

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 257

BY SENATORS BOSO, WELD, CLINE AND MILLER

[Originating in the Committee on the Military; and then

to the Committee on the Judiciary; reported on

February 21, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15-1K-3, §15-1K-4, §15-1K-5, §15-1K-6, §15-1K-7, §15-1K-8 and §15-1K-9,
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:

7 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
8 article, designated §15-1K-3, §15-1K-4, §15-1K-5, §15-1K-6, §15-1K-7, §15-1K-8 and §15-1K-9,
9 all to read as follows:

ARTICLE 1K. CIVIL AIR PATROL LEAVE.

§15-1K-3. Definitions.

10 As used in this article:

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

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

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

17 (2) "Emergency mission" means an Air Force Assigned Mission under which the West
18 Virginia Wing of the Civil Air Patrol conducts operations.

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

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

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

§15-1K-4. Nondiscrimination by employer against Civil Air Patrol members.

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

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

§15-1K-5. Employer to provide leave.

29 (a) An employer shall provide up to a maximum of ten days per calendar year of unpaid
30 Civil Air Patrol leave to an employee training for an emergency mission of the West Virginia Wing
31 of the Civil Air Patrol.

32 (b) An employer shall provide up to a maximum of thirty days per calendar year of unpaid
33 Civil Air Patrol leave to an employee responding to an emergency mission of the West Virginia
34 Wing of the Civil Air Patrol.

35 (c) An employee shall give the employer:

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

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

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

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

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

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

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

§15-1K-6. Return to work by employee.

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

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

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

§15-1K-7. Accrued benefits not lost; leave not to be used with other leave; article not to
affect rights and obligations under collective bargaining or other agreements.

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

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

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

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

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

§15-1K-8. Certain actions by employer prohibited.

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

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

§15-1K-9. Action to enforce article authorized.

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

79 (b) The court may enjoin an act or a practice that violates this article and may order
80 equitable relief to redress the violation or to enforce this article, but no monetary damages may
81 be awarded or recovered.

NOTE: The purpose of this bill is to create protections for employees who are members of the Civil Air Patrol and who train for, and respond to, emergency services missions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.