

## LAW REVIEW<sup>1</sup> 26019

May 2026

### **Section 4317 of USERRA: You Have the Right to Continue Your Civilian Health Insurance Coverage While You Are on Active Duty, But Doing So Is Very Expensive and Likely Inadvisable. By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>**

**1.3.2.6—Health insurance reinstatement and continuation.**

**1.8—Relationship between USERRA and other laws/policies.**

***Eichaker v. Village of Vicksburg*, 84 F. Supp. 3d 618, 629-30 (W.D. Mich. 2015), reversed and remanded 627 Fed. Appx. 527 (6<sup>th</sup> Cir. 2015), on remand 2016 WL 96177, 2016 U.S. Dist. LEXIS 1997 (W.D. Mich. Jan. 8, 2016).**

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2,300 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

<sup>2</sup> BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

*Eichaker* is a complex case involving many alleged violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA). In this article, I will address just one of the many allegations, and that is the allegation that the defendant, the Village of Vicksburg in Michigan, violated section 4317 of USERRA<sup>3</sup> by continuing Eichaker's health insurance coverage during the time that he was away from his civilian job to perform uniformed service and then billing him for the entire cost of that coverage.

Section 4317(a) of the Uniformed Services Employment and Reemployment Rights Act (USERRA) provides as follows:

**(a)**

**(1)**In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), and such person is absent from such position of employment by reason of service in the uniformed services, or such person becomes eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, the plan shall provide that the person **may elect to continue such coverage** as provided in this subsection. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of—

**(A)**

the 24-month period beginning on the date on which the person's absence begins; or

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<sup>3</sup> 38 U.S.C. § 4317.

**(B)**

the day after the date on which the person fails to apply for or return to a position of employment, as determined under section 4312(e).

**(2)**

**A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan** (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986) associated with such coverage for the employer's other employees, **except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, of the cost of such coverage.**

**(3)**In the case of a health plan that is a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability under the plan for employer contributions and benefits arising under this paragraph shall be allocated—

**(A)**

by the plan in such manner as the plan sponsor shall provide; or

**(B)**if the sponsor does not provide—

**(i)**

to the last employer employing the person before the period served by the person in the uniformed services, or

**(ii)**

if such last employer is no longer functional, to the plan.<sup>4</sup>

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<sup>4</sup> 38 U.S.C. § 4317(a) (emphasis supplied).

Under section 4317(b) of USERRA,<sup>5</sup> a person who leaves a civilian job to perform uniformed service and returns to the job after completion of the period of service and who meets the five USERRA conditions for reemployment<sup>6</sup> is entitled to immediate reinstatement of his or her civilian health insurance coverage upon return to the civilian job. There must be no waiting period and no exclusion of “pre-existing conditions” except conditions that the United States Department of Veterans Affairs has determined to be service-connected.<sup>7</sup>

I have addressed the right to reinstatement of one’s civilian health insurance coverage, upon return to the civilian job after a period of uniformed service, in Law Review 19042 and many other articles. In this article, I address the right to **continuation of the individual’s civilian health insurance coverage during the time that the individual is away from the job to perform uniformed service.**

The right to reinstatement of one’s civilian health insurance coverage upon return to work, under section 4317(b), is very valuable and almost indispensable to most service members. By contrast, the right to continue one’s civilian health insurance coverage during the period of uniformed service, under section 4317(a), is utterly useless, in most situations. The Reserve Component service member who leaves the civilian job for voluntary or involuntary uniformed service will not want to continue the civilian health insurance coverage except in the most unusual circumstances.

If Josephine Smith (JS), a member of the Marine Corps Reserve (USMCR), leaves her civilian job for one year of active military service,

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<sup>5</sup> 38 U.S.C. § 4317(b).

<sup>6</sup> See Law Review 24047 (October 2024).

<sup>7</sup> See Law Review 19042 (May 2019).

and if she elects to continue her civilian health insurance coverage through her civilian job under section 4317(a), the employer is permitted to charge her up to 102% of the entire health insurance premium, including the part that the employer normally pays in the case of active employees.<sup>8</sup>

When JS is on an active duty period projected to last for 31 days or more, she is entitled to military health care for herself and her husband and children under the Department of War (DOW) program called TRICARE.<sup>9</sup> JS will not want to spend hundreds of dollars per month for civilian health insurance coverage that duplicates what she is entitled to, at little or no cost, from the military.

**Q: What about the times when JS is on military training or duty for short periods (fewer than 31 days)?**

**A:** For these short periods, the employer is only permitted to charge JS for the employee share, if any, of the cost of the health insurance coverage.<sup>10</sup> JS' civilian health insurance coverage should not be interrupted by short periods of military training or service, like drill weekends and traditional two-week annual training periods.

**Q: How did the District Court Judge in the *Eichaker* case get section 4317 wrong?**

David E. Eichaker served in the Marine Corps and Marine Corps Reserve and transferred to the Michigan Air National Guard (ANG) in February 2001. He was hired as a police officer for the Village of Vicksburg in

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<sup>8</sup> 38 U.S.C. § 4317(a)(2).

<sup>9</sup> 10 U.S.C. § 1074.

<sup>10</sup> 38 U.S.C. § 4317(a)(2).

1999. He was promoted to Lieutenant in May 2003, becoming second-in-command of the small police department. When the longtime police chief retired, Eichaker sought the position but lost out to another police officer, Eric West.

After he became Chief, West reorganized the department, eliminating the Lieutenant position and creating two Sergeant positions. Eichaker was downgraded from Lieutenant to Sergeant, and he lost pay and status in several ways. As a Sergeant, Eichaker was paid an hourly wage rather than a salary. He was frequently assigned to weekend shifts, including on weekends when he was required to train with his ANG unit. Thus, Eichaker lost money when he did not work and was not paid for weekend shifts that conflicted with his ANG training schedule.<sup>11</sup>

Eichaker and West had many disputes and a most difficult working relationship. It appears that West's annoyance with Eichaker for his ANG duties and his absence from work occasionally to fulfill those duties was one part of the multi-faceted dispute between Eichaker and West. At one point, West said to Eichaker: "You think you can go on military leave whenever you feel like it." On 1/24/2011, West demoted Eichaker from Sergeant to Patrolman.

In October 2011, Eichaker learned that he was being called to active duty for deployment to Afghanistan. He was on military leave for more than a year, from 11/1/2011 until 11/16/2012. When Eichaker was called to active duty, he did not request that the Village of Vicksburg continue his health insurance coverage while he was on military leave, but neither did he request that the Village suspend his health insurance coverage during his military service. Eichaker did not need civilian

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<sup>11</sup> See *Monroe v. Standard Oil Co.*, 452 U.S. 549 (1981). See also Law Review 09023 (June 2009).

health insurance coverage while he was on active duty because he had excellent military coverage for himself and his family. In May 2012, while he was on active duty in Afghanistan, Eichaker received a bill from the Village of Vicksburg for unpaid health insurance and disability insurance premiums and union dues.

In February 2012, while on active duty in Afghanistan, Eichaker complained to the Department of War (DOW) agency called “Employer Support of the Guard and Reserve” (ESGR), asserting that his USERRA rights had been violated. In March 2012, he complained to the Veterans’ Employment and Training Service of the United States Department of Labor (DOL-VETS). After he returned home from Afghanistan, he retained private counsel and sued the Village of Vicksburg in the United States District Court for the Western District of Michigan. The case was assigned to Judge Robert Holmes Bell of that court.

In his complaint, Eichaker alleged that the Village had violated USERRA in nine ways. For purposes of this article, only one of those ways was relevant. He alleged that the Village had violated USERRA by “deducting monies for health insurance and other items without his permission.”

The Village filed a motion for summary judgment (MSJ) with respect to all the counts of Eichaker’s complaint, asserting that there was no evidence to support Eichaker’s claims and that no reasonable jury could find for Eichaker. With respect to the health insurance count of Eichaker’s complaint, Judge Bell held:

Plaintiff asserts that his rights under USERRA were violated when the Village deducted money from Plaintiff's paid time off ("PTO") to pay for Plaintiff's health insurance premiums and other items while Plaintiff was deployed in Afghanistan, without his permission. Plaintiff has requested partial summary judgment on his request for a declaration that Defendant's conduct was unlawful under USERRA and an injunction enjoining Defendant from seeking collection on an invoice for the health insurance premiums paid on Plaintiff's behalf.

Plaintiff did not need insurance while he was on active duty with the military because the military provided health insurance to Plaintiff and his family during that time. Prior to his deployment to Afghanistan in the fall of 2011, Plaintiff did not advise the Village whether he wanted to continue or discontinue his health benefits. (Eichaker Dep. 150; Kiel Dep. 24-26, 28.)

For purposes of this opinion the Court will assume that Defendant's withdrawal of money from Plaintiff's PTO account was not proper. However, Plaintiff has not shown that the withdrawal violated USERRA. More importantly, that money was returned to Plaintiff's PTO account, so there is no harm stemming from that action and no need for declaratory or injunctive relief.

That leaves the question as to whether Defendant violated USERRA when it billed Plaintiff for health insurance. Plaintiff acknowledges that insurance premiums are deducted pursuant to the union contract. (Eichaker Dep. 150-51.) According to Plaintiff, the union contract is silent with respect to what should happen in the event of military service. (*Id.* at 151.) Plaintiff did not elect to

continue his health insurance after he was deployed. His benefits were continued because he did not affirmatively request to cancel them. As Crawford testified, "[Eichaker] elected coverage by signing up with Blue Cross/Blue Shield, and as an employee that coverage is there until he elects not to have that coverage." (Crawford Dep. 148.)

USERRA provides that when a person has coverage under a health plan in connection with his employment, and the person is absent from work due to military service, "the plan shall provide that the [service] person may elect to continue such coverage." 38 U.S.C. § 4317(b)(1). USERRA does not prohibit an employer from continuing health care coverage and requiring payments for that coverage by a military service member. USERRA is focused on a serviceman's right to continued coverage, and on prohibiting employers from improperly discontinuing coverage. USERRA does not speak to a servicemember's right to discontinue coverage, nor does it prohibit an employer from continuing coverage for a servicemember who has not specifically chosen to continue it. The plain language and intent of USERRA is to protect the ability of employees on military leave to maintain their health care coverage, not to punish employers for maintaining health care coverage for those employees who have not made an election to discontinue coverage. Plaintiff has not pointed to any language in USERRA that would require a plan to discontinue coverage for a serviceman who has made no choice on whether to continue or to discontinue coverage during his deployment. Indeed, it would likely be a violation of USERRA or the union contract if the Village discontinued Plaintiff's benefits during his deployment if Plaintiff did not specifically request such an action.

Plaintiff faults the Village for failing to advise him that he had the right to discontinue his health insurance. (Eichaker Aff.) When the Village became aware of Plaintiff's dissatisfaction with the deductions for insurance, it certainly could have inquired as to Plaintiff's preference on the issue of the continuation or cancellation of health insurance. Defendant does not deny that Plaintiff may have a claim for reimbursement, but Defendant moves for summary judgment in its favor regarding the deductions for health insurance and union dues because Defendant's conduct was not unlawful under USERRA. If Plaintiff has a claim regarding the handling of his insurance, it is not one cognizable under USERRA. Plaintiff has not shown that he has a claim under USERRA for the manner in which Defendant administered his health benefits.<sup>12</sup>

Eichaker appealed to the United States Court of Appeals for the Sixth Circuit, the intermediate federal appellate court that sits in Cincinnati and hears appeals from district courts in Kentucky, Michigan, Ohio, and Tennessee. The appellate court affirmed Judge Bell's grant of summary judgment as to some of the counts of Eichaker's complaint and reversed as to other counts, including the count related to health insurance coverage. The appellate court remanded the case to the District Court with respect to the counts where summary judgment was granted but should not have been.

On remand, Judge Bell repeated his error, or what I believe to have been his error, with respect to health insurance coverage:

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<sup>12</sup> *Eichaker v. Village of Vicksburg*, 84 F. Supp. 3d 618, 628-30 (W.D. Mich. 2015).

Plaintiff contends that Defendant continued his health insurance, union dues, and disability insurance without his consent during a deployment to Afghanistan from November 1, 2011, to November 16, 2012, and then billed him for them. Apparently, Defendant did not do this when Plaintiff took military leave on prior occasions. (See Compl. ¶ 38, ECF No. 1.) The Court of Appeals indicated that Plaintiff's allegations might give rise to relief under USERRA § 4311 if "the Village's provision of free health insurance during Eichaker's prior deployments was a 'practice' within the meaning of § 4303(2) . . . [and if] anti-military animus or Eichaker's efforts to invoke the Act's protections were a motivating factor in [Chief] West's decision to bill Eichaker" for this insurance. *Eichaker*, 2015 U.S. App. LEXIS 17723, 2015 WL 5827540, at \*5.

Defendant's motion for summary judgment does not make any argument regarding this claim. It does not argue that billing Plaintiff for health insurance does not establish a retaliation claim under § 4311; instead, its motion and brief in support thereof focus on whether it properly continued Plaintiff's health insurance under 38 U.S.C. § 4317. Similarly, Plaintiff's motion for partial summary judgment focuses solely on whether Defendant's actions were proper under § 4317. This Court found, and the Court of Appeals did not disagree, that Plaintiff did not affirmatively elect to discontinue his health insurance during his deployment, and that § 4317 did not require Defendant to discontinue Plaintiff's benefits during his deployment or to inform him that they would be continued in the absence of any election on his part. (See 1/8/2015 Op. 20, ECF No. 78 ("USERRA [§ 4317] does not speak to a servicemember's right to discontinue

coverage, nor does it prohibit an employer from continuing coverage for a servicemember who has not specifically chosen to continue it.".) As the Sixth Circuit indicated, however, Plaintiff states a possible retaliation claim under § 4311. Consequently, Defendant's motion for partial summary judgment will be denied insofar as it seeks judgment on Plaintiff's claim that he was charged for these benefits in retaliation for his protected conduct, but granted insofar as Plaintiff alleges a violation of § 4317. Similarly, because Plaintiff's motion for partial summary judgment is based on a violation of § 4317, it will be denied. In other words, the claim survives summary judgment as a violation of § 4311, not as a violation of § 4317.<sup>13</sup>

In my view, Judge Bell erred when he held, twice, that the Village did not violate section 4317 when it continued Eichaker's health insurance coverage in the absence of a specific request by Eichaker to continue the coverage. It was not Eichaker's responsibility to affirmatively elect to terminate his civilian health insurance coverage when he entered active duty. The employer should have terminated the coverage unless Eichaker affirmatively elected to continue it.

The pertinent section of the Department of Labor (DOL) USERRA Regulation is as follows:

**How does the employee elect continuing health plan coverage?**

USERRA does not specify requirements for *electing continuing coverage*. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be

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<sup>13</sup> *Eichaker v. Vicksburg*, 2016 U.S. Dist. LEXIS 1997, \*3-6 (W.D. Mich. Jan. 8, 2016).

elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.<sup>14</sup>

**Q: How can a person in Eichaker's situation avoid this unfortunate situation?**

**A:** When you leave a civilian job for a period of voluntary or involuntary uniformed service that is projected to last for 31 days or longer, you should affirmatively notify the employer that you want to discontinue your civilian health insurance coverage, subject to reinstatement of the coverage after you complete your period of uniformed service and return to the civilian job. You should give that notice by certified mail or the email equivalent of certified mail. I am attaching a sample letter that the service member can send to the employer in this sort of situation.

**Q: What if the employer has generously offered to continue the employee's civilian health insurance coverage while the employee is away from work for uniformed service *at no cost to the employee*?**

**A:** The employer can always do more than USERRA requires. Section 4302 of USERRA provides:

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<sup>14</sup> 20 C.F.R. § 1002.165 (bold question in original, emphasis by italics supplied).

**(a)**

Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

**(b)**

This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.<sup>15</sup>

If your employer provides you with valuable benefits during your military service, over and above the requirements of USERRA, you should nominate your employer for an ESGR award.

### **Join the Organization That Fights for You**

This article is one of more than 2,000 "Law Review" articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter)— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the

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<sup>15</sup> 38 U.S.C. § 4302.

Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

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descendants of past or present service members, so families can stand with those who serve. Join online at [roa.org/memberoptions](http://roa.org/memberoptions) or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America  
1 Constitution Ave. NE  
Washington, DC 20002

**Here is a sample letter that you can send to your employer in this sort of situation:**

Mr. Dwight Eisenhower  
President  
Eisenhower Furniture Company  
123 Tombstone St.  
Dodge City, KS 66601

Dear Mr. Eisenhower:

Thank you for your excellent support of my service in the United States Army Reserve (USAR), especially during this time when I am being called to the colors for service outside our country. I expect to report to active duty in a few days and to be deployed outside the United States for about one year. I fully expect to return to work at your furniture store after I complete this active-duty period.

Like all the employees at your store, I have an excellent health insurance plan for myself and my family. **I do not wish to continue my health insurance plan through your company during my period of service.** I expect to return to work and to reinstate my health insurance coverage after I am released from active duty.

If you have any questions about my rights under the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA), please contact the Department of War (DOW) organization called Employer Support of the Guard and Reserve (ESGR) at 800-336-4590. I also invite your attention to the “Law Review Library” maintained by the Reserve Organization of America (ROA). See [www.roa.org/lawcenter](http://www.roa.org/lawcenter).

Thank you so much for your prayers on my behalf and for your support of my family during this difficult time for our nation and for my family.

Very respectfully,

Audie Murphy  
Corporal, U.S. Army Reserve