

# MAINE STATE LEGISLATURE

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Personnel

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Military leave of absence

SYLLABUS:

A school teacher who was formerly employed by a municipal school district, and subsequently drafted into the Armed Forces of the United States is entitled to re-employment, by the school board with full credit to pension rights, annual and sick leave accumulation and seniority for his time in the military.

FACTS:

An individual was employed by Caribou School District for a period of two years and thirty-two weeks, during the years 1966 through 1969, as a teacher within that school district. This individual was drafted in 1969 and subsequently enlisted into the Air Force for a period of three years. At the end of three years (June 1972), he received an honorable discharge and within 90 days of this discharge, requested re-employment with the Caribou School District.

The School District re-employed the individual allowing him sick leave accumulation prior to his enlistment and seniority upon his return, but denied him annual and sick leave accumulation for his three years of service, denied him tenure and only gave him credit for two years on salary increment step. The School Board ruled that sick leave does not accumulate during military service, but only before military service, and the credit on the salary schedule was not to exceed two years.

QUESTIONS:

1. Has the individual employee been assured all the benefits due him?
2. Is the Director of Personnel responsible for administration of 5 M.R.S.A. § 555 involving persons other than those in Classified Service?

ANSWERS:

1. No.
2. Yes.

REASON:

Title 5 § 555 of the Maine Revised Statutes provides in part that an employee who has been employed for at least 6 months and has obtained permanent status and subsequently enters military service, under certain conditions, shall be considered on leave of absence without pay. The individual is to be considered as in the service of the agency by which he was employed at the time of entering into the military service. For the purpose of computing time in regard to pension rights, annual and sick leave accumulation and seniority, § 555 says in part:

"Whenever any employee, regularly employed in other than a temporary position for a period of at least 6 months by the State or by any department, bureau, commission or office thereof, or by any county, municipality, township or school district within the State shall . . . enlist, enroll, . . . or be drafted in the Armed Forces of the United States . . . he shall not be deemed or held to have thereby resigned from or abandoned his said employment, nor shall he be removable therefrom during the period of his service . . .

"Such an employee while in the Armed Forces . . . shall be considered as on leave of absence without pay and, for the purposes of computing time in regard to pension rights, annual and sick leave accumulation, and seniority, shall be considered during the period of his federal service as in the service of a governmental agency by which he was employed at the time of his entry into such federal service. Such employee if he reports for duty within a 90-day period from the date of his separation under conditions other than dishonorable from the Armed Forces of the United States or receiving treatment in a hospital at the time of his separation as aforesaid, he reports for duty within 90 days from his discharge from the hospital, shall

"1. Qualified. If still qualified to perform the duties of such position, be restored to such position or to a position of like seniority, status and pay; . . ."

From the facts presented, the employee in the instant case met the necessary elements as described in the statute i.e. he was drafted by the Armed Services of the United States, received an honorable discharge from the Service and had applied within the 90 days from his discharge from the Armed Services to be reinstated to his original job.

Section 555 goes on to say:

"Rights to reemployment, credits toward retirement under the State Retirement System, and vacation or sick leave accumulation, shall not be allowed beyond the period of first enlistment or induction, but in no event beyond 4 years from the date of his original call to active duty in said Armed Forces of the United States except if his return to active duty in said Armed Forces or the extension of his period of service beyond 4 years is required by some mandatory provision and he shall present proof thereto satisfactory to the agency concerned."

The employee in the instant case served for a period of three years and did not reenlist, and in accordance with the Statute he is entitled to full pension rights, annual and sick leave accumulation and seniority for the total three years which he has spent in the Armed Forces of the United States. He shall be considered during the period of his federal service as in the service of the governmental agency by which he was employed prior to his being drafted into the Armed Forces of the United States.

Chapter 51 through Chapter 61 of Title 5 are commonly referred to as Civil Service Chapters. They include the general provisions of civil service; the State Personnel Board; Director of Personnel; classified service; unclassified service and violations of the entire chapters. Section 631 of Chapter 55 states in part, "The Director shall have the power and duty to administer and make effective Chapters 51 to 61 and the rules and regulations of the Board." The Director, which is referred to in § 631, is the Director of Personnel, and accordingly has the power and is responsible for the administration of 5 M.R.S.A. § 555 which would involve persons and situations covered by the Personnel Law.

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