

- (i) leave under subsection (a)(3); or
- (ii) a combination of leave under subsection (a)(3) and leave described in paragraph (1).

(B) Both limitations applicable

If the leave taken by the husband and wife includes leave described in paragraph (1), the limitation in paragraph (1) shall apply to the leave described in paragraph (1).

(Pub. L. 103-3, title I, §102, Feb. 5, 1993, 107 Stat. 9; Pub. L. 110-181, div. A, title V, §585(a)(2), (3)(A)-(D), Jan. 28, 2008, 122 Stat. 129, 130; Pub. L. 111-84, div. A, title V, §565(a)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2309, 2311; Pub. L. 111-119, §2(b), Dec. 21, 2009, 123 Stat. 3477; Pub. L. 116-92, div. F, title LXXVI, §7604(a), Dec. 20, 2019, 133 Stat. 2307; Pub. L. 116-127, div. C, §3102(a), Mar. 18, 2020, 134 Stat. 189.)

Editorial Notes

REFERENCES IN TEXT

The date the Emergency Family and Medical Leave Expansion Act takes effect, referred to in subsec. (a)(1)(F), is the effective date of div. C of Pub. L. 116-127, which is set out as an Effective Date note under section 2620 of this title.

CONSTITUTIONALITY

For information regarding the constitutionality of certain provisions of this section, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

AMENDMENTS

2020—Subsec. (a)(1)(F). Pub. L. 116-127, §3102(a)(1), added subpar. (F).

Subsec. (c). Pub. L. 116-127, §3102(a)(2), substituted “under subsection (a) (other than certain periods of leave under subsection (a)(1)(F))” for “under subsection (a)”.

2019—Subsec. (a)(1). Pub. L. 116-92, §7604(a)(1)(A), inserted “and subsection (d)(3)” after “section 2613 of this title” in introductory provisions.

Subsec. (a)(4). Pub. L. 116-92, §7604(a)(1)(B), substituted “Subject to subsection (d)(3), during” for “During”.

Subsec. (d)(3), (4). Pub. L. 116-92, §7604(a)(2), added pars. (3) and (4).

2009—Subsec. (a)(1)(E). Pub. L. 111-84, §565(a)(1)(B)(i), substituted “covered active duty” for “active duty” in two places and struck out “in support of a contingency operation” before period.

Subsec. (a)(5). Pub. L. 111-119 added par. (5).

Subsec. (e)(2)(A). Pub. L. 111-84, §565(a)(4), substituted “parent, or covered servicemember” for “or parent”.

Subsec. (e)(3). Pub. L. 111-84, §565(a)(1)(B)(ii), substituted “covered active duty” for “active duty” in heading and in two places in text and struck out “in support of a contingency operation” before “, the employee shall provide”.

2008—Subsec. (a)(1)(E). Pub. L. 110-181, §585(a)(2)(A), added subpar. (E).

Subsec. (a)(3), (4). Pub. L. 110-181, §585(a)(2)(B), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 110-181, §585(a)(3)(A)(i), (ii), in second sentence, substituted “subsection (b)(5) or (f) (as appropriate) of section 2613” for “section 2613(b)(5)” and inserted “or under subsection (a)(3)” after “subsection (a)(1)” and, after second sentence, inserted “Subject to subsection (e)(3) and section 2613(f) of this title, leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.”

Subsec. (b)(2). Pub. L. 110-181, §585(a)(3)(A)(iii), inserted “or under subsection (a)(3)” after “subsection (a)(1)”.

Subsec. (d)(1). Pub. L. 110-181, §585(a)(3)(B)(i), inserted “(or 26 workweeks in the case of leave provided under subsection (a)(3))” after “fewer than 12 workweeks” and “(or 26 workweeks, as appropriate)” after “attain the 12 workweeks”.

Subsec. (d)(2)(A). Pub. L. 110-181, §585(a)(3)(B)(ii), substituted “(C), or (E)” for “or (C)”.

Subsec. (d)(2)(B). Pub. L. 110-181, §585(a)(3)(B)(iii), inserted at end “An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided under subsection (a)(3) for any part of the 26-week period of such leave under such subsection, except that nothing in this subchapter requires an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide any such paid leave.”

Subsec. (e)(2). Pub. L. 110-181, §585(a)(3)(C)(i), inserted “or under subsection (a)(3)” after “subsection (a)(1)” in introductory provisions.

Subsec. (e)(3). Pub. L. 110-181, §585(a)(3)(C)(ii), added par. (3).

Subsec. (f). Pub. L. 110-181, §585(a)(3)(D), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116-127 effective no later than 15 days after Mar. 18, 2020, see section 3106 of div. C of Pub. L. 116-127, set out as an Effective Date note under section 2620 of this title.

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116-92 not effective with respect to any birth or placement occurring before Oct. 1, 2020, see section 7604(c) of Pub. L. 116-92, set out as a note under section 2611 of this title.

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.

CLARIFICATION FOR MEMBERS OF THE NATIONAL GUARD AND RESERVES: GAO AND LIBRARY OF CONGRESS EMPLOYEES

Pub. L. 116-92, div. F, title LXXVI, §7605(c), Dec. 20, 2019, 133 Stat. 2308, provided that: “For purposes of determining the eligibility of an employee of the Government Accountability Office or Library of Congress who is a member of the National Guard or Reserves to take leave under section 102(a) of the Family and Medical Leave Act of 1993 [29 U.S.C. 2612(a)], any service by such employee on active duty (as defined in section 101(14) of such Act [29 U.S.C. 2611(14)]) shall be counted as time during which such employee has been employed for purposes of section 101(2)(A) of such Act [29 U.S.C. 2611(2)(A)].”

§ 2613. Certification

(a) In general

An employer may require that a request for leave under subparagraph (C) or (D) of paragraph (1) or paragraph (3) of section 2612(a) of this title be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, or of the next of kin of an individual

in the case of leave taken under such paragraph (3), as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Sufficient certification

Certification provided under subsection (a) shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 2612(a)(1)(C) of this title, a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and

(B) for purposes of leave under section 2612(a)(1)(D) of this title, a statement that the employee is unable to perform the functions of the position of the employee;

(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 2612(a)(1)(D) of this title, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 2612(a)(1)(C) of this title, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) Second opinion

(1) In general

In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 2612(a)(1) of this title, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

(2) Limitation

A health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employer.

(d) Resolution of conflicting opinions

(1) In general

In any case in which the second opinion described in subsection (c) differs from the opinion in the original certification provided under

subsection (a), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) Finality

The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) Subsequent recertification

The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

(f) Certification related to covered active duty or call to covered active duty

An employer may require that a request for leave under section 2612(a)(1)(E) of this title be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe. If the Secretary issues a regulation requiring such certification, the employee shall provide, in a timely manner, a copy of such certification to the employer.

(Pub. L. 103-3, title I, §103, Feb. 5, 1993, 107 Stat. 11; Pub. L. 110-181, div. A, title V, §585(a)(3)(E), Jan. 28, 2008, 122 Stat. 130; Pub. L. 111-84, div. A, title V, §565(a)(1)(C), Oct. 28, 2009, 123 Stat. 2310.)

Editorial Notes

AMENDMENTS

2009—Subsec. (f). Pub. L. 111-84 substituted “covered active duty” for “active duty” in two places in heading.

2008—Subsec. (a). Pub. L. 110-181, §585(a)(3)(E)(i), substituted “paragraph (1) or paragraph (3) of section 2612(a)” for “section 2612(a)(1)” and inserted “or of the next of kin of an individual in the case of leave taken under such paragraph (3),” after “parent of the employee.”

Subsec. (f). Pub. L. 110-181, §585(a)(3)(E)(ii), added subsec. (f).

Statutory Notes and Related Subsidiaries

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.

§ 2614. Employment and benefits protection

(a) Restoration to position

(1) In general

Except as provided in subsection (b), any eligible employee who takes leave under section 2612 of this title for the intended purpose of the leave shall be entitled, on return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay,