

**STATEMENT OF
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THE AMERICAN LEGION
TO THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE DEPARTMENT OF LABOR'S
ADMINISTRATION OF THE
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT
UNDER CHAPTER 43 OF TITLE 38, UNITED STATES CODE.**

AUGUST 8, 2003

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to submit the views of The American Legion on the Department of Labor's administration of the Uniformed Services Employment and Reemployment Rights Act (USERRA) under Chapter 43, Title 38, United States Code (U.S.C.). As tens of thousands of National Guard and Reserve soldiers, sailors, airmen and Marines return from Operation Iraqi Freedom and other deployments around the globe, the importance of this hearing becomes self evident in its relevancy and timeliness.

The American Legion expresses its gratitude to Congress for providing a mechanism for reducing the negative financial impact of service on servicemembers and their families. The American Legion strongly supports this law which has been critical to the continued success of the all-volunteer military and its increasing reliance on Reserve and National Guard units. When a servicemember can be assured that his or her livelihood will be minimally disrupted, benefits will not be forfeited and career paths preserved, they can better accept the sacrifices and risks of military life and continue their essential contributions to our national security. The American Legion supports any measure that will strengthen the effectiveness of USERRA in achieving this goal.

USERRA establishes the reemployment rights of persons who have been absent from a position of employment because of service in the uniformed services. Service in the uniformed services consists of active duty, active duty for training (ACDUTRA), initial ACDUTRA, inactive duty training, full-time or funeral honors, National Guard and full-time Reserve duty, fitness for duty examinations and other circumstances. The uniformed services consist of all the branches of the U.S. Armed Forces, including Army and Air National Guard and Reserves and Commissioned Officers of the Public Health Service. The cumulative length of absence from civilian employment may total up to five years with certain exemptions.

In addition to basic rights to return to previous employment, USERRA protects other benefits and job attributes. USERRA provides for COBRA-like health care continuation for persons who

are absent from work to serve in the uniformed services, even when the employer is not covered by COBRA. Servicemembers who meet the law's eligibility criteria must be treated as if they had been continuously employed for pension purposes, regardless of the type of pension plan the employer has adopted. A returning servicemember is entitled to all general across the board pay raises that he or she would have received if not absent due to active military service. An employer is generally required to allow a returning servicemember to make up any missed tests for promotion if that employee would have been eligible during his or her absence and to make reasonable efforts to help qualify that person

Servicemembers also have obligations to fulfill in order to assert rights under USERRA. The servicemember/employee must: 1) give advance notice to the employer of his or her intention to return to a position following service, 2) apply for reemployment in a timely manner and 3) have completed service under honorable conditions. It is critical to the success of USERRA that deploying servicemembers be knowledgeable of these obligations well in advance of a call-up. The American Legion recommends that outreach programs to disseminate information on rights under USERRA to Guard and Reserve units at monthly drills be established.

The legal authority to enforce USERRA has been assigned to the Veteran's Employment and Training Service (VETS) of the U.S. Department of Labor, except in the cases of federal employees, certain union employees and transit workers. A formal complaint against an employer must be filed with VETS, but it is recommended that mediation first be attempted through volunteers of the National Committee for Employer Support of the Guard and Reserve (NCESGR). In the investigation of complaints, VETS can compel, by subpoena, the production of witnesses and documents. If VETS renders an outcome unfavorable to the employee/veteran, the employee/veteran may further pursue the matter by filing a complaint with the U.S. Attorney General or with the Office of Special Counsel, if federal employment is involved. VETS employees who investigate USERRA claims also handle Veterans Preference (VP) complaints and further the veteran hiring objectives of the Federal Contractor Program.

Administration of USERRA is accomplished through funding of VETS Performance Budget Goal 2 – Quality Workplaces - in support of the DOL's Strategic Goal 3. Budgetary support of USERRA, VP and FCP is accomplished by the residual of funds available after fully funding VETS Performance Goal 1 – the Prepared Workforce. Performance Goal 1 includes the Transition Assistance Program (TAP), Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) Program and Homeless Veterans Reintegration Program (HVRP), as well as grants to States.

VETS' FEDERAL ADMINISTRATION ACTIVITY
(\$ in Thousands)

	FY 2003 Appropriation*	FY 2004 Estimate	FY 2003/2004 Difference
Activity Appropriation (Total VETS Resources)	26,669	29,028	2,359

FTE	250	250	0
Resources Supporting Performance Goal 1	15,328	17,492	2,164
FTE	134	139	5
Resources Remaining in Support of Performance Goal 2	10,707	11,536	829
FTE (USSERA, VP, FCP)	116	111	-5

*FY 2003 estimate was fully funded.

USERRA CASELOAD
Past Performance and *Future Projections*

	FY 2001	FY2002	FY 2003	FY2004
Cases Opened	895	1,195	1,200	1,400
Cases Processed	843	1,135	1,100	1,325
Cases Carried over to next FY	102	162	252	327
Cases Processing within 90 days	90%	90.5%		

Mr. Chairman, given these budget figures and the return of large numbers of service men and women who left jobs to serve, we question whether VETS will have sufficient resources to handle the influx of USERRA claims which will certainly occur. It is clear that the initial projections were based on normal budgetary assumptions and did not foresee such a mobilization as has been required by Operation Iraqi Freedom.

In response to an inquiry from The American Legion, the VETS Office noted that an increase of 10 percent over the FY 2004 budget has been requested and that an additional appropriation for FY 2005 will be requested. VETS Director of Management and Budget states that it would be impossible to staff up for an influx of Operation Iraqi Freedom veterans' claims in such a relatively short time because of the lengthy training processes involved. VETS' projections indicate that the majority of USERRA claims will come in FY 2005, and that a number of them have already been filed based on pre-deployment denials of reemployment rights by employers; that is, denials based on the advance notice requirement by the servicemember. The Director stated that if VETS' FY 2004 request is fully funded that sufficient resources should be available to prevent a case backlog from developing and he reiterated VETS' goal of clearing 95 percent of USSERA complaints within 90 days of filing. The American Legion applauds VETS and its management for currently adjudicating 90 percent of its caseload within 90 days and for its commitment to enforcing the reemployment rights of this nation's all-volunteer armed forces.

Finally, Mr. Chairman, I would like to mention the case of The American Legion's own Deputy Director for Economics, Mr. Joe Sharpe, who is currently in Iraq as an Army civil affairs

specialist, helping to rebuild the banking system in that country. Upon his return, Mr. Sharpe will resume his duties as if he were not called up and will have lost no benefits, time for pension purposes, etc. In fact, he will have lost nothing financially because of The American Legion 's policy of making up the difference between a called-up employee's military pay and his Legion salary. We believe this is the next step in the evolution of equitable policies for Guard and Reserve personnel and it will be a priority of The American Legion.

Again, thank you for this opportunity to comment on this valuable program. The American Legion looks forward to working with the VETS Office and the Subcommittee to ensure that the men and women serving in the Guard and Reserve units are provided adequate job security while defending the freedoms of this great nation.

The American Legion welcomes any questions you or your colleagues may have on this important issue.