

112TH CONGRESS  
1ST SESSION

# H. R. 3524

To amend title 38, United States Code, to provide certain rights for persons who receive treatment for illnesses, injuries, and disabilities incurred in or aggravated by service in the uniformed services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2011

Mr. BRALEY of Iowa introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to provide certain rights for persons who receive treatment for illnesses, injuries, and disabilities incurred in or aggravated by service in the uniformed services, and for other purposes.

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 “Disabled Veterans Em-  
5 ployment Protection Act”.

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

5 (a) RIGHTS OF PERSONS WHO RECEIVE TREATMENT.—

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

10 **“§ 4320. Rights of persons absent from employment**  
11 **for treatment of service-connected dis-**  
12 **abilities**

13 “(a) RETENTION.—Subject to subsection (e), a per-  
14 son who is absent from a position of employment by rea-  
15 son of the receipt of medical treatment for a service-con-  
16 nected disability is entitled to be retained by the person’s  
17 employer.

18 “(b) SENIORITY.—A person who is absent from em-  
19 ployment by reason of the receipt of medical treatment  
20 for a service-connected disability and who is entitled to  
21 be retained by the person’s employer under subsection (a)  
22 is entitled to the seniority and other rights and benefits  
23 determined by seniority that the person had on the date  
24 of the commencement of such treatment plus the addi-  
25 tional seniority and rights and benefits that such person

1 would have attained if the person had remained continu-  
2 ously employed.

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

8 “(A) deemed to be on furlough or leave of ab-  
9 sence while receiving such treatment; and

10 “(B) entitled to such other rights and benefits  
11 not determined by seniority as are generally provided  
12 by the employer of the person to employees having  
13 similar seniority, status, and pay who are on fur-  
14 lough or leave of absence under a contract, agree-  
15 ment, policy, practice, or plan in effect at the com-  
16 mencement of such service or established while such  
17 person is so absent.

18 “(2)(A) Subject to subparagraph (C), a person de-  
19 scribed in subparagraph (B) is not entitled to rights and  
20 benefits under paragraph (1)(B).

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

23 “(i) is absent from a position of employment by  
24 reason of the receipt of medical treatment for a serv-  
25 ice-connected disability; and

1           “(ii) knowingly provides written notice of intent  
2           not to return to a position of employment after re-  
3           ceiving such treatment.

4           “(C) For the purposes of this paragraph, the em-  
5           ployer shall have the burden of proving that a person  
6           knowingly provided clear written notice of intent not to  
7           return to a position of employment after being absent  
8           from employment by reason of the receipt of medical treat-  
9           ment and, in doing so, was aware of the specific rights  
10          and benefits to be lost under subparagraph (A).

11          “(3) A person deemed to be on furlough or leave of  
12          absence under this subsection while receiving medical  
13          treatment for a service-connected disability shall not be  
14          entitled under this subsection to any benefits to which the  
15          person would not otherwise be entitled if the person had  
16          remained continuously employed.

17          “(4) Such person may be required to pay the em-  
18          ployee cost, if any, of any funded benefit continued pursu-  
19          ant to paragraph (1) to the extent other employees on fur-  
20          lough or leave of absence are so required.

21          “(5) The entitlement of a person to coverage under  
22          a health plan is provided for under section 4317 of this  
23          title.

24          “(d) LEAVE.—Any person who is absent from a posi-  
25          tion of employment with an employer by reason of the re-

1 ceipt of medical treatment for a service-connected dis-  
2 ability shall be permitted, upon request of that person, to  
3 use during the period during which the person is so ab-  
4 sent, any vacation, annual, medical, or similar leave with  
5 pay accrued by the person before the commencement of  
6 such period. No employer may require any such person  
7 to use vacation, annual, family, medical, or similar leave  
8 during such period.

9 “(e) EXCEPTIONS.—(1) An employer is not required  
10 to comply with the requirements of this section if—

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

14 “(B) such compliance would impose an undue  
15 hardship on the employer; or

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

21 “(2) In any proceeding involving an issue of whether  
22 (A) any compliance referred to in paragraph (1) is impos-  
23 sible or unreasonable because of a change in an employer’s  
24 circumstances, (B) such compliance would impose an  
25 undue hardship on the employer, or (C) the employment

1 referred to in paragraph (1)(C) is for a brief, nonrecurrent  
2 period and there is no reasonable expectation that such  
3 employment will continue indefinitely or for a significant  
4 period, the employer shall have the burden of proving the  
5 impossibility or unreasonableness, undue hardship, or the  
6 brief or nonrecurrent nature of the employment without  
7 a reasonable expectation of continuing indefinitely or for  
8 a significant period.

9       “(f) LIMITATION.—This section shall apply with re-  
10 spect to any absence from a position of employment with  
11 an employer by reason of the receipt of medical treatment  
12 for a service-connected disability as long as the aggregate  
13 period of such absence or absences is not more than 12  
14 workweeks during any 12-month period.”.

15       (2) CLERICAL AMENDMENT.—The table of sec-  
16 tions at the beginning of such chapter is amended  
17 by inserting after the item relating to section 4319  
18 the following new item:

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

19       (b) HEALTH PLAN.—Section 4317 of title 38, United  
20 States Code, is amended by adding at the end the fol-  
21 lowing new subsection:

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

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

11 (c) 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 determined by the  
3           Secretary of Veterans Affairs to have been in-  
4           curred in or aggravated by service”; and

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

8           (d) **EFFECTIVE DATE.**—The amendments made by  
9           this section shall apply with respect to medical treatment  
10          received on or after the date that is 90 days after the date  
11          of the enactment of this Act.

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