

GA-2015-NG

Georgia Law Protecting State Active Duty Performed By National Guard Members

By Kyle E. Helmick¹

The Georgia Legislature has enacted a section that protects the reemployment rights of National Guard and Reserve personnel, including members of the Georgia National Guard who are called to state active duty by the Governor of Georgia. Here is the entire text of that section:

(a) In the case of any person who has left or leaves a position, other than a temporary position, in the employ of any employer in order to perform military service and who:

(1) Received a certificate of completion of military service duly executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia;

(2) Is still qualified to perform the duties of the position; and

(3) Makes application for reemployment within 90 days after he or she is relieved from such service, if the position was in the employ of a private employer,

the employer shall restore the person to the position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

(b) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who, in order to participate in assemblies or annual training pursuant to [Code Section 38-2-25](#) or in order to attend service schools conducted by the armed forces of the United States for a period or periods up to and including six months, temporarily leaves or has left his or her position, other than a temporary position, in the employ of any employer and who, being qualified to perform the duties of the position, makes application for reemployment within ten days after completion of the temporary period of service; provided, however, that no such person shall be entitled to the benefits, rights, and privileges for the attendance at any service school or schools exceeding a total of six months during any four-year period.

(c) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who is or becomes a member of the organized militia or of a reserve component of the armed forces of the United States and who

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because of such membership is discharged by his or her employer or whose employment is suspended by his or her employer because of such membership and who, being qualified to perform the duties of the position, makes application for reemployment or termination of the period of his or her suspension within ten days after such discharge or suspension. In the event that the member of the organized militia or reserve component is serving on military duty at the time of receipt of notice of the discharge or suspension the aforesaid ten-day period within which application must be made shall not commence to run until the day next following the date of termination of such military duty.

(d) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who is a member of the Georgia National Guard and who is called into active state service pursuant to [Code Section 38-2-6](#) or [38-2-6.1](#) and who because of such active state service is discharged by his or her employer or whose employment is suspended by his or her employer because of such active state service and who, being qualified to perform the duties of the position, makes application for reemployment or termination of the period of his or her suspension within ten days after such discharge or suspension. In the event that the member of the Georgia National Guard is serving in active state service at the time of receipt of notice of the discharge or suspension the aforesaid ten-day period within which application must be made shall not commence to run until the day next following the date of termination of such active state service.

(e) Any person who is restored to a position in accordance with this Code section shall be considered as having been on furlough, on leave of absence during his or her period of military service, performing temporary service under subsection (b), or discharged or suspended under subsection (c) or (d) of this Code section, shall be restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the person entered the military service or commenced the temporary service or was so discharged or suspended, and shall not be discharged from the position without cause within one year after the restoration.

(f) If any *private employer* fails or refuses to comply with this Code section, the superior court of the county in which the private employer resides shall have the power, upon petition by the person entitled to the benefits of this Code section, to require specifically the employer, by injunction, mandatory or otherwise, to comply with this Code section, and may, as an incident thereto, 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 in any such case and may specially set it on the calendar. Any person claiming to be entitled to the benefits of this Code section may appear by his or her own counsel or, upon application to the Attorney General of the state, may request that the Attorney General appear and act on his or her behalf. If the Attorney General is reasonably satisfied that the person so applying is entitled to such benefits, he or she shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any petition and the prosecution thereof. In the hearing and determination of petitions under this Code section no fees or court costs shall be assessed against a person so applying for such benefits.

Georgia Code Annotated section 38-2-280 (West) (emphasis supplied).

The enforcement provision of this section appears to apply only to private employers in Georgia, not to the State of Georgia and its political subdivisions (counties, cities, school

districts, etc.). The Georgia Legislature should amend this provision to make it apply to state and local governments, as employers, because many members of the Georgia National Guard have civilian jobs working for such governments.

Section 38-2-280 applies only to members of the *Georgia* Army National Guard and Air National Guard. There are members of other-state National Guard units (especially neighboring states like Florida and Alabama) who have civilian jobs in Georgia. The Georgia Legislature should amend section 38-2-280 to protect the Georgia jobs of these persons.

GEORGIA LAW PROTECTS NATIONAL GUARD MEMBERS ON STATE ACTIVE DUTY UPDATE—AUGUST 2016

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

In 2016, Georgia Governor Nathan Deal signed into law the “Protecting Guardsmen’s Employment Act.” This new law amends Georgia Code Section 38-2-280 by adding: “or who has been called to state-sponsored active duty as part of the National Guard of another state by that state’s Governor.”

For example, Al Gator lives in far northern Florida and is a Specialist in the Florida Army National Guard. For his civilian job, Gator commutes a few miles north to the Billy Carter Swimming Pool Company in far southern Georgia. After a major hurricane, the Florida Governor calls up Gator and his National Guard unit to state active duty for two weeks, and Gator is absent from his Georgia job for those two weeks.

Until the 2016 amendment was enacted, a person in Gator’s situation had no legally enforceable right to reemployment in his civilian job. Now, the Georgia law expressly applies to this situation.

CORRECTION GEORGIA NATIONAL GUARD CORRECTION AUGUST 2016

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

In our article (above) about protections for the civilian jobs of National Guard members on state active duty, we made the following statement:

The enforcement provision of this section appears to apply only to private employers in Georgia, not to the State of Georgia and its political subdivisions (counties, cities, school districts, etc.). The Georgia Legislature should amend this provision to make it apply to state and local governments as employers, because many members of the Georgia National Guard have civilian jobs working for such governments.

It has come to my attention that our statement is in error. I apologize for any confusion that our error may have caused.

Georgia law provides:

In the event the Governor [of Georgia] declares an emergency and orders any public officer or employee to ordered military duty as a member of the National Guard [state active duty], any such officer or employee, while performing such duty, shall be paid his or her salary or other compensation as a public officer or employee for a period not exceeding 30 days in any one federal fiscal year.²

Thirty (30) days of paid military leave should be sufficient. It is difficult to conceive of a situation in which a public employee is called to state active duty for more than 30 days in a single year.

This provision applies to all state and local government employees (except temporary employees) in Georgia who are National Guard members. Georgia law provides:

“Public officer or employee” means every person, by whatever title, description, or designation known, who receives any pay, salary, or compensation of any kind from the state, a county, municipal corporation, or any other political subdivision or who is in any department of the state, but shall not include persons employed by the state, a county, municipal corporation, or any other political subdivision on a temporary basis.³

For example, a rural school district in southern Georgia employs two National Guard members. Lester Maddox lives in Georgia and is a Sergeant in the Georgia Army National Guard. Ella Gator lives just across the state line in northern Florida and is a Sergeant in the Florida Army National Guard. A hurricane causes major devastation in both Florida and Georgia, and both governors call up many units of their respective National Guard organizations. Both Maddox and Gator are called to state active duty, for 15 days in Florida and 12 days in Georgia.

Maddox is entitled to 12 days of *paid* military leave under section 38-2-279(e). Gator is not entitled to paid or unpaid military leave for Florida state active duty, as a member of the Florida National Guard. It appears that Gator has no legally enforceable right to reinstatement in her Georgia school district job at the end of her Florida state active duty.

² Georgia Code Annotated, Section 38-2-279(e).

³ Georgia Code Annotated, Section 38-2-279(a)(2).