

Maine Law Protects National Guard Members On State Active Duty

By Kyle E. Helmick¹

Maine has enacted excellent provisions protecting the civilian jobs of National Guard members on state active duty. Here are the pertinent sections of Maine law:

1. Intent. The intent of this subchapter is to minimize the disruption to the lives of persons performing service in the National Guard or the Reserves of the United States Armed Forces as well as to their employers, their fellow employees and their communities by providing for the prompt reemployment of these persons upon their satisfactory completion of military service and to prohibit discrimination against these persons because of their military service.

2. Military leave of absence. Any member of the National Guard or the Reserves of the United States Armed Forces is entitled to a military leave of absence from a position with any public or private employer, in response to *state or federal military orders*. The military member shall:

A. Give prior reasonable notice, if reasonable under the military circumstances, to the member's employer of the anticipated absence for military duty; and

B. If the employer so requests, obtain a confirmation from the Adjutant General or applicable reserve component headquarters of the anticipated military duty and satisfactory completion of the member's military duties.

3. Reinstatement. Any person who is in compliance with subsection 2 and is still qualified to perform the duties of such position must be reinstated at the same pay, seniority, benefits and status and receive any other incidences of advantages of employment as if the person had remained continuously employed. The period of absence must be construed as an absence with leave and, within the discretion of the employer, the leave may be with pay. The employer may not require any person returning from a period of military service to report back to work:

A. For periods of military service of 3 days or less, until the completion of the period of service and the expiration of 24 hours after a period allowing for the safe transportation of

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the person from the place of that service to the person's residence;

B. For periods of military service of more than 3 days but not more than 15 days, until the completion of the period of service and the expiration of 48 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence;

C. For periods of military service of more than 15 days but not more than 30 days, until the completion of the period of service and the expiration of 72 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence;

D. For periods of military service of more than 30 days but not more than 180 days, until the completion of the period of service and the expiration of 14 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

E. For periods of military service of more than 180 days, until the completion of the period of service and the expiration of 90 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence.

4. Disability. A person who is in compliance with subsection 2 but who has a disability incurred in or aggravated during the military service for which that person was absent and who, after reasonable efforts by the employer to accommodate the disability, is not qualified due to that disability to be employed in the position of employment in which the member would have been employed if the member had remained continuously employed must be reinstated without loss of seniority, benefits, status and any other incidences of advantages of employment:

A. To any other position that is equivalent in pay, seniority, benefits, status and any other incidences of advantages of employment, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

B. To a position that is the nearest approximation to a position referred to in paragraph A in terms of pay, seniority, benefits, status and any other incidences or advantages of employment consistent with circumstances of the person's case.

5. Employer defined. As used in this section, "employer" means any person, institution, organization or other entity that pays salary or wages for work performed or that has

control over employment opportunities, including a person, institution, organization or other entity to whom the employer has delegated the performance of employment-related responsibilities; the Federal Government; the State and any subdivision or agency of the State; and any successor in interest to a person, institution, organization, or other entity referred to in this subsection.

26 Maine Revised Statutes section 811 (emphasis supplied).

1. Benefits accrual. Absence for military training as described in section 811 does not affect the employee's right to receive normal vacation, sick leave, bonus, advancement and other advantages of employment normally to be anticipated in the employee's particular position.

2. Extension of insurance benefits. Insurance benefits must be extended according to this subsection.

A. A public or private employer shall continue, at no additional cost to the member, the existing health, dental and life insurance benefits for at least the first 30 days of the military duty for any member of the National Guard or the Reserves of the United States Armed Forces if the member takes a military leave of absence from a position with that employer, other than a temporary position, in response to state or federal military orders.

B. After the expiration of the first 30 days of military leave, the member of the National Guard or the Reserves of the United States Armed Forces has the option of continuing the health, dental and life insurance benefits in effect at the member's own expense by paying the insurance premium at the same rates as paid by the employer.

26 Maine Revised Statutes section 812.

These two sections clearly apply to a member of the Maine Army or Air National Guard who is called to state active duty by the Governor of Maine. Does the Maine law give rights to a member of the National Guard of another state who holds a civilian job in Maine? There is no clear answer to this question.

For example, Joshua Lawrence Chamberlain V is a Colonel in the New Hampshire Army National Guard and lives in Portsmouth, New Hampshire. Each morning, he drives across the Piscataqua River to his civilian job at a store in Kittery, Maine. During a major blizzard, the Governor of New Hampshire calls Chamberlain to state active duty in New Hampshire.

Chamberlain's call to state active duty lasts for one week—he is absent from his Maine job for that week. Is the Maine store required to reemploy Chamberlain? We would argue that the answer is yes. The United States Supreme Court has held that laws enacted to benefit service members and veterans are to be liberally construed for the benefit of those who laid aside their civilian pursuits to serve the interests of the country and the community. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946); *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

It would be better if the Maine Legislature amended this provision to make explicit that Maine law protects National Guard members of other states who are called to state active duty by other states.