

“SEC. 5112. AUTHORITY TO EXCLUDE CERTAIN EMPLOYEES.

“The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the definition of employee under section 5110(1) certain employees described in subparagraphs (E) and (F) of such section [sic], including by exempting certain United States Government employers covered by section 5110(2)(A)(i)(V) from the requirements of this title [probably should be “this Act”] with respect to certain categories of Executive Branch employees.”

SUBCHAPTER I—GENERAL REQUIREMENTS  
FOR LEAVE

§ 2611. Definitions

As used in this subchapter:

(1) Commerce

The terms “commerce” and “industry or activity affecting commerce” mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 142 of this title.

(2) Eligible employee

(A) In general

The term “eligible employee” means an employee who has been employed—

- (i) for at least 12 months by the employer with respect to whom leave is requested under section 2612 of this title; and
- (ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) Exclusions

The term “eligible employee” does not include—

- (i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5; or
- (ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) Determination

For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 207 of this title shall apply.

(D) Airline flight crews

(i) Determination

For purposes of determining whether an employee who is a flight attendant or flight crewmember (as such terms are defined in regulations of the Federal Aviation Administration) meets the hours of service requirement specified in subparagraph (A)(ii), the employee will be considered to meet the requirement if—

- (I) the employee has worked or been paid for not less than 60 percent of the applicable total monthly guarantee, or the equivalent, for the previous 12-month

period, for or by the employer with respect to whom leave is requested under section 2612 of this title; and

(II) the employee has worked or been paid for not less than 504 hours (not counting personal commute time or time spent on vacation leave or medical or sick leave) during the previous 12-month period, for or by that employer.

(ii) File

Each employer of an employee described in clause (i) shall maintain on file with the Secretary (in accordance with such regulations as the Secretary may prescribe) containing information specifying the applicable monthly guarantee with respect to each category of employee to which such guarantee applies.

(iii) Definition

In this subparagraph, the term “applicable monthly guarantee” means—

- (I) for an employee described in clause (i) other than an employee on reserve status, the minimum number of hours for which an employer has agreed to schedule such employee for any given month; and
- (II) for an employee described in clause (i) who is on reserve status, the number of hours for which an employer has agreed to pay such employee on reserve status for any given month,

as established in the applicable collective bargaining agreement or, if none exists, in the employer’s policies.

(E) GAO employees

In the case of an employee of the Government Accountability Office, the requirements of subparagraph (A) shall not apply with respect to leave under section 2612(a)(1)(A) or (B) of this title.

(3) Employ; employee; State

The terms “employ”, “employee”, and “State” have the same meanings given such terms in subsections (c), (e), and (g) of section 203 of this title.

(4) Employer

(A) In general

The term “employer”—

- (i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;
- (ii) includes—
  - (I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and
  - (II) any successor in interest of an employer;
- (iii) includes any “public agency”, as defined in section 203(x) of this title; and
- (iv) includes the Government Accountability Office and the Library of Congress.

**(B) Public agency**

For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

**(5) Employment benefits**

The term “employment benefits” means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an “employee benefit plan”, as defined in section 1002(3) of this title.

**(6) Health care provider**

The term “health care provider” means—

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(B) any other person determined by the Secretary to be capable of providing health care services.

**(7) Parent**

The term “parent” means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

**(8) Person**

The term “person” has the same meaning given such term in section 203(a) of this title.

**(9) Reduced leave schedule**

The term “reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

**(10) Secretary**

The term “Secretary” means the Secretary of Labor.

**(11) Serious health condition**

The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

**(12) Son or daughter**

The term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

**(13) Spouse**

The term “spouse” means a husband or wife, as the case may be.

**(14) Covered active duty**

The term “covered active duty” means—

(A) in the case of a member of a regular component of the Armed Forces, duty during

the deployment of the member with the Armed Forces to a foreign country; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10.

**(15) Covered servicemember**

The term “covered servicemember” means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**(16) Outpatient status**

The term “outpatient status”, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**(17) Next of kin**

The term “next of kin”, used with respect to an individual, means the nearest blood relative of that individual.

**(18) Serious injury or illness**

The term “serious injury or illness”—

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that mani-

fested itself before or after the member became a veteran.

### (19) Veteran

The term “veteran” has the meaning given the term in section 101 of title 38.

(Pub. L. 103-3, title I, §101, Feb. 5, 1993, 107 Stat. 7; Pub. L. 104-1, title II, §202(c)(1)(A), Jan. 23, 1995, 109 Stat. 9; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-181, div. A, title V, §585(a)(1), Jan. 28, 2008, 122 Stat. 128; Pub. L. 111-84, div. A, title V, §565(a)(1)(A), (2), (3), Oct. 28, 2009, 123 Stat. 2309, 2310; Pub. L. 111-119, §2(a), Dec. 21, 2009, 123 Stat. 3476; Pub. L. 116-92, div. F, title LXXVI, §7604(b), Dec. 20, 2019, 133 Stat. 2308.)

## Editorial Notes

### AMENDMENTS

- 2019—Par. (2)(E). Pub. L. 116-92 added subpar. (E).  
 2009—Par. (2)(D). Pub. L. 111-119 added subpar. (D).  
 Par. (14). Pub. L. 111-84, §565(a)(1)(A)(i), added par. (14) and struck out former par. (14). Prior to amendment, text read as follows: “The term ‘active duty’ means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10.”  
 Par. (15). Pub. L. 111-84, §565(a)(2), amended par. (15) generally. Prior to amendment, text read as follows: “The term ‘covered servicemember’ means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”  
 Pub. L. 111-84, §565(a)(1)(A)(ii), redesignated par. (16) as (15) and struck out former par. (15). Prior to amendment, text read as follows: “The term ‘contingency operation’ has the same meaning given such term in section 101(a)(13) of title 10.”  
 Pars. (16), (17). Pub. L. 111-84, §565(a)(1)(A)(ii), redesignated pars. (17) and (18) as (16) and (17), respectively. Former par. (16) redesignated (15).  
 Par. (18). Pub. L. 111-84, §565(a)(3), added par. (18) and struck out former par. (18). Prior to amendment, text read as follows: “The term ‘serious injury or illness’, in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.”  
 Pub. L. 111-84, §565(a)(1)(A)(ii), redesignated par. (19) as (18). Former par. (18) redesignated (17).  
 Par. (19). Pub. L. 111-84, §565(a)(3), added par. (19).  
 Pub. L. 111-84, §565(a)(1)(A)(ii), redesignated par. (19) as (18).  
 2008—Pars. (14) to (19). Pub. L. 110-181 added pars. (14) to (19).  
 2004—Par. (4)(A)(iv). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.  
 1995—Par. (4)(A)(iv). Pub. L. 104-1 added cl. (iv).

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-92, div. F, title LXXVI, §7604(c), Dec. 20, 2019, 133 Stat. 2308, provided that: “The amendments made by this section [amending this section and section 2612 of this title] shall not be effective with respect to any birth or placement occurring before October 1, 2020.”

### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-1 effective one year after transmission to Congress of the study under section

1371 of Title 2, The Congress, see section 1312(f)(2) of Title 2. The study required under section 1371 of Title 2, dated Dec. 31, 1996, was transmitted to Congress by the Board of Directors of the Office of Compliance on Dec. 30, 1996.

### EFFECTIVE DATE

Section effective 6 months after Feb. 5, 1993, except that, in the case of collective bargaining agreements in effect on that effective date, section applicable on the earlier of (1) the date of termination of such agreement, or (2) the date that occurs 12 months after Feb. 5, 1993, see section 405(b) of Pub. L. 103-3, set out as a note under section 2601 of this title.

### REGULATIONS

Pub. L. 111-84, div. A, title V, §565(a)(5), Oct. 28, 2009, 123 Stat. 2311, provided that: “In prescribing regulations to carry out the amendments made by this subsection [amending this section and sections 2612 and 2613 of this title], the Secretary of Labor shall consult with the Secretary of Defense and the Secretary of Veterans Affairs, as applicable.”

### FMLA: INCLUDING MILITARY SERVICE IN DETERMINING ELIGIBILITY

Pub. L. 118-31, div. A, title XI, §1114(b), Dec. 22, 2023, 137 Stat. 432, provided that:

“(1) IN GENERAL.—A covered employee who has completed 12 months of service which qualifies as honorable active service in the Army, Navy, Air Force, Space Force, or Marine Corps of the United States shall be deemed to have met the service requirement in section 101(1)(A) [probably should be 101(2)(A)] of the Family and Medical Leave Act of 1993 [29 U.S.C. 2611(2)(A)], notwithstanding the requirements of such section 101(1)(A).

“(2) COVERED EMPLOYEE DEFINED.—In this subsection, the term ‘covered employee’—

“(A) includes—

“(i) any Federal employee eligible for family and medical leave under the Family and Medical Leave Act of 1993 [29 U.S.C. 2601 et seq.] based on their status as such an employee;

“(ii) any Federal employee covered by the Congressional Accountability Act of 1995 [2 U.S.C. 1301 et seq.] eligible for family and medical leave by operation of section 202 of such Act [2 U.S.C. 1312];

“(iii) any Federal employee of the Executive Office of the President eligible for family and medical leave by operation of section 412 of title 3, United States Code; and

“(iv) any non-judicial employee of the District of Columbia courts and any employee of the District of Columbia Public Defender Service; and

“(B) does not include any member of the Commissioned Corps of the Public Health Service or the Commissioned Corps of the National Oceanic and Atmospheric Administration, [sic]”

## § 2612. Leave requirement

### (a) In general

#### (1) Entitlement to leave

Subject to section 2613 of this title and subsection (d)(3), an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if