

TITLE 46
MILITIA AND MILITARY AFFAIRS

CHAPTER 4
IMMUNITIES AND PRIVILEGES

46-401. IMMUNITY FROM ARREST. Members of the Idaho national guard, when said guard is in the service of the United States, or the state of Idaho, shall not be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty.

[(46-401) 1927, ch. 261, sec. 51, p. 510; I.C.A., sec. 45-401.]

46-402. IMMUNITY FOR ACTS DONE IN PERFORMANCE OF DUTY. Members of the Idaho national guard ordered into active service of the state by any proper authority shall not be liable in any court of this state, either civil or criminal for any acts done by them in performance of their duty. When suit or proceedings shall be commenced in any court by any person against any officer of the national guard of this state, for any act done by such officer in his official capacity, in the discharge of any duty under this act; or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting the suit or proceedings, to file security for the payment of costs that may be awarded to the defendant therein. In case the plaintiff shall be nonsuited or have a verdict or judgment rendered against him, the defendant shall recover treble costs.

[(46-402) 1927, ch. 261, sec. 52, p. 510; I.C.A., sec. 45-402.]

46-403. EQUIPMENT EXEMPT FROM CIVIL PROCESS. Uniforms, arms, and equipment, required by law or regulations to be owned by officers of the national guard of this state, and all uniforms, arms, equipment, or other property of state or the United States issued to said officers or enlisted men of the national guard of this state, for use in the military service shall be exempt from all suits, distresses, executions, or sales for debt or payment of taxes.

[(46-403) 1927, ch. 261, sec. 53, p. 510; I.C.A., sec. 45-403.]

46-404. RIGHT OF WAY IN STREETS -- PENALTIES. The commanding officer of any portion of the Idaho national guard called into the active service of the state when performing any military duty in any street or highway, may require any or all persons in such street or highway to yield the right of way to said national guard: provided, that the carriage of United States mails, the legitimate functions of the police, and the progress and operations of hospitals, ambulances, fire engines, and fire departments shall not be interfered with thereby. All others who shall hinder, delay, or obstruct any portion of the national guard on active duty in the service of the state in the performance of any military duty or who shall attempt to do so, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1000.00) or by imprisonment for not less than three (3) months nor more than one (1) year, or both.

[(46-404) 1927, ch. 261, sec. 54, p. 510; I.C.A., sec. 45-404.]

46-405. EXEMPTION FROM TOLL IN PERFORMANCE OF DUTIES. Any person belonging to the Idaho national guard going to or returning from any parade, encampment, drill or meeting which he may be required to attend under the laws and regulations for said national guard, shall, together with his conveyance and the military property of the state or of the United States, or both, in his charge, be allowed to pass free through all toll gates, and over all toll bridges, and ferries, if he is in uniform or if he presents an order for duty or a certificate from his commanding officer that he is a member of the Idaho national guard.

[(46-405) 1927, ch. 261, sec. 55, p. 510; I.C.A., sec. 45-405.]

46-406. EXEMPTION FROM JURY DUTY. Any member of the national guard shall be exempt from sitting or serving as juror in any of the courts of this state, provided he shall furnish the certificate of his immediate commanding officer that he has performed the duties required by his enlistment or commission. No member of the national guard of this state shall be required to serve on any posse comitatus.

[(46-406) 1927, ch. 261, sec. 56, p. 510; I.C.A., sec. 45-406; am. 1978, ch. 54, sec. 5, p. 103.]

46-407. REEMPLOYMENT RIGHTS. (a) Any member of the Idaho national guard who is ordered to duty by the governor, or any 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.

(b) If the member is still qualified to perform the duties of the position he held at the time of the order to duty, he shall be restored by the employer or the employer's successor in interest to that position or one of like seniority, status and pay. If the member is not qualified to perform the duties of such position by reason of disability sustained during the period of duty, but is qualified to perform the duties of any other positions in the employ of the employer, then the employer must offer the member that position which he is qualified to perform which is most similar to his former position in seniority, status and pay.

(c) Any person who is reemployed under this section shall not be discharged without cause within one (1) year after such reemployment.

(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.

[46-407, added 1984, ch. 139, sec. 1, p. 328; am. 2007, ch. 276, sec. 1, p. 805.]

46-408. SECURITY OF THE ORCHARD TRAINING AREA. Employees of the military division of the state of Idaho who are performing security duties at the Orchard training area located in Ada and Elmore counties may, in addition to

their power to protect and secure military property and persons, detain for civil law enforcement authorities any person who commits a violation of the criminal laws of this state in their presence. Persons so detained shall be released to the custody of civil law enforcement authorities as soon as practicable. Employees performing duties under this section are "employees" under sections [6-902](#), [6-903](#) and [6-917](#), Idaho Code, and are not excluded by the exceptions to governmental liability under section [6-904](#) 4. or 5., Idaho Code.

[46-408, added 2000, ch. 86, sec. 1, p. 188; am. 2021, ch. 63, sec. 1, p. 196.]

46-409. THE MILITIA CIVIL RELIEF ACT. (1) As used in this section, the following terms have the following meanings:

(a) "Active member" means any member of the air or army national guard who is called or ordered by the governor to state active duty, or to duty other than for training under [title 32](#) U.S.C., or ordered by competent federal authority into active federal service under [title 10](#) U.S.C.

(b) "Be called or ordered by the governor" means to be called or ordered by the governor to state active duty or to duty other than for training under [title 32](#) U.S.C.

(c) "Duty other than for training" means any state active duty or [title 32](#) U.S.C. duty other than training upon the call or order of the governor, or active federal service under [title 10](#) U.S.C. Duty other than for training does not include weekend drill, annual training (generally fifteen (15) days) as part of normal national guard service, and does not include attendance at military schools.

(d) "Employee" means any person employed by a public or private employer.

(e) "Servicemembers civil relief act (SCRA)" means the provisions of 50 U.S.C. App. section 3901 et seq., which protects active military service members.

(f) "State active duty" means any active duty performed by an active member of the national guard in accordance with this title when called or ordered by the governor.

(g) "Uniformed services employment and reemployment rights act of 1994 (USERRA)" means the provisions of 38 U.S.C. section 4301 et seq., which gives employees who leave a civilian job to perform military service the right to return to the civilian job held before entering military service with the rights to seniority, to purchase insurance coverage and purchase retirement credit.

(2) Whenever any active member of the national guard in time of war, armed conflict, or emergency proclaimed by a governor or by the president of the United States, shall be called or ordered by a governor to state active duty, or to duty other than for training pursuant to [title 32](#) U.S.C., the provision as then in effect of the servicemembers civil relief act, 50 U.S.C. App. section 3901 et seq., and the uniformed services employment and reemployment rights act, 38 U.S.C. section 4301 et seq., shall apply.

(3) With reference to 50 U.S.C. App. section 4012, the adjutant general or his designee shall be responsible to execute certificates of service referred to therein.

[46-409, added 2003, ch. 251, sec. 2, p. 650; am. 2004, ch. 59, sec. 1, p. 277; am. 2007, ch. 276, sec. 2, p. 806; am. 2016, ch. 122, sec. 1, p. 355.]