

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 487
Committee Substitute Favorable 4/26/17
Proposed Conference Committee Substitute H487-PCCS10404-BC-2

Short Title: Nat. Guard Reemployment Rights/Definitions.

(Public)

Sponsors:

Referred to:

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 AND TO ADD ADDITIONAL PROTECTIONS FOR ACTIVE AND RESERVE
7 NATIONAL GUARD MEMBERS UPON EARLY TERMINATION OF A RENTAL
8 AGREEMENT.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Article 16 of Chapter 127A of the General Statutes reads as
11 rewritten:

12 "Article 16.

13 "National Guard Reemployment Rights.

14 "§ 127A-201. Entitlement.

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

18 "§ 127A-201.1. Definitions.

19 The following definitions apply in this Article:

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



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1 b. In the case of a member of the National Guard of another state,
2 service under an order of the governor of that state, which is similar
3 to State active duty.

4 **"§ 127A-202. Rights.**

5 ~~Upon release from state duty, Release From State Duty. – Upon an employee's~~
6 release from state duty, the employee's previous employer shall reemploy the employee in the
7 employee's previous position within five days of the employee's release from state duty. If the
8 employee's state duty lasted 30 days or less, the employee shall make written application to the
9 employee's previous employer for reemployment no later than the first regularly scheduled
10 work period which begins eight hours after the employee has safely traveled from the place of
11 state service to the employee's residence. If the employee's state duty lasted more than 30 days,
12 the employee shall make written application to the employee's previous employer for
13 reemployment within five-14 days of the employee's release from duty or from hospitalization
14 continuing after release. state duty. If the employee is still qualified for the employee's previous
15 employment, the employee shall be restored to his-the employee's previous position or to a
16 position of like seniority, status-status, and salary, unless the employer's circumstances now
17 make the restoration unreasonable. If the employee is no longer qualified for the employee's
18 previous employment, the employee shall be placed in another position, for which the
19 employee is qualified, and which will give the employee appropriate seniority, status-status,
20 and salary, unless the employer's circumstances now make the placement unreasonable.

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

34 ...

35 **"§ 127A-203. Penalties for denial.**

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

41 **SECTION 2.** G.S. 42-45 reads as rewritten:

42 **"§ 42-45. Early termination of rental agreement by military personnel, surviving family**
43 **members, or lawful representative.**

44 (a) Any member of the Armed Forces of the United States-States, the Active Guard and
45 Reserve under section 101 of Title 10 of the United States Code, or a military technician under
46 section 10216 of Title 10 of the United States Code who (i) is required to move pursuant to
47 permanent change of station orders to depart 50 miles or more from the location of the dwelling
48 unit, or (ii) is prematurely or involuntarily discharged or released from active duty with the
49 Armed Forces of the United States, may terminate the member's rental agreement for a
50 dwelling unit by providing the landlord with a written notice of termination to be effective on a
51 date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The

1 notice to the landlord must be accompanied by either a copy of the official military orders or a
2 written verification signed by the member's commanding officer.

3 (a1) Any member of the Armed Forces of the United ~~States~~ States, the Active Guard and
4 Reserve under section 101 of Title 10 of the United States Code, or a military technician under
5 section 10216 of Title 10 of the United States Code who is deployed with a military unit for a
6 period of not less than 90 days may terminate the member's rental agreement for a dwelling unit
7 by providing the landlord with a written notice of termination. The notice to the landlord must
8 be accompanied by either a copy of the official military orders or a written verification signed
9 by the member's commanding officer. Termination of a lease pursuant to this subsection is
10 effective 30 days after the first date on which the next rental payment is due or 45 days after the
11 landlord's receipt of the notice, whichever is shorter, and payable after the date on which the
12 notice of termination is delivered.

13 (a2) Upon termination of a rental agreement under this section, the tenant is liable for the
14 rent due under the rental agreement prorated to the effective date of the termination payable at
15 such time as would have otherwise been required by the terms of the rental agreement. The
16 tenant is not liable for any other rent or damages due to the early termination of the tenancy
17 except the liquidated damages provided in subsection (b) of this section. If a member
18 terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no
19 damages or penalties of any kind shall be due.

20 (a3) If a member of the Armed Forces of the United ~~States~~ States, the Active Guard and
21 Reserve under section 101 of Title 10 of the United States Code, or a military technician under
22 section 10216 of Title 10 of the United States Code dies while on active duty, then an
23 immediate family member, or a lawful representative of the member's estate, may terminate the
24 member's rental agreement for a dwelling unit by providing the landlord with a written notice
25 of termination to be effective on the date described in subsection (a1) of this section. A copy of
26 the death certificate, official military personnel casualty report, or letter from the commanding
27 officer verifying the member's death must accompany the notice for this subsection to be
28 effective. Termination of the member's lease obligations under this subsection shall also
29 terminate the lease obligations of any cotenants who are immediate family members. If the
30 member was a cotenant with a person who is not an immediate family member, then the
31 termination shall relate only to the obligation of the member under the rental agreement. The
32 prorated charges in subsection (a2) of this section and the liquidated damages provisions of
33 subsection (b) of this section shall apply to any claims against the member's estate.

34 (b) In consideration of early termination of the rental agreement, the tenant is liable to
35 the landlord for liquidated damages provided the tenant has completed less than nine months of
36 the tenancy and the landlord has suffered actual damages due to loss of the tenancy. The
37 liquidated damages shall be in an amount no greater than one month's rent if the tenant has
38 completed less than six months of the tenancy as of the effective date of termination, or
39 one-half of one month's rent if the tenant has completed at least six but less than nine months of
40 the tenancy as of the effective date of termination.

41 (c) The provisions of this section may not be waived or modified by the agreement of
42 the parties under any circumstances. Nothing in this section shall affect the rights established
43 by G.S. 42-3."

44 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
45 applies to state duty, as defined in this act, commencing on or after that date. Section 2 of this
46 act applies to lease agreements entered into on or after that date.