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New Evidence of Discrimination against Recently Separated Veterans

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1.2—USERRA Discrimination

In a front-page article, *USA Today* reported: "Unemployment payments to servicemembers fresh out of the military have doubled since 2008, a sign that veterans are returning from war to an increasingly tough job market. The military paid $882 million in unemployment benefits last year, up from $451 million in fiscal 2008. The 2011 figures are trending even higher. Veterans are having a particularly tough time finding jobs. The estimated jobless rate among male veterans 18-24 was more than 30% in May, compared with 18% among male civilians of the same age group, according to the Bureau of Labor Statistics." "Out of uniform means out of work for many new vets", *USA Today,* June 17, 2011, page 1A.[1]

The data cited by *USA Today* are very interesting, but there is one inescapable inference that the reporter failed to draw, or at least to express. The fact that 18-24 year old veterans suffer an unemployment rate that is 40% greater than that of non-veterans in the same age group, who are competing for jobs in the same tough economy, clearly indicates that employers are not aware of or have consciously chosen to flout their obligations under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

A veteran under the age of 25 is *necessarily* a Reserve Component member. The length of an enlistment in any branch of the armed forces is eight years.[2] An individual must be at least 17 years old to enlist with parental permission, or 18 without parental permission. Thus, a new veteran would have to be at least 25 (and probably several years older) to have completed the entire enlistment term and be "completely out.

For example, let us take the hypothetical but very realistic Joe Smith. He graduated from high school in May 2007 and immediately enlisted in the Army, with parental permission. He was almost 18 when he reported to boot camp in September 2007. His enlistment contract called for him to remain on active duty for four years, and he expects to leave active duty in September 2011. He has no plans to affiliate with the Army National Guard or Army Reserve. Nonetheless, he will be a member of the Individual Ready Reserve (IRR) until he completes the eight-year enlistment in May 2015.

Prior to the terrorist attacks of September 11, 2001, the possibility of being called up from the IRR was largely theoretical, but since 2001 several thousand Army and Marine Corps IRR members have been involuntarily called to the colors. Employers are very much aware of these call-ups. An employer will be most reluctant to hire Joe Smith so long as there is a possibility that he may be called back to duty.

Refusing to hire somebody like Joe Smith is a clear violation of section 4311(a) of USERRA, which provides: "A person who is a member of, applies to be a member of, performs, has performed, applies to perform, *or has an obligation to perform* service in a uniformed service shall not be denied *initial employment,* reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or *obligation*." 38 U.S.C. 4311(a) (emphasis supplied).

Ever since Congress abolished the draft in 1973, military recruiters have been telling potential recruits and their parents that joining the military is a good career move, even if the recruit will not stay on active duty for a 20-year career. Tell the young man or woman that during a four-year active duty period he or she will learn valuable job

skills and work habits and will be very attractive to employers when released from active duty. Until now, the data have generally supported this recruiter sales pitch, but not now.

The *USA Today* article quotes Senator Patty Murray[3] as saying of recently separated veterans: "They're young. They're brave. They're enthusiastic. The world's their oyster. They come home and it's a shock to them that six months later they don't have a job."

With today's tough economy, all the services are meeting their goals for recruiting and retention, but the tough economy will improve at some point. I am concerned about military recruiting when the economy improves. Those who turn 18 in 2015 and beyond will hear from their older brothers and sisters, and their parents, that enlisting in the military makes it much harder, not easier, to land a civilian job. This cannot be good news for the continued success of the all volunteer military.

We need a renewed effort to remind employers of USERRA and to make the point to them that there are real adverse consequences (back pay, liquidated damages, loss of the opportunity to bid for federal contracts, etc.) for employers that knowingly flout USERRA.

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[1] The reference to unemployment payments is to the Unemployment Compensation for Ex-Servicemembers (UCX) Program, administered by the state employment commissions and the U.S. Department of Labor (DOL). Unemployment compensation is always charged to the "base employer"—the entity that employed the claimant immediately before he or she lost a job and became unemployed. For persons unemployed after leaving active duty in the armed forces, the base employer is the service from which the person was recently released. DOL reimburses the states for these UCX payments and then bills the Department of Defense (DOD) or the Department of Homeland Security (DHS), for the Coast Guard.

[2] In the early 1980s, the length of an enlistment was increased from six to eight years.

[3] Senator Murray chairs the Senate Veterans' Affairs Committee.