

Union Calendar No. 61

111TH CONGRESS
1ST SESSION

H. R. 466

[Report No. 111-118]

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2009

Mr. DOGGETT (for himself, Mr. BISHOP of New York, Mr. EDWARDS of Texas, Mr. FILNER, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MCGOVERN, and Mr. ORTIZ) introduced the following bill; which was referred to the Committee on Veterans' Affairs

MAY 19, 2009

Additional sponsors: Mr. SESTAK and Mr. HALL of New York

MAY 19, 2009

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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.

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. SHORT TITLE.**

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

6 **SEC. 2. DISCRIMINATION AGAINST PERSONS WHO RECEIVE**
7 **TREATMENT FOR ILLNESSES, INJURIES, AND**
8 **DISABILITIES INCURRED IN OR AGGRAVATED**
9 **BY SERVICE IN THE UNIFORMED SERVICES**
10 **AND ACTS OF REPRISAL PROHIBITED.**

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

14 (1) in subsection (a)—

15 (A) by inserting after “uniformed service”
16 the following: “, or who has an illness, injury,
17 or disability determined by the Secretary of
18 Veterans Affairs to have been incurred in or ag-
19 gravated by such service,”; and

20 (B) by striking “or obligation” and insert-
21 ing “obligation, or receipt of treatment for that
22 illness, injury, or disability”; and

23 (2) in subsection (c)—

24 (A) by striking “or obligation for service”
25 the first time it appears and inserting “obliga-

1 tion for service, or receipt of treatment for an
 2 illness, injury, or disability incurred in or ag-
 3 gravated by service"; and

4 (B) by striking "or obligation for service"
 5 the second time it appears and inserting "obli-
 6 gation for service, or receipt of treatment".

7 (b) **EFFECTIVE DATE.**—The amendments made by
 8 subsection (a) shall apply with respect to treatment re-
 9 ceived on or after the date of the enactment of this Act.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the "Wounded Veteran Job*
 12 *Security Act".*

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

17 (a) **RIGHTS OF PERSONS WHO RECEIVE TREAT-**
 18 **MENT.**—

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

22 **"§ 4320. Rights of persons absent from employment for**
 23 **treatment of service-connected disabilities**

24 “(a) **RETENTION.**—Subject to subsection (e), a person
 25 who is absent from a position of employment by reason of

1 *the receipt of medical treatment for a service-connected dis-*
2 *ability is entitled to be retained by the person's employer.*

3 “(b) *SENIORITY.*—*A person who is absent from em-*
4 *ployment by reason of the receipt of medical treatment for*
5 *a service-connected disability and who is entitled to be re-*
6 *tained by the person's employer under subsection (a) is enti-*
7 *tled to the seniority and other rights and benefits deter-*
8 *mined by seniority that the person had on the date of the*
9 *commencement of such treatment plus the additional senior-*
10 *ity and rights and benefits that such person would have*
11 *attained if the person had remained continuously employed.*

12 “(c) *BENEFITS.*—(1) *A person who is absent from a*
13 *position of employment by reason of the receipt of medical*
14 *treatment for a service-connected disability and who is enti-*
15 *tled to be retained by the person's employer under sub-*
16 *section (a) shall be—*

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

19 “(B) *entitled to such other rights and benefits*
20 *not determined by seniority as are generally provided*
21 *by the employer of the person to employees having*
22 *similar seniority, status, and pay who are on fur-*
23 *lough or leave of absence under a contract, agreement,*
24 *policy, practice, or plan in effect at the commence-*

1 *ment of such service or established while such person*
2 *is so absent.*

3 *“(2)(A) Subject to subparagraph (C), a person de-*
4 *scribed in subparagraph (B) is not entitled to rights and*
5 *benefits under paragraph (1)(B).*

6 *“(B) A person described in this subparagraph is a per-*
7 *son who—*

8 *“(i) is absent from a position of employment by*
9 *reason of the receipt of medical treatment for a serv-*
10 *ice-connected disability; and*

11 *“(ii) knowingly provides written notice of intent*
12 *not to return to a position of employment after receiv-*
13 *ing such treatment.*

14 *“(C) For the purposes of subparagraph (A), the em-*
15 *ployer shall have the burden of proving that a person know-*
16 *ingly provided clear written notice of intent not to return*
17 *to a position of employment after being absent from employ-*
18 *ment by reason of the receipt of medical treatment and, in*
19 *doing so, was aware of the specific rights and benefits to*
20 *be lost under subparagraph (A).*

21 *“(3) A person deemed to be on furlough or leave of*
22 *absence under this subsection while receiving medical treat-*
23 *ment for a service-connected disability shall not be entitled*
24 *under this subsection to any benefits to which the person*

1 *would not otherwise be entitled if the person had remained*
2 *continuously employed.*

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

7 “(5) *The entitlement of a person to coverage under a*
8 *health plan is provided for under section 4317 of this title.*

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

12 “(d) *LEAVE.—Any person who is absent from a posi-*
13 *tion of employment with an employer by reason of the re-*
14 *ceipt of medical treatment for a service-connected disability*
15 *shall be permitted, upon request of that person, to use dur-*
16 *ing the period during which the person is so absent, any*
17 *vacation, annual, medical, or similar leave with pay ac-*
18 *crued by the person before the commencement of such period.*
19 *No employer may require any such person to use vacation,*
20 *annual, family, medical, or similar leave during such pe-*
21 *riod.*

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

1 “(A) the employer’s circumstances have so
2 changed as to make such retention impossible or un-
3 reasonable;

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

6 “(C) the employment from which the person is
7 absent by reason of the receipt of medical treatment
8 is for a brief, nonrecurrent period and there is no rea-
9 sonable expectation that such employment will con-
10 tinue indefinitely or for a significant period.

11 “(2) In any proceeding involving an issue of whether
12 (A) any retention referred to in paragraph (1) is impossible
13 or unreasonable because of a change in an employer’s cir-
14 cumstances, (B) such retention would impose an undue
15 hardship on the employer, or (C) the employment referred
16 to in paragraph (1)(C) is for a brief, nonrecurrent period
17 and there is no reasonable expectation that such employ-
18 ment will continue indefinitely or for a significant period,
19 the employer shall have the burden of proving the impos-
20 sibility or unreasonableness, undue hardship, or the brief
21 or nonrecurrent nature of the employment without a reason-
22 able expectation of continuing indefinitely or for a signifi-
23 cant period.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of such chapter is amended by

1 *inserting after the item relating to section 4319 the*
2 *following new item:*

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

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

6 “(c) *This section shall apply with respect to a person*
7 *who is absent from a position of employment by reason of*
8 *the receipt of medical treatment for a service-connected dis-*
9 *ability (other than a person described in section*
10 *4320(c)(2)(B) of this title) on the same basis as a person*
11 *who is absent from a position of employment by reason of*
12 *service in the uniformed services. In the case of a person*
13 *who is absent from a position of employment by reason of*
14 *the receipt of medical treatment for a service-connected dis-*
15 *ability (other than a person described in section*
16 *4320(c)(2)(B) of this title), the period during which the per-*
17 *son is so absent shall be treated as a period of service in*
18 *the uniformed services for purposes of this section.*”.

19 (c) *EMPLOYEE PENSION BENEFIT PLANS.*—Section
20 *4318 of title 38, United States Code, is amended by adding*
21 *at the end the following new subsection:*

22 “(d) *This section shall apply with respect to a person*
23 *who is absent from a position of employment by reason of*
24 *the receipt of medical treatment for a service-connected dis-*

1 ability (other than a person described in section
 2 4320(c)(2)(B) of this title) on the same basis as a person
 3 who is reemployed under this chapter. In the case of a per-
 4 son who is absent from a position of employment by reason
 5 of the receipt of medical treatment for a service-connected
 6 disability (other than a person described in section
 7 4320(c)(2)(B) of this title), the period during which the per-
 8 son is so absent shall be treated as a period of service in
 9 the uniformed services for purposes of this section.”.

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

13 (1) in subsection (a)—

14 (A) by inserting after “uniformed service”
 15 the following: “, or who has an illness, injury, or
 16 disability determined by the Secretary of Vet-
 17 erans Affairs to have been incurred in or aggra-
 18 vated by such service,”; and

19 (B) by striking “or obligation” and insert-
 20 ing “obligation, or receipt of treatment for that
 21 illness, injury, or disability”; and

22 (2) in subsection (c)—

23 (A) by striking “or obligation for service”
 24 the first time it appears and inserting “obliga-
 25 tion for service, or receipt of treatment for an ill-

1 *ness, injury, or disability determined by the Sec-*
2 *retary of Veterans Affairs to have been incurred*
3 *in or aggravated by service”; and*

4 *(B) by striking “or obligation for service”*
5 *the second time it appears and inserting “obliga-*
6 *tion for service, or receipt of treatment”.*

7 *(e) EFFECTIVE DATE.—The amendments made by this*
8 *section shall apply with respect to medical treatment re-*
9 *ceived 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.”.

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