

Rare DOJ Military Bias Suit Shows Peril Of Co. Admissions

By **Bradford Kelley** (July 28, 2026)

Sometimes the strongest evidence of employment discrimination comes from the employer's own pen. On June 18, the U.S. Department of Justice sued a private assisted living facility in the U.S. District Court for the Western District of Texas for violating the Uniformed Services Employment and Reemployment Rights Act, or USERRA, the federal law that protects employment and reemployment rights of service member employees and prohibits discrimination based on military service.



Bradford Kelley

Opara v. UV Memory Care LLC arose after the employer repeatedly documented that an employee's National Guard obligations were the reason she was removed from her supervisory job — not because of any performance deficiency or failure to satisfy the requirements of the job, but because the employer viewed her military service as incompatible with its staffing needs.

The case settled through a consent decree that was filed the same day as the complaint, but it is worth employers' attention for what it reveals about the DOJ's enforcement posture.

The government rarely litigates USERRA claims against private employers, but will do so when an employer has effectively built the case against itself through its own admissions, underscoring the significant compliance obligations and long-term consequences that can result from such enforcement actions.

Factual Background

The plaintiff served as a healthcare specialist in the Army National Guard while working as a night shift supervisor and medication aide for the defendant, an assisted living facility serving residents with Alzheimer's disease and dementia. She had been employed by the facility since June 2023, supervised six employees, regularly volunteered for additional shifts and received an outstanding employee award the month before her termination.

Throughout her employment, the facility consistently approved her periodic military leave for monthly drills and other National Guard obligations. The disputed termination occurred after the plaintiff attended a three-week basic leader course in 2024. She provided the employer with verbal notice roughly seven weeks before the training began and followed up with a written leave request about six weeks later before the company approved her leave.

Yet midway through the training, a business development representative from the employer emailed the plaintiff demanding documentation "on the appropriate letterhead from the Texas Military Department," warning that her absence "could affect [her] full-time status with UVMC" if the request for documentation was not met. The plaintiff complied, submitting a letter from her sergeant — the third notice she had given her employer regarding that same period of leave.

About a month after she returned from leave, the company handed the plaintiff a letter, titled "Reason for Change in Position from Medication Aide to Compassion Giver." The rationale for the change was spelled out

in terms of resident care: The company said it was responsible for ensuring that "the residents are getting their medications on time every day," and claimed that "[w]ith Maria's schedule with the National Guard, she cannot consistently provide this need on a 3 [days] on/3 [days] off schedule." Further, the letter stated that if this had "been revealed at the time of hire, she would not have been offered a Supervisory position."

The demotion carried a pay cut of \$2 per hour and stripped her of supervisory duties. When the plaintiff refused to accept it, the facility's healthcare directors gave her an ultimatum — sign the demotion paperwork or leave — and terminated her when she again refused.

Responding to the plaintiff's application for unemployment benefits, the company underscored its rationale, telling the Texas Workforce Commission that the plaintiff's monthlong absence meant that she "was not a good fit for the position she was hired to fill," repeating that had it known of her National Guard membership at hiring, "she would not have been offered a supervisory job."

The plaintiff filed a complaint with the U.S. Department of Labor's Veterans' Employment and Training Service in August 2024. That November, DOL VETS found that the company had violated USERRA and had refused to voluntarily comply with the law.

The plaintiff then requested referral to the attorney general, and the DOJ's Civil Rights Division filed suit in June, alleging unlawful demotion and unlawful termination in violation of Title 38 of the U.S. Code, Section 4311. The parties also filed a consent decree, described in more detail below, the same day.

How USERRA Enforcement Works

USERRA's enforcement structure differs from most federal employment discrimination statutes. DOL VETS is the primary investigative agency. A service member who believes an employer has violated USERRA may file a complaint with DOL VETS, which investigates and attempts to reach an informal resolution.

If those efforts fail and the employer is private, the service member may request that DOL VETS refer the matter to the attorney general, who then independently decides whether to represent the individual and sue in federal district court under Title 38 of the U.S. Code, Section 4323.

Significantly, USERRA imposes no administrative exhaustion requirement, making it one of the few federal employment statutes that gives a service member an immediate private right of action. In other words, a plaintiff can bypass DOL VETS and the DOJ altogether and go straight to court.

Why This Case Is Different

The significance of Opara lies less in its legal theory than in its evidence. Most USERRA cases look like ordinary employment discrimination litigation: Plaintiffs build their case on circumstantial evidence, including comparator employees, suspicious timing, shifting explanations and indirect proof of pretext.

Proving this case did not require any of that. The DOJ had contemporaneous, written admissions from the employer itself, repeated twice, in two different forums, in nearly identical language.

Under USERRA's burden-shifting framework, a plaintiff only needs to show that military service was a motivating factor in the challenged decision; the burden then shifts to the employer to prove that it would have taken the same action regardless.[1] This framework is designed for cases where motive must be inferred.

Here, the facility eliminated the need for inference. Its own letter did the plaintiff's work of establishing an illegal motivating factor, and its own submission to a state agency foreclosed any later claim that the letter was misinterpreted or taken out of context.

That evidentiary posture also explains why the DOJ took the case. The attorney general has discretion whether to litigate a referred USERRA matter, and the DOJ exercises its authority to litigate referred USERRA matters selectively.

While relatively few referred USERRA complaints against private employers result in DOJ litigation, Opara illustrates that the department will pursue cases that present strong evidence of discrimination. When the DOJ does step in for an individual claimant, it is a reasonable signal that the facts supporting liability are overwhelming.

The Consent Decree: More Than a Monetary Settlement

Although the consent decree's monetary payment of \$15,000 was modest, the defendant also had to agree to take extensive remedial actions.

The company agreed to:

- Revise its USERRA antidiscrimination, antiretaliation and military leave policies.
- Designate a trained USERRA officer.
- Implement formal complaint and investigation procedures.
- Establish written appeal procedures.
- Incorporate USERRA compliance into manager performance evaluations.
- Provide annual interactive training for employees and volunteers.
- Distribute revised policies to employees and applicants.
- Post the DOL's USERRA notice.
- Submit to nearly two years of DOJ compliance monitoring and recordkeeping obligations.

Moreover, the DOJ retained approval authority over both the revised policies and training materials. For many employers, those operational commitments would involve far greater costs than the settlement payment itself.

Practical Lessons for Employers

Several practical lessons emerge from Opara. First, the facility's demotion letter did not require a plaintiff's lawyer to connect the dots. The company doomed its own case by specifying military service as the reason for the adverse action. This converted what might have been a defensible scheduling decision into a documented USERRA violation.

Second, unemployment filings are discoverable evidence. The company's response to the Texas Workforce Commission repeated the same rationale as the demotion letter, closing off any argument that the letter was an aberration. Notably, responses to state workforce agencies require the same scrutiny as position statements that are submitted to the U.S. Equal Employment Opportunity Commission or the DOL.

Third, a policy that looks to be compliant is not a defense if practice departs from it. Here, the facility had a written military leave of absence policy acknowledging its USERRA reinstatement and benefits obligations. That policy did not prevent the violation, and the DOJ required that it be fully rewritten, along with approximately two years of oversight to confirm that the rewrite actually changes how managers behave.

Fourth, USERRA exposure is not limited to large employers or government contractors. The company here was a single assisted living facility. The statute applies broadly to virtually all private employers, and a DOL VETS complaint can escalate into DOJ litigation regardless of employer size.

Finally, federal oversight can become the most significant consequence of a USERRA violation. While the settlement payment in Opara was relatively modest, the employer accepted years of compliance obligations, reporting requirements, policy revisions, annual training and continuing federal court jurisdiction — consequences that persist long after the settlement has been paid.

Conclusion

Opara v. UV Memory Care ultimately was not a difficult USERRA case. Its importance lies in demonstrating how quickly a routine personnel decision can become a federal enforcement action when an employer expressly attributes that decision to an employee's military obligations.

The DOJ may litigate referred USERRA cases against private employers infrequently, but this case illustrates that it will do so when the evidence clearly establishes that military service was a motivating factor. For employers, the lesson is straightforward: Compliance with USERRA requires more than approving military leave; it requires ensuring that military service does not become part of the rationale for employment decisions.

Bradford J. Kelley is a shareholder and co-chair of the artificial intelligence and technology practice group at Littler Mendelson PC. He previously served as chief counsel to former EEOC Commissioner Keith Sonderling and as a senior policy adviser in the DOL's Wage and Hour Division.

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[1] 38 U.S.C. § 4311(c)(1).