§ 5323. Retention of Federal employee coverage, rights and benefits by employees of tribal organizations

(a) to (d) Omitted

(e) Eligible employees; Federal employee programs subject to retention

Notwithstanding the provisions of sections 8347(a), 8713, and 8914 of title 5, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or who leaves Federal employment to be employed by a tribal organization, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 1607 of title 43, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

1. To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of title 5, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of such payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to the dependents of the deceased employee.

2. To retain coverage, rights, and benefits under chapter 83 ("Retirement") or chapter 84 ("Federal Employees Retirement System") of title 5, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5.

3. To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of title 5, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5.

4. To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of title 5, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5.

(f) Deposit by tribal organization of employee deductions and agency contributions in appropriate funds

During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) Election for retention by employee and tribal organization before date of employment by tribal organization; transfer of employee to another tribal organization

An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

(h) "Employee" defined

For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of title 5.

(i) Promulgation of implementation regulations by President

The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

(j) Additional employee employment rights

Anything in sections 205 and 207 of title 18 to the contrary notwithstanding—

1. an officer or employee of the United States assigned to a tribal organization (as defined in section 5304(l) of this title) or an inter-tribal consortium (as defined in section 5381 of this title), as authorized under section 3372 of title 5 or section 48 of this title may act as
Section is comprised of section 104 of Pub. L. 93-638. Subsecs. (a) to (d) of section 104 of Pub. L. 93-638 are classified to section 3371 of Title 5, Government Organization and Employees, section 2004b of Title 42, The Public Health and Welfare, section 456 of Title 50, Appendix, War and National Defense, and section 4762 of Title 42, respectively. Subsecs. (k) and (l) of section 104 of Pub. L. 93-638 are classified to section 3372 of Title 5.

PRIOR PROVISIONS

A prior section 104 of Pub. L. 93-638 was renumbered section 163 by Pub. L. 100-472 and is classified to section 5322 of this title.

AMENDMENTS

2007—Subsec. (j). Pub. L. 110-81 substituted subsec. (j) generally. Prior to amendment, text read as follows: “Anything in sections 205 and 207 of title 18 to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, or section 48 of this title and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection with any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: Provided, That such former officer or employee must advise in writing the head of the department, agency, court, or commission with which the former officer or employee is dealing or appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement with the matter involved; and

(2) a former officer or employee of the United States who is carrying out official duties as an employee or as an elected or appointed official of a tribal organization (as defined in section 5304(f) of this title) or inter-tribal consortium (as defined in section 5381 of this title) may act as agent or attorney for, and appear on behalf of, such tribal organization or consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: Provided, That such former officer or employee must advise in writing the head of the department, agency, court, or commission with which the former officer or employee is dealing or appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement that he or she may have had as an officer or employee of the United States in connection with the matter involved.

(k), (l) Omitted

(m) Conversion to career appointment

The status of an Indian (as defined in section 5129 of this title) appointed (except temporary appointments) to the Federal service under an excepted appointment under the authority of section 5116 of this title, or any other provision of law granting a preference to Indians in personnel actions, shall be converted to a career appointment in the competitive service after three years of continuous service and satisfactory performance. The conversion shall not alter the Indian’s eligibility for preference in personnel actions.


CODIFICATION

Section was formerly classified to section 450 of this title prior to editorial reclassification and renumbering as this section.
which such amendments apply on or after the 60th day after the date of the enactment of this Act.'"

Pribilof Island Natives Employed by Federal Government on October 28, 1983

Pub. L. 98-702, title II, §210(b), as added by Pub. L. 98-129, §2, Oct. 14, 1983, 97 Stat. 844, provided that: ‘Notwithstanding any other provision of law, any Native of the Pribilof Islands employed by the Federal government on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93-638), known as the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5323(e)).’

§ 5324. Contract or grant provisions and administration

(a) Applicability of Federal contracting laws and regulations; waiver of requirements

(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to sections 5321 of this title shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

(2) Program standards applicable to a non-construction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

(3)(A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 and the regulations relating to acquisitions promulgated under division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 shall apply only to the extent that the application of such provision1 to the construction contract (or subcontract) is—

(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) directly related to the construction activity; and

(iii) not inconsistent with this chapter.

(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

(C)(i) Except as provided in subparagraph (B), no Federal law listed in clause (i) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this chapter, unless expressly provided in such law.

(ii) The laws listed in this paragraph are as follows:

(I) Chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of title 41 of the Act of Aug. 2, 1946 (58 Stat. 770; chapter 479).

(II) Section 6101 of title 41.

(III) Section 9(c)2 of the Act of Aug. 2, 1946 (58 Stat. 809, chapter 744).

(IV) Division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of title 41.


(VI) Chapters 21, 25, 27, 29, and 31 of title 44.

(VII) Section 3145 of title 40.

(VIII) Chapter 65 of title 41.

(IX) Chapter 67 of title 41.


(XI) Executive Order Nos. 12138, 11246, 11701 and 11758.

(b) Payments; transfer of funds by Treasury for disbursement by tribal organization; accountability for interest accrued prior to disbursement

Payments of any grants or under any contracts pursuant to sections 5321 and 5322 of this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this subchapter. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize

1 So in original. Probably should be “provisions”.

2 See References in Text note below.