section (a)(1) or under subsection (a)(3) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, parent, or covered servicemember of the employee, as appropriate; and

(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(3) In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as is reasonable and practicable.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 20; amended Pub. L. 110–181, div. A, title V, § 585(b)(2)–(3)(C), Jan. 28, 2008, 122 Stat. 132; Pub. L. 110–417, [div. A], title X, § 1061(b)(2), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111–84, div. A, title V, § 565(b)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2311, 2312; Pub. L. 116–92, div. F, title LXXVI, § 7602(a), (b), Dec. 20, 2019, 133 Stat. 2304, 2305; Pub. L. 116–283, div. A, title XI, § 1103(f)(3), Jan. 1, 2021, 134 Stat. 3889.)

Editorial Notes

Amendments

2021—Subsec. (d)(1). Pub. L. 116–283, § 1103(f)(3)(A), struck out ''under subchapter I'' before ''for any part'' in two places.

Subsec. (d)(2)(B)(ii). Pub. L. 116–283, § 1103(f)(3)(B), struck out before period at end ''under subchapter I''.

2019—Subsec. (a)(1). Pub. L. 116–92, § 7602(b)(1), which directed amendment of section 6382(a)(1), without specifying the title to be amended, by inserting ''and subsection (d)(2) of this section'' after ''section 6383'' in introductory provisions, was executed to this section, to reflect the probable intent of Congress.

Subsec. (a)(4). Pub. L. 116–92, § 7602(b)(2), which directed amendment of section 6382(a)(4), without specifying the title to be amended, by substituting ''Subject to subsection (d)(2), during'' for ''During'', was executed to this section, to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 116–92, § 7602(a), designated existing provisions as par. (1), substituted ''subparagraph (C),'' for ''subparagraph (A), (B), (C),'', and added par. (2). Amendment made by section 7602(a)(1) directing substitution of ''(1) An employee'' for ''An employee'' was executed to ''An employee'' appearing at the beginning of the subsection, to reflect the probable intent of Congress.

2009—Subsec. (a)(1)(E). Pub. L. 111–84, § 565(b)(1)(B)(i), added subpar. (E).

Subsec. (b)(1). Pub. L. 111–84, § 565(b)(1)(B)(ii), inserted after second sentence ''Subject to subsection (e)(3) and section 6383(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.''

Subsec. (d). Pub. L. 111–84, § 565(b)(1)(B)(iii), substituted ''(D), or (E)'' for ''or (D)''.

Subsec. (e)(2)(A). Pub. L. 111–84, § 565(b)(4), substituted ''parent, or covered servicemember'' for ''or parent''.

Subsec. (e)(3). Pub. L. 111–84, § 565(b)(1)(B)(iv), added par. (3).

2008—Subsec. (a)(3), (4). Pub. L. 110–181, § 585(b)(2), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 110–181, § 585(b)(3)(A)(i), in second sentence, substituted ''subsection (b)(5) or (f) (as appropriate) of section 6383'' for ''section 6383(b)(5)'' and inserted ''or under subsection (a)(3)'' after ''subsection (a)(1)''.

Subsec. (b)(2). Pub. L. 110–181, § 585(b)(3)(A)(ii), inserted ''or under subsection (a)(3)'' after ''subsection (a)(1)''.

Subsec. (d). Pub. L. 110–181, § 585(b)(3)(B), inserted at end ''An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 26-week period of leave under such subsection.''

Subsec. (e). Pub. L. 110–181, § 585(b)(3)(C), as amended by Pub. L. 110–417, inserted ''or under subsection (a)(3)'' after ''subsection (a)(1)'' in par. (1) and in introductory provisions of par. (2).

Statutory Notes and Related Subsidiaries

Effective Date of 2019 Amendment

Pub. L. 116–92, div. F, title LXXVI, § 7602(c), Dec. 20, 2019, 133 Stat. 2306, provided that: ''The amendments made by this section [amending this section] shall not be effective with respect to any birth or placement occurring before October 1, 2020.''

Effective Date of 2008 Amendment

Pub. L. 110–417, [div. A], title X, § 1061(b), Oct. 14, 2008, 122 Stat. 4612, provided that the amendment made by section 1061(b)(2) is effective as of Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted.

Effective Date

Section effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103–3, set out as a note under section 2601 of Title 29, Labor.

Clarification for Members of the National Guard and Reserves: Executive Branch Employees

Pub. L. 116–92, div. F, title LXXVI, § 7605(a), Dec. 20, 2019, 133 Stat. 2308, provided that: ''For purposes of determining the eligibility of an employee who is a member of the National Guard or Reserves to take leave under section 6382(a) of title 5, United States Code, or to substitute such leave pursuant to subsection (d)(2)(A) of section 6382 of such title (as added by section 1102 [probably means section ''7602'' of Pub. L. 116–92]), any service by such employee on active duty (as defined in section 6381(7) of such title) shall be counted as service as an employee for purposes of section 6381(1)(B) of such title.''

§ 6383. Certification

(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification

issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

(b) A 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 6382(a)(1)(C), a statement that the 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 such son, daughter, spouse, or parent; and

(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

(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.

(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

(2) 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 employing agency and the employee.

(e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.

(f) An employing agency may require that a request for leave under paragraph (1)(E) or (3) of section 6382(a) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe.

(Added Pub. L. 103–3, title II, §201(a)(1), Feb. 5, 1993, 107 Stat. 21; amended Pub. L. 110–181, div. A, title V, §585(b)(3)(D), Jan. 28, 2008, 122 Stat. 132; Pub. L. 111–84, div. A, title V, §565(b)(1)(C), Oct. 28, 2009, 123 Stat. 2311.)

Editorial Notes

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–84 substituted ''paragraph (1)(E) or (3) of section 6382(a)'' for ''section 6382(a)(3)''.

2008—Subsec. (f). Pub. L. 110–181 added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103–3, set out as a note under section 2601 of Title 29, Labor.

§ 6384. Employment and benefits protection

(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave—

(1) to be restored by the employing agency to the position held by the employee when the leave commenced; or

(2) to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(c) Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to—

(1) the accrual of any employment benefits during any period of leave; or

(2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.

(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

(Added Pub. L. 103–3, title II, §201(a)(1), Feb. 5, 1993, 107 Stat. 22.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103–3, set out as a note under section 2601 of Title 29, Labor.

§ 6385. Prohibition of coercion

(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

(b) For the purpose of this section—