

LAW REVIEW¹ 26049

August 2026

Yes, the Intelligence Community Must Follow USERRA.

A Recent Government Report Reveals Shortfalls.

Captain Samuel F. Wright, JAGC, USN (Ret.)²

Sergeant Major Steve Minyard, USAR (Ret.)³

1.1.1.8—USERRA applies to the Federal Government.

1.4—USERRA enforcement.

On 1/2/2025, President Joe Biden signed into law the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act

¹ We 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.

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 (VRRA—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 VRRA 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 VRRA 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.

³ BA, Texas Christian University, 2001, MS, American Military University, 2014. Former Command Paralegal, U.S. Army Reserve Command, instructor at The Judge Advocate General's Legal Center and School, with 29 years of service in the United States Army Judge Advocate General's Corps.

(Dole Act). In addition to improving the Department of Veterans Affairs (VA) and optimizing veterans' benefits, especially in the areas of home caregiving and veteran homelessness,⁴ the Dole Act modernizes and improves the Uniformed Services Employment and Reemployment Rights Act (USERRA), 30 years after that law was signed on 10/13/1994.⁵ Law Review 25006 (February 2025), by Colonel George C. Aucoin, USMC (Ret.), explained in detail the important improvements that the Dole Act made to USERRA.

In addition to making improvements to the text of USERRA, the Dole Act also directed the Government Accountability Office (GAO)⁶ to study the application of USERRA to federal intelligence agencies like the Federal Bureau of Investigation (FBI), and the National Security Agency (NSA).

GAO has completed the required study and has filed its report with the Senate Committee on Veterans Affairs and the House Committee on Veterans Affairs. The GAO report is available for free on the GAO website at <https://www.gao.gov/products/gao-26-108133>. Not surprisingly, these agencies of the federal government have work to do

⁴ See Law Review 24058 (December 2024). That article is by Bradley Hennings and Robert Chisholm of the Rhode Island law firm Chisholm Chisholm & Kirkpatrick (CC&K), the nation's largest law firm devoted exclusively to assisting veterans in obtaining their earned veteran benefits.

⁵ See Law Review 24047 (October 2024).

⁶ GAO is an investigative agency in the Legislative Branch of the Federal Government. On its website, GAO describes itself as follows: "GAO provides Congress, the heads of executive agencies, and the public with timely, fact-based, non-partisan information that can be used to improve government and save taxpayers billions of dollars. GAO provides Congress, the heads of executive agencies, and the public with timely, fact-based, non-partisan information that can be used to improve government and save taxpayers billions of dollars. Our work is done at the request of congressional committees or subcommittees or is statutorily required by public laws or committee reports, per our Congressional Protocols."

<https://www.gao.gov/about/what-gao-does/>.



to fully support our Reserve Component member's rights to reemployment.

How we got here.

On 9/16/1940, President Franklin D. Roosevelt signed into law the Selective Training and Service Act (STSA),⁷ our nation's first peacetime draft law.⁸ As originally enacted in 1940, the STSA included a provision requiring civilian employers to reemploy young men who were drafted, upon completion of their required military service. On 8/18/1941, President Roosevelt signed into law the Service Extension Act (SEA).⁹ That law expanded the reemployment provision to include voluntary enlistees as well as draftees.

The federal reemployment statute has applied to the Federal Government and to private employers since 1940. On 12/3/1974, Congress enacted, and President Gerald Ford signed the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA).¹⁰ This law made several amendments to the reemployment statute and moved it from title 50 (war and national defense) of the United States Code to title 38 (veterans affairs). The most important 1974 amendment was to expand the applicability of the reemployment statute to include State and local governments, as employers.

Although the reemployment statute has applied to the Federal Government, as an employer, since 1940, this statute contained no

⁷ Public Law 76-783, 54 Stat. 885.

⁸ World War II began on 9/1/1939, when Germany invaded Poland, but our country did not enter the war formally until 12/7/1941 (Pearl Harbor Day).

⁹ Public Law 77-213, 55 Stat. 1593.

¹⁰ Public Law 93-508, 88 Stat. 1593.

enforcement mechanism with respect to Federal executive agencies until 10/13/1994, when Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA). Section 4324 of USERRA filled that gap by providing for USERRA enforcement against those agencies through the Merit Systems Protection Board (MSPB).¹¹

In 1991, during the brief and spectacularly successful Operation Desert Storm (the liberation of Kuwait from occupation by Iraq), President George H.W. Bush presented to Congress his proposal for an updated and rewritten reemployment statute. The President's proposal was drafted by an interagency task force that primarily consisted of the Department of Labor (DOL) and the Department of Defense (DOD). The House of Representatives quickly enacted its version of a new reemployment statute.

In July 1991, after the House had already passed its version of the new statute but before the Senate acted on the proposal, the intelligence agencies strenuously objected to the enactment of a law that provided for enforcement of employment regulations on intelligence agencies by a forum (the MSPB) that is outside the Intelligence Community.

The same month, the two primary authors of USERRA, Susan M. Webman and Samuel F. Wright, represented DOL at an all-day meeting in the New Executive Office Building. The meeting was chaired by a senior assistant to President Bush. She pushed the parties, including DOL and the intelligence agencies, to come up with a way for USERRA to be enforced against intelligence agencies as employers without the

¹¹ 38 U.S.C. § 4324. See *generally* Law Review 24052 (November 2024), for a detailed discussion of the USERRA enforcement mechanism for Federal agencies as employers.

security risk of review of intelligence agency personnel decisions outside the Intelligence Community. After hours-long detailed negotiations, they came up with two sections to be added to the new reemployment statute. These became sections 4315 and 4325 of USERRA.

Section 4315 of USERRA provides as follows:

(a)

The head of each agency referred to in section 2302(a)(2)(C) of title 5 shall prescribe procedures for ensuring that the rights under this chapter apply to the employees of such agency.

(b)

In prescribing procedures under subsection (a), the head of an agency referred to in that subsection shall ensure, to the maximum extent practicable, that the procedures of the agency for reemploying persons who serve in the uniformed services provide for the reemployment of such persons in the agency in a manner similar to the manner of reemployment described in section 4313.

(c)

(1)

The procedures prescribed under subsection (a) shall designate an official at the agency who shall determine whether or not the reemployment of a person referred to in subsection (b) by the agency is impossible or unreasonable.

(2)

Upon making a determination that the reemployment by the agency of a person referred to in subsection (b) is impossible or

unreasonable, the official referred to in paragraph (1) shall notify the person and the Director of the Office of Personnel Management of such determination.

(3)

A determination pursuant to this subsection shall not be subject to judicial review.

(4)

The head of each agency referred to in subsection (a) shall submit to the Select Committee on Intelligence and the Committee on Veterans' Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Veterans' Affairs of the House of Representatives on an annual basis a report on the number of persons whose reemployment with the agency was determined under this subsection to be impossible or unreasonable during the year preceding the report, including the reason for each such determination.

(d)

(1)

Except as provided in this section, nothing in this section, section 4313, or section 4325 shall be construed to exempt any agency referred to in subsection (a) from compliance with any other substantive provision of this chapter.

(2) This section may not be construed—

(A)

as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary [of Labor] regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the

rights and obligations of employees and Federal agencies under this chapter; or

(B)

as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

(e) The Director of the Office of Personnel Management shall ensure the offer of employment to a person in a position in a Federal executive agency on the basis described in subsection (b) if—

(1)

the person was an employee of an agency referred to in section 2302(a)(2)(C) of title 5 at the time the person entered the service from which the person seeks reemployment under this section.

(2)

the appropriate officer of the agency determines under subsection (c) that reemployment of the person by the agency is impossible or unreasonable; and

(3)

the person submits an application to the Director for an offer of employment under this subsection.¹²

Section 4325 of USERRA provides as follows:

(a) This section applies to any person who alleges that—

(1)

¹² 38 U.S.C. § 4315.

the reemployment of such person by an agency referred to in subsection (a) of section 4315 was not in accordance with procedures for the reemployment of such person under subsection (b) of such section; or

(2)

the failure of such agency to reemploy the person under such section was otherwise wrongful.

(b)

Any person referred to in subsection (a) may submit a claim relating to an allegation referred to in that subsection to the inspector general of the agency which is the subject of the allegation. The inspector general shall investigate and resolve the allegation pursuant to procedures prescribed by the head of the agency.

(c)

In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary [of Labor] under section 4322(d).

(d) This section may not be construed—

(1)

as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter or information relating to the rights and obligations of and Federal agencies under this chapter; or

(2)

as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.¹³

In the 32 years since Congress enacted USERRA in 1994, the intelligence agencies have ignored their obligations under sections 4315 and 4325 of USERRA. In 2025, Congress enacted the Dole Act, and that law required the GAO to study the application of USERRA to intelligence agencies as employers. GAO comprehensively studied this question and reported it back to Congress; the intelligence agencies have finally acknowledged their obligations and have promised to implement sections 4315 and 4325, as federal law has required for 32 years.

WHERE WE ARE TODAY IN THE IC

The GAO report found a structural weakness in how reemployment protections are enforced for the seven IC elements subject to unique statutory procedures under 38 U.S.C. §§ 4315 and 4325 — the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the National Security Agency, and the Federal Bureau of Investigation. GAO found that only three of these seven agencies had incorporated all five statutorily mandated reemployment provisions into their internal guidance; the remaining four had done so only partially, or, in the case of the National Reconnaissance Office, almost not at all. Because Congress designed this framework to substitute internal Inspector General review for the

¹³ 38 U.S.C. § 4325.



external and judicial review available to reservists at other federal agencies, the completeness of each agency's internal guidance functions as the primary safeguard of reemployment rights for reservists.

Incomplete codification of the designated-official and notification requirements therefore does more than create an administrative gap — it removes the only concrete mechanism by which an affected service member could know who is responsible for an adverse reemployment determination or how to challenge it. A Reserve Component member working full-time for the IC must clearly know to whom to seek redress, and the process for addressing an adverse action tied to their military service. Per the GAO, this system is broken as the data on USERRA claims makes clear.

From fiscal years 2019 through 2025, service members employed by these seven IC elements filed 47 claims alleging USERRA reemployment violations, and *not a single claim* was resolved in the claimant's favor. Given that Inspector General review is the exclusive avenue of recourse for these employees — a tradeoff Congress accepted in exchange for insulating intelligence agencies from external scrutiny — a zero percent success rate over a seven-year period raises a fair question about whether that substitute mechanism is functioning as an effective check. GAO's recommendation that the four deficient agencies formally codify all five reemployment provisions was met with concurrence from each, but implementation timelines remain vague — DIA's revised guidance is not expected until January 2027, and the FBI committed to no date at all — suggesting that deficiencies in reservists' reemployment

protections may persist well beyond the report's publication. ROA will follow the GAO's enforcement of its recommendations closely.

We say, “better 32 years late than never.” But this is not to say that we think that it is easy to have a civilian career in an intelligence agency while simultaneously having a part-time military career in a Reserve Component of the armed forces. If in your civilian federal capacity, you are expected to perform duties that are essential to national defense in a mobilization scenario, you will be designated a “key employee” and will be precluded from active, compensated part-time service in the Reserve Components.¹⁴

If you leave an intelligence agency job to perform service in the uniformed services, and if you meet the five USERRA conditions for reemployment and seek reemployment with the intelligence agency, that agency can determine that it is “impossible or unreasonable” to reemploy you and notify the Office of Personnel Management (OPM) of that determination. In that situation, OPM will have the responsibility to identify for you an appropriate position in the Executive Branch of the Federal Government, outside of the Intelligence Community, and to ensure that you are offered that position.¹⁵ In this way, you can have a full-time career as a Federal civilian employee and a part-time career as a member of a Reserve Component of the armed forces.

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

¹⁴ See Law Review 26016 (April 2026). That article is by John Maher and Kevin Mikolashek, the two principal attorneys of Maher Legal Services.

¹⁵ 38 U.S.C. § 4315(e). Section 4315 is quoted in its entirety, above.



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, CAPT(Ret.) Wright has come out of retirement and has 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.>

Join the Organization That Fights for You.

This article is one of more than 2,000 "Law Review" articles available at <https://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 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:

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