

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2155

By Committee on Veterans, Military and Homeland Security

1-28

1 AN ACT concerning militia; relating to reemployment of persons called to
2 duty; amending K.S.A. 48-517 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 48-517 is hereby amended to read as follows: 48-
6 517. (a) Any person *employed in the state of Kansas* who is called or
7 ordered to **state** active duty by ~~the~~ *this state, or any other state*, whether
8 such person is a member of the Kansas **army** national guard, Kansas air
9 national guard, the Kansas state guard or other military force of this state,
10 *or any other state*, and who gave notice thereof to the person's employer,
11 upon satisfactory performance of and release and return from such military
12 duty or recovery from disease or injury resulting ~~therefrom~~ *from such*
13 *military duty*, under honorable conditions, shall be reinstated in or restored
14 to the position of employment, except a temporary position, which the
15 person held at the time the person was called to **state active** duty. The
16 person shall report to the person's place of employment within 72 hours
17 after release from duty or recovery from disease or injury resulting
18 ~~therefrom~~ *from such military duty*, as the case may be, and the person's
19 employer or the employer's successor in interest, whether an agency of the
20 state, a political subdivision of the state or a private employer, shall
21 reinstate or restore the person in the same position which the person left at
22 the time of the person's call to duty at no less compensation than that
23 which the person was receiving at the time of the person's call to duty or to
24 a position of like seniority, status and pay. However, if the person is not
25 qualified to perform the duties of the same position by reason of disability
26 sustained during the person's call to duty but is qualified to perform
27 another position in the employ of the employer or the employer's
28 successor, the employer or the employer's successor in interest shall
29 employ such person in another position, the duties of which the person is
30 qualified to perform, that will provide like seniority, status and pay or the
31 nearest approximation thereof consistent with the circumstances of the
32 case. Any person called to **state active** duty shall receive, upon release
33 ~~under honorable conditions~~ **from state active duty**, documentation of
34 ~~honorable~~ **such person's** service to ~~the~~ *this state or any other state*, ~~as~~
35 ~~provided by the adjutant general~~ **in a memorandum certified by such**
36 **person's commanding officer.**

1 (b) Any person who is restored to the person's position in accordance
2 with the provisions of subsection (a) shall be considered as having been on
3 temporary leave of absence during the period for which the person is
4 called to **state** active duty, shall be restored without loss of seniority, shall
5 be entitled to participate in any benefits offered by the employer pursuant
6 to established rules and practices relating to employees on leave of
7 absence in effect with the employer at the time the person was called to
8 duty as provided ~~herein~~ *in this section* and shall not be discharged from the
9 person's position without cause within one year after restoration to the
10 position.

11 (c) It is understood and declared to be the intent of this section that
12 any person who is restored to a position in accordance with the provisions
13 of subsections (a) and (b) shall be restored in such manner as to give the
14 person such status in the person's employment as the person would have
15 enjoyed if the person had continued in such employment continuously
16 from the time of the person's answering the call to state **active** duty until
17 the time of the person's restoration to such employment.

18 (d) An application on behalf of a person claiming to be entitled to any
19 right or benefit under this section may be made to the attorney general. If
20 the attorney general is reasonably satisfied that the person is entitled to the
21 right or benefit sought, the attorney general may appear on behalf of and
22 act as attorney for the person on whose behalf the application is submitted
23 and may commence an action in the district court of the county for
24 appropriate relief for the person. The district court of the county where the
25 employer of a person claiming a right or benefit under this section, or the
26 successor in interest to such employer, maintains a place of business shall
27 have jurisdiction of any action filed by or on behalf of such person. If the
28 court determines that the employer or the employer's successor in interest
29 has failed to comply with the provisions of this section, the court may
30 order the employer or the employer's successor in interest to: (1) Comply
31 with the provisions of this section; and (2) compensate the person for any
32 loss of wages or benefits suffered by reason of the failure of the employer
33 or employer's successor in interest to comply with the provisions of this
34 section. In addition, the court may order the employer or the employer's
35 successor in interest to pay the person an additional amount equal to the
36 amount authorized by subsection (d)(2) if the court determines that the
37 employer or the employer's successor in interest willfully failed to comply
38 with the provisions of this section. No fees or court costs shall be taxed
39 against any person commencing an action under this subsection. The
40 employer or the employer's successor in interest shall be deemed the only
41 necessary party defendant to any such action.

42 (e) In any case in which two or more persons who are entitled to be
43 restored to a position under the provisions of this section or of any law

1 relating to similar reemployment or reinstatement benefits left the same
2 position in order to enter ~~the~~ *this state's or any other state's* call to **active**
3 duty, the person who left the position first shall have the prior right to be
4 restored thereto, without prejudice to the reemployment rights of the other
5 person or persons to be restored.

6 (f) Upon request, the adjutant general shall provide technical
7 assistance to any person claiming to be entitled to any right or benefit
8 under this section **during the course of an investigation subsequent to a**
9 **claim as provided in subsection (d)** and, when appropriate, to the
10 employer or employer's successor in interest. The adjutant general shall
11 **place an investigating officer on state active duty orders to** investigate
12 the person's claim and attempt to resolve the claim by making reasonable
13 efforts to ensure that the employer or employer's successor in interest
14 complies with the provisions of this section. If such efforts are not
15 successful, the adjutant general shall notify the person of the results of the
16 investigation and the person's entitlement to proceed as provided by
17 subsection (d).

18 (g) (1) An employer or an employer's successor in interest shall not
19 be required to reemploy a person under this section if:

20 (A) The circumstances of the employer or the employer's successor in
21 interest have so changed as to make reemployment of the person
22 impossible or unreasonable;

23 (B) reemployment of the person would impose an undue hardship on
24 the employer or the employer's successor in interest; or

25 (C) the employment from which the person leaves to serve in military
26 duty is for a brief, nonrecurrent period and there is no reasonable
27 expectation that such employment will continue indefinitely or for a
28 significant period.

29 (2) As used in subsection ~~(f)~~(g)(1), "undue hardship" means actions
30 requiring significant difficulty or expense, when considered in light of:

31 (A) The nature and cost of the action needed under this act;

32 (B) the overall financial resources of the facility or facilities involved
33 in the provision of the action; the number of persons employed at such
34 facility; the effect on expenses and resources, or the impact otherwise of
35 such action upon the operation of the facility;

36 (C) the overall financial resources of the employer or the employer's
37 successor in interest; the overall size of the business of the employer or the
38 employer's successor in interest with respect to the number of employees;,
39 the number, type and location of its facilities; and

40 (D) the type of operation or operations of the employer or the
41 employer's successor in interest, including the composition, structure and
42 functions of the work force of such employer or successor in interest; the
43 geographic separateness, administrative, or fiscal relationship of the

- 1 facility or facilities in question to the employer or successor in interest.
- 2 Sec. 2. K.S.A. 48-517 is hereby repealed.
- 3 Sec. 3. This act shall take effect and be in force from and after its
- 4 publication in the statute book.