

## Opinion No. 45-4829

December 21, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. F. G. Healy State Highway Engineer Santa Fe, New Mexico. Attention /- Mr. L. D. Wilson

{\*167} In your letter of December 19, 1945 you request an interpretation of Chap. 24, Laws 1945, relative to re-employment of former employees who entered the armed services. Your question involves employees who resigned several weeks, or a month, prior to the time of entering military service. You inquire whether such employees come within the provisions of the act.

Sec. 57-701 of the 1945 Supplement to the 1941 Compilation provides that any person who since July 1, 1940 has left, or leaves a position, other than a temporary position, in the employ of an employer, to enter the armed forces of the United States, and who serves one year or more and is honorably discharged, is entitled to be re-employed by the State of New Mexico, or any political subdivision thereof, state institution, county or municipality, in the same position, or a position of like seniority, status and pay.

If an employee left your employment a reasonable time before he was inducted or entered the armed services and did not seek and obtain other employment in the meantime, I am of the opinion that he comes within the provisions of the act and is entitled to be re-employed.

In the case entitled: **Murphy vs. Chrysler Corp.**, 11 N. W. (2) 261, 306 Mich. 610, decided in 1943, involving an interpretation of the federal act, being Title 50, U. S. C. A., Appen. 308, the Court held that when an employee resigned to enter the armed services, the employer was no longer liable for payment of premiums on his group insurance, and such insurance did not cover said employee during the interim between his termination of employment and his induction into the armed services. However, the court ends the opinion in this language:

"This decision shall not be construed as affecting the rights and employment status, under the above quoted provisions of the Selective Training Service Act, of an employee who leaves a position; is inducted into the armed forces; receives a certificate of the completion of his training and service; and makes application for re-employment."

Each case may have to be determined from the facts in the particular case; but, generally speaking, an employee who resigns for a short period of time before induction in order to get his business affairs in order, or for other legitimate purposes, would be entitled to re-employment under the above mentioned act.