

Wyoming Law Protects The Civilian Jobs Of National Guard Members,

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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 later established similar state militias. Early in the 20th Century, Congress established the National Guard as a hybrid federal-state organization. National Guard members are subject to call by the President for national emergencies, and they train periodically for that contingency. National Guard members are also subject to state call-ups, by the Governor.

A federal statute called the Uniformed Services Employment and Reemployment Rights Act (USERRA)³ accords the right to reemployment to a person who leaves a civilian job (federal, state, local, or private sector) for voluntary or involuntary service in the uniformed services (as defined by USERRA) and who meets the USERRA eligibility criteria.⁴ USERRA protects the civilian jobs of National Guard members (as well as members of the Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve) after military training or service under title 10, title 14, or title 32 of the United States Code, but USERRA does not apply to state active duty. If National Guard members are to have reemployment rights after state active duty, it must be by state law.

Like every other state, Wyoming has enacted a statute to protect the civilian jobs of National Guard members on state active duty. The pertinent section of Wyoming law provides as follows: "(a) It is herein declared to be the *policy* of the state of Wyoming that *its citizens* who serve their country *and state* and who leave their employment, homes and education shall not be penalized nor economically disadvantaged because of such service." Wyoming Statutes, section 19-11-102(a) (emphasis supplied).⁵

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³ USERRA is codified in title 38, United States Code, sections 4301-4335.

⁴ The person must have left the civilian job for the purpose of performing uniformed service and must have given the employer prior oral or written notice. The person's cumulative period or periods of uniformed service, relating to the employer relationship with that employer, must not have exceeded five years, but certain kinds of service are exempt from the computation of the person's five-year limit. The person must have been released from the period of service without having received a disqualifying bad discharge from the military and after release the person must have made a timely application for reemployment.

⁵ Wyoming Statutes, section 19-11-111 restates USERRA in great detail but imperfectly. This provision is harmless but serves no useful purpose. Wyoming employers are required to comply with USERRA (a federal statute) without regard to what state law may provide.

This “statement of policy” may be insufficient to protect the civilian jobs of National Guard members who are away from their civilian jobs for state active duty. Is this “policy” binding on a private employer in Wyoming? How is this “policy” to be enforced? This is not made clear in this brief section.

For example, Vidkun Quisling owns and operates Quisling’s Norwegian Seafood Restaurant in Evanston, Wyoming. Among the restaurant’s 50 employees, three are National Guard members. Bill Cody lives in Evanston and is a Sergeant in the Wyoming Army National Guard. Brigham Young also lives in Evanston, but he is a Specialist (E-4) in the Utah Army National Guard. Mia Love lives a few miles south in Durant, Utah. She is a Senior Airman (E-4) in the Utah Air National Guard.

A tornado causes devastation in several Wyoming and Utah counties, and both Governors call up Army National Guard and Air National Guard units. Cody, Young, and Love are all called to state active duty—Cody was called by the Governor of Wyoming, and Young and Love were called by the Governor of Utah. Mr. Quisling is annoyed by the shortness of the notice and the inconvenience that the call-up causes for him as owner-operator of the restaurant. When Cody, Young, and Love return from their state active duty tours, Mr. Quisling informs each of them that he or she has been fired and replaced and orders them off the property.

Cody meets both the requirements of section 19-11-102(a), in that he is a citizen of Wyoming, and his service has been to the State of Wyoming. But if Mr. Quisling refuses to reinstate him to his job, it is unclear what (if any) remedy is available to Cody through the Wyoming court system. Young is a citizen of Wyoming, but his service has been to Utah, not Wyoming. Love fails on both counts, in that she is a citizen of Utah and her service has been to the State of Utah.

Wyoming Protection for National Guard Members on State Active Duty UPDATE AUGUST 2016

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

On March 7, 2016, Wyoming Governor Matt Mead signed into law Enrolled Act Number 24. This Act went into effect July 1, 2016. This new law amended Wyoming Code section 19-11-102 to expand the protection of National Guard members who have civilian jobs in Wyoming and who leave civilian jobs for state active duty. As expanded, the protection applies to National Guard members of other states who have civilian jobs in Wyoming, as well as Wyoming National Guard members.

I am correcting the statement made in our Wyoming article, to the effect that Wyoming has provided no enforcement mechanism to enforce these protections. I now find that there is a more than adequate enforcement mechanism, under sections 19-11-105 and 19-11-111 of the Wyoming Code. This enforcement mechanism applies to private employers in Wyoming and

also to the State of Wyoming and its political subdivisions. I apologize for any confusion that our error may have caused.