



Rep. Stephanie A. Kifowit

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1 AMENDMENT TO HOUSE BILL 1362

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1362 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Service Member Employment and Reemployment  
5 Rights Act is amended by changing Sections 1-10, 1-15, 5-5,  
6 and 5-10 as follows:

7 (330 ILCS 61/1-10)

8 Sec. 1-10. Definitions. As used in this Act:

9 "Accrue" means to accumulate in regular or increasing  
10 amounts over time subject to customary allocation of cost.

11 "Active duty" means any full-time military service  
12 regardless of length or voluntariness including, but not  
13 limited to, annual training, full-time National Guard duty,  
14 and State active duty. "Active duty" does not include any form  
15 of inactive duty service such as drill duty or muster duty.

16 "Active duty", unless provided otherwise, includes active duty

1 without pay.

2 "Active service" means all forms of active and inactive  
3 duty regardless of voluntariness including, but not limited  
4 to, annual training, active duty for training, initial active  
5 duty training, overseas training duty, full-time National  
6 Guard duty, active duty other than training, State active  
7 duty, mobilizations, and muster duty. "Active service" does  
8 not include absences to work as a military technician,  
9 sometimes known as a federal dual-status technician. "Active  
10 service", unless provided otherwise, includes active service  
11 without pay. "Active service" includes:

12 (1) Reserve component voluntary active service means  
13 service under one of the following authorities:

14 (A) any duty under 32 U.S.C. 502(f)(1)(B);

15 (B) active guard reserve duty, operational  
16 support, or additional duty under 10 U.S.C. 12301(d)  
17 or 32 U.S.C. 502(f)(1)(B);

18 (C) funeral honors under 10 U.S.C. 12503 or 32  
19 U.S.C. 115;

20 (D) duty at the National Guard Bureau under 10  
21 U.S.C. 12402;

22 (E) unsatisfactory participation under 10 U.S.C.  
23 10148 or 10 U.S.C. 12303;

24 (F) discipline under 10 U.S.C. 802(d);

25 (G) extended active duty under 10 U.S.C. 12311;

26 and

1 (H) reserve program administrator under 10 U.S.C.  
2 10211.

3 (2) Reserve component involuntary active service  
4 includes, but is not limited to, service under one of the  
5 following authorities:

6 (A) annual training or drill requirements under 10  
7 U.S.C. 10147, 10 U.S.C. 12301(b), or 32 U.S.C. 502(a);

8 (B) additional training duty or other duty under  
9 32 U.S.C. 502(f) (1) (A);

10 (C) pre-planned or pre-programmed combatant  
11 commander support under 10 U.S.C. 12304b;

12 (D) mobilization under 10 U.S.C. 12301(a) or 10  
13 U.S.C. 12302;

14 (E) presidential reserve call-up under 10 U.S.C.  
15 12304;

16 (F) emergencies and natural disasters under 10  
17 U.S.C. 12304a or 14 U.S.C. 712;

18 (G) muster duty under 10 U.S.C. 12319;

19 (H) retiree recall under 10 U.S.C. 688;

20 (I) captive status under 10 U.S.C. 12301(g);

21 (J) insurrection under 10 U.S.C. 331, 10 U.S.C.  
22 332, or 10 U.S.C. 12406;

23 (K) pending line of duty determination for  
24 response to sexual assault under 10 U.S.C. 12323; and

25 (L) initial active duty for training under 10  
26 U.S.C. 671.

1 Reserve component active service not listed in paragraph  
2 (1) or (2) shall be considered involuntary active service  
3 under paragraph (2).

4 "Active service without pay" means active service  
5 performed under any authority in which base pay is not  
6 received regardless of other allowances.

7 "Annual training" means any active duty performed under  
8 Section 10147 or 12301(b) of Title 10 of the United States Code  
9 or under Section 502(a) of Title 32 of the United States Code.

10 "Base pay" means the main component of military pay,  
11 whether active or inactive, based on rank and time in service.  
12 It does not include the addition of conditional funds for  
13 specific purposes such as allowances, incentive and special  
14 pay. Base pay, also known as basic pay, can be determined by  
15 referencing the appropriate military pay chart covering the  
16 time period in question located on the federal Defense Finance  
17 and Accounting Services website or as reflected on a federal  
18 Military Leave and Earnings Statement.

19 "Benefits" includes, but is not limited to, the terms,  
20 conditions, or privileges of employment, including any  
21 advantage, profit, privilege, gain, status, account, or  
22 interest, including wages or salary for work performed, that  
23 accrues by reason of an employment contract or agreement or an  
24 employer policy, plan, or practice and includes rights and  
25 benefits under a pension plan, a health plan, an employee  
26 stock ownership plan, insurance coverage and awards, bonuses,

1 severance pay, supplemental unemployment benefits, vacations,  
2 and the opportunity to select work hours or location of  
3 employment.

4 "Differential compensation" means pay due when the  
5 employee's daily rate of compensation for military service is  
6 less than his or her daily rate of compensation as a public  
7 employee.

8 "Employee" means anyone employed by an employer.  
9 "Employee" includes any person who is a citizen, national, or  
10 permanent resident of the United States employed in a  
11 workplace that the State has legal authority to regulate  
12 business and employment. "Employee" does not include an  
13 independent contractor.

14 "Employer" means any person, institution, organization, or  
15 other entity that pays salary or wages for work performed or  
16 that has control over employment opportunities, including:

17 (1) a person, institution, organization, or other  
18 entity to whom the employer has delegated the performance  
19 of employment-related responsibilities;

20 (2) an employer of a public employee;

21 (3) any successor in interest to a person,  
22 institution, organization, or other entity referred to  
23 under this definition; and

24 (4) a person, institution, organization, or other  
25 entity that has been denied initial employment in  
26 violation of Section 5-15.

1 "Inactive duty" means inactive duty training, including  
2 drills, consisting of regularly scheduled unit training  
3 assemblies, additional training assemblies, periods of  
4 appropriate duty or equivalent training, and any special  
5 additional duties authorized for reserve component personnel  
6 by appropriate military authority. "Inactive duty" does not  
7 include active duty.

8 "Military leave" means a furlough or leave of absence  
9 while performing active service. It cannot be substituted for  
10 accrued vacation, annual, or similar leave with pay except at  
11 the sole discretion of the service member employee. It is not a  
12 benefit of employment that is requested but a legal  
13 requirement upon receiving notice of pending military service.

14 "Military service" means:

15 (1) Service in the Armed Forces of the United States,  
16 the National Guard of any state or territory regardless of  
17 status, and the State Guard as defined in the State Guard  
18 Act. "Military service", whether active or reserve,  
19 includes service under the authority of U.S.C. Titles 10,  
20 14, or 32, or State active duty.

21 (2) Service in a federally recognized auxiliary of the  
22 United States Armed Forces when performing official duties  
23 in support of military or civilian authorities as a result  
24 of an emergency.

25 (3) A period for which an employee is absent from a  
26 position of employment for the purpose of medical or

1 dental treatment for a condition, illness, or injury  
2 sustained or aggravated during a period of active service  
3 in which treatment is paid by the United States Department  
4 of Defense Military Health System.

5 "Orders in lieu of annual training" means any paid active  
6 duty performed by a service member which has been designated  
7 by that service member's military authority as a replacement  
8 or substitution of that service member's annual training  
9 obligation. Employers may request documentation from a service  
10 member's military unit to confirm that periods of military  
11 service qualify as orders in lieu of annual training.

12 "Public employee" means any person classified as a  
13 full-time employee of the State of Illinois, a unit of local  
14 government, a public institution of higher education as  
15 defined in Section 1 of the Board of Higher Education Act, or a  
16 school district, other than an independent contractor.

17 "Reserve component" means the reserve components of  
18 Illinois and the United States Armed Forces regardless of  
19 status.

20 "Service member" means any person who is a member of a  
21 military service.

22 "State active duty" means full-time State-funded military  
23 duty under the command and control of the Governor and subject  
24 to the Military Code of Illinois.

25 "Unit of local government" means any city, village, town,  
26 county, or special district.

1 (Source: P.A. 102-1030, eff. 5-27-22; 103-154, eff. 6-30-23.)

2 (330 ILCS 61/1-15)

3 Sec. 1-15. Differential compensation.

4 (a) As used in this Section, "work days" are the actual  
5 number of shifts ~~days~~ the employee would have worked during  
6 the period of military leave but for the service member's  
7 military obligation. "Work days" are tabulated without regard  
8 for the number of hours in a shift, regardless if the shift  
9 extends into the next day. ~~work day. Work hours that extend~~  
10 ~~into the next calendar day count as 2 work days.~~

11 (b) Differential compensation under this Act is calculated  
12 on a daily basis and only applies to days in which the employee  
13 would have otherwise been scheduled or required to work as a  
14 public employee. Differential compensation shall be paid to  
15 all forms of active service except active service without pay.  
16 Differential compensation is calculated as follows:

17 (1) To calculate differential compensation, subtract  
18 the daily rate of compensation for military service from  
19 the daily rate of compensation as a public employee.

20 (2) To calculate the daily rate of compensation as a  
21 public employee, divide the employee's regular  
22 compensation as a public employee during the pay period by  
23 the number of work days in the pay period.

24 (3) To calculate the daily rate of compensation for  
25 military service, divide the employee's base pay for the

1 applicable military service by the number of calendar days  
2 in the month the service member was paid by the military.  
3 For purposes of inactive duty, the daily rate of  
4 compensation for military service is calculated in  
5 accordance with the applicable drill pay chart issued by  
6 Defense Finance and Accounting Services.

7 (Source: P.A. 100-1101, eff. 1-1-19.)

8 (330 ILCS 61/5-5)

9 Sec. 5-5. Basic protections. This Section incorporates  
10 Sections 4304, 4312, 4313, 4316, 4317, and 4318 of the  
11 Uniformed Services Employment and Reemployment Rights Act  
12 under Title 38 of the United States Code, as may be amended,  
13 including case law and regulations promulgated under that Act,  
14 subject to the following:

15 (1) For the purposes of this Section, all employment  
16 rights shall be extended to all employees in military  
17 service under this Act, unless otherwise stated.

18 (2) Military leave. A service member employee is not  
19 required to get permission from his or her employer for  
20 military leave. The service member employee is only  
21 required to give such employer advance notice of pending  
22 service. This advance notice entitles a service member  
23 employee to military leave.

24 An employer may not impose conditions for military  
25 leave, such as work shift replacement, not otherwise

1 imposed by this Act or other applicable law. This  
2 paragraph shall not be construed to prevent an employer  
3 from providing scheduling options to employees in lieu of  
4 paid military leave.

5 A service member employee is not required to  
6 accommodate his or her employer's needs as to the timing,  
7 frequency, or duration of military leave; however,  
8 employers are permitted to bring concerns over the timing,  
9 frequency, or duration of military leave to the attention  
10 of the appropriate military authority. The accommodation  
11 of these requests are subject to military law and  
12 discretion.

13 Military necessity as an exception to advance notice  
14 of pending military leave for State active duty will be  
15 determined by appropriate State military authority and is  
16 not subject to judicial review.

17 For purposes of notice of pending military service  
18 under paragraphs (2) or (3) of the definition of "military  
19 service" under Section 1-10, an employer may require  
20 notice by appropriate military authority on official  
21 letterhead. For purposes of this paragraph, notice  
22 exceptions do not apply.

23 (3) Service, efficiency, and performance rating. A  
24 service member employee who is absent on military leave  
25 shall, minimally, for the period of military leave, be  
26 credited with the average of the efficiency or performance

1 ratings or evaluations received for the 3 years  
2 immediately before the absence for military leave.  
3 Additionally, the rating shall not be less than the rating  
4 that he or she received for the rated period immediately  
5 prior to his or her absence on military leave. In  
6 computing seniority and service requirements for promotion  
7 eligibility or any other benefit of employment, the period  
8 of military duty shall be counted as civilian service.  
9 This paragraph does not apply to probationary periods.

10 (4) State active duty ineligible discharge. For  
11 purposes of State active duty, a disqualifying discharge  
12 or separation will be the State equivalent under the  
13 Military Code of Illinois for purposes of ineligibility of  
14 reemployment under the Uniformed Services Employment and  
15 Reemployment Rights Act as determined by appropriate State  
16 military authority.

17 (5) A retroactive upgrade of a disqualifying discharge  
18 or release will restore reemployment rights providing the  
19 service member employee otherwise meets this Act's  
20 eligibility criteria.

21 (6) A service member whose employment with an employer  
22 is interrupted by a period of active service shall be  
23 permitted, upon request of that service member, to use  
24 during such period of service any vacation, annual, or  
25 similar leave with pay accrued by the service member  
26 before the commencement of such period of active service.

1       No employer may require any such service member to use  
2       vacation, annual, or similar leave during such period of  
3       active service. This provision expressly applies to both  
4       paid and unpaid active service, including, but not limited  
5       to: travel to and from military orders, rest periods  
6       immediately before or after military orders, and military  
7       service during which the service member does not receive  
8       pay from the military.

9       (Source: P.A. 100-1101, eff. 1-1-19.)

10       (330 ILCS 61/5-10)

11       Sec. 5-10. Additional benefits for public employee members  
12       of a reserve component.

13       (a) Concurrent compensation. During periods of military  
14       leave for annual training or orders in lieu of annual  
15       training, public employees shall continue to receive full  
16       compensation as a public employee for up to 30 days per  
17       calendar year and military leave for purposes of receiving  
18       concurrent compensation may be performed nonsynchronously.  
19       Public employees may receive concurrent compensation for both  
20       annual training orders and orders in lieu of annual training  
21       in the same calendar year, however the combined total of their  
22       concurrent compensation shall not exceed 30 days in a calendar  
23       year.

24       (b) Differential Compensation. During periods of military  
25       leave for active service, public employees shall receive

1 differential compensation subject to the following:

2 (1) Public employees may elect the use of accrued  
3 vacation, annual, or similar leave with pay in lieu of  
4 differential compensation during any period of military  
5 leave.

6 (2) Differential compensation for voluntary active  
7 service under Section 1-10 is limited to 60 work days in a  
8 calendar year.

9 (3) After a public employee is absent from his or her  
10 employment for a consecutive period of 365 days while  
11 performing voluntary active service, the employee's  
12 entitlement to differential compensation shall be  
13 terminated. Upon return to work with his or her employer  
14 for more than 90 calendar days, the public employee's  
15 right to differential pay shall be reinstated. Nothing in  
16 this Section shall entitle a public employee to  
17 differential pay in excess of 60 work days per calendar  
18 year for voluntary active service.

19 (4) Public employees are not entitled to differential  
20 pay under this Section for periods of unpaid active  
21 service including, but not limited to: travel to and from  
22 military orders, rest periods immediately before or after  
23 military orders, and military service in which the public  
24 employee does not receive pay from the military. ~~(3)~~  
25 ~~Differential compensation shall not be paid for active~~  
26 ~~service without pay.~~

1           (5) ~~(4)~~ Public employees who have exhausted concurrent  
2           compensation under subsection (a) of Section 5-10 in a  
3           calendar year shall receive differential compensation when  
4           authorized under subsection (b) of Section 5-10 in the  
5           same calendar year.

6           (c) Employer-based health plan benefits shall continue in  
7           accordance with Section 5-5 of this Act, except the employer's  
8           share of the full premium and administrative costs shall  
9           continue to be paid by the employer for active duty.

10          (d) In the event that 20% or more employees of a unit of  
11          local government are mobilized under 10 U.S.C. 12301(a), 10  
12          U.S.C. 12302, 10 U.S.C. 12304, or 10 U.S.C. 12304a, or 14  
13          U.S.C. 712 concurrently, additional benefits under this  
14          Section are not required without funding for that purpose.

15          (Source: P.A. 100-1101, eff. 1-1-19.)".