

# SENATE, No. 59

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator ROBERT W. SINGER**

**District 30 (Monmouth and Ocean)**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Senators Corrado, Connors, Brown and Diegnan**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



S59 SINGER, SINGLETON

2

1 AN ACT concerning employment protections for members of the  
2 National Guard employed in New Jersey and amending  
3 P.L.1941, c.119, P.L.1979, c.317 and N.J.S.11A:8-1.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

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

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

34 In no case shall such person be discharged or separated from his  
35 office, position or employment during such period of leave of  
36 absence because of his entry into such service, or because of  
37 reasons of economy or efficiency or other related reason if entry  
38 into active military service in the Armed Forces of the United  
39 States, or the National Guard, was in time of war or an emergency,  
40 including a state emergency. During the period of such leave of  
41 absence such person shall be entitled to all the rights, privileges and  
42 benefits that he would have had or acquired if he had actually  
43 served in such office, position or employment during such period of  
44 leave of absence except, unless otherwise provided by law, the right  
45 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.

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

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

20

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

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

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

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

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

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

45 b. The benefits, rights and privileges granted to persons in the  
46 military service by this section shall be extended to and be  
47 applicable to any person who, in order to participate in assemblies  
48 or annual training or in order to attend service schools conducted by

1 the Armed Forces of the United States for a period or periods up to  
2 and including three months, temporarily leaves or has left his  
3 position, other than a temporary position, in the employ of any  
4 employer and who, being qualified to perform the duties of such  
5 position, makes application for reemployment within 10 days after  
6 completion of such temporary period of service; provided that no  
7 such person shall be entitled to the said benefits, rights and  
8 privileges for such attendance at any service school or schools  
9 exceeding a total of three months during any four-year period.

10 c. The benefits, rights and privileges granted to persons in the  
11 military service by this section shall be extended to and be  
12 applicable to any person who is or becomes a member of the  
13 organized militia or of a reserve component of the Armed Forces of  
14 the United States and who, because of such membership is  
15 discharged by his employer or whose employment is suspended by  
16 his employer because of such membership and who, being qualified  
17 to perform the duties of such position, makes application for  
18 reemployment or termination of the period of his suspension within  
19 10 days after such discharge or suspension.

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

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

36 e. In case any private employer fails or refuses to comply with  
37 the provisions of this section the Superior Court shall have the  
38 power, upon the filing of a complaint, by the person entitled to the  
39 benefits of such provisions, to specifically require such employer to  
40 comply with such provisions, and may, as an incident thereto,  
41 compensate such person for any loss of wages or benefits suffered  
42 by reason of such employer's unlawful action. The court shall order  
43 a speedy hearing in any such case, and shall advance it on the  
44 calendar. Any person claiming to be entitled to the benefits of the  
45 provisions of this section may appear and be represented by  
46 counsel, or, upon application to the Attorney General of the State,  
47 may request that the Attorney General appear and act on his behalf.  
48 If the Attorney General is reasonably satisfied that the person so

1 applying is entitled to such benefits, he shall appear and act as  
2 attorney for such person in the amicable adjustment of the claim, or  
3 in the filing of any complaint and the prosecution thereof. In the  
4 hearing and determination of such applications under this section,  
5 no fees or court costs shall be assessed against a person so applying  
6 for such benefits.

7 (cf: P.L2007, c.239, s.2)

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

10 11A:8-1. a. A permanent employee may be laid off for economy,  
11 efficiency or other related reason. A permanent employee shall  
12 receive 45 days' written notice, unless in State government a greater  
13 time period is ordered by the commission, which shall be served  
14 personally or by certified mail, of impending layoff or demotion  
15 and the reasons therefor. The notice shall expire 120 days after  
16 service unless extended by the commission for good cause. At the  
17 same time the notice is served, the appointing authority shall  
18 provide the commission with a list of the names and permanent  
19 titles of all employees receiving the notice. The Civil Service  
20 Commission shall adopt rules to implement employee layoff rights  
21 consistent with the provisions of this section. The commission shall  
22 consult with the advisory board representing labor organizations  
23 prior to such recommendations.

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

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

43 d. For purposes of State service, "job location" means a county.  
44 The commission shall assign a job location to every facility and  
45 office within a State department or autonomous agency. For  
46 purposes of local service, "job location" means the entire political  
47 subdivision and includes any facility operated by the political  
48 subdivision outside its geographic borders.

1 e. For purposes of determining lateral title rights in State and  
2 political subdivision service, title comparability shall be determined  
3 by the commission based upon whether the: (1) titles have  
4 substantially similar duties and responsibilities; (2) education and  
5 experience requirements for the titles are identical or similar; (3)  
6 employees in an affected title, with minimal training and  
7 orientation, could perform the duties of the designated title by  
8 virtue of having qualified for the affected title; and (4) special  
9 skills, licenses, certifications or registration requirements for the  
10 designated title are similar and do not exceed those which are  
11 mandatory for the affected title. Demotional title rights shall be  
12 determined by the commission based upon the same criteria, except  
13 that the demotional title shall have lower but substantially similar  
14 duties and responsibilities as the affected title.

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

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

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

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

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

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

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

47 (6) in State service, and in local jurisdictions having a  
48 performance evaluation program approved by the commission, the

1 position held by the permanent employee whose performance rating  
2 within the most recent 12 months in the employee's permanent title  
3 was marginally below standards or an equivalent rating; and

4 (7) the position held by the permanent employee with the least  
5 seniority.

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

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

17 For the purposes of this section, "organized militia" means the  
18 Army and Air National Guard of New Jersey or any other state, and  
19 "active service" includes National Guard active service ordered by a  
20 Governor of a state.

21 (cf: P.L.2008, c.29, s.69)

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23 4. This act shall take effect immediately.

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#### STATEMENT

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

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