



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 18, 2008

The Honorable Daniel K. Akaka
Chairman
Committee on Veterans Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on S. 2471, the "USERRA Enforcement Improvement Act of 2007." While we support the goals of S. 2471, we have serious concerns about this legislation.

Specifically, we oppose provisions in subparagraph 2(d)(1)(B)(2) of the bill that would require the Attorney General to make the decision of whether to offer legal representation to a person claiming a violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), and to notify the claimant of that decision, within 45 days of receiving a USERRA referral from the Department of Labor. Given the work necessary to complete this assessment, institution of a 45-day requirement would be arbitrary and not in the interest of justice for the claimant. Indeed, placing any time limits on the Department's internal decision-making process could infringe upon our ability to assess each referral adequately.

Since assuming USERRA jurisdiction in September of 2004, we have processed many referrals that required a substantial amount of time — much longer than 45 days — to complete properly, for reasons outside of our control. In a few cases, claimants have been unavailable to meet with our attorneys during deployments or military assignments. In the last six to nine months, at least five referrals that we have received required additional investigation before we could make an appropriate recommendation. In these cases, it would have been impossible to complete our assessment and notify the claimant of the decision within 45 days.

Additionally, in most cases our ability to conduct a complete investigation without time constraints benefits the claimants. We offer representation in a significant number of the referrals that come to the office with a Department of Labor "merit" recommendation. If we were forced to cut short our review processes, we might be unable to offer representation in "close cases" in particular, where evaluation of the case would benefit from additional information before making a recommendation.

Finally, establishing a statutory deadline would create a potential jurisdictional problem. We recognize that the legislation does not require suit to be filed by this period. However, if we were to miss the 45-day deadline for notifying the claimant of our decision and were to file suit

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after the deadline had passed, a defendant might argue that the suit was jurisdictionally defective because the Government failed to meet the time requirement established by law.

Thank you for the opportunity to present our views. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Nelson", with a long, sweeping horizontal flourish extending to the right.

Keith B. Nelson
Principal Deputy Assistant Attorney General

cc: The Honorable Richard Burr
Ranking Minority Member