

116TH CONGRESS
1ST SESSION

S. 1131

To establish family and medical leave banks to provide paid leave for employees of the Department of Defense, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2019

Mr. MERKLEY (for himself and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish family and medical leave banks to provide paid leave for employees of the Department of Defense, 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. DEPARTMENT OF DEFENSE FAMILY AND MED-**
4 **ICAL LEAVE BANKS.**

5 (a) IN GENERAL.—Subchapter V of chapter 63 of
6 title 5, United States Code, is amended—

7 (1) by redesignating section 6387 as section
8 6388; and

1 (2) by inserting after section 6386 the fol-
2 lowing:

3 **“§ 6387. Department of Defense family and medical**
4 **leave banks**

5 “(a) DEFINITIONS.—In this section—

6 “(1) the term ‘covered DOD employee’ means
7 an individual described in section 6381(1)(A) who is
8 employed by the Department, without regard to
9 whether the individual meets the requirements of
10 section 6381(1)(B);

11 “(2) the term ‘Department’ means the Depart-
12 ment of Defense;

13 “(3) the term ‘designated unit’ means any
14 agency, component, or other administrative unit of
15 the Department designated by the Secretary under
16 subsection (b)(1);

17 “(4) the term ‘family and medical leave bank’
18 means a family and medical leave bank established
19 under subsection (b)(2);

20 “(5) the term ‘leave recipient’ means a covered
21 DOD employee whose application under subsection
22 (e)(1) to receive leave from a family and medical
23 leave bank is approved; and

24 “(6) the term ‘Secretary’ means the Secretary
25 of Defense.

1 “(b) ESTABLISHMENT OF FAMILY AND MEDICAL
2 LEAVE BANKS.—The Secretary, in consultation with the
3 Director of the Office of Personnel Management, shall—

4 “(1) designate the agencies, components, or
5 other administrative units of the Department for
6 which it is appropriate to have a separate family and
7 medical leave bank; and

8 “(2) establish a family and medical leave bank
9 for each designated unit.

10 “(c) ESTABLISHMENT OF FAMILY AND MEDICAL
11 LEAVE BANK BOARDS.—

12 “(1) IN GENERAL.—For each family and med-
13 ical leave bank established by the Secretary, the Sec-
14 retary shall establish a Family and Medical Leave
15 Bank Board consisting of 3 members, at least one
16 of whom shall represent a labor organization or em-
17 ployee group, to administer the family and medical
18 leave bank, in consultation with the Office of Per-
19 sonnel Management.

20 “(2) DUTIES.—Each Family and Medical Leave
21 Bank Board, in conjunction with the human re-
22 source office for the agency, component, or adminis-
23 trative unit for which the applicable family and med-
24 ical leave bank was established, shall—

1 “(A) review and determine whether to ap-
 2 prove applications to the family and medical
 3 leave bank under subsection (e)(1);

4 “(B) monitor each case of a leave recipi-
 5 ent;

6 “(C) monitor the amount of leave in the
 7 family and medical leave bank and the number
 8 of applications for use of leave from the family
 9 and medical leave bank; and

10 “(D) maintain an adequate amount of
 11 leave in the family and medical leave bank to
 12 the greatest extent practicable.

13 “(3) QUALIFYING FAMILY AND MEDICAL
 14 EVENTS.—To the greatest extent practicable, each
 15 Family and Medical Leave Bank Board shall use the
 16 certification forms and standards established for
 17 purposes of section 6382 in determining whether, for
 18 purposes of this section, a circumstance described in
 19 section 6382(a)(1) exists.

20 “(d) CREDITING OF LEAVE.—

21 “(1) FORFEITED LEAVE.—Any annual leave
 22 lost by a covered DOD employee by operation of sec-
 23 tion 6304 shall be credited to the family and medical
 24 leave bank of the designated unit in which the cov-
 25 ered DOD employee is employed.

1 “(2) ADDITIONAL ANNUAL LEAVE CONTRIBU-
2 TIONS.—This section shall not supersede or modify
3 the ability of a covered DOD employee to donate
4 earned annual leave to a qualified recipient under
5 regulations of the Department.

6 “(3) CONTRIBUTIONS OF USE OR LOSE
7 LEAVE.—

8 “(A) IN GENERAL.—A covered DOD em-
9 ployee who is projected to have annual leave
10 that otherwise would be subject to forfeiture at
11 the end of the leave year under section 6304
12 may submit an application in writing requesting
13 that a specified number of hours (not to exceed
14 the number of hours projected to be subject to
15 forfeiture) be transferred from the annual leave
16 account of the covered DOD employee to the
17 family and medical leave bank for the des-
18 ignated unit in which the covered DOD em-
19 ployee is employed.

20 “(B) APPROVAL.—If a Family and Medical
21 Leave Bank Board approves an application by
22 a covered DOD employee under subparagraph
23 (A), the Secretary shall transfer to the family
24 and medical leave bank of the designated unit
25 in which the covered DOD employee is em-

1 ployed the amount of leave requested to be
2 transferred.

3 “(e) APPLICATION FOR LEAVE.—

4 “(1) IN GENERAL.—A covered DOD employee
5 who is or anticipates being absent from regularly
6 scheduled duty because of a circumstance described
7 in section 6382(a)(1) (without regard to whether the
8 covered DOD employee is entitled to leave under
9 section 6382(a)(1)) may submit an application to re-
10 ceive leave from the family and medical leave bank
11 of the designated unit in which the covered DOD
12 employee is employed, which shall contain such in-
13 formation as the Secretary, in consultation with the
14 Director of the Office of Personnel Management,
15 shall by regulation prescribe.

16 “(2) DETERMINATION.—A Family and Medical
17 Leave Bank Board may—

18 “(A) approve an application submitted
19 under paragraph (1); and

20 “(B) specify the amount of leave that shall
21 be transferred to a covered DOD employee
22 whose application is approved.

23 “(3) MAXIMUM AMOUNT OF LEAVE.—

24 “(A) IN GENERAL.—A Family and Medical
25 Leave Bank Board may not specify an amount

1 of leave to be transferred to a covered DOD
 2 employee that is more than the amount of leave
 3 described in subparagraph (B).

4 “(B) AMOUNT.—The amount described in
 5 this subparagraph is—

6 “(i) with respect to a full-time covered
 7 DOD employee, 12 weeks; and

8 “(ii) with respect to a part-time cov-
 9 ered DOD employee, the amount equal to
 10 the product obtained by multiplying—

11 “(I) 12 weeks; by

12 “(II) the quotient obtained by di-
 13 viding—

14 “(aa) the number of hours
 15 in the regularly scheduled work-
 16 week of the part-time covered
 17 DOD employee; by

18 “(bb) the number of hours
 19 in the regularly scheduled work-
 20 week of a covered DOD employee
 21 serving in a comparable position
 22 on a full-time basis.

23 “(4) TRANSFER.—The Secretary shall transfer
 24 to a covered DOD employee whose application is ap-
 25 proved under paragraph (2)(A) the number of hours

1 of leave specified under paragraph (2)(B) from the
 2 family and medical leave bank for the designated
 3 unit in which the covered DOD employee is em-
 4 ployed.

5 “(f) USE OF LEAVE.—

6 “(1) COORDINATION WITH EXISTING FML.—A
 7 leave recipient who is entitled to leave under section
 8 6382(a)(1) shall use any leave transferred to the
 9 leave recipient from a family and medical leave bank
 10 in accordance with section 6382(d)(2).

11 “(2) FAILURE TO USE LEAVE.—

12 “(A) IN GENERAL.—Any leave transferred
 13 to a leave recipient from a family and medical
 14 leave bank that is not used before the end of
 15 the 12-month period beginning on the date de-
 16 scribed in subparagraph (B)—

17 “(i) shall be forfeited by the leave re-
 18 cipient; and

19 “(ii) shall be credited to the family
 20 and medical leave bank from which the
 21 leave was transferred.

22 “(B) START OF PERIOD FOR USE.—The
 23 date described in this subparagraph is the later
 24 of—

1 “(i) the date on which the cir-
 2 cumstance described in section 6382(a)(1)
 3 arises; or

4 “(ii) the date on which leave is trans-
 5 ferred to the covered DOD employee under
 6 subsection (e)(4).”.

7 (b) USE OF FAMILY AND MEDICAL LEAVE.—Section
 8 6382(d) of title 5, United States Code, is amended—

9 (1) by inserting “(1)” before “An employee may
 10 elect” the first place it appears; and

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

12 “(2)(A) In this paragraph, the term ‘covered DOD
 13 employee’ has the meaning given that term in section
 14 6387.

15 “(B) A covered DOD employee entitled to leave under
 16 subsection (a)(1) to whom leave is transferred from a fam-
 17 ily and medical leave bank under section 6387—

18 “(i) shall substitute for any leave without pay
 19 under subsection (a)(1) the amount of leave trans-
 20 ferred to the employee from the family and medical
 21 leave bank; and

22 “(ii) may substitute for any leave without pay
 23 under subsection (a)(1) any annual or sick leave ac-
 24 crued or accumulated by such employee under sub-
 25 chapter I.

1 “(C) A covered DOD employee to whom leave is
 2 transferred from a family and medical leave bank shall
 3 first use all of the transferred leave before using leave de-
 4 scribed in subparagraph (B)(ii).

5 “(D) The Director of the Office of Personnel Man-
 6 agement shall prescribe any regulations necessary to carry
 7 out this paragraph.”.

8 (c) OPM AUTHORITY.—If the Director of the Office
 9 of Personnel Management determines expanding the fam-
 10 ily and medical leave bank program Governmentwide
 11 would be appropriate, the Director may prescribe regula-
 12 tions granting Executive agencies (as defined in section
 13 105 of title 5, United States Code) the authority to estab-
 14 lish family and medical leave banks, in the same manner
 15 as provided under the amendments made by subsections
 16 (a) and (b), to the maximum extent practicable.

17 (d) TECHNICAL AND CONFORMING AMENDMENT.—
 18 The table of sections for chapter 63 of title 5, United
 19 States Code, is amended by striking the item relating to
 20 section 6387 and inserting the following:

“6387. Department of Defense family and medical leave banks.
 “6388. Regulations.”.

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