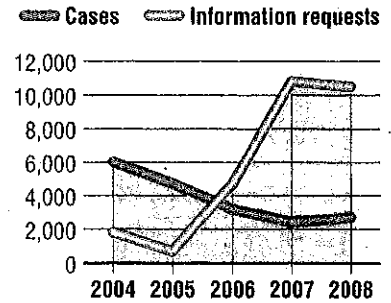


High deployment tempo threatens rehiring under job-protection law

USERRA CASELOAD

The number of USERRA cases handled by ombudsmen for the Defense Department's National Committee for Employer Support of the Guard and Reserve rose by 12 percent in 2008, after a steady decline since 2004. Meanwhile, the number of information requests shot up during the same period:



Source: Defense Department's National Committee for Employer Support of the Guard and Reserve

JOHN BRETSCHNEIDER/STAFF

of service members decide to hire their own attorneys for help in resolving the issue with the employer, or to sue the employer, he said.

"We're seeing more employers who are fighting back," he said. "They're getting legal help to try to find ways around this. Another hidden factor is people who never complain. They may think they have rights, but don't know what to do."

The number of claims filed with the Labor Department has been fairly consistent in recent years, said Labor spokesman Otto Heck.

Preliminary data for fiscal 2008 shows the department received 1,417 new claims in fiscal 2008, compared to 1,365 in 2007, 1,434 in 2006 and 1,252 in 2005.

The Office of Special Counsel, which handles USERRA cases involving federal employers, received 15 referrals in 2008 from the Labor Department. That's up from four in 2007, but the office has already seen an increase in referrals this fiscal year — with 14 since Oct. 1.

If that continues, it will lead to a record number of referrals, said Patrick Boulay, acting chief of OSC's USERRA unit. A new law that puts time limits on the Labor Department for resolving or referring cases may be largely responsible for that, he said. □

is having a dramatic effect on employers' willingness to comply with the Uniformed Services Employment and Reemployment Rights Act, said Mathew Tully, an attorney who specializes in military law and writes a legal column for Army Times.

Some employers say it's worth it for them to reach a monetary settlement rather than rehire the service member, Tully said.

"We've seen a dramatic increase in complaints compared to 2006," he said. "Irrespective of what the law says, employers tend to get aggravated with multiple call-ups."

Guard and reserve members are not just being deployed to Iraq and Afghanistan, but are being pulled away for training and other duty.

The number of cases of USERRA complaints handled by volunteer ombudsmen for the Defense Department's National

Committee for Employer Support of the Guard and Reserve (ESGR) increased by about 12 percent in 2008, compared to 2007, following a steady decline over the previous four years.

But the number of "requests for information" to ESGR has more than doubled in the past two years, from 4,613 in 2006 to 10,742 in 2007. It stayed near that level in 2008, with 10,426 requests.

"It's hard to say why the numbers are going up," said ESGR spokeswoman Air Force Lt. Col. Michelle Barrett. She noted that ESGR has been proactive in getting the word out to troops and employers about rights under USERRA, and there has been some speculation that the sour economy may play a role in the higher number of information requests, as well.

Service members who want free help can go to the ESGR, which tries to broker an informal solution between service members and employers before informing service members that they can file a case with the Department of Labor or hire a private attorney.

But regardless of how many cases come to the ESGR or other federal agencies, that's the "tip of the tip of the tip of the iceberg," said Sam Wright, a retired Navy captain and attorney who is an expert on USERRA who works for Tully's law firm.

Complete information on the total number of USERRA cases "just does not exist," he said. An unknown number

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There are signs that employers are having increasing difficulty complying with the law related to rehiring National Guard and Reserve members returning from military duty. "The top tempo of the Guard and Reserve