

No. 59, S.]

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CHAPTER 719.

AN ACT to repeal 17.035 (2); to renumber 21.70 (4), 21.705 and 21.80; to renumber and amend 21.70 (1), (2), (3) and (5) and 66.52; to amend 16.276 (1) (introductory paragraph) and (2) (a); and to create 66.904 (3) (bb) of the statutes, relating to re-employment after completion of military service.

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

SECTION 1. 16.276 (1) (introductory paragraph) and (2) (a) of the statutes are amended to read:

16.276 (1) (introductory paragraph) Any classified employe of the state of Wisconsin who has enlisted or enlists or has been or is inducted or ordered into active service in the armed forces of the United States pursuant to the selective training and service act of 1940 or the national guard and reserve officer mobilization act of 1940, *the selective service act of 1948* and any acts amendatory thereof or supplementary thereto, and any such employe whose services are specifically requested by the federal government for national defense work as a civilian during a period officially proclaimed to be a national emergency or a limited national emergency, who, in order to perform such training or service, has left or leaves a position, other than a temporary position, as a classified employe of the state of Wisconsin shall be restored to such a position or to a position of like seniority, status, pay, salary advancement and pension rights under sections 42.60 to 42.70 as though such services toward seniority, status, pay, salary advancement and pension rights under sections 42.60 to 42.70 had not been interrupted by such designated service, provided that (a) he presents to the employing agency a certificate or other evidence that he has satisfactorily completed his period of training or service, (b) he is still qualified to perform the duties of such position, (c) he makes application for re-employment within 90 days after he is released from such training or services, and (d) the circumstances of the em-

ploying agency have not changed as to make it impossible or unreasonable to so restore such employe and upon the employe's request made at any time before 6 months after he is relieved from such training or services, or absence during federal hospitalization because of injuries or sickness resulting from such war or emergency service the employe, upon presentation of proof of discharge other than dishonorable or other than (a) by reason of the sentence of a general court martial, (b) on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authorities, (c) as a deserter or (d) of an officer by the acceptance of his resignation for the good of the service, release from such active service or federal hospitalization shall be restored as hereinafter provided:

(2) (a) Any classified employe who leaves state service and enters the armed forces of the United States shall, under the provisions of this section, be given written military leave of absence by the employing agency. Notice of such severance from state service and the terms of any such leave shall be * * * given in writing by the employing agency to the director of personnel for purposes of record.

SECTION 2. 17.035 (2) of the statutes is repealed.

SECTION 3. 21.70 (1), (2) and (3) of the statutes are renumbered 45.50 (1), (2) and (3), respectively, and are amended to read:

45.50 (1) Any person who has enlisted or enlists *in* or *who* has been or is inducted or ordered into active service in the * * * armed forces of the United States pursuant to the selective training and service act of 1940 or the national guard and reserve officers mobilization act of 1940, *the selective service act of 1948* and any acts amendatory thereof or supplementary thereto, and any person whose services are requested by the federal government for national defense work as a civilian during a period officially proclaimed to be a national emergency or a limited national emergency, who, in order to perform such training or service, has left or leaves a position, other than a temporary position, in the employ of any political subdivision of the state or in the employ of any private or other employer, shall be restored to such position or to a position of like seniority, status, pay and salary advancement as though * * * *his* service toward seniority, status, pay or salary advancement had not been interrupted by such * * * absence; provided that (a) he presents * * * *to the employer* evidence that he has satisfactorily completed his period of training or *civilian* service, or that he has been discharged from the armed forces under conditions other than dishonorable, (b) he is still qualified to perform the duties of such position, (c) he makes application for re-employment and resumes work within 90 days after he * * * *completed* such training or services, *military or civilian*, or was so discharged from the armed forces, or within 6 months after release from hospitalization for service-connected injury or disease; and (d) the employer's circumstances have not so changed as to make it impossible or unreasonable to so restore such person * * *. In the event of any dispute arising under this subsection the matter shall be referred to the industrial commission for arbitration except as such matters pertain to any classified employe of the state of Wisconsin, in which case the matter shall be referred to the bureau of personnel.

(2) The service of any person who is or was restored to a position in accordance with subsection (1) hereof shall be deemed not to be interrupted by such * * * absence, except for the receipt of pay or other compensation for the period of such absence and he shall be entitled to participate in insurance, pensions, *retirement plans* or other benefits offered by the employer pursuant to established rules and practices relating to employes on furlough or leave of absence in effect with the employer at the time such person entered or was enlisted, inducted or ordered into such forces and service, and shall not be discharged from such position without cause within one year after such restoration; and such discharge is subject to all federal or state law affecting any municipal or private employment; and subject to the provisions of contracts that may exist between employer and employe. Each county, town, city or village shall contribute or pay from September 16, 1940 all contributions of the employer to the applicable and existent pension, annuity or retirement system as though the service of any such employe had not been interrupted by such military service, provided that in the case of teachers such payment shall be made as provided in sections 38.24, 71.14 (8) and (9) and chapter 42.

(3) In case any employer fails or refuses to comply with the provisions of subsections (1) and (2) hereof, any court of record whether created by general or special act in the proper county having jurisdiction of an action on contract for an amount exceeding \$500 shall have power, upon the filing of a motion, petition or other appropriate pleading and on reasonable notice, which shall not be less than 10 days, to such employer by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss

of wages or benefits suffered by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. No fees or court costs shall be taxed against the person so applying for such benefits. The place of the commencement of the action or proceeding hereunder against a private employer, and the trial or hearing thereof, shall be in any county in which the employment took place or in which such private employer maintains a place of business, and in all other cases shall be as provided in section 261.01. No person who is appointed in the service of the state or of any county, city or village to fill the place of a person so entering the federal armed forces shall acquire permanent tenure during such period of replacement service.

SECTION 4. 21.70 (4) of the statutes is renumbered 45.50 (4).

SECTION 5. 21.70 (5) of the statutes is renumbered 45.50 (5) and amended to read: 45.50 (5) The restoration of classified employes of the state shall be governed by the provisions of section 16.276. The restoration of unclassified state employes shall be governed by *this* section * * *.

SECTION 6. 21.705 and 21.80 of the statutes are renumbered 45.52 and 45.53.

SECTION 7. 66.52 of the statutes is renumbered 45.51 and amended to read:

45.51 (1) The governing body of any *county, town, city* * * *, *village or school district* may grant a leave of absence to any employe or officer who is inducted or who enlists into the armed forces or the nurses corps of the federal government at a time when the United States is engaged in a war. No salary or compensation of such employe or officer shall be paid, nor claim therefor exist during such leave of absence.

(2) The governing body * * * may provide for safeguarding the reinstatement and pension rights, as herein limited, of any employe or officer so inducted or enlisted.

(3) No employe or officer who is appointed to fill the place of any employe or officer so inducted or enlisted shall acquire permanent tenure during such period of replacement service.

(4) If such leave of absence is or has been granted to an elected or appointed official or employe * * * and he has begun his federal service, a temporary vacancy shall be deemed to exist and a successor may be appointed to fill the unexpired term of such official or employe, or until such official or employe returns and files his election to resume his office as hereinafter provided for if the date of such filing be prior to the expiration of such term. Such appointment shall be made in the manner provided * * * for the filling of vacancies caused by death, resignation or otherwise, except that no election need be held to fill any part of such temporary vacancy. The appointee shall have all the powers, duties, liabilities and responsibilities and shall be paid and receive the compensation and other emoluments pertaining to the office or position, unless otherwise provided by the governing body. Within 40 days after the termination of such federal service such elected or appointed official or employe, upon filing with the clerk his statement under oath of such termination and that he elects to resume his office or position, may resume such office or position for the remainder of the term for which he was elected or appointed. The person temporarily filling the vacancy shall thereupon cease to hold the office.

(5) If any provision of *this* section * * * or the application thereof to any person or circumstance is held invalid, the remainder of such subsections or provisions thereof and the application of such provisions to other persons or circumstances shall not be affected thereby.

(6) In cities of the third class with a commission plan of government, in case of temporary or permanent vacancies in the office of mayor, the vice mayor shall temporarily succeed to the office of mayor for the balance of his unexpired term for which he was elected unless sooner terminated as provided in section 17.035 (3). The temporary or permanent vacancy thereby created in the office of councilman may thereupon be filled as provided in *this* section * * *. The term of the person appointed temporarily to the office of councilman shall not * * * extend beyond the expiration of the term of the office vacated and such temporary term shall be vacated sooner as provided for in section 17.035 (3).

SECTION 8. 66.904 (3) (bb) of the statutes is created to read:

66.904 (3) (bb) Current service credit shall be granted for that period of service spent in the armed forces of the United States between the beginning of such service or June 25, 1950, whichever is later, and the date when the employe completes such service, if the employe resumes employment with the participating municipality in conformity with section 45.50 (1), but such credit shall be granted only to a person who left the service of the participating municipality to enter such armed forces. Such credit shall be granted pursuant to section 66.904 (3) (b) as of the date the employment is resumed.

Approved August 3, 1951.