



MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES DEPARTMENT OF LABOR AND
THE UNITED STATES DEPARTMENT OF JUSTICE CONCERNING
THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT
RIGHTS ACT OF 1994, AS AMENDED

I. PREAMBLE AND PURPOSE

In the years following the events of September 11, 2001, the United States mobilized more than 1,000,000 members of the National Guard and Reserve. Of those 1,000,000 members, well over 30,000 served in active-duty capacities around the world. Many of these dedicated men and women – Soldiers, Sailors, Airmen, Marines and Coast Guardsmen – have been and continue to be engaged in conflict overseas and have provided security on the home front and in other critical locations around the world. In addition, as the deployments and activations related to supporting the fight against COVID-19 demonstrate, members of our National Guard and Reserve frequently serve as America’s front of defense against all manner of foes. These contributions have not been without sacrifice and earn the deepest gratitude and appreciation from the United States Government.

It is critically important that members of the National Guard and Reserve, who leave their civilian employment to support the mission of the United States' military, serve with the assurance that, following dedicated service to their country, they will be able to resume their lives and be reinstated to their jobs without difficulty. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, 38 U.S.C.4301-4335, establishes employment protections for these servicemembers. USERRA ensures that those who volunteer to protect our country are equally protected upon reemployment when their service is concluded. USERRA also protects them against denial of employment or any benefit of employment because of present or past service, or commitment to serve, in the uniformed services.

The United States Department of Labor (DOL) and the United States Department of Justice (DOJ) share responsibility in assuring that members of the uniformed services receive the rights and benefits that they are entitled to under USERRA. This Memorandum of Understanding (MOU) confirms the commitment of DOL and DOJ to those who have committed themselves to the service and defense of the United States, and describes how these Departments will work together to assure that USERRA rights are fully and promptly protected. This MOU further sets forth the roles of DOL and DOJ in carrying out their responsibilities under USERRA in cases where a person has alleged that a State, local government, or private employer has violated USERRA. It sets forth the processes to be followed in the referral of cases from DOL to DOJ. It also establishes guidelines for cooperation between DOL and DOJ with the goal of providing expeditious representation for servicemembers in all meritorious USERRA cases.

This MOU supersedes the September 28, 2004, Memorandum of Understanding between the DOL and DOJ. This MOU will expire if not renewed or modified on December 31, 2024.

II. DELEGATIONS WITHIN DOL AND DOJ

The Secretary of Labor has delegated responsibilities under USERRA to the Assistant Secretary for the Veterans' Employment and Training Service (VETS) and to the Solicitor of Labor (SOL).

The Attorney General of the United States has delegated responsibilities under USERRA to the Assistant Attorney General, Civil Rights Division. Within the Civil Rights Division, the Assistant Attorney General has delegated case inception, litigation, and settlement-related responsibilities to the Chief of the Employment Litigation Section.

III. THE REFERRAL REQUEST

A USERRA case is opened by VETS upon receipt of a complaint that alleges that an employer has violated, or is about to violate, USERRA. 38 U.S.C. 4322(a) and (b). VETS investigators initially act as impartial factfinders to determine whether or not a violation has occurred. In cases where, based on the VETS investigation, there appears to be a violation of USERRA, VETS attempts to obtain employer compliance. In those cases where VETS is unable to resolve the complaint to a claimant's satisfaction, either because VETS does not find the complaint to be meritorious or because a fair settlement of a meritorious complaint cannot be obtained, VETS advises the claimant of the results of its investigation and of the claimant's right to either request that the case be referred to DOJ or to pursue the case directly in court. 38 U.S.C. 4322(e). DOL has no authority to refer a case to DOJ until requested to do so by a claimant. Upon request of a claimant, VETS will refer an unresolved USERRA complaint against a State, local government, or private employer to DOJ for potential representation by DOJ. 38 U.S.C. 4323(a).

IV. REFERRAL OF CASES FROM DOL TO DOJ

Cases Originally Assigned On Or After April 1, 2020

When a claimant requests that VETS refer to DOJ a case that was originally assigned by VETS to an investigator on or after April 1, 2020, VETS reviews the case and completes all sections of a Memorandum of Referral (MOR) within the VETS Case Management System (VCMS). The MOR within VCMS sets forth the issues identified during the investigation, analysis of the law, facts established during the course of the investigation with supporting evidence, and DOL's evaluation as to whether or not the claim has been substantiated based on the facts and evidence. VETS will review the content of the MOR section in accordance with the most recent VETS' USERRA Operations Manual and/or interim guidance regarding MOR processing. After review and approval of the MOR and associated documents, the case will be moved to DOJ within the VCMS for processing in accordance with the most recent version of the VCMS DOJ-OSC User Guide. A system-generated email will be sent to all DOJ account holders notifying them that a claimant has requested referral of a claim, and VETS has completed development and approval of the MOR and associated documents.

Cases Originally Assigned Before April 1, 2020

When a claimant requests that VETS refer a case that was originally assigned by VETS to an investigator before April 1, 2020 to DOJ, VETS reviews the case and prepares a letter of referral to DOJ. The letter of referral will include an identification of the issues, analysis of the law, and DOL's statement as to whether or not a USERRA violation has occurred based on the evidence obtained. VETS will then send official notice of the referral via an email informing DOJ that the complete VETS' investigative file has been uploaded to the designated DOJ file-sharing site, and providing the password to access the file. The official email will be addressed to:

Chief
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
USERRA.EMP@usdoj.gov and the Chief's personal DOJ email address.

CCs of the official notice of referral will also be sent to DOJ personnel designated to receive VETS referrals. DOJ will confirm receipt of the referral. Once DOJ has received the entire investigative file from VETS, and confirmed its receipt and assigned a case number, its 60-day statutorily imposed timeline to decide on representation shall commence.

If electronic files are unavailable, hard copies will be sent by certified U.S. Mail to:

Chief, Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
4 Constitution Square
150 M Street, NE, Room 9.1819
Washington, D.C. 20530

V. DOJ-DOL COOPERATION

DOJ may request clarification of the letter of referral or legal analysis, or further VETS investigative efforts, through SOL. For purposes of technical assistance, clarification, or if DOJ requests information concerning the referral or documents in the case file, SOL will facilitate communication between DOJ and VETS.

In cases where DOJ arrives at a determination regarding representation that is inconsistent with the DOL decision regarding the existence or nonexistence of a violation of USERRA, DOJ will notify SOL of its determination in advance of it becoming final. DOL may request a call with DOJ to discuss the rationale underlying the determination. Such a call will allow DOL to provide DOL's interpretation of USERRA, answer any questions regarding the evidence in the investigative file, and also better understand DOJ's determination process in an effort to continually improve the quality of VETS investigations.

VI. CASES WHERE DOJ PROVIDES REPRESENTATION

USERRA gives DOJ the authority to "appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and [to] commence an action for relief under [USERRA] for such person." 38 U.S.C. 4323(a)(1). In an action against a State as an employer, "the action shall be brought in the name of the United States as the plaintiff in the action." *Id.* In cases where DOJ decides to represent the claimant, or bring a claim against a State in the name of the United States, DOJ may request assistance and advice from SOL. Upon agreement between DOJ and SOL, a SOL attorney may be appointed as a Special Assistant U.S. Attorney to handle the case.

VII. CASES WHERE DOJ DOES NOT PROVIDE REPRESENTATION

In cases where DOJ determines that it will not offer representation to the claimant, or the claimant declines representation, or DOJ determines that it will not bring a case in the name of the United States against a state employer, it will send a letter to the claimant advising that representation will not be provided. The notice will not address the factual or legal bases of such determination. Additionally, DOJ will provide a copy of the letter to SOL and VETS.

VETS may advise the employer that a USERRA case has either been closed or referred to DOJ, but it will not inform the employer that a finding of "no merit" has been reached. DOJ may advise an employer that it has closed its case, but it will not inform the employer about the assessment of a case as not having merit or the reasons for such an assessment.

Neither DOJ nor VETS will disclose any information to an employer, agency, or any other person regarding a claimant's case or materials in the case file unless such disclosure is required under the Freedom of Information Act or otherwise required by law.

VIII. EXPEDITED REFERRAL OF SIGNIFICANT MERITORIOUS CASES

In cases where VETS has made a preliminary determination that a case is meritorious and there is an immediate and significant impact on the claimant, or where the claimant is an employee of a State and there may be other impacted State employees, and the claimant requests referral, VETS will promptly refer the case to DOJ by forwarding a copy of the VETS investigation file to DOJ, and will additionally include DOL's preliminary determination when feasible and appropriate. A case may have a significant impact on the claimant where, for example, there has been a failure to employ or reemploy; where the employer has denied the claimant a significant benefit of employment; where the employer has reemployed the claimant to a position that is of significantly lower seniority, status or pay; or where the claimant is the potential member of a class of claimants similarly affected by the policies, acts, or procedures of a single employer.

The purpose of this expedited process is to eliminate potentially duplicative analysis in appropriate cases, to allow the VETS and DOJ to work closely with each other at a very early stage of the referral process, and to provide representation to the claimant as expeditiously as possible in those cases where the USERRA violation has a significant and immediate impact on the claimant. DOJ and VETS will take all appropriate steps to obtain a prompt and fair resolution of the complaint. Upon agreement between DOJ and the SOL, a SOL attorney may be appointed as a Special Assistant U.S. Attorney to handle the expedited case (and/or other cases).

IX. APPOINTMENT OF MOU COORDINATORS

DOL and DOJ seek to ensure consistent USERRA enforcement procedures and to make the most efficient use of their available resources through coordination and communication. Therefore, within thirty (30) days of the effective date of this MOU, DOL and DOJ shall each appoint an MOU Coordinator or Coordinators who will be available to assist, as necessary, in ensuring a full understanding of and compliance with the terms of this MOU and to facilitate the exchange of information between the agencies.

X. OTHER COORDINATION PROCEDURES

- A. Representatives from DOJ and DOL shall meet as necessary to discuss topics of mutual interest to both agencies that further the purposes of this Agreement and, when appropriate, establish procedures for coordination of efforts related to such topics. The topics may include but not be limited to:
- (i) access to and exchanges of electronically stored information and databases;
 - (ii) procedures for coordinated collection, sharing, and analysis of data;

- (iii) training programs and materials, and participation in trainings of DOL staff;
- (iv) detailing or temporarily assigning employees between the agencies to increase collaboration;
- (v) outreach;
- (vi) coordination on statements to the press; and
- (vii) policy statements and guidance, as appropriate, to further the purposes of this Agreement and of USERRA.

B. On a schedule to be determined by the MOU Coordinators, subject to the limitations set forth below, the DOL and DOJ MOU Coordinators shall meet to share claim and case related information, as described below.

- (i) DOL shall provide to DOJ on an annual basis the number of total claims it has received, the number of merit determinations VETS has made, the number of non-merit determinations VETS has made, and the number of resolved and unresolved cases in those determination categories.
- (ii) DOL shall provide DOJ on an annual basis with the total number of referrals requested by claimants and shall identify the Regional Solicitor of Labor office from which those referrals originated.
- (iii) DOL shall provide DOJ on an annual basis with the number of cases determined to be meritorious but unresolved for which no referral was requested, as well as the names of employers involved, geographical location, and other relevant data. When relevant and necessary, DOL will provide DOJ access to the DOL file in cases which proceeded to an advanced stage but were not referred.
- (iv) DOL shall provide DOJ on an annual basis with the number of cases determined to be non-meritorious but unresolved where no referral was requested, as well as the names of employers involved, geographical location, and other relevant data.
- (v) DOJ shall provide DOL with annual case data, including, for cases referred to DOJ by DOL:
 - (i) the total number of complaints filed and cases resolved through settlement or some other disposition;
 - (ii) a description of the types of USERRA issues raised in cases referred to DOJ;
 - (iii) the total number of representations offered by DOJ and total number of representations declined by DOJ;

- (iv) the total number of referrals involving a claim against a state agency, as well as whether DOJ filed a complaint against the state agency;
- (v) brief summaries of complaints filed and significant case resolutions; and
- (vi) any recommendations for administrative or legislative action related to USERRA by March 1 of each year for the previous calendar year.
- (vi) On a monthly basis DOJ will provide an update to DOL on cases and matters, including representations offered, representations declined, claims against a State where complaints were filed, claims against a State where a complaint was determined not to be filed, total complaints, settlements, and resolutions.
- (vii) DOJ and DOL MOU Coordinators will apprise their counterparts of any plans to file a statement of interest or amicus brief in any USERRA-related case and provide an opportunity for the other agency to review and comment on the draft prior to filing.

XI. DISCLOSURE OF INFORMATION TO DEFENDANTS

If, during the course of litigation, a Defendant requests the VETS investigative file, DOJ will review the contents of the file initially to determine which documents may be subject to privilege and which privileges may apply. DOJ will then transmit this review to DOL's SOL, and SOL will communicate to DOJ which documents in the file, or which elements of documents, it wishes DOJ to assert a privilege on its behalf. Upon request, SOL shall provide DOJ a declaration concerning the privileged documents and the necessity of the assertion of a privilege.

XII. SCOPE OF AGREEMENT

Compliance with this agreement is subject to available funding. Nothing in this agreement is to be construed as requiring the expenditure of additional funds or provision of services beyond the requirements prescribed by applicable statutes, regulations, and existing agreements. This agreement is intended only to describe the roles and responsibilities of DOL and DOJ and to improve the coordination between DOL and DOJ in the enforcement of USERRA complaints. This agreement does not create any right or benefit, substantive or procedural, nor does it create any right to judicial review involving compliance or noncompliance with its provisions.

XIII. IMPLEMENTATION AND MONITORING OF AGREEMENT

The provisions of this MOU become effective on the date of signature. DOJ and the DOL agree to ensure their respective organizations fully understand the role of each entity with respect to this agreement. They will monitor relationships between their respective organizations to ensure that a high level of cooperative effort is achieved in joint activities and the sharing of information. Any differences arising out of the interpretation, application, or implementation of

this MOU will be resolved amicably through consultation or discussions between the agencies.

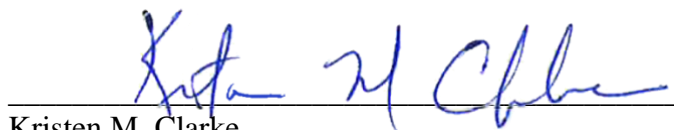
XIV. MODIFICATION OF THE AGREEMENT

This MOU remains in effect for a period of five years from the date of signing and may be renewed by written agreement of the agencies. The provisions of this MOU may be reviewed and modified or terminated when it is determined by either agency that such review and modification or termination is in the interest of efficient enforcement of the law or laws involved. Changes to this MOU shall be in writing and approved by the signatories below or their successors as an attachment to this agreement.

Signed this 8th day of December, 2021.



James D. Rodriguez,
Acting Assistant Secretary for Veterans' Employment and Training, Department of Labor



Kristen M. Clarke
Assistant Attorney General for the Civil Rights Division of the Department of Justice

Renewed this 8th day of December, 2021.