

## Unhappy homecoming

By Hilary Potkewitz

Published: October 4, 2009 - 5:59 am

Leaving a good job at J.P. Morgan to go sailing in the Persian Gulf was not part of James Townsend's career plan, but the Navy Reserve had its own ideas.

Mr. Townsend, a technology director and senior manager in corporate risk services, was involuntarily mobilized in September 2007 for a one-year deployment.

He returned from Iraq last fall to another involuntary mobilization: J.P. Morgan was shipping him off to Texas to work at Chase rather than reinstating him at his old job at the firm's corporate office in Delaware.

The move was a demotion as far as Mr. Townsend was concerned, and he's arguing as much in a lawsuit filed in August in New York's Southern District.

The new job would carry the same title as his old position, but he would be supervising a staff of 10, far fewer than the 43 direct reports he had in his old job (10 of whom were VPs with their own departments), according to the suit. Furthermore, the suit charges, being transferred to an outpost of a subsidiary business would hurt his opportunities for promotion.

"By law, soldiers should not be penalized for their service, plain and simple," says Capt. Samuel Wright, director of the law center at the Reserve Officers Association, an advocacy group. "The fact that a job has been filled in no way excuses the employer from his duty."

### Complaints rise after financial collapse

J.P. Morgan declined to comment, but a source within the firm says officials are looking into the case and "want to do the right thing."

That duty is laid out in the Uniformed Service Employment and Reemployment Rights Act, which mandates service members be reinstated in their old jobs or in comparable positions, complete with any status and pay increases they would have earned had they stayed behind.

With so many reservists coming home amid a deep recession, it's becoming a common problem these days, particularly on Wall Street.

This kind of thing happens all the time," says Matthew Tully, founding partner of the law firm Tully Rinckey, which is representing Mr. Townsend. He claims that some banks are using layoffs and streamlining as an excuse to push out reservists.

USERRA complaints in the financial sector have mushroomed since the financial markets collapsed a year and a half ago, according to the firm's data. Tully Rinckey currently has 200 active claims against Wall Street banks, twice as many as the firm handled in all of 2007.

In contrast, the number of USERRA complaints filed with the Employer Support of the Guard and Reserve, a Defense Department committee, was up about 8% last year, to 2,664, only slightly higher than in 2007 but a major improvement from 2005, when more than 4,600 cases were filed.

Over the past eight years of conflict in Iraq and Afghanistan, human resources departments in most industries have learned to deal with the deployment issue, says Rob Thurston, president of staffing and benefits consulting firm HRConsultingGroup.com. The exception is financial services, he says, which is still mired in what he calls the X factor.

“That entire industry has changed so much in the past two years, the person returning has to not only learn to readapt to corporate life, but he has to catch up,” Mr. Thurston says.

Retraining folks costs money. Complicating the issue is that some military units have been deployed three and four times, so the firm has to keep reassigning employees and clients, and holding jobs available.

“It’s become increasingly difficult for employers to accommodate [returning] reservists and guards,” says Mr. Thurston.

“Sure, those are tough decisions, but the law is very clear,” says Mr. Wright of the Reserve Officers Association.

In addition, all of the layoffs and mergers among financial firms have led to practical questions about how far to extend these open-ended obligations.

### **Landmark decision**

Some of those questions were answered in a recent landmark decision in federal court in Connecticut.

In a rare public suit—most USERRA claims against financial firms are settled before they see the light of day—Michael Serricchio, a 35-year-old Air Force reservist, was awarded \$1 million in damages and reinstated as a stockbroker in March when a Connecticut judge ruled in his favor.

Mr. Serricchio was working as a broker at Prudential in Stamford, Conn., when he was deployed to Saudi Arabia shortly after 9/11. He was told he would reclaim his clients upon his return. His tour lasted almost two years, and while he was flying helicopter missions, Prudential was acquired by Wachovia. In the shuffle, his clients were farmed out to other financial advisers.

### **Bound by acquiree's obligation**

Mr. Serricchio had had more than 237 clients and earned nearly \$200,000 per year, mostly on commissions. Wachovia told him when he returned that he'd have to build a new book of business from cold calls, and that the bank would only pay him a \$2,000 per month advance, which he'd have to repay from future commissions. It was an offer, the suit claims, they expected him to refuse, thereby freeing them of their USERRA obligation.

Wells Fargo absorbed Wachovia last year, took over the case, and lost. The court held that Wells Fargo, when it acquired the bank that had acquired the original employer (Prudential), was bound

by Prudential's USERRA obligation. Mr. Serricchio chose to make his case public, however, and testified before Congress on the issue. Rarely do such cases actually make it to court.

“Big banks don't want to litigate, because it's bad publicity,” Mr. Tully says. “They'd rather give someone \$500,000 and a good letter of recommendation to get the hell out and go find a job at some other bank.” A confidentiality agreement almost always accompanies such a settlement.