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Florida Law Protecting State Active Duty Performed By National Guard Members

By Kyle E. Helmick¹

Florida has enacted a statute that protects the civilian jobs of National Guard members on state active duty. Here is the entire text of that statute:

(1) If a member of the National Guard is ordered into state active duty *pursuant to this chapter*, a private or public employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities, may not discharge, reprimand, or in any other way penalize such member because of his or her absence by reason of state active duty.

(2)(a) Upon the completion of state active duty, a member of the National Guard shall promptly notify the employer of his or her intent to return to work.

(b) An employer is not required to allow a member of the National Guard to return to work under this section if:

1. The employer's circumstances have so changed as to make employment impossible or unreasonable;
2. Employment would impose an undue hardship on the employer;
3. The employment from which the member of the National Guard leaves to serve in state active duty is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period; or
4. The employer had legally sufficient cause to terminate the member of the National Guard at the time he or she left for state active duty.

The employer has the burden of proving the impossibility or unreasonableness, undue hardship, the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period, or the legally sufficient cause to terminate the person at the time he or she left for state active duty.

(c) A member of the National Guard who returns to work after serving on state active duty is entitled to:

1. The seniority that the member had at his or her place of employment on the date of the commencement of his or her state active duty and any other rights and benefits that inure to the member as a result of such seniority; and
2. Any additional seniority that the member would have attained at his or her place of employment if he or she had remained continuously employed and the rights and benefits that inure to the member as a result of such seniority.

(d) A member of the National Guard who returns to work after serving on state active duty may not be discharged from such employment for a period of 1 year after the date the member returns to work, except for cause.

(e) An employer may not require any National Guard member returning to employment following a period of state active duty service to use vacation, annual, compensatory, or similar leave for

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the period during which the member was ordered into state active duty. However, any such returning member shall, upon his or her request, be permitted to use, for the period during which the member was ordered into state active duty, any vacation, annual, compensatory, or similar leave with pay accrued by the member prior to the commencement of his or her state active duty service.

(3) If the Adjutant General certifies that there is probable cause to believe there has been a violation of this section, an employee ordered into state active duty so injured by a violation of this section may bring civil action against an employer violating this section in a court of competent jurisdiction of the county in which the alleged violator resides or has his or her principal place of business, or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant is liable for actual damages or \$500, whichever is greater. The prevailing party in any litigation proceedings is entitled to recover reasonable attorney's fees and court costs.

(4) The certification of probable cause may not be issued until the Adjutant General, or his or her designee, has investigated the issues. All employers and other personnel involved with the issues of such investigation must cooperate with the Adjutant General in the investigation.

Florida Statutes Annotated section 250.482 (West) (emphasis supplied).

This section contains an enforcement mechanism and applies to private employers in Florida, as well as the State of Florida and its political subdivisions (counties, cities, school districts, etc.).

There are members of National Guard units of other states (especially neighboring states like Georgia and Alabama) who have civilian jobs in Florida. For example, Specialist Joe Smith of the Georgia Army National Guard has a civilian job for the XYZ Corporation in Jacksonville, Florida. If Smith is called to state active duty by the Governor of Georgia, does section 250.482 give him the right to reemployment at the XYZ Corporation when he is released from this period of state active duty?

The answer is apparently *no*. Section 250.482(1) refers to “a member of the National Guard who is ordered into state active duty *pursuant to this chapter*.” (Emphasis supplied.) Smith has not been ordered to state active duty “pursuant to this chapter” of Florida law—Smith has been ordered by state active duty pursuant to Georgia law.

We would like to see the Florida Legislature amend section 250.482 to protect the civilian jobs of members of other-state National Guard units who have civilian jobs in Florida and who are called to state active duty by their home-state Governors.

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

On April 8, 2016 Florida Governor Rick Scott signed into law S.B. 7040. This new law is effective on the date of enactment. It is not retroactive. This new enactment amends many separate

sections of Florida Statutes and enacts new sections. As relevant to this discussion concerning protecting the civilian jobs of National Guard members who are away from their civilian jobs for state active duty, the two amended sections are section 250.81 and section 250.482.

As amended by S.B. 7040, section 250.81 of Florida Statutes reads as follows:

Legislative intent. It is the intent of the Legislature that men and women who serve in the [Florida National Guard] National Guard of any state, the United States Armed Forces, and Armed Forces Reserves understand their rights under applicable state and federal laws. Further, it is the intent of the Legislature that Florida residents and businesses understand the rights afforded to the men and women who volunteer their time and sacrifice their lives to protect the freedoms granted by the Constitutions of the United States and the State of Florida.

The three bracketed words were deleted by the 2016 amendment. The five underlined words were added by the 2016 amendment.

As amended by S.B. 7040, section 250.482 of Florida Statutes reads as follows:

If a member of the National Guard is ordered into state active duty pursuant to this chapter or into active duty as defined by the law of any other state, a private or public employer, or an employing or appointing authority of this state, its counties, school districts, political subdivisions, career centers, community colleges, or universities, may not discharge, reprimand, or in any other way penalize such member because of his or her absence by reason of state active duty.

The 13 underlined words were added by the 2016 amendment.

The purpose and effect of these amendments is to extend the protection of Florida law to protect members of the National Guard of other states who are called to state active duty by other-state governors but who have civilian jobs in Florida.

For example, Jimmy Carter lives in southern Georgia and is a Sergeant in the Georgia Army National Guard. For his civilian job, he works just a few miles south, at the Ally Gator Truck Stop & Restaurant in northern Florida. Carter is called to state active duty by the Governor of Georgia, for clean-up and rescue operations after a major hurricane. Carter is absent from his Florida job, at the truck stop, for two weeks, because of this period of Georgia state active duty.

Prior to the 2016 amendment, a person in this situation did not have a legally enforceable right to reinstatement in the truck stop job. Now, a person in this situation is protected by Florida law.