

103^D CONGRESS
1ST SESSION

H. R. 1

AMENDMENT

In the Senate of the United States,

February 4 (legislative day, January 5), 1993.

Resolved, That the bill from the House of Representatives (H.R. 1) entitled “An Act to grant family and temporary medical leave under certain circumstances”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

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

2 (a) *SHORT TITLE.*—*This Act may be cited as the*

3 *“Family and Medical Leave Act of 1993”.*

1 (b) *TABLE OF CONTENTS.*—*The table of contents is as*
2 *follows:*

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—GENERAL REQUIREMENTS FOR LEAVE

Sec. 101. Definitions.
Sec. 102. Leave requirement.
Sec. 103. Certification.
Sec. 104. Employment and benefits protection.
Sec. 105. Prohibited acts.
Sec. 106. Investigative authority.
Sec. 107. Enforcement.
Sec. 108. Special rules concerning employees of local educational agencies.
Sec. 109. Notice.

TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Leave requirement.

TITLE III—COMMISSION ON LEAVE

Sec. 301. Establishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.
Sec. 306. Termination.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect on other laws.
Sec. 402. Effect on existing employment benefits.
Sec. 403. Encouragement of more generous leave policies.
Sec. 404. Regulations.
Sec. 405. Effective dates.

TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES

Sec. 501. Leave for certain Senate employees.
Sec. 502. Leave for certain House employees.

TITLE VI—SENSE OF CONGRESS

Sec. 601. Sense of Congress.

3 **SEC. 2. FINDINGS AND PURPOSES.**

4 (a) *FINDINGS.*—*Congress finds that—*

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

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

8 (3) *the lack of employment policies to accommo-*
9 *date working parents can force individuals to choose*
10 *between job security and parenting;*

11 (4) *there is inadequate job security for employees*
12 *who have serious health conditions that prevent them*
13 *from working for temporary periods;*

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

19 (6) *employment standards that apply to one gen-*
20 *der only have serious potential for encouraging em-*
21 *ployers to discriminate against employees and appli-*
22 *cants for employment who are of that gender.*

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

24 (1) *to balance the demands of the workplace with*
25 *the needs of families, to promote the stability and eco-*

1 *conomic security of families, and to promote national*
2 *interests in preserving family integrity;*

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

7 *(3) to accomplish the purposes described in para-*
8 *graphs (1) and (2) in a manner that accommodates*
9 *the legitimate interests of employers;*

10 *(4) to accomplish the purposes described in para-*
11 *graphs (1) and (2) in a manner that, consistent with*
12 *the Equal Protection Clause of the Fourteenth Amend-*
13 *ment, minimizes the potential for employment dis-*
14 *crimination on the basis of sex by ensuring generally*
15 *that leave is available for eligible medical reasons (in-*
16 *cluding maternity-related disability) and for compel-*
17 *ling family reasons, on a gender-neutral basis; and*

18 *(5) to promote the goal of equal employment op-*
19 *portunity for women and men, pursuant to such*
20 *clause.*

21 **TITLE I—GENERAL**
22 **REQUIREMENTS FOR LEAVE**

23 **SEC. 101. DEFINITIONS.**

24 *As used in this title:*

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

10 (2) *ELIGIBLE EMPLOYEE.*—

11 (A) *IN GENERAL.*—The term “eligible em-
12 ployee” means an employee who has been em-
13 ployed—

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

17 (ii) for at least 1,250 hours of service
18 with such employer during the previous 12-
19 month period.

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

22 (i) any Federal officer or employee cov-
23 ered under subchapter V of chapter 63 of
24 title 5, United States Code (as added by
25 title II of this Act); or

1 (ii) any employee of an employer who
2 is employed at a worksite at which such em-
3 ployer employs less than 50 employees if the
4 total number of employees employed by that
5 employer within 75 miles of that worksite is
6 less than 50.

7 (C) DETERMINATION.—For purposes of de-
8 termining whether an employee meets the hours
9 of service requirement specified in subparagraph
10 (A)(ii), the legal standards established under sec-
11 tion 7 of the Fair Labor Standards Act of 1938
12 (29 U.S.C. 207) shall apply.

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

18 (4) EMPLOYER.—

19 (A) IN GENERAL.—The term “employer”—

20 (i) means any person engaged in com-
21 merce or in any industry or activity affect-
22 ing commerce who employs 50 or more em-
23 ployees for each working day during each of
24 20 or more calendar workweeks in the cur-
25 rent or preceding calendar year;

1 (ii) includes—

2 (I) any person who acts, directly
3 or indirectly, in the interest of an em-
4 ployer to any of the employees of such
5 employer; and

6 (II) any successor in interest of
7 an employer; and

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

11 (B) PUBLIC AGENCY.—For purposes of sub-
12 paragraph (A)(iii), a public agency shall be con-
13 sidered to be a person engaged in commerce or
14 in an industry or activity affecting commerce.

15 (5) EMPLOYMENT BENEFITS.—The term “em-
16 ployment benefits” means all benefits provided or
17 made available to employees by an employer, includ-
18 ing group life insurance, health insurance, disability
19 insurance, sick leave, annual leave, educational bene-
20 fits, and pensions, regardless of whether such benefits
21 are provided by a practice or written policy of an
22 employer or through an “employee benefit plan”, as
23 defined in section 3(3) of the Employee Retirement
24 Income Security Act of 1974 (29 U.S.C. 1002(3)).

1 (6) *HEALTH CARE PROVIDER.*—The term “health
2 *care provider*” means—

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

7 (B) any other person determined by the Sec-
8 retary to be capable of providing health care
9 services.

10 (7) *PARENT.*—The term “parent” means the bio-
11 logical parent of an employee or an individual who
12 stood in loco parentis to an employee when the em-
13 ployee was a son or daughter.

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

17 (9) *REDUCED LEAVE SCHEDULE.*—The term “re-
18 duced leave schedule” means a leave schedule that re-
19 duces the usual number of hours per workweek, or
20 hours per workday, of an employee.

21 (10) *SECRETARY.*—The term “Secretary” means
22 the Secretary of Labor.

23 (11) *SERIOUS HEALTH CONDITION.*—The term
24 “serious health condition” means an illness, injury,

1 *impairment, or physical or mental condition that in-*
2 *volves—*

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

5 *(B) continuing treatment by a health care*
6 *provider.*

7 *(12) SON OR DAUGHTER.—The term “son or*
8 *daughter” means a biological, adopted, or foster child,*
9 *a stepchild, a legal ward, or a child of a person*
10 *standing in loco parentis, who is—*

11 *(A) under 18 years of age; or*

12 *(B) 18 years of age or older and incapable*
13 *of self-care because of a mental or physical*
14 *disability.*

15 *(13) SPOUSE.—the term “spouse” means a hus-*
16 *band or wife, as the case may be.*

17 **SEC. 102. LEAVE REQUIREMENT.**

18 *(a) IN GENERAL.—*

19 *(1) ENTITLEMENT TO LEAVE.—Subject to section*
20 *103, an eligible employee shall be entitled to a total*
21 *of 12 workweeks of leave during any 12-month period*
22 *for one or more of the following:*

23 *(A) Because of the birth of a son or daugh-*
24 *ter of the employee and in order to care for such*
25 *son or daughter.*

1 (B) Because of the placement of a son or
2 daughter with the employee for adoption or foster
3 care.

4 (C) In order to care for the spouse, or a son,
5 daughter, or parent, of the employee, if such
6 spouse, son, daughter, or parent has a serious
7 health condition.

8 (D) Because of a serious health condition
9 that makes the employee unable to perform the
10 functions of the position of such employee.

11 (2) EXPIRATION OF ENTITLEMENT.—The entitle-
12 ment to leave under subparagraphs (A) and (B) of
13 paragraph (1) for a birth or placement of a son or
14 daughter shall expire at the end of the 12-month pe-
15 riod beginning on the date of such birth or placement.

16 (b) LEAVE TAKEN INTERMITTENTLY OR ON A
17 REDUCED LEAVE SCHEDULE.—

18 (1) IN GENERAL.—Leave under subparagraph
19 (A) or (B) of subsection (a)(1) shall not be taken by
20 an employee intermittently or on a reduced leave
21 schedule unless the employee and the employer of the
22 employee agree otherwise. Subject to paragraph (2),
23 subsection (e)(2), and section 103(b)(5), leave under
24 subparagraph (C) or (D) of subsection (a)(1) may be
25 taken intermittently or on a reduced leave schedule

1 *when medically necessary. The taking of leave inter-*
2 *mittently or on a reduced leave schedule pursuant to*
3 *this paragraph shall not result in a reduction in the*
4 *total amount of leave to which the employee is enti-*
5 *tled under subsection (a) beyond the amount of leave*
6 *actually taken.*

7 (2) *ALTERNATIVE POSITION.—If an employee re-*
8 *quests intermittent leave, or leave on a reduced leave*
9 *schedule, under subparagraph (C) or (D) of subsection*
10 *(a)(1), that is foreseeable based on planned medical*
11 *treatment, the employer may require such employee to*
12 *transfer temporarily to an available alternative posi-*
13 *tion offered by the employer for which the employee*
14 *is qualified and that—*

15 (A) *has equivalent pay and benefits; and*

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

19 (c) *UNPAID LEAVE PERMITTED.—Except as provided*
20 *in subsection (d), leave granted under subsection (a) may*
21 *consist of unpaid leave. Where an employee is otherwise ex-*
22 *empt under regulations issued by the Secretary pursuant*
23 *to section 13(a)(1) of the Fair Labor Standards Act of 1938*
24 *(29 U.S.C. 213(a)(1)), the compliance of an employer with*

1 *this title by providing unpaid leave shall not affect the ex-*
2 *empt status of the employee under such section.*

3 *(d) RELATIONSHIP TO PAID LEAVE.—*

4 *(1) UNPAID LEAVE.—If an employer provides*
5 *paid leave for fewer than 12 workweeks, the addi-*
6 *tional weeks of leave necessary to attain the 12 work-*
7 *weeks of leave required under this title may be pro-*
8 *vided without compensation.*

9 *(2) SUBSTITUTION OF PAID LEAVE.—*

10 *(A) IN GENERAL.—An eligible employee*
11 *may elect, or an employer may require the em-*
12 *ployee, to substitute any of the accrued paid va-*
13 *cation leave, personal leave, or family leave of*
14 *the employee for leave provided under subpara-*
15 *graph (A), (B), or (C) of subsection (a)(1) for*
16 *any part of the 12-week period of such leave*
17 *under such subsection.*

18 *(B) SERIOUS HEALTH CONDITION.—An eli-*
19 *gible employee may elect, or an employer may*
20 *require the employee, to substitute any of the ac-*
21 *crued paid vacation leave, personal leave, or*
22 *medical or sick leave of the employee for leave*
23 *provided under subparagraph (C) or (D) of sub-*
24 *section (a)(1) for any part of the 12-week period*
25 *of such leave under such subsection, except that*

1 *nothing in this title shall require an employer to*
2 *provide paid sick leave or paid medical leave in*
3 *any situation in which such employer would not*
4 *normally provide any such paid leave.*

5 *(e) FORESEEABLE LEAVE.—*

6 *(1) REQUIREMENT OF NOTICE.—In any case in*
7 *which the necessity for leave under subparagraph (A)*
8 *or (B) of subsection (a)(1) is foreseeable based on an*
9 *expected birth or placement, the employee shall pro-*
10 *vide the employer with not less than 30 days' notice,*
11 *before the date the leave is to begin, of the employee's*
12 *intention to take leave under such subparagraph, ex-*
13 *cept that if the date of the birth or placement requires*
14 *leave to begin in less than 30 days, the employee shall*
15 *provide such notice as is practicable.*

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

20 *(A) shall make a reasonable effort to sched-*
21 *ule the treatment so as not to disrupt unduly the*
22 *operations of the employer, subject to the ap-*
23 *proval of the health care provider of the employee*
24 *or the health care provider of the son, daughter,*

1 spouse, or parent of the employee, as appro-
2 priate; and

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

10 (f) *SPOUSES EMPLOYED BY THE SAME EMPLOYER.*—

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

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

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

20 **SEC. 103. CERTIFICATION.**

21 (a) *IN GENERAL.*—An employer may require that a
22 request for leave under subparagraph (C) or (D) of section
23 102(a)(1) be supported by a certification issued by the
24 health care provider of the eligible employee or of the son,
25 daughter, spouse, or parent of the employee, as appropriate.

1 *The employee shall provide, in a timely manner, a copy*
2 *of such certification to the employer.*

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

5 *(1) the date on which the serious health condi-*
6 *tion commenced;*

7 *(2) the probable duration of the condition;*

8 *(3) the appropriate medical facts within the*
9 *knowledge of the health care provider regarding the*
10 *condition;*

11 *(4)(A) for purposes of leave under section*
12 *102(a)(1)(C), a statement that the eligible employee is*
13 *needed to care for the son, daughter, spouse, or parent*
14 *and an estimate of the amount of time that such em-*
15 *ployee is needed to care for the son, daughter, spouse,*
16 *or parent; and*

17 *(B) for purposes of leave under section*
18 *102(a)(1)(D), a statement that the employee is unable*
19 *to perform the functions of the position of the em-*
20 *ployee;*

21 *(5) in the case of certification for intermittent*
22 *leave, or leave on a reduced leave schedule, for*
23 *planned medical treatment, the dates on which such*
24 *treatment is expected to be given and the duration of*
25 *such treatment;*

1 (6) *in the case of certification for intermittent*
2 *leave, or leave on a reduced leave schedule, under sec-*
3 *tion 102(a)(1)(D), a statement of the medical neces-*
4 *sity for the intermittent leave or leave on a reduced*
5 *leave schedule, and the expected duration of the inter-*
6 *mittent leave or reduced leave schedule; and*

7 (7) *in the case of certification for intermittent*
8 *leave, or leave on a reduced leave schedule, under sec-*
9 *tion 102(a)(1)(C), a statement that the employee's*
10 *intermittent leave or leave on a reduced leave schedule*
11 *is necessary for the care of the son, daughter, parent,*
12 *or spouse who has a serious health condition, or will*
13 *assist in their recovery, and the expected duration*
14 *and schedule of the intermittent leave or reduced leave*
15 *schedule.*

16 (c) *SECOND OPINION.—*

17 (1) *IN GENERAL.—In any case in which the em-*
18 *ployer has reason to doubt the validity of the certifi-*
19 *cation provided under subsection (a) for leave under*
20 *subparagraph (C) or (D) of section 102(a)(1), the em-*
21 *ployer may require, at the expense of the employer,*
22 *that the eligible employee obtain the opinion of a sec-*
23 *ond health care provider designated or approved by*
24 *the employer concerning any information certified*
25 *under subsection (b) for such leave.*

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

4 (d) *RESOLUTION OF CONFLICTING OPINIONS.*—

5 (1) *IN GENERAL.*—In any case in which the sec-
6 ond opinion described in subsection (c) differs from
7 the opinion in the original certification provided
8 under subsection (a), the employer may require, at
9 the expense of the employer, that the employee obtain
10 the opinion of a third health care provider designated
11 or approved jointly by the employer and the employee
12 concerning the information certified under subsection
13 (b).

14 (2) *FINALITY.*—The opinion of the third health
15 care provider concerning the information certified
16 under subsection (b) shall be considered to be final
17 and shall be binding on the employer and the
18 employee.

19 (e) *SUBSEQUENT RECERTIFICATION.*—The employer
20 may require that the eligible employee obtain subsequent
21 recertifications on a reasonable basis.

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

23 (a) *RESTORATION TO POSITION.*—

24 (1) *IN GENERAL.*—Except as provided in sub-
25 section (b), any eligible employee who takes leave

1 *under section 102 for the intended purpose of the*
2 *leave shall be entitled, on return from such leave—*

3 *(A) to be restored by the employer to the po-*
4 *sition of employment held by the employee when*
5 *the leave commenced; or*

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

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

13 *(3) LIMITATIONS.—Nothing in this section shall*
14 *be construed to entitle any restored employee to—*

15 *(A) the accrual of any seniority or employ-*
16 *ment benefits during any period of leave; or*

17 *(B) any right, benefit, or position of em-*
18 *ployment other than any right, benefit, or posi-*
19 *tion to which the employee would have been enti-*
20 *tled had the employee not taken the leave.*

21 *(4) CERTIFICATION.—As a condition of restora-*
22 *tion under paragraph (1) for an employee who has*
23 *taken leave under section 102(a)(1)(D), the employer*
24 *may have a uniformly applied practice or policy that*
25 *requires each such employee to receive certification*

1 *from the health care provider of the employee that the*
2 *employee is able to resume work, except that nothing*
3 *in this paragraph shall supersede a valid State or*
4 *local law or a collective bargaining agreement that*
5 *governs the return to work of such employees.*

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

11 (b) *EXEMPTION CONCERNING CERTAIN HIGHLY COM-*
12 *PENSATED EMPLOYEES.—*

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

16 (A) *such denial is necessary to prevent sub-*
17 *stantial and grievous economic injury to the op-*
18 *erations of the employer;*

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

23 (C) *in any case in which the leave has com-*
24 *menced, the employee elects not to return to em-*
25 *ployment after receiving such notice.*

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

7 (c) *MAINTENANCE OF HEALTH BENEFITS.*—

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

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

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

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

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

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

9 (3) CERTIFICATION.—

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

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

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

1 work because of a condition specified in sec-
2 tion 102(a)(1)(D).

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

6 (C) *SUFFICIENCY OF CERTIFICATION.*—

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

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

24 **SEC. 105. PROHIBITED ACTS.**

25 (a) *INTERFERENCE WITH RIGHTS.*—

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

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

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

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

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

19 (3) *has testified, or is about to testify, in any in-*
20 *quiry or proceeding relating to any right provided*
21 *under this title.*

22 **SEC. 106. INVESTIGATIVE AUTHORITY.**

23 (a) *IN GENERAL.*—To ensure compliance with the pro-
24 visions of this title, or any regulation or order issued under
25 this title, the Secretary shall have, subject to subsection (c),

1 *the investigative authority provided under section 11(a) of*
2 *the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).*

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

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

18 (d) *SUBPOENA POWERS.—For the purposes of any in-*
19 *vestigation provided for in this section, the Secretary shall*
20 *have the subpoena authority provided for under section 9*
21 *of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).*

22 **SEC. 107. ENFORCEMENT.**

23 (a) *CIVIL ACTION BY EMPLOYEES.—*

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

4 (A) for damages equal to—

5 (i) the amount of—

6 (I) any wages, salary, employ-
7 ment benefits, or other compensation
8 denied or lost to such employee by rea-
9 son of the violation; or

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

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

22 (iii) an additional amount as liq-
23 uidated damages equal to the sum of the
24 amount described in clause (i) and the in-
25 terest described in clause (ii), except that if

1 *an employer who has violated section 105*
2 *proves to the satisfaction of the court that*
3 *the act or omission which violated section*
4 *105 was in good faith and that the em-*
5 *ployer had reasonable grounds for believing*
6 *that the act or omission was not a violation*
7 *of section 105, such court may, in the dis-*
8 *cretion of the court, reduce the amount of*
9 *the liability to the amount and interest de-*
10 *termined under clauses (i) and (ii), respec-*
11 *tively; and*

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

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

21 *(A) the employees; or*

22 *(B) the employees and other employees simi-*
23 *larly situated.*

24 *(3) FEES AND COSTS.—The court in such an ac-*
25 *tion shall, in addition to any judgment awarded to*

1 *the plaintiff, allow a reasonable attorney's fee, reason-*
2 *able expert witness fees, and other costs of the action*
3 *to be paid by the defendant.*

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

7 (A) *on the filing of a complaint by the Sec-*
8 *retary in an action under subsection (d) in*
9 *which restraint is sought of any further delay in*
10 *the payment of the amount described in para-*
11 *graph (1)(A) to such employee by an employer*
12 *responsible under paragraph (1) for the pay-*
13 *ment; or*

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

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

23 (b) *ACTION BY THE SECRETARY.—*

24 (1) *ADMINISTRATIVE ACTION.—The Secretary*
25 *shall receive, investigate, and attempt to resolve com-*

1 *plaints of violations of section 105 in the same man-*
2 *ner that the Secretary receives, investigates, and at-*
3 *tempts to resolve complaints of violations of sections*
4 *6 and 7 of the Fair Labor Standards Act of 1938 (29*
5 *U.S.C. 206 and 207).*

6 (2) *CIVIL ACTION.*—*The Secretary may bring an*
7 *action in any court of competent jurisdiction to re-*
8 *cover the damages described in subsection (a)(1)(A).*

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

17 (c) *LIMITATION.*—

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

23 (2) *WILLFUL VIOLATION.*—*In the case of such ac-*
24 *tion brought for a willful violation of section 105,*
25 *such action may be brought within 3 years of the date*

1 of the last event constituting the alleged violation for
2 which such action is brought.

3 (3) *COMMENCEMENT.*—In determining when an
4 action is commenced by the Secretary under this sec-
5 tion for the purposes of this subsection, it shall be
6 considered to be commenced on the date when the
7 complaint is filed.

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

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

16 (2) to award such other equitable relief as may
17 be appropriate, including employment, reinstatement,
18 and promotion.

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

22 **SEC. 108. SPECIAL RULES CONCERNING EMPLOYEES OF**
23 **LOCAL EDUCATIONAL AGENCIES.**

24 (a) *APPLICATION.*—

1 (1) *IN GENERAL.*—*Except as otherwise provided*
2 *in this section, the rights (including the rights under*
3 *section 104, which shall extend throughout the period*
4 *of leave of any employee under this section), remedies,*
5 *and procedures under this title shall apply to—*

6 (A) any “local educational agency” (as de-
7 *fin*ed in section 1471(12) of the Elementary and
8 *Secondary Education Act of 1965 (20 U.S.C.*
9 *2891(12))) and an eligible employee of the agen-*
10 *cy; and*

11 (B) any private elementary or secondary
12 *school and an eligible employee of the school.*

13 (2) *DEFINITIONS.*—*For purposes of the applica-*
14 *tion described in paragraph (1):*

15 (A) *ELIGIBLE EMPLOYEE.*—*The term “eligi-*
16 *ble employee” means an eligible employee of an*
17 *agency or school described in paragraph (1).*

18 (B) *EMPLOYER.*—*The term “employer”*
19 *means an agency or school described in para-*
20 *graph (1).*

21 (b) *LEAVE DOES NOT VIOLATE CERTAIN OTHER FED-*
22 *ERAL LAWS.*—*A local educational agency and a private ele-*
23 *mentary or secondary school shall not be in violation of*
24 *the Individuals with Disabilities Education Act (20 U.S.C.*
25 *1400 et seq.), section 504 of the Rehabilitation Act of 1973*

1 *(29 U.S.C. 794), or title VI of the Civil Rights Act of 1964*
2 *(42 U.S.C. 2000d et seq.), solely as a result of an eligible*
3 *employee of such agency or school exercising the rights of*
4 *such employee under this title.*

5 *(c) INTERMITTENT LEAVE OR LEAVE ON A REDUCED*
6 *SCHEDULE FOR INSTRUCTIONAL EMPLOYEES.—*

7 *(1) IN GENERAL.—Subject to paragraph (2), in*
8 *any case in which an eligible employee employed*
9 *principally in an instructional capacity by any such*
10 *educational agency or school requests leave under sub-*
11 *paragraph (C) or (D) of section 102(a)(1) that is*
12 *foreseeable based on planned medical treatment and*
13 *the employee would be on leave for greater than 20*
14 *percent of the total number of working days in the pe-*
15 *riod during which the leave would extend, the agency*
16 *or school may require that such employee elect ei-*
17 *ther—*

18 *(A) to take leave for periods of a particular*
19 *duration, not to exceed the duration of the*
20 *planned medical treatment; or*

21 *(B) to transfer temporarily to an available*
22 *alternative position offered by the employer for*
23 *which the employee is qualified, and that—*

24 *(i) has equivalent pay and benefits;*
25 *and*

1 (ii) better accommodates recurring pe-
2 riods of leave than the regular employment
3 position of the employee.

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

8 (d) RULES APPLICABLE TO PERIODS NEAR THE CON-
9 CLUSION OF AN ACADEMIC TERM.—The following rules
10 shall apply with respect to periods of leave near the conclu-
11 sion of an academic term in the case of any eligible em-
12 ployee employed principally in an instructional capacity
13 by any such educational agency or school:

14 (1) LEAVE MORE THAN 5 WEEKS PRIOR TO END
15 OF TERM.—If the eligible employee begins leave under
16 section 102 more than 5 weeks prior to the end of the
17 academic term, the agency or school may require the
18 employee to continue taking leave until the end of
19 such term, if—

20 (A) the leave is of at least 3 weeks duration;

21 and

22 (B) the return to employment would occur
23 during the 3-week period before the end of such
24 term.

1 (2) *LEAVE LESS THAN 5 WEEKS PRIOR TO END*
2 *OF TERM.—If the eligible employee begins leave under*
3 *subparagraph (A), (B), or (C) of section 102(a)(1)*
4 *during the period that commences 5 weeks prior to the*
5 *end of the academic term, the agency or school may*
6 *require the employee to continue taking leave until*
7 *the end of such term, if—*

8 (A) *the leave is of greater than 2 weeks du-*
9 *ration; and*

10 (B) *the return to employment would occur*
11 *during the 2-week period before the end of such*
12 *term.*

13 (3) *LEAVE LESS THAN 3 WEEKS PRIOR TO END*
14 *OF TERM.—If the eligible employee begins leave under*
15 *subparagraph (A), (B), or (C) of section 102(a)(1)*
16 *during the period that commences 3 weeks prior to the*
17 *end of the academic term and the duration of the*
18 *leave is greater than 5 working days, the agency or*
19 *school may require the employee to continue to take*
20 *leave until the end of such term.*

21 (e) *RESTORATION TO EQUIVALENT EMPLOYMENT PO-*
22 *SITION.—For purposes of determinations under section*
23 *104(a)(1)(B) (relating to the restoration of an eligible em-*
24 *ployee to an equivalent position), in the case of a local edu-*
25 *cational agency or a private elementary or secondary*

1 school, such determination shall be made on the basis of
2 established school board policies and practices, private
3 school policies and practices, and collective bargaining
4 agreements.

5 (f) *REDUCTION OF THE AMOUNT OF LIABILITY.*—If a
6 local educational agency or a private elementary or second-
7 ary school that has violated this title proves to the satisfac-
8 tion of the court that the agency, school, or department had
9 reasonable grounds for believing that the underlying act or
10 omission was not a violation of this title, such court may,
11 in the discretion of the court, reduce the amount of the li-
12 ability provided for under section 107(a)(1)(A) to the
13 amount and interest determined under clauses (i) and (ii),
14 respectively, of such section.

15 **SEC. 109. NOTICE.**

16 (a) *IN GENERAL.*—Each employer shall post and keep
17 posted, in conspicuous places on the premises of the em-
18 ployer where notices to employees and applicants for em-
19 ployment are customarily posted, a notice, to be prepared
20 or approved by the Secretary, setting forth excerpts from,
21 or summaries of, the pertinent provisions of this title and
22 information pertaining to the filing of a charge.

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

1 **TITLE II—LEAVE FOR CIVIL**
2 **SERVICE EMPLOYEES**

3 **SEC. 201. LEAVE REQUIREMENT.**

4 (a) *CIVIL SERVICE EMPLOYEES.*—

5 (1) *IN GENERAL.*—Chapter 63 of title 5, United
6 States Code, is amended by adding at the end the fol-
7 lowing new subchapter:

8 “SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

9 “§ 6381. **Definitions**

10 “For the purpose of this subchapter—

11 “(1) the term ‘employee’ means any individual
12 who—

13 “(A) is an ‘employee’, as defined by section
14 6301(2), including any individual employed in a
15 position referred to in clause (v) or (ix) of sec-
16 tion 6301(2), but excluding any individual em-
17 ployed by the government of the District of Co-
18 lumbia and any individual employed on a tem-
19 porary or intermittent basis; and

20 “(B) has completed at least 12 months of
21 service as an employee (within the meaning of
22 subparagraph (A));

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

24 “(A) a doctor of medicine or osteopathy who
25 is authorized to practice medicine or surgery (as

1 *appropriate) by the State in which the doctor*
2 *practices; and*

3 *“(B) any other person determined by the*
4 *Director of the Office of Personnel Management*
5 *to be capable of providing health care services;*

6 *“(3) the term ‘parent’ means the biological par-*
7 *ent of an employee or an individual who stood in loco*
8 *parentis to an employee when the employee was a son*
9 *or daughter;*

10 *“(4) the term ‘reduced leave schedule’ means a*
11 *leave schedule that reduces the usual number of hours*
12 *per workweek, or hours per workday, of an employee;*

13 *“(5) the term ‘serious health condition’ means an*
14 *illness, injury, impairment, or physical or mental*
15 *condition that involves—*

16 *“(A) inpatient care in a hospital, hospice,*
17 *or residential medical care facility; or*

18 *“(B) continuing treatment by a health care*
19 *provider; and*

20 *“(6) the term ‘son or daughter’ means a biologi-*
21 *cal, adopted, or foster child, a stepchild, a legal ward,*
22 *or a child of a person standing in loco parentis, who*
23 *is—*

24 *“(A) under 18 years of age; or*

1 “(B) 18 years of age or older and incapable
2 of self-care because of a mental or physical dis-
3 ability.

4 **“§ 6382. Leave requirement**

5 “(a)(1) Subject to section 6383, an employee shall be
6 entitled to a total of 12 administrative workweeks of leave
7 during any 12-month period for one or more of the follow-
8 ing:

9 “(A) Because of the birth of a son or daughter
10 of the employee and in order to care for such son or
11 daughter.

12 “(B) Because of the placement of a son or daugh-
13 ter with the employee for adoption or foster care.

14 “(C) In order to care for the spouse, or a son,
15 daughter, or parent, of the employee, if such spouse,
16 son, daughter, or parent has a serious health condi-
17 tion.

18 “(D) Because of a serious health condition that
19 makes the employee unable to perform the functions
20 of the employee’s position.

21 “(2) The entitlement to leave under subparagraph (A)
22 or (B) of paragraph (1) based on the birth or placement
23 of a son or daughter shall expire at the end of the 12-month
24 period beginning on the date of such birth or placement.

1 “(b)(1) Leave under subparagraph (A) or (B) of sub-
2 section (a)(1) shall not be taken by an employee intermit-
3 tently or on a reduced leave schedule unless the employee
4 and the employing agency of the employee agree otherwise.
5 Subject to paragraph (2), subsection (e)(2), and section
6 6383(b)(5), leave under subparagraph (C) or (D) of sub-
7 section (a)(1) may be taken intermittently or on a reduced
8 leave schedule when medically necessary. In the case of an
9 employee who takes leave intermittently or on a reduced
10 leave schedule pursuant to this paragraph, any hours of
11 leave so taken by such employee shall be subtracted from
12 the total amount of leave remaining available to such em-
13 ployee under subsection (a), for purposes of the 12-month
14 period involved, on an hour-for-hour basis.

15 “(2) If an employee requests intermittent leave, or
16 leave on a reduced leave schedule, under subparagraph (C)
17 or (D) of subsection (a)(1), that is foreseeable based on
18 planned medical treatment, the employing agency may re-
19 quire such employee to transfer temporarily to an available
20 alternative position offered by the employing agency for
21 which the employee is qualified and that—

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

23 “(B) better accommodates recurring periods of
24 leave than the regular employment position of the em-
25 ployee.

1 “(c) Except as provided in subsection (d), leave grant-
2 ed under subsection (a) shall be leave without pay.

3 “(d) An employee may elect to substitute for leave
4 under subparagraph (A), (B), (C), or (D) of subsection
5 (a)(1) any of the employee’s accrued or accumulated annual
6 or sick leave under subchapter I for any part of the 12-
7 week period of leave under such subsection, except that noth-
8 ing in this subchapter shall require an employing agency
9 to provide paid sick leave in any situation in which such
10 employing agency would not normally provide any such
11 paid leave.

12 “(e)(1) In any case in which the necessity for leave
13 under subparagraph (A) or (B) of subsection (a)(1) is fore-
14 seeable based on an expected birth or placement, the em-
15 ployee shall provide the employing agency with not less
16 than 30 days’ notice, before the date the leave is to begin,
17 of the employee’s intention to take leave under such sub-
18 paragraph, except that if the date of the birth or placement
19 requires leave to begin in less than 30 days, the employee
20 shall provide such notice as is practicable.

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

24 “(A) shall make a reasonable effort to schedule
25 the treatment so as not to disrupt unduly the oper-

1 *ations of the employing agency, subject to the ap-*
2 *proval of the health care provider of the employee or*
3 *the health care provider of the son, daughter, spouse,*
4 *or parent of the employee, as appropriate; and*

5 *“(B) shall provide the employing agency with*
6 *not less than 30 days’ notice, before the date the leave*
7 *is to begin, of the employee’s intention to take leave*
8 *under such subparagraph, except that if the date of*
9 *the treatment requires leave to begin in less than 30*
10 *days, the employee shall provide such notice as is*
11 *practicable.*

12 **“§6383. Certification**

13 *“(a) An employing agency may require that a request*
14 *for leave under subparagraph (C) or (D) of section*
15 *6382(a)(1) be supported by certification issued by the health*
16 *care provider of the employee or of the son, daughter, spouse,*
17 *or parent of the employee, as appropriate. The employee*
18 *shall provide, in a timely manner, a copy of such certifi-*
19 *cation to the employing agency.*

20 *“(b) A certification provided under subsection (a) shall*
21 *be sufficient if it states—*

22 *“(1) the date on which the serious health condi-*
23 *tion commenced;*

24 *“(2) the probable duration of the condition;*

1 “(3) the appropriate medical facts within the
2 knowledge of the health care provider regarding the
3 condition;

4 “(4)(A) for purposes of leave under section
5 6382(a)(1)(C), a statement that the employee is need-
6 ed to care for the son, daughter, spouse, or parent,
7 and an estimate of the amount of time that such em-
8 ployee is needed to care for such son, daughter,
9 spouse, or parent; and

10 “(B) for purposes of leave under section
11 6382(a)(1)(D), a statement that the employee is un-
12 able to perform the functions of the position of the
13 employee; and

14 “(5) in the case of certification for intermittent
15 leave, or leave on a reduced leave schedule, for
16 planned medical treatment, the dates on which such
17 treatment is expected to be given and the duration of
18 such treatment.

19 “(c)(1) In any case in which the employing agency has
20 reason to doubt the validity of the certification provided
21 under subsection (a) for leave under subparagraph (C) or
22 (D) of section 6382(a)(1), the employing agency may re-
23 quire, at the expense of the agency, that the employee obtain
24 the opinion of a second health care provider designated or

1 *approved by the employing agency concerning any informa-*
2 *tion certified under subsection (b) for such leave.*

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

6 “(d)(1) In any case in which the second opinion de-
7 scribed in subsection (c) differs from the original certifi-
8 cation provided under subsection (a), the employing agency
9 may require, at the expense of the agency, that the employee
10 obtain the opinion of a third health care provider des-
11 igned or approved jointly by the employing agency and
12 the employee concerning the information certified under
13 subsection (b).

14 “(2) The opinion of the third health care provider con-
15 cerning the information certified under subsection (b) shall
16 be considered to be final and shall be binding on the em-
17 ploying agency and the employee.

18 “(e) The employing agency may require, at the expense
19 of the agency, that the employee obtain subsequent
20 recertifications on a reasonable basis.

21 **“§ 6384. Employment and benefits protection**

22 “(a) Any employee who takes leave under section 6382
23 for the intended purpose of the leave shall be entitled, upon
24 return from such leave—

1 “(1) to be restored by the employing agency to
2 the position held by the employee when the leave com-
3 menced; or

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

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

10 “(c) Except as otherwise provided by or under law,
11 nothing in this section shall be construed to entitle any re-
12 stored employee to—

13 “(1) the accrual of any employment benefits dur-
14 ing any period of leave; or

15 “(2) any right, benefit, or position of employ-
16 ment other than any right, benefit, or position to
17 which the employee would have been entitled had the
18 employee not taken the leave.

19 “(d) As a condition to restoration under subsection (a)
20 for an employee who takes leave under section
21 6382(a)(1)(D), the employing agency may have a uniformly
22 applied practice or policy that requires each such employee
23 to receive certification from the health care provider of the
24 employee that the employee is able to resume work.

1 “(e) Nothing in this section shall be construed to pro-
2 hibit an employing agency from requiring an employee on
3 leave under section 6382 to report periodically to the em-
4 ploying agency on the status and intention of the employee
5 to return to work.

6 **“§ 6385. Prohibition of coercion**

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

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

13 “(1) the term ‘intimidate, threaten, or coerce’ in-
14 cludes promising to confer or conferring any benefit
15 (such as appointment, promotion, or compensation),
16 or taking or threatening to take any reprisal (such as
17 deprivation of appointment, promotion, or compensa-
18 tion); and

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

21 **“§ 6386. Health insurance**

22 “An employee enrolled in a health benefits plan under
23 chapter 89 who is placed in a leave status under section
24 6382 may elect to continue the health benefits enrollment
25 of the employee while in such leave status and arrange to

1 *pay currently into the Employees Health Benefits Fund*
2 *(described in section 8909), the appropriate employee con-*
3 *tributions.*

4 **“§ 6387. Regulations**

5 *“The Office of Personnel Management shall prescribe*
6 *regulations necessary for the administration of this sub-*
7 *chapter. The regulations prescribed under this subchapter*
8 *shall, to the extent appropriate, be consistent with the regu-*
9 *lations prescribed by the Secretary of Labor to carry out*
10 *title I of the Family and Medical Leave Act of 1993.”.*

11 *(2) TABLE OF CONTENTS.—The table of contents*
12 *for chapter 63 of title 5, United States Code, is*
13 *amended by adding at the end the following:*

“SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

“6381. Definitions.
“6382. Leave requirement.
“6383. Certification.
“6384. Employment and benefits protection.
“6385. Prohibition of coercion.
“6386. Health insurance.
“6387. Regulations.”.

14 *(b) EMPLOYEES PAID FROM NONAPPROPRIATED*
15 *FUNDS.—Section 2105(c)(1) of title 5, United States Code,*
16 *is amended—*

17 *(1) by striking “or” at the end of subparagraph*
18 *(C); and*

19 *(2) by adding at the end the following new sub-*
20 *paragraph:*

1 “(E) subchapter V of chapter 63, which
2 shall be applied so as to construe references to
3 benefit programs to refer to applicable programs
4 for employees paid from nonappropriated funds;
5 or”.

6 **TITLE III—COMMISSION ON**
7 **LEAVE**

8 **SEC. 301. ESTABLISHMENT.**

9 *There is established a commission to be known as the*
10 *Commission on Leave (referred to in this title as the “Com-*
11 *mission”).*

12 **SEC. 302. DUTIES.**

13 *The Commission shall—*

14 *(1) conduct a comprehensive study of—*

15 *(A) existing and proposed mandatory and*
16 *voluntary policies relating to family and tem-*
17 *porary medical leave, including policies provided*
18 *by employers not covered under this Act;*

19 *(B) the potential costs, benefits, and impact*
20 *on productivity, job creation and business*
21 *growth of such policies on employers and em-*
22 *ployees;*

23 *(C) possible differences in costs, benefits,*
24 *and impact on productivity, job creation and*

1 *business growth of such policies on employers*
2 *based on business type and size;*

3 *(D) the impact of family and medical leave*
4 *policies on the availability of employee benefits*
5 *provided by employers, including employers not*
6 *covered under this Act;*

7 *(E) alternate and equivalent State enforce-*
8 *ment of title I with respect to employees de-*
9 *scribed in section 108(a);*

10 *(F) methods used by employers to reduce*
11 *administrative costs of implementing family and*
12 *medical leave policies;*

13 *(G) the ability of the employers to recover,*
14 *under section 104(c)(2), the premiums described*
15 *in such section; and*

16 *(H) the impact on employers and employees*
17 *of policies that provide temporary wage replace-*
18 *ment during periods of family and medical*
19 *leave.*

20 *(2) not later than 2 years after the date on*
21 *which the Commission first meets, prepare and sub-*
22 *mit, to the appropriate Committees of Congress, a re-*
23 *port concerning the subjects listed in paragraph (1).*

24 **SEC. 303. MEMBERSHIP.**

25 *(a) COMPOSITION.—*

1 (1) *APPOINTMENTS.*—*The Commission shall be*
2 *composed of 12 voting members and 4 ex officio mem-*
3 *bers to be appointed not later than 60 days after the*
4 *date of the enactment of this Act as follows:*

5 (A) *SENATORS.*—*One Senator shall be ap-*
6 *pointed by the Majority Leader of the Senate,*
7 *and one Senator shall be appointed by the Mi-*
8 *nority Leader of the Senate.*

9 (B) *MEMBERS OF HOUSE OF REPRESENTA-*
10 *TIVES.*—*One Member of the House of Representa-*
11 *tives shall be appointed by the Speaker of the*
12 *House of Representatives, and one Member of the*
13 *House of Representatives shall be appointed by*
14 *the Minority Leader of the House of Representa-*
15 *tives.*

16 (C) *ADDITIONAL MEMBERS.*—

17 (i) *APPOINTMENT.*—*Two members each*
18 *shall be appointed by—*

19 (I) *the Speaker of the House of*
20 *Representatives;*

21 (II) *the Majority Leader of the*
22 *Senate;*

23 (III) *the Minority Leader of the*
24 *House of Representatives; and*

1 (IV) *the Minority Leader of the*
2 *Senate.*

3 (ii) *EXPERTISE.—Such members shall be*
4 *appointed by virtue of demonstrated expertise in*
5 *relevant family, temporary disability, and labor*
6 *management issues. Such members shall include*
7 *representatives of employers, including employers*
8 *from large businesses and from small businesses.*

9 (2) *EX OFFICIO MEMBERS.—The Secretary of*
10 *Health and Human Services, the Secretary of Labor,*
11 *the Secretary of Commerce, and the Administrator of*
12 *the Small Business Administration shall serve on the*
13 *Commission as nonvoting ex officio members.*

14 (b) *VACANCIES.—Any vacancy on the Commission*
15 *shall be filled in the manner in which the original appoint-*
16 *ment was made. The vacancy shall not affect the power of*
17 *the remaining members to execute the duties of the Commis-*
18 *sion.*

19 (c) *CHAIRPERSON AND VICE CHAIRPERSON.—The*
20 *Commission shall elect a chairperson and a vice chair-*
21 *person from among the members of the Commission.*

22 (d) *QUORUM.—Eight members of the Commission shall*
23 *constitute a quorum for all purposes, except that a lesser*
24 *number may constitute a quorum for the purpose of holding*
25 *hearings.*

1 **SEC. 304. COMPENSATION.**

2 (a) *PAY.*—Members of the Commission shall serve
3 without compensation.

4 (b) *TRAVEL EXPENSES.*—Members of the Commission
5 shall be allowed reasonable travel expenses, including a per
6 diem allowance, in accordance with section 5703 of title 5,
7 United States Code, when performing duties of the
8 Commission.

9 **SEC. 305. POWERS.**

10 (a) *MEETINGS.*—The Commission shall first meet not
11 later than 30 days after the date on which all members are
12 appointed, and the Commission shall meet thereafter on the
13 call of the chairperson or a majority of the members.

14 (b) *HEARINGS AND SESSIONS.*—The Commission may
15 hold such hearings, sit and act at such times and places,
16 take such testimony, and receive such evidence as the Com-
17 mission considers appropriate. The Commission may ad-
18 minister oaths or affirmations to witnesses appearing before
19 it.

20 (c) *ACCESS TO INFORMATION.*—The Commission may
21 secure directly from any Federal agency information nec-
22 essary to enable it to carry out this title, if the information
23 may be disclosed under section 552 of title 5, United States
24 Code. Subject to the previous sentence, on the request of the
25 chairperson or vice chairperson of the Commission, the head

1 *of such agency shall furnish such information to the Com-*
2 *mission.*

3 (d) *USE OF FACILITIES AND SERVICES.*—*Upon the re-*
4 *quest of the Commission, the head of any Federal agency*
5 *may make available to the Commission any of the facilities*
6 *and services of such agency.*

7 (e) *PERSONNEL FROM OTHER AGENCIES.*—*On the re-*
8 *quest of the Commission, the head of any Federal agency*
9 *may detail any of the personnel of such agency to serve as*
10 *an Executive Director of the Commission or assist the Com-*
11 *mission in carrying out the duties of the Commission. Any*
12 *detail shall not interrupt or otherwise affect the civil service*
13 *status or privileges of the Federal employee.*

14 (f) *VOLUNTARY SERVICE.*—*Notwithstanding section*
15 *1342 of title 31, United States Code, the chairperson of the*
16 *Commission may accept for the Commission voluntary serv-*
17 *ices provided by a member of the Commission.*

18 **SEC. 306. TERMINATION.**

19 *The Commission shall terminate 30 days after the date*
20 *of the submission of the report of the Commission to Con-*
21 *gress.*

1 **TITLE IV—MISCELLANEOUS**
2 **PROVISIONS**

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

4 (a) *FEDERAL AND STATE ANTIDISCRIMINATION*
5 *LAWS.—Nothing in this Act or any amendment made by*
6 *this Act shall be construed to modify or affect any Federal*
7 *or State law prohibiting discrimination on the basis of*
8 *race, religion, color, national origin, sex, age, or disability.*

9 (b) *STATE AND LOCAL LAWS.—Nothing in this Act or*
10 *any amendment made by this Act shall be construed to su-*
11 *perede any provision of any State or local law that pro-*
12 *vides greater family or medical leave rights than the rights*
13 *established under this Act or any amendment made by this*
14 *Act.*

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

16 (a) *MORE PROTECTIVE.—Nothing in this Act or any*
17 *amendment made by this Act shall be construed to diminish*
18 *the obligation of an employer to comply with any collective*
19 *bargaining agreement or any employment benefit program*
20 *or plan that provides greater family or medical leave rights*
21 *to employees than the rights established under this Act or*
22 *any amendment made by this Act.*

23 (b) *LESS PROTECTIVE.—The rights established for em-*
24 *ployees under this Act or any amendment made by this Act*

1 *shall not be diminished by any collective bargaining agree-*
2 *ment or any employment benefit program or plan.*

3 **SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE**
4 **POLICIES.**

5 *Nothing in this Act or any amendment made by this*
6 *Act shall be construed to discourage employers from adopt-*
7 *ing or retaining leave policies more generous than any poli-*
8 *cies that comply with the requirements under this Act or*
9 *any amendment made by this Act.*

10 **SEC. 404. REGULATIONS.**

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

14 **SEC. 405. EFFECTIVE DATES.**

15 *(a) TITLE III.—Title III shall take effect on the date*
16 *of the enactment of this Act.*

17 *(b) OTHER TITLES.—*

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

22 *(2) COLLECTIVE BARGAINING AGREEMENTS.—In*
23 *the case of a collective bargaining agreement in effect*
24 *on the effective date prescribed by paragraph (1), title*
25 *I shall apply on the earlier of—*

1 (A) the date of the termination of such
2 agreement; or

3 (B) the date that occurs 12 months after the
4 date of the enactment of this Act.

5 **TITLE V—COVERAGE OF**
6 **CONGRESSIONAL EMPLOYEES**

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

8 (a) *COVERAGE.*—The rights and protections estab-
9 lished under sections 101 through 105 shall apply with re-
10 spect to a Senate employee and an employing office. For
11 purposes of such application, the term “eligible employee”
12 means a Senate employee and the term “employer” means
13 an employing office.

14 (b) *CONSIDERATION OF ALLEGATIONS.*—

15 (1) *APPLICABLE PROVISIONS.*—The provisions of
16 sections 304 through 313 of the Government Employee
17 Rights Act of 1991 (2 U.S.C. 1204–1213) shall, except
18 as provided in subsections (d) and (e)—

19 (A) apply with respect to an allegation of
20 a violation of a provision of sections 101 through
21 105, with respect to Senate employment of a
22 Senate employee; and

23 (B) apply to such an allegation in the same
24 manner and to the same extent as such sections
25 of the Government Employee Rights Act of 1991

1 *apply with respect to an allegation of a violation*
2 *under such Act.*

3 (2) *ENTITY.*—*Such an allegation shall be ad-*
4 *ressed by the Office of Senate Fair Employment*
5 *Practices or such other entity as the Senate may des-*
6 *ignate.*

7 (c) *RIGHTS OF EMPLOYEES.*—*The Office of Senate*
8 *Fair Employment Practices shall ensure that Senate em-*
9 *ployees are informed of their rights under sections 101*
10 *through 105.*

11 (d) *LIMITATIONS.*—*A request for counseling under sec-*
12 *tion 305 of such Act by a Senate employee alleging a viola-*
13 *tion of a provision of sections 101 through 105 shall be*
14 *made not later than 2 years after the date of the last event*
15 *constituting the alleged violation for which the counseling*
16 *is requested, or not later than 3 years after such date in*
17 *the case of a willful violation of section 105.*

18 (e) *APPLICABLE REMEDIES.*—*The remedies applicable*
19 *to individuals who demonstrate a violation of a provision*
20 *of sections 101 through 105 shall be such remedies as would*
21 *be appropriate if awarded under paragraph (1) or (3) of*
22 *section 107(a).*

23 (f) *EXERCISE OF RULEMAKING POWER.*—*The provi-*
24 *sions of subsections (b), (c), (d), and (e), except as such sub-*
25 *sections apply with respect to section 309 of the Government*

1 *Employee Rights Act of 1991 (2 U.S.C. 1209), are enacted*
2 *by the Senate as an exercise of the rulemaking power of*
3 *the Senate, with full recognition of the right of the Senate*
4 *to change its rules, in the same manner, and to the same*
5 *extent, as in the case of any other rule of the Senate. No*
6 *Senate employee may commence a judicial proceeding with*
7 *respect to an allegation described in subsection (b)(1), ex-*
8 *cept as provided in this section.*

9 (g) *SEVERABILITY.—Notwithstanding any other provi-*
10 *sion of law, if any provision of section 309 of the Govern-*
11 *ment Employee Rights Act of 1991 (2 U.S.C. 1209), or of*
12 *subsection (b)(1) insofar as it applies such section 309 to*
13 *an allegation described in subsection (b)(1)(A), is invali-*
14 *dated, both such section 309, and subsection (b)(1) insofar*
15 *as it applies such section 309 to such an allegation, shall*
16 *have no force and effect, and shall be considered to be invali-*
17 *dated for purposes of section 322 of such Act (2 U.S.C.*
18 *1221).*

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

20 (1) *EMPLOYING OFFICE.—The term “employing*
21 *office” means the office with the final authority de-*
22 *scribed in section 301(2) of such Act (2 U.S.C.*
23 *1201(2)).*

24 (2) *SENATE EMPLOYEE.—The term “Senate em-*
25 *ployee” means an employee described in subpara-*

1 *graph (A) or (B) of section 301(c)(1) of such Act (2*
2 *U.S.C. 1201(c)(1)) who has been employed for at least*
3 *12 months on other than a temporary or intermittent*
4 *basis by any employing office.*

5 **SEC. 502. LEAVE FOR CERTAIN HOUSE EMPLOYEES.**

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

10 (b) *ADMINISTRATION.*—*In the administration of this*
11 *section, the remedies and procedures under the Fair Em-*
12 *ployment Practices Resolution shall be applied.*

13 (c) *DEFINITION.*—*As used in this section, the term*
14 *“Fair Employment Practices Resolution” means rule LI of*
15 *the Rules of the House of Representatives.*

16 **TITLE VI—SENSE OF CONGRESS**

17 **SEC. 601. SENSE OF CONGRESS.**

18 *It is the sense of the Congress that:*

19 (a) *The Secretary of Defense shall conduct a*
20 *comprehensive review of current departmental policy*
21 *with respect to the service of homosexuals in the*
22 *Armed Forces;*

23 (b) *Such review shall include the basis for the*
24 *current policy of mandatory separation; the rights of*
25 *all service men and women, and the effects of any*

1 *change in such policy on morale, discipline, and mili-*
2 *tary effectiveness;*

3 *(c) The Secretary shall report the results of such*
4 *review and consultations and his recommendations to*
5 *the President and to the Congress no later than July*
6 *15, 1993;*

7 *(d) The Senate Committee on Armed Services*
8 *shall conduct (i) comprehensive hearings on the cur-*
9 *rent military policy with respect to the service of ho-*
10 *mosexuals in the military services; and (ii) shall con-*
11 *duct oversight hearings on the Secretary's rec-*
12 *ommendations as such are reported.*

Attest:

Secretary.

HR 1 EAS—2

HR 1 EAS—3

HR 1 EAS—4

HR 1 EAS—5