

105TH CONGRESS
1ST SESSION

H. R. 851

To amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1997

Ms. ROYBAL-ALLARD (for herself, Mr. TORRES, Mrs. MORELLA, Mr. FROST, Mr. GUTIERREZ, Ms. SLAUGHTER, Ms. LOFGREN, Ms. NORTON, Mrs. MALONEY of New York, Ms. PELOSI, Mr. ACKERMAN, Mr. JACKSON of Illinois, Mr. CONYERS, Mr. LEWIS of Georgia, and Mr. BALDACCI) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, Government Reform and Oversight, and House Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Battered Women’s Employment Protection Act”.

1 (b) REFERENCE.—Whenever in this Act an amend-
2 ment or repeal is expressed in terms of an amendment
3 to, or repeal of, a section or other provision, the reference
4 shall be considered to be made to a section or other provi-
5 sion of the Family and Medical Leave Act of 1993.

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

7 (a) FINDINGS.—Congress finds that—

8 (1) violence against women is the leading cause
9 of physical injury to women, and the Department of
10 Justice estimates that intimate partners commit
11 more than one million violent crimes against women
12 every year;

13 (2) approximately 95 percent of the victims of
14 domestic violence are women;

15 (3) in the United States, a woman is more like-
16 ly to be assaulted, injured, raped, or killed by a male
17 partner than by any other type of assailant;

18 (4) the Bureau of Labor Statistics predicts that
19 women will account for two-thirds of all new en-
20 trants into the work force between now and the year
21 2000;

22 (5) violence against women dramatically affects
23 women's work force participation, insofar as one-
24 quarter of battered women surveyed had lost a job

1 due at least in part to the effects of domestic vio-
2 lence, and over half had been harassed by their
3 abuser at work;

4 (6) a study by Domestic Violence Intervention
5 Services, Inc. found that 96 percent of employed do-
6 mestic violence victims had some type of problem in
7 the workplace as a direct result of their abuse or
8 abuser;

9 (7) the availability of economic support is a
10 critical factor in women's ability to leave abusive sit-
11 uations that threaten them and their children, and
12 over half of battered women surveyed stayed with
13 their batterers because they lacked resources to sup-
14 port themselves and their children;

15 (8) a report by the New York City Victims
16 Services Agency found that abusive spouses and
17 lovers harass 74 percent of battered women at work,
18 54 percent of battering victims miss at least 3 days
19 of work per month, 56 percent are late for work at
20 least 5 times per month, and a University of Min-
21 nesota study found that 24 percent of women in
22 support groups for battered women had lost a job
23 partly because of being abused;

24 (9) a survey of State unemployment insurance
25 agency directors by the Federal Advisory Council on

1 Unemployment Compensation found that in 31
2 States battered women who leave work as a result
3 of domestic violence do not qualify for unemploy-
4 ment benefits, in 9 States the determination often
5 varies depending on the facts and circumstances,
6 and in only 13 States are they usually considered
7 qualified for unemployment benefits;

8 (10) a study by the New York State Depart-
9 ment of Labor found that, when filing for unemploy-
10 ment insurance benefits, domestic violence victims
11 frequently hide their victimization and do not dis-
12 close the domestic violence as a reason for their
13 problems with the job or need to separate from em-
14 ployment;

15 (11) 49 percent of senior executives recently
16 surveyed said domestic violence has a harmful effect
17 on their company's productivity, 47 percent said do-
18 mestic violence negatively affects attendance, and 44
19 percent said domestic violence increases health care
20 costs, and the Bureau of National Affairs estimates
21 that domestic violence costs employers between 3
22 and 5 billion dollars per year; and

23 (12) existing Federal and State legislation does
24 not expressly authorize battered women to take leave
25 from work to seek legal assistance and redress,

1 counseling, or assistance with safety planning and
2 activities.

3 (b) PURPOSES.—Pursuant to the affirmative power
4 of Congress to enact this Act under section 5 of the Four-
5 teenth Amendment to the Constitution, as well as under
6 clause 1 of section 8 of Article I of the Constitution and
7 clause 3 of section 8 of Article I of the Constitution, the
8 purposes of this Act are—

9 (1) to promote the national interest in reducing
10 domestic violence by enabling victims of domestic vi-
11 olence to maintain the financial independence nec-
12 essary to leave abusive situations, to achieve safety
13 and minimize the physical and emotional injuries
14 from domestic violence, and to reduce the devastat-
15 ing economic consequences of domestic violence to
16 employers and employees, by—

17 (A) providing unemployment insurance for
18 victims of domestic violence who are forced to
19 leave their employment as a result of domestic
20 violence; and

21 (B) entitling employed victims of domestic
22 violence to take reasonable leave under the
23 Family and Medical Leave Act of 1993 to seek
24 medical help, legal assistance, counseling, and

1 safety planning and assistance without penalty
2 from their employer;

3 (2) to promote the purposes of the Fourteenth
4 Amendment by protecting the civil and economic
5 rights of victims of domestic violence and by further-
6 ing the equal opportunity of women to employment
7 and economic self-sufficiency;

8 (3) to minimize the negative impact on inter-
9 state commerce from dislocations of employees and
10 harmful effects on productivity, health care costs,
11 and employer costs from domestic violence; and

12 (4) to accomplish the purposes described in
13 paragraphs (1) , (2) and (3) in a manner that ac-
14 commodates the legitimate interests of employers.

15 **SEC. 3. UNEMPLOYMENT COMPENSATION.**

16 (a) UNEMPLOYMENT COMPENSATION.—Section
17 3304(a) of the Internal Revenue Code of 1986 is amend-
18 ed—

19 (1) by striking “and” at the end of paragraph
20 (18),

21 (2) by striking the period at the end of para-
22 graph (19) and inserting “; and”,

23 (3) by adding after paragraph (19) the follow-
24 ing:

1 “(20) compensation is to be provided where an
2 individual is separated from employment due to cir-
3 cumstances directly resulting from the individual’s
4 experience of domestic violence.”,

5 (4) by redesignating subsections (b) through (f)
6 as subsections (c) through (g), respectively, and

7 (5) by adding after subsection (a) the following:

8 “(b) CONSTRUCTION.—

9 “(1) For the purpose of determining, under
10 subsection (a)(20), whether an employee’s separation
11 from employment is ‘directly resulting’ from the in-
12 dividual’s experience of domestic violence, it shall be
13 sufficient if the separation from employment re-
14 sulted from—

15 “(A) the employee’s reasonable fear of fu-
16 ture domestic violence at or en route to or from
17 her place of employment;

18 “(B) the employee’s wish to relocate to an-
19 other geographic area in order to avoid future
20 domestic violence against the employee or the
21 employee’s family;

22 “(C) the employee’s need to recover from
23 traumatic stress resulting from the employee’s
24 experience of domestic violence;

1 “(D) the employer’s denial of the employ-
2 ee’s request for the temporary leave from em-
3 ployment to address domestic violence and its
4 effects authorized by section 102 of the Family
5 and Medical Leave Act of 1993; or

6 “(E) any other respect in which domestic
7 violence causes the employee to reasonably be-
8 lieve that termination of employment is nec-
9 essary for the future safety of the employee or
10 the employee’s family.

11 “(2) For purposes of subsection (a)(20), where
12 State law requires the employee to have made rea-
13 sonable efforts to retain employment as a condition
14 for receiving unemployment compensation, it shall be
15 sufficient that the employee—

16 “(A) sought protection from or assistance
17 in responding to domestic violence, including
18 calling the police or seeking legal, social work,
19 medical, clergy, or other assistance;

20 “(B) sought safety, including refuge in a
21 shelter or temporary or permanent relocation,
22 whether or not the employee actually obtained
23 such refuge or accomplished such relocation; or

1 “(C) reasonably believed that options such
2 as a leave, transfer, or alternative work sched-
3 ule would not be sufficient to guarantee the em-
4 ployee or the employee’s family’s safety.

5 “(3) For purposes of subsection (a)(20), where
6 State law requires the employee to actively search
7 for employment after separation from employment
8 as a condition for receiving unemployment com-
9 pensation, such requirement shall be deemed to be
10 met where the employee is temporarily unable to ac-
11 tively search for employment because the employee is
12 engaged in seeking safety or relief for the employee
13 or the employee’s family from domestic violence, in-
14 cluding—

15 “(A) going into hiding or relocating or at-
16 tempting to do so, including activities associ-
17 ated with such relocation or hiding, such as
18 seeking to obtain sufficient shelter, food, school-
19 ing for children, or other necessities of life for
20 the employee or the employee’s family;

21 “(B) actively pursuing legal protection or
22 remedies, including meeting with the police,
23 going to court to make inquiries or file papers,
24 meeting with attorneys, or attending court pro-
25 ceedings; or

1 “(C) participating in psychological, social,
2 or religious counseling or support activities to
3 assist the employee in ending domestic violence.

4 “(4) In determining if an employee meets the
5 requirements of paragraphs (1), (2), and (3), the
6 employer of an employee may require the employee
7 to provide—

8 “(A) documentation of the domestic vio-
9 lence, such as police or court records, or docu-
10 mentation of the domestic violence from a shel-
11 ter worker, attorney, clergy, or medical or other
12 professional from whom the employee has
13 sought assistance in addressing domestic vio-
14 lence and its effects; or

15 “(B) other corroborating evidence, such as
16 a statement from any other individual with
17 knowledge of the circumstances which provide
18 the basis for the claim, or physical evidence of
19 domestic violence, such as photographs, torn or
20 bloody clothes, etc.”.

21 All evidence of domestic violence experienced by an
22 employee, including an employee’s statement, any
23 corroborating evidence, and the fact that an em-
24 ployee has applied for or inquired about unemploy-
25 ment compensation available under section

1 3304(a)(20) shall be retained in the strictest con-
2 fidence of the employer, except to the extent con-
3 sented to by the employee where disclosure is nec-
4 essary to protect the employee’s safety.”.

5 (b) SOCIAL SECURITY PERSONNEL TRAINING.—Sec-
6 tion 303(a) of the Social Security Act (42 U.S.C.
7 503(a)(4)) is amended by redesignating paragraphs (4)
8 through (10) as paragraphs (5) through (11), respectively,
9 and by adding after paragraph (3) the following:

10 “(4) Such methods of administration as will en-
11 sure that claims reviewers and hearing personnel are
12 adequately trained in the nature and dynamics of
13 domestic violence and in methods of ascertaining
14 and keeping confidential information about possible
15 experiences of domestic violence, so that employment
16 separations stemming from domestic violence are re-
17 liably screened, identified, and adjudicated and full
18 confidentiality is provided for the employee’s claim
19 and submitted evidence.”.

20 (c) DEFINITIONS.—Section 3306 of the Internal Rev-
21 enue Code of 1986 is amended by adding at the end the
22 following:

23 “(u) DOMESTIC VIOLENCE.—The term ‘domestic vio-
24 lence’ includes abuse committed against an employee or
25 a family member of the employee by—

1 “(1) a current or former spouse of the em-
2 ployee;

3 “(2) a person with whom the employee shares
4 a child in common;

5 “(3) a person who is cohabitating with or has
6 cohabitated with the employee as a romantic or inti-
7 mate partner; or

8 “(4) a person from whom the employee would
9 be eligible for protection under the domestic vio-
10 lence, protection order, or family laws of the juris-
11 diction in which the employee resides or the em-
12 ployer is located.

13 “(v) ABUSE.—The term ‘abuse’ includes—

14 “(1) physical acts resulting in, or threatening to
15 result in, physical injury;

16 “(2) sexual abuse, sexual activity involving a
17 dependent child, or threats of or attempts at sexual
18 abuse;

19 “(3) mental abuse, including threats, intimidat-
20 ion, acts designed to induce terror, or restraints on
21 liberty; and

22 “(4) deprivation of medical care, housing, food
23 or other necessities of life.”.

1 **SEC. 4. ENTITLEMENT TO LEAVE FOR DOMESTIC VIO-**
2 **LENCE.**

3 (a) **AUTHORITY FOR LEAVE.**—Section 102(a)(1) (29
4 U.S.C. 2612(a)(1)) is amended by adding at the end the
5 following:

6 “(E) In order to care for the child or par-
7 ent of the employee, if such child or parent is
8 addressing domestic violence and its effects.

9 “(F) Because the employee is addressing
10 domestic violence and its effects, the employee
11 is unable to perform any of the functions of the
12 position of such employee.”.

13 (b) **DEFINITION.**—Section 101 (29 U.S.C. 2611) is
14 amended by adding at the end the following:

15 “(14) **ADDRESSING DOMESTIC VIOLENCE AND**
16 **ITS EFFECTS.**—The term ‘addressing domestic vio-

17 **lence and its effects’ means—**
18 “(A) experiencing domestic violence,

19 “(B) seeking medical attention for or re-
20 covering from injuries caused by domestic vio-
21 lence,

22 “(C) seeking legal assistance or remedies,
23 including communicating with the police or an
24 attorney, or participating in any legal proceed-
25 ing related to domestic violence,

1 “(D) attending support groups for victims
2 of domestic violence,

3 “(E) obtaining psychological counseling re-
4 lated to experiences of domestic violence,

5 “(F) participating in safety planning and
6 other actions to increase safety from future do-
7 mestic violence, including temporary or perma-
8 nent relocation and

9 “(G) any other activity necessitated by do-
10 mestic violence which must be undertaken dur-
11 ing hours of employment.”.

12 (c) INTERMITTENT OR REDUCED LEAVE.—Section
13 102(b) (29 U.S.C. 2612(b)) is amended by adding at the
14 end the following:

15 “(3) DOMESTIC VIOLENCE.—Leave under sub-
16 paragraph (E) or (F) of subsection (a)(1) may be
17 taken by an employee intermittently or on a reduced
18 leave schedule. The taking of leave intermittently or
19 on a reduced leave schedule pursuant to this para-
20 graph shall not result in a reduction in the total
21 amount of leave to which the employee is entitled
22 under subsection (a) beyond the amount of leave ac-
23 tually taken.”.

1 (d) PAID LEAVE.—Section 102(d)(2) (29 U.S.C.
2 2612(d)) is amended by striking “(C) or (D)” and insert-
3 ing “(C), (D), (E), or (F)”.

4 (e) CERTIFICATION.—Section 103 (29 U.S.C. 2613)
5 is amended by redesignating subsection (e) as subsection
6 (f) and by inserting after subsection (d) the following:

7 “(e) DOMESTIC VIOLENCE.—In determining if an
8 employee meets the requirements of subparagraph (E) or
9 (F) of section 102(a)(1), the employer of an employee may
10 require the employee to provide—

11 “(1) documentation of the domestic violence,
12 such as police or court records, or documentation of
13 the domestic violence from a shelter worker, attor-
14 ney, clergy, or medical or other professional from
15 whom the employee has sought assistance in ad-
16 dressing domestic violence and its effects; or

17 “(2) other corroborating evidence, such as a
18 statement from any other individual with knowledge
19 of the circumstances which provide the basis for the
20 claim, or physical evidence of domestic violence, such
21 as photographs, torn or bloody clothes, etc.”.

22 (f) CONFIDENTIALITY.—Section 103 (29 U.S.C.
23 2613), as amended by subsection (e), is amended—

24 (1) in the title by adding before the period the
25 following: “; **CONFIDENTIALITY**”, and

1 (2) by adding at the end the following:

2 “(g) CONFIDENTIALITY.—All evidence of domestic vi-
3 olence experienced by an employee or the employee’s child
4 or parent, including an employee’s statement, any corrobo-
5 rating evidence, and the fact that an employee has re-
6 quested leave for the purpose of addressing domestic vio-
7 lence and its effects, shall be retained in the strictest con-
8 fidence by the employer, except to the extent consented
9 to by the employee where disclosure is necessary to protect
10 the employee’s safety.”.

11 **SEC. 5. ENTITLEMENT TO LEAVE FOR FEDERAL EMPLOY-**
12 **EES FOR DOMESTIC VIOLENCE.**

13 (a) AUTHORITY FOR LEAVE.—Section 6382 of title
14 5, United States Code is amended by adding at the end
15 the following:

16 “(E) In order to care for the child or parent of
17 the employee, if such child or parent is addressing
18 domestic violence and its effects.

19 “(F) Because the employee is addressing do-
20 mestic violence and its effects, the employee is un-
21 able to perform any of the functions of the position
22 of such employee.”.

23 (b) DEFINITION.—Section 6381 of title 5, United
24 States Code is amended by striking “and” at the end of

1 paragraph (5), by striking the period at the end of para-
2 graph (6) and inserting “; and” and by adding at the end
3 the following:

4 “(7) the term ‘addressing domestic violence and
5 its effects’ means—

6 “(A) experiencing domestic violence,

7 “(B) seeking medical attention for or re-
8 covering from injuries caused by domestic vio-
9 lence,

10 “(C) seeking legal assistance or remedies,
11 including communicating with the police or an
12 attorney, or participating in any legal proceed-
13 ing related to domestic violence,

14 “(D) attending support groups for victims
15 of domestic violence,

16 “(E) obtaining psychological counseling re-
17 lated to experiences of domestic violence,

18 “(F) participating in safety planning and
19 other actions to increase safety from future do-
20 mestic violence, including temporary or perma-
21 nent relocation and

22 “(G) any other activity necessitated by do-
23 mestic violence which must be undertaken dur-
24 ing hours of employment.”.

1 (c) INTERMITTENT OR REDUCED LEAVE.—Section
2 6382(b) of title 5, United States Code, is amended by add-
3 ing at the end the following:

4 “(3) Leave under subparagraph (E) or (F) of
5 subsection (a)(1) may be taken by an employee
6 intermittently or on a reduced leave schedule. The
7 taking of leave intermittently or on a reduced leave
8 schedule pursuant to this paragraph shall not result
9 in a reduction in the total amount of leave to which
10 the employee is entitled under subsection (a) beyond
11 the amount of leave actually taken.”.

12 (d) OTHER LEAVE.—Section 6382(d) of title 5, Unit-
13 ed States Code, is amended by striking “(C) or (D)” and
14 inserting “(C), (D), (E), or (F)”.

15 (e) CERTIFICATION.—Section 6383 of title 5, United
16 States Code, is amended by redesignating subsection (e)
17 as subsection (f) and by inserting after subsection (d) the
18 following:

19 “(e) DOMESTIC VIOLENCE.—In determining if an
20 employee meets the requirements of subparagraph (E) or
21 (F) of section 6382(a)(1), the employer of an employee
22 may require the employee to provide—

23 “(1) documentation of the domestic violence,
24 such as police or court records, or documentation of

1 the domestic violence from a shelter worker, attor-
2 ney, clergy, or medical or other professional from
3 whom the employee has sought assistance in ad-
4 dressing domestic violence and its effects; or

5 “(2) other corroborating evidence, such as a
6 statement from any other individual with knowledge
7 of the circumstances which provide the basis for the
8 claim, or physical evidence of domestic violence, such
9 as photographs, torn or bloody clothes, etc.”.

10 (f) CONFIDENTIALITY.—Section 6383 of title 5,
11 United States Code, as amended by subsection (e), is
12 amended—

13 (1) in the title by adding before the period the
14 following: “; **Confidentiality**”, and

15 (2) by adding at the end the following:

16 “(g) CONFIDENTIALITY.—All evidence of domestic vi-
17 olence experienced by an employee or the employee’s child
18 or parent, including an employee’s statement, any corrobo-
19 rating evidence, and the fact that an employee has re-
20 quested leave for the purpose of addressing domestic vio-
21 lence and its effects, shall be retained in the strictest con-
22 fidence by the employer, except to the extent consented
23 to by the employee where disclosure is necessary to protect
24 the employee’s safety.”.

1 **SEC. 6. EFFECT ON OTHER LAWS AND EMPLOYMENT BENE-**
2 **FITS.**

3 (1) MORE PROTECTIVE.—Nothing in this Act
4 or the amendments made by this Act shall be con-
5 strued to supersede any provision of any Federal,
6 State or local law, collective bargaining agreement,
7 or other employment benefit program which provides
8 greater unemployment compensation or leave bene-
9 fits for employed victims of domestic violence than
10 the rights established under this Act or such amend-
11 ments.

12 (2) LESS PROTECTIVE.—The rights established
13 for employees under this Act or the amendments
14 made by this Act shall not be diminished by any col-
15 lective bargaining agreement, any employment bene-
16 fit program or plan, or any State or local law.

17 **SEC. 7. EFFECTIVE DATE.**

18 (a) GENERAL RULE.—Except as provided in sub-
19 section (b), this Act and the amendments made by this
20 Act shall take effect upon the expiration of 180 days from
21 the date of the enactment of this Act.

22 (b) UNEMPLOYMENT COMPENSATION.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by section 3 shall

1 apply in the case of compensation paid for weeks be-
2 ginning on or after the expiration of 180 days from
3 the date of the enactment of this Act.

4 (2) MEETING OF STATE LEGISLATURE.—In the
5 case of a State with respect to which the Secretary
6 of Labor has determined that the State legislature
7 is required in order to comply with the amendments
8 made by section 3, the amendments made by section
9 3 shall apply in the case of compensation paid for
10 weeks which begin on or after the expiration of 180
11 days from the date of the enactment of this Act and
12 after the end of the first session of the State legisla-
13 ture which begins after the date of the enactment of
14 this Act or which began prior to the date of the en-
15 actment of this Act and remained in session for at
16 least 25 calendar days after such date of enactment.
17 For purposes of the preceding sentence, the term
18 “session” means a regular, special, budget, or other
19 session of a State legislature.

○