

LAW REVIEW 0605

Demonstration Project on USERRA Enforcement Within the Federal Government

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I have addressed the enforcement of the Uniformed Services Employment and Reemployment Rights Act (USERRA) at length in Law Reviews 12, 24, 34, 61, 65, 67, 89, 93, 115, 127, 128, 148, 172, 189, 197, 200, 203, and 0604. A person asserting that his or her employer or former employer has violated USERRA may make a formal, written complaint to the Veterans' Employment and Training Service, U.S. Department of Labor (DOL-VETS). After conducting its investigation, and after efforts to obtain employer compliance prove unavailing, DOL-VETS refers the case file to the Office of Special Counsel (OSC), if the employer is a Federal executive agency, or to the Department of Justice (DOJ), if the employer is a state, a political subdivision of a state, or a private employer.

Upon receipt of a completed DOL-VETS investigation of a federal sector USERRA complaint, OSC reviews the evidence obtained and the conclusions reached by DOL-VETS. If reasonably satisfied that the claimant is entitled to the benefits he or she seeks, OSC initiates a proceeding, in the name of the claimant, in the Merit Systems Protection Board (MSPB), a quasi-judicial federal agency. DOJ performs the same function in cases under its jurisdiction.

On Dec. 10, 2004, Congress enacted the Veterans' Benefits Improvement Act (VBIA). Section 204(a) of the VBIA established a demonstration project on USERRA enforcement within the Executive Branch of the federal government. The project began Feb. 8, 2005 and ends Sept. 30, 2007.

Pursuant to the demonstration project, OSC (rather than DOL-VETS) receives and investigates any USERRA complaint against a federal executive agency if the claimant's Social Security Number (SSN) ends in an odd digit. OSC also receives and investigates (regardless of the claimant's SSN) all federal sector USERRA claims that also involve related allegations of "prohibited personnel practices" over which OSC otherwise has jurisdiction.

The demonstration project enables servicemembers to have their USERRA allegations investigated by OSC's experienced staff and, if substantiated, quickly resolved via settlement or by filing an action before the MSPB. I am confident the demonstration project will show that USERRA complaints made to OSC directly are resolved much more quickly and thoroughly than those cases which go to DOL-VETS first.

On several occasions, I have heard Special Counsel Scott Bloch express his strong personal commitment to effective USERRA enforcement within the federal government.

He expressed that commitment during his senate confirmation hearings in December 2003, and he has expressed that commitment publicly on numerous occasions since taking office in January 2004. He has also expressed that commitment to me personally. The actions of OSC since Scott Bloch arrived demonstrate this commitment is genuine and meaningful.

An effective leader can change the direction and priorities of an organization, and that is exactly what Scott Bloch has done. Before he arrived, OSC had never filed a USERRA enforcement action in the MSPB. (Several federal employees filed MSPB actions on their own behalf without federal assistance.) USERRA enforcement has gone from a stepchild within OSC to a top priority.

Bloch's own son is an enlisted Marine who has already served two tours of duty in Iraq and will soon be returning for a third tour.

Note: This description of the demonstration project was borrowed almost verbatim from a letter dated October 7, 2005, from the Honorable Scott J. Bloch (Special Counsel of the United States) to the Honorable David M. Walker (Comptroller General of the United States and head of the Government Accountability Office or GAO). That letter is reprinted in full in Appendix IX of GAO Report No. 06-60. That report can be found on GAO's Web site, www.gao.gov.

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