

AR-2015-NG

Arkansas Law Protecting National Guard Members On State Active Duty

By Kyle E. Helmick¹
And Nathan M. Richardson²

The State of Arkansas has codified extensive protections for National Guard members on state active duty in Arkansas Code section 12-62-413. Here is the entire text of that provision:

- (a) A person who is called to active state duty as a member of the armed forces of this state or *any other state*, [emphasis added] including without limitation the National Guard, a reserve component of the armed forces, or the militia, is afforded such employment and reemployment rights, privileges, benefits, and protections in employment as though that person had been called to active duty in the service of the United States and shall not be denied hiring, retention in employment, promotion, or other incidents or advantages of employment because of any obligation as a member of the armed forces.
- (b) In any civil action to enforce the provisions of this section, the prevailing party may be allowed a reasonable attorney's fee to be assessed by the court and collected as costs.

This section appears to apply both to employees of the State of Arkansas and its political subdivisions (counties, cities, school districts, etc.) and also to private employers in Arkansas. It does not apply to Federal employees who are National Guard members. Of course, a state lacks the constitutional authority to regulate the relationship between the Federal Government and its employees.

This section provides a workable enforcement mechanism, enabling a National Guard member to bring a civil action in state court and providing attorney's fees if the member retains private counsel and prevails. This section is not limited to members of the Arkansas National Guard—it applies to "a member of the armed forces of this state or *any other state*." (Emphasis supplied.) For example, Isaac Baker (a member of the Texas Army National Guard) has a civilian job working at a store in Texarkana, Arkansas. This section protects Baker's Arkansas job when he is called up by the Governor of Texas to perform state active duty in Texas.

¹ Kyle E. Helmick has completed his first year of law school at Georgetown University in Washington, DC. He has provided very valuable volunteer legal research assistance to the Service Members Law Center throughout his first year of law school.

² Nathan M. Richardson has completed his first year of law school and George Washington University in Washington, DC and is a summer associate, providing very valuable legal research assistance to the Service Members Law Center.