

## CHAPTER 239

AN ACT concerning certain employment protections for employees on military leave in time of war or emergency 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:

C.38:23-4 Leave of absence to employees of State, county, municipality or of other political subdivision entering military or naval service.

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, in time of war or an 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 was in time of war or an 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 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.

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

C.38:23C-20 Reemployment of persons after completion of military service.

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 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.

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.

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

Layoff; inapplicable to those on certain military leave.

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 commissioner, 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 commissioner for good cause. At the same time the notice is served, the appointing authority shall provide the commissioner with a list of the names and permanent titles of all employees receiving the notice. The board shall adopt rules to implement employee layoff rights consistent with the provisions of this section, upon recommendation by the commissioner. The commissioner 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 commissioner may establish broader layoff units.

d. For purposes of State service, "job location" means a county. The commissioner 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 department 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 commissioner 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 department, 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 department, 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 commissioner 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 in time of war or emergency be laid off.

4. This act shall take effect immediately.

Approved January 3, 2008.