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*November, 2011*

## **\$20+ Million Settlement Shows Business Risk of Violating Military Service Member Or Veteran's Federal Credit, Other Rights**

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

Today's (November 14, 2011) Justice Department announcement that a Bank of America subsidiary will pay 160 military service members at least \$116,785 apiece for violating their federal credit rights is the latest reminder to businesses and their leaders of the significant liability that they run for failing to honor the legal rights of U.S. military service persons and their families.

Following up on the Justice Department Civil Rights Division's September 22, 2011 announcement of its achievement of an agreement to settle employment discrimination charges brought against ServiceMaster 24-Hour and its owner stemming from their refusal to reemploy a member of the U.S. Army Reserve following his return from active duty, The two settlements together illustrate the growing risks businesses run if they fail to honor these and other rights of members and veterans of the U.S. military.

With government and private awareness and enforcement of these rights on the rise, 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.

### **Lender Triggers Huge Liability For Violating Military Servicemembers Credit Rights**

On May 26, 2011, the Justice Department announced a settlement with BAC Home Loans Servicing LP, formerly known as Countrywide Home Loans Servicing LP, which resolved allegations that the bank unlawfully foreclosed on servicemembers' homes in violation of the SCRA. The settlement represents the largest action taken under the SCRA by the Justice Department to date.

To settle the Justice Department charges that its subsidiary, BAC Home Loan Service, LP, violated the credit protections afforded to military service persons and their families by the Servicemember Civil Relief Act (SCRA), Bank of America agreed to pay \$20 million to approximately 160 servicemembers who Justice Department officials charged were illegally foreclosed on between 2006 and the middle of 2009. Under the agreement, Bank of America agreed to provide information about its foreclosures from mid 2009-2010 and to pay damages in the same minimum amount to those servicemembers whose homes were illegally foreclosed upon to compensate for the loss of their homes.

On November 14, 2011, Justice Department officials announced that as part of its ongoing actions in relation to the settlement, BAC Home Loan Service, LP will be required to pay servicemembers whose homes were unlawfully foreclosed upon a minimum \$116,785 plus compensation for any equity lost to compensate them for the bank's alleged violations of their SCRA credit rights. Letters to notify the 157 servicemembers who will receive payments under this portion of the settlement of the amount of money that they may receive under the settlement are scheduled to go in the mail beginning today.

### **Service Member/Veteran Employment Rights Enforcement Also Rising**

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. Under the Obama Administration, Justice Department officials have significantly stepped up enforcement of these protections. Although the amount of the settlement is significantly smaller, the September 22, 2011 settlement of employment discrimination charges against Service Master highlights the readiness of federal officials to enforce those protections as well as the consumer and credit protections of the SCRA.

The Service Master settlement resolved charges made by the Justice Department that Service Master and its owner violated the USERRA right of U.S. Army Reserve member Kyle A. Sharp. Under the terms of the consent decree, ServiceMaster agreed to pay Sharp \$15,000 in back pay to resolve Sharp's USERRA claims.

Sharp was ordered to report for active military training in the United States Army in May 2010 and notified the company president of his upcoming military service. When Sharp notified the company president he wished to return to his job upon his release from active military training, however, Service Master refused to return him to his prior position. Instead, the president told 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.

The settlement agreement resolved charges that Service Master violated USERRA by failing to reemploy Sharp in his pre-service position as a crew chief for ServiceMaster following his return from active military duty in November 2010.

## **Government Stepping Up Enforcement of Military Service Members & Veterans Consumer & Employment Rights**

The BAC and Sharp settlements are recent examples of a lengthy and growing list of actions taken by the Justice Department and other federal officials against U.S. businesses for alleged violations of servicemembers' employment, credit, voting and other rights under USERRA or other laws. The Justice Department increasingly also is charging employers around the country with violating service member's employment rights. See e.g., [\*\*PBGC Expands Pension Benefit Protection For Military Service Members As Justice Department Files 22nd USERRA Military Leave Lawsuit Against An Employer Since January\*\*](#)

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.

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 SCRA, as well as 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.

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 or returned from 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. See, e.g., [\*\*Labor Secretary Comments Highlight Federal Protections & Resources To Support Veteran's Employment Rights.\*\*](#)

In light of the rising risks of enforcement, 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 extensive experience advising and representing businesses about managing responsibilities and risks under USERRA, SCRA and other federal rules regarding the rights of military service members and veterans in employment, credit and other transactions.

Ms. Stamer has more than 24 years experience advising and representing employer, employee benefit and other clients before the Department of Labor, Justice Department, Internal Revenue Service, the Department of Labor, Department of Veterans Affairs, 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 handling 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. She frequently speaks and conducts training for the American Bar Association, DallasHR, Solutions Law Press and a wide range of other corporations and associations on the management of compliance and risks associated with employment and consumer rights of military service members, veterans and their families See, e.g., [Update on Employment Rights of Employees in The Military & Their Family](#).

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](http://www.CynthiaStamer.com).

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