

Act No. 121
Public Acts of 2002
Approved by the Governor
March 29, 2002
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Senators Miller, Scott, Young, DeBeaussaert, Byrum, Smith and Dingell

ENROLLED SENATE BILL No. 994

AN ACT to amend 1955 PA 133, entitled "An act to provide for the granting of military leaves and providing re-employment protection for officers and enlisted men of the military or naval forces of the state or of the United States," by amending section 3 (MCL 32.273).

The People of the State of Michigan enact:

Sec. 3. (1) An employee who requests a leave from his or her employment shall not be denied a leave of absence by his or her employer for the purpose of being inducted into or entering into active service, active state service, or the service of the United States, for the purpose of determining his or her physical fitness to enter the service, or for performing training duty as an officer or enlisted member of the military or naval forces of this state or of the United States. Following release from service, training duty, or rejection, the employee shall, if he or she makes application to his or her employer for reemployment within 15 days following service, release, or rejection, be reemployed in a position of employment in the following order of priority:

(a) Following service of 1 to 90 days, in the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by service, the duties of which the person is qualified to perform.

(b) Following service of 1 to 90 days, in the position of employment in which the person was employed on the date of the commencement of service, only if the person is not qualified to perform the duties of the position referred to in subdivision (a) and after reasonable efforts by the employer to qualify the person have been made.

(c) Following service of 91 or more days, a position described under subdivision (a) or (b) or in any other position of lesser status or pay that the person is qualified to perform, only if the person is not qualified and cannot become qualified with reasonable efforts by the employer to be employed as described in subdivision (b).

(2) A person who is reemployed under this section is entitled to the seniority and other rights and benefits that are determined by seniority that the person had on the date of the commencement of service plus the additional seniority and rights and benefits that the person would have attained if the person had been continually employed.

(3) In addition to the seniority, rights, and benefits under subsection (2), a person who is reemployed under this section is entitled to rights and benefits, not determined by seniority, that are generally provided by the employer to employees who have similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of service or established while the person performs service.

(4) The employee is not entitled to reemployment under this section if the employee who is absent by reason of active service, active state service, or the service of the United States has a cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, that exceeds 5 years, except that any period of service shall not include any of the following:

(a) Any service that is required, beyond 5 years, to complete an initial period of obligated service.

(b) Any service during which the person was unable to obtain orders releasing him or her from a period of service in the uniformed services before the expiration of the 5-year period and the inability was through no fault of the person.

(c) Any service performed as required pursuant to 10 U.S.C. 10147, under 32 U.S.C. 502(a) or 503, or to fulfill additional training requirements determined and certified in writing by the appropriate service secretary to be necessary for professional development or for completion of skill training or retraining.

(d) Any service performed by a member in active service, active state service, or the service of the United States if any of the following occur:

(i) The member is ordered to or retained on active duty, active service, or active state service under 10 U.S.C. 688, 12301(a), 12301(g), 12302, 12304, or 12305, or under 14 U.S.C. 331, 332, 359, 360, 367, or 712.

(ii) The member is ordered to or retained on active duty, active service, or active state service, other than for training, under any provision of law because of a war or national emergency declared by the president, the congress, or the governor.

(iii) The member is ordered to active duty, other than for training, in support, as determined by the appropriate service secretary, of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304.

(iv) The member is ordered to active duty in support, as determined by the appropriate service secretary, of a critical mission or requirement of the uniformed services.

(v) The member is called into federal service as a member of the national guard under 10 U.S.C. 331 to 335 or under 10 U.S.C. 12406.

(5) An employee is not entitled to the benefits under this section if the service of the employee in any of the uniformed services is terminated under any of the following circumstances:

(a) A separation of the person from the uniformed service or national guard with a dishonorable or bad conduct discharge.

(b) A separation of the person from the uniformed service or national guard under other than honorable conditions, as characterized pursuant to regulations prescribed by the appropriate service secretary.

(c) A dismissal of the person under 10 U.S.C. 1161(a).

(d) A dropping from the rolls pursuant to 10 U.S.C. 1161(b).

(6) As used in this section:

(a) "Active service" means service, including active state service or special duty required by law, regulation, or pursuant to order of the governor. Active service includes continuing service of an active member of the national guard and the defense force in fulfilling that active member's commission, appointment, or enlistment.

(b) "Active state service", as applied to the national guard and the defense force, means military service in support of civil authorities, at the request of local authorities, including, but not limited to, support in the enforcement of laws prohibiting the importation, sale, delivery, possession, or use of a controlled substance, if ordered by the governor or as otherwise provided in this act. As used in this subdivision, "controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(c) "Service" means active service, active state service, or in the service of the United States.

(d) "Service secretary" means the secretary of the army, secretary of the navy, or secretary of the air force as defined in 10 U.S.C. 101(9).

(e) "Uniformed service" means the armed forces, the reserve component, the national guard in active service or active state service, the commissioned corps of the public health service, and any other category of persons designated by the president or governor in time of war or national emergency.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Sam E. Randall

Clerk of the House of Representatives.

Approved _____

Governor.