



Uniformed Services Employment and Reemployment Rights Act

- **MAY 15, 2003**
- **Presented By**
- **MAJ S. BRADY WHITAKER**



Overview



- **Who gets protections**
- **What are the protections**
- **How are they enforced**



Prerequisites for Coverage



- A Civilian Job
- Prior Notice of leaving
- Less than 5 years absence
- Separation under Honorable conditions
- Report back in a timely manner



Reporting rules



- **Up to 30 days: safe travel + 8 hours**
- **31 - 180 days: w/in 14 days**
- **181 days or more: w/in 90 days**
- **Or else . . .**



USEERRA Protections



- Prompt Reinstatement
- Status
- Accrued Seniority
- Health Insurance Coverage
- Training or other accommodations
- Special protection from discharge



Anti-Discrimination Provision



- Employers cannot discriminate in hiring, reemployment, retention, promotion or any employment benefit because of military service [Sec. 4311]
- Think of EEO cases- “A motivating factor” -- not sole motivating factor
- No reprisals



Employer Defenses



- **Employer Change in Circumstances [Impossibility Defense]**
- **Undue Hardship on Employer**
- **Brief and Nonrecurrent Employment**
- **Waiver or Estoppel**
- **Laches**



Enforcement



- **DoD: National Committee for Employer Support of the Guard and Reserve (NCESGR)**
- **1-800-336-4590**
- **Education, mediation, persuasion**



Enforcement



- **Department of Labor: Veterans Employment and Training Service (VETS)**
- **1-202-693-4701**
- **Gatekeeper for Federal enforcement assistance**
- **Likely to transfer to VA in near future**
- **--OSC (Office of Special Counsel) before MSPB for Federal employers**
- **--DOJ for other employers**



Private Actions under USERRA



- **Prevailing Party may be awarded reasonable attorney fees, expert witness fees, and court costs.**
- **Willful violation = double damages against non-federal employer**
- **Federal Court may use full equitable powers of TRO, injunction, and contempt orders to get employer to comply with Act**
- **Employees may use instead private counsel instead of DOJ**
- **Problems for State Employees**



Federal Employees



- Probationary or non-probationary can appeal to MSPB
- Can ask for VETS assistance first
- OSC, MSPB may assist with MSPB appeal
- Employee may retain private counsel, request fees
- No double damages



Federal Employees



- No filing deadline
- USERRA can be implied by the factual record--need not be pleaded
- Can be used as an affirmative defense in other adverse actions



USERRA Refinements



- **VETS BENEFITS IMPROVEMENT ACT OF 1996**
 - Employee can choose whether to use vacation/leave for military service
- **USERRA AMENDMENTS of 1998**
 - Fix for State Employee lawsuits against States failed
 - Extra-Territorial Extension of USERRA protections for American owned corporations and Federal employees worldwide [64 F.R. 31485 (11 Jun 99)]. [38 USC 4319]
 - **INCLUDES AAFEES Employees**



Limitations on USERRA Legal Assistance



- AR 27-3, para.3-6 e
- Mobilization/demobilization briefings
- Sample letters
- Referrals to NCESGR or VETS
- Follow-up
- Coordination



USEERRA Advocacy



- **Careful about taking representation actions**
- **Employers often act out of ignorance of the law**
- **Clients will have more success if they treat their employers decently**
- **Beware pretexts!**



Mobilization Process



- Alert
- Mobilization
 - Home Station
 - Mobilization Station (Power Projection Platform)
- Deployment (Air/Sea/Land)
- Redeployment
- Reintegration
- Demobilization



Mobilization Process Legal Issues



- Alert
- Mobilization
- Wills
- POAs
- Lautenberg
- USERRA
- SSCRA



Mobilization Process Legal Issues



- Demobilization
 - USERRA
 - SSCRA
 - UCMJ
 - Adverse Admin
 - Claims
 - ROS
 - LOD



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Employer Support of the Guard and Reserve





FOCUS



- **Periods of protection**
- **Notice**
- **Legal Assistance tabbed**