

curred in, or aggravated during, performance of service in the uniformed services.

(3) In the case of a person whose coverage under a health plan is terminated by reason of the person having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title but who subsequently does not commence a period of active duty under the order to active duty that established such eligibility because the order is canceled before such active duty commences, the provisions of paragraph (1) relating to any exclusion or waiting period in connection with the reinstatement of coverage under a health plan shall apply to such person's continued employment, upon the termination of such eligibility for medical and dental care under chapter 55 of title 10 that is incident to the cancellation of such order, in the same manner as if the person had become reemployed upon such termination of eligibility.

(Added Pub. L. 103-353, §2(a), Oct. 13, 1994, 108 Stat. 3161; amended Pub. L. 104-275, title III, §311(7), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 108-454, title II, §201(a), Dec. 10, 2004, 118 Stat. 3605; Pub. L. 109-233, title III, §303, June 15, 2006, 120 Stat. 406.)

#### REFERENCES IN TEXT

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

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

#### PRIOR PROVISIONS

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

#### AMENDMENTS

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

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

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

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

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

#### EFFECTIVE DATE OF 2004 AMENDMENT

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

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### EFFECTIVE DATE

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

#### § 4318. Employee pension benefit plans

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

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

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

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

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

deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated—

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

(B) if the sponsor does not provide—

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

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

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

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

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

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

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

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

#### REFERENCES IN TEXT

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

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

#### PRIOR PROVISIONS

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

#### AMENDMENTS

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

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### EFFECTIVE DATE

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

### § 4319. Employment and reemployment rights in foreign countries

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

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

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

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

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

#### EFFECTIVE DATE

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