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Presidential Memorandum Gives Uniformed Services Employment and Reemployment Rights Act (USERRA) Guidance to Federal Employers

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1.1.1.8 USERRA Applies to Federal Government

1.4 USERRA Enforcement

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was enacted for many reasons, including to encourage service in the uniformed services, to minimize impacts on one's career for that service, and to prohibit discrimination for that service.² At the time it was enacted, it was "the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of USERRA."³ Unfortunately, that has not been the case. In our experience at the Service Members Law Center, the Federal Government is one of the worst violators of rights granted to service member employees under USERRA.

On July 19, 2012, President Obama released a Presidential Memorandum to the heads of the executive departments and agencies regarding ensuring USERRA protections.⁴ The memorandum directed several steps that must be taken to improve their protection of the rights of their service member employees. The memorandum can be found:

First, the memorandum established a USERRA Employment Protection Working group. This working group will coordinate and review agency efforts to improve implementation of USERRA. The group will also coordinate efforts to educate veterans and serving reservists and advise them of how to assert their USERRA rights. The working group will also be responsible for collecting data on how well the implementation process is going. Within 90 days from 19 July 2012, the USERRA Employment Protection working group must report to the President on the progress of implementation of the memorandum.

The memorandum also required the Director of the Office of Personnel Management (OPM) to issue guidance on USERRA to federal agencies, in concert with other working group participants. The guidance will give specifics on how agencies can improve protection of USERRA rights for their employees. In the course of developing this guidance, OPM will review laws, statutes, policies, etc., that might stand in the way of USERRA protections. OPM will report to the President within one year on the findings of this review along with any recommended changes.

OPM will also be responsible for working with the Department of Defense to better track data on the overall state of veterans and serving guard and reserve members who are employed by the Federal Government.

All of these requirements are progress for the Federal Government as an employer. The President's desire to transform Federal Agencies into model employers is laudable. However, the memorandum notes that the head of each agency is responsible for ensuring the necessary resources are provided to enact any recommended policy changes. This

responsibility is subject to the availability of appropriations. It is difficult not to be pessimistic about the outlook for availability of funds in federal agencies with budgets as tight as they are.

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² 38 U.S.C. §4301.

³ Id.

⁴ Memorandum of July 19, 2012, "Ensuring the Uniformed Services Employment and Reemployment Rights Act (USERRA) Protections," 77 Fed. Reg. 43,699 (July 19, 2012), available at

<https://www.federalregister.gov/articles/2012/07/25/2012-18325/ensuring-the-uniformed-services-employmentand-reemployment-rights-act-userra-protections> .