

## LAW REVIEW<sup>1</sup> 22018

March 2022

### No Statute of Limitations Limits when you Can Initiate a USERRA Complaint.

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[About Sam Wright](#)

1.1.1.8—USERRA applies to the Federal Government

1.4—USERRA enforcement

1.6—USERRA and statutes of limitations

1.8—Relationship between USERRA and other laws/policies

**Q: I am the same retired Army Reserve Colonel who asked the questions in Law Reviews 22016 and 22017, the immediately preceding two articles in the Law Review series. My Federal agency employer violated the Uniformed Services Employment and Reemployment Rights Act (USERRA) when it refused to give me Federal civilian pension credit for my final active-duty period, from 10/1/2008 until 9/30/2012. I filed a complaint with the agency's Equal Employment Opportunity (EEO) office, asserting that the agency had violated USERRA. The EEO office dismissed my complaint out-of-hand, saying that there is a 45-day deadline for**

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2300 "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 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

<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 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>.

**filing a Federal EEO complaint, measured from the date of the unfavorable personnel action or the date that the employee became aware of the unfavorable personnel action. The EEO office said that the statute of limitations on my USERRA complaint expired almost a decade ago. Help!**

### **Answer, bottom line up front**

First, you should not have filed an EEO complaint for an alleged USERRA violation.<sup>3</sup> Second, there is indeed a 45-day statute of limitations for asserting an EEO complaint, but that statute of limitations does not apply to USERRA complaints.<sup>4</sup> Third, USERRA does not have a statute of limitations and it specifically precludes the application of statutes of limitations in other statutes.<sup>5</sup> It is not too late to pursue your complaint that your Federal agency employer violated USERRA in 2012.

### **Explanation**

The pertinent subsection of USERRA is as follows:

If any person seeks to file a complaint or claim with the Secretary [of Labor], the Merit Systems Protection Board, or a Federal or State court under this chapter alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim.<sup>6</sup>

Although almost a decade has passed since you were improperly denied pension credit for your 2008-12 active-duty period, you can bring an action in the Merit Systems Protection Board<sup>7</sup> to correct the 2012 violation. This is not to say that I recommend waiting a decade to assert a USERRA violation. USERRA cases are not exempt from the general rule of “you snooze you lose.” The longer you wait, the more difficult it generally becomes to prove your case. Moreover, if the employer can show that your inexcusable delay has prejudiced the employer’s

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<sup>3</sup> See Law Review 17107 (November 2017). The title of that article is “Don’t File an EEO Complaint for a USERRA Violation.” The EEO complaint process is for complaints alleging that Federal agencies have violated Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), or the Americans With Disabilities Act (ADA). Title VII forbids discrimination in employment on the basis of race, color, sex, religion, or national origin. The ADEA forbids employment discrimination based on age (over 40). The ADA forbids discrimination based on disability and requires employers to make reasonable accommodations for disabled persons.

<sup>4</sup> See Law Review 22006 (January 2022).

<sup>5</sup> See 38 U.S.C. § 4327(b).

<sup>6</sup> 38 U.S.C. § 4327(b). Congress added section 4327 to USERRA on 10/10/2008. See Public Law 110-389, Title III, § 311(f)(1), Oct. 10, 2008, 122 Stat. 4163. The preclusion of statutes of limitations applies to reemployments initiated on or after 10/10/2008.

<sup>7</sup> See Law Review 22006 (January 2022) for a discussion of the USERRA enforcement mechanism with respect to claims that Federal executive agencies, as employers, have violated USERRA.

ability to defend, the court (or in this case the MSPB) could dismiss your case based on the equitable doctrine of laches.<sup>8</sup>

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

This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://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 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 almost 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 educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, 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 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 eight<sup>9</sup> uniformed services, you are eligible for membership in ROA, 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 [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 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  
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<sup>8</sup> See Law Review 19076 (August 2019).

<sup>9</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.