

108TH CONGRESS  
1ST SESSION

# S. 320

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 2003

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

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## 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.**

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

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

1 ily and Medical Leave Act of 1993 (29 U.S.C. 2601 et  
2 seq.).

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

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

13 (2) The Department of Labor’s overly broad  
14 regulations and interpretations have caused many of  
15 those problems by greatly expanding the Act’s cov-  
16 erage to apply to many nonserious health conditions.

17 (3) Those problems are also documented in a  
18 review of litigation under the Act. The validity of 13  
19 different Department of Labor regulations relating  
20 to the Act has been challenged in 64 reported court  
21 decisions.

22 (4) From 1996 through 2002, 6 congressional  
23 hearings (2 in the Senate and 4 in the House of  
24 Representatives) documented numerous implementa-  
25 tion problems with the Act due to the Department

1 of Labor's misapplication of the Act through some  
2 of its regulations and interpretations.

3 (5) Documented problems generated by the Act  
4 include significant new administrative and personnel  
5 costs, loss of productivity, scheduling difficulties, un-  
6 necessary paperwork and recordkeeping, and other  
7 compliance problems.

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

13 (7) Administrative problems associated with the  
14 use of intermittent leave under the Act are a well-  
15 documented issue. Approximately  $\frac{3}{4}$  (76 percent) of  
16 the respondents to a 2000 survey by the Society for  
17 Human Resource Management said they would find  
18 compliance easier if the Department of Labor al-  
19 lowed covered leave to be offered and tracked in in-  
20 crements of half days rather than minutes.

21 (8) The Commission on Leave, established in  
22 title III of the Act (29 U.S.C. 2631 et seq.) which  
23 in 1996 reported few difficulties with compliance  
24 with the Act, failed to identify many of the problems  
25 with compliance because the survey on which the re-

1 port was based was conducted too soon after the  
2 date of enactment of the Act and the most signifi-  
3 cant problems with compliance arose only when em-  
4 ployers later sought to comply with the Act's final  
5 regulations and interpretations.

6 (9) A more recent Department of Labor survey,  
7 released in January 2001 as an update requested by  
8 Congress to the 1996 Commission on Leave report,  
9 found that between 1995 and 2000, there had been  
10 a 21.5 percent decline in the share of covered estab-  
11 lishments reporting that it was somewhat easy or  
12 very easy to comply with the Act.

13 (10) According to the Society for Human Re-  
14 source Management 2003 FMLA Survey, 50 percent  
15 of human resource professionals indicated that they  
16 have had to grant leave requests under the Act that  
17 they did not believe were legitimate because of the  
18 Department of Labor's interpretations, and 34 per-  
19 cent of human resource professionals were aware of  
20 employee complaints in the past 12 months due to  
21 coworkers' questionable use of leave under the Act.

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

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

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

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

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

4                   “(A) IN GENERAL.—”; and

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

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

10                   “(C) EXAMPLES.—The term includes an  
11 illness, injury, impairment, or physical or men-  
12 tal condition such as a heart attack, a heart  
13 condition requiring a heart bypass or valve op-  
14 eration, a back condition requiring extensive  
15 therapy or a surgical procedure, a stroke, a se-  
16 vere respiratory condition, a spinal injury, ap-  
17 pendicitis, pneumonia, emphysema, severe ar-  
18 thritis, a severe nervous disorder, an injury  
19 caused by a serious accident on or off the job,  
20 an ongoing pregnancy, a miscarriage, a com-  
21 plication or illness related to pregnancy (such  
22 as severe morning sickness), a need for prenatal  
23 care, childbirth, and recovery from childbirth,  
24 that involves care or treatment described in  
25 subparagraph (A).”.

**1 SEC. 4. INTERMITTENT LEAVE.**

2 Section 102(b)(1) (29 U.S.C. 2612(b)(1)) is amended  
3 by striking the period at the end of the second sentence  
4 and inserting the following: “, as certified under section  
5 103 by the health care provider involved after each leave  
6 occurrence. An employer may require an employee to take  
7 intermittent leave under this Act in increments of up to  
8 (and including)  $\frac{1}{2}$  of a workday. An employer may require  
9 an employee who travels as part of the normal day-to-day  
10 work or duty assignment of the employee and who re-  
11 quests intermittent leave or leave on a reduced leave  
12 schedule under this Act to take leave for the duration of  
13 the work or assignment involved, if the employer cannot  
14 reasonably accommodate the employee’s request.”.

**15 SEC. 5. REQUEST FOR LEAVE.**

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

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

1           “(4) TIMELINESS OF REQUEST FOR LEAVE.—

2           For purposes of paragraph (3), a request for leave  
3           shall be considered to be timely if—

4                   “(A) in the case of foreseeable leave, the  
5           employee—

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

9                           “(ii) submits any written application  
10                          required by the employer for the leave not  
11                          later than 5 working days after providing  
12                          the notice to the employer; and

13                   “(B) in the case of unforeseeable leave, the  
14           employee—

15                           “(i) notifies the employer orally of the  
16                           need for the leave—

17                                   “(I) not later than the date the  
18                                   leave commences; or

19                                   “(II) during such additional pe-  
20                                   riod as may be necessary, if the em-  
21                                   ployer is physically or mentally in-  
22                                   capable of providing the notification;  
23                                   and

24                           “(ii) submits any written application  
25                          required by the employer for the leave—

1                   “(I) not later than 5 working  
2                   days after providing the notice to the  
3                   employer; or

4                   “(II) during such additional pe-  
5                   riod as may be necessary, if the em-  
6                   ployee is physically or mentally in-  
7                   capable of submitting the applica-  
8                   tion.”.

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

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

12                   “(C) PAID ABSENCE.—Notwithstanding  
13                   subparagraphs (A) and (B), with respect to  
14                   leave provided under subsection (a)(1)(D), if an  
15                   employer provides a paid absence under the em-  
16                   ployer’s collective bargaining agreement, an em-  
17                   ployee welfare benefit plan under the Employee  
18                   Retirement Income Security Act of 1974 (29  
19                   U.S.C. 1001 et seq.), or under any other sick  
20                   leave, sick pay, or disability plan, program, or  
21                   policy of the employer, the employer may re-  
22                   quire the employee to choose between the paid  
23                   absence and unpaid leave provided under this  
24                   title.”.

1 **SEC. 7. REGULATIONS.**

2 (a) **EXISTING REGULATIONS.—**

3 (1) **REVIEW.—**Not later than 90 days after the  
4 date of enactment of this Act, the Secretary of  
5 Labor shall review all regulations issued before that  
6 date to implement the Family and Medical Leave  
7 Act of 1993 (29 U.S.C. 2601 et seq.), including the  
8 regulations published in sections 825.114 and  
9 825.115 of title 29, Code of Federal Regulations.

10 (2) **TERMINATION.—**The regulations described  
11 in paragraph (1), and opinions letters promulgated  
12 under the regulations, cease to be effective on the ef-  
13 fective date of final regulations issued under sub-  
14 section (b)(2)(B), except as described in subsection  
15 (c).

16 (b) **REVISED REGULATIONS.—**

17 (1) **IN GENERAL.—**The Secretary of Labor shall  
18 issue revised regulations implementing the Family  
19 and Medical Leave Act of 1993 that reflect the  
20 amendments made by this Act.

21 (2) **NEW REGULATIONS.—**The Secretary of  
22 Labor shall issue—

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

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

4           (3) **EFFECTIVE DATE.**—The final regulations  
5           take effect 90 days after the date on which the regu-  
6           lations are issued.

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

12          **SEC. 8. EFFECTIVE DATE.**

13          The amendments made by this Act take effect 180  
14          days after the date of enactment of this Act.

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