

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 257

BY SENATORS BOSO, WELD, CLINE AND MILLER

[Originating in the Committee on the Judiciary;

reported on February 24, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15-1K-1, §15-1K-2, §15-1K-3, §15-1K-4, §15-1K-5, §15-1K-6 and §15-1K-7,
3 all relating to Civil Air Patrol leave and protection of employees performing Civil Air Patrol
4 missions; providing that employers may not discriminate based on an employee's
5 membership in the Civil Air Patrol; and providing that an employee may bring a civil action
6 to enforce the provisions of this article but shall not recover monetary damages.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §15-1K-1, §15-1K-2, §15-1K-3, §15-1K-4, §15-1K-5, §15-1K-6 and §15-1K-7,
3 all to read as follows:

ARTICLE 1K. CIVIL AIR PATROL LEAVE.

§15-1K-1. Definitions.

1 As used in this article:

2 (1) "Civil Air Patrol leave" means leave requested by an employee who:

3 (A) Is a volunteer member of the civilian auxiliary of the United States Air Force known as
4 the Civil Air Patrol; and

5 (B) Has been authorized by the United States Air Force, the Governor or a department,
6 division, agency or political subdivision of the state to respond to or train for an emergency
7 mission.

8 (2) "Emergency mission" means an Air Force assigned mission under which the West
9 Virginia wing of the Civil Air Patrol conducts operations.

10 (3) "Employee" means any individual who performs services for, or under the control of, a
11 provider of wages or remuneration.

12 (4) "Employee benefits" means all benefits other than wages given by an employer.

13 (5) "Employer" means any person or entity that employs more than fifteen employees.

§15-1K-2. Nondiscrimination by employer against Civil Air Patrol members.

1 (a) An employer may not discriminate against or discharge from employment an employee
2 who has been employed for a minimum of ninety days and is a member of the Civil Air Patrol
3 because of membership in the Civil Air Patrol.

4 (b) An employer may not hinder or prevent an employee who has been employed for a
5 minimum of ninety days from performing service as part of the West Virginia wing of the Civil Air
6 Patrol during an emergency mission or training if the member is entitled to leave under this article.

§15-1K-3. Employer to provide leave.

1 (a) An employer shall provide up to a maximum of ten days per calendar year of unpaid
2 Civil Air Patrol leave to an employee training for an emergency mission of the West Virginia wing
3 of the Civil Air Patrol.

4 (b) An employer shall provide up to a maximum of thirty days per calendar year of unpaid
5 Civil Air Patrol leave to an employee responding to an emergency mission of the West Virginia
6 wing of the Civil Air Patrol.

7 (c) An employee shall give the employer:

8 (1) At least fourteen days' notice of the intended dates of the beginning and end of leave
9 together with an estimate of the amount of time needed to complete training; and

10 (2) As much notice as possible of the intended dates of the beginning and end of leave
11 together with an estimate of the amount of time needed to complete an emergency mission.

12 (d) The employee shall report to the employer necessary changes in the time required to
13 complete the training or mission.

14 (e) The employer may require verification of the eligibility of the employee for the Civil Air
15 Patrol leave requested or taken.

16 (f) If the employee fails to provide the required verification, the employer may deny the
17 Civil Air Patrol leave.

18 (g) An employee taking leave under this article is not required to exhaust all available
19 leave or time-off benefits before using Civil Air Patrol leave.

20 (h) This article does not prevent an employer from providing paid leave for leave under
21 this article.

§15-1K-4. Return to work by employee.

1 (a) When the employee returns to work, the employer shall restore the employee to the
2 position held when the leave began or to a position with equivalent seniority status, benefits, pay
3 and conditions of employment.

4 (b) An employer may decline to restore an employee as required in this article because of
5 circumstances unrelated to the provisions of this article.

6 (c) An employer and an employee may negotiate for the employer to pay for the benefits
7 of the employee during the leave, but the employer is not required to continue or maintain
8 employee benefits for any employee eligible for leave under this article where the employee would
9 not be otherwise eligible for any benefit under the policies of the employer or the content of any
10 employee benefit plan which regulates eligibility for benefits.

§15-1K-5. Accrued benefits not lost; leave not to be used with other leave; rights and obligations under collective bargaining or other agreements.

1 (a) The use of Civil Air Patrol leave under this article may not result in the loss of an
2 employee benefit accrued before the first date of leave.

3 (b) An employee using leave under any other provision of state or federal law may not
4 concurrently use leave granted under this article.

5 (c) This article does not affect the obligation of an employer to comply with a collective
6 bargaining agreement or an employee benefit plan that provides greater leave rights to employees
7 than the rights provided under this article.

8 (d) The grant of leave under this article may not be diminished by a collective bargaining
9 agreement or an employee benefit plan entered into on or after July 1, 2017.

10 (e) This article does not affect or diminish the contract rights or seniority status of an
11 employee not entitled to Civil Air Patrol leave.

§15-1K-6. Certain actions by employer prohibited.

1 (a) An employer may not interfere with the use of Civil Air Patrol leave allowed under this
2 article.

3 (b) An employer may not discharge, fine, suspend, expel, discipline or in any other manner
4 discriminate against an employee who is a member of the Civil Air Patrol because that employee
5 complies with the provisions of this article or opposes a practice not in compliance with this article.

§15-1K-7. Action to enforce article authorized.

1 (a) An employee may bring a civil action in the appropriate circuit court to enforce this
2 article.

3 (b) The court may enjoin an act or practice that violates this article and may order equitable
4 relief to redress the violation or to enforce this article, including the recovery of lost wages incurred
5 as a result of any violation under this article. No other monetary damages may be awarded or
6 recovered.