

**MS-2015-NG**  
**Mississippi Law Protects The Civilian Jobs Of National Guard**  
**Members On State Active Duty**  
**(updated April 2018)**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>1</sup>  
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Today's National Guard traces its origins to 1636, when the Massachusetts Bay Colony established the Massachusetts militia to defend the colony against attacks by the Pequot Indians. Other colonies and states established similar state militias, and those state militias were called to federal duty for the Revolutionary War, the War of 1812, the Mexican-American War, the Civil War, and the Spanish-American War.

Under federal legislation enacted very early in the 20<sup>th</sup> Century, state militia forces have been given major federal assistance in pay, training, and equipment and have been given federal status as part of the Army National Guard of the United States, one of the seven Reserve Components of the United States Armed Forces.<sup>3</sup> After World War II, when the Air Force became a separate service rather than part of the Army, Congress created the Air National Guard of the United States as a similar hybrid state-federal military service.

In Mississippi and any other state, the Army National Guard and Air National Guard have a hybrid state-federal status. As a member of the Mississippi Army National Guard, Sergeant Jefferson Davis is subject to call-up by the Governor of Mississippi for state active duty. As a member of the Army National Guard of the United States,<sup>4</sup> he is subject to call-up by the President of the United States for national defense emergencies. Davis regularly performs military training and duty under title 32 and title 10 of the United States Code, and the Uniformed Services Employment and Reemployment Rights Act (USERRA)<sup>5</sup> gives Davis and other National Guard members the right to reemployment in their civilian jobs (federal, state, local, or private sector) after absences from their civilian jobs for title 10 and title 32 periods of military training or service.

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<sup>2</sup> Kyle Helmick has completed his first year of law school at Georgetown University in Washington, DC. He provided very valuable volunteer legal research assistance to the Service Members Law Center throughout his first year of law school.

<sup>3</sup> The other six Reserve Components are the Army Reserve, the Air National Guard of the United States, the Air Force Reserve, the Navy Reserve, the Marine Corps Reserve, and the Coast Guard Reserve. The Army National Guard and Air National Guard have this hybrid state-federal status, while the other five Reserve Components are purely federal entities.

<sup>4</sup> The Army National Guard of the United States is one of our nation's seven Reserve Components, of which the other six are the Air National Guard of the United States, the Army Reserve, the Air Force Reserve, the Navy Reserve, the Marine Corps Reserve, and the Coast Guard Reserve.

<sup>5</sup> USERRA is codified in title 38, United States Code, sections 4301-4335.

USERRA does not protect National Guard members when they are on *state active duty*, called by the Governor for state emergencies. When National Guard members are away from their civilian jobs for state active duty, they must look to state laws like section 33-1-19 to protect their civilian jobs. Unfortunately, the Mississippi law only applies to members of the *Mississippi* Army National Guard or Air National Guard on state active duty.

Like every other state legislature, the Mississippi Legislature has enacted a provision to protect members of the Mississippi Army National Guard and the Mississippi Air National Guard when they are on state active duty, called by the Governor of Mississippi for state emergencies like hurricanes, fires, floods, riots, etc. Here is the entire text of that section:

Any person who is a member of any reserve component of the armed forces of the United States, or former member of the service of the United States discharged or released therefrom under conditions other than dishonorable, who, in order to perform duties or receive training with the armed forces of the United States *or of the State of Mississippi (including active state duty, state training duty or any other military duty authorized under Title 10 or Title 32 of the United States Code)*, leaves a position, other than a temporary position, in the employ of any employer, and who shall give evidence of the satisfactory completion of such duty or training, and who is still qualified to perform the duties of such position, shall be entitled to be restored to his previous or a similar position, in the same status, pay and seniority, and such period of absence for military duty or training shall be construed as an absence with leave but may be without pay.

Mississippi Code Annotated, section 33-1-19 (West) (emphasis supplied).

Vicky Vilnius operates a bed-and-breakfast in Vicksburg, Mississippi. There are two National Guard members among her ten employees. Jefferson Davis lives in Vicksburg and is a Sergeant in the Mississippi Army National Guard. Louise Lafitte lives a few miles west in Tallulah, Louisiana and is a Sergeant in the Louisiana Army National Guard. The Mississippi River overflows its banks, and both the Governor of Mississippi and the Governor of Louisiana call up certain National Guard units. Both Davis and Lafitte are called to state active duty. Ms. Vilnius is annoyed because the call-up inconveniences her in her operation of the bed-and-breakfast, and she decides to fire both Davis and Lafitte.

Davis has the legally enforceable right to reemployment at Vicky's bed-and-breakfast, provided he meets the conditions set forth in section 33-1-19. Lafitte has no enforceable reemployment rights, because she is not a member of the *Mississippi* National Guard.

### **UPDATE—APRIL 2018**

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

Mississippi Governor Phil Bryant has signed Senate Bill No. 2459, and this new law goes into effect on 7/1/2018. This new law amends section 33-1-19 of the Mississippi Code. As amended, section 33-1-19 protects the right to reinstatement to civilian jobs of members of the National

Guard of other states who have civilian jobs in Mississippi, as well as members of the Mississippi National Guard who have civilian jobs in the state.

In the article, we offered the example of Louise Lafitte, who lives in Tallulah, Louisiana and is a member of the Louisiana National Guard, and who is called to state active duty by the Governor of Louisiana. For her civilian job, Lafitte commutes across the Mississippi River to a restaurant in Vicksburg, Mississippi.

Prior to 7/1/2018, a person in this situation does not have a legally enforceable right to reinstatement at the Vicksburg restaurant. On or after 7/1/2018, the civilian job of a person in this situation is protected by Mississippi law.