

WOUNDED VETERAN JOB SECURITY ACT

MAY 19, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FILNER, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 466]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 466) to amend title 38, United States Code, to prohibit discrimination and acts of reprisal against persons who receive treatment for illnesses, injuries, and disabilities incurred in or aggravated by service in the uniformed services, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment .....	2
Purpose and Summary .....	4
Background and Need for Legislation .....	4
Hearings .....	4
Subcommittee Consideration .....	5
Committee Consideration .....	5
Committee Votes .....	5
Committee Oversight Findings .....	5
Statement of General Performance Goals and Objectives .....	5
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	6
Earmarks and Tax and Tariff Benefits .....	6
Committee Cost Estimate .....	6
Congressional Budget Office Estimate .....	6
Federal Mandates Statement .....	9
Advisory Committee Statement .....	9
Constitutional Authority Statement .....	9
Applicability to Legislative Branch .....	9
Section-by-Section Analysis of the Legislation .....	9
Changes in Existing Law Made by the Bill as Reported .....	10

## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Wounded Veteran Job Security Act”.

## SEC. 2. RIGHTS OF PERSONS WHO RECEIVE TREATMENT FOR ILLNESSES, INJURIES, AND DISABILITIES INCURRED IN OR AGGRAVATED BY SERVICE IN THE UNIFORMED SERVICES.

(a) RIGHTS OF PERSONS WHO RECEIVE TREATMENT.—

(1) IN GENERAL.—Subchapter II of chapter 43 of title 38, United States Code, is amended by adding at the end the following new section:

**“§ 4320. Rights of persons absent from employment for treatment of service-connected disabilities**

“(a) RETENTION.—Subject to subsection (e), a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability is entitled to be retained by the person’s employer.

“(b) SENIORITY.—A person who is absent from employment by reason of the receipt of medical treatment for a service-connected disability and who is entitled to be retained by the person’s employer under subsection (a) is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of such treatment plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

“(c) BENEFITS.—(1) A person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability and who is entitled to be retained by the person’s employer under subsection (a) shall be—

“(A) deemed to be on furlough or leave of absence while receiving such treatment; and

“(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person is so absent.

“(2)(A) Subject to subparagraph (C), a person described in subparagraph (B) is not entitled to rights and benefits under paragraph (1)(B).

“(B) A person described in this subparagraph is a person who—

“(i) is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability; and

“(ii) knowingly provides written notice of intent not to return to a position of employment after receiving such treatment.

“(C) 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 being absent from employment by reason of the receipt of medical treatment 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 receiving medical treatment for a service-connected disability 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 of this title.

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

“(d) LEAVE.—Any person who is absent from a position of employment with an employer by reason of the receipt of medical treatment for a service-connected disability shall be permitted, upon request of that person, to use during the period during which the person is so absent, any vacation, annual, medical, or similar leave with pay accrued by the person before the commencement of such period. No employer may require any such person to use vacation, annual, family, medical, or similar leave during such period.

“(e) EXCEPTIONS.—(1) An employer is not required to retain a person under this section if—

“(A) the employer’s circumstances have so changed as to make such retention impossible or unreasonable;

“(B) such retention would impose an undue hardship on the employer; or

“(C) the employment from which the person is absent by reason of the receipt of medical treatment is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

“(2) In any proceeding involving an issue of whether (A) any retention referred to in paragraph (1) is impossible or unreasonable because of a change in an employer’s circumstances, (B) such retention would impose an undue hardship on the employer, or (C) the employment referred to in paragraph (1)(C) is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period, the employer shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4319 the following new item:

“4320. Rights of persons absent from employment for treatment of service-connected disabilities.”.

(b) HEALTH PLAN.—Section 4317 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(c) This section shall apply with respect to a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4320(c)(2)(B) of this title) on the same basis as a person who is absent from a position of employment by reason of service in the uniformed services. In the case of a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4320(c)(2)(B) of this title), the period during which the person is so absent shall be treated as a period of service in the uniformed services for purposes of this section.”.

(c) EMPLOYEE PENSION BENEFIT PLANS.—Section 4318 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(d) This section shall apply with respect to a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4320(c)(2)(B) of this title) on the same basis as a person who is reemployed under this chapter. In the case of a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4320(c)(2)(B) of this title), the period during which the person is so absent shall be treated as a period of service in the uniformed services for purposes of this section.”.

(d) PROHIBITION OF DISCRIMINATION AND ACTS OF REPRISAL.—Section 4311 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting after “uniformed service” the following: “, or who has an illness, injury, or disability determined by the Secretary of Veterans Affairs to have been incurred in or aggravated by such service;”; and

(B) by striking “or obligation” and inserting “obligation, or receipt of treatment for that illness, injury, or disability”; and

(2) in subsection (c)—

(A) by striking “or obligation for service” the first time it appears and inserting “obligation for service, or receipt of treatment for an illness, injury, or disability determined by the Secretary of Veterans Affairs to have been incurred in or aggravated by service”; and

(B) by striking “or obligation for service” the second time it appears and inserting “obligation for service, or receipt of treatment”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to medical treatment received on or after the date of the enactment of this Act.

Amend the title so as to read:

A bill to amend title 38, United States Code, to provide for certain rights and benefits for persons who are absent from positions of employment to receive medical treatment for service-connected disabilities.

## PURPOSE AND SUMMARY

H.R. 466 was introduced on January 13, 2009, by Representative Lloyd Doggett of Texas. H.R. 466, as amended, seeks to expand Uniformed Services Employment and Reemployment Rights Act (USERRA) protections to include servicemembers and veterans who have an illness, injury or disability determined by the Secretary of the U.S. Department of Veterans Affairs (VA) to have been incurred in or aggravated by military service.

## BACKGROUND AND NEED FOR LEGISLATION

USERRA provides certain employment protections by prohibiting discrimination in employment against persons who serve, have served or apply to serve in the uniformed services to include Reserve forces and National Guard members who are mobilized or are on active duty for training. It also prohibits acts of reprisal against persons who act to enforce the law.

USERRA additionally provides that returning servicemembers be reemployed in the job they would have attained had they not been absent due to military service, with the same seniority, status and pay, as well as other rights and benefits determined by seniority. This law also requires that reasonable efforts (such as training or retraining) be made to enable returning servicemembers to refresh or upgrade their skills to help them qualify for reemployment. The law provides for alternative reemployment positions if the servicemember cannot qualify for the position they would have attained if they had not served in the U.S. Armed Forces.

Recognizing the need to reevaluate existing laws to protect servicemembers and veterans, Representative Doggett of Texas introduced legislation to expand USERRA protections to cover servicemembers and veterans whose service connected disability requires extended medical care. On March 4, 2009, Representative Doggett testified before the Subcommittee on Economic Opportunity that over 30,000 troops have been wounded as a result of their service in support of Operation Iraqi Freedom and Operation Enduring Freedom. Of these, over 8,000 have suffered from Traumatic Brain Injuries (TBI) and over 1,200 have required amputation of a limb. Representative Doggett also highlighted that such injuries, and others encountered by thousands of servicemembers, can pose severe obstacles for someone who is attempting to heal and maintain employment at the same time.

## HEARINGS

On March 4, 2009, the Subcommittee on Economic Opportunity held a legislative hearing on several bills introduced during the 111th Congress, including H.R. 466.

The following witnesses testified: The Honorable Steve Israel of New York; The Honorable Peter Welch of Vermont; The Honorable Lloyd Doggett of Texas; Mr. Justin Brown, Legislative Associate, National Legislative Service, Veterans of Foreign Wars of the United States; Ms. Cheryl Beversdorf, RN, MHS, MA, President and Chief Executive Officer, National Coalition for Homeless Veterans; Mr. John L. Wilson, Associate National Legislative Director, Disabled American Veterans; Mr. Mark Walker, Assistant Director, National Economic Commission, The American Legion; Mr. Thomas

Zampieri, Ph.D., Director of Government Relations, Blinded Veterans of America; Mr. Patrick H. Boulay, Chief, USERRA Unit, U.S. Office of Special Counsel; Mr. Keith M. Wilson, Director, Education Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs. Those submitting statements for the record included: Mr. John M. McWilliam, Deputy Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor; The Honorable Rodney Alexander of Louisiana; The Honorable Steve Buyer of Indiana; The Honorable Bob Filner of California; Mr. David French, Vice President, Government Relations, International Franchise Association; Mr. Thomas S. Whitaker, President and Deputy Chairman, North Carolina Employment Security Commission, on behalf of National Association of State Workforce Agencies; and the Paralyzed Veterans of America.

#### SUBCOMMITTEE CONSIDERATION

On March 19, 2009, the Subcommittee on Economic Opportunity met in open markup session and ordered favorably forwarded to the full Committee H.R. 466 by voice vote.

#### COMMITTEE CONSIDERATION

On May 6, 2009, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 466, as amended, reported favorably to the House of Representatives, by voice vote. During consideration of the bill the following amendment was considered:

An amendment in the nature of a substitute, offered by Ms. Herseth Sandlin of South Dakota allowing employers to prove that the bill would impose an undue hardship to the employer and bringing the bill language in line with the current protections afforded to servicemembers and veterans under USERRA, was agreed to by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 466 reported to the House. A motion by Mr. Buyer of Indiana to order H.R. 466, as amended, reported favorably to the House of Representatives was agreed to by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX  
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 466 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 466 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 466 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 19, 2009.*

Hon. BOB FILNER,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 466, the Wounded Veteran Job Security Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Camille Woodland.

Sincerely,

DOUGLAS W. ELMENDORF,  
*Director.*

Enclosure.

*H.R. 466—Wounded Veteran Job Security Act*

Summary: H.R. 466 would protect veterans from losing their jobs when they are absent from work in order to receive medical treatment for service-connected disabilities and would allow them to retain seniority, health, pension, and other benefits. CBO estimates that implementing the bill would cost \$6 million over the 2010–2014 period, assuming the appropriation of the necessary amounts. In addition, CBO estimates that enacting H.R. 466 would reduce revenues by \$15 million over the 2010–2019 period and would have an insignificant effect on direct spending.

The requirements on employers to retain veterans as employees and to provide certain benefits would be intergovernmental and

private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs of complying with the mandates would fall below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates (\$69 million and \$139 million in 2009, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 466 is shown in the following table. The discretionary costs of this legislation fall within budget functions that include employee pay and benefits. The direct spending costs fall within budget function 600 (income security).

By fiscal year in millions of dollars—	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN REVENUES <sup>1</sup>												
Estimated Revenues .....	-1	-1	-1	-1	-1	-2	-2	-2	-2	-2	-6	-15
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level .....	1	1	1	1	1	1	1	1	2	2	6	13
Estimated Outlays .....	1	1	1	1	1	1	1	1	2	2	6	13

<sup>1</sup> a. Negative numbers indicate a reduction in revenues and an increase in the deficit.

Notes.—CBO estimates that the direct spending costs of this bill would total less than \$500,000 over the 2010–2019 period. Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO estimates that H.R. 466 will be enacted near the end of fiscal year 2009 and that the necessary amounts will be appropriated for each year beginning in 2010.

### *Revenues*

H.R. 466 would result in higher matching contributions by private-sector employers into 401(k) plans. Higher contributions, in turn, would result in more of an employee's compensation being received in the form of tax-deferred retirement contributions, and less in the form of taxable wages. As a result of this shift, federal revenues from income and payroll taxes would decline. CBO estimates that revenues would be reduced by \$15 million over the 2010–2019 period. Social Security payroll taxes, which are off-budget, would account for about \$5 million of that amount.

### *Spending Subject to Appropriation*

The federal government would bear the increased cost of employee benefits for veterans who are federal employees and who would take leave from work under this bill; however, many of the protections available to veterans under this bill already exist in current law, and would not increase costs to the federal government. Under Executive Order 5396, disabled veterans employed by the Executive Branch are entitled to leave-without-pay in order to receive necessary medical treatment. Employees of the federal government who have been at their jobs for at least a year are already allowed to take up to 12 weeks of unpaid leave for certain medical reasons and retain their health care benefits under the Family and Medical Leave Act (FMLA). In addition, benefit and leave policies throughout the federal government allow individuals in leave-without-pay status to continue to be eligible for health insurance, retirement, and other benefits for up to a year.

Under current law, federal employees taking unpaid leave cannot contribute to or receive a matching contribution from their employers to their Thrift Savings Plan (TSP), the retirement savings and investment plan for federal employees. H.R. 466 would allow eligible veterans to make the missed TSP contributions after they return to work. The employing agency would then be required to make a matching contribution. Based on information from the Department of Veterans Affairs and usage and benefit rates for FMLA, CBO estimates that approximately 9,400 eligible veterans who are federal employees would take leave under H.R. 466 annually. Based on TSP participation rates from the U.S. Office of Personnel Management, CBO estimates that approximately 5,700 veterans annually (or 60 percent) would contribute to their TSP after returning to work and would receive a 3 percent matching contribution. Assuming an average leave period of one month, the employer cost would be approximately \$200 per employee. CBO estimates that the cost to the federal government for the matching contributions would be approximately \$1 million in the first year, and \$5 million over the 2010–2014 period, assuming the availability of appropriated funds.

CBO estimates that there would be a relatively small cost for benefits for employees not covered under FMLA, but who would be allowed to take unpaid leave under this bill. This would include new employees of less than a year and individuals who needed more than 12 weeks of leave. CBO estimates these costs would total about \$1 million over the 2010–2014 period.

#### *Direct Spending*

H.R. 466 also would have a relatively small direct spending cost for increased retirement payments for federal employees. Under current law and policy, individuals on unpaid leave for more than six months in one year receive a reduced retirement benefit under the Federal Employees Retirement System. Under H.R. 466, individuals taking over six months of leave-without-pay would not have their retirement benefits reduced. CBO expects the increases in retirement payments under this bill to be small; most of the increase in spending would occur outside the 10-year budget projection period. We estimate that the increased retirement payments would increase direct spending by an insignificant amount over the 2010–2019 period.

**Intergovernmental and Private-Sector Impact:** H.R. 466 would impose intergovernmental and private-sector mandates as defined in UMRA on employers of veterans who miss work for a period of time due to medical treatment for a service-connected injury. The bill would require employers to retain such veterans as employees, and grant them seniority and other rights and benefits as if they had not been absent. Those rights to employment, seniority, and benefits would accrue to veterans regardless of their length of employment. Benefit levels would, however, be limited to those provided to similar employees. Based on leave and benefits data for individuals who are covered by FMLA, CBO estimates that the costs of the mandates would fall below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates (\$69 million and \$139 million in 2009, respectively, adjusted annually for inflation).

Section 4 of UMRA excludes from the application of that act any legislative provisions that establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. CBO has determined that section 3(d) of the bill would fall within that exclusion and has not reviewed the section for mandates.

Estimate prepared by: Federal Spending: Camille Woodland; Federal Revenues: Zachary Epstein; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 466 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 466.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 466 is provided by Article I, section 8 of the Constitution of the United States.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section provides the short title of H.R. 466, as amended, as the “Wounded Veteran Job Security Act.”

##### *Section 2. Rights of persons who receive treatment for illnesses, injuries, and disabilities incurred or aggravated by service in the uniformed services.*

This section would add a new section 4320 to Subchapter II of Chapter 43 of title 38 to expand Uniformed Services Employment and Reemployment Rights Act (USERRA) protections to include servicemembers and veterans who have an illness, injury or disability determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated by, military service.

This new section would provide that service-connected disabled veterans who seek medical attention would have USERRA protec-

tions for seniority, status, retention, and pay as well as other rights and benefits determined by employment.

This section provides the employer the opportunity to terminate the leave provided to the veteran under this section if the employer's circumstances have changed so as to make such retention impossible or unreasonable, it is proven that such leave would impose an undue hardship to the employer, or there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

This section provides that amendments made by this section shall apply to medical treatment received on or after the date of enactment of this act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

**PART III—READJUSTMENT AND RELATED BENEFITS**

\* \* \* \* \*

**CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES**

SUBCHAPTER I—GENERAL

Sec.

4301. Purposes; sense of Congress.

\* \* \* \* \*

SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

\* \* \* \* \*

4320. *Rights of persons absent from employment for treatment of service-connected disabilities.*

\* \* \* \* \*

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, *or who has an illness, injury, or disability determined by the Secretary of Veterans Affairs to have been incurred in or aggravated by such 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, perform-

ance of service, application for service, [or obligation] *obligation, or receipt of treatment for that illness, injury, or disability.*

\* \* \* \* \*

(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] *obligation for service, or receipt of treatment for an illness, injury, or disability determined by the Secretary of Veterans Affairs to have been incurred in or aggravated by 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] *obligation for service, or receipt of treatment; or*

\* \* \* \* \*

**§ 4317. Health plans**

(a) \* \* \*

\* \* \* \* \*

(c) *This section shall apply with respect to a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4320(c)(2)(B) of this title) on the same basis as a person who is absent from a position of employment by reason of service in the uniformed services. In the case of a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4320(c)(2)(B) of this title), the period during which the person is so absent shall be treated as a period of service in the uniformed services for purposes of this section.*

**§ 4318. Employee pension benefit plans**

(a) \* \* \*

\* \* \* \* \*

(d) *This section shall apply with respect to a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4319(c)(2)(B) of this title) on the same basis as a person who is reemployed under this chapter. In the case of a person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability (other than a person described in section 4320(c)(2)(B) of this title), the period during which the person is so absent shall be treated as a period of service in the uniformed services for purposes of this section.*

\* \* \* \* \*

**§ 4320. Rights of persons absent from employment for treatment of service-connected disabilities**

(a) *RETENTION.*—Subject to subsection (e), a person who is absent from a position of employment by reason of the receipt of medical

*treatment for a service-connected disability is entitled to be retained by the person's employer.*

(b) *SENIORITY.—A person who is absent from employment by reason of the receipt of medical treatment for a service-connected disability and who is entitled to be retained by the person's employer under subsection (a) is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of such treatment plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.*

(c) *BENEFITS.—(1) A person who is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability and who is entitled to be retained by the person's employer under subsection (a) shall be—*

*(A) deemed to be on furlough or leave of absence while receiving such treatment; and*

*(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person is so absent.*

*(2)(A) Subject to subparagraph (C), a person described in subparagraph (B) is not entitled to rights and benefits under paragraph (1)(B).*

*(B) A person described in this subparagraph is a person who—*

*(i) is absent from a position of employment by reason of the receipt of medical treatment for a service-connected disability; and*

*(ii) knowingly provides written notice of intent not to return to a position of employment after receiving such treatment.*

*(C) 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 being absent from employment by reason of the receipt of medical treatment 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 receiving medical treatment for a service-connected disability 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 of this title.*

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

(d) *LEAVE.—Any person who is absent from a position of employment with an employer by reason of the receipt of medical treatment for a service-connected disability shall be permitted, upon request of that person, to use during the period during which the person is so absent, any vacation, annual, medical, or similar leave with pay ac-*

*crued by the person before the commencement of such period. No employer may require any such person to use vacation, annual, family, medical, or similar leave during such period.*

*(e) EXCEPTIONS.—(1) An employer is not required to retain a person under this section if—*

*(A) the employer's circumstances have so changed as to make such retention impossible or unreasonable;*

*(B) such retention would impose an undue hardship on the employer; or*

*(C) the employment from which the person is absent by reason of the receipt of medical treatment is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.*

*(2) In any proceeding involving an issue of whether (A) any retention referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances, (B) such retention would impose an undue hardship on the employer, or (C) the employment referred to in paragraph (1)(C) is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period, the employer shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.*

\* \* \* \* \*

