

# STATE OF NEW YORK

1759

2019-2020 Regular Sessions

## IN ASSEMBLY

January 17, 2019

Introduced by M. of A. M. G. MILLER -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the military law, in relation to enacting the "New York city health and hospitals corporation military pay act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York city health and hospitals corporation military pay act".

3 § 2. Subdivision 5-a of section 242 of the military law, as added by  
4 chapter 238 of the laws of 2008, subparagraph (ii) of paragraph (b) and  
5 the opening paragraph of paragraph (e) as amended by chapter 240 of the  
6 laws of 2008, is amended to read as follows:

7 5-a. Pay for employees of a city with a population of one million or  
8 more. This subdivision shall govern the calculation of compensation and,  
9 where applicable, repayment of same by public officers or employees of a  
10 city with a population of one million or more or who are employees of  
11 the New York city health and hospitals corporation who are engaged in  
12 the performance of ordered military duty, including time spent traveling  
13 to and returning from such duty. In any conflict between this subdivi-  
14 sion and any other provision of law with respect to such public servant  
15 soldiers, this subdivision shall be controlling.

16 (a) Definitions. As used in this subdivision:

17 (i) "Base pay of city salary" means the base pay received by a public  
18 officer or employee from employment by a city. For public officers and  
19 employees who, prior to the effective date of this subdivision, elected  
20 to participate in a "full pay/repayment plan", have returned to city  
21 employment from ordered military duty as of the effective date of this  
22 subdivision and are, on the effective date of this subdivision, public  
23 officers or employees, the base pay of city salary shall be calculated  
24 by the implementing agency as the salary received by the public servant

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 soldier as of the effective date of this subdivision or the date of  
2 return to city service, whichever is later.

3 For public officers and employees who, prior to the effective date of  
4 this subdivision, elected to participate in a "full pay/repayment plan"  
5 and who return to city employment from ordered military duty after the  
6 effective date of this subdivision, the base pay of city salary shall be  
7 calculated on the date of return to city employment.

8 For public officers and employees who, prior to the effective date of  
9 this subdivision, elected to participate in a "full pay/repayment plan"  
10 and who have, by the effective date of this subdivision, already sepa-  
11 rated from city employment in a manner other than by retirement, and  
12 except where the implementing agency shall determine the existence of  
13 hardship, the base pay of city salary shall be calculated as the salary  
14 received by the public servant soldier as of the date of separation from  
15 city service.

16 For public officers and employees who, prior to the effective date of  
17 this subdivision, elected to participate in a "full pay/repayment plan"  
18 and who separate from city employment in a manner other than retirement  
19 after the effective date of this subdivision, and except where the  
20 implementing agency shall determine the existence of hardship, the base  
21 pay of city salary shall be calculated as the salary received by the  
22 public servant soldier as of the date of return to city service.

23 (ii) "Balloon payment" means the payment required for full satisfac-  
24 tion of any remaining outstanding repayment obligation after ten years  
25 from the date of return from ordered military duty pursuant to paragraph  
26 (e) of this subdivision.

27 (iii) "City" means a city with a population of one million or more.

28 (iv) "City salary" means the gross salary received by a public officer  
29 or employee from employment by a city, before taxes, deductions, or  
30 court-ordered payments, required or voluntary; but excluding payments by  
31 a city as employer for health, pension, and other benefits.

32 (v) "Covered operation" means those military operations designated by  
33 the federal government of the United States, in support of "Operation  
34 Enduring Freedom", "Operation Iraqi Freedom", "Operation Noble Eagle",  
35 or successors thereto, or operations specifically connected by federal  
36 designation, action or implication with homeland security. The imple-  
37 menting agency may make such additional designations on a case-by-case  
38 basis as it shall deem, in its discretion, to be in keeping with the  
39 spirit and intent of this subdivision.

40 (vi) "Differential pay" means the pay calculated as the difference  
41 between a public servant soldier's military salary and city salary,  
42 where the military salary is less than the city salary.

43 (vii) "Full pay/repayment plan" means a salary and benefits plan in  
44 effect in a city prior to the effective date of this subdivision whereby  
45 a public servant soldier elected to receive city salary while on mili-  
46 tary duty, but is required to repay the lesser of such city salary or  
47 military salary to a city upon return from military duty.

48 (viii) "Implementing agency" means an agency of a city, as designated  
49 by the mayor of such city in writing, that is authorized to implement  
50 the provisions of this subdivision.

51 (ix) "Military salary" means the gross salary paid by the government  
52 of the United States to a public servant soldier for ordered military  
53 duty in the armed forces of the United States in a covered operation, as  
54 further defined by the implementing agency, provided that such military  
55 pay shall be calculated without regard to such extra or additional

1 stipends as hazard pay, housing or food allowances, or other similar  
2 additions.

3 (x) "Public officer" or "employee" means a public officer or an  
4 employee of a city or an employee of the New York city health and hospi-  
5 tals corporation.

6 (xi) "Public servant soldier" means a public officer [~~or~~], employee of  
7 a city or an employee of the New York city health and hospitals corpo-  
8 ration performing ordered military duty in connection with a covered  
9 operation.

10 (b) The mayor of a city shall designate an agency of such city to be  
11 the implementing agency that will administer and implement this subdivi-  
12 sion. The implementing agency is hereby authorized to and shall:

13 (i) provide for the continuation of health insurance benefits, to the  
14 public servant soldier and to such public servant soldier's family, if  
15 the family had been included in such coverage prior to the public serv-  
16 ant soldier beginning ordered military duty, under the same terms and  
17 conditions as applied to such public servant soldier prior to leaving  
18 city employment for ordered military duty; and

19 (ii) provide for hardship under certain conditions determined by the  
20 implementing agency for public servant soldiers who elected to partic-  
21 ipate in a "full pay/repayment plan". Such conditions shall include, but  
22 shall not be limited to, any material unforeseen or compelling changes  
23 in circumstances affecting a public servant soldier's ability to repay  
24 that occurred since such public servant soldier elected to participate  
25 in the "full pay/repayment plan," including but not limited to injuries  
26 sustained while on ordered military duty, or a determination by the  
27 implementing agency that the public servant soldier is or will be expe-  
28 riencing severe economic hardship due to a change in circumstances.  
29 Relief may include an extension of the repayment term or a reduction in  
30 the percentage of salary dedicated to repayment, or a modification to  
31 the requirement for a balloon payment. Such determinations of economic  
32 hardship may be made on a case-by-case basis, and the implementing agen-  
33 cy may require the provision of such information by the public servant  
34 soldier as it deems necessary to make such determination.

35 (c) Subdivision five of this section or any other law to the contrary  
36 notwithstanding, until August first, two thousand ten, unless the mayor  
37 of a city, in his or her discretion, extends such date, a public officer  
38 or employee shall be paid city salary as such public officer or employee  
39 for any and all periods of absence while engaged in the performance of  
40 ordered military duty, and while going to and returning from such duty,  
41 not exceeding thirty working days in any one calendar year and not  
42 exceeding thirty working days in any one continuous period of such  
43 absence.

44 (d) Subdivision five of this section or any other law to the contrary  
45 notwithstanding, until August first, two thousand ten, unless the mayor  
46 of a city, in his or her discretion, extends such date, a public servant  
47 soldier shall, after having received the city salary to which he or she  
48 is entitled pursuant to paragraph (c) of this subdivision, be paid  
49 differential pay thereafter on his or her regularly scheduled pay period  
50 for the duration of such ordered military duty, if such ordered military  
51 duty is in connection with a covered operation. No repayment shall be  
52 required to the city for such differential pay received by a public  
53 servant soldier, provided that this prohibition on repayment shall not  
54 apply in the case of a material error in calculation that results in an  
55 unwarranted increase to the public servant soldier. Repayment of any

1 such overage shall be governed by the terms of paragraph (e) of this  
2 subdivision.

3 (e) A public officer or employee who, prior to the effective date of  
4 this subdivision, elected to participate in a "full pay/repayment plan"  
5 and, in having done so, incurred a repayment obligation, shall make  
6 repayments in accordance with terms adopted by the implementing agency,  
7 except that, with respect to such repayment obligations, such officer or  
8 employee shall have satisfied the obligation to repay when he or she has  
9 repaid eighty-five percent of the amount of city salary or military  
10 salary, whichever is less, less other such discounts implemented by the  
11 implementing agency as of the effective date of this subdivision and  
12 such incentives as may be implemented by the implementing agency to  
13 encourage payment, and no such term shall:

14 (i) require a public officer or employee, while employed by such city,  
15 to pay in any pay period more than seven and one-half percent of his or  
16 her base pay of city salary toward satisfying his or her repayment obli-  
17 gation, except that a term may provide for full satisfaction of any  
18 remaining outstanding repayment obligation after ten years from the date  
19 of return from ordered military duty; or

20 (ii) require a retired public officer or employee to pay, in any  
21 month, an amount more than seven and one-half percent of his or her  
22 monthly pension payment, except that a term may provide for full satis-  
23 faction of any remaining outstanding repayment obligation after ten  
24 years from the date of return from ordered military duty; or

25 (iii) require a public officer or employee separated from employment  
26 by such city in a manner other than by retirement, to pay, in any year,  
27 an amount more than seven and one-half percent of the base pay of city  
28 salary, except that a term may provide for full satisfaction of any  
29 remaining outstanding repayment obligation after ten years from the date  
30 of return from ordered military duty.

31 (f) Notwithstanding paragraph (e) of this subdivision, a city shall  
32 not require the satisfaction of any repayment obligation in the event  
33 that a public servant soldier is killed in the performance of ordered  
34 military duty.

35 § 3. This act shall take effect immediately.