

2001 SENATE BILL 298

October 26, 2001 – Introduced by Senators MOEN, BRESKE, S. FITZGERALD, RISSER, BURKE, PLACHE, WIRCH, HANSEN, GROBSCHMIDT, DARLING, WELCH, SCHULTZ, ROSENZWEIG and ROESSLER, cosponsored by Representatives MUSSER, RYBA, NASS, POCAN, GRONEMUS, LADWIG, FREESE, TURNER, HAHN, TOWNSEND, GUNDRUM, LASSA, PETROWSKI, BOYLE, RILEY, SYKORA, OTT, VRAKAS, OWENS, COLON, KREUSER, LA FAVE, ALBERS, GUNDERSON, MILLER and MEYERHOFER. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

1 **AN ACT** *to create* 21.80, 106.54 (7), 111.91 (2) (gm), 230.32 (7) and 230.45 (1) (m)
 2 of the statutes; **relating to:** reemployment rights after national guard or state
 3 defense force service, providing an exemption from emergency rule-making
 4 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Introduction

Under current federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides certain reemployment rights and benefits to persons who are absent from employment because of service in the armed forces or the national guard under federal law (service in the uniformed services). USERRA, however, does not cover person who are absent from employment because of service in the national guard or the state defense force under state law or because of certain service in the national guard under federal law that is not considered to be service in the uniformed services under USERRA (active service). This bill provides for persons who are absent from employment because of active service under state law certain reemployment rights and benefits that are parallel to the reemployment rights and benefits that are provided under USERRA for persons who are absent from employment because of service in the uniformed services under federal law.

Entitlement to reemployment rights

The bill requires any employer, including the state, employing one or more persons on a permanent basis to reemploy a person who is entitled to reemployment

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under the bill promptly on completion of the person's active service unless the employer's circumstances have so changed as to make reemployment of the person impossible or unreasonable, the position that the person left to perform active service was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue, or, in the case of a person who is not qualified for reemployment, the accommodations, training, or effort required to qualify the person for reemployment would pose an unreasonable hardship on the employer. A person is entitled to reemployment under the bill if all of the following prerequisites are met:

1. The employer has been given advanced notice of the active service, unless the giving of advanced notice was precluded by military necessity or was otherwise impossible or unreasonable.

2. Subject to certain exceptions, the cumulative length of all absences from employment with the employer because of active service or service in the uniformed services does not exceed five years.

3. The person reports back to work or applies for reemployment within the time frames required under the bill. If the person was in active service for less than 31 days, the person must report back to work at the first full regularly-scheduled work period following completion of the active service, plus a reasonable time for safe transportation home and an eight-hour rest period. If the person was in active service for more than 30, but less than 181, days, the person must apply for reemployment within 14 days after completion of the active service. If the person was in active service for more than 180 days, the person must apply for reemployment within 90 days after completion of the active service. In addition, the bill extends those periods for reporting back to work or applying for reemployment by up to two years for hospitalization or convalescence for an illness or injury incurred in or aggravated during the active service.

4. The person's service in the national guard or state defense force was not terminated under other than honorable conditions.

A person who is performing active service on the effective date of the bill is entitled to reemployment under the bill if the person reports back to work or applies for reemployment on or after the effective date of the bill and otherwise meets the prerequisites for reemployment under the bill.

Reemployment positions

The bill specifies the type of position in which a person must be reemployed on returning from active service as follows:

1. If the person was in active service for less than 91 days, the person must be reemployed in the position in which the person would have been employed if the person's employment had not been interrupted by the active service so long as the person is qualified to perform the duties of the position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position in which the person was employed before the active service.

2. If the person was in active service for more than 90 days, the person must be reemployed in the position in which the person would have been employed if the

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person's employment had not been interrupted by the active service or in a position of like seniority, status, and pay so long as the person is qualified to perform the duties of the position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position in which the person was employed before the active service or in a position of like seniority, status, and pay.

3. If the person has a disability that was incurred in or aggravated during the active service and if after reasonable efforts by the employer to accommodate the disability the employee is not qualified due to the disability to perform the duties of the position in which the person would have been employed if the person's employment had not been interrupted by the active service, the person must be reemployed in any other position that is equivalent to that position in seniority, status, and pay, the duties of which the person is qualified to perform or would be qualified to perform with reasonable efforts by the employer, or, if no equivalent position is available, in a position that is the nearest approximation to that equivalent position in terms of seniority, status, and pay, consistent with the person's circumstances.

4. If the person is not qualified to be employed in the position in which the person would have been employed if the person's employment had not been interrupted by the active service or in the position in which the person was employed before the active service for any reason other than disability incurred in or aggravated during the active service and cannot become qualified to be so employed with reasonable efforts by the employer, the person must be reemployed in any other position that the person is qualified to perform and that is the nearest approximation to the position in which the person would have been employed if the person's employment had not been interrupted by the active service or, if no position that is the nearest approximation to that position is available, in a position that the person is qualified to perform and that is the nearest approximation to the position in which the person was employed before the active service began.

Seniority and other rights and benefits

The bill also specifies that a person who is absent from employment because of active service is entitled to certain other rights and benefits as follows:

1. On reemployment, the person is entitled to the seniority and other rights and benefits determined by seniority that the person would have had if the person's employment had not been interrupted by the active service.

2. While absent from employment, the person is considered to be on furlough or leave of absence and is entitled to all rights and benefits not determined by seniority that are generally provided by the employer to employees having similar seniority, status, and pay who are on furlough or leave of absence.

3. While absent from employment, the person may continue health coverage for the person and his or her dependents for up to 18 months or until the day after the date on which the person is required to report back to work or apply for reemployment, whichever occurs first. If the person's health coverage is terminated because the person is in active service, the person is entitled to reinstatement of health coverage on reemployment with no exclusion or waiting period that would not

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have been imposed had the coverage not been terminated because of the active service. A person who is performing active service on the effective date of the bill or a dependent or personal representative of the person may elect to continue health coverage for the remainder of that 18-month period or until the day after the date on which the person is required to report back to work or apply for reemployment, whichever occurs first.

4. The person may not be discharged from employment, except for cause, for 180 days after reemployment, if the active service was for more than 30 days, but less than 181 days, and for one year after reemployment, if the active service was for more than 180 days.

Enforcement

Finally, the bill provides a procedure for the enforcement of a person's rights under the bill. Specifically, the bill permits a person who believes that his or her employer has failed or refused, or is about to fail or refuse, to provide to the person any reemployment right or benefit to which the person is entitled under the bill to file a complaint with the adjutant general who must then investigate the complaint. If the adjutant general is reasonably satisfied that the person is entitled to the rights or benefits sought, the adjutant general must endeavor to resolve the complaint by conference, conciliation, or persuasion. If the adjutant general is not able to resolve the complaint, the person may request the adjutant general to refer the complaint to counsel appointed by the governor for the purpose of prosecuting such complaints who must file a complaint for appropriate relief with the department of workforce development (DWD) or, if the person is an employee of a state agency, the personnel commission. The bill also permits a person to file a complaint with DWD or the personnel commission on the person's own behalf without filing a complaint with the adjutant general or requesting the adjutant general to refer the complaint to counsel.

DWD or the personnel commission must process the complaint in the same manner that employment discrimination complaints are processed under the fair employment law. If DWD or the personnel commission finds that an employer has failed or refused, or is about to fail or refuse, to provide any reemployment right or benefit to which a person is entitled under the bill or has discharged or otherwise discriminated against any person in retaliation for attempting to enforce any rights provided under the bill, DWD or the personnel commission may order the employer to do any one or more of the following:

1. Take such action as will fully vindicate the rights and benefits of the person under the bill.

2. Compensate the person for any loss of wages, salary, or other benefits suffered because of the failure or refusal to provide reemployment rights or benefits or the discharge or other discrimination.

3. Pay the person, as liquidated damages, an amount that is equal to the amount of compensation ordered, if DWD or the personnel commission finds that the failure or refusal to provide reemployment rights or benefits or the discharge or other discrimination was willful.

4. Pay the person costs and reasonable actual attorney fees, if the person is not represented by counsel appointed by the governor.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 21.80 of the statutes is created to read:

2 **21.80 Reemployment rights after national guard or state defense force**
3 **service. (1) DEFINITIONS.** In this section:

4 (a) “Active service” means active service in the national guard or the state
5 defense force under an order of the governor issued under this chapter or active
6 service in the national guard under 32 USC 502 (f) that is not considered to be service
7 in the uniformed services.

8 (b) “Employer” means a person engaging in any activity, enterprise, or business
9 in this state employing one or more persons on a permanent basis. “Employer”
10 includes the state and any office, department, independent agency, authority,
11 institution, association, society, or other body in state government created or
12 authorized to be created by the constitution or any law, including the legislature and
13 the courts. “Employer” also includes a successor-in-interest of a person employing
14 an individual who has provided notice to that person under sub. (3) (a).

15 (c) “Health benefit plan” has the meaning given in s. 632.745 (11).

16 (d) “Qualified” means having the ability to perform the essential tasks of an
17 employment position.

18 (e) “Reasonable efforts” means, with respect to an action required by an
19 employer under sub. (4) (a) 1., 2., 3., or 4., an action that does not place an undue
20 hardship on the employer.

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1 (f) “Service in the uniformed services” has the meaning given in 38 USC 4303
2 (13).

3 (g) “Undue hardship” means, with respect to an action required by an employer
4 under sub. (4) (a) 1., 2., 3., or 4., significant difficulty or expense, when considered
5 in light of all of the following:

6 1. The nature and cost of the action.

7 2. The overall financial resources of the facility involved in providing the action,
8 the number of persons employed at the facility, the effect of providing the action on
9 the resources and finances of the facility, and any other impact of the action on the
10 operation of the facility.

11 3. The overall financial resources of the employer, the number of persons
12 employed by the employer, and the number, type, and location of the employer’s
13 facilities.

14 4. The type of operation of the employer, including the composition, structure,
15 and functions of the employer’s workforce, the geographic separateness from the
16 employer of the facility involved in providing the action, and the administrative and
17 financial relationship of the facility to the employer.

18 **(2) MORE GENEROUS RIGHTS PERMITTED.** Nothing in this section prohibits an
19 employer from providing employees who are called into active service with
20 reemployment rights and benefits that are more generous to the employee than the
21 rights and benefits provided under this section.

22 **(3) REEMPLOYMENT RIGHTS.** (a) *Prerequisites.* Subject to par. (d), any person who
23 is absent from a position of employment because of active service is entitled to the
24 reemployment rights and benefits specified in this section if all of the following apply:

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1 1. Except as provided in par. (b), the person or an appropriate officer in the
2 national guard or the state defense force has given advanced notice of the active
3 service to the person's employer.

4 2. Except as provided in par. (c), the cumulative length of the absence from the
5 position of employment and of all previous absences from a position of employment
6 with the employer by reason of active service or service in the uniformed services
7 does not exceed 5 years.

8 3. Except as provided in par. (f), the person reports to the employer or submits
9 an application for reemployment to the employer as required under par. (e).

10 4. The person's service in the national guard or the state defense force has not
11 been terminated under other than honorable conditions.

12 (b) *Notice not required.* No notice is required under par. (a) 1. if the giving of
13 that notice is precluded by military necessity or is otherwise impossible or
14 unreasonable. A determination of military necessity for purposes of this paragraph
15 shall be made according to rules and regulations promulgated by the adjutant
16 general or the federal secretary of defense and is not subject to judicial review.

17 (c) *Length of absence limit.* The periods of service in the uniformed services
18 described in 38 USC 4312 (c) (1) to (4) and all of the following periods of active service
19 are not included in calculating the 5-year period specified in par. (a) 2.:

20 1. Any period of active service beyond that 5-year period that is required to
21 complete an initial period of obligated active service.

22 2. Any period of active service for which the person, through no fault of the
23 person's own, was unable to obtain orders releasing the person from a period of active
24 service before the expiration of the 5-year period.

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1 3. Any period of active service that was performed to fulfill any additional
2 training requirements determined and certified in writing by the federal secretary
3 of the army, the federal secretary of the air force, or the adjutant general to be
4 necessary for professional development or for completion of skill training or
5 retraining.

6 4. Any period of active service that was performed by a person who was ordered
7 to, or retained in, active service, other than for training, because of a state emergency
8 declared by the governor, because of a war or national emergency declared by the
9 president of the United States or Congress, because of insurrection, rebellion, riot,
10 invasion, or resistance to the execution of the laws of this state or of the United
11 States, or in support of an operational mission, a critical mission, or any other
12 requirement of the uniformed services.

13 (d) *Exceptions.* An employer is not required to reemploy a person under this
14 section if the employer shows that any of the following apply:

15 1. The employer's circumstances have so changed as to make reemployment of
16 the person impossible or unreasonable.

17 2. The position of employment that the person left to perform active service was
18 for a brief, nonrecurrent period and there was no reasonable expectation that the
19 position of employment would continue indefinitely or for a significant period of time.

20 3. In the case of a person who is entitled to reemployment under sub. (4) (a) 3.
21 or 4., the accommodations, training, or effort required under sub. (4) (a) 3. or 4. would
22 pose an undue hardship on the employer.

23 (e) *Return procedures.* 1. Subject to subds. 4. and 5., if a person who has been
24 absent from a position of employment because of active service that lasted for less
25 than 31 days, who has been absent from a position of employment for any period of

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1 time for the purpose of an examination to determine the person's fitness to perform
2 active service, or who has been absent from a position of employment because the
3 person was hospitalized for or was convalescing from an illness or injury that was
4 incurred in or aggravated during the performance of that active service wishes to
5 receive the reemployment rights and benefits specified in this section, the person
6 must notify the person's employer of the person's intent to return to the position of
7 employment by reporting to the employer by no later than the beginning of the first
8 full regularly-scheduled work period on the first full calendar day following the
9 completion of the active service, examination, or period of hospitalization or
10 convalescence, a period of time that allows for the safe transportation of the person
11 from the place of active service, examination, hospitalization, or convalescence to the
12 person's residence, and a rest period of 8 hours following that transportation period
13 or, if through no fault of the person's own reporting to the employer within that time
14 is impossible or unreasonable, by reporting to the employer as soon as possible after
15 that 8-hour rest period.

16 2. Subject to subds. 4. and 5., if a person who has been absent from a position
17 of employment because of active service that lasted for more than 30 days, but less
18 than 181 days, or who has been absent from a position of employment because the
19 person was hospitalized for or was convalescing from an illness or injury that was
20 incurred in or aggravated during the performance of that active service wishes to
21 receive the reemployment rights and benefits specified in this section, the person
22 must notify the person's employer of the person's intent to return to the position of
23 employment by submitting to the employer an application for reemployment by no
24 later than 14 days after the completion of the active service, hospitalization, or
25 convalescence or, if through no fault of the person's own submitting the application

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1 within that time is impossible or unreasonable, by submitting to the employer an
2 application for reemployment by no later than the first full calendar day on which
3 submission of the application becomes possible.

4 3. Subject to subds. 4. and 5., if a person who has been absent from a position
5 of employment because of active service that lasted for more than 180 days or who
6 has been absent from a position of employment because the person was hospitalized
7 for or was convalescing from an illness or injury that was incurred in or aggravated
8 during the performance of that active service wishes to receive the reemployment
9 rights and benefits specified in this section, the person must notify the person's
10 employer of the person's intent to return to the position of employment by submitting
11 to the employer an application for reemployment by no later than 90 days after the
12 completion of the active service, hospitalization, or convalescence or, if through no
13 fault of the person's own submitting the application within that time is impossible
14 or unreasonable, by submitting to the employer an application for reemployment by
15 no later than the first full calendar day on which submission of the application
16 becomes possible.

17 4. The period of hospitalization or convalescence specified in subds. 1., 2., and
18 3. may not exceed 2 years, except that if through no fault of the person's own it is
19 impossible or unreasonable for the person to report to the employer within the time
20 specified in subd. 1. or to apply for reemployment within the time specified in subd.
21 2. or 3., that 2-year period shall be extended by the minimum period of time required
22 to accommodate the circumstances that made it impossible or unreasonable for the
23 person to report or apply as so required.

24 5. A person who fails to report to the person's employer within the time specified
25 in subd. 1. or who fails to apply for reemployment within the time specified in subd.

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1 2. or 3. does not automatically forfeit the reemployment rights and benefits specified
2 in this section. Instead, the person shall be subject to the rules, policies, and
3 practices of the person's employer pertaining to discipline for unexcused absences
4 from work.

5 (f) *Documentation.* 1. A person who submits an application for reemployment
6 under par. (e) 2. or 3. must, on the request of the person's employer, provide to the
7 employer documentation to establish that the application was submitted within the
8 time limits specified in par. (e) 2. or 3., that the person's cumulative length of all
9 absences from employment with the employer because of active service or service in
10 the uniformed services does not, except as permitted under par. (c), exceed 5 years,
11 and that the person's service was not terminated under other than honorable
12 conditions.

13 2. An employer may not refuse to reemploy a person who fails to provide any
14 of the documentation specified in subd. 1. because that documentation does not exist
15 or is not readily available at the time the employer requests that documentation. If
16 after the person is reemployed documentation becomes available that establishes
17 that the person does not meet a requirement specified in subd. 1., the employer may
18 terminate the person's employment and the provision of any rights and benefits
19 afforded to the person under this section.

20 3. An employer may not delay or attempt to defeat a reemployment right that
21 the employer is obligated to provide under this section by demanding documentation
22 that does not exist or is not readily available at the time of the demand.

23 (g) *Veterans preferences.* The right of a person to reemployment under this
24 subsection does not entitle the person to retention, preference, or displacement
25 rights over any person who has a superior claim under s. 45.35 (4), 62.13 (4) (d), 63.08

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1 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m),
2 230.25, or 230.275.

3 (h) *Prohibited bases for denial of reemployment.* In determining a person's
4 right to reemployment and other benefits under this section, an employer may not
5 deny reemployment or any other benefits based on the timing, frequency, duration,
6 or nature of the person's active service or service in the uniformed services so long
7 as the requirements under par. (a) are met.

8 **(4) REEMPLOYMENT POSITIONS.** (a) *Prompt reemployment required.* 1. Subject
9 to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled
10 to reemployment under sub. (3) and whose period of active service was for less than
11 91 days promptly on completion of that period of active service in the position of
12 employment in which the person would have been employed if the continuous
13 employment of the person with the employer had not been interrupted by that active
14 service so long as the person is qualified to perform the duties of that position or, if
15 after reasonable efforts by the employer to qualify the person to perform those duties
16 the person is not qualified to perform those duties, in the position of employment in
17 which the person was employed on the date on which the person's period of active
18 service began.

19 2. Subject to subds. 3. and 4. and par. (b), an employer shall reemploy a person
20 who is entitled to reemployment under sub. (3) and whose period of active service was
21 for more than 90 days promptly on completion of that period of active service in the
22 position of employment in which the person would have been employed if the
23 continuous employment of the person with the employer had not been interrupted
24 by that active service or in a position of employment of like seniority, status, and pay
25 so long as the person is qualified to perform the duties of that position or, if after

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1 reasonable efforts by the employer to qualify the person to perform those duties the
2 person is not qualified to perform those duties, in the position of employment in
3 which the person was employed on the date on which the person's period of active
4 service began or in a position of employment of like seniority, status, and pay.

5 3. Subject to par. (b), in the case of a person who has a disability that was
6 incurred in or aggravated during a period of active service and who, after reasonable
7 efforts by the employer to accommodate the disability, is not qualified due to the
8 disability to perform the duties of the position of employment in which the person
9 would have been employed if the continuous employment of the person with the
10 employer had not been interrupted by the active service, the employer shall reemploy
11 the person promptly on completion of that period of active service in any other
12 position that is equivalent to that position in seniority, status, and pay, the duties of
13 which the person is qualified to perform or would become qualified to perform with
14 reasonable efforts by the employer, or, if there is no other position of employment
15 available that is equivalent to that position in seniority, status, and pay, in a position
16 that is the nearest approximation to that equivalent position in terms of seniority,
17 status, and pay, consistent with the person's circumstances.

18 4. Subject to par. (b), in the case of a person who is not qualified to be employed
19 in the position of employment in which the person would have been employed if the
20 continuous employment of the person with the employer had not been interrupted
21 by the person's active service or in the position of employment in which the person
22 was employed on the date on which the person's period of active service began for any
23 reason other than disability incurred in or aggravated during a period of active
24 service and who cannot become qualified to be so employed with reasonable efforts
25 by the employer, the employer shall reemploy the person promptly on completion of

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1 that period of active service in any other position that the person is qualified to
2 perform and that is the nearest approximation to the position of employment in
3 which the person would have been employed if the continuous employment of the
4 person with the employer had not been interrupted by that active service, with full
5 seniority, or if no position of employment that is the nearest approximation to that
6 position is available, in a position of employment that the person is qualified to
7 perform and that is the nearest approximation to the position of employment in
8 which the person was employed on the date on which the person's period of active
9 service began, with full seniority.

10 (b) *Multiple returning employees.* 1. If 2 or more persons who are entitled to
11 reemployment under sub. (3) in the same position of employment have reported to
12 the employer or applied for reemployment in that position, the person who left
13 employment first shall have the prior right to reemployment in that position.

14 2. A person who is entitled to reemployment under sub. (3), but who is not
15 reemployed because of subd. 1., shall be entitled to reemployment as provided in par.

16 (a) 1., 2., 3., or 4., whichever is applicable, in a position of employment that provides
17 for similar status and pay as the position described in subd. 1., consistent with the
18 person's circumstances, with full seniority.

19 **(5) RIGHTS, BENEFITS, AND OBLIGATIONS.** (a) *Seniority.* A person who is
20 reemployed under this section is entitled to the seniority and other rights and
21 benefits determined by seniority that the person had on the last day of employment
22 before the person's active service began, plus all seniority and other rights and
23 benefits determined by seniority that the person would have had if the continuous
24 employment of the person with the employer had not been interrupted by that active
25 service.

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1 (b) *Continuation of benefits.* 1. Subject to subds. 2. to 5., a person who is absent
2 from employment because of active service is considered to be on furlough or leave
3 of absence while performing the active service and is entitled to receive all rights and
4 benefits not determined by seniority that are generally provided by the employer to
5 employees having similar seniority, status, and pay who are on furlough or leave of
6 absence under a contract, agreement, policy, practice, or plan that is in effect on the
7 day on which the active service began or that is established while the person is
8 performing the active service.

9 2. If an employer shows that a person who is absent from a position of
10 employment because of active service has knowingly provided written notice of the
11 person's intent not to return to a position of employment with the employer after that
12 active service and, in doing so, was aware of the specific rights and benefits under
13 subd. 1. that the person would lose while absent from the position of employment,
14 the person is not entitled to the rights and benefits specified in subd. 1. while absent
15 from employment.

16 3. A person who is considered to be on furlough or leave of absence under subd.
17 1. while performing active service is not entitled to any benefit to which the person
18 would not otherwise be entitled if the person had remained continuously employed.

19 4. An employer may require a person who is considered to be on furlough or
20 leave of absence under subd. 1. while performing active service to pay the employee
21 cost, if any, of any benefit that is continued under subd. 1. to the same extent that
22 other employees who are on furlough or leave of absence are so required.

23 5. A person who is absent from a position of employment because of active
24 service is entitled to receive coverage under a health benefit plan during the absence
25 and on reemployment as provided in sub. (6).

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1 (c) *Protection from discharge.* An employer that reemploys under this section
2 a person whose period of active service lasted for more than 30 days, but less than
3 181 days, may not discharge the person within 180 days after the date of
4 reemployment except for cause. An employer that reemploys under this section a
5 person whose period of active service lasted for more than 180 days may not
6 discharge the person within one year after the date of reemployment except for
7 cause.

8 **(6) CONTINUATION OF HEALTH CARE COVERAGE.** (a) *Option to continue coverage.*
9 Notwithstanding s. 632.897, if a person who has coverage under a health benefit plan
10 in connection with the person's employment is absent from a position of employment
11 because of active service, the insurer that issued the health benefit plan shall permit
12 the person, and the person's dependents, to continue coverage under the health
13 benefit plan until the first to occur of the following:

14 1. Eighteen months have elapsed since the person's absence from the position
15 of employment began.

16 2. The day after the date on which the person is required under sub. (3) (e) to
17 report to the employer or apply for reemployment.

18 (b) *Payment of premiums.* A person who elects to continue coverage under par.
19 (a) and who is absent from a position of employment for 30 days or less may not be
20 required to pay more than the employee share, if any, of the cost of the coverage. A
21 person who elects to continue coverage under par. (a) and who is absent from a
22 position of employment for more than 30 days may be required to pay up to 102% of
23 the full premium for that coverage for the period of continued coverage that exceeds
24 30 days.

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1 (c) *Reinstatement on reemployment.* If a person's coverage under a health
2 benefit plan in connection with his or her employment was terminated because of the
3 person's active service and if after returning from that active service the person is
4 reemployed under sub. (3), coverage under the health benefit plan shall be reinstated
5 for the person and the person's dependents immediately upon reemployment. With
6 respect to the reinstated coverage, no exclusion or waiting period may be imposed
7 that would not have been imposed had the coverage not been terminated because of
8 the active service.

9 **(7) ENFORCEMENT.** (a) *Complaint.* Any person who believes that his or her
10 employer has failed or refused, or is about to fail or refuse, to provide to the person
11 any reemployment right or benefit to which the person is entitled under this section
12 may file a complaint with the adjutant general, in such form as the adjutant general
13 may prescribe by rule, summarizing the allegations that form the basis of the
14 complaint. The adjutant general shall investigate the complaint and, if the adjutant
15 general is reasonably satisfied that the person is entitled to the rights or benefits
16 sought, the adjutant general shall endeavor to resolve the complaint by conference,
17 conciliation, or persuasion. If the adjutant general is not reasonably satisfied that
18 the person is entitled to the rights or benefits sought, the adjutant general may
19 refuse to endeavor to resolve the complaint and shall notify the person who filed the
20 complaint that the person may proceed under par. (b) 2. to enforce the person's rights
21 under this section. If the adjutant general is not able to resolve the complaint, the
22 adjutant general shall notify the person who filed the complaint that the person may
23 proceed under par. (b) 1. or 2. to enforce the person's rights under this section.

24 (b) *Enforcement procedures.* 1. A person who receives notification under par.
25 (a) that the adjutant general was unable to resolve the person's complaint may

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1 request the adjutant general to refer the complaint to counsel, which may include the
2 attorney general, appointed by the governor on the recommendation of the adjutant
3 general for the purpose of prosecuting complaints under this subdivision who shall
4 file a complaint for appropriate relief with the department of workforce development
5 or, if the person is an employee of a state agency, as defined in s. 111.32 (6) (a), the
6 personnel commission.

7 2. Subdivision 1. does not preclude a person who has chosen not to file a
8 complaint with the adjutant general under par. (a), whose complaint the adjutant
9 general has refused to endeavor to resolve under par. (a), or who has chosen not to
10 request the adjutant general to refer his or her complaint to counsel under subd. 1.
11 from filing a complaint for appropriate relief with the department of workforce
12 development or, if the person is an employee of a state agency, with the personnel
13 commission.

14 3. The department of workforce development or the personnel commission shall
15 process a complaint filed under subd. 1. or 2. in the same manner that employment
16 discrimination complaints are processed under s. 111.39.

17 (c) *Retaliation prohibited.* An employer may not discharge or otherwise
18 discriminate against any person for filing a complaint or attempting to enforce a
19 right provided under this section or for testifying or assisting in any action or
20 proceeding to enforce a right provided under this section.

21 (d) *Remedies.* If the department of workforce development or the personnel
22 commission finds that an employer has failed or refused, or is about to fail or refuse,
23 to provide any reemployment right or benefit to which a person is entitled under this
24 section or has discharged or otherwise discriminated against any person in violation

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1 of par. (c), the department of workforce development or the personnel commission
2 may order the employer to do any one or more of the following:

3 1. Take such action as will fully vindicate the rights and benefits of the person
4 under this section.

5 2. Compensate the person for any loss of wages, salary, or other benefits
6 suffered because of the failure or refusal to provide reemployment rights or benefits
7 under this section or the discharge or other discrimination.

8 3. Pay the person, as liquidated damages, an amount that is equal to the
9 amount ordered under subd. 2. if the department of workforce development or the
10 personnel commission finds that the failure or refusal to provide reemployment
11 rights or benefits under this section or the discharge or other discrimination was
12 willful.

13 4. Pay the person costs and reasonable actual attorney fees, if the person is not
14 represented by counsel appointed under par. (b) 1.

15 **(8) RULES.** The department of military affairs shall promulgate rules
16 implementing this section.

17 **SECTION 2.** 106.54 (7) of the statutes is created to read:

18 106.54 (7) The division shall receive complaints under s. 21.80 (7) (b) 1. or 2.
19 and shall process the complaints in the same manner that employment
20 discrimination complaints are processed under s. 111.39.

21 **SECTION 3.** 111.91 (2) (gm) of the statutes is created to read:

22 111.91 (2) (gm) Reemployment rights of employees under s. 230.32 (7).

23 **SECTION 4.** 230.32 (7) of the statutes is created to read:

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1 230.32 (7) Any employee who is absent from state service because the employee
2 is in active service, as defined in s. 21.80 (1) (a), is entitled to all reemployment rights
3 and benefits provided under s. 21.80.

4 **SECTION 5.** 230.45 (1) (m) of the statutes is created to read:

5 230.45 (1) (m) Receive complaints under s. 21.80 (7) (b) 1. or 2. and, except as
6 provided in sub. (1m), process the complaints in the same manner that employment
7 discrimination complaints are processed under s. 111.39.

8 **SECTION 6. Nonstatutory provisions.**

9 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
10 the department of military affairs shall promulgate the rules required under section
11 21.80 (8) of the statutes, as created by this act, for the period before the effective date
12 of the permanent rules promulgated under section 21.80 (8) of the statutes, as
13 created by this act, but not to exceed the period authorized under section 227.24 (1)
14 (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of
15 the statutes, the department of military affairs is not required to provide evidence
16 that promulgating a rule under this subsection as an emergency rule is necessary for
17 the preservation of the public peace, health, safety, or welfare and is not required to
18 provide a finding of emergency for a rule promulgated under this subsection.

19 (2) TRANSITIONAL PROVISIONS; PERSONS IN ACTIVE SERVICE ON EFFECTIVE DATE.

20 (a) *Reemployment.* A person who is performing active service, as defined in
21 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
22 paragraph is entitled to the reemployment rights and benefits provided in section
23 21.80 of the statutes, as created by this act, if, subject to section 21.80 (3) (d) of the
24 statutes, as created by this act, all of the following apply:

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1 1. The person or an appropriate officer in the national guard or the state
2 defense force has given advanced notice of the active service to the person's employer,
3 unless the giving of that notice was precluded by military necessity or was otherwise
4 impossible or unreasonable as described in section 21.80 (3) (b) of the statutes, as
5 created by this act.

6 2. The cumulative length of all absences from a position of employment with
7 the employer by reason of active service or service in the uniformed services, as
8 defined in 38 USC 4303 (13), whether before or after the effective date of this
9 subdivision, does not exceed 5 years, except as provided in section 21.80 (3) (c) of the
10 statutes, as created by this act.

11 3. The person reports to the employer as required under section 21.80 (3) (e)
12 1. of the statutes, as created by this act, or applies for reemployment under section
13 21.80 (3) (e) 2. or 3. of the statutes, as created by this act, whichever is applicable, on
14 or after the effective date of this subdivision.

15 4. The person's service in the national guard or the state defense force has not
16 been terminated under other than honorable conditions.

17 (b) *Health coverage.* A person who is performing active service, as defined in
18 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
19 paragraph or a dependent or personal representative of the person may elect to
20 continue coverage under a health benefit plan, as defined in section 632.745 (11) of
21 the statutes, as provided in section 21.80 (6) (a) of the statutes, as created by this act.
22 If such an election is made, the health benefit plan shall remain in effect for the
23 remaining portion of the 18-month period that began when the person left
24 employment to perform active service or until the day after the date on which the

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1 person is required under section 21.80 (3) (e) of the statutes, as created by this act,
2 to report to the employer or apply for reemployment, whichever occurs first.

3 **SECTION 7. Initial applicability.**

4 (1) CONTINUATION OF BENEFITS. The treatment of section 21.80 (5) (b) 1. to 4. of
5 the statutes first applies to a person who is performing active service, as defined in
6 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
7 subsection, except that the treatment of section 21.80 (5) (b) 2. of the statutes first
8 applies to a person who leaves a position of employment to perform active service on
9 the effective date of this subsection.

10 (2) HEALTH COVERAGE. Subject to SECTION 6 (2) (b) of this act, the treatment of
11 section 21.80 (6) of the statutes first applies to a person who leaves a position of
12 employment to perform active service on the effective date of this subsection.

13 (END)