

## USERRA

The sacrifices that service members make in serving their country are not lost on the military law attorneys at Tully Rinckey PLLC, many of whom have served. In fact, our founding partner's legal career began after he was subjected to – and he successfully fought – discrimination based on his military duty at the hands of his civilian employer. Since then, Tully Rinckey PLLC has emerged as a leading supporter of service members' employment rights and a pioneer in the field of Uniformed Services Employment and Reemployment Rights Act (USERRA) litigation. **USERRA**

Service members called to active duty should not see their civilian employment suffer because they had to take military leave to serve their country. USERRA provides a wide range of protections intended to ensure civilian employers do not discriminate against workers based on their military service. Both public and private sector employers of any size must adhere to USERRA. The law protects members of the armed forces, National Guard, U.S. Public Health Services Commissioned Corps, and service categories designated by the president during times of war or national emergency. Don't let employers get away with violating your USERRA rights. Get an experienced military law attorney on your side today by calling Tully Rinckey PLLC in Rochester, N.Y. **USERRA Protections**

### Reemployment Rights

: Workers who leave their civilian jobs after being called to active duty have a right to be reemployed to the position they left when their uniformed service ends. USERRA's reemployment rights are contingent on the service member adhering to pre- and post-uniformed service notification requirements. These notification requirements include providing the civilian employer with advanced notice of military obligations and applications for reemployment that usually must be submitted immediately or within 90 days of returning from active duty, depending on the duration of uniformed service. A two-year extension may be available for this reemployment application deadline in cases involving service-connected injury or illness.

Based on what is referred to as the "escalator principle," service members should be reemployed to the position they would have had they not left civilian employment to serve in the military. Depending on the duration of uniformed service, employers may reemploy service members to positions of "like status," meaning the positions are similar to what they would have had in terms of seniority, status, and pay had they not left civilian employment to actively serve. Employers may be exempt from USERRA's reemployment requirements in cases where such reemployment would impose an undue hardship on them. **Seniority and Benefits**

: Under the escalator principle, reemployed service members must receive the same seniority and benefits they would have received had they not left their civilian employment for active duty.

#### Discharge from Employment

: Reemployed service members are shielded from terminations not based on cause for periods of 180 days when the period of uniformed service lasted from 31 to 180 days or one year for uniformed service periods exceeding 180 days.

#### Discrimination:

Employers cannot discriminate against workers or subject them to hostile work environments because of their military obligations.

#### Retaliation:

Employers cannot retaliate against employees who assert their USERRA rights.

## How We Can Help

Service members' options for asserting their USERRA Rights include the following: Filing a complaint with the U.S. Department of Labor – Veterans Employment and Training Service (DOL VETS). DOL VETS investigates complaints and if wrongdoing is discovered then it will attempt to negotiate a solution with the employer. Some federal employee complaints may be redirected to the U.S. Office of Special Counsel (OSC). DOL VETS lacks enforcement authority, so in matters involving private or state, or local or government employers where a resolution could not be reached it would have to refer the matter to the U.S. Office of the Attorney General, which declines many such cases. In matters involving the federal government, unresolved cases can be referred to the OSC.

#### Filing a federal lawsuit/MSPB appeal

: Rather than waiting for DOL VETS to investigate your case and attempt to negotiate a resolution with the employer, service members can take a more direct approach. If they work in the private sector or for a state or local government, they could file a lawsuit in federal district court. If they work for the federal government, they could file an appeal with the Merit Systems Protection Board (MSPB). Both measures are highly technical, and service members should consult with a military law attorney before pursuing one of the other.

#### Remedies

: Remedies available at federal court or the MSPB include reinstatement, compensation of lost benefits or wages (pay compensation could be double in private sector cases involving willful violations), and attorney's fees for plaintiffs only.

The military law attorneys at Tully Rinckey PLLC in Rochester, N.Y. can represent service members throughout New York's Finger Lakes region, including Batavia, Geneseo, Rochester, Canandaigua, Albion, Waterloo, Lyons, Warsaw, and Penn Yan. To schedule a consultation with a military lawyer, call us at 585-492-4700 or e-mail at [info@1888law4life.com](mailto:info@1888law4life.com)

. [Click here](#)

to view a video about our consultation process.

For urgent legal matters, call us 24 hours a day, seven days a week at 518-727-3593. We are responsive to the needs of our current and prospective clients and will respond to phone calls within business hours.

We respond to e-mails within business hours on the same day. For the quickest response, call us.

During normal business hours, our client relations team can help put potential clients in contact with lawyers who can address their legal concerns. Anyone who calls or e-mails us after hours should expect to hear from us during the next business day.