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AB-583 Military service: employment protections. (2015-2016)

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Assembly Bill No. 583

CHAPTER 183

An act to amend Section 395.06 of the Military and Veterans Code, relating to military service.

[Approved by Governor August 12, 2015. Filed with Secretary of State August 12, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 583, Chávez. Military service: employment protections.

Existing law provides protections for members of the National Guard ordered into active state service by the Governor or active federal service by the President of the United States for emergency purposes, and for reservists called to active duty, as specified.

Existing law provides protections for these persons during their period of military service with respect to their private employment rights upon return from service, and requires the district attorney of the county in which an employer maintains a place of business to act as an attorney on behalf of a service member in any action, as specified, against an employer who fails or refuses to comply with those provisions, if the district attorney is reasonably satisfied that the person is entitled to these benefits.

This bill would reorganize these provisions, and would extend these protections to members of the National Guard of other states who are called to military service by their respective Governors or by the President of the United States, and who have left a position in private employment in California. Because this bill would expand the duties of district attorneys, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 395.06 of the Military and Veterans Code is amended to read:

395.06. (a) A private employer shall consider a former employee who meets the requirements of subdivision (b) as having been on a leave of absence during any period of the former employee's active service in the National Guard of any state, and is subject to both of the following:

(1) If the former position was a full-time position, and not a temporary position, the former employer shall restore the former employee to the former position or to a position of similar seniority, status, and pay without loss of retirement or other benefits, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so, and shall not discharge the former employee from the position without cause within one year after restoring him or her to the position.

(2) If the position was a part-time position, and not a temporary position, the former employer shall restore the former employee to the former position, or to a position of similar seniority, status, and pay, if any exists, and shall not discharge the former employee from the position without cause within one year after restoring him or her to the position.

(b) To be eligible for the employment protections specified in paragraph (1), the former employee shall meet all of the following requirements:

(1) He or she is an officer or enlisted member of the National Guard of any state.

(2) He or she was called to active duty by the Governor of the state where he or she serves in the National Guard or by the President of the United States.

(3) He or she received a certificate of satisfactory service in the National Guard of the state where he or she serves in the National Guard.

(4) He or she is still qualified to perform the duties of the position.

(5) If he or she left a full-time position, he or she made application for reemployment within 40 days of being released from service. If he or she left part-time employment, he or she made application for reemployment within five days of being released from service.

(c) If any employer fails or refuses to comply with this section, the superior court of the county in which the employer maintains a place of business may, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of this section, specifically require the employer to comply with this section and compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing and shall advance it on the calendar. Upon application to the district attorney of the county in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the district attorney, if reasonably satisfied that the person is entitled to these benefits, shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

(d) Upon application to the city prosecutor of the city in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the city prosecutor, if reasonably satisfied that the person is entitled to these benefits, may appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.