

Guard, as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency, or in a position which, under or pursuant to the State law, is designated as a major nontenured policymaker or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week, for reference to services performed in the employ of a school which is not an institution of higher education.

Subsec. (b)(6). Pub. L. 94-566, §115(b)(2), substituted “by an inmate of a custodial or penal institution” for “for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution”.

Subsec. (d). Pub. L. 94-566, §115(c)(2), struck out subsec. (d) which defined “institution of higher education”. See section 3304(f) of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 applicable to service performed on or after Dec. 21, 2000, with transition rule for service performed in the employ of an Indian tribe, see section 166(e) of Pub. L. 106-554, set out as a note under section 3306 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 5405(b) of Pub. L. 105-33 provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997].”

Section 5407(b) of Pub. L. 105-33 provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1977 AMENDMENT

Section 302(d)(2) of Pub. L. 95-19 provided that: “The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 506 of the Unemployment Compensation Amendments of 1976 [which amended this section in 1976, see Effective Date of 1976 Amendment note below].”

#### EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 115(a), (b), (c)(2), (3) of Pub. L. 94-566, see section 115(d) of Pub. L. 94-566, set out as a note under section 3304 of this title.

For effective date of amendment by section 506(a) of Pub. L. 94-566, see section 506(c) of Pub. L. 94-566, set out as a note under section 3304 of this title.

#### EFFECTIVE DATE

Section applicable with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after Dec. 31, 1971, see section 104(d)(1) of Pub. L. 91-373, set out as a note under section 3304 of this title.

### § 3310. Judicial review

#### (a) In general

Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the

court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

#### (b) Findings of fact

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

#### (c) Jurisdiction of court; review

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

#### (d) Stay of Secretary of Labor's action

(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary of Labor's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary of Labor's action and including such other relief as may be necessary to preserve status or rights.

(Added Pub. L. 91-373, title I, §131(b)(1), Aug. 10, 1970, 84 Stat. 703; amended Pub. L. 94-455, title XIX, §1906(b)(13)(F), (H), Oct. 4, 1976, 90 Stat. 1835; Pub. L. 98-620, title IV, §402(28)(A), Nov. 8, 1984, 98 Stat. 3359.)

#### AMENDMENTS

1984—Subsec. (e). Pub. L. 98-620 struck out subsec. (e) which had provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary of Labor or of the State would receive, a preference and would be heard and determined as expeditiously as possible.

1976—Subsec. (d)(2). Pub. L. 94-455, §1906(b)(13)(F), substituted “the Secretary of Labor's action” for “the Secretary's action” in two places.

Subsec. (e). Pub. L. 94-455, §1906(b)(13)(H), substituted “of the Secretary of Labor” for “of the Secretary”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

### § 3311. Short title

This chapter may be cited as the “Federal Unemployment Tax Act.”

(Aug. 16, 1954, ch. 736, 68A Stat. 454, §3308; renumbered §3309, Pub. L. 86-778, title V,