

USERRA



Uniformed Services Employment and Reemployment Rights Act of 1994



FY 2019
Annual Report to Congress

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Veterans' Employment and Training • July 2020

The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) are: to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and to prohibit discrimination against persons because of their service in the uniformed services. It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of USERRA.

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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 discriminating against a person because of such person's attempt to enforce his or her rights 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 status, seniority, and rate of pay as if he or she 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.

This Fiscal Year (FY) 2019 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 this chapter during the fiscal year for which the report is made.
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) during the fiscal year for which the report is made.
3. The number of cases referred to the Attorney General or the Special Counsel pursuant to Section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of Special Counsel (OSC) before the Merit Systems Protection Board (MSPB) pursuant to section 4324 during such fiscal year.
4. The number of complaints filed by the Attorney General pursuant to Section 4323 during such fiscal year.
5. The number of cases reviewed by the Secretary of Labor and the Secretary of Defense through ESGR of DOD that involve the same person.
6. With respect to each of the cases referenced above:
 - A. the number of such cases that involve a disability related issue, and
 - B. the number of such 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 such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System (SOCS).
9. An indication of whether there are any apparent patterns of violation of the provisions of this chapter 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 this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

OVERVIEW OF USERRA PROTECTIONS

USERRA generally requires U.S. employers regardless of size or location of operation, as well as foreign employers operating in the United States or its territories, to reemploy eligible veterans returning to their 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, and to restore seniority, status, pay, pensions, and other benefits that would have accrued but for the employee's absence due to military 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 military service.

Eligibility requirements for service members seeking reemployment generally provide that the absence must be due to service; advance notice (oral or in writing) must be given 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 the uniformed service. This includes certain other non-military organizations including the National Disaster Medical System, and the commissioned corps of the Public Health Service. USERRA also protects anyone—veteran or non-veteran, service member or non-service member—from reprisal 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 U.S. 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 his or her USERRA rights have been violated may file a complaint with VETS, which will then investigate the claim(s). Alternatively, an individual may seek to informally mediate his or her claims utilizing ESGR Ombudsmen's informal mediation services to try to resolve his or her USERRA-related issues. Informal mediation is not required and an individual may file a complaint with VETS 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 VETS, VETS will formally investigate the complaint and attempt to resolve those complaints found meritorious. If, following VETS' investigation there is no resolution of the complaint, the claimant may request referral of his/her 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 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 VETS.

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

OVERVIEW

ESGR is a DOD program established in 1972 to promote cooperation and understanding between Reserve Component (RC) service members and their civilian employers in support of the critical role the National Guard and Reserve play in our nation's defense and readiness. ESGR helps develop and promote supportive civilian work environments for RC members through employer outreach and recognition, military outreach, and customer service operations to answer questions and increase understanding of applicable laws and DOD policies. ESGR also offers ombudsman services for service members who request assistance to resolve conflicts or misunderstandings with their civilian employers related to their uniformed service.

¹ The U.S. Office of Special Counsel (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.

ESGR is a volunteer-centric program with a nationwide network of 3,686 volunteers that works to ensure all employers support and value the employment of RC members. Headquarters (HQ) ESGR in Alexandria, Virginia, provides guidance, resources, and support to its volunteers and to its 54 volunteer-led state committees. An ESGR state committee is located in each of the 50 States, the District of Columbia, Guam and the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico. Each of the ESGR state committees has its own leadership structure, headed by an ESGR state committee chair. The majority of ESGR's volunteers have previously served in the uniformed services.

In FY 2019, ESGR volunteers engaged 111,618 employers and 305,316 service members, educating both groups on their rights and responsibilities under USERRA and related DOD policies.

OUTREACH PROGRAMS

ESGR conducts awareness and recognition programs aimed at the employers of RC service members to engender positive support for National Guard and Reserve service. ESGR also educates both service members and employers about their rights and responsibilities under USERRA and related DOD policies to assist in preventing or reducing employer/employee conflicts and misunderstandings related to an employee's uniformed service. ESGR engages directly with military units to promote a better understanding of USERRA, ESGR programs and services, and the importance of positive working relationships with employers to overall military participation and readiness.

ESGR's outreach efforts to employers includes voluntary participation in the Statement of Support Program. Employers who sign Statements of Support pledge that they will:

- Fully recognize, honor, and comply with the 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.
- Continually recognize and support our country's service members and their families, in peace, in crises, and in war.

Outreach programs also include the ESGR Awards Program, designed to recognize employers for policies and practices that are supportive of 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 that have demonstrated exceptional support to RC employees.

During FY 2019, ESGR recognized 10,227 supervisors of RC service members with the Patriot Award, received 2,415 nominations for the 2019 Secretary of Defense Employer Support Freedom Award, and obtained 9,393 Statements of Support from employers across the Nation.

OMBUDSMAN SERVICES

ESGR assists National Guard and Reserve members with uniformed-service-related employment conflicts through its nationwide volunteer Ombudsman Services program. While ESGR is not a USERRA enforcement agency and does not participate in formal investigation or litigation processes, the Ombudsman Services program provides information, education and neutral, informal third-party mediation services to help resolve employee-employer USERRA conflicts. The program has more than 500 ombudsmen nationwide who are specifically trained on the rights and responsibilities outlined in USERRA, the use of neutral, informal mediation techniques, and how to further an understanding of the USERRA statute and regulations. In addition to the Ombudsman Services program, ESGR operates a Customer Service Center (CSC) for 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 2019, ESGR received 19,452 contacts by telephone and email, of which 1,471 contacts resulted in actual USERRA mediation cases. ESGR's mediation efforts covered an array of USERRA-related issues that included 637 complaints involving some type of military discrimination; 813 complaints involving job reinstatement; and 21 complaints involving possible retaliation or reprisal. There were 334 USERRA mediation cases in which ESGR was unable to 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, and track problems, coordinate issues, and identify trends as part of their efforts to protect service members' and employers' rights.

DOD USERRA WORKING GROUP

In June 2017, the Deputy Assistant Secretary of Defense for Reserve Integration (DASD RI) established a DOD USERRA Working Group, led by ESGR, to review USERRA application and policy in the context of current RC utilization rates. The participants in the USERRA Working Group include representatives from the DASD RI office, ESGR, each of the Military Departments and RCs, and DOL. The working group's efforts in FY 2019 focused on clarifying DOD policies and establishing processes to 1) assist employers with verification of uniformed service and service dates, and 2) assist both service members and employers in better understanding the authority under which orders are written in order to determine which periods of uniformed service count against the five-year service limitation for reemployment protections as established in USERRA.

DEPARTMENT OF LABOR'S USERRA OUTREACH AND CLAIMS INVESTIGATION

VETS PUBLIC EDUCATION AND COMPLIANCE ASSISTANCE EFFORTS

VETS conducts a robust public outreach campaign to educate 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 components, VETS has briefed more than one million individuals on USERRA. In FY 2019, VETS presented USERRA information to 7,285 individuals including service members, members of professional groups, and members of the general public at 218 events. For example, on January 8, 2019, VETS presented USERRA information via webinar to more than 50 senior law enforcement leaders from a variety of law enforcement organizations at an annual conference hosted by the Sergeants Benevolent Association of New York City. On August 26, 2019, VETS also presented a live USERRA briefing to DOD and civilian personnel with the U.S. Army Intelligence Security Command (INSCOM) at Fort Belvoir, Virginia. Intelligence organizations such as INSCOM must investigate alleged USERRA violations internally, and it is very important that their staff understand applicable rights and obligations under the law. VETS' USERRA website contains a number of educational resources for service members, veterans, employers, employees, and others regarding USERRA, and can be found at:

[HTTPS://WWW.DOL.GOV/AGENCIES/VETS/PROGRAMS/USERRA](https://www.dol.gov/agencies/vets/programs/userra). The website contains the USERRA elaws Advisor, frequently-asked-questions, and other useful information.

Briefings to mobilizing and demobilizing members of the Guard and Reserve are given in collaboration with ESGR. Together, the two agencies strive to ensure that every service member receives a USERRA briefing upon mobilization and demobilization from active military service. In FY 2019, VETS and OSC also coordinated their efforts to provide technical assistance on USERRA to a number of Federal agencies.

VETS INVESTIGATIVE PROCESS

USERRA investigations are complaint-driven. An individual who believes that his or her USERRA rights have been violated may file a complaint (VETS Form 1010) with VETS online or submit a signed form in person or via electronic mail or personal 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 immediately opens a formal investigation. A brief notification of process rights, written in 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 an administrative subpoena to obtain the necessary evidence. To ensure investigations are of the highest quality and are conducted in a uniform and timely manner, VETS investigators are extensively trained in the legal aspects of USERRA, in

investigative techniques, and in the agency's operating procedures. If the evidence compiled in a USERRA investigation supports the allegations made, the agency will attempt to obtain satisfactory resolution through negotiation or mediation. VETS encourages all parties to resolve disputes promptly and avoid litigation.

VETS has 90 days to complete its investigation, unless VETS obtains an extension of time from the claimant for VETS to continue the investigation and attempt to resolve the case. At any point during the investigative process, the claimant may elect to withdraw the complaint from VETS and pursue the claim with private counsel or *pro se*.

CASE REFERRAL PROCESS

Upon completion of the investigation, if VETS does not resolve the case to the claimant's satisfaction, VETS advises the claimant in a written closing letter of his or her 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 his or her case be referred, VETS must refer the claim regardless of whether VETS has found merit in the complaint. Each VETS' case referral contains a memorandum analyzing the USERRA claim and providing an assessment on whether or not the claim has merit. VETS has 60 days to complete this referral process, unless VETS obtains an extension of time from the claimant.

PROGRAM INITIATIVES

In FY 2019, VETS engaged in a number of program improvement initiatives including completing its revision of the basic internal USERRA investigator course at the National Veterans' Training Institute, updating online investigator learning materials and informational sub-regulatory guidance and fact sheets, and executing a new Memorandum of Understanding with ESGR to better define both organizations' roles and responsibilities under USERRA. In addition, VETS staff actively participated in the DOD USERRA Working Group, materially contributing to efforts to clarify covered military service for employers and service members relating to USERRA's five-year cumulative service limitation, published in DOD Instruction 1205.12.

Also during FY 2019, VETS conducted a pilot project in order to determine if having specialized investigators would improve case efficiencies and overall case quality. Upon conclusion of the pilot project, in FY 2020 VETS will hire specialized regional investigators, one in each of VETS' six regions, to focus exclusively on compliance-related activities — USERRA investigations and compliance assistance outreach. Those six specialized regional investigators are expected to be on board, fully-trained, and operational by the end of FY 2020.

Additionally in FY 2019, VETS worked to develop the VETS' electronic Case Management System (VCMS), which will fully replace its first-generation Information Management System. Unlike its predecessor, the VCMS is entirely electronic, and incorporates all aspects of the investigative and referral processes, making case investigations more efficient and fungible.

The VCMS was deployed in Spring FY 2020, and will be continuously upgraded incorporating new system requirements and technological advancements.

DEPARTMENT OF JUSTICE ENFORCEMENT

DOJ and DOL work collaboratively to meet the goal of ensuring service members' USERRA rights are protected. If DOL cannot resolve a service member's USERRA claim against a private, State, or local government employer, the service member may ask DOL to refer his or her claim to the Attorney General for review.

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 or State agency, the action is brought in the name of the United States. In all other cases, the United States files suit in the name of the service member. DOJ also attempts to seek relief on the service member's behalf and to settle the claims without commencing an 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, it informs the service member of this decision, in writing, and notifies him or her that he or she has the 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 Division assumed USERRA enforcement authority in 2004 and through the end of FY 2019, it has filed 107 USERRA lawsuits and favorably resolved 195 USERRA complaints either through consent decrees obtained in those suits or through facilitated private settlements. Under the current administration through the end of FY 2019, DOJ has filed eight complaints on behalf of ten service members and filed or negotiated private settlements in excess of \$750,000. For example, on December 17, 2018, DOJ completed a settlement on behalf of Captain Rebecca Cruz, a member of the Arizona Air National Guard, resolving her USERRA claim against the City of Glendale, Arizona. DOJ's complaint in that matter, filed on August 14, 2017, alleged that the City terminated Captain Cruz's employment because she requested a military leave of absence. In resolution of her USERRA claim, Glendale agreed to compensate Captain Cruz for both lost wages and benefits and to provide pension credits to her with the Arizona State Pension Plan.

On August 8, 2019, DOJ reached a settlement agreement with the Warren County, North Carolina, Board of Education (Warren County) that resolved a USERRA suit on behalf of Dwayne Coffey, a Command Sergeant Major (CSM) in the Army Reserve. In its complaint, filed on April 10, 2019, the United States alleged that Warren County violated USERRA by eliminating CSM Coffey's employment position while he was on active duty with the military and failed to re-employ him in a comparable position when he returned.

Under the terms of the settlement agreement, Warren County reinstated CSM Coffey to the position of Dean of Students at Warren County Middle School, and provided him with back pay and pension benefits. The reinstatement position is the one that CSM Coffey held before his period of active duty with the Army.

DOJ also works closely with the Solicitor's Office (SOL) at DOL in training VETS investigators through both live and remote training sessions, discussing case trends, and collaborating on USERRA strategy. In FY 2019, DOJ and SOL delivered an internal VETS training presentation on complex pension issues in USERRA cases. DOJ and SOL also have a scheduled monthly call where all case referrals and case resolutions are discussed.

In FY 2020, 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 achieve the best possible result for the service member. The United States will also continue to seek out opportunities to participate as *amicus curiae* and file statements of interest on behalf of service members furthering DOJ's continued enforcement powers under the statute.

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 policy for the Federal Government to ensure it meets that goal.

During FY 2019, VETS and OSC professional staff collaborated to provide technical assistance and guidance on a number of highly complex issues to Federal agencies, teaching and training agency staff on the law and best practices set forth in OPM's guidance. VETS and OSC continue to collaborate in this effort, which has earned praise from agency officials who received their guidance. These activities were conducted in furtherance of the idea that the Federal Government should be a model employer, particularly with respect to honoring its commitment to preserving and promoting service members' and veterans' employment rights.

Moving forward into the coming fiscal years, VETS will continue its plans to increase these activities. Furthermore, in an effort to broaden and strengthen partnerships with other Federal agencies, VETS, in coordination with OSC, DOD, and OPM, will continue to work together with its Federal partners to identify and share best practices to ensure that our nation's veterans are

well served. Through these partnerships, VETS can better address issues and respond to requests for assistance, more effectively promote veteran employment in the Federal sector, and develop new ideas and additional ways to collaborate with employers on veteran employment initiatives.

MANDATED REPORTING REQUIREMENTS

SECTION 4332 OF USERRA, 38 U.S.C. § 4332, 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 UNDER THIS CHAPTER DURING THE FISCAL YEAR FOR WHICH THE REPORT IS MADE

DOL reviewed 950 new unique² cases in FY 2019 opened pursuant to a submitted VETS Form 1010 complaint. The table below provides the numbers of unique USERRA cases reviewed by DOL and OSC in FY 2014 – FY 2019.

Figure 1. Unique USERRA Cases Reviewed by DOL and OSC³

| Fiscal Year | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|-----------------|---------|---------|---------|---------|---------|---------|
| Total New Cases | 1,286 | 1,123 | 930 | 944 | 917 | 950 |
| Total Cases | 1,511 | 1,288 | 1,107 | 1,098 | 1,095 | 1,127 |

During FY 2019, DOL carried over an additional 163 unique cases (open investigations) from 2018. During FY 2019, DOL reopened (at the claimants’ request) 11 cases from FY 2018 and three from FY 2017 or earlier. In sum, DOL reviewed a total of 1,127 unique cases in FY 2019.

2. THE NUMBER OF CASES REVIEWED BY ESGR, ON BEHALF OF THE SECRETARY OF DEFENSE, DURING THE FISCAL YEAR

During FY 2019, ESGR received 19,452 contacts by telephone and email. Of those contacts, 1,471 resulted in actual USERRA cases reviewed by ESGR Ombudsmen.

3. THE NUMBER OF CASES REFERRED TO THE ATTORNEY GENERAL OR THE SPECIAL COUNSEL PURSUANT TO SECTION 4323 OR 4324, RESPECTIVELY, DURING SUCH FISCAL

² 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.

³ This table captures unique cases also reviewed by OSC in FY 2014 under a demonstration project established by the Veterans Benefits Act of 2010. New unique cases reviewed by OSC totaled 146 in FY 2014. Unique case assignments to OSC under this demonstration project ended in FY 2014.

YEAR AND THE NUMBER OF ACTIONS INITIATED BY THE OFFICE OF THE SPECIAL COUNSEL BEFORE THE MERIT SYSTEMS PROTECTION BOARD PURSUANT TO SECTION 4324 DURING SUCH FISCAL YEAR

In FY 2019, the Attorney General received 40⁴ cases and OSC received 21 cases referred by DOL. During the fiscal year, OSC did not initiate any new actions before the MSPB. The nature and status of these referred cases is reflected in mandatory reporting requirement number seven of this report.

4. THE NUMBER OF COMPLAINTS FILED BY THE ATTORNEY GENERAL PURSUANT TO SECTION 4323 DURING SUCH FISCAL YEAR

DOJ filed three USERRA complaints in Federal court in FY 2019.

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 1,404 individuals who had filed the 1,471 cases reviewed by ESGR Ombudsmen in FY 2019, and the date of each case. VETS compared the ESGR data to its own data⁵ on cases initially opened between October 1, 2018 and October 31, 2019⁶. This comparison resulted in 133 likely matches, thus, it appears that 9% of 2019 ESGR cases were subsequently opened as VETS cases.

6. WITH RESPECT TO THE CASES REPORTED ON PURSUANT TO PARAGRAPHS 1, 2, 3, 4, AND 5—

A. THE NUMBER OF SUCH CASES THAT INVOLVE A DISABILITY-RELATED ISSUE

- i. Fourteen of the new unique cases first reviewed by VETS in FY 2019 (1.5%) involved a disability-related issue.
- ii. Thirteen of the ESGR cases first reviewed in FY 2019 (0.9%) involved a disability related issue.
- iii. Of the referral cases received by DOJ and OSC from DOL in FY 2019 for consideration of litigation, one of those received by OSC and none of those received by DOJ involved a disability-related issue.
- iv. Of the three USERRA complaints filed by DOJ in FY 2019, none involved a disability related issue.
- v. With respect to the 133 cases reviewed by DOL and ESGR involving the same person in FY 2019, none involved a disability-related issue.

⁴ 46 cases were referred to DOJ in FY 2019. Of those, six cases were still being prepared for transmission to DOJ at the end of FY 2019. Accordingly, DOJ received 40 referrals from DOL in FY 2019.

⁵ Absent more specific data on the employer(s) and specific allegation(s) involved, case matching cannot be made with complete confidence.

⁶ October 2019 VETS data was included to capture the ESGR cases that were opened late FY 2019 and may have been filed with VETS in October 2019.

B. THE NUMBER OF SUCH CASES THAT INVOLVE A PERSON WHO HAS A SERVICE-CONNECTED DISABILITY

- i. In FY 2019, VETS asked claimants whether they had a service-connected disability. Among the 950 new unique cases VETS received, VETS obtained responses from 915 claimants, 270 (29.5%) of whom reported having such a disability. Among these 270 claimants, 13 also claimed a USERRA related disability. Among the 646 claimants who responded but did not report having a service-connected disability, one claimed a USERRA-related disability issue.
- ii. No information is available on the number of cases handled by ESGR that involved a person with a service-connected disability.
- iii. Of the referral cases received by DOJ from DOL in FY 2019 for consideration of litigation, 17 involved a claimant who reported a service-connected disability, and none included a USERRA-related disability issue. Six of the referral cases received by OSC from DOL in FY 2019 involved a claimant who reported a service-connected disability, and one included a USERRA-related disability issue.
- iv. Of the 3 USERRA complaints filed by DOJ in FY 2019, none involved a service-connected disability.
- v. With respect to the 133 cases reviewed by VETS and ESGR involving the same person in FY 2019, VETS obtained service-connected disability responses from 130 of these claimants, 32 (24.6%) of whom reported having such a disability. None of the claimants among the 32 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. CASES REVIEWED BY THE DEPARTMENT OF LABOR

The following issues were raised in the new unique USERRA cases reviewed by DOL. Because many USERRA cases involve multiple issues, the number of cases in this chart exceeds the 950 new unique cases reported by VETS in FY 2019 and the combined percentages exceed 100%.

Figure 2. Cases Opened by VETS in FY 2019

| USERRA ISSUE | VETS CASES ALLEGING ISSUE | |
|--|---------------------------|---------|
| | NUMBER | PERCENT |
| Military obligations discrimination | 417 | 43.9% |
| Reinstatement | 139 | 14.6% |
| Other non-seniority benefits | 36 | 3.8% |
| Promotion | 61 | 6.4% |
| Vacation | 13 | 1.4% |
| Status | 15 | 1.6% |
| Pay rate | 26 | 2.7% |
| Reasonable accommodation/retraining for non-qualified/non-disabled | 5 | 0.5% |
| Discrimination as retaliation for any action | 106 | 11.2% |
| Seniority | 13 | 1.4% |
| Pension | 35 | 3.7% |
| Initial hiring discrimination | 57 | 6.0% |
| Layoff | 29 | 3.1% |
| Special protected period discharged | 4 | 0.4% |
| Health benefits | 10 | 1.1% |
| Reasonable accommodations/retraining for disabled | 14 | 1.5% |
| Other | 40 | 4.2% |

DOL investigated and closed 940 cases in FY 2019 under the following closure codes (each code is explained in Figure 4):

Figure 3. Investigated and Subsequently Closed by VETS in FY 2019

| CLOSURE CODE | VETS CASES CLOSED | |
|---|-------------------|---------------|
| | NUMBER | PERCENT |
| No merit | 279 | 29.7% |
| <i>Referrals requested on cases closed in FY 2019: 34</i> | | |
| Administrative | 76 | 8.1% |
| <i>Referrals requested on cases closed in FY 2019: 1</i> | | |
| Claim granted | 82 | 8.7% |
| <i>Referrals requested on cases closed in FY 2019: 1</i> | | |
| Claim Settled | 90 | 9.6% |
| Claim Withdrawn – Claimant seeks no further action | 340 | 36.2% |
| Claim Withdrawn – Claimant to consult with ESGR | 5 | 0.5% |
| Not eligible | 41 | 4.4% |
| <i>Referrals requested on cases closed in FY 2019: 7</i> | | |
| Merit, not resolved | 27 | 2.9% |
| <i>Referrals requested on cases closed in FY 2019: 16</i> | | |
| TOTAL: | 940 | 100.0% |
| <i>Total referrals requested on cases closed in FY 2019: 59⁷</i> | | |

⁷ In addition to the 59 cases that were investigated and closed by VETS, and requested for referral to DOJ or OSC in FY 2019, there were seven cases that were requested for referral to DOJ or OSC in FY 2019. All seven of those requests were from cases that were closed in FY 2018 (1 “Claim Granted”, 4 “No Merit”, and 2 “Merit, not resolved”). In total there were 66 referrals requested in FY 2019.

Figure 4. CASE CLOSURE CODES EXPLAINED

- **ADMINISTRATIVE CLOSURE:** A case should be closed administratively under any of the following circumstances:
 - **Lack of Interest** – Administrative closure is appropriate when the claimant clearly displays lack of interest or is obviously uncooperative. Examples are failure to reply to multiple VETS’ letters, failure to give VETS a change of address, failure to supply information that could be easily obtained, and failure to attend scheduled meetings or conferences.
 - **Continued Unauthorized Contact by Third Party with Employer** – Although a claimant is entitled to be represented by a third party under USERRA while the case is investigated by VETS, if the representation interferes with the investigation, he or she will be informed that VETS can no longer continue its involvement in the case and that the case will be administratively closed.
- **CLAIM GRANTED:** When the employer grants all of the claimant’s entitlements.
- **CLAIM SETTLED:** When the claimant and the employer agree to settle the case potentially for less than the claimant’s full entitlements under USERRA.
- **WITHDRAWN CLAIM (CLAIMANT SEEKS NO FURTHER ACTION):** When the claimant informs VETS in writing of his/her desire to withdraw the claim.
- **WITHDRAWN CLAIM (CLAIMANT SEEKS TO CONSULT WITH ESGR):** When the claimant elects to withdraw from VETS investigation to informally resolve the matter with ESGR.
- **NOT ELIGIBLE:** If a case has already been opened, and VETS finds that the claimant does not meet the eligibility requirements in the statute, the case should be discussed with the claimant and, with his/her concurrence, closed on the basis of no eligibility.
- **NO MERIT:** The claimant is not entitled to relief for reasons other than failure to meet eligibility requirements.
- **CASES REFERRED:** Unsettled cases are closed only when they are referred by DOL for appropriate referral action.
- **MERIT, NOT RESOLVED:** When the completed investigation finds merit to the complaint, but VETS is unable to obtain a satisfactory resolution.
- **MERIT UNDETERMINED:** When the investigation is not complete but the statutory deadline for case completion (or an extension previously agreed to by the claimant) is reached and the claimant does not agree to a further extension.

B. CASES REVIEWED BY THE ESGR ON BEHALF OF THE SECRETARY OF DEFENSE

ESGR Ombudsman services covered an array of USERRA issues that included 637 complaints involving some type of military discrimination, 813 complaints involving job reinstatement, and 21 complaints involving possible retaliation or reprisal during FY 2019.

ESGR resolved 1,137 of its 1,471 Ombudsman cases. There were 334 USERRA Ombudsman cases in which the employee and employer could not reach an agreement. In these instances ESGR Ombudsmen informed both parties that the employee had the option to file a case with DOL or seek assistance through a private attorney.

The following crosswalk 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 5. Crosswalk of USERRA Issues, FY 2019

ESGR Ombudsman Services ↔ VETS’ National Guard & Reserve Complaint Cases

| Primary Categories | ESGR Ombudsman Cases “Problem Codes” (Converted to VETS’ Issue Codes) | | VETS Complaint Cases “Issue Codes” * | |
|--|--|---|---|-----|
| Discrimination | Military Obligation Discrimination | 596 | ID – Military Obligations Discrimination | 373 |
| | Initial Hiring Discrimination | 30 | II – Initial Hiring Discrimination | 32 |
| | Other | 11 | | |
| | 637 Ombudsman Cases (43%) | | 405 Issues in 403 Complaint Cases (53% of Complaint Cases) | |
| Reinstatement/ Reemployment | Health Benefits | 28 | IH – Health Benefits | 10 |
| | Pension | 23 | IP - Pension | 32 |
| | Seniority | 18 | IS - Seniority | 11 |
| | Other Non-Seniority Benefits | 56 | IB – Other Non-Seniority Benefits | 31 |
| | Status | 39 | IZ - Status | 14 |
| | Layoff | 9 | IL - Layoff | 23 |
| | Vacation | 83 | IV - Vacation | 13 |
| | Reinstatement | 387 | IR - Reinstatement | 113 |
| | Promotion | 89 | IT - Promotion | 54 |
| | Reasonable Accommodations/Retraining for Disabled | 13 | IA – Reasonable Accommodations/ Retraining for Disabled | 4 |
| | Reasonable Accommodation/Retraining for Non-Qualified Non-Disabled | 2 | IW – Reasonable Accommodations/Retraining for Non-Qualified Non-Disabled | 5 |
| | Pay Rate | 63 | IM – Pay Rate | 21 |
| | Special Protected Period Discharge | 3 | IF – Special Protected Period Discharge | 4 |
| 813 Ombudsman Cases (55%) | | 335 Issues in 273 Complaint Cases (36% of Complaint Cases) | | |

* 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 23 “Other” VETS Issues and Cases from this chart.

ESGR Ombudsman Services ↔ VETS’ National Guard & Reserve Complaint Cases

**Primary
Categories**

**ESGR
Ombudsman Cases
“Problem Codes”**
(Converted to VETS’ Issue Codes)

**VETS
Complaint Cases
“Issue Codes” ***

| | | | | |
|-----------------|--|----|--|----|
| Reprisal | Discrimination as Retaliation for any Action | 21 | ID2 – Discrimination as Retaliation for any Action | 64 |
| | 21 Ombudsman Cases (1.42%) | | 64 Issues in 64 Complaint Cases (8.4% of Complaint Cases) | |

C. CASES REFERRED TO THE DEPARTMENT OF JUSTICE OR THE OFFICE OF SPECIAL COUNSEL⁸

CASES REFERRED TO THE DEPARTMENT OF JUSTICE

In FY 2019, DOJ received a total of 40 referrals from DOL at the claimant’s request. Sixteen were assessed as having merit and twenty-four were assessed as not having merit.

Out of the cases that were assessed as having merit, DOJ offered representation in two cases, and declined representation in seven cases. Six referrals involved state agencies as potential defendants, one of which DOJ facilitated settlement, and five of which were still under consideration by DOJ in FY 2019. The remaining referral assessed as having merit was still under consideration by DOJ in FY 2019.

Out of the twenty-four cases assessed as having non-merit, based on DOL’s assessment and DOJ’s independent analysis of the merits of each referral, DOJ declined representation with respect to 10 referrals. Nine referrals involved a State agency, seven of which DOJ declined to pursue litigation and had been referred as non-merit cases by DOL, and two of which were still under consideration by DOJ in FY 2019. The remaining five referrals were still under consideration by DOJ in FY 2019.

The cases referred to DOJ in FY 2019 involved a number of USERRA issues. Approximately 23% (9) of these cases involved allegations of termination and/or discharge; approximately 23% (9) of these cases involved reemployment allegations, such as accommodation and disability; while approximately 15% (6) of these 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, with approximately 10% (4) involving failure to promote; approximately 3% (1) involving failure to hire or recruit; 5% (2) denial of access; 3% (1) disparate treatment; and approximately

⁸ In contrast with Figure 3 above, this section counts the referrals actually received by DOJ and OSC during FY 2019. Therefore this section includes referrals from requests that were made in FY 2018 that were received in FY 2019, and excludes requests that were made in FY 2019 that were not received until FY 2020.

35% (14) involving actions affecting the claimant's terms and conditions of employment, such as hostile work environment, discipline or harassment. The remaining 5% (2) of these cases involved allegations of retaliation for asserting USERRA protection.⁹

CASES REFERRED TO THE OFFICE OF SPECIAL COUNSEL

During FY 2019, OSC received a total of 21 referrals from DOL at the claimant's request, under 38 U.S.C. § 4324. Additionally, five cases referred to OSC during the previous fiscal year remained pending at the beginning of FY 2019. Thus, 26 total referral cases were pending at OSC during the fiscal year. OSC closed or resolved 21 of the 26 cases during the fiscal year (approximately 83% within the 60 day time limit), while five cases remained pending at the end of the fiscal year. OSC did not file any new USERRA appeals with the U.S. Merit Systems Protection Board during FY 2019 but continues to represent one service member in an appeal filed during a previous fiscal year that remains pending before the Board.

In 14 of the 21 cases DOL referred to OSC during FY 2019, the service member alleged discrimination based on uniformed service, such as termination, non-promotion, non-selection, or denial of employment benefits; in three cases, retaliation for exercising USERRA rights; and in seven cases, violations of reemployment rights.¹⁰

D. COMPLAINTS FILED BY THE ATTORNEY GENERAL

DOJ filed three USERRA complaints in FY 2019. One case was settled in FY 2019. The remaining two cases were in active litigation in FY 2019. In addition to the Coffey and Cruz cases discussed above, the Department also filed suit against Watermark Solutions (Watermark), a private corporation located in Phoenix, Arizona, on December 18, 2018. The complaint alleged that Watermark violated the employment rights of Staff Sergeant Larry Green (SSgt Green), a reservist in the United States Air Force, because SSgt Green's requirement to perform service in the Air Force Reserves was a motivating factor in Watermark's decision to terminate his employment. At the time that SSgt Green was hired by Watermark in July 2015, he informed Watermark of his military training obligations as an Air Force Reservist. Prior to his employment with Watermark, SSgt Green served his country for six years on active duty and has been a member of the United States Air Force Reserves since 2015. Despite the fact SSgt Green submitted notice of his Reserve training duties when he was hired, the complaint alleges that in June 2016, Watermark terminated SSgt Green's employment within days of being notified of the dates of his pending military training obligations.

On June 27, 2019, DOL and DOJ filed a joint amicus brief in the U.S. Court of Appeals for the Seventh Circuit in the case of *Mueller v. City of Joliet*, 18-3609, supporting an Illinois

⁹ Several cases involved multiple issues. Each issue was counted separately.

¹⁰ Some cases involved multiple issues. Each issue was counted separately.

National Guard member, David Mueller, in his argument that USERRA applies to him as he served on National Guard Duty Orders issued under Title 32. Mr. Mueller had filed a complaint alleging that the City of Joliet violated his USERRA protections by denying him the opportunity to accrue employment benefits while he was deployed as part of a state counter-drug operation. The District Court had dismissed Mr. Mueller's claim and agreed with the civilian employer's contentions that USERRA does not protect a service member called to duty in a state counter-drug operation because it considered this to be state, not federal, National Guard service. On December 4, 2019, the Seventh Circuit agreed with Mr. Mueller that the District Court's decision should be overturned because Mr. Mueller's service in the counter-drug task force constituted "full-time National Guard duty" under Title 32, constitutes "uniformed service" within the meaning of USERRA, and thus entitled him to USERRA's employment protection.

On September 30, 2019, DOJ filed a complaint in the Northern District of Mississippi against Coahoma County, Mississippi (Coahoma County), to protect the employment rights of Army Reservist, Staff Sergeant (SSG) Jason Sims Sr. According to the complaint, SSG Sims was employed with the Coahoma County Sheriff's Office from 2014 to 2018 during which time he also performed military service by teaching leadership courses at the United States Army Installation at Fort Knox, Kentucky. The complaint alleges that he was fired because of this military service obligation, in violation of USERRA. The lawsuit seeks reinstatement of SSG Sims to his employment with the Coahoma County Sheriff's Office and the recovery of back wages and other benefits of employment that Sims lost as a result of his termination. The matter is currently in litigation.

And finally, on January 7, 2019, DOJ announced the settlement of a matter the Justice Department litigated since FY 2017 against Farmacia Lugo, Inc. (Farmacia Lugo). The complaint in that matter alleged that Farmacia Lugo, a business based in Puerto Rico, violated the employment rights of U.S. Army Reservist Anna J. Santiago under USERRA. Santiago has served her country as a member of the Army Reserves since 2012. She currently holds the rank of Private First Class and serves as a culinary specialist. According to the complaint, PFC Santiago's military service was a motivating factor in Farmacia Lugo's decision to terminate her employment. DOJ claimed that, in 2014 and 2015, PFC Santiago served multiple periods of military duty which caused her to be absent from her job as a pharmacy technician. The complaint alleged that during and after PFC Santiago's periods of military service, the owner of Farmacia Lugo began making negative statements about PFC Santiago and her military service obligations. This pattern of disparagement of PFC Santiago's military service by her employer was ongoing and continued through November 2015 after she returned from military training. The complaint further alleged that, on November 11, 2015, the owner of Farmacia Lugo terminated PFC Santiago in front of other employees and customers. The complaint alleged that during the termination, the employer told PFC Santiago that it was appropriate that it occurred on Veterans Day because her military service was the cause of her termination.

E. COMPLAINTS FILED BY THE OFFICE OF SPECIAL COUNSEL

OSC did not file any new USERRA appeals with the U.S. Merit Systems Protection Board during FY 2019 but continues to represent one service member in an appeal filed during a previous fiscal year that remains pending before the Board.

F. CASES REVIEWED BY DOL AND ESGR INVOLVING THE SAME PERSON

DOL's response to paragraph 5 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, 133 likely matches were identified. This figure indicates that first ESGR, and subsequently DOL, handled the same individuals' claims.

DOL closed all but one of these 133 likely matches by April 21, 2020, under the following closure codes: no merit: 50 (37.6%); administrative: 10 (7.5%); claim granted: 14 (10.5%); claim settled: 19 (14.3%); claim withdrawn: 39 (29.3%); not eligible: 2 (1.5%); merit, not resolved: 8 (6.0%); and there were no merit undetermined. 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 133 likely match cases were distributed among the various VETS closure codes.

Figure 6

| VETS' Data For 133 Likely Case Matches with FY 2019 ESGR Cases* | | | | | | | | | | | |
|--|----------------------------|----------------------|----------------------|------------------------|---------------------------|----------------------------|-----------------|---------------------|-------------------------------------|---|---|
| VETS' USERRA Issue Codes | VETS' Closure Codes | | | | | | | | | NUMBER OF CASES FOR EACH ISSUE CODE: | PERCENT OF ALL LIKELY MATCH CASES: |
| | Administrative | Claim Granted | Claim Settled | Claim Withdrawn | Merit Undetermined | Merit, Not Resolved | No Merit | Not Eligible | [Still Open as of 6/18/2019] | | |
| Military Obligations Discrimination | 7 | 6 | 9 | 21 | 0 | 5 | 25 | 1 | 0 | 74 | 55.6% |
| Reinstatement | 1 | 2 | 6 | 7 | 0 | 2 | 9 | 0 | 0 | 27 | 20.3% |
| Other Non-Seniority Benefits | 0 | 1 | 0 | 0 | 0 | 0 | 2 | 0 | 1 | 4 | 3.0% |
| Promotion | 0 | 1 | 1 | 2 | 0 | 0 | 2 | 0 | 0 | 6 | 4.5% |
| Vacation | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 3 | 2.3% |
| Status | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 3 | 2.3% |
| Pay Rate | 0 | 1 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 4 | 3.0% |
| Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Discrimination as Retaliation for any Action | 2 | 0 | 1 | 4 | 0 | 0 | 6 | 0 | 0 | 13 | 9.8% |
| Seniority | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 1.5% |
| Pension | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 2 | 1.5% |
| Initial Hiring Discrimination | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Layoff | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Special Protected Period Discharge | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0.8% |
| Health Benefits | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0.8% |
| Reasonable Accommodations/Retraining for Disabled | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Other | 0 | 0 | 0 | 1 | 0 | 0 | 2 | 1 | 1 | 5 | 3.8% |
| NUMBER OF ISSUE CODES FOR EACH CLOSURE CODE: | 10 | 14 | 19 | 39 | 0 | 8 | 50 | 2 | 3 | 145 | |
| PERCENT OF ALL LIKELY MATCH CASES: | 7.5% | 10.5% | 14.3% | 29.3% | 0.0% | 6.0% | 37.6% | 1.5% | 2.3% | | 109.0% |

* NOTE: 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 exceed the 133 ESGR and VETS cases involving the same person, and the combined percentages exceed 100%. Matching of FY 2019 ESGR cases and VETS cases initially opened 10/1/2018 to 10/31/2019 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 SUCH CASES THAT INVOLVE PERSONS WITH DIFFERENT OCCUPATIONS OR PERSONS SEEKING DIFFERENT OCCUPATIONS, AS DESIGNATED BY THE STANDARD OCCUPATIONAL CLASSIFICATION SYSTEM

VETS is the only Federal agency that collected occupational data on USERRA claimants and recorded the respective Standard Occupational Classification System (SOCS) code in FY 2019. Therefore, SOCS code data is not available for ESGR mediation cases. The chart below shows the full distribution of the SOCS codes in FY 2019 USERRA cases, across four different 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:

- Out of 919 (96.7%)¹¹ of the unique complaints filed in FY 2019, 18.9% of complaints involved Protective Service Occupations; 11.9% involved Management occupations; and 10.2% involved Office and Administrative Support occupations.

¹¹ Total is less than 100% because the SOCS code was not recorded for some cases.

- Out of 130 (97.7%)¹² of the cases reviewed by VETS and ESGR, likely involving the same person in FY 2019, 23% of those cases involved Protective Service occupations; both Management and Office and Administrative Support occupations involved 10% of complaints; and both Business and Financial Operations and Transportation and Material Moving occupations involved 8.5% of involved complaints.
- Out of the 40 referral cases received by the Attorney General from DOL in FY 2019, 32.5% of those cases involved Protective Service occupations; 15.0% involved Management occupations; and 10.0% involved Business and Financial Operations occupations.
- Out of the 21 referral cases received by OSC from DOL in FY 2019, 38% of complaints involved Protective Service occupations; 9.5% of complaints involved each of the following five occupations: Management; Office and Administrative Support; Business and Financial Operations; Arts, Design, Entertainment, Sports, and Media; and Installation, Maintenance, and Repair.

**Figure 7. Occupations Involved in FY 2019 USERRA CASES¹³ -
As designated by the Standard Occupational Classification System (SOCS)**

| SOCS Job Family | Percent of Cases involving SOCS Code | | | |
|--|--------------------------------------|--------------|------|-----------------------|
| | VETS Cases | Referrals to | | Common to VETS & ESGR |
| | | DOJ | OSC | |
| Protective Service | 18.9% | 32.6% | 38% | 23% |
| Management | 11.9% | 17.4% | 9.5% | 10% |
| Office and Administrative Support | 10.2% | 8.7% | 9.5% | 10% |
| Transportation and Material Moving | 7.0% | 4.4% | 0.0% | 8.5% |
| Installation, Maintenance, and Repair | 4.0% | 4.4% | 9.5% | 3.0% |
| Business and Financial Operations | 7.6% | 8.7% | 9.5% | 8.5% |
| Healthcare Practitioners and Technical | 5.0% | 6.5% | 0.0% | 5.4% |
| Production | 3.7% | 2.0% | 0.0% | 5.4% |

¹² Total is less than 100% because the SOCS code was not recorded for some cases.

¹³ The following occupations accounted for 2.5% or fewer within each case referral category show in this chart with exceptions as noted here: Military Specific (Exception: 4.35% of Referrals to DOJ); Arts, Design, Entertainment, Sports, and Media (Exception: 9.52% of Referrals to OSC, 3% of Cases common to both VETS and ESGR); Legal; Farming, Fishing, and Forestry (Exception: 4.76% of Referrals to OSC); and Architecture and Engineering (Exception: 3% of Cases common to both VETS and ESGR).

| SOCS Job Family | Percent of Cases involving SOCS Code | | | |
|-----------------------------|--------------------------------------|--------------|------|-----------------------|
| | VETS Cases | Referrals to | | Common to VETS & ESGR |
| | | DOJ | OSC | |
| Computer and Mathematical | 3.5% | 4.4% | 0% | 3.8% |
| Sales and Related | 4.4% | 0% | 4.8% | 3.8% |
| Construction and Extraction | 3.0% | 0% | 0% | 3.8% |

9. AN INDICATION OF WHETHER THERE ARE ANY APPARENT PATTERNS OF VIOLATION OF THE PROVISIONS OF THIS CHAPTER, TOGETHER WITH AN EXPLANATION THEREOF

No patterns of violations of USERRA became apparent in FY 2019. 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 THIS CHAPTER, BETWEEN EMPLOYERS AND PERSONS SEEKING EMPLOYMENT OR REEMPLOYMENT

Recommendation from DOL: None at this time.

Recommendation from DOJ: None at this time.

USERRA annual reports are available for fiscal years (FY) 1995-1999 and 2004-2018. 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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