

Indiana Law Protecting National Guard Members Performing State Active Duty

By Kyle E. Helmick¹

Indiana has enacted protections for Indiana National Guard members who are away from their civilian jobs for state active duty. Here is the text of the pertinent sections:

Sec. 23. (a) As used in this section, “active duty” means:

(1) training or duty under federal law; or

(2) *state active duty under section 7 of this chapter; performed under an order of the governor.*

(b) The rights, benefits, and protections of the federal Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. 501 et seq., as amended and in effect on January 1, 2003, apply to a member of the Indiana national guard ordered to active duty for at least thirty (30) consecutive days.

(c) The rights, benefits, and protections of the federal Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301 et seq., as amended and in effect on January 1, 2003, apply to a member of the Indiana national guard ordered to active duty.

(d) Nothing in this section shall be construed as a restriction or limitation on any of the rights, benefits, and protections granted to a member of the Indiana national guard under federal law.

Indiana Code Annotated section 10-16-7-23 (West) (emphasis supplied).

Sec. 6. *A member of the Indiana national guard is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to the member's regular vacation period for the total number of days that the member is on state active duty under section 7 of this chapter. The leave of absence may be with or without loss of time or pay at the discretion of the member's employer.*

Indiana Code Annotated section 10-16-7-6 (West) (emphasis supplied).

¹ Kyle E. Helmick has completed his first year of law school at Georgetown University in Washington, DC. He has provided very valuable volunteer legal research assistance to the Service Members Law Center throughout his first year of law school.

Sec. 4. An employer who knowingly or intentionally refuses to allow *a member of the Indiana national guard* to attend any assembly at which the member has a duty to perform under this chapter commits a Class B misdemeanor.

Indiana Code Annotated section 10-16-7-4 (West).

It is suggested that making violations criminal (Class B misdemeanors) may not be an effective way of enforcing these protections. Local prosecutors are likely to give low priority to these cases, and the prosecutor always has discretion to bring or not bring a criminal case. It is also unclear how a political subdivision (like a local school district or sheriff's office) could be prosecuted criminally.

These protections clearly apply only to members of the *Indiana* National Guard. There are no doubt members of other-state National Guard units (especially neighboring states like Illinois and Ohio) who have civilian jobs in Indiana. We would like to see the Indiana Legislature amend these provisions to make them apply to members of other-state National Guard units who have civilian jobs in Indiana and who are called to state active duty by their home-state Governors.

UPDATE—MARCH 2016

On March 22, 2016 Indiana Governor Mike Pence signed into law Senate Bill 362. This action amends Indiana law and expands the protection of the civilian jobs of National Guard members to include members of the National Guard of other states who have civilian jobs in Indiana.

For example, Mary Buckeye lives in western Ohio and is a member of the Ohio Army National Guard. Her civilian job is just across the state line in eastern Indiana. Mary is called to state active duty by the Governor of Ohio. Under the 2016 amendment, Mary has a legally enforceable right to reemployment in her Indiana job, after completing her period of Ohio state active duty. Previously, a person in this situation had no legally enforceable right to reemployment.