

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2545

By: Kannady

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5  
6 AS INTRODUCED

7 An Act relating to state military forces; amending 44  
8 O.S. 2011, Section 208, as amended by Section 204,  
9 Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section  
10 208), which relates to discrimination against members  
11 of state military forces; enacting the Oklahoma  
12 Uniformed Services Employment and Reemployment Rights  
13 Act; declaring applicability of act; defining term;  
14 stating purposes of the act; construing provisions of  
15 act; declaring act to supersede certain laws and  
16 other documents; defining terms; specifying  
17 eligibility and entitlement to act benefits;  
18 prohibiting denial of certain employment for person  
19 with service in state military forces; barring  
20 discrimination against certain employee; providing  
21 for applicability to specified employment;  
22 establishing reemployment rights and benefits for  
23 certain employees; requiring advance written or  
24 verbal notice to employer; providing an exception;  
permitting employer to not reemploy employee in  
certain circumstances; directing employee to provide  
notice of intent to return; specifying timing  
requirements for notice; requiring documentation for  
reemployment application; barring rights if person  
has a superior claim; directing prompt reemployment;  
describing priority for reemployment; giving priority  
to person who left the position first; establishing  
procedures for reemployment in state government;  
directing oversight by the Director of Human Capital  
Management; prescribing duties of Director; providing  
for employment in another state agency; mandating  
administrators of public entities to establish  
procedures for act; listing minimum content of  
procedures; providing for certain annual report;  
providing an exception; construing provisions;  
requiring offer of employment for certain employees;

1       prescribing seniority for certain reemployed persons;  
2       establishing conditions for persons absent from  
3       employment; prohibiting certain discharge from  
4       reemployment; providing exceptions; permitting  
5       employee to use accrued leave time; mandating an  
6       authorized leave of absence; allowing person to  
7       continue employer health plan coverage; specifying  
8       procedures for coverage continuation; excluding  
9       applicability of act to foreign employer; providing  
10       for determination of controlling employer; exempting  
11       compliance for certain employers; directing  
12       Commissioner of Labor to assist with rights and  
13       benefits of the act; providing for filing a complaint  
14       with the Commissioner; prescribing contents of  
15       complaint; requiring notification be given to  
16       complainant within specified time; directing  
17       Commissioner to investigate complaints; prescribing  
18       attempt to resolve complaint; mandating notification  
19       to complainant within certain time; allowing  
20       complainant to request referral to the Attorney  
21       General or district attorney; specifying procedures  
22       for referrals; prescribing jurisdiction and venue;  
23       authorizing court to award remedies; authorizing  
24       court to use equity powers; establishing standing for  
      violations of the act; limiting party who can be a  
      respondent; prohibiting claimant from paying fees or  
      court costs; providing for award of certain fees and  
      expenses; defining term; granting access to persons  
      and documents for purpose of investigations;  
      authorizing subpoena powers; allowing remedy for  
      disobeying subpoena; establishing jurisdiction for  
      certain writs; excluding applicability to certain  
      employers; permitting extension of time for state  
      officials; exempting claims from any statute of  
      limitations; authorizing prescribing regulations to  
      implement the provisions of this act; directing  
      annual report of complaints; providing an exception;  
      requiring certain officials to take actions to inform  
      employees of rights under this act; mandating  
      employer to provide employees of certain notice;  
      providing for content of notice; directing training  
      for state employee human resources personnel;  
      providing for development and frequency of training;  
      defining term; amending 72 O.S. 2011, Section 48.1,  
      which relates to a leave of absence; extending  
      remedies to a certain leave of absence; mandating  
      protections for private sector officers an employees;

1 defining term; providing for codification; and  
2 declaring an emergency.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 44 O.S. 2011, Section 208, as  
6 amended by Section 204, Chapter 408, O.S.L. 2019 (44 O.S. Supp.  
7 2020, Section 208), is amended to read as follows:

8 Section 208. No person shall discriminate against any officer  
9 or enlisted member of the National Guard or Civil Air Patrol or a  
10 judge carrying out his or her duties as a member of the Military  
11 Court of Appeals because of his or her membership therein. No  
12 person shall prohibit or refuse entrance to any officer or enlisted  
13 member of the United States Armed Forces, or of the state military  
14 forces ~~of this state~~, into any public entertainment or place of  
15 amusement because such officer or enlisted member is wearing a  
16 uniform of the organization to which he or she belongs. No  
17 employer, officer or agent of any corporation, company, firm or  
18 other person, shall discharge any person from employment because of  
19 being an officer, warrant officer or enlisted member of the military  
20 forces of the state, or hinder or prevent him or her from performing  
21 any military service he or she may be called upon to perform by  
22 proper authority, in respect to his or her employment, trade or  
23 business. Any person violating any of the provisions of this  
24 section, shall be punished by a fine of not to exceed One Hundred

1 Dollars (\$100.00), or by imprisonment in the county jail for a  
2 period of not to exceed thirty (30) days, or by both such fine and  
3 imprisonment.

4 SECTION 2. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 4300 of Title 44, unless there  
6 is created a duplication in numbering, reads as follows:

7 Sections 2 through 24 of this act shall be known and may be  
8 cited as the "Oklahoma Uniformed Services Employment and  
9 Reemployment Rights Act". The Oklahoma Uniformed Services  
10 Employment and Reemployment Rights Act shall be applicable to  
11 members of the state military forces while serving on state active  
12 duty or Title 32 active duty. "State military forces", "state  
13 active duty" and "Title 32 active duty" for the purposes of the  
14 Oklahoma Uniformed Services Employment and Reemployment Rights Act,  
15 shall be defined in accordance with Section 801 of Title 44 of the  
16 Oklahoma Statutes.

17 SECTION 3. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 4301 of Title 44, unless there  
19 is created a duplication in numbering, reads as follows:

20 The purposes of the Oklahoma Uniformed Services Employment and  
21 Reemployment Rights Act are:

22 1. To encourage noncareer service in the state military forces  
23 by eliminating or minimizing the disadvantages to civilian careers  
24 and employment which can result from such service;

1           2. To minimize the disruption to the lives of persons  
2 performing service in the state military forces as well as to their  
3 employers, their fellow employees, and their communities, by  
4 providing for the prompt reemployment of such persons upon their  
5 completion of service; and

6           3. To prohibit discrimination against persons because of their  
7 service in the state military forces.

8           SECTION 4.           NEW LAW           A new section of law to be codified  
9 in the Oklahoma Statutes as Section 4302 of Title 44, unless there  
10 is created a duplication in numbering, reads as follows:

11           A. Nothing in the Oklahoma Uniformed Services Employment and  
12 Reemployment Rights Act shall be construed to supersede, nullify or  
13 diminish any federal law or state law, including any county or  
14 municipal law or ordinance, contract, agreement, policy, plan,  
15 practice or other matter that establishes a right or benefit that is  
16 more beneficial to, or is in addition to, a right or benefit  
17 provided for such person in the Oklahoma Uniformed Services  
18 Employment and Reemployment Rights Act.

19           B. The Oklahoma Uniformed Services Employment and Reemployment  
20 Rights Act supersedes any other state law, including any county or  
21 municipal law or ordinance, contract, agreement, policy, plan,  
22 practice, or other matter that reduces, limits, or eliminates in any  
23 manner any right or benefit provided by the Oklahoma Uniformed  
24 Services Employment and Reemployment Rights Act, including the

1 establishment of additional prerequisites to the exercise of any  
2 such right or the receipt of any such benefit.

3 SECTION 5. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 4303 of Title 44, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in the Oklahoma Uniformed Services Employment and  
7 Reemployment Rights Act:

8 1. "Adjutant General" shall be defined in accordance with  
9 Section 801 of Title 44 of the Oklahoma Statutes;

10 2. "Attorney General" means the Oklahoma Attorney General whose  
11 office is established in Section 1 of Article VI of the Oklahoma  
12 Constitution and whose powers and duties are established pursuant to  
13 Section 18b of Title 74 of the Oklahoma Statutes or any person  
14 designated or retained by the Attorney General to carry out a  
15 responsibility of the Attorney General under the Oklahoma Uniformed  
16 Services Employment and Reemployment Rights Act;

17 3. "Benefit", "benefit of employment", or "rights and benefits"  
18 means the terms, conditions, or privileges of employment, including  
19 any advantage, profit, privilege, gain, status, account, or  
20 interest, including wages or salary for work performed, that accrues  
21 by reason of an employment contract or agreement or an employer  
22 policy, plan, or practice and includes rights and benefits under a  
23 pension plan, a health plan, an employee stock ownership plan,  
24 insurance coverage, awards, bonuses, severance pay, supplemental

1 unemployment benefits, vacations, and the opportunity to select work  
2 hours or location of employment;

3 4. "Commissioner of Labor" means the Oklahoma Commissioner of  
4 Labor whose office is established in Section 1 of Article VI of the  
5 Oklahoma Constitution and whose powers and duties are established  
6 pursuant to Section 1 et seq. of Title 40 of the Oklahoma Statutes  
7 or any person designated or retained by the Commissioner of Labor to  
8 carry out a responsibility of the Commissioner of Labor under the  
9 Oklahoma Uniformed Services Employment and Reemployment Rights Act;

10 5. "District attorney" means the executive officer established  
11 pursuant to Section 215.1 of Title 19 of the Oklahoma Statutes. The  
12 powers and duties exercised by a district attorney pursuant to the  
13 Oklahoma Uniformed Services Employment and Reemployment Rights Act,  
14 upon designation by the district attorney, may also be performed by  
15 an assistant district attorney or by a special district attorney  
16 appointed pursuant to subsection C of Section 215.37M of Title 19 of  
17 the Oklahoma Statutes;

18 6. "Employee" means any person employed by an employer.  
19 Employee includes any person who is a citizen, national, or  
20 permanent resident alien of the United States;

21 7. a. Except as provided in subparagraphs b and c of this  
22 paragraph, "employer" means any person, institution,  
23 organization, or other entity that pays salary or  
24

1 wages for work performed or that has control over  
2 employment opportunities, including:

3 (1) a person, institution, organization, or other  
4 entity to whom the employer has delegated the  
5 performance of employment-related  
6 responsibilities,

7 (2) the State of Oklahoma,

8 (3) any political subdivision within the State of  
9 Oklahoma,

10 (4) any successor in interest to a person,  
11 institution, organization, or other entity  
12 referred to in this subparagraph, and

13 (5) a person, institution, organization, or other  
14 entity that has denied initial employment in  
15 violation of Section 7 of this act,

16 b. where a National Guard technician is employed under  
17 Section 709 of Title 32 of the United States Code,  
18 "employer" means the Adjutant General,

19 c. (1) whether the term "successor in interest" applies  
20 with respect to an entity described in division  
21 (4) of subparagraph a of this paragraph shall be  
22 determined on a case-by-case basis using a  
23 multi-factor test that considers the following  
24 factors:



- (a) substantial continuity of business operations,
- (b) use of the same or similar facilities,
- (c) continuity of work force,
- (d) similarity of jobs and working conditions,
- (e) similarity of supervisory personnel,
- (f) similarity of machinery, equipment, and production methods,
- (g) similarity of products or services,

(2) the entity's lack of notice or awareness of a potential or pending claim under the Oklahoma Uniformed Services Employment and Reemployment Rights Act at the time of a merger, acquisition, or other form of succession shall not be considered when applying the multi-factor test under division (1) of this subparagraph;

8. "State agency" includes any executive branch agency within the state, whether appropriated or nonappropriated, established either by the Oklahoma Constitution or by the Oklahoma Statutes, including the Oklahoma Military Department with respect to the state employees employed by the Oklahoma Military Department;

9. "State government" means any state agency, the legislative branch of the state, and the judicial branch of the state;

1        10. "Political subdivision" means the seventy-seven (77)  
2 counties of the state, incorporated municipalities, including both  
3 cities and towns, and all public entities or instrumentalities,  
4 including, but not limited to, municipal corporations, municipal  
5 sewer and water authorities, public trusts and public authorities in  
6 the state which are not a state agency, an executive officer, the  
7 legislative branch or the judicial branch of the state. Political  
8 subdivisions include, but are not limited to, special districts,  
9 authorities and instrumentalities such as school districts, fire  
10 protection districts, conservation districts, water and sewer  
11 districts, emergency medical service districts and airport and  
12 housing authorities;

13        11. "Health plan" means an insurance policy or contract,  
14 medical or hospital service agreement, membership or subscription  
15 contract, or other arrangement under which health services for  
16 individuals are provided or the expenses of such services are paid;

17        12. "Notice" means any written or verbal notification of an  
18 obligation or intention to perform service in the state military  
19 forces provided to an employer by the employee who will perform such  
20 service or by the state military force component in which the  
21 service is to be performed;

22        13. "Qualified", with respect to an employment position, means  
23 having the ability to perform the essential tasks of the position;

24

1 14. "Reasonable efforts", in actions required of an employer  
2 under the Oklahoma Uniformed Services Employment and Reemployment  
3 Rights Act, means actions, including training, provided by an  
4 employer, which do not place an undue hardship on the employer;

5 15. "Secretary concerned" means either the Secretary of the  
6 Army or the Secretary of the Air Force as the context requires;

7 16. "Seniority" means longevity in employment together with any  
8 benefits of employment which accrue with, or are determined by,  
9 longevity in employment;

10 17. "Service in the state military forces" means the  
11 performance of duty on a voluntary or involuntary basis in the state  
12 military forces under competent authority when ordered to "state  
13 active duty" or "Title 32 active duty" as defined in Section 801 of  
14 Title 44 of the Oklahoma Statutes;

15 18. "State" means the State of Oklahoma;

16 19. "Undue hardship", in actions taken by an employer, means  
17 actions requiring significant difficulty or expense, when considered  
18 in light of:

- 19 a. the nature and cost of the action needed,
- 20 b. the overall financial resources of the facility or  
21 facilities involved in the provision of the action,  
22 the number of persons employed at the facility, the  
23 effect on expenses and resources, or the impact  
24

1 otherwise of such action upon the operation of the  
2 facility,

3 c. the overall financial resources of the employer; the  
4 overall size of the business of an employer with  
5 respect to the number of its employees; the number,  
6 type, and location of its facilities, and

7 d. the type of operation or operations of the employer,  
8 including the composition, structure, and functions of  
9 the workforce of such employer; the geographic  
10 separateness, administrative, or fiscal relationship  
11 of the facility or facilities in question to the  
12 employer; and

13 20. "State military forces" shall be defined in accordance with  
14 Section 801 of Title 44 of the Oklahoma Statutes.

15 SECTION 6. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 4304 of Title 44, unless there  
17 is created a duplication in numbering, reads as follows:

18 A person's entitlement to the benefits of the Oklahoma Uniformed  
19 Services Employment and Reemployment Rights Act due to the person's  
20 service in the state military forces terminates upon any of the  
21 following events:

22 1. A separation of the person from the state military forces  
23 with a dishonorable or bad conduct discharge;

1           2. A separation of the person from the state military forces  
2 under other than honorable conditions, as characterized pursuant to  
3 state law or regulations prescribed by the National Guard Bureau or  
4 applicable regulations of the United States Army or the United  
5 States Air Force;

6           3. A dismissal of the person permitted under the Oklahoma  
7 Uniform Code of Military Justice or the regulations promulgated  
8 pursuant to the provisions of the Oklahoma Uniform Code of Military  
9 Justice or the applicable regulations of the National Guard Bureau  
10 or the United States Army or the United States Air Force; or

11           4. A dropping of the person from the rolls pursuant to the  
12 Oklahoma Uniform Code of Military Justice or the regulations  
13 promulgated pursuant to the provisions of the Oklahoma Uniform Code  
14 of Military Justice or the applicable regulations of the National  
15 Guard Bureau or the United States Army or the United States Air  
16 Force.

17           SECTION 7.           NEW LAW           A new section of law to be codified  
18 in the Oklahoma Statutes as Section 4311 of Title 44, unless there  
19 is created a duplication in numbering, reads as follows:

20           A. A person who is a member of, applies to be a member of,  
21 performs, has performed, applies to perform, or has an obligation to  
22 perform service in the state military forces shall not be denied  
23 initial employment, reemployment, retention in employment,  
24 promotion, or any benefit of employment by an employer on the basis

1 of that membership, application for membership, performance of  
2 service, application for service, or obligation.

3 B. An employer shall not discriminate in employment against or  
4 take any adverse employment action against any person because the  
5 person:

6 1. Has taken an action to enforce a protection afforded  
7 pursuant to the Oklahoma Uniformed Services Employment and  
8 Reemployment Rights Act;

9 2. Has testified or otherwise made a statement in or in  
10 connection with any proceeding under the Oklahoma Uniformed Services  
11 Employment and Reemployment Rights Act;

12 3. Has assisted or otherwise participated in an investigation  
13 under the Oklahoma Uniformed Services Employment and Reemployment  
14 Rights Act; or

15 4. Has exercised a right provided for in the Oklahoma Uniformed  
16 Services Employment and Reemployment Rights Act.

17 The prohibition in this subsection shall apply with respect to a  
18 person regardless of whether that person has performed service in  
19 the state military forces.

20 C. An employer shall be considered to have engaged in actions  
21 prohibited:

22 1. Under subsection A of this section, if the person's  
23 membership, application for membership, service, application for  
24 service, or obligation for service in the state military forces is a

1 motivating factor in the employer's action, unless the employer can  
2 prove that the action would have been taken in the absence of such  
3 membership, application for membership, service, application for  
4 service, or obligation for service; or

5 2. Under subsection B of this section, if the person's:

6 a. action to enforce a protection afforded any person  
7 under the Oklahoma Uniformed Services Employment and  
8 Reemployment Rights Act,

9 b. testimony or making of a statement in or in connection  
10 with any proceeding under the Oklahoma Uniformed  
11 Services Employment and Reemployment Rights Act,

12 c. assistance or other participation in an investigation  
13 under the Oklahoma Uniformed Services Employment and  
14 Reemployment Rights Act, or

15 d. exercise of a right provided for in the Oklahoma  
16 Uniformed Services Employment and Reemployment Rights  
17 Act,

18 is a motivating factor in the employer's action, unless the  
19 employer can prove that the action would have been taken in  
20 the absence of such person's enforcement action, testimony,  
21 statement, assistance, participation, or exercise of a  
22 right.

23 D. The prohibitions in subsections A and B of this section  
24 shall apply to any position of employment, including a position that

1 is described in subparagraph c of paragraph 1 of subsection D of  
2 Section 8 of this act.

3 SECTION 8. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 4312 of Title 44, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. Subject to subsections B, C, and D of this section and  
7 subject to Section 6 of this act, any person whose absence from a  
8 position of employment is necessitated by reason of service in the  
9 state military forces shall be entitled to the reemployment rights  
10 and benefits and other employment benefits of the Oklahoma Uniformed  
11 Services Employment and Reemployment Rights Act if:

12 1. The person, or an appropriate officer of the state military  
13 forces in which such service is performed, has given advance written  
14 or verbal notice of service to the person's employer;

15 2. The cumulative length of the absence and of all previous  
16 absences from a position of employment with that employer by reason  
17 of service in the uniformed services does not exceed five (5) years;  
18 and

19 3. Except as provided in subsection F of this section, the  
20 person reports to, or submits an application for reemployment to,  
21 his or her employer in accordance with the provisions of subsection  
22 E of this section.

23 B. No notice is required under paragraph 1 of subsection A of  
24 this section if the giving of notice is precluded by military



1 necessity or, under all of the relevant circumstances, the giving of  
2 notice is otherwise impossible or unreasonable. A determination of  
3 military necessity for the purposes of this subsection shall be made  
4 pursuant to the applicable regulations prescribed by the Secretary  
5 of Defense pursuant to Section 4312 of Title 38 of the United States  
6 Code or pursuant to regulations prescribed by the Adjutant General  
7 and shall not be subject to judicial review.

8 C. Subsection A of this section shall apply to a person who is  
9 absent from a position of employment by reason of service in the  
10 state military forces if his or her cumulative period of service in  
11 the state military forces, with respect to the employer relationship  
12 for which he or she seeks reemployment, does not exceed five (5)  
13 years, except that any such period of service shall not include any  
14 service:

15 1. That is required, beyond five (5) years, to complete an  
16 initial period of obligated service;

17 2. During which the person was unable to obtain orders  
18 releasing him or her from a period of service in the state military  
19 forces before the expiration of the five-year period and the  
20 inability was through no fault of the person;

21 3. Performed as required pursuant to Sections 502 or 503 of  
22 Title 32 of the United States Code, or to fulfill additional  
23 training requirements determined and certified in writing by the  
24

1 Secretary concerned, to be necessary for professional development,  
2 or for completion of skill training or retraining; or

3 4. Performed by a member of the state military forces who is:

4 a. ordered to state active duty in support of a mission  
5 or requirement of the state military forces,

6 b. ordered to or retained on Title 32 active duty under  
7 subsection f of Section 502 of Title 32 of the United  
8 States Code, or

9 c. ordered to or retained on state active duty or Title  
10 32 active duty, other than for training, under any  
11 provision of state or federal law to execute the laws  
12 of the state, or suppress insurrections or repel  
13 invasions or for any state emergency declared by the  
14 Governor or the Oklahoma Legislature, as determined by  
15 the Adjutant General for state active duty or by the  
16 Secretary concerned for Title 32 active duty.

17 D. 1. An employer is not required to reemploy a person under  
18 the Oklahoma Uniformed Services Employment and Reemployment Rights  
19 Act if:

20 a. the employer's circumstances have so changed as to  
21 make reemployment impossible or unreasonable,

22 b. for a person entitled to reemployment under paragraph  
23 3 or 4 of subsection A of Section 9 of this act or  
24 subparagraph b of paragraph 2 of subsection B of

1 Section 9 of this act, the employment would impose an  
2 undue hardship on the employer, or

- 3 c. the employment from which the person leaves to serve  
4 in the state military forces is for a brief,  
5 nonrecurrent period and there is no reasonable  
6 expectation that the employment will continue  
7 indefinitely or for a significant period.

8 2. In any proceeding involving an issue of whether:

9 a. any reemployment referred to in paragraph 1 of this  
10 section is impossible or unreasonable because of a  
11 change in an employer's circumstances,

12 b. any accommodation, training, or effort referred to in  
13 paragraph 3 or 4 of subsection A of Section 9 of this  
14 act or subparagraph b of paragraph 2 of subsection B  
15 of Section 9 of this act would impose an undue  
16 hardship on the employer, or

17 c. the employment referred to in subparagraph c of  
18 paragraph 1 of this subsection is for a brief,  
19 nonrecurrent period and there is no reasonable  
20 expectation that the employment will continue  
21 indefinitely or for a significant period,

22 the employer shall have the burden of proving the  
23 impossibility or unreasonableness, undue hardship, or the  
24 brief or nonrecurrent nature of the employment without a

1 reasonable expectation of continuing indefinitely or for a  
2 significant period.

3 E. 1. Subject to paragraph 2 of this subsection, a person  
4 referred to in subsection A of this section shall, upon the  
5 completion of a period of service in the state military forces,  
6 notify the employer referred to in such subsection of the person's  
7 intent to return to a position of employment with such employer as  
8 follows:

9 a. for a person whose period of service in the state  
10 military forces was less than thirty-one (31) days, by  
11 reporting to the employer:

12 (1) not later than the beginning of the first full  
13 regularly scheduled work period on the first full  
14 calendar day following the completion of the  
15 period of service and the expiration of eight (8)  
16 hours after a period allowing for the safe  
17 transportation of the person from the place of  
18 that service to the person's residence, or

19 (2) as soon as possible after the expiration of the  
20 eight-hour period referred to in division (1) of  
21 this subparagraph, if reporting within the period  
22 is impossible or unreasonable through no fault of  
23 the person,  
24

1           b.    for a person who is absent from a position of  
2                   employment for a period of any length for the purposes  
3                   of an examination to determine the person's fitness to  
4                   perform service in the state military forces, by  
5                   reporting in the manner and time referred to in  
6                   subparagraph a of paragraph 1 of this subsection.

7           c.    for a person whose period of service in the state  
8                   military forces was for more than thirty (30) days but  
9                   less than one hundred eighty-one (181) days, by  
10                  submitting an application for reemployment with the  
11                  employer not later than fourteen (14) days after the  
12                  completion of the period of service or if submitting  
13                  the application within the period is impossible or  
14                  unreasonable through no fault of the person, the next  
15                  first full calendar day when submission of the  
16                  application becomes possible,

17          d.    for a person whose period of service in the state  
18                   military forces was for more than one hundred eighty  
19                   (180) days, by submitting an application for  
20                   reemployment with the employer not later than ninety  
21                   (90) days after the completion of the period of  
22                   service.

23          2.    a.    A person who is hospitalized for, or convalescing  
24                   from, an illness or injury incurred in, or aggravated

1 during, the performance of service in the state  
2 military forces shall, at the end of the period that  
3 is necessary for the person to recover from such  
4 illness or injury, report to the person's employer,  
5 for a person described in subparagraph a or b of  
6 paragraph 1 of this subsection or submit an  
7 application for reemployment with such employer, for a  
8 person described in subparagraph c or d of paragraph 1  
9 of this subsection. Except as provided in  
10 subparagraph b of this paragraph, the period of  
11 recovery shall not exceed two (2) years.

12 b. The two-year period shall be extended by the minimum  
13 time required to accommodate the circumstances beyond  
14 the person's control which make reporting within the  
15 period specified in subparagraph a of this paragraph  
16 impossible or unreasonable.

17 3. A person who fails to report or apply for employment or  
18 reemployment within the appropriate period specified in this  
19 subsection shall not automatically forfeit his or her entitlement to  
20 the rights and benefits referred to in subsection A of this section  
21 but shall be subject to the conduct rules, established policy, and  
22 general practices of the employer pertaining to explanations and  
23 discipline with respect to absence from scheduled work.

1 F. 1. A person who submits an application for reemployment in  
2 accordance with subparagraph c or d of paragraph 1 of subsection E  
3 of this section or paragraph 2 of subsection E of this section shall  
4 provide to his or her employer, upon request of the employer,  
5 documentation to establish that:

6 a. his or her application is timely,

7 b. he or she has not exceeded the service limitations  
8 provided in paragraph 2 of subsection A of this  
9 section, except as permitted under subsection C of  
10 this section, and

11 c. his or her entitlement to the benefits under this act  
12 has not been terminated pursuant to Section 6 of this  
13 act.

14 2. Documentation of any matter referred to in paragraph 1 of  
15 this subsection that satisfies regulations prescribed by the  
16 Commissioner of Labor shall satisfy the documentation requirements  
17 in such paragraph.

18 3. a. Except as provided in subparagraph b of this  
19 paragraph, the failure of a person to provide  
20 documentation that satisfies regulations prescribed  
21 pursuant to paragraph 2 of this subsection shall not  
22 be a basis for denying reemployment in accordance with  
23 the provisions of the Oklahoma Uniformed Services  
24 Employment and Reemployment Rights Act if the failure

1 occurs because such documentation does not exist or is  
2 not readily available at the time of the request of  
3 the employer. If, after reemployment, documentation  
4 becomes available that establishes he or she does not  
5 meet one or more of the requirements referred to in  
6 subparagraphs a, b, and c of paragraph 1 of this  
7 subsection, the employer of such person may terminate  
8 the employment of the person and the provision of any  
9 rights or benefits afforded the person under the  
10 Oklahoma Uniformed Services Employment and  
11 Reemployment Rights Act.

12 b. An employer who reemploys a person absent from a  
13 position of employment for more than ninety (90) days  
14 may require that the person provide the employer with  
15 the documentation referred to in subparagraph a of  
16 this paragraph before beginning to treat the person as  
17 not having incurred a break in service for pension  
18 purposes.

19 4. An employer shall not delay or attempt to defeat a  
20 reemployment obligation by demanding documentation that does not  
21 then exist or is not then readily available.

22 G. The right of a person to reemployment pursuant to this  
23 section shall not entitle the person to retention, preference, or  
24 displacement rights over any person with a superior claim under the



1 provisions of Title 5 of the United States Code relating to veterans  
2 and other preference eligibles.

3 H. In any determination of a person's entitlement to protection  
4 under the Oklahoma Uniformed Services Employment and Reemployment  
5 Rights Act, the timing, frequency, and duration of his or her  
6 training or service, or the nature of the training or service,  
7 including voluntary service, in the state military forces shall not  
8 be a basis for denying protection of the Oklahoma Uniformed Services  
9 Employment and Reemployment Rights Act if the service does not  
10 exceed the limitations set forth in subsection C of this section and  
11 the notice requirements established in paragraph 1 of subsection A  
12 of this section and the notification requirements established in  
13 subsection E of this section are met.

14 SECTION 9. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 4313 of Title 44, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. Subject to subsection B of this section, for any employee,  
18 and Sections 10 and 11 of this act, for an employee of a state  
19 government or a political subdivision thereof, a person who is  
20 entitled to reemployment under Section 8 of this act, upon  
21 completion of a period of service in the state military forces,  
22 shall be promptly reemployed in the following order of priority:  
23  
24

1 1. Except as provided in paragraphs 3 and 4 of this subsection,  
2 for a person whose period of service in the state military forces  
3 was for less than ninety-one (91) days:

4 a. in the position of employment in which the person  
5 would have been employed if the continuous employment  
6 of the person with the employer had not been  
7 interrupted by the service, the duties of which the  
8 person is qualified to perform, or

9 b. in the position of employment in which the person was  
10 employed on the date of the commencement of the  
11 service in the state military forces, only if he or  
12 she is not qualified to perform the duties of the  
13 position referred to in subparagraph a of this  
14 paragraph after reasonable efforts by the employer to  
15 qualify the person;

16 2. Except as provided in paragraphs 3 and 4 of this subsection,  
17 for a person whose period of service in the state military forces  
18 was for more than ninety (90) days:

19 a. in the position of employment in which the person  
20 would have been employed if the continuous employment  
21 of the person with the employer had not been  
22 interrupted by the service, or a position of like  
23 seniority, status and pay, the duties of which he or  
24 she is qualified to perform, or

1           b.    in the position of employment in which the person was  
2               employed on the date of the commencement of the  
3               service in the state military forces, or a position of  
4               like seniority, status and pay, the duties of which he  
5               or she is qualified to perform, only if he or she is  
6               not qualified to perform the duties of a position  
7               referred to in subparagraph a of this paragraph after  
8               reasonable efforts by the employer to qualify the  
9               person;

10          3.    For a person who has a disability incurred in, or aggravated  
11       during, the service, and who, after reasonable efforts by the  
12       employer to accommodate the disability, is not qualified due to the  
13       disability to be employed in the position of employment in which the  
14       person would have been employed if the continuous employment of the  
15       person with the employer had not been interrupted by the service:

16           a.    in any other position which is equivalent in  
17               seniority, status, and pay, the duties of which he or  
18               she is qualified to perform or would become qualified  
19               to perform with reasonable efforts by the employer, or  
20           b.    if not employed under subparagraph a of this  
21               paragraph, in a position which is the nearest  
22               approximation to a position referred to in  
23               subparagraph a in terms of seniority, status, and pay  
24               consistent with circumstances of his or her case;

1           4. For a person who is not qualified pursuant to subparagraph a  
2 of paragraph 2 of this subsection to be employed in the position of  
3 employment in which he or she:

4           a. would have been employed if the continuous employment  
5 of the person with the employer had not been  
6 interrupted by the service, or

7           b. was employed on the date of the commencement of the  
8 service in the state military forces for any reason,  
9 other than disability incurred in, or aggravated  
10 during, service in the state military forces, and

11 cannot become qualified with reasonable efforts by the employer, in  
12 any other position which is the nearest approximation to a position  
13 referred to first in subparagraph a of this paragraph and then in  
14 subparagraph b of this paragraph which such person is qualified to  
15 perform, with full seniority.

16           B. 1. If two or more persons are entitled to reemployment  
17 under Section 8 of this act in the same position of employment and  
18 more than one of them has reported for such reemployment, the person  
19 who left the position first shall have the prior right to  
20 reemployment in that position.

21           2. Any person entitled to reemployment under Section 8 of this  
22 act who is not reemployed in a position of employment by reason of  
23 paragraph 1 of this subsection shall be entitled to be reemployed as  
24 follows:

- 1           a.    except as provided in subparagraph b of this  
2                    paragraph, in any other position of employment  
3                    referred to in paragraph 1 or 2 of subsection A of  
4                    this section, as the case may be, in the order of  
5                    priority set out in subsection A of this section, that  
6                    provides a similar status and pay to a position of  
7                    employment referred to in paragraph 1 of this  
8                    subsection, consistent with the circumstances of his  
9                    or her case, with full seniority,
- 10           b.   for a person who has a disability incurred in, or  
11                    aggravated during, a period of service in the state  
12                    military forces that requires reasonable efforts by  
13                    the employer for the person to be able to perform the  
14                    duties of the position of employment, in any other  
15                    position referred to in paragraph 3 of subsection A of  
16                    this section, in the order of priority set out in  
17                    subsection A of this section, that provides a similar  
18                    status and pay to a position referred to in paragraph  
19                    1 of this subsection, consistent with circumstances of  
20                    his or her case, with full seniority.

21           SECTION 10.        NEW LAW        A new section of law to be codified  
22 in the Oklahoma Statutes as Section 4314 of Title 44, unless there  
23 is created a duplication in numbering, reads as follows:

1       A. Except as provided in subsections B, C and D of this  
2 section, if a person is entitled to reemployment by the state  
3 government under Section 8 of this act, he or she shall be  
4 reemployed in a position of employment as described in Section 9 of  
5 this act.

6       B. 1. If the Director of Human Capital Management of the  
7 Office of Management and Enterprise Services makes a determination  
8 described in paragraph 2 of this subsection with respect to a person  
9 who was employed by a state agency at the time he or she entered the  
10 state military forces from which he or she seeks reemployment under  
11 this section, the Director shall:

12           a. identify a position of like seniority, status, and pay  
13           at another state agency that satisfies the  
14           requirements of Section 9 of this act and for which  
15           the person is qualified, and

16           b. ensure that the person is offered such a position.

17       2. The Director shall carry out the duties in subparagraphs a  
18 and b of paragraph 1 of this subsection if the Director determines  
19 that:

20           a. the state agency that employed the person referred to  
21           in such paragraph no longer exists and the functions  
22           of the agency have not been transferred to another  
23           state agency, or

24

1           b.    it is impossible or unreasonable for the agency to  
2                    reemploy the person.

3           C.    If the employer of a person described in subsection A of  
4 this section was, at the time the person entered the state military  
5 forces from which the person seeks reemployment under this section,  
6 a part of the judicial branch or the legislative branch of the  
7 state, and the employer determines that it is impossible or  
8 unreasonable for the employer to reemploy the person, the person  
9 shall, upon application to the Director of Human Capital Management  
10 of the Office of Management and Enterprise Services, be ensured an  
11 offer of employment in an alternative position in a state agency on  
12 the basis described in subsection B of this section.

13           D.    If the Adjutant General determines it is impossible or  
14 unreasonable to reemploy a person who was a National Guard  
15 technician employed under Section 709 of Title 32 of the United  
16 States Code, the person shall, upon application to the Director of  
17 Human Capital Management of the Office of Management and Enterprise  
18 Services, be ensured an offer of employment in an alternative  
19 position in a state agency on the basis described in subsection B of  
20 this section.

21           SECTION 11.       NEW LAW        A new section of law to be codified  
22 in the Oklahoma Statutes as Section 4315 of Title 44, unless there  
23 is created a duplication in numbering, reads as follows:

1       A. The administrator of each state agency or political  
2 subdivision shall prescribe procedures for ensuring that the rights  
3 under the Oklahoma Uniformed Services Employment and Reemployment  
4 Rights Act apply to the employees of the state agency or political  
5 subdivision.

6       B. In prescribing procedures pursuant to subsection A of this  
7 section, the administrator shall ensure, to the maximum extent  
8 practicable, that the procedures of the state agency or political  
9 subdivision for reemploying persons who serve in the state military  
10 forces provide for the reemployment of such persons in the state  
11 agency or political subdivision in a manner similar to the manner of  
12 reemployment described in Section 9 of this act.

13       C. 1. The procedures prescribed in subsection A of this  
14 section shall designate an employee at the state agency or political  
15 subdivision who shall determine whether or not the reemployment of a  
16 person referred to in subsection B of this section by the state  
17 agency or political subdivision is impossible or unreasonable.

18       2. Upon making a determination that the reemployment is  
19 impossible or unreasonable, the official designated in paragraph 1  
20 of this subsection shall notify the person seeking reemployment and  
21 the Director of Human Capital Management of the Office of Management  
22 and Enterprise Services of such determination.

23       3. A determination made pursuant to this subsection shall not  
24 be subject to judicial review.



1           4. The administrator of each state agency or political  
2 subdivision shall submit to the Committee on Veterans and Military  
3 Affairs of the Oklahoma House of Representatives and the Committee  
4 on Veterans and Military Affairs of the Oklahoma State Senate by  
5 December 31 of each year a report on the number of persons whose  
6 reemployment with the state agency or political subdivision was  
7 determined under this subsection to be impossible or unreasonable  
8 during the year preceding the report, including the reason for each  
9 determination. In the event such determination is not made within  
10 the preceding reporting period, no report shall be required pursuant  
11 to this paragraph.

12           D. 1. Except as provided in this section, nothing in this  
13 section or Section 9 of this act shall be construed to exempt any  
14 state agency or political subdivision referred to in subsection A of  
15 this section from compliance with any other substantive provision of  
16 the Oklahoma Uniformed Services Employment and Reemployment Rights  
17 Act.

18           2. This section shall not be construed as prohibiting:

19           a. an employee of a state agency or political subdivision  
20                 from seeking information from the Commissioner of  
21                 Labor regarding assistance in pursuing reemployment  
22                 from the state agency or political subdivision under  
23                 the Oklahoma Uniformed Services Employment and  
24                 Reemployment Rights Act, alternative employment in the

1 state government under the Oklahoma Uniformed Services  
2 Employment and Reemployment Rights Act, or information  
3 relating to the rights and obligations of employees  
4 and state agencies, political subdivisions or their  
5 instrumentalities under the Oklahoma Uniformed  
6 Services Employment and Reemployment Rights Act, or

7 b. such a state agency or political subdivision from  
8 voluntarily cooperating with or seeking assistance in  
9 or of clarification from the Commissioner of Labor or  
10 the Director of Human Capital Management of the Office  
11 of Management and Enterprise Services of any matter  
12 arising under the Oklahoma Uniformed Services  
13 Employment and Reemployment Rights Act.

14 E. The Director of Human Capital Management of the Office of  
15 Management and Enterprise Services shall ensure the offer of  
16 employment to a person in a position in a state agency on the basis  
17 described in subsection B of this section if:

18 1. The person was an employee of a state agency or political  
19 subdivision at the time he or she entered the state military forces  
20 from which the person seeks reemployment under this section;

21 2. The appropriate officer of the state agency or political  
22 subdivision determines under subsection C of this section that  
23 reemployment of the person by the state agency or political  
24 subdivision is impossible or unreasonable; and

1           3. The person submits an application to the Director of Human  
2 Capital Management of the Office of Management and Enterprise  
3 Services for an offer of employment pursuant to this subsection.

4           SECTION 12.           NEW LAW           A new section of law to be codified  
5 in the Oklahoma Statutes as Section 4316 of Title 44, unless there  
6 is created a duplication in numbering, reads as follows:

7           A. A person who is reemployed under the Oklahoma Uniformed  
8 Services Employment and Reemployment Rights Act is entitled to the  
9 seniority and other rights and benefits determined by seniority that  
10 he or she had on the date of the commencement of service in the  
11 state military forces plus the additional seniority and rights and  
12 benefits that he or she would have attained if he or she had  
13 remained continuously employed.

14           B. 1. Subject to paragraphs 2 through 5 of this subsection, a  
15 person who is absent from a position of employment by reason of  
16 service in the state military forces shall be:

- 17           a. deemed to be on furlough or leave of absence while  
18           performing such service, and
- 19           b. entitled to other rights and benefits not determined  
20           by seniority as are generally provided by the employer  
21           of the person to employees having similar seniority,  
22           status, and pay who are on furlough or leave of  
23           absence under a contract, agreement, policy, practice,  
24

1 or plan in effect at the commencement of the service  
2 or established while such person performs the service.

3 2. a. subject to subparagraph b of this paragraph, a person  
4 who:

5 (1) is absent from a position of employment by reason  
6 of service in the state military forces, and

7 (2) knowingly provides written notice of intent not  
8 to return to a position of employment after  
9 service in the state military forces,

10 is not entitled to rights and benefits under  
11 subparagraph b of paragraph 1 of this subsection.

12 b. for the purposes of subparagraph a of this paragraph,  
13 the employer shall have the burden of proving that a  
14 person knowingly provided clear written notice of  
15 intent not to return to a position of employment after  
16 service in the state military forces and, in doing so,  
17 was aware of the specific rights and benefits to be  
18 lost under subparagraph a of this paragraph.

19 3. A person deemed to be on furlough or leave of absence under  
20 this subsection while serving in the state military forces shall not  
21 be entitled to any benefits under this subsection which he or she  
22 would not otherwise be entitled if he or she had remained  
23 continuously employed.

24

1 4. A person may be required to pay the employee cost, if any,  
2 of any funded benefit continued pursuant to paragraph 1 of this  
3 subsection to the extent other employees on furlough or leave of  
4 absence are so required.

5 5. The entitlement of a person to coverage under a health plan  
6 is provided for under Section 13 of this act.

7 C. A person who is reemployed by an employer under the Oklahoma  
8 Uniformed Services Employment and Reemployment Rights Act shall not  
9 be discharged from such employment, except for cause:

10 1. Within one (1) year after the date of reemployment, if his  
11 or her period of service before the reemployment was more than one  
12 hundred eighty (180) days; or

13 2. Within one hundred eighty (180) days after the date of  
14 reemployment, if his or her period of service before the  
15 reemployment was more than thirty (30) days but less than one  
16 hundred eighty-one (181) days.

17 D. Any person whose employment is interrupted by a period of  
18 service in the state military forces shall be permitted, upon  
19 request of the person, to use during such period of service any  
20 vacation, annual, or similar leave with pay accrued by the person  
21 before the commencement of such service. No employer may require  
22 any such person to use vacation, annual, or similar leave during the  
23 period of service.

24

1 E. 1. An employer shall grant an employee who is a member of  
2 the state military forces an authorized leave of absence from a  
3 position of employment to allow that employee to perform funeral  
4 honors duty as authorized by Section 12503 of Title 10 of the United  
5 States Code or Section 115 of Title 32 of the United States Code.

6 2. For purposes of paragraph 1 of subsection E of Section 8 of  
7 this act, an employee who takes an authorized leave of absence  
8 pursuant to this subsection is deemed to have notified the employer  
9 of the employee's intent to return to such position of employment.

10 SECTION 13. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 4317 of Title 44, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. 1. In any case in which a person or his or her dependents  
14 has coverage under a health plan in connection with the person's  
15 position of employment, including a group health plan as defined in  
16 Section 607(1) of the federal Employee Retirement Income Security  
17 Act of 1974, and the person is absent from his or her position of  
18 employment due to service in the state military forces, the plan  
19 shall provide that he or she may elect to continue such coverage as  
20 provided in this subsection. The maximum period of coverage of a  
21 person and his or her dependents under an election shall be the  
22 lesser of:

23 a. a twenty-four-month period beginning on the date on  
24 which his or her absence begins, or

1           b.    the day after the date on which the person fails to  
2                    apply for or return to a position of employment, as  
3                    determined in subsection E of Section 8 of this act.

4           2.    A person who elects to continue health-plan coverage under  
5 this paragraph may be required to pay not more than one-hundred two  
6 percent (102%) of the full premium under the plan, determined in the  
7 same manner as the applicable premium under Section 4980B(f) (4) of  
8 the Internal Revenue Code of 1986, associated with the coverage for  
9 the employer's other employees, except where a person who performs  
10 service in the state military forces for less than thirty-one (31)  
11 days, he or she may not be required to pay more than the employee  
12 share, if any, for such coverage.

13           3.    For a health plan that is a multiemployer plan, as defined  
14 in Section 3(37) of the federal Employee Retirement Income Security  
15 Act of 1974, any liability under the plan for employer contributions  
16 and benefits arising under this paragraph shall be allocated:

17           a.    by the plan in such manner as the plan sponsor shall  
18                    provide, or

19           b.    if the sponsor does not provide:

20                   (1) to the last employer employing the person before  
21                        the period served by the person in the state  
22                        military forces, or

23                   (2) if such last employer is no longer functional, to  
24                        the plan.

1 B. 1. Except as provided in paragraph 2 of this subsection,  
2 for a person whose coverage under a health plan was terminated by  
3 reason of service in the state military forces, or by reason of the  
4 person's having become eligible for medical and dental care provided  
5 to the person incidental to their service in the state military  
6 forces, an exclusion or waiting period shall not be imposed in  
7 connection with the reinstatement of coverage upon reemployment  
8 under the Oklahoma Uniformed Services Employment and Reemployment  
9 Rights Act if an exclusion or waiting period would not have been  
10 imposed under a health plan had coverage of the person by the plan  
11 not been terminated as a result of the service or eligibility. This  
12 paragraph applies to the person who is reemployed and to any person  
13 who is covered by the plan by reason of the reinstatement of the  
14 coverage of the person. This paragraph shall not apply to the  
15 coverage of any illness or injury determined by the Adjutant General  
16 to have been incurred in, or aggravated during, performance of state  
17 active duty or Title 32 active duty in the state military forces.

18 2. If a person whose coverage under a health plan is terminated  
19 due to the person becoming eligible for medical and dental care  
20 provided to the person incidental to his or her service in the state  
21 military forces but the person subsequently does not commence a  
22 period of state active duty or Title 32 active duty under the order  
23 to state active duty or Title 32 active duty that established  
24 eligibility because the order is canceled before the duty commences,



1 the provisions of paragraph 1 of this subsection related to any  
2 exclusion or waiting period in connection with the reinstatement of  
3 coverage under a health plan shall apply to the person's continued  
4 employment, upon the termination of eligibility for medical and  
5 dental care provided to the person due to his or her service in the  
6 state military forces that is incident to the cancellation of the  
7 order, in the same manner as if the person had become reemployed  
8 upon termination of eligibility.

9 SECTION 14. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 4319 of Title 44, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. Liability of controlling Oklahoma employer of foreign  
13 entity. If an employer controls an entity that is incorporated or  
14 otherwise organized in a foreign country, any denial of employment,  
15 reemployment, or benefit by such entity shall be presumed to be by  
16 the employer.

17 B. Inapplicability to foreign employer. This section shall not  
18 apply to foreign operations of an employer that is a foreign person  
19 not controlled by an Oklahoma employer.

20 C. Determination of controlling employer. For purposes of this  
21 section, the determination of whether an employer controls an entity  
22 shall be based upon the interrelations of operations, common  
23 management, centralized control of labor relations, and common  
24 ownership or financial control of the employer and the entity.

1 D. Exemption. Notwithstanding any other provision of this  
2 section, an employer, or an entity controlled by an employer, shall  
3 be exempt from compliance with any of Sections 7 through 14 of this  
4 act with respect to an employee in a workplace in a foreign country,  
5 if compliance would cause the employer or entity controlled by an  
6 employer, to violate the law of the foreign country in which the  
7 workplace is located.

8 SECTION 15. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 4321 of Title 44, unless there  
10 is created a duplication in numbering, reads as follows:

11 The Commissioner of Labor shall provide assistance to any person  
12 regarding the employment and reemployment rights and benefits which  
13 the person is entitled under the Oklahoma Uniformed Services  
14 Employment and Reemployment Rights Act. In providing assistance, the  
15 Commissioner may request assistance from existing federal and state  
16 agencies engaged in similar or related activities and utilize the  
17 assistance of volunteers.

18 SECTION 16. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 4322 of Title 44, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. A person who claims that:

22 1. He or she is entitled under the Oklahoma Uniformed Services  
23 Employment and Reemployment Rights Act to employment or reemployment  
24 rights or benefits with respect to employment; and

1           2.    a.    his or her employer has failed or refused, or is about  
2                    to fail or refuse, to comply with the provisions of  
3                    the Oklahoma Uniformed Services Employment and  
4                    Reemployment Rights Act, or

5            b.    his or her employer is a state agency and the employer  
6                    or the Office of Management and Enterprise Services,  
7                    Human Capital Management, has failed or refused, or is  
8                    about to fail or refuse, to comply with the provisions  
9                    of the Oklahoma Uniformed Services Employment and  
10                  Reemployment Rights Act,

11 may file a complaint with the Commissioner of Labor as provided in  
12 subsection B of this section, and the Commissioner shall investigate  
13 such complaint.

14           B.    The complaint shall be in writing on a form prescribed by  
15 the Commissioner, include the name and address of the employer  
16 against whom the complaint is filed, and contain a summary of the  
17 allegations that form the basis for the complaint.

18           C.    1.   Not later than five (5) days after the Commissioner  
19 receives a complaint submitted pursuant to this section, the  
20 Commissioner shall notify the claimant in writing of his or her  
21 rights with respect to the complaint under this section and Section  
22 17 of this act.

1        2. The Commissioner shall, upon request, provide technical  
2 assistance to a potential claimant for a complaint under this  
3 subsection, and when appropriate, to the claimant's employer.

4        D. The Commissioner shall investigate each complaint submitted  
5 pursuant to this section. If the Commissioner determines as a  
6 result of the investigation that the action alleged in the complaint  
7 occurred, the Commissioner shall attempt to resolve the complaint by  
8 making reasonable efforts to ensure that the employer named in the  
9 complaint complies with the provisions of the Oklahoma Uniformed  
10 Services Employment and Reemployment Rights Act.

11        E. If the efforts of the Commissioner do not resolve the  
12 complaint, the Commissioner shall notify the person who submitted  
13 the complaint in writing of:

14            1. The results of the Commissioner's investigation; and

15            2. The complainant's entitlement to proceed under the  
16 enforcement of rights provisions in Section 17 of this act for a  
17 person submitting a complaint against a state or private employer.

18        F. Any action required by subsections D and E of this section  
19 for a complaint submitted by a person to the Commissioner under  
20 subsection A of this section shall be completed by the Commissioner  
21 not later than ninety (90) days after receipt of the complaint.

22        SECTION 17.        NEW LAW        A new section of law to be codified  
23 in the Oklahoma Statutes as Section 4323 of Title 44, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. Action for relief. 1. A person who receives from the  
2 Commissioner of Labor a notification pursuant to subsection E of  
3 Section 16 of this act of an unsuccessful effort to resolve a  
4 complaint relating to state government as an employer or a private  
5 employer may request that the Commissioner refer the complaint to  
6 the Attorney General or to a district attorney with relevant  
7 jurisdiction. The Commissioner shall refer the complaint to the  
8 Attorney General or a district attorney with relevant jurisdiction  
9 not later than sixty (60) days after receiving the request. If the  
10 Attorney General or district attorney is reasonably satisfied that  
11 the complainant is entitled to the rights or benefits sought, the  
12 Attorney General or the district attorney may appear on behalf of,  
13 and act as attorney for, the complainant and commence an action for  
14 relief under the Oklahoma Uniformed Services Employment and  
15 Reemployment Rights Act.

16       2. Not later than sixty (60) days after the date the Attorney  
17 General or district attorney receives a referral as provided in  
18 paragraph 1 of this subsection, the Attorney General or district  
19 attorney shall:

- 20           a. make a decision whether to appear on behalf of, and  
21           act as attorney for, the complainant, and  
22           b. notify the complainant in writing of the decision.
- 23  
24

1           3. A person may commence an action for relief based on a  
2 complaint against a state government employer or a private employer  
3 if the person:

4           a. has chosen not to request assistance from the  
5 Commissioner under Section 16 of this act,

6           b. has chosen not to request the Commissioner to refer  
7 the complaint to the Attorney General or a district  
8 attorney pursuant to this subsection, or

9           c. has been refused representation by the Attorney  
10 General or a district attorney.

11           B. Jurisdiction. In an action against a state government  
12 employer or a private employer commenced by the Attorney General or  
13 a district attorney, the district courts shall have jurisdiction  
14 over the action.

15           C. Venue. 1. In an action by the Attorney General against a  
16 state government employer, the action may proceed in any district  
17 court of the state.

18           2. In an action by a district attorney against a state  
19 government employer, the action may proceed in the district court of  
20 the county where the complainant resides or was previously assigned  
21 for duty as a state employee immediately prior to service in the  
22 state military forces.

23           3. In an action by the Attorney General or by a district  
24 attorney against a private employer, the action may proceed in the

1 district court of the county where the private employer of the  
2 complainant maintains a place of business.

3 D. Remedies. 1. In any action pursuant to this section, the  
4 court may award relief by requiring the employer to:

5 a. comply with the provisions of the Oklahoma Uniformed  
6 Services Employment and Reemployment Rights Act,

7 b. compensate the complainant for any loss of wages or  
8 benefits suffered by reason of the employer's failure  
9 to comply with the provisions of the Oklahoma  
10 Uniformed Services Employment and Reemployment Rights  
11 Act,

12 c. pay the complainant an amount equal to the amount  
13 provided in subparagraph b of this paragraph as  
14 liquidated damages, if the court determines that the  
15 employer willfully failed to comply with the  
16 provisions of the Oklahoma Uniformed Services  
17 Employment and Reemployment Rights Act,

18 d. pay actual and compensatory damages, or

19 e. pay punitive damages. Punitive damages awarded  
20 pursuant to this subparagraph shall be determined in  
21 accordance with applicable state law.

22 2. a. any compensation awarded pursuant to this subsection  
23 shall be in addition to, and shall not diminish, any  
24 of the other rights and benefits provided for under

1 the Oklahoma Uniformed Services Employment and  
2 Reemployment Rights Act,

3 b. in an action commenced in the name of the State of  
4 Oklahoma for which the relief includes compensation  
5 awarded pursuant to subparagraphs b, c, d or e of  
6 paragraph 1 of this subsection, the compensation shall  
7 be held in a special deposit account and shall be  
8 paid, on order of the Attorney General or district  
9 attorney, directly to the claimant. If the  
10 compensation is not paid to claimant because of  
11 inability to do so within a period of three (3) years,  
12 the compensation shall be deposited in the Unclaimed  
13 Property Fund of the State Treasury pursuant to the  
14 Uniform Unclaimed Property Act, Section 651 et seq. of  
15 Title 60 of the Oklahoma Statutes.

16 3. The State of Oklahoma shall be subject to the same remedies,  
17 including prejudgment interest, as may be imposed upon any private  
18 employer under this section.

19 E. Equity powers. The court shall use, if it deems  
20 appropriate, its full equity powers, including temporary or  
21 permanent injunctions, temporary restraining orders, and contempt  
22 orders, to vindicate fully the rights or benefits of persons under  
23 the Oklahoma Uniformed Services Employment and Reemployment Rights  
24 Act.



1 F. Standing. An action pursuant to the Oklahoma Uniformed  
2 Services Employment and Reemployment Rights Act may be initiated  
3 only by a person claiming rights or benefits as provided in the act  
4 under subsection A of this section or by the State of Oklahoma under  
5 paragraph 1 of subsection A of this section.

6 G. Respondent. In any action pursuant to the Oklahoma  
7 Uniformed Services Employment and Reemployment Rights Act, only an  
8 employer or a potential employer shall be a necessary party  
9 respondent.

10 H. Fees and court costs. 1. No fees or court costs shall be  
11 charged against or imposed upon any person claiming rights under the  
12 Oklahoma Uniformed Services Employment and Reemployment Rights Act.

13 2. In any action or proceeding to enforce a provision of the  
14 Oklahoma Uniformed Services Employment and Reemployment Rights Act  
15 by a claimant who obtained private counsel for an action or  
16 proceeding, the court may award a prevailing claimant reasonable  
17 attorney fees, expert witness fees, and other litigation expenses.

18 I. Definition. As used in this section, "private employer"  
19 includes the political subdivisions of the State of Oklahoma as  
20 defined in Section 5 of this act.

21 SECTION 18. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 4326 of Title 44, unless there  
23 is created a duplication in numbering, reads as follows:

24

1 A. In any investigations pursuant to the Oklahoma Uniformed  
2 Services Employment and Reemployment Rights Act:

3 1. Duly authorized representatives of the Commissioner of Labor  
4 shall, at all reasonable times, have reasonable access to and the  
5 right to interview persons with information relevant to an  
6 investigation and shall have reasonable access to, for purposes of  
7 examination, and the right to copy and receive, any documents of any  
8 person or employer that the Commissioner considers relevant to the  
9 investigation; and

10 2. The Commissioner may require by subpoena the attendance and  
11 testimony of witnesses and the production of documents relating to  
12 any matter under investigation. If a party disobeys a subpoena, and  
13 upon request of the Commissioner, the Attorney General or a district  
14 attorney may apply to district court for an order enforcing the  
15 subpoena.

16 B. Upon application, district courts of the state shall have  
17 jurisdiction to issue writs commanding any person or employer to  
18 comply with the subpoena of the Commissioner or to comply with any  
19 order of the Commissioner made pursuant to a lawful investigation  
20 pursuant to the Oklahoma Uniformed Services Employment and  
21 Reemployment Rights Act, and district courts shall have jurisdiction  
22 to punish a party for failure to obey a subpoena or other lawful  
23 order of the Commissioner as a contempt of court.

1 C. Subsections A and B of this section shall not apply to the  
2 legislative branch or the judicial branch of the state.

3 SECTION 19. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 4327 of Title 44, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. Effect of noncompliance of state officials with deadlines.

7 1. The inability of the Commissioner of Labor, Attorney  
8 General, or a district attorney to comply with a deadline applicable  
9 to such official under Section 16 or 17 of this act shall not:

10 a. affect the authority of the Attorney General or a  
11 district attorney to represent and file an action or  
12 submit a complaint on behalf of a person under Section  
13 17 of this act,

14 b. affect the right of a person to:

15 (1) commence an action under Section 17 of this act,  
16 or

17 (2) obtain any type of assistance or relief  
18 authorized by the Oklahoma Uniformed Services  
19 Employment and Reemployment Rights Act,

20 c. deprive a district court of jurisdiction over an  
21 action or complaint filed by the Attorney General, a  
22 district attorney, or a person under Section 17 of  
23 this act, and  
24

1 d. constitute a defense, including a statute of  
2 limitations period, that any employer, including state  
3 government, its political subdivisions or a private  
4 employer, may raise in an action filed by the Attorney  
5 General, a district attorney, or a person under  
6 Section 17 of this act.

7 2. If the Commissioner, the Attorney General, or a district  
8 attorney is unable to meet a deadline applicable to such official in  
9 Sections 16 or 17 of this act, and claimant agrees to an extension  
10 of time, the Commissioner, the Attorney General, or a district  
11 attorney, shall complete the required action within the additional  
12 period of time agreed to by the claimant.

13 B. Inapplicability of statutes of limitations. If any person  
14 seeks to file a complaint or claim with the Commissioner of Labor or  
15 a district court alleging a violation of the Oklahoma Uniformed  
16 Services Employment and Reemployment Rights Act, there shall be no  
17 limitation on the period for filing the complaint or claim.

18 SECTION 20. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 4331 of Title 44, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. The Commissioner of Labor, in consultation with the Adjutant  
22 General, may prescribe regulations implementing the provisions of  
23 the Oklahoma Uniformed Services Employment and Reemployment Rights  
24

1 Act as it applies to state government, political subdivisions, and  
2 private employers.

3 B. The Director of Human Capital Management of the Office of  
4 Management and Enterprise Services, in consultation with the  
5 Commissioner of Labor and the Adjutant General, may prescribe  
6 regulations implementing the provisions of the Oklahoma Uniformed  
7 Services Employment and Reemployment Rights Act as it applies to  
8 state agencies as employers. The regulations shall be consistent  
9 with regulations pertaining to political subdivisions and private  
10 employers, except that state employees may be given greater or  
11 additional rights.

12 SECTION 21. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 4332 of Title 44, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. Annual report by the Commissioner of Labor. The  
16 Commissioner shall, after consultation with the Attorney General and  
17 any district attorney to whom a complaint pursuant to the Oklahoma  
18 Uniformed Services Employment and Reemployment Rights Act has been  
19 referred, transmit to the Committee on Veterans and Military Affairs  
20 of the Oklahoma House of Representatives and the Committee on  
21 Veterans and Military Affairs of the Oklahoma State Senate not later  
22 than July 1 of each year a report on matters for the fiscal year  
23 ending in the year before the year in which the report is  
24 transmitted the number of cases reviewed by the Department of Labor

1 under the Oklahoma Uniformed Services Employment and Reemployment  
2 Rights Act during the fiscal year for which the report is made.

3 B. In the event no complaints are received pursuant to the  
4 Oklahoma Uniformed Services Employment and Reemployment Rights Act  
5 during the fiscal year for which the report is made, no report shall  
6 be required pursuant to this section.

7 SECTION 22. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 4333 of Title 44, unless there  
9 is created a duplication in numbering, reads as follows:

10 The Commissioner of Labor, Adjutant General, and Executive  
11 Director of the Oklahoma Department of Veterans Affairs shall take  
12 such actions as they determine to be appropriate to inform persons  
13 entitled to rights and benefits under the Oklahoma Uniformed  
14 Services Employment and Reemployment Rights Act and employers of the  
15 rights, benefits, and obligations of employees and employers under  
16 the Oklahoma Uniformed Services Employment and Reemployment Rights  
17 Act.

18 SECTION 23. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 4334 of Title 44, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. Requirement to provide notice. Each employer shall identify  
22 their employees who are members of the state military forces and  
23 provide them with a notice of the rights, benefits, and obligations  
24 of employees and employers subject to the Oklahoma Uniformed

1 Services Employment and Reemployment Rights Act. This notice  
2 requirement may be met by posting the notice where employers  
3 customarily place notices for employees.

4 B. Content of the notice. The Commissioner of Labor shall  
5 provide employers with the content of the notice required by this  
6 section.

7 SECTION 24. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 4335 of Title 44, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. Training required. The administrator of each state agency  
11 and political subdivision shall provide training for the human  
12 resources personnel of the agency or political subdivision on the  
13 following:

14 1. The rights, benefits, and obligations of employees who are  
15 members of the state military forces under the Oklahoma Uniformed  
16 Services Employment and Reemployment Rights Act; and

17 2. The application and administration of the requirements of  
18 the Oklahoma Uniformed Services Employment and Reemployment Rights  
19 Act by the agency or political subdivision;

20 B. Training Consultation and Frequency. The training required  
21 by subsection A of this section for state agencies shall be  
22 developed and provided in consultation with the Director of Human  
23 Capital Management of the Office of Management and Enterprise  
24 Services. The training shall be provided as determined by the

1 Director of Human Capital Management of the Office of Management and  
2 Enterprise Services in order to ensure that the human resources  
3 personnel of state agencies are kept fully and currently informed of  
4 the issues covered by the training.

5 C. Human resources personnel defined. As used in this section,  
6 "human resources personnel", means any personnel of a state agency  
7 or political subdivision who are authorized to recommend, take, or  
8 approve any employee action which is subject to the requirements of  
9 the Oklahoma Uniformed Services Employment and Reemployment Rights  
10 Act.

11 SECTION 25. AMENDATORY 72 O.S. 2011, Section 48.1, is  
12 amended to read as follows:

13 Section 48.1 A. All officers and employees of any employer in  
14 the private sector, who are members, either officers or enlisted, of  
15 the Reserve Components, ~~to include the Army and Air National Guard~~  
16 ~~and~~ of the Army, Navy, Air Force, Marine Corps, and Coast Guard  
17 ~~Reserves~~, or any other component of the Armed Forces of the United  
18 States, shall, when ordered by the proper authority to active or  
19 inactive duty or service under Title 10 of the United States Code,  
20 be entitled to a leave of absence from such private civilian  
21 employment for the period of such service without loss of status or  
22 seniority. During such leave of absence in any federal fiscal year,  
23 the employer in the private sector may elect to pay the officer or  
24 employee an amount equal to the difference between his or her full



1 regular pay from the employer in the private sector and his or her  
2 military base pay. The durational limit of protected military  
3 service as provided for in this section shall not be less than that  
4 provided by federal law.

5 If any employer in the private sector fails to comply with the  
6 provisions of this ~~section~~ subsection, the officer or employee may  
7 bring an action in district court for ~~actual and compensatory~~ the  
8 same remedies and damages provided for in Section 17 of this act,  
9 for such noncompliance and may be granted such relief as is just and  
10 proper under the circumstances.

11 B. All officers and employees of any employer in the private  
12 sector, who are members, either officers or enlisted, of the state  
13 military forces, shall, when ordered by the proper authority to  
14 state active duty or Title 32 active duty, be entitled to all the  
15 protections provided under the Oklahoma Uniformed Services  
16 Employment and Reemployment Rights Act, Sections 2 through 24 of  
17 this act.

18 C. "State active duty", "state military forces", and "Title 32  
19 active duty", for the purposes of this section, shall be defined in  
20 accordance with Section 801 of Title 44 of the Oklahoma Statutes.

21 SECTION 26. It being immediately necessary for the preservation  
22 of the public peace, health or safety, an emergency is hereby  
23  
24

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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