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Actively Participating Reserve Component Members Sue L-3 Communications for Hiring Discrimination and Case Settles

By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]
Update on Sam Wright

1.2—USERRA forbids discrimination
1.4—USERRA enforcement

***J. Mitch Hall and Nathan Kay v. L-3 Communications Corp., L-3 Communications Vertex Aerospace LLC, and L-3 Communications Integrated Systems L.P,* Civil Action No. 2:15-cv-0231-SAB, United States District Court for the Eastern District of Washington.**

J. Mitch Hall and Nathan Kay, on behalf of themselves and a proposed class of unsuccessful job applicants, filed suit against L-3 Communications and two related companies named above. On its website, L-3 describes itself as follows: "With headquarters in New York City and

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[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1700 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1500 of the articles.

[2] BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 42 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

approximately 31,000 employees worldwide, L3 develops advanced defense technologies and commercial solutions in pilot training, aviation security, night vision and EO/IR, weapons, maritime systems and space."[3]

Hall and Kay alleged that L-3 systematically discriminates against actively participating National Guard and Reserve personnel in hiring for pilot positions. They alleged that L-3 managers disfavored serving reservists and National Guard members because of the scheduling difficulties and inconvenience that military leave imposes on the company and its supervisors. They alleged that this discrimination violated section 4311(a) of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Washington Law Against Discrimination (WLAG).

Section 4311(a) of USERRA provides:

> A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services shall not be denied *initial employment,* reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.[4]

As I have explained in footnote 2 and in Law Review 15067 (August 2015), Congress enacted USERRA[5] and President Bill Clinton signed it into law on 10/13/1994, as a long-overdue update and rewrite of the Veterans' Reemployment Rights Act (VRRA), which was originally enacted in 1940 for the members of my late father's generation (the "greatest generation") who were drafted or voluntarily enlisted in the armed forces for World War II. The VRRA was amended in 1968, 51 years ago, to add a provision making it unlawful for an employer to fire a Reserve or National Guard member or to deny the person a promotion or incident or advantage of employment because of the person's obligations as a member of a reserve component of the armed forces. In 1986, 33 years ago, Congress amended that provision by outlawing *discrimination in hiring.* Prior to the enactment of USERRA in 1994, the pertinent provision of the VRRA was as follows:

> Any person who *seeks* or holds a position described in clause (A) or (B) of subsection (a) of this section shall not be denied *hiring,* retention in employment, or any promotion or

[3] *See* https://www.l3t.com/about-l3/company-profile.
[4] 38 U.S.C. 4311(a) (emphasis supplied).
[5] Public Law 103-353.

other incident or advantage of employment because of any obligation as a member of a Reserve Component of the Armed Forces.[6]

Although discrimination in hiring has been unlawful for 33 years, there are not a lot of court cases about hiring discrimination, under the VRRA or USERRA. This is the first *class-action* lawsuit about hiring discrimination.

When a large company like L-3 has vacancies, it typically advertises the openings and establishes a procedure for persons to apply. Only a minority of those who apply are invited to come in for interviews. The plaintiffs have alleged that at L-3 the applicants whom the company knew or suspected to be current National Guard or Reserve participants never got to second base in the application process—they were not invited in for interviews. This makes it difficult to identify the specific individuals who would have been hired but for the illegal discrimination.

While not admitting that it violated the law, L-3 has agreed to settle this case by setting aside a substantial sum of money to pay persons who are in the affected class and who file claims in writing by 5/7/2019. A person filing a claim must show that he or she applied for a covered position between 1/1/2011 and 9/28/2018 and met the stated qualifications for the position and was not hired. Such a person will receive a settlement amount, to be paid from the money set aside.

More importantly, L-3 has agreed to *injunctive relief* to prevent future violations. Going forward, L-3 managers and supervisors will not inquire about the military status of job applicants until hiring decisions have been made. The company has also agreed to institute training on USERRA and military leave for its managers and supervisors and to amend its leave policies to make them more favorable to employees who also serve our country in the National Guard or Reserve.

The Honorable Stanley A. Bastian, United States District Judge for the Eastern District of Washington, has *preliminarily* approved the settlement. Members of the proposed class have until 5/7/2019 to file written objections to the settlement or to file claims under the settlement. I urge affected persons to file claims by the deadline and not to file objections.

I congratulate attorneys Thomas Jarrard and Matthew Crotty (ROA life members) and Peter Romer-Friedman for their excellent work in this case.

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[6] 38 U.S.C. 2021(b)(3) (1988 edition of the United States Code) (emphasis supplied). The italicized words were added by the 1986 amendment.