

SENATE BILL NO. 195

INTRODUCED BY M. CAFERRO, C. LARSEN

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A BILL FOR AN ACT ENTITLED: "AN ACT APPLYING THE EMPLOYMENT PROTECTIONS FOR MEMBERS OF MONTANA'S NATIONAL GUARD TO MEMBERS OF THE NATIONAL GUARD IN ANOTHER STATE WHO ARE EMPLOYED IN MONTANA; AND AMENDING SECTIONS 10-1-1002, 10-1-1003, 10-1-1005, 10-1-1007, AND 10-1-1009, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-1-1002, MCA, is amended to read:

"10-1-1002. Purpose -- legislative intent. The purpose of this part is to recognize the importance of the service performed by Montana national guard members and the national guard members of other states who are employed in Montana and to protect the employment rights of national guard members who may be called to state active duty when there is a state emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and the national guard members of other states who are employed in Montana and intends that this part will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues."

Section 2. Section 10-1-1003, MCA, is amended to read:

"10-1-1003. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

- (1) "Department" means the department of labor and industry established in 2-15-1701.
- (2) "Elected official" means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.
- (3) (a) "Employer" means any public or private person or entity providing employment in Montana.
(b) The term does not include the United States.
- (4) "Federally funded military duty" means duty, including training, performed pursuant to orders issued under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed

1 physician's certification to recover from an illness or injury incurred while performing the duty.

2 (5) "Member" means a member of the state's organized militia provided for in 10-1-103 or a member of
3 the national guard of another state.

4 (6) "Military service" includes both federally funded military duty and state active duty.

5 (7) (a) "State active duty" means duty performed by a member when a disaster or an emergency has
6 been declared by the proper authority of the state of Montana pursuant to Article VI, section 13, of the Montana
7 constitution or pursuant to the authority of the governor of any other state to include the time period, if any,
8 required pursuant to a licensed physician's certification to recover from an illness or injury incurred while
9 performing the active duty.

10 (b) The term does not include federally funded military duty."
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12 **Section 3.** Section 10-1-1005, MCA, is amended to read:

13 **"10-1-1005. Prohibition against employment discrimination.** An employer may not deny employment,
14 reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate
15 against, or threaten negative consequences against a person with regard to employment because of the person's
16 membership, application for membership, or potential application for membership in the ~~state organized militia~~
17 national guard of Montana or any other state or because the person may exercise or has exercised a right or may
18 claim or has claimed a benefit under this part."
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20 **SECTION 4. SECTION 10-1-1007, MCA, IS AMENDED TO READ:**

21 **"10-1-1007. Right to return to employment without loss of benefits -- exceptions -- definition.** (1)
22 Subject to the provisions of this section, after a leave of absence for state active duty, a member is entitled to
23 return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the
24 member would have accrued if the member had not been absent for the state active duty.

25 (2) (a) If a member was a probationary employee when ordered to state active duty, the employer may
26 require the member to resume the member's probationary period from the date when the member's leave of
27 absence for state active duty began.

28 (b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation
29 leave, military leave, or other leave benefits during the member's leave of absence for state active duty. However,
30 the member may not be provided with lesser leave accrual benefits than are provided to all other employees of

1 the employer in a similar but nonmilitary leave status.

2 (c) (i) An employer's health plan must provide that:

3 (A) a member may elect to not remain covered under the employer's health plan while the member is
4 on state active duty but that when the member returns, the member may resume coverage under the plan without
5 the plan considering the employee to have incurred a break in service; and

6 (B) a member may elect to remain on the employer's health plan while the member is on state active duty
7 without being required to pay more than the regular employee share of the premium, except as provided in
8 subsection (2)(c)(ii).

9 (ii) If a member's state active duty qualifies the member for coverage under the state of Montana's health
10 insurance plan as an employee of the department of military affairs, the employer's health plan may require the
11 member to pay up to 102% of the full premium for continued coverage.

12 (iii) A health insurance plan covering an employee who is a member serving on state active duty is not
13 required to cover any illness or injury caused or aggravated by state active duty.

14 (iv) If the member is a state employee prior to being ordered to state active duty, the member does not
15 become qualified as an employee of the department of military affairs for the purposes of health plan coverage
16 until the member's state active duty qualifies the member to be considered an employee of the department of
17 military affairs pursuant to 2-18-701.

18 (d) An employer's pension plan must provide that when a member returns to employment from state
19 active duty:

20 (i) the member's period of state active duty may constitute service with the employer or employers
21 maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued benefits and
22 for the purposes of determining the accrual of benefits under the plan; and

23 (ii) if the member elects to receive credit and makes the contributions required to accrue the pension
24 benefits that the member would have accrued if the member had not been absent for the state active duty, then
25 the employer shall pay the amount of the employer contribution that would have been made for the member if
26 the member had not been absent.

27 (e) An employer is not obligated to allow the member to return to employment after the member's
28 absence for state active duty if:

29 (i) the member is no longer qualified to perform the duties of the position, subject to the provisions of
30 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

- 1 (ii) the member's position was temporary and the temporary employment period has expired;
- 2 (iii) the member's request to return to employment was not done in a timely manner;
- 3 (iv) the employer's circumstances have changed so significantly that the member's continued employment
- 4 with the employer cannot reasonably be expected; or
- 5 (v) the member's return to employment would cause the employer an undue hardship;
- 6 (vi) the member did not inform the employer at the time of hire that the member was a member of the
- 7 state's organized militia or the national guard of another state; or
- 8 (vii) the member enlisted in the state's organized militia or another state's national guard during the
- 9 course of employment with the employer and did not inform the employer of the enlistment.

10 (3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner"

11 means:

- 12 (i) for state active duty of up to 30 days, the member returned to employment the next regular work shift
- 13 following safe travel time plus 8 hours;
- 14 (ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of
- 15 termination of state active duty; and
- 16 (iii) for state active duty of more than 180 days, the member returned to employment within 90 days of
- 17 termination of the state active duty.

18 (b) If there are extenuating circumstances that preclude the member from returning to employment within

19 the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section

20 "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202."

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22 **Section 5.** Section 10-1-1009, MCA, is amended to read:

23 **"10-1-1009. Paid military leave for public employees.** (1) An employee of the state or of any political

24 subdivision, as defined in 2-9-101, who is a member of the ~~organized militia of this state~~ national guard of

25 Montana or any other state or who is a member of the organized or unorganized reserve corps or military forces

26 of the United States and who has been an employee for a period of at least 6 months must be given leave of

27 absence with pay accruing at a rate of 120 hours in a calendar year, or academic year if applicable, for performing

28 military service.

- 29 (2) Military leave may not be charged against the employee's annual vacation time.
- 30 (3) Unused military leave must be carried over to the next calendar year, or academic year if applicable,

1 but may not exceed a total of 240 hours in any calendar or academic year."

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