

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2545

By: **Burns** and Kannady of the
House

7 and

Simpson of the Senate

8
9
10
11 COMMITTEE SUBSTITUTE

12 An Act relating to state military forces; amending 44
13 O.S. 2011, Section 208, as amended by Section 204,
14 Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section
15 208), which relates to discrimination against members
16 of state military forces; updating language; enacting
17 the Oklahoma Uniformed Services Employment and
18 Reemployment Rights Act; declaring applicability of
19 act; defining terms; stating purposes of the act;
20 construing provisions of act; declaring act to
21 supersede certain laws and other documents; defining
22 terms; specifying eligibility and entitlement to act
23 benefits; prohibiting denial of certain employment
24 for person with service in state military forces;
barring discrimination against certain employee;
providing for applicability to specified employment;
establishing reemployment rights and benefits for
certain employees; requiring advance written or
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

1 to person who left the position first; establishing
2 procedures for reemployment in state government;
3 directing oversight by the Director of Human Capital
4 Management; prescribing duties of Director; providing
5 for employment in another state agency; mandating
6 administrators of public entities to establish
7 procedures for act; listing minimum content of
8 procedures; providing for certain annual report;
9 providing an exception; construing provisions;
10 requiring offer of employment for certain employees;
11 prescribing seniority for certain reemployed persons;
12 establishing conditions for persons absent from
13 employment; prohibiting certain discharge from
14 reemployment; providing exceptions; permitting
15 employee to use accrued leave time; mandating an
16 authorized leave of absence; allowing person to
17 continue employer health plan coverage; specifying
18 procedures for coverage continuation; prescribing
19 applicability of act to foreign employer; providing
20 for determination of controlling employer; exempting
21 compliance for certain employers; directing
22 Commissioner of Labor to assist with rights and
23 benefits of the act; providing for filing a complaint
24 with the Commissioner; prescribing contents of
complaint; requiring notification be given to
complainant within specified time; directing
Commissioner to investigate complaints; prescribing
attempt to resolve complaint; mandating notification
to complainant within certain time; allowing
complainant to request referral to the district
attorney; specifying procedures for referrals;
prescribing jurisdiction and venue; authorizing court
to award remedies; authorizing court to use equity
powers; establishing standing for violations of the
act; limiting party who can be a respondent;
prohibiting complainant 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;

1 requiring certain officials to take actions to inform
2 employees of rights under this act; mandating
3 employer to provide certain notice; providing for
4 content of notice; directing training for state
5 employee human resources personnel; providing for
6 development and frequency of training; defining term;
7 amending 72 O.S. 2011, Section 48.1, which relates to
8 a leave of absence; extending remedies to a certain
9 leave of absence; mandating protections for private-
10 sector officers and employees; defining term;
11 providing for codification; and declaring an
12 emergency.

13
14
15
16
17
18
19
20
21
22
23
24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

Section 208. No person shall discriminate against any officer
or enlisted member of the National Guard or Civil Air Patrol or a
judge carrying out his or her duties as a member of the Military
Court of Appeals because of his or her membership therein. No
person shall prohibit or refuse entrance to any officer or enlisted
member of the Uniformed Services of the United States ~~Armed Forces~~,
or of the state military forces ~~of this state~~, into any public
entertainment or place of amusement because such officer or enlisted
member is wearing a uniform of the organization to which he or she
belongs. No employer, officer or agent of any corporation, company,
firm or other person, shall discharge any person from employment

1 because of being an officer, warrant officer or enlisted member of
2 the military forces of the state, or hinder or prevent him or her
3 from performing any military service he or she may be called upon to
4 perform by proper authority, in respect to his or her employment,
5 trade or business. Any person violating any of the provisions of
6 this section, shall be punished by a fine of not to exceed One
7 Hundred Dollars (\$100.00), or by imprisonment in the county jail for
8 a period of not to exceed thirty (30) days, or by both such fine and
9 imprisonment.

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

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

23
24

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

4 The purposes of the Oklahoma Uniformed Services Employment and
5 Reemployment Rights Act are:

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

9 2. To minimize the disruption to the lives of persons
10 performing service in the state military forces as well as to their
11 employers, their fellow employees, and their communities, by
12 providing for the prompt reemployment of such persons upon their
13 completion of service; and

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

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

19 A. Nothing in the Oklahoma Uniformed Services Employment and
20 Reemployment Rights Act shall be construed to supersede, nullify or
21 diminish any federal law or state law, including any county or
22 municipal law or ordinance, contract, agreement, policy, plan,
23 practice or other matter that establishes a right or benefit that is
24 more beneficial to, or is in addition to, a right or benefit

1 provided for such person in the Oklahoma Uniformed Services
2 Employment and Reemployment Rights Act.

3 B. The Oklahoma Uniformed Services Employment and Reemployment
4 Rights Act supersedes any other state law, including any county or
5 municipal law or ordinance, contract, agreement, policy, plan,
6 practice, or other matter that reduces, limits, or eliminates in any
7 manner any right or benefit provided by the Oklahoma Uniformed
8 Services Employment and Reemployment Rights Act, including the
9 establishment of additional prerequisites to the exercise of any
10 such right or the receipt of any such benefit.

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

14 As used in the Oklahoma Uniformed Services Employment and
15 Reemployment Rights Act:

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

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

1 insurance coverage, awards, bonuses, severance pay, supplemental
2 unemployment benefits, vacations, and the opportunity to select work
3 hours or location of employment;

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

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

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

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

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 soldier or airman of the Oklahoma National
17 Guard performs his or her duty as an Active Guard and
18 Reserve program participant or where a National Guard
19 technician is employed under 32 U.S.C., Section 709,
20 "employer" does not mean the Adjutant General.

21 c. Where a National Guard technician is employed under 32
22 U.S.C., Section 709, "employer" means the Adjutant
23 General.

24

1 d. (1) Whether the term "successor in interest" applies
2 with respect to an entity described in division
3 (4) of subparagraph a of this paragraph shall be
4 determined on a case-by-case basis using a
5 multi-factor test that considers the following
6 factors:

- 7 (a) substantial continuity of business
8 operations,
- 9 (b) use of the same or similar facilities,
- 10 (c) continuity of workforce,
- 11 (d) similarity of jobs and working conditions,
- 12 (e) similarity of supervisory personnel,
- 13 (f) similarity of machinery, equipment, and
14 production methods, and
- 15 (g) similarity of products or services.

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

23 7. "Health plan" means an insurance policy or contract, medical
24 or hospital service agreement, membership or subscription contract,

1 or other arrangement under which health services for individuals are
2 provided or the expenses of such services are paid;

3 8. "Notice" means any written or verbal notification of an
4 obligation or intention to perform service in the state military
5 forces provided to an employer by the employee who will perform such
6 service or by the state military force component in which the
7 service is to be performed;

8 9. "Political subdivision" means the seventy-seven counties of
9 the state, incorporated municipalities, including both cities and
10 towns, and all public entities or instrumentalities, including, but
11 not limited to, municipal corporations, municipal sewer and water
12 authorities, public trusts and public authorities in the state which
13 are not a state agency, an executive officer, the legislative branch
14 or the judicial branch of the state. Political subdivisions
15 include, but are not limited to, special districts, authorities and
16 instrumentalities such as school districts, fire protection
17 districts, conservation districts, water and sewer districts,
18 emergency medical service districts and airport and housing
19 authorities;

20 10. "Qualified", with respect to an employment position, means
21 having the ability to perform the essential tasks of the position;

22 11. "Reasonable efforts", in actions required of an employer
23 under the Oklahoma Uniformed Services Employment and Reemployment
24

1 Rights Act, means actions, including training, provided by an
2 employer which do not place an undue hardship on the employer;

3 12. "Secretary concerned" means either the Secretary of the
4 Army or the Secretary of the Air Force as the context requires;

5 13. "Seniority" means longevity in employment together with any
6 benefits of employment which accrue with, or are determined by,
7 longevity in employment;

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

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

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

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

21 18. "State military forces" shall be defined in accordance with
22 Section 801 of Title 44 of the Oklahoma Statutes; and

23

24

1 19. "Undue hardship", in actions taken by an employer, means
2 actions requiring significant difficulty or expense, when considered
3 in light of:

- 4 a. the nature and cost of the action needed,
- 5 b. the overall financial resources of the facility or
6 facilities involved in the provision of the action,
7 the number of persons employed at the facility, the
8 effect on expenses and resources, or the impact
9 otherwise of such action upon the operation of the
10 facility,
- 11 c. the overall financial resources of the employer; the
12 overall size of the business of an employer with
13 respect to the number of its employees; or the number,
14 type, and location of its facilities, and
- 15 d. the type of operation or operations of the employer,
16 including the composition, structure, and functions of
17 the workforce of such employer; or the geographic
18 separateness, administrative, or fiscal relationship
19 of the facility or facilities in question to the
20 employer.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 4304 of Title 44, unless there
23 is created a duplication in numbering, reads as follows:
24

1 A person's entitlement to the benefits of the Oklahoma Uniformed
2 Services Employment and Reemployment Rights Act due to the person's
3 service in the state military forces terminates upon any of the
4 following events:

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

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

12 3. A dismissal of the person permitted under the Oklahoma
13 Uniform Code of Military Justice or the regulations promulgated
14 pursuant to the provisions of the Oklahoma Uniform Code of Military
15 Justice or the applicable regulations of the National Guard Bureau
16 or the United States Army or the United States Air Force; or

17 4. A dropping of the person from the rolls pursuant to the
18 Oklahoma Uniform Code of Military Justice or the regulations
19 promulgated pursuant to the provisions of the Oklahoma Uniform Code
20 of Military Justice or the applicable regulations of the National
21 Guard Bureau or the United States Army or the United States Air
22 Force.

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

4 A. A person who is a member of, applies to be a member of,
5 performs, has performed, applies to perform, or has an obligation to
6 perform service in the state military forces shall not be denied
7 initial employment, reemployment, retention in employment,
8 promotion, or any benefit of employment by an employer on the basis
9 of that membership, application for membership, performance of
10 service, application for service, or obligation.

11 B. An employer shall not discriminate in employment against or
12 take any adverse employment action against any person because the
13 person:

14 1. Has taken an action to enforce a protection afforded
15 pursuant to the Oklahoma Uniformed Services Employment and
16 Reemployment Rights Act;

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

20 3. Has assisted or otherwise participated in an investigation
21 under the Oklahoma Uniformed Services Employment and Reemployment
22 Rights Act; or

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

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

4 C. An employer shall be considered to have engaged in actions
5 prohibited:

6 1. Under subsection A of this section if the person's
7 membership, application for membership, service, application for
8 service, or obligation for service in the state military forces is a
9 motivating factor in the employer's action, unless the employer can
10 prove that the action would have been taken in the absence of such
11 membership, application for membership, service, application for
12 service, or obligation for service; or

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

- 14 a. action to enforce a protection afforded any person
15 under the Oklahoma Uniformed Services Employment and
16 Reemployment Rights Act,
- 17 b. testimony or making of a statement in or in connection
18 with any proceeding under the Oklahoma Uniformed
19 Services Employment and Reemployment Rights Act,
- 20 c. assistance or other participation in an investigation
21 under the Oklahoma Uniformed Services Employment and
22 Reemployment Rights Act, or

23
24

1 d. exercise of a right provided for in the Oklahoma
2 Uniformed Services Employment and Reemployment Rights
3 Act,

4 is a motivating factor in the employer's action, unless the employer
5 can prove that the action would have been taken in the absence of
6 such person's enforcement action, testimony, statement, assistance,
7 participation, or exercise of a right.

8 D. The prohibitions in subsections A and B of this section
9 shall apply to any position of employment, including a position that
10 is described in subparagraph c of paragraph 1 of subsection D of
11 Section 8 of this act.

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

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

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

1 2. The cumulative length of the absence and of all previous
2 absences from a position of employment with that employer by reason
3 of service in the Uniformed Services of the United States does not
4 exceed five (5) years; and

5 3. Except as provided in subsection F of this section, the
6 person reports to, or submits an application for reemployment to,
7 his or her employer in accordance with the provisions of subsection
8 E of this section.

9 B. No notice is required under paragraph 1 of subsection A of
10 this section if the giving of notice is precluded by military
11 necessity or, under all of the relevant circumstances, the giving of
12 notice is otherwise impossible or unreasonable. A determination of
13 military necessity for the purposes of this subsection shall be made
14 pursuant to the applicable regulations prescribed by the Secretary
15 of Defense pursuant to 38 U.S.C., Section 4312 or pursuant to
16 regulations prescribed by the Adjutant General and shall not be
17 subject to judicial review.

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

- 1 1. That is required, beyond five (5) years, to complete an
2 initial period of obligated service;
- 3 2. During which the person was unable to obtain orders
4 releasing him or her from a period of service in the state military
5 forces before the expiration of the five-year period and the
6 inability was through no fault of the person;
- 7 3. Performed as required pursuant to 32 U.S.C., Section 502 or
8 503, or to fulfill additional training requirements determined and
9 certified in writing by the Secretary concerned, to be necessary for
10 professional development, or for completion of skill training or
11 retraining;
- 12 4. Performed by a member of the state military forces who is:
- 13 a. ordered to state active duty in support of a mission
14 or requirement of the state military forces,
- 15 b. ordered to or retained on Title 32 active duty under
16 32 U.S.C., Section 502(f), or
- 17 c. ordered to or retained on state active duty or Title
18 32 active duty, other than for training, under any
19 provision of state or federal law to execute the laws
20 of the state, or suppress insurrections or repel
21 invasions or for any state emergency declared by the
22 Governor or the Oklahoma Legislature, as determined by
23 the Adjutant General for state active duty or by the
24 Secretary concerned for Title 32 active duty; or

1 5. Performed as active duty, as defined in 10 U.S.C., Section
2 101(d) (1) .

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

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

8 b. for a person entitled to reemployment under paragraph
9 3 or 4 of subsection A of Section 9 of this act or
10 subparagraph b of paragraph 2 of subsection B of
11 Section 9 of this act, the employment would impose an
12 undue hardship on the employer, or

13 c. the employment from which the person leaves to serve
14 in the state military forces is for a brief,
15 nonrecurrent period and there is no reasonable
16 expectation that the employment will continue
17 indefinitely or for a significant period.

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

19 a. any reemployment referred to in paragraph 1 of this
20 subsection is impossible or unreasonable because of a
21 change in an employer's circumstances,

22 b. any accommodation, training, or effort referred to in
23 paragraph 3 or 4 of subsection A of Section 9 of this
24 act or subparagraph b of paragraph 2 of subsection B

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

3 c. the employment referred to in subparagraph c of
4 paragraph 1 of this subsection 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 the employer shall have the burden of proving the impossibility or
9 unreasonableness, undue hardship, or the brief or nonrecurrent
10 nature of the employment without a reasonable expectation of
11 continuing indefinitely or for a significant period.

12 E. 1. Subject to paragraph 2 of this subsection, a person
13 referred to in subsection A of this section shall, upon the
14 completion of a period of service in the state military forces,
15 notify the employer referred to in such subsection of the person's
16 intent to return to a position of employment with such employer as
17 follows:

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

21 (1) not later than the beginning of the first full
22 regularly scheduled work period on the first full
23 calendar day following the completion of the
24 period of service and the expiration of eight (8)

1 hours after a period allowing for the safe
2 transportation of the person from the place of
3 that service to the person's residence, or
4 (2) as soon as possible after the expiration of the
5 eight-hour period referred to in division (1) of
6 this subparagraph, if reporting within the period
7 is impossible or unreasonable through no fault of
8 the person,

9 b. for a person who is absent from a position of
10 employment for a period of any length for the purposes
11 of an examination to determine the person's fitness to
12 perform service in the state military forces, by
13 reporting in the manner and time referred to in
14 subparagraph a of paragraph 1 of this subsection,

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

1 d. for a person whose period of service in the state
2 military forces was for more than one hundred eighty
3 (180) days, by submitting an application for
4 reemployment with the employer not later than ninety
5 (90) days after the completion of the period of
6 service.

7 2. a. A person who is hospitalized for, or convalescing
8 from, an illness or injury incurred in, or aggravated
9 during, the performance of service in the state
10 military forces shall, at the end of the period that
11 is necessary for the person to recover from such
12 illness or injury, report to the person's employer,
13 for a person described in subparagraph a or b of
14 paragraph 1 of this subsection or submit an
15 application for reemployment with such employer, for a
16 person described in subparagraph c or d of paragraph 1
17 of this subsection. Except as provided in
18 subparagraph b of this paragraph, the period of
19 recovery shall not exceed two (2) years.

20 b. The two-year period shall be extended by the minimum
21 time required to accommodate the circumstances beyond
22 the person's control which make reporting within the
23 period specified in subparagraph a of this paragraph
24 impossible or unreasonable.

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

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

- 13 a. his or her application is timely,
- 14 b. he or she has not exceeded the service limitations
15 provided in paragraph 2 of subsection A of this
16 section, except as permitted under subsection C of
17 this section, and
- 18 c. his or her entitlement to the benefits under this act
19 has not been terminated pursuant to Section 6 of this
20 act.

21 2. Documentation of any matter referred to in paragraph 1 of
22 this subsection that satisfies regulations prescribed by the
23 Commissioner of Labor shall satisfy the documentation requirements
24 in such paragraph.

1 3. a. Except as provided in subparagraph b of this
2 paragraph, the failure of a person to provide
3 documentation that satisfies regulations prescribed
4 pursuant to paragraph 2 of this subsection shall not
5 be a basis for denying reemployment in accordance with
6 the provisions of the Oklahoma Uniformed Services
7 Employment and Reemployment Rights Act if the failure
8 occurs because such documentation does not exist or is
9 not readily available at the time of the request of
10 the employer. If, after reemployment, documentation
11 becomes available that establishes the person does not
12 meet one or more of the requirements referred to in
13 subparagraphs a, b and c of paragraph 1 of this
14 subsection, the employer of such person may terminate
15 the employment of the person and the provision of any
16 rights or benefits afforded the person under the
17 Oklahoma Uniformed Services Employment and
18 Reemployment Rights Act.

19 b. An employer who reemploys a person absent from a
20 position of employment for more than ninety (90) days
21 may require that the person provide the employer with
22 the documentation referred to in subparagraph a of
23 this paragraph before beginning to treat the person as
24

1 not having incurred a break in service for pension
2 purposes.

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

6 G. The right of a person to reemployment pursuant to this
7 section shall not entitle the person to retention, preference, or
8 displacement rights over any person with a superior claim under the
9 provisions of Title 5 of the United States Code relating to veterans
10 and other preference eligibles.

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

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

1 A. Subject to subsection B of this section for any employee,
2 and Sections 10 and 11 of this act for an employee of a state
3 government or a political subdivision thereof, a person who is
4 entitled to reemployment under Section 8 of this act, upon
5 completion of a period of service in the state military forces,
6 shall be promptly reemployed in the following order of priority:

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

10 a. in the position of employment in which the person
11 would have been employed if the continuous employment
12 of the person with the employer had not been
13 interrupted by the service, the duties of which the
14 person is qualified to perform, or

15 b. in the position of employment in which the person was
16 employed on the date of the commencement of the
17 service in the state military forces, only if he or
18 she is not qualified to perform the duties of the
19 position referred to in subparagraph a of this
20 paragraph after reasonable efforts by the employer to
21 qualify the person;

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

1 a. in the position of employment in which the person
2 would have been employed if the continuous employment
3 of the person with the employer had not been
4 interrupted by the service, or a position of like
5 seniority, status and pay, the duties of which he or
6 she is qualified to perform, or

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

16 3. For a person who has a disability incurred in, or aggravated
17 during, the service, and who, after reasonable efforts by the
18 employer to accommodate the disability, is not qualified due to the
19 disability to be employed in the position of employment in which the
20 person would have been employed if the continuous employment of the
21 person with the employer had not been interrupted by the service:

22 a. in any other position which is equivalent in
23 seniority, status, and pay, the duties of which he or
24

1 she is qualified to perform or would become qualified
2 to perform with reasonable efforts by the employer, or
3 b. if not employed under subparagraph a of this
4 paragraph, in a position which is the nearest
5 approximation to a position referred to in
6 subparagraph a of this paragraph in terms of
7 seniority, status, and pay consistent with
8 circumstances of his or her case; or

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

12 a. would have been employed if the continuous employment
13 of the person with the employer had not been
14 interrupted by the service, or

15 b. was employed on the date of the commencement of the
16 service in the state military forces for any reason,
17 other than disability incurred in, or aggravated
18 during, service in the state military forces, and
19 cannot become qualified with reasonable efforts by the employer, in
20 any other position which is the nearest approximation to a position
21 referred to first in subparagraph a of this paragraph and then in
22 subparagraph b of this paragraph which such person is qualified to
23 perform, with full seniority.

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

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

10 a. except as provided in subparagraph b of this
11 paragraph, in any other position of employment
12 referred to in paragraph 1 or 2 of subsection A of
13 this section, as the case may be, in the order of
14 priority set out in subsection A of this section, that
15 provides a similar status and pay to a position of
16 employment referred to in paragraph 1 of this
17 subsection, consistent with the circumstances of his
18 or her case, with full seniority, or

19 b. for a person who has a disability incurred in, or
20 aggravated during, a period of service in the state
21 military forces that requires reasonable efforts by
22 the employer for the person to be able to perform the
23 duties of the position of employment, in any other
24 position referred to in paragraph 3 of subsection A of

1 this section, in the order of priority set out in
2 subsection A of this section, that provides a similar
3 status and pay to a position referred to in paragraph
4 1 of this subsection, consistent with circumstances of
5 his or her case, with full seniority.

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

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

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

- 20 a. identify a position of like seniority, status, and pay
21 at another state agency that satisfies the
22 requirements of Section 9 of this act and for which
23 the person is qualified, and
24 b. ensure that the person is offered such a position.

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

4 a. the state agency that employed the person no longer
5 exists and the functions of the agency have not been
6 transferred to another state agency, or

7 b. it is impossible or unreasonable for the agency to
8 reemploy the person.

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

19 D. If the Adjutant General determines it is impossible or
20 unreasonable to reemploy a person who was a National Guard
21 technician employed under 32 U.S.C., Section 709, the person shall,
22 upon application to the Director of Human Capital Management of the
23 Office of Management and Enterprise Services, be ensured an offer of
24

1 employment in an alternative position in a state agency on the basis
2 described in subsection B of this section.

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

6 A. The administrator of each state agency or political
7 subdivision shall prescribe procedures for ensuring that the rights
8 under the Oklahoma Uniformed Services Employment and Reemployment
9 Rights Act apply to the employees of the state agency or political
10 subdivision.

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

18 C. 1. The procedures prescribed in subsection A of this
19 section shall designate an employee at the state agency or political
20 subdivision who shall determine whether or not the reemployment of a
21 person referred to in subsection B of this section by the state
22 agency or political subdivision is impossible or unreasonable.

23 2. Upon making a determination that the reemployment is
24 impossible or unreasonable, the official designated in paragraph 1

1 of this subsection shall notify the person seeking reemployment and
2 the Director of Human Capital Management of the Office of Management
3 and Enterprise Services of such determination.

4 3. A determination made pursuant to this subsection shall not
5 be subject to judicial review.

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

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

23 2. This section shall not be construed as prohibiting:
24

- 1 a. an employee of a state agency or political subdivision
2 from seeking information from the Commissioner of
3 Labor regarding assistance in pursuing reemployment
4 from the state agency or political subdivision under
5 the Oklahoma Uniformed Services Employment and
6 Reemployment Rights Act, alternative employment in the
7 state government under the Oklahoma Uniformed Services
8 Employment and Reemployment Rights Act, or information
9 relating to the rights and obligations of employees
10 and state agencies, political subdivisions or their
11 instrumentalities under the Oklahoma Uniformed
12 Services Employment and Reemployment Rights Act, or
13 b. such a state agency or political subdivision from
14 voluntarily cooperating with or seeking assistance in
15 or clarification from the Commissioner of Labor or the
16 Director of Human Capital Management of the Office of
17 Management and Enterprise Services for any matter
18 arising under the Oklahoma Uniformed Services
19 Employment and Reemployment Rights Act.

20 E. The Director of Human Capital Management of the Office of
21 Management and Enterprise Services shall ensure the offer of
22 employment to a person in a position in a state agency on the basis
23 described in subsection B of this section if:
24

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

4 2. The appropriate officer of the state agency or political
5 subdivision determines under subsection C of this section that
6 reemployment of the person by the state agency or political
7 subdivision is impossible or unreasonable; and

8 3. The person submits an application to the Director of Human
9 Capital Management of the Office of Management and Enterprise
10 Services for an offer of employment pursuant to this section.

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

14 A. A person who is reemployed under the Oklahoma Uniformed
15 Services Employment and Reemployment Rights Act is entitled to the
16 seniority and other rights and benefits determined by seniority that
17 he or she had on the date of the commencement of service in the
18 state military forces plus the additional seniority and rights and
19 benefits that he or she would have attained if he or she had
20 remained continuously employed.

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

1 a. deemed to be on furlough or leave of absence while
2 performing such service, and

3 b. entitled to other rights and benefits not determined
4 by seniority as are generally provided by the employer
5 of the person to employees having similar seniority,
6 status, and pay who are on furlough or leave of
7 absence under a contract, agreement, policy, practice,
8 or plan in effect at the commencement of the service
9 or established while such person performs the service.

10 2. a. Subject to subparagraph b of this paragraph, a person
11 who:

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

14 (2) knowingly provides written notice of intent not
15 to return to a position of employment after
16 service in the state military forces,

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

19 b. For the purposes of subparagraph a of this paragraph,
20 the employer shall have the burden of proving that a
21 person knowingly provided clear written notice of
22 intent not to return to a position of employment after
23 service in the state military forces and, in doing so,
24

1 was aware of the specific rights and benefits to be
2 lost under subparagraph a of this paragraph.

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

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

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

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

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

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

1 D. Any person whose employment is interrupted by a period of
2 service in the state military forces shall be permitted, upon
3 request of the person, to use during such period of service any
4 vacation, annual, or similar leave with pay accrued by the person
5 before the commencement of such service. No employer may require
6 any such person to use vacation, annual, or similar leave during the
7 period of service.

8 E. 1. An employer shall grant an employee who is a member of
9 the state military forces an authorized leave of absence from a
10 position of employment to allow that employee to perform funeral
11 honors duty as authorized by 10 U.S.C., Section 12503 or 32 U.S.C.,
12 Section 115.

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

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

20 A. 1. In any case in which a person or his or her dependents
21 have coverage under a health plan in connection with the person's
22 position of employment, including a group health plan as defined in
23 Section 607(1) of the federal Employee Retirement Income Security
24 Act of 1974, and the person is absent from his or her position of

1 employment due to service in the state military forces, the plan
2 shall provide that he or she may elect to continue such coverage as
3 provided in this subsection. The maximum period of coverage of a
4 person and his or her dependents under an election shall be the
5 lesser of:

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

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

11 2. A person who elects to continue health plan coverage under
12 this section may be required to pay not more than one hundred two
13 percent (102%) of the full premium under the plan, determined in the
14 same manner as the applicable premium under Section 4980B(f)(4) of
15 the Internal Revenue Code of 1986, associated with the coverage for
16 other employees of the employer, except where a person is absent due
17 to service in the state military forces for less than thirty-one
18 (31) days, the person shall not be required to pay more than the
19 employee share, if any, for such coverage.

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

24

1 a. by the plan in such manner as the plan sponsor shall
2 provide, or

3 b. if the sponsor does not provide:

4 (1) to the last employer employing the person before
5 the period served by the person in the state
6 military forces, or

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

9 B. 1. Except as provided in paragraph 2 of this subsection,
10 for a person whose coverage under a health plan was terminated by
11 reason of service in the state military forces, or by reason of the
12 person's having become eligible for medical and dental care provided
13 to the person incidental to his or her service in the state military
14 forces, an exclusion or waiting period shall not be imposed in
15 connection with the reinstatement of coverage upon reemployment
16 under the Oklahoma Uniformed Services Employment and Reemployment
17 Rights Act if an exclusion or waiting period would not have been
18 imposed under a health plan had coverage of the person by the plan
19 not been terminated as a result of the service or eligibility. This
20 paragraph applies to the person who is reemployed and to any person
21 who is covered by the plan by reason of the reinstatement of the
22 coverage of the person. This paragraph shall not apply to the
23 coverage of any illness or injury determined by the Adjutant General
24

1 to have been incurred in, or aggravated during, performance of state
2 active duty or Title 32 active duty in the state military forces.

3 2. If a person whose coverage under a health plan is terminated
4 due to the person becoming eligible for medical and dental care
5 provided to the person incidental to his or her service in the state
6 military forces but the person subsequently does not commence a
7 period of state active duty or Title 32 active duty under the order
8 to state active duty or Title 32 active duty that established
9 eligibility because the order is canceled before the duty commences,
10 the provisions of paragraph 1 of this subsection related to any
11 exclusion or waiting period in connection with the reinstatement of
12 coverage under a health plan shall apply to the person's continued
13 employment, upon the termination of eligibility for medical and
14 dental care provided to the person due to his or her service in the
15 state military forces that is incident to the cancellation of the
16 order, in the same manner as if the person had become reemployed
17 upon termination of eligibility.

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

21 A. Liability of controlling Oklahoma employer of foreign
22 entity. If an employer controls an entity that is incorporated or
23 otherwise organized in a foreign country, any denial of employment,
24

1 reemployment, or benefit by such entity shall be presumed to be by
2 the employer.

3 B. Applicability to foreign employer. This section shall not
4 apply to foreign operations of an employer that is a foreign person
5 not controlled by an Oklahoma employer, except that any employer
6 conducting business in Oklahoma, even a foreign entity not
7 registered with the Oklahoma Secretary of State, or any employer
8 with employees working in Oklahoma shall be subject to this act.

9 C. Determination of controlling employer. For purposes of this
10 section, the determination of whether an employer controls an entity
11 shall be based upon the interrelations of operations, common
12 management, centralized control of labor relations, and common
13 ownership or financial control of the employer and the entity.

14 D. Exemption. Notwithstanding any other provision of this
15 section, an employer, or an entity controlled by an employer, shall
16 be exempt from compliance with Sections 7 through 14 of this act
17 with respect to an employee in a workplace in a foreign country, if
18 compliance would cause the employer or entity controlled by an
19 employer, to violate the law of the foreign country in which the
20 workplace is located.

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

24

1 The Commissioner of Labor shall provide assistance to any person
2 regarding the employment and reemployment rights and benefits which
3 the person is entitled to under the Oklahoma Uniformed Services
4 Employment and Reemployment Rights Act. In providing assistance,
5 the Commissioner may request assistance from existing federal and
6 state agencies engaged in similar or related activities and utilize
7 the assistance of volunteers.

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

11 A. A person who claims that:

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

15 2. a. His or her employer has failed or refused, or is about
16 to fail or refuse, to comply with the provisions of
17 the Oklahoma Uniformed Services Employment and
18 Reemployment Rights Act, or

19 b. His or her employer is a state agency and the employer
20 or the Office of Management and Enterprise Services,
21 Human Capital Management, has failed or refused, or is
22 about to fail or refuse, to comply with the provisions
23 of the Oklahoma Uniformed Services Employment and
24 Reemployment Rights Act,

1 may file a complaint with the Commissioner of Labor as provided in
2 subsection B of this section, and the Commissioner shall investigate
3 such complaint.

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

8 C. 1. Not later than five (5) business days after the
9 Commissioner receives a complaint submitted pursuant to this
10 section, the Commissioner shall notify the complainant in writing of
11 his or her rights with respect to the complaint under this section
12 and Section 17 of this act.

13 2. The Commissioner shall, upon request, provide technical
14 assistance to a potential complainant for a complaint under this
15 subsection and, when appropriate, to the complainant's employer.

16 D. The Commissioner shall investigate each complaint submitted
17 pursuant to this section. If the Commissioner determines as a
18 result of the investigation that the action alleged in the complaint
19 occurred, the Commissioner shall attempt to resolve the complaint by
20 making reasonable efforts to ensure that the employer named in the
21 complaint complies with the provisions of the Oklahoma Uniformed
22 Services Employment and Reemployment Rights Act.

23
24

1 E. If the efforts of the Commissioner do not resolve the
2 complaint, the Commissioner shall notify the complainant in writing
3 of:

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

5 2. The complainant's entitlement to proceed under the
6 enforcement of rights provisions in Section 17 of this act for a
7 complainant against a state or private employer.

8 F. Any action required by subsections D and E of this section
9 for a complaint submitted by a complainant to the Commissioner under
10 subsection A of this section shall be completed by the Commissioner
11 not later than ninety (90) days after receipt of the complaint.

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

15 A. Action for relief. 1. A person who receives from the
16 Commissioner of Labor a notification pursuant to subsection E of
17 Section 16 of this act of an unsuccessful effort to resolve a
18 complaint relating to a state government employer may request that
19 the Commissioner refer the complaint to the district attorney with
20 relevant jurisdiction. The Commissioner shall refer the complaint
21 to the district attorney with relevant jurisdiction not later than
22 sixty (60) days after receiving the request. If the district
23 attorney is reasonably satisfied that the complainant is entitled to
24 the rights or benefits sought, the district attorney may appear on

1 behalf of, and act as attorney for, the complainant and commence an
2 action for relief under the Oklahoma Uniformed Services Employment
3 and Reemployment Rights Act.

4 2. Not later than sixty (60) days after the date the district
5 attorney receives a referral as provided in paragraph 1 of this
6 subsection, the district attorney shall:

- 7 a. make a decision whether to appear on behalf of, and
8 act as attorney for, the complainant, and
- 9 b. notify the complainant in writing of the decision.

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

- 13 a. has chosen not to request assistance from the
14 Commissioner under Section 16 of this act,
- 15 b. has chosen not to request the Commissioner to refer
16 the complaint to the district attorney pursuant to
17 paragraph 1 of this subsection, or
- 18 c. has been refused representation by the district
19 attorney.

20 B. Jurisdiction. In an action against a state government
21 employer or a private employer commenced by the district attorney,
22 the district courts shall have jurisdiction over the action.

23 C. Venue. 1. In an action by a district attorney against a
24 state government employer, the action may proceed in the district

1 court of the county where the complainant resides or was previously
2 assigned for duty as a state employee immediately prior to service
3 in the state military forces.

4 2. In an action by a district attorney against a private
5 employer, the action may proceed in the district court of the county
6 where the private employer of the complainant maintains a place of
7 business.

8 D. Remedies. 1. In any action pursuant to this section, the
9 court may award any or all of the following types of relief by
10 requiring the employer to:

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

13 b. compensate the complainant for any loss of wages or
14 benefits suffered by reason of the employer's failure
15 to comply with the provisions of the Oklahoma
16 Uniformed Services Employment and Reemployment Rights
17 Act,

18 c. pay the complainant an amount equal to the amount
19 provided in subparagraph b of this paragraph as
20 liquidated damages, if the court determines that the
21 employer willfully failed to comply with the
22 provisions of the Oklahoma Uniformed Services
23 Employment and Reemployment Rights Act,

24 d. pay actual and compensatory damages, and

1 e. pay punitive damages. Punitive damages awarded
2 pursuant to this subparagraph shall be determined in
3 accordance with applicable state law.

4 2. a. Any compensation awarded pursuant to this subsection
5 shall be in addition to, and shall not diminish, any
6 of the other rights and benefits provided for under
7 the Oklahoma Uniformed Services Employment and
8 Reemployment Rights Act.

9 b. In an action commenced in the name of the State of
10 Oklahoma for which the relief includes compensation
11 awarded pursuant to subparagraph b, c, d or e of
12 paragraph 1 of this subsection, the compensation shall
13 be held in a special deposit account and shall be
14 paid, on order of the district attorney who commenced
15 the action against a state government employer or a
16 private employer, directly to the complainant. If the
17 compensation is not paid to the complainant because of
18 inability to do so within a period of three (3) years,
19 the compensation shall be deposited in the Unclaimed
20 Property Fund of the State Treasury pursuant to the
21 Uniform Unclaimed Property Act, Section 651 et seq. of
22 Title 60 of the Oklahoma Statutes.

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

4 E. Equity powers. The court shall use, if it deems
5 appropriate, its full equity powers, including temporary or
6 permanent injunctions, temporary restraining orders, and contempt
7 orders, to vindicate fully the rights or benefits of persons under
8 the Oklahoma Uniformed Services Employment and Reemployment Rights
9 Act.

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

15 G. Respondent. In any action pursuant to the Oklahoma
16 Uniformed Services Employment and Reemployment Rights Act, only an
17 employer or a potential employer shall be a necessary party
18 respondent.

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

22 2. In any action or proceeding to enforce a provision of the
23 Oklahoma Uniformed Services Employment and Reemployment Rights Act
24 by a complainant who obtained private counsel for an action or

1 proceeding, the court may award a prevailing complainant reasonable
2 attorney fees, expert witness fees, and other litigation expenses.

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

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

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

11 1. Duly authorized representatives of the Commissioner of Labor
12 shall, at all reasonable times, have reasonable access to and the
13 right to interview persons with information relevant to an
14 investigation and shall have reasonable access to, for purposes of
15 examination, and the right to copy and receive, any documents of any
16 person or employer that the Commissioner considers relevant to the
17 investigation; and

18 2. The Commissioner may require by subpoena the attendance and
19 testimony of witnesses and the production of documents relating to
20 any matter under investigation. If a party disobeys a subpoena, and
21 upon request of the Commissioner, the district attorney with
22 jurisdiction in the county where the complainant resides or where
23 the complainant was previously assigned for duty as a state employee
24

1 immediately prior to service in the military forces may apply to
2 district court for an order enforcing the subpoena.

3 B. Upon application, district courts of the state shall have
4 jurisdiction to issue writs commanding any person or employer to
5 comply with the subpoena of the Commissioner or to comply with any
6 order of the Commissioner made pursuant to a lawful investigation
7 pursuant to the Oklahoma Uniformed Services Employment and
8 Reemployment Rights Act, and district courts shall have jurisdiction
9 to punish a party for failure to obey a subpoena or other lawful
10 order of the Commissioner as a contempt of court.

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

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

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

17 1. The inability of the Commissioner of Labor or a district
18 attorney to comply with a deadline applicable to such official under
19 Section 16 or 17 of this act shall not:

20 a. affect the authority of the district attorney to
21 represent and file an action or submit a complaint on
22 behalf of a person under Section 17 of this act,

23 b. affect the right of a person to:
24

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

3 (2) obtain any type of assistance or relief
4 authorized by the Oklahoma Uniformed Services
5 Employment and Reemployment Rights Act,

6 c. deprive a district court of jurisdiction over an
7 action or complaint filed by the district attorney or
8 a person under Section 17 of this act, and

9 d. constitute a defense, including a statute of
10 limitations period, that any employer, including state
11 government, its political subdivisions or a private
12 employer, may raise in an action filed by the district
13 attorney or a person under Section 17 of this act.

14 2. If the Commissioner or the district attorney is unable to
15 meet a deadline applicable to such official in Section 16 or 17 of
16 this act, and the complainant agrees to an extension of time, the
17 Commissioner or the district attorney shall complete the required
18 action within the additional period of time agreed to by the
19 complainant.

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

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

4 A. The Commissioner of Labor, in consultation with the Adjutant
5 General, may prescribe regulations implementing the provisions of
6 the Oklahoma Uniformed Services Employment and Reemployment Rights
7 Act as it applies to state government, political subdivisions, and
8 private employers.

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

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

21 A. Annual report by the Commissioner of Labor. The
22 Commissioner shall, after consultation with the district attorney to
23 whom a complaint pursuant to the Oklahoma Uniformed Services
24 Employment and Reemployment Rights Act has been referred, transmit

1 to the Committee on Veterans and Military Affairs of the Oklahoma
2 House of Representatives and the Committee on Veterans and Military
3 Affairs of the Oklahoma State Senate not later than July 1 of each
4 year a report on matters for the fiscal year ending in the year
5 before the year in which the report is transmitted the number of
6 cases reviewed by the Department of Labor under the Oklahoma
7 Uniformed Services Employment and Reemployment Rights Act during the
8 fiscal year for which the report is made.

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

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

16 The Commissioner of Labor, Adjutant General, and Executive
17 Director of the Oklahoma Department of Veterans Affairs shall take
18 such actions as they determine to be appropriate to inform persons
19 entitled to rights and benefits under the Oklahoma Uniformed
20 Services Employment and Reemployment Rights Act and employers of the
21 rights, benefits, and obligations of employees and employers under
22 the Oklahoma Uniformed Services Employment and Reemployment Rights
23 Act.

24

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

4 A. Requirement to provide notice. Each employer shall identify
5 their employees who are members of the state military forces and
6 provide them with a notice of the rights, benefits, and obligations
7 of employees and employers subject to the Oklahoma Uniformed
8 Services Employment and Reemployment Rights Act. This notice
9 requirement may be met by posting the notice where employers
10 customarily place notices for employees.

11 B. Content of the notice. The Commissioner of Labor shall
12 provide employers with the content of the notice required by this
13 section.

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

17 A. Training required. The administrator of each state agency
18 and political subdivision shall provide training for the human
19 resources personnel of the agency or political subdivision on the
20 following:

21 1. The rights, benefits, and obligations provided in the
22 Oklahoma Uniformed Services Employment and Reemployment Rights Act
23 for employees who are members of the state military forces; and
24

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

4 B. Training consultation and frequency. The training required
5 by subsection A of this section for state agencies shall be
6 developed and provided in consultation with the Director of Human
7 Capital Management of the Office of Management and Enterprise
8 Services. The training shall be provided as determined by the
9 Director of Human Capital Management of the Office of Management and
10 Enterprise Services in order to ensure that the human resources
11 personnel of state agencies are kept fully and currently informed of
12 the issues covered by the training.

13 C. Human resources personnel defined. As used in this section,
14 "human resources personnel" means any personnel of a state agency or
15 political subdivision who are authorized to recommend, take, or
16 approve any employee action which is subject to the requirements of
17 the Oklahoma Uniformed Services Employment and Reemployment Rights
18 Act.

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

21 Section 48.1 A. All officers and employees of any employer in
22 the private sector, who are members, either officers or enlisted, of
23 the Reserve Components, ~~to include the Army and Air National Guard~~
24 ~~and~~ of the Army, Navy, Air Force, Marine Corps, and Coast Guard

1 ~~Reserves~~, or any other component of the ~~Armed Forces~~ Uniformed
2 Services of the United States, shall, when ordered by the proper
3 authority to active or inactive duty or service under Title 10 of
4 the United States Code, be entitled to a leave of absence from such
5 private civilian employment for the period of such service without
6 loss of status or seniority. During such leave of absence in any
7 federal fiscal year, the employer in the private sector may elect to
8 pay the officer or employee an amount equal to the difference
9 between his or her full regular pay from the employer in the private
10 sector and his or her military base pay. The durational limit of
11 protected military service as provided for in this section shall not
12 be less than that provided by federal law.

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

19 B. All officers and employees of any employer in the private
20 sector, who are members, either officers or enlisted, of the state
21 military forces, shall, when ordered by the proper authority to
22 state active duty or Title 32 active duty, be entitled to all the
23 protections provided under the Oklahoma Uniformed Services
24 Employment and Reemployment Rights Act.

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

4 SECTION 26. It being immediately necessary for the preservation
5 of the public peace, health or safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8
9 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS,
10 dated 02/18/2021 - DO PASS, As Amended and Coauthored.

11
12
13
14
15
16
17
18
19
20
21
22
23
24