

(ii) knowingly provides written notice of intent not to return to a position of employment after service in the uniformed service,

is not entitled to rights and benefits under paragraph (1)(B).

(B) For the purposes of subparagraph (A), the employer shall have the burden of proving that a person knowingly provided clear written notice of intent not to return to a position of employment after service in the uniformed service and, in doing so, was aware of the specific rights and benefits to be lost under subparagraph (A).

(3) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

(4) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to paragraph (1) to the extent other employees on furlough or leave of absence are so required.

(5) The entitlement of a person to coverage under a health plan is provided for under section 4317.

(6) The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4318.

(c) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause—

(1) within one year after the date of such re-employment, if the person's period of service before the reemployment was more than 180 days; or

(2) within 180 days after the date of such re-employment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

(d) Any person whose employment with an employer is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. No employer may require any such person to use vacation, annual, or similar leave during such period of service.

(e)(1) An employer shall grant an employee who is a member of a reserve component an authorized leave of absence from a position of employment to allow that employee to perform funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(2) For purposes of section 4312(e)(1) of this title, an employee who takes an authorized leave of absence under paragraph (1) is deemed to have notified the employer of the employee's intent to return to such position of employment.

(Added Pub. L. 103-353, §2(a), Oct. 13, 1994, 108 Stat. 3160; amended Pub. L. 104-275, title III, §311(6), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 106-419, title III, §323(b), Nov. 1, 2000, 114 Stat. 1855.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4316 was renumbered section 7616 of this title.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106-419 added subsec. (e).

1996—Subsec. (d). Pub. L. 104-275 inserted at end "No employer may require any such person to use vacation, annual, or similar leave during such period of service."

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-419 effective 180 days after Nov. 1, 2000, see section 323(c) of Pub. L. 106-419, set out as a note under section 4303 of this title.

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 the provisions concerning insurance coverage (other than health) are effective with respect to furloughs or leaves of absence initiated on or after Oct. 13, 1994, and subsec. (b)(2) of this section is applicable only to the rights and benefits provided in subsec. (b)(1)(B) of this section and to persons who leave a position of employment for service in the uniformed services more than 60 days after Oct. 13, 1994, and not applicable to any other right or benefit of a person under this chapter, see section 8 of Pub. L. 103-353, set out as a note under section 4301 of this title.

§ 4317. Health plans

(a)(1) In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), and such person is absent from such position of employment by reason of service in the uniformed services, 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, the plan shall provide that the person may elect to continue such coverage as provided in this subsection. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of—

(A) the 24-month period beginning on the date on which the person's absence begins; or

(B) the day after the date on which the person fails to apply for or return to a position of employment, as determined under section 4312(e).

(2) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986) associated with such coverage for the employer's other employees, except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

(3) In the case of a health plan that is a multi-employer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability under the plan for employer

contributions and benefits arising under this paragraph shall be allocated—

(A) by the plan in such manner as the plan sponsor 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.

(b)(1) Except as provided in paragraph (2), in the case of a person whose coverage under a health plan was terminated by reason of service in the uniformed services, 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, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment under this chapter if an exclusion or waiting period would not have been imposed under a health plan had coverage of such person by such plan not been terminated as a result of such service or eligibility. This paragraph applies to the person who is reemployed and to any individual who is covered by such plan by reason of the reinstatement of the coverage of such person.

(2) Paragraph (1) shall not apply to the coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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