

# STATE OF NEW YORK

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5542

2021-2022 Regular Sessions

## IN SENATE

March 10, 2021

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Introduced by Sen. BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the military law, in relation to employment protections during the performance of state active duty by members of the national guard

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

1 Section 1. Subdivision 1 of section 301 of the military law, as  
2 amended by chapter 574 of the laws of 1959, is amended to read as  
3 follows:

4 1. The term "military service" means duty by a person, male or female,  
5 in the active military service of the United States as defined in  
6 section one of this chapter [~~and~~]; active duty in the military service  
7 of the state pursuant to an order of the governor issued pursuant to  
8 section six or seven of this chapter; and state active duty by members  
9 of the national guard who are activated pursuant to a call of the gover-  
10 nor of this state or of any other state as provided for by law.

11 § 2. Section 317 of the military law, as added by chapter 728 of the  
12 laws of 1951, subdivision 1 as amended by chapter 136 of the laws of  
13 1952, subdivisions 2, 2-a and 3 as amended by chapter 312 of the laws of  
14 1993, and subdivision 4 as amended by chapter 509 of the laws of 1956,  
15 is amended to read as follows:

16 § 317. Reemployment in private industry. 1. In the case of any person  
17 who, in order to perform military service, has left or leaves a posi-  
18 tion, other than a temporary position, in the employ of any employer,  
19 and who

20 (a) receives a certificate of completion of military service duly  
21 executed by an officer of the applicable force of the armed forces of  
22 the United States or by an officer of the applicable force of the organ-  
23 ized militia of this state or of any other state as provided for by law;

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

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1 (b) is still qualified to perform the duties of such position; and

2 (c) makes application for reemployment within ninety days after he or  
3 she is relieved from such service, if such position was in the employ of  
4 a private employer, such employer shall restore such person to such  
5 position, or to a position of like seniority, status and pay, unless the  
6 employer's circumstances have so changed as to make it impossible or  
7 unreasonable to do so.

8 2. The benefits, rights and privileges granted to persons in the mili-  
9 tary service by this section shall be extended to and be applicable to  
10 any person who, in order to participate in assemblies for drill or other  
11 equivalent training, reserve duty training, instruction or duties, or  
12 annual full-time training duty, active duty for training or other annual  
13 training pursuant to any law of the United States or section forty-six  
14 of this chapter or the regulations issued thereunder, or in order to  
15 attend service schools conducted by the armed forces of the United  
16 States, temporarily leaves or has left his or her position, other than a  
17 temporary position, in the employ of any employer and who, being quali-  
18 fied to perform the duties of such position, makes application for reem-  
19 ployment within ten days after completion of such temporary period of  
20 service.

21 2-a. The benefits, rights and privileges granted to persons in the  
22 military service by this section shall be extended to and be applicable  
23 to any person who, in order to perform initial full-time training duty  
24 or initial active duty for training with or in an armed force of the  
25 United States under the provisions of this chapter or the laws of the  
26 United States or both, temporarily leaves or has left his or her posi-  
27 tion, other than a temporary position, in the employ of any employer and  
28 who, being qualified to perform the duties of such position, makes  
29 application for re-employment within sixty days after completion of such  
30 period of full-time training duty or active duty for training.

31 3. The benefits, rights and privileges granted to persons in the mili-  
32 tary service by this section shall be extended to and be applicable to  
33 any person who is or becomes a member of the organized militia of this  
34 state or of any other state as provided for by law, or of a reserve  
35 component of the armed forces of the United States and who, because of  
36 such membership is discharged by his or her employer or whose employment  
37 is suspended by his or her employer because of such membership and who,  
38 being qualified to perform the duties of such position, makes applica-  
39 tion for reemployment or termination of the period of his or her suspen-  
40 sion within ten days after such discharge or suspension. These benefits,  
41 rights and privileges are not applicable to persons participating in  
42 routine reserve officer training corps training except when performing  
43 advanced training duty as a member of a reserve component of the armed  
44 forces.

45 4. Any person who is restored to a position in accordance with the  
46 provisions of this section shall be considered as having been on  
47 furlough or leave of absence during his or her period of military  
48 service, temporary service under subdivision two or subdivision two-a  
49 [~~hereof~~] of this section, or of discharge or suspension under subdivi-  
50 sion three [~~hereof~~] of this section, shall be so restored without loss  
51 of seniority, shall be entitled to participate in insurance or other  
52 benefits offered by the employer pursuant to established rules and prac-  
53 tices relating to employees on furlough or leave of absence in effect  
54 with the employer at the time such person entered the military service  
55 or commenced such temporary service or was so discharged or suspended,

1 and shall not be discharged from such position without cause, within one  
2 year after such restoration.

3 5. In case any private employer fails or refuses to comply with the  
4 provisions of this section, the supreme court of the state within the  
5 county in which such private employer maintains a place of business,  
6 shall have the power, upon the filing of a motion, petition or other  
7 appropriate pleading, by the person entitled to the benefits of such  
8 provisions, to specifically require such employer to comply with such  
9 provisions, and may, as an incident thereto, compensate such person for  
10 any loss of wages or benefits suffered by reason of such employer's  
11 unlawful action. The court shall order a speedy hearing in any such  
12 case, and shall advance it on the calendar. Any person claiming to be  
13 entitled to the benefits of the provisions of this section may appear  
14 and be represented by counsel, or, upon application to the attorney  
15 general of the state, may request that the attorney general appear and  
16 act on his or her behalf. If the attorney general is reasonably satis-  
17 fied that the person so applying is entitled to such benefits, he or she  
18 shall appear and act as attorney for such person in the amicable adjust-  
19 ment of the claim, or in the filing of any motion, petition or other  
20 appropriate pleading and the prosecution thereof. In the hearing and  
21 determination of such applications under this section no fees or court  
22 costs shall be assessed against a person so applying for such benefits.

23 § 3. This act shall take effect immediately.