

## LAW REVIEW<sup>1</sup> 26037

July 2026

### **USERRA Applies to Multi-Employer Pension Plans.**

**By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>**

**1.1.1.1—USERRA applies to hiring halls and joint employers.**

**1.3.2.3—Pension credit for service time.**

**1.4—USERRA enforcement.**

More than 20 years ago, in early 2006, the Reserve Officers Association (now doing business as the Reserve Organization of America) published our Law Review 0607. That article is about the responsibility of pension

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<sup>1</sup> 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.

<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. 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](mailto:samuel@maherlegalservices.com) or by telephone at (708) 468-8155.



plan administrators to ensure that returning service members and veterans are properly credited with civilian pension credit for time spent away from work performing uniformed service. We adhere to what we wrote in 2006, and this issue is important, now more than ever. Accordingly, we are republishing Law Review 0607 today.

### **LAW REVIEW 0607**

#### **How Does USERRA Apply To the Relationship Among Employers and Pension Plan Administrators?**

**By CAPT Samuel F. Wright, JAGC, USNR**

**Q: I am an administrator of a multi-employer defined benefit pension plan. The participating employers are 30 different construction companies. The plan was established in 1955, and seven of the companies have been with the plan from the start. I have read with interest your articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), especially the articles pertaining to the obligations of the employer concerning pension benefits. I was present to hear your speech at the Associated General Contractors Legal Conference on April 29, 2005, in Washington, DC. [See Law Review 183 for the text of the speech.]**

**We are located in the 9th Circuit, and I have advised the pension plan trustees and the participating employers that we are bound by *Imel v. Laborers Pension Trust of Northern California*, 904 F.2d 1327 (9th Cir.), cert. denied, 498 U.S. 939 (1980), as described in your speech and your articles.**

**I am sure that at least several dozen employees in the plan are Reservists who have been mobilized since September 2001. Am I responsible for ensuring that these folks receive pension credit in our plan for the time they are away from work for military service? I do not consider myself to be the employer of these people, so I am off the hook, right?**

**A: Wrong.** USERRA defines 16 terms used in the law, including the term “employer.” That broad definition includes “a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities” 38 U.S.C. § 4303(4)(A)(i). Because the employers have delegated to you the function of administering pension benefits for employees, you are an employer for purposes of USERRA. If you fail to comply with USERRA responsibilities, you are subject to being sued, just like any other employer.

**Q: The employers participating in our pension plan are located all across our large state. In most cases, I will not even know that an employee has been called to military service, returned, and reemployed by an employer participating in our plan or by the hiring hall operated by the union on behalf of all the employers. How am I to comply with USERRA if I am not even aware that an employee has been reemployed?**

**A:** “Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reasons

of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.” 38 U.S.C. § 4318(c). I suggest you remind all the participating employers of their obligation to notify you upon reemploying an employee returning from military service.

**Q: Our pension plan is not exactly flush with excess cash. Our plan is funded by employer contributions for each pay period that an individual works. If we must pay benefits for periods of time when an employee was not working and when the employer was not making payments to our plan, that will no doubt adversely affect the actuarial soundness of our plan. Is this an unfunded obligation of the pension plan?**

**A:** No, it should be a funded obligation. “An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide benefits described in subsection (a)(2).” 38 U.S.C. § 4318(b)(1).

You should develop a system for reminding participating employers to notify you of reemployment of returning service members. When you receive such notices, you should bill the employer for the costs involved. All of this needs to happen within two or three months after the employee returns to work.

I suggest that you should not let this issue fester until the affected employee retires—by that time, perhaps several decades later, it will be



most difficult to collect from employers (to say nothing of the lost interest). Please note that any dispute between you and participating employers concerning funding pension benefits mandated by USERRA should not in any way affect the rights of the employee-veteran. As I have explained, you are an “employer” for USERRA purposes. You are required to accord pension credit, as mandated by USERRA, whether or not the employer has made the required contributions.

**Q: As you described in Law Review 183, the employers that participate in our pension plan utilize a hiring hall operated by the union to obtain employees as needed for construction projects. The pension plan rewards service with all the employers, not just one employer. An employee works for that particular company for the duration of the project and then returns to the hiring hall for a new assignment, probably to a different company. The typical employee participating in our plan works for all the employers in our plan over the course of a year, or at least over the course of a career.**

**Let us say that Joe Smith was working for the XYZ Company when he was called to serve. When he returned from service, he went back to the hiring hall, and the first employer to which he was assigned was the ABC Company. In this scenario, which company is responsible for funding the cost of treating Smith as if he had been continuously employed during the time he was away from work for service?**

**A: Unless your plan or the collective bargaining agreement provides otherwise, the obligation to fund the cost falls upon “the last employer employing the person before the period served by the person in the**

uniformed services.” 38 U.S.C. § 4318(b)(1)(B)(i). In this scenario, the responsible employer would be the XYZ Company.

**Q: What if the XYZ Company declared bankruptcy and went out of business during the time that Smith was on active duty?**

**A:** In that case, the cost falls on the plan itself. See 38 U.S.C. § 4318(b)(1)(B)(ii).

**Q: I have also heard from a participating employee who claims he was called to active duty for the first Persian Gulf War in 1990. I don't have to worry about that one because it was before Congress enacted USERRA, right?**

**A: Wrong.** This person is entitled to pension credit for the time she was on active duty in 1990-91, based on the Veterans' Reemployment Rights (VRR) law, precursor of USERRA. USERRA's transition rules make it clear that rights accrued under the law prior to the 1994 effective date of USERRA are not forfeited by the enactment of USERRA, superseding the VRR law.

I invite your attention to *Alabama Power Co. v. Davis*, 431 U.S. 581 (1977) and *Imel v. Laborers' Pension Trust of Northern California*, 904 F.2d 1327 (9th Cir.), cert. denied, 498 U.S. 939 (1980). I also invite your attention to my Law Review 139. Of course, the provisions about notification and funding were not in effect at the time— Congress added those provisions in 1994, as part of USERRA. But the lack of those provisions in no way detracts from your obligation to provide this individual with the pension benefits to which she is entitled.

**Q: The person served on active duty and returned to work more than 15 years ago. Certainly, the statute of limitations must preclude her from making a claim at this time.**

**A: Wrong.** The VRR law contains no statute of limitations, and the same is true of USERRA, and both laws contain identical provisions precluding the application of State statutes of limitations. Moreover, her claim has not even accrued yet, because she has not yet retired and started drawing retirement benefits.

In summary, Congress has provided you, the pension plan administrator, all the tools you need to avoid unanticipated costs that have not been funded, but any dispute between you and the participating employers should not be permitted to delay or defeat the pension rights of returning service members under USERRA.

***The views expressed herein are the personal views of the author, and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. Government.***

***I included this disclaimer in Law Review 0607 because I was not yet retired from the Navy Reserve when I authored this article in 2006. I retired from the Navy Reserve on 4/1/2007.***

**End of reprint of Law Review 0607 (published in 2006).**

I adhere to what I wrote 20 years ago, in Law Review 0607. It is even clearer now than it was in 2006 that there is no statute of limitations

under USERRA and that USERRA precludes the application of other statutes of limitations. USERRA provides:

**(b) Inapplicability of Statutes of Limitations.—**

If any person seeks to file a complaint or claim with the Secretary [of Labor], the Merit Systems Protection Board, or a Federal or State court under this chapter alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim. (Added Public Law 110-389, title III, section 311(f)(1), Oct. 10, 2008, 122 Stat. 4163.)

38 U.S.C. § 4327(b).

It is important, now more than ever, that multi-employer pension plan administrators insist that participating employers notify the pension plan administrator when a service member or veteran returns to work after a period of absence necessitated by military service and that the pension plan administrator promptly bill the employer and insist that the employer pay the bill.

**Q: The term “hiring hall” is reminiscent of the classic 1954 movie *On the Waterfront*. Do hiring halls still exist in the third decade of the 21<sup>st</sup> Century?**

**A: Yes.**

**Do Hiring Halls Still Exist Today?**

Yes — **union hiring halls still exist today**, though their scope has been significantly shaped by federal labor law. They remain a common feature in certain industries, especially **construction, maritime, and some entertainment sectors**, where work is often project-based and temporary.

### **How They Work**

A hiring hall is a **labor referral service operated by a union** that acts as the exclusive agent for dispatching workers to jobs under a collective bargaining agreement (CBA) with signatory employers. Employers contact the hall for specific numbers and types of skilled labor, and the union refers eligible workers from its “out-of-work list” — a registry of qualified applicants.

The **National Labor Relations Board (NLRB)** recognizes union hiring halls in industries like construction and maritime, but only if they meet certain safeguards:

- **Non-discrimination:** Referrals must not be based on union membership or non-membership.
- **Employer’s right to reject:** Employers can refuse any union-referred applicant, preventing the system from becoming a “closed shop.”
- **Transparency:** Union hiring hall rules must be posted in conspicuous places.

These conditions were established after the **Taft-Hartley Act (1947)** and reinforced in NLRB decisions like *Mountain Pacific* (1958).

### **Current Use**

- **Construction:** Many IBEW [International Brotherhood of Electrical Workers] and other building trades unions still operate hiring halls, often with “right to reject” clauses in their agreements.
- **Maritime:** Union hiring halls are still used in some seafaring industries, though maritime labor laws have evolved.
- **Other industries:** Similar systems exist in entertainment, transportation, and other sectors with unionized, project-based work.

### Summary

Hiring halls are **not obsolete**— they persist in regulated industries where unions and employers maintain formal referral arrangements. Their continued existence is tied to the need for a structured, fair, and legally compliant way to match skilled workers with short-term or project-based jobs, while ensuring non-discrimination and employer hiring control.<sup>3</sup>

### Q: Do these same rules apply to single-employer pension plans?

**A: Yes.** In single-employer plans, the administration is much simpler. Restoring the returning service member or veteran to the pension plan should be an integral part of the reemployment process.<sup>4</sup>

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<https://www.bing.com/search?q=Do+hiring+halls+still+exist%3F&form=ANNTTH1&refig=6a25aeed91e44d79a837bd54eb91314b&pc=U531>.

<sup>4</sup> See Law Review 22070 (November 2022) and Law Review 21059 (September 2021).

**Q: Who is entitled to be treated as if continuously employed by the civilian employer during the time that he or she was away from work to perform uniformed service?**

**A:** The returning service member or veteran is entitled to be treated as if he or she had been continuously employed upon restoration to a defined benefit pension plan if he or she meets the five USERRA conditions for reemployment. For a defined contribution plan, the restoration right is slightly different.<sup>5</sup>

**Q: What are the five USERRA conditions for reemployment?**

**A:** When an employee 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 only if he or she meets the five USERRA conditions:<sup>6</sup>

- a. He or she must have left a civilian job to perform voluntary or involuntary uniformed service.<sup>7</sup>
- b. He or she must have given the employer prior oral or written notice of impending absence to perform service.<sup>8</sup>

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<sup>5</sup> See Law Review 14021 (February 2014).

<sup>6</sup> See *generally* Law Review 24047 (October 2024) for a detailed discussion of the five USERRA conditions.

<sup>7</sup> 38 U.S.C. § 4312(a).

<sup>8</sup> 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).

- 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.<sup>9</sup>
- d. He or she served honorably and was released from the period of service without having received a disqualifying bad discharge from the military.<sup>10</sup>
- e. He or she made a timely application for reemployment with the pre-service employer after release from the period of service.<sup>11</sup>

If the employee meets these criteria, 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. Upon reemployment, he or she is entitled to be treated for civilian pension purposes as if he or she had remained continuously employed.<sup>12</sup>

**Q: You wrote that the returning service member or veteran must have made a timely application for reemployment with the pre-service employer. In the hiring hall situation, the individual's first job after returning from service will almost always be different from the last employer before leaving for service. How does USERRA apply to this circumstance?**

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<sup>9</sup> 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 your five-year limit with respect to that employer relationship. See Law Review 16043 (May 2016) for a detailed discussion of what counts and what does not count in exhausting an individual's five-year limit.

<sup>10</sup> 38 U.S.C. § 4304. Disqualifying bad discharges include punitive discharges, awarded by court martial for serious crimes, and other-than-honorable administrative discharges.

<sup>11</sup> After a period of service of 181 days or more, you have 90 days to apply for reemployment. 38 U.S.C. § 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service.

<sup>12</sup> See 38 U.S.C. § 4318. I have placed the entire text of section 4318 at the end of this article.

**A:** In the hiring hall situation, the individual employee is deemed to have an employment relationship with the entire system, which consists of the group of employers, the hiring hall, and the union. Upon returning from a period of absence necessitated by uniformed service, the individual must apply for reemployment through the hiring hall.<sup>13</sup>

**Q: How do we get the word out to employers and pension plan administrators?**

**A:** I have sent a letter, along with a copy of this article, to Ilene Ferenczy, Esq. of Ferenczy Benefits Law Center (law firm), and the National Institute of Pension Administrators (nonprofit organization). If she responds, I will let the readers know by means of an update to this article.

**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.

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<sup>13</sup> See *Imel v. Laborers’ Pension Trust Fund*, 904 F.2d 1327 (9<sup>th</sup> Cir.), cert. denied, 498 U.S. 939 (1990). See also Law Review 21031 (April 2021).



Here is a link to the Maher Legal Services website:

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

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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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