

New USERRA Lawsuit by Jayson Huntsman

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

[About Sam Wright](#)

1.2—USERRA forbids discrimination and reprisal

1.3.2.10—Furlough or leave of absence clause

1.4—USERRA enforcement

Jayson Huntsman is a pilot for Southwest Airlines (SWA). He is also a recently retired Air Force Reserve officer and a life member of the Reserve Organization of America (ROA). He has brought a series of class action lawsuits against SWA for violating the Uniformed Services Employment and Reemployment Rights Act (USERRA). Jayson Huntsman marches in smartly where other SWA pilots fear to tread. It is unlawful, under section 4311(b) of USERRA,³ for an employer to reprimand an employee or applicant for exercising USERRA rights or taking an action to enforce USERRA, but that is not to say that such reprisal does not occur. Almost

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "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 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 1800 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 44 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 (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 largely 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 SWright@roa.org.

³ 38 U.S.C. 4311(b).

uniquely, Jayson Huntsman has the cojones to take on the employer by serving as the named plaintiff in a class action suit. Bravo Zulu to Jayson Huntsman.

Jayson Huntsman's most recent class action suit against SWA is like the class action suit brought by ROA member Eric White against United Airlines (UAL), as described in Law Review 21014, the immediately preceding article in this series. Huntsman's claim, on behalf of himself and all SWA employees (not just pilots) who are active members of the Reserve or National Guard, is that SWA must grant *paid* military leave for short tours of military training (like drill weekends and traditional annual training tours) because SWA grants paid leave to employees on non-military leaves of absence of comparable duration. Like White's claim, Huntsman's claim is under USERRA's "furlough or leave of absence" clause.⁴

Jayson Huntsman brought his lawsuit in the United States District Court for the Northern District of California. On 2/3/2021, Judge Phyllis J. Hamilton of that court granted Huntsman's motion for class certification, meaning that Jayson Huntsman now represents the class of SWA employees (pilots, flight attendants, mechanics, etc.) who are active participants in the National Guard or Reserve. The determination of the merits of Huntsman's claim comes next. It is likely that Judge Hamilton will give weight to the determination by the United States Court of Appeals for the 7th Circuit, in *White v. United Air Lines*.

California is in the 9th Circuit, along with Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, as well as Guam and the Commonwealth of the Northern Marianas Islands. District judges in the 9th Circuit are required to follow 9th Circuit precedents. Judge Hamilton is not required to follow *White*, a 7th Circuit precedent, but it is likely that she will. If Huntsman reaches the 9th Circuit, as is likely, the 9th Circuit will likely follow the 7th Circuit precedent. If the 9th Circuit disagrees with the 7th Circuit, it is likely that the Supreme Court will grant certiorari (discretionary review) to resolve this conflict among the circuits.

We will keep the readers informed of developments on this important issue.

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This article is one of 2000-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. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. 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

⁴ 38 U.S.C. 4316(b).

advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs. Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights 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 seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. 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 www.roa.org 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:

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