

AN ACT concerning veterans.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Service Member Employment and Reemployment Rights Act is amended by changing Sections 1-10, 1-15, 5-5, and 5-10 as follows:

(330 ILCS 61/1-10)

Sec. 1-10. Definitions. As used in this Act:

"Accrue" means to accumulate in regular or increasing amounts over time subject to customary allocation of cost.

"Active duty" means any full-time military service regardless of length or voluntariness including, but not limited to, annual training, full-time National Guard duty, and State active duty. "Active duty" does not include any form of inactive duty service such as drill duty or muster duty. "Active duty", unless provided otherwise, includes active duty without pay.

"Active service" means all forms of active and inactive duty regardless of voluntariness including, but not limited to, annual training, active duty for training, initial active duty training, overseas training duty, full-time National Guard duty, active duty other than training, State active duty, mobilizations, and muster duty. "Active service" does

not include absences to work as a military technician, sometimes known as a federal dual-status technician. "Active service", unless provided otherwise, includes active service without pay. "Active service" includes:

(1) Reserve component voluntary active service means service under one of the following authorities:

(A) any duty under 32 U.S.C. 502(f) (1) (B);

(B) active guard reserve duty, operational support, or additional duty under 10 U.S.C. 12301(d) or 32 U.S.C. 502(f) (1) (B);

(C) funeral honors under 10 U.S.C. 12503 or 32 U.S.C. 115;

(D) duty at the National Guard Bureau under 10 U.S.C. 12402;

(E) unsatisfactory participation under 10 U.S.C. 10148 or 10 U.S.C. 12303;

(F) discipline under 10 U.S.C. 802(d);

(G) extended active duty under 10 U.S.C. 12311;
and

(H) reserve program administrator under 10 U.S.C. 10211.

(2) Reserve component involuntary active service includes, but is not limited to, service under one of the following authorities:

(A) annual training or drill requirements under 10 U.S.C. 10147, 10 U.S.C. 12301(b), or 32 U.S.C. 502(a);

(B) additional training duty or other duty under 32 U.S.C. 502(f) (1) (A);

(C) pre-planned or pre-programmed combatant commander support under 10 U.S.C. 12304b;

(D) mobilization under 10 U.S.C. 12301(a) or 10 U.S.C. 12302;

(E) presidential reserve call-up under 10 U.S.C. 12304;

(F) emergencies and natural disasters under 10 U.S.C. 12304a or 14 U.S.C. 712;

(G) muster duty under 10 U.S.C. 12319;

(H) retiree recall under 10 U.S.C. 688;

(I) captive status under 10 U.S.C. 12301(g);

(J) insurrection under 10 U.S.C. 331, 10 U.S.C. 332, or 10 U.S.C. 12406;

(K) pending line of duty determination for response to sexual assault under 10 U.S.C. 12323; and

(L) initial active duty for training under 10 U.S.C. 671.

Reserve component active service not listed in paragraph (1) or (2) shall be considered involuntary active service under paragraph (2).

"Active service without pay" means active service performed under any authority in which base pay is not received regardless of other allowances.

"Annual training" means any active duty performed under

Section 10147 or 12301(b) of Title 10 of the United States Code or under Section 502(a) of Title 32 of the United States Code.

"Base pay" means the main component of military pay, whether active or inactive, based on rank and time in service. It does not include the addition of conditional funds for specific purposes such as allowances, incentive and special pay. Base pay, also known as basic pay, can be determined by referencing the appropriate military pay chart covering the time period in question located on the federal Defense Finance and Accounting Services website or as reflected on a federal Military Leave and Earnings Statement.

"Benefits" includes, but is not limited to, the terms, conditions, or privileges of employment, including any advantage, profit, privilege, gain, status, account, or interest, including wages or salary for work performed, that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

"Differential compensation" means pay due when the employee's daily rate of compensation for military service is less than his or her daily rate of compensation as a public employee.

"Employee" means anyone employed by an employer. "Employee" includes any person who is a citizen, national, or permanent resident of the United States employed in a workplace that the State has legal authority to regulate business and employment. "Employee" does not include an independent contractor.

"Employer" means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities, including:

- (1) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

- (2) an employer of a public employee;

- (3) any successor in interest to a person, institution, organization, or other entity referred to under this definition; and

- (4) a person, institution, organization, or other entity that has been denied initial employment in violation of Section 5-15.

"Inactive duty" means inactive duty training, including drills, consisting of regularly scheduled unit training assemblies, additional training assemblies, periods of appropriate duty or equivalent training, and any special additional duties authorized for reserve component personnel by appropriate military authority. "Inactive duty" does not include active duty.

"Military leave" means a furlough or leave of absence while performing active service. It cannot be substituted for accrued vacation, annual, or similar leave with pay except at the sole discretion of the service member employee. It is not a benefit of employment that is requested but a legal requirement upon receiving notice of pending military service.

"Military service" means:

(1) Service in the Armed Forces of the United States, the National Guard of any state or territory regardless of status, and the State Guard as defined in the State Guard Act. "Military service", whether active or reserve, includes service under the authority of U.S.C. Titles 10, 14, or 32, or State active duty.

(2) Service in a federally recognized auxiliary of the United States Armed Forces when performing official duties in support of military or civilian authorities as a result of an emergency.

(3) A period for which an employee is absent from a position of employment for the purpose of medical or dental treatment for a condition, illness, or injury sustained or aggravated during a period of active service in which treatment is paid by the United States Department of Defense Military Health System.

"Orders in lieu of annual training" means any paid active duty performed by a service member which has been designated by that service member's military authority as a replacement

or substitution of that service member's annual training obligation. Employers may request documentation from a service member's military unit to confirm that periods of military service qualify as orders in lieu of annual training.

"Public employee" means any person classified as a full-time employee of the State of Illinois, a unit of local government, a public institution of higher education as defined in Section 1 of the Board of Higher Education Act, or a school district, other than an independent contractor.

"Reserve component" means the reserve components of Illinois and the United States Armed Forces regardless of status.

"Service member" means any person who is a member of a military service.

"State active duty" means full-time State-funded military duty under the command and control of the Governor and subject to the Military Code of Illinois.

"Unit of local government" means any city, village, town, county, or special district.

(Source: P.A. 102-1030, eff. 5-27-22; 103-154, eff. 6-30-23.)

(330 ILCS 61/1-15)

Sec. 1-15. Differential compensation.

(a) As used in this Section, "work days" are the actual number of shifts ~~days~~ the employee would have worked during the period of military leave but for the service member's

military obligation. "Work days" are tabulated up to 24 continuous hours in a shift, regardless if the shift extends into the next calendar day. A shift that extends beyond 24 continuous hours will be calculated as an additional work day. ~~without regard for the number of hours in a work day. Work hours that extend into the next calendar day count as 2 work days.~~

(b) Differential compensation under this Act is calculated on a daily basis and only applies to days in which the employee would have otherwise been scheduled or required to work as a public employee. Differential compensation shall be paid to all forms of active service except active service without pay. Differential compensation is calculated as follows:

(1) To calculate differential compensation, subtract the daily rate of compensation for military service from the daily rate of compensation as a public employee.

(2) To calculate the daily rate of compensation as a public employee, divide the employee's regular compensation as a public employee during the pay period by the number of work days in the pay period.

(3) To calculate the daily rate of compensation for military service, divide the employee's base pay for the applicable military service by the number of calendar days in the month the service member was paid by the military. For purposes of inactive duty, the daily rate of compensation for military service is calculated in

accordance with the applicable drill pay chart issued by
Defense Finance and Accounting Services.

(Source: P.A. 100-1101, eff. 1-1-19.)

(330 ILCS 61/5-5)

Sec. 5-5. Basic protections. This Section incorporates Sections 4304, 4312, 4313, 4316, 4317, and 4318 of the Uniformed Services Employment and Reemployment Rights Act under Title 38 of the United States Code, as may be amended, including case law and regulations promulgated under that Act, subject to the following:

(1) For the purposes of this Section, all employment rights shall be extended to all employees in military service under this Act, unless otherwise stated.

(2) Military leave. A service member employee is not required to get permission from his or her employer for military leave. The service member employee is only required to give such employer advance notice of pending service. This advance notice entitles a service member employee to military leave.

An employer may not impose conditions for military leave, such as work shift replacement, not otherwise imposed by this Act or other applicable law. This paragraph shall not be construed to prevent an employer from providing scheduling options to employees in lieu of paid military leave.

A service member employee is not required to accommodate his or her employer's needs as to the timing, frequency, or duration of military leave; however, employers are permitted to bring concerns over the timing, frequency, or duration of military leave to the attention of the appropriate military authority. The accommodation of these requests are subject to military law and discretion.

Military necessity as an exception to advance notice of pending military leave for State active duty will be determined by appropriate State military authority and is not subject to judicial review.

For purposes of notice of pending military service under paragraphs (2) or (3) of the definition of "military service" under Section 1-10, an employer may require notice by appropriate military authority on official letterhead. For purposes of this paragraph, notice exceptions do not apply.

(3) Service, efficiency, and performance rating. A service member employee who is absent on military leave shall, minimally, for the period of military leave, be credited with the average of the efficiency or performance ratings or evaluations received for the 3 years immediately before the absence for military leave. Additionally, the rating shall not be less than the rating that he or she received for the rated period immediately

prior to his or her absence on military leave. In computing seniority and service requirements for promotion eligibility or any other benefit of employment, the period of military duty shall be counted as civilian service. This paragraph does not apply to probationary periods.

(4) State active duty ineligible discharge. For purposes of State active duty, a disqualifying discharge or separation will be the State equivalent under the Military Code of Illinois for purposes of ineligibility of reemployment under the Uniformed Services Employment and Reemployment Rights Act as determined by appropriate State military authority.

(5) A retroactive upgrade of a disqualifying discharge or release will restore reemployment rights providing the service member employee otherwise meets this Act's eligibility criteria.

(6) A service member whose employment with an employer is interrupted by a period of active service shall be permitted, upon request of that service member, to use during such period of service any vacation, annual, or similar leave with pay accrued by the service member before the commencement of such period of active service. No employer may require any such service member to use vacation, annual, or similar leave during such period of active service. This provision expressly applies to both paid and unpaid active service, including, but not limited

to: travel to and from military orders, rest periods immediately before or after military orders, and military service during which the service member does not receive pay from the military.

(Source: P.A. 100-1101, eff. 1-1-19.)

(330 ILCS 61/5-10)

Sec. 5-10. Additional benefits for public employee members of a reserve component.

(a) Concurrent compensation. During periods of military leave for annual training or orders in lieu of annual training, public employees shall continue to receive full compensation as a public employee for up to 30 days per calendar year and military leave for purposes of receiving concurrent compensation may be performed nonsynchronously. Public employees may receive concurrent compensation for both annual training orders and orders in lieu of annual training in the same calendar year; however, the combined total of their concurrent compensation shall not exceed 30 days in a calendar year.

(b) Differential Compensation. During periods of military leave for active service, public employees shall receive differential compensation subject to the following:

(1) Public employees may elect the use of accrued vacation, annual, or similar leave with pay in lieu of differential compensation during any period of military

leave.

(2) Differential compensation for voluntary active service under Section 1-10 is limited to 60 work days in a calendar year.

(3) After a public employee is absent from his or her employment for a consecutive 3-year period while performing voluntary active service, the employee's entitlement to differential compensation shall be terminated. Upon return to work with his or her employer for more than 90 calendar days, the public employee's right to differential pay shall be reinstated. Nothing in this Section shall entitle a public employee to differential pay in excess of 60 work days per calendar year for voluntary active service.

(4) Public employees are not entitled to differential pay under this Section for periods of unpaid active service including, but not limited to: travel to and from military orders, rest periods immediately before or after military orders, and military service in which the public employee does not receive pay from the military. ~~(3) Differential compensation shall not be paid for active service without pay.~~

(5) ~~(4)~~ Public employees who have exhausted concurrent compensation under subsection (a) of Section 5-10 in a calendar year shall receive differential compensation when authorized under subsection (b) of Section 5-10 in the

same calendar year.

(c) Employer-based health plan benefits shall continue in accordance with Section 5-5 of this Act, except the employer's share of the full premium and administrative costs shall continue to be paid by the employer for active duty.

(d) In the event that 20% or more employees of a unit of local government are mobilized under 10 U.S.C. 12301(a), 10 U.S.C. 12302, 10 U.S.C. 12304, or 10 U.S.C. 12304a, or 14 U.S.C. 712 concurrently, additional benefits under this Section are not required without funding for that purpose.

(Source: P.A. 100-1101, eff. 1-1-19.)

Section 99. Effective date. This Act takes effect upon becoming law.