

H.R. 2195, Protecting the Employment Rights of Servicemembers Act

As ordered reported by the House Committee on Veterans' Affairs on May 4, 2021

By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	Yes, Cannot Determine Costs
		Contains private-sector mandate?	Yes, Cannot Determine Costs
* = between zero and \$500,000.			

The Uniformed Services Employment and Reemployment Rights Act (USERRA) generally prohibits employment discrimination based on service in the armed forces, provides reemployment rights after qualifying service in the armed forces, and protects employees from retaliation for exercising their rights under the act. H.R. 2195 would specify that agreements to arbitrate claims under the act are unenforceable if they predate the date on which claims are filed in court.

Reducing the number of arbitration agreements could increase the number of cases that are referred to the Department of Labor (DOL), the Department of Justice (DOJ), and the Office of Special Counsel (OSC) for enforcement of USERRA. DOL investigated roughly 1,100 claims in 2019. Of those, 61 were referred to DOJ or OSC for further investigation, and DOJ took 3 to federal court.

CBO expects that enacting H.R. 2195 would not significantly increase the number of claims and cases those agencies would handle for the following reasons. First, the bill would not explicitly prohibit employers from requiring employees to consent arbitration agreements as a condition of employment. DOL already considers those agreements unenforceable, but their existence could deter some employees from making claims. Additionally, employees could agree to arbitrate USERRA claims after the complaint has been filed in court, potentially reducing the number of cases that DOJ would litigate. On that basis, CBO

estimates that implementing the bill would not significantly increase spending subject to appropriation over the 2021-2026 period.

H.R. 2195 would impose a mandate on public and private entities as defined in the Unfunded Mandates Reform Act (UMRA) by eliminating an existing right to settle alleged violations of USERRA through arbitration agreements that predate the date on which claims are filed in court. The cost of the mandate would be the difference in the amount of the settlement received when disputes are resolved through the court or through mandatory arbitration and the difference in costs to obtain settlements through the courts.

The bill could affect millions of service members, reservists, and National Guard members who are protected by USERRA. Alleged violations of USERRA can be resolved by filing a complaint with the federal government, courts, or through arbitration. While some complaints are filed each year with DOL, an unknown number of complaints are resolved through arbitration, the outcomes of which are generally confidential. As a result, no data are available to anticipate the number of court petitions that would be initiated or to compare the outcomes and costs between mandatory arbitration settlements with court settlements. Because the number of lawsuits that would be initiated if the bill is enacted and the difference in potential awards is unknowable, CBO has no basis to estimate the cost of the mandate.

The CBO staff contacts for this estimate are Paul B.A. Holland and Brandon Lever (for mandates). The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.