

GAO@100 Highlights

Highlights of [GAO-21-221](#), a report to congressional committees

Why GAO Did This Study

Servicemembers are among millions of Americans who enter into contracts or agreements with mandatory arbitration clauses. For example, these provisions may be included in the contracts servicemembers sign when they enter the civilian workforce, obtain a car loan, or lease an apartment. These contracts generally require disputes to be resolved in private proceedings with arbitrators rather than in court.

Due to concerns these clauses may not afford servicemembers certain employment and consumer rights, Congress included a provision in the National Defense Authorization Act for Fiscal Year 2020 for GAO to study their effects on servicemembers' ability to file claims under USERRA and SCRA. This report examines (1) the effect mandatory arbitration has on servicemembers' ability to file claims and obtain relief for violations of USERRA and SCRA, and (2) the extent to which data are available to determine the prevalence of mandatory arbitration clauses and their effect on servicemember claims.

GAO reviewed federal laws, court cases, and regulations, as well as agency documents, academic and industry research, and articles on the claims process. GAO interviewed officials from DOD, DOL, DOJ, and other agencies, academic researchers, and a range of stakeholders representing servicemembers, businesses, attorneys, and arbitration firms. GAO also identified and evaluated potential sources of data on servicemembers' employment and consumer claims collected by federal agencies and the firms that administer arbitrations or maintained in court records.

View [GAO-21-221](#). For more information, contact Kris T. Nguyen at (202) 512-7215 or NguyenTT@gao.gov.

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SERVICEMEMBER RIGHTS

Mandatory Arbitration Clauses Have Affected Some Employment and Consumer Claims but the Extent of Their Effects is Unknown

What GAO Found

Mandatory arbitration clauses in civilian employment contracts and consumer agreements have prevented servicemembers from resolving certain claims in court under two laws that offer protections: the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and the Servicemembers Civil Relief Act, as amended (SCRA) (see figure). Some courts have held that claims involving mandatory arbitration clauses must be resolved with arbitrators in private proceedings rather than in court. Although we reviewed federal court cases that upheld the enforceability of these clauses, Department of Justice (DOJ) officials said mandatory arbitration clauses have not prevented DOJ from initiating lawsuits against employers and other businesses under USERRA or SCRA. However, DOJ officials noted that these clauses could affect their ability to pursue USERRA claims against private employers on behalf of servicemembers. Servicemembers may also seek administrative assistance from federal agencies, and mandatory arbitration clauses have not prevented agencies from providing this assistance. For example, officials from DOJ, as well as the Departments of Defense (DOD) and Labor (DOL), told us they can often informally resolve claims for servicemembers by explaining servicemember rights to employers and businesses.

Examples of Employment and Consumer Protections for Servicemembers



Protection against employment discrimination because of past, present, or future military service



Prompt reemployment for reservists returning to civilian employment



Protection against foreclosures without court orders



Ability to terminate automobile leases without penalty when entering military service

Source: GAO review of the Uniformed Servicemembers Employment and Reemployment Rights Act of 1994, as amended (USERRA); and the Servicemembers Civil Relief Act, as amended (SCRA). | [GAO-21-221](#)

Note: USERRA generally provides protections for individuals who voluntarily or involuntarily leave civilian employment to perform service in the uniformed services. SCRA generally provides protections for servicemembers on active duty, including reservists and members of the National Guard and Coast Guard called to active duty.

Data needed to determine the prevalence of mandatory arbitration clauses and their effect on the outcomes of servicemembers' employment and consumer claims under USERRA and SCRA are insufficient or do not exist. Officials from DOD, DOL, and DOJ told us their data systems are not set up to track these clauses. Further, no data exist for claims settled without litigation or abandoned by servicemembers. Finally, data on arbitrations are limited because they are often private proceedings that the parties involved agree to keep confidential.