

Complaints, Suits on Rise

Federal law requires employers to rehire their workers in the National Guard or reserves who are called to active duty.

But since the economy went sour two years ago, the numbers of complaints and lawsuits filed against employers for violations of the Uniformed Services Employment and Reemployment Rights Act have gone through the roof.

The law doesn't protect a guardsman whose employer goes out of business or whose position is eliminated, but it does prevent his boss from giving his job to someone else.

In 2008 and 2009, a total of 2,863 USERRA complaints were filed with the Department of Labor – or 11.5 for every 1,000 soldiers who were deactivated during those two years. Five years ago, the rate was seven per 1,000.

The Department of Justice, which takes the most serious of those cases to federal court, filed 22 lawsuits in the fiscal year that ended last Sept. 30, double the number it brought the year before.

Attorneys who specialize in USERRA case say the official numbers don't begin to paint the full picture.

"From 2001 to 2004, most of the violations of USERRA were non-intentional," said Mathew Tully, a lawyer based in Albany, N.Y.

Not anymore.

"We've had clients who were fired and told, 'Contact our law firm, we'll work out a severance package,'" said Tully, himself a major in the New York Army National Guard. "We've handled 100 to 150 cases involving illegal termination in the last 18 months. Before 2007, you could count the number of cases that involved firing on one hand."

The official numbers also may understate the extent of the problem, USERRA experts say, because many Guard members simply don't try to enforce their rights. Manuel Polanco of Brooklyn, assigned to the New Jersey Army National Guard 2nd Battalion, 113th Infantry, returned from Iraq last May to find that his job at a private security company in New York had been given to someone else.

"My boss told me he'd give me a call when there was an opening," he said. "I never heard from them."

Asked why he didn't try to take legal action, Polanco shrugged. "I guess the owner just didn't want to fire anybody else."