

Court Clarifies That USERRA Complaints Now Have New Road to Justice

Cases can be heard first in NYS Supreme Court

The New York State Supreme Court of Albany County recently made a preliminary ruling in favor of an Army reservist in her case against the New York State Department of Health. The court ruled circumstances can require a Uniformed Services Employment and Reemployment Rights Act (USERRA)

case to be heard in the New York State Supreme Court. The case Wang v New York State Dept. of Health

., involved Donna Wang who worked as a healthcare surveyor for NYS Dept. of Health (NYSDOH) in 2008 when she was called to active duty as a member of the United States Army Reserves. After returning from active duty, Wang noticed an increase and complexity in the number of cases she was assigned compared to her co-workers and was called on to complete the tasks in less time than her peers were required to. Wang was also informed that due to her military duty it would be tough for her to take vacation time and in addition, was removed from on-call duties without explanation and experienced harassment and retaliatory actions from co-workers and supervisors. Historically claims against the state are filed in the Court of Claims. The ruling in Ms. Wang's case is important because it vests jurisdiction with the New York State Supreme Court, which has full equity powers. The State argued that since Wang was seeking monetary settlement she could not advance her case through the NYS Supreme Court. Her attorney, Michael Macomber argued that Wang was also seeking equitable relief thereby allowing her case to be heard. The courts agreed with Macomber further clarifying that circumstances can arise that could allow a USERRA

case to be first heard in the New York State Supreme Court, a decision that has never been clarified up to this point. The choice forum is important for several reasons, most importantly, the time limit for filing claims in the court of claims versus the Supreme Court. Whereas a plaintiff only has 90-days to file a claim with the Court of Claims, there is no statute of limitations to pursue USERRA

claims in the Supreme Court. "This is ammo for those seeking justice for their USERRA

violation. Any service member, who is seeking equity, now has a path to travel without worrying if they filed their claim on time. This is and will be about making Ms. Wang and other service members whole again after they have been wronged by their employer and because of that the New York State Supreme court can not turn them away," said Michael Macomber

, employment law

attorney at Tully Rinckey PLLC and winning litigator. USERRA

protects individuals who, voluntary or involuntary, leave their civilian job and perform military

duties as long as they meet certain criteria. Wang met all the qualifications and is now seeking relief against her former employer, NYSDOH, for violating her USERRA rights and is currently pursuing that complaint through the NYS Supreme Court.