

1973 WL 27671 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 8, 1973

*1 Mr. George W. Thomas
Veterans Affairs Officer
Dorchester County Veterans Affairs Office
P. O. Box 661
St. George, South Carolina 29477

Dear Mr. Thomas:

In response to your letter dated January 11, 1973, it is apparent in reading Section 50-151.1 that there is no mention within this specific provision as to when state employees returning from active military service are entitled to be returned to the state payroll. Section 50-151.1 merely states that employees are entitled to leave of absence from duties without loss of seniority or efficiency or registrar rating. Section 50-157 states that officers as defined in Section 50-151(1) are entitled to reassume positions from which they have been absent upon giving thirty days notice in writing. It is important to note that Section 50-157 is limited to officers and, therefore, does not cover state employees who are not officers. Consequently, since the answer to your questions cannot be found in Section 50-151.1 or Section 50-157, and neither can it be found in any case law; to resolve your question requires an interpretation of the status of a leave of absence, ie, how to apply for a leave of absence and how to apply for resumption of employment upon the expiration of leave of absence. This is an administration matter and can be resolved by addressing this inquiry to the State Personnel Division, 700 Knox Abbott Drive, Cayce, South Carolina, 29033.

In response to whether the state employee in question must be credited with years spent on active duty toward seniority, Section 50-151.1 states that the employee is entitled to leave of absence without loss of seniority (time accrued on the job prior to entry on active duty). Section 50-151.1 does not specify expressly or by implication that employees must be credited with years spent on active nor do other provisions in Chapter 4, Sections 50-151 through 50-157 so hold. Therefore, it is the opinion of this office that Section 50-151.1 nor other sections in Chapter 4, Title 50, Volume 10, require that employees be credited for years spent on active duty towards seniority.

In response to that part of your question that makes reference to job-rating classification, again Section 50-151.1 does not require that returning servicemen be placed in a better position than prior to entry on active duty.

Though there are no South Carolina cases which shed light on the position returning veterans are entitled to reassume, a 1961 opinion rendered by this office indicates that as to reemployment rights of state employees returning from active military service, the pertinent Federal Law (Title 50, U.S.C.A. App., Section 459) is directory as opposed to mandatory as to the respective states. Therefore, states have the discretion to pass legislation regarding reemployment rights of state employees. Since Section 50-151.1 does not require that returning servicemen be given different job-rating classifications than prior to entry on active duty, there is no such requirement.

*2 If we may be of further assistance in the future, please do not hesitate to let us know.
Very truly yours,

Hulan A. Small
Assistant Attorney General

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