

LAW REVIEW 931

(SEPTEMBER 2009)

CATEGORY: 1.1.1.7—USERRA Application to State and Local Governments

1.3.2.1—Prompt Reinstatement

1.3.2.9—Accommodations for Disabled Veterans

1.4—USERRA Enforcement

1.7—USERRA Regulations

DOJ Sues California Department of Corrections

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On May 5 the U.S. Department of Justice (DOJ) filed suit against the California Department of Corrections & Rehabilitation (CDCR) in the U.S. District Court for the Eastern District of California (Sacramento). The suit alleged that the CDCR violated the Uniformed Services Employment and Reemployment Rights Act (USERRA) when it refused to reemploy Air Force Reservist Dany Felix when he returned from active duty in August 2006.

Mr. Felix worked for the CDCR as a medical technical assistant from March 2003 until late 2005, when he was called to active duty. Mr. Felix suffered a back injury while on active duty, and he was honorably discharged in August 2006. He then made a timely application for reemployment, and he met the USERRA eligibility criteria for reemployment. DOJ's suit asserts that the CDCR violated USERRA when it refused to reemploy him on account of his service-connected injury.

Under section 4313(a)(3) of USERRA, the CDCR had a duty to make reasonable efforts to accommodate Mr. Felix's disability and to enable him to return to his medical technical assistant position. If Mr. Felix's disability could not be reasonably accommodated in that particular position of employment, the CDCR was required to reemploy him in another position for which he was qualified or could become qualified with reasonable employer efforts. The CDCR did not offer to reemploy Mr. Felix until May 2007, nine months after he returned from active duty and only after he had notified the employer that he had found employment with another employer.

Section 4331 of USERRA gives the Secretary of Labor the authority to promulgate regulations about the application of USERRA to state and local governments and private employers. The secretary exercised that authority and published final USERRA regulations in the Federal Register in December 2005. Those regulations are now published in Title 20, Code of Federal Regulations, Part 1002 (20 C.F.R. Part 1002). The regulations provide: "Absent unusual circumstances, reemployment must occur within two weeks of the employee's application for reemployment." 20 C.F.R. 1002.181.