



Ohio Legislative Service Commission

Final Analysis

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Am. Sub. H.B. 48 128th General Assembly (As Passed by the General Assembly)

Reps. Ujvagi, Phillips, Murray, Pryor, Harris, Dodd, Lundy, Book, Letson, Fende, Yuko, Skindell, Goyal, Pillich, S. Williams, Belcher, Boyd, Brown, Carney, Celeste, Chandler, Daniels, Driehaus, Dyer, Foley, Garland, Garrison, Hagan, Harwood, Heard, Koziura, Luckie, Mallory, Newcomb, Okey, Otterman, Patten, Sayre, Schneider, Stewart, Szollosi, Weddington, B. Williams, Winburn

Sens. Fedor, Hughes, Cafaro, Faber, Grendell, Harris, Husted, Jones, Kearney, D. Miller, R. Miller, Morano, Niehaus, Patton, Sawyer, Schaffer, Schiavoni, Schuring, Smith, Strahorn, Turner, Wilson, Widener, Wagoner

Effective date: July 2, 2010; certain provisions effective April 2, 2010

ACT SUMMARY

- Provides two weeks of leave for any employee who is the spouse, parent, or a person who has or had legal custody of a member of the uniformed services who is called to active duty or is injured, wounded, or hospitalized while serving on active duty.
- Provides for implementation of the federal uniformed services and overseas absent voting law.
- Allows a tax deduction for the Persian Gulf, Afghanistan, or Iraq conflict veterans bonus.
- Makes an appropriation to pay the bonus.

* This version corrects the effective date from July 1, 2010, to July 2, 2010.

CONTENT AND OPERATION

Leave for spouses and parents of a member of the uniformed services

(R.C. 5906.02)

The act requires an employer¹ to allow an employee,² once per calendar year, to take leave up to ten days or 80 hours, whichever is less, if all of the following conditions are satisfied:³

(1) The employer has employed the employee for at least 12 consecutive months and for at least 1,250 hours in the 12 months immediately preceding commencement of the leave;

(2) The employee is the parent, spouse, or a person who has or had legal custody of a person who is a member of the uniformed services⁴ and who is called into active duty⁵ in the uniformed services for a period longer than 30 days or is injured, wounded, or hospitalized while serving on active duty in the uniformed services;

(3) The employee gives notice to the employer that the employee intends to take leave pursuant to the act at least 14 days before taking the leave if the leave is being taken because of a call to active duty or at least two days before taking leave if the leave is being taken because of an injury, wound, or hospitalization;

¹ An "employer" is a person who employs 50 or more employees and includes the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision of the state (R.C. 5906.01(C)). It is questionable, however, whether a municipal corporation can be required to provide this benefit. See *Northern Ohio Patrolmen's Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375 (compensation of municipal employees is a fundamental power of local self-government).

² An "employee" is any person who performs a service for wages or other remuneration for an employer (R.C. 5906.01(D)).

³ Federal law provides a similar entitlement under the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*

⁴ "Uniformed services" means the armed forces, the Ohio organized militia when engaged in full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency (R.C. 5906.01(E)).

⁵ "Active duty" is full-time duty in the active military service of the United States or active duty pursuant to a Presidential order, a Congressional act, or a Governor's proclamation. "Active duty" does not include active duty for training, initial active duty for training, or the period of time for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any duty unless such period is contemporaneous with an active duty period (R.C. 5906.01(A)).

(4) The dates on which the employee takes leave occur no more than two weeks before or one week after the deployment date of the employee's spouse, child, or ward or former ward; and

(5) The employee does not have any other leave available for the employee's use except sick leave or disability leave.

If the leave is for an injury, wound, or hospitalization of a critical or life-threatening nature, the employee need not provide advance notice to the employer as otherwise explained in (3) above.

An employer must continue to provide benefits⁶ to the employee during the period of time the employee is on leave. The employee is responsible for the same proportion of the cost of the benefits as the employee regularly pays during periods of time when the employee is not on leave. The employer is not required to pay salary or wages to the employee during the period of time the employee is on leave. Upon the completion of the leave, the employer must restore the employee to the position the employee held before taking the leave or to a position with equivalent seniority, benefits, pay, and other terms and conditions of employment.

The act permits an employer to require an employee requesting leave to provide certification from the appropriate military authority to verify that the employee satisfies the conditions described above.

Interference with rights and benefits

(R.C. 5906.03)

The act prohibits an employer from interfering with, restraining, or denying the exercise or attempted exercise of a right established by the act. In that regard, an employer must not discharge, fine, suspend, expel, discipline, or discriminate against an employee with respect to any term or condition of employment because of the employee's actual or potential exercise, or support for another employee's exercise, of any right established by the act. However, the act does not prevent an employer from taking an employment action that is independent of the exercise of those rights.

Additionally, an employer must not deprive an employee who takes leave of any benefit that accrued before the date that leave commences and must not require an employee to waive the rights to which the employee is entitled.

⁶ "Benefits" are the employment benefits, other than salary or wages, that an employer regularly provides or makes available to employees, including, but not limited to, medical insurance, disability insurance, life insurance, pension plans, and retirement plans (R.C. 5906.01(B)).

On and after the act's effective date, an employer must not enter into a collective bargaining agreement or employee benefit plan that limits or requires an employee to waive the rights established by the act. An employer must comply with any collective bargaining agreement or employee benefit plan that provides leave benefits similar to that established under the act that are greater than the leave benefits established under the act. The act specifies that an employer can provide leave benefits greater than those established under the act.

Applicability of act to public employee collective bargaining agreements

(R.C. 4117.10)

Generally, the Public Employees' Collective Bargaining Act (R.C. Chapter 4117.) governs collective bargaining between public employers and public employees. Under that Act, an agreement entered into between a public employer and an exclusive representative⁷ governs the wages, hours, terms, and conditions of employment, and apart from specified exceptions, prevails over conflicting state laws. However, the act specifies that its provisions pertaining to leave for spouses, parents, and custodians of a member of the uniformed services prevail over any conflicting provision of an agreement between an employee organization and public employer if the terms of the agreement contain benefits that are less than those contained in the act.

Applicability of act to existing employment agreements

(Section 3)

The act specifies that it does apply to employers and employees who have entered into a collective bargaining agreement or other contract of employment that is in effect before the act's effective date and that conflicts with the act, but must apply to such employers and employees immediately upon the expiration of the conflicting agreement or contract.

Penalties

(R.C. 5906.99)

Whoever violates the provisions of the act is subject to a civil action for injunctive relief or any other relief that a court finds necessary to secure a right provided by the act.

⁷ An exclusive representative is an employee organization (union) certified by the State Employment Relations Board to represent employees in a bargaining unit (R.C. 4117.01, not in the act).

Implementation of the federal uniformed services and overseas absent voting law

--Requires absent voter's ballots for individuals who are eligible to vote as uniformed services or overseas voters to be ready and available for use on the 45th day before the day of the election (R.C. 3509.01).

--Generally changes filing deadlines for candidates, questions, and issues from the 75th day to the 90th day before the day of the election and increases by ten days other associated election deadlines (R.C. 3501.02). Eliminates separate filing deadlines that apply only to presidential primary elections.

--Permits the Secretary of State to delegate responsibilities for implementing the federal uniformed services and overseas absent voting law to the boards of elections, and requires the boards to perform any duties so delegated (R.C. 3501.05 and 3501.11).

--Permits an individual who is eligible to vote as a uniformed services or overseas voter under federal law to request election documents electronically from the office of the Secretary of State or the board of elections of the county in which the person's voting residence is located and to receive those documents through electronic means (R.C. 3503.191 and 3511.021).

--Requires the Secretary of State, in coordination with the boards of elections, to establish a free access system by which an absent uniformed services voter or overseas voter may determine the status of the person's absent voter's ballot request, the person's completed absent voter's ballot, and whether the person's absent voter's ballot was counted (R.C. 3511.021).

--Requires a board of elections to accept and process federal write-in absentee ballots as required under federal law (R.C. 3511.14).

--Prohibits the Secretary of State or a board of elections from refusing to accept and process a voter registration application, absent voter's ballot application, returned absent voter's ballot, or federal write-in absentee ballot from an individual who is eligible to vote as a uniformed services or overseas voter under federal law due to any requirements regarding notarization, paper type, paper weight and size, envelope type, or envelope weight and size (R.C. 3501.012).

--Renames "armed service absent voter's ballots" as "uniformed services or overseas absent voter's ballots," and requires overseas voters who wish to vote absent voter's ballots to vote under that law (Chapter 3511.).

--Increases from 40 days before an election to 56 days before an election the time in which an election must be held to fill a vacancy in an elected office, and requires candidates to fill vacancies to be named not later than the 50th day before the day of the election (R.C. 3.02, 1901.10, and 3513.31).

Persian Gulf, Afghanistan, and Iraq conflict veteran bonus

In November 2009, Ohio voters adopted Section 2r of Article VIII, Ohio Constitution, authorizing payment of a bonus to veterans of the Persian Gulf, Afghanistan, and Iraq conflicts. The bonus provision authorizes the issuance of general obligation bonds to fund the bonus program. Bonuses of varying amounts depending on the service and status of veterans may be paid under the bonus program.

The act appropriates \$50 million in both fiscal years 2010 and 2011 for the purpose of paying the Persian Gulf, Afghanistan, and Iraq conflicts veterans bonus.

The act also provides that a taxpayer may deduct from the taxpayer's adjusted gross income any amounts received during the taxable year as a Persian Gulf, Afghanistan, or Iraq conflict veterans bonus. A taxpayer may deduct the bonus amount only to the extent the bonus is not otherwise deducted or excluded in computing the taxpayer's adjusted gross income.

The provisions of the act pertaining to the appropriation and the tax deduction take immediate effect. (R.C. 5747.01 and Sections 5, 6, and 7.)

HISTORY

ACTION	DATE
Introduced	02-24-09
Reported, H. Veterans Affairs	06-10-09
Passed House (87-8)	06-17-09
Reported, S. State & Local Gov't & Veterans Affairs	03-24-10
Passed Senate (32-0)	03-24-10
Concurrence (96-0)	03-24-10

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