

103D CONGRESS
1ST SESSION

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To grant family and temporary medical leave under certain circumstances.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. FORD of Michigan (for himself, Mr. CLAY, Mr. MILLER of California, Mr. MURPHY, Mr. KILDEE, Mr. WILLIAMS, Mr. MARTINEZ, Mr. OWENS, Mr. SAWYER, Mr. PAYNE of New Jersey, Ms. UNSOELD, Ms. MINK, Mr. ANDREWS of New Jersey, Mr. REED, Mr. ROEMER, Mr. ENGEL, Mr. BECERRA, Mr. SCOTT, Mr. GENE GREEN of Texas, Ms. WOOLSEY, Mr. ROMERO-BARCELO, Mr. KLINK, Ms. ENGLISH of Arizona, Mr. STRICKLAND, Mrs. SCHROEDER, Mrs. ROUKEMA, Ms. SNOWE, Mr. SWETT, Mr. FORD of Tennessee, Mr. MATSUI, Mr. BONIOR, Mr. SANDERS, Mrs. KENNELLY, Mr. GORDON, and Mr. WELDON) introduced the following bill; which was referred jointly to the Committees on Education and Labor, Post Office and Civil Service, and House Administration

JANUARY 21, 1993

Additional sponsors: Mr. GEPHARDT, Mr. ACKERMAN, Mr. BACCHUS of Florida, Mr. BAESLER, Mr. BARRETT of Wisconsin, Mr. BERMAN, Mr. BILBRAY, Mr. BORSKI, Mr. BROWN of California, Ms. BYRNE, Mr. CHAPMAN, Mr. CLYBURN, Mr. CONYERS, Mr. COSTELLO, Mr. DEFazio, Ms. DELAURO, Mr. DELLUMS, Mr. DE LUGO, Ms. ESHOO, Mr. ESPY, Mr. FALEOMAVAEGA, Mr. FAZIO, Mr. FLAKE, Mr. FOGLIETTA, Mr. FRANK of Massachusetts, Mr. GIBBONS, Ms. HARMAN, Mr. HINCHEY, Mr. HOLDEN, Mr. HYDE, Mr. JOHNSTON of Florida, Mr. KOPETSKI, Mr. LEHMAN, Ms. LONG, Mr. McCLOSKEY, Mr. McDERMOTT, Mr. MACHTLEY, Ms. MALONEY, Mr. MANTON, Mr. MARKEY, Mr. MAZZOLI, Mr. MEEHAN, Mr. MINETA, Mrs. MORELLA, Mr. MURTHA, Ms. NORTON, Mr. OLVER, Mr. PANETTA, Mr. PASTOR, Ms. PELOSI, Mr. PETERSON of Minnesota, Mr. PETERSON of Florida, Mr. POMEROY, Mr. RAHALL, Mr. REYNOLDS, Ms. SCHENK, Mr. SCHUMER, Mr. SHAYS, Mr. STARK, Mr. STUDDS, Mr. STUPAK, Mr. SWIFT, Mr. VENTO, Mr. WASHINGTON, Mr. WAXMAN, Mr. WISE, Mr. WYNN, Ms. BROWN of Florida, Mr. BLACKWELL, Mr. DOOLEY, Mr. COLEMAN, Mrs. COLLINS of Illinois, Mr. EVANS, Mr. FISH, Mr. LEVIN, Ms. MOLINARI, Mr. NEAL of Massachusetts, Mr. OBERSTAR, Mr. POSHARD, Mr. SABO, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Ms. WATERS, Mr. WHEAT, Mr. DIXON, Mr. SERRANO, Mr. RANGEL, Mr. PALLONE, Mr. TRAFICANT, Mr. CARDIN,

Mr. ANDREWS of Maine, Mr. SANGMEISTER, Mr. WILSON, Mr. EDWARDS
of California, Mr. RAVENEL, Mr. KLECZKA, and Mr. DURBIN

A BILL

To grant family and temporary medical leave under certain
circumstances.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Family and Medical Leave Act of 1993”.

6 (b) TABLE OF CONTENTS.—The table of contents is
7 as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—GENERAL REQUIREMENTS FOR LEAVE

Sec. 101. Definitions.
Sec. 102. Leave requirement.
Sec. 103. Certification.
Sec. 104. Employment and benefits protection.
Sec. 105. Prohibited acts.
Sec. 106. Investigative authority.
Sec. 107. Enforcement.
Sec. 108. Special rules concerning employees of local educational agencies.
Sec. 109. Notice.
Sec. 110. Regulations.

TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Leave requirement.

TITLE III—COMMISSION ON LEAVE

Sec. 301. Establishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.
Sec. 306. Termination.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Effect on other laws.
- Sec. 402. Effect on existing employment benefits.
- Sec. 403. Encouragement of more generous leave policies.
- Sec. 404. Regulations.
- Sec. 405. Effective dates.

TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES

- Sec. 501. Leave for certain Senate employees.
- Sec. 502. Leave for certain congressional employees.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3 (1) the number of single-parent households and
4 two-parent households in which the single parent or
5 both parents work is increasing significantly;

6 (2) it is important for the development of chil-
7 dren and the family unit that fathers and mothers
8 be able to participate in early childrearing and the
9 care of family members who have serious health con-
10 ditions;

11 (3) the lack of employment policies to accom-
12 modate working parents can force individuals to
13 choose between job security and parenting;

14 (4) there is inadequate job security for employ-
15 ees who have serious health conditions that prevent
16 them from working for temporary periods;

17 (5) due to the nature of the roles of men and
18 women in our society, the primary responsibility for
19 family caretaking often falls on women, and such re-

1 sponsibility affects the working lives of women more
2 than it affects the working lives of men; and

3 (6) employment standards that apply to one
4 gender only have serious potential for encouraging
5 employers to discriminate against employees and ap-
6 plicants for employment who are of that gender.

7 (b) PURPOSES.—It is the purpose of this Act—

8 (1) to balance the demands of the workplace
9 with the needs of families, to promote the stability
10 and economic security of families, and to promote
11 national interests in preserving family integrity;

12 (2) to entitle employees to take reasonable leave
13 for medical reasons, for the birth or adoption of a
14 child, and for the care of a child, spouse, or parent
15 who has a serious health condition;

16 (3) to accomplish the purposes described in
17 paragraphs (1) and (2) in a manner that accommo-
18 dates the legitimate interests of employers;

19 (4) to accomplish the purposes described in
20 paragraphs (1) and (2) in a manner that, consistent
21 with the Equal Protection Clause of the Fourteenth
22 Amendment, minimizes the potential for employment
23 discrimination on the basis of sex by ensuring gen-
24 erally that leave is available for eligible medical rea-
25 sons (including maternity-related disability) and for

1 compelling family reasons, on a gender-neutral basis;
2 and

3 (5) to promote the goal of equal employment
4 opportunity for women and men, pursuant to such
5 clause.

6 **TITLE I—GENERAL** 7 **REQUIREMENTS FOR LEAVE**

8 **SEC. 101. DEFINITIONS.**

9 As used in this title:

10 (1) **COMMERCE.**—The terms “commerce” and
11 “industry or activity affecting commerce” mean any
12 activity, business, or industry in commerce or in
13 which a labor dispute would hinder or obstruct com-
14 merce or the free flow of commerce, and include
15 “commerce” and any “industry affecting com-
16 merce”, as defined in paragraphs (1) and (3) of sec-
17 tion 501 of the Labor Management Relations Act,
18 1947 (29 U.S.C. 142 (1) and (3)).

19 (2) **ELIGIBLE EMPLOYEE.**—

20 (A) **IN GENERAL.**—The term “eligible em-
21 ployee” means any “employee”, as defined in
22 section 3(e) of the Fair Labor Standards Act of
23 1938 (29 U.S.C. 203(e)), who has been em-
24 ployed—

1 (i) for at least 12 months by the em-
2 ployer with respect to whom leave is re-
3 quested under section 102; and

4 (ii) for at least 1,250 hours of service
5 with such employer during the previous 12-
6 month period.

7 (B) EXCLUSIONS.—The term “eligible em-
8 ployee” does not include—

9 (i) any Federal officer or employee
10 covered under subchapter V of chapter 63
11 of title 5, United States Code (as added by
12 title II of this Act); or

13 (ii) any employee of an employer who
14 is employed at a worksite at which such
15 employer employs less than 50 employees if
16 the total number of employees employed by
17 that employer within 75 miles of that
18 worksite is less than 50.

19 (C) DETERMINATION.—For purposes of deter-
20 mining whether an employee meets the hours of
21 service requirement specified in subparagraph
22 (A)(ii), the legal standards established under section
23 7 of the Fair Labor Standards Act of 1938 (29
24 U.S.C. 207) shall apply.

1 (3) EMPLOY; STATE.—The terms “employ” and
2 “State” have the same meanings given such terms
3 in subsections (c) and (g) of section 3 of the Fair
4 Labor Standards Act of 1938 (29 U.S.C. 203 (c)
5 and (g)).

6 (4) EMPLOYEE.—The term “employee” means
7 any individual employed by an employer.

8 (5) EMPLOYER.—

9 (A) IN GENERAL.—The term “em-
10 ployer”—

11 (i) means any person engaged in com-
12 merce or in any industry or activity affect-
13 ing commerce who employs 50 or more em-
14 ployees for each working day during each
15 of 20 or more calendar workweeks in the
16 current or preceding calendar year;

17 (ii) includes—

18 (I) any person who acts, directly
19 or indirectly, in the interest of an em-
20 ployer to any of the employees of such
21 employer; and

22 (II) any successor in interest of
23 an employer; and

1 (iii) includes any “public agency”, as
2 defined in section 3(x) of the Fair Labor
3 Standards Act of 1938 (29 U.S.C. 203(x)).

4 (B) PUBLIC AGENCY.—For purposes of
5 subparagraph (A)(iii), a public agency shall be
6 considered to be a person engaged in commerce
7 or in an industry or activity affecting com-
8 merce.

9 (6) EMPLOYMENT BENEFITS.—The term “em-
10 ployment benefits” means all benefits provided or
11 made available to employees by an employer, includ-
12 ing group life insurance, health insurance, disability
13 insurance, sick leave, annual leave, educational bene-
14 fits, and pensions, regardless of whether such bene-
15 fits are provided by a practice or written policy of
16 an employer or through an “employee benefit plan”,
17 as defined in section 3(3) of the Employee Retirement
18 Income Security Act of 1974 (29 U.S.C.
19 1002(3)).

20 (7) HEALTH CARE PROVIDER.—The term
21 “health care provider” means—

22 (A) a doctor of medicine or osteopathy who
23 is authorized to practice medicine or surgery
24 (as appropriate) by the State in which the doc-
25 tor practices; or

1 (B) any other person determined by the
2 Secretary to be capable of providing health care
3 services.

4 (8) PARENT.—The term “parent” means the
5 biological parent of an employee or an individual
6 who stood in loco parentis to an employee when the
7 employee was a son or daughter.

8 (9) PERSON.—The term “person” has the same
9 meaning given such term in section 3(a) of the Fair
10 Labor Standards Act of 1938 (29 U.S.C. 203(a)).

11 (10) REDUCED LEAVE SCHEDULE.—The term
12 “reduced leave schedule” means leave that reduces
13 the usual number of hours per workweek, or hours
14 per workday, of an employee.

15 (11) SECRETARY.—The term “Secretary”
16 means the Secretary of Labor.

17 (12) SERIOUS HEALTH CONDITION.—The term
18 “serious health condition” means an illness, injury,
19 impairment, or physical or mental condition that in-
20 volves—

21 (A) inpatient care in a hospital, hospice, or
22 residential medical care facility; or

23 (B) continuing treatment by a health care
24 provider.

1 (13) SON OR DAUGHTER.—The term “son or
2 daughter” means a biological, adopted, or foster
3 child, a stepchild, a legal ward, or a child of a per-
4 son standing in loco parentis, who is—

5 (A) under 18 years of age; or

6 (B) 18 years of age or older and incapable
7 of self-care because of a mental or physical dis-
8 ability.

9 **SEC. 102. LEAVE REQUIREMENT.**

10 (a) IN GENERAL.—

11 (1) ENTITLEMENT TO LEAVE.—Subject to sec-
12 tion 103, an eligible employee shall be entitled to a
13 total of 12 workweeks of leave during any 12-month
14 period for one or more of the following:

15 (A) Because of the birth of a son or
16 daughter of the employee and in order to care
17 for such son or daughter.

18 (B) Because of the placement of a son or
19 daughter with the employee for adoption or fos-
20 ter care.

21 (C) In order to care for the spouse, or a
22 son, daughter, or parent, of the employee, if
23 such spouse, son, daughter, or parent has a se-
24 rious health condition.

1 (D) Because of a serious health condition
2 that makes the employee unable to perform the
3 functions of the position of such employee.

4 (2) EXPIRATION OF ENTITLEMENT.—The enti-
5 tlement to leave under subparagraphs (A) and (B)
6 of paragraph (1) for a birth or placement of a son
7 or daughter shall expire at the end of the 12-month
8 period beginning on the date of such birth or place-
9 ment.

10 (3) INTERMITTENT LEAVE.—

11 (A) IN GENERAL.—Leave under subpara-
12 graph (A) or (B) of paragraph (1) shall not be
13 taken by an employee intermittently unless the
14 employee and the employer of the employee
15 agree otherwise. Subject to subparagraph (B),
16 subsection (e)(2), and section 103(b)(5), leave
17 under subparagraph (C) or (D) of paragraph
18 (1) may be taken intermittently when medically
19 necessary.

20 (B) ALTERNATIVE POSITION.—If an em-
21 ployee requests intermittent leave under sub-
22 paragraph (C) or (D) of paragraph (1) that is
23 foreseeable based on planned medical treat-
24 ment, the employer may require such employee
25 to transfer temporarily to an available alter-

1 native position offered by the employer for
2 which the employee is qualified and that—

3 (i) has equivalent pay and benefits;

4 and

5 (ii) better accommodates recurring pe-
6 riods of leave than the regular employment
7 position of the employee.

8 (b) REDUCED LEAVE.—On agreement between the
9 employer and the employee, leave under subsection (a)
10 may be taken on a reduced leave schedule. Such reduced
11 leave schedule shall not result in a reduction in the total
12 amount of leave to which the employee is entitled under
13 subsection (a) beyond the amount of leave actually taken.

14 (c) UNPAID LEAVE PERMITTED.—Except as provided
15 in subsection (d), leave granted under subsection (a) may
16 consist of unpaid leave.

17 (d) RELATIONSHIP TO PAID LEAVE.—

18 (1) UNPAID LEAVE.—If an employer provides
19 paid leave for fewer than 12 workweeks, the addi-
20 tional weeks of leave necessary to attain the 12
21 workweeks of leave required under this title may be
22 provided without compensation.

23 (2) SUBSTITUTION OF PAID LEAVE.—

24 (A) IN GENERAL.—An eligible employee
25 may elect, or an employer may require the em-

1 employee, to substitute any of the accrued paid va-
2 cation leave, personal leave, or family leave of
3 the employee for leave provided under subpara-
4 graph (A), (B), or (C) of subsection (a)(1) for
5 any part of the 12-week period of such leave
6 under such subsection.

7 (B) SERIOUS HEALTH CONDITION.—An el-
8 igible employee may elect, or an employer may
9 require the employee, to substitute any of the
10 accrued paid vacation leave, personal leave, or
11 medical or sick leave of the employee for leave
12 provided under subparagraph (C) or (D) of sub-
13 section (a)(1) for any part of the 12-week pe-
14 riod of such leave under such subsection, except
15 that nothing in this title shall require an em-
16 ployer to provide paid sick leave or paid medical
17 leave in any situation in which such employer
18 would not normally provide any such paid leave.

19 (e) FORESEEABLE LEAVE.—

20 (1) REQUIREMENT OF NOTICE.—In any case in
21 which the necessity for leave under subparagraph
22 (A) or (B) of subsection (a)(1) is foreseeable based
23 on an expected birth or adoption, the employee shall
24 provide the employer with not less than 30 days' no-
25 tice, before the date the leave is to begin, of the em-

1 employee's intention to take leave under such subpara-
2 graph, except that if the date of the birth or adop-
3 tion requires leave to begin in less than 30 days, the
4 employee shall provide such notice as is practicable.

5 (2) DUTIES OF EMPLOYEE.—In any case in
6 which the necessity for leave under subparagraph
7 (C) or (D) of subsection (a)(1) is foreseeable based
8 on planned medical treatment, the employee—

9 (A) shall make a reasonable effort to
10 schedule the treatment so as not to disrupt un-
11 duly the operations of the employer, subject to
12 the approval of the health care provider of the
13 employee or the health care provider of the son,
14 daughter, spouse, or parent of the employee, as
15 appropriate; and

16 (B) shall provide the employer with not
17 less than 30 days' notice, before the date the
18 leave is to begin, of the employee's intention to
19 take leave under such subparagraph, except
20 that if the date of the treatment requires leave
21 to begin in less than 30 days, the employee
22 shall provide such notice as is practicable.

23 (f) SPOUSES EMPLOYED BY THE SAME EM-
24 PLOYER.—In any case in which a husband and wife enti-
25 tled to leave under subsection (a) are employed by the

1 same employer, the aggregate number of workweeks of
2 leave to which both may be entitled may be limited to 12
3 workweeks during any 12-month period, if such leave is
4 taken—

5 (1) under subparagraph (A) or (B) of sub-
6 section (a)(1); or

7 (2) to care for a sick parent under subpara-
8 graph (C) of such subsection.

9 **SEC. 103. CERTIFICATION.**

10 (a) IN GENERAL.—An employer may require that a
11 request for leave under subparagraph (C) or (D) of section
12 102(a)(1) be supported by a certification issued by the
13 health care provider of the eligible employee or of the son,
14 daughter, spouse, or parent of the employee, as appro-
15 priate. The employee shall provide, in a timely manner,
16 a copy of such certification to the employer.

17 (b) SUFFICIENT CERTIFICATION.—Certification pro-
18 vided under subsection (a) shall be sufficient if it states—

19 (1) the date on which the serious health condi-
20 tion commenced;

21 (2) the probable duration of the condition;

22 (3) the appropriate medical facts within the
23 knowledge of the health care provider regarding the
24 condition;

1 (4)(A) for purposes of leave under section
2 102(a)(1)(C), a statement that the eligible employee
3 is needed to care for the son, daughter, spouse, or
4 parent and an estimate of the amount of time that
5 such employee is needed to care for the son, daugh-
6 ter, spouse, or parent; and

7 (B) for purposes of leave under section
8 102(a)(1)(D), a statement that the employee is un-
9 able to perform the functions of the position of the
10 employee; and

11 (5) in the case of certification for intermittent
12 leave for planned medical treatment, the dates on
13 which such treatment is expected to be given and the
14 duration of such treatment.

15 (c) SECOND OPINION.—

16 (1) IN GENERAL.—In any case in which the em-
17 ployer has reason to doubt the validity of the certifi-
18 cation provided under subsection (a) for leave under
19 subparagraph (C) or (D) of section 102(a)(1), the
20 employer may require, at the expense of the em-
21 ployer, that the eligible employee obtain the opinion
22 of a second health care provider designated or ap-
23 proved by the employer concerning any information
24 certified under subsection (b) for such leave.

1 (2) LIMITATION.—A health care provider des-
2 ignated or approved under paragraph (1) shall not
3 be employed on a regular basis by the employer.

4 (d) RESOLUTION OF CONFLICTING OPINIONS.—

5 (1) IN GENERAL.—In any case in which the
6 second opinion described in subsection (c) differs
7 from the opinion in the original certification pro-
8 vided under subsection (a), the employer may re-
9 quire, at the expense of the employer, that the em-
10 ployee obtain the opinion of a third health care pro-
11 vider designated or approved jointly by the employer
12 and the employee concerning the information cer-
13 tified under subsection (b).

14 (2) FINALITY.—The opinion of the third health
15 care provider concerning the information certified
16 under subsection (b) shall be considered to be final
17 and shall be binding on the employer and the em-
18 ployee.

19 (e) SUBSEQUENT RECERTIFICATION.—The employer
20 may require that the eligible employee obtain subsequent
21 recertifications on a reasonable basis.

22 **SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.**

23 (a) RESTORATION TO POSITION.—

24 (1) IN GENERAL.—Except as provided in sub-
25 section (b), any eligible employee who takes leave

1 under section 102 for the intended purpose of the
2 leave shall be entitled, on return from such leave—

3 (A) to be restored by the employer to the
4 position of employment held by the employee
5 when the leave commenced; or

6 (B) to be restored to an equivalent position
7 with equivalent employment benefits, pay, and
8 other terms and conditions of employment.

9 (2) LOSS OF BENEFITS.—The taking of leave
10 under section 102 shall not result in the loss of any
11 employment benefit accrued prior to the date on
12 which the leave commenced.

13 (3) LIMITATIONS.—Nothing in this section shall
14 be construed to entitle any restored employee to—

15 (A) the accrual of any seniority or employ-
16 ment benefits during any period of leave; or

17 (B) any right, benefit, or position of em-
18 ployment other than any right, benefit, or posi-
19 tion to which the employee would have been en-
20 titled had the employee not taken the leave.

21 (4) CERTIFICATION.—As a condition of restora-
22 tion under paragraph (1) for an employee who has
23 taken leave under section 102(a)(1)(D), the em-
24 ployer may have a uniformly applied practice or pol-
25 icy that requires each such employee to receive cer-

1 tification from the health care provider of the em-
2 ployee that the employee is able to resume work, ex-
3 cept that nothing in this paragraph shall supersede
4 a valid State or local law or a collective bargaining
5 agreement that governs the return to work of such
6 employees.

7 (5) CONSTRUCTION.—Nothing in this sub-
8 section shall be construed to prohibit an employer
9 from requiring an employee on leave under section
10 102 to report periodically to the employer on the
11 status and intention of the employee to return to
12 work.

13 (b) EXEMPTION CONCERNING CERTAIN HIGHLY
14 COMPENSATED EMPLOYEES.—

15 (1) DENIAL OF RESTORATION.—An employer
16 may deny restoration under subsection (a) to any el-
17 igible employee described in paragraph (2) if—

18 (A) such denial is necessary to prevent
19 substantial and grievous economic injury to the
20 operations of the employer;

21 (B) the employer notifies the employee of
22 the intent of the employer to deny restoration
23 on such basis at the time the employer deter-
24 mines that such injury would occur; and

1 (C) in any case in which the leave has
2 commenced, the employee elects not to return
3 to employment after receiving such notice.

4 (2) AFFECTED EMPLOYEES.—An eligible em-
5 ployee described in paragraph (1) is a salaried eligi-
6 ble employee who is among the highest paid 10 per-
7 cent of the employees employed by the employer
8 within 75 miles of the facility at which the employee
9 is employed.

10 (c) MAINTENANCE OF HEALTH BENEFITS.—

11 (1) COVERAGE.—Except as provided in para-
12 graph (2), during any period that an eligible em-
13 ployee takes leave under section 102, the employer
14 shall maintain coverage under any “group health
15 plan” (as defined in section 5000(b)(1) of the Inter-
16 nal Revenue Code of 1986) for the duration of such
17 leave at the level and under the conditions coverage
18 would have been provided if the employee had con-
19 tinued in employment continuously from the date the
20 employee commenced the leave until the date the
21 employee is restored under subsection (a).

22 (2) FAILURE TO RETURN FROM LEAVE.—The
23 employer may recover the premium that the em-
24 ployer paid for maintaining coverage for the em-

1 ployee under such group health plan during any pe-
2 riod of unpaid leave under section 102 if—

3 (A) the employee fails to return from leave
4 under section 102 after the period of leave to
5 which the employee is entitled has expired; and

6 (B) the employee fails to return to work
7 for a reason other than—

8 (i) the continuation, recurrence, or
9 onset of a serious health condition that en-
10 titles the employee to leave under subpara-
11 graph (C) or (D) of section 102(a)(1); or

12 (ii) other circumstances beyond the
13 control of the employee.

14 (3) CERTIFICATION.—

15 (A) ISSUANCE.—An employer may require
16 that a claim that an employee is unable to re-
17 turn to work because of the continuation, recur-
18 rence, or onset of the serious health condition
19 described in paragraph (2)(B)(i) be supported
20 by—

21 (i) a certification issued by the health
22 care provider of the son, daughter, spouse,
23 or parent of the employee, as appropriate,
24 in the case of an employee unable to return

1 to work because of a condition specified in
2 section 102(a)(1)(C); or

3 (ii) a certification issued by the health
4 care provider of the eligible employee, in
5 the case of an employee unable to return
6 to work because of a condition specified in
7 section 102(a)(1)(D).

8 (B) COPY.—The employee shall provide, in
9 a timely manner, a copy of such certification to
10 the employer.

11 (C) SUFFICIENCY OF CERTIFICATION.—

12 (i) LEAVE DUE TO SERIOUS HEALTH
13 CONDITION OF EMPLOYEE.—The certifi-
14 cation described in subparagraph (A)(i)
15 shall be sufficient if the certification states
16 that a serious health condition prevented
17 the employee from being able to perform
18 the functions of the position of the em-
19 ployee on the date that the leave of the
20 employee expired.

21 (ii) LEAVE DUE TO SERIOUS HEALTH
22 CONDITION OF FAMILY MEMBER.—The
23 certification described in subparagraph
24 (A)(ii) shall be sufficient if the certification
25 states that the employee is needed to care

1 for the son, daughter, spouse, or parent
2 who has a serious health condition on the
3 date that the leave of the employee ex-
4 pired.

5 **SEC. 105. PROHIBITED ACTS.**

6 (a) INTERFERENCE WITH RIGHTS.—

7 (1) EXERCISE OF RIGHTS.—It shall be unlawful
8 for any employer to interfere with, restrain, or deny
9 the exercise of or the attempt to exercise, any right
10 provided under this title.

11 (2) DISCRIMINATION.—It shall be unlawful for
12 any employer to discharge or in any other manner
13 discriminate against any individual for opposing any
14 practice made unlawful by this title.

15 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
16 IES.—It shall be unlawful for any person to discharge or
17 in any other manner discriminate against any individual
18 because such individual—

19 (1) has filed any charge, or has instituted or
20 caused to be instituted any proceeding, under or re-
21 lated to this title;

22 (2) has given, or is about to give, any informa-
23 tion in connection with any inquiry or proceeding re-
24 lating to any right provided under this title; or

1 (3) has testified, or is about to testify, in any
2 inquiry or proceeding relating to any right provided
3 under this title.

4 **SEC. 106. INVESTIGATIVE AUTHORITY.**

5 (a) IN GENERAL.—To ensure compliance with the
6 provisions of this title, or any regulation or order issued
7 under this title, the Secretary shall have, subject to sub-
8 section (c), the investigative authority provided under sec-
9 tion 11(a) of the Fair Labor Standards Act of 1938 (29
10 U.S.C. 211(a)).

11 (b) OBLIGATION TO KEEP AND PRESERVE
12 RECORDS.—Any employer shall keep and preserve records
13 in accordance with section 11(c) of the Fair Labor Stand-
14 ards Act of 1938 (29 U.S.C. 211(c)) and in accordance
15 with regulations issued by the Secretary.

16 (c) REQUIRED SUBMISSIONS GENERALLY LIMITED
17 TO AN ANNUAL BASIS.—The Secretary shall not under the
18 authority of this section require any employer or any plan,
19 fund, or program to submit to the Secretary any books
20 or records more than once during any 12-month period,
21 unless the Secretary has reasonable cause to believe there
22 may exist a violation of this title or any regulation or order
23 issued pursuant to this title, or is investigating a charge
24 pursuant to section 107(b).

1 (d) SUBPOENA POWERS.—For the purposes of any
2 investigation provided for in this section, the Secretary
3 shall have the subpoena authority provided for under sec-
4 tion 9 of the Fair Labor Standards Act of 1938 (29
5 U.S.C. 209).

6 **SEC. 107. ENFORCEMENT.**

7 (a) CIVIL ACTION BY EMPLOYEES.—

8 (1) LIABILITY.—Any employer who violates sec-
9 tion 105 shall be liable to any eligible employee af-
10 fected—

11 (A) for damages equal to—

12 (i) the amount of—

13 (I) any wages, salary, employ-
14 ment benefits, or other compensation
15 denied or lost to such employee by
16 reason of the violation; or

17 (II) in a case in which wages,
18 salary, employment benefits, or other
19 compensation have not been denied or
20 lost to the employee, any actual mone-
21 tary losses sustained by the employee
22 as a direct result of the violation, such
23 as the cost of providing care, up to a
24 sum equal to 12 weeks of wages or
25 salary for the employee;

1 (ii) the interest on the amount de-
2 scribed in clause (i) calculated at the pre-
3 vailing rate; and

4 (iii) an additional amount as liq-
5 uidated damages equal to the sum of the
6 amount described in clause (i) and the in-
7 terest described in clause (ii), except that
8 if an employer who has violated section
9 105 proves to the satisfaction of the court
10 that the act or omission which violated sec-
11 tion 105 was in good faith and that the
12 employer had reasonable grounds for be-
13 lieving that the act or omission was not a
14 violation of section 105, such court may, in
15 the discretion of the court, reduce the
16 amount of the liability to the amount and
17 interest determined under clauses (i) and
18 (ii), respectively; and

19 (B) for such equitable relief as may be ap-
20 propriate, including, without limitation, employ-
21 ment, reinstatement, and promotion.

22 (2) STANDING.—An action to recover the dam-
23 ages or equitable relief prescribed in paragraph (1)
24 may be maintained against any employer (including
25 a public agency) in any Federal or State court of

1 competent jurisdiction by any one or more employees
2 for and in behalf of—

3 (A) the employees; or

4 (B) the employees and other employees
5 similarly situated.

6 (3) FEES AND COSTS.—The court in such an
7 action shall, in addition to any judgment awarded to
8 the plaintiff, allow a reasonable attorney’s fee, rea-
9 sonable expert witness fees, and other costs of the
10 action to be paid by the defendant.

11 (4) LIMITATIONS.—The right provided by para-
12 graph (2) to bring an action by or on behalf of any
13 employee shall terminate, unless such action is dis-
14 missed without prejudice on motion of the Secretary,
15 on—

16 (A) the filing of a complaint by the Sec-
17 retary in an action under subsection (d) in
18 which—

19 (i) restraint is sought of any further
20 delay in the payment of the damages de-
21 scribed in paragraph (1)(A) to such em-
22 ployee by an employer liable under para-
23 graph (1) for the damages; or

24 (ii) equitable relief is sought as a re-
25 sult of alleged violations of section 105; or

1 (B) the filing of a complaint by the Sec-
2 retary in an action under subsection (b) in
3 which a recovery is sought of the damages de-
4 scribed in paragraph (1)(A) owing to an eligible
5 employee by an employer liable under para-
6 graph (1).

7 (b) ACTION BY THE SECRETARY.—

8 (1) ADMINISTRATIVE ACTION.—The Secretary
9 shall receive, investigate, and attempt to resolve
10 complaints of violations of section 105 in the same
11 manner that the Secretary receives, investigates, and
12 attempts to resolve complaints of violations of sec-
13 tions 6 and 7 of the Fair Labor Standards Act of
14 1938 (29 U.S.C. 206 and 207).

15 (2) CIVIL ACTION.—The Secretary may bring
16 an action in any court of competent jurisdiction to
17 recover on behalf of an eligible employee the dam-
18 ages described in subsection (a)(1)(A).

19 (3) SUMS RECOVERED.—Any sums recovered by
20 the Secretary on behalf of an employee pursuant to
21 paragraph (2) shall be held in a special deposit ac-
22 count and shall be paid, on order of the Secretary,
23 directly to each employee affected. Any such sums
24 not paid to an employee because of inability to do
25 so within a period of 3 years shall be deposited into

1 the Treasury of the United States as miscellaneous
2 receipts.

3 (c) LIMITATION.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), an action may be brought under sub-
6 section (a) or (b) not later than 2 years after the
7 date of the last event constituting the alleged viola-
8 tion for which the action is brought.

9 (2) WILLFUL VIOLATION.—In the case of such
10 action brought for a willful violation of section 105,
11 such action may be brought within 3 years of the
12 date of the last event constituting the alleged viola-
13 tion for which such action is brought.

14 (3) COMMENCEMENT.—In determining when an
15 action is commenced by the Secretary under sub-
16 section (b) for the purposes of this subsection, it
17 shall be considered to be commenced on the date
18 when the complaint is filed.

19 (d) ACTION FOR INJUNCTION BY SECRETARY.—The
20 district courts of the United States shall have jurisdiction,
21 for cause shown, over an action brought by the Secretary
22 to restrain violations of section 105, including actions to
23 restrain the withholding of payment of wages, salary, em-
24 ployment benefits, or other compensation, plus interest,
25 found by the court to be due to eligible employees.

1 **SEC. 108. SPECIAL RULES CONCERNING EMPLOYEES OF**
2 **LOCAL EDUCATIONAL AGENCIES.**

3 (a) APPLICATION.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this section, the rights (including the rights
6 under section 104, which shall extend throughout
7 the period of leave of any employee under this sec-
8 tion), remedies, and procedures under this title shall
9 apply to—

10 (A) any “local educational agency” (as de-
11 fined in section 1471(12) of the Elementary
12 and Secondary Education Act of 1965 (20
13 U.S.C. 2891(12))) and an eligible employee of
14 the agency; and

15 (B) any private elementary or secondary
16 school and an eligible employee of the school.

17 (2) DEFINITIONS.—For purposes of the appli-
18 cation described in paragraph (1):

19 (A) ELIGIBLE EMPLOYEE.—The term “eli-
20 gible employee” means an eligible employee of
21 an agency or school described in paragraph (1).

22 (B) EMPLOYER.—The term “employer”
23 means an agency or school described in para-
24 graph (1).

25 (b) LEAVE DOES NOT VIOLATE CERTAIN OTHER
26 FEDERAL LAWS.—A local educational agency and a pri-

1 vate elementary or secondary school shall not be in viola-
2 tion of the Individuals with Disabilities Education Act (20
3 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act
4 of 1973 (29 U.S.C. 794), or title VI of the Civil Rights
5 Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result
6 of an eligible employee of such agency or school exercising
7 the rights of such employee under this title.

8 (c) INTERMITTENT LEAVE FOR INSTRUCTIONAL EM-
9 PLOYEES.—

10 (1) IN GENERAL.—Subject to paragraph (2), in
11 any case in which an eligible employee employed
12 principally in an instructional capacity by any such
13 educational agency or school requests leave under
14 subparagraph (C) or (D) of section 102(a)(1) that
15 is foreseeable based on planned medical treatment
16 and the employee would be on leave for greater than
17 20 percent of the total number of working days in
18 the period during which the leave would extend, the
19 agency or school may require that such employee
20 elect either—

21 (A) to take leave for periods of a particular
22 duration, not to exceed the duration of the
23 planned medical treatment; or

1 (B) to transfer temporarily to an available
2 alternative position offered by the employer for
3 which the employee is qualified, and that—

4 (i) has equivalent pay and benefits;

5 and

6 (ii) better accommodates recurring pe-
7 riods of leave than the regular employment
8 position of the employee.

9 (2) APPLICATION.—The elections described in
10 subparagraphs (A) and (B) of paragraph (1) shall
11 apply only with respect to an eligible employee who
12 complies with section 102(e)(2).

13 (d) RULES APPLICABLE TO PERIODS NEAR THE
14 CONCLUSION OF AN ACADEMIC TERM.—The following
15 rules shall apply with respect to periods of leave near the
16 conclusion of an academic term in the case of any eligible
17 employee employed principally in an instructional capacity
18 by any such educational agency or school:

19 (1) LEAVE MORE THAN 5 WEEKS PRIOR TO END
20 OF TERM.—If the eligible employee begins leave
21 under section 102 more than 5 weeks prior to the
22 end of the academic term, the agency or school may
23 require the employee to continue taking leave until
24 the end of such term, if—

1 (A) the leave is of at least 3 weeks dura-
2 tion; and

3 (B) the return to employment would occur
4 during the 3-week period before the end of such
5 term.

6 (2) LEAVE LESS THAN 5 WEEKS PRIOR TO END
7 OF TERM.—If the eligible employee begins leave
8 under subparagraph (A), (B), or (C) of section
9 102(a)(1) during the period that commences 5 weeks
10 prior to the end of the academic term, the agency
11 or school may require the employee to continue tak-
12 ing leave until the end of such term, if—

13 (A) the leave is of greater than 2 weeks
14 duration; and

15 (B) the return to employment would occur
16 during the 2-week period before the end of such
17 term.

18 (3) LEAVE LESS THAN 3 WEEKS PRIOR TO END
19 OF TERM.—If the eligible employee begins leave
20 under paragraph (A), (B), or (C) of section
21 102(a)(1) during the period that commences 3 weeks
22 prior to the end of the academic term and the dura-
23 tion of the leave is greater than 5 working days, the
24 agency or school may require the employee to con-
25 tinue to take leave until the end of such term.

1 (e) RESTORATION TO EQUIVALENT EMPLOYMENT
2 POSITION.—For purposes of determinations under section
3 104(a)(1)(B) (relating to the restoration of an eligible em-
4 ployee to an equivalent position), in the case of a local
5 educational agency or a private elementary or secondary
6 school, such determination shall be made on the basis of
7 established school board policies and practices, private
8 school policies and practices, and collective bargaining
9 agreements.

10 (f) REDUCTION OF THE AMOUNT OF LIABILITY.—If
11 a local educational agency or a private elementary or sec-
12 ondary school that has violated this title proves to the sat-
13 isfaction of the administrative law judge or the court that
14 the agency, school, or department had reasonable grounds
15 for believing that the underlying act or omission was not
16 a violation of this title, such judge or court may, in the
17 discretion of the judge or court, reduce the amount of the
18 liability provided for under section 107(a)(1)(A) to the
19 amount and interest determined under clauses (i) and (ii),
20 respectively, of such section.

21 **SEC. 109. NOTICE.**

22 (a) IN GENERAL.—Each employer shall post and
23 keep posted, in conspicuous places on the premises of the
24 employer where notices to employees and applicants for
25 employment are customarily posted, a notice, to be pre-

1 pared or approved by the Secretary, setting forth excerpts
 2 from, or summaries of, the pertinent provisions of this
 3 title and information pertaining to the filing of a charge.

4 (b) PENALTY.—Any employer that willfully violates
 5 this section shall be assessed a civil money penalty not
 6 to exceed \$100 for each separate offense.

7 **SEC. 110. REGULATIONS.**

8 Not later than 60 days after the date of enactment
 9 of this title, the Secretary shall prescribe such regulations
 10 as are necessary to carry out this title.

11 **TITLE II—LEAVE FOR CIVIL**
 12 **SERVICE EMPLOYEES**

13 **SEC. 201. LEAVE REQUIREMENT.**

14 (a) CIVIL SERVICE EMPLOYEES.—

15 (1) IN GENERAL.—Chapter 63 of title 5, United
 16 States Code, is amended by adding at the end the
 17 following new subchapter:

18 “SUBCHAPTER V—FAMILY AND MEDICAL

19 LEAVE

20 **“§ 6381. Definitions**

21 “For the purpose of this subchapter—

22 “(1) the term ‘employee’ means any individual
 23 who—

24 “(A) is an ‘employee’, as defined by section
 25 6301(2), including any individual employed in a

1 position referred to in clause (v) or (ix) of sec-
2 tion 6301(2), but excluding any individual em-
3 ployed by the government of the District of Co-
4 lumbia and any individual employed on a tem-
5 porary or intermittent basis; and

6 “(B) has completed at least 12 months of
7 service as an employee (within the meaning of
8 subparagraph (A));

9 “(2) the term ‘health care provider’ means—

10 “(A) a doctor of medicine or osteopathy
11 who is authorized to practice medicine or sur-
12 gery (as appropriate) by the State in which the
13 doctor practices; and

14 “(B) any other person determined by the
15 Director of the Office of Personnel Management
16 to be capable of providing health care services;

17 “(3) the term ‘parent’ means the biological par-
18 ent of an employee or an individual who stood in
19 loco parentis to an employee when the employee was
20 a son or daughter;

21 “(4) the term ‘reduced leave schedule’ means
22 leave that reduces the usual number of hours per
23 workweek, or hours per workday, of an employee;

1 “(5) the term ‘serious health condition’ means
2 an illness, injury, impairment, or physical or mental
3 condition that involves—

4 “(A) inpatient care in a hospital, hospice,
5 or residential medical care facility; or

6 “(B) continuing treatment by a health care
7 provider; and

8 “(6) the term ‘son or daughter’ means a bio-
9 logical, adopted, or foster child, a stepchild, a legal
10 ward, or a child of a person standing in loco
11 parentis, who is—

12 “(A) under 18 years of age; or

13 “(B) 18 years of age or older and incapa-
14 ble of self-care because of a mental or physical
15 disability.

16 **“§ 6382. Leave requirement**

17 “(a)(1) Subject to section 6383, an employee shall
18 be entitled to a total of 12 administrative workweeks of
19 leave during any 12-month period for one or more of the
20 following:

21 “(A) Because of the birth of a son or daughter
22 of the employee and in order to care for such son
23 or daughter.

1 “(B) Because of the placement of a son or
2 daughter with the employee for adoption or foster
3 care.

4 “(C) In order to care for the spouse, or a son,
5 daughter, or parent, of the employee, if such spouse,
6 son, daughter, or parent has a serious health condi-
7 tion.

8 “(D) Because of a serious health condition that
9 makes the employee unable to perform the functions
10 of the employee’s position.

11 “(2) The entitlement to leave under subparagraph
12 (A) or (B) of paragraph (1) based on the birth or place-
13 ment of a son or daughter shall expire at the end of the
14 12-month period beginning on the date of such birth or
15 placement.

16 “(3)(A) Leave under subparagraph (A) or (B) of
17 paragraph (1) shall not be taken by an employee intermit-
18 tently unless the employee and the employing agency of
19 the employee agree otherwise. Subject to subparagraph
20 (B), subsection (e)(2), and section 6383(b)(5), leave under
21 subparagraph (C) or (D) of paragraph (1) may be taken
22 intermittently when medically necessary.

23 “(B) If an employee requests intermittent leave under
24 subparagraph (C) or (D) of paragraph (1) that is foresee-
25 able based on planned medical treatment, the employing

1 agency may require such employee to transfer temporarily
2 to an available alternative position offered by the employ-
3 ing agency for which the employee is qualified and that—

4 “(i) has equivalent pay and benefits; and

5 “(ii) better accommodates recurring periods of
6 leave than the regular employment position of the
7 employee.

8 “(b) On agreement between the employing agency
9 and the employee, leave under subsection (a) may be taken
10 on a reduced leave schedule. In the case of an employee
11 on a reduced leave schedule, any hours of leave taken by
12 such employee under such schedule shall be subtracted
13 from the total amount of leave remaining available to such
14 employee under subsection (a), for purposes of the 12-
15 month period involved, on an hour-for-hour basis.

16 “(c) Except as provided in subsection (d), leave
17 granted under subsection (a) shall be leave without pay.

18 “(d) An employee may elect to substitute for leave
19 under subparagraph (A), (B), (C), or (D) of subsection
20 (a)(1) any of the employee’s accrued or accumulated an-
21 nual or sick leave under subchapter I for any part of the
22 12-week period of leave under such subsection, except that
23 nothing in this subchapter shall require an employing
24 agency to provide paid sick leave in any situation in which

1 such employing agency would not normally provide any
2 such paid leave.

3 “(e)(1) In any case in which the necessity for leave
4 under subparagraph (A) or (B) of subsection (a)(1) is
5 foreseeable based on an expected birth or placement, the
6 employee shall provide the employing agency with not less
7 than 30 days’ notice, before the date the leave is to begin,
8 of the employee’s intention to take leave under such sub-
9 paragraph, except that if the date of the birth or adoption
10 requires leave to begin in less than 30 days, the employee
11 shall provide such notice as is practicable.

12 “(2) In any case in which the necessity for leave
13 under subparagraph (C) or (D) of subsection (a)(1) is
14 foreseeable based on planned medical treatment, the em-
15 ployee—

16 “(A) shall make a reasonable effort to schedule
17 the treatment so as not to disrupt unduly the oper-
18 ations of the employing agency, subject to the ap-
19 proval of the health care provider of the employee or
20 the health care provider of the son, daughter,
21 spouse, or parent of the employee; and

22 “(B) shall provide the employing agency with
23 not less than 30 days’ notice, before the date the
24 leave is to begin, of the employee’s intention to take
25 leave under such subparagraph, except that if the

1 date of the treatment requires leave to begin in less
2 than 30 days, the employee shall provide such notice
3 as is practicable.

4 **“§ 6383. Certification**

5 “(a) An employing agency may require that a request
6 for leave under subparagraph (C) or (D) of section
7 6382(a)(1) be supported by certification issued by the
8 health care provider of the employee or of the son, daugh-
9 ter, spouse, or parent of the employee, as appropriate. The
10 employee shall provide, in a timely manner, a copy of such
11 certification to the employing agency.

12 “(b) A certification provided under subsection (a)
13 shall be sufficient if it states—

14 “(1) the date on which the serious health condi-
15 tion commenced;

16 “(2) the probable duration of the condition;

17 “(3) the appropriate medical facts within the
18 knowledge of the health care provider regarding the
19 condition;

20 “(4)(A) for purposes of leave under section
21 6382(a)(1)(C), a statement that the employee is
22 needed to care for the son, daughter, spouse, or par-
23 ent, and an estimate of the amount of time that
24 such employee is needed to care for such son, daugh-
25 ter, spouse, or parent; and

1 “(B) for purposes of leave under section
2 6382(a)(1)(D), a statement that the employee is un-
3 able to perform the functions of the position of the
4 employee; and

5 “(5) in the case of certification for intermittent
6 leave for planned medical treatment, the dates on
7 which such treatment is expected to be given and the
8 duration of such treatment.

9 “(c)(1) In any case in which the employing agency
10 has reason to doubt the validity of the certification pro-
11 vided under subsection (a) for leave under subparagraph
12 (C) or (D) of section 6382(a)(1), the employing agency
13 may require, at the expense of the agency, that the em-
14 ployee obtain the opinion of a second health care provider
15 designated or approved by the employing agency concern-
16 ing any information certified under subsection (b) for such
17 leave.

18 “(2) Any health care provider designated or approved
19 under paragraph (1) shall not be employed on a regular
20 basis by the employing agency.

21 “(d)(1) In any case in which the second opinion de-
22 scribed in subsection (c) differs from the original certifi-
23 cation provided under subsection (a), the employing agen-
24 cy may require, at the expense of the agency, that the em-
25 ployee obtain the opinion of a third health care provider

1 designated or approved jointly by the employing agency
2 and the employee concerning the information certified
3 under subsection (b).

4 “(2) The opinion of the third health care provider
5 concerning the information certified under subsection (b)
6 shall be considered to be final and shall be binding on the
7 employing agency and the employee.

8 “(e) The employing agency may require, at the ex-
9 pense of the agency, that the employee obtain subsequent
10 recertifications on a reasonable basis.

11 **“§ 6384. Employment and benefits protection**

12 “(a) Any employee who takes leave under section
13 6382 for the intended purpose of the leave shall be enti-
14 tled, upon return from such leave—

15 “(1) to be restored by the employing agency to
16 the position held by the employee when the leave
17 commenced; or

18 “(2) to be restored to an equivalent position
19 with equivalent benefits, pay, status, and other
20 terms and conditions of employment.

21 “(b) The taking of leave under section 6382 shall not
22 result in the loss of any employment benefit accrued prior
23 to the date on which the leave commenced.

1 “(c) Except as otherwise provided by or under law,
2 nothing in this section shall be construed to entitle any
3 restored employee to—

4 “(1) the accrual of any seniority or employment
5 benefits during any period of leave; or

6 “(2) any right, benefit, or position of employ-
7 ment other than any right, benefit, or position to
8 which the employee would have been entitled had the
9 employee not taken the leave.

10 “(d) As a condition to restoration under subsection
11 (a) for an employee who takes leave under section
12 6382(a)(1)(D), the employing agency may have a uni-
13 formly applied practice or policy that requires each em-
14 ployee to receive certification from the health care provider
15 of the employee that the employee is able to resume work.

16 “(e) Nothing in this section shall be construed to pro-
17 hibit an employing agency from requiring an employee on
18 leave under section 6382 to report periodically to the em-
19 ploying agency on the status and intention of the employee
20 to return to work.

21 **“§ 6385. Prohibition of coercion**

22 “(a) An employee shall not directly or indirectly in-
23 timidate, threaten, or coerce, or attempt to intimidate,
24 threaten, or coerce, any other employee for the purpose

1 of interfering with the exercise of any rights which such
2 other employee may have under this subchapter.

3 “(b) For the purpose of this section—

4 “(1) the term ‘intimidate, threaten, or coerce’
5 includes promising to confer or conferring any bene-
6 fit (such as appointment, promotion, or compensa-
7 tion), or taking or threatening to take any reprisal
8 (such as deprivation of appointment, promotion, or
9 compensation); and

10 “(2) the term ‘employee’ means any ‘employee’,
11 as defined by section 2105.

12 **“§ 6386. Health insurance**

13 “An employee enrolled in a health benefits plan under
14 chapter 89 who is placed in a leave status under section
15 6382 may elect to continue the health benefits enrollment
16 of the employee while in such leave status and arrange
17 to pay currently into the Employees Health Benefits Fund
18 (described in section 8909), the appropriate employee con-
19 tributions.

20 **“§ 6387. Regulations**

21 “The Office of Personnel Management shall prescribe
22 regulations necessary for the administration of this sub-
23 chapter. The regulations prescribed under this subchapter
24 shall, to the extent appropriate, be consistent with the reg-

1 ulations prescribed by the Secretary of Labor under title
2 I of the Family and Medical Leave Act of 1993.”.

3 (2) TABLE OF CONTENTS.—The table of con-
4 tents for chapter 63 of title 5, United States Code,
5 is amended by adding at the end the following:

“SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

“6381. Definitions.

“6382. Leave requirement.

“6383. Certification.

“6384. Employment and benefits protection.

“6385. Prohibition of coercion.

“6386. Health insurance.

“6387. Regulations.”.

6 (b) EMPLOYEES PAID FROM NONAPPROPRIATED
7 FUNDS.—Section 2105(c)(1) of title 5, United States
8 Code, is amended—

9 (1) by striking “or” at the end of subparagraph
10 (C); and

11 (2) by adding at the end the following new sub-
12 paragraph:

13 “(E) subchapter V of chapter 63, which
14 shall be applied so as to construe references to
15 benefit programs to refer to applicable pro-
16 grams for employees paid from nonappropriated
17 funds; or”.

1 **TITLE III—COMMISSION ON**
2 **LEAVE**

3 **SEC. 301. ESTABLISHMENT.**

4 There is established a commission to be known as the
5 Commission on Leave (hereinafter referred to in this title
6 as the “Commission”).

7 **SEC. 302. DUTIES.**

8 The Commission shall—

9 (1) conduct a comprehensive study of—

10 (A) existing and proposed policies relating
11 to leave;

12 (B) the potential costs, benefits, and im-
13 pact on productivity of such policies on employ-
14 ers; and

15 (C) alternative and equivalent State en-
16 forcement of title I of this Act with respect to
17 employees described in section 108(a); and

18 (2) not later than 2 years after the date on
19 which the Commission first meets, prepare and sub-
20 mit, to the appropriate Committees of Congress, a
21 report concerning the subjects listed in paragraph
22 (1).

23 **SEC. 303. MEMBERSHIP.**

24 (a) COMPOSITION.—

1 (1) APPOINTMENTS.—The Commission shall be
2 composed of 12 voting members and 2 ex officio
3 members to be appointed not later than 60 days
4 after the date of the enactment of this Act as
5 follows:

6 (A) SENATORS.—One Senator shall be ap-
7 pointed by the Majority Leader of the Senate,
8 and one Senator shall be appointed by the Mi-
9 nority Leader of the Senate.

10 (B) MEMBERS OF HOUSE OF REPRESENTA-
11 TIVES.—One Member of the House of Rep-
12 resentatives shall be appointed by the Speaker
13 of the House of Representatives, and one Mem-
14 ber of the House of Representatives shall be ap-
15 pointed by the Minority Leader of the House of
16 Representatives.

17 (C) ADDITIONAL MEMBERS.—

18 (i) APPOINTMENT.—Two Members
19 each shall be appointed by—

20 (I) the Speaker of the House of
21 Representatives;

22 (II) the Majority Leader of the
23 Senate;

24 (III) the Minority Leader of the
25 House of Representatives; and

1 (IV) the Minority Leader of the
2 Senate.

3 (ii) EXPERTISE.—Such members shall
4 be appointed by virtue of demonstrated ex-
5 pertise in relevant family, temporary dis-
6 ability, and labor-management issues and
7 shall include representatives of employers.

8 (2) EX OFFICIO MEMBERS.—The Secretary of
9 Health and Human Services and the Secretary of
10 Labor shall serve on the Commission as nonvoting
11 ex officio members.

12 (b) VACANCIES.—Any vacancy on the Commission
13 shall be filled in the manner in which the original appoint-
14 ment was made. The vacancy shall not affect the power
15 of the remaining members to execute the duties of the
16 Commission.

17 (c) CHAIRPERSON AND VICE CHAIRPERSON.—The
18 Commission shall elect a chairperson and a vice chair-
19 person from among the members of the Commission.

20 (d) QUORUM.—Eight members of the Commission
21 shall constitute a quorum for all purposes, except that a
22 lesser number may constitute a quorum for the purpose
23 of holding hearings.

1 **SEC. 304. COMPENSATION.**

2 (a) PAY.—Members of the Commission shall serve
3 without compensation.

4 (b) TRAVEL EXPENSES.—Members of the Commis-
5 sion shall be allowed reasonable travel expenses, including
6 a per diem allowance, in accordance with section 5703 of
7 title 5, United States Code, when performing duties of the
8 Commission.

9 **SEC. 305. POWERS.**

10 (a) MEETINGS.—The Commission shall first meet not
11 later than 30 days after the date on which all members
12 are appointed, and the Commission shall meet thereafter
13 on the call of the chairperson or a majority of the mem-
14 bers.

15 (b) HEARINGS AND SESSIONS.—The Commission
16 may hold such hearings, sit and act at such times and
17 places, take such testimony, and receive such evidence as
18 the Commission considers appropriate. The Commission
19 may administer oaths or affirmations to witnesses appear-
20 ing before it.

21 (c) ACCESS TO INFORMATION.—The Commission
22 may secure directly from any Federal agency information
23 necessary to enable it to carry out this title, if the informa-
24 tion may be disclosed under section 552 of title 5, United
25 States Code. Subject to the previous sentence, on the re-
26 quest of the chairperson or vice chairperson of the Com-

1 mission, the head of such agency shall furnish such infor-
2 mation to the Commission.

3 (d) EXECUTIVE DIRECTOR.—The Commission may
4 appoint an Executive Director from the personnel of any
5 Federal agency to assist the Commission in carrying out
6 the duties of the Commission. Any appointment shall not
7 interrupt or otherwise affect the civil service status or
8 privileges of the employee appointed.

9 (e) USE OF FACILITIES AND SERVICES.—Upon the
10 request of the Commission, the head of any Federal agen-
11 cy may make available to the Commission any of the facili-
12 ties and services of such agency.

13 (f) PERSONNEL FROM OTHER AGENCIES.—On the
14 request of the Commission, the head of any Federal agen-
15 cy may detail any of the personnel of such agency to assist
16 the Commission in carrying out the duties of the Commis-
17 sion. Any detail shall not interrupt or otherwise affect the
18 civil service status or privileges of the Federal employee.

19 (g) VOLUNTARY SERVICE.—Notwithstanding section
20 1342 of title 31, United States Code, the chairperson of
21 the Commission may accept for the Commission voluntary
22 services provided by a member of the Commission.

1 **SEC. 306. TERMINATION.**

2 The Commission shall terminate 30 days after the
3 date of the submission of the report of the Commission
4 to Congress.

5 **TITLE IV—MISCELLANEOUS**
6 **PROVISIONS**

7 **SEC. 401. EFFECT ON OTHER LAWS.**

8 (a) FEDERAL AND STATE ANTIDISCRIMINATION
9 LAWS.—Nothing in this Act or any amendment made by
10 this Act shall be construed to modify or affect any Federal
11 or State law prohibiting discrimination on the basis of
12 race, religion, color, national origin, sex, age, or disability.

13 (b) STATE AND LOCAL LAWS.—Nothing in this Act
14 or any amendment made by this Act shall be construed
15 to supersede any provision of any State and local law that
16 provides greater employee leave rights than the rights es-
17 tablished under this Act or any amendment made by this
18 Act.

19 **SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.**

20 (a) MORE PROTECTIVE.—Nothing in this Act or any
21 amendment made by this Act shall be construed to dimin-
22 ish the obligation of an employer to comply with any col-
23 lective bargaining agreement or any employment benefit
24 program or plan that provides greater family and medical
25 leave rights to employees than the rights provided under
26 this Act or any amendment made by this Act.

1 (b) LESS PROTECTIVE.—The rights provided to em-
2 ployees under this Act or any amendment made by this
3 Act shall not be diminished by any collective bargaining
4 agreement or any employment benefit program or plan.

5 **SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE**
6 **POLICIES.**

7 Nothing in this Act or any amendment made by this
8 Act shall be construed to discourage employers from
9 adopting or retaining leave policies more generous than
10 any policies that comply with the requirements under this
11 Act or any amendment made by this Act.

12 **SEC. 404. REGULATIONS.**

13 The Secretary of Labor shall prescribe such regula-
14 tions as are necessary to carry out sections 401 through
15 403 not later than 60 days after the date of the enactment
16 of this Act.

17 **SEC. 405. EFFECTIVE DATES.**

18 (a) TITLE III.—Title III shall take effect on the date
19 of the enactment of this Act.

20 (b) OTHER TITLES.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), titles I, II, and V and this title shall take
23 effect 6 months after the date of the enactment of
24 this Act.

1 (2) COLLECTIVE BARGAINING AGREEMENTS.—

2 In the case of a collective bargaining agreement in
3 effect on the effective date prescribed by paragraph
4 (1), title I shall apply on the earlier of—

5 (A) the date of the termination of such
6 agreement; or

7 (B) the date that occurs 12 months after
8 the date of the enactment of this Act.

9 **TITLE V—COVERAGE OF**
10 **CONGRESSIONAL EMPLOYEES**

11 **SEC. 501. LEAVE FOR CERTAIN SENATE EMPLOYEES.**

12 (a) COVERAGE.—The rights and protections estab-
13 lished under sections 101 through 105 shall apply with
14 respect to a Senate employee and an employing office. For
15 purposes of such application, the term “eligible employee”
16 means a Senate employee and the term “employer” means
17 an employing office.

18 (b) CONSIDERATION OF ALLEGATIONS.—

19 (1) APPLICABLE PROVISIONS.—The provisions
20 of sections 304 through 313 of the Government Em-
21 ployee Rights Act of 1991 (2 U.S.C. 1204–1213)
22 shall, except as provided in subsections (d) and (e)—

23 (A) apply with respect to an allegation of
24 a violation of a provision of sections 101

1 through 105, with respect to Senate employ-
2 ment of a Senate employee; and

3 (B) apply to such an allegation in the
4 same manner and to the same extent as such
5 sections of the Government Employee Rights
6 Act of 1991 apply with respect to an allegation
7 of a violation under such Act.

8 (2) ENTITY.—Such an allegation shall be ad-
9 dressed by the Office of Senate Fair Employment
10 Practices or such other entity as the Senate may
11 designate.

12 (c) RIGHTS OF EMPLOYEES.—The Office of Senate
13 Fair Employment Practices shall ensure that Senate em-
14 ployees are informed of their rights under sections 101
15 through 105.

16 (d) LIMITATIONS.—A request for counseling under
17 section 305 of such Act by a Senate employee alleging a
18 violation of a provision of sections 101 through 105 shall
19 be made not later than 2 years after the date of the last
20 event constituting the alleged violation for which the coun-
21 seling is requested, or not later than 3 years after such
22 date in the case of a willful violation of section 105.

23 (e) APPLICABLE REMEDIES.—The remedies applica-
24 ble to individuals who demonstrate a violation of a provi-
25 sion of sections 101 through 105 shall be such remedies

1 as would be appropriate if awarded under paragraph (1)
2 or (3) of section 107(a).

3 (f) EXERCISE OF RULEMAKING POWER.—The provi-
4 sions of subsections (b), (c), (d), and (e), except as such
5 subsections apply with respect to section 309 of the Gov-
6 ernment Employee Rights Act of 1991 (2 U.S.C. 1209),
7 are enacted by the Senate as an exercise of the rulemaking
8 power of the Senate, with full recognition of the right of
9 the Senate to change its rules, in the same manner, and
10 to the same extent, as in the case of any other rule of
11 the Senate. No Senate employee may commence a judicial
12 proceeding with respect to an allegation described in sub-
13 section (b)(1), except as provided in this section.

14 (g) SEVERABILITY.—Notwithstanding any other pro-
15 vision of law, if any provision of section 309 of the Govern-
16 ment Employee Rights Act of 1991 (2 U.S.C. 1209) or
17 of subsection (e) is invalidated, both such section 309 and
18 subsection (e) shall have no force and effect, and shall be
19 considered to be invalidated for purposes of section 322
20 of such Act (2 U.S.C. 1221).

21 (h) DEFINITIONS.—As used in this section:

22 (1) EMPLOYING OFFICE.—The term “employing
23 office” means the office with the final authority de-
24 scribed in section 301(2) of such Act (2 U.S.C.
25 1201(2)).

1 (2) SENATE EMPLOYEE.—The term “Senate
2 employee” means an employee described in subpara-
3 graph (A) or (B) of section 301(c)(1) of such Act
4 (2 U.S.C. 1201(c)(1)) who has been employed for at
5 least 12 months on other than a temporary or inter-
6 mittent basis by any employing office.

7 **SEC. 502. LEAVE FOR CERTAIN CONGRESSIONAL EMPLOY-**
8 **EES.**

9 (a) IN GENERAL.—The rights and protections under
10 sections 102 through 105 (other than section 104(b)) shall
11 apply to any employee in an employment position and any
12 employing authority of the House of Representatives.

13 (b) ADMINISTRATION.—In the administration of this
14 section, the remedies and procedures under the Fair Em-
15 ployment Practices Resolution shall be applied.

16 (c) DEFINITION.—As used in this section, the term
17 “Fair Employment Practices Resolution” means the reso-
18 lution in rule LI of the Rules of the House of Representa-
19 tives.

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