

Law Prohibits Public Employers from Laying Off Service Members on Active Duty

By Mathew B. Tully

New York public employees who took leave to serve their country have less reason to worry about losing their civilian employment due to the consolidation, abolishment, displacement or demotion of their positions under legislation (A.1428-B) Gov. Andrew Cuomo signed into law on July 20.

With Cuomo still threatening to lay off up to 9,800 state employees, this law could not be any timelier. The law, which took effect immediately, extends to active duty service members whose public employers are downsizing the full reemployment rights provided under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA)

The legislation came in response to the 2010 termination of several service members while they were serving overseas by the Metropolitan transportation Authority (MTA). The new law closes a loophole in New York's Soldiers and Sailors Civil Relief Act that allowed the MTA to make no exemptions for the service members and lay them off because the downstate authority was downsizing. Additionally, the law prohibits public employers from abolishing positions primarily because they belong to service members who are on active duty.

The closure of this loophole was crucial. Employers – in the private and public sectors alike – are always looking for ways around the employment and reemployment rights of service members. Some employers might try to get rid of service members by claiming they abandoned their civilian positions while others might claim that they did not want to hold a position for an employee on active duty. A military law

or employment law attorney

can help service members counter these claims and keep their jobs by refuting the circumstantial evidence on which employers based their termination decisions or showing that termination actions were motivated by unlawful discrimination on the basis of military service.

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