

USERRA

FY 2021
ANNUAL REPORT TO CONGRESS

Uniformed Services Employment and
Reemployment Rights Act of 1994



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Veterans' Employment and Training • August 2022



The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) are: to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and to prohibit discrimination against persons because of their service in the uniformed services. It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of USERRA.

TABLE OF CONTENTS

Table of Contents	I
Introduction	1
Overview of USERRA Protections	2
USERRA Services Provided by the Department of Defense’s Employer Support of the Guard and Reserve	4
1. Overview	4
2. Outreach Programs	4
3. Ombudsman Services	5
4. Department of Defense USERRA Working Group	6
Department of Labor’s USERRA Outreach and Claims Investigation	6
1. VETS’ Public Education and Compliance Assistance Efforts	6
2. VETS’ Investigative Process	7
3. Case Referral Process	8
4. Program Initiatives	8
Department of Justice Enforcement	9
Office of Special Counsel Enforcement	11
USERRA in the Federal Sector	11
Mandated Reporting Requirements	11
1. The number of cases reviewed by the Department of Labor under this chapter during the fiscal year for which the report is made	12
2. The number of cases reviewed by ESGR, on behalf of the Secretary of Defense, during the fiscal year	12
3. The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of the Special Counsel before the Merit Systems Protection Board pursuant to section 4324 during such fiscal year	12
A. Cases referred to the Department of Justice or the Office of Special Counsel.....	13
B. Complaints Filed by the Attorney General and Actions Initiated by the Office of Special Counsel.....	14

4. The number of complaints filed by the Attorney General pursuant to section 4323 during such fiscal year	16
5. The number of cases reviewed by the Secretary of Labor and ESGR that involve the same person	16
A. Cases Reviewed by ESGR on Behalf of the Secretary of Defense.....	16
B. Cases Reviewed by DOL and ESGR Involving the Same Person.....	18
6. With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5—	20
A. The Number of Such Cases that Involve a Disability-Related Issue	20
B. The Number of Such Cases that Involve a Person who has a Service-Connected Disability.....	20
7. The nature and status of each case reported pursuant to paragraph 1, 2, 3, 4, or 5—	21
Cases Reviewed by DOL	21
8. With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5, the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System	23
9. An indication of whether there are any apparent patterns of violation of the provisions of this chapter, together with an explanation thereof	26
10. Recommendation for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment	26

INTRODUCTION

The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 (USERRA or the Act), was signed into law on October 13, 1994. USERRA prohibits discrimination in employment based on an individual's prior service in the uniformed services; current service in the uniformed services; or intent to join the uniformed services. An employer is also prohibited from retaliating against a person because of such person's attempt to enforce their rights, or the rights of others, under the Act. In addition, an employer may not retaliate against an individual for filing a USERRA claim, testifying, or otherwise providing assistance in any proceeding under the Act. USERRA also provides reemployment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is entitled to be re-employed with the seniority, status, and rate of pay as if they had been continuously employed during the period of service. USERRA applies to private employers, the Federal Government, and State and local governments. It also applies to United States employers operating overseas and foreign employers operating within the United States.

As reported by the Defense Manpower Data Center (DMDC) in its strength accounting reporting, there were a total of 800,064 members of the Reserve Components (RC), which are comprised of Reserve and National Guard troops, and 1,375,926 members of the Active Components of the U.S. Armed Forces, on duty as of September 30, 2021. In addition, 16,769 RC members, and 22,218 National Guard members were active in overseas contingency operations in November of 2020, the first report from the FY 2021 reporting period. In September 2021, at the end of the reporting period, DMDC reports that there were 15,765 (-1,004) RC members and 17,787 (-4,431) National Guard members active in overseas contingency operations. These figures represent only those RC members who were activated for Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, Operation New Dawn, Operation Inherent Resolve, and Operation Freedom Sentinel. Additional RC members served on active duty for training and domestic operations during this period.

This Fiscal Year (FY) 2021 report was prepared in accordance with 38 U.S.C. § 4332(a), which requires the Secretary of Labor, after consultation with the Attorney General and the Special Counsel, to prepare and transmit an annual report to Congress containing the following information for the preceding fiscal year:

1. The number of cases reviewed by the Department of Labor (DOL) under this chapter during the fiscal year for which the report is made.
2. The number of cases reviewed by the Secretary of Defense under the National Committee for Employer Support of the Guard and Reserve (ESGR) of the Department of Defense (DOD) during the fiscal year for which the report is made.

3. The number of cases referred to the Attorney General or the Special Counsel pursuant to Section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of Special Counsel (OSC) before the Merit Systems Protection Board (MSPB) pursuant to section 4324 during such fiscal year.
4. The number of complaints filed by the Attorney General pursuant to Section 4323 during such fiscal year.
5. The number of cases reviewed by the Secretary of Labor and the Secretary of Defense through the National Committee for Employer Support of the Guard and Reserve of the Department of Defense that involve the same person.
6. With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5), referenced above:
 - A. The number of such cases that involve a disability related issue, and
 - B. The number of such cases that involve a person who has a service-connected disability.
7. The nature and status of each of the cases referenced above.
8. With respect to each of the cases referenced above, the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System (SOCS).
9. An indication of whether there are any apparent patterns of violation of the provisions of this chapter together with an explanation thereof.
10. Recommendations for administrative or legislative action that the Secretary of Labor, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

OVERVIEW OF USERRA PROTECTIONS

USERRA generally requires United States employers regardless of size or location of operation, as well as foreign employers operating in the United States or its territories, to re-employ eligible veterans returning to civilian employment after a period of service in the uniformed services. It requires employers, with certain exceptions, to provide training to restore competency in duties, seniority, status, pay, pensions, and other benefits that would have accrued but for the employee's absence due to uniformed service. Under USERRA, employers are generally liable for funding their share, if any, to the civilian retirement plan(s) of employed servicemembers away on uniformed service. Uniformed service includes United States active duty and reserve component military organizations, and certain other non-

military organizations including the Federal Emergency Management Agency's (FEMA) Urban Search and Rescue System (USAR), the National Disaster Medical System (NDMS), and the commissioned corps of the Public Health Service (PHS).

Eligibility requirements for servicemembers seeking reemployment generally provide that the absence must be due to service; advance notice (oral or in writing) must be provided to the employer; the cumulative period(s) of service while employed by the employer must not exceed five years; the application for reemployment must be timely; and the discharge from service must not be disqualifying.

Employers are also prohibited from discriminating on the basis of service in a uniformed service. USERRA also protects anyone—veteran or non-veteran, servicemember or non-servicemember—from reprisals for either exercising rights or assisting in any proceeding under the Act.

DOL is statutorily tasked with providing assistance to any person with respect to USERRA employment and reemployment rights and benefits and may request the assistance of other Federal and State agencies engaged in similar or related activities to do so. DOL, DOD, and the Department of Veterans Affairs share responsibility for promoting a clear understanding of USERRA among employers and individuals concerning their respective rights and responsibilities under USERRA. In addition, USERRA requires all Federal agencies to provide USERRA awareness training to human resources personnel, in consultation with the Office of Personnel Management (OPM). OPM issues guidance on ways to improve USERRA protection policies and practices for Federal agencies. DOL's Veterans' Employment and Training Service (VETS) and DOD's ESGR provide extensive public education, outreach, and compliance assistance with the goals of preventing violations caused by ignorance or misunderstanding of the law and ensuring that protected individuals understand their rights and know what assistance is available to help them secure those rights.

An individual who believes their USERRA rights have been violated may file a complaint with DOL, which will then investigate the claim(s). Alternatively, individuals may seek to informally resolve their claims utilizing ESGR Ombudsman's informal resolution services to try to resolve their USERRA related issues. Informal resolution is not required, and an individual may file a complaint with DOL at any time. Additionally, individuals have a private right of action to pursue their USERRA claims without any administrative exhaustion requirements. Once a complaint is filed with DOL, VETS will formally investigate the complaint, determine if the complaint is substantiated, and attempt to resolve those complaints when appropriate. Following VETS' investigation, if the claimant is unsatisfied with the outcome or determination made by VETS, the claimant may request referral of their

case to the Department of Justice (DOJ) for cases involving a private, State, or local government employer, and to OSC¹ for cases involving a Federal employer.

This report begins by describing the various roles each of the Federal agencies referenced above play in the administration of USERRA. Next, the report responds to each of the statutorily mandated reporting requirements described in the introduction to this report. In addition, the report contains other information of interest, including USERRA case outcomes for cases closed by DOJ, OSC, and DOL.

USERRA SERVICES PROVIDED BY THE DEPARTMENT OF DEFENSE'S EMPLOYER SUPPORT OF THE GUARD AND RESERVE

1. Overview

ESGR is a DOD office established in 1972 to support the critical role the National Guard and Reserve play in our Nation's defense and readiness. ESGR promotes and develops supportive civilian work environments between RC Servicemembers and their civilian employers by increasing their understanding of applicable laws and DOD policies, accomplished through effective Military and Employer Outreach services, Employer Recognition programs, and a broad range of technical assistance services which provide education regarding the applicability of USERRA.

ESGR is a volunteer-centric program with a nationwide network of 3,000 volunteers that strive to ensure all employers support and value the employment of RC and National Guard members. ESGR Headquarters in Alexandria, Virginia, provides guidance, resources, and support to its volunteers and 54 volunteer-led state committees. An ESGR state committee operates in 50 States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico. Each ESGR state committee is headed by an ESGR state committee chair. The majority of ESGR's volunteers have previously served in the military.

In FY 2021, ESGR volunteers engaged 43,800 employers and 135,373 servicemembers providing education and awareness on their rights and responsibilities under USERRA and associated DOD policy.

2. Outreach Programs

ESGR conducts awareness and recognition programs for employers to prevent or reduce employer/employee conflicts and misunderstandings related to an employee's uniformed service. ESGR also educates both servicemembers and employers about their rights and

¹ OSC is an independent Federal investigative and prosecutorial agency. OSC's primary mission is to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, including protections included in USERRA.

responsibilities under USERRA and related DoD policies and engages directly with military units to improve their understanding of USERRA, ESGR programs, and their role in championing positive working relationships with employers while maintaining military readiness.

ESGR's outreach efforts include employers' voluntary participation in the Statement of Support Program. Employers who sign Statements of Support pledge that they will:

- Recognize, honor, and comply with the USERRA.
- Provide managers and supervisors with the tools to effectively manage employees who serve in the National Guard and Reserve.
- Appreciate the values, leadership, and unique skills servicemembers bring to the workforce and encourage opportunities to hire Guardsmen, Reservists, transitioning servicemembers, and Veterans.
- Continually recognize and support our country's servicemembers and their families in peace, crises, and war.

Outreach programs also include the ESGR Awards Program, designed to recognize employers for policies and practices supporting their employees' participation in the National Guard and Reserve. Employer awards originate from servicemembers' nominations, identifying supportive supervisors with the Patriot Award. ESGR administers the Secretary of Defense Employer Support Freedom Award, the U.S. Government's highest honor bestowed on employers. The Freedom Award is presented annually to 15 employers that have demonstrated exceptional support to RC employees.

During FY 2021, ESGR recognized 7,087 supervisors of RC servicemembers with the Patriot Award, received 3,382 nominations for the 2021 Secretary of Defense Employer Support Freedom Award, and obtained 3,965 Statements of Support from employers across the Nation.

3. Ombudsman Services

ESGR assists National Guard and Reserve members with uniformed-service-related employment conflicts through a nationwide Ombudsman Services program. While ESGR is not a USERRA-enforcement agency and does not participate in formal investigation or litigation processes, the ESGR Ombudsman Services Program provides information, education, and neutral, informal third-party resolution services to help resolve employee-employer USERRA conflicts. The program has 380 trained Ombudsmen nationwide who offer resolution and technical assistance to servicemembers and employers about their USERRA rights and responsibilities. In addition, ESGR operates a Customer Service Center (CSC), which fields USERRA-related inquiries and information requests from customers worldwide. The CSC provides prompt, expert telephonic and email responses to servicemembers and civilian employers on USERRA-related matters.

During FY 2021, ESGR received 17,927 contacts by telephone and email, of which 1,134 contacts resulted in actual USERRA mediation cases. ESGR's resolution efforts covered an array of USERRA-related issues, including 472 complaints involving some form of alleged military discrimination, 649 complaints involving job reinstatement, and 13 complaints involving possible retaliation or reprisal. There were 232 USERRA cases for resolution where ESGR could not facilitate an agreement between the employee and employer. In those instances, ESGR ombudsmen informed both parties that the employee had the right to file a case with DOL or seek assistance through a private attorney. ESGR and DOL coordinate closely on USERRA-related issues, track problems, coordinate efforts, and identify trends to protect servicemembers' and employers' rights.

4. Department of Defense USERRA Working Group

In June 2017, the Deputy Assistant Secretary of Defense for Reserve Integration (DASD RI) established a DOD USERRA Working Group, led by ESGR, to review USERRA application and policy in the context of current RC utilization rates. The participants in the USERRA Working Group include representatives from the DASD RI office, ESGR, each of the Military Departments and RCs, and DOL.

DEPARTMENT OF LABOR'S USERRA OUTREACH AND CLAIMS INVESTIGATION

1. VETS' Public Education and Compliance Assistance Efforts

VETS conducts a robust public outreach campaign to educate servicemembers, employers, and others on their rights and responsibilities under USERRA. Since the terrorist attacks of September 11, 2001, which resulted in the single greatest mobilization of reserve components, VETS has briefed more than one million individuals on USERRA. VETS continued this outreach in FY 2021, presenting USERRA information to individuals including servicemembers, members of professional groups, and to members of the general public.

For example, on January 28, 2021, the Attorney for the Town of Davie, Florida contacted VETS' Florida field office seeking to receive an overview of USERRA and assistance addressing concerns regarding employer compliance with USERRA. The Town of Davie coordinated with the Atlanta region to include USERRA training as part of its annual training for supervisors. Three training sessions, including a question-and-answer session, were conducted between April and May of 2021. In total, training was provided to over 160 Town of Davie municipal supervisors and managers.

In another example, on May 14, 2021, the VETS' Maine State Director partnered with the Maine ESGR Chair, and other ESGR ombudsmen, to present a USERRA briefing during the Maine Annual Human Resources Convention. Training focused on the status of mobilized National Guard members, and RC employees, and an overview of their rights and responsibilities. Over 1,000 human resource professionals from throughout Maine attended

the training, with several following up with VETS after the event seeking additional information.

In another example, on July 26, 2021, the VETS' Washington State Director, the Washington State House of Representatives Legal Counsel, and the Washington ESGR chair provided virtual USERRA training to 36 members of the Washington State House of Representative's human resources and legal departments. The training covered many aspects of USERRA compliance with a focus on servicemember reemployment rights and employer responsibilities under USERRA, and Washington State specific USERRA-type laws, state military leave, and veterans' preference laws.

VETS' efforts to educate the public also include maintenance of our USERRA website which contains a number of educational resource materials on the statute and its application to servicemembers, veterans, employers, employees, employers, and others including the USERRA e-laws Advisor, frequently asked questions, and other useful information. It can be accessed at: <https://www.dol.gov/agencies/vets/programs/userra>.

Briefings to mobilizing and demobilizing members of the National Guard and Reserve are provided in collaboration with ESGR. Together, the two agencies strive to ensure that servicemembers receive a USERRA briefing upon mobilization and demobilization from active military service.

2. VETS' Investigative Process

USERRA investigations are complaint driven. An individual who believes that their USERRA rights have been violated may file a complaint (VETS Form 1010) with VETS online or submit a signed form by email, mail, or facsimile. VETS Form 1010 is available to the public online through the VETS' web page. Upon receipt of an electronically filed or signed and completed hard-copy VETS Form 1010, VETS immediately opens an investigation. A notification of process rights, written in easy-to-understand question and answer format, is sent to each claimant within five days of VETS' receipt of a complaint.

The assigned investigator collects and reviews pertinent documentary evidence, interviews necessary witnesses, and may use a subpoena to obtain necessary evidence. To ensure investigations are of the highest quality and are conducted in a uniform and timely manner, VETS' investigators are extensively trained in the legal aspects of USERRA, investigative techniques, and the agency's operating procedures. If the evidence compiled during a USERRA investigation supports the allegations made, the agency will attempt to obtain satisfactory resolution through negotiation or settlement. VETS encourages all parties to resolve disputes promptly and avoid litigation in order to preserve the employee-employer relationship.

VETS has 90 days to complete its investigation, unless VETS obtains an extension of time from the claimant for VETS to continue the investigation and attempt to resolve the case. The 90-day period begins on the date a complaint is filed with VETS National Office. At any

point during the investigative process, the claimant may elect to withdraw the complaint from VETS and pursue the claim with private counsel or on a *pro se* basis.

3. Case Referral Process

Upon completion of the investigation, if VETS does not resolve the case to the claimant's satisfaction, VETS advises the claimant in a closing letter of their right to have the case referred to either DOJ or to OSC, as appropriate, for consideration of legal representation at no cost to the claimant. If a claimant requests that their case be referred, VETS must refer the claim regardless of whether VETS has determined that the submitted complaint was substantiated by the facts and evidence obtained during the investigation. Each VETS' case referral contains a memorandum analyzing the USERRA claim and providing an assessment of whether or not the complaint was substantiated. VETS has 60 days to complete this referral process, unless VETS obtains an extension of time from the claimant. The 60-day period begins when the claimant's request for referral is filed with VETS National Office.

4. Program Initiatives

In FY 2021, VETS engaged in a number of program improvement initiatives including expanding the number of specialized Regional Investigators (RIs). The base number of RI positions was increased from six positions to ten positions during the fiscal year. The continued and expanded use of specialized investigators to conduct investigations and engage in compliance assistance outreach continues to improve the effectiveness and efficiency of case processing and efforts to inform the public of their rights and responsibilities under USERRA.

VETS also continued development of the VETS Case Management System (VCMS) by implementing changes necessary to provide DOJ and OSC electronic access to the case files reviewed under USERRA, 38 USC §4332 (c)(2). Electronic access to case files allows DOJ and OSC the ability to review all material connected to an investigation in its original format and improves the efficiency and reliability of the transfer of the case file to DOJ and OSC.

Following expansion of VCMS access to DOJ and OSC, VETS and DOJ drafted a new Memorandum of Understanding (MOU) which was signed on December 8, 2021, and which will be executed in FY 2022. The updated MOU identifies the roles of each respective agency, and their responsibilities under USERRA. Specifically, the MOU clarifies the timelines for case file transfer and review, responsibilities for data sharing and reporting, and creates primary points of contact within each agency to streamline communications. DOL will report on the completion of this initiative in the next USERRA Annual Report to Congress.

Additionally, DOL drafted and published several USERRA-related internal policies and fact sheets for the general public during Fiscal Year (FY) 2021. Internal policies that were drafted and published included how VETS conducts USERRA Compliance Assistance, and Additional Efforts to Resolve Merit, Not Resolved Cases under USERRA. Fact Sheets that

were drafted and published on VETS' website included those on Reemployment Rights and Benefits, COVID-19 Impact, New Coverage for State Active Duty, Separations and USERRA Impact, and Notification of Absence.

DEPARTMENT OF JUSTICE ENFORCEMENT

DOJ and DOL work collaboratively to meet the goal of ensuring servicemembers' USERRA rights are protected. If DOL cannot resolve a servicemember's USERRA claim against a private, State, or local government employer, the servicemember may ask DOL to refer the servicemember's claim to the Attorney General for review. Each DOL referral includes a VETS investigative case file and a memorandum of referral analyzing the case and providing an assessment as to whether or not the claim(s) were substantiated.

Upon receipt of a substantiated USERRA claim which was not resolved prior to closure from DOL, DOJ's Civil Rights Division conducts an independent review of the complete DOL investigative file and analysis. If the Attorney General is reasonably satisfied that the servicemember is entitled to relief, the Attorney General may exercise DOJ's prosecutorial authority and commence an action in federal court on behalf of the servicemember. If the employer is a State or State agency, the action is brought in the name of the United States. In all other cases, the United States files suit in the name of the servicemember. DOJ also attempts to seek relief on the servicemember's behalf and to settle the claims without commencing an action in court. If DOJ determines that it will not offer legal representation to a claimant, or seek relief on the servicemember's behalf, it informs the servicemember of this decision, in writing, and notifies him or her that he or she has the right to proceed with private counsel. In all cases, DOJ ensures that each USERRA referral receives careful consideration and is processed as expeditiously as practicable.

DOJ continues to vigorously enforce USERRA against private, State and local employers, through litigation, facilitated settlements, outreach and advocacy. Since the Division assumed USERRA enforcement authority in 2004 and through the end of FY 2021, it has filed 113 USERRA lawsuits and favorably resolved 210 USERRA complaints either through consent decrees obtained in those suits or through facilitated private settlements. In FY 2021, DOJ settled, or facilitated settlement, in ten cases and matters at a total value in excess of \$420,000 in payments directly to the servicemembers. The United States also filed four complaints under USERRA on behalf of both the servicemembers and in the name of the United States.

For example, on January 5, 2021, DOJ facilitated a settlement agreement that resolved the USERRA complaint of Kansas Army National Guard member Scott Hockman against the Woodson County Sheriff's Department. Hockman alleged the Sheriff's Department discriminated against him in violation of USERRA when it fired him from his Deputy Sheriff's job in April 2020, days after he gave notice of an upcoming military deployment. Under the settlement, Hockman was reinstated in his former position at a wage higher than he previously earned, with full restoration of lost seniority and benefits.

On September 9, 2021, DOJ facilitated a settlement agreement that resolved the reemployment claims of U.S. Army National Guard member Joshua Starks against Spirit AeroSystems, Inc. Starks alleged that, in 2005, following a 10-week deployment, he was unlawfully denied reemployment in his plant worker job by Spirit, the successor-in-interest to his pre-service employer, the Boeing Corporation. Starks was on layoff status before his deployment but was recalled to work while still away. During Starks' deployment, Spirit acquired the plant from Boeing and hired most of its former workers at full pay, along with a bonus of cash and Spirit stock and seniority credit for their years with Boeing. Months after his return, Starks was rehired by Spirit but at lower than his pre-service wage, and, unlike the earlier hired Boeing workers, he received neither a bonus nor credit for his Boeing years of service, which reduced the rate of his leave accrual. Under the settlement, Starks received \$76,000 in lost benefits, seniority credit for his earlier Boeing service, and 411 hours added to his leave account, which represented the full compensation that DOL determined Starks was due.

On December 12, 2020, DOJ facilitated a settlement agreement that resolved the USERRA complaint of Colleen O'Callaghan, a member of the Ohio Army National Guard, against Taylor Communications, Inc. O'Callaghan alleged that, following her reemployment after a four-month deployment, she was given lesser job duties and was later terminated due to a reduction in force, in violation of USERRA's reemployment and discrimination provisions. Under the settlement, O'Callaghan received \$18,500, representing the full relief that she sought in her claim.

On December 16, 2020, DOJ facilitated a settlement between luxury jeweler Harry Winston and U.S. Army reservist John Walker. In December 2017, Walker applied for a job with Harry Winston Inc. who ultimately denied his application. Walker alleged Harry Winston Inc. refused to hire him because of his military service obligations. Under the terms of the settlement, Harry Winston Inc. agreed to fully compensate Walker \$25,000 for his back-pay and non-wage damages.

DOJ has also worked closely with the Solicitor's Office at DOL in training VETS investigators through both live and remote training sessions, discussing case trends, and collaborating on USERRA strategy. For example, the DOJ and the Solicitor's Office at DOL have a scheduled monthly call where all case referrals and case resolutions are discussed. In FY 2022, DOJ will continue to work with DOL to ensure that referrals are promptly and carefully processed, and that each meritorious referral is resolved to the satisfaction of the servicemember and the Government. While DOJ will continue to aggressively pursue litigation when warranted, it seeks to resolve meritorious referrals without contested litigation whenever possible, in order to achieve the best possible result for the servicemember. The United States will also continue to seek out opportunities to participate as *amicus curiae* and file statements of interest on behalf of servicemembers.

OFFICE OF SPECIAL COUNSEL ENFORCEMENT

OSC's enforcement responsibilities apply to Federal-sector USERRA cases. Case referrals from DOL to OSC following a VETS' investigation are addressed in a manner similar to that used in DOJ referrals discussed above.

USERRA IN THE FEDERAL SECTOR

The Federal Government is committed to being a model employer under USERRA. OPM is responsible for administering USERRA policy for the Federal Government to ensure it meets that goal.

During FY 2021, VETS and OSC professional staff collaborated to provide technical assistance and guidance on a number of highly complex issues to Federal agencies, teaching and training agency staff on the law and best practices set forth in OPM's guidance. This joint training has been very well received by Federal agencies, and our professional staff have been asked to return in subsequent years by those agencies to provide additional training. VETS and OSC continue to collaborate in this effort, which has earned praise from agency officials who received their guidance. These activities were conducted in furtherance of the idea that the Federal Government should be a model employer, particularly with respect to honoring its commitment to preserving and promoting servicemembers' and veterans' employment rights.

In FY 2022 and future years, VETS will continue its plans to increase these activities. Furthermore, in an effort to broaden and strengthen partnerships with other Federal agencies, VETS, in coordination with OSC, DOD, and OPM, will continue to work together with other Federal partners to identify and share best practices to ensure that our nation's veterans are well served. Through these partnerships, VETS can better respond to requests for assistance, more effectively promote veteran employment in the Federal sector and develop innovative approaches to collaborate with employers on veteran employment initiatives.

MANDATED REPORTING REQUIREMENTS

Section 4332 of USERRA, 38 U.S.C. § 4332, requires the Secretary of Labor, after consultation with the Attorney General and the Special Counsel, to prepare and transmit an annual report to Congress containing the following information for the preceding fiscal year.

1. The number of cases reviewed by the Department of Labor under this chapter during the fiscal year for which the report is made

DOL reviewed 862 new unique² cases in FY 2021 opened pursuant to a submitted VETS Form 1010 complaint. The table below provides the numbers of unique USERRA cases reviewed by DOL from October 1, 2015, to September 30, 2021.

Figure 1. Unique USERRA Cases Reviewed by DOL

Fiscal Year	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Total New Cases	930	944	917	950	944	862
Total Cases	1,107	1,098	1,095	1,127	1,117	994

During FY 2021, DOL carried over an additional 126 unique cases (open investigations) from FY 2020, and two from FY 2019. During FY 2021, DOL reopened (at the claimants' request) one case from FY 2020 and three from FY 2019 or earlier. In sum, DOL reviewed a total of 994 unique cases in FY 2021.

2. The number of cases reviewed by ESGR, on behalf of the Secretary of Defense, during the fiscal year

During FY 2021, ESGR received 17,927 contacts by telephone and email, of which 1,134 contacts resulted in actual USERRA cases for resolution.

3. The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of the Special Counsel before the Merit Systems Protection Board pursuant to section 4324 during such fiscal year

In FY 2021, DOL completed referral actions and transferred 24 cases to the Attorney General and 23 cases³ to OSC. During the fiscal year, OSC did not file any new USERRA complaints with the MSPB but continues to represent one servicemember in an appeal filed during a previous fiscal year that remains pending before the MSPB. The nature and status of these referred cases is reflected in mandatory reporting requirement number seven of this report.

² This excludes duplicative cases such as cases that are filed multiple times by the same claimant with the same complaint or cases that have been previously investigated and have been reopened.

³ Referral actions completed by DOL may not match the count of referrals accepted by DOJ or OSC during a fiscal year due to the gap in time between the date DOL transmits a referred case, and the date DOJ or OSC accepts a referred case in instances where such a gap crosses between one fiscal year and another.

A. Cases referred to the Department of Justice or the Office of Special Counsel⁴

i. Cases referred to the Department of Justice

In FY 2021, DOJ's Civil Rights Division received a total of 25 referrals from DOL. Eleven were assessed as being substantiated and fourteen were assessed as not being substantiated. Out of the referrals that were assessed as having merit, DOJ facilitated settlement in two referrals, offered representation in two referrals which were still under consideration by DOJ in FY 2021, and five referrals involved a state agency as a potential defendant one of which is in active litigation and four of which were still under consideration by DOJ in FY 2021. DOJ declined representation with respect to the remaining two referrals assessed as being substantiated.

Out of the fourteen cases assessed as not being substantiated, based on DOL's assessment and DOJ's independent analysis of the merits of each referral, DOJ declined representation with respect to ten referrals. Four of these referrals involved a state agency, three of which DOJ declined to pursue litigation, and one of which was still under consideration by DOJ in FY 2021.

The cases referred to DOJ in FY 2021 involved a number of USERRA issues. Approximately 12% (3) of these cases involved allegations of termination and/or discharge, approximately 36% (9) of these cases involved reemployment allegations, such as accommodation and disability; while approximately 36% (9) of these cases involved allegations of loss or denial of benefits, such as loss of pay, assignment, reduction or loss of pension or health benefits, and loss of seniority. The remaining cases involved various forms of discrimination, with approximately 4% (1) involving failure to promote, and approximately 44% (11) involving actions affecting the servicemember's terms and conditions of employment, such as hostile work environment, discipline or harassment. The remaining 24% (6) of these cases involved allegations of retaliation for asserting USERRA protection.⁵

ii. Cases Referred to the Office of the Special Counsel

During FY 2021, DOL referred 19 cases to OSC⁶, at the servicemember's request, under 38 U.S.C. § 4324. Additionally, three cases referred to OSC during the previous fiscal year remained pending at the beginning of FY 2021. Thus, 22 total referral cases were pending at

⁴ In contrast with Figure 3 above, this section counts the referrals actually received by DOJ and OSC during FY 2021. Therefore, this section includes referrals from requests that were made in FY 2020 that were received in FY 2021 and excludes requests that were made in FY 2021 that were not received until FY 2022.

⁵ Several cases involved multiple issues. Each issue was counted separately.

⁶ Referral actions completed by DOL may not match the count of referrals accepted by DOJ or OSC during a fiscal year due to the gap in time between the date DOL completes work on a referral request, and the date DOJ or OSC accepts a referral in instances where such a gap crosses between one fiscal year and another.

OSC during the fiscal year. OSC closed or resolved 17 of the 22 cases during the fiscal year (approximately 88% within the initial 60-day time limit), while five cases remained pending at the end of the fiscal year. OSC did not file any new USERRA appeals with the U.S. Merit Systems Protection Board (MSPB) during FY 2021 but continues to represent one servicemember in an appeal filed during a previous fiscal year that remains pending. In addition, OSC offered MSPB representation to another servicemember, whose case settled before an appeal was filed.

In 18 of the 19 cases DOL referred to OSC during FY 2021, the servicemember alleged discrimination based on uniformed service, such as termination, non-promotion, non-selection, or denial of employment benefits; in two cases, retaliation for exercising USERRA rights; and in one case, violations of reemployment rights (some cases contain multiple allegations).

B. Complaints Filed by the Attorney General and Actions Initiated by the Office of Special Counsel

i. Complaints Filed by the Attorney General

The DOJ filed four USERRA complaints in FY 2021, which included eight cases referred from DOL. Two of those cases, *Christopher Robbins v. Ashley Furniture* and *Louis P. Rego v. Maimonides Medical Center*, were settled in FY 2021. The remaining cases, *United States v. Prince George County Police Department* and *United States v. Guam and Government of Guam Retirement Fund* were in active litigation in FY 2021.

On May 3, 2021, working in conjunction with the United States Attorney's Office of the Eastern District of New York, DOJ filed a complaint, and announced a settlement in the case of *Louis P. Rego v. Maimonides Medical Center*. According to the United States' complaint, Maimonides violated USERRA by terminating Lieutenant Colonel Rego's employment in the Pharmacy Department after he was called up to active military duty status. Under the terms of the settlement, Maimonides will pay Rego \$195,000 to compensate him for lost wages and other damages. The settlement also requires Maimonides to provide annual training to hospital officials and human resources staff on the rights of servicemembers under USERRA.

On May 25, 2021, DOJ, working with the United States Attorney's Office for the Southern District of Indiana, filed and resolved a lawsuit in which Indiana Army National Guardsman Captain Christopher Robbins alleged that The Dufresne Spencer Group, doing business as Ashley Home Store, violated USERRA when it failed to promptly offer him reemployment after a period of active-duty military service. Under the terms of the settlement, the company agreed to pay Robbins backpay and liquidated damages, offer comprehensive training to its supervisors and HR officials on USERRA, and post a notice at the store advising employees of their rights under USERRA and the company's intent to comply with the law.

On September 1, 2021, DOJ filed a complaint, which included claimants from five cases referred from DOL, in the United States District Court for the District of Guam against the Territory of Guam and the Government of Guam Retirement Fund. Brought in the name of the United States, the complaint alleges that defendants deny its servicemember-employees' pension credit and retirement benefits if those employees use donated leave while on military duty, in violation of USERRA. USERRA requires employers to treat employees as having uninterrupted service with the employer for time on military duty, including for pension accrual purposes. The complaint is based on the allegations of five current or retired Guam employees who served on active duty in the military, were denied pension credit for portions of their military service served while using donated leave, and, as a result, will have reduced pension benefits for the rest of their lives, but the United States' complaint alleges that defendants' practices may have illegally denied benefits to many other servicemembers. The United States' complaint seeks damages on behalf of all affected servicemember-employees and injunctive relief requiring defendants to comply with USERRA. On December 21, 2021, the Court denied defendants' motions to dismiss the complaint. The case is currently in litigation and set for trial in March 2023.

On September 30, 2021, working in conjunction with the United States Attorney's Office for the Eastern District of Virginia, DOJ filed a civil complaint in the U.S. District Court for the Eastern District of Virginia against Prince George County, Virginia, and the Virginia Retirement System (VRS) to enforce employment rights guaranteed to a member of the Virginia Army National Guard, Major Mark Gunn. In its complaint, the United States alleges that Gunn had been a detective with the Prince George County Police Department for fourteen years when, in January 2016, he was called to active duty by the Virginia Army National Guard. The United States further alleges that when Gunn returned from his active-duty service, the County refused to allow Gunn to return to his detective position. Instead, the County assigned him back to a Patrol Unit officer position. The United States also alleges that the County denied Gunn employment benefits that he would have accrued during his period of active-duty service, including a bonus awarded to County employees. Finally, the United States alleges that the County's unlawful actions caused Gunn to leave his employment with the Prince George County Police Department and return to active duty in the Virginia Army National Guard. The complaint seeks to have Gunn effectively reinstated to his prior detective position and to recover employment benefits that the County denied him during his period of active-duty service from 2016 to 2018, as well as the VRS pension credits and benefits that he lost as a result of the County's USERRA alleged violations. The case is currently in litigation and set for trial in September 2022.

ii. Actions Initiated by the Office of Special Counsel

OSC did not file any new USERRA appeals with the MSPB during FY 2021 but continues to represent one servicemember in an appeal filed during a previous fiscal year that remains pending before the MSPB.

4. The number of complaints filed by the Attorney General pursuant to section 4323 during such fiscal year

DOJ filed four USERRA complaints in Federal court in FY 2021, which included eight cases referred from DOL. One of the complaints filed by DOJ included five claimants from five separate USERRA cases investigated by DOL.

5. The number of cases reviewed by the Secretary of Labor and ESGR that involve the same person

ESGR provided VETS with the names of 1,134 individuals who had filed cases reviewed by ESGR Ombudsmen in FY 2021, and the date of each case. VETS compared the ESGR data to its own data⁷ on cases initially opened between October 1, 2020, and September 30, 2021. This comparison resulted in 105 likely matches thus, it appears that 9.3% of 2021 ESGR cases were subsequently opened as VETS' cases.

A. Cases Reviewed by ESGR on Behalf of the Secretary of Defense

ESGR's resolution efforts covered an array of USERRA-related issues, including 472 complaints involving some form of alleged military discrimination, 649 complaints involving job reinstatement, and 13 complaints involving possible retaliation or reprisal.

ESGR resolved 900 of its 1,134 ombudsman cases. There were 232 USERRA cases for resolution where ESGR could not facilitate an agreement between the employee and employer. In those instances, ESGR ombudsmen informed both parties that the employee had the right to file a case with DOL or seek assistance through a private attorney.

The following crosswalk aligns the issues identified in ESGR case data with VETS' data. It shows the number of cases for each separate issue. For three groupings of issues defined as "Primary Categories" – Discrimination, Reinstatement/Reemployment, and Reprisal – the crosswalk also shows both the total cases, and the percentages of all cases, for each category.

⁷ Matches between ESGR and VETS' cases are made by matching names and dates of ESGR interactions against VETS' claimants who self-identify as having engaged with ESGR initially. Therefore, matches are likely but not guaranteed without additional provision of personally identifiable information (PII).

Figure 2. Crosswalk of USERRA Issues, FY 2021

ESGR Ombudsman Services ↔ VETS' National Guard & Reserve Complaint Cases				
Primary Categories	ESGR Ombudsman Cases "Problem Codes" (Converted to VETS' Issue Codes)		VETS' Complaint Cases "Issue Codes" ⁸	
Discrimination	Military Obligation Discrimination	433	ID – Military Obligations Discrimination	422
	Initial Hiring Discrimination	39	II – Initial Hiring Discrimination	25
	472 Ombudsman Cases (41.6% of Issues Mediated)		447 Issues in 425 Complaint Cases (58.1% of Complaint Cases)	
Reinstatement/ Reemployment	Health Benefits	19	IH – Health Benefits	57
	Pension	13	IP - Pension	55
	Seniority	21	IS - Seniority	67
	Other Non-Seniority Benefits	35	IB – Other Non-Seniority Benefits	87
	Status	51	IZ - Status	85
	Layoff	15	IL - Layoff	91
	Vacation	83	IV - Vacation	58
	Reinstatement	287	IR - Reinstatement	181
	Promotion	56	IT - Promotion	77
	Reasonable Accommodations/Retraining for Disabled	5	IA – Reasonable Accommodations/ Retraining for Disabled	27
	Reasonable Accommodation/Retraining for Non-Qualified Non-Disabled	2	IW – Reasonable Accommodations/Retraining	15
	Pay Rate	55	IM – Pay Rate	107
	Special Protected Period Discharge	7	IF – Special Protected Period Discharge	32
649 Ombudsman Cases (57.2% of Issues Mediated)		939 Issues in 531 Complaint Cases (72.5% of Complaint Cases)		
Reprisal	Discrimination as Retaliation for any Action	13	ID2 – Discrimination as Retaliation for any Action	152
	13 Ombudsman Cases (1.2% of Issues Mediated)		152 Issues in 152 Complaint Cases (20.8% of Complaint Cases)	

⁸ To facilitate comparisons with ESGR data, VETS' data in this chart reflects only National Guard and Reserve (NG&R) complaint cases, whereas all complaint cases were reflected earlier in this report in the "Mandated Reporting Requirements" section. Also, the percentages of NG&R complaint cases among the three primary categories for VETS in this chart total less than 100%, because VETS' issue and case counts here do not include the uncategorized "Other" problem issue code, thereby excluding 16 stand-alone "Other" VETS issues and cases from this chart.

B. Cases Reviewed by DOL and ESGR Involving the Same Person

DOL's response to paragraph five of the Mandated Reporting Requirements, setting forth the number of cases reviewed by DOL and DOD through ESGR that involve the same person, indicates that in comparing ESGR data on USERRA cases during the fiscal year, 105 likely matches were identified. This figure indicates that first ESGR, and subsequently DOL, handled the same individuals' claims.

DOL closed all but eight of these 105 likely matches by September 30, 2021, under the following closure codes: No Merit: 33 (34%); Administrative: 5 (5.2%); Claim Granted: 15 (15.5%); Claim Settled: 14 (14.4%); Claim Withdrawn: 22 (22.7%); Not Eligible: 3 (3.1%); Merit, Not Resolved: 4 (4.1%); and Merit Undetermined: 1 (1%). An explanation of VETS' case closure codes appears in the explanation of the status of cases reviewed by DOL.

The following chart shows how the alleged issues in these 105 likely match cases were distributed among the various VETS' closure codes.

Figure 3. FY 2021 VETS/ESGR Likely Case Matches

VETS' DATA For 105 Likely Case Matches with FY 2021 ESGR Cases*												
VETS' USERRA Issue Codes	VETS' Closure Codes										Issue Totals	% of Total
	No Merit	Administrative	Claim Granted	Claim Settled	Claim Withdrawn	Not Eligible	Merit Not Resolved	Merit Undetermined	Still Open			
Military Obligations Discrimination	26	3	8	8	15	2	3	1	4	70	66.7%	
Reinstatement	12	1	6	8	2	1	2	0	2	34	32.4%	
Other Non-Seniority Benefits	1	1	2	3	2	0	0	0	2	11	10.5%	
Promotion	1	0	3	0	1	1	1	0	2	9	8.6%	
Vacation	2	1	1	1	1	0	1	0	1	8	7.6%	
Status	4	1	0	2	4	1	0	0	3	15	14.3%	
Pay Rate	3	1	5	0	3	1	1	0	0	14	13.3%	
Reasonable Accommodation/Retraining for Non-Qualified/Non-Disabled	1	0	1	0	0	0	0	0	0	2	1.9%	
Discrimination as Retaliation for any Action	10	0	1	1	5	1	1	0	2	21	20.0%	
Seniority	2	0	1	0	2	1	0	0	2	8	7.6%	
Pension	0	0	0	0	0	0	0	0	2	2	1.9%	
Initial Hiring Discrimination	1	0	0	2	0	0	1	0	0	4	3.8%	
Layoff	7	1	2	1	3	0	1	0	0	15	14.3%	
Special Protected Period Discharge	0	0	0	0	1	0	1	0	0	2	1.9%	
Health Benefits	1	0	0	0	2	0	0	0	0	3	2.9%	
Reasonable Accommodation/Retraining for Disabled	0	1	0	1	1	0	0	0	0	3	2.9%	
Other	4	1	4	2	4	0	0	0	2	17	16.2%	
Closure Code Total	75	11	34	29	46	8	12	1	22	238		
% of Total	71.4%	10.5%	32.4%	27.6%	43.8%	7.6%	11.4%	1.0%	21.0%		226.7%	

*Note: Many USERRA cases involve multiple issues, and VETS records all the USERRA issues involved in a case. As a result, the numbers of cases and issues in this chart exceeded the 105 ESGR and VETS cases involving the same person, and the combined percentages exceed 100%. Matching of FY 2021 ESGR cases and VETS cases initially opened 10/1/2020 to 9/30/2021 is based on claim dates and claimant names.

6. With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5—

A. The Number of Such Cases that Involve a Disability-Related Issue

1. Fifty-two of the 862 new unique cases first reviewed by DOL in FY 2021 (6%) involved a disability-related issue.
2. Nine of the ESGR cases first reviewed in FY 2021 (0.7%) involved a disability related issue.
3. Of the 47 cases which were referred to DOJ and OSC in FY 2021 three of those transferred to OSC and none of those transferred to DOJ involved a disability-related issue.
4. Of the four USERRA cases filed by DOJ in FY 2021, which included eight cases referred from DOL, none involved a disability related issue.
5. With respect to the 105 cases reviewed by DOL and ESGR involving the same person in FY 2021, none involved a disability-related issue.

B. The Number of Such Cases that Involve a Person who has a Service-Connected Disability

1. In FY 2021, VETS asked claimants whether they had a service-connected disability. Among the 862 new unique cases VETS received, VETS obtained responses from 792 claimants (91.9%), 284 (33%) of whom reported having such a disability. Among these 284 claimants, 44 also claimed a USERRA related disability. Among the 508 claimants who responded but did not report having a service-connected disability, eight claimed a USERRA-related disability issue.
2. No information is available on the number of cases handled by ESGR that involved a person with a service-connected disability.
3. Of the 24 cases referred to DOJ for consideration of litigation, eight involved a claimant who reported a service-connected disability, and none involved a USERRA related disability issue.
4. Of the 23 cases referred to OSC for consideration of litigation, 12 involved a claimant who reported a service-connected disability, and three involved a USERRA related disability issue.
5. Of the four USERRA cases filed by DOJ in FY 2021, which included eight cases referred from DOL, one involved a service-connected disability.
6. With respect to the 105 cases reviewed by DOL and ESGR involving the same person in FY 2021, VETS obtained service-connected disability responses from 95 of these claimants, 21 (20%) of whom reported having such a disability. Two of the claimants among the 21 who reported having a service-connected disability also claimed a USERRA related disability issue.

7. The nature and status of each case reported pursuant to paragraph 1, 2, 3, 4, or 5—

Cases Reviewed by DOL

The following issues were raised in the new unique USERRA cases reviewed by DOL. Because many USERRA cases involve multiple issues, the number of cases in this chart exceeds the 862 new unique cases reported by VETS in FY 2021 and the combined percentages exceed 100%.

i. Figure 4. Cases Opened by VETS in FY 2021

USERRA ISSUE	VETS' CASES ALLEGING ISSUE	
	NUMBER	PERCENT
Military obligations discrimination	445	51.6%
Reinstatement	202	23.4%
Other non-seniority benefits	96	11.1%
Promotion	92	10.7%
Vacation	60	7.0%
Status	98	11.4%
Pay rate	120	13.9%
Reasonable accommodation/retraining for non-qualified/non-disabled	22	2.6%
Discrimination as retaliation for any action	202	23.4%
Seniority	80	9.3%
Pension	62	7.2%
Initial hiring discrimination	29	3.4%
Layoff	103	10.0%
Special protected period discharged	37	4.3%
Health benefits	86	10.0%
Reasonable accommodations/retraining for disabled	52	6.0%
Other	139	16.1%

VETS investigated and closed 844 cases in FY 2021, including 701 cases which were new and unique cases in FY 2021, under the following closure codes (each code is explained in Figure 6):

ii. **Figure 5. Investigated and Subsequently Closed by VETS in FY 2021**

CLOSURE CODE	VETS CASES CLOSED	
	NUMBER	PERCENT
No Merit	245	29%
<i>Referrals requested on cases closed in FY 2021: 16</i>		
Administrative	90	10.7%
<i>Referrals requested on cases closed in FY 2021: 0</i>		
Claim Granted	100	11.8%
<i>Referrals requested on cases closed in FY 2021: 1</i>		
Claim Settled	76	9%
<i>Referrals requested on cases closed in FY 2021: 0</i>		
Claim Withdrawn	248	29.4%
Not Eligible	49	5.8%
<i>Referrals requested on cases closed in FY 2021: 2</i>		
Merit Not Resolved	31	3.7%
<i>Referrals requested on cases closed in FY 2021: 11</i>		
Merit Undetermined	5	0.6%
<i>Referrals requested on cases closed in FY 2021: 2</i>		
TOTAL:	844	100.0%
<i>Total referrals requested on cases closed in FY 2021: 32⁹</i>		

⁹ In addition to the 32 cases that were investigated and closed by VETS and referred to DOJ or OSC in FY 2021, there were 15 cases referred to DOJ or OSC in FY 2021 whose cases were closed prior to FY 2021. Ten cases were closed as “No Merit”, two cases were closed as “Not Eligible”, and three were closed as “Merit Not Resolved”. In total there were 47 referrals transferred to DOJ or OSC in FY 2021.

iii. Figure 6. Case Closure Codes Explained

- **ADMINISTRATIVE CLOSURE:** A case should be closed administratively under any of the following circumstances:

Lack of Interest – Administrative closure is appropriate when the claimant clearly displays lack of interest or is obviously uncooperative. Examples are failure to reply to multiple VETS’ letters, failure to give VETS a change of address, failure to supply information that could be easily obtained, and failure to attend scheduled meetings or conferences.

Continued Unauthorized Contact by Third Party with Employer – Although a claimant is entitled to be represented by a third party under USERRA while the case is investigated by VETS, if the representation interferes with the investigation, they will be informed that VETS can no longer continue its involvement in the case and that the case will be administratively closed.

- **CLAIM GRANTED:** When the employer grants all of the claimant’s entitlements.
- **CLAIM SETTLED:** When the claimant and the employer agree to settle the case potentially for less than the claimant’s full entitlements under USERRA.
- **WITHDRAWN CLAIM:** When the claimant informs VETS in writing of their desire to withdraw the claim.
- **NOT ELIGIBLE:** If a case has already been opened, and VETS finds that the claimant does not meet the eligibility requirements in the statute, the case should be discussed with the claimant and, with their concurrence, closed on the basis of no eligibility.
- **NO MERIT:** The claimant is not entitled to relief for reasons other than failure to meet eligibility requirements.
- **CASES REFERRED:** Unsettled cases are closed only when they are referred by DOL for appropriate referral action.
- **MERIT, NOT RESOLVED:** When the completed investigation finds merit to the complaint, but VETS is unable to obtain a satisfactory resolution.
- **MERIT UNDETERMINED:** When the investigation is not complete but the statutory deadline for case completion (or an extension previously agreed to by the claimant) is reached and the claimant does not agree to a further extension.

8. **With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5, the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System**

VETS is the only Federal agency that collected occupational data on USERRA claimants and recorded the respective SOCS code in FY 2021. Therefore, SOCS code data is not available

for ESGR cases for resolution. The chart below shows the full distribution of the SOCS codes in FY 2021 USERRA cases, across four different categories: VETS' cases, Cases common to VETS and ESGR; Referrals to DOJ; and Referrals to OSC. The predominant occupations found among each of these four categories of cases can be summarized as follows:

1. Out of 858 (99.54%)¹⁰ of the new and unique complaints filed in FY 2021, 21.4% of complaints involved Protective Service occupations; 12.3% involved Management occupations; and 9.3% involved Office and Administrative Support occupations.
2. Out of 105 cases reviewed by DOL and ESGR. likely involving the same person in FY 2021, 14.3% of those cases involved Protective Service occupations; 13.3% involved Management occupations; and 9.5% involved Healthcare Practitioners and Technical Occupations.
3. Out of the 24 referrals transferred to DOJ in FY 2021, 37.5% of those cases involved Protective Service occupations; 12.5% involved Educational Instruction and Library occupations, and Transportation and Material Moving occupations respectively; and 8.3% involved Management occupations, Business and Financial Operations occupations, and Construction and Extraction occupations respectively.
4. Out of the 23 referrals processed by DOL and forwarded to OSC from DOL in FY 2021, 30.4% of complaints involved Business and Financial Operations occupations, and Protective Service occupations respectively; and 8.7% involved Management occupations, Healthcare Practitioners and Technical occupations, and Office and Administrative Support occupations respectively.

¹⁰ Total is less than 100% because the SOCS code was not recorded for some cases.

Figure 2. Occupations Involved in FY 2021 USERRA Cases - as Designated by the Standard Occupational Classification System (SOCS)

SOCS Job Family	Percent of Cases involving SOCS Code			
	VETS Cases	Referrals to		Common to VETS & ESGR
		DOJ	OSC	
Protective Service	21.4%	37.5%	30.4%	14.3%
Management	12.3%	8.3%	8.7%	13.3%
Office and Administrative Support	9.3%	0%	8.7%	7.6%
Business and Financial Operations	7.6%	8.3%	30.4%	6.7%
Transportation and Material Moving	7.1%	12.5%	0%	8.6%
Healthcare Practitioners and Technical	6.6%	0%	8.7%	9.5%
Computer and Mathematical	4.4%	0%	0%	1.9%
Installation, Maintenance, and Repair	4.2%	4.2%	0%	8.6%
Production	3.4%	0%	0%	4.8%
Architecture and Engineering	2.9%	4.2%	0%	4.8%
Educational Instruction and Library	2.8%	12.5%	0%	3.8%
Sales and Related	2.7%	0%	0%	2.9%
Legal	2.6%	0%	4.3%	1.9%
Construction and Extraction	2.1%	8.3%	0%	3.8%
Food Preparation and Serving	1.9%	4.2%	0%	2.9%
Life, Physical, and Social Science	1.7%	0%	4.4%	2.9%
Community and Social Science	1.5%	0%	0%	0%
Arts, Design, Entertainment, Sports, and Media	1.3%	0%	0%	0%
Building and Grounds Cleaning and Maintenance	1.2%	0%	4.4%	1%
Military Specific	0.9%	0%	0%	1%
Personal Care and Service	0.8%	0%	0%	0%
Healthcare Support	0.7%	0%	0%	0%
Farming, Fishing, and Forestry	0.4%	0%	0%	0%

9. An indication of whether there are any apparent patterns of violation of the provisions of this chapter, together with an explanation thereof

No patterns of violations of USERRA became apparent in FY 2021. DOL will continue to monitor USERRA cases to identify trends as they arise.

10. Recommendation for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment

The Special Counsel has not offered any specific recommendations for administrative or legislative action at this time. The Secretary offers the recommendations set forth below, which are supported by the Department of Justice.

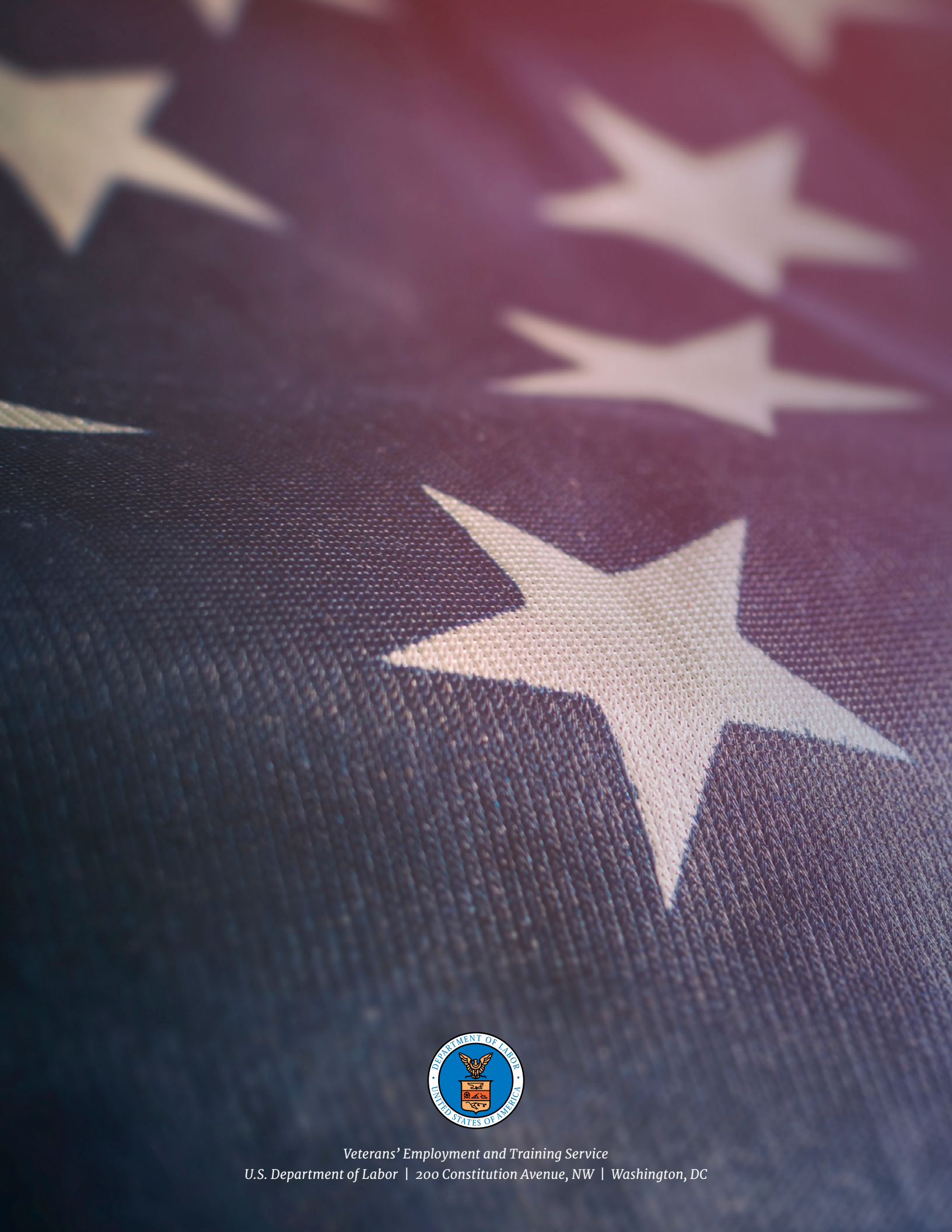
1. DOL supports changes to USERRA that will strengthen the United States' ability to enforce USERRA and ensure that the statute is consistent with other civil rights laws. To these ends, DOL offers the following recommendations:
 - a. We request amending USERRA to allow the Attorney General, acting on behalf of the United States, to serve as a plaintiff in all USERRA suits, rather than only in suits filed against State employers.
 - b. We request the grant of independent authority to the Attorney General to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. This amendment would significantly strengthen DOJ's ability to enforce USERRA to address a systemic violation (such as a policy prohibiting extended absences, including absences for uniformed service) that could adversely affect the employment rights of multiple servicemembers.
 - c. To support the proposed pattern-or-practice authority, we request amending USERRA to provide the Attorney General with civil investigative demand authority to compel the production of existing documents and unsworn answers to written questions from the custodian of such documents. DOL has subpoena power in its investigations under USERRA. The Attorney General, however, has no pre-suit investigatory authority. Because the proposal for pattern-or-practice authority includes the authority to initiate an investigation, Congress should provide the Attorney General with the appropriate investigative tools.
2. DOL also supports changes to USERRA that would empower servicemembers to more ably exercise their USERRA rights. To this end, DOL offers the following additional recommendations:
 - a. That the U.S. Senate pass the Forced Arbitration Injustice Repeal (FAIR) Act (H.R. 963) and send the bill to the President to sign. The FAIR Act,

which passed the U.S. House of Representatives in March 2022, would void all pre-dispute mandatory arbitration agreements in employment, antitrust, consumer, and other matters, including pre-complaint employment disputes under USERRA, and would guarantee the availability of procedural rights under USERRA.

- b. As an alternative to the FAIR Act, to guarantee the availability of procedural rights included under USERRA, we request that Congress clarify that 38 U.S.C. § 4302(b) protects both substantive and procedural rights and benefits from reduction, limitation, or elimination.
- c. As an alternative to the FAIR Act specific to USERRA, we further request that Congress clarify that the definition of “benefit,” “benefit of employment,” or “rights and benefits” in 38 U.S.C. § 4303(2) includes procedural protections provided by the statute. In particular, to guarantee the procedural right of adjudication of USERRA rights, we recommend explicitly noting that agreements to arbitrate are unenforceable unless all parties consent to arbitration after a complaint on the specific claim has been filed in court or with the MSPB and all parties knowingly and voluntarily consent to have that particular claim subjected to arbitration.
- d. To support the proposed pattern-or-practice authority, we request amending USERRA to preserve the right of the aggrieved servicemember to intervene in pattern-or-practice suits or to bring their own suit where the Attorney General has declined to file suit.
- e. DOL recommends amending chapter 43 of title 38, United States Code, to improve the enforcement of reemployment rights under that chapter with respect to a State employer. We would propose to alter the language of the statute to explicitly allow aggrieved servicemembers and veterans to file suits against State employers in state and federal courts. This will codify the U.S. Supreme Court’s recent ruling in *Torres v. Texas* that states may not invoke sovereign immunity to avoid liability under USERRA.

DOL looks forward to working with Congress on these proposed USERRA amendments.

USERRA annual reports are available for fiscal years (FY) 1995-1999 and 2004-2020. No reports are available for FY 2000-2003 because the reporting requirement expired in FY 2000. It was reinstated by Section 202 of the Veterans Benefits Improvement Act of 2004, P.L. 108-454, 118 Stat. 2598 (December 2004).



Veterans' Employment and Training Service
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