

**NEBRASKA DEPARTMENT OF LABOR**

# VETERANS RE-EMPLOYMENT RIGHTS LAW

*Neb. Rev. Stat. §§55-160 to 55-166*



**PETE RICKETTS, GOVERNOR**

**JOHN H. ALBIN, COMMISSIONER**

[Current Through 2018 Legislature, Regular Session]

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**55-160. Military leave of absence without loss of pay; limitations.**

(1) All employees, including elected officials of the State of Nebraska, or any political subdivision thereof, who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve, shall be entitled to a military leave of absence from their respective duties, without loss of pay, when employed with or without pay under the orders or authorization of competent authority in the active service of the state or of the United States. Members who normally work or are normally scheduled to work one hundred fifty-nine hours or more in three consecutive weeks and scheduled to work twenty-four hour shifts shall receive a military leave of absence of one hundred sixty-eight hours each calendar year. Members who normally work or are normally scheduled to work one hundred twenty hours or more but less than one hundred fifty-nine hours in three consecutive weeks shall receive a military leave of absence of one hundred twenty hours each calendar year. Members who normally work or are normally scheduled to work less than one hundred twenty hours in three consecutive weeks shall receive a military leave of absence each calendar year equal to the number of hours they normally work or would normally be scheduled to work, whichever is greater, in three consecutive weeks. Such military leave of absence may be taken in hourly increments and shall be in addition to the regular annual leave of the persons named in this section.

(2) When the Governor of this state declares that a state of emergency exists and any of the persons named in this section are ordered to active service of the state, a state of emergency leave of absence will be granted until such member is released from active service of the state by competent authority. A military leave of absence shall not be used during a state of emergency declared by the Governor. Other forms of leave may be granted. During a state of emergency leave of absence because of the call of the Governor, any official or employee subject to this section shall receive his or her normal salary or compensation minus the state active duty base pay he or she receives in active service of the state. Governmental officers serving a term of office shall receive their compensation as provided by law.

**Source:** Laws 1947, c. 198, § 1, p. 642; Laws 1953, c. 188, § 26, p. 602; R.R.S.1943, § 55-156.01; Laws 1969, c. 459, § 58, p. 1600; Laws 2002, LB 722, § 3; Laws 2018, LB1003, § 1.

**Effective Date:** July 19, 2018

**Annotations**

Under former law, the term "workday" for purposes of military leave means any 24-hour period in which work is done. *Hall v. City of Omaha*, 266 Neb. 127, 663 N.W.2d 97 (2003).

A claim for relief made pursuant to this section is not preempted by the Railway Labor Act, 45 U.S.C. section 151 et seq. This section is inapplicable to private sector employment relationships. *Ferguson v. Union Pacific R.R. Co.*, 258 Neb. 78, 601 N.W.2d 907 (1999).

State employee on paid emergency military duty entitled to receive portion of regular employment salary as equals income loss on active duty. *King v. School Dist. of Omaha*, 197 Neb. 303, 248 N.W.2d 752 (1976).

**55-161. Military leave of absence; rights of officer or employee.**

(1) The parts of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Chapter 43, listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in existence and effective as of January 1, 2001, are adopted as Nebraska law. This section shall be applicable to all persons employed in the State of Nebraska and shall include all officers and permanent employees, including teachers employed on a one-year contract basis and elected officials, of the state or of any of its agencies or political subdivisions. The Legislature hereby adopts:

(a) Section 4301(a) — Purposes;

(b) Section 4302 — Relation to other law and plans or agreements;

(c) Section 4303(2),(4),(7) through (13),(15), and (16) and those portions of subparagraph (3) not relating to employment in a foreign country — Definitions;

(d) Section 4304 — Character of service;

(e) Section 4311 — Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited;

(f) Section 4312 — Reemployment rights of persons who serve in the uniformed services;

(g) Section 4313 with the exception of that portion of subparagraph (a) dealing with reemployment of federal employees — Reemployment positions;

(h) Section 4316 — Rights, benefits, and obligations of persons absent from employment for service in a uniformed service;

(i) Section 4317 — Health plans; and

(j) Section 4318 — Employee pension benefit plans.

(2) This section applies to all members performing duty in active service of the state and to any person employed in Nebraska who is a member of the National Guard of another state and who is called into active service by the Governor of that state.

(3) The proper appointing authority or employer may make a temporary appointment to fill any vacancy created by the absence of an officer or employee pursuant to this section. Such officer or employee shall not be discharged from his or her former or new position without justifiable cause within one year after reinstatement.

(4) The Commissioner of Labor shall enforce this section.

(5) The Adjutant General shall perform duties assigned to the Secretary of Defense, Secretary of Veterans Affairs, or Secretary of Labor in the portions of 38 U.S.C. Chapter 43 adopted under this section.

**Source:** Laws 1951, c. 183, § 1, p. 686; Laws 1953, c. 189, § 1, p. 609; R.R.S.1943, § 55-156.02; Laws 1969, c. 459, § 59, p. 1600; Laws 1969, c. 751, § 8, p. 2828; Laws 1972, LB 1510, § 1; Laws 2002, LB 722, § 4; Laws 2016, LB753, § 1.

**Effective Date:** July 21, 2016.

**55-161.01. Officers and employees of state; violation of rights; Commissioner of Labor; investigate; order; filing of action; order.**

Any person who feels that his or her employment rights under the provisions of section 55-161 have been violated may file complaint with respect thereto with the Commissioner of Labor. Such complaint shall not be subject to formal requirements but shall be sufficient if it identifies the parties involved and the right or rights alleged to have been violated. The commissioner shall promptly investigate each such complaint and if he or she finds that the allegations thereof are true he or she shall issue his or her order to the offending party directing the granting to complainant of all his or her rights under section 55-161, including the granting of backpay from the date the violation occurred. If such order has not been complied with within ten days after its mailing, by registered or certified mail, the commissioner may file suit in the district court for the county in which the alleged violation occurred for a writ of mandamus ordering the granting of the rights wrongfully denied together with backpay from the date the violation occurred. Such suit shall be determined by the court as expeditiously as practicable. The court shall enter such order as the evidence shows to be appropriate, including, in cases of flagrant violations of rights, the removal from office or employment of the person or persons responsible therefor when such removal is permitted by the Constitution of the State of Nebraska. In any such suit or in any appeal from the decision of the district court, the commissioner may employ private counsel with the written authorization required by subdivision (5) of section 84-205. A reasonable fee for such counsel shall be allowed by the court in any case in which a decision favorable to the commissioner is rendered.

**Source:** Laws 1972, LB 1510, § 2; Laws 1997, LB 758, § 5.

**55-161.02. Officers and employees of state; employer; granting of rights of veteran; effect.**

The employer shall not incur any liability to any person whose employment is terminated, or whose seniority, status, or other employment rights are curtailed as the result of the granting to a veteran of all the rights assured him under the provisions of section 55-161.

**Source:** Laws 1972, LB 1510, § 3.

**55-162. Repealed.**

**Source:** Laws 2002, LB 722, § 9.

**55-163. Repealed.**

**Source:** Laws 2002, LB 722, § 9.

**55-164. Military leave of absence; damages for noncompliance.**

## VETERANS RE-EMPLOYMENT RIGHTS LAW

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If any employer fails to comply with any of the provisions of section 55-160 or 55-161, the employee may, at his or her election, bring an action at law for damages for such noncompliance. The employee may also apply to the courts for such equitable relief as may be just and proper under the circumstances.

**Source:** Laws 1957, c. 238, § 3, p. 799; R.R.S.1943, § 55-193; Laws 1969, c. 459, § 62, p. 1602; Laws 2002, LB 722, § 5.

**55-165. Military leave of absence; violation; penalty.**

Any person, firm, or organization violating section 55-160 or 55-161 shall be guilty of a Class IV misdemeanor and, in addition thereto, shall restore to the employee all rights of which he or she has been illegally deprived.

**Source:** Laws 1957, c. 238, § 4, p. 799; R.R.S.1943, § 55-194; Laws 1969, c. 459, § 63, p. 1602; Laws 1977, LB 39, § 51; Laws 2002, LB 722, § 6.

**55-166. National Guard; armed forces of United States; member; discharge by employer; violation; penalty.**

Any person, firm, or organization, who discharges an employee because of his membership in the National Guard of this state or his fulfillment of military duty in the active service of the state or of the United States, shall be guilty of a Class IV misdemeanor, and, in addition thereto, shall restore the employee to a position of like seniority, status, and pay.

**Source:** Laws 1955, c. 213, § 3, p. 599; R.R.S.1943, § 55-190; Laws 1969, c. 459, § 64, p. 1603; Laws 1977, LB 39, § 52.