

ASSEMBLY, No. 217

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblywoman DIANNE C. GOVE

District 9 (Atlantic, Burlington and Ocean)

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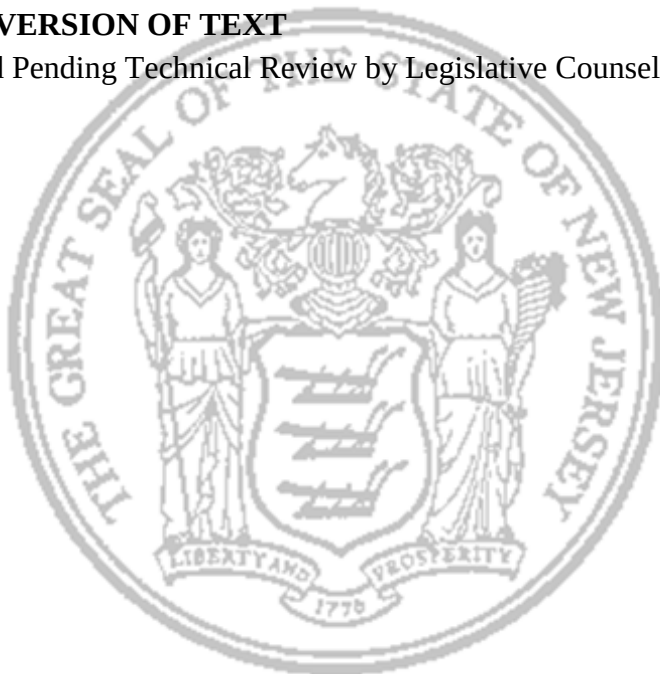
Assemblymen Rumpf and Benson

SYNOPSIS

Modifies laws regarding compensation and leaves of absence for certain public employees who served in the military; requires public employers follow certain policies and procedures for leaves of absence.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/27/2020)

1 **AN ACT** concerning compensation, and leaves of absence for certain
2 active and retired members of the military who are public
3 employees, and amending various sections of the statutory law
4 and supplementing Title 38 of the Revised Statutes.

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

8
9 1. R.S.38:23-1 is amended to read as follows:

10 38:23-1. a. A permanent or full-time temporary officer or
11 employee of the State or of a board, commission, authority or other
12 instrumentality of the State, or of a county, school district or
13 municipality, who is a member of the organized reserve of the
14 Army of the United States, United States Naval Reserve, United
15 States Air Force Reserve or United States Marine Corps Reserve, or
16 other organization affiliated therewith, including the National
17 Guard of other states, shall be entitled, in addition to pay received,
18 if any, as a member of a reserve component of the Armed Forces of
19 the United States, to leave of absence from his or her respective
20 duty without loss of pay or time on all work days on which he or
21 she shall be engaged in any period of Federal active duty, provided,
22 however, that such leaves of absence shall not exceed 30 work days
23 in any calendar year. Such leave of absence shall be in addition to
24 the regular vacation or other accrued leave allowed such officer or
25 employee.

26 Any leave of absence for such duty in excess of 30 work days
27 shall be without **【pay but without】** loss of time, and the officer or
28 employee shall be entitled to pay as provided in an applicable
29 collective negotiations agreement in effect at the time of the leave
30 of absence. If an applicable collective negotiations agreement is
31 not in effect or does not address this matter or a person is not
32 covered by a collective negotiations agreement, the officer or
33 employee shall be entitled to pay as the public employer may, at its
34 sole discretion, provide.

35 An officer or employee entitled to a leave of absence also shall
36 be entitled, during the period of the leave of absence, to payment by
37 the public employer, on behalf of the officer or employee, of any
38 contribution required of the officer or employee to a retirement
39 system or program and to a health care benefits plan or program, in
40 addition to any contribution or payment required of the public
41 employer.

42 The leave of absence to which an officer or employee is entitled
43 shall include:

44 leave for one travel day to the active duty location if the officer
45 or employee resides 50 or more miles from the location of duty and

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.

checks in to lodgings at or near the duty location for the purpose of resting prior to undertaking the military service obligation; and leave, prior to undertaking the military service obligation, of five days if the length of service will be 30 to 180 days, and of ten days if the length of service will be 181 days or more.

For the purposes of this section:

“Federal active duty” means:

the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority, including active duty, active duty for training, initial active duty for training, and inactive duty training;

service on a full time basis in the National Guard;

time for medical appointments and consultations, surgery, counseling for post traumatic stress disorder, recuperation, rehabilitation, and recovery from an injury sustained or aggravated as a result of military service; and

time for an examination to determine fitness for performing funeral honors duty as authorized by 10 U.S.C. s.12503 or 32 U.S.C. s.115.

b. Notwithstanding subsection a. of this section, a full-time temporary officer or employee who has served under such temporary appointment for less than one year shall receive for the service hereinabove described leave without pay but without loss of time.

(cf: P.L.2001, c.351, s.1)

2. Section 1 of P.L.1951, c.18 (C.38:23-4.1) is amended to read as follows:

1. As used in the act to which this act is a supplement, the term "emergency" shall include, but shall not be limited to, any period of time after June **【twenty-third, one thousand nine hundred and fifty】** 23, 1950, and prior to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December **【sixteenth, one thousand nine hundred and fifty】** 16, 1950, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States, and any period of time after September 11, 2001, and prior to the termination or suspension of the Global War on Terrorism as declared by the President of the United States.

(cf: P.L.1951, c.18, s.1)

3. N.J.S.38A:4-4 is amended to read as follows:

38A:4-4. a. A permanent or full-time temporary officer or employee of the State or of a board, commission, authority or other instrumentality of the State or of a county, school district or municipality who is a member of the organized militia shall be entitled, in addition to pay received, if any, as a member of the

1 organized militia, to leave of absence from his or her respective
2 duties without loss of pay or time on all days during which he or
3 she shall be engaged in any period of State or Federal active duty;
4 provided, however, that the leaves of absence for Federal active
5 duty or active duty for training shall not exceed 90 work days in the
6 aggregate in any calendar year. Any leave of absence for such duty
7 in excess of 90 work days shall be **without pay but** without loss
8 of time, and the officer or employee shall be entitled to pay as
9 provided in an applicable collective negotiations agreement in
10 effect at the time of the leave of absence. If an applicable collective
11 negotiations agreement is not in effect or does not address this
12 matter or a person is not covered by a collective negotiations
13 agreement, the officer or employee shall be entitled to pay as the
14 public employer may, at its sole discretion, provide.

15 The leave of absence to which an officer or employee is entitled
16 shall include leave for one travel day to the active duty location if
17 the officer or employee resides 50 or more miles from the location
18 of duty and checks in to lodging at or near the duty location for the
19 purpose of resting prior to undertaking the military service
20 obligation.

21 b. Leave of absence for such military duty shall be in addition
22 to the regular vacation or other accrued leave allowed such officers
23 and employees by the State, county or municipal law, ordinance,
24 resolution, or regulation. If the officer or employer is not entitled to
25 pay during a leave of absence, the officer or employee may elect to
26 use accrued vacation or other paid leave during the leave of
27 absence. The public employer shall not require that officer or
28 employee to use vacation or other accrued paid leave during the
29 leave of absence.

30 c. Notwithstanding subsection a. of this section, a full-time
31 temporary officer or employee who has served under such
32 temporary appointment for less than one year shall receive for the
33 service hereinabove described leave without pay but without loss of
34 time.

35 (cf: P.L.2001, c.351, s.3)

36
37 4. (New section) a. The State and each political subdivision of
38 the State shall prepare and maintain written policies and procedures
39 to be followed with regard to leaves of absence by officers and
40 employees who are members of the Armed Forces of the United
41 States and the reserve components thereof, including the National
42 Guard. The policies and procedures shall address all matters
43 regarding leaves of absence pursuant to R.S.38:23-1, R.S.38:23-4,
44 N.J.S.38A:4-4, and any other statute regarding leaves of absence,
45 compensation, and benefits of such officers and employees. The
46 policies and procedures shall specify, among other matters,
47 documentation requirements.

1 The policies and procedures shall be applied in a uniform and
2 fair manner.

3 b. Notice of any changes to the policies and procedures shall be
4 given promptly to all affected officers and employees and training
5 shall be provided to ensure proper implementation of the policies
6 and administration of the procedures.

7 c. Notwithstanding any other provision of a law, rule, or
8 regulation to the contrary, upon receipt of a request for a leave of
9 absence by an officer or employee, the public employer shall inform
10 an officer or employee in writing, within 90 days after the receipt,
11 of any issues or matters regarding the leave request. If the
12 employer does not notify the officer or employee within this time
13 period, the employer shall be permanently barred from raising any
14 such issue or matter, or charging the officer or employee with an
15 administrative violation.

16 d. The receipt of required documentation submitted by an
17 officer or employee shall be acknowledged in writing by the public
18 employer.

19 e. A public employer shall provide a full accounting to the
20 officer or employee of all matters regarding pay within a reasonable
21 period of time and in a reasonable manner.

22 f. All records for each officer and employee shall be
23 maintained by the public employer for a period of not less than 10
24 years.

25 g. No provision of this section nor any amendatory provision of
26 P.L. , c. (pending before the Legislature as this bill) shall alter
27 any duty to negotiate leaves of absences for such officers or
28 employees as otherwise required by law.

29 h. If in any action brought in a court of law by a public officer
30 or employee a public employer is found to be in violation of this
31 section or any other statute concerning the employment,
32 compensation, or leave of absence of an officer or employee who
33 served as a member of the United States Armed Forces or the
34 National Guard, the court shall award to the officer or employee
35 reasonable attorney's fees and other fees and costs.

36
37 5. This act shall take effect immediately.
38
39

40 STATEMENT
41

42 This bill makes various changes to the laws concerning
43 termination, compensation, and leaves of absence of certain active
44 and retired members of the United States military, the reserves, and
45 the National Guard who are public employees.

46 N.J.S.A.38:23-1 requires a public employer to provide a paid
47 leave of absence for federal active duty to public employees who
48 are members of the reserves of the United States military, including

1 the National Guard of other states. The employer must provide paid
2 leave for 30 work days per year. Leave after 30 days is provided
3 without pay. Also, N.J.S.A.38A:4-4 requires a public employer to
4 provide a paid leave of absence for State or federal active duty to
5 public employees who are members of the New Jersey National
6 Guard. The employer must provide paid leave for 90 work days per
7 year. Leave after 90 days is provided without pay. This bill
8 provides that the public employee would be entitled to pay for the
9 days over 30 or the days over 90, as appropriate, if pay is provided
10 in an applicable collective negotiations agreement in effect at the
11 time of the leave of absence. If an applicable collective
12 negotiations agreement is not in effect or does not address this
13 matter or a person is not covered by a collective negotiations
14 agreement, the officer or employee will be entitled to pay only if
15 the public employer decides to provide it.

16 Also for the purposes of N.J.S.A.38A:4-4, the bill permits a
17 public employee to use, at the employee's sole discretion, accrued
18 paid leave for State and federal active duty as a member of the New
19 Jersey National Guard and the employer cannot require an
20 employee to use that time for leave.

21 For the purposes of N.J.S.A.38:23-1, this bill entitles a public
22 employee, during the leave of absence, to payment by the public
23 employer, on behalf of the employee, of any contribution required
24 of the officer or employee to a retirement system or program and to
25 a health care benefits plan or program, in addition to any
26 contribution or payment required of the public employer.

27 For the purposes of N.J.S.A.38:23-1, this bill entitles a public
28 employee to: (1) leave for one travel day to the active duty location
29 if the officer or employee resides 50 or more miles from the
30 location of duty and checks in to lodgings at or near the duty
31 location for the purpose of resting prior to undertaking the military
32 service obligation; and (2) leave, prior to undertaking the military
33 service obligation, of five days if the length of service will be 30 to
34 180 days, and of ten days if the length of service will be 181 days or
35 more.

36 Also for the purposes of N.J.S.A.38:23-1, the bill defines
37 "Federal active duty" to mean:

38 the performance of duty on a voluntary or involuntary basis in a
39 uniformed service under competent authority, including active duty,
40 active duty for training, initial active duty for training, and inactive
41 duty training;

42 service on a full time basis in the National Guard;

43 time for medical appointments and consultations, surgery,
44 counseling for post traumatic stress disorder, recuperation,
45 rehabilitation, and recovery from an injury sustained or aggravated
46 as a result of military service; and

47 time for an examination to determine fitness for performing
48 funeral honors duty as authorized by federal law.

1 N.J.S.A.38:23-4.1 defines “emergency” for the purposes of
2 N.J.S.A.38:23-4, which provides that a public employee who enters
3 the active military service of the United States or of this State in
4 time of war or emergency must be granted a leave of absence for
5 that service and for three months after receiving a discharge from
6 service. If the public employee is incapacitated by injury or
7 sickness at the time of discharge, the leave must be extended until
8 three months after the employee’s discharge, or until the expiration
9 of two years from the date of discharge. N.J.S.A.38:23-4 also
10 provides that during the leave, the employee cannot be terminated
11 or laid off if entry into the military occurred in time of war or
12 emergency. During the period of leave, the employee is entitled to
13 all the rights, privileges and benefits of the public employment.
14 The leave may be granted with or without pay. The employee is
15 entitled to resume the employment if he applies before the
16 expiration of the leave. The bill defines “emergency” for the
17 purposes of this statute to include any period of time from
18 September 11, 2001 until the termination of the Global War on
19 Terrorism as declared by the President of the United States.

20 Finally, the bill requires public employers to prepare and
21 maintain written policies and procedures to be followed with regard
22 to leaves of absence by officers and employees who are members of
23 the Armed Forces of the United States and the reserve components
24 thereof, including the National Guard. The policies must specify
25 documentation requirements for leave, and the receipt of required
26 documentation must be acknowledged in writing by the public
27 employer. The policies and procedures must be applied in a
28 uniform and fair manner. Notice of any changes to the policies and
29 procedures must be given promptly to all affected officers and
30 employees and training must be provided to ensure proper
31 implementation and administration. Upon receipt of a request for a
32 leave or absence by an officer or employee, the public employer
33 must inform an officer or employee in writing, within 90 days after
34 the receipt, of any issues or matters regarding the leave request. If
35 the employer does not notify the officer or employee within such
36 time period, the employer will be permanently barred from raising
37 any such issue or matter, or charging the officer or employee with
38 an administrative violation. A public employer must provide a full
39 accounting to an officer or employee of all matters regarding pay
40 within a reasonable period of time and in a reasonable manner. All
41 records for each officer or employee must be maintained by the
42 public employer for a period of not less than 10 years. If in any
43 action brought in a court of law by an officer or employee, a public
44 employer is found to be in violation of any statutes concerning the
45 employment, compensation, or leave of absence of a public officer
46 or employee who served as a member of the United States Armed
47 Forces or the National Guard, the court must award to the officer or
48 employee reasonable attorney’s fees and other fees and costs.