

105TH CONGRESS
2D SESSION

H. R. 3751

To amend the Family and Medical Leave Act of 1993.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1998

Mr. FAWELL (for himself, Mr. GOODE, Mr. STENHOLM, Mr. PICKETT, Mr. HALL of Texas, and Mr. PETERSON of Pennsylvania) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Government Reform and Oversight, and House Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Family and Medical Leave Act of 1993.

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.—Whenever in this Act an amend-
8 ment is expressed in terms of an amendment to, or repeal
9 of, a section or other provision, the reference shall be con-

sidered to be made to that section or other provision of
the Family and Medical Leave Act of 1993.

(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. Certification requirements.
- Sec. 8. Regulations.
- Sec. 9. Effective date.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The Family and Medical Leave Act of 1993
(in this section referred to as the “Act”) is not
working as Congress intended when it passed the
Act in 1993. Many employers, including those na-
tionally recognized as having generous family-friend-
ly benefit and leave programs, are experiencing seri-
ous 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 cov-
erage to apply to many non-serious health condi-
tions.

(3) Documented problems generated by the Act
include significant new administrative and personnel
costs, loss of productivity and scheduling difficulties,

1 unnecessary paperwork and record keeping, and
2 other compliance problems.

3 (4) The Act often conflicts with employers' ex-
4 isting paid sick leave policies and prevent employers
5 from managing absences through their absence con-
6 trol plans and results in most leave under the Act
7 becoming paid leave.

8 (5) The Commission on Leave, established in
9 title III of the Act, which reported few difficulties
10 with compliance with the Act, failed to identify many
11 of the problems with compliance because its study
12 was conducted too soon after the enactment of the
13 Act and the most significant problems with compli-
14 ance arose only when employers later sought to com-
15 ply with the Act's final regulations and interpreta-
16 tions.

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

18 (a) AMENDMENT.—Section 101(11) (29 U.S.C.
19 2611(11)) is amended by adding after and below subpara-
20 graph (B) the following:

21 “The term ‘serious health condition’ does not cover
22 short-term conditions for which treatment and recov-
23 ery are very brief. Conditions covered include, for ex-
24 ample, heart attacks, heart conditions requiring ex-
25 tensive therapy or surgical procedures, strokes, se-

1 vere respiratory conditions, spinal injuries, appendi-
2 citis, pneumonia, emphysema, severe arthritis, severe
3 nervous disorders, injuries caused by serious acci-
4 dents on or off the job, ongoing pregnancy, mis-
5 carriages, complications or illnesses related to preg-
6 nancy, such as severe morning sickness, the need for
7 prenatal care, childbirth, and recovery from child-
8 birth.”.

9 (b) REGULATIONS.—

10 (1) REPEAL.—The regulations of the Secretary
11 of Labor, published at sections 825.114 and 825.115
12 of title 29 of the Code of Federal Regulations, and
13 opinion letters promulgated thereunder shall be null
14 and void on the effective date of final regulations
15 issued under paragraph (2).

16 (2) NEW REGULATIONS.—The Secretary of
17 Labor shall revise the regulations referred to in
18 paragraph (1) and shall issue proposed regulations
19 making such revision not later than 90 days after
20 the date of enactment of this Act and shall issue
21 final regulations not later than 180 days after such
22 date of enactment.

23 (3) TRANSITION.—With respect to leaves and
24 requests for leave made under section 102 of the
25 Family and Medical Leave Act of 1993 occurring be-

1 fore the effective date of the final regulations under
2 paragraph (2), an employer may rely on the regula-
3 tions of the Secretary referred to in paragraph (1).
4 In any action to enforce the requirements of such
5 Act pending on or after the effective date of such
6 final regulations, no provision of the regulations re-
7 ferred to in paragraph (1) may be cited as evidence
8 of an employer's non-compliance with such Act.

9 **SEC. 4. INTERMITTENT LEAVE.**

10 Section 102(b)(1) (29 U.S.C. 2612(b)(1)) is amended
11 by striking the period at the end of the second sentence
12 and inserting the following: "as certified by the health care
13 provider after each leave occurrence. An employer may re-
14 quire an employee to take intermittent leave in increments
15 of up to one-half of a work day. Employers may require
16 employees who travel as part of their normal day-to-day
17 work or duty assignments to take leave for the duration
18 of that work or assignment if the employer cannot reason-
19 ably accommodate the employee's request to take leave
20 intermittently or on a reduced leave schedule."

21 **SEC. 5. REQUEST FOR LEAVE.**

22 Section 102(a) (29 U.S.C. 2612(a)) is amended by
23 inserting after paragraph (2) the following:

24 "(3) REQUEST FOR LEAVE.—When an employer
25 does not exercise under subsection (d)(2) the right

1 to substitute other employer provided leave for leave
2 under this title, an employer may require an em-
3 ployee who wants leave under this title to request in
4 a timely manner such leave. If required by the em-
5 ployer, an employee who fails to make such a timely
6 request may be denied leave under this title.

7 “(4) TIMELINESS OF REQUEST FOR LEAVE.—
8 As used in paragraph (3) of this subsection, a re-
9 quest for leave is timely if—

10 “(A) in the case of foreseeable leave, the
11 employee provides the applicable advance notice
12 required by subsection (e) and submits any
13 written application required by the employer
14 within 5 working days of providing the notice to
15 the employer; and

16 “(B) in the case of unforeseeable leave, the
17 employee notifies the employer verbally of the
18 need for the leave no later than the time the
19 leave commences and submits any written appli-
20 cation required by the employer within 5 work-
21 ing days of providing the notice to the em-
22 ployer, except that the 5-day period will be ex-
23 tended as necessary if the employee is phys-
24 ically or mentally incapable of providing notice
25 or submitting the application.”.

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

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

4 “(C) PAID ABSENCE.—Notwithstanding
5 subparagraphs (A) and (B), with respect to
6 leave provided under subparagraph (D) of sub-
7 section (a)(1), where an employer provides paid
8 absence under an employer’s collective bargain-
9 ing agreement, a welfare benefit plan under the
10 Employee Retirement Income Security Act of
11 1974, or under any other sick leave, sick pay,
12 or disability plan, program, or policy of the em-
13 ployer, an employer may require the employee
14 to choose between such paid absence and un-
15 paid leave provided under this title.”.

16 **SEC. 7. CERTIFICATION REQUIREMENTS.**

17 Section 103(b)(3) (29 U.S.C. 2613(b)(3)) is amended
18 to read as follows:

19 “(3) the appropriate medical facts, which must
20 be documented by objective medical findings.”.

21 **SEC. 8. REGULATIONS.**

22 (a) GENERAL RULE.—Except as provided in section
23 3(b)(2), not later than 6 months after the date of the en-
24 actment of this Act, the Secretary of Labor shall review
25 and revise all regulations promulgated before such date

1 to implement the Family and Medical Leave Act of 1993
2 to reflect the amendments made by this Act.

3 (b) With respect to actions taken by an employer be-
4 fore the effective date of such revised regulations, compli-
5 ance with the regulations in effect before such date shall
6 be deemed to constitute full compliance with this Act.
7 After the effective date of this Act, the Secretary may not
8 enforce regulations in effect before such date.

9 **SEC. 9. EFFECTIVE DATE.**

10 The amendments made by this Act shall take effect
11 upon the expiration of 180 days after the date of the en-
12 actment of this Act.

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