

Effective 5/3/2023

Chapter 8

Employees in Military Service

71A-8-101 Public officers and employees in military service -- Not to be prejudiced thereby -- Refusal to reinstate -- Procedure -- Motion -- Hearing and determination.

- (1) As used in this chapter, "public officer" means the same as that term is defined in Section 67-16-3.
- (2) A public officer who enters state or federal active service in any branch of the armed forces of this state or of the United States shall be granted a leave of absence not to exceed five years during that service.
- (3)
 - (a) A person entitled to a leave of absence under this section shall be restored to the same position, or to a position equivalent to the same position, which the person held immediately prior to the commencement of active military service.
 - (b) A request for restoration of employment under this section must be submitted within 40 days after release from active service.
 - (c) Restoration of employment shall be made within 20 days after submission of the request to the employer.
 - (d) A person returning from active military service may not, without cause, be discharged or subjected to reduction of compensation for a period of one year following a return to employment under this section.
- (4) A person returning to employment under this section:
 - (a) shall retain all personal, sick, and other leave to which the person was entitled immediately prior to the commencement of active military service;
 - (b) shall receive and earn benefits and compensation at a level not less than that to which the person would have been entitled had the officer or employee not been absent due to active military service; and
 - (c) may not be prejudiced, by the preservice employer or that employer's successor in interest, as to employment, appointment, reappointment, reemployment, or promotion by reason of the employee's active military service.
- (5)
 - (a) A public officer may not be required to resign from, vacate, or forfeit a governmental office or position as a consequence of entering into active military service.
 - (b) A person in active military service is not considered to be holding an office or position of trust or employment under the United States government for purposes of determining whether that person is disqualified or prohibited from retaining a position or serving as a public officer.
 - (c) Nothing in this section shall serve to extend a period of employment or term of office beyond that to which the affected person was elected or appointed. A person who is a legislator or public officer for a specific term by virtue of election or appointment is entitled to a leave of absence under this section for a period not to exceed the applicable term.
- (6) A person denied restoration of employment or benefits given under this chapter may petition the district court of the county in which the person resides, or in which the denial occurs, to require the public employer to comply with the provisions of this section without delay. Fees or court costs may not be assessed against the petitioner. The court shall order a speedy hearing in the case and advance it on the calendar so far as reasonably possible. If the court

determines that the petitioner is entitled to relief, the court shall order all appropriate relief, to include compensation for loss of wages and benefits and an award of attorneys' fees and costs.

Renumbered and Amended by Chapter 44, 2023 General Session

71A-8-102 Employees in military service -- Government employees in United States armed forces or National Guard -- Pay allowance for time spent on duty -- Deduction of vacation time prohibited.

- (1) All state employees who are members of the organized reserve of the United States armed forces, including the National Guard of this state, shall be allowed full pay for all time not in excess of 15 days per year spent fulfilling the service requirements of the armed forces of the United States, including the National Guard of this state. This leave shall be in addition to any annual vacation leave with pay to which an employee may be entitled.
- (2) County and municipal employees who are members of the organized reserve of the United States armed forces, including the National Guard of this state, may be allowed up to full pay for all time not in excess of 15 days per year spent fulfilling the service requirements of the armed forces of the United States, including the National Guard of this state. This leave is at the discretion of the employing county or municipality and, if granted, shall be in addition to annual vacation leave with pay.
- (3) The governor, counties, and municipal agencies may adopt ordinances, exceptions, rules, or policies that:
 - (a) provide more than 15 days of paid military leave;
 - (b) provide for differential pay that compensates the difference, if any, between the service member's civilian pay and military pay, not to include allowances; and
 - (c) extend health, dental, vision, disability, and life insurance benefits to members of the National Guard and reserves activated for more than 30 days.

Renumbered and Amended by Chapter 44, 2023 General Session

71A-8-103 Extension of licenses for members of National Guard and reservists ordered to active duty .

- (1) As used in this section, "license" means:
 - (a) any license issued under Title 58, Occupations and Professions; and
 - (b) a license for emergency medical personnel.
- (2) A license held by a member of the National Guard or reserve component of the armed forces that expires while the member is on state or federal active duty is extended until 90 days after the member is discharged from active duty status.
- (3) A license held by a service member that expires while the member is deployed is extended for 90 days after the last date of the deployment listed on the service member's deployment order.
- (4) The licensing agency shall renew a license extended under Subsection (2) or (3) until the next date that the license expires or for the period that the license is normally issued, at no cost to the service member, member of the National Guard, or reserve component of the armed forces if all of the following conditions are met:
 - (a) the service member, National Guard member, or reservist requests renewal of the license within 90 days after the termination date of the activation or deployment orders;
 - (b) the service member, National Guard member, or reservist provides the licensing agency with a copy of the individual's official orders calling the member or reservist to active duty

- or deployment, and official orders discharging the member or reservist from active duty or deployment; and
 - (c) the service member, the National Guard member, or reservist meets all the requirements necessary for the renewal of the license, except the member or reservist need not meet the requirements, if any, that relate to continuing education or training.
- (5) The provisions of this section do not apply:
- (a) to regularly scheduled annual training;
 - (b) in-state active National Guard and reserve orders; or
 - (c) orders that do not require the service member to relocate outside of this state.

71A-8-104 Employees in military service -- Professional liability protection for certain persons ordered to active duty in the armed forces.

- (1) This section applies to a person who:
- (a) is ordered to state or federal military service, other than training; and
 - (b) immediately before receiving the order to military service:
 - (i) was engaged in the furnishing of health-care services or other services determined by rule to be professional services; and
 - (ii) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the service member during the period of the service member's active duty unless the premiums are paid for coverage for that period.
- (2) Coverage of a person referred to in Subsection (1) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with Subsection (3) upon receipt of a written request by the service member.
- (3) A professional liability insurance carrier:
- (a) may not require that premiums be paid by or on behalf of a service member for any professional liability insurance coverage suspended pursuant to Subsection (2); and
 - (b) shall refund any amount paid for coverage for the period of the suspension or, upon the election of the service member, apply the amount for the payment of any premium becoming due upon the reinstatement of the coverage.
- (4) A professional liability insurance carrier is not liable with respect to any claim that is based on professional conduct, including any failure to take any action in a professional capacity of a person that occurs during a period of suspension of that person's professional liability insurance under this section. For the purposes of the preceding sentence, a claim based upon the failure of a professional to make adequate provision for patients to be cared for during the period of the professional's military service is considered an action or failure to take action before the beginning of the period of suspension of professional liability insurance under this section, except in a case in which professional services were provided after the date of the beginning of the period.
- (5)
- (a) Professional liability insurance coverage suspended in the case of any service member pursuant to Subsection (2) shall be reinstated by the insurance carrier on the date on which the service member transmits to the insurance carrier a written request for reinstatement.
 - (b) The request of a service member for reinstatement shall be effective only if the service member transmits the request to the insurance carrier within 30 days after the date on which the service member's military service is terminated. The insurance carrier shall notify the person of the due date for payment of the insurance premium. The premium shall be paid by the person within 30 days after receipt of the notice.

- (6) The period for which professional liability insurance coverage shall be reinstated for a service member under this section may not be less than the balance of the period for which coverage would have continued under the policy if the coverage had not been suspended.
- (7) An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any service member for the minimum period of the reinstatement of coverage required under Subsection (5) to an amount greater than the amount chargeable for the coverage for the period before the suspension, except to the extent of any general increase in the premium amounts charged by that carrier for the same professional liability coverage for other persons similarly covered by the same insurance during the period of the suspension.
- (8) This section does not:
 - (a) require a suspension of professional liability insurance coverage for any person who is not a person referred to in Subsection (1) and who is covered by the same professional liability insurance as a person referred to in Subsection (1); or
 - (b) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.
- (9) A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a person whose professional liability insurance coverage has been suspended under Subsection (2) shall be stayed until the end of the period of the suspension if:
 - (a) the action was commenced during the period or suspension;
 - (b) the action is based on an act or omission that occurred before the date on which the suspension became effective; and
 - (c) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the person.

Renumbered and Amended by Chapter 44, 2023 General Session

71A-8-105 Reserve member of armed forces -- Leave of absence from employment -- Liability of employers.

- (1) Any member of a reserve component of the armed forces of the United States who, pursuant to military orders, enters active duty, active duty for training, inactive duty training, or state active duty shall, upon request, be granted a leave of absence from employment, but for no more than five years.
- (2) Members of the Utah National Guard or the State Defense Force, when ordered to state military service by the governor, have the same rights and protections as provided by federal law for activation to federal military service for the duration of their state service not to exceed five years.
- (3) General officers of the Utah National Guard or the State Defense Force or other officers appointed to a general officer position, when appointed to state employment by the governor or the adjutant general, have the same rights and protections as provided by federal law for activation to federal military service for the duration of their state appointment, even if the state appointment exceeds five years.
- (4) Upon satisfactory release from state or federal orders, or from hospitalization incidental to the orders, the member shall be permitted to return to the prior employment and have the same rights and protections as provided by federal law for activation to federal military service as it

pertains to seniority, status, pay, and vacation the member would have had as an employee if the member had not been absent for military purposes.

- (5) Any employer who willfully deprives an employee who is absent as a member under this chapter of any of the benefits under this chapter or discriminates in hiring for any employment position, public or private, based on membership in any reserve component of the armed forces, is guilty of a class B misdemeanor.