# EMPLOYMENT PROTECTIONS DURING STATE-SPONSORED ACTIVATION BEST PRACTICES

**SUBJECT:** State statutes that cover National Guard members during state-sponsored mobilizations impact employers within the state. States can modify their statutes to strengthen enforcement mechanisms for members of the National Guard returning to jobs in their affiliated state and protect the employment rights of members of the National Guard who are employed outside of their affiliated state at the time of state-sponsored activations.

**PRINCIPLES:** States can adopt legislation to strengthen their state Uniformed Services Employment and Reemployment Rights Act (USERRA) statute. "Best practice" protections include these substantive points:

- The state law provides an effective enforcement mechanism through *private right of action, or another recourse,* for members of the National Guard who work within their assigned state.
- The state law also provides protection to a member of the National Guard of *another state* who holds a civilian job in the state where they do not have their National Guard membership.

**BEST PRACTICES:** The following state statutes apply to *public* and *private* employees, provide protection for a member of the National Guard of *another state* who holds a civilian job in the state with the needed clarification of statute, and provide an effective enforcement mechanism through *private right of action, or another recourse*.

1. Louisiana Statute Annotated Section 29:403

   *(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.*

   Example: If a member of the Texas National Guard has a civilian job in Louisiana and is called to state active duty by the governor of Texas in the aftermath of a hurricane, the member's job in Louisiana is protected under Louisiana law, which expressly refers to members of the National Guard of "this state or of any other state." The same protection is afforded the Louisiana Guardsman who works in Texas because Texas law has a similar provision.

   Louisiana Statute Annotated Section 29:422

   *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.*

*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.*

2. Idaho Code Annotated Section 46-407

*(a) Any member of the Idaho national guard who is ordered to duty by the governor, <u>or any</u> Idaho employee who is a member of the national guard of another state and who is called into active service by the governor of that state, and who at the time of such order to duty is employed by any employer other than the United States government, shall be entitled to reemployment as set forth in section 46-409, Idaho Code.*

Example: If a member of the Nevada National Guard has a civilian job in Idaho and is called to state active duty by the governor of Nevada to fight a forest fire, the member's job in Idaho is protected because Idaho law protects the member of the national guard of another state who is called into active service by the governor of that state. However, the converse is not true for a member of the Idaho National Guard who works in Nevada because Nevada law only applies to members of the Nevada National Guard on state active duty.

*(d) If any employer fails or refuses to comply with this section, the district court in the county in which the member was employed shall have the power, upon petition by the member, to compel the employer to comply with this section and to compensate the member for lost wages and benefits, for costs of the action, and for reasonable attorney's fees. The court shall order a speedy hearing in any such case and advance it on the calendar.*