

Court Cases Reaffirm Law Prohibiting Discrimination Against Workers Serving in the Military

The law protecting the jobs and benefits of employees on active or reserve military duty received a boost earlier this week from two separate court decisions.

The rulings, handed down in separate cases by the Supreme Court and the U.S. Court of Appeals for the Federal Circuit, involve the 1994 Uniformed Services Employment and Reemployment Rights Act, which prohibits employers -- including the federal government -- from firing or otherwise discriminating against a worker who is serving or has served in the military. The two courts decided in favor of the plaintiffs, both of whom sued their employers for violating USERRA.

The Federal Circuit Court of Appeals on Feb. 28 kicked *Richard Erickson v. United States Postal Service* back to the Merit Systems Protection Board, where MSPB likely will direct the agency to reinstate Erickson. The case, which has been in litigation for a decade, involves a decorated Army Special Forces sergeant major who was fired from his job at USPS in 2000 because of excessive use of military leave.

Erickson could be entitled to hundreds of thousands of dollars in back pay, damages and lawyers' fees from the Postal Service, said his lawyer Mathew Tully of the firm Tully Rinckey PLLC. "The guy is a stud," Tully said, referring to Erickson's military record, which includes a Purple Heart. "That's what makes this case so disturbing."

In a separate case this week, the Supreme Court on March 1 decided that Proctor Hospital in Illinois ultimately was liable under USERRA when one of its employees fired another worker, Vincent Staub, because she relied on information from Staub's supervisors, who complained openly about his absences resulting from his duties as an Army Reservist. In fiscal 2009, the federal government handled 1,431 new USERRA-related cases, according to an October 2010 Labor Department report. According to the law, employees must meet five criteria for eligibility under USERRA:

Have or applied for a civilian job

Given notice to their employer prior to leaving the job for military training or service

Not exceeded the five-year cumulative limit on periods of service

Have been released from service under conditions other than dishonorable

Report back or reapply to the civilian job in a timely fashion.

The government requires agencies to train federal human resources managers on the law, administered by Labor and the Justice Department. But retired Navy Capt. Sam Wright

wonders how well the law is understood. "I don't see there is real evidence that it's happening," said Wright, who is director of the Service Members Law Center at the Reserve Officers Association.

The Office of Personnel Management has given agencies guidance, and the Employer Support of the Guard and Reserve, part of the Defense Department, has provided more than 1 million training DVDs to American employers, including the federal government, and more than 100,000 resource guides to employers. The ESGR has 650 trained volunteer ombudsmen across the country who provide neutral and free mediation before USERRA cases reach the courts.

"Many times a conflict arises due to a misunderstanding rather than a purposeful violation of the law," said ESGR spokeswoman Beth Sherman.