

**Calendar No. 3**

103D CONGRESS  
1ST SESSION

**S. 5**

**[Report No. 103-3]**

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**A BILL**

To grant family and temporary medical leave under  
certain circumstances.

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JANUARY 27 (legislative day, JANUARY 5), 1993  
Reported without amendment

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1<sup>ST</sup> SESSION**S. 5****[Report No. 103-3]**

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## IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 5), 1993

Mr. DODD (for himself, Mr. KENNEDY, Mr. PACKWOOD, Mr. MITCHELL, Mr. JEFFORDS, Ms. MIKULSKI, Mr. HATFIELD, Mr. BOND, Mr. METZENBAUM, Mr. COATS, Mr. D'AMATO, Mr. CHAFEE, Mr. DECONCINI, Mr. PELL, Mr. SIMON, Mr. SPECTER, Mr. BRADLEY, Mr. MOYNIHAN, Mr. KERRY, Mr. INOUE, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. REID, Mr. SARBANES, Mr. AKAKA, Mr. BINGAMAN, Mr. DASCHLE, Mr. EXON, Mr. HARKIN, Mr. RIEGLE, Mr. BRYAN, Mr. KERREY, Mr. LEVIN, Mr. WELLSTONE, Mr. KOHL, Mr. FORD, Mr. FEINGOLD, Mrs. BOXER, Ms. FEINSTEIN, Ms. MURRAY, Ms. MOSELEY-BRAUN, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

JANUARY 27 (legislative day, JANUARY 5), 1993

Reported by Mr. KENNEDY, without amendment

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**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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

4 (b) TABLE OF CONTENTS.—The table of contents is  
5 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.

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.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

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

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

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

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

15           (5) due to the nature of the roles of men and  
16 women in our society, the primary responsibility for  
17 family caretaking often falls on women, and such re-  
18 sponsibility affects the working lives of women more  
19 than it affects the working lives of men; and

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

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

1           (1) to balance the demands of the workplace  
2           with the needs of families, to promote the stability  
3           and economic security of families, and to promote  
4           national interests in preserving family integrity;

5           (2) to entitle employees to take reasonable leave  
6           for medical reasons, for the birth or adoption of a  
7           child, and for the care of a child, spouse, or parent  
8           who has a serious health condition;

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

12          (4) to accomplish the purposes described in  
13          paragraphs (1) and (2) in a manner that, consistent  
14          with the Equal Protection Clause of the Fourteenth  
15          Amendment, minimizes the potential for employment  
16          discrimination on the basis of sex by ensuring gen-  
17          erally that leave is available for eligible medical rea-  
18          sons (including maternity-related disability) and for  
19          compelling family reasons, on a gender-neutral basis;  
20          and

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

1                   **TITLE I—GENERAL**  
2                   **REQUIREMENTS FOR LEAVE**

3 **SEC. 101. DEFINITIONS.**

4           As used in this title:

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

14                   (2) **ELIGIBLE EMPLOYEE.**—

15                           (A) **IN GENERAL.**—The term “eligible em-  
16                           ployee” means an employee who has been em-  
17                           ployed—

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

21                                   (ii) for at least 1,250 hours of service  
22                                   with such employer during the previous 12-  
23                                   month period.

24                           (B) **EXCLUSIONS.**—The term “eligible em-  
25                           ployee” does not include—

1 (i) any Federal officer or employee  
2 covered under subchapter V of chapter 63  
3 of title 5, United States Code (as added by  
4 title II of this Act); or

5 (ii) any employee of an employer who  
6 is employed at a worksite at which such  
7 employer employs less than 50 employees if  
8 the total number of employees employed by  
9 that employer within 75 miles of that  
10 worksite is less than 50.

11 (C) DETERMINATION.—For purposes of  
12 determining whether an employee meets the  
13 hours of service requirement specified in sub-  
14 paragraph (A)(ii), the legal standards estab-  
15 lished under section 7 of the Fair Labor Stand-  
16 ards Act of 1938 (29 U.S.C. 207) shall apply.

17 (3) EMPLOY; EMPLOYEE; STATE.—The terms  
18 “employ”, “employee”, and “State” have the same  
19 meanings given such terms in subsections (c), (e),  
20 and (g) of section 3 of the Fair Labor Standards  
21 Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

22 (4) EMPLOYER.—

23 (A) IN GENERAL.—The term “em-  
24 ployer”—

1 (i) means any person engaged in com-  
2 merce or in any industry or activity affect-  
3 ing commerce who employs 50 or more em-  
4 ployees for each working day during each  
5 of 20 or more calendar workweeks in the  
6 current or preceding calendar year;

7 (ii) includes—

8 (I) any person who acts, directly  
9 or indirectly, in the interest of an em-  
10 ployer to any of the employees of such  
11 employer; and

12 (II) any successor in interest of  
13 an employer; and

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

17 (B) PUBLIC AGENCY.—For purposes of  
18 subparagraph (A)(iii), a public agency shall be  
19 considered to be a person engaged in commerce  
20 or in an industry or activity affecting com-  
21 merce.

22 (5) EMPLOYMENT BENEFITS.—The term “em-  
23 ployment benefits” means all benefits provided or  
24 made available to employees by an employer, includ-  
25 ing group life insurance, health insurance, disability

1 insurance, sick leave, annual leave, educational bene-  
2 fits, and pensions, regardless of whether such bene-  
3 fits are provided by a practice or written policy of  
4 an employer or through an “employee benefit plan”,  
5 as defined in section 3(3) of the Employee Retirement  
6 Income Security Act of 1974 (29 U.S.C.  
7 1002(3)).

8 (6) HEALTH CARE PROVIDER.—The term  
9 “health care provider” means—

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

14 (B) any other person determined by the  
15 Secretary to be capable of providing health care  
16 services.

17 (7) PARENT.—The term “parent” means the  
18 biological parent of an employee or an individual  
19 who stood in loco parentis to an employee when the  
20 employee was a son or daughter.

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

24 (9) REDUCED LEAVE SCHEDULE.—The term  
25 “reduced leave schedule” means a leave schedule

1 that reduces the usual number of hours per work-  
2 week, or hours per workday, of an employee.

3 (10) SECRETARY.—The term “Secretary”  
4 means the Secretary of Labor.

5 (11) SERIOUS HEALTH CONDITION.—The term  
6 “serious health condition” means an illness, injury,  
7 impairment, or physical or mental condition that in-  
8 volves—

9 (A) inpatient care in a hospital, hospice, or  
10 residential medical care facility; or

11 (B) continuing treatment by a health care  
12 provider.

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

17 (A) under 18 years of age; or

18 (B) 18 years of age or older and incapable  
19 of self-care because of a mental or physical  
20 disability.

21 **SEC. 102. LEAVE REQUIREMENT.**

22 (a) IN GENERAL.—

23 (1) ENTITLEMENT TO LEAVE.—Subject to sec-  
24 tion 103, an eligible employee shall be entitled to a

1 total of 12 workweeks of leave during any 12-month  
2 period for one or more of the following:

3 (A) Because of the birth of a son or  
4 daughter of the employee and in order to care  
5 for such son or daughter.

6 (B) Because of the placement of a son or  
7 daughter with the employee for adoption or fos-  
8 ter care.

9 (C) In order to care for the spouse, or a  
10 son, daughter, or parent, of the employee, if  
11 such spouse, son, daughter, or parent has a se-  
12 rious health condition.

13 (D) Because of a serious health condition  
14 that makes the employee unable to perform the  
15 functions of the position of such employee.

16 (2) EXPIRATION OF ENTITLEMENT.—The enti-  
17 tlement to leave under subparagraphs (A) and (B)  
18 of paragraph (1) for a birth or placement of a son  
19 or daughter shall expire at the end of the 12-month  
20 period beginning on the date of such birth or  
21 placement.

22 (b) LEAVE TAKEN INTERMITTENTLY OR ON A  
23 REDUCED LEAVE SCHEDULE.—

24 (1) IN GENERAL.—Leave under subparagraph  
25 (A) or (B) of paragraph (1) shall not be taken by

1 an employee intermittently or on a reduced leave  
2 schedule unless the employee and the employer of  
3 the employee agree otherwise. Subject to subpara-  
4 graph (B), subsection (e)(2), and section 103(b)(5),  
5 leave under subparagraph (C) or (D) of paragraph  
6 (1) may be taken intermittently or on a reduced  
7 leave schedule when medically necessary. The taking  
8 of leave intermittently or on a reduced leave sched-  
9 ule pursuant to this paragraph shall not result in a  
10 reduction in the total amount of leave to which the  
11 employee is entitled under subsection (a) beyond the  
12 amount of leave actually taken.

13 (2) ALTERNATIVE POSITION.—If an employee  
14 requests intermittent leave, or leave on a reduced  
15 leave schedule, under subparagraph (C) or (D) of  
16 paragraph (1), that is foreseeable based on planned  
17 medical treatment, the employer may require such  
18 employee to transfer temporarily to an available al-  
19 ternative position offered by the employer for which  
20 the employee is qualified and that—

21 (A) has equivalent pay and benefits; and

22 (B) better accommodates recurring periods  
23 of leave than the regular employment position  
24 of the employee.

1 (c) UNPAID LEAVE PERMITTED.—Except as provided  
2 in subsection (d), leave granted under subsection (a) may  
3 consist of unpaid leave. Where an employee is otherwise  
4 exempt under regulations issued by the Secretary pursu-  
5 ant to section 13(a)(1) of the Fair Labor Standards Act  
6 of 1938 (29 U.S.C. 213(a)(1)), the compliance of an em-  
7 ployer with this title by providing unpaid leave shall not  
8 affect the exempt status of the employee under such  
9 section.

10 (d) RELATIONSHIP TO PAID LEAVE.—

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

16 (2) SUBSTITUTION OF PAID LEAVE.—

17 (A) IN GENERAL.—An eligible employee  
18 may elect, or an employer may require the em-  
19 ployee, to substitute any of the accrued paid va-  
20 cation leave, personal leave, or family leave of  
21 the employee for leave provided under subpara-  
22 graph (A), (B), or (C) of subsection (a)(1) for  
23 any part of the 12-week period of such leave  
24 under such subsection.

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

13       (e) FORESEEABLE LEAVE.—

14           (1) REQUIREMENT OF NOTICE.—In any case in  
15          which the necessity for leave under subparagraph  
16          (A) or (B) of subsection (a)(1) is foreseeable based  
17          on an expected birth or placement, the employee  
18          shall provide the employer with not less than 30  
19          days' notice, before the date the leave is to begin, of  
20          the employee's intention to take leave under such  
21          subparagraph, except that if the date of the birth or  
22          placement requires leave to begin in less than 30  
23          days, the employee shall provide such notice as is  
24          practicable.

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

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

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

19           (f) SPOUSES EMPLOYED BY THE SAME EM-  
20           PLOYER.—In any case in which a husband and wife enti-  
21           tled to leave under subsection (a) are employed by the  
22           same employer, the aggregate number of workweeks of  
23           leave to which both may be entitled may be limited to 12  
24           workweeks during any 12-month period, if such leave is  
25           taken—

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

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

5 **SEC. 103. CERTIFICATION.**

6 (a) IN GENERAL.—An employer may require that a  
7 request for leave under subparagraph (C) or (D) of section  
8 102(a)(1) be supported by a certification issued by the  
9 health care provider of the eligible employee or of the son,  
10 daughter, spouse, or parent of the employee, as appro-  
11 priate. The employee shall provide, in a timely manner,  
12 a copy of such certification to the employer.

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

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

17 (2) the probable duration of the condition;

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

21 (4)(A) for purposes of leave under section  
22 102(a)(1)(C), a statement that the eligible employee  
23 is needed to care for the son, daughter, spouse, or  
24 parent and an estimate of the amount of time that

1 such employee is needed to care for the son, daugh-  
2 ter, spouse, or parent; and

3 (B) for purposes of leave under section  
4 102(a)(1)(D), a statement that the employee is un-  
5 able to perform the functions of the position of the  
6 employee; and

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

11 (c) SECOND OPINION.—

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

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

24 (d) RESOLUTION OF CONFLICTING OPINIONS.—

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

10           (2) FINALITY.—The opinion of the third health  
11           care provider concerning the information certified  
12           under subsection (b) shall be considered to be final  
13           and shall be binding on the employer and the  
14           employee.

15           (e) SUBSEQUENT RECERTIFICATION.—The employer  
16           may require that the eligible employee obtain subsequent  
17           recertifications on a reasonable basis.

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

19           (a) RESTORATION TO POSITION.—

20           (1) IN GENERAL.—Except as provided in sub-  
21           section (b), any eligible employee who takes leave  
22           under section 102 for the intended purpose of the  
23           leave shall be entitled, on return from such leave—

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

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

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

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

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

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

19 (4) CERTIFICATION.—As a condition of restora-  
20 tion under paragraph (1) for an employee who has  
21 taken leave under section 102(a)(1)(D), the em-  
22 ployer may have a uniformly applied practice or pol-  
23 icy that requires each such employee to receive cer-  
24 tification from the health care provider of the em-  
25 ployee that the employee is able to resume work, ex-

1       cept that nothing in this paragraph shall supersede  
2       a valid State or local law or a collective bargaining  
3       agreement that governs the return to work of such  
4       employees.

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

11      (b) EXEMPTION CONCERNING CERTAIN HIGHLY  
12      COMPENSATED EMPLOYEES.—

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

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

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

23           (C) in any case in which the leave has  
24           commenced, the employee elects not to return  
25           to employment after receiving such notice.

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

7           (c) MAINTENANCE OF HEALTH BENEFITS.—

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

18          (2) FAILURE TO RETURN FROM LEAVE.—The  
19          employer may recover the premium that the em-  
20          ployer paid for maintaining coverage for the em-  
21          ployee under such group health plan during any pe-  
22          riod of unpaid leave under section 102 if—

23                 (A) the employee fails to return from leave  
24                 under section 102 after the period of leave to  
25                 which the employee is entitled has expired; and

1 (B) the employee fails to return to work  
2 for a reason other than—

3 (i) the continuation, recurrence, or  
4 onset of a serious health condition that en-  
5 titles the employee to leave under subpara-  
6 graph (C) or (D) of section 102(a)(1); or

7 (ii) other circumstances beyond the  
8 control of the employee.

9 (3) CERTIFICATION.—

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

16 (i) a certification issued by the health  
17 care provider of the son, daughter, spouse,  
18 or parent of the employee, as appropriate,  
19 in the case of an employee unable to return  
20 to work because of a condition specified in  
21 section 102(a)(1)(C); or

22 (ii) a certification issued by the health  
23 care provider of the eligible employee, in  
24 the case of an employee unable to return

1 to work because of a condition specified in  
2 section 102(a)(1)(D).

3 (B) COPY.—The employee shall provide, in  
4 a timely manner, a copy of such certification to  
5 the employer.

6 (C) SUFFICIENCY OF CERTIFICATION.—

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

16 (ii) LEAVE DUE TO SERIOUS HEALTH  
17 CONDITION OF FAMILY MEMBER.—The  
18 certification described in subparagraph  
19 (A)(ii) shall be sufficient if the certification  
20 states that the employee is needed to care  
21 for the son, daughter, spouse, or parent  
22 who has a serious health condition on the  
23 date that the leave of the employee  
24 expired.

1 **SEC. 105. PROHIBITED ACTS.**

2 (a) INTERFERENCE WITH RIGHTS.—

3 (1) EXERCISE OF RIGHTS.—It shall be unlawful  
4 for any employer to interfere with, restrain, or deny  
5 the exercise of or the attempt to exercise, any right  
6 provided under this title.

7 (2) DISCRIMINATION.—It shall be unlawful for  
8 any employer to discharge or in any other manner  
9 discriminate against any individual for opposing any  
10 practice made unlawful by this title.

11 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
12 IES.—It shall be unlawful for any person to discharge or  
13 in any other manner discriminate against any individual  
14 because such individual—

15 (1) has filed any charge, or has instituted or  
16 caused to be instituted any proceeding, under or re-  
17 lated to this title;

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

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

24 **SEC. 106. INVESTIGATIVE AUTHORITY.**

25 (a) IN GENERAL.—To ensure compliance with the  
26 provisions of this title, or any regulation or order issued

1 under this title, the Secretary shall have, subject to sub-  
2 section (c), the investigative authority provided under sec-  
3 tion 11(a) of the Fair Labor Standards Act of 1938 (29  
4 U.S.C. 211(a)).

5 (b) OBLIGATION TO KEEP AND PRESERVE  
6 RECORDS.—Any employer shall make, keep, and preserve  
7 records pertaining to compliance with this title in accord-  
8 ance with section 11(c) of the Fair Labor Standards Act  
9 of 1938 (29 U.S.C. 211(c)) and in accordance with regula-  
10 tions issued by the Secretary.

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

20 (d) SUBPOENA POWERS.—For the purposes of any  
21 investigation provided for in this section, the Secretary  
22 shall have the subpoena authority provided for under sec-  
23 tion 9 of the Fair Labor Standards Act of 1938 (29  
24 U.S.C. 209).

1 **SEC. 107. ENFORCEMENT.**

2 (a) CIVIL ACTION BY EMPLOYEES.—

3 (1) LIABILITY.—Any employer who violates sec-  
4 tion 105 shall be liable to any eligible employee af-  
5 fected—

6 (A) for damages equal to—

7 (i) the amount of—

8 (I) any wages, salary, employ-  
9 ment benefits, or other compensation  
10 denied or lost to such employee by  
11 reason of the violation; or

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

21 (ii) the interest on the amount de-  
22 scribed in clause (i) calculated at the pre-  
23 vailing rate; and

24 (iii) an additional amount as liq-  
25 uidated damages equal to the sum of the  
26 amount described in clause (i) and the in-

1           terest described in clause (ii), except that  
2           if an employer who has violated section  
3           105 proves to the satisfaction of the court  
4           that the act or omission which violated sec-  
5           tion 105 was in good faith and that the  
6           employer had reasonable grounds for be-  
7           lieving that the act or omission was not a  
8           violation of section 105, such court may, in  
9           the discretion of the court, reduce the  
10          amount of the liability to the amount and  
11          interest determined under clauses (i) and  
12          (ii), respectively; and

13           (B) for such equitable relief as may be ap-  
14          propriate, including employment, reinstatement,  
15          and promotion.

16          (2) RIGHT OF ACTION.—An action to recover  
17          the damages or equitable relief prescribed in para-  
18          graph (1) may be maintained against any employer  
19          (including a public agency) in any Federal or State  
20          court of competent jurisdiction by any one or more  
21          employees for and in behalf of—

22           (A) the employees; or

23           (B) the employees and other employees  
24          similarly situated.

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

6           (4) LIMITATIONS.—The right provided by para-  
7           graph (2) to bring an action by or on behalf of any  
8           employee shall terminate—

9                   (A) on the filing of a complaint by the Sec-  
10                  retary in an action under subsection (d) in  
11                  which restraint is sought of any further delay  
12                  in the payment of the amount described in  
13                  paragraph (1)(A) to such employee by an em-  
14                  ployer responsible under paragraph (1) for the  
15                  payment; or

16                  (B) on the filing of a complaint by the Sec-  
17                  retary in an action under subsection (b) in  
18                  which a recovery is sought of the damages de-  
19                  scribed in paragraph (1)(A) owing to an eligible  
20                  employee by an employer liable under para-  
21                  graph (1),

22           unless the action described in subparagraph (A) or  
23           (B) is dismissed without prejudice on motion of the  
24           Secretary.

25           (b) ACTION BY THE SECRETARY.—

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

8           (2) CIVIL ACTION.—The Secretary may bring  
9 an action in any court of competent jurisdiction to  
10 recover the damages described in subsection  
11 (a)(1)(A).

12           (3) SUMS RECOVERED.—Any sums recovered by  
13 the Secretary pursuant to paragraph (2) shall be  
14 held in a special deposit account and shall be paid,  
15 on order of the Secretary, directly to each employee  
16 affected. Any such sums not paid to an employee be-  
17 cause of inability to do so within a period of 3 years  
18 shall be deposited into the Treasury of the United  
19 States as miscellaneous receipts.

20           (c) LIMITATION.—

21           (1) IN GENERAL.—Except as provided in para-  
22 graph (2), an action may be brought under this sec-  
23 tion not later than 2 years after the date of the last  
24 event constituting the alleged violation for which the  
25 action is brought.

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

6           (3) COMMENCEMENT.—In determining when an  
7           action is commenced by the Secretary under this  
8           section for the purposes of this subsection, it shall  
9           be considered to be commenced on the date when the  
10          complaint is filed.

11          (d) ACTION FOR INJUNCTION BY SECRETARY.—The  
12          district courts of the United States shall have jurisdiction,  
13          for cause shown, in an action brought by the Secretary—

14                (1) to restrain violations of section 105, includ-  
15                ing the restraint of any withholding of payment of  
16                wages, salary, employment benefits, or other com-  
17                pensation, plus interest, found by the court to be  
18                due to eligible employees; or

19                (2) to award such other equitable relief as may  
20                be appropriate, including employment, reinstatement,  
21                and promotion.

22          (e) SOLICITOR OF LABOR.—The Solicitor of Labor  
23          may appear for and represent the Secretary on any litiga-  
24          tion brought under this section.

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 subparagraph (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 court that the agency, school, or depart-  
14 ment had reasonable grounds for believing that the under-  
15 lying act or omission was not a violation of this title, such  
16 court may, in the discretion of the court, reduce the  
17 amount of the liability provided for under section  
18 107(a)(1)(A) to the amount and interest determined  
19 under clauses (i) and (ii), respectively, of such section.

20 **SEC. 109. NOTICE.**

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

1 from, or summaries of, the pertinent provisions of this  
2 title and information pertaining to the filing of a charge.

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

6 **TITLE II—LEAVE FOR CIVIL**  
7 **SERVICE EMPLOYEES**

8 **SEC. 201. LEAVE REQUIREMENT.**

9 (a) CIVIL SERVICE EMPLOYEES.—

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

13 “SUBCHAPTER V—FAMILY AND MEDICAL  
14 LEAVE

15 **“§ 6381. Definitions**

16 “For the purpose of this subchapter—

17 “(1) the term ‘employee’ means any individual  
18 who—

19 “(A) is an ‘employee’, as defined by section  
20 6301(2), including any individual employed in a  
21 position referred to in clause (v) or (ix) of sec-  
22 tion 6301(2), but excluding any individual em-  
23 ployed by the government of the District of Co-  
24 lumbia and any individual employed on a tem-  
25 porary or intermittent basis; and

1           “(B) has completed at least 12 months of  
2           service as an employee (within the meaning of  
3           subparagraph (A));

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

5                 “(A) a doctor of medicine or osteopathy  
6                 who is authorized to practice medicine or sur-  
7                 gery (as appropriate) by the State in which the  
8                 doctor practices; and

9                 “(B) any other person determined by the  
10                Director of the Office of Personnel Management  
11                to be capable of providing health care services;

12           “(3) the term ‘parent’ means the biological par-  
13           ent of an employee or an individual who stood in  
14           loco parentis to an employee when the employee was  
15           a son or daughter;

16           “(4) the term ‘reduced leave schedule’ means a  
17           leave schedule that reduces the usual number of  
18           hours per workweek, or hours per workday, of an  
19           employee;

20           “(5) the term ‘serious health condition’ means  
21           an illness, injury, impairment, or physical or mental  
22           condition that involves—

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

1           “(B) continuing treatment by a health care  
2           provider; and

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

7           “(A) under 18 years of age; or

8           “(B) 18 years of age or older and incapa-  
9           ble of self-care because of a mental or physical  
10          disability.

11   **“§ 6382. Leave requirement**

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

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

19          “(B) Because of the placement of a son or  
20          daughter with the employee for adoption or foster  
21          care.

22          “(C) In order to care for the spouse, or a son,  
23          daughter, or parent, of the employee, if such spouse,  
24          son, daughter, or parent has a serious health condi-  
25          tion.

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

4           “(2) The entitlement to leave under subparagraph  
5 (A) or (B) of paragraph (1) based on the birth or place-  
6 ment of a son or daughter shall expire at the end of the  
7 12-month period beginning on the date of such birth or  
8 placement.

9           “(b)(1) Leave under subparagraph (A) or (B) of sub-  
10 section (a)(1) shall not be taken by an employee intermit-  
11 tently or on a reduced leave schedule unless the employee  
12 and the employing agency of the employee agree otherwise.  
13 Subject to paragraph (2), subsection (e)(2), and section  
14 6383(b)(5), leave under subparagraph (C) or (D) of sub-  
15 section (a)(1) may be taken intermittently or on a reduced  
16 leave schedule when medically necessary. In the case of  
17 an employee who takes leave intermittently or on a re-  
18 duced leave schedule pursuant to this paragraph, any  
19 hours of leave so taken by such employee shall be sub-  
20 tracted from the total amount of leave remaining available  
21 to such employee under subsection (a), for purposes of the  
22 12-month period involved, on an hour-for-hour basis.

23           “(2) If an employee requests intermittent leave, or  
24 leave on a reduced leave schedule, under subparagraph (C)  
25 or (D) of subsection (a)(1), that is foreseeable based on

1 planned medical treatment, the employing agency may re-  
2 quire such employee to transfer temporarily to an available  
3 alternative position offered by the employing agency for  
4 which the employee is qualified and that—

5           “(A) has equivalent pay and benefits; and

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

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

11           “(d) An employee may elect to substitute for leave  
12 under subparagraph (A), (B), (C), or (D) of subsection  
13 (a)(1) any of the employee’s accrued or accumulated an-  
14 nual or sick leave under subchapter I for any part of the  
15 12-week period of leave under such subsection, except that  
16 nothing in this subchapter shall require an employing  
17 agency to provide paid sick leave in any situation in which  
18 such employing agency would not normally provide any  
19 such paid leave.

20           “(e)(1) In any case in which the necessity for leave  
21 under subparagraph (A) or (B) of subsection (a)(1) is  
22 foreseeable based on an expected birth or placement, the  
23 employee shall provide the employing agency with not less  
24 than 30 days’ notice, before the date the leave is to begin,  
25 of the employee’s intention to take leave under such sub-

1 paragraph, except that if the date of the birth or place-  
2 ment requires leave to begin in less than 30 days, the em-  
3 ployee shall provide such notice as is practicable.

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

8 “(A) shall make a reasonable effort to schedule  
9 the treatment so as not to disrupt unduly the oper-  
10 ations of the employing agency, subject to the ap-  
11 proval of the health care provider of the employee or  
12 the health care provider of the son, daughter,  
13 spouse, or parent of the employee, as appropriate;  
14 and

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

22 **“§ 6383. Certification**

23 “(a) An employing agency may require that a request  
24 for leave under subparagraph (C) or (D) of section  
25 6382(a)(1) be supported by certification issued by the

1 health care provider of the employee or of the son, daugh-  
2 ter, spouse, or parent of the employee, as appropriate. The  
3 employee shall provide, in a timely manner, a copy of such  
4 certification to the employing agency.

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

7 “(1) the date on which the serious health condi-  
8 tion commenced;

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

10 “(3) the appropriate medical facts within the  
11 knowledge of the health care provider regarding the  
12 condition;

13 “(4)(A) for purposes of leave under section  
14 6382(a)(1)(C), a statement that the employee is  
15 needed to care for the son, daughter, spouse, or par-  
16 ent, and an estimate of the amount of time that  
17 such employee is needed to care for such son, daugh-  
18 ter, spouse, or parent; and

19 “(B) for purposes of leave under section  
20 6382(a)(1)(D), a statement that the employee is un-  
21 able to perform the functions of the position of the  
22 employee; and

23 “(5) in the case of certification for intermittent  
24 leave for planned medical treatment, the dates on

1       which such treatment is expected to be given and the  
2       duration of such treatment.

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

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

15       “(d)(1) In any case in which the second opinion de-  
16 scribed in subsection (c) differs from the original certifi-  
17 cation provided under subsection (a), the employing agen-  
18 cy may require, at the expense of the agency, that the em-  
19 ployee obtain the opinion of a third health care provider  
20 designated or approved jointly by the employing agency  
21 and the employee concerning the information certified  
22 under subsection (b).

23       “(2) The opinion of the third health care provider  
24 concerning the information certified under subsection (b)

1 shall be considered to be final and shall be binding on the  
2 employing agency and the employee.

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

6 **“§ 6384. Employment and benefits protection**

7 “(a) Any employee who takes leave under section  
8 6382 for the intended purpose of the leave shall be enti-  
9 tled, upon return from such leave—

10 “(1) to be restored by the employing agency to  
11 the position held by the employee when the leave  
12 commenced; or

13 “(2) to be restored to an equivalent position  
14 with equivalent benefits, pay, status, and other  
15 terms and conditions of employment.

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

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

22 “(1) the accrual of any employment benefits  
23 during any period of leave; or

24 “(2) any right, benefit, or position of employ-  
25 ment other than any right, benefit, or position to

1 which the employee would have been entitled had the  
2 employee not taken the leave.

3 “(d) As a condition to restoration under subsection  
4 (a) for an employee who takes leave under section  
5 6382(a)(1)(D), the employing agency may have a uni-  
6 formly applied practice or policy that requires each such  
7 employee to receive certification from the health care pro-  
8 vider of the employee that the employee is able to resume  
9 work.

10 “(e) Nothing in this section shall be construed to pro-  
11 hibit an employing agency from requiring an employee on  
12 leave under section 6382 to report periodically to the em-  
13 ploying agency on the status and intention of the employee  
14 to return to work.

15 **“§ 6385. Prohibition of coercion**

16 “(a) An employee shall not directly or indirectly in-  
17 timidate, threaten, or coerce, or attempt to intimidate,  
18 threaten, or coerce, any other employee for the purpose  
19 of interfering with the exercise of any rights which such  
20 other employee may have under this subchapter.

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

22 “(1) the term ‘intimidate, threaten, or coerce’  
23 includes promising to confer or conferring any bene-  
24 fit (such as appointment, promotion, or compensa-  
25 tion), or taking or threatening to take any reprisal

1 (such as deprivation of appointment, promotion, or  
2 compensation); and

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

5 **“§ 6386. Health insurance**

6 “An employee enrolled in a health benefits plan under  
7 chapter 89 who is placed in a leave status under section  
8 6382 may elect to continue the health benefits enrollment  
9 of the employee while in such leave status and arrange  
10 to pay currently into the Employees Health Benefits Fund  
11 (described in section 8909), the appropriate employee con-  
12 tributions.

13 **“§ 6387. Regulations**

14 “The Office of Personnel Management shall prescribe  
15 regulations necessary for the administration of this sub-  
16 chapter. The regulations prescribed under this subchapter  
17 shall, to the extent appropriate, be consistent with the reg-  
18 ulations prescribed by the Secretary of Labor under title  
19 I of the Family and Medical Leave Act of 1993.”.

20 (2) TABLE OF CONTENTS.—The table of con-  
21 tents for chapter 63 of title 5, United States Code,  
22 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.”.

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

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

6 (2) by adding at the end the following new sub-  
7 paragraph:

8 “(E) subchapter V of chapter 63, which  
9 shall be applied so as to construe references to  
10 benefit programs to refer to applicable pro-  
11 grams for employees paid from nonappropriated  
12 funds; or”.

### 13 **TITLE III—COMMISSION ON** 14 **LEAVE**

#### 15 **SEC. 301. ESTABLISHMENT.**

16 There is established a commission to be known as the  
17 Commission on Leave (referred to in this title as the  
18 “Commission”).

#### 19 **SEC. 302. DUTIES.**

20 The Commission shall—

21 (1) conduct a comprehensive study of—

22 (A) existing and proposed policies relating  
23 to leave;

1 (B) the potential costs, benefits, and im-  
2 pact on productivity of such policies on employ-  
3 ers; and

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

7 (2) not later than 2 years after the date on  
8 which the Commission first meets, prepare and sub-  
9 mit, to the appropriate Committees of Congress, a  
10 report concerning the subjects listed in paragraph  
11 (1).

12 **SEC. 303. MEMBERSHIP.**

13 (a) COMPOSITION.—

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

19 (A) SENATORS.—One Senator shall be ap-  
20 pointed by the Majority Leader of the Senate,  
21 and one Senator shall be appointed by the Mi-  
22 nority Leader of the Senate.

23 (B) MEMBERS OF HOUSE OF REPRESENTA-  
24 TIVES.—One Member of the House of Rep-  
25 resentatives shall be appointed by the Speaker

1 of the House of Representatives, and one Mem-  
2 ber of the House of Representatives shall be ap-  
3 pointed by the Minority Leader of the House of  
4 Representatives.

5 (C) ADDITIONAL MEMBERS.—

6 (i) APPOINTMENT.—Two Members  
7 each shall be appointed by—

8 (I) the Speaker of the House of  
9 Representatives;

10 (II) the Majority Leader of the  
11 Senate;

12 (III) the Minority Leader of the  
13 House of Representatives; and

14 (IV) the Minority Leader of the  
15 Senate.

16 (ii) EXPERTISE.—Such members shall  
17 be appointed by virtue of demonstrated ex-  
18 pertise in relevant family, temporary dis-  
19 ability, and labor-management issues and  
20 shall include representatives of employers.

21 (2) EX OFFICIO MEMBERS.—The Secretary of  
22 Health and Human Services and the Secretary of  
23 Labor shall serve on the Commission as nonvoting  
24 ex officio members.

1       (b) VACANCIES.—Any vacancy on the Commission  
2 shall be filled in the manner in which the original appoint-  
3 ment was made. The vacancy shall not affect the power  
4 of the remaining members to execute the duties of the  
5 Commission.

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

9       (d) QUORUM.—Eight members of the Commission  
10 shall constitute a quorum for all purposes, except that a  
11 lesser number may constitute a quorum for the purpose  
12 of holding hearings.

13 **SEC. 304. COMPENSATION.**

14       (a) PAY.—Members of the Commission shall serve  
15 without compensation.

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

21 **SEC. 305. POWERS.**

22       (a) MEETINGS.—The Commission shall first meet not  
23 later than 30 days after the date on which all members  
24 are appointed, and the Commission shall meet thereafter

1 on the call of the chairperson or a majority of the  
2 members.

3 (b) HEARINGS AND SESSIONS.—The Commission  
4 may hold such hearings, sit and act at such times and  
5 places, take such testimony, and receive such evidence as  
6 the Commission considers appropriate. The Commission  
7 may administer oaths or affirmations to witnesses appear-  
8 ing before it.

9 (c) ACCESS TO INFORMATION.—The Commission  
10 may secure directly from any Federal agency information  
11 necessary to enable it to carry out this title, if the informa-  
12 tion may be disclosed under section 552 of title 5, United  
13 States Code. Subject to the previous sentence, on the re-  
14 quest of the chairperson or vice chairperson of the Com-  
15 mission, the head of such agency shall furnish such infor-  
16 mation to the Commission.

17 (d) USE OF FACILITIES AND SERVICES.—Upon the  
18 request of the Commission, the head of any Federal agen-  
19 cy may make available to the Commission any of the facili-  
20 ties and services of such agency.

21 (e) PERSONNEL FROM OTHER AGENCIES.—On the  
22 request of the Commission, the head of any Federal agen-  
23 cy may detail any of the personnel of such agency to serve  
24 as an Executive Director of the Commission or assist the  
25 Commission in carrying out the duties of the Commission.

1 Any detail shall not interrupt or otherwise affect the civil  
2 service status or privileges of the Federal employee.

3 (f) VOLUNTARY SERVICE.—Notwithstanding section  
4 1342 of title 31, United States Code, the chairperson of  
5 the Commission may accept for the Commission voluntary  
6 services provided by a member of the Commission.

7 **SEC. 306. TERMINATION.**

8 The Commission shall terminate 30 days after the  
9 date of the submission of the report of the Commission  
10 to Congress.

11 **TITLE IV—MISCELLANEOUS**  
12 **PROVISIONS**

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

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

19 (b) STATE AND LOCAL LAWS.—Nothing in this Act  
20 or any amendment made by this Act shall be construed  
21 to supersede any provision of any State or local law that  
22 provides greater family or medical leave rights than the  
23 rights established under this Act or any amendment made  
24 by this Act.

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

2 (a) MORE PROTECTIVE.—Nothing in this Act or any  
3 amendment made by this Act shall be construed to dimin-  
4 ish the obligation of an employer to comply with any col-  
5 lective bargaining agreement or any employment benefit  
6 program or plan that provides greater family or medical  
7 leave rights to employees than the rights established under  
8 this Act or any amendment made by this Act.

9 (b) LESS PROTECTIVE.—The rights established for  
10 employees under this Act or any amendment made by this  
11 Act shall not be diminished by any collective bargaining  
12 agreement or any employment benefit program or plan.

13 **SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE**  
14 **POLICIES.**

15 Nothing in this Act or any amendment made by this  
16 Act shall be construed to discourage employers from  
17 adopting or retaining leave policies more generous than  
18 any policies that comply with the requirements under this  
19 Act or any amendment made by this Act.

20 **SEC. 404. REGULATIONS.**

21 The Secretary of Labor shall prescribe such regula-  
22 tions as are necessary to carry out title I and this title  
23 not later than 120 days after the date of the enactment  
24 of this Act.

1 **SEC. 405. EFFECTIVE DATES.**

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

4 (b) OTHER TITLES.—

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

9 (2) COLLECTIVE BARGAINING AGREEMENTS.—  
10 In the case of a collective bargaining agreement in  
11 effect on the effective date prescribed by paragraph  
12 (1), title I shall apply on the earlier of—

13 (A) the date of the termination of such  
14 agreement; or

15 (B) the date that occurs 12 months after  
16 the date of the enactment of this Act.

17 **TITLE V—COVERAGE OF**  
18 **CONGRESSIONAL EMPLOYEES**

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

20 (a) COVERAGE.—The rights and protections estab-  
21 lished under sections 101 through 105 shall apply with  
22 respect to a Senate employee and an employing office. For  
23 purposes of such application, the term “eligible employee”  
24 means a Senate employee and the term “employer” means  
25 an employing office.

26 (b) CONSIDERATION OF ALLEGATIONS.—

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

5           (A) apply with respect to an allegation of  
6 a violation of a provision of sections 101  
7 through 105, with respect to Senate employ-  
8 ment of a Senate employee; and

9           (B) apply to such an allegation in the  
10 same manner and to the same extent as such  
11 sections of the Government Employee Rights  
12 Act of 1991 apply with respect to an allegation  
13 of a violation under such Act.

14           (2) ENTITY.—Such an allegation shall be ad-  
15 dressed by the Office of Senate Fair Employment  
16 Practices or such other entity as the Senate may  
17 designate.

18           (c) RIGHTS OF EMPLOYEES.—The Office of Senate  
19 Fair Employment Practices shall ensure that Senate em-  
20 ployees are informed of their rights under sections 101  
21 through 105.

22           (d) LIMITATIONS.—A request for counseling under  
23 section 305 of such Act by a Senate employee alleging a  
24 violation of a provision of sections 101 through 105 shall  
25 be made not later than 2 years after the date of the last

1 event constituting the alleged violation for which the coun-  
2 seling is requested, or not later than 3 years after such  
3 date in the case of a willful violation of section 105.

4 (e) APPLICABLE REMEDIES.—The remedies applica-  
5 ble to individuals who demonstrate a violation of a provi-  
6 sion of sections 101 through 105 shall be such remedies  
7 as would be appropriate if awarded under paragraph (1)  
8 or (3) of section 107(a).

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

20 (g) SEVERABILITY.—Notwithstanding any other pro-  
21 vision of law, if any provision of section 309 of the Govern-  
22 ment Employee Rights Act of 1991 (2 U.S.C. 1209), or  
23 of subsection (b)(1) insofar as it applies such section 309  
24 to an allegation described in subsection (b)(1)(A), is in-  
25 validated, both such section 309, and subsection (b)(1) in-

1 sofar as it applies such section 309 to such an allegation,  
2 shall have no force and effect, and shall be considered to  
3 be invalidated for purposes of section 322 of such Act (2  
4 U.S.C. 1221).

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

6 (1) EMPLOYING OFFICE.—The term “employing  
7 office” means the office with the final authority de-  
8 scribed in section 301(2) of such Act (2 U.S.C.  
9 1201(2)).

10 (2) SENATE EMPLOYEE.—The term “Senate  
11 employee” means an employee described in subpara-  
12 graph (A) or (B) of section 301(c)(1) of such Act  
13 (2 U.S.C. 1201(c)(1)) who has been employed for at  
14 least 12 months on other than a temporary or inter-  
15 mittent basis by any employing office.

16 **SEC. 502. LEAVE FOR CERTAIN CONGRESSIONAL EMPLOY-**  
17 **EES.**

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

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

1       (c) DEFINITION.—As used in this section, the term  
2 “Fair Employment Practices Resolution” means the reso-  
3 lution in rule LI of the Rules of the House of Representa-  
4 tives.

S 5 RS—2

S 5 RS—3

S 5 RS—4