



## *Latest Legal loophole allows companies to fire military reservists who go to war*

Kevin Ziober was a lieutenant in the Navy Reserve in 2012 when he received deployment orders to Afghanistan. On his last day of work before leaving, dozens of co-workers gathered for a sendoff. There was a cake and balloons. And then, Ziober says, he was summoned to the human resources office — and fired.

Ziober believes he was fired because of his military service and the inconvenience it caused his employer. If so, that would be a violation of federal law. The Uniformed Services Employment and Reemployment Rights Act, known as USERRA, exists to protect military reservists against such discrimination.

Traditionally, someone in his position would consider suing his employer and letting a judge or a jury decide whether the dismissal was fair. But Ziober may never get that chance because his employer asked him — Ziober says he was “forced” — to sign a fine-print legal document surrendering the right to sue and agreeing to resolve disputes outside of court.

But do such arbitration agreements apply to USERRA? That's now a question for the American legal system.

Ziober's case will be heard in July by the highest federal court in California, the Ninth Circuit Court of Appeals. The Navy officer wants to sue his former employer, but first he must convince the judge that he has the right to do so.

Ziober's former employer, a real estate management firm called BLB Resources, disputes his version of the events, saying Ziober's work performance had declined, and that his firing became necessary when the federal contract to which he was assigned was not renewed. Regardless, the agreement is firmly grounded in law, the company's attorney said.

"Arbitration provides the parties with a neutral judge who can resolve claims more efficiently and expeditiously, thereby reducing costs for all parties quicker than civil courts, which have fewer resource and where cases can last two or three years," Lonnie Giamela, the California attorney representing BLB Resources, told Military Times.

### **Legal exemption or loophole?**

The issue is becoming more common. While military reservists have faced routine mobilizations for more than a decade, many companies during the past few years have expanded their use of these arbitration agreements.

Today, it's almost impossible to register for a credit card or cell phone service without also signing an arbitration agreement, often buried in fine print, which prevents you, the customer, from ever suing that company in question. Employers, especially large corporations, use them to shield themselves from a host of liabilities that include personal injury or sexual harassment.



## *Latest Legal loophole allows companies to fire military reservists who go to war*

And dozens of class action lawsuits, like a recent one filed by employees of Taco Bell, are thrown out of court based on these agreements.

But USERRA rights might be different. Protecting service members from employment discrimination is directly linked to military readiness and the Defense Department's ability to recruit and retain more than 800,000 part-time troops every year. The 1994 law was established to ensure that the veteran "who was called to the colors not be penalized on his return by reason of his absence from his civilian job," wrote one of Ziober's attorneys, Peter Romer-Friedman.

Some lawmakers in Congress also are worried about the issue. Connecticut Sen. Richard Blumenthal, a Democrat, has proposed a law that would eliminate any ambiguity in the USERRA law and state explicitly that service members cannot be blocked from the court system by arbitration agreements.

"After fighting for our freedom overseas, no service member or veteran should have to fight for their job when they come home," Blumenthal said. "And they certainly shouldn't be denied their right to their day in court if their federal rights are violated."

Ziober is expected to testify on this issue Wednesday at a hearing before the Senate Committee on Veterans Affairs. Congress has not voted on the measure, so for now the issue will remain a matter for the court system.

A Defense Department spokesman declined to comment on the issue.



## *Latest Legal loophole allows companies to fire military reservists who go to war*



Kevin Ziober (Photo: Courtesy of Kevin Ziober)

### **Another case emerges**

Another service member has a case moving up to the federal appellate courts as well. They are one notch below the U.S. Supreme Court.

Army Reserve Sgt. Rodney Bodine was hired several years ago by a pest control company in Alabama. Shortly after he started the job, his supervisor “began making negative comments about Bodine’s military obligations, including that it would be best if Bodine would get out of the military,” according to Bodine's lawsuit.

When Bodine renewed his military commitment, his employer stripped him of the most lucrative part of the soldier’s sales territory, making it difficult for Bodine to make his sales targets, according to court papers.

The pest control firm fired Bodine in September 2014, according to court papers.



## *Latest Legal loophole allows companies to fire military reservists who go to war*

Bodine filed a lawsuit against his former employer in the federal court's Northern District of Alabama.

A district judge threw out the lawsuit, not because of any evidence that the employer complied with the USERRA law but because Bodine has signed an “employment agreement” that included a line saying “All disputes, controversies or claims of any kind and nature between the parties hereto ... shall be resolved exclusively by ... alternative dispute resolution mechanisms.”

In April, Bodine appealed to the 11th Circuit Court in Atlanta and is awaiting a ruling.