

LAW REVIEW¹ 25026
July 2025
DOJ Should Prioritize USERRA Enforcement.
By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.4—USERRA enforcement.

A person who claims that his or her rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) have been violated by any employer (federal, state, local, or private sector) is permitted to file a formal, written USERRA complaint with the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS).³ Upon receiving such a complaint,

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "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 Spouses' 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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

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 45 years, I have collaborated 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 38 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 <mailto:swright@roa.org>.

³ 38 U.S.C. § 4322(a) and (b).

DOL-VETS is required to investigate it.⁴ In conducting a USERRA investigation, DOL-VETS has subpoena authority.⁵

If the DOL-VETS investigation shows that the complaint has probable merit, DOL-VETS is required to make “reasonable efforts” to persuade the employer to comply with USERRA and to compensate the complainant for lost pay and benefits suffered by reason of the USERRA violation.⁶ If DOL-VETS is unable to persuade the employer to comply with USERRA, DOL-VETS is required to notify the complainant of the results of the investigation and of the complainant’s right to request referral to the United States Department of Justice (DOJ).⁷

The complainant may then request that DOL-VETS refer the case to DOJ, and upon receipt of such a request DOL-VETS must refer the case to DOJ promptly.⁸ If DOJ is reasonably satisfied that the complainant is entitled to the USERRA benefits that he or she seeks, DOJ may appear and act as attorney for the complainant in filing and prosecuting the case in the appropriate federal district court.⁹

Within DOJ, responsibility for enforcement of USERRA against state and local governments and private employers¹⁰ is assigned to the Civil Rights Division, which is led by the Assistant Attorney General for Civil Rights (AAGCR). Recently, President Trump nominated the Honorable Harmeet Dhillon to be the AAGCR, and the Senate confirmed the nomination. On 4/7/2025, I sent this letter to AAGCR Harmeet Dhillon:

⁴ 38 U.S.C. § 4322(d).

⁵ 38 U.S.C. § 4326.

⁶ 38 U.S.C. § 4322(d).

⁷ 38 U.S.C. § 4322(e).

⁸ 38 U.S.C. § 4323(a)(1).

⁹ *Id.*

¹⁰ There is a different enforcement mechanism for cases against Federal executive agencies. 38 U.S.C. § 4324.

Honorable Harmeet Dhillon
Assistant Attorney General for Civil Rights
United States Department of Justice
Washington, DC 20530

Re: Enforcement of the Uniformed Services Employment and Reemployment Rights Act

Dear Ms. Dhillon:

Congratulations on your confirmation as the Assistant Attorney General for Civil Rights. One of the many responsibilities of the Civil Rights Division is to enforce, with respect to state and local governments and private employers, the Uniformed Services Employment and Reemployment Rights Act (USERRA). During the Presidency of George W. Bush, the responsibility, within DOJ, for enforcing USERRA was transferred from the Civil Division to the Civil Rights Division, and that brought about a 1000% improvement in the diligence of DOJ in enforcing this essential law. Since the transfer, DOJ enforcement of USERRA has been good to excellent, under both Republican and Democrat Presidents.

USERRA (Public Law 103-353) was signed into law by President Bill Clinton on 10/13/1994. USERRA is codified in title 38, sections 4301 through 4335. USERRA was the long-overdue update of and replacement for the Veterans' Reemployment Rights Act (VRRA), which was originally enacted in 1940.

For more than 84 years, federal law has required employers to reemploy the men and women who have left their civilian jobs for voluntary or involuntary military service. This law is an essential part of the fabric of our society, but all too many employers feign ignorance of this law or seek to shuck their responsibilities through clever or not-so-clever artifices.

USERRA applies to almost all employers in our country, including the Federal Government, the States, the political subdivisions of States, and private employers, regardless of size. You only need one employee to have the obligations of an employer for purposes of the federal reemployment statute. *See*

Cole v. Swint, 961 F.2d 58, 60 (5th Cir. 1992). In 1940, in 1994, and at all other relevant times, Congress fully understood that this law puts burdens on civilian employers, but those burdens are tiny as compared to the heavy burdens, sometime the ultimate sacrifice, that are voluntarily undertaken by that fraction of 1% of our population who have volunteered to serve our country in uniform.

In 1973, more than two generations ago, Congress abolished the draft and established the All-Volunteer Military (AVM). With our armed forces made up entirely of volunteers, not draftees, our country has the best-motivated, best-led, and best-equipped armed forces in the world and perhaps in the history of the world. Those who argue for a return to the draft should look to the woeful performance of Russian conscripts in Ukraine.

USERRA is one of several essential laws that Congress has enacted to encourage qualified young men and women to enlist in our armed forces, in the Active Component or the Reserve Component. Without a law like USERRA, it would not be possible for the services to recruit and retain the necessary quality and quantity of personnel to defend our country.

To the employers who complain about the “burdens” imposed on employers by the effective enforcement of USERRA, I say the following: “Our country is not drafting you, and it is not drafting your children and grandchildren. When you find service members and veterans in your workforce or among job applicants, you should cheerfully go above and beyond the requirements of USERRA in hiring and promoting those who serve or have served in your place and in place of your offspring.”

In its first case construing the 1940 reemployment statute, the Supreme Court held that “This law should be liberally construed for he who has laid aside his civilian pursuits to serve his country in its hour of great need.” *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284-85 (1946).

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index, to facilitate finding articles about specific topics. As a sample, I am enclosing six articles about the essential role of DOJ in enforcing USERRA. Upon request, I can send you 24 more articles on this topic.

The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997, and we add new articles each month. The articles are available for free to everyone, not just ROA members. Through these articles, and by other means, including amicus curiae briefs that we file in the Supreme Court and other courts, ROA advocates for the rights and interests of service members, without regard to their membership status, or lack thereof, in our organization. Our articles provide vital information, not readily available elsewhere, about the legal rights of service members and how to exercise and enforce those rights.

I fully understand that there are many important statutes under your purview as the Assistant Attorney General for the Civil Rights Division. Please ensure that appropriate attention and resources are devoted to USERRA enforcement.

Very respectfully,

Samuel F. Wright

Enclosures (as stated)

For more than 30 years, ROA has advocated for the liberal interpretation and strict enforcement of USERRA because this law is essential to the recruitment, training, retention, and effectiveness of our nation's uniformed services.

Please join or support ROA.

This article is one of 2,300-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing

business as the Reserve Organization of America (ROA), initiated this column in 1997. We add new articles each month.

ROA is the nation's only national military organization that exclusively and solely supports the nation's reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).¹¹

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state

¹¹ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight¹² uniformed services, you are eligible for membership in ROA,¹³ and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at <https://www.roa.org/page/memberoptions> or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002¹⁴

¹² Congress recently established the United States Space Force as the eighth uniformed service.

¹³ Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

¹⁴ You can also contribute on-line at www.roa.org.