

105TH CONGRESS
1ST SESSION

S. 367

To amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1997

Mr. WELLSTONE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects 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 AND REFERENCE.**

4 (A) SHORT TITLE.—This Act may be cited as the
5 “Battered Women’s Employment Protection Act ”.

6 (b) REFERENCE.—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
2 sion of the Family and Medical Leave Act of 1993 (29
3 U.S.C. 2601 et seq.).

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) violence against women is the leading cause
7 of physical injury to women, and the Department of
8 Justice estimates that intimate partners commit
9 more than 1,000,000 violent crimes against women
10 every year;

11 (2) approximately 95 percent of the victims of
12 domestic violence are women;

13 (3) in the United States, a woman is more like-
14 ly to be assaulted, injured, raped, or killed by a male
15 partner than by any other type of assailant;

16 (4) the Bureau of Labor Statistics predicts that
17 women will account for two-thirds of all new en-
18 trants into the workforce between now and the year
19 2000;

20 (5) violence against women dramatically affects
21 women's workforce participation, insofar as one-
22 quarter of the battered women surveyed had lost a
23 job due at least in part to the effects of domestic vi-
24 olence, and over one-half had been harassed by their
25 abuser at work;

1 (6) a study by Domestic Violence Intervention
2 Services, Inc. found that 96 percent of employed do-
3 mestic violence victims had some type of problem in
4 the workplace as a direct result of their abuse or
5 abuser;

6 (7) the availability of economic support is a
7 critical factor in a women's ability to leave abusive
8 situations that threaten them and their children, and
9 over one-half of the battered women surveyed stayed
10 with their batterers because they lacked resources to
11 support themselves and their children;

12 (8) a report by the New York City Victims
13 Services Agency found that abusive spouses and
14 lovers harass 74 percent of battered women at work,
15 54 percent of battering victims miss at least 3 days
16 of work per month, 56 percent are late for work at
17 least 5 times per month, and a University of Min-
18 nesota study found that 24 percent of women in
19 support groups for battered women had lost a job
20 partly because of being abused;

21 (9) a survey of State unemployment insurance
22 agency directors by the Federal Advisory Council on
23 Unemployment Compensation found that in 31
24 States battered women who leave work as a result

1 of domestic violence do not qualify for unemploy-
2 ment benefits, in 9 States the determination often
3 varies depending on the facts and circumstances,
4 and in only 13 States are they usually considered
5 qualified for unemployment benefits;

6 (10) a study by the New York State Depart-
7 ment of Labor found that, when filing for unemploy-
8 ment insurance benefits, domestic violence victims
9 frequently hide their victimization and do not dis-
10 close the domestic violence as a reason for their
11 problems with the job or need to separate from em-
12 ployment;

13 (11) 49 percent of senior executives recently
14 surveyed said domestic violence has a harmful effect
15 on their company's productivity, 47 percent said do-
16 mestic violence negatively affects attendance, and 44
17 percent said domestic violence increases health care
18 costs, and the Bureau of National Affairs estimates
19 that domestic violence costs employers between
20 \$3,000,000,000 and \$5,000,000,000 per year; and

21 (12) existing Federal and State legislation does
22 not expressly authorize battered women to take leave
23 from work to seek legal assistance and redress,
24 counseling, or assistance with safety planning and
25 activities.

1 (b) PURPOSES.—Pursuant to the affirmative power
2 of Congress to enact this Act under section 5 of the Four-
3 teenth Amendment to the Constitution, as well as under
4 clause 1 of section 8 of Article I of the Constitution and
5 clause 3 of section 8 of Article I of the Constitution, the
6 purposes of this Act are—

7 (1) to promote the national interest in reducing
8 domestic violence by enabling victims of domestic vi-
9 olence to maintain the financial independence nec-
10 essary to leave abusive situations, to achieve safety
11 and minimize the physical and emotional injuries
12 from domestic violence, and to reduce the devastat-
13 ing economic consequences of domestic violence to
14 employers and employees, by—

15 (A) providing unemployment insurance for
16 victims of domestic violence who are forced to
17 leave their employment as a result of domestic
18 violence; and

19 (B) entitling employed victims of domestic
20 violence to take reasonable leave under the
21 Family and Medical Leave Act of 1993 (29
22 U.S.C. 2601 et seq.) to seek medical help, legal
23 assistance, counseling, and safety planning and
24 assistance without penalty from their employer;

1 (2) to promote the purposes of the Fourteenth
 2 Amendment by protecting the civil and economic
 3 rights of victims of domestic violence and by further-
 4 ing the equal opportunity of women to employment
 5 and economic self-sufficiency;

6 (3) to minimize the negative impact on inter-
 7 state commerce from dislocations of employees and
 8 harmful effects on productivity, health care costs,
 9 and employer costs from domestic violence; and

10 (4) to accomplish the purposes described in
 11 paragraphs (1) , (2) and (3) in a manner that ac-
 12 commodates the legitimate interests of employers.

13 **SEC. 3. UNEMPLOYMENT COMPENSATION.**

14 (a) UNEMPLOYMENT COMPENSATION.—Section
 15 3304(a) of the Internal Revenue Code of 1986 is amend-
 16 ed—

17 (1) by striking “and” at the end of paragraph
 18 (18);

19 (2) by striking the period at the end of para-
 20 graph (19) and inserting “; and”;

21 (3) by adding after paragraph (19) the follow-
 22 ing:

1 “(20) compensation is to be provided where an
 2 individual is separated from employment due to cir-
 3 cumstances directly resulting from the individual’s
 4 experience of domestic violence.”;

5 (4) by redesignating subsections (b) through (f)
 6 as subsections (c) through (g), respectively; and

7 (5) by inserting after subsection (a) the follow-
 8 ing:

9 “(b) CONSTRUCTION.—

10 “(1) DIRECTLY RESULTING FROM VIOLENCE.—

11 For the purpose of determining, under subsection
 12 (a)(20), whether an employee’s separation from em-
 13 ployment is ‘directly resulting’ from the individual’s
 14 experience of domestic violence, it shall be sufficient
 15 if the separation from employment resulted from—

16 “(A) the employee’s reasonable fear of fu-
 17 ture domestic violence at or en route to or from
 18 her place of employment;

19 “(B) the employee’s wish to relocate to an-
 20 other geographic area in order to avoid future
 21 domestic violence against the employee or the
 22 employee’s family;

23 “(C) the employee’s need to recover from
 24 traumatic stress resulting from the employee’s
 25 experience of domestic violence;

“(D) the employer’s denial of the employee’s request for the temporary leave from employment to address domestic violence and its effects authorized by section 102 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612); or

“(E) any other respect in which domestic violence causes the employee to reasonably believe that termination of employment is necessary for the future safety of the employee or the employee’s family.

“(2) REASONABLE EFFORTS TO RETAIN EMPLOYMENT.—For purposes of subsection (a)(20), where State law requires the employee to have made reasonable efforts to retain employment as a condition for receiving unemployment compensation, it shall be sufficient that the employee—

“(A) sought protection from or assistance in responding to domestic violence, including calling the police or seeking legal, social work, medical, clergy, or other assistance;

“(B) sought safety, including refuge in a shelter or temporary or permanent relocation, whether or not the employee actually obtained such refuge or accomplished such relocation; or

1 “(C) reasonably believed that options such
2 as a leave, transfer, or alternative work sched-
3 ule would not be sufficient to guarantee the em-
4 ployee or the employee’s family’s safety.

5 “(3) ACTIVE EMPLOYMENT SEARCH.—For pur-
6 poses of subsection (a)(20), where State law requires
7 the employee to actively search for employment after
8 separation from employment as a condition for re-
9 ceiving unemployment compensation, such require-
10 ment shall be deemed to be met where the employee
11 is temporarily unable to actively search for employ-
12 ment because the employee is engaged in seeking
13 safety or relief for the employee or the employee’s
14 family from domestic violence, including—

15 “(A) going into hiding or relocating or at-
16 tempting to do so, including activities associ-
17 ated with such relocation or hiding, such as
18 seeking to obtain sufficient shelter, food, school-
19 ing for children, or other necessities of life for
20 the employee or the employee’s family;

21 “(B) actively pursuing legal protection or
22 remedies, including meeting with the police,
23 going to court to make inquiries or file papers,
24 meeting with attorneys, or attending court pro-
25 ceedings; or

1 “(C) participating in psychological, social,
2 or religious counseling or support activities to
3 assist the employee in ending domestic violence.

4 “(4) REQUIREMENT TO PROVIDE DOCUMENTA-
5 TION OR OTHER EVIDENCE.—In determining if an
6 employee meets the requirements of paragraphs (1),
7 (2), and (3), the employer of an employee may re-
8 quire the employee to provide—

9 “(A) documentation of the domestic vio-
10 lence, such as police or court records, or docu-
11 mentation of the domestic violence from a shel-
12 ter worker, attorney, clergy, or medical or other
13 professional from whom the employee has
14 sought assistance in addressing domestic vio-
15 lence and its effects; or

16 “(B) other corroborating evidence, such as
17 a statement from any other individual with
18 knowledge of the circumstances which provide
19 the basis for the claim, or physical evidence of
20 domestic violence, such as photographs, torn or
21 bloody clothes, or other similar evidence.

22 All evidence of domestic violence experienced by an
23 employee, including an employee’s statement, any

1 corroborating evidence, and the fact that an em-
2 ployee has applied for or inquired about unemploy-
3 ment compensation available under subsection
4 (a)(20) shall be retained in the strictest confidence
5 of the employer, except to the extent consented to by
6 the employee where disclosure is necessary to protect
7 the employee's safety.''.
8

9 (b) SOCIAL SECURITY PERSONNEL TRAINING.—Sec-
10 tion 303(a) of the Social Security Act (42 U.S.C.
11 503(a)(4)) is amended by redesignating paragraphs (4)
12 through (10) as paragraphs (5) through (11), respectively,
13 and by inserting after paragraph (3) the following:

14 “(4) Such methods of administration as will en-
15 sure that claims reviewers and hearing personnel are
16 adequately trained in the nature and dynamics of
17 domestic violence and in methods of ascertaining
18 and keeping confidential information about possible
19 experiences of domestic violence, so that employment
20 separations stemming from domestic violence are re-
21 liably screened, identified, and adjudicated and full
22 confidentiality is provided for the employee's claim
23 and submitted evidence.'”.

24 (c) DEFINITIONS.—Section 3306 of the Internal Rev-
25 enue Code of 1986 is amended by adding at the end the
following:

1 “(u) DOMESTIC VIOLENCE.—The term ‘domestic vio-
2 lence’ includes abuse committed against an employee or
3 a family member of the employee by—

4 “(1) a current or former spouse of the em-
5 ployee;

6 “(2) a person with whom the employee shares
7 a child in common;

8 “(3) a person who is cohabitating with or has
9 cohabitated with the employee as a romantic or inti-
10 mate partner; or

11 “(4) a person from whom the employee would
12 be eligible for protection under the domestic vio-
13 lence, protection order, or family laws of the juris-
14 diction in which the employee resides or the em-
15 ployer is located.

16 “(v) ABUSE.—The term ‘abuse’ includes—

17 “(1) physical acts resulting in, or threatening to
18 result in, physical injury;

19 “(2) sexual abuse, sexual activity involving a
20 dependent child, or threats of or attempts at sexual
21 abuse;

22 “(3) mental abuse, including threats, intimid-
23 ation, acts designed to induce terror, or restraints on
24 liberty; and

1 “(4) deprivation of medical care, housing, food
2 or other necessities of life.”.

3 **SEC. 4. ENTITLEMENT TO LEAVE FOR DOMESTIC VIO-**
4 **LENCE.**

5 (a) **AUTHORITY FOR LEAVE.**—Section 102(a)(1) (29
6 U.S.C. 2612(a)(1)) is amended by adding at the end the
7 following:

8 “(E) In order to care for the child or par-
9 ent of the employee, if such child or parent is
10 addressing domestic violence and its effects.

11 “(F) Because the employee is addressing
12 domestic violence and its effects, the employee
13 is unable to perform any of the functions of the
14 position of such employee.”.

15 (b) **DEFINITION.**—Section 101 (29 U.S.C. 2611) is
16 amended by adding at the end the following:

17 “(14) **ADDRESSING DOMESTIC VIOLENCE AND**
18 **ITS EFFECTS.**—The term ‘addressing domestic vio-

19 **lence and its effects’ means—**
20 “(A) experiencing domestic violence;

21 “(B) seeking medical attention for or re-
22 covering from injuries caused by domestic vio-
23 lence;

24 “(C) seeking legal assistance or remedies,
25 including communicating with the police or an

1 attorney, or participating in any legal proceed-
 2 ing related to domestic violence;

3 “(D) attending support groups for victims
 4 of domestic violence;

5 “(E) obtaining psychological counseling re-
 6 lated to experiences of domestic violence;

7 “(F) participating in safety planning and
 8 other actions to increase safety from future do-
 9 mestic violence, including temporary or perma-
 10 nent relocation; and

11 “(G) any other activity necessitated by do-
 12 mestic violence which must be undertaken dur-
 13 ing hours of employment.”.

14 (c) INTERMITTENT OR REDUCED LEAVE.—Section
 15 102(b) (29 U.S.C. 2612(b)) is amended by adding at the
 16 end the following:

17 “(3) DOMESTIC VIOLENCE.—Leave under sub-
 18 paragraph (E) or (F) of subsection (a)(1) may be
 19 taken by an employee intermittently or on a reduced
 20 leave schedule. The taking of leave intermittently or
 21 on a reduced leave schedule pursuant to this para-
 22 graph shall not result in a reduction in the total
 23 amount of leave to which the employee is entitled
 24 under subsection (a) beyond the amount of leave ac-
 25 tually taken.”.

1 (d) PAID LEAVE.—Section 102(d)(2)(B) (29 U.S.C.
 2 2612(d)(2)(B)) is amended by striking “(C) or (D)” and
 3 inserting “(C), (D), (E), or (F)”.

4 (e) CERTIFICATION.—Section 103 (29 U.S.C. 2613)
 5 is amended by redesignating subsection (e) as subsection
 6 (f) and by inserting after subsection (d) the following:

7 “(e) DOMESTIC VIOLENCE.—In determining if an
 8 employee meets the requirements of subparagraph (E) or
 9 (F) of section 102(a)(1), the employer of an employee may
 10 require the employee to provide—

11 “(1) documentation of the domestic violence,
 12 such as police or court records, or documentation of
 13 the domestic violence from a shelter worker, attor-
 14 ney, clergy, or medical or other professional from
 15 whom the employee has sought assistance in ad-
 16 dressing domestic violence and its effects; or

17 “(2) other corroborating evidence, such as a
 18 statement from any other individual with knowledge
 19 of the circumstances which provide the basis for the
 20 claim, or physical evidence of domestic violence, such
 21 as photographs, torn or bloody clothes, etc.”.

22 (f) CONFIDENTIALITY.—Section 103 (29 U.S.C.
 23 2613), as amended by subsection (e), is amended—

24 (1) in the title by adding before the period the
 25 following: “; **CONFIDENTIALITY**”; and

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

2 “(f) CONFIDENTIALITY.—All evidence of domestic vi-
 3 olence experienced by an employee or the employee’s child
 4 or parent, including an employee’s statement, any corrobo-
 5 rating evidence, and the fact that an employee has re-
 6 quested leave for the purpose of addressing domestic vio-
 7 lence and its effects, shall be retained in the strictest con-
 8 fidence by the employer, except to the extent consented
 9 to by the employee where disclosure is necessary to protect
 10 the employee’s safety.”.

11 **SEC. 5. ENTITLEMENT TO LEAVE FOR FEDERAL EMPLOY-**
 12 **EES FOR DOMESTIC VIOLENCE.**

13 (a) AUTHORITY FOR LEAVE.—Section 6382 of title
 14 5, United States Code is amended by adding at the end
 15 the following:

16 “(E) In order to care for the child or parent of
 17 the employee, if such child or parent is addressing
 18 domestic violence and its effects.

19 “(F) Because the employee is addressing do-
 20 mestic violence and its effects, the employee is un-
 21 able to perform any of the functions of the position
 22 of such employee.”.

23 (b) DEFINITION.—Section 6381 of title 5, United
 24 States Code is amended—

1 (1) by striking “and” at the end of paragraph
2 (5);

3 (2) by striking the period at the end of para-
4 graph (6) and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(7) the term ‘addressing domestic violence and
7 its effects’ means—

8 “(A) experiencing domestic violence;

9 “(B) seeking medical attention for or re-
10 covering from injuries caused by domestic vio-
11 lence;

12 “(C) seeking legal assistance or remedies,
13 including communicating with the police or an
14 attorney, or participating in any legal proceed-
15 ing related to domestic violence;

16 “(D) attending support groups for victims
17 of domestic violence;

18 “(E) obtaining psychological counseling re-
19 lated to experiences of domestic violence;

20 “(F) participating in safety planning and
21 other actions to increase safety from future do-
22 mestic violence, including temporary or perma-
23 nent relocation; and

1 “(G) any other activity necessitated by do-
 2 mestic violence which must be undertaken dur-
 3 ing hours of employment.”.

4 (c) INTERMITTENT OR REDUCED LEAVE.—Section
 5 6382(b) of title 5, United States Code, is amended by add-
 6 ing at the end the following:

7 “(3) Leave under subparagraph (E) or (F) of
 8 subsection (a)(1) may be taken by an employee
 9 intermittently or on a reduced leave schedule. The
 10 taking of leave intermittently or on a reduced leave
 11 schedule pursuant to this paragraph shall not result
 12 in a reduction in the total amount of leave to which
 13 the employee is entitled under subsection (a) beyond
 14 the amount of leave actually taken.”.

15 (d) OTHER LEAVE.—Section 6382(d) of title 5, Unit-
 16 ed States Code, is amended by striking “(C) or (D)” and
 17 inserting “(C), (D), (E), or (F)”.

18 (e) CERTIFICATION.—Section 6383 of title 5, United
 19 States Code, is amended by redesignating subsection (e)
 20 as subsection (f) and by inserting after subsection (d) the
 21 following:

22 “(e) DOMESTIC VIOLENCE.—In determining if an
 23 employee meets the requirements of subparagraph (E) or
 24 (F) of section 6382(a)(1), the employer of an employee
 25 may require the employee to provide—

1 “(1) documentation of the domestic violence,
 2 such as police or court records, or documentation of
 3 the domestic violence from a shelter worker, attor-
 4 ney, clergy, or medical or other professional from
 5 whom the employee has sought assistance in ad-
 6 dressing domestic violence and its effects; or

7 “(2) other corroborating evidence, such as a
 8 statement from any other individual with knowledge
 9 of the circumstances which provide the basis for the
 10 claim, or physical evidence of domestic violence, such
 11 as photographs, torn or bloody clothes, etc.”.

12 (f) CONFIDENTIALITY.—Section 6383 of title 5,
 13 United States Code, as amended by subsection (e), is
 14 amended—

15 (1) in the title by adding before the period the
 16 following: **“; Confidentiality”**, and

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

18 “(g) CONFIDENTIALITY.—All evidence of domestic vi-
 19 olence experienced by an employee or the employee’s child
 20 or parent, including an employee’s statement, any corrobo-
 21 rating evidence, and the fact that an employee has re-
 22 quested leave for the purpose of addressing domestic vio-
 23 lence and its effects, shall be retained in the strictest con-
 24 fidence by the employer, except to the extent consented

1 to by the employee where disclosure is necessary to protect
2 the employee's safety.''.
3

4 **SEC. 6. EFFECT ON OTHER LAWS AND EMPLOYMENT BENE-**
5 **FITS.**

6 (1) MORE PROTECTIVE.—Nothing in this Act
7 or the amendments made by this Act shall be con-
8 strued to supersede any provision of any Federal,
9 State or local law, collective bargaining agreement,
10 or other employment benefit program which provides
11 greater unemployment compensation or leave bene-
12 fits for employed victims of domestic violence than
13 the rights established under this Act or such amend-
14 ments.

15 (2) LESS PROTECTIVE.—The rights established
16 for employees under this Act or the amendments
17 made by this Act shall not be diminished by any col-
18 lective bargaining agreement, any employment bene-
19 fit program or plan, or any State or local law.

20 **SEC. 7. EFFECTIVE DATE.**

21 (a) GENERAL RULE.—Except as provided in sub-
22 section (b), this Act and the amendments made by this
23 Act shall take effect upon the expiration of 180 days from
24 the date of the enactment of this Act.

(b) UNEMPLOYMENT COMPENSATION.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by section 3 shall
3 apply in the case of compensation paid for weeks be-
4 ginning on or after the expiration of 180 days from
5 the date of the enactment of this Act.

6 (2) MEETING OF STATE LEGISLATURE.—In the
7 case of a State with respect to which the Secretary
8 of Labor has determined that the State legislature
9 is required in order to comply with the amendments
10 made by section 3, the amendments made by section
11 3 shall apply in the case of compensation paid for
12 weeks which begin on or after the expiration of 180
13 days from the date of the enactment of this Act and
14 after the end of the first session of the State legisla-
15 ture which begins after the date of the enactment of
16 this Act or which began prior to the date of the en-
17 actment of this Act and remained in session for at
18 least 25 calendar days after such date of enactment.
19 For purposes of the preceding sentence, the term
20 “session” means a regular, special, budget, or other
21 session of a State legislature.

○