

## LEGISLATIVE BILL 1510

Approved by the Governor March 23, 1972

Introduced by Government, Military and Veterans Affairs Committee, Terry Carpenter, 48th District, Chairman; Fred W. Carstens, 30th District; John W. DeCamp, 40th District; William F. Swanson, 27th District; Glenn A. Goodrich, 20th District

AN ACT to amend section 55-161, Revised Statutes Supplement, 1969, relating to the militia; to clarify reemployment rights of veterans; to provide procedures for the enforcement of such rights; to provide for nonliability of the employer; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 55-161, Revised Statutes Supplement, 1969, be amended to read as follows:

55-161. All officers and employees, including teachers employed on a one-year contract basis and elected officials, of the state, or of any of its agencies or political subdivisions, who leave a position other than temporary to undergo military training with the armed forces of the United States or undertake military duty in the active service of the state, shall be entitled to a leave of absence from such civil employment for the period of such training or service, not to exceed four years, plus in each case any additional period in which he was unable to obtain orders relieving him from active duty, plus any period of time hospitalized incident to active duty, without loss of status or efficiency rating, and without loss of pay during the first fifteen work days of such leave of absence. Such pay for the first fifteen work days shall not be construed as being in addition to the pay provided for in section 55-160. The proper appointing authority may make a temporary appointment to fill any vacancy created by such leave of absence. When such person is separated from such training or service under honorable conditions, or upon his discharge from hospitalization incident to that duty, such employee shall be entitled to return to his former position with such seniority, status, pay, and vacation as he would have had if he had not been absent for such purpose, if he is still qualified to perform the duties of his former position, and if he makes application within thirty days after he is released from such training or service. If such

person is not qualified to perform the duties of such position upon his return by reason of disability sustained during the training or service but is qualified to perform the duties of any other position in the employ of the employer, he shall be restored to such other position, the duties of which he is qualified to perform, as will provide him with the same seniority, status, and pay, or the nearest proximation thereof consistent with the circumstances in his case. Such person shall not be discharged from his former or new position without justifiable cause within one year after reinstatement. It shall be the duty of the Commissioner of Labor to enforce the provisions of this section.

Sec. 2. Any person who feels that his employment rights under the provisions of section 55-161 have been violated may file complaint with respect thereto with the Commissioner of Labor. Such complaint shall not be subject to formal requirements but shall be sufficient if it identifies the parties involved and the right or rights alleged to have been violated. The commissioner shall promptly investigate each such complaint and if he finds that the allegations thereof are true he shall issue his order to the offending party directing the granting to complainant of all his rights under section 55-161, including the granting of back-pay from the date the violation occurred. If such order has not been complied with within ten days after its mailing, by registered or certified mail, the commissioner may file suit in the district court for the county in which the alleged violation occurred for a writ of mandamus ordering the granting of the rights wrongfully denied together with back-pay from the date the violation occurred. Such suit shall be determined by the court as expeditiously as practicable. The court shall enter such order as the evidence shows to be appropriate, including, in cases of flagrant violations of rights, the removal from office or employment of the person or persons responsible therefor when such removal is permitted by the Constitution of the State of Nebraska. In any such suit or in any appeal from the decision of the district court, the commissioner may employ private counsel with the written authorization required by subdivision (4) of section 84-205. A reasonable fee for such counsel shall be allowed by the court in any case in which a decision favorable to the commissioner is rendered.

Sec. 3. The employer shall not incur any liability to any person whose employment is terminated, or whose seniority, status, or other employment rights are curtailed as the result of the granting to a veteran of all the rights assured him under the provisions of section 55-161.

Sec. 4. That original section 55-161, Revised Statutes Supplement, 1969, is repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.