

§ 2601. Findings and purposes

(a) Findings

Congress finds that—

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

(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early child-rearing and the care of family members who have serious health conditions;

(3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;

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

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

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) Purposes

It is the purpose of this Act—

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

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

(3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

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

(Pub. L. 103-3, §2, Feb. 5, 1993, 107 Stat. 6.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, known as the Family and Medical Leave Act of 1993, which enacted this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes below. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 405 title IV of Pub. L. 103-3 provided that:

“(a) TITLE III.—Title III [enacting subchapter II of this chapter] shall take effect on the date of the enactment of this Act [Feb. 5, 1993].

“(b) OTHER TITLES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), titles I, II, and V and this title [enacting subchapters I and III of this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, and amending section 2105 of Title 5] shall take effect 6 months after the date of the enactment of this Act.

“(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I [enacting subchapter I of this chapter] shall apply on the earlier of—

“(A) the date of the termination of such agreement; or

“(B) the date that occurs 12 months after the date of the enactment of this Act.”

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111-119, §1, Dec. 21, 2009, 123 Stat. 3476, provided that: “This Act [amending sections 2611 and 2612 of this title] may be cited as the ‘Airline Flight Crew Technical Corrections Act’.”

SHORT TITLE

Section 1(a) of Pub. L. 103-3 provided that: “This Act [enacting this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amending section 2105 of Title 5, and enacting provisions set out above] may be cited as the ‘Family and Medical Leave Act of 1993’.”

SUBCHAPTER I—GENERAL REQUIREMENTS FOR LEAVE

§ 2611. Definitions

As used in this subchapter:

(1) Commerce

The terms “commerce” and “industry or activity affecting commerce” mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 142 of this title.

(2) Eligible employee

(A) In general

The term “eligible employee” means an employee who has been employed—

(i) for at least 12 months by the employer with respect to whom leave is requested under section 2612 of this title; and

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

(B) Exclusions

The term “eligible employee” does not include—

(i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5; or

(ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed

by that employer within 75 miles of that worksite is less than 50.

(C) Determination

For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 207 of this title shall apply.

(D) Airline flight crews

(i) Determination

For purposes of determining whether an employee who is a flight attendant or flight crewmember (as such terms are defined in regulations of the Federal Aviation Administration) meets the hours of service requirement specified in subparagraph (A)(ii), the employee will be considered to meet the requirement if—

(I) the employee has worked or been paid for not less than 60 percent of the applicable total monthly guarantee, or the equivalent, for the previous 12-month period, for or by the employer with respect to whom leave is requested under section 2612 of this title; and

(II) the employee has worked or been paid for not less than 504 hours (not counting personal commute time or time spent on vacation leave or medical or sick leave) during the previous 12-month period, for or by that employer.

(ii) File

Each employer of an employee described in clause (i) shall maintain on file with the Secretary (in accordance with such regulations as the Secretary may prescribe) containing information specifying the applicable monthly guarantee with respect to each category of employee to which such guarantee applies.

(iii) Definition

In this subparagraph, the term “applicable monthly guarantee” means—

(I) for an employee described in clause (i) other than an employee on reserve status, the minimum number of hours for which an employer has agreed to schedule such employee for any given month; and

(II) for an employee described in clause (i) who is on reserve status, the number of hours for which an employer has agreed to pay such employee on reserve status for any given month,

as established in the applicable collective bargaining agreement or, if none exists, in the employer’s policies.

(3) Employer; employee; State

The terms “employer”, “employee”, and “State” have the same meanings given such terms in subsections (c), (e), and (g) of section 203 of this title.

(4) Employer

(A) In general

The term “employer”—

(i) means any person engaged in commerce or in any industry or activity af-

fecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes—

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer;

(iii) includes any “public agency”, as defined in section 203(x) of this title; and

(iv) includes the Government Accountability Office and the Library of Congress.

(B) Public agency

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

(5) Employment benefits

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

(6) Health care provider

The term “health care provider” means—

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

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

(7) Parent

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

(8) Person

The term “person” has the same meaning given such term in section 203(a) of this title.

(9) Reduced leave schedule

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

(10) Secretary

The term “Secretary” means the Secretary of Labor.

(11) Serious health condition

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

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

(B) continuing treatment by a health care provider.

(12) Son or daughter

The term “son or daughter” means a biological, adopted, or foster child, a stepchild, a

legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

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

(13) Spouse

The term “spouse” means a husband or wife, as the case may be.

(14) Covered active duty

The term “covered active duty” means—

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10.

(15) Covered servicemember

The term “covered servicemember” means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

(16) Outpatient status

The term “outpatient status”, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(17) Next of kin

The term “next of kin”, used with respect to an individual, means the nearest blood relative of that individual.

(18) Serious injury or illness

The term “serious injury or illness”—

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to per-

form the duties of the member’s office, grade, rank, or rating; and

(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

(19) Veteran

The term “veteran” has the meaning given the term in section 101 of title 38.

(Pub. L. 103-3, title I, § 101, Feb. 5, 1993, 107 Stat. 7; Pub. L. 104-1, title II, § 202(c)(1)(A), Jan. 23, 1995, 109 Stat. 9; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-181, div. A, title V, § 585(a)(1), Jan. 28, 2008, 122 Stat. 128; Pub. L. 111-84, div. A, title V, § 565(a)(1)(A), (2), (3), Oct. 28, 2009, 123 Stat. 2309, 2310; Pub. L. 111-119, § 2(a), Dec. 21, 2009, 123 Stat. 3476.)

AMENDMENTS

2009—Par. (2)(D). Pub. L. 111-119 added subpar. (D).

Par. (14). Pub. L. 111-84, § 565(a)(1)(A)(i), added par. (14) and struck out former par. (14). Prior to amendment, text read as follows: “The term ‘active duty’ means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10.”

Par. (15). Pub. L. 111-84, § 565(a)(2), amended par. (15) generally. Prior to amendment, text read as follows: “The term ‘covered servicemember’ means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”

Pub. L. 111-84, § 565(a)(1)(A)(ii), redesignated par. (16) as (15) and struck out former par. (15). Prior to amendment, text read as follows: “The term ‘contingency operation’ has the same meaning given such term in section 101(a)(13) of title 10.”

Pars. (16), (17). Pub. L. 111-84, § 565(a)(1)(A)(ii), redesignated pars. (17) and (18) as (16) and (17), respectively. Former par. (16) redesignated (15).

Par. (18). Pub. L. 111-84, § 565(a)(3), added par. (18) and struck out former par. (18). Prior to amendment, text read as follows: “The term ‘serious injury or illness’, in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.”

Pub. L. 111-84, § 565(a)(1)(A)(ii), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Par. (19). Pub. L. 111-84, § 565(a)(3), added par. (19).

Pub. L. 111-84, § 565(a)(1)(A)(ii), redesignated par. (19) as (18).

2008—Pars. (14) to (19). Pub. L. 110-181 added pars. (14) to (19).

2004—Par. (4)(A)(iv). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1995—Par. (4)(A)(iv). Pub. L. 104-1 added cl. (iv).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-1 effective one year after transmission to Congress of the study under section

1371 of Title 2, The Congress, see section 1312(e)(2) of Title 2. The study required under section 1371 of Title 2, dated Dec. 31, 1996, was transmitted to Congress by the Board of Directors of the Office of Compliance on Dec. 30, 1996.

EFFECTIVE DATE

Subchapter effective 6 months after Feb. 5, 1993, except that, in the case of collective bargaining agreements in effect on that effective date, subchapter applicable on the earlier of (1) the date of termination of such agreement, or (2) the date that occurs 12 months after Feb. 5, 1993, see section 405(b) of Pub. L. 103-3, set out as a note under section 2601 of this title.

REGULATIONS

Pub. L. 111-84, div. A, title V, §565(a)(5), Oct. 28, 2009, 123 Stat. 2311, provided that: "In prescribing regulations to carry out the amendments made by this subsection [amending this section and sections 2612 and 2613 of this title], the Secretary of Labor shall consult with the Secretary of Defense and the Secretary of Veterans Affairs, as applicable."

§ 2612. Leave requirement

(a) In general

(1) Entitlement to leave

Subject to section 2613 of this title, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

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

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

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

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

(E) Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(2) Expiration of entitlement

The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) Servicemember family leave

Subject to section 2613 of this title, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

(4) Combined leave total

During the single 12-month period described in paragraph (3), an eligible employee shall be

entitled to a combined total of 26 workweeks of leave under paragraphs (1) and (3). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (1) during any other 12-month period.

(5) Calculation of leave for airline flight crews

The Secretary may provide, by regulation, a method for calculating the leave described in paragraph (1) with respect to employees described in section 2611(2)(D) of this title.

(b) Leave taken intermittently or on reduced leave schedule

(1) In general

Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and subsection (b)(5) or (f) (as appropriate) of section 2613 of this title, leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) may be taken intermittently or on a reduced leave schedule when medically necessary. Subject to subsection (e)(3) and section 2613(f) of this title, leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) Alternative position

If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that—

(A) has equivalent pay and benefits; and

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

(c) Unpaid leave permitted

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

(d) Relationship to paid leave

(1) Unpaid leave

If an employer provides paid leave for fewer than 12 workweeks (or 26 workweeks in the case of leave provided under subsection (a)(3)), the additional weeks of leave necessary to attain the 12 workweeks (or 26 workweeks, as appropriate) of leave required under this subchapter may be provided without compensation.