

## LAW REVIEW<sup>1</sup> 21075

November 2021

### The COVID-19 Vaccine Mandate for Service Members Is Valid and Constitutional, and all Service Members Should Comply.

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[About Sam Wright](#)

#### 9.0—Miscellaneous

#### 12.0—Military criminal justice

*Dixon v. DeBlasio, 2021 U.S. Dist. LEXIS 196287 (E.D.N.Y. Oct. 12, 2021).*

This is a recent, scholarly decision written by Senior Judge Brian M. Cogan of the United States District Court for the Eastern District of New York. Judge Cogan carefully considered and firmly rejected constitutional arguments against three Emergency Executive Orders (EOs) signed by the Mayor of New York. Those EOs require businesses to require that their employees and patrons exhibit proof of full vaccination status (for COVID-19) as a condition of entry into certain indoor

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<sup>1</sup> I invite the reader's attention to <http://www.roa.org/lawcenter>. You will find more than 2200 "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 two thousand of the articles.

<sup>2</sup> 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 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 [SWright@roa.org](mailto:SWright@roa.org).

premises. I am confident that other challenges to the constitutionality of COVID-19 vaccination mandates will also fail.

I think that the courts will be especially deferential to the military services regarding the enforcement of vaccine mandates. Of course, there is a compelling governmental interest in protecting our nation from threats, and in the close quarters existence often required of military personnel the transmission of communicable diseases is a constant concern. The broad transmission of communicable diseases like COVID-19 can have a devastating effect on military readiness.

In my 37 years of Active and Reserve service (1970-2007), I willingly received all the required vaccines, including Smallpox, Anthrax, Tetanus, and the annual Influenza vaccine. I never suffered ill effects from any vaccine, and these vaccines protected me from contracting communicable diseases. The need for such vaccines is even clearer in the case of COVID-19, a pandemic that has already killed more than 670,000 Americans and is not over.

All active-duty Navy personnel must be fully vaccinated by 11/28/2021, and the deadline for Navy Reserve personnel is 12/28/2021. The other services have similar requirements. These requirements amount to *lawful general orders*, and violation of these requirements is a punishable criminal offense under the Uniform Code of Military Justice (UCMJ). Courts martial or non-judicial punishment are possible, but it is more likely that the services will discharge unvaccinated personnel with honorable or general discharges.

*I strongly urge all military personnel, Active Component and Reserve Component, to get the COVID-19 vaccine and all other required vaccines as soon as possible.*

### **Please join or support ROA**

This article is one of 2,200-plus “Law Review” articles available at <http://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 almost a century old—it was established on 10/1/1922 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 advocate for the implementation of policies that provide for adequate national security. For 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, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, ROA educates service members, military spouses, attorneys, judges, employers, ESGR volunteers, DOL investigators, congressional and State legislative 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 cost 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 eight uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20.00 or \$450 for 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 [www.roa.org/](http://www.roa.org/) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially to help us continue and increase our support of those who serve. You can mail us a contribution to:

Reserve Organization of America  
1 Constitution Avenue NE  
Washington, DC 20002

## **UPDATE—NOVEMBER 2021**

**It is unlikely that other States will follow Oklahoma's lead in trying to stand in the way of enforcement of the necessary and constitutional Department of Defense mandate that all service members (Active, Reserve, and National Guard) get the COVID-19 vaccine. I reiterate my advice that all service members should obtain the COVID-19 vaccine and all other required vaccines as soon as possible.**

**<https://www.armytimes.com/news/your-military/2021/11/17/other-states-hesitant-to-defy-guards-covid-vaccine-mandate-like-oklahoma/>**