

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1181

Introduced by

Representatives DeKrey, Belter, Martinson, Metcalf

Senators Dotzenrod, Hogue

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

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

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

8 **37-29-01. Definitions.**

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

17 **37-29-02. Discrimination prohibited in hiring practices - Civil actions.** An
18 employer may not discriminate from hiring or otherwise deny employment to an individual who
19 is a volunteer emergency responder, based on the fact the individual is a volunteer emergency
20 responder. A volunteer emergency responder who is discriminated against or denied
21 employment under this section may bring a civil action against the employer that violated this
22 section, seeking reasonable reparations for damages caused due to the discrimination or denial
23 of employment. A civil action under this section must be commenced within one year of the
24 date of the violation.

1 **37-29-03. Discrimination prohibited in employment practices - Limitations -**

2 **Verification - Civil actions.**

- 3 1. An employer may not terminate or demote an employee who is a volunteer
4 emergency responder or in any other manner discriminate against that employee
5 in the terms and conditions of employment based upon the employee being absent
6 or tardy from employment due to serving as a volunteer emergency responder in
7 responding to a disaster or emergency.
- 8 2. An employee who is terminated, demoted, or otherwise discriminated against in
9 violation of this section may bring a civil action against the employer that violated
10 this subsection. In the civil action, the employee may seek reinstatement to the
11 employee's former position; payment of back wages; reinstatement of fringe
12 benefits; and if seniority rights are granted, the employee may seek reinstatement
13 of seniority rights. A civil action under this section must be commenced within one
14 year of the date of the violation.
- 15 3. Subsection 1 does not apply if due to serving as a volunteer emergency
16 responder, the employee is absent or tardy from the employee's place of
17 employment for a period that exceeds ten regular business days in a calendar
18 year.
- 19 4. In order to receive the protections of subsection 1, an employee who will be absent
20 or tardy from the employee's place of employment while serving as a volunteer
21 emergency responder in the case of a disaster or emergency shall make
22 reasonable efforts to notify the employer of that service and shall continue to make
23 those reasonable notification efforts over the course of the absence.
- 24 5. An employer may request that an employee provide the employer with written
25 verification of times and dates of instances during which the employee was absent
26 or tardy from employment due to serving as a volunteer emergency responder in
27 the case of a disaster or emergency. Verification under this subsection may
28 include a statement from the department of emergency services, the adjutant
29 general's office, the North Dakota wing of the civil air patrol, or other appropriate
30 entity.

1 6. This section does not limit an employer from charging against an employee's
2 regular pay the time the employee is absent or tardy from employment while
3 serving as a volunteer emergency responder to a disaster or emergency.

4 **37-29-04. Exceptions.**

5 1. Subsection 1 of section 37-29-03 is not applicable if the employer is a state
6 agency, an agency of a political subdivision, or a private entity that performs critical
7 emergency services during a disaster or emergency, and the employer's executive
8 officer determines the absence of an employee who is also a volunteer emergency
9 responder will cause undue hardship or the inability of the employer to provide
10 critical emergency services during a disaster or emergency. Under this subsection
11 the executive officer shall:

12 a. Make all reasonable efforts to inform an employee who is a volunteer
13 emergency responder that the employment services that employee performs
14 are essential and therefore that employee's absence from the workplace will
15 be unauthorized if the employee is called to report for duty as a volunteer
16 emergency responder.

17 b. Provide the employee notification of the determination the absence is
18 unauthorized before the employee reports for duty as a volunteer emergency
19 responder.

20 2. Subsection 1 of section 37-29-03 is not applicable if the employer is a private entity
21 and the employer's executive officer in charge of the private entity determines the
22 employment services provided by an employee who is a volunteer emergency
23 responder are so critical the services cannot be performed by another employee
24 and the employee's absence will create the potential for irreparable harm to or
25 permanent closure of the private entity. Under this subsection the executive officer
26 shall:

27 a. Make all reasonable efforts to inform an employee who is a volunteer
28 emergency responder that the employment services that employee performs
29 are essential and therefore that employee's absence from the workplace will
30 be unauthorized if the employee is called to report for duty as a volunteer
31 emergency responder.

1 b. Provide the employee notification of the determination the absence is
2 unauthorized before the employee reports for duty as a volunteer emergency
3 responder.

4 3. The governor or adjutant general may supersede the decision of the executive
5 officer which was made under subsection 1 or 2 if the governor or adjutant general
6 determines the nature of the emergency or disaster is so serious that the services
7 provided by the volunteer emergency responder are key and essential to the
8 emergency response efforts and public safety responsibilities of the adjutant
9 general's office.

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

12 **54-06-27. Emergency service volunteers - Leave.** Upon issuance of an order or
13 proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, a search
14 emergency by the air force rescue coordination center or by the department of emergency
15 services, or a declaration of at least a level II disaster by the American red cross in this or any
16 other state, the executive officer in charge of a state agency or the governing body of any
17 political subdivision may grant a leave of absence to any full-time employee of that
18 governmental entity who is an emergency medical service provider, a member of the civil air
19 patrol, a firefighter, police officer, volunteer member of the North Dakota army or air national
20 guard, or emergency radio operator, or who performs other services necessary in an
21 emergency. The leave of absence must be for the purpose of allowing that employee to
22 provide voluntary emergency services. ~~A person~~ An individual on leave under this section is
23 not deemed to be an employee of the governmental entity for the purposes of workforce safety
24 and insurance. The cumulative leave granted under this section may not exceed ~~five~~ ten
25 working days during any calendar year. The leave may not result in a loss of compensation,
26 seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise
27 eligible.

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