

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 1997

PREPARED BY:

**OFFICE OF THE ASSISTANT SECRETARY
FOR VETERANS' EMPLOYMENT AND TRAINING**

**U. S. DEPARTMENT OF LABOR
200 Constitution Avenue, N.W.
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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. The Act is codified at chapter 43, Title 38, United States Code, sections 4301-4333. USERRA is a sweeping revision of the predecessor Veterans' Reemployment Rights Act.

Section 4332 of USERRA requires an annual report to the Congress on case processing activity for the previous fiscal year (FY) beginning in 1996 and continuing annually through the year 2000. This is the third such report and covers actions taken during FY 1997. This report was prepared in consultation with the Attorney General and the United States Office of Special Counsel.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS

1. CASE ACTIVITY BY DEPARTMENT OF LABOR IN FY 1997

Cases Opened:

In FY 1997, the Veterans' Employment and Training Service (VETS), on behalf of the Secretary of Labor, opened 1,245 new cases and continued the investigation of 223 cases opened the previous FY. Cases opened decreased 2% from the number of cases (1,270) opened in FY 1996.

Of the cases opened in FY 1997, 900 (72%) involved private employers, 243 (20%) involved States or political subdivisions of States, and 102 (8%) involved Federal employers. Of FY 1997 cases, 1,002 (80%) were opened for National Guard or Reserve members, 202 (16%) for military veterans, and 41 (3%) for persons with no prior or current military membership (applicants, for example).

Many of the cases opened by VETS involved multiple USERRA issues. Of 1,245 cases opened in FY 1997, 1,536 issues were identified. Approximately 61% of the case issues involved hiring and firing. Included were: 484 case issues (32%) involving employment discrimination because of an individual's military service or obligations or because of an individual's actions to enforce the protections of USERRA; 346 case issues (23%) involving refusal to reinstate or reemploy an individual following a period of military service; 28 (2%) concerning

layoff because of military obligations; 48 (3%) that involved refusal by an employer to hire an individual because of military service or obligations; and 10 (1%) concerned termination of a person during the statutory period of protection from discharge without cause following reemployment.

Issues involving other than hiring and firing of claimants included: 72 (5%) on seniority; 27 (2%) on failure to provide non-seniority benefits; 40 (3%) on denied promotions; 71 (5%) on vacations; 29 (2%) on reasonable employer efforts to accommodate, retrain, or otherwise qualify for work a returning disabled service member; 8 (1%) on reasonable employer efforts to accommodate, retrain, or otherwise qualify for work a non-disabled returning service member; 66 (4%) on pay rates; 66 (4%) on status in employment; 55 (4%) on pension benefit plans; 25 (2%) on health benefits; and 161 case issues (10%) on various other issues not among the foregoing specified issue categories (Due to rounding of percentages, the total exceeds 100%).

Cases of Reprisal:

Section 4311(b) of USERRA provides that an employer may not discriminate in employment or take any adverse employment action against any person because that person has testified in connection with a proceeding or assisted with an investigation. In FY 1997, there were no such cases opened by VETS.

Cases Resolved:

In FY 1997, VETS closed 1,261 cases, of which 1,008 (80%) were closed within 90 days or less, and 1,086 (86%) were closed in 120 days or less. At the end of FY 1997, 6 cases remained open for a period of greater than one year. Five of those cases have since been closed. The remaining case involves an employer who is currently reviewing a proposed settlement that would resolve the case if accepted.

Of the 1,261 closed cases, there were 539 (43%) USERRA claims resolved through VETS' mediation efforts. In these cases, VETS' actions helped bring about recovery of \$546,824 in lost wages and benefits for claimants. There were 107 (8%) closures because individuals chose to withdraw their claims during the investigation. In 339 (27%) cases, VETS' investigation resulted in a determination that the claim was without merit. In 64 (5%) cases, claimants were found to be not eligible for the remedies or benefits sought. In 156 cases (12%), there was administrative closure by VETS because the claimant failed to cooperate with the investigation or simultaneously pursued the claim with the assistance of a third party. The remainder of cases (approximately 5%) were processed for referral to either the Attorney General or the Office of Special Counsel. Referrals are covered in detail below.

Subpoenas:

VETS issued seven subpoenas during FY 1997 under authority provided by section 4326 of USERRA. The subpoenas were complied with by the employers served.

2. CASES REFERRED TO THE ATTORNEY GENERAL AND OFFICE OF SPECIAL COUNSEL

Attorney General:

Upon the claimant's request, section 4323(a)(1) of the Act provides that VETS will refer to the Attorney General cases against private and State employers that are not resolved through VETS' efforts. The Civil Division of the Department of Justice and the United States Attorneys' Offices (USAOs) act on behalf of the Attorney General on 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 providing 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. In cases they receive from the Civil Division, the USAO makes an independent determination as to the case's merits. If reasonably satisfied that the claimant is entitled to the remedies or benefits sought, the USAO represents the claimant and attempts to resolve the matter, through litigation if necessary.

In FY 1997, the Civil Division received 54 cases from VETS through RSOL. The Civil Division forwarded 21 cases to the

USAOs and declined representation in 28 that they determined lacked merit. In addition, Civil Division attorneys personally handled and settled one case. The remaining four cases were under review by the Civil Division at the close of FY 1997.

In 1997, USAOs filed complaints in district courts on behalf of five claimants, represented three claimants at trial, and negotiated settlements in four cases. The USAOs declined representation in three cases based on their findings that the cases lacked merit. For the year 1997, claimants recovered \$122,000 in lost wages and benefits after intervention by the Department of Justice.

Office of Special Counsel:

USERRA significantly strengthened the employment and reemployment rights of Federal employees who perform service in the uniformed services. With USERRA's enactment, VETS was authorized to investigate claims brought by Federal employees. Also, section 4324(a)(1) of the Act provides Federal employees the opportunity to request referral of their cases to the Office of Special Counsel (OSC) who may represent them before the Merit Systems Protection Board. This new provision parallels the assistance by the Attorney General available to claimants in cases involving State or private employers.

In FY 1997, the OSC received six cases from the Department of Labor. In four cases, OSC declined representation based on their finding that the cases lacked merit. One case was withdrawn by the claimant. The remaining case is still

under review. During FY 1997, the OSC also declined representation on three cases carried over from FY 1996.

3. TRENDS

We have begun to note that in cases where claims are filed against Federal employers, the cases that are not resolved quickly often tend to take more time to bring to closure than similar non-Federal cases. During FY 1997, the average age for non-Federal cases closed was 63.1 days, while Federal cases closed averaged 67.3 days. VETS will continue to track this statistic to assess whether it is cause for concern.

4. EFFORTS TO IMPROVE AWARENESS OF USERRA

USERRA Advisor:

During FY 1997, VETS joined with other agencies in the Department of Labor in developing the USERRA Advisor system. The Advisor, introduced by Secretary Herman on November 24, 1997, provides electronic information on USERRA to employers as well as protected persons on the Department of Labor Internet home page at <http://www.dol.gov>. The Advisor can be found in the VETS section of the Department's "e-laws" page.

Federal Employer Outreach:

During FY 1997, VETS continued to work with Federal agencies to improve awareness of USERRA among Federal employers at all levels. VETS believes that establishing links with headquarters-level managers in the agencies will foster improved compliance throughout those agencies, down to the local office level.

5. LEGISLATIVE ACTION
RECOMMENDATIONS:

While VETS has no recommendations for new legislation to amend USERRA, with the Departments of Justice and Defense as well as other USERRA partners, we continue to study and discuss various legislative proposals related to the Act that may be enacted in the current Congress. In particular, we have a strong interest in proposals that would: provide USERRA coverage for persons employed overseas by U.S. employers; allow for OSC representation for VRR law claims against Federal employers arising prior to USERRA's enactment; and improve USERRA enforcement mechanisms for employees of State governments.