

107TH CONGRESS
1ST SESSION

S. 489

To amend the Family and Medical Leave Act of 1993 to clarify the Act,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2001

Mr. GREGG introduced the following bill; which was read twice and referred
to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Family and Medical Leave Act of 1993 to
clarify the Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CON-**
4 **TENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Family and Medical Leave Clarification Act”.

7 (b) REFERENCES.—Except as otherwise expressly
8 provided, wherever in this Act an amendment or repeal
9 is expressed in terms of an amendment to, or repeal of,
10 a section or other provision, the reference shall be consid-

ered to be made to a section or other provision of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

(c) TABLE OF CONTENTS.—The table of contents is as follows:

- Sec. 1. Short title; references; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definition of serious health condition.
- Sec. 4. Intermittent leave.
- Sec. 5. Request for leave.
- Sec. 6. Substitution of paid leave.
- Sec. 7. Regulations.
- Sec. 8. Effective date.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Family and Medical Leave Act of 1993 (referred to in this section as the “Act”) is not working as Congress intended when Congress passed the Act in 1993. Many employers, including those employers that are nationally recognized as having generous family-friendly benefit and leave programs, are experiencing serious problems complying with the Act.

(2) The Department of Labor’s overly broad regulations and interpretations have caused many of these problems by greatly expanding the Act’s coverage to apply to many nonserious health conditions.

(3) Documented problems generated by the Act include significant new administrative and personnel

1 costs, loss of productivity and scheduling difficulties,
 2 unnecessary paperwork and recordkeeping, and
 3 other compliance problems.

4 (4) The Act often conflicts with employers' paid
 5 sick leave policies, prevents employers from man-
 6 aging absences through their absence control plans,
 7 and results in most leave under the Act becoming
 8 paid leave.

9 (5) The Commission on Leave, established in
 10 title III of the Act (29 U.S.C. 2631 et seq.), which
 11 reported few difficulties with compliance with the
 12 Act, failed to identify many of the problems with
 13 compliance because the study on which the report
 14 was based was conducted too soon after the date of
 15 enactment of the Act and the most significant prob-
 16 lems with compliance arose only when employers
 17 later sought to comply with the Act's final regula-
 18 tions and interpretations.

19 **SEC. 3. DEFINITION OF SERIOUS HEALTH CONDITION.**

20 Section 101(11) (29 U.S.C. 2611(11)) is amended—

21 (1) by redesignating subparagraphs (A) and
 22 (B) as clauses (i) and (ii), respectively;

23 (2) by aligning the margins of those clauses
 24 with the margins of clause (i) of paragraph (4)(A);

25 (3) by inserting before “The” the following:

1 “(A) IN GENERAL.—”; and

2 (4) by adding at the end the following:

3 “(B) EXCLUSIONS.—The term does not in-
4 clude a short-term illness, injury, impairment,
5 or condition for which treatment and recovery
6 are very brief.

7 “(C) EXAMPLES.—The term includes an
8 illness, injury, impairment, or physical or men-
9 tal condition such as a heart attack, a heart
10 condition requiring extensive therapy or a sur-
11 gical procedure, a stroke, a severe respiratory
12 condition, a spinal injury, appendicitis, pneu-
13 monia, emphysema, severe arthritis, a severe
14 nervous disorder, an injury caused by a serious
15 accident on or off the job, an ongoing preg-
16 nancy, a miscarriage, a complication or illness
17 related to pregnancy, such as severe morning
18 sickness, a need for prenatal care, childbirth,
19 and recovery from childbirth, that involves care
20 or treatment described in subparagraph (A).”.

21 **SEC. 4. INTERMITTENT LEAVE.**

22 Section 102(b)(1) (29 U.S.C. 2612(b)(1)) is amended
23 by striking the period at the end of the second sentence
24 and inserting the following: “, as certified under section
25 103 by the health care provider after each leave occur-

1 rence. An employer may require an employee to take inter-
 2 mittent leave in increments of up to $\frac{1}{2}$ of a workday. An
 3 employer may require an employee who travels as part of
 4 the normal day-to-day work or duty assignment of the em-
 5 ployee and who requests intermittent leave or leave on a
 6 reduced schedule to take leave for the duration of that
 7 work or assignment if the employer cannot reasonably ac-
 8 commodate the employee's request.”.

9 **SEC. 5. REQUEST FOR LEAVE.**

10 Section 102(e) (29 U.S.C. 2612(e)) is amended by
 11 inserting after paragraph (2) the following:

12 “(3) REQUEST FOR LEAVE.—If an employer
 13 does not exercise, under subsection (d)(2), the right
 14 to require an employee to substitute other employer-
 15 provided leave for leave under this title, the em-
 16 ployer may require the employee who wants leave
 17 under this title to request the leave in a timely man-
 18 ner. If an employer requires a timely request under
 19 this paragraph, an employee who fails to make a
 20 timely request may be denied leave under this title.

21 “(4) TIMELINESS OF REQUEST FOR LEAVE.—
 22 For purposes of paragraph (3), a request for leave
 23 shall be considered to be timely if—

24 “(A) in the case of foreseeable leave, the
 25 employee—

1 “(i) provides the applicable advance
2 notice required by paragraphs (1) and (2);
3 and

4 “(ii) submits any written application
5 required by the employer for the leave not
6 later than 5 working days after providing
7 the notice to the employer; and

8 “(B) in the case of unforeseeable leave, the
9 employee—

10 “(i) notifies the employer orally of the
11 need for the leave—

12 “(I) not later than the date the
13 leave commences; or

14 “(II) during such additional pe-
15 riod as may be necessary, if the em-
16 ployer is physically or mentally in-
17 capable of providing the notification;
18 and

19 “(ii) submits any written application
20 required by the employer for the leave—

21 “(I) not later than 5 working
22 days after providing the notice to the
23 employer; or

24 “(II) during such additional pe-
25 riod as may be necessary, if the em-

1 employee is physically or mentally in-
 2 capable of submitting the applica-
 3 tion.”.

4 **SEC. 6. SUBSTITUTION OF PAID LEAVE.**

5 Section 102(d)(2) (29 U.S.C. 2612(d)(2)) is amended
 6 by adding at the end the following:

7 “(C) PAID ABSENCE.—Notwithstanding
 8 subparagraphs (A) and (B), with respect to
 9 leave provided under subparagraph (D) of sub-
 10 section (a)(1), where an employer provides a
 11 paid absence under the employer’s collective
 12 bargaining agreement, a welfare benefit plan
 13 under the Employee Retirement Income Secu-
 14 rity Act of 1974 (29 U.S.C. 1001 et seq.), or
 15 under any other sick leave, sick pay, or dis-
 16 ability plan, program, or policy of the employer,
 17 the employer may require the employee to
 18 choose between the paid absence and unpaid
 19 leave provided under this title.”.

20 **SEC. 7. REGULATIONS.**

21 (a) EXISTING REGULATIONS.—

22 (1) REVIEW.—Not later than 90 days after the
 23 date of enactment of this Act, the Secretary of
 24 Labor shall review all regulations issued before that
 25 date to implement the Family and Medical Leave

1 Act of 1993 (29 U.S.C. 2601 et seq.), including the
2 regulations published in sections 825.114 and
3 825.115 of title 29, Code of Federal Regulations.

4 (2) TERMINATION.—The regulations, and opin-
5 ions letters promulgated under the regulations, shall
6 cease to be effective on the effective date of final
7 regulations issued under subsection (b)(2)(B), except
8 as described in subsection (c).

9 (b) REVISED REGULATIONS.—

10 (1) IN GENERAL.—The Secretary of Labor shall
11 issue revised regulations implementing the Family
12 and Medical Leave Act of 1993 that reflect the
13 amendments made by this Act.

14 (2) NEW REGULATIONS.—The Secretary of
15 Labor shall issue—

16 (A) proposed regulations described in para-
17 graph (1) not later than 90 days after the date
18 of enactment of this Act; and

19 (B) final regulations described in para-
20 graph (1) not later than 180 days after that
21 date of enactment.

22 (3) EFFECTIVE DATE.—The final regulations
23 take effect 90 days after the date on which the regu-
24 lations are issued.

1 (c) TRANSITION.—The regulations described in sub-
2 section (a) shall apply to actions taken by an employer
3 prior to the effective date of final regulations issued under
4 subsection (b)(2)(B), with respect to leave under the Fam-
5 ily and Medical Leave Act of 1993.

6 **SEC. 8. EFFECTIVE DATE.**

7 The amendments made by this Act shall take effect
8 180 days after the date of enactment of this Act.

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