U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs) - News Release[1]:

National Guard (In Federal Status) and Reserve Mobilized as of July 18, 2007

This week, the army, navy, air force and Marine Corps announced an increase, while the coast guard number remained the same. The net collective result is 1,036 more reservists mobilized than last week.

At any given time, services may mobilize some units and individuals while demobilizing others, making it possible for these figures to either increase or decrease. Total number currently on active duty in support of the partial mobilization for the army, national guard and army reserves 77,168; navy reserve, 5,087; air national guard and air force reserve, 5,612; Marine Corps Reserve, 5,928; and the coast guard reserve, 301. This brings the total National Guard and reserve personnel, who have been mobilized, to 94,096, including both units and individual augmentees.

The Reserve Components of the Armed Forces of the United States are made up of approximately 1.1 million Reservists.[2] Of that number, approximately 858,000 are in a drilling status which means that, at a minimum, they serve their country 39 days per year.[3] Since September 11, 2001, 617,703 Reservists have been mobilized[4] in support of Operations Noble Eagle, Enduring Freedom and Iraqi Freedom.[5] Since mobilization authority is typically for a period of 24 months, the "minimum" is no longer the period of time that most concerns Reservists, their families and their employers. As of the date of

this paper, approximately 94,000 individuals who likely have primary private and public sector employment are otherwise engaged in the defense of our national interests.

The Reserve Components provide 45% of the total U.S. military force but only costs the American taxpayer 7% of the Defense Budget.[6] Clearly, the Reservist is a "good deal" for the military and the taxpayer. That discount, enjoyed by the nation as a whole, is purchased by the service ethos of the individual Reservist and his/her family, with a corresponding charge to American business. Businesses that employ Reservists need to ensure that managers are fully aware of the protections afforded Reservists under the law – especially with the recent increase in the nation's operational use of the reserves. The 617,703 mobilized Reservists ("military employees") have had a significant economic impact on employers during these most recent mobilizations, before, during and after their active service. Manager's need to ensure that the impact of these costs do not lead to discrimination against the military employees.

The purpose of this paper is to provide a historical context and overview of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The Act's ethical context is framed by the following question: What is proper amount of protection that should be given to citizen-soldiers and Marines when they return to civilian employment after completion of a period of active military service? Given the legislative intent and judicial applications of the law, it would appear that the ethical framework has favored the military employee. The "motivating factor" rule applied by the courts is the expression of policy that attempts to answer the ethical question in a manner that supports the nation's continued reliance on the Guard and Reserve.

HISTORICAL CONTEXT OF USERRA

The Selective Training and Service Act of 1940[7] required men between the ages of 21 and 30 to register with local draft boards, but also contained provisions to address the employment needs of draftees, guard and reserve forces. President Franklin Roosevelt signed the Selective Training and Service Act of 1940 which created the country's first peacetime draft and formally established the Selective Service System as an independent Federal agency.[8] Following the World War II, Congress enacted additional employment protections as part of the Military Service Act[9] to protect the typical draftee who served two to three years and then returned to civilian life.[10] From 1948 until 1973, during both peacetime and periods of conflict, men were drafted to fill vacancies in the armed forces which could not be filled through voluntary means. During this time, the interests of the Reservists and the Draftee were essentially the same: having civilian employment at the conclusion of duty.

In 1974, Congress passed the Vietnam Era Veteran's Readjustment Assistance Act, or what is commonly referred to as the Veterans Reemployment Rights Act (VRRA).[11] By this time the draft had been rescinded and the policy rationale for statutory employment protection was that such protection was seen as an inducement to lure one-term volunteers to replace draftees and to promote continued service in those separating from active duty.[12] Enticing service members to remain available in a reserve capacity was critical at this time due to the military's shift from relying on a large standing force to a leaner active component complimented by a reserve component.[13] Complimenting this shift in military policy, Congress assisted by passing laws that would aid reserve members with civilian employment issues.[14] VRRA contained several

provisions guaranteeing the reinstatement rights of employees who were inducted into active duty as a result of Selective Service or activated as a result of a reserve order.[15]

AN OVERVIEW OF USERRA

The Uniformed Services Employment and Reemployment Rights Act of 1994, enacted October 13, 1994, prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed military services.[16] USERRA prohibits discrimination, or the denying of any benefit of employment, on the basis of an individual's membership, participation or obligation for service in the armed forces. USERRA also protects the rights of veterans, reservists, National Guard members and other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.[17]

The policy justifications for USERRA, enunciated by Congress, included the desire to: (1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; (2) 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 (3) to prohibit discrimination against persons because of their service in the uniformed services.[18] It [was] the sense of Congress that the Federal Government should [also] be a model employer in carrying out the provisions of [USERRA].[19]

Under USERRA, a person who leaves a civilian job for voluntary or involuntary "service in the uniformed services"[20] is entitled to re-employment upon return (with

accrued seniority) if they left the job for the purpose of performing military service with prior oral or written notice to the civilian employer.[21] Such notice is not required in instances of military necessity or impossibility.[22] Additionally, after the conclusion of service, the employee must report back to work in a timely manner.[23] Generally, the cumulative length of military leave protected by USERRA may not exceed five years.[24]

After completion of protected military service, under USERRA, the military employee must provide timely notice of his/her intention to return to their former position with their employer.[25] The deadline for such notice is determined by the length of time the member served in the military.[26] For employers, USERRA has a number of guidelines regarding reemployment and other obligations. Under USERRA, employers are required to promptly reemploy the returning military employee.[27] In general, the employer is required to restore or assign the military employee to the job the military employee would have attained had he/she not been absent for military service. This is commonly referred to as the "escalator" principle.[28] Nevertheless, reemployment rights are not absolute; employers are only required to use "reasonable efforts" to enable the military employee to qualify for the "escalator" position. If the military employee cannot or does not qualify for an escalator position, at a minimum, the employer must place the military employee in the same position the military employee had before the USERRA protected leave.[29]

Reemployment of a person is excused if an employer's circumstances have changed so much that reemployment of the person would be impossible or unreasonable.[30] A reduction-in-force that would have included the military employee would be an example of such an impossible circumstance.[31] Furthermore, "Employers

are excused from making efforts to qualify returning service members or from accommodating individuals with service connected disabilities, when doing so would be of such difficulty or expense as to cause *undue hardship*."[32]

"Impossibility" under USERRA differs significantly from the "impossibility" standard in contract law or other contexts. In Hannah v. Hicks,[33] adjudicated under the VRRA, the district court in Virginia denied the plaintiff reemployment in her former job with the Commonwealth Attorney for the City of Richmond. Susan Hannah, who worked for the Commonwealth Attorney and was also a Naval Reservist, was called to active service with the Navy. During her period of military leave, an election was held and a new Commonwealth Attorney was elected. After being denied reemployment upon her return, Hannah sued. In denying Hannah's claim, the court explained: The VRRA specifically stated that a veteran should be restored to his or her former position "unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so."[34] In this instance, the "impossibility" standard was met because Hannah was an at-will employee in a previous political administration. The newly elected Commonwealth Attorney typically had the ability to replace the administration he had just defeated in an election. The court noted that in this particular circumstance, Hannah was not denied reemployment due to her service with the Navy, but due to her service with the previous political administration. For purposes of this analysis, Hannah's military service was not a "motivating factor" that led to the denial of her request to be reemployed. Nevertheless, from a judicial and political perspective, impossibility is in the eyes of the beholder.

Although Hannah was considered an at-will employee, her outcome was not typical. For defined periods after return from service, the military employee is not truly an at-will employee. USERRA actually provides for job protection during defined time periods after a military employee returns from duty. In addition to generally requiring companies to reemploy military employees upon their return from USERRA protected military leave, the law provides that an employee who has been on leave for over 180 days may not be terminated for reasons other than "cause" for one year.[35] For leave periods of less than 180 days, military employees may not be terminated for reasons other than cause for six months following their return to work.[36] Nevertheless, employers who can demonstrate the aforementioned *undue hardship* still may have the ability to terminate the employment of a military employee during these protected periods if the circumstances warrant such action.

USERRA does not require that employers pay the military employee during periods of military leave. Military employees may use accrued vacation or similar paid leave, but an employer cannot require the employee to do so.[37] With respect to health insurance, benefits continue during military leave of 30 days or less, with the military employee paying his or her monthly share of the premium.[38] If the military leave exceeds 30 days, USERRA allows the employee to choose to continue health benefits, including those for dependents, for a period of 18 months.[39] Under USERRA, the employer cannot require the military employee to pay more than 102 percent of the full premium for the health insurance.[40] As for benefits other than health insurance, employees on military leave are untitled to the same benefits as employees on other types of unpaid leave.[41]

USERRA protection is generally available to all noncareer service members; nevertheless there are specific instances in which a person's entitlements to USERRA protection may be terminated[42]: (1) a separation of such person from such uniformed service with a dishonorable or bad conduct discharge; (2) a separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned;(3) a dismissal of such person permitted under section 1161(a) of title 10[43]; (4) a dropping of such person from the rolls pursuant to section 1161(b) of title 10.[44]

The Veterans' Employment and Training Service (VETS) of the U.S. Department of Labor has the legal authority to enforce USERRA.[45] VETS has the ability to conduct an investigation of an alleged USERRA violation and can require the production of documents and the attendance of witnesses by subpoena.[46] To vindicate rights under USERRA, a plaintiff must make a written formal complaint against his/her employer.[47] Upon receipt of such complaint VETS will conduct an investigation to determine if the complaint has probable merit. If VETS concludes the allegations have probable merit, they will attempt to have the employer comply with USERRA.[48] If the employer refuses to comply, VETS informs the service member of the results of the investigation and of his/her rights to proceed further.[49]

Additionally, the military employee may pursue litigation through the services of the U.S. Attorney General, the Office of Special Counsel, or a private attorney.[50] The military employee has a right to a jury trial and can recover actual damages to include back pay, lost benefits, and pension adjustments.[51] Other equitable remedies include

reinstatement, provision of retroactive seniority, restored vacation and correction of personnel files.[52]

MOTIVATING FACTOR AND THE BURDEN OF PROOF

What is proper amount of protection that should be given to citizen-soldiers and Marines when they return to civilian employment after completion of a period of active military service?

Both the legislature and the courts have answered this question by providing a level of protection that does not allow employers to take military service into account when making decisions about the military employee's value to the firm or governmental organization. Section 4311 of USERRA states in pertinent part:

> ". . . (c) An employer shall be considered to have engaged in actions prohibited--(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or (2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, ... or (D) exercise of a right provided for in this chapter, is a **motivating factor** in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, ... or exercise of a right (Emphasis added)."

Accordingly, for a military employee to prove that his/her past, present, or future connection with military service lead to an adverse employment action, he/she must first prove that the military service was A motivating factor – not THE motivating factor - in the justification for the adverse action; a critical distinction. What this means to management is that even if there were a myriad of reason for taking adverse action upon

the military employee, military service cannot be considered in any way, shape or form. In fact, if the military employee is able to demonstrate that the military service was a motivating factor (the prima facie case); to avoid liability the employer has the burden of proof of nondiscrimination.[53] Once the military employee proves any service connected adverse action, the employer must then prove that they would have taken the same action regardless of the military employee's connection with the service. This places a heavy burden on the employer but represents the legislative and judicial answer to our ethical question. For purposes of our analysis, the ethical framework is found in the court's burden shifting scheme.

"The Congressional Record and the courts which have interpreted USERRA indicate that the burden-shifting framework approved by the Supreme Court in NLRB v. Transportation Management Corp.,[54] is used to determine whether an employer discharged a reservist in violation of USERRA."[55] In accordance with Transportation Management, to establish a violation of USERRA, Plaintiff is required to establish that his military service was a motivating factor in an adverse employment action.[56] A motivating factor is one that "a truthful employer would list if asked for the reasons for its decision."[57] Once Plaintiff establishes Defendant's motivation, the burden shifts to Defendant to show, by a preponderance of the evidence, that it would have taken the same action in the absence of Plaintiff's military service. [58] Unlike Title VII evidentiary burdens, USERRA actions shift both the burden of production and persuasion to the employer.[59]

Given that the prohibition against discriminating against military employees dates back to 1940, and given the current use of the Reserve and Guard forces in support of

operations throughout the world, it is somewhat surprising that more employers are not familiar with the requirements of USERRA. Last March, in Grosjean v. FirstEnergy,[60] the U.S. District Court for the Northern District of Ohio held that an military employee taking leave under USERRA was entitled to summary judgment on the liability element of a USERRA claim with respect to a performance review that explicitly stated the military employee as "partially effective" due to his military leave. The negative written evaluation was given to the military employee in 2005 and covered the 2004 period of service - -three years after the events of September 11, 2001 and one year after the U.S. invasion of Iraq. In finding for the military employee, the court explained: "It is clear, from the evaluation and . . . testimony, that Plaintiff's military-related absence was taken into account and further was a factor for his "partially effective" rating. Therefore, Plaintiff provides sufficient evidence that his military service was a motivating factor in his performance evaluation."[61] The burden of production and persuasion then shifted to the employer who had to demonstrate by a preponderance of the evidence that it would have rated the military employee "partially effective" even if the military employee had not taken any military leave. In this particular case, with the written evidence not in dispute, the employer was unable to produce sufficient evidence and the court found that, "[n]o reasonable jury could find for [FirstEnergy] on this issue, and therefore partial summary judgment is granted as to the 2004 performance evaluation.

ETHICAL CONTEXT – POLICY IMPLICATIONS

USERRA is no more than the most recent expression of America's reliance a non-career military personnel to augment her regular forces, a reliance that arguably goes back to the Revolutionary War and continues to this day with the Global War on Terror.

Ethically, the act is an expression of legislative desire to protect military employees from discrimination that could and does result from voluntarily or involuntarily military leave. The Selective Training Act of 1940 is one of the earliest expressions of this policy. Congressional intent would appear to be that the protection for the military employee, especially after service, be nearly absolute.

The burden shifting scheme outlined by USERRA asks employers to ignore potentially long periods of absence by their military employees. This policy preference certainly benefits the nation as a whole because of the lower personnel costs associated with using Reserve forces. The question remains: Is the underlying benefit of using Reserves a net cost savings to the nation or merely a new form of tax? More importantly, who is paying this tax? A broader ethical framework analysis brings to light some of the issues not addressed in the current version of USERRA.

First, although USERRA protections for military employees appear absolute, they assume that the protected Reservist has a static employment situation before, during and after mobilization. According to the Bureau of Labor Statistics of the U.S. Department of Labor, the average person born in the later years of the baby boom held 10.5 jobs from age 18 to age 40.[62] Ages 18 to 40 happen to coincide with the ages that correspond to the vast majority of both active duty and reserve military service. By shifting the burden of the nation's increasing reliance on the reserve to employers, USERRA related lawsuits may be a reflection of the fact that, from a business perspective, military employees have a negative impact on an organization's profitability. As a result, the military employee becomes less attractive in the fluid employment marketplace. While the "motivating factor" issue is relatively easy to prove in situations where the military employee returns

to an existing position, ethically, should Congress ignore the fact that from a business perspective, the more a military employee has participated in military service, the less attractive that employee becomes to a bottom line oriented private employer? When any employer, particularly one familiar with USERRA requirements, is faced with a hiring choice between two equally qualified candidates, the protections afforded the military affiliated job applicant may put him/her at a significant disadvantage when compare to his/her nonaffiliated civilian peer.

Second, the intent of the "escalator principle" is sound, but very difficult to apply. One common scenario among Reservist who have spent significant time on active duty occurs when a coveted promotion opportunity takes place while the military employee was on leave. In any competitive promotion system, the criteria for promotion are often subjective. More often than not, the military employee will have no recourse if he/she suspects that they "would have" been promoted if he/she were there at the time. Here again, it would appear that the nonaffiliated civilian peer is at a distinct advantage.

Third, USERRA does not address the economic burden placed on an employer in keeping the military employee's position open and subsequently reemploying the veteran in an escalated pay and benefit status.[63] While neutral on its face, USERRA benefits the large employer over the small business. For large employers, losing a handful of employees during a time of national crisis rarely will have a material effect on the business. A handful of employees taking military leave from a smaller organization could easily have a material impact on the bottom line – particularly when we look at the possibility of 24 month deployments. According to the U.S. Department of the Interior, Office of Small and Disadvantaged Business Utilization, 97% of all U.S. business firms

are small and small business accounts for 48% of the nonfarm gross national product (GNP). Although certainly an unintended consequence, USERRA amounts to a regressive tax on small business.

In making the ethical determination as to whether USERRA is right or wrong, the conclusion certainly should be that it is right, but in need of improvement. At the end of the Cold War, Congress decided to enact what amounted to a military reduction-in-force (RIF). Despite this RIF, America's participation on the world stage necessitated a continued strong global military presence. Reliance on the cost-effective Reserve Forces has allowed the nation to maintain its military obligations at a significantly reduced cost. That cost is one that should be considered voluntarily born by the Guard and Reserve since almost all members who currently participate entered the All Volunteer Force.[64] To protect the rights of individuals who volunteer to augment our nation's defense without the benefits that accompany career military status is certainly the right thing to do. Despite the best of intentions, in a competitive employment environment, it would be difficult to argue that the military employee is at an advantage because of his/her service. In recognition of that fact, Congress should consider increasing the benefits for Reservists based on the individual's increased participation during times of national crises.

The costs employers bear cannot be easily categorized. On the one hand, global commerce requires a strong U.S. military presence and business benefits from that presence. On the other hand, the larger businesses that benefit most from global commerce appear to pay a significantly lower cost than the vast majority of small businesses that employ the lion's share of America's workforce and, most likely, the

military employee. Since USERRA doesn't address the cost to employers, from the firm's perspective, USERRA should be considered the cost of doing business. That cost, mandated by government can also be thought of as an additional business tax. As such, the most obvious policy improvement for USERRA from the employer's perspective would be to have tax credits that offset the costs to employers.

CONCLUSION

Managers need to have a thorough understanding of their obligations to military employees who take military leave. The legislature and the courts have interpreted USERRA in a way most favorable to the military employee without regard to the costs imposed on employers. The "motivating factor" analysis is an expression of congressional intent that there should be no disruption to the military employees' civilian employment as a result of military leave. Practically speaking, there will always be some disruption whenever any employee spends significant amount of time away from his or her employer. Given that reality, it is highly advisable that Managers be aware of their obligations and do the best they can to minimize the impact of military leave upon the military employee. Congress should consider amending USERRA to address practical issues affecting the military employee and cost issues affecting employers.

---

[1] http://www.defenselink.mil/releases/release.aspx?releaseid=11090.
[2] Information Briefing, Office of the Assistant Secretary of Defense for Reserve Affairs (June 26, 2007), at http://www.defenselink.mil/ra/documents/Reserve%20Affairs%20101.pdf.
[3] *Id.*
[4] Mobilized: Involuntary Active Duty in a Federal Status (10 USC 12302) that authorizes the use of Reserve Forces for up to 24 months.
[5] Information Briefing, Office of the Assistant Secretary of Defense for Reserve Affairs (June 26, 2007).
[6] Information Briefing, Office of the Assistant Secretary of Defense for Reserve Affairs (Mar. 13, 2006), at http:// www.defenselink.mil/ra/documents/RA101FY06.pdf.

[7] Pub. L. No. 76-783, 54 Stat. 885 (1940) (terminated 1947).
[8] Selective Service System website at http://www.sss.gov/backgr.htm.
[9] Pub. L. No. 759, § 9, 62 Stat. 614 (1948) (formerly codified at 50 U.S.C. app. § 459; repealed by Pub. L. No. 93-508, § 405, 88 Stat. 1600 (1974)).
[10] Major Michele A Forte, Reemployment Rights for Guard and Reserve: Will Civilian Employers Pay the Price for National Defense? 59 A.F. L. Rev. 287 (2007) (citing Lieutenant Colonel Craig Manson, The Uniformed Services Employment and Reemployment Rights Act of 1994, 47 A.F. L. REV. 55, 56 (1999)).
[11] Vietnam Era Veterans' Readjustment Assistance Act of 1974, Pub. L. No. 93-508, 88 Stat. 1578 (1974).
[12] Manson, supra note 16, at 56.
[13] Forte, supra note 10, at 293.
[14] *Id.*
[15] *Id.*
[16] Title 38 U.S. Code, Chapter 43, Sections 4301-4333, Public Law 103-353
[17] 38 U.S.C. § 4301, et. seq.
[18] *Id.*
[19] *See Id.*
[20] "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service, including: active duty; active duty for training; initial active duty for training, inactive duty training; full-time National Guard duty; absence from work for an examination to determine a person's fitness for any of the above types of duty; funeral honors duty performed by National Guard or reserve members; duty performed by intermittent employees of the National Disaster Medical System (NDMS), which is part of the Department of Homeland Security – Emergency Preparedness and Response Directorate (FEMA), when activated for a public health emergency, and approved training to prepare for such service (added by Pub. L. 107-188, June 2002) See Title 42, U.S. Code, section 300hh-11(e).
[21] 38 U.S.C. § 4312(a). (See *A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA)*, U.S. Department of Labor Veteran's Employment and Training Service, July 2004.)
[22] *Id.*
[23] 38 U.S.C. § 4312(b)
[24] 38 U.S.C. § 4312(c)
[25] 38 U.S.C. § 4312(e)(1).
[26] *Id.* (Periods of less than 31 day, the employee must report to work at the beginning of the next scheduled work period after release; for service of more than 30 days but less than 180, the military employee must submit an application for reemployment within 14 days of release; for service of 181 days or more, the military employee must apply for reemployment within 90 days from release of service.)
[27] 38 U.S.C. § 4313(a)
[28] The reemployment position with the highest priority in the reemployment schemes reflects the "escalator" principle that has been a key concept in federal veterans' reemployment legislation. The escalator principle requires that each returning service member actually step back onto the seniority "escalator" at the point the person would have occupied if the person had remained continuously employed. (*A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act* at p. 6 & 7)
[29] *See* Francis v. Booz, Allen & Hamilton, Inc., 452 F.3d 299, 306 (4th Cir. 2006); (Federal contractor did not violate section of Uniformed Services Employment and Reemployment Rights Act (USERRA) requiring an employer to rehire covered employees when it rehired employee with the same title, salary, consulting engagement, and work location upon returning after her military deployment; any alleged subsequent discrimination was not within scope of section 4312).
[30] *A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act* at p. 8
[31] *Id.*
[32] *Id.*
[33] 1997 U.S. Dist. LEXIS 16284 (E.D. Va. June 19, 1997).
[34] *Id.* At *5
[35] 38 U.S.C. § 4316(c)
[36] *Id.*

[37] 38 U.S.C. § 4316(d)
[38] David R. Fontain, Robin M. McCune, Allen J. Gross, Stacey L. West, Militar Leave: What You Need to Know about USERRA, (July/August 2003) ACCA Docket 21, no.7: 74-85.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] 38 U.S.C. § 4304.
[43] Dismissal of an Officer by sentence of court-martial, commutation of sentence of court martial or in time of war, by order of the President.
[44] Dropping on officer from the rolls by the President for unauthorized absence or confinement by court-martial, or confinement by federal or state authorities.
[45] See 38 U.S.C. § 4321, 4322
[46] See 38 U.S.C. § 4326.
[47] See 38 U.S.C. § 4322(b).
[48] See 38 U.S.C. § 4322(d).
[49] See 38 U.S.C. § 4322(e).
[50] See 38 U.S.C. §§ 4322(a) and 4322(d)
[51] See 38 U.S.C. § 4323(d).
[52] *Id.*
[53] See Brandasse v. City of Suffulk, Va., 72 F. Supp 2d 608, 617 (E.D. VA 1999)
[54] 462 U.S. 393, 401, 103 S.Ct. 2469, 76 L.Ed.2d 667 (1983)
[55] Grosjean v.FirstEnergy, 481 F. Supp. 2d 878 (N.D.Ohio, March 30, 2007) (citing Brandsasse v. City of Suffolk, Va., 72 F.Supp.2d 608, 617 (E.D.Va.1999) (citations omitted); but see Smith v. Noramco of Delaware, Inc., No. 02-1615-KAJ, 2004 WL 1043711 (D.Del. May 3, 2004)).
[56] Grosjean, 481 F.Supp 2d at 883 (citing *Curby*, 216 F.3d at 557).
[57] *Id.* (citing *Brandsasse*, 72 F.Supp.2d at 617)
[58] *Id.* (citing 38 U.S.C. § 4311(c)(1); *Coffman v. Chugach Support Services, Inc.*, 411 F.3d 1231, 1238-39 (11th Cir.2005); *Sheehan v. Dep't of the Navy*, 240 F.3d 1009, 1014-15 (Fed.Cir.2001))
[59] *Id.*
[60] Grosjean, 481 F.Supp 2d 883.
[61] Grosjean, 481 F.Supp 2d at 884.
[62] http://www.bls.gov/news.release/pdf/nlsoy.pdf
[63] Forte, supra note 10, at 337.
[64] Very few individuals serving today were drafted, and if they were drafted initially, the obligated service period has long since passed.