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Reemployment Rights Of National Guard Members In Oklahoma

By Captain Samuel F. Wright, JAGC, USN (Ret.)¹

The National Guard is a hybrid state-federal entity, created by federal legislation enacted very early in the 20th Century. National Guard members are subject to federal call-up for operations like Iraq and Afghanistan, and they engage in periodic training to maintain their readiness for such contingencies. Under certain circumstances, members of National Guard can be called up for state active duty by the Governor of Oklahoma or by another state governor. A federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA) protects members of the Army or Air National Guard (as well as members of the Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve) when they are away from their civilian jobs for voluntary or involuntary training or service under title 10 or title 32 of the United States Code. USERRA does not protect National Guard members who are away from their jobs for state active duty. If National Guard members are to have reemployment rights after state active duty, it must be by state law.

Title 72, section 48 of Oklahoma Statutes applies to the State of Oklahoma and its political subdivisions (counties, cities, school districts, etc.). It applies to members of the Army National Guard (ARNG) and Air National Guard (ANG), as well as the other five Reserve Components of the United States armed forces. It applies to members of the Oklahoma National Guard as well as members of the National Guard of another state who have civilian jobs for the State of Oklahoma or a political subdivision of the state.

Persons who meet these criteria are entitled to job-protected leaves of absence from their civilian jobs “when ordered by proper authority.” This language appears to include orders to state active duty by the Governor of Oklahoma or another state’s governor.

The employee is entitled to leave *with full civilian pay* for the first 30 regularly scheduled civilian work days that the individual is away from his or her civilian job for federal or state military duty or training. After the first 30 regularly scheduled work days missed, the employer (state agency or local government) may, in its discretion, pay the employee differential pay, if the employee’s military pay is less than the regular civilian pay. The right to time off, at least without pay, is unlimited.

¹ Captain Wright is the Director of the Service Members Law Center at the Reserve Officers Association. He can be reached by telephone at (800) 809-9448, ext. 730. His e-mail is SWright@roa.org. Thank you to Austin M. Giesel (second year law student at Georgetown University) for research assistance in the drafting of this article.

Title 72, section 48.1 applies to private employers in Oklahoma. Private employers are not required to grant paid military leave or to pay differential pay, but the right to time off (at least without pay) is unlimited. The right to military leave under section 48.1 applies to state active duty ordered by the Governor of Oklahoma or another state's governor, as well as federal military duty or training.

If a private sector employer in Oklahoma fails to comply with section 48.1, the individual National Guard member or reservist may bring an action in Oklahoma district court for actual and compensatory damages for such noncompliance and the court may grant such relief as is just and proper under the circumstances.