

1 **SENATE FLOOR VERSION**

2 March 25, 2021

3 ENGROSSED HOUSE
4 BILL NO. 2545

By: Burns, Kannady, Steagall
and Fugate of the House

5 and

6 Simpson of the Senate

7
8 An Act relating to state military forces; amending 44
9 O.S. 2011, Section 208, as amended by Section 204,
10 Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section
11 208), which relates to discrimination against members
12 of state military forces; updating language; enacting
13 the Oklahoma Uniformed Services Employment and
14 Reemployment Rights Act; declaring applicability of
15 act; defining terms; stating purposes of the act;
16 construing provisions of act; declaring act to
17 supersede certain laws and other documents; defining
18 terms; specifying eligibility and entitlement to act
19 benefits; prohibiting denial of certain employment
20 for person with service in state military forces;
21 barring discrimination against certain employee;
22 providing for applicability to specified employment;
23 establishing reemployment rights and benefits for
24 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
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;

1 providing an exception; construing provisions;
2 requiring offer of employment for certain employees;
3 prescribing seniority for certain reemployed persons;
4 establishing conditions for persons absent from
5 employment; prohibiting certain discharge from
6 reemployment; providing exceptions; permitting
7 employee to use accrued leave time; mandating an
8 authorized leave of absence; allowing person to
9 continue employer health plan coverage; specifying
10 procedures for coverage continuation; prescribing
11 applicability of act to foreign employer; providing
12 for determination of controlling employer; exempting
13 compliance for certain employers; directing
14 Commissioner of Labor to assist with rights and
15 benefits of the act; providing for filing a complaint
16 with the Commissioner; prescribing contents of
17 complaint; requiring notification be given to
18 complainant within specified time; directing
19 Commissioner to investigate complaints; prescribing
20 attempt to resolve complaint; mandating notification
21 to complainant within certain time; allowing
22 complainant to request referral to the district
23 attorney; specifying procedures for referrals;
24 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;
requiring certain officials to take actions to inform
employees of rights under this act; mandating
employer to provide 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

1 leave of absence; mandating protections for private-
2 sector officers and employees; defining term;
3 providing for codification; and declaring an
4 emergency.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. AMENDATORY 44 O.S. 2011, Section 208, as
7 amended by Section 204, Chapter 408, O.S.L. 2019 (44 O.S. Supp.
8 2020, Section 208), is amended to read as follows:

9 Section 208. No person shall discriminate against any officer
10 or enlisted member of the National Guard or Civil Air Patrol or a
11 judge carrying out his or her duties as a member of the Military
12 Court of Appeals because of his or her membership therein. No
13 person shall prohibit or refuse entrance to any officer or enlisted
14 member of the Uniformed Services of the United States Armed Forces,
15 or of the state military forces ~~of this state~~, into any public
16 entertainment or place of amusement because such officer or enlisted
17 member is wearing a uniform of the organization to which he or she
18 belongs. No employer, officer or agent of any corporation, company,
19 firm or other person, shall discharge any person from employment
20 because of being an officer, warrant officer or enlisted member of
21 the military forces of the state, or hinder or prevent him or her
22 from performing any military service he or she may be called upon to
23 perform by proper authority, in respect to his or her employment,
24 trade or business. Any person violating any of the provisions of

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

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

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

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

21 The purposes of the Oklahoma Uniformed Services Employment and
22 Reemployment Rights Act are:
23
24

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

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

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

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

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

22 B. The Oklahoma Uniformed Services Employment and Reemployment
23 Rights Act supersedes any other state law, including any county or
24 municipal law or ordinance, contract, agreement, policy, plan,

1 practice, or other matter that reduces, limits, or eliminates in any
2 manner any right or benefit provided by the Oklahoma Uniformed
3 Services Employment and Reemployment Rights Act, including the
4 establishment of additional prerequisites to the exercise of any
5 such right or the receipt of any such benefit.

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

9 As used in the Oklahoma Uniformed Services Employment and
10 Reemployment Rights Act:

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

13 2. "Benefit", "benefit of employment", or "rights and benefits"
14 means the terms, conditions, or privileges of employment, including
15 any advantage, profit, privilege, gain, status, account, or
16 interest, including wages or salary for work performed, that accrues
17 by reason of an employment contract or agreement or an employer
18 policy, plan, or practice and includes rights and benefits under a
19 pension plan, a health plan, an employee stock ownership plan,
20 insurance coverage, awards, bonuses, severance pay, supplemental
21 unemployment benefits, vacations, and the opportunity to select work
22 hours or location of employment;

23 3. "Commissioner of Labor" means the Oklahoma Commissioner of
24 Labor whose office is established in Section 1 of Article VI of the

1 Oklahoma Constitution and whose powers and duties are established
2 pursuant to Section 1 of Title 40 of the Oklahoma Statutes or any
3 person designated or retained by the Commissioner of Labor to carry
4 out a responsibility of the Commissioner of Labor under the Oklahoma
5 Uniformed Services Employment and Reemployment Rights Act;

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

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

17 6. a. Except as provided in subparagraphs b and c of this
18 paragraph, "employer" means any person, institution,
19 organization, or other entity that pays salary or
20 wages for work performed or that has control over
21 employment opportunities, including:

22 (1) a person, institution, organization, or other
23 entity to whom the employer has delegated the
24

1 performance of employment-related
2 responsibilities,

3 (2) the State of Oklahoma,

4 (3) any political subdivision within the State of
5 Oklahoma,

6 (4) any successor in interest to a person,
7 institution, organization, or other entity
8 referred to in this subparagraph, and

9 (5) a person, institution, organization, or other
10 entity that has denied initial employment in
11 violation of Section 7 of this act.

12 b. Where a soldier or airman of the Oklahoma National
13 Guard performs his or her duty as an Active Guard and
14 Reserve program participant or where a National Guard
15 technician is employed under 32 U.S.C., Section 709,
16 "employer" does not mean the Adjutant General.

17 c. Where a National Guard technician is employed under 32
18 U.S.C., Section 709, "employer" means the Adjutant
19 General.

20 d. (1) Whether the term "successor in interest" applies
21 with respect to an entity described in division
22 (4) of subparagraph a of this paragraph shall be
23 determined on a case-by-case basis using a
24

1 multifactor test that considers the following
2 factors:

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

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

19 7. "Health plan" means an insurance policy or contract, medical
20 or hospital service agreement, membership or subscription contract,
21 or other arrangement under which health services for individuals are
22 provided or the expenses of such services are paid;

23 8. "Notice" means any written or verbal notification of an
24 obligation or intention to perform service in the state military

1 forces provided to an employer by the employee who will perform such
2 service or by the state military force component in which the
3 service is to be performed;

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

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

18 11. "Reasonable efforts", in actions required of an employer
19 under the Oklahoma Uniformed Services Employment and Reemployment
20 Rights Act, means actions, including training, provided by an
21 employer which do not place an undue hardship on the employer;

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

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1 13. "Seniority" means longevity in employment together with any
2 benefits of employment which accrue with, or are determined by,
3 longevity in employment;

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

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

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

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

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

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

22 a. the nature and cost of the action needed,

23 b. the overall financial resources of the facility or
24 facilities involved in the provision of the action,

1 the number of persons employed at the facility, the
2 effect on expenses and resources, or the impact
3 otherwise of such action upon the operation of the
4 facility,

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

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

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

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

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 of the United States does not
18 exceed five (5) years; 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 38 U.S.C., Section 4312 or pursuant to
6 regulations prescribed by the Adjutant General and shall not be
7 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 32 U.S.C., Section 502 or
22 503, or to fulfill additional training requirements determined and
23 certified in writing by the Secretary concerned, to be necessary for
24

1 professional development, or for completion of skill training or
2 retraining;

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 32 U.S.C., Section 502(f), or

8 c. ordered to or retained on state active duty or Title
9 32 active duty, other than for training, under any

10 provision of state or federal law to execute the laws
11 of the state, or suppress insurrections or repel

12 invasions or for any state emergency declared by the
13 Governor or the Oklahoma Legislature, as determined by

14 the Adjutant General for state active duty or by the
15 Secretary concerned for Title 32 active duty; or

16 5. Performed as active duty, as defined in 10 U.S.C., Section
17 101(d)(1).

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

20 Act if:

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

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

1 subparagraph b of paragraph 2 of subsection B of
2 Section 9 of this act, the employment would impose an
3 undue hardship on the employer, or

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

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

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

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

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

23 the employer shall have the burden of proving the impossibility or
24 unreasonableness, undue hardship, or the brief or nonrecurrent

1 nature of the employment without a reasonable expectation of
2 continuing indefinitely or for a 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, or

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 the person 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 of this paragraph in terms of
24

1 seniority, status, and pay consistent with
2 circumstances of his or her case; or

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

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

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

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

23 2. Any person entitled to reemployment under Section 8 of this
24 act who is not reemployed in a position of employment by reason of

1 paragraph 1 of this subsection shall be entitled to be reemployed as
2 follows:

3 a. except as provided in subparagraph b of this
4 paragraph, in any other position of employment
5 referred to in paragraph 1 or 2 of subsection A of
6 this section, as the case may be, in the order of
7 priority set out in subsection A of this section, that
8 provides a similar status and pay to a position of
9 employment referred to in paragraph 1 of this
10 subsection, consistent with the circumstances of his
11 or her case, with full seniority, or

12 b. for a person who has a disability incurred in, or
13 aggravated during, a period of service in the state
14 military forces that requires reasonable efforts by
15 the employer for the person to be able to perform the
16 duties of the position of employment, in any other
17 position referred to in paragraph 3 of subsection A of
18 this section, in the order of priority set out in
19 subsection A of this section, that provides a similar
20 status and pay to a position referred to in paragraph
21 1 of this subsection, consistent with circumstances of
22 his or her case, with full seniority.

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

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

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

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

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

20 2. The Director shall carry out the duties in subparagraphs a
21 and b of paragraph 1 of this subsection if the Director determines
22 that:
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1 a. the state agency that employed the person no longer
2 exists and the functions of the agency have not been
3 transferred to another state agency, or

4 b. it is impossible or unreasonable for the agency to
5 reemploy the person.

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

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

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

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

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

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

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

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

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

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

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

23 a. an employee of a state agency or political subdivision
24 from seeking information from the Commissioner of

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

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

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

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

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

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

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

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

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

23 b. entitled to other rights and benefits not determined
24 by seniority as are generally provided by the employer

1 of the person to employees having similar seniority,
2 status, and pay who are on furlough or leave of
3 absence under a contract, agreement, policy, practice,
4 or plan in effect at the commencement of the service
5 or established while such person performs the service.

6 2. a. Subject to subparagraph b of this paragraph, a person
7 who:

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

10 (2) knowingly provides written notice of intent not
11 to return to a position of employment after
12 service in the state military forces,

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

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

22 3. A person deemed to be on furlough or leave of absence under
23 this subsection while serving in the state military forces shall not
24 be entitled to any benefits under this subsection which he or she

1 would not otherwise be entitled if he or she had remained
2 continuously employed.

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

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

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

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

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

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

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

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

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

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

- 1 a. a twenty-four-month period beginning on the date on
2 which his or her absence begins, or
3 b. the day after the date on which the person fails to
4 apply for or return to a position of employment, as
5 determined in subsection E of Section 8 of this act.

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

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

19 a. by the plan in such manner as the plan sponsor shall
20 provide, or

21 b. if the sponsor does not provide:

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

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

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

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

1 to state active duty or Title 32 active duty that established
2 eligibility because the order is canceled before the duty commences,
3 the provisions of paragraph 1 of this subsection related to any
4 exclusion or waiting period in connection with the reinstatement of
5 coverage under a health plan shall apply to the person's continued
6 employment, upon the termination of eligibility for medical and
7 dental care provided to the person due to his or her service in the
8 state military forces that is incident to the cancellation of the
9 order, in the same manner as if the person had become reemployed
10 upon termination of eligibility.

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

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

19 B. Applicability to foreign employer. This section shall not
20 apply to foreign operations of an employer that is a foreign person
21 not controlled by an Oklahoma employer, except that any employer
22 conducting business in Oklahoma, even a foreign entity not
23 registered with the Oklahoma Secretary of State, or any employer
24 with employees working in Oklahoma shall be subject to this act.

1 C. Determination of controlling employer. For purposes of this
2 section, the determination of whether an employer controls an entity
3 shall be based upon the interrelations of operations, common
4 management, centralized control of labor relations, and common
5 ownership or financial control of the employer and the entity.

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

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

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

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

4 A. A person who claims that:

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

8 2. a. His or her employer has failed or refused, or is about
9 to fail or refuse, to comply with the provisions of
10 the Oklahoma Uniformed Services Employment and
11 Reemployment Rights Act, or

12 b. His or her employer is a state agency and the employer
13 or the Office of Management and Enterprise Services,
14 Human Capital Management, has failed or refused, or is
15 about to fail or refuse, to comply with the provisions
16 of the Oklahoma Uniformed Services Employment and
17 Reemployment Rights Act,
18 may file a complaint with the Commissioner of Labor as
19 provided in subsection B of this section, and the
20 Commissioner shall investigate such complaint.

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

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

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

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

16 E. If the efforts of the Commissioner do not resolve the
17 complaint, the Commissioner shall notify the complainant in writing
18 of:

- 19 1. The results of the Commissioner's investigation; and
20 2. The complainant's entitlement to proceed under the
21 enforcement of rights provisions in Section 17 of this act for a
22 complainant against a state or private employer.

23 F. Any action required by subsections D and E of this section
24 for a complaint submitted by a complainant to the Commissioner under

1 subsection A of this section shall be completed by the Commissioner
2 not later than ninety (90) days after receipt of the complaint.

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

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

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

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

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 district attorney pursuant to
8 paragraph 1 of this subsection, or

9 c. has been refused representation by the district
10 attorney.

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

14 C. Venue. 1. In an action by a district attorney against a
15 state government employer, the action may proceed in the district
16 court of the county where the complainant resides or was previously
17 assigned for duty as a state employee immediately prior to service
18 in the state military forces.

19 2. In an action by a district attorney against a private
20 employer, the action may proceed in the district court of the county
21 where the private employer of the complainant maintains a place of
22 business.

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

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

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

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

17 d. pay actual and compensatory damages, and

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

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

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 subparagraph 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 district attorney who commenced
9 the action against a state government employer or a
10 private employer, directly to the complainant. If the
11 compensation is not paid to the complainant because of
12 inability to do so within a period of three (3) years,
13 the compensation shall be deposited in the Unclaimed
14 Property Fund of the State Treasury pursuant to the
15 Uniform Unclaimed Property Act, Section 651 et seq. of
16 Title 60 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

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

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

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

13 2. The Commissioner may require by subpoena the attendance and
14 testimony of witnesses and the production of documents relating to
15 any matter under investigation. If a party disobeys a subpoena, and
16 upon request of the Commissioner, the district attorney with
17 jurisdiction in the county where the complainant resides or where
18 the complainant was previously assigned for duty as a state employee
19 immediately prior to service in the military forces may apply to
20 district court for an order enforcing the subpoena.

21 B. Upon application, district courts of the state shall have
22 jurisdiction to issue writs commanding any person or employer to
23 comply with the subpoena of the Commissioner or to comply with any
24 order of the Commissioner made pursuant to a lawful investigation

1 pursuant to the Oklahoma Uniformed Services Employment and
2 Reemployment Rights Act, and district courts shall have jurisdiction
3 to punish a party for failure to obey a subpoena or other lawful
4 order of the Commissioner as a contempt of court.

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

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

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

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

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

17 b. affect the right of a person to:

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

20 (2) obtain any type of assistance or relief
21 authorized by the Oklahoma Uniformed Services
22 Employment and Reemployment Rights Act,
23
24

- 1 c. deprive a district court of jurisdiction over an
2 action or complaint filed by the district attorney or
3 a person under Section 17 of this act, and
4 d. constitute a defense, including a statute of
5 limitations period, that any employer, including state
6 government, its political subdivisions or a private
7 employer, may raise in an action filed by the district
8 attorney or a person under Section 17 of this act.

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

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

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

23 A. The Commissioner of Labor, in consultation with the Adjutant
24 General, may prescribe regulations implementing the provisions of

1 the Oklahoma Uniformed Services Employment and Reemployment Rights
2 Act as it applies to state government, political subdivisions, and
3 private employers.

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

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

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

1 cases reviewed by the Department of Labor under the Oklahoma
2 Uniformed Services Employment and Reemployment Rights Act during the
3 fiscal year for which the report is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pay the officer or employee an amount equal to the difference
2 between his or her full regular pay from the employer in the private
3 sector and his or her military base pay. The durational limit of
4 protected military service as provided for in this section shall not
5 be less than that provided by federal law.

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

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

3 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS
4 March 25, 2021 - DO PASS
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