



Department of Justice

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ATTORNEY GENERAL JOHN ASHCROFT, LABOR SECRETARY ELAINE L. CHAO SIGN AGREEMENT IMPROVING JOB PROTECTION FOR RETURNING GUARDSMEN AND RESERVISTS

WASHINGTON, D.C. - Attorney General John Ashcroft and Labor Secretary Elaine L. Chao have signed a Memorandum of Understanding (MOU) to ensure that the employment rights of men and women returning from military service are vigorously protected. Specifically, the MOU streamlines and strengthens enforcement of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Congress passed USERRA to safeguard the employment rights and benefits of service members upon their return to civilian life.

“The brave men and women protected by USERRA voluntarily set aside the comforts of civilian life and stepped in harm’s way,” said Attorney General Ashcroft. “We owe it to them to make sure that their employment rights and protections are fully and vigorously protected upon their return from military service. USERRA and today’s agreement reflect the highest virtues of civic responsibility.”

“Our military men and women have been there for us, so now it’s our turn to step up our efforts for them,” Labor Secretary Elaine L. Chao said. “This agreement will strengthen enforcement of USERRA by ensuring faster resolution of USERRA cases and quicker enforcement action by the government when it is necessary.”

The MOU deals exclusively with each Department’s role and responsibilities in the enforcement of USERRA. The Attorney General has delegated his USERRA responsibilities to the Civil Rights Division of the Department of Justice and the U.S. Attorneys’ offices. USERRA will now be enforced by the Civil Rights Division along with other employment-related civil rights statutes. The Department of Labor has delegated its USERRA responsibilities to the Veterans’ Employment and Training Service and the Office of the Solicitor.

The MOU will streamline the enforcement process, allowing the two agencies to work closely and effectively to ensure the protection of USERRA rights. Specifically, under the MOU, when a complaint raises an issue of immediate and significant harm, and each agency concurs that the complaint appears meritorious, it may be referred for enforcement immediately. This will eliminate duplicative factual inquiry and legal analysis by the two agencies, expediting the seeking of appropriate relief for the returning service member.

DOL last week also issued new regulations strengthening USERRA protections. In addition to the new regulations, Secretary Chao and the DOL’s Veterans’ Employment and Training Services (VETS) have taken other steps to reduce the rate of USERRA violations, including:

- Providing briefings to more than 158,000 service members and others on USERRA;
- Responding to almost 26,000 requests for technical assistance;
- Distributing more than 240 televised public service announcements, with a second announcement to be released shortly; and
- Addressing most of the major human resource and employer organizations.

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Fact Sheet: Department of Justice Efforts to Protect the Rights of Servicemembers and Veterans

"This Memorial Day, I want to take the opportunity to highlight the steadfast commitment of the Justice Department's Civil Rights Division to protecting the rights of America's servicemembers, who have made invaluable sacrifices for this nation."

-Grace Chung Becker, Acting Assistant Attorney General for Civil Rights

The Civil Rights Division protects servicemembers' rights by vigorously enforcing the following laws: civilian employment rights are protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); voting rights are protected by the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA); financial security is protected by the Servicemembers Civil Relief Act of 2003 (SCRA); and the civil rights of veterans in public institutions are protected by the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA).

Uniformed Services Employment and Reemployment Rights Act (USERRA):

- USERRA was enacted to protect servicemembers from being disadvantaged in their civilian careers due to serving in the uniformed services. USERRA not only prohibits discrimination against persons based upon their military service, but also:
 - Requires employers to reemploy servicemembers upon their return from military leave;
 - affords returning servicemembers protections from discharge when their military leave exceeds 30 days in length; and
 - entitles servicemembers to enjoy the same rights and benefits of employment that the employer generally provides to employees who take comparable forms of non-military leave.
- Servicemembers may file a USERRA claim with the Department of Labor (DOL) through DOL's Veterans Employment Training Service (VETS). Servicemembers can go to www.dol.gov/vets to find their local VETS office or to <http://vets1010.dol.gov> to obtain claim forms. <http://vets1010.dol.gov>. <http://www.dol.gov/vets>. Servicemembers may also file a complaint in federal district court, without filing a complaint with DOL, to seek redress for a USERRA violation.
 - The U.S. Attorney General and DOJ may represent servicemembers in their USERRA claims against private employers and state and local governments. The claims are handled by the Civil Rights Division's Employment Litigation Section. Additional information regarding USERRA's protections and the USERRA cases handled by DOJ can be found at www.servicemembers.gov or www.usdoj.gov/crt/emp.

Recent USERRA Cases:

- **Woodall v. American Airlines, Inc.** In the first class action lawsuit brought by the Department of Justice under USERRA, DOJ filed a lawsuit against American Airlines, the nation's largest commercial air carrier, following a referral from the VETS. The suit alleged that American Airlines violated USERRA by prohibiting pilots from accruing vacation and sick leave benefits while on military leave to the same extent as pilots on comparable forms of non-military leave. If the court approves the agreement DOJ filed on April 17, 2008, American Airlines will pay 353 pilots who performed military service a total of \$345,773 for the loss of vacation and sick leave benefits, and provide sick leave credits having an estimated value of \$215,000.
- **Thornton v. Wal-Mart Stores, Inc.** On May 21, 2008, the United States District Court for the Middle District of Florida

approved and entered a consent decree requiring Wal-Mart to pay Mr. Thornton \$12,000 in back wages. The complaint alleged that Wal-Mart violated USERRA in failing to properly reinstate Mr. Thornton to his pre-service position as a cashier following his service in the United States Air Force. Mr. Thornton timely sought reemployment with Wal-Mart but was told that he would have to reapply for his cashier position because he was no longer listed as an employee.

- ***Williams v. Gibson County, Tennessee*** On May 21, 2008, the court approved DOJ's agreement with Gibson County resolving Ms. Williams' complaint that the county violated USERRA by failing to reemploy and promote her upon her return from two years of service with the Army National Guard in Iraq. Upon her return from active duty in July 2006, Ms. Williams promptly informed the county that she wanted to return to her part-time emergency medical technician (EMT) position. The county did not reemploy her until four months after she attempted to gain reemployment, nor did the county properly credit her for seniority for her time on active duty service. According to the terms of the consent decree, the county must promote Ms. Williams to a full-time EMT position, retroactive to the date she should have been promoted in 2006, and pay her \$17,000 to compensate for lost wages and other monetary losses.

Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA):

- UOCAVA protects active duty members of the U.S. uniformed services or merchant marine and their family members, and U.S. citizens residing outside the United States. The act also:
 - Requires that the states and territories make sure that members of our armed forces who are stationed away from home, and other citizens who are residing overseas, can register and vote absentee in all elections for federal offices;
 - enables protected voters to use a federal form to simultaneously register to vote and request an absentee ballot from their local election officials; and
 - allows protected voters to use a single application to request that ballots be sent automatically for all federal elections for the next two general elections.
- States must provide absentee ballots in sufficient time to permit voters to receive, cast and return them by the state's absentee ballot deadline so they can be counted. At a minimum, ballots must be mailed within 30 days of the state's return deadline.

Recent UOCAVA Enforcement Efforts:

- In 2006, DOJ resolved by agreement a UOCAVA suit against Connecticut to ensure protected voters could vote in the 2006 federal primary elections. That same year, DOJ remedied long-standing structural issues affecting UOCAVA voters' ability to vote in special elections in Mississippi and in federal run-off elections in North Carolina, South Carolina and Alabama.
- In 2007, DOJ worked with three states -- Massachusetts, Ohio and Virginia -- to successfully resolve potential UOCAVA violations in connection with special elections to fill vacancies in Congress.
- In February 2008, DOJ brought a law suit against Tennessee, and obtained a consent decree to ensure that servicemembers and other overseas voters would not be disenfranchised in the 2008 presidential primary election. Similarly, the Civil Rights Division participated in a recent lawsuit in Illinois to protect the rights of UOCAVA voters stationed overseas to vote in a special Congressional election.

The Servicemembers Civil Relief Act of 2003 (SCRA):

- The Servicemembers Civil Relief Act of 2003 (SCRA), formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), is a federal law that provides protections for military members as they enter active duty, including, in certain circumstances:
 - capping the interest rate on pre-service debts at 6%;
 - allowing servicemembers to terminate residential and auto leases early;
 - prohibiting evictions, foreclosures and repossessions without a court order;
 - delaying court and administrative proceedings; and
 - protecting servicemembers from default judgments.
- Servicemembers should first contact the nearest Armed Forces Legal Assistance Program office to see if the SCRA

applies. Dependents of servicemembers can also contact or visit local military legal assistance offices where they reside. To find the closest military legal assistance office, go to <http://legalassistance.law.af.mil/content/locator.php>.

- If the military legal assistance office cannot resolve the issue, the chief of legal assistance for the particular branch may choose to forward the complaint to the Department of Justice. The Department of Justice will then review the matter to determine whether enforcement action is appropriate.

Recent SCRA Enforcement Efforts:

- In May 2007, the Civil Rights Division convinced a major car dealer to return an Army assistant chaplain's car, which it had repossessed without a court order, and reimburse all storage fees and remove the negative credit report information from his credit report.
- In October 2007, the Justice Department obtained a prison sentence of six months, the first known prison sentence in such a case, and a \$15,300 restitution order against a landlord who evicted a servicemember's wife and children from their mobile home without a court order.
- In January 2008, the Civil Rights Division convinced a bank to remove derogatory information from a servicemember's credit report so that he could retain his security clearance, which prevented his involuntary discharge from the military and allowed him to deploy to Afghanistan.

Additional Efforts to Protect our Veterans:

The Civil Rights Division also protects the civil rights of veterans in public institutions. The Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) gives the Attorney General the authority to investigate institutional conditions and to file lawsuits to remedy a pattern or practice of unlawful conditions. The Civil Rights Division's Special Litigation Section protects the constitutional and federal statutory rights of persons confined in certain institutions owned or operated by, or on behalf of, state or local governments. These institutions include facilities for individuals who are mentally ill and developmentally disabled, nursing homes, juvenile correctional facilities, and adult jails and prisons.

- **Tennessee State Veterans' Home:** The Special Litigation Section has investigated allegations of patterns and practices of deficient care in the Tennessee State Veterans' Home facilities in Humboldt and Murfreesboro, and on Feb. 8, 2008, issued a Findings Letter recommending remedial action. The Special Litigation Section is currently working with the state to address these concerns.

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