

Idaho Law Protecting National Guard Members Performing State Active Duty

By Kyle E. Helmick¹

Idaho has exemplary employment protections for National Guard members who are ordered to active state duty, including members of National Guard units of other states who have civilian jobs in Idaho. Here are the pertinent sections of state law:

- (a) Any member of the Idaho national guard who is ordered to duty by the governor, *or any Idaho employee who is a member of the national guard of another state and who is called into active service by the governor of that state*, and who at the time of such order to duty is employed by any employer other than the United States government, shall be entitled to reemployment as set forth in section 46-409, Idaho Code.
- (b) If the member is still qualified to perform the duties of the position he held at the time of the order to duty, he shall be restored by the employer or the employer's successor in interest to that position or one of like seniority, status and pay. If the member is not qualified to perform the duties of such position by reason of disability sustained during the period of duty, but is qualified to perform the duties of any other positions in the employ of the employer, then the employer must offer the member that position which he is qualified to perform which is most similar to his former position in seniority, status and pay.
- (c) Any person who is reemployed under this section shall not be discharged without cause within one (1) year after such reemployment.
- (d) If any employer fails or refuses to comply with this section, the district court in the county in which the member was employed shall have the power, upon petition by the member, to compel the employer to comply with this section and to compensate the member for lost wages and benefits, for costs of the action, and for reasonable attorney's fees. The court shall order a speedy hearing in any such case and advance it on the calendar.

Idaho Code Annotated section 46-407 (West) (emphasis supplied).

Such absence for military training shall not affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his employment normally to be anticipated in his particular position. All officers and employees of the

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state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States shall also be entitled to their existing medical benefits for the first thirty (30) days of a deployment ordered or authorized under the provisions of the national defense act, and such entitlement shall not decrease any existing accrued leave balances.

Idaho Code Annotated section 46-225 (West).

Any person who is a duly qualified member of the national guard or of the reserve components of the armed forces, who is a member of an organized unit and who, in order to receive military training with the armed forces of the United States, not to exceed fifteen (15) days in any one (1) calendar year, leaves a position other than employment of a temporary nature in the employ of any employer, and who shall give evidence defining date of departure and date of return for purposes of military training ninety (90) days prior to the date of departure and who shall further give evidence of the satisfactory completion of such training immediately thereafter, and who is still qualified to perform the duties of such position, shall be entitled to be restored to his previous or similar position with the same status, pay and seniority. Such seniority shall continue to accrue during such period of absence, and such period of absence for military training shall be construed as an absence without leave and within the discretion of the employer. Said leave may be with or without pay.

Idaho Code Annotated section 46-224 (West).