

1 JOHN TYMCZYSZYN
John T Law, PLLC
2 700 112th Ave NE, Suite 300
Bellevue, WA 98004
3 Telephone: 425.533.2156

4 THOMAS G. JARRARD
Law Office of Thomas G. Jarrard, PLLC
5 1020 N. Washington Street
Spokane, WA 99201
6 Telephone: 425.239.7290

7 Attorneys for Plaintiff

8 **IN THE UNITED STATES DISTRICT COURT**
FOR THE WESTERN DISTRICT OF WASHINGTON

<p>9 Travis Bearden,</p> <p>10 11 Plaintiff,</p> <p>12 v.</p> <p>13 City of Ocean Shores, WA,</p> <p>Defendants.</p>	<p>NO. 3:21-cv-5035</p> <p>COMPLAINT AND DEMAND FOR TRIAL BY JURY</p> <p>EXEMPT FROM FILING FEES UNDER 38 U.S.C. § 4323(h)(1)</p>	
--	--	--

14 **I. INTRODUCTION**

15 1. This civil action is brought pursuant to the Uniformed Services Employment
16 and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 (USERRA) and is
17 exempt from filing fees under 38 U.S.C. § 4323(h)(1).

18 2. Plaintiff, Travis Bearden (“Plaintiff” or “Mr. Bearden”), by and through his
19 undersigned attorneys, brings this Complaint against the City of Ocean Shores (hereafter
20 “Defendants”), and alleges as follows:

21 **II. PARTIES AND JURISDICTION AND INTRADISTRICT ASSIGNMENT**

22 3. Mr. Bearden resided in the State of Washington and was an employee of
23 Defendants at all times pertinent hereto.

1 4. At all times relevant to this lawsuit Mr. Bearden was an enlisted in the United
2 States Army Reserves.

3 5. Defendant, City of Ocean Shores is an employer in Washington.

4 6. The above Defendant exercised control over the employment benefits and
5 opportunities of Mr. Bearden, was a primary decision maker regarding Defendants'
6 violation of Mr. Bearden rights, and for the purposes of 38 U.S.C. §§ 4303(4) and
7 4323(c)(2) is a private employer.

8 7. All acts complained of occurred within the Western District of Washington.

9 8. The Federal Court for the Western District of Washington has personal
10 jurisdiction over the parties and subject matter jurisdiction for the claims in this complaint
11 pursuant to 38 U.S.C. § 4323(b), 28 U.S.C. § 1331, 28 U.S.C. § 1367(a).

12 9. Venue is proper in the Western District of Washington under 38 U.S.C. §
13 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions complained herein
14 occurred in the District and Defendants conduct business there.

15 10. This action arose in Ocean Shores, Washington in Grays Harbor County;
16 therefore, pursuant to local rules it should be assigned to the Tacoma Division of the
17 Western District of Washington.

18 **IV. FACTS**

19 11. In 2007, Mr. Bearden was hired as a firefighter/paramedic by the City of
20 Ocean Shores, WA.

21 12. In 2013, Mr. Bearden joined the Army Reserves as a 68W healthcare
22 specialist.

23 13. In late 2013, Mr. Bearden attended Army basic training (AKA Boot Camp).
24

1 14. In March 2014, Mr. Bearden returned from his Army basic training to his
2 employment with the City of Ocean Shores, WA.

3 15. In March 2014, Mr. Bearden was advised by co-worker, Matthew
4 Welander, that the Defendants had attempted to find a legal method to terminate his
5 employment due to his military obligations, but were unable to do so.

6 16. In September 2018, Mr. Bearden requested military leave accrued under
7 RCW 38.40.060.

8 17. Defendants refused to provide Mr. Bearden that military leave, claiming
9 that he did not have written orders.

10 18. In November 2019, Mr. Bearden was activated under Title 32 for active-
11 duty.

12 19. In October 2020, Mr. Bearden requested military leave accrued under
13 RCW 38.40.060.

14 20. In October 2020, Mr. Bearden made a complaint for the violation of his
15 USERRA rights to the Employment Support of the Guard and Reserve (ESGR).

16 21. The ESGR contacted Defendants regarding Mr. Bearden's USERRA
17 complaint.

18 22. On October 30, 2020, Dani Smith, Defendant's Human Resources
19 Specialist, sent Mr. Bearden an email and denied his military leave request.

20 23. On information and belief, the denial of paid leave caused Mr. Bearden and
21 his family to lose insurance coverage and benefits, because he had no paid hours during
22 the month.

1 24. On information and belief, Defendants failed to make timely contributions
2 to Mr. Bearden's retirement upon his return from military service.

3 25. Defendants' actions are the direct and proximate cause of Mr. Bearden's
4 damages.

5 26. As a result of Defendants' unlawful conduct in violation of USERRA and
6 Washington law, Mr. Bearden has suffered a loss of earnings and other benefits of
7 employment in an amount to be proved at trial. Further, as a result of Defendants'
8 unlawful conduct and the necessity of this action to seek a remedy, Mr. Bearden fears
9 further retaliation (*i.e.*, continued attempts by the Defendant to unlawfully terminate the
10 employment of Mr. Bearden by using a false pretext of false reasons for discipline or
11 termination). As such, any employment relationship that Mr. Bearden may have enjoyed
12 with Defendants prior to the filing of this action is irreparably damaged through no fault
13 of Mr. Bearden.

14 27. Upon information and belief, Defendants are a party to contracts with the
15 Federal Government and/or State of Washington which prohibit Defendants from
16 discrimination against veterans and military service members and further evidence of its
17 knowing and reckless disregard for the protections afforded a service member under
18 USERRA.

19 28. At all times relevant hereto, Defendants had a duty to conduct themselves
20 in compliance with the law, including USERRA and ensure its managers and agents
21 followed the Act.

22 29. The above-referenced actions by Defendants, and their agents, breached
23 those duties.

1 30. To the extent that Defendants allege application of any agreement that
2 constitutes any limitation on Plaintiff's rights under USERRA, it is illegal, null and void,
3 inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.

4 31. Upon information and belief, Defendants maintained workplace posters
5 that set out employer responsibilities under USERRA as required by 38 U.S.C. § 4334.

6 32. Defendants are highly trained professionals, with immediate access to the
7 provisions of USERRA and the laws of the state of Washington, with the support of a
8 sophisticated Human Resources Department, including immediate access to
9 professional human resources personnel, and specially trained employment counsel.

10 **V. CAUSES OF ACTION**

11 **(COUNT 1 VIOLATION OF 38 U.S.C. § 4302(b))**

12 Defendants violated 38 U.S.C. § 4302(b) of USERRA, among other ways, by:

- 13 a. Maintaining a military leave policy that violates the provisions of USERRA;
14 b. Imposing additional requirements in contravention of 38 U.S.C. § 4316 (b)
15 and (d);
16 c. Imposing additional requirements in contravention of 20 C.F.R. 1002.87;
17 d. Imposing additional requirements in contravention of 20 C.F.R. 1002.104;
18 e. Imposing additional requirements in contravention of 20 C.F.R. §
19 1002.121;
20 f. Characterizing Mr. Bearden's employment status in contravention of 20
21 C.F.R. § 1002.149.
22 g. Imposing additional requirements in contravention of 20 C.F.R. §
23 1002.153(a).

1 **(COUNT 2 VIOLATION OF 38 U.S.C. § 4311(a))**

2 Defendants violated 38 U.S.C. § 4311(a) of USERRA, among other ways, by:

- 3 a. Denying pay and benefits of employment based on Bearden's obligation to
4 perform military service; and
5 b. Imposing additional prerequisites to employment benefits based on Mr.
6 Bearden's obligation to perform military service.

7 **(COUNT 3 VIOLATION OF 38 U.S.C. § 4311(b))**

8 Defendants violated 38 U.S.C. § 4311(b) of USERRA, among other ways, by:

- 9 a. Taking adverse employment actions against Mr. Bearden following his
10 complaint that the city was violating his rights under USERRA;
11 b. Taking adverse employment actions against Mr. Bearden following Mr.
12 Bearden's complaint to ESGR that the city was violating his rights under USERRA; and
13 c. Denying Mr. Bearden proper pay and benefits of employment in retaliation
14 for his exercise of his rights under USERRA.

15 **(COUNT 4 VIOLATION OF 38 U.S.C. § 4316(b))**

16 Defendants violated 38 U.S.C. § 4316(a)-(b) of USERRA, among other ways by:

- 17 a. Denying Mr. Bearden rights and benefits determined by seniority;
18 b. Denying Mr. Bearden other rights and benefits not determined by seniority.

19 **(COUNT 5 VIOLATION OF 38 U.S.C. § 4316(d))**

20 Defendants violated 38 U.S.C. § 4316(d) and 20 C.F.R. § 1002.153(a) among
21 other ways, by denying Mr. Bearden paid military leave accrued under RCW 38.40.060,
22 while on orders.

23 *////*

1 c. An Order declaring as a matter of law, Defendant's refusal to credit Mr.
2 Bearden with service credits he accrued while on active-duty military service violates
3 USERRA.

4 d. An Order requiring Defendant to make up all missing contributions to Mr.
5 Bearden's retirement account within 30-days of when he returns to work following the
6 completion of qualifying military leave.

7 e. Equitable relief as mandated by Congress pursuant to 38 U.S.C. § 4323(e),
8 including temporary or permanent injunctions, temporary restraining orders, and
9 contempt orders, to vindicate fully the rights or benefits of persons under this chapter,
10 and as necessary to prevent future harm to Mr. Bearden and other servicemembers.

11 f. An Order declaring as a matter of law that Defendant's violations of
12 USERRA were willful, pursuant to 38 U.S.C. § 4323(d)(1)(C); and

13 g. Compensation for all injury and damages suffered by Mr. Bearden
14 including, but not limited to, both economic and non-economic damages, in the amount
15 to be proven at trial including back pay, front pay, pre and post judgment interest, lost
16 benefits of employment, adverse tax consequences of any award for economic
17 damages, liquidated damages for willful violations as it relates to the improper
18 withholding of wages and benefits and general damages relating to emotional distress
19 and mental anguish damages as provided by law.

20 h. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to 38
21 U.S.C. § 4323, and as otherwise provided by law, as well as the private attorney general
22 theory of recovery of reasonable attorney fees and costs in employment related cases.
23
24

1 i. An Order enjoining Defendants from applying its illegal policies to Mr.
2 Bearden;

3 j. An Order requiring Defendants to include a written statement in Mr.
4 Bearden's employment file stating Defendant's violated Mr. Bearden's USERRA rights
5 leading to this litigation, and Order that Defendants must disclose that in all future
6 employment inquiries.

7 k. For such other and further relief as this Court deems just and equitable.

8 **VI JURY TRIAL DEMAND**

9 Pursuant to Rule 38 of the Federal Rules of Civil Procedure or any similar rule or
10 law, Plaintiff demands a trial by jury for all causes of action and issues for which trial by
11 jury is available.

12 Respectfully submitted this January 13, 2021.

13 /s/ John M. Tymczyszyn
14 JOHN M. TYMCZYSZYN
15 John T Law, PLLC
16 700 112th Ave NE, Suite 300
17 Bellevue, WA 98004
18 Telephone: 425.533.2156

19 /s/ Thomas G. Jarrard
20 THOMAS G. JARRARD
21 Law Office of Thomas G. Jarrard, PLLC
22 1020 N. Washington Street
23 Spokane, WA 99201
24 Telephone: 425.239.7290

Attorneys for Plaintiff