

U. S. DEPARTMENT OF LABOR

**Assistant Secretary
For
Veterans' Employment and Training**

**UNIFORMED SERVICES EMPLOYMENT
AND REEMPLOYMENT RIGHTS ACT
OF 1994 (USERRA)
ANNUAL REPORT**

**TO
CONGRESS**

FOR FISCAL YEAR 1996

PREPARED BY:

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INTRODUCTION

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA or the Act) was signed into law on October 13, 1994. This Act is codified at title 38, chapter 43, United States Code (USC), as chapter 43. USERRA is a complete revision of the predecessor Veterans' Reemployment Rights law.

Section 4332 of title 38 requires an annual report to the Congress on case processing activity for the preceding fiscal year (FY) beginning in 1996 and continuing annually through the year 2000. This is the second such report and covers actions taken during FY 1996. This report is made in consultation with the Attorney General and the United States Special Counsel.

Uniformed Services' Employment and Reemployment Rights

1. Cases Reviewed by the Department of Labor in FY 1996:

Cases Opened:

In FY 1996, the Veterans' Employment and Training Service (VETS) on behalf of the Secretary opened 1,270 new cases and continued the investigation of 297 cases opened in the previous fiscal year. Cases opened decreased 8% from the number of cases (1,387) opened in FY 1995.

Of the cases opened in FY 1996, 903 (71%) involved private employers, 254 (20%) involved states or the political subdivisions of states, and 113 (9%) involved Federal agencies. Cases were opened for 1,018 (80%) Reserve and National Guard personnel, 230 (18%) for veterans, and 22 (2%) for persons who were undergoing examination for military service.

Many cases involved multiple issues. Of the 1270 cases opened in FY 1996, there were 1751 total issues. These issues included 397 cases (23%) involving a refusal to reinstate or reemploy the individuals following a period of military service; 488 cases (28%) regarding a discharge from employment because of military service or obligation; 91 cases (5%) concerning layoffs because of military obligations; 43 cases (2%) involved a refusal of employers to hire individuals with military obligations; and 12 cases (1%) were discharge of

individuals during the period of protection from discharge without cause.

The issues involving other than the hiring or firing of claimants included: 98 (6%) on seniority; 82 (5%) on failure to provide non-seniority fringe benefits; 60 (3%) on denied promotions; 94 (5%) on vacation; 18 (1%) on accommodation or retraining of service members; 62 (4%) on retraining or reasonable accommodations for disabled service members; 61 (3%) on pay rates; 49 (3%) involving employee pension benefit plan issues; 24 (1%) on health benefit plans; and 172 (10%) not covered by specified issue codes.

Cases Resolved:

In FY 1996, VETS closed 1,344 cases, of which 1,031 (77%) were closed in 90 days or less and 1,144 (85%) were closed in 120 days or less. At the end of FY 1996, two cases remained open for a period greater than one year. One case remained because the claimant requested an extension to gather additional information to support the case. A Memorandum of Referral will be prepared and the case will be forwarded to the Department of Justice (DOJ). Similarly, the other case is scheduled to be referred to the DOJ, if resolution is not reached by February 1997. Investigation and processing continue for the remaining 220 cases opened in FY 1996 and carried into FY 1997.

Of the 1,344 closed cases, there were 570 (42%) USERRA claims resolved through VETS' mediation efforts. VETS' actions resulted in \$618,956 in lost wages and benefits being recovered for claimants. There were 145 (11%) individuals who chose to withdraw their claims during the investigation. In 347 cases (26%), investigations resulted in determinations that the claims were without merit, and in 66 cases (5%) claimants were determined not eligible for benefits sought. In 150 cases (11%), there was administrative closure because claimants did not cooperate with the investigation or simultaneously pursued the same claim with the assistance of a third party. Sixty-three cases (5%) were processed for referral to the DOJ. Four cases are under review by the Solicitor of Labor and the DOJ has received 59 cases. Three (<1%) cases were processed for referral to the Office of Special Counsel (OSC).

Case of Reprisal:

Section 4311(c)(1) of title 38 provides that an employer may not discriminate in employment against or take any adverse employment action against any person because that person had testified in connection with a preceding or assisted with an investigation. In FY 1997, VETS opened one case on behalf of a witness who was discharged due to statements she made during an investigation. The issue was resolved and the case closed with the individual, a non-veteran, returning to her job and receiving financial compensation.

Subpoenas:

VETS issued four subpoenas under the authority USERRA provides the Secretary. Two of the subpoenas were not complied with by the employer. Action has been initiated by VETS to seek the assistance of the Attorney General in the enforcement of these subpoenas. Two other subpoenas were issued and the requested information was provided by the employers.

2. Cases Referred to the Attorney General and Office of Special Counsel:

Attorney General:

Upon the claimants' request pursuant to 38 U.S.C. §4323(a)(1), VETS refers to the Attorney General complaints against private employers and states when VETS is unable to achieve a satisfactory resolution. The Civil Division of the Department of Justice (Civil Division) and the United States Attorneys' Offices (USAOs) act on behalf of the Attorney General in USERRA matters.

VETS refers cases to the Civil Division through the Department of Labor's Regional Solicitors (RSOL). Each referral includes the VETS' investigative file; a VETS' memorandum analyzing the case and a recommendation, based upon the facts and the law, whether representation should be provided or declined; and the RSOL's analysis and recommendation.

Based upon a review of the record, the Civil Division either forwards the case to the USAO for review and appropriate action or declines representation and

returns it to the RSOL due to a lack of merit. If the USAO is reasonably satisfied that the claimant is entitled to the benefits sought, the USAO is charged with representing the claimant and attempts to resolve the matter, through litigation if necessary.

In FY 1996, the Civil Division received 59 cases from the Secretary. The Civil Division forwarded to the USAOs 16 cases and declined representation in 38 cases at the recommendation of the DOL. The remaining five cases were still under review by the Civil Division at the end of FY 1996.

In FY 1996, the USAO filed complaints in district court on behalf of six claimants, represented two claimants at trial, and negotiated settlements in nine cases. The USAOs declined representation in 16 cases and three claimants withdrew their requests for representation before the USAOs filed complaints. During FY 1996, claimants recovered \$308,603 in lost wages and benefits after intervention by the Department of Justice.

Office of Special Counsel:

USERRA clarifies and significantly strengthens the employment and reemployment rights of Federal employees who perform service in a uniformed service. In so doing, the Act provides new responsibilities for the OSC. In FY 1996 the OSC received three USERRA referrals from the DOL. These cases were still being considered by the OSC at the close of FY 1996.

3. Trends:

The number of cases opened for Reserve component personnel steadily increased as a percentage of the total number of cases opened for the past five years. In FY 1992, 59% of cases were opened for Reserve component personnel. This percentage increased to 69% in FY 1993, 75% in FY 1994, 77% in FY 1995 and last year (FY 1996), 80% of cases opened were for Reserve component personnel. This steady increase may be attributed to the growing use of the Reserve and National Guard to provide for national security.

4. Efforts to Improve Employers' Awareness of USERRA:

In FY 1997, VETS is expanding the availability of USERRA information through the Internet. VETS' Web home page will be used to provide USERRA information in an electronic format to the public.

To better serve the veterans returning from active military service, Reservist and National Guard members, VETS National Office is offering to assist Federal agencies in reviewing their personnel policies regarding military leave and is providing technical assistance. Working through the Office of Personnel Management (OPM) Advisory Group and the Executive Branch Human Resource Managers, VETS will work with and provide technical assistance to Federal agencies.

5. Legislative Action Recommendations:

The FY 1995 Report to Congress recommended a number of technical amendments to enhance and clarify the administration of USERRA. These recommendations were incorporated into the Veterans Benefits Improvement Act of 1996 (Public Law 104-276). The Internal Revenue Code was also amended to facilitate certain pension plans

compliance with the requirements of USERRA (Public Law 104-188).

The DOL, OPM, DOJ and the Department of State are participating with the Department of Defense in the study of reemployment rights of Reservists and Guard members employed outside the territorial borders of the United States.