

CT-2015-NG
(updated July 2017)

Connecticut Law Protecting National Guard Members On State Active Duty

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Connecticut law provides as follows for members of the Connecticut Army National Guard and Air National Guard who are called to state active duty by the Governor of Connecticut:

Any member of the *Connecticut* National Guard whom the Governor orders into active state service shall have all of the protections afforded to service members on federal active service by the Uniformed Services Employment and Reemployment Rights Act, 38 USC Sections 4301 to 4333, inclusive, and by the Servicemembers Civil Relief Act, except for the provisions of 50 USC App, Sections 536 and 541 to 549, inclusive, pertaining to life insurance, as amended.

Connecticut General Statutes Annotated section 27-34a (West) (emphasis supplied).

This section appears to lack an enforcement mechanism. If a Connecticut employer refuses to reemploy a National Guard member returning from state active duty, what remedy is available? Can the member bring an action in state court against the employer? Can the court grant an injunction requiring the employer to reinstate the individual? Is back pay available? If the service member retains private counsel to bring such a civil action and prevails, can the court order the employer to pay the attorney's fee? The Connecticut Legislature needs to amend section 27-34a and provide an effective enforcement mechanism.

This section is limited to members of the *Connecticut* National Guard. There are no doubt members of other-state National Guard units (especially neighboring states like New York and Rhode Island) who have civilian jobs in Connecticut. The Connecticut Legislature should amend section 27-34a to protect the civilian jobs of these individuals when they are called to state active duty by their home-state Governors.

UPDATE JULY 2017

Connecticut Governor Daniel P. Malloy has signed Public Act No. 17-127. Section 14 of this new act repeals subsection (b) of section 27-33a of the Connecticut General Statutes (CGS) and enacts a new subsection (b) as follows:

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(b) The employer of any employee who, as a part of such employee's service in the armed forces of the state, [or] any reserve component of the armed forces of the United States *or the National Guard of another state*, is ordered to perform military duty, including meetings or drills, during regular working hours shall allow such employee leave of absence for such purpose. No such employee shall be subjected by any person, directly or indirectly, to any loss or reduction of vacation or holiday privileges by reason of such absence, or be prejudiced by reason of such absence with reference to promotion or continuance in office or employment, or to reappointment to office or reemployment.

CGS 27-33a(b). This new language goes into effect on October 1, 2017 and is not retroactive.

The bracketed word has been deleted and the italicized words have been added. The purpose and effect of this amendment is to expand the protection of Connecticut law to members of the National Guard of other states who have civilian jobs in Connecticut.

For example, Alexander Hamilton lives in New York City and is a Specialist (E-4) in the New York Army National Guard. His civilian job is just across the state line in Stamford, Connecticut. Hamilton is called to state active duty by the Governor of New York and is away from his civilian job at the Connecticut law firm Dewey Cheatham & Howe (DCH), where he is a paralegal. After September 30, 2017, the civilian job of a person in this situation will be protected by Connecticut law.

Public Act No. 17-917 also amends CGS section 46a-58(a) to read as follows:

It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of this state or the United States on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, [or] physical disability *or status as a veteran*.

CGS section 46a-58(a). This bracketed language has been deleted and the italicized language has been added. This amendment goes into effect on October 1, 2017.

Public Act No. 17-917 makes the same "*or status as a veteran*" addition to provisions of Connecticut law that make it unlawful for state officials to discriminate in offering or providing employment, services, grants, or licenses. And this new act makes it unlawful to discriminate on the basis of "*status as a veteran*" in employment, membership in occupational associations, housing, etc. These changes all go into effect on October 1, 2017.