

Article 16.

National Guard Reemployment Rights.

§ 127A-201. Entitlement.

Any member of the North Carolina National Guard or the National Guard of another state who, at the direction of a state's Governor, enters state duty, is entitled, upon honorable release from state duty, to all the reemployment rights provided for in this Article. (1979, c. 155, s. 1; 2015-161, s. 1; 2017-156, s. 1.)

§ 127A-201.1. Definitions.

The following definitions apply in this Article:

- (1) **Benefit of employment.** – A term, condition, or privilege of employment, including any wages, salary, advantage, profit, privilege, gain, status, account, or interest that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice. The definition also includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.
- (2) **Qualified.** – Having the ability to perform the essential tasks of an employment position.
- (3) **Seniority.** – Longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.
- (4) **State duty.** – Any of the following:
 - a. In the case of a member of the North Carolina National Guard, State active duty under an order of the Governor pursuant to this Chapter.
 - b. In the case of a member of the National Guard of another state, service under an order of the governor of that state, which is similar to State active duty. (2017-156, s. 1.)

§ 127A-202. Rights.

(a) **Release From State Duty.** – Upon an employee's release from state duty, the employee's previous employer shall reemploy the employee in the employee's previous position within five days of the employee's release from state duty. If the employee's state duty lasted 30 days or less, the employee shall make written application to the employee's previous employer for reemployment no later than the first regularly scheduled work period that begins 24 hours after the employee has safely traveled from the place of state service to the employee's residence. If the employee's state duty lasted more than 30 days, the employee shall make written application to the employee's previous employer for reemployment within 14 days of the employee's release from state duty. If the employee is still qualified for the employee's previous employment, the employee shall be restored to the employee's previous position or to a position of like seniority, status, and salary, unless the employer's circumstances at that time make the restoration unreasonable. If the employee is no longer qualified for the employee's previous employment, the employee shall be placed in another position for which the employee is qualified and that will give the employee appropriate seniority, status, and salary, unless the employer's circumstances at that time make the placement unreasonable.

(b) **Period of Recovery.** – Notwithstanding the time limitations of subsection (a) of this section, if an employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of state duty, the employee shall make written application for reemployment within the period of recovery. The period of recovery is the period necessary for the employee to recover from the illness or injury, not to exceed two years unless the Commissioner of Labor extends the period. The Commissioner may extend the two-year period of recovery only if (i) the employee files with the Commissioner a written request for extension at least 15 days prior to the expiration of the two-year period of recovery and (ii) the Commissioner finds that reemployment during the two-year period would place an undue burden on the employee. The Commissioner, if extending the two-year period of recovery, shall notify the employee's previous employer of the amount of the extension. A party who is dissatisfied with a decision of the Commissioner may commence a contested case under Article 3 of Chapter 150B of the General Statutes. (1979, c. 155, s. 1; 2011-195, s. 1(a); 2017-156, s. 1; 2018-136, 3rd Ex. Sess., s. 5.9.)

§ 127A-202.1. Discrimination against persons who serve in the National Guard and acts of reprisal prohibited.

(a) It is the policy of this State that all individuals shall be afforded the right to perform, apply to perform, or have an obligation to perform service in the North Carolina National Guard or the National Guard of another state without fear of discrimination or retaliatory action from their employer or prospective employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An individual who is a member of the North Carolina National Guard or the National Guard of another state who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard or the National Guard of another state shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) A person shall be considered to have denied a member of the North Carolina National Guard or the National Guard of another state initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service in the North Carolina National Guard or the National Guard of another state is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation.

(d) Nothing in this section shall be construed to require a person to pay salary or wages to a member of the North Carolina National Guard or of the National Guard of another state during the member's period of active service.

(e) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

(f) This section shall also apply when a member of the North Carolina National Guard or the National Guard of another state is called into active duty at the direction of the President, the Governor, or by any other competent authority. (1997-153, s. 1; 2004-130, s. 3; 2015-161, s. 2.)

§ 127A-203. Penalties for denial.

If any employer, public or private, fails or refuses to comply with G.S. 127A-202, the superior court for the district of the employer's place of business may, upon the filing of a motion, petition, or other appropriate pleading by the employee, require the employer to comply with G.S. 127A-202 and to compensate the employee for any loss of wages or benefits of employment suffered by reason of the employer's unlawful failure or refusal. (1979, c. 155, s. 1; 2017-156, s. 1.)

§ 127A-204: Reserved for future codification purposes.

§ 127A-205: Reserved for future codification purposes.

§ 127A-206: Reserved for future codification purposes.

§ 127A-207: Reserved for future codification purposes.

§ 127A-208: Reserved for future codification purposes.

§ 127A-209: Reserved for future codification purposes.