

114TH CONGRESS
1ST SESSION

H. R. 1439

To provide paid family and medical leave benefits to certain individuals,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2015

Ms. DELAURO (for herself, Mrs. CAROLYN B. MALONEY of New York, Mr. SCHIFF, Mr. RANGEL, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Ms. NORTON, Mr. PALLONE, Mr. CONNOLLY, Ms. MATSUI, Mr. GRIJALVA, Ms. EDWARDS, Ms. KAPTUR, Ms. SCHAKOWSKY, Ms. CLARK of Massachusetts, Mr. CARSON of Indiana, Mr. PASCRELL, Ms. WASSERMAN SCHULTZ, Ms. TSONGAS, Mr. HASTINGS, Mr. YARMUTH, Mr. HONDA, Mr. TAKAI, Mr. GARAMENDI, Ms. CHU of California, Mr. BLUMENAUER, Ms. LOFGREN, Mr. CICILLINE, Mr. KENNEDY, Mr. SEAN PATRICK MALONEY of New York, Ms. FRANKEL of Florida, Ms. PINGREE, Ms. SPEIER, Ms. MCCOLLUM, Ms. LEE, Miss RICE of New York, Mrs. DINGELL, Mr. GUTIÉRREZ, Mr. LARSEN of Washington, Mrs. LOWEY, Mr. DAVID SCOTT of Georgia, Ms. CASTOR of Florida, Ms. BROWN of Florida, Mr. HUFFMAN, Mr. MCGOVERN, Mr. SWALWELL of California, Mr. GENE GREEN of Texas, Mr. SCOTT of Virginia, Ms. ESHOO, Mr. POLIS, Mr. BRADY of Pennsylvania, Mr. CAPUANO, Mr. CROWLEY, Mr. SERRANO, Mr. LYNCH, Mr. TONKO, Mr. RYAN of Ohio, Mr. ELLISON, Mr. McDERMOTT, Ms. KUSTER, Mr. NADLER, Mr. PRICE of North Carolina, Ms. SLAUGHTER, Mr. TAKANO, Ms. WILSON of Florida, Mr. DOGGETT, Ms. FUDGE, Mr. LEWIS, Mr. ENGEL, Ms. LINDA T. SÁNCHEZ of California, Mr. BERA, Mrs. CAPPS, Mr. COHEN, Mr. CONYERS, Mr. DELANEY, Ms. HAHN, Mr. LOWENTHAL, Mrs. NAPOLITANO, Ms. ROYBAL-ALLARD, Mr. THOMPSON of California, Mrs. LAWRENCE, Mr. COURTNEY, Ms. BONAMICI, and Ms. MENG) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To provide paid family and medical leave benefits to certain individuals, 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.**

4 This Act may be cited as the “Family and Medical
5 Insurance Leave Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) In nearly two-thirds of families with chil-
9 dren, all adults in the household work. Three in four
10 caregivers have worked at a paying job at some
11 point during their caregiving experience. Without
12 paid family and medical leave, many workers are un-
13 able to take time away from work to care for new-
14 born children, ill or aging parents and relatives, or
15 themselves.

16 (2) Both women and men need to be able to
17 take time off work to participate in early care of
18 their children, in the care of seriously ill family
19 members, and to address their own serious health
20 conditions. Yet, a mere 13 percent of workers in the
21 United States have access to paid family leave
22 through their employers, and fewer than 40 percent

1 have access to short-term disability insurance pro-
2 vided by their employer to use for their own ill-
3 nesses.

4 (3) Many workers cannot afford to take unpaid
5 time off work to provide care. According to the De-
6 partment of Labor, nearly half of workers who quali-
7 fied for leave under the Family and Medical Leave
8 Act of 1993 (FMLA) in 2011 were unable to take
9 the leave because they could not afford to take time
10 off without pay. Six in ten workers who took par-
11 tially paid or unpaid leave reported difficulty making
12 ends meet; half of these workers were forced to cut
13 their leaves short due to financial constraints.

14 (4) Only 13 percent of all workers had access
15 to paid family leave in 2013 and it was available to
16 only 4 percent of individuals working in the lowest
17 paying jobs. Workers who lack paid family leave face
18 lost wages or even job loss when they miss work be-
19 cause of their own illness or to care for an ill child
20 or parent. In this way, access to paid leave plays a
21 critical role in families' efforts to maintain employ-
22 ment and economic security.

23 (5) Caregiving has a high value but also comes
24 at a high cost for family caregivers. The estimated
25 value of unpaid family care provided in 2009 was

1 \$450 billion. Caregivers face financial, physical and
2 emotional hardships, and in many cases their ca-
3 reers, incomes, and retirement security suffer be-
4 cause of their family responsibilities. Working care-
5 givers should not have to risk their family's eco-
6 nomic security to fulfill their caregiving obligations.
7 The average worker age 50 and older who leaves the
8 workforce to care for an elderly parent loses more
9 than \$300,000 in earnings and retirement income.

10 (6) The population over age 65 is expected to
11 double within the next few decades. The number of
12 people with chronic conditions is expected to reach
13 157 million by 2020. Many of these individuals will
14 at some point require family care, and for older
15 workers still in the workforce, many will need time
16 off at some point to address serious health condi-
17 tions.

18 (7) Ensuring working family caregivers have
19 paid family leave to care for ailing elders could drive
20 down Medicare costs by decreasing recurrences of
21 ailments and re-admittance into hospitals.

22 (8) Many workers are forced to quickly return
23 to work after the birth or arrival of a child because
24 they have no access to paid family and medical
25 leave. Only half of new mothers take paid leave of

1 any duration after the birth of their first child, and
2 among women with less than a high school education
3 the figure is less than 20 percent—a rate that has
4 not changed in half a century.

5 (9) When new mothers have no choice but to
6 return to work without taking leave, children can ex-
7 perience a variety of negative outcomes including
8 higher rates of infant mortality, lower rates of
9 breastfeeding, lower rates of immunization, and a
10 higher incidence of maternal physical and mental
11 health concerns. California’s paid family leave insur-
12 ance program has increased the number of weeks of
13 leave that women take after childbirth, with larger
14 effects among women in jobs that do not provide
15 paid leave.

16 (10) A nationwide paid family leave program
17 would address the persistent sex discrimination in
18 the utilization of leave benefits and reduce the dis-
19 parity between women and men regarding who takes
20 time off from work to fulfill caregiving duties. This
21 disparity is driven in part by the fact that men con-
22 tinue to earn more than women, and, as a result, it
23 often makes more economic sense for women in two-
24 parent families to take unpaid leave and forgo their
25 lower salary.

1 (11) Many men would like to be more involved
2 in caregiving and report greater work-family conflict
3 than ever before. In California, men's use of the
4 State's paid family leave insurance program to care
5 for a new child has more than doubled since the pro-
6 gram's implementation.

7 (12) Paid family and medical leave promotes
8 families' financial security and independence, in-
9 creases worker retention, and promotes savings for
10 taxpayers. Women who take paid leave after a
11 child's birth are more likely to be in the labor force
12 in the 9 to 12 months after a child's birth and to
13 earn higher wages in the year following their child's
14 birth. Both men and women who take paid leave
15 after a child's birth are less likely to receive food
16 stamps and public assistance in the year following a
17 child's birth.

18 (13) Without paid medical leave, workers who
19 are ill or injured may return to work before being
20 fully recovered, thus making them susceptible to a
21 relapse or recurrence, and potentially placing addi-
22 tional burdens on the health care system. When a
23 job requires physical stamina or ability, individuals
24 who return to work too early may put themselves or
25 others in jeopardy.

1 (14) A social insurance model of providing paid
2 family leave pioneered by the states of California,
3 New Jersey, and Rhode Island has worked well for
4 workers, their families, and employers. Between
5 2004 and 2014, Californians filed more than 1.9
6 million claims to leave to care for a family member
7 or bond with a new child. The overwhelming major-
8 ity of California employers report that the program
9 had a positive or neutral effect on their business.

10 (15) Between 2009 and 2014, more than
11 160,000 New Jersey workers filed eligible claims for
12 family leave. Since January 2014, when Rhode Is-
13 land's program started, more than 4,200 workers
14 have filed paid family leave claims.

15 (16) Researchers conclude that some employers
16 experienced cost savings by coordinating their own
17 benefits with those offered through the State paid
18 family leave program.

19 (17) Employers and employees benefit when
20 workers have access to paid leave. Social Security is
21 one of the Nation's primary social insurance systems
22 and it provides retirement assistance and disability
23 benefits. When Social Security was created in 1934,
24 most families had a stay at home caregiver. That is
25 no longer the case. For the first time in the Nation's

1 history, half of all workers in the United States are
2 women. The system needs to be changed to reflect
3 the realities of today's workforce and provide work-
4 ers with income when they need leave from work due
5 to the birth of a child or a serious health condition.

6 (18) When workers can care for themselves and
7 their loved ones, employers experience positive im-
8 pacts. More than four times as many worksites cov-
9 ered by FMLA reported positive effects on employee
10 productivity, absenteeism, turnover, career advance-
11 ment and morale, as well as the business' profit-
12 ability as reported negative effects in the Depart-
13 ment of Labor's 2012 survey on the FMLA.

14 (b) PURPOSE.—It is the purpose of this Act—

15 (1) to help working families, including single
16 working parents and dual-earner families, afford to
17 take time away from work to provide care for a fam-
18 ily member and be good workers;

19 (2) to provide workers with a reasonable level
20 of wage replacement during time away from work
21 for a serious health condition, for the birth or adop-
22 tion of a child, for the care of a child, spouse, or
23 parent who has a serious health condition, for the
24 care of an injured servicemember, or for qualifying

1 exigencies arising from the deployment of a service-
2 member;

3 (3) to address sex discrimination, promote the
4 goal of equal employment opportunity for women
5 and men, and to provide relief when employers vio-
6 late the law; and

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

10 **SEC. 3. DEFINITIONS.**

11 In this Act, the following definitions apply:

12 (1) CAREGIVING DAY.—The term “caregiving
13 day” means, with respect to an individual, a cal-
14 endar day in which the individual engaged in quali-
15 fied caregiving.

16 (2) COMMISSIONER.—The term “Commis-
17 sioner” means the Commissioner of Social Security.

18 (3) DEPUTY COMMISSIONER.—The term “Dep-
19 uty Commissioner” means the Deputy Commissioner
20 who heads the Office of Paid Family and Medical
21 Leave established under section 4(a).

22 (4) ELIGIBLE INDIVIDUAL.—The term “eligible
23 individual” means an individual who is entitled to a
24 benefit under section 5 for a particular month, upon
25 filing an application for such benefit for such month.

1 (5) INITIAL WAITING PERIOD.—The term “ini-
2 tial waiting period” means a period beginning with
3 the first caregiving day of an individual occurring
4 during the individual’s benefit period and ending
5 after the earlier of—

6 (A) the fifth caregiving day of the indi-
7 vidual occurring during the benefit period; or

8 (B) the month preceding the first month in
9 the benefit period during which occur not less
10 than 15 caregiving days of the individual.

11 (6) QUALIFIED CAREGIVING.—The term “quali-
12 fied caregiving” means any activity engaged in by an
13 individual, other than regular employment, for a rea-
14 son for which an eligible employee would be entitled
15 to leave under subparagraphs (A) through (E) of
16 paragraph (1) of section 102(a) of the Family and
17 Medical Leave Act of 1993 (29 U.S.C. 2612(a)).

18 (7) SELF-EMPLOYMENT INCOME.—The term
19 “self-employment income” has the same meaning as
20 such term in section 211(b) of such Act (42 U.S.C.
21 411(b)).

22 (8) STATE.—The term “State” means any
23 State of the United States or the District of Colum-
24 bia or any Territory or possession of the United
25 States.

1 (9) WAGES.—The term “wages”, except as such
2 term is used in subsection (i)(2) of section 5, has
3 the same meaning as such term in section 209 of the
4 Social Security Act (42 U.S.C. 409).

5 (10) 60-DAY LIMITATION PERIOD.—The term
6 “60-day limitation period” means a period—

7 (A) beginning with the first caregiving day
8 of an individual occurring during the individ-
9 ual’s benefit period and after the expiration of
10 the individual’s 5-day waiting period, if applica-
11 ble; and

12 (B) ending with the 60th caregiving day of
13 the individual occurring during the benefit pe-
14 riod and after the expiration of the 5-day wait-
15 ing period,

16 disregarding any caregiving day of the individual oc-
17 curring during any month in the benefit period after
18 the first 20 caregiving days of the individual occur-
19 ring during such month.

20 **SEC. 4. OFFICE OF PAID FAMILY AND MEDICAL LEAVE.**

21 (a) ESTABLISHMENT OF OFFICE.—There is estab-
22 lished within the Social Security Administration an office
23 to be known as the Office of Paid Family and Medical
24 Leave. The Office shall be headed by a Deputy Commis-
25 sioner who shall be appointed by the Commissioner.

1 (b) RESPONSIBILITIES OF DEPUTY COMMIS-
2 SIONER.—The Commissioner, acting through the Deputy
3 Commissioner, shall be responsible for—

4 (1) hiring personnel and making employment
5 decisions with regard to such personnel;

6 (2) issuing such regulations as may be nec-
7 essary to carry out the purposes of this Act;

8 (3) entering into cooperative agreements with
9 other agencies and departments to ensure the effi-
10 ciency of the administration of the program;

11 (4) determining eligibility for family and med-
12 ical leave insurance benefits under section 5;

13 (5) determining benefit amounts for each
14 month of such eligibility and making timely pay-
15 ments of such benefits to entitled individuals in ac-
16 cordance with such section;

17 (6) establishing and maintaining a system of
18 records relating to the administration of such sec-
19 tion;

20 (7) preventing fraud and abuse relating to such
21 benefits;

22 (8) providing information on request regarding
23 eligibility requirements, the claims process, benefit
24 amounts, maximum benefits payable, notice require-
25 ments, non-discrimination rights, confidentiality, co-

1 ordination of leave under this Act and other laws,
 2 collective bargaining agreements, and employer poli-
 3 cies;

4 (9) annually providing employers a notice in-
 5 forming employees of the availability of such bene-
 6 fits;

7 (10) annually making available to the public a
 8 report that includes the number of individuals who
 9 received such benefits, the purposes for which such
 10 benefits were received, and an analysis of utilization
 11 rates of such benefits by gender, race, ethnicity, and
 12 income levels; and

13 (11) tailoring culturally and linguistically com-
 14 petent education and outreach toward increasing uti-
 15 lization rates of benefits under such section.

16 (c) AVAILABILITY OF DATA.—The Commissioner
 17 shall make available to the Deputy Commissioner such
 18 data as the Commissioner determines necessary to enable
 19 the Deputy Commissioner to effectively carry out the re-
 20 sponsibilities described in subsection (b).

21 **SEC. 5. FAMILY AND MEDICAL LEAVE INSURANCE BENEFIT**
 22 **PAYMENTS.**

23 (a) IN GENERAL.—Every individual who—

24 (1) is insured for disability insurance benefits
 25 (as determined under section 223(c) of the Social

1 Security Act (42 U.S.C. 423(c)) at the time such
2 individual's application is filed;

3 (2) has earned income from employment during
4 the 12 months prior to the month in which the ap-
5 plication is filed;

6 (3) has filed an application for a family and
7 medical leave insurance benefit in accordance with
8 subsection (d); and

9 (4) was engaged in qualified caregiving, or an-
10 ticipates being so engaged, during the period that
11 begins 90 days before the date on which such appli-
12 cation is filed or within 30 days after such date,
13 shall be entitled to such a benefit for each month in the
14 benefit period specified in subsection (c), not to exceed 60
15 caregiving days per benefit period.

16 (b) BENEFIT AMOUNT.—

17 (1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection, the benefit amount to which
19 an individual is entitled under this section for a
20 month shall be an amount equal to the greater of—

21 (A) the lesser of $\frac{1}{18}$ of the wages and self-
22 employment income of the individual for the
23 calendar year in which such wages and self-em-
24 ployment income are the highest among the
25 most recent three calendar years, or the max-

1 imum benefit amount determined under para-
2 graph (2); or

3 (B) the minimum benefit amount deter-
4 mined under paragraph (2),

5 multiplied by the quotient (not greater than 1) ob-
6 tained by dividing the number of caregiving days of
7 the individual in such month by 20.

8 (2) ANNUAL INCREASE OF MAXIMUM AND MIN-
9 IMUM BENEFIT AMOUNTS.—

10 (A) For individuals who initially become el-
11 igible for family and medical leave insurance
12 benefits in the first full calendar year after the
13 date of enactment of this Act, the maximum
14 monthly benefit amount and the minimum
15 monthly benefit amount shall be \$4,000 and
16 \$580, respectively.

17 (B) For individuals who initially become el-
18 igible for family and medical leave insurance
19 benefits in any calendar year after such first
20 full calendar year the maximum benefit amount
21 and the minimum benefit amount shall be, re-
22 spectively, the product of the corresponding
23 amount determined with respect to the first cal-
24 endar year under subparagraph (A) and the
25 quotient obtained by dividing—

1 (i) the national average wage index
 2 (as defined in section 209(k)(1) of the So-
 3 cial Security Act (42 U.S.C. 409(k)(1)))
 4 for the second calendar year preceding the
 5 first calendar year for which the deter-
 6 mination is made, by

7 (ii) the national average wage index
 8 (as so defined) for 2015.

9 (3) LIMITATIONS ON BENEFITS PAID.—

10 (A) NONPAYABLE WAITING PERIOD.—Any
 11 calendar day during an individual's benefit pe-
 12 riod which occurs before the expiration of an
 13 initial waiting period shall not be taken into ac-
 14 count under this subsection as a caregiving day
 15 of the individual.

16 (B) LIMITATION ON TOTAL BENEFITS
 17 PAID.—Any calendar day during an individual's
 18 benefit period which occurs after the expiration
 19 of a 60-day limitation period shall not be taken
 20 into account under this subsection as a
 21 caregiving day of the individual.

22 (4) REDUCTION IN BENEFIT AMOUNT ON AC-
 23 COUNT OF RECEIPT OF CERTAIN BENEFITS.—A ben-
 24 efit under this section for a month shall be reduced
 25 by the amount, if any, in certain benefits (as deter-

1 mined under regulations issued by the Commis-
2 sioner) as may be otherwise received by an indi-
3 vidual. For purposes of the preceding sentence, cer-
4 tain benefits include—

5 (A) periodic benefits on account of such in-
6 dividual's total or partial disability under a
7 workmen's compensation law or plan of the
8 United States or a State; and

9 (B) periodic benefits on account of an indi-
10 vidual's employment status under an unemploy-
11 ment law or plan of the United States or a
12 State.

13 (5) COORDINATION OF BENEFIT AMOUNT WITH
14 CERTAIN STATE BENEFITS.—A benefit received
15 under this section shall be coordinated, in a manner
16 determined by regulations issued by the Commis-
17 sioner, with the periodic benefits received from tem-
18 porary disability insurance or family leave insurance
19 programs under any law or plan of a State, a polit-
20 ical subdivision (as that term is used in section
21 218(b)(2) of the Social Security Act (42 U.S.C.
22 418(b)(2))), or an instrumentality of 2 or more
23 States (as that term is used in section 218(g) of
24 such Act of the Social Security Act (42 U.S.C.
25 418(g))).

1 (c) BENEFIT PERIOD.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the benefit period specified in this sub-
4 section shall begin on the 1st day of the 1st month
5 in which the individual meets the criteria specified in
6 paragraphs (1), (2), and (3) of subsection (a), and
7 shall end on the date that is 365 days after the 1st
8 day of the benefit period.

9 (2) RETROACTIVE BENEFITS.—In the case of
10 an application for benefits under this section for
11 qualified caregiving in which the individual was en-
12 gaged at any time during the 90-day period pre-
13 ceding the date on which such application is sub-
14 mitted, the benefit period specified in this subsection
15 shall begin on the later of—

16 (A) the 1st day of the 1st month in which
17 the individual engaged in such qualified
18 caregiving; or

19 (B) the 1st day of the 1st month that be-
20 gins during such 90-day period,

21 and shall end on the date that is 365 days after the
22 1st day of the benefit period.

23 (d) APPLICATION.—An application for a family and
24 medical leave insurance benefit shall include—

1 (1) a statement that the individual was engaged
2 in qualified caregiving, or anticipates being so en-
3 gaged, during the period that begins 90 days before
4 the date on which the application is submitted or
5 within 30 days after such date;

6 (2) if the qualified caregiving described in the
7 statement in paragraph (1) is engaged in by the in-
8 dividual because of a serious health condition of the
9 individual or a relative of the individual, a certifi-
10 cation, issued by the health care provider treating
11 such serious health condition, that affirms the infor-
12 mation specified in paragraph (1) and contains such
13 information as the Commissioner shall specify in
14 regulations, which shall be no more than the infor-
15 mation that is required to be stated under section
16 103(b) of the Family and Medical Leave Act of
17 1993 (29 U.S.C. 2613(b));

18 (3) if such qualified caregiving is engaged in by
19 the individual for any other authorized reason, a cer-
20 tification, issued by a relevant authority determined
21 under regulations issued by the Commissioner, that
22 affirms the circumstances giving rise to such reason;
23 and

24 (4) an attestation from the applicant that his or
25 her employer has been provided with written notice

1 of the individual's intention to take family or med-
2 ical leave, if the individual has an employer, or to
3 the Commissioner in all other cases.

4 (e) INELIGIBILITY; DISQUALIFICATION.—

5 (1) INELIGIBILITY FOR BENEFIT.—An indi-
6 vidual shall be ineligible for a benefit under this sec-
7 tion for any month for which the individual is enti-
8 tled to—

9 (A) disability insurance benefits under sec-
10 tion 223 of the Social Security Act (42 U.S.C.
11 423) or a similar permanent disability program
12 under any law or plan of a State or political
13 subdivision or instrumentality of a State (as
14 such terms are used in section 218 of the Social
15 Security Act (42 U.S.C. 418));

16 (B) monthly insurance benefits under sec-
17 tion 202 of such Act (42 U.S.C. 402) based on
18 such individual's disability (as defined in sec-
19 tion 223(d) of such Act (42 U.S.C. 423(d))); or

20 (C) benefits under title XVI of such Act
21 (42 U.S.C. 1381 et seq.) based on such individ-
22 ual's status as a disabled individual (as deter-
23 mined under section 1614 of such Act (42
24 U.S.C. 1382c)).

1 (2) DISQUALIFICATION.—An individual who has
2 been convicted of a violation under section 208 of
3 the Social Security Act (42 U.S.C. 408) or who has
4 been found to have used false statement to secure
5 benefits under this section, shall be ineligible for
6 benefits under this section for a 1-year period fol-
7 lowing the date of such conviction.

8 (f) REVIEW OF ELIGIBILITY AND BENEFIT PAYMENT
9 DETERMINATIONS.—

10 (1) ELIGIBILITY DETERMINATIONS.—

11 (A) IN GENERAL.—The Commissioner
12 shall provide notice to an individual applying
13 for benefits under this section of the initial de-
14 termination of eligibility for such benefits, and
15 the estimated benefit amount for a month in
16 which one caregiving day of the individual oc-
17 curs, as soon as practicable after the applica-
18 tion is received.

19 (B) REVIEW.—An individual may request
20 review of an initial adverse determination with
21 respect to such application at any time before
22 the end of the 20-day period that begins on the
23 date notice of such determination is received,
24 except that such 20-day period may be extended
25 for good cause. As soon as practicable after the

1 individual requests review of the determination,
2 the Commissioner shall provide notice to the in-
3 dividual of a final determination of eligibility
4 for benefits under this section.

5 (2) BENEFIT PAYMENT DETERMINATIONS.—

6 (A) IN GENERAL.—The Commissioner
7 shall make any monthly benefit payment to an
8 individual claiming benefits for a month under
9 this section, or provide notice of the reason
10 such payment will not be made if the Commis-
11 sioner determines that the individual is not en-
12 titled to payment for such month, not later
13 than 20 days after the individual's monthly
14 benefit claim report for such month is received.
15 Such monthly report shall be filed with the
16 Commissioner not later than 15 days after the
17 end of each month.

18 (B) REVIEW.—If the Commissioner deter-
19 mines that payment will not be made to an in-
20 dividual for a month, or if the Commissioner
21 determines that payment shall be made based
22 on a number of caregiving days in the month
23 inconsistent with the number of caregiving days
24 in the monthly benefit claim report of the indi-
25 vidual for such month, the individual may re-

1 quest review of such determination at any time
2 before the end of the 20-day period that begins
3 on the date notice of such determination is re-
4 ceived, except that such 20-day period may be
5 extended for good cause. Not later than 20 days
6 after the individual requests review of the deter-
7 mination, the Commissioner shall provide notice
8 to the individual of a final determination of
9 payment for such month, and shall make pay-
10 ment to the individual of any additional amount
11 not included in the initial payment to the indi-
12 vidual for such month to which the Commis-
13 sioner determines the individual is entitled.

14 (3) BURDEN OF PROOF.—An application for
15 benefits under this section and a monthly benefit
16 claim report of an individual shall each be presumed
17 to be true and accurate, unless the Commissioner
18 demonstrates by a preponderance of the evidence
19 that information contained in the application is
20 false.

21 (4) DEFINITION OF MONTHLY BENEFIT CLAIM
22 REPORT.—For purposes of this subsection, the term
23 “monthly benefit claim report” means, with respect
24 to an individual for a month, the individual’s report
25 to the Commissioner of the number of caregiving

1 days of the individual in such month, which shall be
2 filed no later than 15 days after the end of each
3 month.

4 (5) REVIEW.—All final determinations of the
5 Commissioner under this subsection shall be review-
6 able according to the procedures set out in section
7 205 of the Social Security Act (42 U.S.C. 405).

8 (g) RELATIONSHIP WITH STATE LAW; EMPLOYER
9 BENEFITS.—

10 (1) IN GENERAL.—This section does not pre-
11 empt or supercede any provision of State or local
12 law that authorizes a State or local municipality to
13 provide paid family and medical leave benefits simi-
14 lar to the benefits provided under this section.

15 (2) GREATER BENEFITS ALLOWED.—Nothing
16 in this Act shall be construed to diminish the obliga-
17 tion of an employer to comply with any contract, col-
18 lective bargaining agreement, or any employment
19 benefit program or plan that provides greater paid
20 leave or other leave rights to employees than the
21 rights established under this Act.

22 (h) PROHIBITED ACTS; ENFORCEMENT.—

23 (1) IN GENERAL.—It shall be unlawful for any
24 person to discharge or in any other manner discrimi-
25 nate against an individual because the individual has

1 applied for, indicated an intent to apply for, or re-
2 ceived family and medical leave insurance benefits.

3 (2) CIVIL ACTION BY AN INDIVIDUAL.—

4 (A) LIABILITY.—Any person who violates
5 paragraph (1) shall be liable to any individual
6 employed by such person who is affected by the
7 violation—

8 (i) for damages equal to the sum of—

9 (I) the amount of—

10 (aa) any wages, salary, em-
11 ployment benefits, or other com-
12 pensation denied or lost to such
13 individual by reason of the viola-
14 tion; or

15 (bb) in a case in which
16 wages, salary, employment bene-
17 fits, or other compensation have
18 not been denied or lost to the in-
19 dividual, any actual monetary
20 losses sustained by the individual
21 as a direct result of the violation,
22 such as the cost of providing
23 care, up to a sum equal to 60
24 calendar days of wages or salary
25 for the individual;

1 (II) the interest on the amount
2 described in subclause (I) calculated
3 at the prevailing rate; and

4 (III) an additional amount as liq-
5 uidated damages equal to the sum of
6 the amount described in subclause (I)
7 and the interest described in sub-
8 clause (II), except that if a person
9 who has violated paragraph (1) proves
10 to the satisfaction of the court that
11 the act or omission which violated
12 paragraph (1) was in good faith and
13 that the person had reasonable
14 grounds for believing that the act or
15 omission was not a violation of para-
16 graph (1), such court may, in the dis-
17 cretion of the court, reduce the
18 amount of the liability to the amount
19 and interest determined under sub-
20 clauses (I) and (II), respectively; and

21 (ii) for such equitable relief as may be
22 appropriate, including employment, rein-
23 statement, and promotion.

24 (B) RIGHT OF ACTION.—An action to re-
25 cover the damages or equitable relief prescribed

1 in subparagraph (A) may be maintained against
2 any person in any Federal or State court of
3 competent jurisdiction by any individual for and
4 on behalf of—

5 (i) the individual; or

6 (ii) the individual and other individ-
7 uals similarly situated.

8 (C) FEES AND COSTS.—The court in such
9 an action shall, in addition to any judgment
10 awarded to the plaintiff, allow a reasonable at-
11 torney’s fee, reasonable expert witness fees, and
12 other costs of the action to be paid by the de-
13 fendant.

14 (D) LIMITATIONS.—The right provided by
15 subparagraph (B) to bring an action by or on
16 behalf of any individual shall terminate—

17 (i) on the filing of a complaint by the
18 Commissioner in an action under para-
19 graph (5) in which restraint is sought of
20 any further delay in the payment of the
21 amount described in subparagraph (A)(I)
22 to such individual by the person respon-
23 sible under subparagraph (A) for the pay-
24 ment; or

1 (ii) on the filing of a complaint by the
2 Commissioner in an action under para-
3 graph (3) in which a recovery is sought of
4 the damages described in subparagraph
5 (A)(I) owing to an individual by a person
6 liable under subparagraph (A),
7 unless the action described in clause (I) or (ii)
8 is dismissed without prejudice on motion of the
9 Commissioner.

10 (3) ACTION BY THE COMMISSIONER.—

11 (A) CIVIL ACTION.—The Commissioner
12 may bring an action in any court of competent
13 jurisdiction to recover the damages described in
14 paragraph (2)(A)(I).

15 (B) SUMS RECOVERED.—Any sums recov-
16 ered by the Commissioner pursuant to subpara-
17 graph (A) shall be held in a special deposit ac-
18 count and shall be paid, on order of the Com-
19 missioner, directly to each individual affected.
20 Any such sums not paid to an individual be-
21 cause of inability to do so within a period of 3
22 years shall be deposited into the Federal Family
23 and Medical Leave Insurance Trust Fund.

24 (4) LIMITATION.—

1 (A) IN GENERAL.—An action may be
2 brought under this subsection not later than 3
3 years after the date of the last event consti-
4 tuting the alleged violation for which the action
5 is brought.

6 (B) COMMENCEMENT.—An action brought
7 by the Commissioner under this subsection shall
8 be considered to be commenced on the date
9 when the complaint is filed.

10 (5) ACTION FOR INJUNCTION BY COMMIS-
11 SIONER.—The district courts of the United States
12 shall have jurisdiction, for cause shown, in an action
13 brought by the Commissioner—

14 (A) to restrain violations of paragraph (1),
15 including the restraint of any withholding of
16 payment of wages, salary, employment benefits,
17 or other compensation, plus interest, found by
18 the court to be due to an individual; or

19 (B) to award such other equitable relief as
20 may be appropriate, including employment, re-
21 instatement, and promotion.

22 (i) SPECIAL RULE FOR RAILROAD EMPLOYEES.—For
23 purposes of subsection (a)(1), an individual shall be
24 deemed to be insured for disability insurance benefits if
25 the individual would be so insured if the individual's serv-

1 ice as an employee (as defined in the section 1(b) of the
 2 Railroad Retirement Act of 1974) after December 31,
 3 1936, were included within the meaning of the term “em-
 4 ployment” for purposes of title II of the Social Security
 5 Act (42 U.S.C. 401 et seq.).

6 (j) DETERMINATION OF WHETHER AN ACTIVITY
 7 CONSTITUTES QUALIFIED CAREGIVING.—

8 (1) IN GENERAL.—For purposes of determining
 9 whether an activity engaged in by an individual con-
 10 stitutes qualified caregiving under this section—

11 (A) the term “spouse” (as used in section
 12 102(a) of the Family and Medical Leave Act
 13 (29 U.S.C. 2612(a))) includes the individual’s
 14 domestic partner; and

15 (B) the term “son or daughter” (as used
 16 in such section) includes a son or daughter (as
 17 defined in section 101 of such Act) of the indi-
 18 vidual’s domestic partner.

19 (2) DOMESTIC PARTNER.—

20 (A) IN GENERAL.—For purposes of para-
 21 graph (1), the term “domestic partner”, with
 22 respect to an individual, means another indi-
 23 vidual with whom the individual is in a com-
 24 mitted relationship.

1 (B) COMMITTED RELATIONSHIP DE-
2 FINED.—The term “committed relationship”
3 means a relationship between two individuals
4 (each at least 18 years of age) in which each
5 individual is the other individual’s sole domestic
6 partner and both individuals share responsi-
7 bility for a significant measure of each other’s
8 common welfare. The term includes any such
9 relationship between two individuals, including
10 individuals of the same sex, that is granted
11 legal recognition by a State or political subdivi-
12 sion of a State as a marriage or analogous rela-
13 tionship, including a civil union or domestic
14 partnership.

15 (k) APPLICABILITY OF CERTAIN SOCIAL SECURITY
16 ACT PROVISIONS.—The provisions of sections 204, 205,
17 206, and 208 of the Social Security Act shall apply to
18 benefit payments authorized by and paid out pursuant to
19 this section in the same way that such provisions apply
20 to benefit payments authorized by and paid out pursuant
21 to title II of such Act.

22 (l) EFFECTIVE DATE FOR APPLICATIONS.—Applica-
23 tions described in this section may be filed beginning 18
24 months after the date of enactment of this Act.

1 **SEC. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE**
2 **INSURANCE TRUST FUND.**

3 (a) IN GENERAL.—There is hereby created on the
4 books of the Treasury of the United States a trust fund
5 to be known as the “Federal Family and Medical Leave
6 Insurance Trust Fund”. The Federal Family and Medical
7 Leave Insurance Trust Fund shall consist of such gifts
8 and bequests as may be made as provided in section
9 201(i)(1) of the Social Security Act (42 U.S.C. 401(i)(1))
10 and such amounts as may be appropriated to, or deposited
11 in, the Federal Family and Medical Leave Insurance
12 Trust Fund as provided in this section.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—

14 (1) IN GENERAL.—There is authorized to be
15 appropriated to the Federal Family and Medical
16 Leave Insurance Trust Fund out of moneys in the
17 Treasury not otherwise appropriated—

18 (A) for the first three fiscal years begin-
19 ning after the date of enactment of this Act,
20 such sums as may be necessary for the Com-
21 missioner to administer the office established
22 under section 4 and pay the benefits under sec-
23 tion 5;

24 (B) 100 percent of the taxes imposed by
25 sections 3101(c) and 3111(c) of the Internal
26 Revenue Code of 1986 with respect to wages

1 (as defined in section 3121 of such Code) re-
2 ported to the Secretary of the Treasury pursu-
3 ant to subtitle F of such Code, as determined
4 by the Secretary of the Treasury by applying
5 the applicable rate of tax under such sections to
6 such wages;

7 (C) 100 percent of the taxes imposed by
8 section 1401(c) of such Code with respect to
9 self-employment income (as defined in section
10 1402 of such Code) reported to the Secretary of
11 the Treasury on tax returns under subtitle F of
12 such Code, as determined by the Secretary of
13 the Treasury by applying the applicable rate of
14 tax under such section to such self-employment
15 income; and

16 (D) 100 percent of the taxes imposed by
17 sections 3201(c), 3211(c), and 3221(c) of such
18 Code with respect to compensation (as defined
19 in section 3231 of such Code) reported to the
20 Secretary of the Treasury on tax returns under
21 subtitle F of such Code, as determined by the
22 Secretary of the Treasury by applying the ap-
23 plicable rate of tax under such sections to such
24 compensation.

1 (2) REPAYMENT OF INITIAL APPROPRIATION.—

2 Amounts appropriated pursuant to subparagraph
3 (A) of paragraph (1) shall be repaid to the Treasury
4 of the United States not later than 10 years after
5 the first appropriation is made pursuant to such
6 subparagraph.

7 (3) TRANSFER TO TRUST FUND.—The amounts
8 described in paragraph (2) shall be transferred from
9 time to time from the general fund in the Treasury
10 to the Federal Family and Medical Leave Insurance
11 Trust Fund, such amounts to be determined on the
12 basis of estimates by the Secretary of the Treasury
13 of the taxes, specified in such paragraph, paid to or
14 deposited into the Treasury. Proper adjustments
15 shall be made in amounts subsequently transferred
16 to the extent prior estimates were inconsistent with
17 the taxes specified in such paragraph.

18 (c) MANAGEMENT OF TRUST FUND.—The provisions
19 of subsections (c), (d), (e), (f), (i), and (m) of section 201
20 of the Social Security Act (42 U.S.C. 401) shall apply with
21 respect to the Federal Family and Medical Leave Insur-
22 ance Trust Fund in the same manner as such provisions
23 apply to the Federal Old-Age and Survivors Insurance
24 Trust Fund and the Disability Insurance Trust Fund.

1 (d) BENEFITS PAID FROM TRUST FUND.—Benefit
 2 payments required to be made under section 5 shall be
 3 made only from the Federal Family and Medical Leave
 4 Insurance Trust Fund.

5 (e) ADMINISTRATION.—There are authorized to be
 6 made available for expenditure, out of the Federal Family
 7 and Medical Leave Insurance Trust Fund, such sums as
 8 may be necessary to pay the costs of the administration
 9 of section 5, including start-up costs, technical assistance,
 10 outreach, education, evaluation, and reporting.

11 (f) PROHIBITION.—No funds from the Social Secu-
 12 rity Trust Fund or appropriated to the Social Security Ad-
 13 ministration to administer Social Security programs may
 14 be used for Federal Family and Medical Leave Insurance
 15 benefits or administration set forth under this Act.

16 **SEC. 7. INTERNAL REVENUE CODE PROVISIONS.**

17 (a) IN GENERAL.—

18 (1) EMPLOYEE CONTRIBUTION.—Section 3101
 19 of the Internal Revenue Code of 1986 is amended—

20 (A) by redesignating subsection (c) as sub-
 21 section (d), and

22 (B) by inserting after subsection (b) the
 23 following:

24 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

1 “(1) IN GENERAL.—In addition to other taxes,
 2 there is hereby imposed on the income of every indi-
 3 vidual a tax equal to the applicable percentage of the
 4 wages (as defined in section 3121(a)) received by the
 5 individual with respect to employment (as defined in
 6 section 3121(b)).

7 “(2) APPLICABLE PERCENTAGE.—For purposes
 8 of paragraph (1), the term ‘applicable percentage’
 9 means 0.2 percent in the case of wages received in
 10 any calendar year.”.

11 (2) EMPLOYER CONTRIBUTION.—Section 3111
 12 of such Code is amended—

13 (A) by redesignating subsections (c), (d)
 14 and (e) as subsections (d), (e), and (f) respec-
 15 tively, and

16 (B) by inserting after subsection (b) the
 17 following:

18 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

19 “(1) IN GENERAL.—In addition to other taxes,
 20 there is hereby imposed on every employer an excise
 21 tax, with respect to having individuals in his employ,
 22 equal to the applicable percentage of the wages (as
 23 defined in section 3121(a)) paid by the employer
 24 with respect to employment (as defined in section
 25 3121(b)).

1 “(2) APPLICABLE PERCENTAGE.—For purposes
 2 of paragraph (1), the term ‘applicable percentage’
 3 means 0.2 percent in the case of wages paid in any
 4 calendar year.”.

5 (3) SELF-EMPLOYMENT INCOME CONTRIBU-
 6 TION.—

7 (A) IN GENERAL.—Section 1401 of such
 8 Code is amended—

9 (i) by redesignating subsection (c) as
 10 subsection (d), and

11 (ii) by inserting after subsection (b)
 12 the following:

13 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

14 “(1) IN GENERAL.—In addition to other taxes,
 15 there is hereby imposed for each taxable year, on the
 16 self-employment income of every individual, a tax
 17 equal to the applicable percentage of the amount of
 18 the self-employment income for such taxable year.

19 “(2) APPLICABLE PERCENTAGE.—For purposes
 20 of paragraph (1), the term ‘applicable percentage’
 21 means 0.4 percent in the case of self-employment in-
 22 come in any taxable year.”.

23 (B) EXCLUSION OF CERTAIN NET EARN-
 24 INGS FROM SELF-EMPLOYMENT.—Section
 25 1402(b)(1) of such Code is amended by striking

1 “tax imposed by section 1401(a)” and inserting
 2 “taxes imposed by subsections (a) and (c) of
 3 section 1401”.

4 (b) RAILROAD RETIREMENT TAX ACT.—

5 (1) EMPLOYEE CONTRIBUTION.—Section 3201
 6 of such Code is amended—

7 (A) by redesignating subsection (c) as sub-
 8 section (d), and

9 (B) by inserting after subsection (b) the
 10 following:

11 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

12 “(1) IN GENERAL.—In addition to other taxes,
 13 there is hereby imposed on the income of each em-
 14 ployee a tax equal to the applicable percentage of
 15 the compensation received during any calendar year
 16 by such employee for services rendered by such em-
 17 ployee.

18 “(2) APPLICABLE PERCENTAGE.—For purposes
 19 of paragraph (1), the term ‘applicable percentage’
 20 means 0.2 percent in the case of compensation re-
 21 ceived in any calendar year.”.

22 (2) EMPLOYEE REPRESENTATIVE CONTRIBU-
 23 TION.—Section 3211 of such Code is amended—

24 (A) by redesignating subsection (c) as sub-
 25 section (d), and

1 (B) by inserting after subsection (b) the
 2 following:

3 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

4 “(1) IN GENERAL.—In addition to other taxes,
 5 there is hereby imposed on the income of each em-
 6 ployee representative a tax equal to the applicable
 7 percentage of the compensation received during any
 8 calendar year by such employee representative for
 9 services rendered by such employee representative.

10 “(2) APPLICABLE PERCENTAGE.—For purposes
 11 of paragraph (1), the term ‘applicable percentage’
 12 means 0.2 percent in the case of compensation re-
 13 ceived in any calendar year.”.

14 (3) EMPLOYER CONTRIBUTION.—Section 3221
 15 of such Code is amended—

16 (A) by redesignating subsections (c) and
 17 (d) as subsections (d) and (e), respectively, and

18 (B) by inserting after subsection (b) the
 19 following:

20 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

21 “(1) IN GENERAL.—In addition to other taxes,
 22 there is hereby imposed on every employer an excise
 23 tax, with respect to having individuals in his employ,
 24 equal to the applicable percentage of the compensa-

tion paid during any calendar year by such employer for services rendered to such employer.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of compensation paid in any calendar year.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 6413(c) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1)—

(i) by inserting “, section 3101(c),” after “by section 3101(a)”; and

(ii) by striking “both” and inserting “each”; and

(B) in paragraph (2), by inserting “or 3101(c)” after “3101(a)” each place it appears.

(2) Section 15(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(a)) is amended by inserting “(other than sections 3201(c), 3211(c), and 3221(c))” before the period at the end.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 120 days after the date of the enactment of this Act.

1 **SEC. 8. REGULATIONS.**

2 The Commissioner, in consultation with the Secretary
3 of Labor, shall prescribe regulations necessary to carry out
4 this Act. In developing such regulations, the Commissioner
5 shall consider the input from a volunteer advisory body
6 comprised of not more than 15 individuals, including ex-
7 perts in the relevant subject matter and officials charged
8 with implementing State paid family and medical leave in-
9 surance programs. The Commissioner shall take such pro-
10 grams into account when proposing regulations. Such indi-
11 viduals shall be appointed as follows:

12 (1) Five individuals to be appointed by the
13 President.

14 (2) Three individuals to be appointed by the
15 majority leader of the Senate.

16 (3) Two individuals to be appointed by the mi-
17 nority leader of the Senate.

18 (4) Three individuals to be appointed by the
19 Speaker of the House of Representatives.

20 (5) Two individuals to be appointed by the mi-
21 nority leader of the House of Representatives.

22 **SEC. 9. GAO STUDY.**

23 Not later than 3 years after the date of enactment
24 of this Act, the Comptroller General shall submit to Con-
25 gress a report on family and medical leave insurance bene-
26 fits paid under section 5 for any month during the 1-year

1 period beginning on January 1, 2017. The report shall in-
2 clude the following:

3 (1) An identification of the total number of ap-
4 plications for such benefits filed for any month dur-
5 ing such 1-year period, and the average number of
6 days occurring in the period beginning on the date
7 on which such an application is received and ending
8 on the date on which the initial determination of eli-
9 gibility with respect to the application is made.

10 (2) An identification of the total number of re-
11 quests for review of an initial adverse determination
12 of eligibility for such benefits made during such 1-
13 year period, and the average number of days occur-
14 ring in the period beginning on the date on which
15 such review is requested and ending on the date on
16 which the final determination of eligibility with re-
17 spect to such review is made.

18 (3) An identification of the total number of
19 monthly benefit claim reports for such benefits filed
20 during such 1-year period, and the average number
21 of days occurring in the period beginning on the
22 date on which such a claim report is received and
23 ending on the date on which the initial determina-
24 tion of eligibility with respect to the claim report is
25 made.

1 (4) An identification of the total number of re-
2 quests for review of an initial adverse determination
3 relating to a monthly benefit claim report for such
4 benefits made during such 1-year period, and the av-
5 erage number of days occurring in the period begin-
6 ning on the date on which such review is requested
7 and ending on the date on which the final deter-
8 mination of eligibility with respect to such review is
9 made.

10 (5) An identification of any excessive delay in
11 any of the periods described in paragraphs (1)
12 through (4), and a description of the causes for such
13 delay.

○