

**AZ-2015-NG**  
**(updated April 2018)**

**Arizona Law Protecting National Guard Members On State Active Duty**

By Kyle E. Helmick<sup>1</sup>

Arizona has enacted a good provision protecting the civilian job rights of National Guard members on state active duty. Here is the entire text of the pertinent section:

A. An employer shall not refuse to permit members of the National Guard or the United States armed forces reserves to take leaves of absence from employment for the purpose of complying with competent orders of the state or United States for active duty, or to attend camps, maneuvers, formations or armory drills. The leaves of absence shall not affect vacation rights that employees otherwise have, except that an employer need not consider the period of absence as a period of work in determining eligibility for vacation and the amount of vacation pay to which the employee is entitled.

B. A member of the national guard or the United States armed forces reserves shall not lose seniority or precedence while absent under competent military orders. On return to employment the employee shall be returned to the employee's previous position, or to a higher position commensurate with the employee's ability and experience as seniority or precedence would ordinarily entitle the employee.

C. An officer or employee of this state, or any department or political subdivision of this state, who is a member of the national guard or the United States armed forces reserves shall be entitled to leave of absence pursuant to § 38-610 from the individual's duties without loss of time or efficiency rating on all days during which the individual is engaged in field training as provided by this chapter, and for a period during leave of absence not to exceed thirty days in any two consecutive years the individual is entitled to pay. For purposes of this section, an officer or employee shall not be charged military leave for days on which the individual was not otherwise scheduled for work.

*D. When ordered by the governor to perform training or duty under this section or § 26-171, subsection C, § 26-172 or § 26-175, members of the Arizona national guard shall have the protections afforded to persons on federal active duty by the soldiers and sailors civil relief act of 1940 (54 Stat. 1178; 50 United States Code App. §§ 501 through 548 and 560 through 591) and by the uniformed services employment and reemployment rights act of 1994 (108 Stat. 3149; 38 United States Code §§ 4301 through 4333).<sup>2</sup>*

E. A person violating any provision of subsection A or B of this section is guilty of a class 1 misdemeanor. The county attorney shall prosecute violations of this section in superior court.

Arizona Revised Statutes Annotated, section 26-168 (West) (emphasis supplied).

This section appears to apply to the State of Arizona (as an employer) and its political subdivisions (counties, cities, school districts, etc.) and also to private employers in Arizona. This section does not apply to employees of the Federal Government who are members of the

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<sup>2</sup> As originally enacted in 1994, USERRA ended at section 4333. In the intervening 20 years, Congress has enacted a section 4334 and a section 4335.

Arizona Army National Guard or Air National Guard. Of course, a state lacks the constitutional authority to regulate the relationship between the Federal Government and its employees.

This section only applies to members of the *Arizona* Army National Guard or Air National Guard. There are no doubt members of National Guard units of other states (especially neighboring states like New Mexico and California) who happen to have civilian jobs in Arizona. We would like to see the Arizona Legislature amend section 26-168 and broaden the application to include National Guard members of other states who may have civilian jobs in Arizona and who may be called to state active duty by their own states.

### **UPDATE—APRIL 2018**

By Captain Samuel F. Wright, JAGC, USN (Ret.)

On 4/3/2018, Arizona Governor Doug Ducey signed into law House Bill 2421. This new law amended section 26-168 of Arizona Revised Statutes. As amended, the right to a job-protected leave of absence for state active duty now applies to a member of the National Guard of “this state or any other state.” Previously, this right only applied to members of the Arizona National Guard.

For example, Vidkun Quisling is the owner-operator of the Big Budget Motel at Lake Meade, Arizona. Quisling has 50 employees, and two of them are National Guard members. Jerry Geronimo lives in Arizona and is a member of the Arizona Army National Guard. Hugh Betcha lives just across the state line in Nevada and is a member of the Nevada Army National Guard. After a destructive series of tornadoes, Geronimo and Betcha are called to state active duty by the Governors of Arizona and Nevada, respectively.

Quisling is annoyed by the short-notice call-up and he refuses to reinstate both Geronimo and Betcha when they return after completing their state active duty periods. Prior to this recent amendment, Geronimo had an enforceable right to reinstatement in his job at the motel, but Betcha had no such right, because he was not a member of the *Arizona* National Guard. Now, Betcha’s job is also protected by Arizona law.