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Alaska Statute Protecting National Guard Members On State Active Duty

By Kyle E. Helmick¹

Alaska has an excellent statute that protects members of the Alaska Army National Guard and Air National Guard when they perform state active duty, as called by the Governor for state emergencies (fires, floods, etc.). Here is the entire text of that section:

- (a) An employer shall grant to an employee who is a member of the organized militia a leave of absence to perform active state service under [AS 26.05.070](#).
- (b) When an employee is released from a period of active state service under [AS 26.05.070](#) or discharged from hospitalization that arose from active state service, the employee is entitled to return to the employee's former position, or a comparable position, at the pay, seniority, and benefit level the employee would have had if the employee had not been absent as a result of active state service. An employee, other than an employee who has been hospitalized, shall report for work at the beginning of the workday following the last calendar day necessary to travel from the site of active state service to the employee's work site. An employee who has been hospitalized shall report for work at the beginning of the workday following the last calendar day necessary to travel from the hospital or place of recuperation to the employee's work site. If the employee fails to return to work at that time, the employer may impose whatever discipline is provided by the employer's rules of conduct for unexcused absence from work.
- (c) If an employee is not qualified to perform the duties of the employee's position as a result of permanent disability sustained because of the employee's active state service but is qualified to perform the duties of another position with the employer, the employer shall offer an employee who requests reemployment the available, vacant position that most closely approximates the pay and benefits of the employee's previous position and that the employee is qualified for and capable of performing. An employee loses the right to reemployment under this subsection unless the employee requests reemployment within 30 days after receiving a statement from the employee's treating physician indicating both that the employee has reached maximum recovery and that the employee is released to return to full-time work.
- (d) For employees other than state employees, the Department of Labor and Workforce Development shall enforce this section by appropriate regulations. For state employees, the division of personnel in the Department of Administration shall enforce this section. Regulations adopted under this section may provide for orders of reinstatement and back pay if appropriate. For employees other than state employees, contested cases arising under this section are to be handled under [AS 44.62.330 - 44.62.630](#). Appeals involving state employees must be made to the personnel board under the procedure set out in the state's personnel rules for grievances.
- (e) Notwithstanding (f) of this section, a person aggrieved under this section may bring an action in superior court no sooner than 30 days after giving notice to the Department of Labor and Workforce Development, or, in the case of a state employee, to the director of the division of personnel. The action must be brought within two years after the claim arose.
- (f) A collective bargaining agreement entered into in the state after September 2, 1990 may not

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contain provisions contrary to this subsection.

(g) This section does not affect [AS 39.20.340](#) or [39.20.350](#) governing paid leave and reinstatement of state and local employees for certain military activities.

Alaska Statutes Annotated, section 26.05.075 (West).

This section applies to Alaska's "organized militia." That militia includes the Alaska Army National Guard, the Alaska Air National Guard, and the Alaska State Defense Force (ASDF). The Army National Guard and Air National Guard have a dual state-federal status, as the military force of the State of Alaska and also as a Reserve Component of the United States armed forces. The ASDF is a purely state entity.

Section 26.05.075 applies to the State of Alaska and its political subdivisions (local governments) and also to private employers in Alaska. This section does not apply to the Federal Government, as the employer of Alaska National Guard and ASDF members, but of course the State of Alaska does not have the constitutional authority to regulate the relationship between the Federal Government and its employees.

Section 26.05.075 applies to members of Alaska's organized militia. It does not apply to National Guard members of other states who happen to have civilian jobs in Alaska and who may be called to state active duty by the Governors of their own states. We want all the states to enact state laws that protect National Guard members on state active duty, including members of National Guard units of other states. This issue is of secondary importance in Alaska, because Alaska is not contiguous to any other state. Nonetheless, it is likely that there are at least a few National Guard members from other states who have civilian jobs in Alaska, and they should be protected.

UPDATE—JULY 2018

In July 2018, Alaska Governor Bill Walker signed into law H.B. 3, and this new law amends Alaska law to expand the protection of National Guard members on *state active duty*. Prior to this amendment, Alaska law only protected the civilian jobs of members of the *Alaska Army National Guard*, the *Alaska Air National Guard*, or the *Alaska State Defense Force*.²

For example, Mary Jones is a Specialist (E-4) in the Army National Guard of the State of Washington, but she has a civilian job in Alaska. Jones is called to state active duty by the Governor of Washington. Prior to the recent amendment, a person in this situation was not protected by Alaska law. Now, the civilian job of a person in this situation is protected.

² The Alaska State Defense Force is a purely state entity—the 21st Century Alaska State Militia. Unlike the Alaska Army National Guard and Air National Guard, the Alaska State Defense Force does not have a hybrid federal-state status and does not receive significant federal support. If there is a significant state emergency at a time when a substantial portion of the Army National Guard and Air National Guard have been federalized and deployed elsewhere, the Alaska State Defense Force could be a valuable resource to the Governor in dealing with the state emergency.