

LAW REVIEW¹ 26075

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Work for a Federal Agency? Don't Expect the Same "Liquidated Damages" If They Willfully Violate USERRA.

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

1.1.1.8—USERRA applies to the Federal Government.

1.4—USERRA enforcement.

Q: I am a petty officer in the Coast Guard Reserve and a life member of the Reserve Organization of America (ROA). I have read with great interest many of your "Law Review" articles about the Uniformed

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 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. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRA—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 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. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to service members. I joined your organization as a life member because I want to support this great service that you are providing for Reserve Component service members like me.

In January 2024, I was hired by a Federal Executive Agency (FEA) as a civil service employee. This was my first Federal civilian job. Eight months later, in August 2024, I volunteered to go on active duty in the Coast Guard for one year, from 10/1/2024 through 9/30/2025. I gave my direct supervisor and the FEA Personnel Office six weeks of advance notice, orally and in writing, that I would be leaving my FEA position to report to Coast Guard duty in a distant location. I requested to be put on “military leave” for the durations of my active duty period.

I have read and studied your Law Review 24047 (October 2024). I am certain that I met the five USERRA conditions for reemployment when I applied for reemployment on 10/2/2025, just two days after I left active duty. My direct supervisor and the FEA Personnel Director violated USERRA *willfully*. They knew that I was entitled to reemployment, but they denied my application for reemployment because they do not like members of the armed forces and veterans and because they had hired a civilian nonveteran to fill my position and did not want to displace her.

I have also read Law Review 25006, by Colonel George C. Aucoin, USMC (Ret.). He wrote that Congress amended USERRA and that now (after 1/3/2025) a court can order an employer that has willfully

violated USERRA to pay “liquidated damages” (in addition to the actual damages) in the amount of \$50,000 or the amount of the actual damages, whichever is greater.

In my case, the amount of actual damage is very small, only a few hundred dollars, because I quickly found a local government job that pays more than the FEA job to which I was entitled to under USERRA. At this point, I do not want to return to FEA, but I think that the agency should be required to pay me \$50,000 for violating USERRA.

Does USERRA give me the right to collect \$50,000 from FEA for violating USERRA willfully?

A: No. Section 4323 of USERRA³ provides for enforcement of this law against State and local governments and private employers. Section 4324 of USERRA⁴ provides for enforcement of this law against Federal executive agencies like your pre-service employer. Section 4323 provides for the award of liquidated damages for willful violations. Section 4324 has no such provision. I have placed the entire text of section 4323 and section 4324 at the end of this article.

Because your potential USERRA case is against a Federal executive agency, there is no way for you to collect liquidated damages. Yes, there needs to be a way to hold Federal supervisors and personnel officials accountable for willfully violating USERRA, in order to dissuade future willful violations of this essential law. In Law Review 26002

³ 38 U.S.C. § 4323.

⁴ 38 U.S.C. § 4324.

(January 2026) and Law Review 15089 (October 2015), I proposed these two USERRA amendments (not yet enacted):

a. Provide for the Merit Systems Protection Board (MSPB) to require federal executive agencies to pay liquidated damages for willful USERRA violations.

Section 4323 of USERRA⁵ provides an enforcement mechanism for cases involving state and local governments and private employers. Section 4324⁶ provides an enforcement mechanism for federal executive agencies as employers. Section 4323 includes a provision requiring the defendant employer to pay liquidated (extra) damages if the court finds that the defendant violated USERRA willfully. The Dole Act amended the “liquidated damages” provision to read as follows: “The court may require the employer to pay the person the greater of \$50,000 or the amount equal to [loss of wages and benefits suffered by reason of an employer’s failure to comply] as liquidated damages, if the Court finds that the employer knowingly failed to comply with the provisions of this chapter.”⁷

Section 4324 does not contain a provision requiring a Federal agency to pay liquidated damages (extra damages) for violating USERRA willfully. I propose that the “liquidated damages” provision in section 4323 should be added to section 4324. Federal employees, former federal employees, and prospective federal employees who were unlawfully denied hiring should have the same rights and remedies as are available against a private employer. Indeed, they should have better rights

⁵ 38 U.S.C. § 4323.

⁶ 38 U.S.C. § 4324,

⁷ 38 U.S.C. § 4323(a)(1).

because USERRA’s first section expresses the ‘sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.’⁸ Under current law, there is no provision for requiring a Federal Government agency to pay extra damages for violating USERRA willfully. This proposal would close that loophole.

b. Amend the list of “prohibited personnel practices” for federal employees to make specific reference to USERRA.

Section 2302 of title 5 of the United States Code⁹ enumerates 12 Prohibited Personnel Practices (PPPs). A Federal employee who commits a PPP can be disciplined by the MSPB, including removal from the Federal workforce, for committing a PPP. PPP # 11 is as follows: “take, or fail to take, recommend or approve a personnel action if taking or failing to take such an action would violate a veterans’ preference requirement.”¹⁰

Proposed change.

We propose to add “or the Uniformed Services Employment and Reemployment Rights Act” to section 2302(b)(11).

Rationale for change

To promote USERRA compliance within the Federal Government, Federal supervisors and personnel officials must be held personally

⁸ 38 U.S.C. § 4301(b).

⁹ 5 U.S.C. § 2302.

¹⁰ 5 U.S.C. § 2302(b)(11).

accountable and must pay a price, from their own pockets, for willfully violating USERRA.

Reference

Law Review 25034 (September 2025).

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.

Here is a link to the Maher Legal Services website:

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

Join the Organization That Fights for You.

This article is one of more than 2,000 "Law Review" articles available at [Law Center | ROA](#)— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files *amicus curiae* ("friend of the court") briefs in the Supreme Court and federal courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

Your membership makes the mission possible.

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants of past or present service members, so families can stand with those who serve. Join online at [Reserve Organization of America - ROA](#) or call 800-809-9448. If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

Here is the entire text of section 4323 of USERRA:

(a)Action for Relief.—

(1)

A person who receives from the Secretary [of Labor] a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is

entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for relief under this chapter for such person. In the case of such an action against a State (as an employer), the action shall be brought in the name of the United States as the plaintiff in the action.

(2)Not later than 60 days after the date the Attorney General receives a referral under paragraph (1), the Attorney General shall—

(A)

make a decision whether to appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted; and

(B)

notify such person in writing of such decision.

(3)A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person—

(A)

has chosen not to apply to the Secretary for assistance under section 4322(a) of this title;

(B)

has chosen not to request that the Secretary refer the complaint to the Attorney General; or

(C)

has been refused representation by the [Attorney General](#) with respect to the complaint under such paragraph.

(b)Jurisdiction.—

(1)

In the case of an action against a State (as an employer) or a private employer commenced by the United States, the district courts of the United States shall have jurisdiction over the action.

(2)

In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State.

(3)

In the case of an action against a private employer by a person, the district courts of the United States shall have jurisdiction of the action.

(c) Venue.—

(1)

In the case of an action by the United States against a State (as an employer), the action may proceed in the United States district court for any district in which the State exercises any authority or carries out any function.

(2)

In the case of an action against a private employer, the action may proceed in the United States district court for any district in which the private employer of the person maintains a place of business.

(d) Remedies.—

(1) In any action under this section, the court may award relief as follows:

(A)

The court may require the employer to comply with the provisions of this chapter.

(B)

The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter.

(C)

The court may require the employer to pay the person the amount referred to in subparagraph (B) and interest on such amount, calculated at a rate of 3 percent per year.

(D)

The court may require the employer to pay the person the greater of \$50,000 or the amount equal to the amounts referred to in subparagraphs (B) and (C) as liquidated damages, if the court determines that the employer knowingly failed to comply with the provisions of this chapter.

(2)

(A)

Any compensation awarded under subparagraph (B) or (C) of paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for under this chapter.

(B)

In the case of an action commenced in the name of the United States for which the relief includes compensation awarded under subparagraph (B) or (C) of paragraph (1), such compensation shall be held in a special deposit account and shall be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to the person because of inability to do so within a period of 3 years, the compensation shall be covered into the Treasury of the United States as miscellaneous receipts.

(3)

A State shall be subject to the same remedies, including prejudgment interest, as may be imposed upon any private employer under this section.

(e)Equity Powers.—

(1)

The court shall use, in any case in which the court determines it is appropriate, its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter.

(2)A person bringing an action to enforce a provision of this chapter pursuant to subsection (a) shall be entitled to an injunction under paragraph (1) if such person demonstrates—

(A)a violation—

(i)

of the provisions of this chapter; or

(ii)

of the provisions of this chapter is threatened or is imminent;

(B)

the harm to the person outweighs the injury to the employer;

(C)

a likelihood of success on the merits of such action; and

(D)

awarding such relief is in the public interest.

(3)

The court may not deny a motion for injunctive relief on the basis that a party bringing an action to enforce a provision of this chapter may be awarded wages unearned due to an unlawful termination or denial of employment at the conclusion of such action.

(f)Standing.—

An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter under subsection (a) or by the United States under subsection (a)(1).

(g)Respondent.—

In any action under this chapter, only an employer or a potential employer, as the case may be, shall be a necessary party respondent.

(h)Fees, Court Costs.—

(1)

No fees or court costs may be charged or taxed against any person claiming rights under this chapter.

(2)

In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(3) who obtained private counsel for such action or proceeding, the court shall award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

(i)Definition.—

In this section, the term “private employer” includes a political subdivision of a State.

38 U.S.C. § 4323 (emphasis supplied).

Here is the entire text of section 4324 of USERRA (applying to enforcement of USERRA against Federal executive agencies):

(a)

(1)

A person who receives from the Secretary [of Labor] a notification pursuant to section 4322(e) may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. Not

later than 60 days after the date the Secretary receives such a request, the Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

(2)

(A)

If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.

(B) Not later than 60 days after the date the Special Counsel receives a referral under paragraph (1), the Special Counsel shall—

(i)

make a decision whether to represent a person before the Merit Systems Protection Board under subparagraph (A); and

(ii)

notify such person in writing of such decision.

(b) A person may submit a complaint against a Federal executive agency or the Office of Personnel Management under this subchapter directly to the Merit Systems Protection Board if that person—

(1)

has chosen not to apply to the Secretary for assistance under section 4322(a);

(2)

has received a notification from the Secretary under section 4322(e);

(3)

has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or

(4)

has received a notification of a decision from the Special Counsel under subsection (a)(2)(B) declining to initiate an action and represent the person before the Merit Systems Protection Board.

(c)

(1)

The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b), without regard as to whether the complaint accrued before, on, or after October 13, 1994. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

(2)

If the Board determines that a Federal executive agency or the Office of Personnel Management has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or Office to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

(3)

Any compensation received by a person pursuant to an order under paragraph (2) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.

(4)

If the Board determines as a result of a hearing or adjudication conducted pursuant to a complaint submitted by a person directly to the Board pursuant to subsection (b) that such person is entitled to an order referred to in paragraph (2), the Board shall award such person reasonable attorney fees, expert witness fees, and other litigation expenses. The Board may, in its discretion, award reasonable attorney

fees in a case settled before the issuance of an order if the person can demonstrate that significant attorney fees were incurred and that justice requires such an award.

(d)

(1)

A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

(2)

Such person may be represented in the Federal Circuit proceeding by the Special Counsel unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

(3) In such Federal Circuit proceeding, the court shall award such person reasonable attorney fees, expert witness fees, and other litigation expenses if such person—

(A)

prevails in such Federal Circuit proceeding; and

(B)

is not represented by the Special Counsel in such Federal Circuit proceeding.

38 U.S.C. § 4324.

Please note that the provision for liquidated damages appears in section 4323 but not in section 4324. Thus, liquidated damages cannot be awarded against a Federal executive agency.