

LAW REVIEW¹ 26036

July 2026

ROA Life Member Sues Southwest Airlines for Violating USERRA and Settles for \$18.5 Million. By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.2—USERRA forbids discrimination.

1.3.2.10—Furlough or leave of absence clause.

1.4—USERRA enforcement.

1.8—Relationship between USERRA and other laws/policies.

¹ I invite the reader's attention to <https://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.

² 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. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.



Q: I am a retired Captain (O-6) of the Coast Guard Reserve. I am a life member of the Reserve Organization of America (ROA), and I am currently serving as a national officer of ROA. For many years, I have read with great interest your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those of us who serve or have served our country in uniform.

Recently, I read on the Internet an article saying that a guy named Huntsman sued Southwest Airlines (SWA), claiming that the airline had violated USERRA, and the case settled for \$18.5 million. What is this case about? First, who is Huntsman?

A: Huntsman is Jayson Huntsman, a recently retired Air National Guard officer and a life member of ROA. He is a pilot for SWA. He sued SWA, claiming that the airline should have given him and other similarly situated SWA pilots **paid military leave** for short periods when he and they were away from the SWA jobs to perform training and service in the Reserve Components (RC) of the armed forces. The airline did not admit that it had violated federal law, but it agreed to change its policies and to pay \$18.5 million to compensate these pilots for the pay they lost when they should have been granted paid military leave but were not.

This lawsuit was filed in January 2019 (more than seven years before the case was settled) by four lawyers: Thomas Jarrard, Matthew Crotty, R. Joseph Barton, and Peter Romer-Friedman. Bravo Zulu to those four lawyers for their excellent and successful representation of Jayson



Huntsman and the class of SWA pilots who simultaneously serve in the Reserve Components of the armed forces.

Q: Does that mean that Jayson Huntsman gets paid \$18.5 million for bringing this lawsuit?

A: No. This is a class-action lawsuit, and there are believed to be 2,791 SWA pilots in the class. Jayson Huntsman brought the lawsuit on his own behalf and on behalf of all other similarly situated SWA pilots. His lawyers sought and obtained the court's permission to bring this case as a class-action. All the SWA pilots were notified and given the opportunity to opt out of this lawsuit, but only a handful opted out. After Huntsman's lawyers negotiated this settlement, they presented it to the court for review. The District Court Judge reviewed the settlement in detail and concluded that it was fair to all, not just Jayson Huntsman.

Each pilot in the class, including Jayson Huntsman, will be compensated for the pay that he or she lost because SWA did not grant paid military leave, as required by USERRA's furlough or leave of absence clause (FLOAC). For each pilot in the class, a determination will be made as to the number of hours of paid military leave that he or she should have received and the correct hourly rate for that time. Jayson Huntsman will receive no additional money for agreeing to serve as the named lead plaintiff.

This is not the first time that Jayson Huntsman has had the courage to serve as the named lead plaintiff in a class action lawsuit against SWA. As I explained in Law Review 17071 (July 2017), attorneys Thomas G.

Jarrard and Matthew Z. Crotty (both life members of ROA), along with five other attorneys, sued SWA on 7/14/2017, alleging that the airline had violated section 4318 of USERRA³ concerning the application of USERRA to SWA's defined contribution pension plan. That case settled satisfactorily in 2019.⁴

Q: Would it be unlawful for SWA to retaliate against Huntsman or any other pilot for filing the lawsuit?

A: Yes. Such retaliation would violate section 4311 of USERRA, which provides as follows:

(a)

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b)

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

³ 38 U.S.C. § 4318.

⁴ See Law Review 19093 (October 2019).

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.

(c) An employer shall be considered to have engaged in actions prohibited—

(1)

under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(2)

under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d)

The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title.⁵

Retaliating against Huntsman or one of the other pilots for agreeing to serve as the named lead plaintiff would have violated section 4311(b), but that is not to say that such retaliation never occurs. Among all the SWA pilots, Huntsman was the only one willing to stand up and be counted in this way.

Q: I thought that USERRA provided only for unpaid but job-protected military leave. How are Huntsman and the other SWA pilots entitled to paid military leave?

A: They are entitled to paid military leave under USERRA's furlough or leave of absence clause (FLOAC), which is discussed in detail below.

The basic entitlement under USERRA is the right to reemployment after a period of absence from a civilian job necessitated by service in the uniformed services. If an individual meets the five USERRA conditions, he or she is entitled to prompt reinstatement in the employment position that he or she would have attained if continuously employed by the civilian employer.⁶ Upon reemployment, he or she is entitled to be treated for civilian seniority and pension purposes as if he or she had remained continuously employed.⁷

⁵ 38 U.S.C. § 4311 (emphasis supplied).

⁶ See 38 U.S.C. § 4312.

⁷ See 38 U.S.C. §§ 4316(a), 4318.

Q: What are the five USERRA conditions for reemployment?

A: When an individual is away from his or her civilian job (federal, state, local, or private sector) for a short, intermediate, or long period of uniformed service, the returning service member or veteran will have the right to reemployment in the pre-service job if he or she meets the five USERRA conditions:⁸

- a. He or she must have left a civilian job to perform voluntary or involuntary uniformed service.⁹
- b. He or she must have given the employer prior oral or written notice of impending absence to perform service.¹⁰
- c. His or her cumulative period or periods of uniformed service, related to the employer relationship for which he or she seeks reemployment, must not have exceeded five years.¹¹
- d. He or she must have served honorably and was released from the period of service without having received a disqualifying bad discharge from the military.¹²

⁸ See *generally* Law Review 24047 (October 2024) for a detailed discussion of the five USERRA conditions.

⁹ 38 U.S.C. § 4312(a).

¹⁰ 38 U.S.C. § 4312(a)(1). No specific amount of advance notice is required, but of course the practical advice is to give the employer as much notice as possible. “No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable.” 38 U.S.C. § 4312(b)(1).

¹¹ 38 U.S.C. § 4312(c). There are nine exemptions from the five-year limit. That is, there are nine kinds of service that do not count toward exhausting an individual’s five-year limit with respect to that employer relationship. See Law Review 26020 (May 2026) for a detailed discussion of what counts and what does not count in exhausting an individual’s five-year limit.

¹² 38 U.S.C. § 4304. Disqualifying bad discharges include punitive discharges, awarded by court martial for serious crimes, and other-than-honorable administrative discharges.

- e. He or she must have made a timely application for reemployment with the pre-service employer after release from the period of service.¹³

Q: What is USERRA’s furlough or leave of absence clause (FLOAC)?

A: USERRA provides:

(b)

(1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be—

(A)

deemed to be on furlough or leave of absence while performing such service; and

(B)

entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.¹⁴

We, the Reserve Organization of America (ROA), have argued, in our Law Review articles and in several amicus curiae (“friend of the court”) briefs that we have filed in several federal appellate courts, that the FLOAC means that if an employer (federal, state, local, or private sector)

¹³ After a period of service of 181 days or more, the individual has 90 days to apply for reemployment. 38 U.S.C. § 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service.

¹⁴ 38 U.S.C. § 4316(b)(1).

grants paid military leave for a non-military reason (like jury duty), the employer must grant paid military leave for a period of absence for uniformed service that is of comparable duration. Four of the 13 federal intermediate appellate courts have agreed with our argument.¹⁵

Q: What about the other nine federal appellate courts?

A: The other nine circuits have not yet addressed this specific legal question. When they do, they will likely follow the 3rd, 7th, 9th, and 11th Circuits.

Q: Is it possible that the Supreme Court will grant certiorari in a later case and overrule these four circuit precedents?

A: That is possible but most unlikely. The Supreme Court only grants certiorari (agrees to hear) for the cases that it wants to consider, and the Supreme Court denies certiorari in 99% of the cases where it is sought. When the Supreme Court grants certiorari, it is usually because there is a conflict among the circuits on a specific legal question. In this case, there is no circuit split because the 3rd, 7th, 9th, and 11th Circuits have ruled similarly.

Q: The entitlements of SWA pilots are set forth in the collective bargaining agreement (CBA) between the airline and the Southwest Airlines Pilots Association (SWAPA), the union that represents the

¹⁵ See *Myrick v. City of Hoover*, 69 F.4th 1309 (11th Cir. 2023); *Clarkson v. Alaska Airlines, Inc.*, 59 F.4th 424 (9th Cir. 2023); *Travers v. FedEx Corp.*, 8 F.4th 198 (3rd Cir. 2021); and *White v. United Air Lines*, 987 F.3rd 616 (7th Cir. 2021). See generally Law Review 24038 (July 2024), Law Review 24037 (July 2024), and Law Review 23026 (May 2023).

pilots. Where does the court get the authority to change the terms of the CBA?

A: In its first case construing the 1940 reemployment statute, the Supreme Court held: “No practice of employers or agreements between employers and unions can cut down the service adjustment benefits that Congress has secured the veteran under the Act.”¹⁶ The CBA can give the pilots greater or additional rights, over and above USERRA, but it cannot take away rights conferred by USERRA. USERRA provides:

(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.¹⁷

¹⁶ *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946).

¹⁷ 38 U.S.C. § 4302.



Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

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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 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.

Beyond this library of legal resources, ROA files *amicus curiae* ("friend of the court") briefs in the Supreme Court and federal courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

Your membership makes the mission possible.

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has



also recently expanded eligibility to include ancestors and lineal descendants of past or present service members, so families can stand with those who serve. Join online at <https://members.roa.org/join/person/mbrtype.html?action=join> 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:

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