

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 2012, DOL referred 111 cases to the Attorney General's Civil Rights Division and 23 cases to OSC. During the fiscal year, OSC did not represent any Service Members before the MSPB which resulted in a MSPB decision. The nature and status of these referred cases is reflected in mandatory reporting requirement number seven of this report.

4. THE NUMBER OF COMPLAINTS FILED BY THE ATTORNEY GENERAL PURSUANT TO SECTION 4323 DURING SUCH FISCAL YEAR.

DOJ filed nine USERRA complaints in FY 2012. Eight of these cases have now settled and the remaining case is in active litigation.

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 2,793 individuals who had filed the 2,793 cases reviewed by ESGR Ombudsmen in FY 2012, and the date of each case. VETS compared the ESGR data to its own data⁵ on cases initially opened from October 1, 2011 through October 31, 2012⁶. This comparison resulted in 258 likely matches; thus, it appears that 9% of FY 2012 ESGR cases were subsequently opened as VETS cases.

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.

- i.** Twenty-three of the new unique cases, or 1.8%, of those reviewed by DOL in FY 2012, involved a disability-related issue.
- ii.** Forty-one of the new unique cases, or 1.5% of those reviewed by ESGR in FY 2012, involved a disability-related issue.
- iii.** Of the cases referred for consideration of litigation, two of those referred to DOJ and none of those referred to OSC involved a disability-related issue.
- iv.** Of the nine cases filed by DOJ in FY 2012, none involved a disability-related issue.
- v.** With respect to the 258 cases reviewed by DOL and ESGR involving the same person in FY 2012, four (1.6%) involved a disability-related issue.

⁵ Absent more specific data on the employer(s) and specific allegation(s) involved, case matching cannot be made with complete confidence.

⁶ October data was included to capture late FY 2012 ESGR cases that were filed with VETS early in FY 2013.

B. THE NUMBER OF SUCH CASES THAT INVOLVE A PERSON WHO HAS A SERVICE-CONNECTED DISABILITY.

- i. In FY 2012, VETS asked claimants whether they had a service-connected disability. Among the 1,275 new unique claims VETS received, VETS obtained responses from 1,261 claimants, 21% (261) of whom reported having such a disability. Among these 261 claimants who reported having a service-connected disability, 21 also claimed a USERRA-related disability issue. Among the remaining 1,000 claimants who responded but did not report having a service-connected disability, two claimed a USERRA-related disability issue.
- ii. No information is available on the number of cases handled by ESGR that involved a person with a service-connected disability.
- iii. Of the cases referred for consideration of litigation, 19 of those referred to DOJ involved a claimant who reported a service-connected disability, with four of those claimants also claiming a USERRA-related disability issue. Eight of those referred to OSC involved a claimant who reported a service-connected disability, with two of those claimants also claiming a USERRA-related disability issue.
- iv. Of the nine cases filed by DOJ in FY 2012, one involved a person with a service-connected disability; however, none of those nine claimants also claimed a USERRA-related disability issue.
- v. With respect to the 258 cases reviewed by VETS and ESGR involving the same person in FY 2012, VETS obtained service-connected disability responses from 255 of these claimants, 16% (42) of whom reported having such a disability. Four claimants among the 42 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.

i. CASES REVIEWED BY THE DEPARTMENT OF LABOR

The following issues were raised in the new unique USERRA cases reviewed by DOL:

Cases Opened by VETS in FY 2012 USERRA ISSUE	VETS CASES ALLEGING ISSUE*	
	NUMBER	PERCENT
Military obligations discrimination	471	36.9%
Reinstatement	347	27.2%
Other non-seniority benefits	39	3.1%
Promotion	66	5.2%
Vacation	46	3.6%
Status	38	3.0%
Pay rate	74	5.8%
Reasonable accommodation/ retraining for non-qualified/non-disabled	5	0.4%
Discrimination as retaliation for any action	87	6.8%
Seniority	49	3.8%
Pension	44	3.5%
Initial hiring discrimination	90	7.1%
Layoff	38	3.0%
Special protected period discharge	25	2.0%
Health benefits	17	1.3%
Reasonable accommodations/retraining for disabled	23	1.8%
Other	37	2.9%

* Note: Because many USERRA cases involve multiple issues, the number of cases in this chart exceeds the 1,275 new unique cases reported by VETS in FY 2012 and the combined percentages exceed 100%.

DOL closed 1,290 cases in FY 2012 under the following closure codes: no merit, 427 (33%); administrative, 86 (7%); claim granted, 227 (18%); claim settled, 116 (9%); claim withdrawn, 228 (18%); not eligible, 53 (4%); referred, 125 (10%); merit, not resolved, 25 (2%); merit undetermined, 3 (<1%).⁷ An explanation of case closure codes follows.

⁷ Combined closure code percentages exceed 100% due to the effects of rounding each code to a whole percentage.

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, failure to attend scheduled meetings or conferences, and failure to make a written request for referral after being given the opportunity to do so.
 - **Continued Unauthorized Contact by Third Party with Employer** – Although a claimant is entitled to be represented either by VETS or by a third party under USERRA, he or she may not be simultaneously represented by both parties if the representation interferes with the investigation. If the claimant insists on being represented by a third party in a USERRA case, and that representation interferes with a VETS investigation, he or she 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 for less than the claimant's full entitlements under USERRA.
- **WITHDRAWN CLAIM:** When the claimant informs VETS in writing of his/her 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 his/her 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 to the Regional Solicitor's Office 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.

ii. CASES REVIEWED BY THE ESGR ON BEHALF OF THE SECRETARY OF DEFENSE

ESGR Ombudsman services covered an array of USERRA issues that included 1,271 complaints involving some type of military discrimination, 764 complaints involving job reinstatement and reemployment problems; and 15 cases involving possible retaliation or reprisal during FY 2012.

ESGR resolved 2,166 of its 2,793 Ombudsman cases. There were 627 USERRA Ombudsman cases in which the employee and employer could not reach an agreement. In these instances ESGR Ombudsmen informed both parties that the employee had the option 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 UIMS data.

Crosswalk of USERRA Issues, FY 2012

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" *

Discrimination	Military Obligations Discrimination	1183	ID - Military Obligations Discrimination	403
	Initial Hiring Discrimination	89	II - Initial Hiring Discrimination	83
	1,272 Ombudsman Cases (47%)		486 Issues in 482 Complaint Cases (44% of Complaint Cases)	
Reinstatement/ Reemployment	Health Benefits	46	IH - Health Benefits	12
	Pension	28	IP - Pension	40
	Seniority	44	IS - Seniority	43
	Other Non-Seniority Benefits	51	IB - Other Non-Seniority Benefits	30
	Status	69	IZ - Status	34
	Layoff	89	IL - Layoff	33
	Vacation	109	IV - Vacation	40
	Reinstatement	764	IR - Reinstatement	302
	Promotion	117	IT - Promotion	61
	Reasonable Accommodations/Retraining for Disabled	41	IA - Reasonable Accommodations/Retraining for Disabled	17
	Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled	5	IW - Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled	4
	Pay Rate	80	IM - Pay Rate	65
	Special Protected Period Discharge	5	IF - Special Protected Period Discharge	19
1,448 Ombudsman Cases (53%)		700 Issues in 529 Complaint Cases (48% of Complaint Cases)		
Reprisal	Discrimination as Retaliation for any Action	15	ID2 - Discrimination as Retaliation for any Action	73
	15 Ombudsman Cases (<1%)		73 Issues in 73 Complaint Cases (7% of Complaint Cases)	

* To facilitate comparisons with ESGR data, VETS' data in this chart reflects only National Guard & 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 both VETS and ESGR in this chart total less than 100% for each agency, because ESGR's Case counts and VETS' Issue counts here do not include the uncategorized "Other" Problem/Issue Code, thereby excluding 58 "Other" ESGR Cases and 30 "Other" VETS Issues from this chart.

iii. CASES REFERRED TO THE DEPARTMENT OF JUSTICE OR THE OFFICE OF SPECIAL COUNSEL

CASES REFERRED TO THE DEPARTMENT OF JUSTICE

In FY 2012, the Civil Rights Division received 41 referrals from DOL where DOL found that the claims had merit and recommended that DOJ offer representation to the service member. DOJ offered representation in 12 cases, facilitated 11 settlements, and declined representation in 13 cases (one due to the service member obtaining private counsel). Two referrals were withdrawn by the service member, and two referrals involved State agencies and DOJ declined to pursue litigation. With respect to the remaining referral, DOL was able to settle the matter before DOJ decided whether to offer representation.

DOJ received an additional 70 referrals from DOL in FY 2012 with a recommendation that the claims lacked merit and representation should be declined. Based on DOL's recommendation and DOJ's independent analysis of the merits of each referral, DOJ declined representation with respect to 57 referrals. Two referrals were withdrawn by the service member, and the remaining 11 referrals involved State agencies and, in agreement with DOL, DOJ declined to pursue litigation.

The cases referred to the Civil Rights Division in FY 2012 involved a number of USERRA issues. Approximately 26% (29) of these cases involved allegations of termination and/or discharge, approximately 33% (37) of these cases involved reemployment allegations, while approximately 18% (20) 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 13% (14) involving failure to promote, approximately 12% (13) involving failure to hire, approximately 2% (2) involving service-connected disability, and approximately 61% (68) involving actions affecting the service member's terms and conditions of employment, such as discipline or harassment. The remaining 5% (5) of these cases involved allegations of retaliation for asserting USERRA protection.⁸

CASES REFERRED TO THE OFFICE OF THE SPECIAL COUNSEL

During Fiscal Year 2012, DOL referred 23 cases to OSC at the request of the service member, under 38 U.S.C. Sec. 4324. Additionally, 18 cases referred to OSC during the previous fiscal year remained pending at the beginning of Fiscal Year 2012.⁹ Thus, 41 total cases were pending at OSC during the fiscal year. OSC did not file any actions with the U.S. Merit Systems Protection Board during the fiscal year, but obtained corrective action for four service members, including two service members for whom OSC provided legal representation.

In 33 of the 41 cases, the service member alleged discrimination based on uniformed service, including termination, non-promotion, non-selection, or improper denial of employment benefits; in 10 cases, violations of reemployment rights; and in five cases, retaliation for exercising USERRA rights.¹⁰

⁸ Several cases involved multiple issues. Each issue was counted separately.

⁹ One referral counted here as pending at the beginning of FY 2012 had actually been referred by DOL to OSC during FY 2011; however, that case file was not received by OSC until FY 2012.

¹⁰ The totals do not add up to 41 cases because some cases contain multiple allegations (i.e., there were 48 allegations in the 41 cases).

Of the 41 total cases, OSC completed 30 cases during Fiscal Year 2012, while 11 cases remained pending at the end of the fiscal year. OSC did not file any actions with the U.S. Merit Systems Protection Board during the fiscal year, but obtained corrective action for four service members, including two service members for whom OSC provided legal representation

USERRA cases referred to OSC by DOL under 38 U.S.C. Sec. 4324 are separate and apart from USERRA complaints received by OSC under the current USERRA Demonstration Project (*see* “**USERRA DEMONSTRATION PROJECT**”).

iv. COMPLAINTS FILED BY THE ATTORNEY GENERAL

The Department of Justice filed nine USERRA complaints in FY 2012. Eight of these cases have now settled and the remaining case is in active litigation.

v. CASES REVIEWED BY DOL AND ESGR INVOLVING THE SAME PERSON

DOL’s response to Mandated Reporting Requirement # 5, 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, 258 likely matches were identified. This figure indicates that first ESGR, and subsequently DOL, handled the same individuals’ claims. The claims included allegations of the following issues:

CASES REVIEWED BY DOL AND ESGR INVOLVING THE SAME PERSON USERRA ISSUE	CASES ALLEGING ISSUE*	
	NUMBER	PERCENT
Military obligations discrimination	107	41.5%
Reinstatement	71	27.5%
Other non-seniority benefits	6	2.3%
Promotion	8	3.1%
Vacation	3	1.2%
Status	12	4.7%
Pay rate	16	6.2%
Reasonable accommodation/ retraining for non-qualified/non-disabled	1	0.4%
Discrimination as retaliation for any action	16	6.2%
Seniority	17	6.6%
Pension	7	2.7%
Initial hiring discrimination	6	2.3%
Layoff	6	2.3%
Special protected period discharge	6	2.3%
Health benefits	5	1.9%
Reasonable accommodations/retraining for disabled	4	1.6%
Other	5	1.9%

* Note: Many USERRA cases involve multiple issues, and VETS records all the USERRA issues involved in a case. As a result, the number of cases in this chart exceeds the 258 ESGR and VETS cases involving the same person, and the combined percentages exceed 100%. Matching of FY 2012 ESGR cases and VETS cases initially opened 10/1/2011 to 10/31/2012 is based on claim dates and claimant names.

DOL closed all of these 258 likely matches by May 31, 2013, under the following closure codes: no merit, 85 (33%); administrative, 19 (7%); claim granted, 48 (19%); claim settled, 26 (10%); claim withdrawn, 42 (16%); not eligible, 8 (3%); referred, 22 (9%); merit, not resolved, 7 (3%); merit undetermined, 1 (<1%). An explanation of VETS case closure codes appears in the explanation of the status of cases reviewed by DOL.

VETS' Data For 258 Likely Case Matches with FY 2012 ESGR Cases*

VETS' USERRA Issue Codes	VETS' Close Codes									NUMBER OF CASES:	PERCENT:
	Administrative	Claim Granted	Claim Settled	Claim Withdrawn	Merit Undetermined	Merit, Not Resolved	No Merit	Not Eligible	Referred		
Military Obligations Discrimination	8	15	12	21	1	5	43	2	7	114	44.2%
Reinstatement	4	19	11	9	0	6	22	4	5	80	31.0%
Other Non-Seniority Benefits	0	1	0	2	0	0	4	0	1	8	3.1%
Promotion	0	1	0	3	0	0	3	0	2	9	3.5%
Vacation	0	2	0	2	0	0	0	0	0	4	1.6%
Status	0	3	1	4	0	1	4	0	1	14	5.4%
Pay Rate	0	4	3	4	0	1	5	0	2	19	7.4%
Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled	1	1	0	0	0	0	0	0	0	2	0.8%
Discrimination as Retaliation for any Action	2	1	0	7	0	0	8	0	0	18	7.0%
Seniority	2	4	2	7	0	0	1	0	1	17	6.6%
Pension	1	4	0	0	0	0	0	1	2	8	3.1%
Initial Hiring Discrimination	0	1	1	1	0	0	3	0	0	6	2.3%
Layoff	2	0	1	1	0	0	2	0	0	6	2.3%
Special Protected Period Discharge	0	1	2	2	0	1	2	0	0	8	3.1%
Health Benefits	1	0	0	1	0	0	3	0	0	5	1.9%
Reasonable Accommodations/Retraining for Disabled	0	0	0	1	0	0	0	1	2	4	1.6%
Other	0	2	0	0	0	0	2	0	1	5	1.9%
NUMBER OF CASES:	21	59	33	65	1	14	102	8	24	327	
PERCENT:	8.1%	22.9%	12.8%	25.2%	0.4%	5.4%	39.5%	3.1%	9.3%		126.7%

* Note: Many USERRA cases involve multiple issues, and VETS records all the USERRA issues involved in a case. As a result, the number of cases in this chart exceeds the 258 ESGR and VETS cases involving the same person, and the combined percentages exceed 100%. Matching of FY 2012 ESGR cases and VETS cases initially opened 10/1/2011 to 10/31/2012 is based on claim dates and claimant names.

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 Standard Occupational Classification System (SOCS) code in FY 2012. Therefore, SOCS code data is not available for cases filed only with ESGR.

VETS was able to obtain the SOCS code in 98% (1,252) of the unique complaints filed in FY 2012. That data reveal that 21% of complaints involved Protective Service occupations. Another 11% involved Office and Administrative Support occupations, and 9% involved Transportation and Material Moving occupations.

With respect to cases reviewed by VETS and ESGR likely involving the same person in FY 2012, VETS obtained the SOCS code in all but one of the 258 cases. That data reveal that 23% of those cases involved Protective Service occupations, 9% involved Office and Administrative Support occupations, and each of the following occupational categories involved 7% of these cases: Management; Sales and Related; Installation, Maintenance, and Repair; and Healthcare Practitioners and Technical.

With respect to cases referred to the Attorney General's DOJ Civil Rights Division from DOL in FY 2012, VETS obtained the SOCS code in all but two of the 111 cases. That data reveals that 25% of those cases involved Protective Service occupations. Two other occupational categories each involved 11% of these cases: Transportation and Material Moving; and, Management.

VETS obtained the SOCS code in all 23 of the cases referred to OSC from DOL through VETS and SOL in FY 2012. That data reveals that 22% of cases involved Business and Financial Operations, 17%

involved Protective Service occupations, and three other occupational categories each involved 13% of these cases: Office and Administrative Support; Healthcare Practitioners and Technical; and, Life, Physical, and Social Science.

Occupations Involved in FY 2012 USERRA CASES¹¹				
As designated by the Standard Occupational Classification System (SOCS)				
SOCS Job Family	Percentage of Cases involving SOCS Code			
	VETS Cases	Referrals to		Common to VETS & ESGR
		DOJ	OSC	
Protective Service	21%	25%	17%	23%
Office and Administrative Support	11%	6%	13%	9%
Transportation and Material Moving	9%	11%	4%	6%
Management	8%	11%	4%	7%
Sales and Related	7%	3%	0%	7%
Installation, Maintenance, and Repair	7%	3%	0%	7%
Production	5%	2%	0%	4%
Healthcare Practitioners and Technical	4%	6%	13%	7%
Food Preparation and Serving Related	4%	2%	0%	2%
Business and Financial Operations	4%	6%	22%	2%
Education, Training, and Library	3%	6%	0%	5%

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 2012. DOL will continue to monitor USERRA cases to identify trends as they arise.

¹¹ The following occupations accounted for 2% or fewer within each case/referral category shown in this chart (*with exceptions as noted here*): Architecture and Engineering (*Exception: 4% of Cases Common to VETS & ESGR*); Arts, Design, Entertainment, Sports, and Media; Building and Grounds Cleaning and Maintenance; Community and Social Services; Computer and Mathematical (*Exceptions: 4% of Referrals to both DOJ & OSC, and 5% of Cases Common to VETS & ESGR*); Construction and Extraction (*Exception: 5% of Referrals to DOJ*); Farming, Fishing, and Forestry; Healthcare Support (*Exception: 4% of Referrals to OSC*); Legal (*Exceptions: 6% of Referrals to DOJ & 4% of Referrals to OSC*); Life, Physical, and Social Science (*Exception: 13% of Referrals to OSC*); Military Specific; and, Personal Care and Service occupations.

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.

RECOMMENDATION FROM DOJ AND DOL: *Strengthen the United States’ ability to enforce USERRA, in the following ways: Ensure that USERRA is consistent with other civil rights laws by allowing the United States to bring suit in its own name as the plaintiff, to vindicate the public interest in ensuring the statute is enforced; to challenge identified patterns and practices that violate the law; to preserve the right of the aggrieved Service Member to intervene in such suits or to bring his or her own suit where the Attorney General has declined to file suit; and to allow the Attorney General the authority to compel production of evidence.*

The Departments of Justice and Labor urge Congress to strengthen the United States’ ability to enforce USERRA, including by the means set forth in two provisions of the “Putting Our Veterans Back to Work Act of 2013,” S. 6, which would significantly strengthen the Attorney General’s authority to enforce USERRA. First, Section 401 of S. 6 would amend 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. At the same time, it would preserve the right of the aggrieved Service Member to intervene in such suits or to bring his or her own suit where the Attorney General has declined to file suit.

S. 6 would also grant 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 strengthen significantly DOJ’s ability to enforce USERRA to address a systemic violation (such as a policy prohibiting extended absences, including absences for military service) that could adversely affect the employment rights of multiple Service Members.

Finally, to support the proposed pattern-or-practice authority, Section 404 of S. 6 would further amend 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 some investigative tools. The civil investigative demand proposal in S. 6 is narrow in scope and would be subject to the same limitations that apply to DOJ’s authority under the False Claims Act.

DOJ and DOL look forward to working with Congress on these USERRA provisions.

USERRA annual reports are available for fiscal years (FY) 1995-1999 and 2004-2012. 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).



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