

LEGISLATIVE DIGEST

[Police Code - Private Sector Military Leave Pay]

Ordinance amending the Police Code to require private employers to pay employees who are military reservists and are called for military duty the difference between their military salary and their salary as employees, for up to 30 days in a calendar year, and to create procedures for implementation and enforcement of this requirement.

Existing Law

Currently, private employers are not required to pay military reserve personnel the difference between their private and military salaries when those personnel are called for duty.

Amendments to Current Law

This ordinance would create Police Code Article 33Q, which would require private employers with 100 or more employees to pay employees who are military reservists and are called for Military Duty the difference between their military salary and their salary as employees, for up to 30 days in a calendar year.

“Military Duty” means active military service in response to the September 11, 2001 terrorist attacks, international terrorism, the conflict in Iraq, or related extraordinary circumstances, or military service to provide medical or logistical support to federal, state, or local government responses to the COVID-19 pandemic, natural disasters, or engagement in military duty ordered for the purposes of military training, drills, encampment, naval cruises, special exercises, Emergency State Active Duty, or like activity.

If an employee is later released from Military Duty and is fit to return to their prior position but does not do so within 60 days, the employer may opt to treat the supplemental compensation paid as a loan.

The ordinance designates the Office of Labor Standards and Enforcement (OLSE) as the department responsible for implementation and enforcement of this requirement. OLSE may undertake administrative enforcement. In addition, the City, or any person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in a court of competent jurisdiction. An aggrieved individual or entity may also bring a civil action after notice to the City, if the City declines to bring an action and does not make a finding that no violation has occurred.

The requirements of Article 33Q shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

Background Information

California Military and Veterans Code Sections 395.01 and 395.02 provide that public employees on military leave are entitled to their regular public employee compensation for the first 30 days of military leave.

The City's Annual Salary Ordinance requires the City to pay the difference between the regular salary and military pay for military reserve and National Guard personnel who are City employees and who are called for active service for greater than 30 consecutive days, and provides that this amount be offset by salary payments required under other laws, to avoid double payments. "Active service" includes service to respond to the September 11th, 2001 terrorist attacks, international terrorism, conflict in Iraq or related extraordinary circumstances, or to the COVID 19 pandemic, and shall not include scheduled training, drills, unit training assemblies or similar events.

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