

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

JUNE 9, 2023

Mr. C. SCOTT FRANKLIN of Florida (for himself and Mr. BOST) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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”.

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

8 (a) EXPANSION OF INJUNCTIVE RELIEF.—Sub-
9 section (e) of section 4323 of title 38, United States Code,
10 is amended—

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

3 (2) by adding at the end the following new
4 paragraphs:

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

9 “(A) a violation—

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

11 “(ii) of the provisions of this chapter is threat-
12 ened or is imminent; and

13 “(B) a likelihood of success on the merits of such ac-
14 tion.

15 “(3) The court may not deny a motion for injunctive
16 relief on the basis that a party bringing an action to en-
17 force a provision of this chapter may be awarded wages
18 unearned due to an unlawful termination of employment
19 at the conclusion of such action.”.

20 (b) EXPANSION OF LIQUIDATED DAMAGES.—

21 (1) DAMAGES AGAINST A STATE OR PRIVATE
22 EMPLOYER.—Such section is further amended in
23 paragraph (1) of subsection (d), by striking subpara-
24 graph (C) and inserting the following new subpara-
25 graphs:

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

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

11 (2) DAMAGES AGAINST FEDERAL EXECUTIVE
12 AGENCIES.—Subsection (c) of section 4324 of such
13 title is amended—

14 (A) by redesignating paragraphs (3) and
15 (4) as paragraphs (4) and (5), respectively; and

16 (B) by inserting after paragraph (2) the
17 following new paragraph:

18 “(3) If the Board determines that a Federal executive
19 agency or the Office of Personnel Management has vio-
20 lated the requirement under subsection (a) of section 4334
21 of this title, such violation shall constitute prima facie evi-
22 dence that such Federal executive agency or the Office of
23 Personnel Management knowingly failed to comply with
24 the provisions of this chapter.”.

1 (c) MANDATORY ATTORNEY FEES AWARD IN SUC-
2 CESSFUL ACTIONS FOR REEMPLOYMENT.—

3 (1) MSPB ACTIONS.—Paragraph (5) of sub-
4 section (c) of such section (as redesignated by sub-
5 section (b)(2)) is amended by striking “the Board
6 may, in its discretion, award such person reasonable
7 attorney fees” and inserting “the Board shall award
8 such person reasonable attorney fees”.

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

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

15 “(A) prevails in such Federal Circuit pro-
16 ceeding; and

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

19 (3) ACTIONS AGAINST A STATE OR PRIVATE EM-
20 PLOYER.—Paragraph (2) of section 4323(h) of such
21 title is amended by striking “the court may award
22 any such person who prevails in such action or pro-
23 ceeding reasonable attorney fees” and inserting “the
24 court shall award any such person who prevails in
25 such action or proceeding reasonable attorney fees”.

1 (d) REPEAL OF IMMUNITY FOR CERTAIN FEDERAL
2 INTELLIGENCE AGENCIES.—

3 (1) USERRA IMMUNITY REPEALED.—Sections
4 4315 and 4325 of such title are repealed.

5 (2) CONFORMING AMENDMENT.—Section
6 4313(a) of such title is amended by striking “sec-
7 tions 4314 and 4315” and inserting “section 4314”.

8 (e) MAINTENANCE OF PERFORMANCE REVIEW RAT-
9 INGS.—Section 4312 of such title is amended—

10 (1) by redesignating subsections (g) and (h) as
11 subsections (h) and (i); and

12 (2) by inserting after subsection (f) the fol-
13 lowing new subsection:

14 “(g) On any performance review that an employer ad-
15 ministers while an employee is absent from a position of
16 employment by reason of service in the uniformed services,
17 such employer shall give such employee a performance
18 score that is equal to the average of the sum of each per-
19 formance score such employee received on any perform-
20 ance review such employer administered during the period
21 beginning on the date that is three years before the date
22 the absence of such employee began and ending on the
23 date the absence of such employee began.”.

24 (f) EXPANSION OF ELIGIBLE TIME AWAY FROM CI-
25 VILIAN EMPLOYMENT.—Section 4303(13) of such title is

1 amended by inserting “, a period for which a person is
2 absent from a position of employment for the purpose of
3 medical or dental treatment for a condition, illness, or in-
4 jury sustained or aggravated during any such duty” after
5 “any such duty”.

6 (g) LIMITATION ON USERRA PURPOSES.—Section
7 4301(a)(1) of such title is amended by striking “encour-
8 age noncareer service in the uniformed services” and in-
9 serting “encourage service in the uniformed services”.

10 (h) REVIEW AND REPORT.—

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

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

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

24 (B) an identification of the number of ac-
25 tions for relief under chapter 43 of title 38,

1 United States Code, initiated during the period
2 covered by the report, disaggregated by size of
3 employer and geographic region;

4 (C) an identification of the number of such
5 actions for relief that were erroneously dis-
6 missed, as determined by the Comptroller Gen-
7 eral;

8 (D) an identification of the number of such
9 actions for relief that were referred to the De-
10 partment of Justice; and

11 (E) an assessment of trends, if any, in
12 such actions for relief initiated during such pe-
13 riod.

14 **SEC. 3. REVIEW OF INVESTIGATIONS MANUAL OF VET-**
15 **ERANS' EMPLOYMENT AND TRAINING SERV-**
16 **ICE.**

17 (a) IN GENERAL.—Not later than one year after the
18 date of the enactment of this Act, and biennially there-
19 after, the Secretary of Labor, shall review the manual of
20 the Department of Labor titled “Veterans’ Employment
21 and Training Service Investigations Manual: USERRA,
22 VEOA, and VP” (or a successor manual) and make such
23 revisions to such manual as the Secretary determines ap-
24 propriate.

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

6 (1) a report that includes a description of any
7 revision to such manual made pursuant to such re-
8 view; and

9 (2) a copy of such manual, in unredacted form.

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