

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 404*

Short Title: Nat. Guard Reemployment Rights/Definitions. (Public)

Sponsors: Senator Britt (Primary Sponsor).

Referred to: Rules and Operations of the Senate

March 28, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE DEFINITIONS TO CLARIFY THE NATIONAL GUARD
3 REEMPLOYMENT RIGHTS AND TO EXTEND THE REEMPLOYMENT
4 APPLICATION PERIOD FOR NATIONAL GUARD MEMBERS WHO HAVE
5 INCURRED AN INJURY DURING THE PERFORMANCE OF STATE ACTIVE DUTY.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 16 of Chapter 127A of the General Statutes reads as
8 rewritten:

9 "Article 16.

10 "National Guard Reemployment Rights.

11 **"§ 127A-201. Entitlement.**

12 Any member of the North Carolina National Guard or the National Guard of another state
13 who, at the direction of a state's Governor, enters ~~State-state~~ duty, is entitled, upon honorable
14 release from ~~State-state~~ duty, to all the reemployment rights provided for in this Article.

15 **"§ 127A-201.1. Definitions.**

16 The following definitions apply in this Article:

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

36 **"§ 127A-202. Rights.**



1 (a) Release From State Duty. – Upon an employee's release from state duty, the
2 employee's previous employer shall reemploy the employee in the employee's previous position
3 within five days of the employee's release from state duty. ~~Upon release from State duty, If the~~
4 employee's state duty lasted more than 30 days, the employee shall make written application to
5 the employee's previous employer for reemployment within five–14 days of the employee's
6 release from duty or from hospitalization continuing after release–state duty. If the employee is
7 still qualified for the employee's previous employment, the employee shall be restored to ~~his~~
8 the employee's previous position or to a position of like seniority, status–status, and salary,
9 unless the employer's circumstances now make the restoration unreasonable. If the employee is
10 no longer qualified for the employee's previous employment, the employee shall be placed in
11 another position, for which the employee is qualified, and which will give the employee
12 appropriate seniority, ~~status–status,~~ and salary, unless the employer's circumstances now make
13 the placement unreasonable.

14 (b) Period of Recovery. – Notwithstanding the time limitations of subsection (a) of this
15 section, if an employee is hospitalized for, or convalescing from, an illness or injury incurred
16 in, or aggravated during, the performance of state duty, the employee shall make written
17 application for reemployment within the period of recovery. The period of recovery is the
18 period necessary for the employee to recover from the illness or injury, not to exceed two years
19 unless the Commissioner of Labor extends the period. The Commissioner may extend the
20 two-year period of recovery only if (i) the employee files with the Commissioner a written
21 request for extension at least 15 days prior to the expiration of the two-year period of recovery
22 and (ii) the Commissioner finds that reemployment during the two-year period would place an
23 undue burden on the employee. The Commissioner, if extending the two-year period of
24 recovery, shall notify the employee's previous employer of the amount of the extension. A party
25 who is dissatisfied with a decision of the Commissioner may commence a contested case under
26 Article 3 of Chapter 150B of the General Statutes.

27 ...

28 **"§ 127A-203. Penalties for denial.**

29 If any employer, public or private, fails or refuses to comply with G.S. 127A-202, the
30 superior court for the district of the employer's place of business may, upon the filing of a
31 motion, petition, or other appropriate pleading by the employee, require the employer to
32 comply with G.S. 127A-202 and to compensate the employee for any loss of wages or benefits
33 of employment suffered by reason of the employer's unlawful failure or refusal."

34 **SECTION 2.** This act is effective when it becomes law and applies to state duty, as
35 defined in this act, commencing on or after that date.