

Sec.
4319. Employment and reemployment rights in foreign countries.

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CODIFICATION

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

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

AMENDMENTS

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

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

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

SUBCHAPTER I—GENERAL

§ 4301. Purposes; sense of Congress

(a) The purposes of this chapter are—

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

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

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

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

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

PRIOR PROVISIONS

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

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

AMENDMENTS

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

EFFECTIVE DATE OF 1996 AMENDMENT

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 (§§ 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, § 312, Oct. 9, 1996, 110 Stat. 3336, provided that:

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

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

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

ment. Any service pursuant to orders issued under such section 502(f) served after 60 days after the date of the enactment of this Act, regardless of when begun, shall be considered under the amendments made by this Act.

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

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

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

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

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

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

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

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

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

“(h) EMPLOYER PENSION BENEFIT PLANS.—(1) Nothing in this Act shall be construed to relieve an employer of

an obligation to provide contributions to a pension plan (or provide pension benefits), or to relieve the obligation of a pension plan to provide pension benefits, which is required by the provisions of chapter 43 of title 38, United States Code, in effect on the day before this Act takes effect [probably means the day before Oct. 13, 1994].

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

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

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

Pub. L. 111-275, title I, §105, Oct. 13, 2010, 124 Stat. 2868, provided that:

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

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

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

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

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

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

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

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

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

“(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—

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

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

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

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

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

“(A) Definitions of performance measures, including—

“(i) customer satisfaction;

“(ii) cost (such as, but not limited to, average cost per claim);

“(iii) timeliness (such as, but not limited to, average processing time, case age);

“(iv) capacity (such as, but not limited to, staffing levels, education, grade level, training received, caseload); and

“(v) case outcomes.

“(B) Definitions of case outcomes.

“(C) Data collection methods and timing of collection.

“(D) Data quality assurance processes.

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

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

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

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

“(1) not later than one year after the commencement of the demonstration project, and annually thereafter during the period when the demonstration project is conducted, submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an interim report on the demonstration project; and

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

Pub. L. 108-454, title II, §204, Dec. 10, 2004, 118 Stat. 3606, required the Secretary of Labor and the Office of

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

§ 4302. Relation to other law and plans or agreements

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

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

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

PRIOR PROVISIONS

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

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

EFFECTIVE DATE

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

§ 4303. Definitions

For the purposes of this chapter—

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

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