Uniformed Services Employment and Reemployment Act (USERRA)

Presented by Employment Law Attorneys in the Denver Office of the Rocky Mountain Region

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USERRA LAW

- **USERRA Basics**
  - 38 U.S.C. §43 –
    - Prohibits discrimination relating to past, present, future military service
  - 38 U.S.C. §4301(b) “As federal employers, we should be model employers in carrying out provisions of this Chapter.”

- **Protections:** Hiring, Promotion, Retention, Advantages of Employment, Restoration to Position if Deployed/Activated
USERRA LAW & BASICS

- Obligations of Employer
- Obligations of the Service Member
- Reemployment Eligibility
- Restoration Rights & status with Agency

**Process:**
- FEDERAL: Employee files first with DOL (VEOA) and then directly with MSPB (appeal)
- PRIVATE employees go to civilian court of appropriate jurisdiction
USERRA CASE LAW

- Army Settles USERRA Case (Hanke)
  - National Guardsmen lost his job as civilian contractor when it was “in-sourced” by Army
  - He was in Iraq in 2010 when this happened

  - OSC represented the soldier and held the Army to the 2010 change to the law—*clarification that the obligation to reemploy follows the new employer when jobs change from private to public sector positions*.

  - US Gov’t is the biggest violator of USERRA? Over 1548 or 18% complaints in federal agencies
USERRA CASE LAW

- OH Supreme Court case Turner v. Houk, Warden, et al., 112 Ohio St. 3d 561, 2007 Ohio 814, 2007 Ohio LEXIS 521

- Navy reservist and employee of Ohio State Pen. In Youngstown, OH – went active duty

- When he left was “admin. Asst 2” – when he returned, placed as “business administrator” which was 2 pay ranges below the previous position
CONTINUED ....

- **Process:** USERRA authorizes individuals to sue a state (or any other employer) in federal court in the individual’s own name (as plaintiff)

- To sue a state in federal court under USERRA, first complain to U.S. Dept of Labor’s Veterans Employment and Training Service (VETS)—investigation—then, referred to attorney general.
USERRA CASE LAW

- **Staub v. Proctor Hospital** – No. 09–400, March 1, 2011
  - Angiography technician – US Army Reservist’s supervisors were hostile to his service.
  - Grievances were filed bc of said hostilities
  - *Is the person’s service a motivating factor in the actions that are taken v. that employee?*
  - Employer held liable
USERRA/Restoration

- *West v. Air Force*, 111 LRP 64195, 117 MSPR 24 (9/30/11)
  - *Escalator Principle* did not apply in this case—promotion not a prerequisite of seniority or a reward for length of service—her peers promoted competitively
  - Realignment of position not a violation—returned to a position she would have held absent her service; realignment is within Agency’s discretion
ESGR & More Information

- If there are issues, or you have questions or your employees have questions, CALL ESGR

- Remember: knowledge is key!

- Some contacts at DOL, Denver: 303–318–8827, see flyer if you need this contact list