

Law Review 24013 Update

After the District Judge dismissed this complaint without prejudice, the plaintiff redrafted and refiled the complaint. Later, the plaintiff and the defendant reached a settlement that is satisfactory to the plaintiff. This case is over.

On 1/2/2025, the President signed the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act, Public Law 118-210. As described in our Law Review 25006 (February 2025), this important new law made several helpful amendments to the Uniformed Services Employment and Reemployment Rights Act (USERRA). One of those amendments was to change the language of section 4311(b) of USERRA to read as follows:

An employer may not discriminate in employment against or take any adverse employment action **or other retaliatory action** against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

38 U.S.C. section 4311(b) (emphasis supplied).

We had the *Lara* case in mind when we asked Congress to make this change to USERRA. The District Court Judge initially held that initiating a bad-faith criminal prosecution against the Reserve Component service member to reprise against him or her for having exercised USERRA rights was not a violation because a criminal prosecution, even if in bad faith and for improper purposes, was not an “adverse employment action.” The Dole Act amendment addresses this loophole.