



March 27, 2009

**ENGROSSED
HOUSE BILL No. 1205**

DIGEST OF HB 1205 (Updated March 25, 2009 1:58 pm - DI 102)

Citations Affected: IC 4-15; IC 36-8.

Synopsis: Injured volunteer firefighters. Provides that the state, a political subdivision, or a private employer may not discipline an employee who is a member of a volunteer fire department and who is injured or absent from work because of an injury that occurs while the employee is engaged in emergency firefighting or emergency response activities. Provides that the period in which the employee may not be disciplined for an absence because of an injury may not exceed six months from the date of the injury. Provides that the employer may require the injured employee to provide evidence from a physician or other medical authority showing: (1) treatment for the injury at the time of the absence; and (2) a connection between the injury and the employee's emergency firefighting or emergency response activities. Requires the employer, to the extent required by federal or state law, to retain information about the injury in a separate medical file and to treat the information as a confidential medical record. Allows an injured employee to use sick leave when the employee is absent from work because of an injury that occurs while the employee is engaged in emergency firefighting or emergency response activities. Requires an employer to administer the absence in a manner consistent with the federal Family and Medical Leave Act.

Effective: July 1, 2009.

Bischoff, Ruppel, Tincher, Blanton

(SENATE SPONSORS — LANDSKE, YOUNG R MICHAEL, YOUNG R,
LEWIS, ARNOLD)

January 12, 2009, read first time and referred to Committee on Veterans Affairs and Public Safety.

February 16, 2009, reported — Do Pass.

February 19, 2009, read second time, ordered engrossed. Engrossed.

February 24, 2009, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

March 2, 2009, read first time and referred to Committee on Pensions and Labor.

March 26, 2009, amended, reported favorably — Do Pass.

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EH 1205—LS 6984/DI 102+



March 27, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1205

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-10-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. **(a)** An employee
3 may not be disciplined for absence from work if:

4 (1) the employee is a member of a volunteer fire department
5 under IC 36-8-12;

6 (2) the employee has notified ~~his~~ **the employee's** immediate
7 supervisor in writing that ~~he~~ **the employee** is a member of a
8 volunteer fire department;

9 (3) the employee presents a written statement to ~~his~~ **the**
10 **employee's** immediate supervisor from the chief or other officer
11 in charge of the volunteer fire department that the employee was
12 engaged in emergency firefighting activity at the time of ~~his~~ **the**
13 **employee's** absence from work; and

14 (4) the employee secures authorization from ~~his~~ **the employee's**
15 supervisor to leave ~~his~~ **the employee's** duty station if the
16 employee has already reported for work.

17 **(b) An employee who:**

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1 (1) is a member of a volunteer fire department under
 2 IC 36-8-12; and
 3 (2) is injured while the employee is engaged in emergency
 4 firefighting or other emergency response;
 5 may not be disciplined as a result of the injury or an absence from
 6 work because of the injury if the employee complies with
 7 subsections (a) and (c). However, for each instance of emergency
 8 firefighting activity or other emergency response that results in an
 9 injury to an employee, this subsection applies only to the period of
 10 the employee's absence from work that does not exceed six (6)
 11 months from the date of the injury.
 12 (c) The immediate supervisor of an employee described in
 13 subsection (b) may require the employee to provide evidence from
 14 a physician or other medical authority showing:
 15 (1) treatment for the injury at the time of the absence; and
 16 (2) a connection between the injury and the employee's
 17 emergency firefighting or other emergency response activities.
 18 (d) To the extent required by federal or state law, information
 19 obtained under subsection (c) by an immediate supervisor must be:
 20 (1) retained in a separate medical file created for the
 21 employee; and
 22 (2) treated as a confidential medical record.
 23 (e) The state personnel department shall administer an absence
 24 from employment under subsection (b) in a manner consistent with
 25 the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601
 26 et seq.), as amended and in effect on January 1, 2009.
 27 SECTION 2. IC 36-8-12-10.5, AS AMENDED BY P.L.43-2005,
 28 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2009]: Sec. 10.5. (a) This section does not apply to an
 30 employee of the state subject to IC 4-15-10-7.
 31 (b) This section applies to an employee of a political subdivision
 32 who:
 33 (1) is a volunteer firefighter or volunteer member; and
 34 (2) has notified the employee's employer in writing that the
 35 employee is a volunteer firefighter or volunteer member.
 36 (c) The political subdivision employer may not discipline an
 37 employee:
 38 (1) for being absent from employment by reason of responding to
 39 a fire or emergency call that was received before the time that the
 40 employee was to report to employment; or
 41 (2) for leaving the employee's duty station to respond to a fire or
 42 an emergency call if the employee has secured authorization from

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1 the employee's supervisor to leave the duty station in response to
2 a fire or an emergency call received after the employee has
3 reported to work; or

4 **(3) for:**
5 **(A) an injury; or**
6 **(B) an absence from work because of an injury;**
7 **that occurs while the employee is engaged in emergency**
8 **firefighting or other emergency response.**

9 **However, for each instance of emergency firefighting activity or**
10 **other emergency response that results in an injury to an employee,**
11 **subdivision (3) applies only to the period of the employee's absence**
12 **from work that does not exceed six (6) months from the date of the**
13 **injury.**

14 (d) The political subdivision employer may require an employee
15 who has been absent from employment as set forth in subsection ~~(c)(1)~~
16 ~~or (c)(2)~~ (c) to present a written statement from the fire chief or other
17 officer in charge of the volunteer fire department, or officer in charge
18 of the volunteer emergency medical services association, at the time of
19 the absence **or injury** indicating that the employee was engaged in
20 emergency firefighting or emergency activity at the time of the absence
21 **or injury.**

22 (e) **The political subdivision employer may require an employee**
23 **who is injured or absent from work as described in subsection**
24 **(c)(3) to provide evidence from a physician or other medical**
25 **authority showing:**

- 26 (1) **treatment for the injury at the time of the absence; and**
- 27 (2) **a connection between the injury and the employee's**
28 **emergency firefighting or other emergency response activities.**

29 (f) **To the extent required by federal or state law, information**
30 **obtained under subsection (e) by a political subdivision employer**
31 **must be:**

- 32 (1) **retained in a separate medical file created for the**
33 **employee; and**
- 34 (2) **treated as a confidential medical record.**

35 ~~(c)~~ (g) An employee who is disciplined by the employer in violation
36 of subsection (c) may bring a civil action against the employer in the
37 county of employment. In the action, the employee may seek the
38 following:

- 39 (1) Payment of back wages.
- 40 (2) Reinstatement to the employee's former position.
- 41 (3) Fringe benefits wrongly denied or withdrawn.
- 42 (4) Seniority rights wrongly denied or withdrawn.

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1 An action brought under this subsection must be filed within one (1)
2 year after the date of the disciplinary action.

3 (f) (h) A public servant who permits or authorizes an employee of
4 a political subdivision under the supervision of the public servant to be
5 absent from employment as set forth in subsection (c) is not considered
6 to have committed a violation of IC 35-44-2-4(b).

7 SECTION 3. IC 36-8-12-10.7, AS ADDED BY P.L.43-2005,
8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2009]: Sec. 10.7. (a) This section applies to an employee of
10 a private employer who:

- 11 (1) is a volunteer firefighter or volunteer member; and
- 12 (2) has notified the employee's employer in writing that the
- 13 employee is a volunteer firefighter or volunteer member.

14 (b) Except as provided in subsection (c), the employer may not
15 discipline an employee:

- 16 (1) for being absent from employment by reason of responding to
- 17 a fire or emergency call that was received before the time that the
- 18 employee was to report to employment; or
- 19 (2) for leaving the employee's duty station to respond to a fire or
- 20 emergency call if the employee has secured authorization from
- 21 the employee's supervisor to leave the duty station in response to
- 22 a fire or an emergency call received after the employee has
- 23 reported to work; or

- 24 (3) for:
 - 25 (A) an injury; or
 - 26 (B) an absence from work because of an injury;
 - 27 that occurs while the employee is engaged in emergency
 - 28 firefighting or other emergency response.

29 **However, for each instance of emergency firefighting activity or**
30 **other emergency response that results in an injury to an employee,**
31 **subdivision (3) applies only to the period of the employee's absence**
32 **from work that does not exceed six (6) months from the date of the**
33 **injury.**

34 (c) After the employer has received the notice required under
35 subsection (a)(2), the employer may reject the notification from the
36 employee on the grounds that the employee is an essential employee to
37 the employer. If the employer has rejected the notification of the
38 employee:

- 39 (1) subsection (b) does not apply to the employee; and
- 40 (2) the employee must promptly notify the:
 - 41 (A) fire chief or other officer in charge of the volunteer fire
 - 42 department; or

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1 (B) the officer in charge of the volunteer emergency medical
 2 services association;
 3 of the rejection of the notice of the employee who is a volunteer
 4 firefighter or a volunteer member.

5 (d) The employer may require an employee who has been absent
 6 from employment as set forth in subsection (b) to present a written
 7 statement from the fire chief or other officer in charge of the volunteer
 8 fire department, or officer in charge of the emergency medical services
 9 association, at the time of the absence **or injury** indicating that the
 10 employee was engaged in emergency firefighting or emergency activity
 11 at the time of the absence **or injury**.

12 (e) **The employer may require an employee who is injured or**
 13 **absent from work as described in subsection (b)(3) to provide**
 14 **evidence from a physician or other medical authority showing:**

- 15 (1) **treatment for the injury at the time of the absence; and**
 16 (2) **a connection between the injury and the employee's**
 17 **emergency firefighting or other emergency response activities.**

18 (f) **To the extent required by federal or state law, information**
 19 **obtained under subsection (e) by an employer must be:**

- 20 (1) **retained in a separate medical file created for the**
 21 **employee; and**
 22 (2) **treated as a confidential medical record.**

23 SECTION 4. IC 36-8-12-10.9, AS ADDED BY P.L.43-2005,
 24 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2009]: Sec. 10.9. (a) The employer may require an employee
 26 who will be absent from employment as set forth in:

- 27 (1) section 10.5(c)(1); or
 28 (2) section 10.7(b)(1);

29 of this chapter to notify the employer before the scheduled start time
 30 for the absence from employment to be excused by the employer.

31 (b) The employer is not required to pay salary or wages to an
 32 employee who has been absent from employment as set forth in section
 33 10.5(c) or 10.7(b) of this chapter for the time away from the employee's
 34 duty station. The employee may seek remuneration for the absence
 35 from employment by the use of:

- 36 (1) vacation leave;
 37 (2) personal time; ~~or~~
 38 (3) compensatory time off; **or**
 39 (4) **in the case of an absence from employment as set forth in**
 40 **section 10.5(c)(3) or 10.7(b)(3) of this chapter, sick leave.**

41 (c) **An employer shall administer an absence from employment**
 42 **as set forth in section 10.5(c)(3) or 10.7(b)(3) in a manner**

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1 **consistent with the federal Family and Medical Leave Act of 1993**
2 **(29 U.S.C. 2601 et seq.), as amended and in effect on January 1,**
3 **2009.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Veterans Affairs and Public Safety, to which was referred House Bill 1205, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

TINCHER, Chair

Committee Vote: yeas 8, nays 0.

 COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1205, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 7, after "(c)." insert "**However, for each instance of emergency firefighting activity or other emergency response that results in an injury to an employee, this subsection applies only to the period of the employee's absence from work that does not exceed six (6) months from the date of the injury.**".

Page 2, between lines 18 and 19, begin a new paragraph and insert: "**(e) The state personnel department shall administer an absence from employment under subsection (b) in a manner consistent with the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), as amended and in effect on January 1, 2009.**".

Page 2, after line 42, begin a new line blocked left and insert "**However, for each instance of emergency firefighting activity or other emergency response that results in an injury to an employee, subdivision (3) applies only to the period of the employee's absence from work that does not exceed six (6) months from the date of the injury.**".

Page 4, between lines 15 and 16, begin a new line blocked left and insert "**However, for each instance of emergency firefighting activity or other emergency response that results in an injury to an employee, subdivision (3) applies only to the period of the employee's absence from work that does not exceed six (6) months from the date of the injury.**".

Page 5, after line 22, begin a new paragraph and insert:

"**(c) An employer shall administer an absence from employment as set forth in section 10.5(c)(3) or 10.7(b)(3) in a manner**

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consistent with the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), as amended and in effect on January 1, 2009."

and when so amended that said bill do pass.

(Reference is to HB 1205 as printed February 17, 2009.)

KRUSE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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