

**Enrolled**  
**House Bill 2231**

Sponsored by Representative WILDE; Representatives BOSHART DAVIS, DRAZAN, EVANS, HAYDEN, POST, SMITH DB, Senator MANNING JR (Presession filed.)

CHAPTER .....

AN ACT

Relating to reemployment rights for servicemembers; amending ORS 408.240 and 659A.082; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 408.240 is amended to read:

408.240. (1)(a) Whenever a public officer or employee leaves a position, whether voluntarily or involuntarily, in order to perform military duty, the office or position may not become vacant, nor shall the officer or employee be subject to removal as a consequence of leaving the position. Unless the officer or employee dies, resigns or is relieved or discharged from such duty under other than honorable conditions, during the term for which the officer or employee was elected, appointed or employed, the officer or employee shall be considered absent on leave until release from active service has permitted the officer or employee to resume the duties of the office or position.

(b) While absent on leave, a public officer or employee may, but is not absolutely entitled to, receive the pay or other emolument of the office or position, and shall not become liable, as an officer or employee, on an official bond or otherwise, for the acts or omissions of any other person.

(2) Subsection (1)(a) of this section does not apply unless the officer or employee, upon the termination of military duty, is qualified to perform the duties of the office or position, and makes application within 90 days after the officer or employee is relieved from military duty, or from hospitalization continuing after discharge for a period of not more than one year. If the officer or employee is not qualified to perform the duties of the office or position by reason of the officer's or employee's service, but is qualified to perform the duties of any other public position, the officer or employee shall be restored to the other position, the duties of which the officer or employee is qualified to perform, as will provide the officer or employee like seniority, status and pay, or the nearest approximation thereof, consistent with the circumstances in the case.

(3) Except as otherwise provided in this subsection, subsection (1) of this section does not apply if the total of the officer's or employee's military duty exceeds five years. Subsection (1) of this section is applicable with regard to military duty that exceeds five years if the period of additional duty was *[imposed by law or resulted from inability of the officer or employee to obtain orders relieving the officer or employee from active duty.]*:

(a) **Imposed by law;**

(b) **Due to inability of the officer or employee to obtain orders relieving the officer or employee from active duty;**

(c) **Voluntary service overseas; or**

**(d) Voluntary service within the United States during or in response to an emergency or disaster declared by local, state or federal government.**

(4) Notwithstanding subsection (1) of this section:

(a) The State of Oregon shall continue coverage under an employer-sponsored health plan to a public officer or employee of the State of Oregon and any other individual provided coverage under the officer's or employee's plan on the day before the date the officer or employee goes on leave for a period not exceeding a total of 24 months while the public officer or employee is absent on leave.

(b) An employer other than the State of Oregon may provide coverage under an employer-sponsored health plan to an officer or employee and any other individual provided coverage under the officer's or employee's plan on the day before the date the officer or employee goes on leave for the period during which the officer or employee is absent on leave.

(5)(a) The State of Oregon, a county, a municipality or another political subdivision of the state may establish and administer a donated leave program that:

(A) Allows an officer or employee who is absent on leave to receive donated leave; and

(B) Allows an officer or employee to voluntarily donate vacation time to an eligible officer or employee who is absent on leave.

(b) An officer or employee who is absent on leave and who receives donated leave under paragraph (a) of this subsection may receive an amount of donated leave that supplements any compensation received for performing military duty, but may not receive more than the amount of base salary the officer or employee was earning on the date the officer or employee began the leave of absence.

(c) This subsection does not apply to a leave of absence under ORS 408.290.

(6) The State of Oregon, a county, a municipality or another political subdivision of the state may establish and administer a program that allows an officer or employee who is absent on leave to receive an amount of pay or other emolument that supplements and exceeds any compensation received for performing military duty, provided the amount received by the officer or employee under this subsection does not exceed the amount of base salary the officer or employee was earning on the date the officer or employee began the leave of absence.

**SECTION 2.** ORS 659A.082 is amended to read:

659A.082. (1) As used in this section:

(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full-time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service.

(b) "Uniformed service" means the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the United States Public Health Service and any other category of persons designated by the President of the United States in time of war or national emergency.

(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:

(a) If the employer is a public body, denying a public officer or public employee the status or rights provided by ORS 408.240 to 408.280 and 408.290.

(b) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:

(A) Initial employment;

(B) Reemployment following a leave from employment taken by reason of service in a uniformed service;

(C) Retention in employment;

(D) Promotion; or

(E) Any other term, condition or privilege of employment, including but not limited to compensation.

(c) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.

(3) An employer does not commit an unlawful employment practice under subsection (2)(b) of this section if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

(4) Subsection (2)(b) and (c) of this section shall be construed to the extent possible in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, **including the five-year limit on eligibility for reemployment under 38 U.S.C. 4312.**

(5) **In addition to any exception under federal law, the cumulative period of time for which an employee is absent from a position of employment with an employer for purposes of any of the following types of service in the uniformed service shall be excluded from the calculation of any durational limit on the eligibility for reemployment rights:**

(a) **Voluntary service overseas; and**

(b) **Voluntary service within the United States during or in response to an emergency or disaster declared by local, state or federal government.**

**SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.**

**Passed by House April 1, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 11, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State