

104TH CONGRESS
2D SESSION

H. R. 3104

To amend the Internal Revenue Code of 1986 to provide special rules relating to veterans' reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1996

Mrs. VUCANOVICH introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide special rules relating to veterans' reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TREATMENT OF CERTAIN VETERANS' REEM-**
4 **PLOYMENT RIGHTS.**

5 (a) IN GENERAL.—Section 414 of the Internal Reve-
6 nue Code of 1986 is amended by adding at the end the
7 following new subsection:

1 “(u) SPECIAL RULES RELATING TO VETERANS’ RE-
2 EMPLOYMENT RIGHTS UNDER USERRA.—

3 “(1) TREATMENT OF CERTAIN CONTRIBUTIONS
4 MADE PURSUANT TO VETERANS’ REEMPLOYMENT
5 RIGHTS.—If any contribution is made by an em-
6 ployer or an employee under an individual account
7 plan with respect to an employee, or by an employee
8 to a defined benefit plan that provides for employee
9 contributions, and such contribution is required by
10 reason of such employee’s rights under chapter 43 of
11 title 38, United States Code, resulting from qualified
12 military service, then—

13 “(A) such contribution shall not be subject
14 to any otherwise applicable limitation contained
15 in section 402(g), 402(h), 403(b), 404(a),
16 404(h), 408, 415, or 457, and shall not be
17 taken into account in applying such limitations
18 to other contributions or benefits under such
19 plan or any other plan, with respect to the year
20 in which the contribution is made,

21 “(B) such contribution shall be subject to
22 the limitations referred to in subparagraph (A)
23 with respect to the year to which the contribu-
24 tion relates (in accordance with rules prescribed
25 by the Secretary), and

1 “(C) such plan shall not be treated as fail-
2 ing to meet the requirements of section
3 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11),
4 401(m), 403(b)(12), 408(k)(3), 408(k)(6),
5 410(b), or 416 by reason of the making of (or
6 the right to make) such contribution.

7 For purposes of the preceding sentence, any elective
8 deferral or employee contribution made under para-
9 graph (2) shall be treated as required by reason of
10 the employee’s rights under such chapter 43.

11 “(2) REEMPLOYMENT RIGHTS UNDER USERRA
12 WITH RESPECT TO ELECTIVE DEFERRALS.—

13 “(A) IN GENERAL.—For purposes of this
14 subchapter and section 457, if an employee is
15 entitled to the benefits of chapter 43 of title 38,
16 United States Code, with respect to any plan
17 which provides for elective deferrals, the em-
18 ployer sponsoring the plan shall be treated as
19 meeting the requirements of such chapter 43
20 with respect to such elective deferrals only if
21 such employer—

22 “(i) permits such employee to make
23 additional elective deferrals under such
24 plan (in the amount determined under sub-
25 paragraph (B) or such lesser amount as is

1 elected by the employee) during the period
2 which begins on the date of the reemploy-
3 ment of such employee with such employer
4 and has the same length as the lesser of—

5 “(I) the product of 3 and the pe-
6 riod of qualified military service which
7 resulted in such rights, and

8 “(II) 5 years, and

9 “(ii) makes a matching contribution
10 with respect to any additional elective de-
11 ferral made pursuant to clause (i) which
12 would have been required had such defer-
13 ral actually been made during the period of
14 such qualified military service.

15 “(B) AMOUNT OF MAKEUP REQUIRED.—

16 The amount determined under this subpara-
17 graph with respect to any plan is the maximum
18 amount of the elective deferrals that the indi-
19 vidual would have been permitted to make
20 under the plan in accordance with the limita-
21 tions referred to in paragraph (1)(A) during the
22 period of qualified military service if the indi-
23 vidual had continued to be employed by the em-
24 ployer during such period and received com-
25 pensation as determined under paragraph (7).

1 Proper adjustment shall be made to the amount
2 determined under the preceding sentence for
3 any elective deferrals actually made during the
4 period of such qualified military service.

5 “(C) ELECTIVE DEFERRAL.—For purposes
6 of this paragraph, the term ‘elective deferral’
7 has the meaning given such term by section
8 402(g)(3); except that such term shall include
9 any deferral of compensation under an eligible
10 deferred compensation plan (as defined in sec-
11 tion 457(b)).

12 “(D) AFTER-TAX EMPLOYEE CONTRIBU-
13 TIONS.—References in subparagraphs (A) and
14 (B) to elective deferrals shall be treated as in-
15 cluding references to employee contributions.

16 “(3) CERTAIN RETROACTIVE ADJUSTMENTS
17 NOT REQUIRED.—For purposes of this subchapter
18 and subchapter E, no provision of chapter 43 of title
19 38, United States Code, shall be construed as re-
20 quiring—

21 “(A) any crediting of earnings to an em-
22 ployee with respect to any contribution before
23 such contribution is actually made, or

1 “(B) any allocation of any forfeiture with
2 respect to the period of qualified military serv-
3 ice.

4 “(4) LOAN REPAYMENT SUSPENSIONS PER-
5 MITTED.—If any plan suspends the obligation to
6 repay any loan made to an employee from such plan
7 for any part of any period during which such em-
8 ployee is performing service in the uniformed serv-
9 ices (as defined in chapter 43 of title 38, United
10 States Code), whether or not qualified military serv-
11 ice, such suspension shall not be taken into account
12 for purposes of section 72(p), 401(a), or 4975(d)(1).

13 “(5) QUALIFIED MILITARY SERVICE.—For pur-
14 poses of this subsection, the term ‘qualified military
15 service’ means any service in the uniformed services
16 (as defined in chapter 43 of title 38, United States
17 Code) by any individual if such individual is entitled
18 to reemployment rights under such chapter with re-
19 spect to such service.

20 “(6) INDIVIDUAL ACCOUNT PLAN.—For pur-
21 poses of this subsection, the term ‘individual account
22 plan’ means any defined contribution plan (including
23 any tax-sheltered annuity plan under section 403(b),
24 any simplified employee pension under section

1 408(k), and any eligible deferred compensation plan
2 (as defined in section 457(b)).

3 “(7) COMPENSATION.—For purposes of sections
4 403(b)(3), 415(c)(3), and 457(e)(5), an employee
5 who is in qualified military service shall be treated
6 as receiving compensation from the employer during
7 such period of qualified military service equal to—

8 “(A) the compensation the employee would
9 have received during such period if the em-
10 ployee were not in qualified military service, de-
11 termined based on the rate of pay the employee
12 would have received from the employer but for
13 absence during the period of qualified military
14 service, or

15 “(B) if the compensation the employee
16 would have received during such period was not
17 reasonably certain, the employee’s average com-
18 pensation from the employer during the 12-
19 month period immediately preceding the quali-
20 fied military service (or, if shorter, the period of
21 employment immediately preceding the qualified
22 military service).

23 “(8) USERRA REQUIREMENTS FOR QUALIFIED
24 RETIREMENT PLANS.—For purposes of this sub-
25 chapter and section 457, an employer sponsoring a

1 retirement plan shall be treated as meeting the re-
2 quirements of chapter 43 of title 38, United States
3 Code, only if each of the following requirements is
4 met:

5 “(A) An individual reemployed under such
6 chapter is treated with respect to such plan as
7 not having incurred a break in service with the
8 employer maintaining the plan by reason of
9 such individual’s period of qualified military
10 service.

11 “(B) Each period of qualified military
12 service served by an individual is, upon reem-
13 ployment under such chapter, deemed with re-
14 spect to such plan to constitute service with the
15 employer maintaining the plan for the purpose
16 of determining the nonforfeitability of the indi-
17 vidual’s accrued benefits under such plan and
18 for the purpose of determining the accrual of
19 benefits under such plan.

20 “(C) An individual reemployed under such
21 chapter is entitled to accrued benefits that are
22 contingent on the making of, or derived from,
23 employee contributions or elective deferrals only
24 to the extent the individual makes payment to
25 the plan with respect to such contributions or

1 deferrals. No such payment may exceed the
2 amount the individual would have been per-
3 mitted or required to contribute had the indi-
4 vidual remained continuously employed by the
5 employer throughout the period of qualified
6 military service. Any payment to such plan shall
7 be made during the period beginning with the
8 date of reemployment and whose duration is 3
9 times the period of the qualified military service
10 (but not greater than 5 years).

11 “(9) PLANS NOT SUBJECT TO TITLE 38.—This
12 subsection shall not apply to any retirement plan to
13 which chapter 43 of title 38, United States Code,
14 does not apply.

15 “(10) REFERENCES.—For purposes of this sec-
16 tion, any reference to chapter 43 of title 38, United
17 States Code, shall be treated as a reference to such
18 chapter as in effect on December 12, 1994 (without
19 regard to any subsequent amendment).”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall be effective as of December 12, 1994.

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