

111TH CONGRESS
1ST SESSION

S. 1607

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, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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, 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 “Wounded Veteran Job
5 Security Act of 2009”.

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.—
 6

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 wheth-
22 er—

23 “(A) any compliance referred to in paragraph
24 (1) is impossible or unreasonable because of a
25 change in an employer’s circumstances;

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

3 “(C) the employment referred to in paragraph
4 (1)(C) is for a brief, nonrecurrent period and there
5 is no reasonable expectation that such employment
6 will continue indefinitely or for a significant period,
7 the employer shall have the burden of proving the impos-
8 sibility or unreasonableness, undue hardship, or the brief
9 or nonrecurrent nature of the employment without a rea-
10 sonable expectation of continuing indefinitely or for a sig-
11 nificant period.”.

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

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

16 (b) HEALTH PLAN.—Section 4317 of such title is
17 amended by adding at the end the following new sub-
18 section:

19 “(c)(1) This section shall apply with respect to a per-
20 son who is absent from a position of employment by rea-
21 son of the receipt of medical treatment for a service-con-
22 nected disability (other than a person described in section
23 4320(c)(2)(B) of this title) on the same basis as a person

1 who is absent from a position of employment by reason
2 of service in the uniformed services.

3 “(2) In the case of a person who is absent from a
4 position of employment by reason of the receipt of medical
5 treatment for a service-connected disability (other than a
6 person described in section 4320(c)(2)(B) of this title), the
7 period during which the person is so absent shall be treat-
8 ed as a period of service in the uniformed services for pur-
9 poses of this section.”.

10 (c) PROHIBITION OF DISCRIMINATION AND ACTS OF
11 REPRISAL.—Section 4311 of such title is amended—

12 (1) in subsection (a)—

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

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

21 (2) in subsection (c)(1)—

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

1 Secretary of Veterans Affairs to have been in-
2 curred in or aggravated by service”; and

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

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply with respect to medical treatment
8 received on or after the date of the enactment of this Act.

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