

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1632 Session of 2013

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 16, 2013

AN ACT

1 Amending Title 35 (Health and Safety) of the Pennsylvania
2 Consolidated Statutes, further providing for employment
3 sanctions; and providing for a volunteer emergency responders
4 employer tax credit.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Subchapter C of Chapter 74 of Title 35 of the
8 Pennsylvania Consolidated Statutes is repealed:

9 [SUBCHAPTER C

10 EMPLOYMENT SANCTIONS

11 Sec.

12 7421. Scope of subchapter.

13 7422. Definitions.

14 7423. Prohibition on termination and discipline.

15 7424. Prohibition on discrimination.

16 7425. Lost time.

1 7426. Statements.

2 7427. Violations.

3 § 7421. Scope of subchapter.

4 This subchapter relates to employment sanctions.

5 § 7422. Definitions.

6 The following words and phrases when used in this subchapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Discipline." The taking of an action against an employee
10 which adversely affects his regular pay to an extent greater
11 than permitted by section 7425 (relating to lost time), his job
12 status, his opportunity for promotion or his right to any
13 benefit granted by the employer to other similarly situated
14 employees.

15 "Discriminate." To discharge or to discipline in a manner
16 inconsistent with the employer's treatment of other similarly
17 situated employees who are injured in the course of their
18 employment or related activities.

19 "Employer." An individual, partnership, association,
20 corporation, business trust or a person or group of persons
21 acting directly or indirectly in the interest of an employer in
22 relation to any employee.

23 "Line of duty." Going to, coming from or during fire
24 prevention and safety activities which includes fire prevention,
25 first aid, rescue and salvage, ambulance service, fire police
26 work, assistance at accidents, control of crowds both on the
27 fire grounds and at occasions of public or general assembly,
28 animal rescue, abatement of conditions due to storm, flood or
29 general peril, abatement or removal of hazards to safety and
30 other activities as are commonly undertaken by fire companies,

1 ambulance services or rescue squads or their affiliated
2 organizations.

3 § 7423. Prohibition on termination and discipline.

4 No employer shall terminate or discipline an employee who is
5 a volunteer fireman, a volunteer member of the fire police or a
6 volunteer member of an ambulance service or rescue squad and, in
7 the line of duty, has responded to a call prior to the time he
8 was due to report for work resulting in a loss of time from his
9 employment.

10 § 7424. Prohibition on discrimination.

11 No employer shall discriminate against an employee because
12 the employee has been injured in the line of duty as a volunteer
13 fireman, a volunteer member of the fire police or a volunteer
14 member of an ambulance service or rescue squad, nor shall an
15 employer discriminate against an employee injured in the line of
16 duty as a volunteer fireman, a volunteer member of the fire
17 police or a volunteer member of an ambulance service or rescue
18 squad who subsequently returns to work after receiving workers'
19 compensation benefits under the act of June 2, 1915 (P.L.736,
20 No.338), known as the Workers' Compensation Act.

21 § 7425. Lost time.

22 Time lost from employment as provided in section 7423
23 (relating to prohibition on termination and discipline) may be
24 charged to the regular pay of the employee.

25 § 7426. Statements.

26 An employee losing time as provided in section 7423 (relating
27 to prohibition on termination and discipline) shall supply his
28 employer with a statement from the chief executive officer of
29 his volunteer fire company, ambulance service or rescue squad or
30 its affiliated organization stating that he responded to a call

1 and the time of the call.

2 § 7427. Violations.

3 (a) Employers.--An employer who willfully and knowingly
4 violates this subchapter shall be required to revoke a
5 disciplinary action and any penalty attached thereto or to
6 reinstate such employee to his former position and shall be
7 required to pay the employee all lost wages and benefits for the
8 period between termination and reinstatement and reasonable
9 attorney fees incurred in an action to recover lost wages and
10 benefits.

11 (b) Statute of limitations.--An action to enforce this
12 subchapter shall be commenced within two years of the date of
13 violation, and the action shall be commenced in the court of
14 common pleas of the county in which the employer is located.]

15 Section 2. Title 35 is amended by adding a chapter to read:

16 CHAPTER 74A

17 VOLUNTEER EMERGENCY RESPONDERS EMPLOYER TAX CREDIT

18 Subchapter

19 A. Preliminary Provisions

20 B. Private Sector Incentives

21 C. Public Sector Incentives

22 SUBCHAPTER A

23 PRELIMINARY PROVISIONS

24 Sec.

25 74A01. Scope of chapter.

26 74A02. Legislative findings and declaration.

27 74A03. Definitions.

28 74A04. Employment discrimination prohibited.

29 § 74A01. Scope of chapter.

30 This chapter relates to volunteer emergency responders

1 employer tax credit.

2 § 74A02. Legislative findings and declaration.

3 (a) Findings.--The General Assembly finds as follows:

4 (1) Over 85% of all emergency service personnel in this
5 Commonwealth are volunteers.

6 (2) Volunteer emergency service personnel have saved
7 many lives and millions of tax dollars for the citizens of
8 this Commonwealth.

9 (3) During the past decade, the ranks of volunteer
10 emergency service personnel have decreased by more than 10%.

11 (4) The decrease in manpower within this Commonwealth's
12 volunteer emergency services, coupled with increasing
13 conflicts with the volunteer's professional duties, has
14 resulted in:

15 (i) Manpower response shortages to emergency calls.

16 (ii) A decrease in the number of volunteers
17 permitted and able to participate in necessary, and
18 sometimes required, emergency service training.

19 (iii) A greater risk to those who are permitted to
20 respond to an emergency call.

21 (b) Declaration.--The General Assembly declares as follows:

22 (1) It is vital to provide new ways to attract and
23 retain volunteer emergency service personnel without placing
24 an undue burden on taxpayers or businesses throughout this
25 Commonwealth.

26 (2) It is in the public interest for the General
27 Assembly to:

28 (i) Encourage private employers to permit an
29 employee-volunteer to leave work in response to an
30 emergency call in the employee's capacity as a member of

1 a volunteer emergency service organization, with the
2 option of pay, and no loss of time or efficiency rating,
3 by providing a tax credit to the employer for the period
4 during which the employee-volunteer is absent from work
5 because of the employee-volunteer's response to an
6 emergency call, provided that the employee is in
7 compliance with a prearranged, preapproved release policy
8 of the employer.

9 (ii) Encourage private employers to permit an
10 employee-volunteer to take a paid leave of absence at the
11 request of the chief executive officer of the volunteer
12 emergency service organization to which the employee-
13 volunteer belongs in order to participate in emergency
14 service training by providing a tax credit to the
15 employer for a period of no more than five days per year
16 during which the employee-volunteer is participating in
17 emergency service training, provided the employee is in
18 compliance with a prearranged, preapproved release policy
19 of the employer.

20 (iii) Authorize the Commonwealth and its political
21 subdivisions to permit an employee-volunteer to leave
22 work in response to an emergency call, with or without
23 pay, and no loss of time or efficiency rating.

24 § 74A03. Definitions.

25 The following words and phrases when used in this chapter
26 shall have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 "Commonwealth." A department, agency, board, commission or
29 instrumentality of State government.

30 "Discipline." To take any action against an employee which

1 adversely affects the employee's regular pay to an extent not
2 provided for in this chapter, the employee's job status or
3 opportunity for promotion or the employee's right to any benefit
4 granted by the employer to other similarly situated employees.

5 "Discriminate." To discharge or to discipline in a manner
6 inconsistent with the employer's treatment of other similarly
7 situated employees who are injured in the course of their
8 employment or related activities.

9 "Department." The Department of Community and Economic
10 Development of the Commonwealth.

11 "Employee-volunteer." A member of a volunteer emergency
12 service organization who is in the employ of the Commonwealth, a
13 political subdivision or a private employer.

14 "Employer." An individual, partnership, association,
15 corporation, business trust or any person or group of persons
16 who controls and directs a worker under an express or implied
17 contract of hire and who pays the worker's salary or wages. The
18 term shall include the Commonwealth and its political
19 subdivisions.

20 "Line of duty." Going to, coming from or during fire
21 prevention and safety activities, which includes fire
22 prevention, first aid, rescue and salvage, ambulance service,
23 fire police work, assistance at accidents, control of crowds
24 both on the fire grounds and at occasions of public or general
25 assembly, animal rescue, abatement of conditions due to storm,
26 flood or general peril, abatement or removal of hazards to
27 safety and other activities as are commonly undertaken by fire
28 companies, ambulance services or rescue squads or their
29 affiliated organizations.

30 "Pass-through entity." A partnership as defined in section

1 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
2 Tax Reform Code of 1971, or a Pennsylvania S corporation as
3 defined in section 301(n.1) of the Tax Reform Code of 1971.

4 "Political subdivision." A county, city, borough,
5 incorporated town, township, home rule municipality, school
6 district or municipal authority.

7 "Qualified tax liability." The liability for taxes imposed
8 under Article III, IV, VI, VII, VIII, IX or XV of the act of
9 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
10 1971. The term shall not include a tax withheld by an employer
11 from an employee under Article III of the Tax Reform Code of
12 1971.

13 "Tax credit." The employee-volunteer emergency response tax
14 credit established by this article.

15 "Taxpayer." An entity that is subject to a tax imposed under
16 Article III, IV, VI, VII, VIII, IX or XV of the act of March 4,
17 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The
18 term shall not include a tax withheld by an employer from an
19 employee under Article III of the Tax Reform Code of 1971.

20 "Volunteer ambulance service." A nonprofit chartered
21 corporation, association or organization located in this
22 Commonwealth, which is licensed by the Department of Health, is
23 not associated or affiliated with a hospital and which is
24 regularly engaged in the provision of emergency medical
25 services, including basic life support or advanced life support
26 services and advanced life support squads as defined in 28 Pa.
27 Code § 1005.1 (relating to general provisions). The term shall
28 not include a corporation, association or organization that is
29 primarily engaged in the operation of invalid coaches which are
30 intended for the routine transport of persons who are

1 convalescent or otherwise nonambulatory and do not ordinarily
2 require emergency medical treatment while in transit.

3 "Volunteer emergency service organization." An organization
4 which is a volunteer fire company, volunteer ambulance service,
5 volunteer rescue company or volunteer hazardous material
6 response team.

7 "Volunteer fire company." A nonprofit chartered corporation,
8 association or organization located in this Commonwealth which
9 provides fire protection or rescue services and which may offer
10 other voluntary emergency services within this Commonwealth.
11 Voluntary emergency services provided by a volunteer fire
12 company may include voluntary ambulance and voluntary rescue
13 services.

14 "Volunteer hazardous material response team." A nonprofit
15 chartered corporation, association or organization located in
16 this Commonwealth whose members are certified and organized to
17 provide emergency response services to mitigate actual or
18 potential immediate threats to public health and the environment
19 in response to the release or threat of a release of a hazardous
20 material. The term includes teams certified to perform
21 stabilization actions needed to remove threats to public health
22 and the environment from hazardous material releases.

23 "Volunteer rescue company." A nonprofit chartered
24 corporation, association or organization located in this
25 Commonwealth which provides rescue service in this Commonwealth.
26 § 74A04. Employment discrimination prohibited.

27 (a) General rule.--It is unlawful for an employer to
28 discriminate against, refuse to hire or employ an individual <--
29 because the individual is a member of a volunteer emergency
30 service organization.

1 (b) ~~Discrimination~~ PROHIBITION ON DISCIPLINE AND

<--

2 DISCRIMINATION for time lost.--

3 (1) It is unlawful for an employer to discipline or
4 discriminate or to discharge from employment ~~or to otherwise~~ <--
5 ~~discriminate~~ against an employee-volunteer with respect to
6 base salary, hire, tenure, terms, conditions or privileges of
7 employment for the reason that the employee-volunteer
8 responded to an emergency call prior to the time the
9 employee-volunteer was due to report to work, resulting in
10 loss of time from employment, if the employee-volunteer
11 satisfies the requirements of paragraph (2).

12 (2) An employee-volunteer who loses time ~~as prohibited~~ <--
13 FOR REASONS SPECIFIED in this section shall immediately upon <--
14 arriving at work inform his or her employer or immediate
15 supervisor that the employee-volunteer has been called to
16 respond to an emergency. The employee-volunteer losing time
17 as provided for under this chapter shall supply his or her
18 employer with a statement from the chief executive officer of
19 his or her volunteer emergency service organization stating
20 that he or she responded to a call and the time of the call.

21 (3) If an employee-volunteer is employed by a private
22 employer, any time lost from employment may be charged
23 against the employee-volunteer's regular salary or wages or
24 the private employer may apply for the tax credits provided
25 in section 74A11(a) (relating to volunteer responders
26 employer tax credit).

27 (4) If an employee-volunteer is employed by the
28 Commonwealth or a political subdivision, payment of salary or
29 wages for time lost from employment shall be based on a
30 policy adopted by the Commonwealth or the political

1 subdivision.

2 (c) Discrimination because of injury.--It is unlawful for an
3 employer to discipline or to discharge from employment or to
4 otherwise discriminate against an employee-volunteer with
5 respect to compensation, hire, tenure, terms, conditions or
6 privilege of employment because the employee-volunteer has been
7 injured in the line of duty and has subsequently returned to
8 work, regardless of whether the employee-volunteer received any
9 workers' compensation benefits under the act of June 2, 1915
10 (P.L.736, No.338), known as the Workers' Compensation Act.

11 (d) Legal action.--An employer who willfully and knowingly
12 violates the provisions of this chapter shall:

13 (1) Revoke any disciplinary action and any penalty
14 imposed against an employee-volunteer or reinstate the
15 employee-volunteer to his or her former position.

16 (2) Pay to the employee-volunteer all lost wages and
17 benefits for the period between termination and reinstatement
18 and any reasonable attorney fees which are incurred in an
19 action to recover lost wages and benefits.

20 (e) Period of limitations.--An action to enforce the
21 provisions of this chapter shall be commenced within a period of
22 two years from the date of violation, and the action shall be
23 commenced in the court of common pleas of the county in which
24 the employer is located.

25 SUBCHAPTER B

26 PRIVATE SECTOR INCENTIVES

27 Sec.

28 74A11. Volunteer responders employer tax credit.

29 74A12. Application for tax credit.

30 74A13. Review and approval.

1 74A14. Limitations.

2 74A15. Shareholder, owner or member pass-through.

3 74A16. Guidelines.

4 74A17. Applicability.

5 74A18. Reports.

6 § 74A11. Volunteer responders employer tax credit.

7 (a) Eligibility.--A taxpayer shall be eligible to receive a
8 tax credit against any qualified tax liability if the taxpayer
9 permits an employee-volunteer to take a paid leave of absence
10 for any of the following:

11 (1) In response to an emergency call or to respond to an
12 emergency call prior to the start of work.

13 (2) At the written request of the chief executive
14 officer of the volunteer emergency service organization in
15 order to participate as a student or instructor in training
16 appropriate to the volunteer emergency services organization.

17 (b) Official notice required.--

18 (1) In order to qualify for the paid leave of absence as
19 provided for in subsection (a)(1), the employee-volunteer
20 shall provide notice that the employee-volunteer has been
21 called to respond to an emergency or provide notice that he
22 or she responded to a call and the time of the call and
23 request that a leave of absence be granted.

24 (2) In order to qualify for the paid leave of absence as
25 provided for in subsection (a)(2), the employee-volunteer
26 shall provide the employer, within 14 days of the scheduled
27 training, a signed statement from the chief executive officer
28 of the volunteer emergency service organization that includes
29 the reason and amount of time needed for the employee-
30 volunteer to complete the training along with a request that

1 a leave of absence be granted.

2 § 74A12. Application for tax credit.

3 A taxpayer may apply to the department for a tax credit
4 certificate under this section. The application must be on a
5 form required by the department and shall include all of the
6 following information:

7 (1) The name and address of the taxpayer.

8 (2) Documentation of the following for each eligible
9 employee-volunteer in which a tax credit is being claimed:

10 (i) Name and address of the employee-volunteer.

11 (ii) Total wages paid by the taxpayer to the
12 employee-volunteer.

13 (iii) Wages paid by the taxpayer to the employee-
14 volunteer paid under section 74A11(a) (relating to
15 volunteer responders employer tax credit).

16 (iv) Documentation as required by section 74A11(a)
17 (2) or (b).

18 (3) Any other information required by the department.

19 § 74A13. Review and approval.

20 (a) Duties.--The department shall do all of the following:

21 (1) Review and approve applications according to the
22 order applications are received and the availability of tax
23 credits.

24 (2) Notify the applicant within 30 days of receipt of
25 the application of its determination.

26 (b) Issuance.--If an application is approved, the department
27 shall issue the taxpayer a tax credit certificate within 15 days
28 of the approval.

29 § 74A14. Limitations.

30 (a) Amount.--A tax credit certificate issued under this

1 section may not exceed 50% of a taxpayer's qualified tax
2 liability.

3 (b) Prohibition.--In granting tax credits under this
4 chapter, the department may not do any of the following:

5 (1) Grant more than \$5,000,000 in tax credit
6 certificates in any fiscal year.

7 (2) Grant more than \$10,000 in tax credit certificates
8 to a single taxpayer in any fiscal year.

9 (c) Unused credits.--A taxpayer shall not be entitled to
10 carry forward, carry back or obtain a refund of any unused tax
11 credit.

12 (d) Sale or reassignment.--A tax credit may not be sold or
13 reassigned.

14 § 74A15. Shareholder, owner or member pass-through.

15 (a) Shareholder entitlement.--If a Pennsylvania S
16 corporation does not have an eligible tax liability against
17 which the tax credit may be applied, a shareholder of the
18 Pennsylvania S corporation shall be entitled to a tax credit
19 equal to the tax credit determined for the Pennsylvania S
20 corporation for the taxable year multiplied by the percentage of
21 the Pennsylvania S corporation's distributive income to which
22 the shareholder is entitled.

23 (b) Pass-through entity entitlement.--If a pass-through
24 entity other than a Pennsylvania S corporation does not have tax
25 liability against which the tax credit may be applied, an owner
26 or member of the pass-through entity shall be entitled to a tax
27 credit equal to the tax credit determined for the pass-through
28 entity for the taxable year multiplied by the percentage of the
29 pass-through entity's distributive income to which the owner or
30 member is entitled.

1 (c) Additional credit.--

2 (1) Except as provided under paragraph (2), the tax
3 credit provided under subsections (a) or (b) shall be in
4 addition to any other tax credit to which a shareholder,
5 owner or member of a pass-through entity is otherwise
6 entitled under this chapter.

7 (2) A pass-through entity and a shareholder, owner or
8 member of a pass-through entity shall not claim a tax credit
9 under this chapter for the same employee-volunteer.

10 § 74A16. Guidelines.

11 The department, in conjunction with the Department of
12 Revenue, shall develop written guidelines necessary for the
13 implementation and administration of this article. The
14 guidelines shall be posted on the department's publicly
15 accessible Internet website.

16 § 74A17. Applicability.

17 This chapter shall apply to taxable years beginning after
18 December 31, 2013.

19 § 74A18. Reports.

20 No later than June 1, 2015, and each June 1 thereafter, the
21 department shall submit a report on the effectiveness of the tax
22 credits granted under this chapter. The report shall include the
23 names of taxpayers who were issued tax credits as of the date of
24 the report. The report may include recommendations for changes
25 in the calculation or administration of the tax credits and
26 other information as the department deems appropriate. The
27 report shall be submitted to all of the following:

28 (1) The chairman and minority chairman of the
29 Appropriations Committee of the Senate.

30 (2) The chairman and minority chairman of the Finance

1 Committee of the Senate.

2 (3) The chairman and minority chairman of the
3 Appropriations Committee of the House of Representatives.

4 (4) The chairman and the minority chairman of the
5 Finance Committee of the House of Representatives.

6 SUBCHAPTER C

7 PUBLIC SECTOR INCENTIVES

8 Sec.

9 74A21. Emergency response leave of absence.

10 § 74A21. Emergency response leave of absence.

11 (a) Optional paid leave.--An officer or employee of the
12 Commonwealth or a political subdivision who is an employee-
13 volunteer may be entitled to leave work in response to an
14 emergency call without loss of pay, time or efficiency, subject
15 to the terms and conditions of a policy adopted by the
16 Commonwealth or political subdivision.

17 (b) Official notice required.--In order to qualify for the
18 paid leave as provided for in subsection (a), the employee-
19 volunteer shall:

20 (1) Inform his or her employer or immediate supervisor
21 that the employee-volunteer has been called to respond to an
22 emergency and request that a leave of absence be granted.

23 (2) Supply his or her employer with a statement from the
24 chief executive officer of the emergency service organization
25 stating that he or she responded to a call and the time of
26 the call.

27 Section 3. This act shall take effect in 60 days.