

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2166 Session of 2009

INTRODUCED BY KNOWLES, SOLOBAY, GILLESPIE, MELIO, FAIRCHILD, ADOLPH, BEYER, BRENNAN, BRIGGS, CAUSER, CLYMER, CONKLIN, D. COSTA, CREIGHTON, DEASY, EVERETT, FARRY, FLECK, FREEMAN, GABLER, GIBBONS, GINGRICH, GOODMAN, HARHART, HARRIS, HORNAMAN, HOUGHTON, KILLION, KORTZ, KOTIK, MAHONEY, METZGAR, MICOZZIE, MILNE, MOUL, MURT, MUSTIO, OBERLANDER, O'NEILL, PAYNE, PHILLIPS, READSHAW, REED, REICHLEY, ROAE, ROCK, SANTONI, SCAVELLO, SIPTROTH, STEVENSON, SWANGER, TALLMAN, J. TAYLOR, VULAKOVICH AND YOUNGBLOOD, DECEMBER 14, 2009

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, DECEMBER 14, 2009

AN ACT

1 Providing for employment rights of members of volunteer
2 emergency service organizations and for tax credits for
3 employers of employee-volunteers; and making a related
4 repeal.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 CHAPTER 1

8 GENERAL PROVISIONS

9 Section 101. Short title.

10 This act shall be known and may be cited as the Emergency
11 Response Volunteer Employment Protection Act.

12 Section 102. Legislative findings and declaration.

13 (a) Findings enumerated.--The General Assembly finds as
14 follows:

15 (1) Over 85% of all emergency service personnel in this

1 Commonwealth are volunteers.

2 (2) Volunteer emergency service personnel have saved
3 many lives and millions of tax dollars for the citizens of
4 this Commonwealth.

5 (3) During the past decade, the ranks of volunteer
6 emergency service personnel have decreased by more than 10%.

7 (4) This decrease in manpower within this Commonwealth's
8 volunteer emergency services, coupled with increasing
9 conflicts with the volunteer's professional duties, has
10 resulted in:

11 (i) Manpower response shortages to emergency calls.

12 (ii) A decrease in the number of volunteers
13 permitted and able to participate in necessary, and
14 sometimes required, emergency service training.

15 (iii) A greater risk to those who are permitted to
16 respond to an emergency call.

17 (b) Declaration.--The General Assembly declares as follows:

18 (1) It is vital to provide new ways to attract and
19 retain volunteer emergency service personnel without placing
20 an undue burden on taxpayers or businesses throughout this
21 Commonwealth.

22 (2) It is in the public interest for the General
23 Assembly to:

24 (i) Encourage private employers to permit an
25 employee who is a member of a volunteer emergency service
26 organization to leave work in response to an emergency
27 call or respond to an emergency call prior to the start
28 of work in the employee's capacity as a member of a
29 volunteer emergency service organization, with the option
30 of pay, and no loss of time or efficiency rating, by

1 providing a tax credit to the employer for the period
2 during which the employee-volunteer is absent from work
3 because of the employee-volunteer's response to an
4 emergency call, provided the employee is in compliance
5 with a prearranged, preapproved release policy of the
6 employer.

7 (ii) Encourage private employers to permit an
8 employee who is a member of a volunteer emergency service
9 organization to take a paid leave of absence at the
10 request of the chief executive officer of the volunteer
11 emergency service organization to which the employee-
12 volunteer belongs in order to participate in emergency
13 service training by providing a tax credit to the
14 employer for a period of no more than five days per year
15 during which the employee-volunteer is participating in
16 emergency service training, provided the employee is in
17 compliance with a prearranged, preapproved release policy
18 of the employer.

19 (iii) Require that the Commonwealth and its
20 political subdivisions permit an employee who is a member
21 of a volunteer emergency service organization to respond
22 to an emergency call prior to the start of work in the
23 employee's capacity as a member of a volunteer emergency
24 service organization, with the option of pay, and no loss
25 of time or efficiency rating, provided the employee is in
26 compliance with a prearranged, preapproved release policy
27 of the Commonwealth or political subdivision.

28 (iv) Authorize the Commonwealth and its political
29 subdivisions to permit an employee who is a member of a
30 volunteer emergency service organization to leave work in

1 response to an emergency call, with or without pay, and
2 no loss of time or efficiency rating, and to take an
3 optional paid leave of absence at the request of the
4 chief executive officer of the volunteer emergency
5 service organization to which that employee-volunteer
6 belongs in order to participate in emergency service
7 training for a period of up to five days per year,
8 provided the employee is in compliance with a
9 prearranged, preapproved release policy of the
10 Commonwealth or political subdivision.

11 Section 103. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Commonwealth." A department, agency, board, commission or
16 instrumentality of State government.

17 "Discriminate." To take any action against an employee which
18 adversely affects the employee's regular pay to any extent not
19 provided for in this act, the employee's job status or
20 opportunity for promotion or the employee's right to any benefit
21 granted by the employer to other similarly situated employees.

22 "Employee-volunteer." A member of a volunteer emergency
23 service organization who is in the employ of the Commonwealth, a
24 political subdivision or a private employer.

25 "Employer." An individual, partnership, association,
26 corporation, business trust or any person or group of persons
27 acting directly or indirectly in the interest of an employer in
28 relation to any employee.

29 "Line of duty." All that is required or normally associated
30 with responding to and returning from an emergency call.

1 "Political subdivision." A county, city, borough,
2 incorporated town, township, home rule municipality, school
3 district or municipal authority.

4 "Volunteer ambulance service." A nonprofit chartered
5 corporation, association or organization located in this
6 Commonwealth which is regularly engaged in the service of
7 providing emergency medical care and transportation of patients.

8 "Volunteer emergency service organization." An organization
9 which is a volunteer fire company, volunteer ambulance service,
10 volunteer rescue squad or volunteer hazardous material response
11 team.

12 "Volunteer fire company." A nonprofit chartered corporation,
13 association or organization located in this Commonwealth which
14 provides fire protection services, including fire police
15 services, and other volunteer emergency service within this
16 Commonwealth. Volunteer emergency service provided by a
17 volunteer fire company may include volunteer ambulance and
18 volunteer rescue service.

19 "Volunteer hazardous material response team." A nonprofit
20 chartered corporation, association or organization located in
21 this Commonwealth whose members are specially trained to respond
22 to accidents or situations where hazardous or toxic materials
23 are released into the environment.

24 "Volunteer rescue service." A nonprofit chartered
25 corporation, association or organization located in this
26 Commonwealth which provides rescue service in this Commonwealth.
27 Section 104. Employment discrimination prohibited.

28 (a) General rule.--It is unlawful for the Commonwealth, a
29 political subdivision or a private employer to discriminate
30 against, refuse to hire or employ an individual because the

1 individual is a member of a volunteer emergency service
2 organization.

3 (b) Discrimination for time lost.--

4 (1) It is unlawful for the Commonwealth, a political
5 subdivision or a private employer to discipline or to
6 discharge from employment an employee who is a member of a
7 volunteer emergency service organization or to otherwise
8 discriminate against an employee-volunteer with respect to
9 base salary, hire, tenure, terms, conditions or privileges of
10 employment for the reason that the employee-volunteer
11 responded to an emergency call prior to the time the employee
12 was due to report to work, resulting in loss of time from
13 employment, if the employee satisfies the requirements of
14 paragraph (2).

15 (2) An employee-volunteer who loses time as prohibited
16 in this section shall:

17 (i) Immediately upon arriving at work inform his or
18 her employer or immediate supervisor that the employee
19 has been called to respond to an emergency. The employee-
20 volunteer is required to report to work immediately after
21 the time the chief executive officer of the volunteer
22 emergency service organization to which that employee-
23 volunteer belongs documents the emergency service as
24 being completed.

25 (ii) Provide his or her employer or immediate
26 supervisor with a signed statement from the chief
27 executive officer of the volunteer emergency service
28 organization to which that employee-volunteer belongs.
29 The statement must include the reason for the employee-
30 volunteer's absence and the time during which the

1 employee-volunteer was acting in the line of duty. The
2 statement must be submitted to the employer within ten
3 days from the date of absence.

4 (3) If an employee-volunteer is employed by a private
5 employer, any time lost from employment may be charged
6 against the employee's regular salary or wages or the private
7 employer may apply for the tax credits provided in section
8 301(a).

9 (4) If an employee-volunteer is employed by the
10 Commonwealth or a political subdivision, payment of salary or
11 wages for time lost from employment shall be based on a
12 policy adopted by the Commonwealth or the political
13 subdivision.

14 (c) Discrimination because of injury.--It is unlawful for
15 the Commonwealth, a political subdivision or a private employer
16 to discipline or to discharge from employment or to otherwise
17 discriminate against an employee-volunteer with respect to
18 compensation, hire, tenure, terms, conditions or privilege of
19 employment because the employee-volunteer has been injured in
20 the line of duty as a member of a volunteer emergency service
21 organization and has subsequently returned to work, regardless
22 of whether the employee-volunteer received any workers'
23 compensation benefits under the act of June 2, 1915 (P.L.736,
24 No.338), known as the Workers' Compensation Act.

25 (d) Legal action.--An employer who willfully and knowingly
26 violates the provisions of this act shall:

27 (1) Revoke any disciplinary action and any penalty
28 imposed against an employee-volunteer or reinstate the
29 employee-volunteer to his or her former position.

30 (2) Pay to the employee-volunteer all lost wages and

benefits for the period between termination and reinstatement and any reasonable attorney fees which are incurred in an action to recover lost wages and benefits.

(e) Period of limitations.--An action to enforce the provisions of this act shall be commenced within a period of two years from the date of violation and the action shall be commenced in the court of common pleas of the county in which the employer is located.

CHAPTER 3

PRIVATE SECTOR INCENTIVES

Section 301. Emergency response tax credit.

(a) Authorization of credit.--Every employer engaged in a for-profit business enterprise in this Commonwealth who permits an employee-volunteer to leave work in response to an emergency call or to respond to an emergency call prior to the start of work in the employee-volunteer's capacity as a member of a volunteer emergency service organization, without loss of pay, time or efficiency rating, shall be eligible to receive a tax credit against any tax due from that employer under Article II, III, IV, VI, VII, VII-A, VIII, IX, XI, XII or XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and against any payment of estimated tax or payment of tentative tax due from the employer on account of the taxes.

(b) Calculation of credit.--The amount of the tax credit available to an employer under subsection (a) shall be equal to 100% of the employee-volunteer's earnings for the period during which the employee-volunteer is absent from work on account of responding to an emergency call. The credit must be applied against taxes due in the current tax year. The credit may not be carried back to prior tax years, nor may it be carried forward

1 to future tax years.

2 Section 302. Training leave of absence tax credit.

3 (a) Authorization of credit.--An employer engaged in a for-
4 profit business enterprise in this Commonwealth who permits an
5 employee-volunteer to take a paid leave of absence, at the
6 request of the chief executive officer of the volunteer
7 emergency service organization to which the employee-volunteer
8 belongs in order to participate as a student or instructor in
9 training appropriate to the volunteer emergency services
10 organization, shall be eligible to receive a tax credit against
11 any tax due from that employer under Article II, III, IV, VI,
12 VII, VII-A, VIII, IX, XI, XII or XV of the act of March 4, 1971
13 (P.L.6, No.2), known as the Tax Reform Code of 1971, and against
14 any payment of estimated tax or payment of tentative tax due
15 from the employer on account of the taxes.

16 (b) Calculation of credit.--The amount of tax credit
17 available to an employer under subsection (a) shall be equal to
18 100% of the employee-volunteer's earnings for a period of no
19 more than five days per year during which the employee-volunteer
20 was granted and actually utilized the paid leave in order to
21 participate in training. The credit must be applied against
22 taxes due in the current tax year. The credit may not be carried
23 back to prior tax years, nor may it be carried forward to future
24 tax years.

25 Section 303. Powers and duties.

26 In addition to those powers created by any other act of the
27 General Assembly, the Secretary of Revenue shall have the
28 following powers and duties:

29 (1) To publish any rules and regulations which may be
30 required to implement this act.

1 (2) To publish, as a notice in the Pennsylvania
2 Bulletin, no later than 60 days following the effective date
3 of this act, forms which employers may use to apply for the
4 tax credit authorized by this act. The provisions of section
5 408(b) of the act of March 4, 1971 (P.L.6, No.2), known as
6 the Tax Reform Code of 1971, relating to confidentiality of
7 information required under paragraph (3), shall not apply
8 when the information is divulged for the purposes of this
9 paragraph.

10 (3) To furnish to the members of the General Assembly
11 within five months after the close of any calendar year
12 during which tax credits granted under this act were used an
13 annual report providing, as to each employer which used tax
14 credits during the preceding calendar year under this act,
15 the employee's name, address, standard industrial
16 classification code and the amount of tax credits granted.

17 CHAPTER 5

18 PUBLIC SECTOR INITIATIVES

19 Section 501. Emergency response leave of absence.

20 (a) Optional paid leave.--An officer or employee of the
21 Commonwealth or a political subdivision who is a member of a
22 volunteer emergency service organization may be entitled to
23 leave work in response to an emergency call without loss of pay,
24 time or efficiency, subject to the terms and conditions of a
25 policy adopted by the Commonwealth or political subdivision.

26 (b) Official notice required.--In order to qualify for the
27 paid leave as provided for in subsection (a), the employee-
28 volunteer must:

29 (1) Inform his or her employer or immediate supervisor
30 that the employee has been called to respond to an emergency

1 and request that a leave of absence be granted to respond to
2 the emergency.

3 (2) Report to work immediately after the time the chief
4 executive officer of the volunteer emergency service
5 organization to which that employee-volunteer belongs
6 documents the emergency service as being completed.

7 (3) Provide the employer or immediate supervisor with a
8 signed statement from the chief executive officer of the
9 volunteer emergency service organization to which the
10 employee-volunteer belongs. The statement must include the
11 reason for the employee-volunteer's absence and the time
12 during which the employee-volunteer was acting in the line of
13 duty. The statement must be submitted within ten days from
14 the date of the absence.

15 Section 502. Training leave of absence.

16 (a) Mandatory unpaid leave.--The Commonwealth and a
17 political subdivision shall grant five days of unpaid leave per
18 year to an employee-volunteer for a period during which the
19 employee-volunteer is participating, as a student or instructor,
20 in training at the request of the chief executive officer of the
21 volunteer emergency service organization to which the employee-
22 volunteer belongs.

23 (b) Discretionary paid leave.--In addition to the days of
24 unpaid leave set forth in subsection (a), the Commonwealth and a
25 political subdivision may grant up to five days of paid leave
26 per year to an employee-volunteer for a period during which the
27 employee-volunteer is participating, as a student or instructor,
28 in training at the request of the chief executive officer of the
29 volunteer emergency service organization to which the employee-
30 volunteer belongs.

1 (c) Official notice required.--In order to qualify for a
2 leave of absence under subsection (a) or (b), the employee-
3 volunteer must provide the employer or immediate supervisor with
4 a signed statement from the chief executive officer of the
5 volunteer emergency service organization to which the employee-
6 volunteer belongs. The statement must include the reason for the
7 requested leave and must be submitted at least 14 days prior to
8 the requested date of leave.

9 CHAPTER 7

10 MISCELLANEOUS PROVISIONS

11 Section 701. Repeal.

12 The act of December 1, 1977 (P.L.249, No.83), entitled, as
13 amended, "An act prohibiting employers from firing employees who
14 lose time from employment in the line of duty as volunteer
15 firemen, fire police and volunteer members of ambulance services
16 and rescue squads; and providing penalties," is repealed.

17 Section 702. Effective date.

18 This act shall take effect in 60 days.