(13) The term ''service in the uniformed services'' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(14) The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

(15) The term ''undue hardship'', in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of—

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) The term ''uniformed services'' means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

(Added Pub. L. 103–353, § 2(a), Oct. 13, 1994, 108 Stat. 3150; amended Pub. L. 104–275, title III, § 311(2), Oct. 9, 1996, 110 Stat. 3334; Pub. L. 105–368, title II, § 212(a), Nov. 11, 1998, 112 Stat. 3331; Pub. L. 106–419, title III, § 323(a), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–14, § 8(a)(11), (b)(2), June 5, 2001, 115 Stat. 35, 36; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

PRIOR PROVISIONS

A prior section 4303, added Pub. L. 93–508, title IV, § 404(a), Dec. 3, 1974, 88 Stat. 1596, § 2023; amended Pub. L. 97–295, § 4(72), Oct. 12, 1982, 96 Stat. 1310; renumbered § 4303 and amended Pub. L. 102–568, title V, § 506(a), (c)(2), Oct. 29, 1992, 106 Stat. 4340, 4341, related to reemployment by the United States, by any territory, possession, or political subdivision thereof, or by the District of Columbia, 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 4303 was renumbered section 7603 of this title.

AMENDMENTS

2006—Par. (5). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2001—Par. (13). Pub. L. 107–14, § 8(b)(2), made technical amendment to directory language of Pub. L. 106–419, § 323(a)(1). See 2000 Amendment note below.

Pub. L. 107–14, § 8(a)(11), struck out second period at end.

2000—Par. (13). Pub. L. 106–419, § 323(a)(2), inserted before period at end '', and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.''

Pub. L. 106–419, § 323(a)(1), as amended by Pub. L. 107–14, § 8(b)(2), struck out ''and'' after ''National Guard duty,''.

1998—Par. (3). Pub. L. 105–368 inserted at end ''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.''

1996—Par. (16). Pub. L. 104–275 inserted ''national'' before ''emergency''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–14, § 8(b), June 5, 2001, 115 Stat. 36, provided that the amendment made by section 8(b) is effective Nov. 1, 2000, and as if included in the Veterans Benefits and Health Care Improvement Act of 2000, Pub. L. 106–419, as enacted.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–419, title III, § 323(c), Nov. 1, 2000, 114 Stat. 1856, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 4316 of this title] shall take effect 180 days after the date of the enactment of this Act [Nov. 1, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–368, title II, § 212(c), Nov. 11, 1998, 112 Stat. 3331, provided that: ''The amendments made by this section [enacting section 4319 of this title and amending this section] shall apply only with respect to causes of action arising after the date of the enactment of this Act [Nov. 11, 1998].''

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, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of this title.

§ 4304. Character of service

A person's entitlement to the benefits of this chapter by reason of the service of such person

in one of the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

(2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.

(3) A dismissal of such person permitted under section 1161(a) of title 10.

(4) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

(Added Pub. L. 103–353, § 2(a), Oct. 13, 1994, 108 Stat. 3152.)

PRIOR PROVISIONS

Prior sections 4304 to 4306 were omitted in the general amendment of this chapter by Pub. L. 103–353. Those sections, as in effect on the day before Oct. 13, 1994, continue 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.

Section 4304, added Pub. L. 93–508, title IV, § 404(a), Dec. 3, 1974, 88 Stat. 1598, § 2024; amended Pub. L. 94–286, § 2, May 14, 1976, 90 Stat. 518; Pub. L. 94–502, title VI, § 608(3), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 96–466, title V, § 511, Oct. 17, 1980, 94 Stat. 2207; Pub. L. 99–576, title VII, § 701(60), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 102–12, § 8(a)(1), (b)(1), Mar. 18, 1991, 105 Stat. 38; renumbered § 4304 and amended Pub. L. 102–568, title V, § 506(a), (c)(3), Oct. 29, 1992, 106 Stat. 4340, 4341, related to reemployment rights of persons who enlist in the Armed Forces or enter upon active duty.

Another prior section 4304 was renumbered section 7604 of this title.

Section 4305, added Pub. L. 93–508, title IV, § 404(a), Dec. 3, 1974, 88 Stat. 1600, § 2025; renumbered § 4305, Pub. L. 102–568, title V, § 506(a), Oct. 29, 1992, 106 Stat. 4340, directed the Secretary of Labor, through the Office of Veterans' Reemployment Rights, to render assistance in obtaining reemployment.

Section 4306, added Pub. L. 93–508, title IV, § 404(a), Dec. 3, 1974, 88 Stat. 1600, § 2026; renumbered § 4306, Pub. L. 102–568, title V, § 506(a), Oct. 29, 1992, 106 Stat. 4340, related to prior rights for reemployment in a case in which more than one person is entitled to be reemployed.

A prior section 4307, added Pub. L. 102–25, title III, § 339(a), Apr. 6, 1991, 105 Stat. 91, § 2027; renumbered § 4307, Pub. L. 102–568, title V, § 506(a), Oct. 29, 1992, 106 Stat. 4340, related to qualification for employment position, prior to repeal by Pub. L. 103–353, § 8(d)(2), Oct. 13, 1994, 108 Stat. 3176, eff. Aug. 1, 1990.

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.

SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

§ 4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

(c) An employer shall be considered to have engaged in actions prohibited—

(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title.

(Added Pub. L. 103–353, § 2(a), Oct. 13, 1994, 108 Stat. 3153; amended Pub. L. 104–275, title III, § 311(3), Oct. 9, 1996, 110 Stat. 3334.)

PRIOR PROVISIONS

A prior section 4311 was renumbered section 7611 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–275 added subsec. (b) and struck out former subsec. (b) which read as follows: ''An employer shall be considered to have denied a person initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, performance of service, application for service, or obligation.''

Subsecs. (c), (d). Pub. L. 104–275 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: