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1ST SESSION

S. 1085

To provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2005

Mr. KENNEDY (for himself, Mr. DURBIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. HARKIN, Mr. DODD, Mr. LAUTENBERG, Mr. CORZINE, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. SCHUMER, and Mr. DAYTON) introduced the following bill; which was read the first time

MAY 20, 2005

Read the second time and placed on the calendar

A BILL

To provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Healthy Families Act”.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

1 (1) Working Americans need to take time off
2 for their own health care needs or to perform essen-
3 tial caretaking responsibilities for a wide range of
4 family members, including, among others, their chil-
5 dren, spouse, parents, and parents-in-law, and other
6 children and adults for whom they are caretakers.

7 (2) Health care needs include preventive health
8 care, diagnostic procedures, medical treatment, and
9 recovery in response to short- and long-term ill-
10 nesses and injuries.

11 (3) Providing employees time off to tend to
12 their own health care needs ensures that they will be
13 healthier in the long run. Preventive care helps avoid
14 illnesses and injuries and routine medical care helps
15 detect illnesses early and shorten the duration of ill-
16 nesses.

17 (4) When parents are available to care for their
18 children who become sick, children recover faster,
19 more serious illnesses are prevented, and children's
20 overall mental and physical health are improved.
21 Parents who cannot afford to miss work and must
22 send children with a contagious illness to child care
23 or school contribute to the high rate of infections in
24 child care centers and schools.

1 (5) Providing paid sick leave improves public
2 health by reducing infectious disease. Policies that
3 make it easier for sick adults and children to be iso-
4 lated at home reduce the spread of infectious dis-
5 ease.

6 (6) Routine medical care results in savings by
7 decreasing medical costs by detecting and treating
8 illness and injury early, decreasing the need for
9 emergency care. These savings benefit public and
10 private payers of health insurance, including private
11 businesses.

12 (7) The provision of individual and family sick
13 leave by large and small businesses, both here in the
14 United States and elsewhere, demonstrates that pol-
15 icy solutions are both feasible and affordable in a
16 competitive economy. Measures that ensure that em-
17 ployees are both in good health themselves and do
18 not need to worry about unmet family health prob-
19 lems help businesses by promoting productivity and
20 reducing employee turnover.

21 (8) The American Productivity Audit found
22 that presenteeism—the practice of employees coming
23 to work despite illness—costs \$180,000,000,000 an-
24 nually in lost productivity. Studies in the *Journal of*
25 *Occupational and Environmental Medicine*, the Em-

1 ployee Benefit News, and the Harvard Business Re-
2 view show that presenteeism is a larger productivity
3 drain than either absenteeism or short-term dis-
4 ability.

5 (9) The absence of sick leave has forced Ameri-
6 cans to make untenable choices between needed in-
7 come and jobs on the one hand and caring for their
8 own and their family's health on the other.

9 (10) The majority of middle income Americans
10 lack paid leave for self-care or to care for a family
11 member. Low-income Americans are significantly
12 worse off. Of the poorest families (the lowest quar-
13 tile), 76 percent lack regular sick leave. For families
14 in the next 2 quartiles, 63 percent and 54 percent,
15 respectively lack regular sick leave. Even in the
16 highest income quartile, 40 percent of families lack
17 regular sick leave. Less than $\frac{1}{2}$ of workers who have
18 paid sick leave can use it to care for ill children.

19 (11) It is in the national interest to ensure that
20 Americans from all demographic groups can care for
21 their own health and the health of their families
22 while prospering at work.

23 (12) Due to the nature of the roles of men and
24 women in society, the primary responsibility for fam-
25 ily caretaking often falls on women, and such re-

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

3 (13) Although women are still primarily respon-
4 sible for family caretaking, an increasing number of
5 men are taking on caretaking obligations, and men
6 who request leave time for caretaking purposes are
7 often denied accommodation or penalized because of
8 stereotypes that caretaking is only “women’s work”.

9 (14) Employers’ reliance on persistent stereo-
10 types about the “proper” roles of both men and
11 women in the workplace and in the home—

12 (A) creates a cycle of discrimination that
13 forces women to continue to assume the role of
14 primary family caregiver; and

15 (B) fosters stereotypical views among em-
16 ployers about women’s commitment to work and
17 their value as employees.

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

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are—

24 (1) to ensure that all working Americans can
25 address their own health needs and the health needs

1 of their families by requiring employers to provide a
2 minimum level of paid sick leave including leave for
3 family care;

4 (2) to diminish public and private health care
5 costs by enabling workers to seek early and routine
6 medical care for themselves and their family mem-
7 bers;

8 (3) to accomplish the purposes described in
9 paragraphs (1) and (2) in a manner that is feasible
10 for employers; and

11 (4) consistent with the provision of the 14th
12 amendment to the Constitution relating to equal
13 protection of the laws, and pursuant to Congress'
14 power to enforce that provision under section 5 of
15 that amendment—

16 (A) to accomplish the purposes described
17 in paragraphs (1) and (2) in a manner that
18 minimizes the potential for employment dis-
19 crimination on the basis of sex by ensuring gen-
20 erally that leave is available for eligible medical
21 reasons on a gender-neutral basis; and

22 (B) to promote the goal of equal employ-
23 ment opportunity for women and men.

24 **SEC. 4. DEFINITIONS.**

25 In this Act:

1 (1) CHILD.—The term “child” means a biological,
2 foster, or adopted child, a stepchild, a legal
3 ward, or a child of a person standing in loco
4 parentis, who is—

5 (A) under 18 years of age; or

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

9 (2) EMPLOYEE.—The term “employee” means
10 an individual—

11 (A) who is—

12 (i)(I) an employee (including an applicant), as defined in section 3(e) of the Fair
13 Labor Standards Act of 1938 (29 U.S.C.
14 203(e)), who is not covered under clause
15 (v), including such an employee of the Library of Congress, except that a reference
16 in such section to an employer shall be
17 considered to be a reference to an employer
18 described in clauses (i)(I) and (ii) of paragraph (3)(A); or
19

20 (ii) an employee (including an applicant) of the Government Accountability
21 Office;
22
23
24

1 (ii) a State employee (including an ap-
2 plicant) described in section 304(a) of the
3 Government Employee Rights Act of 1991
4 (42 U.S.C. 2000e–16c(a));

5 (iii) a covered employee (including an
6 applicant), as defined in section 101 of the
7 Congressional Accountability Act of 1995
8 (2 U.S.C. 1301);

9 (iv) a covered employee (including an
10 applicant), as defined in section 411(e) of
11 title 3, United States Code; or

12 (v) a Federal officer or employee (in-
13 cluding an applicant) covered under sub-
14 chapter V of chapter 63 of title 5, United
15 States Code; and

16 (B) who works an average of at least 20
17 hours per week or, in the alternative, at least
18 1,000 hours per year.

19 (3) EMPLOYER.—

20 (A) IN GENERAL.—The term “employer”
21 means a person who is—

22 (i)(I) a covered employer, as defined
23 in subparagraph (B), who is not covered
24 under subclause (V);

1 (II) an entity employing a State em-
2 ployee described in section 304(a) of the
3 Government Employee Rights Act of 1991;

4 (III) an employing office, as defined
5 in section 101 of the Congressional Ac-
6 countability Act of 1995;

7 (IV) an employing office, as defined in
8 section 411(c) of title 3, United States
9 Code; or

10 (V) an employing agency covered
11 under subchapter V of chapter 63 of title
12 5, United States Code; and

13 (ii) is engaged in commerce (including
14 government), in the production of goods
15 for commerce, or in an enterprise engaged
16 in commerce (including government) or in
17 the production of goods for commerce.

18 (B) COVERED EMPLOYER.—

19 (i) IN GENERAL.—In subparagraph
20 (A)(i)(I), the term “covered employer”—

21 (I) means any person engaged in
22 commerce or in any industry or activ-
23 ity affecting commerce who employs
24 15 or more employees for each work-
25 ing day during each of 20 or more

1 calendar workweeks in the current or
2 preceding calendar year;

3 (II) includes—

4 (aa) any person who acts,
5 directly or indirectly, in the inter-
6 est of an employer to any of the
7 employees of such employer; and

8 (bb) any successor in inter-
9 est of an employer;

10 (III) includes any “public agen-
11 cy”, as defined in section 3(x) of the
12 Fair Labor Standards Act of 1938
13 (29 U.S.C. 203(x)); and

14 (IV) includes the Government
15 Accountability Office and the Library
16 of Congress.

17 (ii) PUBLIC AGENCY.—For purposes
18 of clause (i)(III), a public agency shall be
19 considered to be a person engaged in com-
20 merce or in an industry or activity affect-
21 ing commerce.

22 (iii) DEFINITIONS.—For purposes of
23 this subparagraph:

24 (I) COMMERCE.—The terms
25 “commerce” and “industry or activity

1 affecting commerce” mean any activ-
2 ity, business, or industry in commerce
3 or in which a labor dispute would
4 hinder or obstruct commerce or the
5 free flow of commerce, and include
6 “commerce” and any “industry affect-
7 ing commerce”, as defined in para-
8 graphs (1) and (3) of section 501 of
9 the Labor Management Relations Act,
10 1947 (29 U.S.C. 142 (1) and (3)).

11 (II) EMPLOYEE.—The term “em-
12 ployee” has the same meaning given
13 such term in section 3(e) of the Fair
14 Labor Standards Act of 1938 (29
15 U.S.C. 203(e)).

16 (III) PERSON.—The term “per-
17 son” has the same meaning given
18 such term in section 3(a) of the Fair
19 Labor Standards Act of 1938 (29
20 U.S.C. 203(a)).

21 (C) PREDECESSORS.—Any reference in
22 this paragraph to an employer shall include a
23 reference to any predecessor of such employer.

24 (4) EMPLOYMENT BENEFITS.—The term “em-
25 ployment benefits” means all benefits provided or

1 made available to employees by an employer, includ-
2 ing group life insurance, health insurance, disability
3 insurance, sick leave, annual leave, educational bene-
4 fits, and pensions, regardless of whether such bene-
5 fits are provided by a practice or written policy of
6 an employer or through an “employee benefit plan”,
7 as defined in section 3(3) of the Employee Retire-
8 ment Income Security Act of 1974 (29 U.S.C.
9 1002(3)).

10 (5) HEALTH CARE PROVIDER.—The term
11 “health care provider” means a provider who—

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

16 (ii) is any other person determined by the
17 Secretary to be capable of providing health care
18 services; and

19 (B) is not employed by an employer for
20 whom the provider issues certification under
21 this Act.

22 (6) PARENT.—The term “parent” means a bio-
23 logical, foster, or adoptive parent of an employee, a
24 stepparent of an employee, or a legal guardian or

1 other person who stood in loco parentis to an em-
2 ployee when the employee was a child.

3 (7) PRO RATA.—The term “pro rata”, with re-
4 spect to benefits offered to part-time employees,
5 means the proportion of each of the benefits offered
6 to full-time employees that are offered to part-time
7 employees that, for each benefit, is equal to the ratio
8 of part-time hours worked to full-time hours worked.

9 (8) SECRETARY.—The term “Secretary” means
10 the Secretary of Labor.

11 (9) SICK LEAVE.—The term “sick leave” means
12 an increment of compensated leave provided by an
13 employer to an employee as a benefit of employment
14 for use by the employee during an absence from em-
15 ployment for any of the reasons described in para-
16 graphs (1) through (3) of section 5(d).

17 (10) SPOUSE.—The term “spouse”, with re-
18 spect to an employee, has the meaning given such
19 term by the marriage laws of the State in which the
20 employee resides.

21 **SEC. 5. PROVISION OF PAID SICK LEAVE.**

22 (a) IN GENERAL.—An employer shall provide for
23 each employee employed by the employer not less than—

24 (1) 7 days of sick leave with pay annually for
25 employees working 30 or more hours per week; or

1 (2) a pro rata number of days or hours of sick
2 leave with pay annually for employees working less
3 than—

4 (A) 30 hours per week on a year-round
5 basis; or

6 (B) 1,500 hours throughout the year in-
7 volved.

8 (b) ACCRUAL.—

9 (1) PERIOD OF ACCRUAL.—Sick leave provided
10 for under this section shall accrue as determined ap-
11 propriate by the employer, but not on less than a
12 quarterly basis.

13 (2) ACCUMULATION.—Accrued sick leave pro-
14 vided for under this section shall carry over from
15 year to year, but this Act shall not be construed to
16 require an employer to permit an employee to accu-
17 mulate more than 7 days of the sick leave.

18 (3) USE.—The sick leave may be used as ac-
19 crued. The employer, at the discretion of the em-
20 ployer, may loan the sick leave to the employee in
21 advance of accrual by such employee.

22 (c) CALCULATION.—

23 (1) LESS THAN A FULL WORKDAY.—Unless the
24 employer and employee agree to designate otherwise,

1 for periods of sick leave that are less than a normal
2 workday, that leave shall be counted—

3 (A) on an hourly basis; or

4 (B) in the smallest increment that the em-
5 ployer's payroll system uses to account for ab-
6 sences or use of leave.

7 (2) VARIABLE SCHEDULE.—If the schedule of
8 an employee varies from week to week, a weekly av-
9 erage of the hours worked over the 12-week period
10 prior to the beginning of a sick leave period shall be
11 used to calculate the employee's normal workweek
12 for the purpose of determining the amount of sick
13 leave to which the employee is entitled.

14 (d) USES.—Sick leave accrued under this section may
15 be used by an employee for any of the following:

16 (1) An absence resulting from a physical or
17 mental illness, injury, or medical condition of the
18 employee.

19 (2) An absence resulting from obtaining profes-
20 sional medical diagnosis or care, or preventive med-
21 ical care, for the employee subject to the require-
22 ment of subsection (e).

23 (3) An absence for the purpose of caring for a
24 child, a parent, a spouse, or any other individual re-
25 lated by blood or affinity whose close association

1 with the employee is the equivalent of a family rela-
2 tionship, who—

3 (A) has any of the conditions or needs for
4 diagnosis or care described in paragraph (1) or
5 (2); and

6 (B) in the case of someone who is not a
7 child, is otherwise in need of care.

8 (e) SCHEDULING.—An employee shall make a reason-
9 able effort to schedule leave under paragraphs (2) and (3)
10 of subsection (d) in a manner that does not unduly disrupt
11 the operations of the employer.

12 (f) PROCEDURES.—

13 (1) IN GENERAL.—Paid sick leave shall be pro-
14 vided upon the oral or written request of an em-
15 ployee. Such request shall—

16 (A) include a reason for the absence in-
17 volved and the expected duration of the leave;

18 (B) in a case in which the need for leave
19 is foreseeable at least 7 days in advance of such
20 leave, be provided at least 7 days in advance of
21 such leave; and

22 (C) otherwise, be provided as soon as prac-
23 ticable after the employee is aware of the need
24 for such leave.

25 (2) CERTIFICATION.—

1 (A) PROVISION.—

2 (i) IN GENERAL.—Subject to subpara-
3 graph (C), an employer may require that a
4 request for leave be supported by a certifi-
5 cation issued by the health care profes-
6 sional of the eligible employee or of an in-
7 dividual described in subsection (d)(3), as
8 appropriate, if the leave period covers more
9 than 3 consecutive workdays.

10 (ii) TIMELINESS.—The employee shall
11 provide a copy of such certification to the
12 employer in a timely manner, not later
13 than 30 days after the first day of the
14 leave. The employer shall not delay the
15 commencement of the leave on the basis
16 that the employer has not yet received the
17 certification.

18 (B) SUFFICIENT CERTIFICATION.—

19 (i) IN GENERAL.—A certification pro-
20 vided under subparagraph (A) shall be suf-
21 ficient if it states—

22 (I) the date on which the leave
23 will be needed;

24 (II) the probable duration of the
25 leave;

1 (III) the appropriate medical
2 facts within the knowledge of the
3 health care provider regarding the
4 condition involved, subject to clause
5 (ii); and

6 (IV)(aa) for purposes of leave
7 under subsection (d)(1), a statement
8 that leave from work is medically nec-
9 essary;

10 (bb) for purposes of leave under
11 subsection (d)(2), the dates on which
12 testing for a medical diagnosis or care
13 is expected to be given and the dura-
14 tion of such testing or care; and

15 (cc) for purposes of leave under
16 subsection (d)(3), in the case of leave
17 to care for someone who is not a
18 child, a statement that care is needed
19 for an individual described in such
20 subsection, and an estimate of the
21 amount of time that such care is
22 needed for such individual.

23 (ii) LIMITATION.—In issuing a certifi-
24 cation under subparagraph (A), a health
25 care provider shall make reasonable efforts

1 to limit the medical facts described in
2 clause (i)(III) that are disclosed in the cer-
3 tification to the minimum necessary to es-
4 tablish a need for the employee to utilize
5 paid sick leave.

6 (C) REGULATIONS.—Regulations pre-
7 scribed under section 13 shall specify the man-
8 ner in which an employee who does not have
9 health insurance shall provide a certification for
10 purposes of this paragraph.

11 (D) CONFIDENTIALITY AND NONDISCLO-
12 SURE.—

13 (i) PROTECTED HEALTH INFORMA-
14 TION.—Nothing in this Act shall be con-
15 strued to require a health care provider to
16 disclose information in violation of section
17 1177 of the Social Security Act (42 U.S.C.
18 1320d–6) or the regulations promulgated
19 pursuant to section 264(c) of the Health
20 Insurance Portability and Accountability
21 Act (42 U.S.C. 1320d–2 note).

22 (ii) HEALTH INFORMATION
23 RECORDS.—If an employer possesses
24 health information about an employee or
25 an employee’s child, parent, spouse or

1 other individual described in subsection
2 (d)(3), such information shall—

3 (I) be maintained on a separate
4 form and in a separate file from other
5 personnel information;

6 (II) be treated as a confidential
7 medical record; and

8 (III) not be disclosed except to
9 the affected employee or with the per-
10 mission of the affected employee.

11 (g) CURRENT LEAVE POLICIES.—

12 (1) EQUIVALENCY REQUIREMENT.—An em-
13 ployer with a leave policy providing paid leave op-
14 tions shall not be required to modify such policy, if
15 such policy offers an employee the option, at the em-
16 ployee's discretion, to take paid sick leave that is at
17 least equivalent to the sick leave described in para-
18 graphs (1) and (2) of subsection (a) and subsection
19 (d), or if the policy offers paid leave (in amounts
20 equivalent to the amounts described in such para-
21 graphs) for purposes that include the reasons de-
22 scribed in subsection (d).

23 (2) NO ELIMINATION OR REDUCTION OF
24 LEAVE.—An employer may not eliminate or reduce
25 leave in existence on the date of enactment of this

1 Act, regardless of the type of such leave, in order to
2 comply with the provisions of this Act.

3 **SEC. 6. POSTING REQUIREMENT.**

4 (a) IN GENERAL.—Each employer shall post and
5 keep posted a notice, to be prepared or approved in ac-
6 cordance with procedures specified in regulations pre-
7 scribed under section 13, setting forth excerpts from, or
8 summaries of, the pertinent provisions of this Act includ-
9 ing—

10 (1) information describing leave available to
11 employees under this Act;

12 (2) information pertaining to the filing of an
13 action under this Act;

14 (3) the details of the notice requirement for
15 foreseeable leave under section 5(f)(1)(B); and

16 (4) information that describes—

17 (A) the protections that an employee has
18 in exercising rights under this Act; and

19 (B) how the employee can contact the Sec-
20 retary (or other appropriate authority as de-
21 scribed in section 8) if any of the rights are vio-
22 lated.

23 (b) LOCATION.—The notice described under sub-
24 section (a) shall be posted—

1 (1) in conspicuous places on the premises of the
2 employer, where notices to employees (including ap-
3 plicants) are customarily posted; or

4 (2) in employee handbooks.

5 (c) VIOLATION; PENALTY.—Any employer who will-
6 fully violates the posting requirements of this section shall
7 be subject to a civil fine in an amount not to exceed \$100
8 for each separate offense.

9 **SEC. 7. PROHIBITED ACTS.**

10 (a) INTERFERENCE WITH RIGHTS.—

11 (1) EXERCISE OF RIGHTS.—It shall be unlawful
12 for any employer to interfere with, restrain, or deny
13 the exercise of, or the attempt to exercise, any right
14 provided under this Act.

15 (2) DISCRIMINATION.—It shall be unlawful for
16 any employer to discharge or in any other manner
17 discriminate against (including retaliating against)
18 any individual for opposing any practice made un-
19 lawful by this Act, including—

20 (A) discharging or discriminating against
21 (including retaliating against) any individual for
22 exercising, or attempting to exercise, any right
23 provided under this Act;

24 (B) using the taking of sick leave under
25 this Act as a negative factor in an employment

1 action, such as hiring, promotion, or a discipli-
2 nary action; or

3 (C) counting the sick leave under a no-
4 fault attendance policy.

5 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
6 IES.—It shall be unlawful for any person to discharge or
7 in any other manner discriminate against (including retali-
8 ating against) any individual because such individual—

9 (1) has filed an action, or has instituted or
10 caused to be instituted any proceeding, under or re-
11 lated to this Act;

12 (2) has given, or is about to give, any informa-
13 tion in connection with any inquiry or proceeding re-
14 lating to any right provided under this Act; or

15 (3) has testified, or is about to testify, in any
16 inquiry or proceeding relating to any right provided
17 under this Act.

18 (c) CONSTRUCTION.—Nothing in this section shall be
19 construed to state or imply that the scope of the activities
20 prohibited by section 105 of the Family and Medical Leave
21 Act of 1993 (29 U.S.C. 2615) is less than the scope of
22 the activities prohibited by this section.

23 **SEC. 8. ENFORCEMENT AUTHORITY.**

24 (a) IN GENERAL.—

25 (1) DEFINITION.—In this subsection:

1 (A) the term “employee” means an em-
2 ployee described in clause (i) or (ii) of section
3 4(2)(A); and

4 (B) the term “employer” means an em-
5 ployer described in subclause (I) or (II) of sec-
6 tion 4(3)(A)(i).

7 (2) INVESTIGATIVE AUTHORITY.—

8 (A) IN GENERAL.—To ensure compliance
9 with the provisions of this Act, or any regula-
10 tion or order issued under this Act, the Sec-
11 retary shall have, subject to subparagraph (C),
12 the investigative authority provided under sec-
13 tion 11(a) of the Fair Labor Standards Act of
14 1938 (29 U.S.C. 211(a)), with respect to em-
15 ployees and employers.

16 (B) OBLIGATION TO KEEP AND PRESERVE
17 RECORDS.—An employer shall make, keep, and
18 preserve records pertaining to compliance with
19 this Act in accordance with section 11(c) of the
20 Fair Labor Standards Act of 1938 (29 U.S.C.
21 211(c)) and in accordance with regulations pre-
22 scribed by the Secretary.

23 (C) REQUIRED SUBMISSIONS GENERALLY
24 LIMITED TO AN ANNUAL BASIS.—The Secretary
25 shall not require, under the authority of this

1 paragraph, an employer to submit to the Sec-
2 retary any books or records more than once
3 during any 12-month period, unless the Sec-
4 retary has reasonable cause to believe there
5 may exist a violation of this Act or any regula-
6 tion or order issued pursuant to this Act, or is
7 investigating a charge pursuant to paragraph
8 (4).

9 (D) SUBPOENA AUTHORITY.—For the pur-
10 poses of any investigation provided for in this
11 paragraph, the Secretary shall have the sub-
12 poena authority provided for under section 9 of
13 the Fair Labor Standards Act of 1938 (29
14 U.S.C. 209).

15 (3) CIVIL ACTION BY EMPLOYEES.—

16 (A) RIGHT OF ACTION.—An action to re-
17 cover the damages or equitable relief prescribed
18 in subparagraph (B) may be maintained
19 against any employer in any Federal or State
20 court of competent jurisdiction by one or more
21 employees or their representative for and on be-
22 half of—

23 (i) the employees; or

24 (ii) the employees and other employ-
25 ees similarly situated.

1 (B) LIABILITY.—Any employer who vio-
2 lates section 7 (including a violation relating to
3 rights provided under section 5) shall be liable
4 to any employee affected—

5 (i) for damages equal to—

6 (I) the amount of—

7 (aa) any wages, salary, em-
8 ployment benefits, or other com-
9 pensation denied or lost to such
10 employee by reason of the viola-
11 tion; or

12 (bb) in a case in which
13 wages, salary, employment bene-
14 fits, or other compensation have
15 not been denied or lost to the
16 employee, any actual monetary
17 losses sustained by the employee
18 as a direct result of the violation
19 up to a sum equal to 7 days of
20 wages or salary for the employee;

21 (II) the interest on the amount
22 described in subclause (I) calculated
23 at the prevailing rate; and

24 (III) an additional amount as liq-
25 uidated damages; and

1 (ii) for such equitable relief as may be
2 appropriate, including employment, rein-
3 statement, and promotion.

4 (C) FEES AND COSTS.—The court in an
5 action under this paragraph shall, in addition to
6 any judgment awarded to the plaintiff, allow a
7 reasonable attorney’s fee, reasonable expert wit-
8 ness fees, and other costs of the action to be
9 paid by the defendant.

10 (4) ACTION BY THE SECRETARY.—

11 (A) ADMINISTRATIVE ACTION.—The Sec-
12 retary shall receive, investigate, and attempt to
13 resolve complaints of violations of section 7 (in-
14 cluding a violation relating to rights provided
15 under section 5) in the same manner that the
16 Secretary receives, investigates, and attempts to
17 resolve complaints of violations of sections 6
18 and 7 of the Fair Labor Standards Act of 1938
19 (29 U.S.C. 206 and 207).

20 (B) CIVIL ACTION.—The Secretary may
21 bring an action in any court of competent juris-
22 diction to recover the damages described in
23 paragraph (3)(B)(i).

24 (C) SUMS RECOVERED.—Any sums recov-
25 ered by the Secretary pursuant to subparagraph

1 (B) shall be held in a special deposit account
2 and shall be paid, on order of the Secretary, di-
3 rectly to each employee affected. Any such sums
4 not paid to an employee because of inability to
5 do so within a period of 3 years shall be depos-
6 ited into the Treasury of the United States as
7 miscellaneous receipts.

8 (5) LIMITATION.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), an action may be brought
11 under paragraph (3), (4), or (6) not later than
12 2 years after the date of the last event consti-
13 tuting the alleged violation for which the action
14 is brought.

15 (B) WILLFUL VIOLATION.—In the case of
16 an action brought for a willful violation of sec-
17 tion 7 (including a willful violation relating to
18 rights provided under section 5), such action
19 may be brought within 3 years of the date of
20 the last event constituting the alleged violation
21 for which such action is brought.

22 (C) COMMENCEMENT.—In determining
23 when an action is commenced under paragraph
24 (3), (4), or (6) for the purposes of this para-

1 graph, it shall be considered to be commenced
2 on the date when the complaint is filed.

3 (6) ACTION FOR INJUNCTION BY SECRETARY.—

4 The district courts of the United States shall have
5 jurisdiction, for cause shown, in an action brought
6 by the Secretary—

7 (A) to restrain violations of section 7 (in-
8 cluding a violation relating to rights provided
9 under section 5), including the restraint of any
10 withholding of payment of wages, salary, em-
11 ployment benefits, or other compensation, plus
12 interest, found by the court to be due to em-
13 ployees eligible under this Act; or

14 (B) to award such other equitable relief as
15 may be appropriate, including employment, re-
16 instatement, and promotion.

17 (7) SOLICITOR OF LABOR.—The Solicitor of
18 Labor may appear for and represent the Secretary
19 on any litigation brought under paragraph (4) or
20 (6).

21 (8) GOVERNMENT ACCOUNTABILITY OFFICE
22 AND LIBRARY OF CONGRESS.—Notwithstanding any
23 other provision of this subsection, in the case of the
24 Government Accountability Office and the Library of
25 Congress, the authority of the Secretary of Labor

1 under this subsection shall be exercised respectively
2 by the Comptroller General of the United States and
3 the Librarian of Congress.

4 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
5 COUNTABILITY ACT OF 1995.—The powers, remedies, and
6 procedures provided in the Congressional Accountability
7 Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as de-
8 fined in section 101 of that Act (2 U.S.C. 1301)), or any
9 person, alleging a violation of section 202(a)(1) of that
10 Act (42 U.S.C. 1312(a)(1)) shall be the powers, remedies,
11 and procedures this Act provides to that Board, or any
12 person, alleging an unlawful employment practice in viola-
13 tion of this Act against an employee described in section
14 4(2)(A)(iii).

15 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
16 3, UNITED STATES CODE.—The powers, remedies, and
17 procedures provided in chapter 5 of title 3, United States
18 Code, to the President, the Merit Systems Protection
19 Board, or any person, alleging a violation of section
20 412(a)(1) of that title, shall be the powers, remedies, and
21 procedures this Act provides to the President, that Board,
22 or any person, respectively, alleging an unlawful employ-
23 ment practice in violation of this Act against an employee
24 described in section 4(2)(A)(iv).

1 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
2 5, UNITED STATES CODE.—The powers, remedies, and
3 procedures provided in title 5, United States Code, to an
4 employing agency, provided in chapter 12 of that title to
5 the Merit Systems Protection Board, or provided in that
6 title to any person, alleging a violation of chapter 63 of
7 that title, shall be the powers, remedies, and procedures
8 this Act provides to that agency, that Board, or any per-
9 son, respectively, alleging an unlawful employment prac-
10 tice in violation of this Act against an employee described
11 in section 4(2)(A)(v).

12 **SEC. 9. GAO STUDY.**

13 (a) IN GENERAL.—The Comptroller General of the
14 United States shall conduct a study to determine the fol-
15 lowing:

16 (1) The number of days employees used paid
17 sick leave including—

18 (A) the number of employees who used
19 paid sick leave annually;

20 (B) both the number of consecutive days,
21 and total days, employees used paid sick leave
22 for their illnesses, or illnesses of—

23 (i) a child;

24 (ii) a spouse;

25 (iii) a parent; or

1 (iv) any other individual; and

2 (C) the number of employees who used
3 paid sick leave for leave periods covering more
4 than 3 consecutive workdays.

5 (2) Whether employees used paid sick leave to
6 care for illnesses or conditions caused by domestic
7 violence against the employees or their family mem-
8 bers.

9 (3) The cost to employers of implementing paid
10 sick leave policies.

11 (4) The benefits to employers of implementing
12 the policies, including improvements in retention and
13 absentee rates and productivity.

14 (5) The cost to employees of providing certifi-
15 cation issued by a health care provider to obtain
16 paid sick leave.

17 (6) The benefits of paid sick leave to employees
18 and their family members.

19 (7) Whether the provision of paid sick leave has
20 affected the ability of employees to care for their
21 family members.

22 (8) Whether and in what way the provision of
23 paid sick leave affected the ability of employees to
24 provide for their health needs.

1 (9) Whether the provision of paid sick leave af-
2 fected the ability of employees to sustain an ade-
3 quate income while meeting health needs of the em-
4 ployees and their family members.

5 (10) Whether employers who administered paid
6 sick leave policies prior to the date of enactment of
7 this Act were affected by the provisions of this Act.

8 (11) Whether other types of leave were affected
9 by this Act including whether this Act affected—

10 (A) paid vacation leave;

11 (B) paid family or medical leave; or

12 (C) personal leave.

13 (12) Whether paid sick leave affected retention
14 and turnover.

15 (13) Whether paid sick leave increased the use
16 of less costly preventive medical care and lowered
17 the use of emergency room care.

18 (14) Whether paid sick leave reduced the num-
19 ber of children sent to school when the children were
20 sick.

21 (15) Whether paid sick leave reduced the costs
22 of presenteeism for employers.

23 (b) AGGREGATING DATA.—The data collected under
24 paragraphs (1), (2), and (7) of subsection (a) shall be ag-

1 gregated by gender, race, disability, earnings level, age,
2 marital status, and family type, including parental status.

3 (c) REPORTS.—

4 (1) IN GENERAL.—Not later than 18 months
5 after the date of enactment of this Act, the Comp-
6 troller General of the United States shall prepare
7 and submit a report to the appropriate committees
8 of Congress concerning the results of the study con-
9 ducted pursuant to subsection (a) and the data ag-
10 gregated under subsection (b).

11 (2) FOLLOWUP REPORT.—Not later than 5
12 years after the date of enactment of this Act the
13 Comptroller General of the United States shall pre-
14 pare and submit a followup report to the appropriate
15 committees of Congress concerning the results of the
16 study conducted pursuant to subsection (a) and the
17 data aggregated under subsection (b).

18 **SEC. 10. EFFECT ON OTHER LAWS.**

19 (a) FEDERAL AND STATE ANTIDISCRIMINATION
20 LAWS.—Nothing in this Act shall be construed to modify
21 or affect any Federal or State law prohibiting discrimina-
22 tion on the basis of race, religion, color, national origin,
23 sex, age, or disability.

24 (b) STATE AND LOCAL LAWS.—Nothing in this Act
25 shall be construed to supersede any provision of any State

1 or local law that provides greater paid sick leave or other
2 leave rights than the rights established under this Act.

3 **SEC. 11. EFFECT ON EXISTING EMPLOYMENT BENEFITS.**

4 (a) MORE PROTECTIVE.—Nothing in this Act shall
5 be construed to diminish the obligation of an employer to
6 comply with any contract, collective bargaining agreement,
7 or any employment benefit program or plan that provides
8 greater paid sick leave rights to employees than the rights
9 established under this Act.

10 (b) LESS PROTECTIVE.—The rights established for
11 employees under this Act shall not be diminished by any
12 contract, collective bargaining agreement, or any employ-
13 ment benefit program or plan.

14 **SEC. 12. ENCOURAGEMENT OF MORE GENEROUS LEAVE**
15 **POLICIES.**

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

20 **SEC. 13. REGULATIONS.**

21 (a) IN GENERAL.—

22 (1) AUTHORITY.—Except as provided in para-
23 graph (2), not later than 120 days after the date of
24 enactment of this Act, the Secretary shall prescribe
25 such regulations as are necessary to carry out this

1 Act with respect to employees described in clause (i)
2 or (ii) of section 4(2)(A).

3 (2) GOVERNMENT ACCOUNTABILITY OFFICE; LI-
4 BRARY OF CONGRESS.—The Comptroller General of
5 the United States and the Librarian of Congress
6 shall prescribe the regulations with respect to em-
7 ployees of the Government Accountability Office and
8 the Library of Congress, respectively.

9 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
10 COUNTABILITY ACT OF 1995.—

11 (1) AUTHORITY.—Not later than 120 days
12 after the date of enactment of this Act, the Board
13 of Directors of the Office of Compliance shall pre-
14 scribe (in accordance with section 304 of the Con-
15 gressional Accountability Act of 1995 (2 U.S.C.
16 1384)) such regulations as are necessary to carry
17 out this Act with respect to employees described in
18 section 4(2)(A)(iii).

19 (2) AGENCY REGULATIONS.—The regulations
20 prescribed under paragraph (1) shall be the same as
21 substantive regulations promulgated by the Sec-
22 retary to carry out this Act except insofar as the
23 Board may determine, for good cause shown and
24 stated together with the regulations prescribed
25 under paragraph (1), that a modification of such

1 regulations would be more effective for the imple-
2 mentation of the rights and protections involved
3 under this section.

4 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
5 3, UNITED STATES CODE.—

6 (1) AUTHORITY.—Not later than 120 days
7 after the date of enactment of this Act, the Presi-
8 dent (or the designee of the President) shall pre-
9 scribe such regulations as are necessary to carry out
10 this Act with respect to employees described in sec-
11 tion 4(2)(A)(iv).

12 (2) AGENCY REGULATIONS.—The regulations
13 prescribed under paragraph (1) shall be the same as
14 substantive regulations promulgated by the Sec-
15 retary to carry out this Act except insofar as the
16 President (or designee) may determine, for good
17 cause shown and stated together with the regula-
18 tions prescribed under paragraph (1), that a modi-
19 fication of such regulations would be more effective
20 for the implementation of the rights and protections
21 involved under this section.

22 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
23 5, UNITED STATES CODE.—

24 (1) AUTHORITY.—Not later than 120 days
25 after the date of enactment of this Act, the Director

1 of the Office of Personnel Management shall pre-
2 scribe such regulations as are necessary to carry out
3 this Act with respect to employees described in sec-
4 tion 4(2)(A)(v).

5 (2) AGENCY REGULATIONS.—The regulations
6 prescribed under paragraph (1) shall be the same as
7 substantive regulations promulgated by the Sec-
8 retary to carry out this Act except insofar as the Di-
9 rector may determine, for good cause shown and
10 stated together with the regulations prescribed
11 under paragraph (1), that a modification of such
12 regulations would be more effective for the imple-
13 mentation of the rights and protections involved
14 under this section.

15 **SEC. 14. EFFECTIVE DATES.**

16 (a) IN GENERAL.—This Act shall take effect 1 year
17 after the date of issuance of regulations under section
18 13(a)(1).

19 (b) COLLECTIVE BARGAINING AGREEMENTS.—In the
20 case of a collective bargaining agreement in effect on the
21 effective date prescribed by subsection (a), this Act shall
22 take effect on the earlier of—

23 (1) the date of the termination of such agree-
24 ment; or

1 (2) the date that occurs 18 months after the
2 date of issuance of regulations under section
3 13(a)(1).

Calendar No. 111

109TH CONGRESS
1ST Session

S. 1085

A BILL

To provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

MAY 20, 2005

Read the second time and placed on the calendar