

ASSEMBLY, No. 5819

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 7, 2019

Sponsored by:

**Assemblywoman ANNETTE QUIJANO
District 20 (Union)**

Co-Sponsored by:

**Assemblywoman Gove, Assemblyman Rumpf, Assemblywoman DiMaso,
Assemblymen Wirths, Space, Tully, Assemblywoman Swain and
Assemblyman Conaway**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/26/2019)

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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.

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