WEST VIRGINIA CODE CHAPTER 15 ARTICLE 1K

WV Legislature

§15-1K-1. Legislative findings and intent.

(a) The Legislature hereby makes the following findings:

(1) The Civil Air Patrol is the congressionally chartered official auxiliary of the United States Air Force. It performs three congressionally assigned key missions: emergency services, which includes search and rescue, by air and ground, and disaster relief operations; aerospace education for youth and the general public; and cadet programs for teenage youth. In addition, the Civil Air Patrol is tasked with homeland security and other missions.

(2) The Civil Air Patrol also performs nonauxiliary missions for various federal and state governmental and private agencies, such as the West Virginia Army and Air National Guard, State Division of Homeland Security and Emergency Management, the Division of Forestry, local law enforcement, the Federal Emergency Management Agency and the American Red Cross.

(3) The West Virginia wing of the Civil Air Patrol, is organized, equipped, governed, administered and trained in accordance with the rules and regulations of the United States Air Force and the Civil Air Patrol.

(4) The West Virginia wing of the Civil Air Patrol has air and ground assets located throughout the state, as well as highly trained aircrews, ground search crews and other mission support personnel who perform, as unpaid professionals, valuable emergency services missions for the citizens of West Virginia. Additionally, the West Virginia wing of the Civil Air Patrol, through its missions of aerospace education and cadet programs, is instrumental in developing West Virginia’s youth to be the leaders of the future.

(b) In light of the invaluable services provided by the West Virginia wing of the Civil Air Patrol to the state, it is the intent of the Legislature for the state and the Adjutant General to provide administrative, financial and other support to the West Virginia wing of the Civil Air Patrol so that it can continue to train and equip itself and its unpaid personnel to perform these valuable missions for the citizens of the state.

(c) It is also the intent of the Legislature to create protections for employees who are members of the Civil Air Patrol and who train for, and respond to, emergency services missions.

WV Legislature

§15-1K-2. Definitions.

As used in this article:

(1) “Civil Air Patrol leave” means leave requested by an employee who:

(A) Is a volunteer member of the civilian auxiliary of the United States Air Force known as the Civil Air Patrol; and

(B) Has been authorized by the United States Air Force, the Governor or a department, division, agency or political subdivision of the state to respond to or train for an emergency mission.

(2) “Emergency mission” means an Air Force assigned mission under which the West Virginia wing of the Civil Air Patrol conducts operations.

(3) “Employee” means any individual who performs services for, or under the control of, a provider of wages or remuneration.

(4) “Employee benefits” means all benefits other than wages given by an employer.

(5) “Employer” means any person or entity that employs more than fifteen employees.

WV Legislature

§15-1K-3. Adjutant General administration; expenses of Civil Air Patrol.

(a) Due to the nature of its congressionally assigned key missions and nonassigned missions, the West Virginia wing of the Civil Air Patrol shall be administered by the Adjutant General and the Adjutant General's department in accordance with applicable state, federal and Civil Air Patrol regulations.

(b) The Adjutant General, in addition to all other powers and functions authorized by law, may expend state funds:

(1) For operational missions or other objectives related to national security, homeland security, emergency response, disaster relief or other similar missions;

(2) For educational and training purposes of the Civil Air Patrol, including, but not limited to, the purchase of Civil Air Patrol aviation, homeland security and emergency services education training aid books, materials and equipment;

(3) To defray maintenance, repair and replacement costs of Civil Air Patrol aircraft, motor vehicles and other homeland security and emergency services equipment;

(4) To purchase and obtain supplies and equipment for the Civil Air Patrol; and

(5) To maintain the communications network for the Civil Air Patrol and to integrate it with other state communications networks.

(c) Funds specifically appropriated by the Legislature for the purposes specified in subsection (b) of this section may be expended by the Adjutant General and shall be expended for no other purposes.

WV Legislature

§15-1K-4. Nondiscrimination by employer against Civil Air Patrol members.

(a) An employer may not discriminate against or discharge from employment an employee who has been employed for a minimum of ninety days and is a member of the Civil Air Patrol because of membership in the Civil Air Patrol.

(b) An employer may not hinder or prevent an employee who has been employed for a minimum of ninety days from performing service as part of the West Virginia wing of the Civil Air Patrol during an emergency mission or training if the member is entitled to leave under this article.

WV Legislature

§15-1K-5. Employer to provide leave.

(a) An employer shall provide up to a maximum of ten days per calendar year of unpaid Civil Air Patrol leave to an employee training for an emergency mission of the West Virginia wing of the Civil Air Patrol.

(b) An employer shall provide up to a maximum of thirty days per calendar year of unpaid Civil Air Patrol leave to an employee responding to an emergency mission of the West Virginia wing of the Civil Air Patrol.

(c) An employee shall give the employer:

(1) At least fourteen days' notice of the intended dates of the beginning and end of leave together with an estimate of the amount of time needed to complete training; and

(2) As much notice as possible of the intended dates of the beginning and end of leave together with an estimate of the amount of time needed to complete an emergency mission.

(d) The employee shall report to the employer necessary changes in the time required to complete the training or mission.

(e) The employer may require verification of the eligibility of the employee for the Civil Air Patrol leave requested or taken.

(f) If the employee fails to provide the required verification, the employer may deny the Civil Air Patrol leave.

(g) An employee taking leave under this article is not required to exhaust all available leave or time-off benefits before using Civil Air Patrol leave.

(h) This article shall not prevent an employer from providing an employee paid leave.

WV Legislature

§15-1K-6. Return to work by employee.

(a) When the employee returns to work, the employer shall restore the employee to the position held when the leave began or to a position with equivalent seniority status, benefits, pay and conditions of employment.

(b) An employer may decline to restore an employee as required in this article because of circumstances unrelated to the provisions of this article.

(c) An employer and an employee may negotiate for the employer to pay for the benefits of the employee during the leave, but the employer is not required to continue or maintain employee benefits for any employee eligible for leave under this article where the employee would not be otherwise eligible for any benefit under the policies of the employer or the content of any employee benefit plan which regulates eligibility for benefits.

WV Legislature

§15-1K-7. Accrued benefits not lost; leave not to be used with other leave; rights and obligations under collective bargaining or other agreements.

(a) The use of Civil Air Patrol leave under this article may not result in the loss of an employee benefit accrued before the first date of leave.

(b) An employee using leave under any other provision of state or federal law may not concurrently use leave granted under this article.

(c) This article does not affect the obligation of an employer to comply with a collective bargaining agreement or an employee benefit plan that provides greater leave rights to employees than the rights provided under this article.

(d) The grant of leave under this article may not be diminished by a collective bargaining agreement or an employee benefit plan entered into on or after July 1, 2017.

(e) This article does not affect or diminish the contract rights or seniority status of an employee not entitled to Civil Air Patrol leave.

WV Legislature

§15-1K-8. Certain actions by employer prohibited.

(a) An employer may not interfere with the use of Civil Air Patrol leave allowed under this article.

(b) An employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against an employee who is a member of the Civil Air Patrol because that employee complies with the provisions of this article or opposes a practice not in compliance with this article.

WV Legislature

§15-1K-9. Action to enforce article authorized.

(a) An employee may bring a civil action in the appropriate circuit court to enforce this article.

(b) The court may enjoin an act or practice that violates this article and may order equitable relief to redress the violation or to enforce this article, including the recovery of lost wages incurred as a result of any violation under this article. No other monetary damages may be awarded or recovered.

WV Legislature