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HOUSE BILL 1285

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State of Washington

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By Representatives Campbell, Veloria, Chase and Bush

Read first time 01/22/2003. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to reemployment following service in the uniformed  
2 services; and amending RCW 73.16.031, 73.16.033, and 73.16.035.

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

4 **Sec. 1.** RCW 73.16.031 and 2001 c 133 s 3 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

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

11 (2) "Benefit," "benefit of employment," or "rights and benefits"  
12 means any advantage, profit, privilege, gain, status, account, or  
13 interest (other than wages or salary for work performed) that accrues  
14 by reason of an employment contract or agreement or an employer policy,  
15 plan, or practice and includes rights and benefits under a pension  
16 plan, a health plan, an employee stock ownership plan, insurance  
17 coverage and awards, bonuses, severance pay, supplemental unemployment  
18 benefits, vacations, and the opportunity to select work hours or  
19 location of employment.

- 1 (3) "Employee" means a person in a position of employment.
- 2 (4) "Employer" means the person, firm, or corporation, the state,  
3 or any elected or appointed public official currently having control  
4 over the position that has been vacated.
- 5 (5) "Health plan" means an insurance policy or contract, medical or  
6 hospital service agreement, membership or subscription contract, or  
7 other arrangement under which health services for individuals are  
8 provided or the expenses of such services are paid.
- 9 (6) "Notice" means any written or verbal notification of an  
10 obligation or intention to perform service in the uniformed services  
11 provided to an employer by the employee who will perform such service  
12 or by the uniformed service in which such service is to be performed.
- 13 (7) "Position of employment" means any position (~~((other than~~  
14 ~~temporary))) wherein a person is engaged for a private employer,  
15 company, corporation, or the state.~~
- 16 (8) "Qualified," with respect to an employment position, means  
17 having the ability to perform the essential tasks of the position.
- 18 (9) "Rejectee" means a person rejected because he or she is not,  
19 physically or otherwise, qualified to enter the uniformed service.
- 20 (10) "Resident" means any person residing in the state with the  
21 intent to remain other than on a temporary or transient basis.
- 22 (11) "Seniority" means longevity in employment together with any  
23 benefits of employment which accrue with, or are determined by,  
24 longevity in employment.
- 25 (12) "Service in the uniformed services" means the performance of  
26 duty on a voluntary or involuntary basis in a uniformed service under  
27 competent authority and includes active duty, active duty for training,  
28 initial active duty for training, inactive duty training, full-time  
29 national guard duty (including state-ordered active duty), and a period  
30 for which a person is absent from a position of employment for the  
31 purpose of an examination to determine the fitness of the person to  
32 perform any such duty.
- 33 (13) "State" means the state of Washington, including the agencies  
34 and political subdivisions thereof.
- 35 (14) (~~("Temporary position" means a position of short duration~~  
36 ~~which, after being vacated, ceases to exist and wherein the employee~~  
37 ~~has been advised as to its temporary nature prior to his or her~~  
38 ~~engagement.~~

1       ~~(15)~~) "Undue hardship," in the case of actions taken by an  
2 employer, means actions requiring significant difficulty or expense  
3 when 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; and

9       (c) The type of operation or operations of the employer, including  
10 the composition, structure, and functions of the work force of such  
11 employer, the geographic separateness, administrative, or fiscal  
12 relationship of the facility or facilities in question to the employer.

13       ~~((16))~~ (15) "Uniformed services" means the armed forces, the army  
14 national guard, and the air national guard of any state, territory,  
15 commonwealth, possession, or district when engaged in active duty for  
16 training, inactive duty training, full-time national guard duty, or  
17 state active duty, the commissioned corps of the public health service,  
18 the coast guard, and any other category of persons designated by the  
19 president of the United States in time of war or national emergency.

20       **Sec. 2.** RCW 73.16.033 and 2001 c 133 s 5 are each amended to read  
21 as follows:

22       Any person who is a resident of this state or is employed within  
23 this state, and who voluntarily or upon order from competent authority,  
24 vacates a position of employment for service in the uniformed services,  
25 shall, provided he or she meets the requirements of RCW 73.16.035, be  
26 reemployed forthwith: PROVIDED, That the employer need not reemploy  
27 such person if circumstances have so changed such that reemployment  
28 would be impossible or unreasonable due to a change in the employer's  
29 circumstances, or would impose an undue hardship on the employer(~~(+~~  
30 ~~PROVIDED FURTHER, That this section shall not apply to a temporary~~  
31 ~~position)~~)).

32       If such person is still qualified to perform the duties of his or  
33 her former position, he or she shall be restored to that position or to  
34 a position of like seniority, status and pay. If he or she is not so  
35 qualified as a result of disability sustained during his or her service  
36 in the uniformed services, but is nevertheless qualified to perform the  
37 duties of another position, under the control of the same employer, he

1 or she shall be reemployed in such other position: PROVIDED, That such  
2 position shall provide him or her with like seniority, status, and pay,  
3 or the nearest approximation thereto consistent with the circumstances  
4 of the case.

5 **Sec. 3.** RCW 73.16.035 and 2001 c 133 s 6 are each amended to read  
6 as follows:

7 (1) In order to be eligible for the benefits of this chapter, an  
8 applicant must comply with the following requirements:

9 (a) The applicant must notify his or her employer as to his or her  
10 membership in the uniformed services within a reasonable time of  
11 accepting employment or becoming a member of the uniformed services.  
12 An employer may not take any action prohibited in RCW 73.16.032 against  
13 a person because the person provided notice of membership in the  
14 uniformed services to the employer.

15 (b) The applicant must furnish a receipt of an honorable, or under  
16 honorable conditions discharge, report of separation, certificate of  
17 satisfactory service, or other proof of having satisfactorily completed  
18 his or her service. Rejectees must furnish proof of orders for  
19 examination and rejection.

20 (c) The applicant must make written application to the employer or  
21 his or her representative as follows:

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

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

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

33 (ii) In the case of an applicant who is absent from a position of  
34 employment for a period of any length for the purposes of an  
35 examination to determine the applicant's fitness to perform service in  
36 the uniformed services, by reporting in the manner and time referred to  
37 in (c)(i) of this subsection;

1 (iii) In the case of an applicant whose period of service in the  
2 uniformed services was for more than thirty days but less than one  
3 hundred eighty-one days, by submitting an application for reemployment  
4 with the employer not later than fourteen days after the completion of  
5 the period of service or if submitting such application within such  
6 period is impossible or unreasonable through no fault of the applicant,  
7 the next first full calendar day when submission of such application  
8 becomes possible;

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

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

22 (vi) In the case of an applicant who fails to report or apply for  
23 employment or reemployment within the appropriate period specified in  
24 this subsection (1)(c), the applicant does not automatically forfeit  
25 his or her entitlement to the rights and benefits conferred by this  
26 chapter, but is subject to the conduct rules, established policy, and  
27 general practices of the employer pertaining to explanations and  
28 discipline with respect to absence from scheduled work.

29 (d) An applicant who submits an application for reemployment shall  
30 provide to the applicant's employer, upon the request of that employer,  
31 documentation to establish that:

32 (i) The application is timely;

33 (ii) The applicant has not exceeded the service limitations set  
34 forth in this section, except as permitted under (c)(v) of this  
35 subsection; and

36 (iii) The applicant's entitlement to the benefits under this  
37 chapter has not been terminated pursuant to (e) of this subsection.

1 (e) The applicant must return and reenter the office or position  
2 within the appropriate period specified in (c) of this subsection after  
3 serving four years or less in the uniformed services other than state-  
4 ordered active duty: PROVIDED, That any period of additional service  
5 imposed by law, from which one is unable to obtain orders relieving him  
6 or her from active duty, will not affect reemployment rights.

7 (f) The applicant must return and reenter the office or position  
8 within the appropriate period specified in (c) of this subsection after  
9 serving twelve weeks or less in a calendar year in state-ordered active  
10 duty: PROVIDED, That the governor, when declaring an emergency that  
11 necessitates a longer period of service, may extend the period of  
12 service in state-ordered active duty to up to twelve months after which  
13 the applicant is eligible for the benefits of this chapter.

14 (2) The failure of an applicant to provide documentation that  
15 satisfies rules adopted pursuant to subsection (1)(c) of this section  
16 shall not be a basis for denying reemployment in accordance with the  
17 provisions of this chapter if the failure occurs because such  
18 documentation does not exist or is not readily available at the time of  
19 the request of the employer. If, after such reemployment,  
20 documentation becomes available that establishes that the applicant  
21 does not meet one or more of the requirements referred to in subsection  
22 (1)(d) of this section, that applicant's employer may terminate the  
23 employment of the person and the provision of any rights or benefits  
24 afforded the person under this chapter.

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

28 (4) The application in subsection (1) of this section is not  
29 required if the giving of such application is precluded by military  
30 necessity or, under all of the relevant circumstances, the giving of  
31 such notice is otherwise impossible or unreasonable. A determination  
32 of military necessity for the purposes of this subsection shall be made  
33 by the adjutant general of the state of Washington military department  
34 and is not subject to judicial review.

35 (5) In any proceeding involving an issue of whether (a)  
36 reemployment is impossible or unreasonable because of a change in an  
37 employer's circumstances, or (b) reemployment would impose an undue  
38 hardship on the employer, (~~or (c) the employment is for a temporary~~

1 ~~position,~~) the employer has the burden of proving the impossibility or  
2 unreasonableness(~~(~~) or undue hardship(~~(~~~~,~~ ~~or the brief or nonrecurrent~~  
3 ~~nature of the employment without a reasonable expectation of continuing~~  
4 ~~indefinitely or for a significant period)~~)).

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