
SENATE BILL 5263

State of Washington

57th Legislature

2001 Regular Session

By Senators Snyder, Rasmussen and Gardner

Read first time 01/17/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to employment rights of members of the reserve and
2 national guard forces called to duty; amending RCW 73.16.015,
3 73.16.031, 73.16.033, 73.16.035, 73.16.051, 73.16.061, and 73.16.070;
4 and adding new sections to chapter 73.16 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 73.16 RCW
7 to read as follows:

8 (1) It is the intent of the legislature to guarantee employment
9 rights of members of the reserve and national guard forces who are
10 called to active duty. The federal uniformed services employment and
11 reemployment rights act of 1994 protects all such federal personnel.
12 The legislature intends that similar provisions should apply to all
13 such state personnel. Therefore, the legislature intends for this act
14 to ensure protections for state-activated personnel similar to those
15 provided by federal law for federal-activated personnel.

16 (2) The purposes of this chapter are to:

17 (a) Encourage noncareer service in the uniformed services by
18 eliminating or minimizing the disadvantages to civilian careers and
19 employment that can result from such service;

1 (b) Minimize the disruption to the lives of persons performing
2 service in the uniformed services as well as to their employers, their
3 fellow employees, and their communities, by providing for the prompt
4 reemployment of such persons upon their completion of such service; and

5 (c) Prohibit discrimination against persons because of their
6 service in the uniformed services.

7 (3) Therefore, the legislature intends that the governmental
8 agencies of the state of Washington, and all the political subdivisions
9 thereof, should be model employers in carrying out the provisions of
10 this chapter.

11 **Sec. 2.** RCW 73.16.015 and 1951 c 29 s 2 are each amended to read
12 as follows:

13 Any veteran entitled to the benefits of RCW 73.16.010 may enforce
14 his or her rights hereunder by civil action in ~~((the))~~ superior
15 court((s)).

16 **Sec. 3.** RCW 73.16.031 and 1953 c 212 s 1 are each amended to read
17 as follows:

18 ~~((As used in RCW 73.16.031 through 73.16.061, the term:~~
19 ~~"Resident" means any person residing in the state.))~~ The
20 definitions in this section apply throughout this chapter unless the
21 context clearly requires otherwise.

22 (1) "Attorney general" means the attorney general of the state of
23 Washington or any person designated by the attorney general to carry
24 out a responsibility of the attorney general under this chapter.

25 (2) "Benefit," "benefit of employment," or "rights and benefits"
26 means any advantage, profit, privilege, gain, status, account, or
27 interest (other than wages or salary for work performed) that accrues
28 by reason of an employment contract or agreement or an employer policy,
29 plan, or practice and includes rights and benefits under a pension
30 plan, a health plan, an employee stock ownership plan, insurance
31 coverage and awards, bonuses, severance pay, supplemental unemployment
32 benefits, vacations, and the opportunity to select work hours or
33 location of employment.

34 (3) "Employer" means the person, firm, or corporation, the state
35 and any political subdivision thereof, or any elected or appointed
36 public official currently having control over the position that has
37 been vacated.

1 (4) "Health plan" means an insurance policy or contract, medical or
2 hospital service agreement, membership or subscription contract, or
3 other arrangement under which health services for individuals are
4 provided or the expenses of such services are paid.

5 (5) "Notice" means any written or verbal notification of an
6 obligation or intention to perform service in the uniformed services
7 provided to an employer by the employee who will perform such service
8 or by the uniformed service in which such service is to be performed.

9 (6) "Position of employment" means any position (other than
10 temporary) wherein a person is engaged for a private employer, company,
11 corporation, state, municipality, or political subdivision thereof.

12 (7) "Qualified," with respect to an employment position, means
13 having the ability to perform the essential tasks of the position.

14 (8) "Rejectee" means a person rejected because he or she is not,
15 physically or otherwise, qualified to enter the uniformed service.

16 (9) "Resident" means any person residing in the state with the
17 intent to remain other than on a temporary or transient basis.

18 (10) "Seniority" means longevity in employment together with any
19 benefits of employment which accrue with, or are determined by,
20 longevity in employment.

21 (11) "Service in the uniformed services" means the performance of
22 duty on a voluntary or involuntary basis in a uniformed service under
23 competent authority and includes active duty, active duty for training,
24 initial active duty for training, inactive duty training, full-time
25 national guard duty (including state-ordered active duty), and a period
26 for which a person is absent from a position of employment for the
27 purpose of an examination to determine the fitness of the person to
28 perform any such duty.

29 (12) "State" means the state of Washington, including the agencies
30 and political subdivisions thereof.

31 (13) "Temporary position" means a position of short duration which,
32 after being vacated, ceases to exist and wherein the employee has been
33 advised as to its temporary nature prior to his or her engagement.

34 ~~(("Employer" means the person, firm, corporation, state and any~~
35 ~~political subdivision thereof, or public official currently having~~
36 ~~control over the position which has been vacated.~~

37 ~~"Rejectee" means a person rejected because he is not, physically or~~
38 ~~otherwise, qualified to enter the service.))~~

1 (14) "Undue hardship," in the case of actions taken by an employer,
2 means actions requiring significant difficulty or expense when
3 considered in light of:

4 (a) The nature and cost of the action needed under this chapter;

5 (b) The overall financial resources of the facility or facilities
6 involved in the provision of the action; the number of persons employed
7 at such facility; the effect on expenses and resources; or the impact
8 otherwise of such action upon the operation of the facility;

9 (c) The overall financial resources of the employer; the overall
10 size of the business of the employer with respect to the number of its
11 employees; and the number, type, and location of its facilities; and

12 (d) The type of operation or operations of the employer, including
13 the composition, structure, and functions of the work force of such
14 employer, the geographic separateness, administrative, or fiscal
15 relationship of the facility or facilities in question to the employer.

16 (15) "Uniformed services" means the armed forces, the army national
17 guard and the air national guard when engaged in active duty for
18 training, inactive duty training, full-time national guard duty, or
19 state active duty, the commissioned corps of the public health service,
20 the coast guard, and any other category of persons designated by the
21 president of the United States in time of war or national emergency.

22 NEW SECTION. Sec. 4. A new section is added to chapter 73.16 RCW
23 to read as follows:

24 (1) A person who is a member of, applies to be a member of,
25 performs, has performed, applies to perform, or has an obligation to
26 perform service in a uniformed service shall not be denied initial
27 employment, reemployment, retention in employment, promotion, or any
28 benefit of employment by an employer on the basis of that membership,
29 application for membership, performance of service, application for
30 service, or obligation.

31 (2) An employer may not discriminate in employment against or take
32 any adverse employment action against any person because such person
33 (a) has taken an action to enforce a protection afforded any person
34 under this chapter, (b) has testified or otherwise made a statement in
35 or in connection with any proceeding under this chapter, (c) has
36 assisted or otherwise participated in an investigation under this
37 chapter, or (d) has exercised a right provided for in this chapter.
38 The prohibition in this subsection (2) applies with respect to a person

1 regardless of whether that person has performed service in the
2 uniformed services.

3 (3) An employee shall be considered to have engaged in actions
4 prohibited:

5 (a) Under subsection (1) of this section, if the person's
6 membership, application for membership, service, application for
7 service, or obligation for service in the uniformed services is a
8 motivating factor in the employer's action, unless the employer can
9 prove that the action would have been taken in the absence of such
10 membership, application for membership, service, application for
11 service, or obligation for service; or

12 (b) Under subsection (2) of this section if the person's (i) action
13 to enforce a protection afforded any person under this chapter, (ii)
14 testimony or making of a statement in or in connection with any
15 proceeding under this chapter, (iii) assistance or other participation
16 in an investigation under this chapter, or (iv) exercise of a right
17 provided for in this chapter, is a motivating factor in the employer's
18 action, unless the employer can prove that the action would have been
19 taken in the absence of such person's enforcement action, testimony,
20 statement, assistance, participation, or exercise of a right.

21 (4) An employer is not required to reemploy a person under this
22 chapter if the employment from which the person leaves to serve in the
23 uniformed services is for a brief, nonrecurrent period and there is no
24 reasonable expectation that such employment will continue indefinitely
25 or for a significant period.

26 **Sec. 5.** RCW 73.16.033 and 1953 c 212 s 2 are each amended to read
27 as follows:

28 Any person who is a resident of this state or is employed within
29 this state, or is employed by an employer doing business within the
30 state, and who voluntarily or upon ((demand)) order from competent
31 authority, vacates a position of employment to determine his or her
32 physical fitness to enter, or, who actually does enter upon active duty
33 or training in the Washington national guard or the national guard of
34 any state, territory, commonwealth, possession, or district, the armed
35 forces of the United States, or the United States public health
36 service, shall, provided he or she meets the requirements of RCW
37 73.16.035, be reemployed forthwith: PROVIDED, That the employer need
38 not reemploy such person if circumstances have so changed ((as to make

1 ~~it impossible, unreasonable, or against the public interest for him to~~
2 ~~do so)) such that reemployment would be impossible or unreasonable due
3 to a change in the employer's circumstances, or would impose an undue
4 hardship on the employer: PROVIDED FURTHER, That this section shall
5 not apply to a temporary position.~~

6 If such person is still qualified to perform the duties of his or
7 her former position, he or she shall be restored to that position or to
8 a position of like seniority, status and pay. If he or she is not so
9 qualified as a result of disability sustained during his or her
10 service, or during the determination of his or her fitness for service,
11 but is nevertheless qualified to perform the duties of another
12 position, under the control of the same employer, he or she shall be
13 reemployed in such other position: PROVIDED, That such position shall
14 provide him or her with like seniority, status, and pay, or the nearest
15 approximation thereto consistent with the circumstances of the case.

16 **Sec. 6.** RCW 73.16.035 and 1969 c 16 s 1 are each amended to read
17 as follows:

18 (1) In order to be eligible for the benefits of ((RCW 73.16.031
19 through 73.16.061)) this chapter, an applicant must comply with the
20 following requirements:

21 ((1) He)) (a) The applicant must furnish a receipt of an
22 honorable, or under honorable conditions discharge, report of
23 separation, certificate of satisfactory service, or other proof of
24 having satisfactorily completed his or her service. Rejectees must
25 furnish proof of orders for examination and rejection.

26 ((2) He)) (b) The applicant must make written or verbal
27 application to the employer or his or her representative ((within
28 ninety days of the date of his separation or release from training and
29 service. Rejectees must apply within thirty days from date of
30 rejection)) as follows:

31 (i) In the case of an applicant whose period of service in the
32 uniformed services was less than thirty-one days, by reporting to the
33 employer:

34 (A) Not later than the beginning of the first full regularly
35 scheduled work period on the first full calendar day following the
36 completion of the period of service and the expiration of eight hours
37 after a period allowing for the safe transportation of the applicant
38 from the place of that service to the applicant's residence; or

1 (B) As soon as possible after the expiration of the eight-hour
2 period in (b)(i)(A) of this subsection, if reporting within that period
3 is impossible or unreasonable through no fault of the applicant;

4 (ii) In the case of an applicant who is absent from a position of
5 employment for a period of any length for the purposes of an
6 examination to determine the applicant's fitness to perform service in
7 the uniformed services, by reporting in the manner and time referred to
8 in (b)(i) of this subsection;

9 (iii) In the case of an applicant whose period of service in the
10 uniformed services was for more than thirty days but less than one
11 hundred eighty-one days, by submitting an application for reemployment
12 with the employer not later than fourteen days after the completion of
13 the period of service or if submitting such application within such
14 period is impossible or unreasonable through no fault of the applicant,
15 the next first full calendar day when submission of such application
16 becomes possible;

17 (iv) In the case of an applicant whose period of service in the
18 uniformed services was for more than one hundred eighty days, by
19 submitting an application for reemployment with the employer not later
20 than ninety days after the completion of the period of service;

21 (v) In the case of an applicant who is hospitalized for, or
22 convalescing from, an illness or injury incurred in, or aggravated
23 during, the performance of service in the uniformed services, at the
24 end of the period that is necessary for the applicant to recover from
25 such illness or injury, the applicant shall submit an application for
26 reemployment with such employer. The period of recovery may not exceed
27 two years. This two-year period shall be extended by the minimum time
28 required to accommodate the circumstances beyond the applicant's
29 control that make reporting within the two-year period impossible or
30 unreasonable;

31 (vi) In the case of an applicant who fails to report or apply for
32 employment or reemployment within the appropriate period specified in
33 (b) of this subsection, the applicant does not automatically forfeit
34 his or her entitlement to the rights and benefits conferred by this
35 chapter, but is subject to the conduct rules, established policy, and
36 general practices of the employer pertaining to explanations and
37 discipline with respect to absence from scheduled work.

1 (c) An applicant who submits an application for reemployment shall
2 provide to the applicant's employer, upon the request of that employer,
3 documentation to establish that:

4 (i) The application is timely;

5 (ii) The applicant has not exceeded the service limitations set
6 forth in this section, except as permitted under (b)(v) of this
7 subsection; and

8 (iii) The applicant's entitlement to the benefits under this
9 chapter has not been terminated pursuant to (d) of this subsection.

10 ~~((+3))~~ (d) If, due to the necessity of hospitalization, while on
11 active duty, ((he)) the applicant is released or placed on inactive
12 duty and remains hospitalized, ((he)) the applicant is eligible for the
13 benefits of ((RCW 73.16.031 through 73.16.061)) this chapter:
14 PROVIDED, That such hospitalization does not continue for more than one
15 year from date of such release or inactive status: PROVIDED FURTHER,
16 That ((he)) the applicant applies for his or her former position within
17 ninety days after discharge from such hospitalization.

18 ~~((+4-He))~~ (e) The applicant must return and reenter the office or
19 position within three months after serving four years or less:
20 PROVIDED, That any period of additional service imposed by law, from
21 which one is unable to obtain orders relieving him or her from active
22 duty, will not affect ((his)) reemployment rights.

23 (2) The failure of an applicant to provide documentation that
24 satisfies rules adopted pursuant to subsection (1)(b) of this section
25 shall not be a basis for denying reemployment in accordance with the
26 provisions of this chapter if the failure occurs because such
27 documentation does not exist or is not readily available at the time of
28 the request of the employer. If, after such reemployment,
29 documentation becomes available that establishes that the applicant
30 does not meet one or more of the requirements referred to in subsection
31 (1)(c)(i), (ii), and (iii) of this section, that applicant's employer
32 may terminate the employment of the person and the provision of any
33 rights or benefits afforded the person under this chapter.

34 (3) An employer may not delay or attempt to defeat a reemployment
35 obligation by demanding documentation that does not then exist or is
36 not then readily available.

37 (4) The application in subsection (1) of this section is not
38 required if the giving of such application is precluded by military
39 necessity or, under all of the relevant circumstances, the giving of

1 such notice is otherwise impossible or unreasonable. A determination
2 of military necessity for the purposes of this subsection shall be made
3 by the adjutant general of the state of Washington military department
4 and is not subject to judicial review.

5 (5) In any proceeding involving an issue of whether (a)
6 reemployment is impossible or unreasonable because of a change in an
7 employer's circumstances, (b) reemployment would impose an undue
8 hardship on the employer, or (c) the employment is for a brief,
9 nonrecurrent period and there is no reasonable expectation that such
10 employment would have continued indefinitely or for a significant
11 period as provided in section 4(4) of this act, the employer has the
12 burden of proving the impossibility or unreasonableness, undue
13 hardship, or the brief or nonrecurrent nature of the employment without
14 a reasonable expectation of continuing indefinitely or for a
15 significant period.

16 **Sec. 7.** RCW 73.16.051 and 1953 c 212 s 5 are each amended to read
17 as follows:

18 Any person who is entitled to be restored to a position in
19 accordance with the provisions of RCW 73.16.031, 73.16.033, 73.16.035,
20 and 73.16.041 shall be considered as having been on furlough or leave
21 of absence, from his or her position of employment, during his or her
22 period of active military duty or service, and he or she shall be so
23 restored without loss of seniority. He or she shall further be
24 entitled to participate in insurance, vacations, retirement pay, and
25 other benefits offered by the employer pursuant to established rules
26 and practices relating to employees on furlough or leave of absence in
27 effect with the employer at the time such person was ordered into the
28 service; and he or she shall not be discharged from such position
29 without cause within one year after restoration(~~(:—PROVIDED, That no~~
30 ~~employer shall be required to make any payment to keep insurance or~~
31 ~~retirement rights current during such period of military service))~~).

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 73.16 RCW
33 to read as follows:

34 (1) In any case in which a person, or the person's dependents, has
35 coverage under a health plan in connection with the person's position
36 of employment, including a group health plan as defined in section
37 607(1) of the federal employee retirement income security act of 1974,

1 and such person is absent from such position of employment by reason of
2 service in the uniformed services, the plan shall provide that the
3 person may elect to continue such coverage as provided in this section.
4 The maximum period of coverage of a person and person's dependents
5 under such an election shall be the lesser of:

6 (a) The eighteen-month period beginning on the date on which the
7 person's absence begins; or

8 (b) The day after the date on which the person fails to apply for
9 or return to a position of employment, as determined under RCW
10 73.16.035.

11 (2) A person who elects to continue health plan coverage under this
12 section may be required to pay not more than one hundred two percent of
13 the full premium under the plan, determined in the same manner as the
14 applicable premium under section 4980B(f)(4) of the internal revenue
15 code of 1986, associated with such coverage for the employer's other
16 employees, except that in the case of a person who performs service in
17 the uniformed services for less than thirty-one days, the person may
18 not be required to pay more than the employee share, if any, for such
19 coverage.

20 (3) In the case of a health plan that is a multiemployer plan as
21 defined in section 3(37) of the federal employee retirement income
22 security act of 1974 (29 U.S.C. Sec. 1002(37)(A)), any liability under
23 the plan for employer contributions and benefits arising under this
24 subsection shall be allocated:

25 (a) By the plan in the manner as the plan sponsor provides; or

26 (b) If the sponsor does not provide:

27 (i) To the last employer employing the person before the period
28 served by the person in the uniformed services; or

29 (ii) If the last employer is no longer functional, to the plan.

30 (4) Except as provided in subsection (2) of this section, in the
31 case of a person whose coverage under a health plan was terminated by
32 reason of service in the uniformed services, an exclusion or waiting
33 period may not be imposed in connection with the reinstatement of such
34 coverage upon reemployment under this chapter if an exclusion or
35 waiting period would not have been imposed under a health plan had
36 coverage of such person by such plan not been terminated as a result of
37 such service. This subsection applies to the person who is reemployed
38 and to any individual who is covered by such plan by reason of the
39 reinstatement of the coverage of such person.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 73.16 RCW
2 to read as follows:

3 (1)(a) Except as otherwise provided, in the case of a right
4 provided pursuant to an employee pension benefit plan (including those
5 described in sections 3(2) and 3(33) of the federal employee retirement
6 income security act of 1974) or a right provided under any federal or
7 state law governing pension benefits for governmental employees, the
8 right to pension benefits or a person reemployed under this chapter
9 shall be determined under this section.

10 (b) A person reemployed under this chapter shall be treated as not
11 having incurred a break in service with the employer or employers
12 maintaining the plan by reason of such person's period of service in
13 the uniformed services.

14 (c) Each period served by a person in the uniformed services shall,
15 upon reemployment under this chapter, be deemed to constitute service
16 with the employer or employers maintaining the plan for the purpose of
17 determining the nonforfeitability of the person's accrued benefits and
18 for the purpose of determining the accrual of benefits under the plan.

19 (2) An employer reemploying a person under this chapter is liable
20 to an employee pension benefit plan for funding any obligation of the
21 plan to provide the pension benefits described in this section and
22 shall allocate the amounts of any employer contribution for the person
23 in the same manner and to the same extent the allocation occurs for
24 other employees during the period of service. For purposes of
25 determining the amount of such liability and any obligation of the
26 plan, earnings and forfeitures shall not be included. For purposes of
27 determining the amount of such liability and purposes of section 515 of
28 the employee retirement income security act of 1974 or a similar
29 federal or state law governing pension benefits for governmental
30 employees, service in the uniformed services that is deemed under
31 subsection (1) of this section to be service with the employer shall be
32 deemed to be service with the employer under the terms of the plan or
33 any applicable collective bargaining agreement. In the case of a
34 multiemployer plan as defined in section 3(37) of the employee
35 retirement income security act of 1974 (29 U.S.C. Sec. 1002(37)(A)),
36 any liability of the plan described in this paragraph shall be
37 allocated:

38 (a) By the plan in such manner as the sponsor maintaining the plan
39 shall provide; or

1 (b) If the sponsor does not provide:

2 (i) To the last employer employing the person before the period
3 served by the person in the uniformed services; or

4 (ii) If such last employer is no longer functional, to the plan.

5 (3) A person reemployed under this chapter is entitled to accrued
6 benefits pursuant to subsection (1)(a) of this section that are
7 contingent on the making of, or derived from, employee contributions or
8 elective deferrals (as defined in section 402(g)(3) of the internal
9 revenue code of 1986) only to the extent the person makes payment to
10 the plan with respect to such contributions or deferrals. No such
11 payment may exceed the amount the person would have been permitted or
12 required to contribute had the person remained continuously employed by
13 the employer throughout the period of uniformed service. Any payment
14 to the plan described in this subsection shall be made during the
15 period beginning with the date of reemployment and whose duration is
16 three times the period of the person's services, such payment period in
17 the uniformed services, not to exceed five years.

18 (4) For purposes of computing an employer's liability of the
19 employee's contributions under subsection (2) of this section, the
20 employee's compensation during the period of service shall be computed:

21 (a) At the rate the employee would have received but for the period
22 of service in subsection (1)(b) of this section; or

23 (b) In the case that the determination of such rate is not
24 reasonably certain, on the basis of the employee's average rate of
25 compensation during the twelve-month period immediately preceding such
26 period or if shorter, the period of employment immediately preceding
27 such period.

28 (5) Any employer who reemploys a person under this chapter and who
29 is an employer contributing to a multiemployer plan as defined in
30 section 3(37) of the employee retirement income security act of 1974
31 (29 U.S.C. Sec. 1002(37)(A)) under which benefits are or may be payable
32 to such person by reason of the obligations in this chapter, shall,
33 within thirty days after the date of such reemployment, provide
34 information, in writing, of such reemployment to the administrator of
35 such plan.

36 **Sec. 10.** RCW 73.16.061 and 1953 c 212 s 6 are each amended to read
37 as follows:

1 In case any employer, his or her successor or successors fails or
2 refuses to comply with the provisions of (~~RCW 73.16.031 through~~
3 ~~73.16.061~~) this chapter, the (~~prosecuting attorney of the county in~~
4 ~~which the employer is located~~) attorney general shall bring action in
5 the superior court in the county in which the employer is located or
6 does business to obtain an order to specifically require such employer
7 to comply with the provisions (~~hereof~~) of this chapter, and, as an
8 incident thereto, to compensate such person for any loss of wages or
9 benefits suffered by reason of such employer's unlawful act. Any such
10 person who does not desire the services of the (~~prosecuting~~) attorney
11 general may, by private counsel, bring such action.

12 **Sec. 11.** RCW 73.16.070 and 1941 c 201 s 5 are each amended to read
13 as follows:

14 The federal soldiers' and sailors' civil relief act of 1940, Public
15 Act No. 861(~~, 76th congress~~), is hereby specifically declared to
16 apply in proper cases in all the courts of this state.

17 NEW SECTION. **Sec. 12.** A new section is added to chapter 73.16 RCW
18 to read as follows:

19 (1) This chapter shall not supersede, nullify, or diminish any
20 federal, state, or political subdivision of this state, law, ordinance,
21 rule, regulation, contract, agreement, policy, plan, practice, or other
22 matter that establishes a right or benefit that is more beneficial to,
23 or is in addition to, a right or benefit provided for such person in
24 this chapter.

25 (2) This chapter supersedes any state law, or that of any political
26 subdivision of this state as set out in subsection (1) of this section,
27 and any contract, agreement, policy, plan, practice, or other matter
28 that reduces, limits, or eliminates in any manner a right or benefit
29 provided by this chapter, including the establishment of additional
30 prerequisites to the exercise of any such right or the receipt of any
31 such benefit.

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