



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 418

**Assembly Substitute
Amendment 1 and Assembly
Amendments 1 and 2 to the
Substitute Amendment**

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Current Law

Under **current law**, classified state employees who are inducted into active service in the U.S. Armed Forces or who are requested to work for the federal government during national emergencies have restoration rights and certain other benefits. In addition, classified state employees who attend military schools and annual field training or annual active duty for training, and any other state or federal active duty are entitled to receive the difference between their base state pay and base military pay for no more than 30 days of active service per year. Employees do not accumulate sick leave and vacation while on leave for federal service. There is no comparable differential pay provision in current law for unclassified state employees. Because wages are a mandatory subject of collective bargaining, a represented state employee may be eligible to receive pay and benefits for military service under a collective bargaining agreement.

Assembly Bill 418

Assembly Bill 418, as introduced, would require that all state employees who are activated to military service be paid their state salaries while on military duty, minus any military pay and allowances they receive, unless the military pay and allowances equal or exceed the person's state salary. [Allowances are disbursements based on the person's location and mission and are paid for such items as housing, per diem, hostile fire pay, and hazardous duty pay.] The employees would continue to accumulate sick leave and vacation while on military duty.

To qualify for the payment, an employee must: (1) be activated on or after January 1, 2003 to serve on military duty, other than for training purposes; (2) on the activation date, be a member of the Wisconsin National Guard or a member of a reserve component of the U.S. Armed Forces, or recalled to active duty from inactive reserve status; and (3) be on an authorized military leave of absence.

The differential pay and benefits provisions would also apply to state employees who are activated to serve in the U.S. public health service and detailed for duty with the U.S. Armed Forces. These employees would be eligible to be paid their state salary, minus any federal pay and allowances they receive, unless the federal pay and allowances equal or exceed their state salary. They would also continue to accumulate sick leave and vacation during their period of service.

The bill provides that an employee may receive the differential pay and benefits beginning on the 30th day after the employee is activated, for a period of not more than 179 days. The Governor may extend that period to up to one year from the date of activation.

Under current federal and state law, if an employee is returning from active service of more than 30 days, but less than 181 days, the employee must submit an application for reemployment within 14 days after completion of service. The bill would permit an employee to use up to 80 hours of accumulated paid leave prior to resuming work, but does not specify whether the 80 hours must be used within the 14-day period.

The bill applies retroactively to military leaves that begin on or after January 1, 2003.

Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 differs from the bill in the following respects:

1. The substitute amendment subtracts military pay and *housing* allowances, rather than *all* allowances, from state pay to determine the amount of differential pay.
2. Under the substitute amendment, an employee may receive the pay and benefits beginning *on the day* on which the employee is activated, rather than on the 30th day under the bill. Also, the Governor may extend that period to up to *two* years from the date of activation, rather than to up to one year under the bill, and may apply the extension to an individual employee or to a group of employees.
3. The substitute amendment permits an employee to use up to 80 hours of accumulated paid leave *within the 14-day period* following completion of military duty. The bill does not specify that the 80 hours have to be used within the 14-day period.
4. The substitute amendment provides that a state employee may receive differential pay and benefits only after exhausting any other differential pay eligibility the employee may have. Thus, a classified employee who is entitled to 30 days of differential pay under current law, or a represented employee similarly entitled pursuant to a collective bargaining agreement, must first exhaust that benefit before receiving the differential pay benefits created in this legislation. The bill does not contain a similar provision.

Assembly Amendment 1 to Assembly Substitute Amendment 1

Assembly Amendment 1 amends the substitute amendment to make eligible for differential pay and benefits state employees who *were already serving on January 1, 2003* and continued to serve after that date, as are employees activated on or after January 1, 2003 under the substitute amendment. The amendment specifies that employees who were activated before January 1, 2003 may receive the

differential pay and benefits retroactively to January 1, 2003, but not for service in the period prior to that date.

Assembly Amendment 2 to Assembly Substitute Amendment 1

Assembly Amendment 2 amends the substitute amendment to permit an employee to use up to 160 hours of accumulated paid leave within the 30-day period following completion of military duty (rather than 80 hours within a 14-day period under the substitute amendment). The amendment also provides that, after using any such leave, an employee may carry over to the next year any remaining paid leave accumulated while on duty.

The amendment conforms the substitute amendment to the differential pay provisions in the recently enacted state employee contracts.

Legislative History

On September 17, 2003, the Assembly Committee on Veterans and Military Affairs introduced and adopted Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 13; Noes, 0. The committee adopted the substitute amendment, as amended, also on a vote of Ayes, 13; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 12; Noes, 1. Subsequent to committee action, Assembly Amendment 2 to the substitute amendment was introduced. On February 3, 2004, the Assembly adopted Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1, adopted Assembly Substitute Amendment 1, and passed the bill, as amended, on a voice vote.

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