U.S. Office of Special Counsel 1730 M St., NW Washington, DC 20036

www.osc.gov



OSC Overview



- <u>Independent</u> federal investigative & prosecutorial agency established in 1979
- Size: Approx. 110-Person Staff, \$18.5M Budget in FY 2011
- Responsibilities:
 - Protect federal employees & applicants from Prohibited
 Personnel Practices (PPPs), esp. whistleblower retaliation
 - Protect employment rights of veterans by enforcing USERRA and VEOA (Veterans' Preference)
 - Provide secure channel for the disclosure of government waste, fraud, and abuse
 - Prevent undue influence of politics in the workplace by enforcing Hatch Act restrictions on political activity by government employees

USERRA Purposes



- Encourage non-career military service by reducing the disadvantages to civilian careers that result from such service.
- <u>Minimize disruption</u> to service members' civilian lives via prompt reemployment.
- Prohibit employment discrimination because of past, present, or future military service.
- "It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of [USERRA]."

USERRA Cases



•REEMPLOYMENT:

Right to be reemployed in civilian job following military service

•DISCRIMINATION:

Prohibition on denying initial employment, retention, promotion, or any benefit of employment due to military service

•RETALIATION:

Prohibition on retaliating against anyone who exercises USERRA rights or assists another in exercising those rights (even if not a service member)

USERRA Complaint Process





Department of Labor
Veterans Employment & Training Service
(investigation)

Federal

Office of Special Counsel (prosecution)

Non-F<mark>ed</mark>eral

Department of Justice (prosecution)

OSC Recent USERRA Successes



Initial Hiring Discrimination

Agencies may not refuse to hire applicant because he or she can't start work due to military service

- Army officer served in Iraq, was offered his "dream job" as a federal Special Agent, could not report on the agency's start date due to military commitment.
- Agency withdrew the offer, and the veteran spent several months unemployed and under-employed.
- OSC won the case, got the agency to re-offer the position, and vet received back pay with interest.

OSC Recent USERRA Successes



Reemployment Rights

Agencies may be liable under USERRA if they interfere with a government contractor's reemployment rights

- After deployment, Army Reservist attempted to resume his job as a federal contractor supporting a government agency.
- Agency indicated that it was satisfied with his replacement and would "cancel the contract" if contractor attempted to reinstate him.
- OSC successfully litigated his case, holding the government liable for interfering with his reemployment rights under USERRA.

OSC Recent USERRA Successes

"Systemic" Relief for All Federal Employees in Guard or Reserve 5 extra days admin leave covers ALL deployments (not just first)

- OSC caused OPM to change a government-wide leave policy for federal civilian employees returning from Reserve and National Guard duty in Iraq and Afghanistan.
- As a result, thousands of veterans became eligible for five additional days of uncharged leave (excused absence) for which they had previously been deemed ineligible.

First USERRA Demonstration Project



- 2005-2007: Congress est. Demonstration Project whereby OSC (instead of VETS) received approx. half of all federal USERRA cases to investigate and resolve (not just prosecute)
- <u>Purpose</u>: Determine any benefit from having single agency (OSC) handle cases from beginning to end

Results:

- 458 Cases Investigated and Resolved
- 26% Corrective Action Rate
- 120-Day Avg. Resolution Time

USERRA Demonstration Project



Employer Support of the Guard and Reserve

"Odd-Numbered" Federal

Office of Special Counsel (<u>investigation</u> and prosecution)

USERRA Cases by Agency



Demo Project Cases			Referral Cases		
2004-2007			2004-present		
DoD	140	30%	DoD	60	25%
USPS	66	14%	USPS	41	17%
DHS	58	13%	DHS	26	11 %
DVA	49	11%	DVA	23	10%
Other	145	32%	Other	89	37%

New USERRA Demonstration Project



- Established by Veterans' Benefits Act of 2010
- Similar to Last Demonstration Project:
 - Half of all federal cases to OSC (other half to VETS)
 - Three years (2011-2014)
 - Government Accountability Office evaluation
- New Performance Measures
- Began August 9, 2011; 45 cases received in 3 mos.

GAO Evaluation of Demonstration Project



Performance Measures:

- Customer satisfaction;
- Cost (such as avg. cost per case);
- Timeliness (such as avg. processing time, case age);
- Capacity (such as staffing levels, education, grade level, training received, caseload); and
- Case outcomes

Yearly GAO Reports throughout project

Final GAO Report at end of project w/recommendations

USERRA Goals



- Provide better outcomes for more veterans in less time
- Prevent USERRA violations in Federal government through outreach, education, & training
- Obtain "systemic" (across-the-board) relief for federallyemployed veterans and Guard/Reserve members
- <u>Establish</u> pro-veteran legal precedents
- Realize goal of Federal government as "model employer" under USERRA

Challenges



- OSC has been experiencing <u>increasing caseloads</u> in all program areas (Prohibited Personnel Practices, Hatch Act, Whistleblower Disclosures)
- 160-180 new cases per year to investigate, resolve, and prosecute under USERRA DP
- OSC (and Congressional Budget Office) estimate an additional \$1.5M/year needed to fully staff USERRA DP
- Current Staffing: 4 Full-Time Employees