

(A) the person's application is timely;

(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304.

(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

(3)(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4318(a)(2)(A).

(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(h) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.

(Added Pub. L. 103-353, §2(a), Oct. 13, 1994, 108 Stat. 3153; amended Pub. L. 104-275, title III, §311(4), Oct. 9, 1996, 110 Stat. 3334; Pub. L. 112-81, div. A, title V, §575, Dec. 31, 2011, 125 Stat. 1428; Pub. L. 114-92, div. A, title V, §562, Nov. 25, 2015, 129 Stat. 829.)

#### Editorial Notes

##### REFERENCES IN TEXT

Sections 331, 332, 359, 360, 367, and 712 of title 14, referred to in subsec. (c)(4)(A), were redesignated sections 2127, 2128, 2308, 2309, 2314, and 3713, respectively, of title

14 by Pub. L. 115-282, title I, §§112(b), 113(b), 118(b), Dec. 4, 2018, 132 Stat. 4216, 4221, 4233, and references to section 331, 332, 359, 360, 367, or 712 of title 14 deemed to refer to such redesignated sections, see section 123(b)(1) of Pub. L. 115-282, set out as a References to Redesignated Sections of Title 14 note preceding section 101 of Title 14, Coast Guard.

##### PRIOR PROVISIONS

A prior section 4312 was renumbered section 7612 of this title.

##### AMENDMENTS

2015—Subsec. (c)(4)(A). Pub. L. 114-92 inserted “12304a, 12304b,” after “12304.”

2011—Subsec. (c)(4)(F). Pub. L. 112-81 added subpar. (F).

1996—Subsec. (a). Pub. L. 104-275, §311(4)(A), substituted “whose absence from a position of employment is necessitated” for “who is absent from a position of employment”.

Subsec. (c)(3). Pub. L. 104-275, §311(4)(B)(i), substituted “section 10147” for “section 270”.

Subsec. (c)(4)(A). Pub. L. 104-275, §311(4)(B)(ii)(I), substituted “section 688, 12301(a), 12301(g), 12302, 12304, or 12305” for “section 672(a), 672(g), 673, 673b, 673c, or 688”.

Subsec. (c)(4)(B). Pub. L. 104-275, §311(4)(B)(ii)(II), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress”.

Subsec. (c)(4)(C). Pub. L. 104-275, §311(4)(B)(iii)(III), substituted “section 12304” for “section 673b”.

Subsec. (c)(4)(E). Pub. L. 104-275, §311(4)(B)(ii)(IV), substituted “section 12406” for “section 3500 or 8500”.

Subsec. (d)(2)(C). Pub. L. 104-275, §311(4)(C), substituted “is for a brief, nonrecurrent period and there is no reasonable expectation” for “is brief or for a nonrecurrent period and without a reasonable expectation”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 311(4)(A), (B)(ii)(II), (C) of Pub. L. 104-275 effective Oct. 13, 1994, and amendment by section 311(4)(B)(i), (ii)(I), (III), (IV) of Pub. L. 104-275 effective Dec. 1, 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, and with provisions relating to satisfaction of the notification requirement of subsec. (a)(1) of this section, see section 8 of Pub. L. 103-353, set out as a note under section 4301 of this title.

#### § 4313. Reemployment positions

(a) Subject to subsection (b) (in the case of any employee) and sections 4314 and 4315 (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services, shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 91 days—

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with

the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 90 days—

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(3) In the case of a person who has a disability incurred in, or aggravated during, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service—

(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

(4) In the case of a person who (A) is not qualified to be employed in (i) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the uniformed services for any reason (other than disability incurred in, or aggravated during, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position which is the nearest approximation to a position referred to first in clause (A)(i) and then in clause (A)(ii) which such person is qualified to perform, with full seniority.

(b)(1) If two or more persons are entitled to reemployment under section 4312 in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.

(2) Any person entitled to reemployment under section 4312 who is not reemployed in a position of employment by reason of paragraph (1) shall be entitled to be reemployed as follows:

(A) Except as provided in subparagraph (B), in any other position of employment referred to in subsection (a)(1) or (a)(2), as the case may be (in the order of priority set out in the applicable subsection), that provides a similar status and pay to a position of employment referred to in paragraph (1) of this subsection, consistent with the circumstances of such person's case, with full seniority.

(B) In the case of a person who has a disability incurred in, or aggravated during, a period of service in the uniformed services that requires reasonable efforts by the employer for the person to be able to perform the duties of the position of employment, in any other position referred to in subsection (a)(3) (in the order of priority set out in that subsection) that provides a similar status and pay to a position referred to in paragraph (1) of this subsection, consistent with circumstances of such person's case, with full seniority.

(Added Pub. L. 103-353, §2(a), Oct. 13, 1994, 108 Stat. 3157; amended Pub. L. 104-275, title III, §311(5), Oct. 9, 1996, 110 Stat. 3335.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 4313 was renumbered section 7613 of this title.

##### AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104-275 substituted “uniformed services” for “uniform services” in cl. (A)(ii) and “which is the nearest approximation to a position referred to first in clause (A)(i) and then in clause (A)(ii) which” for “of lesser status and pay which” in cl. (B).

#### Statutory Notes and Related Subsidiaries

##### 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 subsec. (a)(3) of this section applicable to reemployments initiated on or after Aug. 1, 1990, see section 8 of Pub. L. 103-353, set out as a note under section 4301 of this title.

#### §4314. Reemployment by the Federal Government

(a) Except as provided in subsections (b), (c), and (d), if a person is entitled to reemployment by the Federal Government under section 4312, such person shall be reemployed in a position of employment as described in section 4313.