

HOUSE BILL NO. 1474

Introduced by

Representatives Metcalf, Boucher, Haas, Klemin

Senators Kilzer, Wardner

1 A BILL for an Act to create and enact a new chapter to title 54 of the North Dakota Century
2 Code, relating to employment and reemployment rights of members of the legislative assembly;
3 and to repeal section 54-03-27 of the North Dakota Century Code, relating to allowing public
4 employers to grant a leave of absence to employees for service in the legislative assembly.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new chapter to title 54 of the North Dakota Century Code is created and
7 enacted as follows:

8 **Definitions.** As used in this chapter:

- 9 1. "Benefit" means any advantage, profit, privilege, gain, status, account, or interest
10 other than wages or salary for work performed that accrues by reason of an
11 employment contract or agreement or an employer policy, plan, or practice. The
12 term includes rights under a pension plan, health plan, employee stock ownership
13 plan, insurance coverage, awards, bonuses, severance pay, supplementary
14 unemployment benefits, sick leave, vacations, and the opportunity to select work
15 hours or location of employment.
- 16 2. "Employee" means an individual who performs services for an employer for
17 compensation, whether in the form of wages, salaries, commission, or otherwise.
18 The term does not include an individual employed or appointed to a position in the
19 legislative or judicial branch, an individual chosen by a public officer to be on the
20 officer's political staff, or an appointee on the policymaking level or an immediate
21 adviser with respect to the exercise of the constitutional or legal powers of a public
22 office.
- 23 3. "Employer" means a person who employs one or more employees for more than
24 one quarter of the year.

- 1 4. "Service in the legislative assembly" means attendance at a regular or special
2 session of the legislative assembly and attendance at a meeting of the legislative
3 council or any of its committees for which the individual is entitled to receive
4 compensation under section 54-35-10.

5 **Discrimination against individuals who serve in the legislative assembly -**
6 **Prohibited.**

- 7 1. An individual who is a member of the legislative assembly may not be denied initial
8 employment, reemployment, retention in employment, promotion, or any benefit by
9 an employer on the basis of that individual's service in the legislative assembly.
10 2. An employer may not discriminate in employment against or take any adverse
11 employment action against an individual because the individual has exercised a
12 right provided in this chapter or taken an action to enforce a protection afforded
13 under this chapter.
14 3. Unless the employer can prove that the employer would have taken the action in
15 the absence of the individual's enforcement action, the employer engages in a
16 prohibited action:
17 a. If an individual's candidacy for election to the legislative assembly or service
18 in the legislative assembly is a motivating factor in the employer's action; or
19 b. If the individual's action to enforce a protection afforded under this chapter is
20 a motivating factor in the employer's action.

21 **Reemployment rights of individuals who serve in the legislative assembly.**

- 22 1. An individual whose absence from a position of employment is necessitated by
23 reason of service in the legislative assembly is entitled to reemployment rights and
24 other benefits if the individual has given advance written or verbal notice of the
25 absence from employment to the individual's employer and the individual reports to
26 or submits an application for reemployment to the employer no later than the
27 beginning of the first full regularly scheduled work period on the first full calendar
28 day following completion of the period of service in the legislative assembly and the
29 expiration of eight hours after the period allowing for the safe transportation of the
30 individual to the individual's residence.

2. An individual who fails to report or apply for employment or reemployment within the specified time period in this section does not automatically forfeit the individual's entitlement to benefits under this chapter but is subject to the conduct rules, established policy, and general practices of the employer pertaining to explanation and discipline with respect to absence from scheduled work.

3. An individual entitled to reemployment under this chapter must be promptly reemployed:

- a. In the position in which the individual would have been employed if the continuous employment of the individual with the employer had not been interrupted by service in the legislative assembly and in which the individual is qualified to perform; or
- b. If the individual is not qualified to perform the duties of the position in which the individual would have been employed if the individual had remained in continuous employment with the employer in the position of employment in which the individual was employed on the date of commencement of the leave for service in the legislative assembly.

Rights, benefits, and obligations of individuals absent from employment for service in the legislative assembly. An individual who is reemployed under this chapter is entitled to the seniority and other benefits determined by seniority that the individual had on the date of the leave of absence for service in the legislative assembly plus the additional seniority and benefits that the individual would have attained if the individual had remained continuously employed. An individual who is absent from a position of employment for service in the legislative assembly is entitled to any other benefits not determined by seniority as are generally provided by the employer to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of the service or established while the individual performs that service. An individual taking a leave of absence for service in the legislative assembly may be required to pay the employee cost, if any, of any funded benefit that is continued to the extent other employees on furlough or leave of absence are so required. An individual who is reemployed by an employer under this chapter may not be discharged from the employment, except for cause within one year after the date of reemployment. An individual whose

1 employment with an employer is interrupted by a period of service in the legislative assembly
2 must be permitted, upon request of that individual, to use during the period of service any
3 vacation, annual, or similar leave with pay accrued by the individual before the commencement
4 of service in the legislative assembly. An employer may not require an individual taking a leave
5 of absence to serve in the legislative assembly to use vacation, annual, or similar leave during
6 the period of service.

7 **Health plans.** If an individual is absent from a position of employment for service in the
8 legislative assembly, and the individual has coverage under a health plan in connection with the
9 individual's position of employment, the plan must provide that the individual may elect to
10 continue such coverage. An employer may require an individual who elects to continue health
11 plan coverage to pay not more than one hundred two percent of the full premium under the plan
12 associated with the coverage for the employer's other employees.

13 **Employee pension benefit plans.** An individual reemployed under this chapter must
14 be treated as not having incurred a break in service with an employer maintaining an employee
15 pension benefit plan during an absence for service in the legislative assembly. Each period of
16 service in the legislative assembly, upon reemployment of the individual, must be deemed to
17 constitute service with the employer maintaining the employee pension benefit plan for the
18 purpose of determining the nonforfeitability of the individual's accrued benefits and for the
19 purpose of determining the accrual of benefits under the plan. The employer reemploying an
20 individual under this chapter shall allocate the amount of any employer contribution for the
21 individual in the same manner and to the same extent the allocation occurs for other employees
22 during the period of service in the legislative assembly.

23 **SECTION 2. REPEAL.** Section 54-03-27 of the 1999 Supplement to the North Dakota
24 Century Code is repealed.