
SENATE COMMITTEE ON MILITARY AND VETERANS AFFAIRS

Senator Bob Archuleta, Chair

2021 - 2022 Regular

Bill No:	AB 1768	Hearing Date:	06/28/2022
Author:	Cooper		
Version:	2/2/22 Introduced		
Urgency:	No	Fiscal:	Yes
Consultant:	V Badillo		

Subject: State employees: active duty compensation and benefits

DESCRIPTION

Summary: This bill would clarify that all activations of state employees who are members of the California National Guard or a United States military reserve organization, due to presidential declarations of emergency, are eligible for differential pay and removes the possibility for any future confusion by state agencies when processing claims.

Existing law:

- 1) Requires the state to provide specified benefits to any state employee member of the California National Guard or a United States military reserve organization when the government orders that employee to active duty by Presidential determination to augment active forces for any operational mission or in time of national emergency declared by the President or otherwise authorized by law. (Government Code § 19775.17 (a))
- 2) Includes military differential pay (i.e., the difference between the employee's military pay and allowances and what the employee's state compensation would have been had the employee not been activated) for the duration of the activation event as authorized pursuant to 10 USC § 12302 and § 12304, but not more than 180 days. (GC § 19775.17 (b) (1))
- 3) Excludes those benefits if vendor contracts prohibit or limit them. (GC § 19775.17 (b) (2))
- 4) Treats compensation provided under these provisions as a loan payable, as specified, by any individual who does not reinstate to state service following active duty. (GC § 19775.17 (c))
- 5) Limits military differential pay to employees not eligible for specified income protection insurance products; but where the employee is eligible for the insurance product, current law limits military differential pay to an amount reduced by the amount payable by the insurance products maximum allowable benefit. (GC § 19775.17 (d))
- 6) Requires the state to reimburse the employee for the income protection insurance premium for the period the employee is on active duty, not to exceed 180 calendar days. (GC § 19775.17 (d))

7) Defines “state employee” to mean a civil service employee or an officer or employee of the legislative, executive, or judicial branches. (GC § 19775.17 (e))

8) Excludes the benefits provided by this provision from employees receiving other specified benefits authorized under provisions related to service in Afghanistan and the War on Terror. (GC § 19775.17 (f))

Federal

- 1) Establishes that during a time of national emergency declared by the President after January 1, 1953, or otherwise authorized by law, the Secretary of Defense or the Secretary’s designee may, without the consent of persons concerned, order any unit (and any member not assigned to a unit) organized to serve as a unit in the Ready Reserve to active duty for no more than 24 consecutive months, among other provisions. (10 United States Code § 12302)
- 2) Allows the President to authorize the Secretary of Defense (and the Secretary of Homeland Security with respect to the U.S. Coast Guard when not operating as a service in the U.S. Navy) to order any unit of the Selected Reserve or Individual Ready Reserve, as specified, to active duty for no more than 365 consecutive days if the President determines that it is necessary to augment the active forces for any named operational mission or that it is necessary to provide assistance to respond to an emergency involving a use or threatened use of a weapon of mass destruction or a terrorist attack or threatened terrorist attack in the U.S. that results, or could result, in significant loss of life or property. (10 USC § 12304)
- 3) Establishes the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 to: encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; minimize the disruption to the lives of persons performing service in the uniformed service as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and prohibit discrimination against persons because of their service in the uniformed services. (38 USC § 4301 et seq.)

This bill:

- 1) Strikes the provision of existing law granting differential pay only when the government specifically orders the qualifying event pursuant to Sections 12302 and 12304 of Title 10 of the United States Code.
- 2) Clarifies the law triggers differential pay when the government orders the state employee to active duty: (a) by determination by the President of the United States that it is necessary to augment the active forces for any operational mission; or (b) when in time of national emergency declared by the President or otherwise authorized by law.
- 3) Makes other nonsubstantive changes.

BACKGROUND

Under existing law, the state provides state employee Reserve and National Guard members with 30 days of salary protection when activated for duty and other benefits, as specified, related to specific activations or operations. According to information from CalHR, existing state law triggers extended payments of up to 180 days under GC §19775.17 to state employees who are activated for active duty when two conditions are met (1) the President declares a national emergency (or identifies an operational mission) and (2) the President invokes the specific statutory authority that authorizes activation of service members.

According to the author, differential pay owed to state employees who are service members in the National Guard or US Military Reserves and were activated in response to COVID was delayed for nearly a year as a result of confusion and varying interpretations of existing statute.

Since March 13th of 2020, the United States has been operating under a presidential declaration of emergency as a result of the COVID-19 pandemic. Since that time state employees, who are serving in the National Guard and Reserves, have been activated across the state in response to the declaration. Despite the clear reason for activation, the California Department of Human Resources (CalHR) had denied requests for differential pay until finally reversing that decision on February 1st, 2021, nearly a year after they should have been receiving the differential pay.

The reason for the delay in benefits was due to a misinterpretation of the federal authority provision contained in subdivision (b) of GOV 19775.17. The author asserts that despite the confusion being currently resolved, it is only a temporary fix. There is nothing stopping state agencies from, again, incorrectly interpreting the statute and delaying, or denying, the differential pay promised to our reserve and guard service members.

Double Referral. This bill was placed on Consent in the Senate Labor, Public Employment, and Retirement Committee on 06/08/2022.

COMMENT

Author's Statement. According to the Author, "It is unthinkable that our service members are called into service, placed in harm's way and at the same time placed into a financial hardship for them and their families. AB 1768 clarifies the intent of the law so that our service members do not have to worry about meeting their personal financial obligations when called up to active duty."

Related/Previous Legislation. Assembly Bill 1032, Cooper, 2021, proposed to extend the period of compensation (i.e., pay, benefits, and reimbursement of the insurance premium for a federally sponsored income protection program) that a state employee, who is a member of the California National Guard or U.S. military reserve organization and ordered to active duty by the U.S. President, as specified, is entitled to receive from 180 calendar days to 365 calendar days, among other provisions.

Senate Bill 1308, Committee on Public Employment and Retirement (Chapter 665, Statutes of 2012) made statutory changes included in the Governor Plan (GRP 1, 2011) to consolidate the DPA and the State Personnel Board into a single agency: the Department of Human Resources.

POSITIONS

Sponsor: California Correctional Peace Officers Association

Support: None Received.

Oppose: None Received.

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