

Committee Print

[Reflecting the Actions of the Subcommittee on Economic
Opportunity on July 19, 2023]

118TH CONGRESS
1ST SESSION

H. R. 3943

To amend title 38, United States Code, to improve the reemployment rights
of members of the Armed Forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

A BILL

To amend title 38, United States Code, to improve the
reemployment rights of members of the Armed Forces,
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 “Servicemember Em-
5 ployment Protection Act of 2023”.

1 **SEC. 2. IMPROVEMENTS TO REEMPLOYMENT RIGHTS OF**
2 **MEMBERS OF THE ARMED FORCES.**

3 (a) **USERRA PURPOSES.**—Section 4301(a)(1) of
4 such title is amended by striking “encourage noncareer
5 service in the uniformed services” and inserting “encour-
6 age service in the uniformed services”.

7 (b) **PROHIBITION OF RETALIATION.**—Subsection (b)
8 of section 4311 of title 38, United States Code, is amend-
9 ed by inserting “or other retaliatory action” after “em-
10 ployment action”.

11 (c) **EXPANSION OF INJUNCTIVE RELIEF.**—Sub-
12 section (e) of section 4323 of such title is amended—

13 (1) by striking “The court shall use” and in-
14 serting “(1) The court shall use”; and

15 (2) by adding at the end the following new
16 paragraphs:

17 “(2) A person bringing an action to enforce a provi-
18 sion of this chapter pursuant to subsection (a) shall be
19 entitled to an injunction under paragraph (1) if such per-
20 son demonstrates—

21 “(A) a violation—

22 “(i) of the provisions of this chapter; or

23 “(ii) of the provisions of this chapter is
24 threatened or is imminent;

25 “(B) the harm to the person outweighs the in-
26 jury to the employer;

1 “(C) a likelihood of success on the merits of
2 such action; and

3 “(D) awarding such relief is in the public inter-
4 est.

5 “(3) The court may not deny a motion for injunctive
6 relief on the basis that a party bringing an action to en-
7 force a provision of this chapter may be awarded wages
8 unearned due to an unlawful termination or denial of em-
9 ployment at the conclusion of such action.”.

10 (d) DAMAGES AGAINST A STATE OR PRIVATE EM-
11 PLOYER.—Section 4323 of such title is further amended,
12 in paragraph (1) of subsection (d), by striking subpara-
13 graph (C) and inserting the following new subparagraphs:

14 “(C) The court may require the employer to
15 pay the person the amount referred to in subpara-
16 graph (B) and interest on such amount, calculated
17 at a rate of 3 percent per year.

18 “(D) The court may require the employer to
19 pay the person the greater of \$50,000 or the amount
20 equal to the amounts referred to in subparagraphs
21 (B) and (C) as liquidated damages, if the court de-
22 termines that the employer knowingly failed to com-
23 ply with the provisions of this chapter.”.

24 (e) MANDATORY ATTORNEY FEES AWARD IN SUC-
25 CESSFUL ACTIONS FOR REEMPLOYMENT.—

1 (1) MSPB ACTIONS.—Paragraph (4) of sub-
2 section (c) of section 4324 of such title is amended
3 by striking “the Board may, in its discretion, award
4 such person reasonable attorney fees[, expert wit-
5 ness fees, and other litigation expenses].” [NOTE:
6 the bracketed language reflects the statute. It is un-
7 clear to me from the amendment whether the inten-
8 tion was to strike those words or not because the pe-
9 riod should not appear until after the word “ex-
10 penses”] and inserting “the Board shall award such
11 person reasonable attorney fees. The Board may, in
12 its discretion, award reasonable attorney fees in a
13 case settled before the issuance of an order if the
14 person can demonstrate that significant attorney
15 fees were incurred and that justice requires such an
16 award.”.

17 (2) FEDERAL CIRCUIT ACTIONS.—Subsection
18 (d) of such section is amended by adding at the end
19 the following new paragraph:

20 “(3) In such Federal Circuit proceeding, the court
21 shall award such person reasonable attorney fees, expert
22 witness fees, and other litigation expenses if such person—

23 “(A) prevails in such Federal Circuit pro-
24 ceeding; and

1 “(B) is not represented by the Special Counsel
2 in such Federal Circuit proceeding.”.

3 (3) ACTIONS AGAINST A STATE OR PRIVATE EM-
4 PLOYER.—Paragraph (2) of section 4323(h) of such
5 title is amended—

6 (A) by striking “subsection (a)(2)” and in-
7 serting “subsection (a)(3)”; and

8 (B) by striking “the court may award any
9 such person who prevails in such action or pro-
10 ceeding reasonable attorney fees” and inserting
11 “the court shall award any such person who
12 prevails in such action or proceeding reasonable
13 attorney fees”.

14 (f) GAO REVIEW AND REPORT ON USERRA.—

15 (1) REVIEW.—The Comptroller General of the
16 United States shall review the methods through
17 which the Secretary of Labor, acting through the
18 Veterans’ Employment and Training Service, proc-
19 esses actions for relief under chapter 43 of title 38,
20 United States Code.

21 (2) ELEMENTS.—Not later than one year after
22 the date of the enactment of this Act, the Comp-
23 troller General shall submit to the Committees on
24 Veterans’ Affairs of the House of Representatives
25 and the Senate a report that includes—

1 (A) the findings of the review required
2 under paragraph (1);

3 (B) an identification of the number of ac-
4 tions for relief under chapter 43 of title 38,
5 United States Code, initiated during the period
6 covered by the report, disaggregated by size of
7 employer and geographic region;

8 (C) an identification of the number of such
9 actions for relief that were erroneously dis-
10 missed, as determined by the Comptroller Gen-
11 eral;

12 (D) an identification of the number of such
13 actions for relief that were referred to the De-
14 partment of Justice; and

15 (E) an assessment of trends, if any, in
16 such actions for relief initiated during such pe-
17 riod.

18 (g) GAO REVIEW OF PROTECTIONS FOR MEMBERS
19 OF THE UNIFORMED SERVICES BY FEDERAL INTEL-
20 LIGENCE AGENCIES.—

21 (1) IN GENERAL.—Not later than one year
22 after the date of the enactment of this Act, the
23 Comptroller General of the United States shall sub-
24 mit to the appropriate congressional committees a
25 report on the processes and procedures adopted and

1 used by the intelligence community to provide the
2 protections for members of the uniformed services
3 otherwise established under chapter 43 of title 38,
4 United States Code.

5 (2) DEFINITIONS.—In this subsection:

6 (A) The term “appropriate congressional
7 committees” means the Committees on Vet-
8 erans’ Affairs of the House of Representatives
9 and Senate, the Permanent Select Committee
10 on Intelligence of the House of Representatives,
11 and the Select Committee on Intelligence of the
12 Senate.

13 (B) The term “intelligence community”
14 has the meaning given such term in section
15 3(4) of the National Security Act of 1947 (50
16 U.S.C. 3003(4)).

17 **SEC. 3. REVIEW OF INVESTIGATIONS MANUAL OF VET-**
18 **ERANS’ EMPLOYMENT AND TRAINING SERV-**
19 **ICE.**

20 (a) IN GENERAL.—Not later than one year after the
21 date of the enactment of this Act, and once every two
22 years thereafter for the period of five years beginning on
23 such date, the Secretary of Labor, shall review the manual
24 of the Department of Labor titled “Veterans’ Employment
25 and Training Service Investigations Manual: USERRA,

1 VEOA, and VP” (or a successor manual) and make such
2 revisions to such manual as the Secretary determines ap-
3 propriate.

4 (b) REPORT.—Not later than 90 days after any date
5 on which the Secretary completes a review required under
6 subsection (a), the Secretary shall submit to the Commit-
7 tees on Veterans’ Affairs of the House of Representatives
8 and the Senate—

9 (1) a report that includes a description of any
10 revision to such manual made pursuant to such re-
11 view; and

12 (2) a copy of the entire such manual which—

13 (A) shall be provided to the Chairman and
14 Ranking Member of each such committee; and

15 (B) may contain a separate addendum for
16 portions of the manual that contain law en-
17 forcement sensitive materials.