believe that you are a member of the proposed class or you have information which might assist the Plaintiffs' lawyers in the prosecution of these allegations, please contact one of the following persons and fill out a questionnaire that can be accessed here:

<http://www.cohenmilstein.com/cases/323/american-airlines-pilots-userra-erisa-pension-contribution-litigation>

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Cohen Milstein is co-counsel in this litigation with the Law Office of Thomas G. Jarrard, Crotty & Son PLLC, Robert Mitchell, and Block & Leviton LLP.