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On the 20th anniversary of USERRA Mat Tully addresses issues that still need to be added to further protect veterans.

**Landmark employment law for troops turns 20
By Karen Jowers**

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The law that dramatically changed — for the better — the employment landscape for National Guard and reserve troops is celebrating its 20th anniversary today. But advocates say some common-sense changes to the Uniformed Services Employment and Reemployment Rights Act of 1994 could strengthen its protections for reserve component troops returning to their civilian jobs after mobilizations and deployments. Over the last two years, one issue that has emerged is a need to protect veterans who take time off for appointments at VA and military medical facilities, said Mathew Tully, founding partner of the law firm Tully Rinckey and author of Military Times' "Ask the Lawyer" column. Tully said his firm has seen a spike in the number of troops who have faced job termination because of their absences for medical appointments once or twice a month. USERRA doesn't cover those medical appointments, nor does any other federal law, Tully said. "But these returning veterans are going to multiple VA appointments." Although Tully said attorneys have been able to intervene to help many troops in that situation, he believes time off to receive care at a VA facility or through a VA contractor should be an excused absence just like military service itself. "This wasn't an issue five years ago or 10 years ago," he said. Sam Wright, a retired Navy Judge Advocate

General Corps captain who now heads the Service Members Law Center at the Reserve Officers Association, said ROA also hears from service members that this is a problem, and agrees it should be addressed. USERRA covers time away from a civilian job for an examination for fitness for military duty, but not for medical treatment, even if the treatment is the direct result of military service, Wright said. "Evening and weekend appointments are not available," he noted. "They need time off from their job." Wright and Tully also support a change that would make the award of attorney fees mandatory, rather than discretionary, in all cases, to include those involving federal employers, so that if the service member wins, the employer must pay the member's attorney fees. Tully also said he finds it odd that USERRA is "toothless" as an anti-discrimination statute. In other similar statutes, if employees sue because of racial, sexual harassment or other discrimination, they are entitled to compensatory damages — but that's not the case under USERRA. "That's disturbing, because it was created to help our national defense," Tully said. "It's not going to happen any time in the near future, but my goal is to raise USERRA up to the level of other discrimination statutes." While it could stand some fresh updates, Tully said there's no question that USERRA "dramatically changed the landscape in the post-9/11 world." "I don't think anybody would have thought there would as many call-ups [of reserve component personnel] as there have been" after 9/11, he said. "The reserve has clearly gone from being a strategic reserve to an operational reserve. If the old law had been in effect, I question whether the number of Guard and Reserve members would have stayed in the military. The old law was weak." Under USERRA, Guard and reserve members were not forced to make decisions about whether they would stay in the military or leave in order to keep their civilian jobs, he said. The 1994 law was an overhaul of the Veterans' Reemployment Rights law, which can be traced back to 1940 when Congress first enacted legislation giving reemployment rights to service members who left civilian jobs when called to active duty. Wright and Susan Webman, who both worked as Labor Department attorneys in the mid-1980s, drafted a complete rewrite of the VRR after an interagency task force appointed by the Defense and Labor determined that the law had become too confusing after being amended multiple times over the years. As Wright recalls, the task force's work seemed destined to gather dust on an obscure bookshelf, partly because other federal agencies saw the proposed overhaul as

a burden on employers, rather than a needed protection for those who serve their country. That changed when Iraq invaded Kuwait in 1990 and President George H.W. Bush ordered a large call-up of reserve component troops. In early 1991, the Bush administration presented the task force draft to Congress as a presidential proposal, although it took another three years to become law. USERRA is sweeping in terms of its protections to service members returning to civilian jobs after being called up to active duty, either voluntarily or involuntarily. For example, it provides for prompt reemployment to the previous position held or in another position of like seniority, status and pay; credit for seniority purposes; pension credit; and any necessary training or retraining. A number of special circumstances also are covered. "It's a good law, but it's not always obeyed," Wright said. "Some employers are looking for ways to get around it. I don't have much sympathy for them. It's not a new law, and it wasn't new in 1994. It's 74 years old." Tully said there were few intentional violations by employers in the first five years or so after 9/11. That began to change around 2006 through 2008. Still, he said, considering the volume of reserve component call-ups, the number of complaints filed by troops has been comparatively small. Service members are given briefings about their reemployment rights under USERRA, and they have several avenues to pursue if they believe their rights have been violated. They can contact the Pentagon's National Committee for Employer Support of the Guard and Reserve; and also may file a complaint with the Labor Department, where the Veterans Employment and Training Service will determine if a violation has occurred and try to negotiate a resolution with the employer. Wright's Service Member's Law Center at the ROA also assists service members with complaints. Monday through Friday, at 800-809-9448, ext. 730, or 202-646-7730, or by email at SWright@roa.org

Wright is there until 10 p.m. Eastern time on Mondays and Thursdays, and urges service members not to call or email from their employer's office. "USERRA is near and dear to my heart ... I tell people I've walked in their shoes," said Tully, a retired New York Army National Guard lieutenant colonel. While working for the Bureau of Prisons as a corrections officer, he was called to active duty for three years. When he returned, he was at first fired, then reinstated, then forced to move to the midnight shift, standing outdoors on guard duty in all types of weather. He contacted at least 15 attorneys; all told

him he had no case. So he represented himself, and sued the Bureau of Prisons, and won. The settlement paid his way through law school. "I am where I am today because of USERRA," Tully said.