

BILL NUMBER: AB 985 AMENDED
BILL TEXT

AMENDED IN SENATE AUGUST 31, 2005
AMENDED IN SENATE JULY 5, 2005
AMENDED IN SENATE JUNE 22, 2005
AMENDED IN ASSEMBLY MAY 26, 2005
AMENDED IN ASSEMBLY APRIL 5, 2005

INTRODUCED BY Assembly Member Torrico
(Coauthors: Assembly Members Bermudez, Cohn, Dymally, Jerome
Horton, and Jones)

FEBRUARY 18, 2005

An act to amend Section 394 of, and to add and repeal Section 394.2 of, the Military and Veterans Code, *and to add Section 1265.2 to the Unemployment Insurance Code*, relating to labor.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Torrico Labor: military duty.

Existing law provides that employers may not discharge or in any manner discriminate against specified employees.

This bill, until January 1, 2011, in the case of an employee, whose job is outsourced, as defined, while the employee is taking time off to perform active military duty as a member of the militia of this state, that is not reinstated by the employer upon return from active duty, would require the employer to pay the employee an amount equal to 6 months of salary, as provided. This bill would provide that this payment would be deemed to ~~offset the first 6 months of payments of unemployment insurance payments~~ *be wages, as described, for the purposes of unemployment insurance payments, as provided* . This bill would make technical nonsubstantive amendments to existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Section 394 of the Military and Veterans Code is amended to read:

394. (a) No person shall discriminate against any officer, warrant officer , or enlisted member of the military or naval forces of the state or of the United States because of that membership. No member of the military forces shall be prejudiced or injured by any person, employer, or officer or agent of any corporation, company, or firm with respect to that member's employment, position, or status, or be denied or disqualified for employment by virtue of membership or service in the military forces of this state or of the United States.

(b) No officer or employee of the state, or of any county, city and county, municipal corporation, or district shall discriminate

against any officer, warrant officer, or enlisted member of the military or naval forces of the state or of the United States because of that membership. No member of the military forces shall be prejudiced or injured by any officer or employee of the state, or of any county, city and county, municipal corporation, or district with respect to that member's employment, appointment, position, or status, or be denied or disqualified for or discharged from that employment or position by virtue of membership or service in the military forces of this state or of the United States.

(c) No person shall prohibit or refuse entrance to any officer or enlisted member of the Army or Navy of the United States or of the military or naval forces of this state into any public entertainment or place of amusement or into any of the places described in Sections 51 and 52 of the Civil Code because that member wears the uniform of the organization to which he or she belongs.

(d) No employer or officer or agent of any corporation, company, or firm, or other person, shall discharge any person from employment because of the performance of any ordered military duty or training or by reason of being an officer, warrant officer, or enlisted member of the military or naval forces of this state, or hinder or prevent that person from performing any military service or from attending any military encampment or place of drill or instruction that he or she may be called upon to perform or attend by proper authority; prejudice or harm him or her in any manner in his or her employment, position, or status by reason of performance of military service or duty or attendance at military encampments or places of drill or instruction; or dissuade, prevent, or stop any person from enlistment or accepting a warrant or commission in the California National Guard or Naval Militia by threat or injury to him or her with respect to his or her employment, position, status, trade, or business because of enlistment or acceptance of a warrant or commission.

(e) (1) No private employer or officer or agent of any corporation, company, or firm, or other person, shall restrict or terminate any collateral benefit for employees by reason of an employee's temporary incapacitation incident to duty in the National Guard or Naval Militia. As used in this subdivision, "temporary incapacitation" means any period of incapacitation of 52 weeks or less.

(2) As used in this subdivision, "benefit" includes, but is not limited to, health care which may be continued at the employee's expense, life insurance, disability insurance, and seniority status.

(f) No person who provides lending or financing shall discriminate against any person with respect to the terms of a loan or financing, including, but not limited to, the finance charge, based on that person's membership in the military or naval forces of this state or of the United States.

(g) Any person violating this section is guilty of a misdemeanor. In addition, any person violating any of the provisions of this section shall be liable for actual damages and reasonable attorney's fees incurred by the injured party.

(h) The remedies provided for in this section are not intended to be exclusive but are in addition to the remedies provided for in other laws, including Sections 51 and 52 of the Civil Code.

SEC. 2. Section 394.2 is added to the Military and Veterans Code, to read:

394.2. (a) In addition to the provisions of any other law, an

employee, whose job is outsourced while that employee is taking time off to perform active military duty as a member of the militia of this state, who is not reinstated by the employer upon return from active duty shall be paid by the employer an amount equal to six months of salary at the rate that was paid to that employee immediately preceding that time off.

(b) For purposes of this section, "outsourced" means a job that was replaced by a job located outside of the United States that involves substantially similar duties or activities as the replaced job. It shall be presumed that the first jobs outsourced were the jobs held by employees described in subdivision (a).

(c) The payment received pursuant to subdivision (a) shall be ~~deemed to offset only the first six months of payments payable to the employee pursuant to the Unemployment Insurance Code.~~ *deemed to be wages, as described in Section 1265.2 of the Unemployment Insurance Code, and shall have no further effect on eligibility for unemployment insurance or payments of unemployment insurance after six months from the date of return from active duty.*

(d) This section shall not apply if the job held by the employee upon return from active duty no longer exists unless the reason the job no longer exists is that the job was outsourced.

(e) This section shall not apply if the employee is reinstated into a job that is substantially similar in duties and the employee is paid an amount equal to or greater than the rate that was paid to the employee immediately preceding the time off.

(f) This section shall remain in effect only until January 1, 2011, and as of that date is repealed.

SEC. 3. Section 1265.2 is added to the Unemployment Insurance Code, to read:

1265.2. Notwithstanding any other provision of this division, payments to an individual under Section 394.2 of the Military and Veterans Code shall be deemed to be wages received and shall be apportioned equally over a 26-week period, starting from the date of return from active duty.