

FILED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

12 JUL 16 AM 11:01

FOR THE UNITED STATES DISTRICT COURT OF INDIANA

ROBERT D. DELEE, )  
)  
Plaintiff, )  
)  
v. )  
)  
CITY OF PLYMOUTH, INDIANA, )  
)  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 3:12CV 380

**COMPLAINT AND JURY DEMAND**

Plaintiff Robert D. DeLee (DeLee), by the undersigned attorneys, alleges as follows:

**INTRODUCTION**

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 (USERRA).

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).
3. Venue is proper in this district under 28 U.S.C. §1391(b)(2) because “a substantial part of the events or omissions giving rise to [plaintiff’s] claim occurred” in this judicial district.

**PARTIES**

4. Plaintiff DeLee resides in Marshall County, Indiana. Marshall County, Indiana is within the jurisdiction of this Court.
5. Defendant City of Plymouth, Indiana (Plymouth) is a municipal government entity within the territorial and subject matter jurisdiction of this Court.

**CLAIM FOR RELIEF**

6. DeLee has worked for Plymouth as a Patrolman in the Police Department since on or about April 19, 1999.
7. Ordinance No. 2010-2009 of the City of Plymouth, adopted on August 23, 2010, continued Plymouth's policy that police officers for Plymouth are entitled to longevity pay on the anniversary date of their employment of \$225 per year of service up to a maximum of \$4,500.
8. Pursuant to Ordinance No. 1480 of the City of Plymouth adopted on November 13, 1989, longevity pay "has long been recognized as an incentive for police and firemen to remain in the service of the City."
9. DeLee has served in the United States Air Force Reserve (Air Force Reserve) since on or about July 7, 1997, and currently holds the rank of Technical Sergeant.
10. On April 20, 2010, DeLee received the full amount of longevity pay to which he was entitled of \$2,475 based on 11 years of continuous employment up to that date.
11. DeLee was mobilized for active duty beginning on September 1, 2010 and concluding on May 11, 2011. DeLee worked full time as a Patrolman for Plymouth both before and after his active duty deployment for the Air Force Reserve between September 1, 2010 and May 11, 2011.
12. DeLee notified Plymouth prior to his deployment on September 1, 2010, and at that time Plymouth paid DeLee a prorated amount of longevity pay of \$900 for the four months he had worked for Plymouth since the anniversary date of his employment on April 19, 2010. As of the date this Complaint was filed, Plymouth has not paid, and has

continued to refuse to pay, DeLee longevity pay of \$1,800 for the eight month period he was deployed. On the fourth page of a letter dated December 19, 2011, Plymouth's City Attorney admitted that Plymouth would have paid DeLee the additional \$1,800 of longevity pay if DeLee had not been mobilized for active duty with the Air Force Reserve between September 1, 2010 and May 11, 2011.

13. Pursuant to USERRA, 38 U.S.C. § 4316(a), a person in a uniformed service, which includes the Air Force Reserve, "is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed."
14. Longevity pay that Plymouth provides to its police officers is a "right and benefit determined by seniority."
15. Defendant Plymouth violated USERRA, § 4316(a) by refusing to pay DeLee longevity pay, which is a seniority-based benefit of employment to which he otherwise would have been entitled but for his deployment by the Air Force Reserve, for his eight month period of active service between September 1, 2010 and May 11, 2011.
16. Plymouth's violation of USERRA § 4316(a), as described in the preceding paragraph, was willful.

**REQUEST FOR RELIEF**

WHEREFORE, DeLee requests that the Court enter judgment against Plymouth as follows:

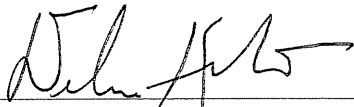
- A. Declare that Plymouth's denial of a seniority-based benefit of employment to DeLee because he fulfilled a service obligation was unlawful and violated USERRA, 38 U.S.C. § 4316(a);
- B. Declare that Plymouth's violations of 38 U.S.C. § 4316(a) were willful pursuant to USERRA, 38 U.S.C. § 4323(d)(1)(C);
- C. Require that Plymouth fully comply with USERRA by paying DeLee longevity pay for the time he was fulfilling his service obligation, and liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C) for Plymouth's willful violation of USERRA;
- D. Enjoin Plymouth from taking any action against DeLee that fails to comply with the provisions of USERRA;
- E. Award DeLee prejudgment interest on the amount of lost benefits found due; and
- F. Grant such other and further relief that is just and proper.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

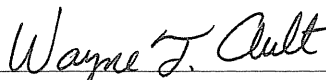


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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
Robert D. DeLee

**DEFENDANTS**  
City of Plymouth, Indiana

3:12CV 380

(b) County of Residence of First Listed Plaintiff Marshall  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Wayne T. Ault; Assistant United States Attorney; Northern District of Indiana; 5400 Federal Plaza, Suite 1500; Hammond, Indiana 46320; Telephone: 219-937-5500

Attorneys (If Known)  
Sean Surrisi, Plymouth City Attorney, 124 North Michigan Street, Plymouth, Indiana 46563; Telephone 574-936-2948

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) 38 U.S.C. § 4301-4335.  
 Brief description of cause:  
 Plaintiff seeks recovery of lost wages and benefits pursuant to USERRA.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \_\_\_\_\_ **JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 07/13/2012  
 SIGNATURE OF ATTORNEY OF RECORD: *Wayne T. Ault, Assistant United States Attorney, Counsel for Plaintiff Robert D. DeLee*

FOR OFFICE USE ONLY: RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_