

# House Bill 2231

Sponsored by Representative WILDE (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts certain types of voluntary service in uniformed service from five-year limit on eligibility for reemployment rights in private and public sectors.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to reemployment rights for servicemembers; amending ORS 408.240 and 659A.082; and pre-  
3 scribing an effective date.

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

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

6 408.240. (1)(a) Whenever a public officer or employee leaves a position, whether voluntarily or  
7 involuntarily, in order to perform military duty, the office or position may not become vacant, nor  
8 shall the officer or employee be subject to removal as a consequence of leaving the position. Unless  
9 the officer or employee dies, resigns or is relieved or discharged from such duty under other than  
10 honorable conditions, during the term for which the officer or employee was elected, appointed or  
11 employed, the officer or employee shall be considered absent on leave until release from active  
12 service has permitted the officer or employee to resume the duties of the office or position.

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

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

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

30 (a) **Imposed by law;**

31 (b) **Due to inability of the officer or employee to obtain orders relieving the officer or**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 **employee from active duty;**

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

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

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

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

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

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

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

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

19 (b) An officer or employee who is absent on leave and who receives donated leave under para-  
 20 graph (a) of this subsection may receive an amount of donated leave that supplements any compen-  
 21 sation received for performing military duty, but may not receive more than the amount of base  
 22 salary the officer or employee was earning on the date the officer or employee began the leave of  
 23 absence.

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

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

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

32 659A.082. (1) As used in this section:

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

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

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

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

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

4 (A) Initial employment;

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

7 (C) Retention in employment;

8 (D) Promotion; or

9 (E) Any other term, condition or privilege of employment, including but not limited to compen-  
10 sation.

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

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

17 (4) Subsection (2)(b) and (c) of this section shall be construed to the extent possible in a manner  
18 that is consistent with similar provisions of the federal Uniformed Services Employment and Reem-  
19 ployment Rights Act of 1994, **including the five-year limit on eligibility for reemployment under**  
20 **38 U.S.C. 4312.**

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

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

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

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

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