

Serial Number 1940/291.



**THE OCCUPATIONAL RE-ESTABLISHMENT EMERGENCY
REGULATIONS 1940.**

GALWAY, Governor-General.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this 5th day of
November, 1940.

Present :

THE RIGHT HON. P. FRASER PRESIDING IN COUNCIL.

PURSUANT to the Emergency Regulations Act, 1939, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS.

1. These regulations may be cited as the Occupational Re-establishment Emergency Regulations 1940.

2. In these regulations, unless the context otherwise requires,—

“Employer”, in relation to a serving employee, includes every person for the time being carrying on the undertaking in which the serving employee was employed immediately before the commencement of his military service or carrying on any undertaking with which that undertaking has at any time since the commencement of the serving employee's military service been amalgamated or in which that undertaking was immediately before the commencement of the serving employee's military service comprised :

“Military service” means continuous whole-time service as a member of any of His Majesty's Naval, Military, or Air Forces, whether in New Zealand or elsewhere :

“Serving employee” means a person who upon leaving his civil employment commenced or hereafter commences to render military service at any time after the 1st day of September, 1939, whether before or after the coming into force of these regulations.

3. The Occupational Re-establishment Emergency Regulations 1939* are hereby revoked.

* Statutory Regulations 1939, Serial number 1939/213, page 866.

4. These regulations shall be read subject to the Suspension of Apprenticeship Emergency Regulations 1939.*

5. It shall be the duty of every employer by whom or by the predecessor of whom in the relation of employer a serving employee was employed for at least four weeks immediately prior to his offering himself for military service or to his being called up for military service to reinstate him in his employment at the termination of his military service or during any period of leave without pay from his military service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had his employment been continuous, including the benefit of conditions providing for increments in remuneration, such benefits to attach so as to entitle him to remuneration at the time of reinstatement at the rate which he would then have received had his employment been continuous up to that time, and on such reinstatement the employer shall not dismiss such employee within six months thereafter.

6. Any employer who fails to comply with the provisions of the last preceding regulation commits an offence, and the Court may, in addition to any other penalty which may be imposed, order such employer to pay to the employee whom he has failed to reinstate or whom he has dismissed in contravention of these regulations a sum not exceeding an amount equal to twelve weeks' remuneration or remuneration for the period of leave without pay from military service, at the rate at which remuneration was last payable to that employee by such employer or by the employer's predecessor in the relation of employer.

7. In any proceedings for an offence against Regulation 5 hereof it shall be a defence to the employer if he proves that the employee formerly employed did not, before the expiration of one month after the termination in New Zealand of his military service, or before the expiration of six months after the termination overseas of his military service, or during any period of leave without pay from military service, as the case may be, apply to the employer for reinstatement, or that, having been offered reinstatement by the employer, he failed without reasonable excuse to present himself for employment at the time and place notified to him by the employer, or that by reason of a change of circumstances (other than the engagement of some other person to replace him)—

(a) It was not reasonably practicable to reinstate him; or

(b) His reinstatement in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not rendered military service was impracticable, and that the employer has offered to reinstate him in the most favourable occupation and under the most favourable conditions reasonably practicable, or that the dismissal of such person was for a reason not connected with the obligations imposed on the employer under Regulation 5 hereof.

8. No person shall terminate the employment of any employee either for the purpose of evading or attempting to evade any obligation imposed on him under these regulations or in the expectancy of the employee's rendering military service or by reason of the fact that the employee has been accepted for military service.

* Statutory Regulations 1939, Serial number 1939/154, page 693.

9. In any proceedings for a breach of the last preceding regulation if the Court is of opinion that there is reasonable cause for belief that the employment was terminated in breach of the last preceding regulation it shall be deemed to have been so terminated unless the employer proves that such termination was for a reason not connected with the obligations imposed on the employer under these regulations or not connected with an expectancy of the employee's rendering military service or not connected with the fact that the employee has been accepted for military service.

10. Where a contract of service is in force between an employer and an employee when or immediately before the employee commences to render military service, then—

(a) If an arrangement has been or is entered into between the parties to the contract, or if the contract makes provision for any of the following purposes, that is to say—

(i) For dealing with all or any of the obligations of the parties thereunder in respect of the period of military service ; or

(ii) For the reckoning of the period of contractual service in relation to the period of military service ; or

(iii) For the adaptation of the terms of the contract in relation to any extension of the period of contractual service,—

the provisions contained in paragraph (b) hereof shall apply only in so far as they are not inconsistent with the arrangement or provision so made as aforesaid, but any such arrangement or provision shall be void so far as it conflicts with Regulation 5 hereof.

(b) If no such arrangement has been or is entered into or no provision made by the contract, or to the extent that any such arrangement or provision does not deal with the obligations hereinafter specified or with the reckoning or the adaptation referred to in subparagraphs (ii) and (iii) of paragraph (a) of this regulation, then, subject always to Regulation 5 hereof,—

(i) The parties to the contract shall in respect of the period of military service be relieved of all their obligations under the contract which relate to the following matters—that is to say, the payment of remuneration, the performance of work, or the provision of work, maintenance (including medical or surgical treatment), or instruction :

(ii) The said obligations shall (unless otherwise dealt with by any arrangement or provision as aforesaid) be of full effect as from the date upon which the employee resumes his work, and where the contract is for a period specified or ascertainable from it the period of contractual service thereunder shall be extended by a period equal to the period of military service or by a period equal to the period of the contract unexpired at the date of commencement of military service if that period be less than the period of military service :

(iii) A period of service (if any) remaining to be served under the contract, apart from any period of extension, shall be treated as beginning immediately on the resumption of work, and any period of extension shall be treated as the concluding period of the contract, and the terms of the contract shall apply to that period of extension accordingly.

11. Nothing in these regulations shall confer upon any employer authority to make any contract or arrangement with reference to the period of military service which he is not authorized to make under any power already possessed by him.

12. Where employees have been employed successively in a particular employment to replace employees who have successively commenced to render military service the right to reinstatement in that employment conferred by these regulations shall vest in such employees in the order in which they commenced to render military service, and when one such employee has been reinstated in pursuance of these regulations the right of his successors to reinstatement in that employment shall forthwith lapse.

13. Notwithstanding anything contained in any Act or regulations thereunder, or in any award or industrial agreement under the Industrial Conciliation and Arbitration Act, 1925, or in any other voluntary agreement affecting conditions of employment, where an employee is embodied in a part of the Defence Forces which have been called out for military training for purposes of defence in New Zealand, every period of such training actually undergone by the employee and involving absence from his regular employment shall up to a maximum of six months in any year of his civil employment be regarded as time served under his contract of service in civil employment :

Provided that in respect of any period of absence from employment during such training the parties to the contract shall be relieved of all their obligations under the contract which relate to the following matters—that is to say, the payment of remuneration, the performance of work, or the provision of work or instruction.

C. A. JEFFERY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.
Date of notification in *Gazette* : 7th day of November, 1940.
These regulations are administered in the Department of Labour.