

Cynthia Marcotte **S**tamer, P.C. OLUTIONS LAWYER™

Primary Office
16633 Dallas Parkway, Suite 600
Addison, Texas 75001
Mobile Telephone: (469) 767.8872

Helping Management Manage

Plano/Mail Room
3948 Legacy Drive
Suite 106, Box 397
Plano, Texas 75023

September 22, 2011

U.S. Businesses Must Exercise Care To Honor Employment, Credit & Other Rights of Service Members

Businesses Urged To Review and Strengthen Their Policies, Practices & Training

U.S. businesses should review and tighten their business and employment practices for dealing with individuals in the military and their families in light of growing risks of enforcement of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and other federal and state protections.

The latest reminder to U.S. businesses that the Obama Administration has made enforcement of service members' employment, borrowing and other rights under USERRA and other federal laws a high priority came from the Justice Department Civil Rights Division's September 22, 2011 announcement that ServiceMaster 24-Hour and Gregory Tullar, ServiceMaster's owner and operator (collectively "Service Master") have agreed to settle Justice Department charges stemming from their refusal to reemploy a member of the U.S. Army Reserve following his return from active duty.

Current and former service members enjoy a wide range of employment, mortgage and other credit, landlord-tenant, housing, litigation and other special protections under Federal law, which generally may be enforced by government action, private lawsuits or both. The Department of Justice often is a key player in the enforcement of these protections alone or in conjunction with the Department of Labor, Department of Veterans Affairs, Department of Housing & Urban Development and various other agencies. In partnership with the Department of Labor, for instance, the Justice Department enforces servicemember's civilian employment rights Under USERRA as well as a broad range of financial security, housing and other rights provided by the Servicemembers Civil Relief Act ("SCRA") and servicemember voting rights under the Uniformed and Overseas Citizen Absentee Voting Act of 1986 ("UOCAVA"),.

Concerning the employment rights of servicemembers, USERRA subject to certain limitations, requires that individuals who leave their civilian jobs to serve in the military be reemployed promptly by their civilian employers in the same positions, or in positions comparable to the positions, they would have held had their employment not been interrupted by military service. In addition to its reemployment rights, USERRA also requires employers and employee benefit plans honor other special and often complicated special rules that give servicemembers special protections of their right to continue to accrue and qualify for promotion, raises, many pension and benefit credits and accruals and other advancement, to continue medical benefits for themselves and their families, and various other protections.

The settlement announced this week resolves the Justice Department's charges that Service Master and Tullar violated the USERRA right of U.S. Army Reserve member Kyle A. Sharp by

failing to reemploy Sharp in his pre-service position as a crew chief for ServiceMaster in and around Scottsdale, Arizona following his return from active military duty in November 2010. Sharp was ordered to report for active military training in the United States Army in May 2010 and notified Tullar of his upcoming military service. Upon his release from active military training, Sharp notified Tullar that he wanted to return to his job as a full-time employee with ServiceMaster. Tullar informed Sharp that a new crew chief had replaced him in his absence and would be continuing in that position.

After Service Master did not reemploy Sharp, Sharp filed a USERRA complaint with the Labor Department's Veterans' Employment and Training Service. When Labor Department efforts to resolve the complaint proved unsuccessful; the Labor Department referred the complaint to the Justice Department.

Under the terms of the consent decree, ServiceMaster and Tullar will pay Sharp \$15,000 in back pay to resolve Sharp's USERRA claims.

The Sharp settlement is a recent example of a lengthy and growing complaints filed by the Justice Department against U.S. businesses for alleged violations of servicemembers' employment, credit, voting and other rights under USERRA or other laws. Since the first of the year, for instance, the Justice Department also has charged several other employers around the country with violating service member's employment rights. It also has obtained settlements from Bank of America and Saxon Mortgage for illegally foreclosing on servicemembers in violation of SCRA. Coupled with increased enforcement actions by other federal and state agencies and litigation brought by private plaintiffs, the Justice Department's enforcement activities make it critical that U.S. businesses exercise care to ensure that their employment and other business practices are properly updated and administered to avoid violation of these rights.

Since the Gulf War, federal laws and regulations governing the rights of servicemembers and their families have changed several times. With so many Americans deployed in active service over the past decade, protection and expansion of rights of members of the military and their families has been a priority for both parties. After making the problems of service members and their family a key focus of his campaign, President Obama has encouraged agencies in his administration to act on this campaign promise. Consequently, the Justice Department, Department of Labor, Department of Veterans Affairs and other agencies both are stepping up investigations and enforcement and conducting vigorous education campaigns to inform members of the military and their families of their federal rights and how to exercise them.

In light of the rising risks resulting from this rising enforcement emphasis, U.S. businesses should act to control their exposure by reviewing, updating and strengthening their policies, practices and workforce and vendor training to minimize the risk of liability for violating servicemembers rights.

If you need assistance in conducting a risk assessment of or responding to an IRS, Labor Department or other legal challenges to your organization's existing policies or practices for dealing with servicemembers or with other compliance, labor and employment, employee benefit or compensation practices, please contact the author of this update, attorney Cynthia Marcotte Stamer.

For Help With These Or Other Matters

The author of this update, attorney Cynthia Marcotte Stamer has more than 24 years experience advising and representing employer, employee benefit and other clients before the Justice

Department, Internal Revenue Service, the Department of Labor, Immigrations & Customs, and other agencies, private plaintiffs and others on worker classification and related human resources, employee benefit, internal controls and risk management matters.

A board certified labor and employment attorney widely known for her extensive and creative knowledge and experience worker classification and other employment, employee benefits and workforce matters, Ms. Stamer works extensively with employers, employee benefit plan sponsors, insurers, administrators, and fiduciaries, payroll and staffing companies, technology and other service providers and others to develop and operate legally defensible programs, practices and policies that promote the client's human resources, employee benefits or other management goals. she works extensively with, speaks and publishes, and conducts management training on compliance and risk management of requirements concerning the handing of servicemember employment and other rights.

A featured presenter of numerous presentations on employment and other responsibilities of U.S. businesses to servicemembers, Ms. Stamer also is a widely published author and highly regarded speaker on these and other employee benefit and human resources matters who is active in many other employee benefits, human resources and other management focused organizations.

The immediate past Chair and current Welfare Benefit Committee Co-Chair of the American Bar Association (ABA) RPTE Employee Benefits & Other Compensation Committee, a Council Representative on the ABA Joint Committee on Employee Benefits, the Vice Chair of the ABA TIPS Employee Benefits Committee, the Gulf States Area TEGE Council Exempt Organizations Coordinator, past-Government Affairs Committee Legislative Chair for the Dallas Human Resources Management Association, past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, and the editor and publisher of [Solutions Law Press HR & Benefits Update](#) and other Solutions Law Press Publications, She also is recognized for her publications, industry leadership, workshops and presentations on these and other human resources concerns and regularly speaks and conducts training on these matters. Her insights on these and other matters appear in the Bureau of National Affairs, Spencer Publications, the Wall Street Journal, the Dallas Business Journal, the Houston Business Journal, and many other national and local publications.

You can learn more about Ms. Stamer and her experience, find out about upcoming training or other events, review some of her past training, speaking, publications and other resources, and register to receive future updates about developments on these and other concerns from Ms. Stamer at www.CynthiaStamer.com.

For important information concerning this communication click [here](#). THE FOLLOWING DISCLAIMER IS INCLUDED TO COMPLY WITH AND IN RESPONSE TO U.S. TREASURY DEPARTMENT CIRCULAR 230 REGULATIONS. ANY STATEMENTS CONTAINED HEREIN ARE NOT INTENDED OR WRITTEN BY THE WRITER TO BE USED, AND NOTHING CONTAINED HEREIN CAN BE USED BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER FEDERAL TAX LAW, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED TRANSACTION OR MATTER ADDRESSED HEREIN.

©2011 Cynthia Marcotte Stamer, P.C.