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**101ST CONGRESS; 1ST SESSION
IN THE HOUSE OF REPRESENTATIVES
AS ENROLLED**

H. R. 770

1989 H.R. 770; 101 H.R. 770

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SYNOPSIS:

An Act To entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition and to temporary medical leave in certain cases involving a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave.

DATE OF INTRODUCTION: FEBRUARY 2, 1989

DATE OF VERSION: JUNE 19, 1990 -- **VERSION:** 5

SPONSOR(S):

None Available with this version.

TEXT:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**-This Act may be cited as the "Family and Medical Leave Act of 1990".

(b) **TABLE OF CONTENTS.**-

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SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.-The Congress finds that-

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) it is important to the development of the child and to the family unit that fathers and mothers be able to participate in early childrearing and the care of their family members who have serious health conditions;

(3) the lack of employment opportunities to accommodate working parents can force individuals to choose between job security and parenting;

(4) there is inadequate job security for some employees who have serious health conditions that prevent them from working for temporary periods;

(5) due to the nature of women's and men's roles in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects their working lives more than it affects the working lives of men; and

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) PURPOSES.-The Congress therefore declares that the purposes of this Act are-

(1) to balance the demands of the workplace with the needs of families, to promote stability and economic security in families, and to promote Federal interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(3) to accomplish such purposes in a manner which accommodates the legitimate interests of employers;

(4) to accomplish such purposes in a manner which, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women

and men, pursuant to such clause.

TITLE I-GENERAL REQUIREMENTS FOR LEAVE

SEC. 101. DEFINITIONS.

For purposes of this title:

(1) 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 activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947 ([29 U.S.C. 141](#) et seq.).

(2) The terms "employ" and "State" have the meanings given such terms in sections 3(g) and 3(c), respectively, of the **Fair Labor Standards Act** of 1938 ([29 U.S.C. 203](#)(g), 203(a), 203(c)).

(3)(A) The term "eligible employee" means any employee as defined in section 3(e) of the **Fair Labor Standards Act** of 1938 (29 U.S.C. 203(e)) who has been employed by the employer with respect to whom leave is sought under section 102 for at least-

- (i) 1,000 hours of service during the previous 12-month period, and
- (ii) 12 months.

(B) Such term does not include-

- (i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act), or
- (ii) any employee of an employer 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.

(4) The term "employee" means any individual employed by an employer.

(5)(A) The term "employer" means any person engaged in commerce or any activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more workweeks in the current or preceding calendar year.

(B) For purposes of subparagraph (A), the term "person" includes-

- (i) any person who acts, directly or indirectly, in the interest of an employer to any of the employer's employees;
- (ii) any successor in interest of an employer; and
- (iii) any public agency, as defined in section 3(x) of the **Fair Labor Standards Act** of 1938 ([29 U.S.C. 203](#)(x)).

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

(6) The term "employment benefits" means all benefits provided or made available to employees by an employer, and include group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or through an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 ([29 U.S.C. 1002](#)(1)).

(7) The term "health care provider" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such function or action.

(8) The term "reduced leave schedule" means leave scheduled for

fewer than an employee's usual number of hours per workweek or hours per workday.

(9) The term "Secretary" means the Secretary of Labor.

(10) The term "serious health condition" means an illness, injury, impairment, or physical or mental conditions which involves-

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

(B) continuing treatment or continuing supervision by a health care provider.

(11) 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 mental or physical disability.

(12) The term "parent" means the biological parent of the child or an individual who stood in loco parentis to a child when the child was a son or daughter.

SEC. 102. LEAVE REQUIREMENT.

(a) IN GENERAL.-(1) An eligible employee shall be entitled, subject to section 103, to 12 workweeks of leave during any 12-month period-

(A) because of the birth of a son or daughter of the employee;

(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 employee's son, daughter, spouse, or parent who has a serious health condition; or

(D) because of a serious health condition which makes the employee unable to perform the functions of such employee's position.

(2)(A) The entitlement to leave under paragraphs (1)(A) and (1)(B) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement. If one parent of a son or daughter takes leave under paragraph (1)(A), the other parent of such son or daughter may not take leave under such paragraph at the same time.

(B) Leave under paragraph (1)(A) or (1)(B) may not be taken by an employee intermittently unless the employee and the employee's employer agree otherwise. Leave under paragraph (1)(C) or (1)(D) may be taken intermittently when medically necessary, subject to subsection (e).

(b) REDUCED LEAVE.-Upon agreement between the employer and the employee, leave under subsection (a) may be taken on a reduced leave schedule. Such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled.

(c) UNPAID LEAVE PERMITTED.-Leave under subsection (a) may consist of unpaid leave, except as provided in subsection (d).

(d) RELATIONSHIP TO PAID LEAVE.-(1)(A) An eligible employee may elect, or an employer may require the employee, to substitute for leave under paragraph (1)(A), (1)(B), or (1)(C) of subsection (a) any of the employee's paid vacation leave, personal leave, or family leave for any part of the 12-week period of such leave under such paragraph.

(B) An eligible employee or employer may elect, or an employer may require the employee, to substitute for leave under paragraph (1)(D) of subsection (a) any of the employee's paid vacation leave, personal leave, or medical or sick leave for any part of the 12-week period of such leave under such paragraph, except that nothing in this Act shall require an

employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(2) If an eligible employee is entitled to leave under subsection (a), if under paragraph (1) the employee elects to substitute or is required by the employee's employer to substitute paid leave for such leave, and if such paid leave is less than the 12 weeks leave under subsection (a), the employee's employer shall provide the employee such additional weeks of leave as may be necessary to attain such 12 weeks.

(e) FORESEEABLE LEAVE.-(1) In any case in which the employee's position.

(c) EXPLANATION OF INABILITY TO PERFORM JOB FUNCTIONS.-The employer may request that, for purposes of section 104(d), certification under subsection (a) that is issued in any case involving leave under section 102(a)(1)(D) include an explanation of the extent to which the eligible employee is unable to perform the functions of the employee's position.

(d) SECOND OPINION.-(1) In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under paragraph (1)(C) or (1)(D) of section 102(a), the employer may require, at its own expense, 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 (a) for such leave.

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

(e) RESOLUTION OF CONFLICTING OPINIONS.-In any case in which the second opinion described in subsection (d) differs from the original certification provided under subsection (a), the employer may require, at its own expense, 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 (a). The opinion of the third health care provider concerning the information certified under subsection (a) shall be considered to be final and shall be binding on the employer and the employee.

(f) SUBSEQUENT RECERTIFICATION.-The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.-(1) Any eligible employee who takes leave under section 102 for its intended purpose shall be entitled, upon 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, and other terms and conditions of employment.

(2) The taking of leave under section 102 shall not result in the loss of any employment benefit earned before the date on which the leave commenced.

(3) Except as provided in subsection (b), nothing in this subsection shall be construed to entitle any restored employee to-

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

(B) 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.

(4) As a condition to restoration under paragraph (1), the employer may have a policy that requires each employee to receive certification from the employee's health care provider that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of employees taking leave under section 102(a)(1)(D).

(b) EXEMPTION CONCERNING CERTAIN HIGHLY COMPENSATED EMPLOYEES.-(1) An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if-

(A) such denial is necessary to prevent substantial and grievous economic injury to the employer's operations;

(B) the employer notifies the employee of its intent to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) An eligible employee described in this paragraph is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) MAINTENANCE OF HEALTH BENEFITS.-During any period an eligible employee takes leave under section 102, the employer shall maintain coverage under any group health plan (as defined in section 162(i)(2) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

(d) NO BAR TO AGREEMENT CONCERNING ALTERNATIVE EMPLOYMENT.-Nothing in this title shall be construed to prohibit an employer and an eligible employee from mutually agreeing to alternative employment for the employee throughout the period during which the employee would be entitled to leave under section 102. Any such period of alternative employment shall not cause a reduction in the period of temporary leave to which the employee is entitled under section 102(a)(1)(D).

SEC. 105. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.-(1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.-It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual-

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(3) has testified, or is about to testify in any inquiry or proceeding relating to any right provided under this title.

SEC. 106. ADMINISTRATIVE ENFORCEMENT.

(a) **IN GENERAL.**-The Secretary shall issue such regulations as are necessary to carry out this section, including regulations concerning service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings.

(b) **CHARGES.**-(1) Any person (or person, including a class or organization, on behalf of any person) alleging an act which violates any provision of this title may file a charge respecting such violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require by regulation.

(2) Not more than 10 days after the Secretary receives notice of the charge, the Secretary-

(A) shall serve a notice of the charge on the person charged with the violation; and

(B) shall inform such person and the charging party as to the rights and procedures provided under this title.

(3) A charge may not be filed more than 1 year after the date of the last event constituting the alleged violation.

(4) The charging party and the person charged with the violation may enter into a settlement agreement concerning the violation alleged in the charge before any determination is reached by the Secretary under subsection (c). Such an agreement shall be effective unless the Secretary determines, within 30 days after notice of the proposed agreement, that the agreement is not generally consistent with the purposes of this title.

(c) **INVESTIGATION; COMPLAINT.**-(1) Within the 60-day period after the Secretary receives any charge respecting a violation of this title, the Secretary shall investigate the charge and issue a complaint based on the charge or dismiss the charge.

(2) If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the charging party and the respondent as to the dismissal.

(3) If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(4) Upon the issuance of a complaint, the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint. Any such settlement shall not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides a full remedy for the charging party.

(5) If, at the end of the 60-day period referred to in paragraph (1), the Secretary-

(A) has not made a determination under paragraph (2) or (3),

(B) has dismissed the charge under paragraph (2), or

(C) has disapproved a settlement agreement under subsection (b)(4) or has not entered into a settlement agreement under paragraph (4) of this subsection,

the charging party may elect to bring a civil action under section 107. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

(6) The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 108.

(7) The Secretary shall have the power to petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition, the court shall cause notice of the petition to be served upon the respondent, and the court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as it deems just and proper.

(d) RIGHTS OF PARTIES.-(1) In any case in which a complaint is issued under subsection (c), the Secretary shall, not more than 10 days after the date on which the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) Any person filing a charge alleging a violation of this title may elect to be a party to any complaint filed by the Secretary alleging such violation. Such election must be made before the commencement of the hearing.

(3) The failure of the Secretary to comply in a timely manner with any obligation assigned to the Secretary under this title shall entitle the charging party to elect, at the time of such failure, to bring a civil action under section 107.

(e) CONDUCT OF HEARING.-(1) The Secretary shall have the duty to prosecute any complaint issued under subsection (b). (2) An administrative law judge shall conduct a hearing on the record with respect to any complaint issued under this title. The hearing shall be commenced within 60 days after the issuance of such complaint, unless the judge, in the judge's discretion, determines that the purposes of this Act would best be furthered by commencement of the action after the expiration of such period.

(f) FINDINGS AND CONCLUSIONS.-(1) After the hearing conducted under this section, the administrative law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 109.

(2) The administrative law judge shall inform the parties, in writing, of the reason for any delay in making such findings and conclusions if such findings and conclusions are not made within 60 days after the conclusion of such hearing.

(g) FINALITY OF DECISION; REVIEW.-(1) The decision and order of the administrative law judge shall become the final decision and order of the agency unless, upon appeal by an aggrieved party taken not more than 30 days after such action, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision and the order of the agency.

(2) Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.-(1) If an order of the agency is not appealed under subsection (g)(2), the Secretary may

petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the Secretary, by filing in such court a written petition praying that such order be enforced.

(2) Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the Secretary. In such a proceeding, the order of the Secretary shall not be subject to review.

(3) If, upon appeal of an order under subsection (g)(2), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the Secretary.

SEC. 107. ENFORCEMENT BY CIVIL ACTION.

(a) RIGHT TO BRING CIVIL ACTION.-(1) Subject to the limitations in this section, an eligible employee or any person, including a class or organization on behalf of any eligible employee or the Secretary may bring a civil action against any employer (including any State employer) to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 106(b).

(3) No civil action may be commenced under paragraph (1) if the Secretary-

(A) has approved a settlement agreement or has failed to disapprove a settlement agreement under section 106(b)(4), in which case no civil action may be filed under this subsection if such action is based upon a violation alleged in the charge and resolved by the agreement; or

(B) has issued a complaint under section 106(c)(3) or 106(c)(6), in which case no civil action may be filed under this subsection if such action is based upon a violation alleged in the complaint.

(4) Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5)(A) Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date of the last event constituting the alleged violation.

(B) In any case in which-

(i) a timely charge is filed under section 106(b), and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 106(c)(4)) occurs more than 11 months after the date on which any alleged violation occurred,

the charging party may commence a civil action not more than 60 days after the date of such failure.

(6) The Secretary may not bring a civil action against any agency of the United States.

(7) Upon the filing of the complaint with the court, the jurisdiction of the court shall be exclusive.

(b) VENUE.-An action brought under subsection (a) in a district court of the United States may be brought-

(1) in any appropriate judicial district under section 1391 of title 28, United States Code, or

(2) in the judicial district in the State in which-

- (A) the employment records relevant to such violation are maintained and administered, or
- (B) the aggrieved person worked or would have worked but for the alleged violation.

(c) **NOTIFICATION OF THE SECRETARY; RIGHT TO INTERVENE.**-A copy of the complaint in any action by an eligible employee under subsection (a) shall be served upon the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under subsection (a).

(d) **ATTORNEYS FOR THE SECRETARY.**-In any civil action under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 108. INVESTIGATIVE AUTHORITY.

(a) **IN GENERAL.**-To ensure compliance with this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the **Fair Labor Standards Act** of 1938 ([29 U.S.C. 211](#)(a)).

(b) **OBLIGATION TO KEEP AND PRESERVE RECORDS.**-Any employer shall keep and preserve records in accordance with section 11(c) of such Act and in accordance with regulations issued by the Secretary.

(c) **REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.**-The Secretary may not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 106.

(d) **SUBPOENA POWERS, ETC.**-For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided under section 9 of the **Fair Labor Standards Act** of 1938.

SEC. 109. RELIEF.

(a) **INJUNCTIVE.**-(1) Upon finding a violation under section 106, the administrative law judge shall issue an order requiring such person to cease and desist from any act or practice which violates this title.

(2) In any civil action brought under section 107, the court may grant as relief against any employer (including any State employer) any permanent or temporary injunction, temporary restraining order, and other equitable relief as the court deems appropriate.

(b) **MONETARY.**-(1) Any employer (including any State employer) that violates any provision of this title shall be liable to the injured party in an amount equal to-

(A) any wages, salary, employment benefits, or other compensation denied or lost to such eligible employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate; and

(B) an additional amount equal to the greater of (i) the amount determined under subparagraph (A), or (ii) consequential damages, not to exceed 3 times the amount determined under such subparagraph.

(2) If an employer who has violated this title proves to the satisfaction of the administrative law judge or the court that the act or omission which violated this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this title, such judge or the court may, in its

discretion, reduce the amount of the liability provided for under this subsection to the amount determined under paragraph (1)(A).

(c) ATTORNEYS' FEES.-The prevailing party (other than the United States) may be awarded a reasonable attorneys' fee as part of the costs, in addition to any relief awarded. The United States shall be liable for costs the same as a private person.

(d) LIMITATION.-Damages awarded under subsection (b) may not accrue from a date more than 2 years before the date on which a charge is filed under section 106(b) or a civil action is brought under section 107.

SEC. 110. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.-Except as otherwise provided in this section, the rights, remedies, and procedures under this Act shall apply to-

(1) any local educational agency (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and its employees, and

(2) any private elementary and secondary school and its employees, including the rights under section 104, which shall extend throughout the period of any employee's leave under this section.

(b) LEAVE DOES NOT VIOLATE CERTAIN OTHER FEDERAL LAWS.-A local educational agency and a private elementary and secondary school shall not be in violation of the Education of the Handicapped Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d](#) et seq.), solely as a result of an eligible employee of such agency or school exercising such employee's rights under this Act.

(c) INTERMITTENT LEAVE FOR INSTRUCTIONAL EMPLOYEES.-(1) Subject to paragraph (2), in any case in which an employee employed principally in an instructional capacity by any such educational agency or school seeks to take leave under section 102(a)(1)(C) or 102(a)(1)(D) which is foreseeable based on planned medical treatment or supervision and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require such employee to elect either-

(A) to take leave for periods of a particular duration, not to exceed the planned medical treatment or supervision; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and which-

(i) has equivalent pay and benefits, and

(ii) better accommodates recurring periods of leave than the employee's regular employment position.

(2) The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an employee who complies with section 102(e)(2).

(d) RULES APPLICABLE TO PERIODS NEAR THE CONCLUSION OF AN ACADEMIC TERM.-The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any employee employed principally in an instructional capacity by any such educational agency or school:

(1) If the employee begins leave under section 102 more than 5 weeks before the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if-

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) If the employee begins leave under paragraph (1)(A), (1)(B), or (1)(C) of section 102(a)(1) during the period that commences 5 weeks before the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if-

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) If the employee begins leave under paragraph (1)(A), (1)(B), or (1)(C) of section 102 during the period that commences 3 weeks before the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) **RESTORATION TO EQUIVALENT EMPLOYMENT POSITION.**-For purposes of determinations under section 104(a)(1)(B) (relating to an employee's restoration to an equivalent position) in the case of a local educational agency or a private elementary and secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) **REDUCTION OF THE AMOUNT OF LIABILITY.**-If a local educational agency or a private elementary and secondary school which has violated title I proves to the satisfaction of the administrative law judge or the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of such title, such judge or court may, in its discretion, reduce the amount of the liability provided for under section 109(b)(1) to the amount determined under subparagraph (A) of such section.

SEC. 111. NOTICE.

(a) **IN GENERAL.**-Each employer shall post and keep posted, in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) **PENALTY.**-Any employer that willfully violates this section shall be assessed a civil money penalty not to exceed \$ 100 for each separate offense.

SEC. 112. REGULATIONS.

The Secretary shall prescribe such regulations as are necessary to carry out this title (including regulations under section 106(a)) within 60 days after the date of the enactment of this Act.

TITLE II-FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. FAMILY AND TEMPORARY MEDICAL LEAVE.

(a) **IN GENERAL.**-(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V-FAMILY AND TEMPORARY MEDICAL LEAVE

"6381. Definitions

"For purposes of this subchapter-

"(1) 'employee' means-

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the

District of Columbia); and

"(B) an individual under clause (v) or (ix) of such section; whose employment is other than on a temporary or intermittent basis;

"(2) 'serious health condition' means an illness, injury, impairment, or physical or mental condition which involves-

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

"(B) continuing treatment, or continuing supervision, by a health care provider;

"(3) 'child' means an individual who is-

"(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

"(B)(i) under 18 years of age, or

"(ii) 18 years of age or older and incapable of self-care because of mental or physical disability; and

"(4) 'parent' means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

"6382. Family leave

"(a) Leave under this section shall be granted on the request of an employee if such leave is requested-

"(1) because of the birth of a child of the employee;

"(2) because of the placement for adoption or foster care of a child with the employee; or

"(3) in order to care for the employee's child or parent who has a serious health condition.

"(b) Leave under this section-

"(1) shall be leave without pay;

"(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

"(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section-

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"(d) Notwithstanding any other provision of this section-

"(1) a request for leave under this section based on the birth of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date of such child's birth; and

"(2) a request for leave under this section based on the placement for adoption or foster care of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date on which such child is so placed.

"(e)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or

adoption in a manner which is reasonable and practicable.

"(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee-

"(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's child or parent; and

"(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

"6383. Temporary medical leave

"(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

"(b) Leave under this section-

"(1) shall be leave without pay;

"(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

"(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section-

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"(d) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee-

"(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the employee's health care provider; and

"(2) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

"6384. Certification

"(a) An employing agency may require that a request for family leave under section 6382(a)(3) or temporary medical leave under section 6383 be supported by certification issued by the health care provider of the employee or of the employee's child or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employing agency.

"(b) Such certification 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 medical facts within the provider's knowledge regarding the condition; and

"(4) for purposes of section 6383, a statement that the employee is unable to perform the functions of the employee's position.

"6385. Job protection

"An employee who uses leave under section 6382 or 6383 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

"6386. Prohibition of coercion

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

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"6387. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6382 or 6383 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

"6388. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1990."

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER V-FAMILY AND TEMPORARY MEDICAL LEAVE

"6381. Definitions.

"6382. Family leave.

"6383. Temporary medical leave.

"6384. Certification.

"6385. Job protection.

"6386. Prohibition of coercion.

"6387. Health insurance.

"6388. Regulations."

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.-Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, and subchapter III of chapter 63,".

TITLE III-COMMISSION ON LEAVE

SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Leave (hereinafter in this Act referred to as the "Commission").

SEC. 302. DUTIES.

The Commission shall-

(1) conduct a comprehensive study of-

(A) existing and proposed policies relating to leave,

(B) the potential costs, benefits, and impact on productivity of such policies on businesses which employ fewer than 50 employees, and

- (C) alternative and equivalent State enforcement of this Act with respect to employees described in section 110; and
- (2) within 2 years after the date on which the Commission first meets, submit a report to the Congress, which may include legislative recommendations concerning coverage of businesses which employ fewer than 50 employees and alternative and equivalent State enforcement of this Act with respect to employees described in section 110.

SEC. 303. MEMBERSHIP.

(a) COMPOSITION.-The Commission shall be composed of 12 voting members and 2 ex-officio members appointed not more than 60 days after the date of the enactment of this Act as follows:

- (1) One Senator shall be appointed by the majority leader of the Senate, and one Senator shall be appointed by the minority leader of the Senate.
- (2) One member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the minority leader of the House of Representatives.
- (3)(A) Two members each shall be appointed by-
 - (i) the Speaker of the House of Representatives,
 - (ii) the majority leader of the Senate,
 - (iii) the minority leader of the House of Representatives, and
 - (iv) the minority leader of the Senate.

(B) Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor-management issues and shall include representatives of small business.

(4) The Secretary of Health and Human Services and the Secretary of Labor shall serve on the Commission as nonvoting ex-officio members.

(b) VACANCIES.-Any vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(c) CHAIRPERSON AND VICE CHAIRPERSON.-The Commission shall elect a chairperson and a vice chairperson from among its members.

(d) QUORUM.-Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) PAY.-Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.-Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

SEC. 305. POWERS.

(a) MEETINGS.-The Commission shall first meet not more than 30 days after the date on which members are appointed, and the Commission shall meet thereafter upon the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.-The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.-The Commission may secure directly from any Federal agency information necessary to enable it to carry out this Act. Upon the request of the chairperson or vice chairperson of the

Commission, the head of such agency shall furnish such information to the Commission.

(d) EXECUTIVE DIRECTOR.-The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission in carrying out its duties.

(e) USE OF FACILITIES AND SERVICES.-Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(f) PERSONNEL FROM OTHER AGENCIES.-Upon the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to assist the Commission in carrying out its duties.

SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of its report to the Congress.

TITLE IV-MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTIDISCRIMINATION LAWS.-Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status.

(b) STATE AND LOCAL LAWS.-Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State and local law which provides greater employee leave rights than the rights established under this Act or any amendment made by this Act.

SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.-Nothing in this Act or any amendment made by this Act shall be construed to diminish an employer's obligation to comply with any collective-bargaining agreement or any employment benefit program or plan which provides greater family and medical leave rights to employees than the rights provided under this Act or any amendment made by this Act.

(b) LESS PROTECTIVE.-The rights provided to employees under this Act or any amendment made by this Act may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies which comply with the requirements under this Act or any amendment made by this Act.

SEC. 404. EFFECTIVE DATES.

(a) TITLE III.-Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.-(1) Except as provided in paragraph (2), titles I and II and this title shall take effect 6 months after the date of the enactment of this Act.

(2) In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I shall apply on the earlier of-

(A) the date of the termination of such agreement; or

(B) the date which occurs 12 months after the date of the enactment of this Act.

SEC. 405. REGULATIONS.

The Secretary shall prescribe such regulations as are necessary to carry out this title within 60 days after the date of the enactment of this

Act.

TITLE V-COVERAGE OF CONGRESSIONAL EMPLOYEES

SEC. 501. LEAVE FOR CERTAIN CONGRESSIONAL EMPLOYEES.

(a) IN GENERAL.-The rights and protections under sections 102 through 105 (other than section 104(b)) shall apply to any employee in an employment position and any employing authority of the House of Representatives.

(b) ADMINISTRATION.-In the administration of this section, the remedies and procedures under the Fair Employment Practices Resolution shall be applied.

(c) DEFINITION.-As used in this section, the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 3, 1988, as continued in effect by House Resolution 15, One Hundred First Congress, agreed to January 3, 1989.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

LOAD-DATE: July 28, 1990