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Title 38 - VETERANS' BENEFITS

PART III - READJUSTMENT AND RELATED BENEFITS

CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

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CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

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CODIFICATION

This chapter was originally added by Pub. L. 93–508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1594, and amended by Pub. L. 94–286, May 14, 1976, 90 Stat. 517; Pub. L. 94–502, Oct. 15, 1976, 90 Stat. 2383; Pub. L. 96–466, Oct. 17, 1980, 94 Stat. 2171; Pub. L. 97–295, Oct. 12, 1982, 96 Stat. 1287; Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3335; Pub. L. 99–576, Oct. 28, 1986, 100 Stat. 3248; Pub. L. 102–12, Mar. 18, 1991, 105 Stat. 34; Pub. L. 102–25, Apr. 6, 1991, 105 Stat. 75; Pub. L. 102–568, Oct. 29, 1992, 106 Stat. 4320. This chapter is shown here, however, as having been added by Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3150, without reference to those intervening amendments because of the general amendment of this chapter by Pub. L. 103–353.

A prior chapter 43 "Mustering-Out Payments", Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1222, 1223, consisted of sections 2101 to 2105, prior to repeal by Pub. L. 89–50, §1(a), June 24, 1965, 79 Stat. 173.

AMENDMENTS

2008—Pub. L. 110–389, title III, §§311(f)(2), 313(b), Oct. 10, 2008, 122 Stat. 4164, 4167, added items 4327 and 4335.

2004—Pub. L. 108–454, title II, §203(b), Dec. 10, 2004, 118 Stat. 3606, added item 4334.

1998—Pub. L. 105–368, title II, §212(b)(2), Nov. 11, 1998, 112 Stat. 3331, added item 4319.

SUBCHAPTER I—GENERAL

§4301. Purposes; sense of Congress

(a) The purposes of this chapter are—

(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3150; amended Pub. L. 104–275, title III, §311(1), Oct. 9, 1996, 110 Stat. 3333.)

PRIOR PROVISIONS

A prior section 4301, added Pub. L. 93–508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1594, §2021; amended Pub. L. 94–502, title VI, §608(1), (2), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 99–576, title III, §331, Oct. 28, 1986, 100 Stat. 3279; Pub. L. 102–12, §5(a), Mar. 18, 1991, 105 Stat. 36; Pub. L. 102–25, title III, §340(a), Apr. 6, 1991, 105 Stat. 92; renumbered §4301, Pub. L. 102–568, title V, §506(a), Oct. 29, 1992, 106 Stat. 4340, related to reemployment rights of persons inducted into the Armed Forces of the United States and benefits protected, prior to the general amendment of this chapter by Pub. L. 103–353. This section, as in effect on the day before Oct. 13, 1994, continues to apply to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, see section 8 of Pub. L. 103–353, as amended, set out as an Effective Date note below.

Another prior section 4301 was renumbered section 7601 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–275 struck out "under honorable conditions" after "upon their completion of such service".

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–275, title III, §313, Oct. 9, 1996, 110 Stat. 3336, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle B (§§311–313) of title III of Pub. L. 104–275, amending this section, sections 4303, 4311 to 4313, 4316 to 4318, and 4322 to 4326 of this title, and provisions set out as a note below] shall take effect as of October 13, 1994.

"(b) REORGANIZED TITLE 10 REFERENCES.—The amendments made by clause (i), and subclauses (I), (III), and (IV) of clause (ii), of section 311(4)(B) [amending section 4312 of this title] shall take effect as of December 1, 1994."

EFFECTIVE DATE

Pub. L. 103–353, §8, Oct. 13, 1994, 108 Stat. 3175, as amended by Pub. L. 104–275, title III, §312, Oct. 9, 1996, 110 Stat. 3336, provided that:

"(a) REEMPLOYMENT.—(1) Except as otherwise provided in this Act [see Short Title of 1994 Amendment note set out under section 101 of this title], the amendments made by this Act shall be effective with respect to reemployments initiated on or after the first day after the 60-day period beginning on the date of enactment of this Act [Oct. 13, 1994].

"(2) The provisions of chapter 43 of title 38, United States Code, in effect on the day before such date of enactment, shall continue to apply to reemployments initiated before the end of such 60-day period.

"(3) In determining the number of years of service that may not be exceeded in an employee-employer relationship with respect to which a person seeks reemployment under chapter 43 of title 38, United States Code, as in effect before or after the date of enactment of this Act, there shall be included all years of service without regard to whether the periods of service occurred before or after such date of enactment unless the period of service is exempted by the chapter 43 that is applicable, as provided in paragraphs (1) and (2), to the reemployment concerned. Any service begun up to 60 days after the date of the enactment of this Act, which is served up to 60 days after the date of the enactment of this Act pursuant to orders issued under section 502(f) of title 32, United States Code, shall be considered under chapter 43 of title 38, United States Code, as in effect on the day before such date of enactment. Any service pursuant to orders issued under such section 502(f) served after 60 days after the date of the enactment of this Act, regardless of when begun, shall be considered under the amendments made by this Act.

"(4) A person who initiates reemployment under chapter 43 of title 38, United States Code, during or after the 60-day period beginning on the date of enactment of this Act and whose reemployment is made in connection with a period of service in the uniformed services that was initiated before the end of such 60-day period shall be deemed to have satisfied the notification requirement of section 4312(a)(1) of title 38, United States Code, as provided in the amendments made by this Act, if the person complied with any applicable notice requirement under chapter 43, United States Code, as in effect on the day before the date of enactment of this Act [Oct. 13, 1994].

"(b) DISCRIMINATION.—The provisions of section 4311 of title 38, United States Code, as provided in the amendments made by this Act, and the provisions of subchapter III of chapter 43 of such title, as provided in the amendments made by this Act, that are necessary for the implementation of such section 4311 shall become effective on the date of enactment of this Act [Oct. 13, 1994].

"(c) INSURANCE.—(1) The provisions of section 4316 of title 38, United States Code, as provided in the amendments made by this Act, concerning insurance coverage (other than health) shall become effective with respect to furloughs or leaves of absence initiated on or after the date of enactment of this Act [Oct. 13, 1994].

"(2) With respect to the provisions of section 4317 of title 38, United States Code, as provided in the amendments made by this Act, a person serving a period of service in the uniformed services on the date of enactment of this Act, or a family member or personal representative of such person, may, after the date of enactment of this Act, elect to reinstate or continue a health plan as provided in such section 4317. If such an election is made, the health plan shall remain in effect for the remaining portion of the 18-month period that began on the date of such person's separation from civilian employment or the period of the person's service in the uniformed service, whichever is the period of lesser duration.

"(d) DISABILITY.—(1) Section 4313(a)(3) of chapter 43 of title 38, United States Code, as provided in the amendments made by this Act, shall apply to reemployments initiated on or after August 1, 1990.

"(2) Effective as of August 1, 1990, section 4307 of title 38, United States Code (as in effect on the date of enactment of this Act [Oct. 13, 1994]), is repealed, and the table of sections at the beginning of chapter 43 of

such title (as in effect on the date of enactment of this Act) is amended by striking out the item relating to section 4307.

"(e) INVESTIGATIONS AND SUBPOENAS.—The provisions of section 4326 of title 38, United States Code, as provided in the amendments made by this Act, shall become effective on the date of the enactment of this Act [Oct. 13, 1994] and apply to any matter pending with the Secretary of Labor under section 4305 of title 38, United States Code, as of that date.

"(f) PREVIOUS ACTIONS.—Except as otherwise provided, the amendments made by this Act do not affect reemployments that were initiated, rights, benefits, and duties that matured, penalties that were incurred, and proceedings that begin before the end of the 60-day period referred to in subsection (a).

"(g) RIGHTS AND BENEFITS RELATIVE TO NOTICE OF INTENT NOT TO RETURN.—Section 4316(b)(2) of title 38, United States Code, as added by the amendments made by this Act, applies only to the rights and benefits provided in section 4316(b)(1)(B) and does not apply to any other right or benefit of a person under chapter 43 of title 38, United States Code. Such section shall apply only to persons who leave a position of employment for service in the uniformed services more than 60 days after the date of enactment of this Act [Oct. 13, 1994].

"(h) EMPLOYER PENSION BENEFIT PLANS.—(1) Nothing in this Act shall be construed to relieve an employer of an obligation to provide contributions to a pension plan (or provide pension benefits), or to relieve the obligation of a pension plan to provide pension benefits, which is required by the provisions of chapter 43 of title 38, United States Code, in effect on the day before this Act takes effect [probably means the day before Oct. 13, 1994].

"(2) If any employee pension benefit plan is not in compliance with section 4318 of such title or paragraph (1) of this subsection on the date of enactment of this Act [Oct. 13, 1994], such plan shall have two years to come into compliance with such section and paragraph.

"(i) DEFINITION.—For the purposes of this section, the term 'service in the uniformed services' shall have the meaning given such term in section 4303(13) of title 38, United States Code, as provided in the amendments made by this Act."

DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL

Pub. L. 111–275, title I, §105, Oct. 13, 2010, 124 Stat. 2868, as amended by Pub. L. 112–234, §2(d), Dec. 28, 2012, 126 Stat. 1624, provided that:

"(a) ESTABLISHMENT OF PROJECT.—The Secretary of Labor and the Office of Special Counsel shall carry out a 36-month demonstration project under which certain claims against Federal executive agencies under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim. The demonstration program shall begin not later than 60 days after the Comptroller General of the United States submits the report required under subsection (e)(3).

"(b) REFERRAL OF ALL PROHIBITED PERSONNEL PRACTICE CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.—

"(1) IN GENERAL.—Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under chapter 43 of title 38, United States Code, with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

"(2) RELATED CLAIMS.—For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under chapter 43 of title 38, United States Code.

"(c) REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.—

"(1) IN GENERAL.—Under the demonstration project, the Secretary—

"(A) shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

"(B) may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

"(2) CLAIMS DESCRIBED.—A claim described in this paragraph is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

"(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—

"(1) IN GENERAL.—The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

"(2) TREATMENT OF CERTAIN TERMS IN CHAPTER 43 OF TITLE 38, UNITED STATES CODE.—In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, any reference to the 'Secretary' in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed to be a reference to the 'Office of Special Counsel'.

"(3) ADMINISTRATIVE JURISDICTION.—In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

"(e) DATA COMPARABILITY FOR REVIEWING AGENCY PERFORMANCE.—

"(1) IN GENERAL.—To facilitate the review of the relative performance of the Office of Special Counsel and the Department of Labor during the demonstration project, the Office of Special Counsel and the Department of Labor shall jointly establish methods and procedures to be used by both the Office and the Department during the demonstration project. Such methods and procedures shall include each of the following:

- "(A) Definitions of performance measures, including—
 - "(i) customer satisfaction;
 - "(ii) cost (such as, but not limited to, average cost per claim);
 - "(iii) timeliness (such as, but not limited to, average processing time, case age);
 - "(iv) capacity (such as, but not limited to, staffing levels, education, grade level, training received, caseload); and
 - "(v) case outcomes.
- "(B) Definitions of case outcomes.
- "(C) Data collection methods and timing of collection.
- "(D) Data quality assurance processes.

"(2) JOINT REPORT TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act [Oct. 13, 2010], the Special Counsel and the Secretary of Labor shall jointly submit to the Committees on Veterans' Affairs of the Senate and House of Representatives and to the Comptroller General of the United States a report describing the methods and procedures established under paragraph (1).

"(3) COMPTROLLER GENERAL REPORT.—Not later than 30 days after the date of the submittal of the report under paragraph (2), the Comptroller General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the report submitted under paragraph (2) and may provide recommendations for improving the methods and procedures described therein.

"(f) AGENCY DATA TO GOVERNMENT ACCOUNTABILITY OFFICE.—The Office of Special Counsel and the Secretary of Labor shall submit to the Comptroller General such information and data about the demonstration project as may be required by the Comptroller General, from time to time during the course of the demonstration project and at the conclusion, in order for the Comptroller General to assess the reliability of the demonstration data maintained by both the Office of Special Counsel and the Department of Labor and to review the relative performance of the Office and Department under the demonstration project.

"(g) GOVERNMENT ACCOUNTABILITY OFFICE REPORT.—The Comptroller General shall review the relative performance of the Office of Special Counsel and the Department of Labor under the demonstration project and—

"(1) not later than one year after the commencement of the demonstration project submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an interim report on the demonstration project; and

"(2) not later than 90 days after the conclusion of the demonstration project, submit to such committees a final report that includes the findings and conclusions of the Comptroller General regarding the relative performance of the Office and the Department under the demonstration project and such recommendations as the Comptroller General determines are appropriate."

Pub. L. 108–454, title II, §204, Dec. 10, 2004, 118 Stat. 3606, required the Secretary of Labor and the Office of Special Counsel to carry out a demonstration project during the period beginning 60 days after Dec. 10, 2004, and ending on September 30, 2007, under which certain claims against Federal executive agencies under the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353, under this chapter were referred to, or otherwise received by, the Office of Special Counsel for assistance.

ENSURING THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) PROTECTIONS

Memorandum of President of the United States, July 19, 2012, 77 F.R. 43699, provided:
Memorandum for the Heads of Executive Departments and Agencies

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects individuals performing, or who performed, uniformed service in accordance with 38 U.S.C. 4301–4335 from adverse employment discrimination on the basis of their uniformed service, and provides for their prompt restoration to civilian employment when they return to civilian life.

USERRA is intended to ensure that these service members are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty; and are not discriminated against in employment because of their military status or obligations. This memorandum will help ensure that Federal agencies improve compliance with USERRA through outreach, education, and oversight.

The Administration strongly believes that every man or woman who has served in our country's uniformed services deserves the full protection of our employment laws, including USERRA. No discrimination or unfair treatment based on one's service will be tolerated. We must do our utmost to ensure that all service members' employment and reemployment rights are respected.

The Federal Government, as our Nation's largest employer, has a responsibility to adopt best practices with respect to employing returning service members. Attracting and retaining the best talent means ensuring fair treatment for individuals who have served our country. Close attention must be paid to our returning service members to ensure that we protect their reemployment rights, and effectively manage their reintegration when they return from service.

As a critical part of that effort, I am directing executive departments and agencies (agencies) to take steps to ensure robust compliance with USERRA's employment and reemployment protections across the Federal Government through outreach, education, and oversight. Ensuring agencies' compliance with USERRA across the Federal Government will maintain our commitment to those who serve.

This effort will build upon, and be in furtherance of, Executive Order 13518 of November 9, 2009 (Employment of Veterans in the Federal Government), which directed agencies to take steps to enhance recruitment of and promote employment opportunities for veterans within the executive branch. Over the last few years, the Federal Government has made a concerted and successful effort to increase the hiring of military veterans and members of the National Guard and Reserves, and veterans now constitute a higher percentage of the Federal workforce than they have in years.

The Federal Government must continue to improve outreach to the uniformed services, veteran, Guard, and Reserve communities; improve agencies' USERRA training and guidance; and ensure that service members and veterans in Federal employment receive the full extent of their employment protections, including USERRA protections. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

SECTION 1. *USERRA Employment Protection Working Group.* There is established the USERRA Employment Protection Working Group (Working Group), to be co-chaired by the Assistant to the President for Domestic Policy and the Assistant to the President and National Security Advisor, or their designated representatives, which shall coordinate and review agency efforts to implement USERRA.

(a) In addition to the Co-Chairs, the Working Group shall include representatives from:

- (i) the Department of Defense;
- (ii) the Department of Justice;
- (iii) the Department of Labor;
- (iv) the Department of Veterans Affairs;
- (v) the Office of Personnel Management;
- (vi) the Office of the Special Counsel; and
- (vii) such other agencies or offices as the Co-Chairs may designate.

(b) In addition to coordinating and reviewing agency efforts to implement USERRA pursuant to this memorandum, the Working Group shall:

- (i) collect data to better track the Federal Government's performance in implementing USERRA protections;
- (ii) coordinate agency efforts to implement best practices, training, and procedures for any agency officials who are authorized to recommend, take, or approve any personnel action with respect to employees of the agency in order to improve compliance with USERRA employment and reemployment protections; and
- (iii) conduct outreach to veterans and members of the National Guard and Reserve and other members of the uniformed services to assist them in fully exercising their employment rights.

(c) Within 30 days of the date of this memorandum, the head of each agency shall designate a senior agency official to act as a liaison between the agency and the Working Group. The agency liaison shall be responsible

for providing the Working Group with information on agency efforts to implement this memorandum, as well as any other relevant information on service member employment that the Working Group may require.

(d) Within 90 days of the date of this memorandum, the Working Group shall report to the President on Government-wide progress in implementing this memorandum.

SEC. 2. Federal USERRA Guidance. (a) Within 180 days of the date of this memorandum, the Director of the Office of Personnel Management, in consultation with the Council on Veterans Employment established by Executive Order 13518 and offices and agencies participating in the Working Group, as appropriate, shall issue guidance to agencies on Federal USERRA employment protection, which shall describe specific steps agencies can take to improve USERRA employment and reemployment protection policies and practices, including:

(i) improving data collection procedures to help better track overall service member employment data in the Federal Government, including Guard and Reserve members;

(ii) using appropriate metrics, as established by the Office of Personnel Management, to measure implementation of this memorandum;

(iii) using guidance and tools, as developed by the Office of Personnel Management through collaboration with the Working Group and Council on Veterans Employment, which draw upon best agency practices as well as practices and guidance from the private sector; and

(iv) strengthening relationships between service members, stakeholder groups, and the agency, and providing better information to service members so as to allow them to be reintegrated as quickly and efficiently as possible when they return to civilian life.

(b) In the course of developing guidance pursuant to subsection (a), the Director of the Office of Personnel Management, in consultation with the Council on Veterans Employment and offices and agencies participating in the Working Group as appropriate, shall review relevant statutes, regulations, policies, and agency training and guidance to identify reforms that would facilitate improved implementation of and compliance with USERRA. The Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget (OMB), shall report to the President on this review, no later than 1 year from the date of this memorandum, and provide recommendations for changes to laws, regulations, and policies that would strengthen USERRA protections.

(c) In developing guidance pursuant to subsection (a), the Director of the Office of Personnel Management shall consult with affected agencies, interagency groups, and public stakeholders.

(d) The Department of Defense and the Office of Personnel Management shall work together to improve data collection procedures to help better track the overall veteran and service member employment data in the Federal Government, particularly Guard and Reserve Members.

SEC. 3. Ensuring USERRA Employment Protection. The head of each agency shall, as expeditiously as possible:

(a) implement the guidance issued pursuant to section 2 of this memorandum;

(b) ensure that the agency has prioritized policies and actions to implement USERRA employment protections, including providing appropriate training and information, as well as undertaking appropriate reemployment measures; and

(c) allocate sufficient resources to effectively implement the requirements of this memorandum, subject to the availability of appropriations.

SEC. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§4302. Relation to other law and plans or agreements

(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3150.)

PRIOR PROVISIONS

A prior section 4302, added Pub. L. 93–508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1596, §2022; amended Pub. L. 97–295, §4(71), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 98–620, title IV, §402(36), Nov. 8, 1984, 98 Stat. 3360; renumbered §4302 and amended Pub. L. 102–568, title V, §506(a), (c)(1), Oct. 29, 1992, 106 Stat. 4340, 4341, related to procedures to enforce reemployment rights, prior to the general amendment of this chapter by Pub. L. 103–353. This section, as in effect on the day before Oct. 13, 1994, continues to apply to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, see section 8 of Pub. L. 103–353, as amended, set out as an Effective Date under section 4301 of this title.

Another prior section 4302 was renumbered section 7602 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4303. Definitions

For the purposes of this chapter—

(1) The term "Attorney General" means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

(2) The term "benefit", "benefit of employment", or "rights and benefits" means the terms, conditions, or privileges of employment, including any advantage, profit, privilege, gain, status, account, or interest (including wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) The term "employee" means any person employed by an employer. Such term includes any person who is a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of section 4319(c) of this title.

(4)(A) Except as provided in subparagraphs (B) and (C), the term "employer" means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities, including—

(i) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

(ii) the Federal Government;

(iii) a State;

(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

(v) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311.

(B) In the case of a National Guard technician employed under section 709 of title 32, the term "employer" means the adjutant general of the State in which the technician is employed.

(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4318.

(D)(i) Whether the term "successor in interest" applies with respect to an entity described in subparagraph (A) for purposes of clause (iv) of such subparagraph shall be determined on a case-by-case basis using a multi-factor test that considers the following factors:

- (I) Substantial continuity of business operations.
- (II) Use of the same or similar facilities.
- (III) Continuity of work force.
- (IV) Similarity of jobs and working conditions.
- (V) Similarity of supervisory personnel.
- (VI) Similarity of machinery, equipment, and production methods.
- (VII) Similarity of products or services.

(ii) The entity's lack of notice or awareness of a potential or pending claim under this chapter at the time of a merger, acquisition, or other form of succession shall not be considered when applying the multi-factor test under clause (i).

(5) The term "Federal executive agency" includes the United States Postal Service, the Postal Regulatory Commission, any nonappropriated fund instrumentality of the United States, any Executive agency (as that term is defined in section 105 of title 5) other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5, and any military department (as that term is defined in section 102 of title 5) with respect to the civilian employees of that department.

(6) The term "Federal Government" includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

(7) The term "health plan" means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(8) The term "notice" means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(9) The term "qualified", with respect to an employment position, means having the ability to perform the essential tasks of the position.

(10) The term "reasonable efforts", in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

(11) Notwithstanding section 101, the term "Secretary" means the Secretary of Labor or any person designated by such Secretary to carry out an activity under this chapter.

(12) The term "seniority" means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(13) The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and a period for which a

person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(14) The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

(15) The term "undue hardship", in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of—

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) The term "uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and any other category of persons designated by the President in time of war or national emergency.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3150; amended Pub. L. 104–275, title III, §311(2), Oct. 9, 1996, 110 Stat. 3334; Pub. L. 105–368, title II, §212(a), Nov. 11, 1998, 112 Stat. 3331; Pub. L. 106–419, title III, §323(a), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–14, §8(a)(11), (b)(2), June 5, 2001, 115 Stat. 35, 36; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 111–275, title VII, §§701(a), 702(a), Oct. 13, 2010, 124 Stat. 2887; Pub. L. 112–56, title II, §251, Nov. 21, 2011, 125 Stat. 729; Pub. L. 114–326, §2(b)(2), Dec. 16, 2016, 130 Stat. 1972.)

REFERENCES IN TEXT

Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in pars. (13) and (16), is classified to section 5165f of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 4303, added Pub. L. 93–508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1596, §2023; amended Pub. L. 97–295, §4(72), Oct. 12, 1982, 96 Stat. 1310; renumbered §4303 and amended Pub. L. 102–568, title V, §506(a), (c)(2), Oct. 29, 1992, 106 Stat. 4340, 4341, related to reemployment by the United States, by any territory, possession, or political subdivision thereof, or by the District of Columbia, prior to the general amendment of this chapter by Pub. L. 103–353. This section, as in effect on the day before Oct. 13, 1994, continues to apply to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, see section 8 of Pub. L. 103–353, as amended, set out as an Effective Date under section 4301 of this title.

Another prior section 4303 was renumbered section 7603 of this title.

AMENDMENTS

2016—Par. (13). Pub. L. 114–326, §2(b)(2)(A), inserted ", a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act" before ", and a period".

Par. (16). Pub. L. 114–326, §2(b)(2)(B), inserted "System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act," after "Public Health Service,".

2011—Par. (2). Pub. L. 112–56 inserted "the terms, conditions, or privileges of employment, including" after "means".

2010—Par. (2). Pub. L. 111–275, §701(a), substituted "(including" for "(other than".

Par. (4)(D). Pub. L. 111–275, §702(a), added subpar. (D).

2006—Par. (5). Pub. L. 109–435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

2001—Par. (13). Pub. L. 107–14, §8(b)(2), made technical amendment to directory language of Pub. L. 106–419, §323(a)(1). See 2000 Amendment note below.

Pub. L. 107–14, §8(a)(11), struck out second period at end.

2000—Par. (13). Pub. L. 106–419, §323(a)(2), inserted before period at end ", and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32."

Pub. L. 106–419, §323(a)(1), as amended by Pub. L. 107–14, §8(b)(2), struck out "and" after "National Guard duty,".

1998—Par. (3). Pub. L. 105–368 inserted at end "Such term includes any person who is a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of section 4319(c) of this title."

1996—Par. (16). Pub. L. 104–275 inserted "national" before "emergency".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–275, title VII, §701(b), Oct. 13, 2010, 124 Stat. 2887, provided that: "The amendment made by subsection (a) [amending this section] shall apply to—

"(1) any failure to comply with a provision of or any violation of chapter 43 of title 38, United States Code, that occurs before, on, or after the date of the enactment of this Act [Oct. 13, 2010]; and

"(2) all actions or complaints filed under such chapter 43 that are pending on or after the date of the enactment of this Act."

Pub. L. 111–275, title VII, §702(b), Oct. 13, 2010, 124 Stat. 2888, provided that: "The amendment made by subsection (a) [amending this section] shall apply to—

"(1) any failure to comply with a provision of or any violation of chapter 43 of title 38, United States Code, that occurs before, on, or after the date of the enactment of this Act [Oct. 13, 2010]; and

"(2) all actions or complaints filed under such chapter 43 that are pending on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–14, §8(b), June 5, 2001, 115 Stat. 36, provided that the amendment made by section 8(b) is effective Nov. 1, 2000, and as if included in the Veterans Benefits and Health Care Improvement Act of 2000, Pub. L. 106–419, as enacted.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–419, title III, §323(c), Nov. 1, 2000, 114 Stat. 1856, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4316 of this title] shall take effect 180 days after the date of the enactment of this Act [Nov. 1, 2000]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–368, title II, §212(c), Nov. 11, 1998, 112 Stat. 3331, provided that: "The amendments made by this section [enacting section 4319 of this title and amending this section] shall apply only with respect to causes of action arising after the date of the enactment of this Act [Nov. 11, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4304. Character of service

A person's entitlement to the benefits of this chapter by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

- (1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.
- (2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.
- (3) A dismissal of such person permitted under section 1161(a) of title 10.
- (4) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3152.)

PRIOR PROVISIONS

Prior sections 4304 to 4306 were omitted in the general amendment of this chapter by Pub. L. 103–353. Those sections, as in effect on the day before Oct. 13, 1994, continue to apply to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, see section 8 of Pub. L. 103–353, as amended, set out as an Effective Date under section 4301 of this title.

Section 4304, added Pub. L. 93–508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1598, §2024; amended Pub. L. 94–286, §2, May 14, 1976, 90 Stat. 518; Pub. L. 94–502, title VI, §608(3), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 96–466, title V, §511, Oct. 17, 1980, 94 Stat. 2207; Pub. L. 99–576, title VII, §701(60), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 102–12, §8(a)(1), (b)(1), Mar. 18, 1991, 105 Stat. 38; renumbered §4304 and amended Pub. L. 102–568, title V, §506(a), (c)(3), Oct. 29, 1992, 106 Stat. 4340, 4341, related to reemployment rights of persons who enlist in the Armed Forces or enter upon active duty.

Another prior section 4304 was renumbered section 7604 of this title.

Section 4305, added Pub. L. 93–508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1600, §2025; renumbered §4305, Pub. L. 102–568, title V, §506(a), Oct. 29, 1992, 106 Stat. 4340, directed the Secretary of Labor, through the Office of Veterans' Reemployment Rights, to render assistance in obtaining reemployment.

Section 4306, added Pub. L. 93–508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1600, §2026; renumbered §4306, Pub. L. 102–568, title V, §506(a), Oct. 29, 1992, 106 Stat. 4340, related to prior rights for reemployment in a case in which more than one person is entitled to be reemployed.

A prior section 4307, added Pub. L. 102–25, title III, §339(a), Apr. 6, 1991, 105 Stat. 91, §2027; renumbered §4307, Pub. L. 102–568, title V, §506(a), Oct. 29, 1992, 106 Stat. 4340, related to qualification for employment position, prior to repeal by Pub. L. 103–353, §8(d)(2), Oct. 13, 1994, 108 Stat. 3176, eff. Aug. 1, 1990.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

§4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

(c) An employer shall be considered to have engaged in actions prohibited—

(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3153; amended Pub. L. 104–275, title III, §311(3), Oct. 9, 1996, 110 Stat. 3334.)

PRIOR PROVISIONS

A prior section 4311 was renumbered section 7611 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–275 added subsec. (b) and struck out former subsec. (b) which read as follows: "An employer shall be considered to have denied a person initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, performance of service, application for service, or obligation."

Subsecs. (c), (d). Pub. L. 104–275 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows:

"(c)(1) An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter.

"(2) The prohibition in paragraph (1) shall apply with respect to a person regardless of whether that person has performed service in the uniformed services and shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C)."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective Oct. 13, 1994, except as otherwise provided, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4312. Reemployment rights of persons who serve in the uniformed services

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if—

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.

(d)(1) An employer is not required to reemploy a person under this chapter if—

(A) the employer's circumstances have so changed as to make such reemployment impossible or unreasonable;

(B) in the case of a person entitled to reemployment under subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313, such employment would impose an undue hardship on the employer; or

(C) the employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(2) In any proceeding involving an issue of whether—

(A) any reemployment referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances,

(B) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 would impose an undue hardship on the employer, or

(C) the employment referred to in paragraph (1)(C) is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period,

the employer shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

(e)(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

(A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer—

(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

(C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.

(D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.

(2)(A) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B) of paragraph (1)) or submit an application for reemployment with such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

(3) A person who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subsection (a) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

(f)(1) A person who submits an application for reemployment in accordance with subparagraph (C) or (D) of subsection (e)(1) or subsection (e)(2) shall provide to the person's employer (upon the request of such employer) documentation to establish that—

(A) the person's application is timely;

(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304.

(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

(3)(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4318(a)(2)(A).

(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(h) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3153; amended Pub. L. 104–275, title III, §311(4), Oct. 9, 1996, 110 Stat. 3334; Pub. L. 112–81, div. A, title V, §575, Dec. 31, 2011, 125 Stat. 1428; Pub. L. 114–92, div. A, title V, §562, Nov. 25, 2015, 129 Stat. 829.)

PRIOR PROVISIONS

A prior section 4312 was renumbered section 7612 of this title.

AMENDMENTS

2015—Subsec. (c)(4)(A). Pub. L. 114–92 inserted "12304a, 12304b," after "12304,".

2011—Subsec. (c)(4)(F). Pub. L. 112–81 added subpar. (F).

1996—Subsec. (a). Pub. L. 104–275, §311(4)(A), substituted "whose absence from a position of employment is necessitated" for "who is absent from a position of employment".

Subsec. (c)(3). Pub. L. 104–275, §311(4)(B)(i), substituted "section 10147" for "section 270".

Subsec. (c)(4)(A). Pub. L. 104–275, §311(4)(B)(ii)(I), substituted "section 688, 12301(a), 12301(g), 12302, 12304, or 12305" for "section 672(a), 672(g), 673, 673b, 673c, or 688".

Subsec. (c)(4)(B). Pub. L. 104–275, §311(4)(B)(ii)(II), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress;"

Subsec. (c)(4)(C). Pub. L. 104–275, §311(4)(B)(ii)(III), substituted "section 12304" for "section 673b".

Subsec. (c)(4)(E). Pub. L. 104–275, §311(4)(B)(ii)(IV), substituted "section 12406" for "section 3500 or 8500".

Subsec. (d)(2)(C). Pub. L. 104–275, §311(4)(C), substituted "is for a brief, nonrecurrent period and there is no reasonable expectation" for "is brief or for a nonrecurrent period and without a reasonable expectation".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 311(4)(A), (B)(ii)(II), (C) of Pub. L. 104–275 effective Oct. 13, 1994, and amendment by section 311(4)(B)(i), (ii)(I), (III), (IV) of Pub. L. 104–275 effective Dec. 1, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, and with provisions relating to satisfaction of the notification requirement of subsec. (a)(1) of this section, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4313. Reemployment positions

(a) Subject to subsection (b) (in the case of any employee) and sections 4314 and 4315 (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services, shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 91 days—

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 90 days—

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(3) In the case of a person who has a disability incurred in, or aggravated during, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service—

(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts

by the employer; or

(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

(4) In the case of a person who (A) is not qualified to be employed in (i) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the uniformed services for any reason (other than disability incurred in, or aggravated during, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position which is the nearest approximation to a position referred to first in clause (A)(i) and then in clause (A)(ii) which such person is qualified to perform, with full seniority.

(b)(1) If two or more persons are entitled to reemployment under section 4312 in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.

(2) Any person entitled to reemployment under section 4312 who is not reemployed in a position of employment by reason of paragraph (1) shall be entitled to be reemployed as follows:

(A) Except as provided in subparagraph (B), in any other position of employment referred to in subsection (a)(1) or (a)(2), as the case may be (in the order of priority set out in the applicable subsection), that provides a similar status and pay to a position of employment referred to in paragraph (1) of this subsection, consistent with the circumstances of such person's case, with full seniority.

(B) In the case of a person who has a disability incurred in, or aggravated during, a period of service in the uniformed services that requires reasonable efforts by the employer for the person to be able to perform the duties of the position of employment, in any other position referred to in subsection (a)(3) (in the order of priority set out in that subsection) that provides a similar status and pay to a position referred to in paragraph (1) of this subsection, consistent with circumstances of such person's case, with full seniority.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3157; amended Pub. L. 104–275, title III, §311(5), Oct. 9, 1996, 110 Stat. 3335.)

PRIOR PROVISIONS

A prior section 4313 was renumbered section 7613 of this title.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–275 substituted "uniformed services" for "uniform services" in cl. (A) (ii) and "which is the nearest approximation to a position referred to first in clause (A)(i) and then in clause (A)(ii) which" for "of lesser status and pay which" in cl. (B).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that subsec. (a)(3) of this section applicable to reemployments initiated on or after Aug. 1, 1990, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4314. Reemployment by the Federal Government

(a) Except as provided in subsections (b), (c), and (d), if a person is entitled to reemployment by the Federal Government under section 4312, such person shall be reemployed in a position of employment as described in section 4313.

(b)(1) If the Director of the Office of Personnel Management makes a determination described in paragraph (2) with respect to a person who was employed by a Federal executive agency at the time the person entered the service from which the person seeks reemployment under this section, the Director shall—

(A) identify a position of like seniority, status, and pay at another Federal executive agency that satisfies the requirements of section 4313 and for which the person is qualified; and

(B) ensure that the person is offered such position.

(2) The Director shall carry out the duties referred to in subparagraphs (A) and (B) of paragraph (1) if the Director determines that—

(A) the Federal executive agency that employed the person referred to in such paragraph no longer exists and the functions of such agency have not been transferred to another Federal executive agency; or

(B) it is impossible or unreasonable for the agency to reemploy the person.

(c) If the employer of a person described in subsection (a) was, at the time such person entered the service from which such person seeks reemployment under this section, a part of the judicial branch or the legislative branch of the Federal Government, and such employer determines that it is impossible or unreasonable for such employer to reemploy such person, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

(d) If the adjutant general of a State determines that it is impossible or unreasonable to reemploy a person who was a National Guard technician employed under section 709 of title 32, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3158.)

PRIOR PROVISIONS

A prior section 4314 was renumbered section 7614 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4315. Reemployment by certain Federal agencies

(a) The head of each agency referred to in section 2302(a)(2)(C)(ii) of title 5 shall prescribe procedures for ensuring that the rights under this chapter apply to the employees of such agency.

(b) In prescribing procedures under subsection (a), the head of an agency referred to in that subsection shall ensure, to the maximum extent practicable, that the procedures of the agency for reemploying persons who serve in the uniformed services provide for the reemployment of such persons in the agency in a manner similar to the manner of reemployment described in section 4313.

(c)(1) The procedures prescribed under subsection (a) shall designate an official at the agency who shall determine whether or not the reemployment of a person referred to in subsection (b) by the agency is impossible or unreasonable.

(2) Upon making a determination that the reemployment by the agency of a person referred to in subsection (b) is impossible or unreasonable, the official referred to in paragraph (1) shall notify the person and the Director of the Office of Personnel Management of such determination.

(3) A determination pursuant to this subsection shall not be subject to judicial review.

(4) The head of each agency referred to in subsection (a) shall submit to the Select Committee on Intelligence and the Committee on Veterans' Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Veterans' Affairs of the House of Representatives on an annual basis a report on the number of persons whose reemployment with the agency was determined under this subsection to be impossible or unreasonable during the year preceding the report, including the reason for each such determination.

(d)(1) Except as provided in this section, nothing in this section, section 4313, or section 4325 shall be construed to exempt any agency referred to in subsection (a) from compliance with any other substantive provision of this chapter.

(2) This section may not be construed—

(A) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

(B) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

(e) The Director of the Office of Personnel Management shall ensure the offer of employment to a person in a position in a Federal executive agency on the basis described in subsection (b) if—

(1) the person was an employee of an agency referred to in section 2302(a)(2)(C)(ii) of title 5 at the time the person entered the service from which the person seeks reemployment under this section;

(2) the appropriate officer of the agency determines under subsection (c) that reemployment of the person by the agency is impossible or unreasonable; and

(3) the person submits an application to the Director for an offer of employment under this subsection.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3159.)

PRIOR PROVISIONS

A prior section 4315 was renumbered section 7615 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service

(a) A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

(b)(1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be—

(A) deemed to be on furlough or leave of absence while performing such service; and

(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

(2)(A) Subject to subparagraph (B), a person who—

- (i) is absent from a position of employment by reason of service in the uniformed services, and
- (ii) knowingly provides written notice of intent not to return to a position of employment after service in the uniformed service,

is not entitled to rights and benefits under paragraph (1)(B).

(B) For the purposes of subparagraph (A), the employer shall have the burden of proving that a person knowingly provided clear written notice of intent not to return to a position of employment after service in the uniformed service and, in doing so, was aware of the specific rights and benefits to be lost under subparagraph (A).

(3) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

(4) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to paragraph (1) to the extent other employees on furlough or leave of absence are so required.

(5) The entitlement of a person to coverage under a health plan is provided for under section 4317.

(6) The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4318.

(c) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause—

(1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or

(2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

(d) Any person whose employment with an employer is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. No employer may require any such person to use vacation, annual, or similar leave during such period of service.

(e)(1) An employer shall grant an employee who is a member of a reserve component an authorized leave of absence from a position of employment to allow that employee to perform funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(2) For purposes of section 4312(e)(1) of this title, an employee who takes an authorized leave of absence under paragraph (1) is deemed to have notified the employer of the employee's intent to return to such position of employment.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3160; amended Pub. L. 104–275, title III, §311(6), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 106–419, title III, §323(b), Nov. 1, 2000, 114 Stat. 1855.)

PRIOR PROVISIONS

A prior section 4316 was renumbered section 7616 of this title.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–419 added subsec. (e).

1996—Subsec. (d). Pub. L. 104–275 inserted at end "No employer may require any such person to use vacation, annual, or similar leave during such period of service."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–419 effective 180 days after Nov. 1, 2000, see section 323(c) of Pub. L. 106–419, set out as a note under section 4303 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that the provisions concerning insurance coverage (other than health) are effective with respect to furloughs or leaves of absence initiated on or after Oct. 13, 1994, and subsec. (b)(2) of this section is applicable only to the rights and benefits provided in subsec. (b)(1)(B) of this section and to persons who leave a position of employment for service in the uniformed services more than 60 days after Oct. 13, 1994, and not applicable to any other right or benefit of a person under this chapter, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4317. Health plans

(a)(1) In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), and such person is absent from such position of employment by reason of service in the uniformed services, or such person becomes eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, the plan shall provide that the person may elect to continue such coverage as provided in this subsection. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of—

- (A) the 24-month period beginning on the date on which the person's absence begins; or
- (B) the day after the date on which the person fails to apply for or return to a position of employment, as determined under section 4312(e).

(2) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986) associated with such coverage for the employer's other employees, except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

(3) In the case of a health plan that is a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability under the plan for employer contributions and benefits arising under this paragraph shall be allocated—

- (A) by the plan in such manner as the plan sponsor shall provide; or
- (B) if the sponsor does not provide—
 - (i) to the last employer employing the person before the period served by the person in the uniformed services, or
 - (ii) if such last employer is no longer functional, to the plan.

(b)(1) Except as provided in paragraph (2), in the case of a person whose coverage under a health plan was terminated by reason of service in the uniformed services, or by reason of the person's having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment under this chapter if an exclusion or waiting period would not have been imposed under a health plan had coverage of such person by such plan not been terminated as a result of such service or eligibility. This paragraph applies to the person who is reemployed and to any individual who is covered by such plan by reason of the reinstatement of the coverage of such person.

(2) Paragraph (1) shall not apply to the coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

(3) In the case of a person whose coverage under a health plan is terminated by reason of the person having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title but who subsequently does not commence a period of active duty under the order to active duty that established such eligibility because the order is

canceled before such active duty commences, the provisions of paragraph (1) relating to any exclusion or waiting period in connection with the reinstatement of coverage under a health plan shall apply to such person's continued employment, upon the termination of such eligibility for medical and dental care under chapter 55 of title 10 that is incident to the cancellation of such order, in the same manner as if the person had become reemployed upon such termination of eligibility. (Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3161; amended Pub. L. 104–275, title III, §311(7), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 108–454, title II, §201(a), Dec. 10, 2004, 118 Stat. 3605; Pub. L. 109–233, title III, §303, June 15, 2006, 120 Stat. 406.)

REFERENCES IN TEXT

Sections 3(37) and 607(1) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), (3), are classified to sections 1002(37) and 1167(1), respectively, of Title 29, Labor.

Section 4980B(f)(4) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2), is classified to section 4980B(f)(4) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 4317 was renumbered section 7617 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–233, §303(a), inserted "or such person becomes eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title," after "by reason of service in the uniformed services,".

Subsec. (b)(1). Pub. L. 109–233, §303(b)(1), inserted "or by reason of the person's having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title," after "by reason of service in the uniformed services," and "or eligibility" after "such service".

Subsec. (b)(3). Pub. L. 109–233, §303(b)(2), added par. (3).

2004—Subsec. (a)(1)(A). Pub. L. 108–454 substituted "24-month period" for "18-month period".

1996—Subsec. (a). Pub. L. 104–275 substituted "(a)(1) In" for "(a)(1)(A) Subject to paragraphs (2) and (3), in", redesignated cls. (i) and (ii) of par. (1) as subpars. (A) and (B), respectively, redesignated former subpars. (B) and (C) as pars. (2) and (3), respectively, and in par. (3), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and subcls. (I) and (II) as cls. (i) and (ii), respectively.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–454, title II, §201(b), Dec. 10, 2004, 118 Stat. 3606, provided that: "The amendment made by subsection (a) [amending this section] shall apply to elections made under section 4317 of title 38, United States Code, on or after the date of the enactment of this Act [Dec. 10, 2004]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that a person on active duty on Oct. 13, 1994, or a family member or personal representative of such person, may, after Oct. 13, 1994, elect to reinstate or continue a health plan provided in this section, and the health plan shall remain in effect for the remaining portion of the 18-month period that began on the date of such person's separation from civilian employment or the period of the person's service in the uniformed service, whichever is of lesser duration, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4318. Employee pension benefit plans

(a)(1)(A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan (including those described in sections 3(2) and 3(33) of the Employee Retirement Income Security Act of 1974) or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter.

(2)(A) A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(b)(1) An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated—

(A) by the plan in such manner as the sponsor maintaining the plan shall provide; or

(B) if the sponsor does not provide—

(i) to the last employer employing the person before the period served by the person in the uniformed services, or

(ii) if such last employer is no longer functional, to the plan.

(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years.

(3) For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed—

(A) at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), or

(B) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3162; amended Pub. L. 104–275, title III, §311(8), Oct. 9, 1996, 110 Stat. 3335.)

REFERENCES IN TEXT

Sections 3 and 515 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(1) (A), (b)(1), and (c), are classified to sections 1002 and 1145, respectively, of Title 29, Labor.

Section 402(g)(3) of the Internal Revenue Code of 1986, referred to in subsec. (b)(2), is classified to section 402(g)(3) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 4318 was renumbered section 7618 of this title.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–275 substituted "services, such payment period" for "services," in last sentence.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that an employee pension benefit plan not in compliance with this section or section 8(h)(1) of Pub. L. 103–353 on Oct. 13, 1994, has two years to come into compliance, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4319. Employment and reemployment rights in foreign countries

(a) **LIABILITY OF CONTROLLING UNITED STATES EMPLOYER OF FOREIGN ENTITY.**—If an employer controls an entity that is incorporated or otherwise organized in a foreign country, any denial of employment, reemployment, or benefit by such entity shall be presumed to be by such employer.

(b) **INAPPLICABILITY TO FOREIGN EMPLOYER.**—This subchapter does not apply to foreign operations of an employer that is a foreign person not controlled by an United States employer.

(c) **DETERMINATION OF CONTROLLING EMPLOYER.**—For the purpose of this section, the determination of whether an employer controls an entity shall be based upon the interrelations of operations, common management, centralized control of labor relations, and common ownership or financial control of the employer and the entity.

(d) **EXEMPTION.**—Notwithstanding any other provision of this subchapter, an employer, or an entity controlled by an employer, shall be exempt from compliance with any of sections 4311 through 4318 of this title with respect to an employee in a workplace in a foreign country, if compliance with that section would cause such employer, or such entity controlled by an employer, to violate the law of the foreign country in which the workplace is located.

(Added Pub. L. 105–368, title II, §212(b)(1), Nov. 11, 1998, 112 Stat. 3331.)

EFFECTIVE DATE

Section applicable only with respect to causes of action arising after Nov. 11, 1998, see section 212(c) of Pub. L. 105–368, set out as an Effective Date of 1998 Amendment note under section 4303 of this title.

SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION

§4321. Assistance in obtaining reemployment or other employment rights or benefits

The Secretary (through the Veterans' Employment and Training Service) shall provide assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under this chapter. In providing such assistance, the Secretary may request the assistance of existing Federal and State agencies engaged in similar or related activities and utilize the assistance of volunteers.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3164.)

PRIOR PROVISIONS

A prior section 4321 was renumbered section 7621 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that provisions necessary for implementation of section 4311 of this title are effective Oct. 13, 1994, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4322. Enforcement of employment or reemployment rights

(a) A person who claims that—

(1) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

(2)(A) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter; or

(B) in the case that the employer is a Federal executive agency, such employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter,

may file a complaint with the Secretary in accordance with subsection (b), and the Secretary shall investigate such complaint.

(b) Such complaint shall be in writing, be in such form as the Secretary may prescribe, include the name and address of the employer against whom the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(c)(1) Not later than five days after the Secretary receives a complaint submitted by a person under subsection (a), the Secretary shall notify such person in writing of his or her rights with respect to such complaint under this section and section 4323 or 4324, as the case may be.

(2) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and when appropriate, to such claimant's employer.

(d) The Secretary shall investigate each complaint submitted pursuant to subsection (a). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

(e) If the efforts of the Secretary with respect to any complaint filed under subsection (a) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint in writing of—

(1) the results of the Secretary's investigation; and

(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4323 (in the case of a person submitting a complaint against a State or private employer) or section 4324 (in the case of a person submitting a complaint against a Federal executive agency or the Office of Personnel Management).

(f) Any action required by subsections (d) and (e) with respect to a complaint submitted by a person to the Secretary under subsection (a) shall be completed by the Secretary not later than 90 days after receipt of such complaint.

(g) This subchapter does not apply to any action relating to benefits to be provided under the Thrift Savings Plan under title 5.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3164; amended Pub. L. 104–275, title III, §311(9), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 110–389, title III, §311(a)–(c), Oct. 10, 2008, 122 Stat. 4162.)

PRIOR PROVISIONS

A prior section 4322 was renumbered section 7622 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–389, §311(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and when appropriate, to such claimant's employer."

Subsec. (e). Pub. L. 110–389, §311(b), inserted "in writing" after "submitted the complaint" in introductory provisions.

Subsecs. (f), (g). Pub. L. 110–389, §311(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1996—Subsec. (d). Pub. L. 104–275, §311(9)(A), inserted "attempt to" before "resolve".

Subsec. (e). Pub. L. 104–275, §311(9)(B)(i), substituted "with respect to any complaint filed under subsection (a) do not resolve the complaint," for "with respect to a complaint under subsection (d) are unsuccessful," in introductory provisions.

Subsec. (e)(2). Pub. L. 104–275, §311(9)(B)(ii), inserted "or the Office of Personnel Management" after "Federal executive agency".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that provisions necessary for implementation of section 4311 of this title are effective Oct. 13, 1994, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4323. Enforcement of rights with respect to a State or private employer

(a) **ACTION FOR RELIEF.**—(1) A person who receives from the Secretary a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for relief under this chapter for such person. In the case of such an action against a State (as an employer), the action shall be brought in the name of the United States as the plaintiff in the action.

(2) Not later than 60 days after the date the Attorney General receives a referral under paragraph (1), the Attorney General shall—

(A) make a decision whether to appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted; and

(B) notify such person in writing of such decision.

(3) A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person—

(A) has chosen not to apply to the Secretary for assistance under section 4322(a) of this title;
(B) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or
(C) has been refused representation by the Attorney General with respect to the complaint under such paragraph.

(b) JURISDICTION.—(1) In the case of an action against a State (as an employer) or a private employer commenced by the United States, the district courts of the United States shall have jurisdiction over the action.

(2) In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State.

(3) In the case of an action against a private employer by a person, the district courts of the United States shall have jurisdiction of the action.

(c) VENUE.—(1) In the case of an action by the United States against a State (as an employer), the action may proceed in the United States district court for any district in which the State exercises any authority or carries out any function.

(2) In the case of an action against a private employer, the action may proceed in the United States district court for any district in which the private employer of the person maintains a place of business.

(d) REMEDIES.—(1) In any action under this section, the court may award relief as follows:

(A) The court may require the employer to comply with the provisions of this chapter.

(B) The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter.

(C) The court may require the employer to pay the person an amount equal to the amount referred to in subparagraph (B) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.

(2)(A) Any compensation awarded under subparagraph (B) or (C) of paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for under this chapter.

(B) In the case of an action commenced in the name of the United States for which the relief includes compensation awarded under subparagraph (B) or (C) of paragraph (1), such compensation shall be held in a special deposit account and shall be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to the person because of inability to do so within a period of 3 years, the compensation shall be covered into the Treasury of the United States as miscellaneous receipts.

(3) A State shall be subject to the same remedies, including prejudgment interest, as may be imposed upon any private employer under this section.

(e) EQUITY POWERS.—The court shall use, in any case in which the court determines it is appropriate, its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter.

(f) STANDING.—An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter under subsection (a) or by the United States under subsection (a)(1).

(g) RESPONDENT.—In any action under this chapter, only an employer or a potential employer, as the case may be, shall be a necessary party respondent.

(h) FEES, COURT COSTS.—(1) No fees or court costs may be charged or taxed against any person claiming rights under this chapter.

(2) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

(i) **DEFINITION.**—In this section, the term "private employer" includes a political subdivision of a State.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3165; amended Pub. L. 104–275, title III, §311(10), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 105–368, title II, §211(a), Nov. 11, 1998, 112 Stat. 3329; Pub. L. 110–389, title III, §§311(d)(1), (e)(1), (f)(3), 315, Oct. 10, 2008, 122 Stat. 4162–4164, 4167.)

PRIOR PROVISIONS

A prior section 4323 was renumbered section 7623 of this title.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–389, §311(d)(1), inserted "Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General." after "to the Attorney General."

Subsec. (a)(2), (3). Pub. L. 110–389, §311(e)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 110–389, §315, substituted "shall use, in any case in which the court determines it is appropriate," for "may use".

Subsecs. (i), (j). Pub. L. 110–389, §311(f)(3), redesignated subsec. (j) as (i) and struck out former subsec. (i) which read as follows: "INAPPLICABILITY OF STATE STATUTE OF LIMITATIONS.—No State statute of limitations shall apply to any proceeding under this chapter."

1998—Pub. L. 105–368 amended section generally, substituting present provisions for provisions which had: in subsec. (a), authorized reference of complaint to Attorney General and commencement of action for relief on behalf of person whose complaint was referred; in subsec. (b), described appropriate venues in cases where defendant is State or private employer; and in subsec. (c), set forth provisions relating to jurisdiction, abridgement of rights, court and attorney fees, equity power of court, standing, respondents, statute of limitations, and remedies.

1996—Subsec. (a)(1). Pub. L. 104–275, §311(10)(A), struck out "of an unsuccessful effort to resolve a complaint" after "notification pursuant to section 4322(e)".

Subsec. (a)(2)(A). Pub. L. 104–275, §311(10)(B), substituted "under section 4322(a)" for "regarding the complaint under section 4322(c)".

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–368, title II, §211(b), Nov. 11, 1998, 112 Stat. 3330, provided that:

"(1) Section 4323 of title 38, United States Code, as amended by subsection (a), shall apply to actions commenced under chapter 43 of such title on or after the date of the enactment of this Act [Nov. 11, 1998], and shall apply to actions commenced under such chapter before the date of the enactment of this Act that are not final on the date of the enactment of this Act, without regard to when the cause of action accrued.

"(2) In the case of any such action against a State (as an employer) in which a person, on the day before the date of the enactment of this Act [Nov. 11, 1998], is represented by the Attorney General under section 4323(a)(1) of such title as in effect on such day, the court shall upon motion of the Attorney General, substitute the United States as the plaintiff in the action pursuant to such section as amended by subsection (a)."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that provisions necessary for implementation of section 4311 of this title are effective Oct. 13, 1994, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4324. Enforcement of rights with respect to Federal executive agencies

(a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) may request that the Secretary refer the complaint for litigation before the Merit Systems Protection

Board. Not later than 60 days after the date the Secretary receives such a request, the Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

(2)(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.

(B) Not later than 60 days after the date the Special Counsel receives a referral under paragraph (1), the Special Counsel shall—

(i) make a decision whether to represent a person before the Merit Systems Protection Board under subparagraph (A); and

(ii) notify such person in writing of such decision.

(b) A person may submit a complaint against a Federal executive agency or the Office of Personnel Management under this subchapter directly to the Merit Systems Protection Board if that person—

(1) has chosen not to apply to the Secretary for assistance under section 4322(a);

(2) has received a notification from the Secretary under section 4322(e);

(3) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or

(4) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B) declining to initiate an action and represent the person before the Merit Systems Protection Board.

(c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b), without regard as to whether the complaint accrued before, on, or after October 13, 1994. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

(2) If the Board determines that a Federal executive agency or the Office of Personnel Management has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or Office to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

(3) Any compensation received by a person pursuant to an order under paragraph (2) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.

(4) If the Board determines as a result of a hearing or adjudication conducted pursuant to a complaint submitted by a person directly to the Board pursuant to subsection (b) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.

(d)(1) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

(2) Such person may be represented in the Federal Circuit proceeding by the Special Counsel unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3166; amended Pub. L. 104–275, title III, §311(11), Oct. 9, 1996, 110 Stat. 3336; Pub. L. 105–368, title II, §213(a), Nov. 11, 1998, 112 Stat. 3331; Pub. L. 110–389, title III, §311(d)(2), (e)(2), Oct. 10, 2008, 122 Stat. 4163; Pub. L. 111–275, title VII, §703(a), Oct. 13, 2010, 124 Stat. 2888.)

PRIOR PROVISIONS

A prior section 4324 was renumbered section 7624 of this title.

AMENDMENTS

2010—Subsec. (b)(4). Pub. L. 111–275 inserted before period at end "declining to initiate an action and represent the person before the Merit Systems Protection Board".

2008—Subsec. (a)(1). Pub. L. 110–389, §311(d)(2), substituted "Not later than 60 days after the date the Secretary receives such a request, the Secretary shall refer" for "The Secretary shall refer".

Subsec. (a)(2)(B). Pub. L. 110–389, §311(e)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "If the Special Counsel declines to initiate an action and represent a person before the Merit Systems Protection Board under subparagraph (A), the Special Counsel shall notify such person of that decision."

1998—Subsec. (c)(1). Pub. L. 105–368 inserted ", without regard as to whether the complaint accrued before, on, or after October 13, 1994" before period at end of first sentence.

1996—Subsec. (a)(1). Pub. L. 104–275, §311(11)(A), struck out "of an unsuccessful effort to resolve a complaint relating to a Federal executive agency" after "notification pursuant to section 4322(e)".

Subsec. (b). Pub. L. 104–275, §311(11)(B)(i), inserted "or the Office of Personnel Management" after "Federal executive agency" in introductory provisions.

Subsec. (b)(1). Pub. L. 104–275, §311(11)(B)(ii), substituted "under section 4322(a)" for "regarding a complaint under section 4322(c)".

Subsec. (c)(2). Pub. L. 104–275, §311(11)(C), inserted "or the Office of Personnel Management" after "Federal executive agency" and substituted "Office to comply" for "employee to comply".

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–368, title II, §213(b), Nov. 11, 1998, 112 Stat. 3332, provided that: "The amendment made by subsection (a) [amending this section] shall apply to complaints filed with the Merit Systems Protection Board on or after October 13, 1994."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that provisions necessary for implementation of section 4311 of this title are effective Oct. 13, 1994, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4325. Enforcement of rights with respect to certain Federal agencies

(a) This section applies to any person who alleges that—

(1) the reemployment of such person by an agency referred to in subsection (a) of section 4315 was not in accordance with procedures for the reemployment of such person under subsection (b) of such section; or

(2) the failure of such agency to reemploy the person under such section was otherwise wrongful.

(b) Any person referred to in subsection (a) may submit a claim relating to an allegation referred to in that subsection to the inspector general of the agency which is the subject of the allegation. The inspector general shall investigate and resolve the allegation pursuant to procedures prescribed by the head of the agency.

(c) In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary under section 4322(d).

(d) This section may not be construed—

(1) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter or information relating to the rights and obligations of employees and Federal agencies under this chapter; or

(2) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3167; amended Pub. L. 104–275, title III, §311(12), Oct. 9, 1996, 110 Stat. 3336.)

PRIOR PROVISIONS

A prior section 4325 was renumbered section 7625 of this title.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104–275 struck out ", alternative employment in the Federal Government under this chapter," before "or information relating to the rights and obligations" and substituted "employees and" for "employee and".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that provisions necessary for implementation of section 4311 of this title are effective Oct. 13, 1994, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4326. Conduct of investigation; subpoenas

(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to and the right to interview persons with information relevant to the investigation and shall have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.

(b) In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this chapter and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(d) Subsections (b) and (c) shall not apply to the legislative branch or the judicial branch of the United States.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3167; amended Pub. L. 104–275, title III, §311(13), Oct. 9, 1996, 110 Stat. 3336.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–275 inserted "have reasonable access to and the right to interview persons with information relevant to the investigation and shall" after "at all reasonable times,".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–275 effective Oct. 13, 1994, see section 313 of Pub. L. 104–275, set out as a note under section 4301 of this title.

EFFECTIVE DATE

Section effective Oct. 13, 1994, and applicable to any matter pending with Secretary of Labor under former section 4305 of this title as of that date, see section 8(e) of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4327. Noncompliance of Federal officials with deadlines; inapplicability of statutes of limitations

(a) EFFECT OF NONCOMPLIANCE OF FEDERAL OFFICIALS WITH DEADLINES.—(1) The inability of the Secretary, the Attorney General, or the Special Counsel to comply with a deadline applicable to such official under section 4322, 4323, or 4324 of this title—

(A) shall not affect the authority of the Attorney General or the Special Counsel to represent and file an action or submit a complaint on behalf of a person under section 4323 or 4324 of this title;

(B) shall not affect the right of a person—

(i) to commence an action under section 4323 of this title;

(ii) to submit a complaint under section 4324 of this title; or

(iii) to obtain any type of assistance or relief authorized by this chapter;

(C) shall not deprive a Federal court, the Merit Systems Protection Board, or a State court of jurisdiction over an action or complaint filed by the Attorney General, the Special Counsel, or a person under section 4323 or 4324 of this title; and

(D) shall not constitute a defense, including a statute of limitations period, that any employer (including a State, a private employer, or a Federal executive agency) or the Office of Personnel Management may raise in an action filed by the Attorney General, the Special Counsel, or a person under section 4323 or 4324 of this title.

(2) If the Secretary, the Attorney General, or the Special Counsel is unable to meet a deadline applicable to such official in section 4322(f), 4323(a)(1), 4323(a)(2), 4324(a)(1), or 4324(a)(2)(B) of this title, and the person agrees to an extension of time, the Secretary, the Attorney General, or the Special Counsel, as the case may be, shall complete the required action within the additional period of time agreed to by the person.

(b) INAPPLICABILITY OF STATUTES OF LIMITATIONS.—If any person seeks to file a complaint or claim with the Secretary, the Merit Systems Protection Board, or a Federal or State court under this chapter alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim.

(Added Pub. L. 110–389, title III, §311(f)(1), Oct. 10, 2008, 122 Stat. 4163.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§4331. Regulations

(a) The Secretary (in consultation with the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to States, local governments, and private employers.

(b)(1) The Director of the Office of Personnel Management (in consultation with the Secretary and the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to Federal executive agencies (other than the agencies referred to in paragraph (2)) as employers. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers, except that employees of the Federal Government may be given greater or additional rights.

(2) The following entities may prescribe regulations to carry out the activities of such entities under this chapter:

- (A) The Merit Systems Protection Board.
- (B) The Office of Special Counsel.
- (C) The agencies referred to in section 2302(a)(2)(C)(ii) of title 5.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3168; amended Pub. L. 109–233, title V, §503(14), June 15, 2006, 120 Stat. 417.)

PRIOR PROVISIONS

A prior section 4331 was renumbered section 7631 of this title.

AMENDMENTS

2006—Subsec. (b)(2)(C). Pub. L. 109–233 substituted "section 2302(a)(2)(C)(ii)" for "section 2303(a)(2)(C)(ii)".

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4332. Reports

(a) **ANNUAL REPORT BY SECRETARY.**—The Secretary shall, after consultation with the Attorney General and the Special Counsel referred to in section 4324(a)(1), transmit to Congress not later than July 1 each year a report on matters for the fiscal year ending in the year before the year in which such report is transmitted as follows:

(1) The number of cases reviewed by the Department of Labor under this chapter during the fiscal year for which the report is made.

(2) The number of cases reviewed by the Secretary of Defense under the National Committee for Employer Support of the Guard and Reserve of the Department of Defense during the fiscal year for which the report is made.

(3) The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of Special Counsel before the Merit Systems Protection Board pursuant to section 4324 during such fiscal year.

(4) The number of complaints filed by the Attorney General pursuant to section 4323 during such fiscal year.

(5) The number of cases reviewed by the Secretary and the Secretary of Defense through the National Committee for Employer Support of the Guard and Reserve of the Department of Defense that involve the same person.

(6) With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5)—

(A) the number of such cases that involve a disability-related issue; and

(B) the number of such cases that involve a person who has a service-connected disability.

(7) The nature and status of each case reported on pursuant to paragraph (1), (2), (3), (4), or (5).

(8) With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5) the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System.

(9) An indication of whether there are any apparent patterns of violation of the provisions of this chapter, together with an explanation thereof.

(10) Recommendations for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

(b) **QUARTERLY REPORTS.**—

(1) **QUARTERLY REPORT BY SECRETARY.**—Not later than 30 days after the end of each fiscal quarter, the Secretary shall submit to Congress, the Secretary of Defense, the Attorney General, and the Special Counsel a report setting forth, for the previous full quarter, the following:

(A) The number of cases for which the Secretary did not meet the requirements of section 4322(f) of this title.

(B) The number of cases for which the Secretary received a request for a referral under paragraph (1) of section 4323(a) of this title but did not make such referral within the time period required by such paragraph.

(2) **QUARTERLY REPORT BY ATTORNEY GENERAL.**—Not later than 30 days after the end of each fiscal quarter, the Attorney General shall submit to Congress, the Secretary, the Secretary of Defense, and the Special Counsel a report setting forth, for the previous full quarter, the number of cases for which the Attorney General received a referral under paragraph (1) of section 4323(a) of this title but did not meet the requirements of paragraph (2) of section 4323(a) of this title for such referral.

(3) **QUARTERLY REPORT BY SPECIAL COUNSEL.**—Not later than 30 days after the end of each fiscal quarter, the Special Counsel shall submit to Congress, the Secretary, the Secretary of Defense, and the Attorney General a report setting forth, for the previous full quarter, the number of cases for which the Special Counsel received a referral under paragraph (1) of section 4324(a) of this title but did not meet the requirements of paragraph (2)(B) of section 4324(a) of this title for such referral.

(c) **UNIFORM CATEGORIZATION OF DATA.**—The Secretary shall coordinate with the Secretary of Defense, the Attorney General, and the Special Counsel to ensure that—

(1) the information in the reports required by this section is categorized in a uniform way; and

(2) the Secretary, the Secretary of Defense, the Attorney General, and the Special Counsel each have electronic access to the case files reviewed under this chapter by the Secretary, the Secretary of Defense, the Attorney General, and the Special Counsel with due regard for the provisions of section 552a of title 5.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3168; amended Pub. L. 108–454, title II, §202, Dec. 10, 2004, 118 Stat. 3606; Pub. L. 110–181, div. A, title V, §595, Jan. 28, 2008, 122 Stat. 139; Pub. L. 110–389, title III, §312(a)–(d), Oct. 10, 2008, 122 Stat. 4164, 4165.)

PRIOR PROVISIONS

A prior section 4332 was renumbered section 7632 of this title.

AMENDMENTS

2008—Pub. L. 110–389, §312(a), (b)(1), designated existing provisions as subsec. (a), inserted heading, and substituted ", transmit to Congress not later than July 1 each year a report on matters for the fiscal year ending in the year before the year in which such report is transmitted as follows:" for "and no later than February 1, 2005, and annually thereafter, transmit to the Congress, a report containing the following matters for the fiscal year ending before such February 1:" in introductory provisions.

Pub. L. 110–181 added par. (2), redesignated former pars. (2) to (6) as (3) to (7), respectively, and in par. (5) substituted "(2), (3), or (4)" for "(2), or (3)".

Subsec. (a)(3). Pub. L. 110–389, §312(b)(2), inserted "and the number of actions initiated by the Office of Special Counsel before the Merit Systems Protection Board pursuant to section 4324 during such fiscal year" before period at end.

Subsec. (a)(5) to (10). Pub. L. 110–389, §312(b)(3)–(7), added pars. (5), (6), and (8), redesignated former pars. (5), (6), and (7) as (7), (9), and (10), respectively, and in par. (7), substituted "(4), or (5)" for "or (4)".

Subsecs. (b), (c). Pub. L. 110–389, §312(c), (d), added subsecs. (b) and (c).

2004—Pub. L. 108–454 substituted "no later than February 1, 2005, and annually thereafter" for "no later than February 1, 1996, and annually thereafter through 2000" in introductory provisions.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–389, title III, §312(f), Oct. 10, 2008, 122 Stat. 4166, provided that: "The amendments made by this section [amending this section] shall apply with respect to each report required under section 4332 of title

38, United States Code (as amended by this section), after the date of the enactment of this Act [Oct. 10, 2008]."

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4333. Outreach

The Secretary, the Secretary of Defense, and the Secretary of Veterans Affairs shall take such actions as such Secretaries determine are appropriate to inform persons entitled to rights and benefits under this chapter and employers of the rights, benefits, and obligations of such persons and such employers under this chapter.

(Added Pub. L. 103–353, §2(a), Oct. 13, 1994, 108 Stat. 3169.)

PRIOR PROVISIONS

A prior section 4333 was renumbered section 7633 of this title.

EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§4334. Notice of rights and duties

(a) **REQUIREMENT TO PROVIDE NOTICE.**—Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

(b) **CONTENT OF NOTICE.**—The Secretary shall provide to employers the text of the notice to be provided under this section.

(Added Pub. L. 108–454, title II, §203(a), Dec. 10, 2004, 118 Stat. 3606.)

PRIOR PROVISIONS

A prior section 4334 was renumbered section 7634 of this title.

EFFECTIVE DATE

Pub. L. 108–454, title II, §203(c), Dec. 10, 2004, 118 Stat. 3606, provided that:

"(1) Not later than the date that is 90 days after the date of the enactment of this Act [Dec. 10, 2004], the Secretary of Labor shall make available to employers the notice required under section 4334 of title 38, United States Code, as added by subsection (a).

"(2) The amendments made by this section [enacting this section] shall apply to employers under chapter 43 of title 38, United States Code, on and after the first date referred to in paragraph (1)."

§4335. Training for Federal executive agency human resources personnel on employment and reemployment rights and limitations

(a) **TRAINING REQUIRED.**—The head of each Federal executive agency shall provide training for the human resources personnel of such agency on the following:

(1) The rights, benefits, and obligations of members of the uniformed services under this chapter.

(2) The application and administration of the requirements of this chapter by such agency with respect to such members.

(b) **CONSULTATION.**—The training provided under subsection (a) shall be developed and provided in consultation with the Director of the Office of Personnel Management.

(c) **FREQUENCY.**—The training under subsection (a) shall be provided with such frequency as the Director of the Office of Personnel Management shall specify in order to ensure that the human resources personnel of Federal executive agencies are kept fully and currently informed of the matters covered by the training.

(d) **HUMAN RESOURCES PERSONNEL DEFINED.**—In this section, the term "human resources personnel", in the case of a Federal executive agency, means any personnel of the agency who are authorized to recommend, take, or approve any personnel action that is subject to the requirements of this chapter with respect to employees of the agency.

(Added Pub. L. 110–389, title III, §313(a), Oct. 10, 2008, 122 Stat. 4166.)

PRIOR PROVISIONS

Prior sections 4335, 4336, and 4351 to 4355 were renumbered sections 7635, 7636, and 7651 to 7655 of this title, respectively.

A prior section 5001 was renumbered section 8101 of this title.

Another prior section 5001, Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1251; Pub. L. 88–450, §1, Aug. 19, 1964, 78 Stat. 500; Pub. L. 89–311, §8, Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93–82, title III, §301, Aug. 2, 1973, 87 Stat. 194; Pub. L. 94–581, title I, §114, title II, §§206(a), 210(e)(1), Oct. 21, 1976, 90 Stat. 2852, 2859, 2864; Pub. L. 95–201, §4(c), Nov. 23, 1977, 91 Stat. 1431, relating generally to the authority of the Administrator to establish hospitals and domiciliary facilities for veterans, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96–22. See section 8102 of this title.

A prior section 5002 was renumbered section 8102 of this title.

Another prior section 5002, Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1252; Pub. L. 94–581, title II, §210(e)(2), Oct. 21, 1976, 90 Stat. 2865, relating to the construction and repair of hospitals, domiciliaries, and outpatient dispensary facilities, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96–22. See section 8103 of this title.

A prior section 5003 was renumbered section 8103 of this title.

Another prior section 5003, Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1252, relating to the use by the Veterans' Administration of Armed Forces' facilities, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96–22. See section 8111 of this title.

A prior section 5004 was renumbered section 8104 of this title.

Another prior section 5004, Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 152; Pub. L. 89–785, title II, §201(a), Nov. 7, 1966, 80 Stat. 1372; Pub. L. 94–581, title II, §210(e)(3), Oct. 21, 1976, 90 Stat. 2865, relating to garage and parking facilities, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96–22. See section 8109 of this title.

A prior section 5005 was renumbered section 8105 of this title.

Another prior section 5005, Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1252; Pub. L. 94–581, title II, §210(e)(4), Oct. 21, 1976, 90 Stat. 2865, relating to the acceptance by the President of buildings, structures, equipment, or grounds from States or other political subdivisions or from persons, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96–22. See section 8115 of this title.

A prior section 5006 was renumbered section 8106 of this title.

Another prior section 5006, Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1253, relating to property formerly owned by the National Home for Disabled Volunteer Soldiers, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96–22. See section 8113 of this title.

A prior section 5007 was renumbered section 8107 of this title.

Another prior section 5007, added Pub. L. 93–82, title III, §302(1), Aug. 2, 1973, 87 Stat. 195, and amended Pub. L. 94–581, title II, §210(e)(5), Oct. 21, 1976, 90 Stat. 2865, relating to partial relinquishment of legislative jurisdiction, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96–22. See section 8112 of this title.

Prior sections 5008 to 5011 were renumbered sections 8108 to 8111 of this title, respectively.

Another prior section 5011 was renumbered section 5021 of this title.

Prior sections 5011A and 5012 were renumbered sections 8111A and 8112 of this title, respectively.

Another prior section 5012 was renumbered section 5022 of this title.

A prior section 5013 was renumbered section 8113 of this title.

Another prior section 5013 was renumbered section 5023 of this title.

A prior section 5014 was renumbered section 8114 of this title.

Another prior section 5014 was renumbered section 5024 of this title.

Prior sections 5015, 5016, 5021 to 5025, 5031 to 5037, and 5051 to 5056 were renumbered sections 8115, 8116, 8121 to 8125, 8131 to 8137, and 8151 to 8156 of this title, respectively.

A prior section 5057, added Pub. L. 89–785, title II, §203, Nov. 7, 1966, 80 Stat. 1376, directed Administrator to submit to Congress not more than sixty days after end of each fiscal year separate reports on activities carried out under sections 5053 and 5054 of this title, prior to repeal by Pub. L. 99–576, title II, §231(c)(2)(A), Oct. 28, 1986, 100 Stat. 3264.

Prior sections 5070, 5071 to 5074, 5081 to 5083, 5091 to 5093, and 5096 were renumbered sections 8201, 8211 to 8214, 8221 to 8223, 8231 to 8233, and 8241 of this title, respectively.