

LAW REVIEW¹ 25035

September 2025

The Role of DOL-VETS in Enforcing USERRA.

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.4—USERRA enforcement.

Q: I am a Captain in the Marine Corps Reserve (USMCR). On the civilian side, I work for a huge company—let us call it Daddy Warbucks Industries or DWI. During the five years that I have worked for the company, my DWI supervisors have given me a hard time about my absences from work for service and training in the USMCR, although those absences have been clearly protected by the Uniformed Services Employment and Reemployment Rights Act (USERRA). By

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 (VRRRA—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 drafted the proposed VRRRA 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 VRRRA 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>.

doing an Internet search on “USERRA,” I found several of your “Law Review” articles about this essential law. Your Law Review 24047 (October 2024) was especially useful.

I was recently away from my DWI job for exactly one year of active duty, from 1/1/2024 through 12/31/2024. I have read and reread your Law Review 24047. I clearly meet and can document that I meet the five USERRA conditions for reemployment. I left my DWI job in late 2023 to report for this period of active duty. I gave my DWI supervisor and the DWI Personnel Office three months of advance notice, orally and in writing, that I would be leaving in late December 2023 to report for active duty. This year of active duty was voluntary, and it counts toward exhausting my five-year limit with DWI, but I still have four years of headroom in my five-year limit with the company.

I applied for reemployment at DWI, in person and in writing, at the DWI office where I work, on 1/2/2025, the first business day of the new year. I followed up promptly with a letter, sent by certified mail and addressed to the Personnel Director of the company. The company never responded to my application for reemployment. I called the Personnel Director five times and left messages, but she never returned my call.

On 2/1/2025, I contacted the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR).³ The ESGR headquarters put me in touch with a volunteer “ombudsman” in the city where I live and where DWI has its headquarters. The ombudsman told me that DWI never responded to

³ ESGR’s telephone number is 800-336-4590. Their website is www.esgr.mil.

his emails, letters, or telephone calls and that I should “go to DOL.”
What does that mean?

Answer, bottom line up front:

In the United States Department of Labor, there is an agency called the “Veterans’ Employment and Training Service” (DOL-VETS). A person who claims that his or her USERRA rights have been violated by any employer (federal, state, local, or private sector) is authorized to file a formal, written USERRA complaint with DOL-VETS.⁴ The best way to file a formal complaint is on-line, at:

[VETS 1010 Form On-line Submission | U.S. Department of Labor](https://www.dol.gov/agencies/vets/programs/userra/vets1010)
(<https://www.dol.gov/agencies/vets/programs/userra/vets1010>).

(Also, for technical assistance and general information, you can reach out directly to your nearest DOL-VETS State Director (DVET) at:

[Regional Offices | U.S. Department of Labor](https://www.dol.gov/agencies/about/regionaloffices)
(<https://www.dol.gov/agencies/about/regionaloffices>), or to the National Compliance Team at VETSCompliance@dol.gov).

Within five days after receiving your complaint, DOL-VETS is required to acknowledge receipt of your complaint and to notify you in writing of your rights concerning the complaint.⁵ DOL-VETS is required to investigate such complaint.⁶ In conducting a USERRA investigation, DOL-VETS has the authority to obtain records, testimony, and other evidence by subpoena.⁷

⁴ 38 U.S.C. § 4322.

⁵ 38 U.S.C. § 4322(c)(1).

⁶ 38 U.S.C. § 4322(d).

⁷ 38 U.S.C. § 4326.

If DOL-VETS determines because of its investigation that your allegations are correct, the agency “shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter [USERRA].”⁸

If DOL-VETS is not successful in persuading your employer to come into compliance with USERRA, the agency is required to notify you of the results of its investigation and of your right to request referral of your case file.⁹ If DOJ is “reasonably satisfied” that DWI has violated your USERRA rights, DOJ may act as your attorney in filing and prosecuting the lawsuit against the employer.¹⁰

Q: If DOJ files the lawsuit against DWI, will I be the named plaintiff? Or will DOJ file the lawsuit in the name of the United States?

A: Because your case is against a private employer (DWI), you will be the named plaintiff even if the DOJ is providing free legal services.¹¹

Q: Am I required to exhaust remedies through DOL-VETS before suing DWI in the appropriate federal district court?

A: No. You can bypass DOL-VETS entirely and sue DWI through private counsel that you retain.¹² But if you want free legal representation through DOJ you must go through DOL-VETS.

⁸ 38 U.S.C. § 4322(d).

⁹ 38 U.S.C. § 4322(e). If, as in your case, the complaint is against a private employer or a state or local government, the case file will be referred, upon your request, to the United States Department of Justice (DOJ). See 38 U.S.C. § 4323(a)(1). If the complaint is against a federal executive agency, the case file will be referred, upon your request, to the United States Office of Special Counsel (OSC). See 38 U.S.C. § 4324(a)(1).

¹⁰ 38 U.S.C. § 4323(a)(1).

¹¹ See Law Review 25016 (April 2025).

¹² 38 U.S.C. § 4324(c)(3)(A).

Q: If I go through DOL-VETS and my case file is referred to DOJ, and if DOJ declines my request for representation, can I sue DWI in the appropriate federal court through private counsel that I retain?

A: Yes.¹³ After DOL-VETS advises you of the results of its investigation, you can choose not to request a referral to DOJ, and you can then file a suit through private counsel.¹⁴

Q: If I sue DWI through private counsel and win, can the court order DWI to pay my attorney fees?

A: Yes.¹⁵

Q: If I sue DWI through private counsel and lose, can the court require me to pay the DWI attorney fees?

A: No. USERRA provides: “No fees or court costs may be charged or taxed against any person claiming rights under this chapter.”¹⁶

Q: I am confident that I have a valid USERRA claim against DWI. I have other valid claims. The company learned that I am the person who complained to the United States Environmental Protection Agency that the company has been unlawfully and surreptitiously dumping toxic waste into the lake that provides potable water for our city. I believe that DWI has violated my “whistleblower” rights. Can DOL-VETS and DOJ represent me with respect to this other claim?

¹³ 38 U.S.C. § 4323(c)(3)(C).

¹⁴ 38 U.S.C. § 4323(c)(3)(B).

¹⁵ 38 U.S.C. § 4323(h)(2).

¹⁶ 38 U.S.C. § 4323(h)(1).

A: DOL-VETS and DOJ can only assist you and represent you with respect to your USERRA claim. If you have other valid claims, you may want to retain private counsel and consolidate all your claims in one lawsuit.

Q: What is your advice? Should I file a formal complaint with DOL-VETS? Or should I bypass DOL-VETS and sue DWI through private counsel that I retain?

A: *In most circumstances*, you are better off with DOL-VETS, at least initially. If DOL-VETS finds that your case is without merit, or if DOJ declines your request for representation, you can always retain private counsel later. The DOL-VETS “no merit” determination will not be admissible in your lawsuit.

Q: In your Law Review 07058 (November 2007), you wrote that DOL-VETS sometimes conducts shoddy investigations and accepts at face value the factual and legal assertions of employers. What gives?

A: I wrote that article 18 years ago. In recent years, there have been big improvements at DOL-VETS, under the leadership of Brigadier General (Retired) Ivan E. Denton, the Director of the Office of National Programs in DOL-VETS.¹⁷ If you believe DOL-VETS got the results of your USERRA case wrong, you can contact DOL-VETS to request a review of your case by reaching out to the National Compliance Team at USERRA-VP-Protest@dol.gov.

¹⁷ General Denton is a career member of the Senior Executive Service (SES). When he retired from the Army National Guard in 2016, he was the J-1 (Personnel) at the National Guard Bureau. He is a member of ROA.

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).¹⁸

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.

¹⁸ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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 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 eight¹⁹ uniformed services, you are eligible for membership in ROA,²⁰ 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

¹⁹ Congress recently established the United States Space Force as the eighth uniformed service.

²⁰ Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

1 Constitution Ave. NE
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²¹ You can also contribute on-line at www.roa.org.