

HOUSE BILL REPORT

SSB 5263

As Reported by House Committee On:

Commerce & Labor

Title: An act relating to employment rights of members of the reserve and national guard forces called to duty.

Brief Description: Changing provisions relating to employment rights of members of reserve and national guard forces.

Sponsors: By Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Snyder, Rasmussen and Gardner).

Brief History:

Committee Activity:

Commerce & Labor: 3/27/01, 3/30/01 [DPA].

Brief Summary of Substitute Bill (As Amended by House Committee)

- Extends state re-employment rights to persons who were called to state-ordered active duty.
- Makes state re-employment rights following certain military service similar to federal re-employment rights following the service.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hunt, Kenney, Lisk and McMorris.

Staff: Jill Reinmuth (786-7134).

Background:

Federal law (the Federal Uniformed Services Employment and Re-employment Rights Act of 1994) gives certain re-employment rights to persons following certain military

service. Likewise, state law provides such rights to state residents who vacate a position of employment to enter the armed services, the Washington National Guard, or the United States Public Health Service.

Eligibility: In general, a person is eligible for re-employment to a former position or to a position of like seniority, status, and pay, if he or she:

- is a resident of the state;
- is honorably discharged; and
- served four years or less.

Application for Re-employment and Return to Work: An eligible person must apply for re-employment within 90 days of his or her discharge, and return to his or her job within three months of discharge.

Benefits: The re-employed person must be treated as if he or she was on leave with respect to health insurance, retirement plans, and other benefits.

Exceptions: An employer is not required to re-employ a person if:

- re-employment would be impossible, unreasonable, or against the public interest because of changed circumstances; or
- employment was in temporary position.

Enforcement: The county prosecuting attorney must bring an action against the employer if an employer fails to comply with state law governing re-employment rights. Alternatively, a person not wishing to pursue his or her rights through the prosecuting attorney may bring an action against the employer.

Summary of Amended Bill:

The re-employment rights of persons following certain military service are modified to include persons who were called to state-ordered active duty, and to make state law similar to federal law.

Eligibility: Eligibility for re-employment is broadened to include not only a person who is a resident of the state, but also a person who is employed in the state. These persons are eligible for re-employment following: four years or less of service in the uniformed services other than state-ordered active duty; or 12 weeks or less in a calendar year of state-ordered active duty.

Application for Re-employment and Return to Work: The deadlines for applying for re-employment and returning to work are changed to depend on the type and length of service:

- If a person served less than 31 days or was absent from employment to take an examination to determine fitness to perform certain military service, the person must report to the employer and return to work on the next regularly scheduled work day after completion of service and expiration of an eight-hour period.
- If a person served more than 30 days, but less than 181 days, the person must apply for re-employment and return to work within 14 days after completion of service.
- If a person served more than 180 days, he or she must apply for re-employment and return to work within 90 days after completion of service.
- If a person was hospitalized for an illness or injury incurred during his or her service, he or she must apply for re-employment and return to work after he or she recovers from the illness or injury, so long as the period of recovery does not exceed two years.

A person must notify the employer of membership in the uniformed services within a reasonable time of accepting employment or becoming a member of the uniformed services.

A person applying for re-employment must provide certain documentation to the employer. An employer may not deny re-employment, however, solely because the documentation was not readily available.

Wages: An offset of military pay against a salary is not a factor in determining whether the employee is a bona fide executive, administrative, or professional employee.

Benefits: A person may continue public employee health benefits for up to 18 months while serving in certain uniformed services. A person electing to continue public employee health benefits may be required to pay for the benefits. Upon re-employment, a person may have public employee pension benefits continue as if there was no break in service.

Prohibited Acts: An employer may not deny employment, re-employment, or any benefit of employment because the person is a member of a uniformed service. An employer also may not retaliate against a person who has exercised or taken action to enforce re-employment rights, or who has participated in a proceeding or investigation related to enforcement of re-employment rights.

Exceptions: An employer is not required to re-employ a person if:

- re-employment would be impossible or unreasonable because of a change in the employer's circumstances; or
- re-employment would impose an undue hardship on the employer; or
- employment was for a brief, non-recurrent period and there was no reasonable expectation that the employment relationship would continue indefinitely.

Enforcement: In general, if an employer fails to comply with state law governing re-employment rights, the attorney general must bring an action against the employer. Alternatively, the person may bring an action against the employer.

In addition, the burden of proof is shifted to the employer in actions involving certain re-employment issues, such as whether re-employment is impossible or unreasonable or whether re-employment would impose an undue hardship on the employer.

Amended Bill Compared to Substitute Bill:

Eligibility: A provision making a person who is employed by an employer doing business in the state eligible for re-employment is deleted.

A provision making a person who served four years or less in the uniformed services eligible for re-employment is changed to refer only to uniformed services other than state-ordered active duty. A provision is added to make a person who served 12 weeks or less in a calendar year in state-ordered active duty eligible for re-employment.

Application: A provision is added to require a person to notify his or her employer as to his or her membership in the uniformed services within a reasonable time of accepting employment or becoming a member of the uniformed services. Another provision is added to require an eligible person to apply for re-employment and return to work within the same period of time.

Benefits: Provisions purporting to regulate private employee benefit plans are changed to deal exclusively with public employee benefit plans.

Wages: A section is added to provide that an offset of military pay against a salary is not a factor in determining whether the employee is a bona fide executive, administrative, or professional employee.

Prohibited Acts: A provision is added to bar an employer from taking prohibited action against a person because he or she provided notice of membership in the uniformed services to the employer.

Exceptions: The definition of undue hardship is modified to exclude consideration of the

overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, and the number, type, and location of its facilities.

Enforcement: A provision is modified to clarify that an enforcement action may be brought against an employer only if the service was state duty not covered under federal law, and the Employer Support for Guard and Reserve Ombudsman was unable to resolve the dispute.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill helps employers and employees deal with re-employment following state-ordered active duty. The striking amendment addresses employer concerns.

Testimony Against: None.

Testified: (In support) Doug Sayan, Washington Committee for Employer Support of the Guard and Reserve; Mellani Hughes and Clif Finch, Association of Washington Business; and Mark Johnson, National Federation of Independent Business.