

KS-NG-OCT2015update

UPDATE ON KANSAS LAW PROTECTING NATIONAL GUARD MEMBERS ON STATE ACTIVE DUTY

October 2015

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

On May 29, 2015, Kansas Governor Sam Brownback signed House Bill No. 2154. This new law went into effect on July 1, 2015. Go to www.kslegislature.org/li/b2015_15/measures/hb2154/.

This new law makes several useful amendments to Kansas law, including adding a new provision authorizing private sector employers in Kansas to establish and implement written veteran preference policies for employment—that is, permissive veterans' preference in private sector employment in Kansas. These provisions are outside the scope of this article.

The amendment that is relevant is to section 48-517 of *Kansas Statutes Annotated* (West). The purpose and effect of the amendment is to extend Kansas' protection of the civilian jobs of National Guard members to include members of the National Guard of other states (typically but not necessarily neighboring states) who have civilian jobs in Kansas. Prior to July 1, 2015, Kansas law only protected members of the Kansas National Guard or State Guard.

For example, Howard Koch lives in Kansas City, Missouri and is a Sergeant in the Missouri Army National Guard. For his civilian job, Koch commutes a few miles west to the Kansas Steak Company in Kansas City, Kansas. Koch is called to active duty by the Governor of Missouri to address civil disturbances on the other side of the state, in the St. Louis area.

Prior to July 1, 2015, Koch had no legally enforceable right to reemployment at the Kansas Steak Company in Kansas. The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) does not apply to state active duty. The Missouri law does not apply across the state line in Kansas. Until July 1, the Kansas law did not protect the civilian job of a member of the National Guard of another state who holds a civilian job in Kansas. Now, the Kansas law protects a person in Koch's situation.

Reviewing the Kansas law, I see another issue that was not raised in our initial article but should have been. I invite the reader's attention to *Kansas Statutes Annotated* section 48-517(a). This section accords the right to reemployment to a National Guard member who has missed civilian work for state active duty and who meets enumerated criteria. One criterion is that the right to reemployment applies to an individual "who gave notice thereof [concerning the need for military leave for state active duty] to the person's employer." I do not see an exception to the

prior notice requirement for exigent circumstances that make prior notice to civilian employers impossible. State active duty is often in this no notice category.

For example, let us assume that a major tornado has devastated Clay Center, Kansas. Dorothy, her little dog Toto, and many of her neighbors are trapped in collapsed buildings, and some of them are still breathing. The Governor of Kansas has called up National Guard members to rescue the trapped persons. If this state active duty mobilization is delayed by even one hour, to permit the National Guard members to give advance notice to their civilian employers, additional deaths will inevitably result from the delay. There needs to be an exception to the advance notice requirement for exigent circumstances that preclude giving advance notice to civilian employers.