

V, § 574(a)–(b)(2)(A), Dec. 2, 2002, 116 Stat. 2558; Pub. L. 108–136, div. A, title VI, § 621(b), Nov. 24, 2003, 117 Stat. 1505; Pub. L. 110–181, div. A, title V, § 552, Jan. 28, 2008, 122 Stat. 117; Pub. L. 115–91, div. A, title VI, § 618(d), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 inserted “or 352” after “section 314” in concluding provisions.

2008—Subsec. (b)(2). Pub. L. 110–181 inserted “for members whose qualifying tour of duty is 12 months or less, or for not more than 20 days for members whose qualifying tour of duty is longer than 12 months,” after “for not more than 15 days”.

2003—Pub. L. 108–136, § 621(b)(2), struck out “enlisted” before “members” in section catchline.

Subsec. (a). Pub. L. 108–136, § 621(b)(1), substituted “a member” for “an enlisted member” in introductory provisions.

2002—Pub. L. 107–314, § 574(b)(2)(A), substituted “recuperation absence: qualified enlisted members” for “recuperative absence for qualified enlisted members” in section catchline.

Subsec. (b). Pub. L. 107–314 substituted “recuperation” for “recuperative” in pars. (1) and (2) and inserted before period at end of par. (2) “, or to an alternative destination and return at a cost not to exceed the cost of round-trip transportation from the location of the extended tour of duty to such nearest port”.

EFFECTIVE DATE

Pub. L. 96–579, § 5(c)(2), Dec. 23, 1980, 94 Stat. 3367, provided: “Section 705 of title 10, United States Code, as added by subsection (b), shall take effect upon the date of the enactment of this section [Dec. 23, 1980] and shall apply only with respect to periods of extended duty overseas beginning on or after such date of enactment.”

§ 705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone

(a) REST AND RECUPERATION AUTHORIZED.—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may provide a member of the armed forces described in subsection (b) the benefits described in subsection (c).

(b) COVERED MEMBERS.—A member of the armed forces described in this subsection is any member who—

(1) is assigned or deployed for at least 270 days in an area or location—

(A) that is designated by the President as a combat zone; and

(B) in which hardship duty pay is authorized to be paid under section 305 or 352(a) of title 37; and

(2) meets such other criteria as the Secretary of Defense may prescribe in the regulations required by subsection (a).

(c) BENEFITS.—The benefits described in this subsection are the following:

(1) A period of rest and recuperation absence for not more than 15 days.

(2) Round-trip transportation at Government expense from the area or location in which the member is serving in connection with the exercise of the period of rest and recuperation.

(d) CONSTRUCTION WITH OTHER LEAVE.—Any benefits provided a member under this section are in addition to any other leave or absence to which the member may be entitled.

(Added Pub. L. 111–383, div. A, title V, § 532(a), Jan. 7, 2011, 124 Stat. 4216; amended Pub. L. 115–91, div. A, title VI, § 618(e), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Subsec. (b)(1)(B). Pub. L. 115–91 inserted “or 352(a)” after “section 305”.

§ 706. Administration of leave required to be taken

(a) A period of leave required to be taken under section 876a or 1182(c)(2) of this title shall be charged against any accrued leave to the member’s credit on the day before the day such leave begins unless the member elects to be paid for such accrued leave under subsection (b). If the member does not elect to be paid for such accrued leave under subsection (b), or does not have sufficient accrued leave to his credit to cover the total period of leave required to be taken, the leave not covered by accrued leave shall be charged as excess leave. If the member elects to be paid for accrued leave under subsection (b), the total period of leave required to be taken shall be charged as excess leave.

(b)(1) A member who is required to take leave under section 876a or 1182(c)(2) of this title and who has accrued leave to his credit on the day before the day such leave begins may elect to be paid for such accrued leave. Any such payment shall be based on the rate of basic pay to which the member was entitled on the day before the day such leave began. If the member does not elect to be paid for such accrued leave, the member is entitled to pay and allowances during the period of accrued leave required to be taken.

(2) Except as provided in paragraph (1) and in sections 707 and 707a of this title, a member may not accrue or receive pay or allowances during a period of leave required to be taken under section 876a or 1182(c)(2) of this title.

(c) A member required to take leave under section 876a or 1182(c)(2) of this title is not entitled to any right or benefit under chapter 43 of title 38 solely because of employment during the period of such leave.

(Added Pub. L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1085; amended Pub. L. 102–568, title V, § 506(c)(5), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103–337, div. A, title X, § 1070(e)(1), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 103–353, § 2(b)(3), Oct. 13, 1994, 108 Stat. 3169; Pub. L. 104–106, div. A, title XV, § 1503(a)(7), Feb. 10, 1996, 110 Stat. 511; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–314, div. A, title V, § 506(c), Dec. 2, 2002, 116 Stat. 2535.)

AMENDMENTS

2002—Pub. L. 107–314, § 506(c)(2), struck out “pending review of certain court-martial convictions” at end of section catchline.

Subsec. (a). Pub. L. 107–314, § 506(c)(1)(A), inserted “or 1182(c)(2)” after “section 876a”.

Subsec. (b). Pub. L. 107–314, § 506(c)(1), inserted “or 1182(c)(2)” after “section 876a” in pars. (1) and (2) and substituted “sections 707 and 707a” for “section 707” in par. (2).

Subsec. (c). Pub. L. 107–314, § 506(c)(1)(A), inserted “or 1182(c)(2)” after “section 876a”.

2000—Subsec. (c). Pub. L. 106–398 struck out “(1)” before “A member required” and struck out par. (2) which

read as follows: "Section 974 of this title does not apply to a member required to take leave under section 876a of this title during the period of such leave."

1996—Subsec. (c)(1). Pub. L. 104-106 substituted "chapter 43 of title 38" for "section 4301 of title 38".

1994—Subsec. (c)(1). Pub. L. 103-353, which directed the amendment of par. (1) by substituting "chapter 43" for "section 4321", could not be executed because intervening amendment by Pub. L. 103-337 had substituted "section 4301" for "section 4321". See below.

Pub. L. 103-337 substituted "4301" for "4321".

1992—Subsec. (c)(1). Pub. L. 102-568 substituted "section 4321" for "section 2021".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment 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, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE

Pub. L. 97-81, §7, Nov. 20, 1981, 95 Stat. 1089, as amended by Pub. L. 98-209, §12(b), Dec. 6, 1983, 97 Stat. 1407, provided that:

"(a) The amendments made by this Act [enacting this section and sections 707 and 876a of this title and amending sections 701, 813, 832, 838, 867, and 869 of this title] shall take effect at the end of the sixty-day period beginning on the date of the enactment of this Act.

"(b)(1) The amendments made by section 2 [enacting this section and sections 707 and 876a of this title and amending section 701 of this title] shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

"(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 [see Effective Date of 1983 Amendment note set out under section 801 of this title]; or

"(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.

"(2) The amendments made by section 3 [amending section 813 of this title] shall apply to each person held as the result of a court-martial sentence announced on or after the effective date of such amendments.

"(3) The amendment made by section 4(a) [amending section 832 of this title] shall apply with respect to investigations under section 832 (article 32) of title 10, United States Code, that begin on or after the effective date of such amendment.

"(4) The amendment made by section 4(b) [amending section 838 of this title] shall apply to trials by court-martial in which all charges are referred to trial on or after the effective date of such amendment.

"(5) The amendment made by section 5 [amending section 867 of this title] shall apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after the effective date of such amendment."

§ 707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

(a) A member—

(1) who is required to take leave under section 876a of this title, any period of which is charged as excess leave under section 706(a) of this title; and

(2) whose sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge is set aside or disapproved by a Court

of Criminal Appeals under section 866 of this title or by the United States Court of Appeals for the Armed Forces under section 867 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave, unless a rehearing or new trial is ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of the rehearing or new trial and such dismissal or discharge is later executed.

(b)(1) A member entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 876a of this title that is charged as excess leave (except any day of accrued leave for which the member has been paid under section 706(b)(1) of this title and which has been charged as excess leave). If the pay grade of the member was reduced to a lower grade as a result of the court-martial sentence (including any reduction in pay grade under section 858a of this title) and such reduction has not been set aside, disapproved, or otherwise vacated, pay and allowances to be paid under this section shall be deemed to have accrued in such lower grade. Otherwise, such pay and allowances shall be deemed to have accrued in the pay grade held by the member on the day before the day on which his court-martial sentence was approved by the convening authority.

(2) Such a member shall be paid the amount of pay and allowances that he is deemed to have accrued, reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period he is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made as follows:

(A) Payment shall be made within 60 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if no rehearing or new trial has been ordered.

(B) Payment shall be made within 180 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if a rehearing or new trial has been ordered but charges have not been referred to a rehearing or new trial within 120 days from the date of that order.

(C) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is not included in the result of such rehearing or new trial, payment shall be made within 60 days of the date of the announcement of the result of such rehearing or new trial.

(D) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of such rehearing or new trial, but such dismissal or discharge is not later executed, payment shall be made within 60 days of the date of the order which set aside, disapproved, or otherwise vacated such dismissal or discharge.