

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1181
(Representatives DeKrey, Belter, Martinson, Metcalf)
(Senators Dotzenrod, Hogue)

AN ACT to create and enact chapter 37-29 of the North Dakota Century Code, relating to job protections for volunteer emergency responders of the adjutant general's office; to amend and reenact section 54-06-27 of the North Dakota Century Code, relating to public service job protections for volunteer emergency responders; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 37-29 of the North Dakota Century Code is created and enacted as follows:

37-29-01. Definitions.

1. As used in this chapter, unless the context otherwise requires:
 - a. "Disaster or emergency" means circumstances resulting in a volunteer emergency responder acting in the capacity as a volunteer emergency responder.
 - b. "Volunteer emergency responder" means an individual in good standing as:
 - (1) A volunteer member of the North Dakota army national guard or North Dakota air national guard; or
 - (2) A volunteer civilian member of the civil air patrol.

37-29-02. Discrimination prohibited in hiring practices - Civil actions. An employer may not discriminate from hiring or otherwise deny employment to an individual who is a volunteer emergency responder, based on the fact the individual is a volunteer emergency responder. A volunteer emergency responder who is discriminated against or denied employment under this section may bring a civil action against the employer that violated this section, seeking reasonable reparations for damages caused due to the discrimination or denial of employment. A civil action under this section must be commenced within one year of the date of the violation.

37-29-03. Discrimination prohibited in employment practices - Limitations - Verification - Civil actions.

1. An employer may not terminate or demote an employee who is a volunteer emergency responder or in any other manner discriminate against that employee in the terms and conditions of employment based upon the employee being absent or tardy from employment due to serving as a volunteer emergency responder in responding to a disaster or emergency.
2. An employee who is terminated, demoted, or otherwise discriminated against in violation of this section may bring a civil action against the employer that violated this subsection. In the civil action, the employee may seek reinstatement to the employee's former position; payment of back wages; reinstatement of fringe benefits; and if seniority rights are granted, the employee may seek reinstatement of seniority rights. A civil action under this section must be commenced within one year of the date of the violation.

3. Subsection 1 does not apply if due to serving as a volunteer emergency responder, the employee is absent or tardy from the employee's place of employment for a period that exceeds ten regular business days in a calendar year.
4. In order to receive the protections of subsection 1, an employee who will be absent or tardy from the employee's place of employment while serving as a volunteer emergency responder in the case of a disaster or emergency shall make reasonable efforts to notify the employer of that service and shall continue to make those reasonable notification efforts over the course of the absence.
5. An employer may request that an employee provide the employer with written verification of times and dates of instances during which the employee was absent or tardy from employment due to serving as a volunteer emergency responder in the case of a disaster or emergency. Verification under this subsection may include a statement from the department of emergency services, the adjutant general's office, the North Dakota wing of the civil air patrol, or other appropriate entity.
6. This section does not limit an employer from charging against an employee's regular pay the time the employee is absent or tardy from employment while serving as a volunteer emergency responder to a disaster or emergency.

37-29-04. Exceptions.

1. Subsection 1 of section 37-29-03 is not applicable if the employer is a state agency, an agency of a political subdivision, or a private entity that performs critical emergency services during a disaster or emergency, and the employer's executive officer determines the absence of an employee who is also a volunteer emergency responder will cause undue hardship or the inability of the employer to provide critical emergency services during a disaster or emergency. Under this subsection the executive officer shall:
 - a. Make all reasonable efforts to inform an employee who is a volunteer emergency responder that the employment services that employee performs are essential and therefore that employee's absence from the workplace will be unauthorized if the employee is called to report for duty as a volunteer emergency responder.
 - b. Provide the employee notification of the determination the absence is unauthorized before the employee reports for duty as a volunteer emergency responder.
2. Subsection 1 of section 37-29-03 is not applicable if the employer is a private entity and the employer's executive officer in charge of the private entity determines the employment services provided by an employee who is a volunteer emergency responder are so critical the services cannot be performed by another employee and the employee's absence will create the potential for irreparable harm to or permanent closure of the private entity. Under this subsection the executive officer shall:
 - a. Make all reasonable efforts to inform an employee who is a volunteer emergency responder that the employment services that employee performs are essential and therefore that employee's absence from the workplace will be unauthorized if the employee is called to report for duty as a volunteer emergency responder.
 - b. Provide the employee notification of the determination the absence is unauthorized before the employee reports for duty as a volunteer emergency responder.
3. The governor or adjutant general may supersede the decision of the executive officer which was made under subsection 1 or 2 if the governor or adjutant general determines the nature of the emergency or disaster is so serious that the services provided by the volunteer emergency responder are key and essential to the emergency response efforts and public safety responsibilities of the adjutant general's office.

SECTION 2. AMENDMENT. Section 54-06-27 of the North Dakota Century Code is amended and reenacted as follows:

54-06-27. Emergency service volunteers - Leave. Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, a search emergency by the air force rescue coordination center or by the department of emergency services, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency or the governing body of any political subdivision may grant a leave of absence to any full-time employee of that governmental entity who is an emergency medical service provider, a member of the civil air patrol, a firefighter, police officer, volunteer member of the North Dakota army or air national guard, or emergency radio operator, or who performs other services necessary in an emergency. The leave of absence must be for the purpose of allowing that employee to provide voluntary emergency services. ~~A person~~ An individual on leave under this section is not deemed to be an employee of the governmental entity for the purposes of workforce safety and insurance. The cumulative leave granted under this section may not exceed ~~five~~ ten working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1181 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 82 Nays 0 Absent 12

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State