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LAW

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FAMILY AND MEDICAL LEAVE ACT

Family and Medical Leave Act

Summary:

29 U.S.C. § 2600 et. seq.

Important Notice

The information provided herein is general in nature and designed to serve as a guide to understanding. These materials are not to be construed as the rendering of legal or management advice. If the reader has a specific need or problem, the services of a competent professional should be sought to address the particular situation.

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Family and Medical Leave Act of 1993

Following is the text of the Family and Medical Leave Act of 1993 (P.L. 103-3), which requires employers with 50 or more workers to provide eligible employees up to 12 weeks of unpaid, job-protected leave in a 12-month period to care for a newborn or newly placed adopted or foster child; to care for a seriously ill child, spouse, or parent; or because of the employee's own illness. Signed into law February 5, 1993, the law took effect August 5, 1993; for employers covered by a collective bargaining agreement on that date, the law was effective on termination of the agreement or on February 5, 1994, whichever was earlier. The law is codified in the U.S. Code at Titles 2, 5, and 29 as indicated and reads as amended by P.L. 103-283, effective July 22, 1994.

FAMILY AND MEDICAL LEAVE

Sec. 1. Short Title; Table of Contents

- (a) Short Title. - This Act may be cited as the "Family and Medical Leave Act of 1993."
- (b) Table of Contents. - The table of contents is as follows:

Sec. 2. Findings and Purposes

- (a) Findings
Congress finds that –
 - (1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;
 - (2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;
 - (3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;
 - (4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;
 - (5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and

- (6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.
- (b) Purposes
It is the purpose of this Act --
- (1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;
 - (2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;
 - (3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;
 - (4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and
 - (5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

TITLE I - GENERAL REQUIREMENTS FOR LEAVE

Sec. 101. Definitions

As used in this title:

- (1) Commerce
The terms “commerce” and “industry or activity affecting commerce” mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (1) and (3)).
- (2) Eligible Employee
 - (A) In General
The term “eligible employee” means an employee who has been employed --

- (i) for at least 12 months by the employer with respect to whom leave is requested under section 102; and
- (ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) Exclusions

The term “eligible employee” does not include

- (i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act); or
- (ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) Determination

For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(3) Employ; Employee; State

The terms “employ”, “employee”, and “State” have the same meanings given such terms in subsections (c), (e), and (g) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

(4) Employer

(A) In General

The term “employer”

- (i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;
- (ii) includes --
 - (I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and
 - (II) any successor in interest of an employer; and

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

(B) Public Agency

For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(5) Employment Benefits

The term “employment benefits” means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an “employee benefit plan”, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(6) Health Care Provider

The term “health care provider” means --

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

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

(7) Parent

The term “parent” means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(8) Person

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

(9) Reduced Leave Schedule

The term “reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(10) Secretary

The term “Secretary” means the Secretary of Labor.

(11) Serious Health Condition

The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves --

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

(B) continuing treatment by a health care provider.

- (12) **Son or Daughter**
The term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is--
- (A) under 18 years of age; or
 - (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.
- (13) **Spouse**
The term “spouse” means a husband or wife, as the case may be.

Sec. 102. Leave Requirement

- (a) **In General**
- (1) **Entitlement to Leave**
Subject to section 103, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
 - (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
 - (B) Because of the placement of a son or daughter with the employee for adoption or foster care.
 - (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
 - (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
 - (2) **Expiration of Entitlement**
The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.
- (b) **Leave Taken Intermittently or on a Reduced Leave Schedule**
- (1) **In General**
Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 103(b)(5), leave under subparagraph (C) or (D) of

subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) Alternative Position

If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that --

(A) has equivalent pay and benefits; and

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

(c) Unpaid Leave Permitted

Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee under such section.

(d) Relationship to Paid Leave

(1) Unpaid Leave

If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) Substitution of Paid Leave

(A) In General

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

(B) Serious Health Condition

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under

subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this title shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(e) Foreseeable Leave

(1) Requirement of Notice

In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) Duties of Employee

In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee--

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

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

(f) Spouses Employed by the Same Employer

In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken...

(1) under subparagraph (A) or (B) of subsection (a)(1); or

(2) to care for a sick parent under subparagraph (C) of such subsection.

Sec. 103. Certification

(a) In General

An employer may require that a request for leave under subparagraph (C) or (D) of section 102(a)(1) be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Sufficient Certification

Certification provided under subsection (a) shall be sufficient if it states--

- (1) the date on which the serious health condition commenced;
- (2) the probable duration of the condition;
- (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
- (4) (A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and
(B) for purposes of leave under section 102(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee;
- (5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
- (6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
- (7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) Second Opinion

- (1) In General

In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 102(a)(1), the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

(2) Limitation

A health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employer.

(d) Resolution of Conflicting Opinions

(1) In General

In any case in which the second opinion described in subsection (c) differs from the opinion in the original certification provided under subsection (a), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) Finality

The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) Subsequent Recertification

The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

Sec. 104. Employment and Benefits Protection

(a) Restoration to Position

(1) In General

Except as provided in subsection (b), any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave--

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

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

- (2) **Loss of Benefits**
The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.
 - (3) **Limitations**
Nothing in this section shall be construed to entitle any restored employee to--
 - (A) the accrual of any seniority or employment benefits during any period of leave; or
 - (B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.
 - (4) **Certification**
As a condition of restoration under paragraph (1) for an employee who has taken leave under section 102(a)(1)(D), the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.
 - (5) **Construction**
Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to report periodically to the employer on the status and intention of the employee to return to work.
- (b) **Exemption Concerning Certain Highly Compensated Employees**
- (1) **Denial of Restoration**
An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if—
 - (A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
 - (B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and
 - (C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.
 - (2) **Affected Employees**

An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) Maintenance of Health Benefits

(1) Coverage

Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any “group health plan” (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(2) Failure to Return from Leave

The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if --

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

(B) the employee fails to return to work for a reason other than --

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

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

(3) Certification

(A) Issuance

An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by--

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

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

- (B) Copy
The employee shall provide, in a timely manner, a copy of such certification to the employer.
- (C) Sufficiency of Certification
 - (i) Leave Due to Serious Health Condition of Employee. -- The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.
 - (ii) Leave Due to Serious Health Condition of Family Member. -- The certification described in subparagraph (A)(i) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

Sec. 105. Prohibited Acts

(a) Interference With Rights

(1) Exercise of Rights

It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) Discrimination

It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) Interference With Proceedings or Inquiries

It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual--

- (1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;
- (2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or
- (3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this title.

Sec. 106. Investigative Authority

- (a) **In General** To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).
- (b) **Obligation to Keep and Preserve Records**
Any employer shall make, keep, and preserve records pertaining to compliance with this title in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.
- (c) **Required Submissions Generally Limited to an Annual Basis**
The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 107(b).
- (d) **Subpoena Powers**
For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

Sec. 107. Enforcement

- (a) **Civil Action by Employees**
 - (1) **Liability**
Any employer who violates section 105 shall be liable to any eligible employee affected --
 - (A) for damages equal to --
 - (i) the amount of --
 - (I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or
 - (II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost

of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

- (ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and
 - (iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and
- (B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) Right of Action

An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of –

- (A) the employees; or
- (B) the employees and other employees similarly situated.

(3) Fees and Costs

The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) Limitations

The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate--

- (A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or
- (B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph

(1)(A) owing to an eligible employee by an employer liable under paragraph (1), unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) Action by the Secretary

(1) Administrative Action

The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 105 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) Civil Action

The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A).

(3) Sums Recovered

Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Limitation

(1) In General

Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) Willful Violation

In the case of such action brought for a willful violation of section 105, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) Commencement

In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) Action for Injunction by Secretary

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

- (1) to restrain violations of section 105, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or
- (2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) Solicitor of Labor

The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

Sec. 108. Special Rules Concerning Employees of Local Educational Agencies

(a) Application

(1) In General

Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this title shall apply to --

- (A) any “local educational agency” (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and an eligible employee of the agency; and
- (B) any private elementary or secondary school and an eligible employee of the school.

(2) Definitions

For purposes of the application described in paragraph (1):

(A) Eligible Employee

The term “eligible employee” means an eligible employee of an agency or school described in paragraph (1).

(B) Employer

The term “employer” means an agency or school described in paragraph (1).

(b) Leave Does Not Violate Certain Other Federal Laws

A local educational agency and a private elementary or secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this title.

(c) Intermittent Leave or Leave on a Reduced Schedule for Instructional Employees

(1) In General

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

- (A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or
- (B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that--
 - (i) has equivalent pay and benefits; and
 - (ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) Application

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

(d) Rules Applicable to Periods Near the Conclusion of an Academic Term

The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) Leave More Than 5 Weeks Prior to End of Term

If the eligible employee begins leave under section 102 more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if --

- (A) the leave is of at least 3 weeks duration; and
- (B) the return to employment would occur during the 3-week period before the end of such term.

(2) Leave Less Than 5 Weeks Prior to End of Term

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to the end of

the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if--

- (A) the leave is of greater than 2 weeks duration; and
- (B) the return to employment would occur during the 2-week period before the end of such term.

(3) Leave Less Than 3 Weeks Prior to End of Term

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) Restoration to Equivalent Employment Position

For purposes of determinations under section 104(a)(1)(B) (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) Reduction of the Amount of Liability

If a local educational agency or a private elementary or secondary school that has violated this title proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of this title, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 107(a)(1)(A) to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

Sec. 109. Notice

(a) In General

Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) Penalty

Any employer that willfully violates this section may be assessed a civil money penalty not to exceed \$100 for each separate offense.

TITLE II -- LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Leave Requirement

(a) Civil Service Employees

(1) In General

Chapter 63 of title 5, United States Code, is amended by adding at the end the following new subchapter:

“SUBCHAPTER V -- FAMILY AND MEDICAL LEAVE

Sec. 6381. Definitions

For the purpose of this subchapter --

(1) the term “employee” means any individual who--

- (A) is an “employee,” as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and
- (B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

(2) the term “health care provider” means --

- (A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and
- (B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

(3) the term “parent” means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter;

(4) the term “reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

(5) the term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves --

- (A) inpatient care in a hospital, hospice, or residential medical care facility; or
- (B) continuing treatment by a health care provider; and

- (6) the term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is --
 - (A) under 18 years of age; or
 - (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

Sec. 6382. Leave Requirement

- (a) (1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:
 - (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
 - (B) Because of the placement of a son or daughter with the employee for adoption or foster care.
 - (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
 - (D) Because of a serious health condition that makes the employee unable to perform the functions of the employee’s position.
- (2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.
- (b) (1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 6383(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.
- (2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employing agency may require such employee to

transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that --

- (A) has equivalent pay and benefits; and
 - (B) better accommodates recurring periods of leave than the regular employment position of the employee.
- (c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.
- (d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.
- (e) (1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.
- (2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee--
- (A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and
 - (B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

Sec. 6383. Certification

- (a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.
- (b) A certification provided under subsection (a) shall be sufficient if it states --
 - (1) the date on which the serious health condition commenced;
 - (2) the probable duration of the condition;
 - (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
 - (4) (A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for such son, daughter, spouse, or parent; and
(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and
 - (5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.
- (c) (1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.
(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.
- (d) (1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

- (2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.
- (e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.

Sec. 6384. Employment and Benefits Protection

- (a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave--
 - (1) to be restored by the employing agency to the position held by the employee when the leave commenced; or
 - (2) to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.
- (b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.
- (c) Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to--
 - (1) the accrual of any employment benefits during any period of leave; or
 - (2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.
- (d) As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.
- (e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

Sec. 6385. Prohibition of Coercion

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

- (b) For the purpose of this section--
 - (1) the term “intimidate, threaten, or coerce” includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) , or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and
 - (2) the term “employee” means any “employee,” as defined by section 2105.

Sec. 6386. Health Insurance

An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

Sec. 6387. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be consistent with the regulations prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993.

- (2) Table of Contents
The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end the following:

SUBCHAPTER V -- FAMILY AND MEDICAL LEAVE

- (b) Employees Paid From Nonappropriated Funds
Section 2105(c)(1) of title 5, United States Code, is amended --
 - (1) by striking “or” at the end of subparagraph (C); and
 - (2) by adding at the end the following new subparagraph: (E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or.

TITLE III -- COMMISSION ON LEAVE

Sec. 301. Establishment

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

Sec. 302. Duties

The Commission shall --

- (1) conduct a comprehensive study of --
 - (A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;
 - (B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;
 - (C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;
 - (D) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act;
 - (E) alternate and equivalent State enforcement of title I with respect to employees described in section 108(a);
 - (F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;
 - (G) the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and
 - (H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.
- (2) not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report concerning the subjects listed in paragraph (1).

Sec. 303. Membership

(a) Composition

(1) Appointments

The Commission shall be composed of 12 voting members and 4 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

(A) Senators

One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

(B) Members of House of Representatives

One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

(C) Additional Members

(i) Appointment

Two members each shall be appointed by--

(I) the Speaker of the House of Representatives;

(II) the Majority Leader of the Senate;

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

(IV) the Minority Leader of the Senate.

(ii) Expertise

Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

(2) Ex Officio Members

The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

(b) Vacancies

Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) Chairperson and Vice Chairperson

The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) Quorum

Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

Sec. 304. Compensation

- (a) Pay
Members of the Commission shall serve without compensation.
- (b) Travel Expenses
Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

Sec. 305. Powers

- (a) Meetings
The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.
- (b) Hearings and Sessions
The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.
- (c) Access to Information
The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.
- (d) Use of Facilities and Services
Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.
- (e) Personnel From Other Agencies
On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Commission or assist the Commission in carrying out the duties of the Commission. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.
- (f) Voluntary Service

Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

Sec. 306. Termination

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

TITLE IV -- MISCELLANEOUS PROVISIONS

Sec. 401. Effect on Other Laws

- (a) **Federal and State Antidiscrimination Laws**
Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.
- (b) **State and Local Laws**
Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

Sec. 402. Effect on Existing Employment Benefits

- (a) **More Protective**
Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.
- (b) **Less Protective**

The rights established for employees under this Act or any amendment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

Sec. 403. Encouragement of More Generous Leave Policies

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

Sec. 404. Regulations

The Secretary of Labor shall prescribe such regulations as are necessary to carry out title I and this title not later than 120 days after the date of the enactment of this Act.

Sec. 405. Effective Dates

- (a) Title III
Title III shall take effect on the date of the enactment of this Act.
- (b) Other Titles
 - (1) In General
Except as provided in paragraph (2), titles I, II, and V and this title shall take effect 6 months after the date of the enactment of this Act.
 - (2) Collective Bargaining Agreements
In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I shall apply on the earlier of --
 - (A) the date of the termination of such agreement; or
 - (B) the date that occurs 12 months after the date of the enactment of this Act.

TITLE V -- COVERAGE OF CONGRESSIONAL EMPLOYEES

Sec. 501. Leave for Certain Senate Employees

- (a) Coverage
The rights and protections established under sections 101 through 105 shall apply with respect to a Senate employee and an employing office. For purposes of such application, the term “eligible employee” means a Senate employee and the term “employer” means an employing office.
- (b) Consideration of Allegations
 - (1) Applicable Provisions
The provisions of sections 304 through 313 of the Government Employee Rights Act of 1991 (2 U.S.C. 1204-1213) shall, except as provided in subsections (d) and (e) --
 - (A) apply with respect to an allegation of a violation of a provision of sections 101 through 105, with respect to Senate employment of a Senate employee; and

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

(2) Entity

Such an allegation shall be addressed by the Office of Senate Fair Employment Practices or such other entity as the Senate may designate.

(c) Rights of Employees

The Office of Senate Fair Employment Practices shall ensure that Senate employees are informed of their rights under sections 101 through 105.

(d) Limitations

A request for counseling under section 305 of such Act by a Senate employee alleging a violation of a provision of sections 101 through 105 shall be made not later than 2 years after the date of the last event constituting the alleged violation for which the counseling is requested, or not later than 3 years after such date in the case of a willful violation of section 105.

(e) Applicable Remedies

The remedies applicable to individuals who demonstrate a violation of a provision of sections 101 through 105 shall be such remedies as would be appropriate if awarded under paragraph (1) or (3) of section 107(a).

(f) Exercise of Rulemaking Power

The provisions of subsections (b), (c), (d), and (e), except as such subsections apply with respect to section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. No Senate employee may commence a judicial proceeding with respect to an allegation described in subsection (b)(1), except as provided in this section.

(g) Severability

Notwithstanding any other provision of law, if any provision of section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), or of subsection (b)(1) insofar as it applies such section 309 to an allegation described in subsection (b)(1)(A), is invalidated, both such section 309, and subsection (b)(1) insofar as it applies such section 309 to such an allegation, shall have no force and effect, and shall be considered to be invalidated for purposes of section 322 of such Act (2 U.S.C. 1221).

(h) Definitions

As used in this section:

(1) Employing Office

The term “employing office” means the office with the final authority described in section 301(2) of such Act (2 U.S.C. 1201(2)).

(2) Senate Employee

The term “Senate employee” means an employee described in subparagraph (A) of section 301(c)(1) of such Act (2 U.S.C. 1201(c)(1)) who has been employed for at least 12 months on other than a temporary or intermittent basis by any employing office.

Sec. 502. Leave for Certain House Employees

(a) In General

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

(b) Administration

In the administration of this section, the remedies, and procedures under the Fair Employment Practices Resolution shall be applied.

(c) Definition

As used in this section, the term “Fair Employment Practices Resolution” means rule LI of the Rules of the House of Representatives.

TITLE VI -- SENSE OF CONGRESS

Sec. 601. Sense of Congress

It is the sense of the Congress that:

- (a) The Secretary of Defense shall conduct a comprehensive review of current departmental policy with respect to the service of homosexuals in the Armed Forces;
- (b) Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;
- (c) The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;
- (d) The Senate Committee on Armed Services shall conduct (i) comprehensive hearings on the current military policy with respect to the service of homosexuals in the military services; and (ii) shall conduct oversight hearings on the Secretary’s recommendations as such are reported.