

S. 1530 Sen Granger

3/30/00

Never defined → but it's horrible
would get FMLA

↳ Δ's defn of serious health condition

↳ can require you to take leave in increments

↳ notice much shorter for 24 duration of employment

↳ if you're paid leave, not covered by FMLA

↳ no job protection

drafted by coalition against FMLA

ham' + moved

Leslie Platt
or

Earl Goral

693-4600

→ N heard it on Platt's syndr

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Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Doc Contents	

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Family and Medical Leave Clarification Act (Introduced in the Senate)

S 1530 IS

106th CONGRESS

1st Session

S. 1530

To amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

August 5, 1999

Mr. GREGG introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

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

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

- (a) **SHORT TITLE**- This Act may be cited as the 'Family and Medical Leave Clarification Act'.
- (b) **REFERENCES**- Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).
- (c) **TABLE OF CONTENTS**- The table of contents is as follows:
- Sec. 1. Short title; references; table of contents.
- Sec. 2. Findings.

Sec. 3. Definition of serious health condition.

Sec. 4. Intermittent leave.

Sec. 5. Request for leave.

Sec. 6. Substitution of paid leave.

Sec. 7. Regulations.

Sec. 8. Effective date.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Family and Medical Leave Act of 1993 (referred to in this section as the 'Act') is not working as Congress intended when Congress passed the Act in 1993. Many employers, including those employers that are nationally recognized as having generous family-friendly benefit and leave programs, are experiencing serious problems complying with the Act.

(2) The Department of Labor's overly broad regulations and interpretations have caused many of these problems by greatly expanding the Act's coverage to apply to many nonserious health conditions.

(3) Documented problems generated by the Act include significant new administrative and personnel costs, loss of productivity and scheduling difficulties, unnecessary paperwork and recordkeeping, and other compliance problems.

(4) The Act often conflicts with employers' paid sick leave policies, prevents employers from managing absences through their absence control plans, and results in most leave under the Act becoming paid leave.

(5) The Commission on Leave, established in title III of the Act (29 U.S.C. 2631 et seq.), which reported few difficulties with compliance with the Act, failed to identify many of the problems with compliance because the study on which the report was based was conducted too soon after the date of enactment of the Act and the most significant problems with compliance arose only when employers later sought to comply with the Act's final regulations and interpretations.

SEC. 3. DEFINITION OF SERIOUS HEALTH CONDITION.

Section 101(11) (29 U.S.C. 2611(11)) is amended--

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by aligning the margins of those clauses with the margins of clause (i) of paragraph (4)(A);

(3) by inserting before 'The' the following:

'(A) IN GENERAL-'; and

(4) by adding at the end the following:

'(B) EXCLUSIONS- The term does not include a short-term illness, injury,

impairment, or condition for which treatment and recovery are very brief.

(C) EXAMPLES- The term includes an illness, injury, impairment, or physical or mental condition such as a heart attack, a heart condition requiring extensive therapy or a surgical procedure, a stroke, a severe respiratory condition, a spinal injury, appendicitis, pneumonia, emphysema, severe arthritis, a severe nervous disorder, an injury caused by a serious accident on or off the job, an ongoing pregnancy, a miscarriage, a complication or illness related to pregnancy, such as severe morning sickness, a need for prenatal care, childbirth, and recovery from childbirth, that involves care or treatment described in subparagraph (A).

SEC. 4. INTERMITTENT LEAVE.

Section 102(b)(1) (29 U.S.C. 2612(b)(1)) is amended by striking the period at the end of the second sentence and inserting the following: ', as certified under section 103 by the health care provider after each leave occurrence. An employer may require an employee to take intermittent leave in increments of up to 1/2 of a workday. An employer may require an employee who travels as part of the normal day-to-day work or duty assignment of the employee and who requests intermittent leave or leave on a reduced schedule to take leave for the duration of that work or assignment if the employer cannot reasonably accommodate the employee's request.'

SEC. 5. REQUEST FOR LEAVE.

Section 102(e) (29 U.S.C. 2612(e)) is amended by inserting after paragraph (2) the following:

(3) REQUEST FOR LEAVE- If an employer does not exercise, under subsection (d)(2), the right to require an employee to substitute other employer-provided leave for leave under this title, the employer may require the employee who wants leave under this title to request the leave in a timely manner. If an employer requires a timely request under this paragraph, an employee who fails to make a timely request may be denied leave under this title.

(4) TIMELINESS OF REQUEST FOR LEAVE- For purposes of paragraph (3), a request for leave shall be considered to be timely if--

(A) in the case of foreseeable leave, the employee--

(i) provides the applicable advance notice required by paragraphs (1) and (2); and

(ii) submits any written application required by the employer for the leave not later than 5 working days after providing the notice to the employer; and

(B) in the case of unforeseeable leave, the employee--

(i) notifies the employer orally of the need for the leave--

(I) not later than the date the leave commences; or

(II) during such additional period as may be necessary, if the employee is physically or mentally incapable of providing the notification; and

(ii) submits any written application required by the employer for the leave--

(I) not later than 5 working days after providing the notice to the employer; or

(II) during such additional period as may be necessary, if the employee is physically or mentally incapable of submitting the application.'

SEC. 6. SUBSTITUTION OF PAID LEAVE.

Section 102(d)(2) (29 U.S.C. 2612(d)(2)) is amended by adding at the end the following:

(C) PAID ABSENCE- Notwithstanding subparagraphs (A) and (B), with respect to leave provided under subparagraph (D) of subsection (a)(1), where an employer provides a paid absence under the employer's collective bargaining agreement, a welfare benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), or under any other sick leave, sick pay, or disability plan, program, or policy of the employer, the employer may require the employee to choose between the paid absence and unpaid leave provided under this title.'

SEC. 7. REGULATIONS.

(a) EXISTING REGULATIONS-

(1) REVIEW- Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall review all regulations issued before that date to implement the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), including the regulations published in sections 825.114 and 825.115 of title 29, Code of Federal Regulations.

(2) TERMINATION- The regulations, and opinion letters promulgated under the regulations, shall cease to be effective on the effective date of final regulations issued under subsection (b)(2)(B), except as described in subsection (c).

(b) REVISED REGULATIONS-

(1) IN GENERAL- The Secretary of Labor shall issue revised regulations implementing the Family and Medical Leave Act of 1993 that reflect the amendments made by this Act.

(2) NEW REGULATIONS- The Secretary of Labor shall issue--

(A) proposed regulations described in paragraph (1) not later than 90 days after the date of enactment of this Act; and

(B) final regulations described in paragraph (1) not later than 180 days after that date of enactment.

(3) EFFECTIVE DATE- The final regulations take effect 90 days after the date on which the regulations are issued.

(c) TRANSITION- The regulations described in subsection (a) shall apply to actions taken by an employer prior to the effective date of final regulations issued under subsection (b)(2)(B), with respect to leave under the Family and Medical Leave Act of 1993.

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

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