

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 167

An Act to amend and reenact §§ 44-93.2 through 44-93.5 of the Code of Virginia, relating to Virginia National Guard; employment protection.

[S 1309]

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 44-93.2 through 44-93.5 of the Code of Virginia are amended and reenacted as follows:

§ 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 or military duty pursuant to Title 32 of the United States Code~~ 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 *or military duty pursuant to Title 32 of the United States Code*, 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~~ 14 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. *This section shall not apply when the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services exceeds five years.*

§ 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 *or military duty pursuant to Title 32 of the United States Code* 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~~ and reasonable attorney fees and costs incurred by reason of the employer's unlawful failure or refusal. Upon request of the affected employee, the Attorney General may represent personally or through one of his assistants, such employee denied the benefits of §§ 44-93, 44-93.2, 44-93.3 and 44-93.4 while in the performance of state active duty.