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March 27, 2014

Governor Nikki R. Haley
1205 Pendleton St.
Columbia, SC 29201

Re: Requirement for state agencies to comply with USERRA

Dear Governor Haley

I am writing on behalf of Aldous Copeland, a Staff Sergeant (SSG) in the South Carolina Army National Guard and a member of our association, the Reserve Officers Association of the United States. SSG Copeland works for the South Carolina Department of Corrections (SCDC) as a corrections officer. In 2011, SSG Copeland was called to active duty and deployed to Afghanistan, a few months before your husband deployed. He was released from active duty in January 2012 and returned to his SCDC position in April 2012.

SSG Copeland was entitled to reemployment under the Uniformed Services Employment and Reemployment Rights Act (USERRA), a federal statute that was enacted in 1994, as a rewrite of a law that was originally enacted in 1940. SSG Copeland met the USERRA eligibility conditions, in that he left his civilian job for military service and gave the civilian employer prior oral or written notice. He served honorably and was released from active duty without a disqualifying bad discharge from the Army. He did not exceed the cumulative five-year limit on the duration of his period or periods of uniformed service, and since he was called to active duty involuntarily his 2011-12 period of service does not count toward his five-year limit. After he was released from active duty, he made a timely application for reemployment at SCDC.

Under section 4317(b)(1) of USERRA, Copeland was entitled to *immediate reinstatement* of his SCDC health insurance coverage upon his reemployment, with no waiting period and no exclusion of pre-existing conditions. Section 4317(b)(1) provides:

“(b) (1) Except as provided in paragraph (2), in the case of a person whose coverage under a health plan was terminated by reason of service in the uniformed services, or by reason of the person's having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage *upon reemployment under this chapter* if an exclusion or waiting period would not have been imposed under a health plan had coverage of such person by such plan not been terminated as a result of such service or eligibility. This paragraph applies to the person who is reemployed and to any individual who is covered by such plan by reason of the reinstatement of the coverage of such person.

38 U.S.C. 4317(b)(1) (emphasis supplied).

The SCDC personnel office delayed reinstating SSG Copeland's SCDC health insurance coverage until January 2014, two years after SSG Copeland returned from military service. The personnel office apparently relied on South Carolina state law, but the state law is irrelevant here. Federal law (USERRA) gave SSG Copeland the right to immediate reinstatement of his health insurance coverage, and section 4302(b) of USERRA provides that USERRA supersedes and overrides a state law that purports to limit USERRA rights or to impose additional prerequisites on the exercise of USERRA rights. Section 4302(b) provides:

"This chapter *supersedes any State law* (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit."

38 U.S.C. 4302(b) (emphasis supplied).

Article VI, Clause 2 of the United States Constitution (commonly called the "Supremacy Clause") provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Yes, it is capitalized just that way, in the style of the late 18th Century.

SCDC claims that SSG Copeland did not specifically request reinstatement of his SCDC health insurance coverage when he returned to work in April 2012, but he claims that he did. The issue is really not relevant because federal law did not require the he make that specific request, and federal law prevails. It was sufficient that he *apply for reemployment*, and he did so within the 90-day period permitted under 38 U.S.C. 4312(e)(1)(D).

It was not necessary, as a matter of law, for SSG Copeland to inform SCDC of its USERRA obligations, and ignorance of the law is no excuse. It is the responsibility of SCDC and other employers to familiarize themselves with USERRA and other federal statutes. It has now been almost 20 years since President Bill Clinton signed USERRA (Public Law 103-353) into law on October 13, 1994.

SSG Copeland did not realize that his SCDC health insurance coverage had not been reinstated until several months after he returned to work. He scheduled a routine checkup with his physician, but the visit was canceled at the last minute when it was realized that his insurance coverage was not in effect and that he was uninsured. SSG Copeland then requested that the SCDC