

“(f) PREVIOUS ACTIONS.—Except as otherwise provided, the amendments made by this Act do not affect reemployments that were initiated, rights, benefits, and duties that matured, penalties that were incurred, and proceedings that begin before the end of the 60-day period referred to in subsection (a).

“(g) RIGHTS AND BENEFITS RELATIVE TO NOTICE OF INTENT NOT TO RETURN.—Section 4316(b)(2) of title 38, United States Code, as added by the amendments made by this Act, applies only to the rights and benefits provided in section 4316(b)(1)(B) and does not apply to any other right or benefit of a person under chapter 43 of title 38, United States Code. Such section shall apply only to persons who leave a position of employment for service in the uniformed services more than 60 days after the date of enactment of this Act [Oct. 13, 1994].

“(h) EMPLOYER PENSION BENEFIT PLANS.—(1) Nothing in this Act shall be construed to relieve an employer of an obligation to provide contributions to a pension plan (or provide pension benefits), or to relieve the obligation of a pension plan to provide pension benefits, which is required by the provisions of chapter 43 of title 38, United States Code, in effect on the day before this Act takes effect [probably means the day before Oct. 13, 1994].

“(2) If any employee pension benefit plan is not in compliance with section 4318 of such title or paragraph (1) of this subsection on the date of enactment of this Act [Oct. 13, 1994], such plan shall have two years to come into compliance with such section and paragraph.

“(i) DEFINITION.—For the purposes of this section, the term ‘service in the uniformed services’ shall have the meaning given such term in section 4303(13) of title 38, United States Code, as provided in the amendments made by this Act.”

**DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL**

Pub. L. 108-454, title II, §204, Dec. 10, 2004, 118 Stat. 3606, provided that:

“(a) ESTABLISHMENT OF PROJECT.—The Secretary of Labor and the Office of Special Counsel shall carry out a demonstration project under which certain claims against Federal executive agencies under the Uniformed Services Employment and Reemployment Rights Act [of 1994, Pub. L. 103-353, see Tables for classification] under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim.

“(b) REFERRAL OF ALL PROHIBITED PERSONNEL ACTION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.—(1) Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under the Uniformed Services Employment and Reemployment Rights Act [of 1994] with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

“(2) For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under the Uniformed Services Employment and Reemployment Rights Act [of 1994].

“(c) REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.—(1) Under the demonstration project, the Secretary—

“(A) shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

“(B) may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

“(2) A claim referred to in paragraph (1) is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social

security account number with an odd number as its terminal digit, or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

“(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—(1) The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

“(2) In the case of any claim referred [to], or otherwise received by, to [sic] the Office of Special Counsel under the demonstration project, any reference to the ‘Secretary’ in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed a reference to the ‘Office of Special Counsel’.

“(3) In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

“(e) PERIOD OF PROJECT.—The demonstration project shall be carried out during the period beginning on the date that is 60 days after the date of the enactment of this Act [Dec. 10, 2004], and ending on September 30, 2007.

“(f) EVALUATIONS AND REPORT.—(1) The Comptroller General of the United States shall conduct periodic evaluations of the demonstration project under this section.

“(2) Not later than April 1, 2007, the Comptroller General shall submit to Congress a report on the evaluations conducted under paragraph (1). The report shall include the following information and recommendations:

“(A) A description of the operation and results of the demonstration program, including—

“(i) the number of claims described in subsection (c) referred to, or otherwise received by, the Office of Special Counsel, and the number of such claims referred to the Secretary of Labor; and

“(ii) for each Federal executive agency, the number of claims resolved, the type of corrective action obtained, the period of time for final resolution of the claim, and the results obtained.

“(B) An assessment of whether referral to the [O]ffice of [S]pecial [C]ounsel of claims under the demonstration project—

“(i) improved services to servicemembers and veterans; or

“(ii) significantly reduced or eliminated duplication of effort and unintended delays in resolving meritorious claims of those servicemembers and veterans.

“(C) An assessment of the feasibility and advisability of referring all claims under chapter 43 of title 38, United States Code, against Federal executive agencies to the Office of Special Counsel for investigation and resolution.

“(D) Such other recommendations for administrative action or legislation as the Comptroller General determines appropriate.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘Office of Special Counsel’ means the Office of Special Counsel established by section 1211 of title 5, United States Code.

“(2) The term ‘Secretary’ means the Secretary of Labor.

“(3) The term ‘Federal executive agency’ has the meaning given that term in section 4303(5) of title 38, United States Code.”

**§ 4302. Relation to other law and plans or agreements**

(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is

more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

(Added Pub. L. 103-353, §2(a), Oct. 13, 1994, 108 Stat. 3150.)

#### PRIOR PROVISIONS

A prior section 4302, added Pub. L. 93-508, title IV, §404(a), Dec. 3, 1974, 88 Stat. 1596, §2022; amended Pub. L. 97-295, §4(71), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 98-620, title IV, §402(36), Nov. 8, 1984, 98 Stat. 3360; renumbered §4302 and amended Pub. L. 102-568, title V, §506(a), (c)(1), Oct. 29, 1992, 106 Stat. 4340, 4341, related to procedures to enforce reemployment rights, prior to the general amendment of this chapter by Pub. L. 103-353. This section, as in effect on the day before Oct. 13, 1994, continues to apply to reemployments initiated before the end of the 60-day period beginning Oct. 13, 1994, see section 8 of Pub. L. 103-353, as amended, set out as an Effective Date under section 4301 of this title.

Another prior section 4302 was renumbered section 7602 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, see section 8 of Pub. L. 103-353, set out as a note under section 4301 of this title.

### § 4303. Definitions

For the purposes of this chapter—

(1) The term “Attorney General” means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

(2) The term “benefit”, “benefit of employment”, or “rights and benefits” means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) The term “employee” means any person employed by an employer. Such term includes any person who is a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of section 4319(c) of this title.

(4)(A) Except as provided in subparagraphs (B) and (C), the term “employer” means any person, institution, organization, or other entity that pays salary or wages for work per-

formed or that has control over employment opportunities, including—

(i) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

(ii) the Federal Government;

(iii) a State;

(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

(v) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311.

(B) In the case of a National Guard technician employed under section 709 of title 32, the term “employer” means the adjutant general of the State in which the technician is employed.

(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4318.

(5) The term “Federal executive agency” includes the United States Postal Service, the Postal Regulatory Commission, any nonappropriated fund instrumentality of the United States, any Executive agency (as that term is defined in section 105 of title 5) other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5, and any military department (as that term is defined in section 102 of title 5) with respect to the civilian employees of that department.

(6) The term “Federal Government” includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

(7) The term “health plan” means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(8) The term “notice” means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(9) The term “qualified”, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(10) The term “reasonable efforts”, in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

(11) Notwithstanding section 101, the term “Secretary” means the Secretary of Labor or any person designated by such Secretary to carry out an activity under this chapter.

(12) The term “seniority” means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.