



Department of Justice

STATEMENT OF

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UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**“UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT
RIGHTS ACT AND SERVICEMEMBERS CIVIL RELIEF ACT ISSUES”**

HEARING HELD

AUGUST 18, 2008

Chairwoman Herseth Sandlin, Ranking Member Boozman, and Members of the Subcommittee:

Thank you for the opportunity to discuss the Department of Justice's (the Department) role in enforcing the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301 - 4334, and the Servicemembers Civil Relief Act of 2003 (SCRA), 50 App. U.S.C. §§ 501 - 596, formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

Congress enacted USERRA to protect the employment rights of veterans returning to their civilian jobs after a period in the uniformed services. USERRA protects the employment and reemployment rights of federal and nonfederal employees who leave their employment to perform military service. USERRA applies to servicemembers in all five branches of the armed services, the Army and Air National Guards when in federal status (title 10 or title 32; not state controlled or funded), and the Commissioned Corps of the Public Health Service. USERRA protects a servicemember from discrimination in employment based on prior service in the uniformed services; current obligations as a member of the uniformed services; or intent to join the uniformed services. It also prohibits an employer from discriminating or retaliating against an individual for making a USERRA claim or participating in an investigation. USERRA establishes a wide range of employment protections for non-career servicemembers, including, in certain circumstances, the right to prompt reemployment with their pre-service employer upon

completion of military service, in a position of like pay, benefits, and status. In certain circumstances, USERRA requires that servicemembers accrue seniority with their civilian employers for time spent in military service and receive the same pay, benefits, and promotional opportunities as their non-military counterparts.

Protecting Servicemembers' Employment Rights

The Department, including the U.S. Attorney's Offices, works closely with the Department of Labor (DOL) to enforce USERRA. USERRA investigations are complaint-driven. Servicemembers who believe that they have been victims of employment discrimination based on their service may file a complaint with the DOL Veterans' Employment and Training Service (VETS). A servicemember who has filed a VETS complaint may request referral to the Department for claims involving private and state or local government entities, or to the Office of Special Counsel for claims involving Federal executive agencies. VETS must refer a claim if a claimant so requests, regardless of whether VETS has found the complaint to be meritorious. If the Attorney General is reasonably satisfied that the claimant is entitled to relief, then he may exercise his prosecutorial authority and serve as the servicemember's attorney in the case. If the case is against a State or State agency, the action is brought in the name of the United States on behalf of the servicemember; if the defendant is a private employer, however, the servicemember is the named plaintiff. If the Attorney General does not offer representation, the servicemember nonetheless retains the right to file a private USERRA lawsuit. In addition, servicemembers may bring a private lawsuit in federal or State court without filing a complaint with DOL.

The roles of the Department and DOL are set forth in a September 28, 2004, Memorandum of Understanding (MOU) that confirms the Department's and DOL's longstanding commitment to ensuring that servicemembers' USERRA rights are protected. In the MOU, the Attorney General assigned responsibility for handling USERRA referrals to the Department's Civil Rights Division (the Division). The Division works closely with our partners at DOL and in the U.S. Attorney's Offices. For example, Division attorneys participate in monthly USERRA conference calls with DOL's National Office of the Solicitor and DOL's Regional Solicitors Offices. During these calls, participants discuss new developments in the field of USERRA law and issues arising in the processing of specific USERRA referrals. Division attorneys also participate in Regional Training Conferences with DOL VETS investigators and DOL Regional Attorneys. In addition, a senior Division attorney attends meetings of the U.S. Attorneys' Military Affairs Working Group to increase awareness of the Division's USERRA enforcement responsibilities and further the partnership between the Civil Rights Division and the U.S. Attorney's Offices in providing representation to servicemembers in USERRA cases.

Recent USERRA Actions

So far in Fiscal Year 2008, the Division has obtained approximately \$600,000 in back pay and compensation for servicemembers. This amount includes a \$347,905 landmark settlement agreement in the first USERRA class action case that the Department has filed since the enactment of the law in 1994. In that case, *Woodall v. American Airlines*, Slip Copy, 2006 WL 2914135 (N.D.Tex.), the Division represented a class of 382 military

pilots who alleged that American violated USERRA by not allowing pilots on military leave to bid on flights and accrue vacation and sick leave benefits to the same extent as pilots on comparable forms of non-military leave. In addition to monetary relief, the settlement agreement reinstated the pilots' sick leave credits, with an estimated value of \$225,000.

The Division has been highly successful in individual USERRA cases as well. For example, we obtained favorable settlements on behalf of a servicemember who had been denied reemployment in his position at a department store; a National Guard member who had lost seniority and benefits upon his return to his position as a corrections officer with the State of New York; a National Guard member who claimed she was not promptly rehired in her position as an Emergency Medical Technician with a county employer and not properly credited with seniority when she returned from military service; and an Army reservist who claimed he was demoted from his management position and subsequently terminated from employment with a private employer because of his Reserve training obligations.

Thus far in Fiscal Year 2008, the Division has filed eight complaints in federal district court on behalf of USERRA claimants and has resolved six of those cases by court-entered consent decree or settlement agreements. Out of court settlements have been negotiated in three additional cases in Fiscal Year 2008, including one resolved by a U.S. Attorney's Office in New Jersey. As of August 18th in Fiscal Year 2008, the Division has received 84 referrals from DOL. In 22 of these referrals, DOL found that that the

case had merit and recommended that the Division represent the servicemember. The Division has offered representation in three of these cases and declined representation in one. One other claim was withdrawn by the claimant. The remaining 17 claims are under investigation. Cases may span several fiscal years from initial referral through investigation, settlement, or litigation. The Division will continue to work with its partners to ensure that referrals are promptly and carefully processed and appropriately resolved.

Servicemembers Civil Relief Act

The SCRA is a federal statute that provides important protections for military members, including: reduction of the rate of interest to six percent for those debts incurred before entry on active duty; the tolling of civil statutes of limitations; stays of civil and administrative proceedings; stays on execution of judgments; and protection against default judgments. The SCRA also generally prohibits evictions, mortgage foreclosures, and repossessions of servicemembers' property without a valid court order; allows servicemembers to terminate residential and automobile leases early in certain circumstances; and guarantees servicemembers certain life and health insurance rights, taxation rights, and voting rights. In some instances, violations of the SCRA are punishable by criminal penalties.

Servicemembers who believe they have a claim under the SCRA should first contact their military Legal Assistance Office. If the military Legal Assistance Office is unable to resolve the issue, the chief of legal assistance may forward the complaint to the

Department of Justice, which then reviews the matter to determine whether and what action is appropriate. When necessary, the Department also accepts inquiries directly from servicemembers.

In the summer of 2006, the Attorney General assigned the Department's SCRA enforcement duties to the Division. Since that time, the Division and the Department's U.S. Attorney's Offices have obtained significant relief for servicemembers under this statute. For example, in October 2007, the U.S. Attorney's Office in the Western District of Michigan obtained the first known prison sentence under SCRA. In that case, a landlord illegally evicted a U.S. Army soldier's pregnant wife and children from their mobile home without a court order while the soldier was away on training duty. The landlord was sentenced to serve six months in jail and pay \$15,300 in restitution.

The Division has obtained strong results this fiscal year in our civil SCRA cases as well. For example, we successfully negotiated the return of a car for an Army non-commissioned officer, whose car had been repossessed by a car dealer without a court order. The dealership also reimbursed all storage fees and removed the negative credit report information from the servicemember's credit report. In another case, we convinced a bank to remove derogatory information from a servicemember's credit report, thereby enabling him to retain his security clearance and to avoid involuntary discharge from the military. As a result, the soldier was allowed to deploy with his unit to Afghanistan. Later, we worked out a payment plan for the servicemember that included an interest rate of six percent for all of the periods of active duty, which allowed

the servicemember to keep his house from going into foreclosure. And in yet another case, we convinced a bank to refund credit card interest it had charged to a servicemember in excess of the six-percent cap mandated by the SCRA. The bank also apologized to the servicemember and forgave the servicemember's entire credit card debt.

Currently, the Division is involved in several ongoing investigations under SCRA, including an investigation of a towing company that is alleged to have sold a servicemember's car at auction while he was deployed to Iraq; municipalities that are alleged to be levying property taxes on the cars of servicemembers stationed in their towns; and major lenders who are alleged to be violating the six percent interest cap provision.

The Division maintains a robust SCRA outreach program. In 2006, the Department launched a website – www.servicemembers.gov – where servicemembers and their families can go to learn about their civil rights and how to file a claim. The site features original content as well as links to important information provided by the Department of Defense and DOL. Additionally, the Division has developed strong working relationships with the chiefs of legal services for each military branch. Our attorneys have met with military attorneys at various bases and have spoken about the SCRA at Judge Advocate General's (JAG) Schools around the country, including the Army JAG School in Charlottesville, Virginia, the Air Force JAG School at Maxwell Air Force Base in Montgomery, Alabama, and the Naval Justice School in Newport, Rhode Island. Our

attorneys also have made presentations about the SCRA at the Marine Corps Base in Quantico, Virginia, at the United States Attorney's National Conference, and at the Military Issues Working Group of the Attorney General's Advisory Commission. Indeed, the Army JAG School is currently working on a training video at our request to use in training Assistant United States Attorneys about the SCRA.

It is our understanding from our conversations with the various service chiefs that most individuals and institutions comply with the SCRA once they are educated about the law. But in the event that an individual servicemember is denied the protections guaranteed by the SCRA, the Division and the U.S. Attorney's Offices stand ready to assist.

Conclusion

The Department thanks the Committee Members and staff for your efforts on behalf of our servicemembers, and for this opportunity to discuss the Department's role in enforcing the important protections provided by Congress through the USERRA and the SCRA.