

Calendar No. 3

103D CONGRESS
1ST SESSION

S. 5

[Report No. 103-3]

A BILL

To grant family and temporary medical leave under
certain circumstances.

JANUARY 27 (legislative day, JANUARY 5), 1993
Reported without amendment

Calendar No. 3103^D CONGRESS
1ST SESSION**S. 5****[Report No. 103-3]**

To grant family and temporary medical leave under certain circumstances.

IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 5), 1993

Mr. DODD (for himself, Mr. KENNEDY, Mr. PACKWOOD, Mr. MITCHELL, Mr. JEFFORDS, Ms. MIKULSKI, Mr. HATFIELD, Mr. BOND, Mr. METZENBAUM, Mr. COATS, Mr. D'AMATO, Mr. CHAFEE, Mr. DECONCINI, Mr. PELL, Mr. SIMON, Mr. SPECTER, Mr. BRADLEY, Mr. MOYNIHAN, Mr. KERRY, Mr. INOUE, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. REID, Mr. SARBANES, Mr. AKAKA, Mr. BINGAMAN, Mr. DASCHLE, Mr. EXON, Mr. HARKIN, Mr. RIEGLE, Mr. BRYAN, Mr. KERREY, Mr. LEVIN, Mr. WELLSTONE, Mr. KOHL, Mr. FORD, Mr. FEINGOLD, Mrs. BOXER, Ms. FEINSTEIN, Ms. MURRAY, Ms. MOSELEY-BRAUN, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

JANUARY 27 (legislative day, JANUARY 5), 1993

Reported by Mr. KENNEDY, without amendment

A BILL

To grant family and temporary medical leave under certain circumstances.

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

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”.

4 (b) TABLE OF CONTENTS.—The table of contents is
5 as 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 congressional employees.

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

7 (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
6 be able to participate in early childrearing and the
7 care of family members who have serious health
8 conditions;

9 (3) the lack of employment policies to accom-
10 modate working parents can force individuals to
11 choose between job security and parenting;

12 (4) there is inadequate job security for employ-
13 ees who have serious health conditions that prevent
14 them from working for temporary periods;

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

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

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

1 (1) to balance the demands of the workplace
2 with the needs of families, to promote the stability
3 and economic security of families, and to promote
4 national interests in preserving family integrity;

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

9 (3) to accomplish the purposes described in
10 paragraphs (1) and (2) in a manner that accommo-
11 dates the legitimate interests of employers;

12 (4) to accomplish the purposes described in
13 paragraphs (1) and (2) in a manner that, consistent
14 with the Equal Protection Clause of the Fourteenth
15 Amendment, minimizes the potential for employment
16 discrimination on the basis of sex by ensuring gen-
17 erally that leave is available for eligible medical rea-
18 sons (including maternity-related disability) and for
19 compelling family reasons, on a gender-neutral basis;
20 and

21 (5) to promote the goal of equal employment
22 opportunity for women and men, pursuant to such
23 clause.

1 **TITLE I—GENERAL**
2 **REQUIREMENTS FOR LEAVE**

3 **SEC. 101. DEFINITIONS.**

4 As used in this title:

5 (1) **COMMERCE.**—The terms “commerce” and
6 “industry or activity affecting commerce” mean any
7 activity, business, or industry in commerce or in
8 which a labor dispute would hinder or obstruct com-
9 merce or the free flow of commerce, and include
10 “commerce” and any “industry affecting com-
11 merce”, as defined in paragraphs (1) and (3) of sec-
12 tion 501 of the Labor Management Relations Act,
13 1947 (29 U.S.C. 142 (1) and (3)).

14 (2) **ELIGIBLE EMPLOYEE.**—

15 (A) **IN GENERAL.**—The term “eligible em-
16 ployee” means an employee who has been em-
17 ployed—

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

21 (ii) for at least 1,250 hours of service
22 with such employer during the previous 12-
23 month period.

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

1 (i) any Federal officer or employee
2 covered under subchapter V of chapter 63
3 of title 5, United States Code (as added by
4 title II of this Act); or

5 (ii) any employee of an employer who
6 is employed at a worksite at which such
7 employer employs less than 50 employees if
8 the total number of employees employed by
9 that employer within 75 miles of that
10 worksite is less than 50.

11 (C) DETERMINATION.—For purposes of
12 determining whether an employee meets the
13 hours of service requirement specified in sub-
14 paragraph (A)(ii), the legal standards estab-
15 lished under section 7 of the Fair Labor Stand-
16 ards Act of 1938 (29 U.S.C. 207) shall apply.

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

22 (4) EMPLOYER.—

23 (A) IN GENERAL.—The term “em-
24 ployer”—

1 (i) means any person engaged in com-
2 merce or in any industry or activity affect-
3 ing commerce who employs 50 or more em-
4 ployees for each working day during each
5 of 20 or more calendar workweeks in the
6 current or preceding calendar year;

7 (ii) includes—

8 (I) any person who acts, directly
9 or indirectly, in the interest of an em-
10 ployer to any of the employees of such
11 employer; and

12 (II) any successor in interest of
13 an employer; and

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

17 (B) PUBLIC AGENCY.—For purposes of
18 subparagraph (A)(iii), a public agency shall be
19 considered to be a person engaged in commerce
20 or in an industry or activity affecting com-
21 merce.

22 (5) EMPLOYMENT BENEFITS.—The term “em-
23 ployment benefits” means all benefits provided or
24 made available to employees by an employer, includ-
25 ing group life insurance, health insurance, disability

1 insurance, sick leave, annual leave, educational bene-
2 fits, and pensions, regardless of whether such bene-
3 fits are provided by a practice or written policy of
4 an employer or through an “employee benefit plan”,
5 as defined in section 3(3) of the Employee Retirement
6 Income Security Act of 1974 (29 U.S.C.
7 1002(3)).

8 (6) HEALTH CARE PROVIDER.—The term
9 “health care provider” means—

10 (A) a doctor of medicine or osteopathy who
11 is authorized to practice medicine or surgery
12 (as appropriate) by the State in which the doc-
13 tor practices; or

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

17 (7) PARENT.—The term “parent” means the
18 biological parent of an employee or an individual
19 who stood in loco parentis to an employee when the
20 employee was a son or daughter.

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

24 (9) REDUCED LEAVE SCHEDULE.—The term
25 “reduced leave schedule” means a leave schedule

1 that reduces the usual number of hours per work-
2 week, or hours per workday, of an employee.

3 (10) SECRETARY.—The term “Secretary”
4 means the Secretary of Labor.

5 (11) SERIOUS HEALTH CONDITION.—The term
6 “serious health condition” means an illness, injury,
7 impairment, or physical or mental condition that in-
8 volves—

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

11 (B) continuing treatment by a health care
12 provider.

13 (12) SON OR DAUGHTER.—The term “son or
14 daughter” means a biological, adopted, or foster
15 child, a stepchild, a legal ward, or a child of a per-
16 son standing in loco parentis, who is—

17 (A) under 18 years of age; or

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

21 **SEC. 102. LEAVE REQUIREMENT.**

22 (a) IN GENERAL.—

23 (1) ENTITLEMENT TO LEAVE.—Subject to sec-
24 tion 103, an eligible employee shall be entitled to a

1 total of 12 workweeks of leave during any 12-month
2 period for one or more of the following:

3 (A) Because of the birth of a son or
4 daughter of the employee and in order to care
5 for such son or daughter.

6 (B) Because of the placement of a son or
7 daughter with the employee for adoption or fos-
8 ter care.

9 (C) In order to care for the spouse, or a
10 son, daughter, or parent, of the employee, if
11 such spouse, son, daughter, or parent has a se-
12 rious health condition.

13 (D) Because of a serious health condition
14 that makes the employee unable to perform the
15 functions of the position of such employee.

16 (2) EXPIRATION OF ENTITLEMENT.—The enti-
17 tlement to leave under subparagraphs (A) and (B)
18 of paragraph (1) for a birth or placement of a son
19 or daughter shall expire at the end of the 12-month
20 period beginning on the date of such birth or
21 placement.

22 (b) LEAVE TAKEN INTERMITTENTLY OR ON A
23 REDUCED LEAVE SCHEDULE.—

24 (1) IN GENERAL.—Leave under subparagraph
25 (A) or (B) of paragraph (1) shall not be taken by

1 an employee intermittently or on a reduced leave
2 schedule unless the employee and the employer of
3 the employee agree otherwise. Subject to subpara-
4 graph (B), subsection (e)(2), and section 103(b)(5),
5 leave under subparagraph (C) or (D) of paragraph
6 (1) may be taken intermittently or on a reduced
7 leave schedule when medically necessary. The taking
8 of leave intermittently or on a reduced leave sched-
9 ule pursuant to this paragraph shall not result in a
10 reduction in the total amount of leave to which the
11 employee is entitled under subsection (a) beyond the
12 amount of leave actually taken.

13 (2) ALTERNATIVE POSITION.—If an employee
14 requests intermittent leave, or leave on a reduced
15 leave schedule, under subparagraph (C) or (D) of
16 paragraph (1), that is foreseeable based on planned
17 medical treatment, the employer may require such
18 employee to transfer temporarily to an available al-
19 ternative position offered by the employer for which
20 the employee is qualified and that—

21 (A) has equivalent pay and benefits; and

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

1 (c) UNPAID LEAVE PERMITTED.—Except as provided
2 in subsection (d), leave granted under subsection (a) may
3 consist of unpaid leave. Where an employee is otherwise
4 exempt under regulations issued by the Secretary pursu-
5 ant to section 13(a)(1) of the Fair Labor Standards Act
6 of 1938 (29 U.S.C. 213(a)(1)), the compliance of an em-
7 ployer with this title by providing unpaid leave shall not
8 affect the exempt status of the employee under such
9 section.

10 (d) RELATIONSHIP TO PAID LEAVE.—

11 (1) UNPAID LEAVE.—If an employer provides
12 paid leave for fewer than 12 workweeks, the addi-
13 tional weeks of leave necessary to attain the 12
14 workweeks of leave required under this title may be
15 provided without compensation.

16 (2) SUBSTITUTION OF PAID LEAVE.—

17 (A) IN GENERAL.—An eligible employee
18 may elect, or an employer may require the em-
19 ployee, to substitute any of the accrued paid va-
20 cation leave, personal leave, or family leave of
21 the employee for leave provided under subpara-
22 graph (A), (B), or (C) of subsection (a)(1) for
23 any part of the 12-week period of such leave
24 under such subsection.

1 (B) SERIOUS HEALTH CONDITION.—An el-
2 igible employee may elect, or an employer may
3 require the employee, to substitute any of the
4 accrued paid vacation leave, personal leave, or
5 medical or sick leave of the employee for leave
6 provided under subparagraph (C) or (D) of sub-
7 section (a)(1) for any part of the 12-week pe-
8 riod of such leave under such subsection, except
9 that nothing in this title shall require an em-
10 ployer to provide paid sick leave or paid medical
11 leave in any situation in which such employer
12 would not normally provide any such paid leave.

13 (e) FORESEEABLE LEAVE.—

14 (1) REQUIREMENT OF NOTICE.—In any case in
15 which the necessity for leave under subparagraph
16 (A) or (B) of subsection (a)(1) is foreseeable based
17 on an expected birth or placement, the employee
18 shall provide the employer with not less than 30
19 days' notice, before the date the leave is to begin, of
20 the employee's intention to take leave under such
21 subparagraph, except that if the date of the birth or
22 placement requires leave to begin in less than 30
23 days, the employee shall provide such notice as is
24 practicable.

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

5 (A) shall make a reasonable effort to
6 schedule the treatment so as not to disrupt un-
7 duly the operations of the employer, subject to
8 the approval of the health care provider of the
9 employee or the health care provider of the son,
10 daughter, spouse, or parent of the employee, as
11 appropriate; and

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

19 (f) SPOUSES EMPLOYED BY THE SAME EM-
20 PLOYER.—In any case in which a husband and wife enti-
21 tled to leave under subsection (a) are employed by the
22 same employer, the aggregate number of workweeks of
23 leave to which both may be entitled may be limited to 12
24 workweeks during any 12-month period, if such leave is
25 taken—

1 (1) under subparagraph (A) or (B) of sub-
2 section (a)(1); or

3 (2) to care for a sick parent under subpara-
4 graph (C) of such subsection.

5 **SEC. 103. CERTIFICATION.**

6 (a) IN GENERAL.—An employer may require that a
7 request for leave under subparagraph (C) or (D) of section
8 102(a)(1) be supported by a certification issued by the
9 health care provider of the eligible employee or of the son,
10 daughter, spouse, or parent of the employee, as appro-
11 priate. The employee shall provide, in a timely manner,
12 a copy of such certification to the employer.

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

15 (1) the date on which the serious health condi-
16 tion commenced;

17 (2) the probable duration of the condition;

18 (3) the appropriate medical facts within the
19 knowledge of the health care provider regarding the
20 condition;

21 (4)(A) for purposes of leave under section
22 102(a)(1)(C), a statement that the eligible employee
23 is needed to care for the son, daughter, spouse, or
24 parent and an estimate of the amount of time that

1 such employee is needed to care for the son, daugh-
2 ter, spouse, or parent; and

3 (B) for purposes of leave under section
4 102(a)(1)(D), a statement that the employee is un-
5 able to perform the functions of the position of the
6 employee; and

7 (5) in the case of certification for intermittent
8 leave for planned medical treatment, the dates on
9 which such treatment is expected to be given and the
10 duration of such treatment.

11 (c) SECOND OPINION.—

12 (1) IN GENERAL.—In any case in which the em-
13 ployer has reason to doubt the validity of the certifi-
14 cation provided under subsection (a) for leave under
15 subparagraph (C) or (D) of section 102(a)(1), the
16 employer may require, at the expense of the em-
17 ployer, that the eligible employee obtain the opinion
18 of a second health care provider designated or ap-
19 proved by the employer concerning any information
20 certified under subsection (b) for such leave.

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

24 (d) RESOLUTION OF CONFLICTING OPINIONS.—

1 (1) IN GENERAL.—In any case in which the
2 second opinion described in subsection (c) differs
3 from the opinion in the original certification pro-
4 vided under subsection (a), the employer may re-
5 quire, at the expense of the employer, that the em-
6 ployee obtain the opinion of a third health care pro-
7 vider designated or approved jointly by the employer
8 and the employee concerning the information cer-
9 tified under subsection (b).

10 (2) FINALITY.—The opinion of the third health
11 care provider concerning the information certified
12 under subsection (b) shall be considered to be final
13 and shall be binding on the employer and the
14 employee.

15 (e) SUBSEQUENT RECERTIFICATION.—The employer
16 may require that the eligible employee obtain subsequent
17 recertifications on a reasonable basis.

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

19 (a) RESTORATION TO POSITION.—

20 (1) IN GENERAL.—Except as provided in sub-
21 section (b), any eligible employee who takes leave
22 under section 102 for the intended purpose of the
23 leave shall be entitled, on return from such leave—

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

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

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

11 (3) LIMITATIONS.—Nothing in this section shall
12 be construed to entitle any restored employee to—

13 (A) the accrual of any seniority or employ-
14 ment benefits during any period of leave; or

15 (B) any right, benefit, or position of em-
16 ployment other than any right, benefit, or posi-
17 tion to which the employee would have been en-
18 titled had the employee not taken the leave.

19 (4) CERTIFICATION.—As a condition of restora-
20 tion under paragraph (1) for an employee who has
21 taken leave under section 102(a)(1)(D), the em-
22 ployer may have a uniformly applied practice or pol-
23 icy that requires each such employee to receive cer-
24 tification from the health care provider of the em-
25 ployee that the employee is able to resume work, ex-

1 cept that nothing in this paragraph shall supersede
2 a valid State or local law or a collective bargaining
3 agreement that governs the return to work of such
4 employees.

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

11 (b) EXEMPTION CONCERNING CERTAIN HIGHLY
12 COMPENSATED EMPLOYEES.—

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

16 (A) such denial is necessary to prevent
17 substantial and grievous economic injury to the
18 operations of the employer;

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

23 (C) in any case in which the leave has
24 commenced, the employee elects not to return
25 to employment 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
5 within 75 miles of the facility at which the employee
6 is 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 Inter-
13 nal Revenue Code of 1986) for the duration of such
14 leave at the level and under the conditions coverage
15 would have been provided if the employee had con-
16 tinued in employment continuously for the duration
17 of such leave.

18 (2) FAILURE TO RETURN FROM LEAVE.—The
19 employer may recover the premium that the em-
20 ployer paid for maintaining coverage for the em-
21 ployee under such group health plan during any pe-
22 riod of unpaid 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
2 for a reason other than—

3 (i) the continuation, recurrence, or
4 onset of a serious health condition that en-
5 titles 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
14 described 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
24 the case of an employee unable to return

1 to work because of a condition specified in
2 section 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)(i)
10 shall be sufficient if the certification states
11 that a serious health condition prevented
12 the employee from being able to perform
13 the functions of the position of the em-
14 ployee on the date that the leave of the
15 employee expired.

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

1 **SEC. 105. PROHIBITED ACTS.**

2 (a) INTERFERENCE WITH RIGHTS.—

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

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

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

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

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

21 (3) has testified, or is about to testify, in any
22 inquiry or proceeding relating to any right provided
23 under this title.

24 **SEC. 106. INVESTIGATIVE AUTHORITY.**

25 (a) IN GENERAL.—To ensure compliance with the
26 provisions of this title, or any regulation or order issued

1 under this title, the Secretary shall have, subject to sub-
2 section (c), the investigative authority provided under sec-
3 tion 11(a) of the Fair Labor Standards Act of 1938 (29
4 U.S.C. 211(a)).

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

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

20 (d) SUBPOENA POWERS.—For the purposes of any
21 investigation provided for in this section, the Secretary
22 shall have the subpoena authority provided for under sec-
23 tion 9 of the Fair Labor Standards Act of 1938 (29
24 U.S.C. 209).

1 **SEC. 107. ENFORCEMENT.**

2 (a) CIVIL ACTION BY EMPLOYEES.—

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

6 (A) for damages equal to—

7 (i) the amount of—

8 (I) any wages, salary, employ-
9 ment benefits, or other compensation
10 denied or lost to such employee by
11 reason of the violation; or

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

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

24 (iii) an additional amount as liq-
25 uidated damages equal to the sum of the
26 amount described in clause (i) and the in-

1 terest described in clause (ii), except that
2 if an employer who has violated section
3 105 proves to the satisfaction of the court
4 that the act or omission which violated sec-
5 tion 105 was in good faith and that the
6 employer had reasonable grounds for be-
7 lieving that the act or omission was not a
8 violation of section 105, such court may, in
9 the discretion of the court, reduce the
10 amount of the liability to the amount and
11 interest determined under clauses (i) and
12 (ii), respectively; and

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

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

22 (A) the employees; or

23 (B) the employees and other employees
24 similarly situated.

1 (3) FEES AND COSTS.—The court in such an
2 action shall, in addition to any judgment awarded to
3 the plaintiff, allow a reasonable attorney’s fee, rea-
4 sonable expert witness fees, and other costs of the
5 action to be paid by the defendant.

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

9 (A) on the filing of a complaint by the Sec-
10 retary in an action under subsection (d) in
11 which restraint is sought of any further delay
12 in the payment of the amount described in
13 paragraph (1)(A) to such employee by an em-
14 ployer responsible under paragraph (1) for the
15 payment; or

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

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

25 (b) ACTION BY THE SECRETARY.—

1 (1) ADMINISTRATIVE ACTION.—The Secretary
2 shall receive, investigate, and attempt to resolve
3 complaints of violations of section 105 in the same
4 manner that the Secretary receives, investigates, and
5 attempts to resolve complaints of violations of sec-
6 tions 6 and 7 of the Fair Labor Standards Act of
7 1938 (29 U.S.C. 206 and 207).

8 (2) CIVIL ACTION.—The Secretary may bring
9 an action in any court of competent jurisdiction to
10 recover the damages described in subsection
11 (a)(1)(A).

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

20 (c) LIMITATION.—

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

1 (2) WILLFUL VIOLATION.—In the case of such
2 action brought for a willful violation of section 105,
3 such action may be brought within 3 years of the
4 date of the last event constituting the alleged viola-
5 tion for which such action is brought.

6 (3) COMMENCEMENT.—In determining when an
7 action is commenced by the Secretary under this
8 section for the purposes of this subsection, it shall
9 be considered to be commenced on the date when the
10 complaint is filed.

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

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

19 (2) to award such other equitable relief as may
20 be appropriate, including employment, reinstatement,
21 and promotion.

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

1 **SEC. 108. SPECIAL RULES CONCERNING EMPLOYEES OF**
2 **LOCAL EDUCATIONAL AGENCIES.**

3 (a) APPLICATION.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this section, the rights (including the rights
6 under section 104, which shall extend throughout
7 the period of leave of any employee under this sec-
8 tion), remedies, and procedures under this title shall
9 apply to—

10 (A) any “local educational agency” (as de-
11 fined in section 1471(12) of the Elementary
12 and Secondary Education Act of 1965 (20
13 U.S.C. 2891(12))) and an eligible employee of
14 the agency; and

15 (B) any private elementary or secondary
16 school and an eligible employee of the school.

17 (2) DEFINITIONS.—For purposes of the appli-
18 cation described in paragraph (1):

19 (A) ELIGIBLE EMPLOYEE.—The term “eli-
20 gible employee” means an eligible employee of
21 an agency or school described in paragraph (1).

22 (B) EMPLOYER.—The term “employer”
23 means an agency or school described in para-
24 graph (1).

25 (b) LEAVE DOES NOT VIOLATE CERTAIN OTHER
26 FEDERAL LAWS.—A local educational agency and a pri-

1 vate elementary or secondary school shall not be in viola-
2 tion of the Individuals with Disabilities Education Act (20
3 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act
4 of 1973 (29 U.S.C. 794), or title VI of the Civil Rights
5 Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result
6 of an eligible employee of such agency or school exercising
7 the rights of such employee under this title.

8 (c) INTERMITTENT LEAVE FOR INSTRUCTIONAL EM-
9 PLOYEES.—

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

21 (A) to take leave for periods of a particular
22 duration, not to exceed the duration of the
23 planned medical treatment; or

1 (B) to transfer temporarily to an available
2 alternative position offered by the employer for
3 which the employee is qualified, and that—

4 (i) has equivalent pay and benefits;

5 and

6 (ii) better accommodates recurring pe-
7 riods of leave than the regular employment
8 position of the employee.

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

13 (d) RULES APPLICABLE TO PERIODS NEAR THE
14 CONCLUSION OF AN ACADEMIC TERM.—The following
15 rules shall apply with respect to periods of leave near the
16 conclusion of an academic term in the case of any eligible
17 employee employed principally in an instructional capacity
18 by any such educational agency or school:

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

1 (A) the leave is of at least 3 weeks dura-
2 tion; and

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

6 (2) LEAVE LESS THAN 5 WEEKS PRIOR TO END
7 OF TERM.—If the eligible employee begins leave
8 under subparagraph (A), (B), or (C) of section
9 102(a)(1) during the period that commences 5 weeks
10 prior to the end of the academic term, the agency
11 or school may require the employee to continue tak-
12 ing leave until the end of such term, if—

13 (A) the leave is of greater than 2 weeks
14 duration; and

15 (B) the return to employment would occur
16 during the 2-week period before the end of such
17 term.

18 (3) LEAVE LESS THAN 3 WEEKS PRIOR TO END
19 OF TERM.—If the eligible employee begins leave
20 under subparagraph (A), (B), or (C) of section
21 102(a)(1) during the period that commences 3 weeks
22 prior to the end of the academic term and the dura-
23 tion of the leave is greater than 5 working days, the
24 agency or school may require the employee to con-
25 tinue to take leave until the end of such term.

1 (e) RESTORATION TO EQUIVALENT EMPLOYMENT
2 POSITION.—For purposes of determinations under section
3 104(a)(1)(B) (relating to the restoration of an eligible em-
4 ployee to an equivalent position), in the case of a local
5 educational agency or a private elementary or secondary
6 school, such determination shall be made on the basis of
7 established school board policies and practices, private
8 school policies and practices, and collective bargaining
9 agreements.

10 (f) REDUCTION OF THE AMOUNT OF LIABILITY.—If
11 a local educational agency or a private elementary or sec-
12 ondary school that has violated this title proves to the sat-
13 isfaction of the court that the agency, school, or depart-
14 ment had reasonable grounds for believing that the under-
15 lying act or omission was not a violation of this title, such
16 court may, in the discretion of the court, reduce the
17 amount of the liability provided for under section
18 107(a)(1)(A) to the amount and interest determined
19 under clauses (i) and (ii), respectively, of such section.

20 **SEC. 109. NOTICE.**

21 (a) IN GENERAL.—Each employer shall post and
22 keep posted, in conspicuous places on the premises of the
23 employer where notices to employees and applicants for
24 employment are customarily posted, a notice, to be pre-
25 pared or approved by the Secretary, setting forth excerpts

1 from, or summaries of, the pertinent provisions of this
2 title and information pertaining to the filing of a charge.

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

6 **TITLE II—LEAVE FOR CIVIL**
7 **SERVICE EMPLOYEES**

8 **SEC. 201. LEAVE REQUIREMENT.**

9 (a) CIVIL SERVICE EMPLOYEES.—

10 (1) IN GENERAL.—Chapter 63 of title 5, United
11 States Code, is amended by adding at the end the
12 following new subchapter:

13 “SUBCHAPTER V—FAMILY AND MEDICAL
14 LEAVE

15 **“§ 6381. Definitions**

16 “For the purpose of this subchapter—

17 “(1) the term ‘employee’ means any individual
18 who—

19 “(A) is an ‘employee’, as defined by section
20 6301(2), including any individual employed in a
21 position referred to in clause (v) or (ix) of sec-
22 tion 6301(2), but excluding any individual em-
23 ployed by the government of the District of Co-
24 lumbia and any individual employed on a tem-
25 porary or intermittent basis; and

1 “(B) has completed at least 12 months of
2 service as an employee (within the meaning of
3 subparagraph (A));

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

5 “(A) a doctor of medicine or osteopathy
6 who is authorized to practice medicine or sur-
7 gery (as appropriate) by the State in which the
8 doctor practices; and

9 “(B) any other person determined by the
10 Director of the Office of Personnel Management
11 to be capable of providing health care services;

12 “(3) the term ‘parent’ means the biological par-
13 ent of an employee or an individual who stood in
14 loco parentis to an employee when the employee was
15 a son or daughter;

16 “(4) the term ‘reduced leave schedule’ means a
17 leave schedule that reduces the usual number of
18 hours per workweek, or hours per workday, of an
19 employee;

20 “(5) the term ‘serious health condition’ means
21 an illness, injury, impairment, or physical or mental
22 condition that involves—

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

1 “(B) continuing treatment by a health care
2 provider; and

3 “(6) the term ‘son or daughter’ means a bio-
4 logical, adopted, or foster child, a stepchild, a legal
5 ward, or a child of a person standing in loco
6 parentis, who is—

7 “(A) under 18 years of age; or

8 “(B) 18 years of age or older and incapa-
9 ble of self-care because of a mental or physical
10 disability.

11 **“§ 6382. Leave requirement**

12 “(a)(1) Subject to section 6383, an employee shall
13 be entitled to a total of 12 administrative workweeks of
14 leave during any 12-month period for one or more of the
15 following:

16 “(A) Because of the birth of a son or daughter
17 of the employee and in order to care for such son
18 or daughter.

19 “(B) Because of the placement of a son or
20 daughter with the employee for adoption or foster
21 care.

22 “(C) In order to care for the spouse, or a son,
23 daughter, or parent, of the employee, if such spouse,
24 son, daughter, or parent has a serious health condi-
25 tion.

1 “(D) Because of a serious health condition that
2 makes the employee unable to perform the functions
3 of the employee’s position.

4 “(2) The entitlement to leave under subparagraph
5 (A) or (B) of paragraph (1) based on the birth or place-
6 ment of a son or daughter shall expire at the end of the
7 12-month period beginning on the date of such birth or
8 placement.

9 “(b)(1) Leave under subparagraph (A) or (B) of sub-
10 section (a)(1) shall not be taken by an employee intermit-
11 tently or on a reduced leave schedule unless the employee
12 and the employing agency of the employee agree otherwise.
13 Subject to paragraph (2), subsection (e)(2), and section
14 6383(b)(5), leave under subparagraph (C) or (D) of sub-
15 section (a)(1) may be taken intermittently or on a reduced
16 leave schedule when medically necessary. In the case of
17 an employee who takes leave intermittently or on a re-
18 duced leave schedule pursuant to this paragraph, any
19 hours of leave so taken by such employee shall be sub-
20 tracted from the total amount of leave remaining available
21 to such employee under subsection (a), for purposes of the
22 12-month period involved, on an hour-for-hour basis.

23 “(2) If an employee requests intermittent leave, or
24 leave on a reduced leave schedule, under subparagraph (C)
25 or (D) of subsection (a)(1), that is foreseeable based on

1 planned medical treatment, the employing agency may re-
2 quire such employee to transfer temporarily to an available
3 alternative position offered by the employing agency for
4 which the employee is qualified and that—

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

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

9 “(c) Except as provided in subsection (d), leave
10 granted under subsection (a) shall be leave without pay.

11 “(d) An employee may elect to substitute for leave
12 under subparagraph (A), (B), (C), or (D) of subsection
13 (a)(1) any of the employee’s accrued or accumulated an-
14 nual or sick leave under subchapter I for any part of the
15 12-week period of leave under such subsection, except that
16 nothing in this subchapter shall require an employing
17 agency to provide paid sick leave in any situation in which
18 such employing agency would not normally provide any
19 such paid leave.

20 “(e)(1) In any case in which the necessity for leave
21 under subparagraph (A) or (B) of subsection (a)(1) is
22 foreseeable based on an expected birth or placement, the
23 employee shall provide the employing agency with not less
24 than 30 days’ notice, before the date the leave is to begin,
25 of the employee’s intention to take leave under such sub-

1 paragraph, except that if the date of the birth or place-
2 ment requires leave to begin in less than 30 days, the em-
3 ployee shall provide such notice as is practicable.

4 “(2) In any case in which the necessity for leave
5 under subparagraph (C) or (D) of subsection (a)(1) is
6 foreseeable based on planned medical treatment, the em-
7 ployee—

8 “(A) shall make a reasonable effort to schedule
9 the treatment so as not to disrupt unduly the oper-
10 ations of the employing agency, subject to the ap-
11 proval of the health care provider of the employee or
12 the health care provider of the son, daughter,
13 spouse, or parent of the employee, as appropriate;
14 and

15 “(B) shall provide the employing agency with
16 not less than 30 days’ notice, before the date the
17 leave is to begin, of the employee’s intention to take
18 leave under such subparagraph, except that if the
19 date of the treatment requires leave to begin in less
20 than 30 days, the employee shall provide such notice
21 as is practicable.

22 **“§ 6383. Certification**

23 “(a) An employing agency may require that a request
24 for leave under subparagraph (C) or (D) of section
25 6382(a)(1) be supported by certification issued by the

1 health care provider of the employee or of the son, daugh-
2 ter, spouse, or parent of the employee, as appropriate. The
3 employee shall provide, in a timely manner, a copy of such
4 certification to the employing agency.

5 “(b) A certification provided under subsection (a)
6 shall be sufficient if it states—

7 “(1) the date on which the serious health condi-
8 tion commenced;

9 “(2) the probable duration of the condition;

10 “(3) the appropriate medical facts within the
11 knowledge of the health care provider regarding the
12 condition;

13 “(4)(A) for purposes of leave under section
14 6382(a)(1)(C), a statement that the employee is
15 needed to care for the son, daughter, spouse, or par-
16 ent, and an estimate of the amount of time that
17 such employee is needed to care for such son, daugh-
18 ter, spouse, or parent; and

19 “(B) for purposes of leave under section
20 6382(a)(1)(D), a statement that the employee is un-
21 able to perform the functions of the position of the
22 employee; and

23 “(5) in the case of certification for intermittent
24 leave for planned medical treatment, the dates on

1 which such treatment is expected to be given and the
2 duration of such treatment.

3 “(c)(1) In any case in which the employing agency
4 has reason to doubt the validity of the certification pro-
5 vided under subsection (a) for leave under subparagraph
6 (C) or (D) of section 6382(a)(1), the employing agency
7 may require, at the expense of the agency, that the em-
8 ployee obtain the opinion of a second health care provider
9 designated or approved by the employing agency concern-
10 ing any information certified under subsection (b) for such
11 leave.

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

15 “(d)(1) In any case in which the second opinion de-
16 scribed in subsection (c) differs from the original certifi-
17 cation provided under subsection (a), the employing agen-
18 cy may require, at the expense of the agency, that the em-
19 ployee obtain the opinion of a third health care provider
20 designated or approved jointly by the employing agency
21 and the employee concerning the information certified
22 under subsection (b).

23 “(2) The opinion of the third health care provider
24 concerning the information certified under subsection (b)

1 shall be considered to be final and shall be binding on the
2 employing agency and the employee.

3 “(e) The employing agency may require, at the ex-
4 pense of the agency, that the employee obtain subsequent
5 recertifications on a reasonable basis.

6 **“§ 6384. Employment and benefits protection**

7 “(a) Any employee who takes leave under section
8 6382 for the intended purpose of the leave shall be enti-
9 tled, upon return from such leave—

10 “(1) to be restored by the employing agency to
11 the position held by the employee when the leave
12 commenced; or

13 “(2) to be restored to an equivalent position
14 with equivalent benefits, pay, status, and other
15 terms and conditions of employment.

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

19 “(c) Except as otherwise provided by or under law,
20 nothing in this section shall be construed to entitle any
21 restored employee to—

22 “(1) the accrual of any employment benefits
23 during any period of leave; or

24 “(2) any right, benefit, or position of employ-
25 ment other than any right, benefit, or position to

1 which the employee would have been entitled had the
2 employee not taken the leave.

3 “(d) As a condition to restoration under subsection
4 (a) for an employee who takes leave under section
5 6382(a)(1)(D), the employing agency may have a uni-
6 formly applied practice or policy that requires each such
7 employee to receive certification from the health care pro-
8 vider of the employee that the employee is able to resume
9 work.

10 “(e) Nothing in this section shall be construed to pro-
11 hibit an employing agency from requiring an employee on
12 leave under section 6382 to report periodically to the em-
13 ploying agency on the status and intention of the employee
14 to return to work.

15 **“§ 6385. Prohibition of coercion**

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

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

22 “(1) the term ‘intimidate, threaten, or coerce’
23 includes promising to confer or conferring any bene-
24 fit (such as appointment, promotion, or compensa-
25 tion), or taking or threatening to take any reprisal

1 (such as deprivation of appointment, promotion, or
2 compensation); and

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

5 **“§ 6386. Health insurance**

6 “An employee enrolled in a health benefits plan under
7 chapter 89 who is placed in a leave status under section
8 6382 may elect to continue the health benefits enrollment
9 of the employee while in such leave status and arrange
10 to pay currently into the Employees Health Benefits Fund
11 (described in section 8909), the appropriate employee con-
12 tributions.

13 **“§ 6387. Regulations**

14 “The Office of Personnel Management shall prescribe
15 regulations necessary for the administration of this sub-
16 chapter. The regulations prescribed under this subchapter
17 shall, to the extent appropriate, be consistent with the reg-
18 ulations prescribed by the Secretary of Labor under title
19 I of the Family and Medical Leave Act of 1993.”.

20 (2) TABLE OF CONTENTS.—The table of con-
21 tents for chapter 63 of title 5, United States Code,
22 is 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.”.

1 (b) EMPLOYEES PAID FROM NONAPPROPRIATED
2 FUNDS.—Section 2105(c)(1) of title 5, United States
3 Code, is amended—

4 (1) by striking “or” at the end of subparagraph
5 (C); and

6 (2) by adding at the end the following new sub-
7 paragraph:

8 “(E) subchapter V of chapter 63, which
9 shall be applied so as to construe references to
10 benefit programs to refer to applicable pro-
11 grams for employees paid from nonappropriated
12 funds; or”.

13 **TITLE III—COMMISSION ON** 14 **LEAVE**

15 **SEC. 301. ESTABLISHMENT.**

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

19 **SEC. 302. DUTIES.**

20 The Commission shall—

21 (1) conduct a comprehensive study of—

22 (A) existing and proposed policies relating
23 to leave;

1 (B) the potential costs, benefits, and im-
2 pact on productivity of such policies on employ-
3 ers; and

4 (C) alternative and equivalent State en-
5 forcement of title I of this Act with respect to
6 employees described in section 108(a); and

7 (2) not later than 2 years after the date on
8 which the Commission first meets, prepare and sub-
9 mit, to the appropriate Committees of Congress, a
10 report concerning the subjects listed in paragraph
11 (1).

12 **SEC. 303. MEMBERSHIP.**

13 (a) COMPOSITION.—

14 (1) APPOINTMENTS.—The Commission shall be
15 composed of 12 voting members and 2 ex officio
16 members to be appointed not later than 60 days
17 after the date of the enactment of this Act as
18 follows:

19 (A) SENATORS.—One Senator shall be ap-
20 pointed by the Majority Leader of the Senate,
21 and one Senator shall be appointed by the Mi-
22 nority Leader of the Senate.

23 (B) MEMBERS OF HOUSE OF REPRESENTA-
24 TIVES.—One Member of the House of Rep-
25 resentatives shall be appointed by the Speaker

1 of the House of Representatives, and one Mem-
2 ber of the House of Representatives shall be ap-
3 pointed by the Minority Leader of the House of
4 Representatives.

5 (C) ADDITIONAL MEMBERS.—

6 (i) APPOINTMENT.—Two Members
7 each shall be appointed by—

8 (I) the Speaker of the House of
9 Representatives;

10 (II) the Majority Leader of the
11 Senate;

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

14 (IV) the Minority Leader of the
15 Senate.

16 (ii) EXPERTISE.—Such members shall
17 be appointed by virtue of demonstrated ex-
18 pertise in relevant family, temporary dis-
19 ability, and labor-management issues and
20 shall include representatives of employers.

21 (2) EX OFFICIO MEMBERS.—The Secretary of
22 Health and Human Services and the Secretary of
23 Labor shall serve on the Commission as nonvoting
24 ex officio members.

1 (b) VACANCIES.—Any vacancy on the Commission
2 shall be filled in the manner in which the original appoint-
3 ment was made. The vacancy shall not affect the power
4 of the remaining members to execute the duties of the
5 Commission.

6 (c) CHAIRPERSON AND VICE CHAIRPERSON.—The
7 Commission shall elect a chairperson and a vice chair-
8 person from among the members of the Commission.

9 (d) QUORUM.—Eight members of the Commission
10 shall constitute a quorum for all purposes, except that a
11 lesser number may constitute a quorum for the purpose
12 of holding hearings.

13 **SEC. 304. COMPENSATION.**

14 (a) PAY.—Members of the Commission shall serve
15 without compensation.

16 (b) TRAVEL EXPENSES.—Members of the Commis-
17 sion shall be allowed reasonable travel expenses, including
18 a per diem allowance, in accordance with section 5703 of
19 title 5, United States Code, when performing duties of the
20 Commission.

21 **SEC. 305. POWERS.**

22 (a) MEETINGS.—The Commission shall first meet not
23 later than 30 days after the date on which all members
24 are appointed, and the Commission shall meet thereafter

1 on the call of the chairperson or a majority of the
2 members.

3 (b) HEARINGS AND SESSIONS.—The Commission
4 may hold such hearings, sit and act at such times and
5 places, take such testimony, and receive such evidence as
6 the Commission considers appropriate. The Commission
7 may administer oaths or affirmations to witnesses appear-
8 ing before it.

9 (c) ACCESS TO INFORMATION.—The Commission
10 may secure directly from any Federal agency information
11 necessary to enable it to carry out this title, if the informa-
12 tion may be disclosed under section 552 of title 5, United
13 States Code. Subject to the previous sentence, on the re-
14 quest of the chairperson or vice chairperson of the Com-
15 mission, the head of such agency shall furnish such infor-
16 mation to the Commission.

17 (d) USE OF FACILITIES AND SERVICES.—Upon the
18 request of the Commission, the head of any Federal agen-
19 cy may make available to the Commission any of the facili-
20 ties and services of such agency.

21 (e) PERSONNEL FROM OTHER AGENCIES.—On the
22 request of the Commission, the head of any Federal agen-
23 cy may detail any of the personnel of such agency to serve
24 as an Executive Director of the Commission or assist the
25 Commission in carrying out the duties of the Commission.

1 Any detail shall not interrupt or otherwise affect the civil
2 service status or privileges of the Federal employee.

3 (f) VOLUNTARY SERVICE.—Notwithstanding section
4 1342 of title 31, United States Code, the chairperson of
5 the Commission may accept for the Commission voluntary
6 services provided by a member of the Commission.

7 **SEC. 306. TERMINATION.**

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

11 **TITLE IV—MISCELLANEOUS**
12 **PROVISIONS**

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

14 (a) FEDERAL AND STATE ANTIDISCRIMINATION
15 LAWS.—Nothing in this Act or any amendment made by
16 this Act shall be construed to modify or affect any Federal
17 or State law prohibiting discrimination on the basis of
18 race, religion, color, national origin, sex, age, or disability.

19 (b) STATE AND LOCAL LAWS.—Nothing in this Act
20 or any amendment made by this Act shall be construed
21 to supersede any provision of any State or local law that
22 provides greater family or medical leave rights than the
23 rights established under this Act or any amendment made
24 by this Act.

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

2 (a) MORE PROTECTIVE.—Nothing in this Act or any
3 amendment made by this Act shall be construed to dimin-
4 ish the obligation of an employer to comply with any col-
5 lective bargaining agreement or any employment benefit
6 program or plan that provides greater family or medical
7 leave rights to employees than the rights established under
8 this Act or any amendment made by this Act.

9 (b) LESS PROTECTIVE.—The rights established for
10 employees under this Act or any amendment made by this
11 Act shall not be diminished by any collective bargaining
12 agreement or any employment benefit program or plan.

13 **SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE**
14 **POLICIES.**

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

20 **SEC. 404. REGULATIONS.**

21 The Secretary of Labor shall prescribe such regula-
22 tions as are necessary to carry out title I and this title
23 not later than 120 days after the date of the enactment
24 of this Act.

1 **SEC. 405. EFFECTIVE DATES.**

2 (a) TITLE III.—Title III shall take effect on the date
3 of the enactment of this Act.

4 (b) OTHER TITLES.—

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

9 (2) COLLECTIVE BARGAINING AGREEMENTS.—
10 In the case of a collective bargaining agreement in
11 effect on the effective date prescribed by paragraph
12 (1), title I shall apply on the earlier of—

13 (A) the date of the termination of such
14 agreement; or

15 (B) the date that occurs 12 months after
16 the date of the enactment of this Act.

17 **TITLE V—COVERAGE OF**
18 **CONGRESSIONAL EMPLOYEES**

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

20 (a) COVERAGE.—The rights and protections estab-
21 lished under sections 101 through 105 shall apply with
22 respect to a Senate employee and an employing office. For
23 purposes of such application, the term “eligible employee”
24 means a Senate employee and the term “employer” means
25 an employing office.

26 (b) CONSIDERATION OF ALLEGATIONS.—

1 (1) APPLICABLE PROVISIONS.—The provisions
2 of sections 304 through 313 of the Government Em-
3 ployee Rights Act of 1991 (2 U.S.C. 1204–1213)
4 shall, except as provided in subsections (d) and (e)—

5 (A) apply with respect to an allegation of
6 a violation of a provision of sections 101
7 through 105, with respect to Senate employ-
8 ment of a Senate employee; and

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

14 (2) ENTITY.—Such an allegation shall be ad-
15 dressed by the Office of Senate Fair Employment
16 Practices or such other entity as the Senate may
17 designate.

18 (c) RIGHTS OF EMPLOYEES.—The Office of Senate
19 Fair Employment Practices shall ensure that Senate em-
20 ployees are informed of their rights under sections 101
21 through 105.

22 (d) LIMITATIONS.—A request for counseling under
23 section 305 of such Act by a Senate employee alleging a
24 violation of a provision of sections 101 through 105 shall
25 be made not later than 2 years after the date of the last

1 event constituting the alleged violation for which the coun-
2 seling is requested, or not later than 3 years after such
3 date in the case of a willful violation of section 105.

4 (e) APPLICABLE REMEDIES.—The remedies applica-
5 ble to individuals who demonstrate a violation of a provi-
6 sion of sections 101 through 105 shall be such remedies
7 as would be appropriate if awarded under paragraph (1)
8 or (3) of section 107(a).

9 (f) EXERCISE OF RULEMAKING POWER.—The provi-
10 sions of subsections (b), (c), (d), and (e), except as such
11 subsections apply with respect to section 309 of the Gov-
12 ernment Employee Rights Act of 1991 (2 U.S.C. 1209),
13 are enacted by the Senate as an exercise of the rulemaking
14 power of the Senate, with full recognition of the right of
15 the Senate to change its rules, in the same manner, and
16 to the same extent, as in the case of any other rule of
17 the Senate. No Senate employee may commence a judicial
18 proceeding with respect to an allegation described in sub-
19 section (b)(1), except as provided in this section.

20 (g) SEVERABILITY.—Notwithstanding any other pro-
21 vision of law, if any provision of section 309 of the Govern-
22 ment Employee Rights Act of 1991 (2 U.S.C. 1209), or
23 of subsection (b)(1) insofar as it applies such section 309
24 to an allegation described in subsection (b)(1)(A), is in-
25 validated, both such section 309, and subsection (b)(1) in-

1 sofar as it applies such section 309 to such an allegation,
2 shall have no force and effect, and shall be considered to
3 be invalidated for purposes of section 322 of such Act (2
4 U.S.C. 1221).

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

6 (1) EMPLOYING OFFICE.—The term “employing
7 office” means the office with the final authority de-
8 scribed in section 301(2) of such Act (2 U.S.C.
9 1201(2)).

10 (2) SENATE EMPLOYEE.—The term “Senate
11 employee” means an employee described in subpara-
12 graph (A) or (B) of section 301(c)(1) of such Act
13 (2 U.S.C. 1201(c)(1)) who has been employed for at
14 least 12 months on other than a temporary or inter-
15 mittent basis by any employing office.

16 **SEC. 502. LEAVE FOR CERTAIN CONGRESSIONAL EMPLOY-**
17 **EES.**

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

22 (b) ADMINISTRATION.—In the administration of this
23 section, the remedies and procedures under the Fair Em-
24 ployment Practices Resolution shall be applied.

1 (c) DEFINITION.—As used in this section, the term
2 “Fair Employment Practices Resolution” means the reso-
3 lution in rule LI of the Rules of the House of Representa-
4 tives.

S 5 RS—2

S 5 RS—3

S 5 RS—4