

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 354

An Act to amend and reenact § 44-93 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 44-93.1 through 44-93.5, relating to reemployment guarantees for members of the Virginia National Guard, Virginia State Defense Force and naval militia.

[H 1372]

Approved April 1, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 44-93 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 44-93.1 through 44-93.5 as follows:

§ 44-93. Leaves of absence for employees of Commonwealth or political subdivisions.

All officers and employees of the Commonwealth or of any political subdivision of the Commonwealth who are former members of the armed services or members of the organized reserve forces of any of the armed services of the United States, National Guard, or naval militia shall be entitled to leaves of absence from their respective duties, without loss of seniority, accrued leave, or efficiency rating, on all days during which they are engaged in federally funded military duty, to include training duty, or when called forth by the Governor pursuant to the provisions of § 44-75.1 or § 44-78.1. There shall be no loss of *regular employer* pay during such leaves of absence, except that paid leaves of absence for federally funded military duty, to include training duty, shall not exceed fifteen workdays per federal fiscal year, and except that no officers or employees shall receive paid leave for more than fifteen workdays per federally funded tour of active military duty. When relieved from such duty, they shall be restored to positions held by them when ordered to duty. *If the office or position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be reinstated in a position of like seniority, status and pay, if the position exists, or in a comparable vacant position for which they are qualified, unless to do so would be unreasonable.* For the purposes of this section, with respect to employees of the Commonwealth or its political subdivisions who do not normally work approximately equal workdays on five or more days of each calendar week, the term "workday" shall mean 1/260 of the total working hours such employee would be scheduled to work during an entire federal fiscal year, not taking into account any state holidays, annual leave, military leave, or other absences.

§ 44-93.1. *Supplement of military pay for employees of Commonwealth or political subdivisions.*

In addition to the paid military leave provisions of § 44-93, the Commonwealth or any political subdivision of the Commonwealth may supplement the military pay of its officers and employees who are reservists or national guard members called to federally funded military duty in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to federally funded military duty. The employer may also, in its discretion, continue to provide any health insurance and other existing benefits to such officers and employees.

§ 44-93.2. *Leaves of absence from nongovernmental employment.*

A member of the Virginia National Guard, Virginia State Defense Force or naval militia called to state active duty pursuant to the provisions of § 44-75.1 or § 44-78.1 by the Governor shall have the right to take leave without pay from his nongovernmental employment. No member of the National Guard, Virginia State Defense Force or naval militia shall be forced to use or exhaust his vacation or other accrued leaves from his nongovernmental employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

§ 44-93.3. *Reemployment rights.*

Upon honorable release from state active duty, a member of the Virginia National Guard, Virginia State Defense Force or naval militia shall make written application to his previous employer for reemployment within five days of his release from duty or from hospitalization following release. When released from such duty, they shall be restored to positions held by them when ordered to duty. If the office or position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which they are qualified, unless to do so would be unreasonable.

§ 44-93.4. *Discrimination against persons who serve in the Virginia National Guard, Virginia State Defense Force, or naval militia; and acts of reprisal prohibited.*

A. A member of the Virginia National Guard, Virginia State Defense Force or naval militia who performs, has performed, applies to perform, or has an obligation to perform state active duty shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

B. A person shall be considered to have denied a member of the Virginia National Guard, Virginia State Defense Force or naval militia initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation for service.

§ 44-93.5. Penalties for denial.

If any employer fails or refuses to comply with the provisions of §§ 44-93, 44-93.2, 44-93.3 and 44-93.4, the circuit court having jurisdiction over the employer's place of business may, upon the filing of a motion, petition, or other appropriate pleading by the employee, require the employer to comply with §§ 44-93, 44-93.2, 44-93.3 and 44-93.4 and to compensate the employee for any loss of wages or benefits suffered by reason of the employer's unlawful failure or refusal.