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California Law Protecting National Guard Members On State Active Duty

By Kyle E. Helmick¹

California has enacted a provision to protect National Guard members on state active duty. Here is the entire text of that section:

(a) Every officer and enlisted member of the California National Guard who, in order to undertake active military duty in the service of the state when the Governor has issued a proclamation of a state of insurrection pursuant to [Section 143](#), or a proclamation of a state of extreme emergency or when the California National Guard is on active duty pursuant to [Section 146](#), or a service member called to active service or duty under Chapter 7.5 (commencing with [Section 400](#)), has left a position, other than a temporary position, in private employment, receives a certificate of satisfactory service in the California National Guard or an equivalent thereof, is still qualified to perform the duties of that position, and makes application within 40 days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position or to a position of similar seniority, status, and pay without loss of retirement or other benefits, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so, and shall not be discharged from the position without cause within one year after being restored to the position.

(b) Every officer and enlisted member who has left a part-time position in private employment for purposes of service pursuant to subdivision (a), receives a certificate of satisfactory service in the California National Guard or an equivalent thereof, is still qualified to perform the duties of that position, and makes application within five days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position, or to a position of similar seniority, status, and pay, if any exists, and shall not be discharged from the position without cause within one year after being restored to the position.

(c) If any employer fails or refuses to comply with this section, the superior court of the county in which the employer maintains a place of business may, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of this section, specifically require the employer to comply with this section and

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compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing and shall advance it on the calendar. Upon application to the district attorney of the county in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the district attorney, if reasonably satisfied that the person is entitled to these benefits, shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

(d) Upon application to the city prosecutor of the city in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the city prosecutor, if reasonably satisfied that the person is entitled to these benefits, may appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

California Military & Veterans Code Annotated, section 395.06 (West).

This section appears to apply to the State of California and its political subdivisions (counties, cities, school districts, etc.), as well as private employers in California. This section 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 only applies to members of the *California* National Guard. There are no doubt members of National Guard units of other states (especially neighboring states like Arizona, Nevada, and Oregon) who happen to hold civilian jobs in California. This section does not protect members of other-state National Guard units who work in California and who are called to state active duty by their home-state Governors. We would like to see the California Legislature amend this section in order to cover those out-of-state National Guard members who work in California.

UPDATE JUNE 2017

In California Government Code sections 19775 and 19775.1, the words “Department of Human Resources” have been deleted by amendment. Thus, as amended, each section now refers to “continuous state service as defined by rule” without specifying that it must be a Department of Human Resources rule. Otherwise, the quoted sections of California law are the same now as they were when Gavriel Swerling wrote this article in 2013.