MILITARY LEAVES; REEMPLOYMENT PROTECTION

Act 133 of 1955

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.

History: 1955, Act 133, Imd. Eff. June 7, 1955

The People of the State of Michigan enact:

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32.271 Members of military or naval forces; discrimination prohibited.

Sec. 1.

No person shall discriminate against any officer or enlisted man of the military or naval forces of the state or of the United States because of his membership therein.

History: 1955, Act 133, Imd. Eff. June 7, 1955

32.272 Member of military or naval forces; employment discrimination or intimidation prohibited.

Sec. 2.

An employer or an officer or agent of any corporation, company, or firm, or other person shall not discharge any person from employment because of being or performing his or her duty as an officer or enlisted member of the military or naval forces of this state or any other state, or hinder or prevent him or her from performing any military service or from attending any military encampment or place of drill or instruction he or she may be called upon to perform or attend by proper authority, or dissuade any person from enlistment or accepting a commission in the National Guard or naval militia by threat of injury to him or her in respect to his or her employment, trade, or business upon enlistment or acceptance of a commission.

History: 1955, Act 133, Imd. Eff. June 7, 1955 ;-- Am. 2016, Act 172, Eff. Sept. 12, 2016

32.273 Member of military or naval forces; leave of absence from employment for military purposes; reemployment; priority; seniority, rights, and benefits; exception; action against employer; remedies; definitions.

Sec. 3.

(1) An employee who gives advance notice for a period of 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 service as an officer or enlisted member of the military or naval forces of this state, any other state, or the United States in active state service or under title 10 or title 32 of the United States Code. If the employee reports to work or applies to the employer within 45 days or, if the service was for more than 180 days, within 90 days following release from service, release from duty, or rejection, the employer shall reemploy the employee 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, in a position described under subdivision (a) or (b), or in a position that is the nearest approximation in status and pay to a position described in subdivision (a) or (b) 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 an uninterrupted period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, that exceeds 5 years. For purposes of this subsection, a 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 USC 10147, under 32 USC 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 USC 688, 12301(a), 12301(g), 12302, 12304, or 12305, or under 14 USC 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 of this state or any other state.

(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 USC 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 USC 331 to 335 or under 10 USC 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 USC 1161(a).

(d) A dropping from the rolls pursuant to 10 USC 1161(b).

(6) An employee who meets the requirements of this section and is denied reemployment as required under this section after reporting to work or applying to the employer may bring an action against the employer in the circuit court for the employee's county of residence and shall be awarded reinstatement and reasonable attorney fees.

(7) 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 of this state or any other state. 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

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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 concerned as defined in 10 USC 101(a)(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.

History: 1955, Act 133, Imd. Eff. June 7, 1955 ;-- Am. 2002, Act 121, Imd. Eff. Apr. 1, 2002 ;-- Am. 2008, Act 106, Imd. Eff. Apr. 25, 2008 ;-- Am. 2016, Act 172, Eff. Sept. 12, 2016

32.273a Differential pay program; definitions.

Sec. 3a.

(1) A local unit of government may provide by ordinance or resolution or through personnel policy a differential pay program or for a specific number of paid days of leave for employees of the local unit of government who request or are required to take a leave of absence to enter into active service in a uniformed service as those terms are defined in section 3.

(2) As used in this section:

(a) "Differential pay program" means a program through which the local unit of government agrees to pay during the leave of absence all or a part of the difference between the amount the employee is paid by the local unit of government and the amount the employee receives through his or her uniformed service if the amount paid by the local unit of government exceeds the amount paid by the uniformed service.

(b) "Local unit of government" means a city, village, township, or county.

History: Add. 2005, Act 8, Imd. Eff. Apr. 25, 2005

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32.274 Violation of act, penalty.

Sec. 4.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

History: 1955, Act 133, Imd. Eff. June 7, 1955