SENATE, No. 3594

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MARCH 18, 2019

Sponsored by:
Senator ROBERT W. SINGER
District 30 (Monmouth and Ocean)
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District 7 (Burlington)
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District 20 (Union)

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SYNOPSIS
Provides certain employment protections for National Guard members employed in New Jersey.

CURRENT VERSION OF TEXT
As introduced.
S3594 SINGER, SINGLETON

AN ACT concerning employment protections for members of the National Guard employed in New Jersey and amending P.L.1941, c.119, P.L.1979, c.317 and N.J.S.11A:8-1.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1941, c.119 (C.38:23-4) is amended to read as follows:

1. Every person holding office, position or employment, other than for a fixed term or period, under the government of this State or of any county, municipality, school district or other political subdivision of this State, or of any board, body, agency or commission of this State or any county, municipality or school district thereof, who after July first, one thousand nine hundred and forty, has entered, or hereafter shall enter, the active military or naval service of the United States or [of this State] the National Guard, in time of war or an emergency, including a state emergency, or for or during any period of training, or pursuant to or in connection with the operation of any system of selective service, or who, after July first, one thousand nine hundred and forty, has entered or hereafter, in time of war, shall enter the active service of the United States Merchant Marine, or the active service of the Women's Army Auxiliary Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy, shall be granted leave of absence for the period of such service and for a further period of three months after receiving his discharge from such service. If any such person shall be incapacitated by wound or sickness at the time of his discharge from such service, his leave of absence shall be extended until three months after his recovery from such wound or sickness, or until the expiration of two years from the date of his discharge from such service, whichever shall first occur.

In no case shall such person be discharged or separated from his office, position or employment during such period of leave of absence because of his entry into such service, or because of reasons of economy or efficiency or other related reason if entry into active military service in the Armed Forces of the United States or the National Guard, was in time of war or an emergency, including a state emergency. During the period of such leave of absence such person shall be entitled to all the rights, privileges and benefits that he would have had or acquired if he had actually served in such office, position or employment during such period of leave of absence except, unless otherwise provided by law, the right to compensation. Such leave of absence may be granted with or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
without pay as provided by law. Such person shall be entitled to resume the office, position or employment held by him at the time of his entrance into such service, provided he shall apply therefor before the expiration of his said leave of absence. If the employer's circumstances have so changed for reasons of economy or efficiency or other related reason as to make it impossible or unreasonable for such person who entered service in time of war or other emergency to resume the office, position or employment held prior to entrance into such service, the employer shall restore such person to a position of like seniority, status and pay, or any position available, if requested by such person, for which the person is able or qualified to perform the duties. Upon resumption of his office, position or employment, the service in such office, position or employment of the person temporarily filling the same shall immediately cease. No person who, after entry into such service, shall have been separated from any such service by a dishonorable discharge shall be entitled to any of the rights, privileges or benefits herein conferred.

(cf: P.L.2007, c.239, s.1)

2. Section 20 of P.L.1979, c.317 (C.38:23C-20) is amended to read as follows:

20. a. In the case of any person who, in order to perform military service, has left or leaves a position, other than a temporary position, in the employ of any employer, and who:

(1) Receives a certificate of completion of military service duly executed by an officer of the applicable force of the Armed Forces of the United States or by an officer of the applicable force of the organized militia;

(2) Is still qualified to perform the duties of such position; and

(3) Makes application for reemployment within 90 days after he is relieved from such service, if such position was in the employ of a private employer, such employer shall restore such person to such position, or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

If the circumstances of an employer have so changed because of reasons of economy or efficiency or other related reason as to make it impossible or unreasonable to restore a person who left to enter active military service in the Armed Forces of the United States or the organized militia in time of war or emergency, such employer shall restore such person to any available position, if requested by such person, for which the person is able or qualified to perform the duties.

b. The benefits, rights and privileges granted to persons in the military service by this section shall be extended to and be applicable to any person who, in order to participate in assemblies or annual training or in order to attend service schools conducted by
the Armed Forces of the United States for a period or periods up to
and including three months, temporarily leaves or has left his
position, other than a temporary position, in the employ of any
employer and who, being qualified to perform the duties of such
position, makes application for reemployment within 10 days after
completion of such temporary period of service; provided that no
such person shall be entitled to the said benefits, rights and
privileges for such attendance at any service school or schools
exceeding a total of three months during any four-year period.

c. The benefits, rights and privileges granted to persons in the
military service by this section shall be extended to and be
applicable to any person who is or becomes a member of the
organized militia or of a reserve component of the Armed Forces of
the United States and who, because of such membership is
discharged by his employer or whose employment is suspended by
his employer because of such membership and who, being qualified
to perform the duties of such position, makes application for
reemployment or termination of the period of his suspension within
10 days after such discharge or suspension.

For the purposes of this section, “organized militia” means the
Army and Air National Guard of New Jersey or any other state, and
“military service” includes National Guard active duty ordered by a
Governor of a state.

d. Any person who is restored to a position in accordance with
the provisions of this section shall be considered as having been on
furlough or leave of absence during his period of military service,
temporary service under paragraph b. hereof, or of discharge or
suspension under paragraph c. hereof, shall be so restored without
loss of seniority, shall be entitled to participate in insurance or other
benefits offered by the employer pursuant to established rules and
practices relating to employees on furlough or leave of absence in
effect with the employer at the time such person entered the
military service or commenced such temporary service or was so
discharged or suspended and shall not be discharged from such
position without cause, within one year after such restoration.

e. In case any private employer fails or refuses to comply with
the provisions of this section the Superior Court shall have the
power, upon the filing of a complaint, by the person entitled to the
benefits of such provisions, to specifically require such employer to
comply with such provisions, and may, as an incident thereto,
compensate such person for any loss of wages or benefits suffered
by reason of such employer's unlawful action. The court shall order
a speedy hearing in any such case, and shall advance it on the
calendar. Any person claiming to be entitled to the benefits of the
provisions of this section may appear and be represented by
counsel, or, upon application to the Attorney General of the State,
may request that the Attorney General appear and act on his behalf.
If the Attorney General is reasonably satisfied that the person so
applying is entitled to such benefits, he shall appear and act as
attorney for such person in the amicable adjustment of the claim, or
in the filing of any complaint and the prosecution thereof. In the
hearing and determination of such applications under this section,
no fees or court costs shall be assessed against a person so applying
for such benefits.
(cf:  P.L.2007, c.239, s.2)

3.  N.J.S.11A:8-1 is amended to read as follows:

11A:8-1. a. A permanent employee may be laid off for economy,
efficiency or other related reason. A permanent employee shall
receive 45 days' written notice, unless in State government a greater
time period is ordered by the commission, which shall be served
personally or by certified mail, of impending layoff or demotion
and the reasons therefor. The notice shall expire 120 days after
service unless extended by the commission for good cause. At the
same time the notice is served, the appointing authority shall
provide the commission with a list of the names and permanent
titles of all employees receiving the notice. The Civil Service
Commission shall adopt rules to implement employee layoff rights
consistent with the provisions of this section. The commission shall
consult with the advisory board representing labor organizations
prior to such recommendations.

b. Permanent employees in the service of the State or a
political subdivision shall be laid off in inverse order of seniority.
As used in this subsection, "seniority" means the length of
continuous permanent service in the jurisdiction, regardless of title
held during the period of service, except that for police and
firefighting titles, "seniority" means the length of continuous
permanent service only in the current permanent title and any other
title that has lateral or demotional rights to the current permanent
title. Seniority for all titles shall be based on the total length of
calendar years, months and days in continuous permanent service
regardless of the length of the employee's work week, work year or
part-time status.

c. For purposes of State service, a "layoff unit" means a
department or autonomous agency and includes all programs
administered by that department or agency. For purposes of
political subdivision service, the "layoff unit" means a department
in a county or municipality, an entire autonomous agency, or an
entire school district, except that the commission may establish
broader layoff units.

d. For purposes of State service, "job location" means a county.
The commission shall assign a job location to every facility and
office within a State department or autonomous agency. For
purposes of local service, "job location" means the entire political
subdivision and includes any facility operated by the political
subdivision outside its geographic borders.
e. For purposes of determining lateral title rights in State and political subdivision service, title comparability shall be determined by the commission based upon whether the: (1) titles have substantially similar duties and responsibilities; (2) education and experience requirements for the titles are identical or similar; (3) employees in an affected title, with minimal training and orientation, could perform the duties of the designated title by virtue of having qualified for the affected title; and (4) special skills, licenses, certifications or registration requirements for the designated title are similar and do not exceed those which are mandatory for the affected title. Demotional title rights shall be determined by the commission based upon the same criteria, except that the demotional title shall have lower but substantially similar duties and responsibilities as the affected title.

f. In State service, a permanent employee in a position affected by a layoff action shall be provided with applicable lateral and demotional title rights first, at the employee's option, within the municipality in which the facility or office is located and then to the job locations selected by the employee within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations and shall indicate job locations at which the employee will accept lateral and demotional title rights. In local service, a permanent employee in a position affected by a layoff action shall be provided lateral and demotional title rights within the layoff unit.

g. Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

(1) a vacant position that the appointing authority has previously indicated it is willing to fill;

(2) a position held by a provisional employee who does not have permanent status in another title, and if there are multiple employees at a job location, the specific position shall be determined by the appointing authority;

(3) a position held by a provisional employee who has permanent status in another title, and if there are multiple provisional employees at a job location, the specific position shall be determined based on level of the permanent title held and seniority;

(4) the position held by the employee serving in a working test period with the least seniority;

(5) in State service, and in local jurisdictions having a performance evaluation program approved by the commission, the position held by the permanent employee whose performance rating within the most recent 12 months in the employee's permanent title was significantly below standards or an equivalent rating;

(6) in State service, and in local jurisdictions having a performance evaluation program approved by the commission, the
position held by the permanent employee whose performance rating
within the most recent 12 months in the employee's permanent title
was marginally below standards or an equivalent rating; and
(7) the position held by the permanent employee with the least
seniority.

h. A permanent employee shall be granted special
reemployment rights based on the employee's permanent title at the
time of the layoff action and the employee shall be certified for
reappointment after the layoff action to the same, lateral and lower
related titles. Special reemployment rights shall be determined by
the commission in the same manner as lateral and demotional
rights.

i. Notwithstanding the provisions above, at no time shall any
person on a military leave of absence for active service in the
Armed Forces of the United States or for active service in the
organized militia in time of war or emergency be laid off.

For the purposes of this section, “organized militia” means the
Army and Air National Guard of New Jersey or any other state, and
“active service” includes National Guard active service ordered by a
Governor of a state.
(cf: P.L.2008, c.29, s.69)

4. This act shall take effect immediately.

STATEMENT

Under current law, a person on a military leave of absence from
employment has certain protections that entitle the person to return
to the former office, position, or employment held at the time of
entrance into such service.

This bill provides members of the National Guard of New Jersey
or any other state who are employed in New Jersey with the same
employment protections as are provided to members of the United
States Armed Forces called to federal active duty.