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

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES

-HEAD-

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

-MISC1-

SUBCHAPTER I - GENERAL

Sec.

4301. Purposes; sense of Congress.

4302. Relation to other law and plans or agreements.

4303. Definitions.

4304. Character of service.

SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

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

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

4313. Reemployment positions.

4314. Reemployment by the Federal Government.

4315. Reemployment by certain Federal agencies.

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

4317. Health plans.

4318. Employee pension benefit plans.

4319. Employment and reemployment rights in foreign countries.

SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

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

4322. Enforcement of employment or reemployment rights.

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

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

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

4326. Conduct of investigation; subpoenas.

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

4331. Regulations.

4332. Reports.

4333. Outreach.

-COD-

CODIFICATION

Chapter 43 was amended generally by Pub. L. 103-353, effective
with respect to reemployments initiated on or after the first day

after the 60-day period beginning Oct. 13, 1994, and is shown herein as having been added by Pub. L. 103-353 without reference to prior amendments. Former chapter 43 ''Veterans' Reemployment Rights'' (Sec. 4301 to 4307), as in effect on the day before Oct. 13, 1994, set out below, 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, set out as an Effective Date note under section 4301 of this title. Former chapter 43, as so in effect, read as follows:

CHAPTER 43 - VETERANS' REEMPLOYMENT RIGHTS

Sec. 4301. Right to reemployment of inducted persons; benefits protected

(a) In the case of any person who is inducted into the Armed Forces of the United States under the Military Selective Service Act (or under any prior or subsequent corresponding law) for training and service and who leaves a position (other than a temporary position) in the employ of any employer in order to perform such training and service, and (1) receives a certificate described in section 9(a) of the Military Selective Service Act (relating to the satisfactory completion of military service), and (2) makes application for reemployment within ninety days after such person is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year -

(A) if such position was in the employ of the United States Government, its territories, or possessions, or political subdivisions thereof, or the District of Columbia, such person shall -

(i) if still qualified to perform the duties of such position or able to become requalified with reasonable efforts by the employer, be restored to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position or able to become requalified with reasonable efforts by the employer, by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of the employer, be offered employment and, if such person so requests, be employed in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case;

(B) if such position was in the employ of a State, or political subdivision thereof, or a private employer, such person shall -

(i) if still qualified to perform the duties of such position or able to become requalified with reasonable efforts by the employer, be restored by such employer or the employer's successor in interest to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position or able to become requalified with reasonable efforts by the employer, by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of such employer or the employer's successor in interest, be offered employment and, if such person so requests, be employed by such employer or the employer's successor in interest in such other position the

duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case,

unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Nothing in this chapter shall excuse noncompliance with any statute or ordinance of a State or political subdivision thereof establishing greater or additional rights or protections than the rights and protections established pursuant to this chapter.

(b)(1)(A) Any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section shall be considered as having been on furlough or leave of absence during such person's period of training and service in the Armed Forces, shall be so restored or reemployed without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration or reemployment.

(B) In the case of employer-offered health insurance, an exclusion or waiting period may not be imposed in connection with coverage of a health or physical condition of a person entitled to participate in that insurance under subparagraph (A), or a health or physical condition of any other person who is covered by the insurance by reason of the coverage of such person, if -

(i) the condition arose before or during that person's period of training or service in the Armed Forces;

(ii) an exclusion or waiting period would not have been imposed for the condition during a period of coverage resulting from participation by such person in the insurance; and

(iii) the condition of such person has not been determined by the Secretary to be service-connected.

(2) It is hereby declared to be the sense of the Congress that any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section should be so restored or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time of such person's entering the Armed Forces until the time of such person's restoration to such employment, or reemployment.

(3) Any person who seeks or holds a position described in clause (A) or (B) of subsection (a) of this section shall not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

(c) The rights granted by subsections (a) and (b) of this section to persons who left the employ of a State or political subdivision thereof and were inducted into the Armed Forces shall not diminish any rights such persons may have pursuant to any statute or ordinance of such State or political subdivision establishing greater or additional rights or protections.

(Added Pub. L. 93-508, title IV, Sec. 404(a), Dec. 3, 1974, 88 Stat. 1594, Sec. 2021; amended Pub. L. 94-502, title VI, Sec.

608(1), (2), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 99-576, title III, Sec. 331, Oct. 28, 1986, 100 Stat. 3279; Pub. L. 102-12, Sec. 5(a), Mar. 18, 1991, 105 Stat. 36; Pub. L. 102-25, title III, Sec. 340(a), Apr. 6, 1991, 105 Stat. 92; renumbered Sec. 4301, Pub. L. 102-568, title V, Sec. 506(a), Oct. 29, 1992, 106 Stat. 4340.)

-MISC3-

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. Section 9(a) of such Act is classified to section 459(a) of Title 50, Appendix. For complete classification of this Act to the Code, see note set out under section 451 of Title 50, Appendix, and Tables.

Sec. 4302. Enforcement procedures

If any employer, who is a private employer or a State or political subdivision thereof, fails or refuses to comply with the provisions of section 4321(a) (4301(a)), (b)(1), or (b)(3), or 4324 (4304) of this title, the district court of the United States for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, specifically to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. Any such compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions. Upon application to the United States attorney or comparable official for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, by any person claiming to be entitled to the benefits provided for in such provisions, such United States attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof specifically to require such employer to comply with such provisions. No fees or court costs shall be taxed against any person who may apply for such benefits. In any such action only the employer shall be deemed a necessary party respondent. No State statute of limitations shall apply to any proceedings under this chapter.

(Added Pub. L. 93-508, title IV, Sec. 404(a), Dec. 3, 1974, 88 Stat. 1596, Sec. 2022; amended Pub. L. 97-295, Sec. 4(71), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 98-620, title IV, Sec. 402(36), Nov. 8, 1984, 98 Stat. 3360; renumbered Sec. 4302 and amended Pub. L. 102-568, title V, Sec. 506(a), (c)(1), Oct. 29, 1992, 106 Stat. 4340, 4341.)

Sec. 4303. Reemployment by the United States, territory, possession, or the District of Columbia

(a) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 4321(a) (4301(a)) and who was employed, immediately before entering

the Armed Forces, by any agency in the executive branch of the Government or by any territory or possession, or political subdivision thereof, or by the District of Columbia, shall be so restored or reemployed by such agency or the successor to its functions, or by such territory, possession, political subdivision, or the District of Columbia. In any case in which, upon appeal of any person who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by the District of Columbia, the Director of the Office of Personnel Management finds that -

(1) such agency is no longer in existence and its functions have not been transferred to any other agency; or

(2) for any reason it is not feasible for such person to be restored to employment by such agency or by the District of Columbia;

the Director shall determine whether or not there is a position in any other agency in the executive branch of the Government or in the government of the District of Columbia for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists or by the government of the District of Columbia, as the case may be. The Director is authorized and directed to issue regulations giving full force and effect to the provisions of this section insofar as they relate to persons entitled to be restored to or employed in positions in the executive branch of the Government or in the government of the District of Columbia, including persons entitled to be reemployed under the last sentence of subsection (b) of this section. The agencies in the executive branch of the Government and the government of the District of Columbia shall comply with such rules, regulations, and orders issued by the Director pursuant to this subsection. The Director is authorized and directed when the Director finds, upon appeal of the person concerned, that any agency in the executive branch of the Government or the government of the District of Columbia has failed or refuses to comply with the provisions of this section, to issue an order specifically requiring such agency or the government of the District of Columbia to comply with such provisions and to compensate such person for any loss of salary or wages suffered by reason of failure to comply with such provisions, less any amounts received by such person through other employment, unemployment compensation, or readjustment allowances. Any such compensation ordered to be paid by the Director shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions, and shall be paid by the head of the agency concerned or by the government of the District of Columbia out of appropriations currently available for salary and expenses of such agency or government, and such appropriations shall be available for such purpose. As used in this chapter, the term "agency in the executive branch of the Government" means any department, independent establishment, agency, or corporation in the executive branch of the United States Government (including the United States Postal Service and the Postal Rate Commission).

(b) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section

4321(a) (4301(a)) of this title, and who was employed, immediately before entering the Armed Forces, in the legislative branch of the Government, shall be so restored or employed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces. In any case in which it is not possible for any such person to be restored to or employed in a position in the legislative branch of the Government and such person is otherwise eligible to acquire a status for transfer to a position in the competitive service in accordance with section 3304(c) of title 5, the Director of the Office of Personnel Management shall, upon appeal of such person, determine whether or not there is a position in the executive branch of the Government for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists.

(c) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 4321(a) (4301(a)) of this title and who was employed, immediately before entering the Armed Forces, in the judicial branch of the Government, shall be so restored or reemployed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces.

(Added Pub. L. 93-508, title IV, Sec. 404(a), Dec. 3, 1974, 88 Stat. 1596, Sec. 2023; amended Pub. L. 97-295, Sec. 4(72), Oct. 12, 1982, 96 Stat. 1310; renumbered Sec. 4303 and amended Pub. L. 102-568, title V, Sec. 506(a), (c)(2), Oct. 29, 1992, 106 Stat. 4340, 4341.)

Sec. 4304. Rights of persons who enlist or are called to active duty; Reserves

(a) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enlists in the Armed Forces of the United States (other than in a Reserve component) shall be entitled upon release from service under honorable conditions to all of the reemployment rights and other benefits provided for by this chapter in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such person's service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by such person after August 1, 1961, does not exceed five years, and if the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law).

(b)(1) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enters upon active duty (other than for the purpose of determining physical fitness and other than for training), whether or not voluntarily, in the Armed Forces of the United States or the Public Health Service in response to an order or call to active duty shall, upon such person's relief from active duty under honorable conditions, be entitled to all of the reemployment rights and benefits provided for by this chapter in the case of persons

inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such active duty performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any such active duty, additional or otherwise, performed after August 1, 1961, does not exceed four years (plus in each case any additional period in which such person was unable to obtain orders relieving such person from active duty).

(2) Any member of a Reserve component of the Armed Forces of the United States who voluntarily or involuntarily enters upon active duty (other than for the purpose of determining physical fitness and other than for training) or whose active duty is voluntarily or involuntarily extended during a period when the President is authorized to order units of the Ready Reserve or members of a Reserve component to active duty shall have the service limitation governing eligibility for reemployment rights under subsection (b)(1) of this section extended by such member's period of such active duty, but not to exceed that period of active duty to which the President is authorized to order units of the Ready Reserve or members of a Reserve component. With respect to a member who voluntarily enters upon active duty or whose active duty is voluntarily extended, the provisions of this subsection shall apply only when such additional active duty is at the request and for the convenience of the Federal Government.

(c) Any member of a Reserve component of the Armed Forces of the United States who is ordered to an initial period of active duty for training of not less than twelve consecutive weeks shall, upon application for reemployment within thirty-one days after (1) such member's release from such active duty for training after satisfactory service, or (2) such member's discharge from hospitalization incident to such active duty for training, or one year after such member's scheduled release from such training, whichever is earlier, be entitled to all reemployment rights and benefits provided by this chapter for persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), except that (A) any person restored to or employed in a position in accordance with the provisions of this subsection shall not be discharged from such position without cause within six months after that restoration, and (B) no reemployment rights granted by this subsection shall entitle any person to retention, preference, or displacement rights over any veteran with a superior claim under those provisions of title 5 relating to veterans and other preference eligibles.

(d) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 4321(a) (4301(a)) shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes. Such employee shall report for work at

the beginning of the next regularly scheduled working period after expiration of the last calendar day necessary to travel from the place of training to the place of employment following such employee's release, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at such next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and discipline with respect to absence from scheduled work. If such an employee is hospitalized incident to active duty for training or inactive duty training, such employee shall be required to report for work at the beginning of the next regularly scheduled work period after expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control, or within one year after such employee's release from active duty for training or inactive duty training, whichever is earlier. If an employee covered by this subsection is not qualified to perform the duties of such employee's position by reason of disability sustained during active duty for training or inactive duty training, but is qualified to perform the duties of any other position in the employ of the employer or such employer's successor in interest, such employee shall be offered employment and, if such person so requests, be employed by that employer or such employer's successor in interest in such other position the duties of which such employee is qualified to perform as will provide such employee like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such employee's case.

(e) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 4321(a) (4301(a)) shall be considered as having been on leave of absence during the period required to report for the purpose of being inducted into, entering, or determining, by a preinduction or other examination, physical fitness to enter the Armed Forces. Upon such employee's rejection, upon completion of such employee's preinduction or other examination, or upon such employee's discharge from hospitalization incident to such rejection or examination, such employee shall be permitted to return to such employee's position in accordance with the provisions of subsection (d) of this section.

(f) For the purposes of subsections (c) and (d) of this section, full-time training or other full-time duty performed by a member of the National Guard under section 316, 502, 503, 504, or 505 of title 32 is considered active duty for training. For the purposes of subsection (d) of this section, inactive duty training performed by that member under section 502 of title 32 or section 206, 301, 309, 402, or 1002 of title 37 is considered inactive duty training.

(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty (other than for training) under section 673b of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under subsection (c) of this section for persons ordered to an initial period of active duty for training of not less than twelve consecutive weeks; and shall have the service limitation governing eligibility for reemployment rights under subsections (a) and (b)(1) of this section extended by

the period of such active duty, including any period of extension of active duty under section 673b of title 10.

(Added Pub. L. 93-508, title IV, Sec. 404(a), Dec. 3, 1974, 88 Stat. 1598, Sec. 2024; amended Pub. L. 94-286, Sec. 2, May 14, 1976, 90 Stat. 518; Pub. L. 94-502, title VI, Sec. 608(3), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 96-466, title V, Sec. 511, Oct. 17, 1980, 94 Stat. 2207; Pub. L. 99-576, title VII, Sec. 701(60), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 102-12, Sec. 8(a)(1), (b)(1), Mar. 18, 1991, 105 Stat. 38; renumbered Sec. 4304 and amended Pub. L. 102-568, title V, Sec. 506(a), (c)(3), Oct. 29, 1992, 106 Stat. 4340, 4341.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsecs. (a), (b), and (c), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see note set out under section 451 of Title 50, Appendix, and Tables.

Section 309 of title 37, referred to in subsec. (f), was repealed with respect to administrative functions performed after Sept. 30, 1980, by Pub. L. 96-107, title IV, Sec. 404(a)(1), (b), Nov. 9, 1979, 93 Stat. 808.

Sec. 4305. Assistance in obtaining reemployment

The Secretary of Labor, through the Office of Veterans' Reemployment Rights, shall render aid in the replacement in their former positions or reemployment of persons who have satisfactorily completed any period of active duty in the Armed Forces or the Public Health Service. In rendering such aid, the Secretary shall use existing Federal and State agencies engaged in similar or related activities and shall utilize the assistance of volunteers. (Added Pub. L. 93-508, title IV, Sec. 404(a), Dec. 3, 1974, 88 Stat. 1600, Sec. 2025; renumbered Sec. 4305, Pub. L. 102-568, title V, Sec. 506(a), Oct. 29, 1992, 106 Stat. 4340.)

Sec. 4306. Prior rights for reemployment

In any case in which two or more persons who are entitled to be restored to or employed in a position under the provisions of this chapter or of any other law relating to similar reemployment benefits left the same position in order to enter the Armed Forces, the person who left such position first shall have the prior right to be restored thereto or reemployed on the basis thereof, without prejudice to the reemployment rights of the other person or persons to be restored or reemployed.

(Added Pub. L. 93-508, title IV, Sec. 404(a), Dec. 3, 1974, 88 Stat. 1600, Sec. 2026; renumbered Sec. 4306, Pub. L. 102-568, title V, Sec. 506(a), Oct. 29, 1992, 106 Stat. 4340.)

(Sec. 4307. Repealed. Pub. L. 103-353, Sec. 8(d)(2), Oct. 13, 1994, 108 Stat. 3176, eff. Aug. 1, 1990)

Section, added Pub. L. 102-25, title III, Sec. 339(a), Apr. 6, 1991, 105 Stat. 91, Sec. 2027; renumbered Sec. 4307, Pub. L. 102-568, title V, Sec. 506(a), Oct. 29, 1992, 106 Stat. 4340, related to qualification for employment position.

PRIOR PROVISIONS

Another 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, Sec. 1(a), June 24, 1965, 79 Stat. 173.

AMENDMENTS

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

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4102A, 4106, 5303A of
this title; title 2 sections 1302, 1361, 1371, 1434; title 3
sections 402, 435; title 5 sections 1204, 8331, 8334, 8351, 8401,
8422, 8432b; title 10 section 706; title 26 sections 414, 3121;
title 28 section 631; title 42 section 410; title 46 App. section
1132; title 50 App. section 593.

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-HEAD-

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-CITE-

38 USC Sec. 4301

01/23/00

-EXPCITE-

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-HEAD-

Sec. 4301. Purposes; sense of Congress

-STATUTE-

(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.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3150;

amended Pub. L. 104-275, title III, Sec. 311(1), Oct. 9, 1996, 110 Stat. 3333.)

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PRIOR PROVISIONS

A prior section 4301, applicable to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, is contained in chapter 43 set out as a note preceding this subchapter.

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

Section 313 of Pub. L. 104-275 provided that:

'(a) In General. - Except as provided in subsection (b), the amendments made by this subtitle (subtitle B (Sec. 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

Section 8 of Pub. L. 103-353, as amended by Pub. L. 104-275, title III, Sec. 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 (set out as a note preceding this subchapter), 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 (set out in a note preceding this subchapter), 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.''

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 App. section 1132.

-CITE-

38 USC Sec. 4302

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER I - GENERAL

-HEAD-

Sec. 4302. Relation to other law and plans or agreements

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

PRIOR PROVISIONS

A prior section 4302, applicable to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, is contained in chapter 43 set out as a note preceding this subchapter.

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.

-CITE-

38 USC Sec. 4303

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER I - GENERAL

-HEAD-

Sec. 4303. Definitions

-STATUTE-

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 any advantage, profit, privilege, gain, status, account, or interest (other than 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.

(5) The term "Federal executive agency" includes the United States Postal Service, the Postal Rate 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, and 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.

(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, and any other category of persons designated by the President in time of war or national emergency.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3150; amended Pub. L. 104-275, title III, Sec. 311(2), Oct. 9, 1996, 110 Stat. 3334; Pub. L. 105-368, title II, Sec. 212(a), Nov. 11, 1998, 112 Stat. 3331.)

-MISC1-

PRIOR PROVISIONS

A prior section 4303, applicable to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, is contained in chapter 43 set out as a note preceding this subchapter.

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

AMENDMENTS

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 1998 AMENDMENT

Pub. L. 105-368, title II, Sec. 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.

-SECFREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4304

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER I - GENERAL

-HEAD-

Sec. 4304. Character of service

-STATUTE-

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.

-SOURCE-

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

-MISC1-

PRIOR PROVISIONS

Prior sections 4304 to 4307, applicable to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, are contained in chapter 43 set out as a note preceding this

subchapter.

Another prior section 4304 was renumbered section 7604 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.

-SECFREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4312 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS
AND LIMITATIONS; PROHIBITIONS 01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-SECFREF-

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4303 of this title.

-CITE-

38 USC Sec. 4311 01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

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

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4303, 4319 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4312

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

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

-STATUTE-

(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, 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; or

(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.

(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.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3153; amended Pub. L. 104-275, title III, Sec. 311(4), Oct. 9, 1996, 110 Stat. 3334.)

-MISC1-

PRIOR PROVISIONS

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

AMENDMENTS

1996 - Subsec. (a). Pub. L. 104-275, Sec. 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, Sec. 311(4)(B)(i), substituted 'section 10147' for 'section 270'.

Subsec. (c)(4)(A). Pub. L. 104-275, Sec. 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, Sec. 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, Sec. 311(4)(B)(ii)(III), substituted 'section 12304' for 'section 673b'.

Subsec. (c)(4)(E). Pub. L. 104-275, Sec. 311(4)(B)(ii)(IV), substituted 'section 12406' for 'section 3500 or 8500'.

Subsec. (d)(2)(C). Pub. L. 104-275, Sec. 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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4311, 4313, 4314, 4317, 4319 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4313

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

Sec. 4313. Reemployment positions

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4312, 4314, 4315, 4319 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4314

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

Sec. 4314. Reemployment by the Federal Government

-STATUTE-

(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).

-SOURCE-

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

-MISC1-

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.

-SECFREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4313, 4319 of this title; title 3 section 416.

-CITE-

38 USC Sec. 4315

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART III - READJUSTMENT AND RELATED BENEFITS

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

SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

-HEAD-

Sec. 4315. Reemployment by certain Federal agencies

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4313, 4319, 4325 of this title.

-CITE-

38 USC Sec. 4316

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

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

-STATUTE-

(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.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3160; amended Pub. L. 104-275, title III, Sec. 311(6), Oct. 9, 1996, 110 Stat. 3335.)

-MISC1-

PRIOR PROVISIONS

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

AMENDMENTS

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 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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4319 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4317

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART III - READJUSTMENT AND RELATED BENEFITS

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

SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

Sec. 4317. Health plans

-STATUTE-

(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, 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 18-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, 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. 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.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3161; amended Pub. L. 104-275, title III, Sec. 311(7), Oct. 9, 1996, 110 Stat. 3335.)

-REFTEXT-

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.

-MISC2-

PRIOR PROVISIONS

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

AMENDMENTS

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 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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4316, 4319 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4318

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

-HEAD-

Sec. 4318. Employee pension benefit plans

-STATUTE-

(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.

-SOURCE-

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

-REFTEXT-

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.

-MISC2-

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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4303, 4312, 4316, 4319 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4319

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART III - READJUSTMENT AND RELATED BENEFITS

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

SUBCHAPTER II - EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

-HEAD-

Sec. 4319. Employment and reemployment rights in foreign countries

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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.

-SECFREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4303 of this title.

-CITE-

38 USC SUBCHAPTER III - PROCEDURES FOR ASSISTANCE,
ENFORCEMENT, AND INVESTIGATION 01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-HEAD-

SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-CITE-

38 USC Sec. 4321 01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-HEAD-

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

-STATUTE-

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.

-SOURCE-

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

-MISC1-

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.

-CITE-

38 USC Sec. 4322

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-HEAD-

Sec. 4322. Enforcement of employment or reemployment rights

-STATUTE-

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

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3164; amended Pub. L. 104-275, title III, Sec. 311(9), Oct. 9, 1996, 110 Stat. 3335.)

-MISC1-

PRIOR PROVISIONS

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

AMENDMENTS

1996 - Subsec. (d). Pub. L. 104-275, Sec. 311(9)(A), inserted 'attempt to' before 'resolve'.

Subsec. (e). Pub. L. 104-275, Sec. 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, Sec. 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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4323, 4324, 4325 of this title.

-CITE-

38 USC Sec. 4323

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-HEAD-

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

-STATUTE-

(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. 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) 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 may use 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) Inapplicability of State Statute of Limitations. - No State statute of limitations shall apply to any proceeding under this chapter.

(j) Definition. - In this section, the term 'private employer' includes a political subdivision of a State.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3165; amended Pub. L. 104-275, title III, Sec. 311(10), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 105-368, title II, Sec. 211(a), Nov. 11, 1998, 112 Stat. 3329.)

-MISC1-

PRIOR PROVISIONS

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

AMENDMENTS

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, Sec. 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, Sec. 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, Sec. 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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4322, 4332 of this title; title 2 section 1316; title 3 section 416.

-CITE-

38 USC Sec. 4324

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES

SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-HEAD-

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

-STATUTE-

(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. 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) 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.

(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).

(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.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3166; amended Pub. L. 104-275, title III, Sec. 311(11), Oct. 9, 1996, 110 Stat. 3336; Pub. L. 105-368, title II, Sec. 213(a), Nov. 11, 1998, 112 Stat. 3331.)

-MISC1-

PRIOR PROVISIONS

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

AMENDMENTS

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, Sec. 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, Sec. 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, Sec. 311(11)(B)(ii), substituted ''under section 4322(a)'' for ''regarding a complaint under section 4322(c)''.

Subsec. (c)(2). Pub. L. 104-275, Sec. 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, Sec. 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.

-SECREP-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4322, 4332 of this title;
title 3 section 416.

-CITE-

38 USC Sec. 4325

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-HEAD-

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

-STATUTE-

- (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.

-SOURCE-

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

-MISC1-

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.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4315 of this title.

-CITE-

38 USC Sec. 4326

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER III - PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND
INVESTIGATION

-HEAD-

Sec. 4326. Conduct of investigation; subpoenas

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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 section 4305 of this title, as set out in a note preceding subchapter I of this chapter, as of that date, see section 8(e) of Pub. L. 103-353, set out as a note under section 4301 of this title.

-CITE-

38 USC SUBCHAPTER IV - MISCELLANEOUS PROVISIONS 01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

-HEAD-

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

-CITE-

38 USC Sec. 4331 01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART III - READJUSTMENT AND RELATED BENEFITS
CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE
UNIFORMED SERVICES
SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 4331. Regulations

-STATUTE-

(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 2303(a)(2)(C)(ii) (FOOTNOTE 1) of title 5.

(FOOTNOTE 1) So in original. Probably should be section ''2302(a)(2)(C)(ii)''.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3168.)

-MISC1-

PRIOR PROVISIONS

A prior section 4331 was renumbered section 7631 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.

-CITE-

38 USC Sec. 4332

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART III - READJUSTMENT AND RELATED BENEFITS

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

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 4332. Reports

-STATUTE-

The Secretary shall, after consultation with the Attorney General and the Special Counsel referred to in section 4324(a)(1) and no later than February 1, 1996, and annually thereafter through 2000, transmit to the Congress, a report containing the following matters for the fiscal year ending before such February 1:

(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 referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year.

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

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

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

(6) 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.

-SOURCE-

(Added Pub. L. 103-353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3168.)

-MISC1-

PRIOR PROVISIONS

A prior section 4332 was renumbered section 7632 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.

-CITE-

38 USC Sec. 4333

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART III - READJUSTMENT AND RELATED BENEFITS

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

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 4333. Outreach

-STATUTE-

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.

-SOURCE-

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

-MISC1-

PRIOR PROVISIONS

Prior sections 4333 to 4336, and 4351 to 4355 were renumbered sections 7633 to 7636, and 7651 to 7655 of this title,

respectively.

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, Sec. 1, Aug. 19, 1964, 78 Stat. 500; Pub. L. 89-311, Sec. 8, Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93-82, title III, Sec. 301, Aug. 2, 1973, 87 Stat. 194; Pub. L. 94-581, title I, Sec. 114, title II, Sec. 206(a), 210(e)(1), Oct. 21, 1976, 90 Stat. 2852, 2859, 2864; Pub. L. 95-201, Sec. 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.

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, Sec. 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.

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.

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, Sec. 201(a), Nov. 7, 1966, 80 Stat. 1372; Pub. L. 94-581, title II, Sec. 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.

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, Sec. 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.

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.

Prior section 5007 was renumbered section 8107 of this title.

Another prior section 5007, added Pub. L. 93-82, title III, Sec. 302(1), Aug. 2, 1973, 87 Stat. 195, and amended Pub. L. 94-581, title II, Sec. 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.

Prior section 5013 was renumbered section 8113 of this title.

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

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.

Prior section 5057, added Pub. L. 89-785, title II, Sec. 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, Sec. 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.

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.

-CITE-

38 USC PART IV - GENERAL ADMINISTRATIVE PROVISIONS

01/23/00

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

-HEAD-

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

-MISC1-

Chap.		Sec.
51.	Claims, Effective Dates, and Payments	5101
53.	Special Provisions Relating to Benefits	5301
55.	Minors, Incompetents, and Other Wards	5501
57.	Records and Investigations	5701
59.	Agents and Attorneys	5901
61.	Penal and Forfeiture Provisions	6101

AMENDMENTS

1991 - Pub. L. 102-40, title IV, Sec. 402(c)(2), May 7, 1991, 105 Stat. 239, substituted '5101' for '3001' in item for chapter 51, '5301' for '3101' in item for chapter 53, '5501' for '3201' in item for chapter 55, '5701' for '3301' in item for chapter 57, '5901' for '3401' in item for chapter 59, and '6101' for '3501' in item for chapter 61.

1988 - Pub. L. 100-687, div. A, title I, Sec. 103(c)(1), Nov. 18, 1988, 102 Stat. 4107, substituted 'Claims' for

'Applications' in item for chapter 51.

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