

ployer, 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) DEFINITION.—In this section, the term “private employer” includes a political subdivision of a State.

(Added Pub. L. 103-353, §2(a), Oct. 13, 1994, 108 Stat. 3165; amended Pub. L. 104-275, title III, §311(10), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 105-368, title II, §211(a), Nov. 11, 1998, 112 Stat. 3329; Pub. L. 110-389, title III, §§311(d)(1), (e)(1), (f)(3), 315, Oct. 10, 2008, 122 Stat. 4162-4164, 4167.)

PRIOR PROVISIONS

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

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-389, §311(d)(1), inserted “Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General.” after “to the Attorney General.”

Subsec. (a)(2), (3). Pub. L. 110-389, §311(e)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 110-389, §315, substituted “shall use, in any case in which the court determines it is appropriate,” for “may use”.

Subsecs. (i), (j). Pub. L. 110-389, §311(f)(3), redesignated subsec. (j) as (i) and struck out former subsec. (i) which read as follows: “INAPPLICABILITY OF STATE STATUTE OF LIMITATIONS.—No State statute of limitations shall apply to any proceeding under this chapter.”

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, §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, §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, §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.

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

(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. Not later than 60 days after the date the Secretary receives such a request, 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) Not later than 60 days after the date the Special Counsel receives a referral under paragraph (1), the Special Counsel shall—

(i) make a decision whether to represent a person before the Merit Systems Protection Board under subparagraph (A); and

(ii) notify such person in writing of such 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) declining to initiate an action and represent the person before the Merit Systems Protection Board.

(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 sub-

mitting 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 re-employment 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.

(Added Pub. L. 103-353, §2(a), Oct. 13, 1994, 108 Stat. 3166; amended Pub. L. 104-275, title III, §311(11), Oct. 9, 1996, 110 Stat. 3336; Pub. L. 105-368, title II, §213(a), Nov. 11, 1998, 112 Stat. 3331; Pub. L. 110-389, title III, §311(d)(2), (e)(2), Oct. 10, 2008, 122 Stat. 4163; Pub. L. 111-275, title VII, §703(a), Oct. 13, 2010, 124 Stat. 2888.)

PRIOR PROVISIONS

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

AMENDMENTS

2010—Subsec. (b)(4). Pub. L. 111-275 inserted before period at end “declining to initiate an action and represent the person before the Merit Systems Protection Board”.

2008—Subsec. (a)(1). Pub. L. 110-389, §311(d)(2), substituted “Not later than 60 days after the date the Secretary receives such a request, the Secretary shall refer” for “The Secretary shall refer”.

Subsec. (a)(2)(B). Pub. L. 110-389, §311(e)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “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.”

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, §311(11)(A), struck out “of an unsuccessful effort to resolve a com-

plaint relating to a Federal executive agency” after “notification pursuant to section 4322(e)”.

Subsec. (b). Pub. L. 104-275, §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, §311(11)(B)(ii), substituted “under section 4322(a)” for “regarding a complaint under section 4322(c)”.

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

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

(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 Man-