

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

CHRISTI LEE JIMENEZ,

Plaintiff,

v.

HOLBROOK PLASTIC PIPE SUPPLY, INC,

Defendant.

Case No. 2:21-cv-02472-JS-AYS

AMENDED COMPLAINT

Jury Trial Demanded

Filing fee waived: 38 U.S.C. §
4323(h)(1).

Plaintiff Christi Lee Jimenez alleges as follows:

SUMMARY OF THE CLAIMS

1. This case is about Defendant Holbrook Plastic Pipe Supply, Inc.'s ("Holbrook" or "Defendant") failure to re-employ Christi Lee Jimenez ("Ms. Jimenez" or "Plaintiff") following the completion of her service in the United States Armed Services.
2. Ms. Jimenez brings this lawsuit under the Uniformed Services Employment and Re-employment Rights Act ("USERRA").

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiff's claims pursuant to 38 U.S.C. § 4323(b) and 28 U.S.C. § 1331.
4. Venue is proper in this District pursuant to 38 U.S.C. § 4323(c)(2) because Defendant maintains a place of business in this District and because a substantial part of the events and omissions giving rise to the claim alleged herein occurred in this District.

PARTIES

5. Ms. Jimenez is a former employee of Defendant. She is an honorably discharged member of the United States Army.

6. Holbrook Plastic Pipe Supply, Inc. does business in Holbrook, New York, is located at 790 Grundy Avenue, Holbrook, NY 11741, and employed Ms. Jimenez before Ms. Jimenez left its employment to serve in the U.S. Army.

STATEMENT OF FACTS

7. Ms. Jimenez started work at Holbrook in May 2009. Her job duties included managing certain accounts, processing purchase orders, and answering phones.

8. In early 2017 Ms. Jimenez decided to join the U.S. Army.

9. In the late-March/early-April 2017 timeframe Ms. Jimenez told Carolyn Olsen, Holbrook's owner, that she was joining the U.S. Army.

10. Toward the end of April 2017 Ms. Jimenez told Ms. Olsen that she was leaving for basic training which was scheduled to start on or about May 2, 2017.

11. Shortly before Ms. Jimenez's last day of work before leaving for military duty Ms. Olsen told Ms. Jimenez that she (Ms. Jimenez) would get her job back once her military service ended.

12. During that conversation Ms. Olsen told Ms. Jimenez "come back to us anytime."

13. Ms. Jimenez served in the U.S. Army from May 2, 2017, through May 12, 2020.

14. Ms. Jimenez's service with the U.S. Army was honorable.

15. On July 28, 2020, at 11:19 AM Ms. Jimenez telephoned Ms. Olsen and requested re-employment stating that she (Ms. Jimenez) had completed her military service and that she wanted to return to work.

16. As of July 28, 2020, Ms. Olsen's home telephone number was (631) 862 6326.

17. Ms. Jimenez's call log shows this conversation happened:

18. Ms. Jimenez's oral return to work request complied with USERRA's regulations which make clear return to work requests "need not follow any particular format" and can be made "orally or in writing." 20 C.F.R. §1002.118

19. Ms. Jimenez's July 28, 2020, telephone call with Ms. Olsen lasted 23 minutes.

20. During the July 28, 2020, telephone call and in response to Ms. Jimenez's request to come back to work, Ms. Olsen told Ms. Jimenez words to the effect of "I'm not going to fire the person who replaced you just because you were serving in the military."

21. The July 28, 2020, telephone call ended with Ms. Olsen not agreeing to return Ms. Jimenez to work.

22. Sometime between July 28, 2020, and August 5, 2020, Ms. Olsen and Ms. Jimenez met for lunch. At that lunch Ms. Olsen told Ms. Jimenez that she (Jimenez) would not be getting her pre-service job back but that there *might* be a sales position Ms. Jimenez could occupy. Ms. Olsen did not specify the sale's position's pay, hours, or benefits but instead told Ms. Jimenez to send a follow up email with questions.

23. On August 6, 2020, Ms. Jimenez did just that, emailing Ms. Olsen as follows:

From: Christie Schulman <christieschulman@yahoo.com>
Date: August 6, 2020 at 22:37:21 EDT
To: Carolyn <jghtreesco@live.com>
Subject: Questions

Hello Carolyn,

Sorry for the late delay. I just want to go over what the job Description details, I know I will be doing project searching, but I also was at Holbrook for 8 years so I am able to assist anybody, I can help Rosalie type up quotes. I can cover Whenever [sic] someone is out or on vacation, [sic] I think I would be a great asset to the company. As far as salary goes in the Military [sic] I was making \$30 hour and I would like to stay in that area. When working for Holbrook the federal holidays we're [sic] not a priority, but being in the military and being a patriot, I feel that they are important. I don't expect every federal off (New Year's Day, Martin Luther king [sic] day, Presidents' Day, Memorial Day, 4th

of July, labor Day, [sic] Columbus Day, Veterans Day, thanksgiving [sic] and Christmas.) I would like to know what the protocol are for these holidays as well as vacation time etc. I look forward to talking to you again.

Thank you,

Christie Schulman Jimenez

24. Ms. Olsen never responded (in writing) to Ms. Jimenez's August 6, 2020, email - - an email which reads like a job application a la "I think I would be a great asset to the company" as opposed to the acceptance of a job offer.

25. From August 7, 2020, through late-September 2020 Ms. Jimenez attempted to get Ms. Olsen to respond to her August 6, 2020, email but was unsuccessful in doing so.

26. On August 27, 2020, Ms. Jimenez re-sent (to Ms. Olsen) the same email she sent to Ms. Olsen on August 6, 2020.

27. Ms. Olsen never responded (in writing) to Ms. Jimenez's August 27, 2020, email.

28. On September 26, 2020, (a Saturday) Ms. Olsen called Ms. Jimenez. This was the first time Ms. Olsen communicated with Ms. Jimenez since their pre-August 5, 2020, lunch meeting.

29. During that September 26, 2020, telephone call Ms. Olsen made absolutely clear that Ms. Jimenez was not going to get re-employed at all in any way, shape, or form.

30. During that phone call Ms. Jimenez stated "I just want to understand correctly that you're not hiring me right now."

31. And in response Ms. Olsen said "No. I can't right now. That's what I'm trying to tell you. It's not your fault. It has nothing to do with you."

32. Ms. Olsen went on to make it profusely clear that Ms. Jimenez was not going to be re-employed by stating at various points during the conversation:

- “that’s why I can’t hire anybody right now.”
- “as I said, I can’t hire you now, okay.”

33. In response to the “as I said, I can’t hire you right now, okay” statement Ms. Jimenez asked: “but you just can’t hire me because you’re upset with everyone at your company?” to which Ms. Olsen responded by accusing Ms. Jimenez of “putting words” in her mouth but then went on to say “I’m telling you that I am not hiring now.”

34. Ms. Olsen’s reason for “not hiring now” was because Ms. Olsen had recently “gone through a lot of things and am not ready to put anybody else on the payroll to try to get everything back into place until I can figure out who’s going to do their job...”

35. Ms. Olsen again made clear “I’m sorry that I can’t hire you at this point.”

36. Ms. Olsen followed up ranting that “until I get everything in place the way I want it I don’t want the [new] person to come in yet” and then admitting that Ms. Olsen might consider hiring one, two, or three people in the event things started to run smoothly.

37. Toward the end of the conversation Ms. Olsen claimed that she needed to see what was going to happen with the Country and thus wasn’t prepared to take on any more responsibilities and “that is why I’m not hiring you right now.”

38. Ms. Olsen then ended the conversation saying, once again, “it’s just that I’m not ready to hire anybody right now.”

39. Throughout the September 26, 2020, conversation Ms. Olsen griped about sub-par employees, claimed that she (Olsen) had increased some employees’ bonuses, and said that Holbrook’s decision to not re-employ Ms. Jimenez had nothing to do with Ms. Jimenez.

40. Simply put, on September 26, 2020, Ms. Olsen told Ms. Jimenez over eight times that Ms. Jimenez would not be re-hired at Holbrook.

41. On September 30, 2020, Ms. Jimenez opted to give Holbrook and Ms. Olson one more chance to do the right thing. To that end, Ms. Jimenez sent Ms. Olsen and Holbrook a certified letter that, once again, requested re-employment:

Dear: Mrs. Olsen,

I would like to reapply for my position Accounts Payable/ Receivable at Holbrook Plastic Pipe Supply Inc. If you could kindly get back to me within 10 days, I can be reached by my cell phone (631-627-4445) or my email (christieschulman@yahoo.com)



42. Ms. Jimenez’s certified letters attached a copy of the New York law (which referenced USERRA) regarding the re-employment of returning veterans.
43. Neither Ms. Olsen nor Holbrook responded to Ms. Jimenez’s certified letters.
44. Holbrook did not re-employ Ms. Jimenez in any position.
45. In early-January 2021 Holbrook hired another person (Carol M) into the company’s accounting department whose work included the same job duties as Ms. Jimenez.
46. Upon information and belief Holbrook made a profit in 2020.
47. Upon information and belief Holbrook hired workers in 2020.

48. Upon information and belief Holbrook did not lay off any workers in 2020 because the company lacked the financial wherewithal to keep those workers employed.

49. During the 2020 timeframe Holbrook received \$234,300 in Paycheck Protection Plan (PPP) funds.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(USERRA - 38 U.S.C. § 4312 – 4313 – FAILURE TO REEMPLOY)

50. In order to enjoy USERRA’s reemployment protections, a plaintiff must: (a) be a member of the Armed Forces of the United States; (b) give notice to his employer of the plaintiff’s military obligations; (c) serve honorably during the military service period; (d) give timely notification, to the employer, of plaintiff’s intent to return to work; and, (e) serve less than five years with the military (absent varied exceptions). 38 U.S.C. § 4312.

51. Ms. Jimenez served in the U.S. Army.

52. Ms. Jimenez gave notice to Defendant of her military service obligation that began on May 2, 2017.

53. Ms. Jimenez served honorably during the above-referenced military service obligation.

54. Ms. Jimenez timely applied for reemployment within 90 days of her military service ending.

55. Upon returning to work Defendant was obligated to reemploy Ms. Jimenez in the following “order of priority”:

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, **or** a position of like seniority, status and pay, the duties of which the person is qualified to perform; **or** **(B)** in the position of employment in which the person was

employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person. 38 U.S.C. § 4313(a)(2)(A)-(B).

56. Defendant did not reemploy Ms. Jimenez in the position she occupied before going on her military duty.

57. Defendant did not reemploy Ms. Jimenez into a position comparable to her pre-deployment job upon her return from military duty.

58. Defendant did not reemploy Ms. Jimenez into a position that was approximate to her pre-deployment job upon her return from military duty.

59. Defendant's failure to follow USERRA's reemployment statutes and regulations have caused Ms. Jimenez damage in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

(USERRA - 38 U.S.C. § 4323- LIQUIDATED DAMAGES)

60. The Defendant absolutely knew that its conduct was prohibited under the provisions of USERRA, and its conduct was willful as defined by 38 U.S.C. § 4323(d), 20 C.F.R. § 1002.312(c), because Ms. Jimenez told Ms. Olsen that she was required to give Ms. Jimenez her job back and because Ms. Jimenez sent Ms. Olsen a copy of New York's military leave law (which incorporated USERRA).

61. Further, 38 U.S.C. § 4334, requires employers, like Holbrook, to maintain a poster at the workplace that informs the company's workers of their USERRA rights which, in

turn, puts employers like Holbrook on notice of the requirements germane to the re-employment of returning veterans.

62. Additionally, Holbrook's website represents that the company is "WBE/DBE/SBE Certified" meaning that it is a Women/Minority Owned business and thus aware that the law imposes certain benefits upon certain protected classes, like returning honorably discharged military veterans.

63. To the extent that any contract, agreement, collective bargaining agreement, policy or practice of the Defendant constitutes any limitation on Ms. Jimenez's rights under USERRA it is illegal, null and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. economic damages in the amount to be proven at trial including back pay, front pay, lost benefits of employment, negative tax consequences of any award;
- b. liquidated damages;
- c. reasonable attorney and expert fees, and costs, pursuant to 38 U.S.C. § 4323 and as otherwise provided by law;
- d. a declaration that Defendant's failure to reemploy Ms. Jimenez violated USERRA, 38 U.S.C. §§ 4312-4313;
- e. a declaration that Defendant's violation of USERRA was willful pursuant to, 38 U.S.C. § 4323(d)(1)(C); and,
- f. other relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury in this action.

Dated: July 30, 2021

Respectfully submitted,

By: /s/ Matthew Z. Crotty

CROTTY & SON LAW FIRM, PLLC

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those who have appeared in this action.

Dated this July 30, 2021

By: /s/ Matthew Z. Crotty

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