

108TH CONGRESS
1ST SESSION

H. R. 35

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Mrs. BIGGERT introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on House Administration and Government Reform, 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 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.**

4 This Act may be cited as the “Family and Medical
5 Leave Clarification Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The Family and Medical Leave Act of 1993
2 (hereinafter referred to as the “Act”) is not working
3 as the Congress intended when it passed the Act in
4 1993. Many employers, including those employers
5 that are nationally recognized as having generous
6 family-friendly benefit and leave programs, are expe-
7 riencing serious problems complying with the Act.

8 (2) The Secretary of Labor’s overly broad regu-
9 lations and interpretations have caused many of
10 these problems by greatly expanding the Act’s cov-
11 erage to apply to many nonserious health conditions.

12 (3) Between 1996 and 2002, six congressional
13 hearings—two in the Senate and four in the House
14 of Representatives—documented numerous imple-
15 mentation problems with the Act due to the Depart-
16 ment of Labor’s misapplication of the Act through
17 some of its regulations and interpretations.

18 (4) Documented problems generated by the Act
19 include significant new administrative and personnel
20 costs, loss of productivity, scheduling difficulties, un-
21 necessary paperwork and recordkeeping, and other
22 compliance problems.

23 (5) The Act often conflicts with employers’ paid
24 sick leave policies, prevents employers from man-
25 aging absences through their absence control plans,

1 and results in most leave under the Act becoming
2 paid leave.

3 (6) Administrative problems associated with the
4 use of intermittent leave under the Act are a well-
5 documented issue. Approximately three-quarters (76
6 percent) of respondents to a 2000 survey by the So-
7 ciety for Human Resource Management said they
8 would find compliance easier if the Department of
9 Labor allowed covered leave to be offered and
10 tracked in half-day increments rather than minutes.

11 (7) In 1996, the Commission on Leave, estab-
12 lished by title III of the Act (29 U.S.C. 2631 et
13 seq.), reported few compliance difficulties with the
14 Act, but the Commission only based its findings on
15 leave taken between January 1994 and June 1995.
16 Only after the final regulations became effective in
17 early 1995, and after the issuance of contradictory
18 interpretations of what constitutes a serious health
19 condition, did employers begin to encounter most
20 compliance difficulties. As a result, the Commission
21 report failed to identify many compliance problems,
22 because the findings were primarily based on leave
23 taken before the final regulations became effective.

24 (8) A more recent Department of Labor survey,
25 released in January 2001 as an update requested by

1 Congress to the 1996 Commission on Leave report,
2 found that between 1995 and 2000, there had been
3 a 21.5 percent decline in the share of covered estab-
4 lishments reporting that it was somewhat easy or
5 very easy to comply with the Act.

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

7 Section 101(11) of the Family and Medical Leave Act
8 of 1993 (29 U.S.C. 2611(11)) is amended—

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

11 (2) by inserting “(A)” before “The term”;

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

13 “(B) Such term includes an illness, injury,
14 impairment, or physical or mental condition
15 that involves care or treatment described in
16 subparagraph (a), such as a heart attack, a
17 heart condition requiring heart bypass or valve
18 operations, a back condition requiring extensive
19 therapy or a surgical procedure, a stroke, a se-
20 vere respiratory condition, a spinal injury, ap-
21 pendicitis, pneumonia, emphysema, severe ar-
22 thritis, a severe nervous disorder, an injury
23 caused by a serious accident on or off the job,
24 an ongoing pregnancy, a miscarriage, and a
25 complication or illness related to pregnancy

1 (such as severe morning sickness, a need for
2 prenatal care, childbirth, and recovery from
3 childbirth); and

4 “(C) Such term does not include a short-
5 term illness, injury, impairment, or condition
6 for which treatment and recovery are very
7 brief.”.

8 **SEC. 4. INTERMITTENT LEAVE.**

9 Section 102(b)(1) of the Family and Medical Leave
10 Act of 1993 (29 U.S.C. 2612(b)(1)) is amended by insert-
11 ing before the period at the end of the second sentence
12 the following: “, as certified under section 103 by the
13 health care provider after each leave occurrence. An em-
14 ployer may require an employee to take intermittent leave
15 in increments of up to half a workday. An employer may
16 require an employee who travels as part of the normal day-
17 to-day work or duty assignment of the employee and who
18 requests intermittent leave or leave on a reduced schedule
19 to take leave for the duration of that work or assignment
20 if the employer cannot reasonably accommodate the em-
21 ployee’s request”.

22 **SEC. 5. REQUEST FOR LEAVE.**

23 Section 102(e) of the Family and Medical Leave Act
24 of 1993 (29 U.S.C. 2612(e)) is amended by inserting after
25 paragraph (2) the following:

1 “(3) REQUEST FOR LEAVE.—If an employer
2 does not exercise, under subsection (d)(2), the right
3 to require an employee to substitute other employer-
4 provided leave for leave under this title, the em-
5 ployer may require the employee who wants leave
6 under this title to request the leave in a timely man-
7 ner. if an employer requires a timely request under
8 this paragraph, an employee who fails to make a
9 timely request may be denied leave under this title.
10 For purposes of this paragraph, a request for leave
11 shall be considered timely if—

12 “(A) in the case of foreseeable leave, the
13 employee—

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

17 “(ii) submits any written application
18 required by the employer for the leave not
19 later than 5 working days after providing
20 the notice to the employer; and

21 “(B) in the case of unforeseeable leave, the
22 employee—

23 “(i) notifies the employer orally of the
24 need for the leave—

1 “(I) not later than the date the
2 leave commences; or

3 “(II) during such additional pe-
4 riod as may be necessary, if the em-
5 ployer is physically or mentally in-
6 capable of providing the notification;
7 and

8 “(ii) submits any written application
9 required by the employer for the leave—

10 “(I) not later than 5 working
11 days after providing the notice to the
12 employer; or

13 “(II) during such additional pe-
14 riod as may be necessary, if the em-
15 ployee is physically or mentally in-
16 capable of submitting the applica-
17 tion.”.

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

19 Section 102(d)(2) of the Family and Medical Leave
20 Act of 1993 (29 U.S.C. 2612(d)(2)) is amended by adding
21 at the end the following:

22 “(C) PAID ABSENCE.—Notwithstanding
23 subparagraphs (A) and (B), with respect to
24 leave provided under subparagraph (D) of sub-
25 section (a)(1), where an employer provides a

1 paid absence under the employer’s collective
2 bargaining agreement, a welfare benefit plan
3 under the Employee Retirement Income Secu-
4 rity Act of 1974 (29 U.S.C. 1001 et seq.), or
5 under any other sick leave, sick pay, or dis-
6 ability plan, program, or policy of the employer,
7 the employer may require the employee to
8 choose between the paid absence and unpaid
9 leave provided under this title.”.

10 **SEC. 7. REGULATIONS.**

11 (a) **REVISED REGULATIONS.**—The Secretary of
12 Labor shall issue revised regulations that implement the
13 Family and Medical Leave Act of 1993 and reflect the
14 amendments made by this Act. In issuing such revised reg-
15 ulations, the Secretary shall—

16 (1) not later than 90 days after the date of en-
17 actment of this Act—

18 (A) review all regulations issued before
19 such date of enactment, including the regula-
20 tions published in sections 825.114 and
21 825.115 of title 29, Code of Federal Regula-
22 tions; and

23 (B) issue proposed regulations; and

24 (2) not later than 180 days after the date of
25 enactment of this Act, issue final regulations, which

1 shall take effect not later than 90 days after the
2 date of their issuance.

3 (b) APPLICATION OF EXISTING REGULATIONS.—

4 Regulations and opinion letters issued by the Secretary
5 of Labor before the effective date of the revised regula-
6 tions under subsection (a) shall not apply to actions taken
7 by an employer after the effective date of such revised reg-
8 ulations with respect to leave under the Family and Med-
9 ical Leave Act of 1993.

10 **SEC. 8. EFFECTIVE DATE OF AMENDMENTS.**

11 The amendments made by this Act shall take effect
12 on the date of issuance of the final regulations required
13 under section 7(a)(2).

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