



Stephanie Straughn never pictured herself dispensing legal advice while toting an M-16 rifle in the sweltering Iraq heat. Even though both of her parents served in the armed forces, Straughn felt she wasn't cut out for military service. "I'm a girlie-girl. I didn't think I'd fit in," says Straughn, 30, who had just graduated from law school in 2001 when terrorists hijacked commercial airplanes and launched attacks against the Pentagon and World Trade Center towers.

"After 9-11," she recalls, "I was frustrated because I felt I wasn't giving anything back to my country. I wanted to do something meaningful." Her answer was to enlist as a reservist in the Judge Advocate General's Corps (JAG Corps), the legal arm of the U.S. Army. And in February 2005, Straughn, who had never lived outside her home state of Illinois, volunteered to go to Iraq for an eight-month tour of duty at Legal Services Agency (LSA) Anaconda. Located 40 miles north of Baghdad, it's the largest legal support base in Iraq, serving 35,000 soldiers.

Across the United States, women lawyers are temporarily, and sometimes permanently, leaving jobs to fulfill military obligations. For instance, almost 26 percent of the 1,587 active-duty officers of the JAG Corps are women lawyers, making it one of the highest percentages of women in any branch of the U.S. Army. More than 16 percent of the JAG's 2,278 reservists and National Guard members are women lawyers. All of those being called up for military leave must concern themselves with what will happen to their families and civilian jobs while they are gone for months or perhaps years.

#### **USERRA Protections**

Prior to her deployment, Straughn was working as one of three associate attorneys at Carter Law Offices, a small legal firm in Peoria, Illinois, that focuses on product litigation. Under the Uniformed Services

# So Long, Farewell, I'm Going to Iraq

By Ann Farmer

Employment and Reemployment Rights Act (USERRA), her employer was obligated to grant her military leave and reemploy her when she returned as long as she wasn't gone longer than five years. Upon resuming her job, Straughn also was entitled to any promotions, raises, and other benefits that she would have received during her absence.

However, before her departure, she went to her boss and said, "I'm leaving, and don't leave my position open," recalls Straughn, explaining that she felt that it would have been too burdensome on the small firm to operate without a replacement for her. "I didn't want to tie his hands," Straughn says. "I told him I would not pursue him legally." As it turns out, he did hire a replacement. But he also rehired Straughn when she

returned to Peoria in late October, festooning her office in red, white, and blue decorations to celebrate her first day back.

Lieutenant Colonel Shawn Kee, who is a married reservist and the father of two young children, returned in November from a 12-month tour of duty in Iraq working as a staff judge advocate (which he says is equivalent to a general counsel). Back home in Stamford, Connecticut, where he is a partner in the offices of Jackson Lewis LLP, a large national workplace law firm, Kee is considered self-employed and therefore not entitled to USERRA benefits and protections. However, his job was never at risk. "It's an advantage to be in a large firm, where other lawyers are able to take care of your clients," he says.

A more problematic situation is when deployed soldiers are sole practitioners. Military rules prohibit reservists from using government computers for personal gain. Unable to assist with clients' needs, these lawyers are often forced to pass off clients to other attorneys while away. And the danger is, "they may lose them forever," says Kee, who recalls an attorney serving in Iraq whose partner in the States found it too burdensome to maintain the

expertise. "It was something you didn't hear much about until Iraq. But it's coming up more and more," says Kathryn Montgomery Moran, a partner at the Chicago office of the national business firm Lord, Bissell & Brook LLP. She says misunderstandings easily occur when companies don't fully understand their obligations toward employees called up for military service. For instance, clashes often occur in the retail sector, where resentments can easily

back, extended tours for three years, fully confident that her civilian responsibilities as a senior attorney with the probate court of Fulton County, Georgia, are being effectively managed by her peers. "They said it made them feel they were contributing to the U.S. involvement by picking up my work," she says.

With the increasing deployment of reservists and National Guard members, another federal law that comes into play more often is the Family and Medical Leave Act (FMLA). It works in conjunction with USERRA to provide medical leave for someone who has just returned from military leave to her civilian job but is faced with a family emergency and needs additional time off. Again, says Moran, "The hardest part is trying to help employers understand why they have to comply when it's so onerous to their operation."

While most states don't offer anything more generous than what's outlined in these two federal laws, the Illinois Family Military Leave Act is one of the exceptions, says Moran, explaining that this recently passed legislation provides close family members of people called to active military duty the opportunity to take unpaid leave in order to spend time together before deployment.

Things didn't always work so favorably to military personnel families. When former U. S. Air Force Colonel and Chief Circuit Military Judge Linda Murnane joined the military in 1974, a policy required all female enlistees to surrender their children to adoption. Men were not considered the legal custodians of their children and, therefore, were not subject to that regulation.

"People in that era had to accomplish miracles to stay in the service and have children at the same time," says Murnane, who recalls that her bunkmate in basic training was a single mom who'd arranged for her parents to adopt her children

### **The Uniformed Services Employment and Reemployment Rights Act (USERRA)**

This federal law requires employers of deployed reservists and National Guard members to reinstate them to their jobs as long as certain criteria are met. Remedies for violations can include lost promotion opportunities, pension adjustments, and other benefits.

For further information:  
[www.dol.gov/vets/programs/userra/main.htm](http://www.dol.gov/vets/programs/userra/main.htm)

double workload. "He had to request a hardship release."

USERRA also doesn't provide protections for employees whose jobs were eliminated while on military tour because of economic factors such as a business closing or downsizing. Sometimes employers take advantage of employees' military duty to eliminate their job. The New York State Attorney General's office, for instance, has set up a hotline to deal with complaints by returning New York State soldiers who feel they've been discriminated against or cheated out of benefits. But it can be tricky to prove that a violation has occurred.

Because of the various workplace complications that ensue when employees take military leaves, lawyers who are familiar with the issues are discovering a growing need for their

erupt when one employee is asked to pick up the slack created by another employee's absence because of weekend-leave obligations or lengthier tours. The employer's instinct may be to fire that person, "but it has to be for cause," says Moran, who finds that most of these problems can be resolved with proper legal counseling. "They have to bend to the military's needs," she adds.

#### **Support from Employers, Colleagues**

In general, though, workplace attorneys say employers and co-workers tend to be supportive when others are called up for military duty. For instance, as the chief of administrative law in the JAG Corps at Fort Bragg, North Carolina, Colonel Barbara Koll has served back-to-

with the understanding that she would quietly recoup them later. But when that time came, her parents refused to surrender them to her. "She had no legal recourse," Murnane recalls.

### Parents Who Deploy

Single parents still cannot enter the military without a waiver. And when married couples with children serve, either as reservists or full-time military personnel, the situation usually presents a heavier burden on the mother. Colonel Malinda Dunn, who is married with two daughters and is currently on full-time active duty in the JAG Corps as a judge advocate, says, "I think it's a fact of life that in the nuclear family environment, women are usually in charge of the child care environment. So when women deploy, the burden of finding appropriate care for children presents a unique challenge for them."

While in Iraq last year, Dunn sat on a forum with a dozen top-ranking female JAG officers who discussed the challenges of managing child care. "For everyone concerned," she says, "the single best thing to do is to understand your deployment timeline so that you can get into a cycle and make the proper arrangements." If you can manage things, Dunn says, "I think the Army JAG Corps is a huge equal opportunity place. You work hard; you move ahead."

During his year at Camp Anaconda, Kee assisted soldiers with child support, divorce, and other legal issues that can crop up when away for a year. He quickly recognized that helping soldiers resolve their legal problems was vitally important. "If they're distressed because of personal issues at home, they could become less focused and more easily get killed," says Kee, describing the frequent mortar and rocket attacks at LSA Anaconda, nicknamed "Mortaritaville."

## What Is the Family and Medical Leave Act (FMLA)?

In general, FMLA allows for covered employees to take up to 12 weeks of leave for maternity, foster care, or adoption purposes, or to deal with a serious medical condition within the family, provided she meets certain eligibility requirements such as having worked for her employer for at least 12 months and 1,250 hours prior to taking the medical leave.

For further information: [www.dol.gov/esa/whd/fmla/](http://www.dol.gov/esa/whd/fmla/)

In addition, Kee trained soldiers on the rules of engagement, including, he says, "when they can and can't use force outside the wire." Another new challenge was presiding over the criminal prosecution of soldiers who committed offenses overseas such as illicit drug use, mail theft, and attempts to smuggle captured weapons home. "I presided over 50 court-martial cases in that year," Kee says.

For her part, 1st Lieutenant Straughn routinely helped commanders interpret Army regulations ranging from adultery to weight control. "They had questions on just about everything," she says, adding that she also worked in the Army Sexual Assault Prevention and Response Program as an advocate for victims of sexual assault. "They're really scared to come forward," Straughn says. "It's a lot more than some women can handle alone."

Through it all, the young, single

lawyer from Peoria, who loves to get dressed up, endured temperatures that sometimes reached 140 degrees and the daily hassle of "wearing all that gear and always having to remember to carry your M-16 rifle," Straughn says. "It was totally life altering. I'm so appreciative of the little things in life now," she adds. "I was working so many hours before I left in order to advance in the firm. Now I realize that being with family and friends is a big priority."

Kee revels in the fact that he was in Iraq during the country's first democratic elections. "It was incredible to be right there on the scene," Kee says, "when millions of people voted for the first time in that part of the world. People received death threats and they still voted." 🗳️

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## How Does FMLA Interact with USERRA?

USERRA requires that service members being reemployed following military service be eligible to credit their period of military leave toward time employed for the purpose of FMLA eligibility, provided they meet certain criteria.

For further information: [www.dol.gov/esa/whd/fmla/userra.htm](http://www.dol.gov/esa/whd/fmla/userra.htm)