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“Other Retaliatory Actions:” DOL-VETS Provides New Guidance To Protect You From Retaliation For Your Reserve Component Service By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.2—USERRA forbids discrimination and retaliation.

On 1/2/2025, President Joe Biden signed into law the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (Dole Act).³ In addition to improving the Department of Veterans Affairs (VA) and optimizing veterans’ benefits, especially in the areas of home

¹ I invite the reader’s attention to [Law Center | ROA](#). You will find more than 2,300 “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), the title 38 chapters that provide for veterans’ benefits administered by the Department of Veterans Affairs (VA), 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 80% 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. I have dealt with USERRA and the Veterans’ Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 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 Public Law 118-210, 138 Stat. 2778 (Jan. 2, 2025).

caregiving and veteran homelessness,⁴ the Dole Act modernized and improved the Uniformed Services Employment and Reemployment Rights Act (USERRA), 30 years after that law was signed on 10/13/1994.⁵

Until recently, section 4311(b) of USERRA read as follows:

An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.⁶

The Dole Act amended section 4311(b) by adding “or other retaliatory action” after “employment action.” This is a welcome addition.

In a recent case, a United States District Court Judge, hearing a motion to dismiss, held that an allegation that a supervisor had initiated a malicious criminal prosecution against an employee to reprimand against the employee for having exercised his USERRA rights was not a violation of section 4311(b), even if true, because a criminal prosecution, even if malicious, was not an “adverse employment

⁴ See Law Review 24058 (December 2024). That article is by Bradley Hennings and Robert Chisholm of the Rhode Island law firm Chisholm Chisholm & Kirkpatrick (CC&K), the nation’s largest law firm devoted exclusively to assisting veterans in obtaining their earned veteran benefits.

⁵ See Law Review 24047 (October 2024).

⁶ 38 U.S.C. § 4311(b).

action.”⁷ We had this case in mind when we proposed this amendment, and we are most pleased that this amendment has been enacted.

On 9/8/2026, the Veterans’ Employment and Training Service of the United States Department of Labor (DOL-VETS) made an important announcement about the purpose and effect of this 2025 USERRA amendment.⁸ I have placed the entire text of this important document at the end of this article.

I am most pleased with this scholarly and helpful document. This document should be cited by attorneys representing individuals who claim and can show that their employers (federal, state, local, or private sector) have retaliated against them for exercising their USERRA rights or for complaining about USERRA violations.

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

⁷ See *Lara v. Rock Valley Community College District Police Department*, 2023 U.S. Dist. LEXIS 36689, 2023 WL 2374979 (N.D. Ill. March 6, 2023). See also Law Review 23032 (June 2023), and Law Review 23064 (December 2023).

⁸ DOL-VETS Opinion Letter USERRA-2026 (Sept. 8, 2026).

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

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**Here is the complete text of DOL-VETS Opinion Letter USERRA-2026-1
(September 8, 2026):**

**U.S. Department of Labor
Veterans' Employment and Training Service.
Washington, D.C. 20210
Opinion Letter USERRA-2026-1
September 8, 2026
SUBJECT: Protections for Employees from
"Other Retaliatory Action" under USERRA.**

The U.S. Department of Labor (DOL), through the Veterans' Employment and Training Service (VETS), interprets and provides guidance on the Uniformed Services Employment and Reemployment Rights Act (USERRA) and investigates complaints filed under this law. USERRA protects civilian employment and reemployment rights and benefits for returning service members and protects employees from discrimination based on uniformed service, including service in both the Active and Reserve components of the armed forces, as well as service in the Commissioned Corps of Public Health Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, the National Urban Search and Rescue Response System, and intermittent personnel with the Federal Emergency Management Agency.

VETS' USERRA opinion letters help publicize VETS' position on complex areas of the law. This letter sets forth VETS' interpretation and analysis

of specific statutory and regulatory provisions relating to protections for employees from “other retaliatory action” under USERRA.

Background

On January 2, 2025, the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (P.L. 118-210 § 221(b)) (“the Dole Act”) added “other retaliatory action” to the list of prohibited actions by employers of service members who are protected under USERRA. See 38 U.S.C. § 4311(b). Before enactment of the Dole Act, employers were prohibited under USERRA from discriminating against or taking an “adverse employment action” against their employees because they engaged in USERRA-protected activity.¹ 38 U.S.C. § 4311(b); See P.L. 104–275 (S 1711) (October 9, 1996). Now, due to this change in the law, an employer may not discriminate in employment against or take any adverse employment action *or other retaliatory action* against any person because such person has engaged in USERRA protected activity (emphasis added). 38 U.S.C. § 4311(b).²

Under USERRA, there are four types of USERRA-protected activity: (1) action to enforce a protection afforded any person under USERRA; (2) testimony or making a statement in or in connection with any proceeding under USERRA; (3) assistance or other participation in an investigation under USERRA; and (4) exercise of a right provided for in USERRA. These activities are protected under USERRA regardless of whether the person who engaged in the activity ever performed service in the uniformed services. 38 U.S.C. § 4311(b). ²

The statute provides: An employer may not discriminate in employment against or take any adverse employment action or other retaliatory action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or USERRA-2026-1, page 2 of 3 VETS addresses questions involving allegations of discrimination and retaliation pursuant to its responsibilities to provide service members assistance in obtaining USERRA benefits and to investigate USERRA complaints. 38 U.S.C. §§ 4321-4322.

VETS has received inquiries from service members and volunteers who support them regarding the types of actions that may be considered “other retaliatory action” under USERRA. This Opinion Letter examines the meaning of “other retaliatory action” and provides some examples of such action. II.

What types of actions by employers may be included under USERRA’s “other retaliatory action” prohibition?

For cases under Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e – 2000e-17, the Supreme Court’s landmark decision in *Burlington Northern* established that retaliation claims are not limited to employment decisions that affect terms and conditions of employment, but extend to actions that could dissuade a reasonable worker from making or supporting a discrimination charge (*Burlington Northern and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

However, because USERRA’s anti-retaliation provision required an “adverse employment action,” some courts interpreted USERRA to cover a narrower range of actions than those covered under Title VII. *See Lisdahl v. Mayo Foundation*, 633 F.3d 712, 721 (8th Cir. 2011).

With the Dole Act’s inclusion of “and other retaliatory action” to 38 U.S.C. § 4311(b), the principles established for Title VII retaliation claims are now equally applicable to retaliation claims under USERRA. In the context of Title VII, federal courts have found that the retaliation provision is “not limited to discriminatory actions that affect the terms and conditions of employment” and may extend to “harms that are not workplace-related or employment-related.” *Baloch v. Kempthorne*, 550 F.3d 1191, 1198 n.4 (D.C. Cir. 2008) (quoting *Burlington Northern* at 64). This affords employees “protection from a wider range of retaliatory conduct” than would be available under previous standards. *Crawford v. Carroll*, 529 F.3d 961, 974 (11th Cir. 2008).

Examples of “other retaliatory actions” have included changes to work schedules, transfers to less desirable positions, increased scrutiny of an employee, the filing of false criminal charges against an employee, exclusion from professional opportunities, and threats or coercion. *See*, 132 Am. Jur. Trials 1 (2013-2016) (citing cases).

The Supreme Court emphasized that context matters in assessing whether an action is materially adverse, and actions that might be immaterial in some contexts may be actionable in others. *See Thompson v. North American Stainless, LP*, 562 U.S. 170, 174-75 (2011); *Corp. Compl. Series: EEO § 4:4* (2019-2020) (citing cases).

Conclusion

Before the 2025 enactment of the Dole Act, employers were prohibited under USERRA from discriminating against or taking an “adverse employment action” against their employees because they engaged in USERRA-protected activity. With the enactment of the Dole Act, “other retaliatory actions” are now actionable in USERRA retaliation claims. The action need not be an “employment action.” This encompasses any retaliatory actions that would be sufficient to dissuade a reasonable employee from, under USERRA, enforcing a protection, testifying in a proceeding, assisting in an investigation, or exercising a right.

The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services. 38 U.S.C. § 4311(b).