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13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE EASTERN DISTRICT OF WASHINGTON**

15 KEVIN WOLFF,

16 Plaintiff,

17 v.

18 DAVID EVANS & ASSOCIATES,  
19 INC.,

20 Defendant.

NO. 2: 17-cv-00025

COMPLAINT AND DEMAND  
FOR TRIAL BY JURY

**EXEMPT FROM FILING FEES  
UNDER 38 U.S.C. § 4323(h)(1)**

21 Mr. Wolff, by and through his attorneys, now alleges:

22 **I. PARTIES AND JURISDICTION**

23 1. Defendant, David Evans & Associates, Inc. ("DEA") is an Oregon  
24 Corporation that is licensed to conduct business in the State of Washington.  
25

1 2. Federal Government records reflect that DEA was a party to at least  
2 198 contracts and received in excess of \$25,000,000 taxpayer dollars during fiscal  
3 years 2015 – 2017. One such government agency with whom DEA contracted  
4 was the Bonneville Power Administration (BPA).  
5

6 3. Plaintiff, Kevin Wolff (“Mr. Wolff”) was an employee of DEA,  
7 worked for DEA as an Electronic Engineer, and, at all relevant times, worked (on  
8 DEA’s behalf) out of the BPA’s Spokane, Washington office.  
9

10 4. At all times relevant Mr. Wolff was a member of the Washington Air  
11 National Guard.

12 5. For the purposes of 38 U.S.C. § 4303(4) DEA is a private employer  
13 operating in the State of Washington.  
14

15 6. All acts complained of occurred within the Eastern District of  
16 Washington.

17 7. The Federal Court for the Eastern District of Washington has personal  
18 jurisdiction over the parties and subject matter jurisdiction for the claims in this  
19 complaint pursuant to 38 U.S.C. § 4323(b), 28 U.S.C. § 1331, 28 U.S.C. §  
20 1367(a).  
21

22 8. Venue is proper in the Eastern District of Washington under 38 U.S.C.  
23 § 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions complained  
24 herein occurred in the District and Defendant conducts business there.  
25

**II. INTRADISTRICT ASSIGNMENT**

1  
2 9. This action arose in Spokane County, Washington; therefore,  
3 pursuant to local rules it should be assigned to the Spokane Division of the  
4 Eastern District of Washington.  
5

**III. FACTS**

6  
7 10. DEA offered Mr. Wolff employment on May 20, 2013, and, in doing  
8 so, informed Mr. Wolff that he would “be located at BPA’s Spokane, WA office”  
9 for, at least, a four year work assignment.  
10

11 11. Mr. Wolff accepted DEA’s employment offer on May 30, 2013.

12 12. Mr. Wolff began working, in Spokane, for DEA shortly after May  
13 30, 2013.  
14

15 13. DEA also employed Steven Bradford, who also worked for DEA at  
16 the BPA’s Spokane, Washington site.

17 14. From May 30, 2013, to March 23, 2014, Mr. Wolff’s Washington Air  
18 National Guard obligations required that Mr. Wolff serve one weekend per month  
19 - - - a requirement that had little, if any, impact on Mr. Wolff’s work  
20 responsibilities with DEA.  
21

22 15. On March 24, 2014, the Washington Air National Guard,  
23 involuntarily mobilized Mr. Wolff to assist with rescue efforts involving the Oso,  
24 Washington mudslide.  
25

1           16. Mr. Wolff timely notified DEA of this military obligation and served  
2 on active duty from March 25, 2014, through April 4, 2014.

3           17. Mr. Wolff further served on military duty from April 22, 2014 to  
4 April 24, 2014 and Mr. Wolff informed DEA of that obligation in early April  
5 2014.  
6

7           18. On or about May 6, 2014, Mr. Wolff informed DEA that he would be  
8 mobilized for June 9, 2014 – June 13, 2014 and for additional military service in  
9 July 2014.  
10

11           19. Mr. Wolff served on active military duty from July 20, 2014 to  
12 August 3, 2014.

13           20. During the October 2014 timeframe, Mr. Wolff had a conversation  
14 with co-worker, Laura Flarity, whereupon Mr. Wolff learned that his company-  
15 given “code name” was “mission man” given the fact that Mr. Wolff was  
16 “always” on military missions.  
17

18           21. In early February 2015 Mr. Wolff learned that the military would be  
19 activating him during the April 18, 2015 – May 22, 2015, timeframe.  
20

21           22. Mr. Wolff promptly informed DEA employee Aime Wallace of his  
22 upcoming military obligation.

23           23. On March 17, 2015, Mr. Wolff, requested information as to how to  
24 go about requesting a pay raise.  
25

1           24. On March 17, 2015, DEA employee Amie Wallace responded to Mr.  
2 Wolff's request and, in doing so, did not reject Mr. Wolff's request nor inform  
3 Mr. Wolff that his job was in jeopardy.

4           25. During the April 2015 timeframe Mr. Wolff informed Joelle Brown,  
5 his BPA supervisor, and Aime Wallace of a possible upcoming multi-month  
6 military deployment scheduled to occur in 2016.

7           26. On April 16, 2015, Ms. Brown, during a bi-monthly meeting in  
8 which Mr. Wolff was in attendance (via phone), stated that BPA had overspent  
9 which, in turn, might result in some worker's hours being cut back from 40  
10 hours/week to 30 hours/week.

11           27. On April 18, 2015, Mr. Wolff departed for his military service.

12           28. On April 30, 2015, DEA informed the BPA that Mr. Wolff was on  
13 military reserve duty in Alabama with an anticipated return date of May 22, 2015.

14           29. Although on notice of Mr. Wolff's military obligation, Mr. Wolff's  
15 May 22, 2015 return-to-work date, DEA did not look to see if alternate work was  
16 available to Mr. Wolff.

17           30. On May 21, 2015, Mr. Wolff returned from his military service.

18           31. On May 22, 2015, DEA terminated Mr. Wolff's employment "per the  
19 client's decision to end your assignment."  
20

1           32.    DEA instructed Mr. Wolff, by phone, to return all DEA and BPA  
2 property, (a majority of which was located at Mr. Wolff's BPA work location at  
3 the Bell Maintenance Headquarters in Spokane, Washington), by mail to DEA in  
4 Portland, Oregon.

5  
6           33.    On May 26, 2015, Mr. Wolff met for about two hours with one of his  
7 supervisors, District Engineer for the Spokane District, Jason Engler. Mr. Wolff  
8 went to his work station, collected, and then returned, all the DEA and BPA  
9 property in his possession to Mr. Engler. Mr. Engler inventoried and  
10 photographed the property.  
11

12           34.    Mr. Wolff was not paid for his work on May 26, 2015.

13           35.    DEA's March 22, 2015, termination letter did not offer Mr. Wolff  
14 any other job within DEA.  
15

16           36.    DEA did not offer Mr. Wolff reemployment following Mr. Wolff's  
17 return from military service.

18           37.    DEA did not offer Mr. Wolff any employment within DEA after  
19 March 22, 2015.  
20

21           38.    In late May 2015 DEA informed Mr. Wolff that he was fired because  
22 of financial difficulties BPA was experiencing.

23           39.    The "Assignment End Notification" form relating to Mr. Wolff's  
24 employment reflects that BPA's "Supplemental Labor Management Office"  
25

1 (SMLO) had never been notified of any issues relating to Mr. Wolff's workplace  
2 performance.

3 40. Moreover, the "Assignment End Notification" form relating to Mr.  
4 Wolff's employment does not list budgetary issues as the "business reason" for  
5 BPA's reason for not extending Mr. Wolff's employment.  
6

7 41. At all times relevant hereto, Defendants maintained policies that  
8 prohibit unlawful retaliation and discrimination.  
9

10 42. DEA's contract with BPA, page 33, requires that DEA "comply with  
11 the rules, regulations, and relevant orders of the Secretary of Labor issued under  
12 the Vietnam Era Veterans' Readjustment Act" (VEVRA) and, *inter alia*, have  
13 affirmative action programs for veterans.  
14

15 43. Shortly after May 22, 2015, BPA and/or DEA instructed its  
16 employees to cease any and all contact with Mr. Wolff.

17 44. At all times relevant hereto, DEA had a duty to act in compliance of  
18 the law of USERRA and ensure its agents follow the Act.  
19

20 45. At all times relevant hereto, DEA maintained a posted notice where  
21 employers customarily place notices for employees as required by 38 U.S.C. §  
22 4334, informing managers and employees of rights under USERRA.  
23  
24  
25

1 46. At all times relevant hereto, DEA had a duty to conduct itself in  
2 compliance with the law, including USERRA and ensure its managers and agents  
3 followed the Act.

4 47. The above-referenced actions by DEA, and its agents, breached those  
5 duties.  
6

7 48. Mr. Wolff suffered economic injury, as well as other harms and  
8 losses as a result of DEA's failure to follow USERRA and Washington law.

9 49. DEA's actions are the direct and proximate cause of Mr. Wolff's  
10 damages.  
11

12 50. To the extent that DEA alleges application of any agreement that  
13 constitutes any limitation on Plaintiff's rights under USERRA, it is illegal, null  
14 and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.  
15

16 **IV. CAUSES OF ACTION**

17 **(CAUSE OF ACTION NO. 1 – VIOLATION OF 38 U.S.C. §**  
18 **4311(c)(1) - DISCRIMINATION)**

19 51. Under 38 U.S.C. § 4311(c)(1) an employee's military obligation  
20 cannot serve as a motivating factor for an employer's decision that is adverse to  
21 that employee.  
22

23 52. Mr. Wolff's requirement that he attend Air National Guard training  
24 and mobilizations is a military obligation.  
25

1 53. Mr. Wolff's military service was a motivating factor in DEA's  
2 decision to terminate his employment in May 2015.

3 54. A plaintiff can establish a USERRA discrimination claim by showing  
4 deviation from company policy and/or legal requirements, proximity in time  
5 between protected activity and military service, and inconsistencies.  
6

7 55. Here DEA (a) terminated Mr. Wolff's employment on May 22, 2015  
8 - - - the day after he returned from military service (b) did not follow USERRA in  
9 offering Mr. Wolff alternate positions of employment, (c) did not follow its own  
10 contractually mandated affirmative action policies that required DEA, as a  
11 government contractor, to take steps to ensure Mr. Wolff (a veteran) became (and  
12 remained) employed, and (d) upon information and belief, did not follow its own  
13 policies and/or practices in giving Mr. Wolff advance notice that his employment  
14 was in jeopardy.  
15  
16

17 56. DEA's acts and omissions have caused Mr. Wolff damages in an  
18 amount to be proven at trial.  
19

20 **(CAUSE OF ACTION NO. 2 - VETERANS DISCRIMINATION**  
21 **- VIOLATION OF RCW 49.60.030 & RCW 49.60.180)**

22 57. Under the Washington Law Against Discrimination an employer  
23 cannot take an adverse action against an employee on, *inter alia*, account of that  
24 employee's military/veteran status.  
25

1 58. DEA violated Mr. Wolff's WLAD-guaranteed protection from  
2 military related employment discrimination by terminating Mr. Wolff's  
3 employment for the reasons stated above.

4 59. DEA's violations of the WLAD have caused Mr. Wolff damage in an  
5 amount to be proven at trial.  
6

7 **(CAUSE OF ACTION NO. 3 - VIOLATION OF USERRA 38**  
8 **U.S.C. § 4312-4313)**

9 60. In order to enjoy USERRA's re-employment protections, a plaintiff  
10 must: (a) be a member of the Armed Forces of the United States; (b) give notice to  
11 his employer of the plaintiff's military obligations; (c) serve honorably during the  
12 military service period; (d) give timely notification, to the employer, of plaintiff's  
13 intent to return to work; and, (e) serve less than five years with the military  
14 (absent varied exceptions). 38 U.S.C. § 4312.  
15

16 61. Mr. Wolff is a member of the Washington Air National Guard.  
17

18 62. Mr. Wolff gave notice to DEA of his April - May 2015 five week  
19 military training obligation.

20 63. Mr. Wolff served honorably during the above-referenced military  
21 training obligation.  
22

23 64. Mr. Wolff timely returned to work following completion of his April-  
24 May 2015 military training obligation.  
25

1           65. Upon returning to work DEA was obligated to re-employ Mr. Wolff  
2 in the following “order of priority”: (1) the position that the employee would have  
3 attained with reasonable certainty if not for the employee’s absence due to  
4 military service (“the escalator position”); (2) the position that the employee was  
5 employed on the date that the period of service began (“the pre-service position”);  
6 or (3) if the employee is not qualified for (1) or (2) above, any other position that  
7 is the nearest approximation first to (1) and then to (2) (“the nearest-  
8 approximation position”). 38 U.S.C. § 4313(a)(1)(A)-(B) & (a)(4); 20 C.F.R. §  
9 1002.191; 20 C.F.R. § 1002.196(a)-(c).  
10  
11

12           66. DEA did not, upon Mr. Wolff’s May 22, 2015, return from military  
13 duty, re-employ Mr. Wolff in the Electronic Engineer position Mr. Wolff  
14 occupied before going on his military duty.  
15

16           67. DEA did not offer Mr. Wolff a position comparable to the Electronic  
17 Engineer position upon Mr. Wolff’s May 22, 2015, return from military duty.  
18

19           68. DEA did not offer Mr. Wolff a position that was approximate to the  
20 Electronic Engineer position upon Mr. Wolff’s May 22, 2015, return from military  
21 duty  
22

23           69. DEA’s failure to follow USERRA’s re-employment statutes and  
24 regulations have caused Mr. Wolff damage in an amount to be proven at trial.  
25

**(CAUSE OF ACTION NO. 4 - VIOLATION OF USERRA 38  
U.S.C. § 4316)**

1  
2  
3 70. The USERRA requires that an employer cannot, without cause,  
4 terminate a reservist-employee (a) within 180 days of that employee's return to  
5 work from military duty provided that (b) the reservist-employee's military  
6 service exceeded 30 days.

7  
8 71. Mr. Wolff's April 18, 2015 – May 21, 2015 military service  
9 exceeded 30 days.

10 72. DEA terminated Mr. Wolff's employment without cause on May 22,  
11 2015, one day after, and within 180 days of, his return from military duty.  
12

13 73. Upon information and belief, no other DEA employee other than Mr.  
14 Wolff was terminated in the same timeframe.

15 74. DEA's actions violated USERRA and caused Mr. Wolff damages in  
16 an amount to be proven at trial.  
17

**(CLAIM FOR LIQUIDATED DAMAGES – 38 U.S.C. § 4323)**

18  
19 75. Plaintiff is entitled to liquidated damages under USERRA because  
20 DEA knew, or showed reckless disregard for whether its conduct was prohibited  
21 under USERRA.  
22

23 76. As a government contractor DEA is mandated to “comply with the  
24 rules, regulations, and relevant orders of the Secretary of Labor issued under the  
25



1 49.60.030(2), as well as the *private attorney general* theory of recovery of  
2 reasonable attorney fees and costs in employment related cases.

3 C. For such other and further relief as this Court deems just and equitable.

4  
5 Respectfully submitted this 20th day of January, 2017.

6 /s Matthew Crotty

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