

Louisiana Law Protects Army National Guard And Air National Guard Members On State Active Duty, And The Protection Is Not Limited To Louisiana Guard Members

By Kyle E. Helmick¹

Among the 50 states, Louisiana provides perhaps the most comprehensive protection for members of the National Guard and Reserve, including members of the Louisiana Army or Air National Guard and the Army or Air National Guard of other states who are performing state active duty. Coverage of state active duty is most important, because the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) does not provide a job-protected right to be absent from one's civilian job for state active duty.²

Every state has state laws protecting the civilian jobs of National Guard members on state active duty—without such laws it would be most difficult for the states to recruit and retain sufficient National Guard members to respond to state emergencies like fires, floods, and riots. The problem is that most of these state laws only protect members of the National Guard of that particular state who leave civilian jobs for state active duty. We believe that at least 5% of National Guard members have civilian jobs in states other than the states of their National Guard affiliation.

For example, Jeanne Lafitte is a Sergeant in the Texas Army National Guard. She lives in Beaumont, Texas.³ In the National Guard, she drills at an armory in Beaumont. During her civilian work week, she travels east a few miles each morning to her civilian job in southwestern Louisiana.

In the aftermath of a hurricane, the Governor of Texas calls Jeanne to state active duty in Texas. The Texas law does not protect her civilian job in Louisiana. The legislature in Austin has no

¹ Kyle E. Helmick has completed his first year of law school at Georgetown University in Washington, DC. He has provided most valuable volunteer legal research assistance to the Service Members Law Center throughout his first year of law school.

² Congress enacted USERRA in 1994, as a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRRA), which was originally enacted in 1940, as part of the Selective Training and Service Act. USERRA is codified in title 38, United States Code, sections 4301-4335 (38 U.S.C. 4301-4335). USERRA provides the right to reemployment in a civilian job (federal, state, local, or private sector) after "service in the uniformed services." Under USERRA, the term "service in the uniformed services" includes active duty, active duty for training, inactive duty training, initial active duty training, funeral honors duty, and time required to be away from a position of employment for the purpose of an examination to determine fitness to perform any such duty. 38 U.S.C. 4303(13). For members of the Army or Air National Guard, USERRA applies to both title 10 duty (title 10 of the United States Code) and title 32 duty. USERRA does not apply to state active duty—duty performed under state law, and financed by the state, for state emergencies like fires, floods, riots, etc.

³ The result would not be different if she lived in Louisiana. One can be a member of the Texas National Guard without living in Texas.

power to regulate the actions of an employer in Louisiana. Texas law does not protect Jeanne's job, but she has protections under Louisiana law, which expressly refers to members of the National Guard of "this state or of any other state."

Here are the pertinent sections of Louisiana law:

A. (1) The provisions of the Servicemembers Civil Relief Act, (50 App. U.S.C. 501 et seq.) (SCRA)⁴ and the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.) (USERRA) are adopted and made a part of this Part, and all of the benefits, protections, and rights provided in SCRA and USERRA shall be applicable to all persons called to service in the uniformed services as defined in R.S. 29:403 and shall be enforceable pursuant to the provisions of this Section.

(2) The Louisiana Workforce Commission shall make available the following notice that every employer shall post in a conspicuous place in each employment establishment:

"If you are in the national guard, military reserves, or active in the military, you have certain protected employment and reemployment rights, freedom from discrimination rights, and civil relief rights under federal law 38 U.S.C. 4301 et seq. (USERRA) and 50 App. U.S.C. 501 et seq. (SCRA) and state law R.S. 29:401 et seq. (MSRA). If you feel that you have been discriminated against or denied such rights on account of your service in the uniformed services, contact the Employer Support Guard and Reserve Committee at 1-800-336-4590."

B. *The district courts of this state shall have jurisdiction over proceedings involving the Servicemembers Civil Relief Act, and the Uniformed Services Employment and Reemployment Rights Act, which shall be governed by the rules applicable to ordinary proceedings.*

C. The district and appellate courts shall give preference in scheduling such proceedings, upon the motion of any person in the uniformed services, or the person's attorney, who presents certification that the person has performed service in the uniformed services or is in service in the uniformed services.

⁴ The SCRA provides many important protections and entitlements to active duty service members, including members of the National Guard or Reserve who are called to active duty or who enter active duty voluntarily. Those protections include the right to a continuance and to protection against a default judgment entered against you while you are on active duty and deployed far away, if you find yourself a party to a civil case or administrative matter in federal or state court or a federal, state, or local administrative proceeding. This reference to the SCRA in state law gives National Guard members important rights (that they would not otherwise have under federal law) when they are on state active duty or duty under title 32 of the United States Code.

D. Suits to enforce the provisions of this Part may be instituted in any court of competent jurisdiction and appropriate venue by the attorney general of Louisiana.

Louisiana Statutes Annotated section 29:422 (emphasis supplied).

(11) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. "Service in the uniformed services" also means service in the armed forces of the United States pursuant to authorization by the United States Congress or presidential proclamation pursuant to the War Powers Resolution (50 U.S.C. 1541 et seq.). *"Service in the uniformed services" also means state active duty by members of the national guard who are activated pursuant to a call of the governor of this state or of any other state as provided for by law.*

Louisiana Statutes Annotated section 29:403 (emphasis supplied).