



FISCAL YEAR 2023

USERRA ANNUAL REPORT TO CONGRESS

October 2024

USERRA ANNUAL REPORTS ARE AVAILABLE FOR FISCAL YEARS (FY) 1995-1999 AND 2004-2023. NO REPORTS ARE AVAILABLE FOR FY 2000-2003 BECAUSE THE REPORTING REQUIREMENT EXPIRED IN FY 2000. IT WAS REINSTATED BY SECTION 202 OF THE VETERANS BENEFITS IMPROVEMENT ACT OF 2004, P.L. 108-454, 118 STAT. 2598 (DECEMBER 2004).

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INTRODUCTION

The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 (USERRA or the Act), was signed into law on October 13, 1994. USERRA prohibits discrimination in employment based on an individual's prior service in the uniformed services, current service in the uniformed services, or intent to join the uniformed services. An employer is also prohibited from retaliating against a person because of their attempt to enforce their rights, or the rights of others, under the Act. In addition, an employer may not retaliate against an individual for filing a USERRA claim, testifying, or otherwise providing assistance in any proceeding under the Act. USERRA also provides reemployment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is entitled to be reemployed with the seniority, status, and rate of pay as if they had been continuously employed during the period of service. USERRA applies to private employers, the federal government, and state and local governments. It also applies to United States employers operating overseas and foreign employers operating within the United States.

As reported by the Defense Manpower Data Center (DMDC) in its strength accounting reporting, there were a total of 767,238 members of the Reserve Components (RC), which are comprised of Reserve and National Guard members, and 1,311,904 members of the Active Components of the U.S. Armed Forces, on duty as of September 30, 2023.

This Fiscal Year (FY) 2023 report was prepared in accordance with 38 U.S.C. § 4332(a), which requires the Secretary of Labor, after consultation with the Attorney General and the Special Counsel, to prepare and transmit an annual report to Congress containing the following information for the preceding fiscal year:

1. The number of cases reviewed by the Department of Labor (DOL) under the Act.
2. The number of cases reviewed by the Secretary of Defense under the National Committee for Employer Support of the Guard and Reserve (ESGR) of the Department of Defense (DOD).
3. The number of cases referred to the Attorney General or the Special Counsel pursuant to Section 4323 or 4324, respectively, and the number of actions initiated by the Office of Special Counsel (OSC) before the Merit Systems Protection Board (MSPB) pursuant to section 4324.
4. The number of complaints filed by the Attorney General pursuant to Section 4323.
5. The number of cases reviewed by the Secretary of Labor and the Secretary of Defense through the ESGR of the DOD that involve the same person.
6. With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5), referenced above:

- A. The number of those cases that involve a disability-related issue, and
 - B. The number of those cases that involve a person who has a service-connected disability.
7. The nature and status of each of the cases referenced above.
 8. With respect to each of the cases referenced above, the number of those cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification (SOC) System.
 9. An indication of whether there are any apparent patterns of violation of the provisions of the Act together with an explanation thereof.
 10. Recommendations for administrative or legislative action that the Secretary of Labor, the Attorney General, or the Special Counsel considers necessary for the effective implementation of the Act, including any action that could be taken to encourage mediation, before claims are filed under the Act, between employers and persons seeking employment or reemployment.

OVERVIEW OF USERRA PROTECTIONS

USERRA generally requires United States employers, regardless of size or location of operation, as well as foreign employers operating in the United States or its territories, to re-employ eligible veterans and uniformed service members returning to civilian employment after a period of service in the uniformed services. It requires employers, with certain exceptions, to provide training to restore competency in duties, seniority, status, pay, pensions, and other benefits that would have accrued but for the employee's absence due to uniformed service. Under USERRA, employers are generally liable for funding their share, if any, to the civilian retirement plan(s) of employed service members away on uniformed service. Uniformed service includes United States active duty (AD) and reserve component (RC) military organizations, and certain other non-military organizations including the Federal Emergency Management Agency's (FEMA) Urban Search and Rescue (US&R) Response System, the FEMA Civilian Reserves, the National Disaster Medical System (NDMS), the commissioned officer corps of the National Oceanic and Atmospheric Administration (NOAA), and Regular Corps and Ready Reserve Corps of the Commissioned Corps of the U.S. Public Health Service (PHS).

Eligibility requirements for service members seeking reemployment generally provide that the absence must be due to uniformed service; advance notice (oral or written) must be provided to the employer; the cumulative period(s) of service while employed by the employer must not exceed five years; the application for reemployment must be timely; and the discharge from service must not be disqualifying.

Employers are also prohibited from discriminating on the basis of service in a uniformed service. USERRA also protects anyone—veteran or non-veteran, service member or non-service member—from reprisals for either exercising rights or assisting in any proceeding under the Act.

DOL is statutorily tasked with providing assistance to any person with respect to USERRA employment and reemployment rights and benefits and may request the assistance of other federal and state agencies engaged in similar or related activities to do so. DOL, DOD, and the Department of Veterans Affairs share responsibility for promoting a clear understanding of USERRA among employers and individuals concerning their respective rights and responsibilities under USERRA. In addition, USERRA requires all federal agencies to provide USERRA awareness training to human resources personnel, in consultation with the Office of Personnel Management (OPM). OPM issues guidance on ways to improve USERRA protection policies and practices for federal agencies. DOL's Veterans' Employment and Training Service (VETS) and DOD's ESGR provide extensive public education, outreach, and compliance assistance with the goals of preventing violations caused by ignorance or misunderstanding of the law and ensuring that protected individuals understand their rights and know what assistance is available to help them secure those rights.

An individual who believes that their USERRA rights have been violated may file a complaint with DOL, which will then investigate the claim(s). Alternatively, individuals may seek to informally resolve their USERRA-related claims using the ESGR Ombudsman's resolution services. Informal resolution is not required, and an individual may file a complaint with DOL at any time. Additionally, individuals have a private right of action to pursue their USERRA claims without any administrative exhaustion requirements. Once a complaint is filed with DOL, VETS investigates the complaint, determines if the complaint is substantiated, and attempts to resolve those complaints, when appropriate. Following a completed USERRA investigation by VETS, if the claimant is unsatisfied with the outcome or determination, the claimant may request referral of their case to the Department of Justice (DOJ) for cases involving a private, state, or local government employer, and to OSC¹ for cases involving a federal government employer.

This report begins by describing the various roles each of the federal agencies referenced above play in the administration of USERRA. Next, the report responds to each of the statutorily mandated reporting requirements described in the introduction to this report. In addition, the report contains other information of interest, including USERRA case outcomes for cases closed by DOJ, OSC, and DOL.

¹ OSC is an independent federal investigative and prosecutorial agency. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, including protections included in USERRA.

USERRA SERVICES PROVIDED BY THE DEPARTMENT OF DEFENSE'S EMPLOYER SUPPORT OF THE GUARD AND RESERVE

1. Overview

More than 50 years ago, DOD recognized the need for civilian employers to support military employees. In 1972, the ESGR was created to gain and maintain employer support for an all-volunteer force. In the decades since its creation, ESGR's mission expanded to include educating employers and service members about the rights and responsibilities of USERRA. USERRA is intended to ensure these service members are not disadvantaged in civilian careers because of their uniformed service, are promptly reemployed in civilian jobs upon their return from duty and are not discriminated against in employment because of military status or obligations.

In support of the Secretary of Defense's priority to "Take Care of Our People," ESGR accomplishes its mission through effective military and employer outreach services, employer recognition programs, and a broad range of assistance services. These services provide education on the applicability of USERRA and emphasize the importance of the National Guard and Reserve in our nation's defense. Ensuring service members understand their rights and benefits under USERRA is a key example of implementing the Secretary's priority to "Take Care of Our People."

Headquartered in Alexandria, Virginia, ESGR provides guidance, resources, and support to its operations through a network of more than 2,300 volunteers who work towards the vision that all employers support and value the employment of National Guard and Reserve service members. ESGR has a network of volunteers in all 50 States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico. These volunteers provided 185,287 hours of labor in support of ESGR's mission.

In FY 2023, ESGR engaged 125,277 employers and 246,971 service members, educating them on their rights and responsibilities under USERRA and associated DOD and DOL policies.

2. Outreach Programs

ESGR conducts awareness and recognition programs for employers to prevent or reduce employer/employee conflicts and misunderstandings related to an employee's uniformed service. ESGR also educates service members and employers about their rights and responsibilities under USERRA and related DOD policies. It also engages with military leaders to improve their understanding of USERRA, ESGR programs, and their role in championing positive working relationships with employers while maintaining military readiness.

ESGR's outreach efforts to employers include voluntary participation in the Statement of Support Program. Employers who sign statements of support pledge they will:

- fully recognize, honor, and comply with USERRA,
- provide managers and supervisors with the tools they need to effectively manage employees who serve in the National Guard and Reserve,
- appreciate the values, leadership, and unique skills service members bring to the workforce, and encourage opportunities to hire guardsmen, reservists, transitioning service members, and veterans, and
- continually recognize and support our country's service members and their families, in peace, in crises, and in war.

Outreach programs also include ESGR awards, designed to recognize employers for policies and practices that support their employees' participation in the National Guard and Reserve. Most employer awards originate from nominations submitted by service members recognizing supportive supervisors with the Patriot Award. ESGR administers the Secretary of Defense Employer Support Freedom Award, the U.S. Government's highest honor bestowed on employers. The Freedom Award is presented annually to a maximum of 15 large, small, and public-sector employers who have demonstrated exceptional support to National Guard and Reserve employees. The Freedom Award was presented in person at the Pentagon Conference Center to 15 recipients on August 30, 2023.

During FY 2023, ESGR recognized 8,316 supervisors of Reserve Component service members with the Patriot Award, received 1,863 nominations for the 2023 Secretary of Defense Employer Support Freedom Award, and obtained 6,809 statements of support from employers across the nation.

3. Ombudsman Services and Customer Service Center

ESGR assists National Guard and Reserve members with unformed service-related employment conflicts through its nationwide Ombudsman Services Program. While ESGR is not a USERRA-enforcement agency and does not participate in formal litigation processes, the Ombudsman Services Program provides information, education, and neutral, informal third-party mediation services to help resolve employee-employer USERRA conflicts. More than 391 highly trained ombudsmen nationwide provide mediation and technical assistance to service members and employers about their USERRA rights and responsibilities. In addition, ESGR operates a Customer Service Center (CSC), which fields USERRA-related inquiries and information requests from customers worldwide. The CSC provides prompt, expert telephonic and email responses to service members and civilian employers on USERRA-related matters. During FY 2023, ESGR received 13,233 contacts by telephone, email, military unit briefs, and employer outreach events, of which 1,486 contacts resulted in ESGR USERRA mediation cases. ESGR's mediation efforts covered an array of USERRA-related issues, including 687 complaints involving some form of military discrimination, 734 complaints involving job reinstatement, and 21 complaints involving possible retaliation or reprisal. There were 314 USERRA mediation cases in which ESGR could not facilitate an

agreement between the employee and employer. Upon the closure of all ESGR USERRA mediation cases both parties are informed that the employee has the right to file a case with DOL or seek assistance through a private attorney. ESGR and the DOL coordinate closely on USERRA-related issues, track problems, coordinate issues, and identify trends as part of their efforts to protect service member and employer rights.

DEPARTMENT OF LABOR’S USERRA OUTREACH AND CLAIMS INVESTIGATION

1. VETS’ Public Education and Compliance Assistance Efforts

VETS conducts a robust public outreach campaign to educate uniformed-service members, employers, and others on their rights and responsibilities under USERRA. Since the terrorist attacks of September 11, 2001, which resulted in the single greatest mobilization of Reserve component members in our nation's history, VETS has briefed more than one million individuals on USERRA. VETS continued this outreach in FY 2023, presenting USERRA information to more than 3,500 individuals, including service members, members of professional groups, and members of the public.

VETS’ efforts to educate the public also include maintenance of our USERRA website, which contains several educational resource materials on the Act and its application to service members, veterans, employers, employees, and others. These materials include the USERRA e-laws Advisor, frequently asked questions, and other useful information. This content can be accessed on [VETS’ website](#).

Presentations to mobilizing and demobilizing members of the National Guard and Reserve are provided in collaboration with ESGR. Together, both agencies strive to ensure that service members receive a USERRA briefing upon mobilization and demobilization from active military service regarding USERRA rights, responsibilities, and enforcement.

2. VETS’ Investigative Process

USERRA investigations are complaint driven. An individual who believes that their USERRA rights have been violated may file a complaint (VETS Form 1010) with VETS online (<https://vets1010.dol.gov>) or submit a claim form by email, mail, or facsimile. VETS Form 1010 is available to the public online through the VETS’ web page. Upon receipt of an electronically filed or signed and completed hard-copy VETS Form 1010, VETS opens an investigation by assigning each case to a qualified investigator. A notification of process rights, written in an easy-to-understand question-and-answer format, is sent to each claimant within five days of VETS’ receipt of a complaint.

The assigned investigator collects and reviews pertinent documentary evidence, interviews necessary witnesses, and may use a subpoena to obtain necessary evidence. VETS’ investigators are extensively trained in the legal aspects of USERRA, investigative techniques, and the agency’s operating procedures in order to ensure investigations are of the

highest quality and are conducted in a uniform and timely manner. If the evidence compiled during a USERRA investigation substantiates the claim, VETS will attempt to obtain satisfactory resolution through negotiation or settlement. VETS encourages all parties to resolve disputes promptly and avoid litigation in order to foster a healthy employee-employer relationship.

VETS has 90 days to complete its investigation unless VETS obtains an extension of time from the claimant to continue the investigation in an effort to resolve the case. The 90-day period begins on the date a complaint is filed with VETS National Office. At any point during the investigative process, the claimant may elect to request suspension of an investigation and pursue the claim with private counsel or on a *pro se* basis.

3. Case Referral Process

Completed investigations that result in a determination of whether a submitted claim is substantiated by the evidence reviewed in the case² are eligible for referral to DOJ or OSC. If VETS does not resolve the case to the claimant's satisfaction, VETS advises the claimant in a closing letter of their right to have the case referred to either DOJ or to OSC, as appropriate, for consideration of legal representation at no cost to the claimant. If a claimant requests that their case be referred, VETS must refer the claim regardless of whether VETS has determined that the submitted complaint was substantiated by the facts and evidence obtained during the investigation. Each VETS case referral contains a memorandum analyzing the USERRA claim and providing an assessment of whether the complaint was substantiated. VETS has 60 days to complete this referral process unless VETS obtains an extension of time from the claimant. The 60-day period begins when the claimant's request for referral is filed with VETS National Office.

4. Program Initiatives

In FY 2023, VETS engaged in several program improvement initiatives, including development and publication of a new VETS 1010 claim submission form, developing the framework for an investigator mentorship program, and replacing the legacy quality measure metric. Each of these efforts was aimed at increasing the quality and integrity of VETS' investigations, while clarifying the requirements for investigators and reducing variations in investigations throughout VETS.

During FY 2023 VETS completed a full redevelopment and replacement of the VETS USERRA/VEOA/VP Form 1010 (Form 1010), which is used by claimants to submit claims alleging violations of USERRA to VETS. VETS took this opportunity to modernize both the existing PDF version and the electronic version. The form was developed using modern

² Incomplete investigations, where cases are closed administratively, prior to VETS determining if each complaint is substantiated, do not immediately receive referral rights upon closure. Claimants may request to reopen these cases, and upon completion of an investigation, may request referral of their case to DOJ or OSC.

requirements for government-issued forms and was reformatted to ensure that critical information related to filed claims were received at the outset of an investigation to prevent any delays in case processing that otherwise could occur. The Form 1010 completed its public comment periods and received OMB approval in advance of its April 30, 2023, deadline.

In FY 2023, VETS developed the framework for an investigative mentorship program, the first of its kind within the Department of Labor. Mentoring plays an important role in an investigator's development, engagement, and retention; all of which contribute significantly to individual and organizational productivity and create an atmosphere where an employee feels valued. VETS' formal mentoring program will connect investigators with other professionals who are willing to help them learn, grow, and advance within the agency. The program is a voluntary program with the mentor and mentee agreeing to a one-year commitment to the program.

The accuracy and quality of USERRA investigations is paramount, and VETS continuously assesses and improves its processes for reviewing case quality. Starting in FY 2021, VETS began work to replace its existing processes and standards for reviewing case quality. Previously, VETS measured case quality quarterly by having a set of experienced investigators review 15 randomly selected cases against a checklist of case elements to be reviewed. VETS determined that the sample size of cases was too limited, and the scope of the reviews was too subjective and narrowly tailored to antiquated investigative elements based on paper case file management. In FY 2023, VETS achieved full replacement of those processes and standards by implementing a new system for reviewing the quality of case work, collectively called Case Quality Measurement (CQM). The new CQM process now reviews 100% of electronic case files against 153 variables identified as contributors of quality. The process both includes and excludes designated variables based on the particularized information submitted in each claim and the applicable requirements to determine if a violation of USERRA occurred. Thus, CQMs provide specific, quantitative data that can help reviewers evaluate the overall quality of the case.

DEPARTMENT OF JUSTICE ENFORCEMENT

DOJ and DOL work collaboratively to ensure service members' USERRA rights are protected. If DOL cannot resolve a claimant's USERRA claim against a private, state, or local government employer, the claimant may ask DOL to refer their claim to the Attorney General for review. Each DOL referral includes: (1) the VETS investigative file; and (2) a memorandum analyzing the complaint and assessing whether the claim(s) is substantiated.

Upon receipt of an unresolved USERRA claim from DOL, DOJ conducts an independent review of the complete DOL investigative file and analysis. If the Attorney General is reasonably satisfied that the service member is entitled to relief, the Attorney General may exercise DOJ's prosecutorial authority and commence an action in federal court on behalf of the service member. If the employer is a state, the action is brought in the name of the United

States. In all other cases, the United States sues in the name of the service member. DOJ generally tries to seek relief on the service member's behalf and to settle the claims without commencing a contested action in court. If DOJ determines that it will not offer legal representation to a claimant or seek relief on the service member's behalf, DOJ notifies the service member of this decision, in writing, and informs the member of their right to proceed with private counsel. In all cases, DOJ ensures that each USERRA referral receives careful consideration and is processed as expeditiously as practicable.

DOJ continues to vigorously enforce USERRA against private, state, and local employers, through litigation, facilitated settlements, outreach, and advocacy. Since the Civil Rights Division assumed USERRA enforcement authority in 2004 and through the end of FY 2023, it has filed 115 USERRA lawsuits and favorably resolved 220 USERRA complaints either through consent decrees obtained in those lawsuits or through facilitated private settlements. In FY 2023, DOJ settled, or facilitated settlement, in two cases and matters at a total value in excess of \$64,800 in payments directly to the service members.

On January 6, 2023, the Civil Rights Division's Employment Litigation Section (ELS) facilitated a finalized private agreement to resolve the USERRA complaint of U.S. Army National Guardsman Peter Kurtz against his former employer D&E Transport, Inc. Kurtz alleged that D&E Transport discriminated against him in violation of USERRA when it terminated his employment while he was on military training orders. Under the agreement, D&E Transport will pay Kurtz \$10,000 in lost wages.

On September 8, 2023, the Civil Rights Division settled a case in the U.S. District Court for the Northern District of Illinois on behalf of a judge advocate, Army Reservist, Derrick Strong, who alleged that the City of Chicago Fire Department (CFD) violated USERRA when it failed to provide him with an opportunity to take a promotional examination that he missed while deployed. Strong provides legal advice and overall legal support to the 416th Theater Engineer Command and is also employed as a cross-trained firefighter and emergency medical technician-basic (firefighter/EMT) for the CFD. In 2017, while he was deployed, the city administered a test for firefighters to become fire engineers. Strong alleged that the CFD violated USERRA by failing to provide him with an opportunity to take the test when he returned to work after his military service. While the case was in litigation, Strong was given the promotional exam, which he passed, and was promoted to the rank of Fire Engineer. The settlement awarded him retroactive seniority and back pay and benefits.

DOJ has also collaborated with the Solicitor's Office at DOL in training VETS investigators through both live and remote training sessions, discussing case trends, and collaborating on USERRA strategy. For example, DOJ and the Solicitor's Office at DOL have a periodic call where all complaint referrals and case resolutions are discussed. In FY 2024, DOJ will continue to work with DOL to ensure that referrals are promptly and carefully processed, and that each meritorious referral is resolved to the satisfaction of the service member and the government. While DOJ will continue to aggressively pursue litigation when warranted, it seeks to resolve meritorious referrals without contested litigation whenever possible, in order

to maximize resources and to ensure efficiency in achieving the best possible result for each service member.

DOJ will also continue to seek out opportunities to participate as *amicus curiae* and file statements of interest on behalf of service members.

OFFICE OF SPECIAL COUNSEL ENFORCEMENT

OSC's enforcement responsibilities apply to federal-sector USERRA cases. Case referrals from DOL to OSC following a VETS' investigation are addressed in a manner similar to that used in DOJ referrals discussed above.

USERRA IN THE FEDERAL SECTOR

The federal government is committed to being a model employer under USERRA. OPM is responsible for administering USERRA for the federal government to ensure that it meets that goal. In furtherance of this goal, VETS and OSC professional staff collaborate annually to provide technical assistance and guidance on many complex issues to federal agencies, teaching and training agency staff on the law and best practices set forth in OPM's guidance. The training provided by VETS and OSC is well received by federal agencies, and VETS' and OSC's professional staff have been asked to return in subsequent years by those agencies to provide additional training. VETS and OSC continue to collaborate in this effort, which has earned praise from agency officials who received their guidance.

In FY 2024 and future years, VETS will continue its plans to increase these activities. Furthermore, to broaden and strengthen partnerships with other federal agencies, VETS, in coordination with OSC, DOD, and OPM, will continue to work with other federal partners to identify and share best practices to ensure that our nation's service members and veterans are well served. Through these partnerships, VETS can better respond to requests for assistance, more effectively promote veteran employment in the federal sector, and develop innovative approaches to collaborate with employers on veteran employment initiatives.

REPORTING REQUIREMENTS

The Secretary of Labor, after consultation with the Attorney General and the Special Counsel, is required, pursuant to 38 U.S.C. § 4332(a), to prepare and transmit an annual report to Congress containing the following information for the preceding fiscal year:

1. The number of cases reviewed by the Department of Labor under the Act.

DOL reviewed 981 new unique³ cases in FY 2023 opened pursuant to a submitted VETS Form 1010 complaint. The table below provides the numbers of unique USERRA cases reviewed by DOL from October 1, 2017, to September 30, 2023.

Figure 1. Unique USERRA Cases Reviewed by DOL

	<i>FY 2018</i>	<i>FY 2019</i>	<i>FY 2020</i>	<i>FY 2021</i>	<i>FY 2022</i>	<i>FY 2023</i>
<i>New Cases</i>	917	950	944	862	1,009	981
<i>Total</i>	1,095	1,127	1,117	994	1,160	1,201

During FY 2023, DOL carried over an additional 189 cases (open investigations) from FY 2022. During FY 2023, DOL reopened (at the claimants' request) 31 cases from FY 2022. In sum, DOL reviewed a total of 1,201 unique cases in FY 2023.

2. The number of cases reviewed by the Secretary of Defense under the National Committee for Employer Support of the Guard and Reserve of the Department of Defense.

During FY 2023, ESGR received 13,233 contacts by telephone, email, and through military unit-briefs and employer outreach events. Of the 13,233 contacts, 1,486 resulted in actual USERRA mediation cases.

3. The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, and the number of actions initiated by the Office of the Special Counsel before the Merit Systems Protection Board pursuant to section 4324.

In FY 2023, DOL completed referral actions and transferred 39 cases to the Attorney General and 9 cases⁴ to OSC. During the fiscal year, OSC did not file any new USERRA complaints with the MSPB but continues to represent one service member in an appeal filed during a previous fiscal year that remains pending before the MSPB. The nature and status of these referred cases is reflected in reporting requirement seven of this report.

³ This excludes duplicative cases such as cases that are filed multiple times by the same claimant with the same complaint or cases that have been previously investigated and have been reopened.

⁴ Referral actions completed by DOL may not match the count of referrals received by DOJ or OSC during a fiscal year due to the gap in time between the date DOL transmits a referred case, and the date on which DOJ or OSC accepts a referred case in instances where such a gap crosses between one fiscal year and another.

A. Cases referred to the Attorney General or the Office of Special Counsel⁵

i. Cases referred to the Attorney General

In FY 2023, DOJ received a total of 37 referrals from DOL. DOL assessed eight as having merit and 29 were assessed as not having merit. Out of the referrals that DOL assessed as having merit, two involved a state agency as a potential defendant. DOJ declined to pursue litigation for one of the referrals involving a state agency but the other was still under consideration by DOJ in FY 2023. As to the remaining merit referrals, DOJ offered representation with respect to two referrals and declined representation with respect to three referrals. The remaining referral was still under consideration by DOJ in FY 2023.

Out of the 29 cases categorized as non-merit, based on DOL's assessment and DOJ's independent analysis of the merits of each referral, DOJ declined representation with respect to 23 referrals. Five of these referrals involved a state agency: three in which DOJ declined to pursue litigation, and two were still under consideration by DOJ in FY 2023. The remaining non-merit referral was still under consideration by DOJ in FY 2023.

The cases referred to DOJ in FY 2023 involved several USERRA issues.⁶ Approximately 32% (12) of the referred cases involved allegations of termination and/or discharge; 27% (10) of the cases involved reemployment allegations, such as accommodation and disability; and 14% (5) of the cases involved allegations of loss or denial of benefits, such as loss of pay, assignment, reduction or loss of pension or health benefits, and loss of seniority. The remaining cases involved various forms of discrimination: approximately 3% (1) of the referred cases involved failure to hire; 19% (7) involved failure to promote; and 19% (7) involved an allegation of retaliation for asserting USERRA protection. Finally, approximately 84% (31) of all the cases referred involved actions affecting the service member's terms and conditions of employment, such as hostile work environment, discipline, or harassment.

ii. Cases Referred to the Office of Special Counsel

During FY 2023, VETS referred 10 new cases to OSC, at a service member's request, under 38 U.S.C. § 4324. Additionally, nine cases referred to OSC during the previous fiscal year remained pending at the beginning of FY 2023. Thus, 19 total referred cases were pending at

⁵ In contrast with referrals completed by DOL, this section counts the referrals that DOJ and OSC accepted during FY 2023. Therefore, this section includes referrals from cases that were transmitted in FY 2022 that were accepted in FY 2023 and excludes cases that were transmitted in FY 2023 that were not accepted until FY 2024.

⁶ Several cases involved multiple issues. Each issue is counted separately.

OSC during the fiscal year. OSC closed or favorably resolved 14 of the 19 cases during the fiscal year, leaving five cases pending at the end of the fiscal year.

In seven of the 10 cases VETS referred to OSC during FY 2023, the service member alleged discrimination based on uniformed service, such as termination, non-promotion, non-selection, or denial of employment benefits; five cases involved violations of reemployment rights; and two cases involved disabled veteran discrimination (note that some cases contained multiple allegations).

While OSC did not file any new USERRA appeals with the U.S. Merit Systems Protection Board (MSPB) in FY 2023, it obtained full relief on behalf of a service member it had represented before the MSPB since 2018. John D. Patrie, a Letter Carrier for the U.S. Postal Service (USPS) in Auburn, Maine, and member of the Maine Air National Guard, was called to active duty immediately following the September 11, 2001, terrorist attacks. Until his honorable discharge in December 2015, Patrie served almost continuously in direct support of the Global War on Terrorism. During that time, he regularly provided copies of his orders to USPS, maintained his employment benefits (including making retirement contributions and paying his union dues), and expressed his desire to return to his postal job once his active duty ended. USPS gave him no indication that it would not reemploy him and sent him letters thanking him for his service and a debit card to purchase his postal uniform. After Patrie notified USPS that he wished to return to his Letter Carrier position in January 2016, however, USPS told him it would not reinstate him because he had “abandoned” his civilian employment there.

VETS investigated Patrie’s USERRA complaint and found that USPS violated USERRA by not reinstating him in January 2016. After USPS continued to deny Patrie reinstatement, VETS referred the case to OSC, which represented him in a USERRA appeal before the MSPB. In April 2019, an MSPB Administrative Judge issued an Initial Decision in Patrie’s favor, but USPS filed a Petition for Review before the MPSB and did not provide him any interim relief, as the Judge had ordered. In August 2023, the MSPB denied USPS’s appeal and ordered USPS to immediately reinstate Patrie, retroactive to January 2016, with full back pay and benefits. As a result, Patrie returned to USPS as a Letter Carrier and received almost eight years’ worth of back pay plus interest, lost overtime pay, matching retirement contributions, and restored seniority.

B. The number of actions initiated by the Office of the Special Counsel before the Merit Systems Protection Board

OSC did not file any new USERRA appeals with the MSPB during FY 2023.

4. The number of complaints filed by the Attorney General pursuant to section 4323.

In FY 2023, DOJ continued to litigate and resolve settlements from USERRA complaints in FY 2021 and FY 2022. One of those cases, *United States v. Illinois Department of*

Corrections was settled and the parties continue to work together to ensure that defendants fulfill their payment and training obligations required by the consent decree. The remaining cases, *United States v. Kansas City Department of Health and Environment* and *United States v. Guam, et al.*, were in active litigation in FY 2023.

In *United States v. Illinois Department of Corrections*, the United States alleged that the Illinois Department of Corrections (IDOC) violated USERRA when it failed to reemploy Roderick Workman, a member of the Illinois Air National Guard since 1991, in his escalator position as a Correctional Transportation Officer I (CTO I) after he returned from military service in December 2019. In its complaint, the United States claimed the CTO I position was Workman's escalator position because it was reasonably certain that IDOC would have selected Workman had he been there to bid for the position based on his seniority and qualifications. On June 7, 2022, the United States District Court for the Northern District of Illinois approved the Parties' joint proposed consent decree. Under the decree's terms, IDOC agreed to pay Workman \$9,026.71 in back pay and interest, amend its policies to make the reasonable certainty standard and escalator position explicit, and train its employees, including supervisors, on USERRA's protections. IDOC worked with DOJ to revise its policies and is currently working to train employees in line with the consent decree.

On June 27, 2022, the Civil Rights Division, in collaboration with the United States Attorney's Office for the District of Kansas, filed a lawsuit on behalf of Army National Guard Staff Sergeant Stacy Gonzales in *United States v. State of Kansas*. The complaint alleges that upon her return from active service overseas in 2007, Gonzales began to experience hostility from the Kansas Department of Health and Environment (KDHE) regarding her military obligations. It also alleges that KDHE violated USERRA when it acted to eliminate Gonzales' position because she had an upcoming military deployment. The lawsuit seeks the recovery of Gonzales' lost wages and other employment benefits, as well as liquidated damages. The district court denied the United States' motion for partial summary judgment and granted the defendant's motion for summary judgment. The case is currently on appeal to the Tenth Circuit Court of Appeals.

The United States also continues litigation in *United States v. Guam, et al.* On September 1, 2021, DOJ filed a complaint in the United States District Court for the District of Guam against the Territory of Guam and the Government of Guam Retirement Fund. Brought in the name of the United States, the complaint alleges that defendants deny its service member-employees' pension credit and retirement benefits if those employees use donated leave while on military duty, in violation of USERRA. The complaint is based on the allegations of five current or retired Guam employees who served on active duty in the military, were denied pension credit for portions of their military service completed while using donated leave, and thus will have reduced pension benefits for the rest of their lives. The complaint alleges that the defendants' practices may have illegally denied benefits to many other service members as well. The complaint seeks damages on behalf of all affected service member-employees and injunctive relief requiring the defendants to comply with USERRA. On March 6, 2023, the Court denied the defendants' motions to dismiss. On July 20, 2023,

DOJ moved for summary judgment on liability, incorporating citations to the Court’s written decision, and arguing that defendants’ failure to provide pension credit to and make pension contributions on behalf of service member-employees violate section 4318 of USERRA.

5. The number of cases reviewed by the Secretary of Labor and ESGR that involve the same person.

ESGR provided VETS with the names of 1,486 individuals who had filed cases reviewed by ESGR Ombudsmen in FY 2023, and the date of each case. VETS compared the ESGR data to its own data⁷ on cases initially opened between October 1, 2022, and September 30, 2023. This comparison resulted in 135 likely matches, or 9.1% of 2023 ESGR cases.

6. With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5—

A. The Number of Those Cases that Involve a Disability-Related Issue

1. Thirty-one of the 981 new unique cases first reviewed by DOL in FY 2023 (3.2%) involved a disability-related issue.
2. Seven of the ESGR cases first reviewed in FY 2023 (0.6%) involved a disability-related issue.
3. Of the 48 cases referred to DOJ and OSC in FY 2023, two cases transferred to DOJ involved a disability-related issue. No cases transferred to OSC involved a disability-related issue.
4. No new cases were filed by DOJ or OSC during FY 2023.
5. With respect to the 135 cases reviewed by DOL and ESGR involving the same person in FY 2023, eight involved a disability-related issue.

B. The Number of Those Cases that Involve a Person who has a Service-Connected Disability

1. In FY 2023, VETS asked claimants whether they had a service-connected disability. Among the 981 new unique cases investigated by VETS, VETS obtained responses from 100% of claimants, with 573 (58.4%) reported having such a disability. Among these 573 claimants, 14 also claimed a USERRA-related disability issue. Among the 377 claimants who responded but did not report having a service-connected disability, 31 claimed a USERRA-related disability issue.

⁷ Matches between ESGR and VETS’ cases are made by matching names and dates of ESGR interactions against VETS’ claimants who self-identify as having engaged with ESGR initially. Therefore, matches are likely but not guaranteed without additional provision of personally identifiable information (PII).

2. Of the 39 cases referred to DOJ for consideration of litigation, 24 involved a claimant who reported a service-connected disability, two of which also involved a USERRA-related disability issue.
3. Of the nine cases referred to OSC for consideration of litigation, one involved a claimant who reported a service-connected disability. That case also involved a USERRA-related disability issue.
4. No new cases were filed by DOJ or OSC during FY 2023.
5. With respect to the 135 cases reviewed by DOL and ESGR involving the same person in FY 2023, 42 (31.1%) reported having a service-connected disability. Four of the claimants who reported having a service-connected disability also claimed a USERRA-related disability issue.

7. The nature and status of each case reported pursuant to paragraph 1, 2, 3, 4, or 5—

A. The Nature and Status of Cases Reviewed by DOL

i. Potential Violations of USERRA Investigated by DOL

USERRA cases can contain one or more issue codes that correspond to potential violations of USERRA. These potential violations are identified by the claimant during submission of their claim to VETS, or by the investigator during the investigation. The following USERRA issues were investigated in the new unique USERRA cases reviewed by DOL. Many USERRA cases involve multiple issues, so the number of cases in Figure 2 exceeds the 981 new unique cases reported by VETS in FY 2023 and the combined percentages exceed 100%.

Figure 2. Potential Violations of USERRA Investigated by DOL

<i>USERRA Issues Identified in Investigations</i>	<i>Number of Cases</i>	<i>Percentage of Cases</i>
Military obligations discrimination	504	51.4%
Reinstatement	257	26.2%
Discrimination as retaliation for any action	209	21.3%
Pay rate	188	19.2%
Promotion	125	12.7%
Other non-seniority benefits	102	10.4%
Status	181	18.5%
Seniority	104	10.6%
Vacation/Leave	125	12.7%
Health benefits	91	9.3%
Other	147	15%
Layoff/Termination	188	19.2%
Pension	63	6.4%
Special protected period discharged	43	4.4%
Reasonable accommodations/retraining for disabled	45	4.6%
Initial hiring discrimination	21	2.1%
Reasonable accommodation/retraining for non-qualified/non-disabled	8	0.8%

ii. Cases Investigated and Subsequently Closed by DOL

Upon completion of an investigation, or the closure of a case for administrative purposes, investigators apply a closure code to each case. These closure codes are selected based on either the investigator’s determination of whether any potential violations within a case were substantiated or not, the claimant’s or claim’s eligibility for coverage as defined by the Act, or circumstances that may have led to an administrative closure. During FY 2023, VETS used five closure codes including Administrative; Claim Resolved; Not Eligible; Not Substantiated; and Substantiated, Not Resolved.

The “Administrative” closure code is used to close cases prior to the completion of an investigation for one of seven defined reasons. It can be applied when the claimant displays a lack of interest in their claim. Lack of interest is determined when, after multiple attempts to contact a claimant, an investigator sends a letter describing the lack of responsiveness and includes a request for a claimant to contact them within 10 days, after which the investigator will close the case administratively. The Administrative closure code may also be applied to a case if the investigator determines that the claimant has initiated a parallel proceeding in federal court, state court, or before the MSPB that matches the claims and circumstances

described in the complaint filed with VETS. The “Administrative” closure code may also be applied if claimant requests in writing that VETS suspend investigation of their claim due to a desire not to pursue a claim any longer, if they will be temporarily unavailable, or if they wish to pursue their claim through ESGR. “Administrative” closure codes are assigned to incomplete investigations and provide a claimant the right to reopen an investigation upon request.

The “Claim Resolved” closure code is applied to cases when an investigator determines that a violation of USERRA occurred, and where the investigator was able to successfully resolve a case. Cases can be resolved formally with a signed settlement agreement, or informally without a settlement agreement. Cases closed with the “Claim Resolved” closure code can be reopened for investigation if a claimant provides new and material evidence to their assigned investigator. If a claimant is not satisfied with the outcome of the investigation or determination of the investigator, they may request referral of their claim to DOJ or OSC.

The “Not Eligible” closure code is applied when an investigator determines that a submitted claim is not covered under USERRA, or when the claimant of a submitted claim is not eligible for coverage under USERRA. If a claimant disagrees with the VETS determination that the claim is not covered, or that the claimant is not eligible under USERRA, they may request referral of their case to DOJ or OSC. If documentation of a claim or claimant’s eligibility is made available at a later date, as new and material evidence, the claimant may also request that VETS reopen their case and continue investigation of their original claim.

The “Not Substantiated” closure code is applied to cases in which the investigator has determined that the potential violations are not substantiated by the evidence. Cases closed with the “Not Substantiated” closure code can be reopened for investigation if a claimant provides new and material evidence to their assigned investigator. If a claimant is not satisfied with the outcome of the investigation or determination of the investigator, they may request referral of their claim to DOJ or OSC.

The “Substantiated, Not Resolved” closure code is applied when VETS has determined that one or more potential violations within a case are substantiated by the facts and evidence, but VETS is unable to facilitate a settlement between the employer and claimant. Claimants may request referral of these completed investigations to DOJ or OSC. Claimants may also choose to continue to pursue relief in a court of competent jurisdiction or before the MSPB using private representation.

VETS investigated and closed 1,022 cases in FY 2023, including 816 cases that were new and unique cases in FY 2023.

Figure 3. Cases Investigated and Subsequently Closed by DOL

<i>CLOSURE CODE</i>	<i>NUMBER</i>	<i>PERCENT</i>
Administrative	317	31.0%
Claim Resolved	225	22.0%
Not Eligible	139	13.6%
Not Substantiated	324	31.7%
Substantiated, Not Resolved	17	1.7%
TOTAL:	1,022	100.0%

B. The Nature and Status of Cases Reviewed by ESGR

i. Cases Reviewed by ESGR on Behalf of the Secretary of Defense

ESGR’s mediation efforts covered an array of USERRA-related issues, including 687 complaints involving some form of military discrimination, 734 complaints involving job reinstatement, and 21 complaints involving possible retaliation or reprisal. There were 314 USERRA mediation cases in which ESGR could not facilitate an agreement between the employee and employer. In those instances, ESGR ombudsmen informed both parties that the employee had the right to file a case with DOL or seek assistance through a private attorney. ESGR and DOL coordinate closely on USERRA-related issues, track problems, coordinate issues, and identify trends as part of their efforts to protect service members’ and employers’ rights.

The following crosswalk (Figure 4) aligns the issues identified in ESGR case data with VETS’ data. It shows the number of cases for each separate issue. For three groupings of issues defined as “Primary Categories” – Discrimination, Reinstatement/Reemployment, and Reprisal – the crosswalk also shows both the total cases, and the percentages of all cases, for each category.

Figure 4. Crosswalk of USERRA Issues, FY 2023

Primary Categories	ESGR Ombudsman Cases “Problem Codes”⁸	VETS’ National Guard and Reserve Cases “Issue Codes”⁹
Discrimination	Military Obligation Discrimination 639	ID – Military Obligations Discrimination 468
	Initial Hiring Discrimination 48	II – Initial Hiring Discrimination 21
	687 Ombudsman Cases (47.6% of Issues Mediated)	489 Issues in 477 Complaint Cases (56.1% of Complaint Cases)
Reinstatement/ Reemployment	Health Benefits 20	IH – Health Benefits 67
	Pension 14	IP - Pension 56
	Seniority 49	IS - Seniority 87
	Other Non-Seniority Benefits 72	IB – Other Non-Seniority Benefits 92
	Status 38	IZ - Status 156
	Layoff 21	IL - Layoff 165
	Vacation 89	IV - Vacation 115
	Reinstatement 289	IR - Reinstatement 225
	Promotion 56	IT - Promotion 111
	Reasonable Accommodations/Retraining for Disabled 22	IA – Reasonable Accommodations/ Retraining for Disabled 33
	Reasonable Accommodation/Retraining for Non-Qualified Non-Disabled 4	IW – Reasonable Accommodations/Retraining for Non-Qualified Non-Disabled 8
	Pay Rate 50	IM – Pay Rate 165
	Special Protected Period Discharge 10	IF – Special Protected Period Discharge 39
734 Ombudsman Cases (50.9% of Issues Mediated)	1,319 Issues in 641 Complaint Cases (75.4% of Complaint Cases)	
Reprisal	Discrimination as Retaliation for any Action 21	ID2 – Discrimination as Retaliation for any Action 172
	21 Ombudsman Cases (1.5% of Issues Mediated)	172 Issues in 172 Complaint Cases (20.2% of Complaint Cases)

⁸ ESGR problem code descriptions have been converted to match each problem codes’ corresponding issue code as defined by VETS.

⁹ To facilitate comparisons with ESGR data, VETS’ data in this chart reflects only National Guard and Reserve (NG&R) complaint cases, whereas all complaint cases were reflected earlier in this report in the “Mandated Reporting Requirements” section. Also, the percentages of NG&R complaint cases among the three primary categories for VETS in this chart total less than 100%, because VETS’ issue and case counts here do not include the uncategorized “Other” problem issue code, thereby excluding 64 stand-alone “Other” VETS issues and cases from this chart.

C. The Nature and Status of Cases Reviewed by the Attorney General and Special Counsel

i. Potential Violations of USERRA in Cases Reviewed by the Attorney General and Special Counsel

DOL referred 39 cases to the Attorney General and 9 cases to the Special Counsel during FY 2023. Each of these 48 cases includes one or more issue codes that correspond to potential violations of USERRA. These potential violations are identified by the claimant during submission of their claim to VETS, or by the investigator during the investigation. The following USERRA issues were investigated in the cases referred to the Attorney General and Special Counsel for review during FY 2023.

Figure 5. Potential Violations of USERRA in Cases Reviewed by the Attorney General and Special Counsel

<i>USERRA Issues in Referred Cases</i>	<i>Number of Cases</i>	<i>Percentage of Cases</i>
Military obligations discrimination	25	52.1%
Discrimination as retaliation for any action	18	37.5%
Pay Rate	11	22.9%
Reinstatement	11	22.9%
Promotion	10	20.8%
Seniority	8	16.7%
Health benefits	7	14.6%
Status	7	14.6%
Other non-seniority benefits	6	12.5%
Other	6	12.5%
Reasonable accommodations/retraining for disabled	3	6.3%
Initial Hiring Discrimination	3	6.3%
Pension	3	6.3%
Reasonable accommodation/retraining for non-qualified/non-disabled	3	6.3%
Special protected period discharged	2	4.2%
Layoff	1	2.1%
Vacation	1	2.1%

ii. DOL Closure Codes Applied to Cases Referred to the Attorney General and Special Counsel

If a claimant is not reasonably satisfied with the outcome of a completed investigation where the investigator has determined whether a violation of the act has occurred, they are entitled to request referral of their case to the Attorney General or Special Counsel for consideration of representation. The following table displays the number of cases that were referred to the Attorney General or Special Counsel during FY 2023 under one of three closure codes applied by VETS. Cases closed with closure codes other than the three displayed below did not receive any requests for referral.

Figure 6. DOL Closure Codes Applied to Cases Referred to the Attorney General and Special Counsel

<i>CLOSURE CODE</i>	<i>NUMBER</i>	<i>PERCENT</i>
Not Eligible	6	12.5%
Not Substantiated	34	70.8%
Substantiated, Not Resolved	8	16.7%
TOTAL:	48	100.0%

D. The Nature and Status of Complaints Filed by the Attorney General

DOJ did not file any new cases in FY 2023.

E. The Nature and Status of Cases Reviewed by DOL and ESGR Involving the Same Person

DOL’s response to paragraph five of the Mandated Reporting Requirements, setting forth the number of cases reviewed by DOL and DOD through ESGR that involve the same person, indicates that in comparing ESGR data on USERRA cases during the fiscal year, 135 likely matches were identified. This figure indicates that first ESGR, and subsequently DOL, handled the same individuals’ claims.

DOL closed 98 of these 135 likely matches by September 30, 2023, under the following closure codes: Administrative: 26 (26.5%); Claim Resolved: 28 (28.6%); Not Eligible: 15 (15.3%); Not Substantiated: 28 (28.6%); and Substantiated, Not Resolved: 1 (0.7%). An explanation of VETS’ case closure codes appears in the explanation of the status of cases reviewed by DOL.

The following chart shows how the alleged issues in these 135 likely matched cases were distributed among the various VETS’ closure codes.

Figure 6. FY 2023 VETS/ESGR Likely Case Matches¹⁰

	<i>Administrative</i>	<i>Claim Resolved</i>	<i>Not Eligible</i>	<i>Not Substantiated</i>	<i>Substantiated, Not Resolved</i>	<i>Still Open</i>	<i>Issue Totals</i>	<i>% of Cases</i>
<i>Military Obligations Discrimination</i>	11	14	5	15	0	11	56	41.5%
<i>Reinstatement</i>	8	15	5	10	0	9	47	35%
<i>Pay Rate</i>	3	9	1	10	0	10	33	24.4%
<i>Status</i>	5	7	3	6	0	8	29	21.5%
<i>Layoff</i>	5	5	3	7	0	8	28	20.7%
<i>Discrimination as Retaliation for any Action</i>	2	2	2	10	0	8	24	17.8%
<i>Vacation</i>	6	8	3	2	0	3	22	16.3%
<i>Other Non-Seniority Benefits</i>	6	3	3	2	0	5	19	14.1%
<i>Promotion</i>	0	3	0	5	1	10	19	14.1%
<i>Seniority</i>	2	4	0	4	0	7	17	12.6%
<i>Other</i>	3	3	3	2	0	2	13	9.6%
<i>Health Benefits</i>	1	2	3	0	0	6	12	8.9%
<i>Special Protected Period Discharge</i>	3	3	0	1	0	3	10	7.4%
<i>Reasonable Accommodation / Retraining for Disabled</i>	0	3	1	2	0	2	8	6%
<i>Pension</i>	3	0	0	0	0	4	7	5.2%
<i>Initial Hiring Discrimination</i>	0	1	0	0	0	1	2	1.5%
<i>Closure Code Issue Totals</i>	58	82	32	76	1	97	346	

¹⁰ Many USERRA cases involve multiple issues and VETS records all the USERRA issues involved in a case. As a result, the numbers of cases and issues in this chart exceeds the 135 ESGR and VETS cases involving the same person, and the combined percentages of matched cases exceed 100%. Matching of FY 2023 ESGR cases and VETS cases initially opened October 1, 2022 to September 30, 2023 is based on claim dates and claimant names.

8. With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5, the number of those cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification (SOC) System.

The chart below (Figure 7) shows the full distribution of the SOC codes for FY 2023 USERRA cases, in four distinct categories: VETS' cases; Cases common to VETS and ESGR; Referrals to DOJ; and Referrals to OSC. The predominant occupations found among each of these four categories of cases can be summarized as follows:

1. Of the 981 new and unique complaints filed in FY 2023, 18.8% of complaints involved Protective Service occupations; 11.4% involved Management occupations; and 10.3% involved Office and Administrative Support occupations.
2. Out of 135 cases reviewed by DOL and ESGR, likely involving the same person in FY 2023, 17.8% of those cases involved Protective Service occupations; 11.1% involved Management occupations; and 11.1% involved Office and Administrative Support occupations.
3. Out of the 39 referrals transferred to DOJ in FY 2023, 23.1% of those cases involved Protective Service occupations; 12.8% involved Management occupations; 10.3% involved Healthcare Practitioners and Technical occupations; and 10.3% involved Educational Instruction and Library occupations.
4. Out of the nine referrals processed by DOL and forwarded to OSC in FY 2023, 33.3% of complaints involved Business and Financial Operations occupations; and 22.2% involved Architecture and Engineering occupations.

**Figure 7. Occupations Involved in FY 2023 USERRA Cases -
as Designated by the Standard Occupational Classification System**

<i>SOC Job Family</i>	<i>VETS Cases</i>	<i>DOJ Referrals</i>	<i>OSC Referrals</i>	<i>VETS & ESGR Cases</i>
<i>Protective Service</i>	18.8%	23.1%	11.1%	17.8%
<i>Management</i>	11.4%	12.8%	0%	11.1%
<i>Office and Administrative Support</i>	10.3%	7.7%	11.1%	11.1%
<i>Business and Financial Operations</i>	7.4%	5.1%	33.3%	5.9%
<i>Transportation and Material Moving</i>	8.1%	5.1%	0%	5.2%
<i>Healthcare Practitioners and Technical</i>	7.3%	10.3%	11.1%	8.9%
<i>Production</i>	2.2%	7.7%	0%	3%
<i>Architecture and Engineering</i>	3.1%	2.6%	22.2%	3.7%
<i>Computer and Mathematical</i>	5%	0%	0%	3.7%
<i>Installation, Maintenance, and Repair</i>	3.7%	0%	0%	3%
<i>Construction and Extraction</i>	3.6%	0%	0%	3.7%
<i>Educational Instruction and Library</i>	2.7%	10.3%	0%	1.5%
<i>Food Preparation and Serving</i>	1.8%	2.6%	0%	2.2%
<i>Sales and Related</i>	4.1%	0%	0%	5.9%
<i>Community and Social Science</i>	1.4%	5.1%	0%	1.5%
<i>Arts, Design, Entertainment, Sports, and Media</i>	2.2%	2.6%	0%	2.2%
<i>Legal</i>	1.8%	2.6%	0%	0%
<i>Building and Grounds Cleaning and Maintenance</i>	0.9%	0%	0%	1.5%
<i>Healthcare Support</i>	1.3%	0%	11.1%	2.2%
<i>Life, Physical, and Social Science</i>	1.2%	0%	11.1%	3%
<i>Military Specific</i>	0.4%	0%	0.0%	0.7%
<i>Personal Care and Service</i>	0.7%	2.6%	0.0%	2.2%

9. An indication of whether there are any apparent patterns of violation of the provisions of the Act, with an explanation.

No patterns of violations of USERRA became apparent in FY 2023. DOL will continue to monitor USERRA cases to identify trends as they arise.

10. Recommendation for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under the Act, between employers and persons seeking employment or reemployment.

Any legislative recommendations will be put forth via the President's Budget process.



Veterans' Employment and Training Service
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