

Returning Troops Face New Fight for Jobs

As the Iraq and Afghanistan wars persist, some employers are becoming increasingly resistant to rehire service members who return from active duty as federal law requires, some legal analysts say.

Washington lawyer Mathew Tully, who specializes in these cases, said that, as the war on terrorism and its heavy reliance on National Guard and Reserve units stretches into its second decade, companies have become more familiar with the Uniformed Services Employment and Reemployment Rights Act.

But Mr. Tully, a founding partner at Tully Rinckey PLLC, said some employers have objections with the law and have been upfront with his firm about their failure to re-employ and sometimes even to hire citizen-soldiers. One prime reason is financial. He said, without specifying names, that airline companies have told the law firm that hiring military personnel has resulted in higher labor costs.

"We've seen the number of intentional violations skyrocket in the past three years," he said. The 1994 law requires employers to rehire workers who return from active military duty and, in the hiring process, prohibits discrimination against those who might become deployed.

A 2008 Labor Department report states that the employment law is entirely "complaint driven" and the government does not bring criminal charges against companies that violate the law.

Eric Montalvo, a partner with the law firm Puckett & Faraj PC, said he also has noticed an increasing number of willful violations by employers. Mr. Montalvo said the economic downturn has aggravated the situation because fewer jobs are available.

"The circumstances are driving [service members] to be very aggressive in pursuing their rights," he said.

Maj. Melissa Phillips, chief of strategic communications at Employer Support of the Guard and Reserve, which handles initial contact with the service members who report violations of the employment law, said the number of inquiries were up notably in 2009 from 2008, and are running higher than usual in 2010.

In 2009, the Defense Department organization received 15,870 inquiries related to the 1994 law, up from 13,090 in 2008. Nine months into fiscal 2010, it has received 12,600 such inquiries, an annual pace of close to 17,000.

Maj. Phillips said higher unemployment rates, coupled with an increased awareness of rights among service members, may be responsible for the increase.

Capt. Samuel Wright, director of the Service Members Law Center at the Reserve Officers Association, has been writing about and dealing with laws pertaining to the hiring of veterans since 1982. The roots of service members' employment rights extend back to 1940, with the Veterans' Reemployment Rights Act, which has been revised and transformed into the current law.

"I think we're seeing a lot more employer resistance as people have been called up three, four, five times," Capt. Wright said.

Even as employers wrestle with uncertainty, many military members and their families are left to make their own way.

Cmdr. Randy Jensen was a reservist when he was called back to active duty in the global war on terrorism in 2001. Before leaving for the Middle East, Cmdr. Jensen worked in the technology department for TASC Inc., a company specializing in national security technology. The company underwent an overhaul during Cmdr. Jensen's absence and did not have his job available upon his return in 2008.

"The bottom line is the law says you're supposed to get the same opportunities as if you've never left," Cmdr. Jensen said. "While I was gone, everything changed. When I came back, I didn't really fit into anything."

Although Cmdr. Jensen was technically rehired, he wasn't assigned to a project that supplied enough earnings to support him, his wife, Jean, and their two daughters, ages 16 and 8.

"For two years, my family lives in fear," said Mrs. Jensen, adding that the complaint-driven nature of the employment law's enforcement makes it easy for major employers to ride out cases. "Once you get laid off, you don't even have the money to fight," she said.

TASC representatives said they kept their end of the deal, but declined to discuss Cmdr. Jensen's case on the record because of a pending investigation.

Company spokesman Jay McCaffrey said TASC does not violate veterans employment laws. "TASC honors all of its commitments under USERRA," he said. "We take that very seriously." Whether the Jensen case is the result of a violation or a misunderstanding, the family is not alone.

The federal government can become a party to such cases, but tracking government numbers over the years doesn't yield clear trends for a variety of reasons:

- *From 2000 through 2003, the Department of Labor, which is responsible for tracking cases of the Uniformed Services Employment and Reemployment Rights Act, didn't submit annual reports to Congress on violations.

- *Different government agencies use different definitions of "complaint," "case" and "referral."

- *The way the Labor Department categorizes the basis for its cases -- discrimination, wage disputes, refusal to rehire and others -- has varied over the years.

- *Congress did not start receiving reports about the Uniformed Services Employment and Reemployment Rights Act until 2007, after a recommendation from the General Accounting Office, now called the Government Accountability Office.

During fiscal 2008, the Labor Department took up 1,389 new cases of the uniformed services act, 35.6 percent of which dealt with "discrimination over military obligations" and 25 percent of which dealt with reinstatement. The other 40 percent covered a score of issues such as pay, pensions, seniority and promotion.

In its annual report to Congress on 2008 violations, the Department of Labor, which is responsible for tracking the cases, said it found "no patterns of violations to USERRA."

Mr. Tully said that only about 1 percent of the cases that his office handled in 2004 involved intentional employer violations. Now, however, he estimates that 15 percent to 20 percent of cases processed through his office involve intentional violations.

He also said government statistics could be misleading because many Guard and Reserve

members become frustrated with government dealings and pursue their claims through private firms such as his, which can resolve cases more quickly.

His firm handled about 973 cases in 2008, more than two-thirds of the 1,389 cases that the entire federal government took that year. He estimated that 98 percent of his firm's cases are resolved in less than six months.

"We are their main advocate, whereas the Department of Labor acts as an ombudsman. Our job is only to protect our client. ... We have actually represented Department of Labor investigators in USERRA claims against the Department of Labor," he said.

Jesse Lawder, a Labor Department spokesman, declined numerous requests to speak on the record about violation patterns or other issues in regard to the employment act.

A study of 58,000 returning reservists released in November 2007 by the Defense Department's Status of Forces Survey revealed that nearly 11,000 post-Sept. 11 returning reservists and National Guard members were denied prompt re-employment. Additionally, more than 20,000 lost seniority, including pay and other benefits, upon leaving for military service.

In April, the U.S. Supreme Court agreed to hear its first case of a firing in which a service member asserted protection under the Uniformed Services Employment and Reemployment Rights Act.

A year earlier, the Justice Department reached an agreement in which American Airlines was required to pay 353 pilots a total of \$345,773 for the loss of vacation and sick leave benefits while on military duty.

In November, President Obama signed an executive order establishing the Veterans Employment Initiative for the executive branch, aiming to increase the employment of veterans in the executive branch and help veterans adjust to civilian service.

"Honoring our sacred trust with America's veterans means doing all we can to help them find work when they come home so they never feel as if the American Dream they fought to defend is out of reach for them and their families," Mr. Obama said in a White House press release. In a 2010 G.I. Jobs report ranking military-friendly employers, Union Pacific Railroad was at the top of the list. The railroad company also was No. 1 in 2005 and 2006.

Tom Lange, a spokesman for Union Pacific, said those who have served in the armed services are assets to the company. He said many Union Pacific employees have been deployed overseas since 2001.

"The job responsibilities that go into working on the railroad match up very, very well with the background that veterans have and their military experience," Mr. Lange said. "You have to really be adaptable to different environments."

According to Labor Department statistics, the nation's work force includes 1.9 million veterans who had served since the Sept. 11, 2001, terrorist attacks. In that veterans pool, 10.7 percent of men and 15.2 percent of women were unemployed in May, compared with 7.5 percent of nonveteran civilian men and 8.2 percent of non-veteran civilian women.

Capt. Wright said he has seen cases in which employers don't want to hire service members in the first place.

"Our real concern is employers won't hire National Guard and Reserve members," he said.

Spokesmen for Sens. Carl Levin of Michigan and John McCain of Arizona, the Democratic chairman and ranking Republican, respectively, on the Senate Armed Services Committee, said the lawmakers were unavailable for comment.

In an informal 2007 online poll by Workforce Management magazine, 51 percent of the 348 respondents said they would not hire a citizen-soldier if they knew that the employee might be called away from the job for an indeterminate period.

Capt. Wright acknowledged the high demands that the law places on many employers, who have to find replacements for the citizen-soldiers and give them their positions when they return. In some cases, that means the employers have to dismiss the citizen-soldiers' replacements.

"Yes, [violating the act] is illegal," Capt. Wright said. "But if employers generally don't like it, or just don't want to go along with the program, it's hard to enforce a law when there is general resistance."

Bert Louthian, a lawyer at the Louthian Law Firm in South Carolina, also acknowledged that the law is "inconvenient" for employers, but he sided with the service members.

"If you balance that out, who's making the bigger sacrifice?" Mr. Louthian said. "I think it's a good law."

Mrs. Jensen said employment is a small price to pay given the service members' sacrifices. "They just want to return to normal life."