

General: Chapter 127A of the North Carolina General Statutes enforced under N.C.G.S § 95 Article 21, provides extensive employment related protections to North Carolina National Guard Service Members (hereinafter NCNG Members) when called to duty at the direction of the Governor. Essentially, discrimination or retaliatory action taken by employers against NCNG Members for answering the call to SAD is unlawful. (N.C.G.S. § 127A-201 through 301) There are not required written notices that must be provided to an employer by a NCNG Member; however, if time allows, providing notice to the employer is a good idea to preserve the relationship and gain the support of the employer. Upon the completion of SAD orders, there is a requirement for NCNG Members to make a written application for reemployment to ensure reemployment right protections.

Policy: "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 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." (N.C.N.G. 127A 202.1)

Rights: A NCNG Member, "who performs, has performed, applies to perform, or has an obligation to perform service in the NCNG 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." N.C.G.S. § 127A-202.1 and N.C.G.S § 95-241(a)).

A member of the North Carolina National Guard called into service of the State by the Governor shall have the right to take leave without pay from his or her civilian employment. No member of the North Carolina National Guard shall be forced to use or exhaust his or her vacation or other accrued leaves from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member. (N.C.G.S § 127A-111) The employer is under no obligation to pay salary or wages during the Guardsmen's period of service.

Any member of the North Carolina National Guard who, at the direction of the Governor, enters State duty, is entitled, upon honorable release from State duty, to all the reemployment rights provided for under Article 16 of Chapter 127A (N.C.G.S. § 127A-201).

Action by NCNG Members: While it may be advisable for NCNG Members to provide written notice to employers when possible, (See Attachment A for an example of a Notification Letter to Employer), upon a call to State Active Duty (SAD), there is not a legal requirement for NCNG Members to provide an order or any written notice to their employer. There is, however, a written notice requirement notifying the employer the NCNG Member will be returning.

Upon release from State duty, however, the NCNG Member is required to make written application to the employee's previous employer for reemployment within five days of the employee's release from duty or from hospitalization continuing after release. (N.C.G.S § 127A-202). (See Attachment B for an example Notice of Release from SAD).