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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 61 Session of 2015

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INTRODUCED BY KNOWLES, BARRAR, MILLARD, BOBACK, CORBIN, DUNBAR, CAUSER, BIZZARRO, MALONEY, KAUFFMAN, DAY, READSHAW, SANTORA, TALLMAN, WATSON, GOODMAN, DEASY, MARSICO, DeLUCA, COHEN, MURT, GABLER, A. HARRIS, GINGRICH, M. K. KELLER, ELLIS, SAYLOR, ZIMMERMAN, DAVIS, HEFFLEY, REESE, KORTZ, FARRY, FEE, TOOHIL AND GILLEN, JANUARY 21, 2015

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REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, JANUARY 21, 2015

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AN ACT

1 Amending Title 35 (Health and Safety) of the Pennsylvania  
2 Consolidated Statutes, further providing for employment  
3 sanctions; and providing for a volunteer emergency responders  
4 employer tax credit.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Subchapter C of Chapter 74 of Title 35 of the  
8 Pennsylvania Consolidated Statutes is repealed:

9 [SUBCHAPTER C

10 EMPLOYMENT SANCTIONS

11 Sec.

12 7421. Scope of subchapter.

13 7422. Definitions.

14 7423. Prohibition on termination and discipline.

15 7424. Prohibition on discrimination.

16 7425. Lost time.

1 7426. Statements.

2 7427. Violations.

3 § 7421. Scope of subchapter.

4 This subchapter relates to employment sanctions.

5 § 7422. Definitions.

6 The following words and phrases when used in this subchapter  
7 shall have the meanings given to them in this section unless the  
8 context clearly indicates otherwise:

9 "Discipline." The taking of an action against an employee  
10 which adversely affects his regular pay to an extent greater  
11 than permitted by section 7425 (relating to lost time), his job  
12 status, his opportunity for promotion or his right to any  
13 benefit granted by the employer to other similarly situated  
14 employees.

15 "Discriminate." To discharge or to discipline in a manner  
16 inconsistent with the employer's treatment of other similarly  
17 situated employees who are injured in the course of their  
18 employment or related activities.

19 "Employer." An individual, partnership, association,  
20 corporation, business trust or a person or group of persons  
21 acting directly or indirectly in the interest of an employer in  
22 relation to any employee.

23 "Line of duty." Going to, coming from or during fire  
24 prevention and safety activities which includes fire prevention,  
25 first aid, rescue and salvage, ambulance service, fire police  
26 work, assistance at accidents, control of crowds both on the  
27 fire grounds and at occasions of public or general assembly,  
28 animal rescue, abatement of conditions due to storm, flood or  
29 general peril, abatement or removal of hazards to safety and  
30 other activities as are commonly undertaken by fire companies,

1 ambulance services or rescue squads or their affiliated  
2 organizations.

3 § 7423. Prohibition on termination and discipline.

4 No employer shall terminate or discipline an employee who is  
5 a volunteer fireman, a volunteer member of the fire police or a  
6 volunteer member of an ambulance service or rescue squad and, in  
7 the line of duty, has responded to a call prior to the time he  
8 was due to report for work resulting in a loss of time from his  
9 employment.

10 § 7424. Prohibition on discrimination.

11 No employer shall discriminate against an employee because  
12 the employee has been injured in the line of duty as a volunteer  
13 fireman, a volunteer member of the fire police or a volunteer  
14 member of an ambulance service or rescue squad, nor shall an  
15 employer discriminate against an employee injured in the line of  
16 duty as a volunteer fireman, a volunteer member of the fire  
17 police or a volunteer member of an ambulance service or rescue  
18 squad who subsequently returns to work after receiving workers'  
19 compensation benefits under the act of June 2, 1915 (P.L.736,  
20 No.338), known as the Workers' Compensation Act.

21 § 7425. Lost time.

22 Time lost from employment as provided in section 7423  
23 (relating to prohibition on termination and discipline) may be  
24 charged to the regular pay of the employee.

25 § 7426. Statements.

26 An employee losing time as provided in section 7423 (relating  
27 to prohibition on termination and discipline) shall supply his  
28 employer with a statement from the chief executive officer of  
29 his volunteer fire company, ambulance service or rescue squad or  
30 its affiliated organization stating that he responded to a call

1 and the time of the call.

2 § 7427. Violations.

3 (a) Employers.--An employer who willfully and knowingly  
4 violates this subchapter shall be required to revoke a  
5 disciplinary action and any penalty attached thereto or to  
6 reinstate such employee to his former position and shall be  
7 required to pay the employee all lost wages and benefits for the  
8 period between termination and reinstatement and reasonable  
9 attorney fees incurred in an action to recover lost wages and  
10 benefits.

11 (b) Statute of limitations.--An action to enforce this  
12 subchapter shall be commenced within two years of the date of  
13 violation, and the action shall be commenced in the court of  
14 common pleas of the county in which the employer is located.]

15 Section 2. Title 35 is amended by adding a chapter to read:

16 CHAPTER 74A

17 VOLUNTEER EMERGENCY RESPONDERS EMPLOYER TAX CREDIT

18 Subchapter

19 A. Preliminary Provisions

20 B. Private Sector Incentives

21 C. Public Sector Incentives

22 SUBCHAPTER A

23 PRELIMINARY PROVISIONS

24 Sec.

25 74A01. Scope of chapter.

26 74A02. Legislative findings and declaration.

27 74A03. Definitions.

28 74A04. Employment discrimination prohibited.

29 § 74A01. Scope of chapter.

30 This chapter relates to volunteer emergency responders

1 employer tax credit.

2 § 74A02. Legislative findings and declaration.

3 (a) Findings.--The General Assembly finds as follows:

4 (1) More than 85% of all emergency service personnel in  
5 this Commonwealth are volunteers.

6 (2) Volunteer emergency service personnel have saved  
7 many lives and millions of tax dollars for the citizens of  
8 this Commonwealth.

9 (3) During the past decade, the ranks of volunteer  
10 emergency service personnel have decreased by more than 10%.

11 (4) The decrease in manpower within this Commonwealth's  
12 volunteer emergency services, coupled with increasing  
13 conflicts with the volunteer's professional duties, has  
14 resulted in:

15 (i) Manpower response shortages to emergency calls.

16 (ii) A decrease in the number of volunteers  
17 permitted and able to participate in necessary, and  
18 sometimes required, emergency service training.

19 (iii) A greater risk to those who are permitted to  
20 respond to an emergency call.

21 (b) Declaration.--The General Assembly declares as follows:

22 (1) It is vital to provide new ways to attract and  
23 retain volunteer emergency service personnel without placing  
24 an undue burden on taxpayers or businesses throughout this  
25 Commonwealth.

26 (2) It is in the public interest for the General  
27 Assembly to:

28 (i) Encourage private employers to permit an  
29 employee-volunteer to leave work in response to an  
30 emergency call in the employee's capacity as a member of

1 a volunteer emergency service organization, with the  
2 option of pay, and no loss of time or efficiency rating,  
3 by providing a tax credit to the employer for the period  
4 during which the employee-volunteer is absent from work  
5 because of the employee-volunteer's response to an  
6 emergency call, provided that the employee is in  
7 compliance with a prearranged, preapproved release policy  
8 of the employer.

9 (ii) Encourage private employers to permit an  
10 employee-volunteer to take a paid leave of absence at the  
11 request of the chief executive officer of the volunteer  
12 emergency service organization to which the employee-  
13 volunteer belongs in order to participate in emergency  
14 service training by providing a tax credit to the  
15 employer for a period of no more than five days per year  
16 during which the employee-volunteer is participating in  
17 emergency service training, provided the employee is in  
18 compliance with a prearranged, preapproved release policy  
19 of the employer.

20 (iii) Authorize the Commonwealth and its political  
21 subdivisions to permit an employee-volunteer to leave  
22 work in response to an emergency call, with or without  
23 pay, and no loss of time or efficiency rating.

24 § 74A03. Definitions.

25 The following words and phrases when used in this chapter  
26 shall have the meanings given to them in this section unless the  
27 context clearly indicates otherwise:

28 "Commonwealth." A department, agency, board, commission or  
29 instrumentality of State government.

30 "Discipline." To take any action against an employee which

1 adversely affects the employee's regular pay to an extent not  
2 provided for in this chapter, the employee's job status or  
3 opportunity for promotion or the employee's right to any benefit  
4 granted by the employer to other similarly situated employees.

5 "Discriminate." To discharge or to discipline in a manner  
6 inconsistent with the employer's treatment of other similarly  
7 situated employees who are injured in the course of their  
8 employment or related activities.

9 "Department." The Department of Community and Economic  
10 Development of the Commonwealth.

11 "Employee-volunteer." A member of a volunteer emergency  
12 service organization who is in the employ of the Commonwealth, a  
13 political subdivision or a private employer.

14 "Employer." An individual, partnership, association,  
15 corporation, business trust or any person or group of persons  
16 who controls and directs a worker under an express or implied  
17 contract of hire and who pays the worker's salary or wages. The  
18 term shall include the Commonwealth and its political  
19 subdivisions.

20 "Line of duty." Going to, coming from or during fire  
21 prevention and safety activities, which include fire prevention,  
22 first aid, rescue and salvage, ambulance service, fire police  
23 work, assistance at accidents, control of crowds both on the  
24 fire grounds and at occasions of public or general assembly,  
25 animal rescue, abatement of conditions due to storm, flood or  
26 general peril, abatement or removal of hazards to safety and  
27 other activities as are commonly undertaken by fire companies,  
28 ambulance services or rescue squads or their affiliated  
29 organizations.

30 "Pass-through entity." A partnership as defined in section

1 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the  
2 Tax Reform Code of 1971, or a Pennsylvania S corporation as  
3 defined in section 301(n.1) of the Tax Reform Code of 1971.

4 "Political subdivision." A county, city, borough,  
5 incorporated town, township, home rule municipality, school  
6 district or municipal authority.

7 "Qualified tax liability." The liability for taxes imposed  
8 under Article III, IV, VI, VII, VIII, IX or XV of the act of  
9 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
10 1971. The term shall not include a tax withheld by an employer  
11 from an employee under Article III of the Tax Reform Code of  
12 1971.

13 "Tax credit." The employee-volunteer emergency response tax  
14 credit established by this article.

15 "Taxpayer." An entity that is subject to a tax imposed under  
16 Article III, IV, VI, VII, VIII, IX or XV of the act of March 4,  
17 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The  
18 term shall not include a tax withheld by an employer from an  
19 employee under Article III of the Tax Reform Code of 1971.

20 "Volunteer ambulance service." A nonprofit chartered  
21 corporation, association or organization located in this  
22 Commonwealth, which is licensed by the Department of Health, is  
23 not associated or affiliated with a hospital and which is  
24 regularly engaged in the provision of emergency medical  
25 services, including basic life support or advanced life support  
26 services and advanced life support squads as defined in 28 Pa.  
27 Code § 1005.1 (relating to general provisions). The term shall  
28 not include a corporation, association or organization that is  
29 primarily engaged in the operation of invalid coaches which are  
30 intended for the routine transport of persons who are

1 convalescent or otherwise nonambulatory and do not ordinarily  
2 require emergency medical treatment while in transit.

3 "Volunteer emergency service organization." An organization  
4 which is a volunteer fire company, volunteer ambulance service,  
5 volunteer rescue company or volunteer hazardous material  
6 response team.

7 "Volunteer fire company." A nonprofit chartered corporation,  
8 association or organization located in this Commonwealth which  
9 provides fire protection or rescue services and which may offer  
10 other voluntary emergency services within this Commonwealth.  
11 Voluntary emergency services provided by a volunteer fire  
12 company may include voluntary ambulance and voluntary rescue  
13 services.

14 "Volunteer hazardous material response team." A nonprofit  
15 chartered corporation, association or organization located in  
16 this Commonwealth whose members are certified and organized to  
17 provide emergency response services to mitigate actual or  
18 potential immediate threats to public health and the environment  
19 in response to the release or threat of a release of a hazardous  
20 material. The term includes teams certified to perform  
21 stabilization actions needed to remove threats to public health  
22 and the environment from hazardous material releases.

23 "Volunteer rescue company." A nonprofit chartered  
24 corporation, association or organization located in this  
25 Commonwealth which provides rescue service in this Commonwealth.  
26 § 74A04. Employment discrimination prohibited.

27 (a) General rule.--It is unlawful for an employer to refuse  
28 to hire or employ an individual because the individual is a  
29 member of a volunteer emergency service organization.

30 (b) Prohibition on discipline and discrimination for time

1 lost.--

2 (1) It is unlawful for an employer to discipline or  
3 discriminate or to discharge from employment an employee-  
4 volunteer with respect to base salary, hire, tenure, terms,  
5 conditions or privileges of employment for the reason that  
6 the employee-volunteer responded to an emergency call prior  
7 to the time the employee-volunteer was due to report to work,  
8 resulting in loss of time from employment, if the employee-  
9 volunteer satisfies the requirements of paragraph (2).

10 (2) An employee-volunteer who loses time for reasons  
11 specified in this section shall immediately upon arriving at  
12 work inform his or her employer or immediate supervisor that  
13 the employee-volunteer has been called to respond to an  
14 emergency. The employee-volunteer losing time as provided for  
15 under this chapter shall supply his or her employer with a  
16 statement from the chief executive officer of his or her  
17 volunteer emergency service organization stating that he or  
18 she responded to a call and the time of the call.

19 (3) If an employee-volunteer is employed by a private  
20 employer, any time lost from employment may be charged  
21 against the employee-volunteer's regular salary or wages or  
22 the private employer may apply for the tax credits provided  
23 in section 74A11(a) (relating to volunteer responders  
24 employer tax credit).

25 (4) If an employee-volunteer is employed by the  
26 Commonwealth or a political subdivision, payment of salary or  
27 wages for time lost from employment shall be based on a  
28 policy adopted by the Commonwealth or the political  
29 subdivision.

30 (c) Discrimination because of injury.--It is unlawful for an

1 employer to discipline or to discharge from employment or to  
2 otherwise discriminate against an employee-volunteer with  
3 respect to compensation, hire, tenure, terms, conditions or  
4 privilege of employment because the employee-volunteer has been  
5 injured in the line of duty and has subsequently returned to  
6 work, regardless of whether the employee-volunteer received any  
7 workers' compensation benefits under the act of June 2, 1915  
8 (P.L.736, No.338), known as the Workers' Compensation Act.

9 (d) Legal action.--An employer who willfully and knowingly  
10 violates the provisions of this chapter shall:

11 (1) Revoke any disciplinary action and any penalty  
12 imposed against an employee-volunteer or reinstate the  
13 employee-volunteer to his or her former position.

14 (2) Pay to the employee-volunteer all lost wages and  
15 benefits for the period between termination and reinstatement  
16 and any reasonable attorney fees which are incurred in an  
17 action to recover lost wages and benefits.

18 (e) Period of limitations.--An action to enforce the  
19 provisions of this chapter shall be commenced within a period of  
20 two years from the date of violation, and the action shall be  
21 commenced in the court of common pleas of the county in which  
22 the employer is located.

23 SUBCHAPTER B

24 PRIVATE SECTOR INCENTIVES

25 Sec.

26 74A11. Volunteer responders employer tax credit.

27 74A12. Application for tax credit.

28 74A13. Review and approval.

29 74A14. Limitations.

30 74A15. Shareholder, owner or member pass-through.

1 74A16. Guidelines.

2 74A17. Applicability.

3 74A18. Reports.

4 § 74A11. Volunteer responders employer tax credit.

5 (a) Eligibility.--A taxpayer shall be eligible to receive a  
6 tax credit against any qualified tax liability if the taxpayer  
7 permits an employee-volunteer to take a paid leave of absence  
8 for any of the following:

9 (1) In response to an emergency call or to respond to an  
10 emergency call prior to the start of work.

11 (2) At the written request of the chief executive  
12 officer of the volunteer emergency service organization in  
13 order to participate as a student or instructor in training  
14 appropriate to the volunteer emergency services organization.

15 (b) Official notice required.--

16 (1) In order to qualify for the paid leave of absence as  
17 provided for in subsection (a)(1), the employee-volunteer  
18 shall provide notice that the employee-volunteer has been  
19 called to respond to an emergency or provide notice that he  
20 or she responded to a call and the time of the call and  
21 request that a leave of absence be granted.

22 (2) In order to qualify for the paid leave of absence as  
23 provided for in subsection (a)(2), the employee-volunteer  
24 shall provide the employer, within 14 days of the scheduled  
25 training, a signed statement from the chief executive officer  
26 of the volunteer emergency service organization that includes  
27 the reason and amount of time needed for the employee-  
28 volunteer to complete the training along with a request that  
29 a leave of absence be granted.

30 § 74A12. Application for tax credit.

1 A taxpayer may apply to the department for a tax credit  
2 certificate under this section. The application must be on a  
3 form required by the department and shall include all of the  
4 following information:

5 (1) The name and address of the taxpayer.

6 (2) Documentation of the following for each eligible  
7 employee-volunteer in which a tax credit is being claimed:

8 (i) Name and address of the employee-volunteer.

9 (ii) Total wages paid by the taxpayer to the  
10 employee-volunteer.

11 (iii) Wages paid by the taxpayer to the employee-  
12 volunteer paid under section 74A11(a) (relating to  
13 volunteer responders employer tax credit).

14 (iv) Documentation as required by section 74A11(a)  
15 (2) or (b).

16 (3) Any other information required by the department.

17 § 74A13. Review and approval.

18 (a) Duties.--The department shall do all of the following:

19 (1) Review and approve applications according to the  
20 order applications are received and the availability of tax  
21 credits.

22 (2) Notify the applicant within 30 days of receipt of  
23 the application of its determination.

24 (b) Issuance.--If an application is approved, the department  
25 shall issue the taxpayer a tax credit certificate within 15 days  
26 of the approval.

27 § 74A14. Limitations.

28 (a) Amount.--A tax credit certificate issued under this  
29 section may not exceed 50% of a taxpayer's qualified tax  
30 liability.

1 (b) Prohibition.--In granting tax credits under this  
2 chapter, the department may not do any of the following:

3 (1) Grant more than \$5,000,000 in tax credit  
4 certificates in any fiscal year.

5 (2) Grant more than \$10,000 in tax credit certificates  
6 to a single taxpayer in any fiscal year.

7 (c) Unused credits.--A taxpayer shall not be entitled to  
8 carry forward, carry back or obtain a refund of any unused tax  
9 credit.

10 (d) Sale or reassignment.--A tax credit may not be sold or  
11 reassigned.

12 § 74A15. Shareholder, owner or member pass-through.

13 (a) Shareholder entitlement.--If a Pennsylvania S  
14 corporation does not have an eligible tax liability against  
15 which the tax credit may be applied, a shareholder of the  
16 Pennsylvania S corporation shall be entitled to a tax credit  
17 equal to the tax credit determined for the Pennsylvania S  
18 corporation for the taxable year multiplied by the percentage of  
19 the Pennsylvania S corporation's distributive income to which  
20 the shareholder is entitled.

21 (b) Pass-through entity entitlement.--If a pass-through  
22 entity other than a Pennsylvania S corporation does not have tax  
23 liability against which the tax credit may be applied, an owner  
24 or member of the pass-through entity shall be entitled to a tax  
25 credit equal to the tax credit determined for the pass-through  
26 entity for the taxable year multiplied by the percentage of the  
27 pass-through entity's distributive income to which the owner or  
28 member is entitled.

29 (c) Additional credit.--

30 (1) Except as provided under paragraph (2), the tax

1 credit provided under subsection (a) or (b) shall be in  
2 addition to any other tax credit to which a shareholder,  
3 owner or member of a pass-through entity is otherwise  
4 entitled under this chapter.

5 (2) A pass-through entity and a shareholder, owner or  
6 member of a pass-through entity shall not claim a tax credit  
7 under this chapter for the same employee-volunteer.

8 § 74A16. Guidelines.

9 The department, in conjunction with the Department of  
10 Revenue, shall develop written guidelines necessary for the  
11 implementation and administration of this chapter. The  
12 guidelines shall be posted on the department's publicly  
13 accessible Internet website.

14 § 74A17. Applicability.

15 This chapter shall apply to taxable years beginning after  
16 December 31, 2015.

17 § 74A18. Reports.

18 No later than June 1, 2017, and each June 1 thereafter, the  
19 department shall submit a report on the effectiveness of the tax  
20 credits granted under this chapter. The report shall include the  
21 names of taxpayers who were issued tax credits as of the date of  
22 the report. The report may include recommendations for changes  
23 in the calculation or administration of the tax credits and  
24 other information as the department deems appropriate. The  
25 report shall be submitted to all of the following:

26 (1) The chairman and minority chairman of the  
27 Appropriations Committee of the Senate.

28 (2) The chairman and minority chairman of the Finance  
29 Committee of the Senate.

30 (3) The chairman and minority chairman of the

1 Appropriations Committee of the House of Representatives.

2 (4) The chairman and the minority chairman of the  
3 Finance Committee of the House of Representatives.

4 SUBCHAPTER C

5 PUBLIC SECTOR INCENTIVES

6 Sec.

7 74A21. Emergency response leave of absence.

8 § 74A21. Emergency response leave of absence.

9 (a) Optional paid leave.--An officer or employee of the  
10 Commonwealth or a political subdivision who is an employee-  
11 volunteer may be entitled to leave work in response to an  
12 emergency call without loss of pay, time or efficiency, subject  
13 to the terms and conditions of a policy adopted by the  
14 Commonwealth or political subdivision.

15 (b) Official notice required.--In order to qualify for the  
16 paid leave as provided for in subsection (a), the employee-  
17 volunteer shall:

18 (1) Inform his or her employer or immediate supervisor  
19 that the employee-volunteer has been called to respond to an  
20 emergency and request that a leave of absence be granted.

21 (2) Supply his or her employer with a statement from the  
22 chief executive officer of the emergency service organization  
23 stating that he or she responded to a call and the time of  
24 the call.

25 Section 3. This act shall take effect in 60 days.