

## NOTABLE ACCOMPLISHMENTS

- During the 103<sup>rd</sup> Congress OPM drafted and shepherded through the legislative process the Federal Workforce Restructuring Act, PL- 103-226 which gave Federal agencies the authority, under certain conditions, to offer buyouts to employees who would leave government service.
- OPM contributed significantly to the content and ultimate passage of PL- 103-94, the Family and Medical Leave Act of 1993. Title II of this act covers Federal Employees and OPM contributed to the drafting of this section and to the effort in Congress to assure passage.
- The Hatch Act Reform Amendments of 1993, PL 103-103, heavily influenced by OPM input and the OPM Office of Congressional Relations was the Administration's primary congressional envoy on this legislation.
- OPM also played a significant role in drafting and securing passage of PL- 103-103, the Federal Employee Leave sharing Amendments Act. This legislation made permanent a pilot allowing Federal employees to donate annual leave to other employees who have an emergency need for leave.

## 105<sup>th</sup> Congress

- The Balanced Budget Act of 1997, PL-105-33, contained provisions to increase employee and agency contributions for Federal Civilian Retirement (Sec. 7001), and changed the method of computing Government contributions under the FEHB program. OPM provided technical assistance to the Administration that made these provisions possible and thus provided important contributions to the legislation that eventually made the surpluses of today possible.
- Section 7001 of PL- 105-174, the 1998 Supplemental Appropriations and Recissions Act, was drafted by OPM. This provision provides for targeted early retirement authority. Previously early retirement could only be offered in cases where agencies were reducing their overall size. This provision allows for early retirement in cases of skills imbalance etc.
- PL-105-277 is the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. This legislation contains reformed overtime provisions for Federal structural firefighters. OPM led Administration efforts to simplify and reform structural firefighter pay for over 10 years. Passage of this legislation represented the culmination of years of effort and negotiations between Federal agencies and organizations representing firefighters. OPM staff not only came up with the ideas that were eventually accepted, but also steered the legislation through a complex and difficult Congressional process.
- Another law drafted and steered through the legislative process by OPM is PL-105-311, the Federal Employees Life Insurance Improvement Act. As a result of this legislation Federal employees will be offered new and innovative life insurance choices in the coming years.

## 106<sup>th</sup> Congress

- PL-106-265 contains two major legislative initiatives the Administration had been advocating for several years. OPM had the lead in both drafting and working with all stakeholders in securing passage of these very important provisions. Title I is the Long-Term Care Security Act which will enable the Federal government to offer long-term care insurance to employees, retirees and their families at a group rate. Title II is the Federal Erroneous Retirement Coverage Corrections Act. Ever since the establishment of the Federal Employees Retirement System there have been cases where employees were erroneously enrolled in one or the other of the Federal retirement systems. Previous law required the immediate correction of such errors, but made no provisions for losses employees might incur in such corrections. This new legislation provides fair and equitable options for both the Government and employees.
- PL-106-56, the Organ Donor Leave Act provides reasonable time off for employees who donate bone marrow or an organ to another individual. OPM drafted and shepherded this legislation through Congress.
- The Treasury and General Government Appropriations Act of 2000 included language drafted by OPM that authorized agencies to use appropriated funds to subsidize child care expenses for low income employees.
- OPM drafted for the President the following Executive Orders which greatly enhanced Federal human resource programs:
  1. E.O. 13124- Permits noncompetitive conversion to the competitive service of individuals with psychiatric disabilities. These are folks who, because of the disabilities were not able to compete for entrance to the Federal service, but through performance in noncompetitive positions demonstrated the ability to serve in permanent positions.
  2. E.O. 13162- established the Federal Career Intern Program to enable the government to offer career internships to qualified applicants.
  3. E.O. 131171- Provides impetus for agencies to hire qualified Hispanic applicants, thus aiding Hispanic Americans in their search for quality employment and helping agencies attract a diverse and highly qualified workforce.

## Notable OPM Accomplishments

### 103<sup>rd</sup> Congress

#### Drafted Administration Proposal

- Public Law 103-226 – 3/30/94  
Federal Workforce Restructuring Act of 1994

#### Contributed to Enactment

- Public Law 103-3 – 2/5/93  
Family and Medical Leave Act of 1993 – Title II – Federal employees
- Public Law 103-94 – 10/6/93  
Hatch Act Reform Amendments of 1993
- Public Law 103-103 – 10/8/93  
Federal Employee Leave Sharing Amendments Act of 1993
- Public Law 103-172 – 12/2/93  
Federal Employees Clean Air Incentives Act – Transit subsidies
- Public Law 103-409 – 10/25/94  
FEGLI Living Benefits Act

### 104<sup>th</sup> Congress

#### Contributed to Enactment

- Public Law 104-208 – 9/30/96  
Omnibus Consolidated Appropriations Act, 1997  
- Established Governmentwide buyout program for employees who retire or resign by December 31, 1997 (Sec. 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in section 101(f))

### 105<sup>th</sup> Congress

#### Drafted Administration Proposal

- Public Law 105-33 – 8/5/97  
Balanced Budget Act of 1997  
- Increased agency/employee contributions for Federal civilian retirement (Sec. 7001)  
- Changed method of computing Government contribution under FEHB Program (Sec. 7002)
- Public Law 105-174 – 5/1/98  
1998 Supplemental Appropriations and Recissions Act  
- Targeted early retirement authority (Sec. 7001)
- Public Law 105-266 – 10/19/98  
Federal Employees Health Care Protection Act of 1998

- Public Law 105-277 – 10/21/98  
Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999  
- Reformed overtime provisions for Federal firefighters (Sec. 628 -- Treasury and General Government Appropriations Act, 1999, as contained in section 101(h))
- Public Law 105-311 – 10/30/98  
Federal Employees Life Insurance Improvement Act

#### Contributed to Enactment

- Public Law 105-33 – 8/5/97  
Balanced Budget Act of 1997  
- District of Columbia Revitalization (Title XI)
- Public Law 105-61 – 10/10/97  
Treasury and General Government Appropriations Act, 1998  
- Established consolidated pay system for Secret Service Uniformed Division (Sec. 118)  
- Extended Physicians Comparability Allowance Program (Sec. 517)
- Public Law 105-85 – 11/18/97  
National Defense Authorization Act for Fiscal Year 1998  
- Provided enhanced recruitment and retention authorities for the Panama Canal Commission (Sec. 3525)
- Public Law 105-205 – 7/22/98  
- Required use of court orders in payment or assignment of Federal Employees Group life Insurance benefits
- Public Law 105-206 – 7/22/98  
Internal Revenue Service Restructuring and Reform Act of 1998  
- Provided personnel flexibilities (Subtitle C of Title I)
- Public Law 105-244 – 10/7/98  
Higher Education Amendments of 1998  
- Established Performance-Based Organization for student loans (New sec. 141)
- Public Law 105-261 – 10/17/98  
Strom Thurmond National Defense Authorization for Fiscal Year 1999  
- Authorized demonstration project for Medicare-eligible military retirees in the Federal Employees Health Benefits Program (Sec. 721)  
- Added nuclear materials couriers to those covered by enhanced early retirement and related provisions (Sec. 3154)
- Public Law 105-274 – 10/21/98  
District of Columbia Courts and Justice Technical Corrections Act of 1998  
- Provided personnel flexibilities for former D.C. employees hired by or transferred to the Federal Government (Sections 3, 4, 5, 6(a), 7(e), 8, and 9)
- Public Law 105-382 – 11/13/98  
Department of State Special Agents Retirement Act of 1998  
- Added certain State Department special agents and security personnel to those covered by enhanced early retirement and related provisions (Sections 2 and 3)

106<sup>th</sup> Congress

## Drafted Executive Order/Memorandum

- E.O. 13124 – 6/4/99
  - Permitted noncompetitive conversion to the competitive service of individuals with psychiatric disabilities
- E.O. 13162 – 7/6/00
  - Established the Federal Career Intern Program
- E.O. 13171 – 10/16/00
  - Hispanic Employment in the Federal Government
- Memorandum – 6/9/00
  - Actions to Further Improve the Management of Federal Human Resources

## Drafted Administration Proposal

- Public Law 106-56 – 9/24/99
  - Organ Donor Leave Act
- Public Law 106-58 – 9/29/99
  - Treasury and General Government Appropriations Act, 2000
    - Authorized agencies to use appropriated funds to provide child care (Sec. 643)
- Public Law 106-265 – 9/19/00
  - Title I – Long-Term Care Security Act
  - Title II – Federal Erroneous Retirement Coverage Corrections Act

## Contributed to Enactment

- Public Law 106-97 – 11/12/99
  - Established new pay adjustment mechanism for administrative law judges
- Public Law 106-113 – 11/29/99
- Section 124 of the Department of the Interior and Related Agencies Appropriations Act, 2000 – Authorized the appointment of Indian probate judges to reduce the backlog of Indian probate cases



OFFICE OF THE DIRECTOR

UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT

WASHINGTON, D.C. 20415

October 1, 1993

Honorable Albert Gore, Jr.  
President of the Senate  
Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal, the "Federal Workforce Restructuring Act of 1993," to eliminate certain narrow restrictions on employee training and to allow agencies to use voluntary separation incentive payments to encourage Federal employees to resign or retire from the service voluntarily. We request that it be referred to the appropriate committee for early consideration. We urge Congress to enact this proposal as soon as possible.

This proposal is an initiative of the National Performance Review. Commitments to trim the Federal workforce to help reduce the deficit, and other planned reorganizations, reductions, and relocations of existing activities will have a significant impact on Federal agencies and employees. Employee retraining will be increasingly necessary as we seek to create a multi-skilled workforce suited to rapidly changing technology. Many employees will have to be prepared to change fields and specialties, and greater flexibility in training will be essential to accomplishing this. Current law imposes unnecessary restrictions on training for new assignments, and restricts the ability of agencies to select the most effective and economical sources of training. This proposal will eliminate these restrictions.

Agency heads currently have a range of tools and incentives to assist them in restructuring their workforce. Agency heads, depending on the particular needs of their organization, can use a combination of attrition, regular retirement, and, when authorized by OPM, early retirement to reach new employment levels. Separation incentives, or buyouts, have proven very effective in reducing employment levels at the Department of Defense, where incentive payments are authorized under the National Defense Authorization Act for 1993 (Public Law 102-484). Other Executive Branch agencies have an urgent need for this tool to enable them also to restructure.

With the enactment of this authority, agency heads could also offer separation incentive payments to categories of workers as a means of encouraging them to retire or resign voluntarily during a 90-day "window" set by the agency during the period beginning on the date

of enactment and ending on September 30, 1994. In all cases, the agency head would determine the targeting of early retirement or separation incentive payments, or both, depending on the needs of the agency. If necessary, the agency head could delay separations for up to 2 years when there is a temporary need for certain employees to assist in the downsizing effort or other essential activities. It is the intention of the Administration that each agency would develop a plan for use of the separation incentives and obtain OMB approval of the plan before using this new authority. Further, agency heads would be expected to personally approve any offers of separation incentives to members of the Senior Executive Service.

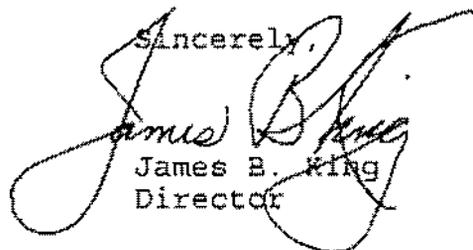
We envision widespread use of the voluntary early retirement authority in conjunction with the use of incentives. The law requires agencies to obtain the approval of OPM to offer "early outs." To assure the complementary use of early retirements with separation incentives, we intend to adopt new procedures to facilitate agency requests and flexibility in their use, including delay of the early retirement effective date to match any phased-in use of separation incentives.

The separation incentives would be fully funded from an agency's existing appropriations. More significantly, separations resulting from the payment of incentives are expected to produce substantial savings in FY 1995, helping agencies to reach that year's reduction targets. Agencies would be expected to reduce their employment levels to ensure that permanent savings are achieved. Furthermore, to address a long-standing problem in the Civil Service Retirement System, the proposal requires full funding of the additional cost to the Retirement Fund for all early retirements under that System.

The Office of Management and Budget advises that the enactment of this proposal would be in accord with the program of the President.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,



James B. King  
Director

Enclosures

A BILL

To amend title 5, United States Code, to eliminate narrow restrictions on employee training, to provide a temporary voluntary separation incentive, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Workforce Restructuring Act of 1993".

Sec. 2. (a) Chapter 41 of title 5, United States Code, is amended--

(1) in section 4101(4) by striking "fields" and all that follows through the semicolon and inserting in lieu thereof "fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals;"

(2) in section 4103--

(A) in subsection (a) by striking "In" and all that follows through "proficiency" and inserting in lieu thereof "In order to assist in achieving an agency's mission and performance goals by improving employee and organizational performance"; and

(B) in subsection (b)--

(i) in paragraph (1) by striking "determines" and all that follows through the period and inserting in lieu thereof "determines that such training would be in the interests of the Government.";

(ii) by repealing paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(iii) in subparagraph (C) of paragraph (2) (as so redesignated) by striking "retaining" and all that follows through the period and inserting in lieu thereof "such training.";

(3) in section 4105--

(A) by striking "(a)" at the beginning; and

(B) by repealing subsections (b) and (c);

(4) by repealing section 4106;

(5) in section 4107--

(A) by amending the catchline to read as follows:  
"§4107. Restriction on degree training";

(B) by repealing subsections (a) and (b) and redesignating subsections (c) and (d) as subsections (a) and (b), respectively;

(C) by amending subsection (a) (as so redesignated)--

(i) by striking "subsection (d)" and inserting in lieu thereof "subsection (b)"; and

(ii) by striking "by, in, or through a non-Government facility"; and

(D) by amending paragraph (1) of subsection (b) (as so redesignated) by striking "subsection (c)" and inserting in lieu thereof "subsection (a)";

(6) in section 4108(a) by striking "by, in, or through

a non-Government facility under this chapter" and inserting in lieu thereof "for more than a minimum period prescribed by the head of the agency";

(7) in section 4113(b) by striking everything following the first sentence;

(8) by repealing section 4114; and

(9) in section 4118--

(A) in subsection (a)(7) by striking "by, in, and through non-Government facilities";

(B) by repealing subsection (b); and

(C) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(b) The analysis of chapter 41 of title 5, United States Code, is amended--

(1) by striking the items relating to sections 4106 and 4114; and

(2) by amending the item relating to section 4107 to read as follows:

"4107. Restriction on degree training."

(c) The amendments made by this section are effective on the date of enactment of this Act.

Sec. 3. (a) For the purpose of this section--

(1) 'agency' means an Executive agency, as defined in section 105 of title 5, United States Code, but does not include the Department of Defense, the Central Intelligence Agency, or the General Accounting Office; and

(2) 'employee' means an employee, as defined in section 2105 of title 5, United States Code, of an agency, serving under an appointment without time limitation, who has been currently employed for a continuous period of at least 12 months, including an individual employed by a county committee established under section 590h(b) of title 16, United States Code, but does not include--

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in subparagraph (A).

(b) (1) In order to assist in the restructuring of the Federal workforce while minimizing involuntary separations, the head of an agency may pay, or authorize the payment of, a voluntary separation incentive to employees in any component of the agency, employees in any occupation or geographic location, or any combination thereof, who agree, during a continuous 90-day period designated by the agency head for the agency or a component thereof, beginning no earlier than the date of enactment of this Act and ending no later than September 30, 1994, to separate from service with the agency, whether by retirement or resignation.

(2) In order to receive a voluntary separation incentive, an employee shall separate from service no later than the last day of the 90-day period designated by the agency head under paragraph (1), unless the agency head determines that, in order to ensure the performance of the agency's mission, the employee must agree to continue in service until a later date, but not later than 2 years after such last day of the 90-day period.

(c) A voluntary separation incentive--

(1) shall be paid in a lump sum after the employee's separation;

(2) shall be equal to the lesser of--

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section; or

(B) \$25,000;

(3) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(4) shall not be taken into account in determining the amount of any severance pay to which an employee may be entitled under section 5595 of title 5, United States Code, based on any other separation; and

(5) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(d) An employee who has received a voluntary separation

incentive under this section and accepts employment with the Government of the United States within 2 years of the date of the separation on which payment of the incentive is based shall be required to repay the entire amount of the incentive to the agency that paid the incentive. If the employment is with an Executive agency (as defined in section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.

(e) The Director of the Office of Personnel Management may prescribe any regulations necessary for the administration of this Act.

(f) The Director of the Administrative Office of the United States Courts may, by regulation, establish a program consistent with the program established by subsections (a)-(d) of this section for employees of the judicial branch.

(g) It is the sense of Congress that--

(1) employment in the Executive Branch should be reduced by not less than one full-time equivalent position for each two employees who are paid voluntary separation incentives under this Act; and

(2) each agency should adjust its employment levels to achieve this result.

Sec. 4. (a) Section 5597 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(g) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of enactment of the Federal Workforce Restructuring Act of 1993 and accepts employment with the Government of the United States within 2 years of the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the defense agency that paid the separation pay. If the employment is with an Executive agency (as defined in section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If

the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee."

(b) Section 2(b) of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103-36; 107 Stat. 104) is amended by adding at the end the following: "An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of enactment of the Federal Workforce Restructuring Act of 1993 and accepts employment with the Government of the United States within 2 years of the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the Central Intelligence Agency. If the employment is with an Executive agency (as defined in section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee. If the employment is with the judicial

branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee."

Sec. 5. (a) Section 8334 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(1) In addition to any other payments required by this subchapter, an agency shall remit to the Office for deposit in the Treasury of the United States to the credit of the Fund an amount equal to 9 percent of the final rate of basic pay of each employee of the agency who retires under section 8336(d)".

(b) The amendment made by this section shall apply with respect to retirements occurring on or after the date of enactment of this Act.

"FEDERAL WORKFORCE RESTRUCTURING ACT OF 1993"

- Proposal would remove unnecessary and narrow restrictions on employee training
  - o Purpose of training would be broadened to improvement of individual and organizational performance
  - o Training would be related to achievement of agency mission and performance goals
  - o Restrictions on non-Government vs. Government training would be eliminated
- During a 3-month "window" designated by each agency head in the period beginning on the date of enactment and ending on September 30, 1994, Executive Branch agencies would be permitted to pay a voluntary separation incentive to employees who retire or resign
  - o Only permanent employees who have been employed at least 1 year would be eligible
  - o Defense Department and CIA employees, who are already covered by similar programs, would be excluded, as would reemployed annuitants and those eligible for disability retirement
  - o Head of each agency would designate components of agency, occupations, particular locations, etc., where separation incentives would be offered
  - o Administration would expect agency heads to personally approve any payment to SES members
  - o Head of each agency would also have authority to delay separation for up to 2 years, where necessary for performance of agency mission
  - o Agencies would reduce employment by one position for each two separation incentives paid
- Amount of voluntary separation incentive would be lesser of \$25,000 or the amount the employee would be paid in severance pay if eligible for severance pay
- Employees who receive voluntary separation incentives would have to repay if reemployed in Government within 2 years

- Repayment requirement would be waived for exceptional recruiting problems
- Repayment requirement would also apply to similar Defense Department and CIA programs
- Effective beginning at the same time as the voluntary separation incentive program, the proposal would also rectify a long-standing problem for the Civil Service Retirement System, namely the "underfunding" of early retirements
  - Annuity reduction of 2 percent for each year employee is under age 55 is insufficient to pay for extra benefit
  - Proposal would require agencies to pay extra charge of 9 percent of employee's final pay for each early retirement under Civil Service Retirement System
  - Would apply to all early retirements under Civil Service Retirement System, not just those resulting from voluntary separation incentive programs

**PUBLIC LAW 103-3—FEB. 5, 1993**

**FAMILY AND MEDICAL LEAVE ACT OF 1993**

Public Law 103-3  
103d Congress

An Act

Feb. 5, 1993  
(H.R. 1)

Family and  
Medical Leave  
Act of 1993.  
29 USC 2601  
note.

To grant family and temporary medical leave under certain circumstances.

*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 1993".

(b) **TABLE OF CONTENTS.**—The table of contents is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Findings and purposes.

**TITLE I—GENERAL REQUIREMENTS FOR LEAVE**

Sec. 101. Definitions.  
Sec. 102. Leave requirement.  
Sec. 103. Certification.  
Sec. 104. Employment and benefits protection.  
Sec. 105. Prohibited acts.  
Sec. 106. Investigative authority.  
Sec. 107. Enforcement.  
Sec. 108. Special rules concerning employees of local educational agencies.  
Sec. 109. Notice.

**TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES**

Sec. 201. Leave requirement.

**TITLE III—COMMISSION ON LEAVE**

Sec. 301. Establishment.  
Sec. 302. Duties.  
Sec. 303. Membership.  
Sec. 304. Compensation.  
Sec. 305. Powers.  
Sec. 306. Termination.

**TITLE IV—MISCELLANEOUS PROVISIONS**

Sec. 401. Effect on other laws.  
Sec. 402. Effect on existing employment benefits.  
Sec. 403. Encouragement of more generous leave policies.  
Sec. 404. Regulations.  
Sec. 405. Effective dates.

**TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES**

Sec. 501. Leave for certain Senate employees.  
Sec. 502. Leave for certain House employees.

**TITLE VI—SENSE OF CONGRESS**

Sec. 601. Sense of Congress.

29 USC 2601.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) **FINDINGS.**—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 for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;

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

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

(5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women 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.—It is the purpose of this Act—

(1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national 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 the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment 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.

29 USC 2611.

As used in this title:

(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 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (1) and (3)).

(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 102; 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, United States Code (as added by title II of this Act); 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 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(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 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

(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; and

(iii) includes any “public agency”, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(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 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(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 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(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.

#### SEC. 102. LEAVE REQUIREMENT.

29 USC 2612.

##### (a) IN GENERAL.—

(1) ENTITLEMENT TO LEAVE.—Subject to section 103, 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 such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(2) EXPIRATION OF ENTITLEMENT.—The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) 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.

##### (b) LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED LEAVE SCHEDULE.—

(1) IN GENERAL.—Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermit-

tently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 103(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) **ALTERNATIVE POSITION.**—If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that—

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) **UNPAID LEAVE PERMITTED.**—Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee under such section.

(d) **RELATIONSHIP TO PAID LEAVE.**—

(1) **UNPAID LEAVE.**—If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) **SUBSTITUTION OF PAID LEAVE.**—

(A) **IN GENERAL.**—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

(B) **SERIOUS HEALTH CONDITION.**—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this title 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.

(e) **FORESEEABLE LEAVE.**—

(1) **REQUIREMENT OF NOTICE.**—In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer 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) **DUTIES OF EMPLOYEE.**—In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) 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 employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

(B) shall provide the employer 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.

(f) **SPOUSES EMPLOYED BY THE SAME EMPLOYER.**—In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken—

- (1) under subparagraph (A) or (B) of subsection (a)(1);
- or
- (2) to care for a sick parent under subparagraph (C) of such subsection.

**SEC. 103. CERTIFICATION.**

29 USC 2613.

(a) **IN GENERAL.**—An employer may require that a request for leave under subparagraph (C) or (D) of section 102(a)(1) 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, 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 102(a)(1)(C), 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 102(a)(1)(D), 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 102(a)(1)(D),

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 102(a)(1)(C), 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 102(a)(1), 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.

29 USC 2614.

**SEC. 104. 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 102 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, and other terms and conditions of employment.

(2) **LOSS OF BENEFITS.**—The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) **LIMITATIONS.**—Nothing in this section 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) **CERTIFICATION.**—As a condition of restoration under paragraph (1) for an employee who has taken leave under section 102(a)(1)(D), the employer 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, 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 such employees.

(5) **CONSTRUCTION.**—Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to report periodically to the employer on the status and intention of the employee to return to work.

**(b) EXEMPTION CONCERNING CERTAIN HIGHLY COMPENSATED EMPLOYEES.—**

(1) **DENIAL OF RESTORATION.**—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 operations of the employer;

(B) the employer notifies the employee of the intent of the employer 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) **AFFECTED EMPLOYEES.**—An eligible employee described in paragraph (1) 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.—**

(1) **COVERAGE.**—Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any “group health plan” (as defined in section 5000(b)(1) 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 for the duration of such leave.

(2) **FAILURE TO RETURN FROM LEAVE.**—The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if—

(A) the employee fails to return from leave under section 102 after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than—

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

(ii) other circumstances beyond the control of the employee.

**(3) CERTIFICATION.—**

**(A) ISSUANCE.—**An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by—

(i) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(C); or

(ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(D).

**(B) COPY.—**The employee shall provide, in a timely manner, a copy of such certification to the employer.

**(C) SUFFICIENCY OF CERTIFICATION.—**

**(i) LEAVE DUE TO SERIOUS HEALTH CONDITION OF EMPLOYEE.—**The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

**(ii) LEAVE DUE TO SERIOUS HEALTH CONDITION OF FAMILY MEMBER.—**The certification described in subparagraph (A)(i) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

29 USC 2615.

**SEC. 106. PROHIBITED ACTS.**

**(a) INTERFERENCE WITH RIGHTS.—**

**(1) EXERCISE OF RIGHTS.—**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) DISCRIMINATION.—**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. INVESTIGATIVE AUTHORITY.**

29 USC 2616.

(a) **IN GENERAL.**—To ensure compliance with the provisions of 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 make, keep, and preserve records pertaining to compliance with this title in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.

(c) **REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.**—The Secretary shall 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 107(b).

(d) **SUBPOENA POWERS.**—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

**SEC. 107. ENFORCEMENT.**

29 USC 2617.

(a) **CIVIL ACTION BY EMPLOYEES.**—

(1) **LIABILITY.**—Any employer who violates section 105 shall be liable to any eligible employee affected—

(A) for damages equal to—

(i) the amount of—

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) **RIGHT OF ACTION.**—An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of—

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) **FEES AND COSTS.**—The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) **LIMITATIONS.**—The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate—

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1),

unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) **ACTION BY THE SECRETARY.**—

(1) **ADMINISTRATIVE ACTION.**—The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 105 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) **CIVIL ACTION.**—The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A).

(3) **SUMS RECOVERED.**—Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) **LIMITATION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) **WILLFUL VIOLATION.**—In the case of such action brought for a willful violation of section 105, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) **COMMENCEMENT.**—In determining when an action is commenced by the Secretary under this section for the purposes

of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) **ACTION FOR INJUNCTION BY SECRETARY.**—The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary—

(1) to restrain violations of section 105, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) **SOLICITOR OF LABOR.**—The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

**SEC. 106. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.** 29 USC 2618.

(a) **APPLICATION.**—

(1) **IN GENERAL.**—Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this title shall apply to—

(A) 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 an eligible employee of the agency; and

(B) any private elementary or secondary school and an eligible employee of the school.

(2) **DEFINITIONS.**—For purposes of the application described in paragraph (1):

(A) **ELIGIBLE EMPLOYEE.**—The term "eligible employee" means an eligible employee of an agency or school described in paragraph (1).

(B) **EMPLOYER.**—The term "employer" means an agency or school described in paragraph (1).

(b) **LEAVE DOES NOT VIOLATE CERTAIN OTHER FEDERAL LAWS.**—A local educational agency and a private elementary or secondary school shall not be in violation of the Individuals with Disabilities Education 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 the rights of such employee under this title.

(c) **INTERMITTENT LEAVE OR LEAVE ON A REDUCED SCHEDULE FOR INSTRUCTIONAL EMPLOYEES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), in any case in which an eligible employee employed principally in an instructional capacity by any such educational agency or school requests leave under subparagraph (C) or (D) of section 102(a)(1) that is foreseeable based on planned medical treatment 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 that such employee elect either—

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

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

(i) has equivalent pay and benefits; and

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

(2) APPLICATION.—The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 102(a)(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 eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) LEAVE MORE THAN 5 WEEKS PRIOR TO END OF TERM.—

If the eligible employee begins leave under section 102 more than 5 weeks prior to 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) LEAVE LESS THAN 5 WEEKS PRIOR TO END OF TERM.—

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to 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) LEAVE LESS THAN 3 WEEKS PRIOR TO END OF TERM.—

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to 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 the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or 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 or secondary school that has violated this title proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of this title, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 107(a)(1)(A)

to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

**SEC. 109. NOTICE.**

29 USC 2619.

(a) **IN GENERAL.**—Each employer shall post and keep posted, in conspicuous places on the premises of the employer 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 may be assessed a civil money penalty not to exceed \$100 for each separate offense.

## TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES

**SEC. 201. LEAVE REQUIREMENT.****(a) CIVIL SERVICE EMPLOYEES.—**

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

### “SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

**“§ 6381. Definitions**

“For the purpose of this subchapter—

“(1) the term ‘employee’ means any individual who—

“(A) is an ‘employee’, as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and

“(B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

“(2) 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; and

“(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

“(3) 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;

“(4) 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;

“(5) 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; and

"(6) 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.

"§ 6382. Leave requirement

"(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative 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 such spouse, son, daughter, or parent has a serious health condition.

"(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

"(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the 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.

"(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (a)(2), and section 6383(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

"(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—

"(A) has equivalent pay and benefits; and

"(B) better accommodates recurring periods of leave than the regular employment position of the employee.

"(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

"(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.

"(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) 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) 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, or parent 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.

#### "§ 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.

#### **"§ 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.

#### **"§ 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—

"(1) the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and

"(2) the term 'employee' means any 'employee', as defined by section 2105.

**\*§ 6386. Health insurance**

"An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

**\*§ 6387. Regulations**

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be consistent with the regulations prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993."

(2) TABLE OF CONTENTS.—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 MEDICAL LEAVE**

- \*6381. Definitions.
- \*6382. Leave requirement.
- \*6383. Certification.
- \*6384. Employment and benefits protection.
- \*6385. Prohibition of coercion.
- \*6386. Health insurance.
- \*6387. Regulations."

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended—

- (1) by striking "or" at the end of subparagraph (C); and
- (2) by adding at the end the following new subparagraph:
 

"(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or".

## TITLE III—COMMISSION ON LEAVE

**SEC. 301. ESTABLISHMENT.**

29 USC 2631.

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

**SEC. 302. DUTIES.**

29 USC 2632.

The Commission shall—

- (1) conduct a comprehensive study of—
  - (A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;

(B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;

(C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;

(D) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act;

(E) alternate and equivalent State enforcement of title I with respect to employees described in section 108(a);

(F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;

(G) the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and

(H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.

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(2) not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report concerning the subjects listed in paragraph (1).

29 USC 2633.

**SEC. 303. MEMBERSHIP.**

(a) COMPOSITION.—

(1) APPOINTMENTS.—The Commission shall be composed of 12 voting members and 4 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

(A) SENATORS.—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.

(B) MEMBERS OF HOUSE OF REPRESENTATIVES.—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.

(C) ADDITIONAL MEMBERS.—

(i) APPOINTMENT.—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.

(ii) EXPERTISE.—Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

(2) EX OFFICIO MEMBERS.—The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Adminis-

tration 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. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) **CHAIRPERSON AND VICE CHAIRPERSON.**—The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(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.**

29 USC 2634.

(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.**

29 USC 2635.

(a) **MEETINGS.**—The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on 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 title, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) **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.

(e) **PERSONNEL FROM OTHER AGENCIES.**—On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Commission or assist the Commission in carrying out the duties of the Commission. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) **VOLUNTARY SERVICE.**—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

#### **SEC. 306. TERMINATION.**

29 USC 2636.

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

## TITLE IV—MISCELLANEOUS PROVISIONS

29 USC 2651.

**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 disability.

(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 or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

29 USC 2652.

**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 the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.

(b) **LESS PROTECTIVE.**—The rights established for employees under this Act or any amendment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

29 USC 2653.

**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 that comply with the requirements under this Act or any amendment made by this Act.

29 USC 2654.

**SEC. 404. REGULATIONS.**

The Secretary of Labor shall prescribe such regulations as are necessary to carry out title I and this title not later than 120 days after the date of the enactment of this Act.

29 USC 2601  
note.**SEC. 405. EFFECTIVE DATES.**

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

**(b) OTHER TITLES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), titles I, II, and V and this title shall take effect 6 months after the date of the enactment of this Act.

(2) **COLLECTIVE BARGAINING AGREEMENTS.**—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 that occurs 12 months after the date of the enactment of this Act.

## TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES

### SEC. 501. LEAVE FOR CERTAIN SENATE EMPLOYEES.

2 USC 60m.

(a) **COVERAGE.**—The rights and protections established under sections 101 through 105 shall apply with respect to a Senate employee and an employing office. For purposes of such application, the term “eligible employee” means a Senate employee and the term “employer” means an employing office.

(b) **CONSIDERATION OF ALLEGATIONS.**—

(1) **APPLICABLE PROVISIONS.**—The provisions of sections 304 through 313 of the Government Employee Rights Act of 1991 (2 U.S.C. 1204–1213) shall, except as provided in subsections (d) and (e)—

(A) apply with respect to an allegation of a violation of a provision of sections 101 through 105, with respect to Senate employment of a Senate employee; and

(B) apply to such an allegation in the same manner and to the same extent as such sections of the Government Employee Rights Act of 1991 apply with respect to an allegation of a violation under such Act.

(2) **ENTITY.**—Such an allegation shall be addressed by the Office of Senate Fair Employment Practices or such other entity as the Senate may designate.

(c) **RIGHTS OF EMPLOYEES.**—The Office of Senate Fair Employment Practices shall ensure that Senate employees are informed of their rights under sections 101 through 105.

(d) **LIMITATIONS.**—A request for counseling under section 305 of such Act by a Senate employee alleging a violation of a provision of sections 101 through 105 shall be made not later than 2 years after the date of the last event constituting the alleged violation for which the counseling is requested, or not later than 3 years after such date in the case of a willful violation of section 105.

(e) **APPLICABLE REMEDIES.**—The remedies applicable to individuals who demonstrate a violation of a provision of sections 101 through 105 shall be such remedies as would be appropriate if awarded under paragraph (1) or (3) of section 107(a).

(f) **EXERCISE OF RULEMAKING POWER.**—The provisions of subsections (b), (c), (d), and (e), except as such subsections apply with respect to section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. No Senate employee may commence a judicial proceeding with respect to an allegation described in subsection (b)(1), except as provided in this section.

(g) SEVERABILITY.—Notwithstanding any other provision of law, if any provision of section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), or of subsection (b)(1) insofar as it applies such section 309 to an allegation described in subsection (b)(1)(A), is invalidated, both such section 309, and subsection (b)(1) insofar as it applies such section 309 to such an allegation, shall have no force and effect, and shall be considered to be invalidated for purposes of section 322 of such Act (2 U.S.C. 1221).

(h) DEFINITIONS.—As used in this section:

(1) EMPLOYING OFFICE.—The term “employing office” means the office with the final authority described in section 301(2) of such Act (2 U.S.C. 1201(2)).

(2) SENATE EMPLOYEE.—The term “Senate employee” means an employee described in subparagraph (A) or (B) of section 301(c)(1) of such Act (2 U.S.C. 1201(c)(1)) who has been employed for at least 12 months on other than a temporary or intermittent basis by any employing office.

2 USC 60n.

**SEC. 502. LEAVE FOR CERTAIN HOUSE EMPLOYERS.**

(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 rule LI of the Rules of the House of Representatives.

## TITLE VI—SENSE OF CONGRESS

**SEC. 601. SENSE OF CONGRESS.**

It is the sense of the Congress that:

(a) The Secretary of Defense shall conduct a comprehensive review of current departmental policy with respect to the service of homosexuals in the Armed Forces;

(b) Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;

(c) The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;

Reports.

(d) The Senate Committee on Armed Services shall conduct (i) comprehensive hearings on the current military policy with respect to the service of homosexuals in the military services; and (ii) shall conduct oversight hearings on the Secretary's recommendations as such are reported.

Approved February 5, 1993.

LEGISLATIVE HISTORY—H.R. 1 (S. 5):

HOUSE REPORTS: No. 103-8, Pt. 1 (Comm. on Education and Labor) and Pt. 2 (Comm. on Post Office and Civil Service).

SENATE REPORTS: No. 103-3 accompanying S. 5 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 139 (1993):

Feb. 2, S. 5 considered in Senate.

Feb. 3, considered in Senate; H.R. 1 considered and passed House.

Feb. 4, H.R. 1 considered and passed Senate, amended, in lieu of S. 5. House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):

Feb. 5, Presidential remarks and statement.



Public Law 103-226  
103d Congress

An Act

To provide temporary authority to Government agencies relating to voluntary separation incentive payments, and for other purposes.

Mar. 30, 1994  
(H.R. 3345)

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Workforce Restructuring Act of 1994".

Federal  
Workforce  
Restructuring  
Act of 1994.  
5 USC 2101 note.

**SEC. 2. TRAINING.**

(a) **IN GENERAL.**—Chapter 41 of title 5, United States Code, is amended—

(1) in section 4101(4) by striking "fields" and all that follows through the semicolon and inserting "fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals";

(2) in section 4103—

(A) in subsection (a)—

(i) by striking "In" and all that follows through "maintain" and inserting "In order to assist in achieving an agency's mission and performance goals by improving employee and organizational performance, the head of each agency, in conformity with this chapter, shall establish, operate, maintain, and evaluate";

(ii) by striking "and" at the end of paragraph (2);

(iii) by redesignating paragraph (3) as paragraph (4); and

(iv) by inserting after paragraph (2) the following:

"(3) provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency; and"; and

(B) in subsection (b)—

(i) in paragraph (1) by striking "determines" and all that follows through the period and inserting "determines that such training would be in the interests of the Government.";

(ii) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(iii) in subparagraph (C) of paragraph (2) (as so redesignated) by striking "retaining" and all that follows through the period and inserting "such training";

(3) in section 4105—

(A) in subsection (a) by striking "(a)"; and

- (B) by striking subsections (b) and (c);
- (4) by repealing section 4106;
- (5) in section 4107—
  - (A) by amending the catchline to read as follows:

**“§ 4107. Restriction on degree training”;**

- (B) by striking subsections (a) and (b) and redesignating subsections (c) and (d) as subsections (a) and (b), respectively;
  - (C) by amending subsection (a) (as so redesignated)—
    - (i) by striking “subsection (d)” and inserting “subsection (b)”;
    - (ii) by striking “by, in, or through a non-Government facility”;
  - (D) by amending paragraph (1) of subsection (b) (as so redesignated) by striking “subsection (c)” and inserting “subsection (a)”;
  - (6) in section 4108(a) by striking “by, in, or through a non-Government facility under this chapter” and inserting “for more than a minimum period prescribed by the head of the agency”;
  - (7) in section 4113(b)—
    - (A) in the first sentence by striking “annually to the Office,” and inserting “to the Office, at least once every 3 years, and”;
    - (B) by striking the matter following the first sentence and inserting the following: “The report shall set forth—
      - “(1) information needed to determine that training is being provided in a manner which is in compliance with applicable laws intended to protect or promote equal employment opportunity; and
      - “(2) information concerning the expenditures of the agency in connection with training and such other information as the Office considers appropriate.”;
  - (8) by repealing section 4114; and
  - (9) in section 4118—
    - (A) in subsection (a)(7) by striking “by, in, and through non-Government facilities”;
    - (B) by striking subsection (b); and
    - (C) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.
- (b) TECHNICAL AND CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—
- (1) in section 3381(e) by striking “4105(a),” and inserting “4105,”; and
  - (2) in the analysis for chapter 41—
    - (A) by repealing the items relating to sections 4106 and 4114; and
    - (B) by amending the item relating to section 4107 to read as follows:

“4107. Restriction on degree training.”.

5 USC 3381 note. (c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of enactment of this Act.

5 USC 5597 note. SEC. 3. VOLUNTARY SEPARATION INCENTIVES.

(a) DEFINITIONS.—For the purpose of this section—

(1) the term "agency" means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the Department of Defense, the Central Intelligence Agency, or the General Accounting Office; and

(2) the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who is employed by an agency, is serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 12 months; such term includes an individual employed by a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), but does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in subparagraph (A).

(b) AUTHORITY.—

(1) IN GENERAL.—In order to avoid or minimize the need for involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action, and subject to paragraph (2), the head of an agency may pay, or authorize the payment of, voluntary separation incentive payments to agency employees—

(A) in any component of the agency;

(B) in any occupation;

(C) in any geographic location; or

(D) on the basis of any combination of factors under subparagraphs (A) through (C).

(2) CONDITION.—

(A) IN GENERAL.—In order to receive an incentive payment, an employee must separate from service with the agency (whether by retirement or resignation) before April 1, 1995.

(B) EXCEPTION.—An employee who does not separate from service before the date specified in subparagraph (A) shall be ineligible for an incentive payment under this section unless—

(i) the agency head determines that, in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation; and

(ii) the employee separates after completing any additional period of service required (but not later than March 31, 1997).

(c) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(1) shall be paid in a lump sum after the employee's separation;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section; or

(B) \$25,000;

(3) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(4) shall not be taken into account in determining the amount of any severance pay to which an employee may be entitled under section 5595 of title 5, United States Code, based on any other separation; and

(5) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

**(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—**

(1) **IN GENERAL.**—An employee who has received a voluntary separation incentive payment under this section and accepts employment with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the agency that paid the incentive payment.

**(2) WAIVER AUTHORITY.—**

(A) **EXECUTIVE AGENCY.**—If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(B) **LEGISLATIVE BRANCH.**—If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(C) **JUDICIAL BRANCH.**—If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) **DEFINITION.**—For purposes of paragraph (1) (but not paragraph (2)), the term "employment" includes employment under a personal services contract with the United States.

(e) **REGULATIONS.**—The Director of the Office of Personnel Management may prescribe any regulations necessary for the administration of subsections (a) through (d).

(f) **EMPLOYEES OF THE JUDICIAL BRANCH.**—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program consistent with the program established by subsections (a) through (d) for individuals serving in the judicial branch.

ISC 8331 note. **SEC. 4. ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.**

**(a) RELATING TO FISCAL YEARS 1994 AND 1995.—**

(1) **IN GENERAL.**—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, an agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement

and Disability Fund an amount equal to 9 percent of the final basic pay of each employee of the agency—

(A) who, on or after the date of the enactment of this Act and before October 1, 1995, retires under section 8336(d)(2) of such title; and

(B) to whom a voluntary separation incentive payment has been or is to be paid by such agency based on that retirement.

(2) DEFINITIONS.—For the purpose of this subsection—

(A) the term “final basic pay”, with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor; and

(B) the term “voluntary separation incentive payment” means—

(i) a voluntary separation incentive payment under section 3 (including under any program established under section 3(f)); and

(ii) any separation pay under section 5597 of title 5, United States Code, or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103-36; 107 Stat. 104).

(b) RELATING TO FISCAL YEARS 1995 THROUGH 1998.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, in fiscal years 1995, 1996, 1997, and 1998 (and in addition to any amounts required under subsection (a)), each agency shall, before the end of each such fiscal year, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to the product of—

(A) the number of employees of such agency who, as of March 31st of such fiscal year, are subject to subchapter III of chapter 83 or chapter 84 of such title; multiplied by

(B) \$80.

(2) DEFINITION.—For the purpose of this subsection, the term “agency” means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

(c) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary to carry out this section.

**SEC. 5. REDUCTION OF FEDERAL FULL-TIME EQUIVALENT POSITIONS.**

5 USC 3101 (b)

(a) DEFINITION.—For the purpose of this section, the term “agency” means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

(b) LIMITATIONS ON FULL-TIME EQUIVALENT POSITIONS.—The President, through the Office of Management and Budget (in consultation with the Office of Personnel Management), shall ensure

President.

that the total number of full-time equivalent positions in all agencies shall not exceed—

- (1) 2,084,600 during fiscal year 1994;
- (2) 2,043,300 during fiscal year 1995;
- (3) 2,003,300 during fiscal year 1996;
- (4) 1,963,300 during fiscal year 1997;
- (5) 1,922,300 during fiscal year 1998; and
- (6) 1,882,300 during fiscal year 1999.

(c) **MONITORING AND NOTIFICATION.**—The Office of Management and Budget, after consultation with the Office of Personnel Management, shall—

(1) continuously monitor all agencies and make a determination on the first date of each quarter of each applicable fiscal year of whether the requirements under subsection (b) are met; and

(2) notify the President and the Congress on the first date of each quarter of each applicable fiscal year of any determination that any requirement of subsection (b) is not met.

(d) **COMPLIANCE.**—If, at any time during a fiscal year, the Office of Management and Budget notifies the President and the Congress that any requirement under subsection (b) is not met, no agency may hire any employee for any position in such agency until the Office of Management and Budget notifies the President and the Congress that the total number of full-time equivalent positions for all agencies equals or is less than the applicable number required under subsection (b).

(e) **WAIVER.**—

(1) **EMERGENCIES.**—Any provision of this section may be waived upon a determination by the President that—

(A) the existence of a state of war or other national security concern so requires; or

(B) the existence of an extraordinary emergency threatening life, health, safety, property, or the environment so requires.

(2) **AGENCY EFFICIENCY OR CRITICAL MISSION.**—

(A) Subsection (d) may be waived, in the case of a particular position or category of positions in an agency, upon a determination of the President that the efficiency of the agency or the performance of a critical agency mission so requires.

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(B) Whenever the President grants a waiver pursuant to subparagraph (A), the President shall take all necessary actions to ensure that the overall limitations set forth in subsection (b) are not exceeded.

(f) **EMPLOYMENT BACKFILL PREVENTION.**—

(1) **IN GENERAL.**—The total number of funded employee positions in all agencies (excluding the Department of Defense and the Central Intelligence Agency) shall be reduced by one position for each vacancy created by the separation of any employee who has received, or is due to receive, a voluntary separation incentive payment under section 3 (a)–(e). For purposes of this subsection, positions and vacancies shall be counted on a full-time-equivalent basis.

(2) **RELATED RESTRICTION.**—No funds budgeted for and appropriated by any Act for salaries or expenses of positions eliminated under this subsection may be used for any purpose other than authorized separation costs.

(g) **LIMITATION ON PROCUREMENT OF SERVICE CONTRACTS.**— President.  
The President shall take appropriate action to ensure that there is no increase in the procurement of service contracts by reason of the enactment of this Act, except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the Federal Government.

**SEC. 6. MONITORING AND REPORT RELATING TO VOLUNTARY SEPARATION INCENTIVE PAYMENTS.** 5 USC 5507 (a)

No later than December 31st of each fiscal year, the Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives a report which, with respect to the preceding fiscal year, shall include—

- (1) the number of employees who received a voluntary separation incentive payment under section 3 during such preceding fiscal year;
- (2) the agency from which each such employee separated;
- (3) at the time of separation from service by each such employee—
  - (A) such employee's grade or pay level; and
  - (B) the geographic location of such employee's official duty station, by region, State, and city (or foreign nation, if applicable); and
- (4)(A) the number of waivers made (in the repayment upon subsequent employment) by each agency or other authority under section 3 or the amendments made by section 8; and
- (B) the title and the grade or pay level of the position filled by the employee to whom such waiver applied.

**SEC. 7. DISLOCATION PAYMENTS FOR CERTAIN CONTRACTOR PERSONNEL.**

(a) **PAYMENT.**—No later than October 31, 1994, the Director of the National Aeronautics and Space Administration shall pay \$5,000 to each full-time contractor employee who—

- (1) was hired, under a contract relating to the Advanced Solid Rocket Motor Program, by—
  - (A) Lockheed Missiles and Space Company;
  - (B) Aerojet Corporation, Advanced Solid Rocket Motor Division; or
  - (C) Rust Corporation;
- (2) was separated from employment in Yellow Creek, Mississippi, as a result of the termination of the Advanced Solid Rocket Motor Program; and
- (3)(A) had been hired locally at Yellow Creek, Mississippi; or
- (B) based on the separation referred to in paragraph (2), was eligible, but elected not, to be relocated.

(b) **OFFSET.**—No payment made under this section shall be offset against the severance costs of a contractor.

(c) **SOURCE OF PAYMENTS.**—Payments under this section shall be from funds appropriated under the subheading "SPACE FLIGHT, CONTROL AND DATA COMMUNICATIONS" under the heading "NATIONAL AERONAUTICS AND SPACE ADMINISTRATION" under title III of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Public Law 103-124; 107 Stat. 1299).

(d) **LIMITATION ON PAYMENTS.**—The amount of total payments made under this section may not exceed \$1,000,000.

**SEC. 8. SUBSEQUENT EMPLOYMENT AND REPAYMENT OF SEPARATION PAYMENT.**

(a) **DEFENSE AGENCY SEPARATION PAY.**—Section 5597 of title 5, United States Code, is amended by adding at the end the following:

“(g)(1) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the defense agency that paid the separation pay.

“(2) If the employment is with an Executive agency, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

“(3) If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

“(4) If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.”.

SC 303-4

(b) **CENTRAL INTELLIGENCE AGENCY SEPARATION PAYMENT.**—Section 2(b) of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103-36; 107 Stat. 104) is amended by adding at the end the following: “An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the Central Intelligence Agency. If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.”.

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**SEC. 9. STANDARDIZATION OF WITHDRAWAL OPTIONS FOR THRIFT SAVINGS PLAN PARTICIPANTS.**

(a) **PARTICIPATION IN THE THRIFT SAVINGS PLAN.**—Section 8351(b) of title 5, United States Code, is amended—

(1) by amending paragraph (4) to read as follows:

“(4) Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment.”;

(2) by striking paragraphs (5), (6), and (8);

(3) by redesignating paragraphs (7), (9), and (10) as paragraphs (5), (6), and (7), respectively;

(4) in paragraph (5)(C) (as so redesignated by paragraph (3) of this subsection) by striking “or former spouse” each place it appears;

(5) by amending paragraph (6) (as so redesignated by paragraph (3) of this subsection) to read as follows:

“(6) Notwithstanding paragraph (4), if an employee or Member separates from Government employment and such employee’s or Member’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b).”; and

(6) in paragraph (7) (as so redesignated by paragraph (3) of this subsection) by striking “nonforfeiture” and inserting “nonforfeitable”.

(b) **BENEFITS AND ELECTION OF BENEFITS.**—Section 8433 of title 5, United States Code, is amended—

(1) in subsection (b) by striking the matter before paragraph (1) and inserting the following:

“(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—”;

(2) by striking subsections (c) and (d) and redesignating subsections (e) through (i) as subsections (c) through (g), respectively;

(3) in subsection (c)(1) (as so redesignated by paragraph (2) of this subsection) by striking “or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954)” and inserting “directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986)”;

(4) in subsection (d)(2) (as so redesignated by paragraph (2) of this subsection) by striking “or (c)(2)”;

(5) in subsection (f) (as so redesignated by paragraph (2) of this subsection)—

(A) by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(B) in paragraph (1) (as so redesignated by subparagraph (A) of this paragraph)—

(i) by striking “Notwithstanding subsections (b) and (c), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under either of those subsections, and such employee’s or Member’s” and inserting “Notwithstanding subsection (b), if an employee or Member separates from

Government employment, and such employee's or Member's"; and

(ii) by striking "or (c), as applicable"; and

(C) in paragraph (2) (as so redesignated by subparagraph (A) of this paragraph) by striking "paragraphs (1) and (2)" and inserting "paragraph (1)".

(c) ANNUITIES: METHODS OF PAYMENT; ELECTION; PURCHASE.—Section 8434(c) of title 5, United States Code, is amended to read as follows:

"(c) Notwithstanding the elimination of a method of payment by the Board, an employee, Member, former employee, or former Member may elect the eliminated method if the elimination of such method becomes effective less than 5 years before the date on which that individual's annuity commences."

(d) PROTECTIONS FOR SPOUSES AND FORMER SPOUSES.—Section 8435 of title 5, United States Code, is amended—

(1) in subsection (a)(1)(A) by striking "subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously made under subsection (b)(1), (b)(2), (c)(1), or (c)(2)" and inserting "subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2)";

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively;

(4) in subsection (b) (as so redesignated by paragraph (3) of this subsection) by amending paragraph (2) to read as follows:

"(2) Paragraph (1) shall not apply if—

"(A) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

"(B) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described under subsection (a)(2) (A) or (B) make the requirement of a joint waiver inappropriate."; and

(5) in subsection (e)(1) (as so redesignated by paragraph (3) of this subsection) by striking "and a transfer may not be made under section 8433(d) of this title".

(e) JUSTICES AND JUDGES.—Section 8440a(b) of title 5, United States Code, is amended—

(1) in paragraph (5) by striking "Section 8433(d)" and inserting "Section 8433(b)"; and

(2) by striking paragraphs (7) and (8) and inserting the following:

"(7) Notwithstanding paragraphs (4) and (5), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, or resigns without having met the age and service requirements set forth under section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)."

(f) BANKRUPTCY JUDGES AND MAGISTRATES.—Section 8440b of title 5, United States Code, is amended—

(1) in subsection (b)(4) by amending subparagraph (B) to read as follows:

"(B) Section 8433(b) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors Annuities for Bankruptcy Judges and Magistrates Act of 1988.";

(2) in subsection (b)(4)(C) by striking "Section 8433(d)" and inserting "Section 8433(b)";

(3) in subsection (b)(5) by striking "retirement under section 377 of title 28 is" and inserting "any of the actions described under paragraph (4) (A), (B), or (C) shall be considered";

(4) in subsection (b) by striking paragraph (8) and redesignating paragraph (9) as paragraph (8); and

(5) in paragraph (8) of subsection (b) (as so redesignated by paragraph (4) of this subsection)—

(A) by striking "Notwithstanding subparagraphs (A) and (B) of paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) or (c)" and inserting "Notwithstanding paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b)"; and

(B) by striking "and (c), as applicable".

(g) CLAIMS COURT JUDGES.—Section 8440c of title 5, United States Code, is amended—

(1) in subsection (b)(4)(B) by striking "Section 8433(d)" and inserting "Section 8433(b)";

(2) in subsection (b)(5) by striking "retirement under section 178 of title 28 is" and inserting "any of the actions described in paragraph (4) (A) or (B) shall be considered";

(3) in subsection (b) by striking paragraph (8) and redesignating paragraph (9) as paragraph (8); and

(4) in paragraph (8) (as so redesignated by paragraph (3) of this subsection) by striking "Notwithstanding paragraph (4)(A)" and inserting "Notwithstanding paragraph (4)".

(h) JUDGES OF THE UNITED STATES COURT OF VETERANS APPEALS.—Section 8440d(b)(5) of title 5, United States Code, is amended by striking "A transfer shall be made as provided in section 8433(d) of this title" and inserting "Section 8433(b) of this title applies".

(i) TECHNICAL AND CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—

(1) in section 8351(b)(5)(B) (as so redesignated by subsection (a)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(2) in section 8351(b)(5)(D) (as so redesignated by subsection (a)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(3) in section 8433(b)(4) by striking "subsection (e)" and inserting "subsection (c)";

(4) in section 8433(d)(1) (as so redesignated by subsection (b)(2) of this section) by striking "(d) of section 8435" and inserting "(c) of section 8435";

(5) in section 8433(d)(2) (as so redesignated by subsection (b)(2) of this section) by striking "section 8435(d)" and inserting "section 8435(c)";

(6) in section 8433(e) (as so redesignated by subsection (b)(2) of this section) by striking "section 8435(d)(2)" and inserting "section 8435(c)(2)";

(7) in section 8433(g)(5) (as so redesignated by subsection (b)(2) of this section) by striking "section 8435(f)" and inserting "section 8435(e)";

(8) in section 8434(b) by striking "section 8435(c)" and inserting "section 8435(b)";

(9) in section 8435(a)(1)(B) by striking "subsection (c)" and inserting "subsection (b)";

(10) in section 8435(d)(1)(B) (as so redesignated by subsection (d)(3) of this section) by striking "subsection (d)(2)" and inserting "subsection (c)(2)";

(11) in section 8435(d)(3)(A) (as so redesignated by subsection (d)(3) of this section) by striking "subsection (c)(1)" and inserting "subsection (b)(1)";

(12) in section 8435(d)(6) (as so redesignated by subsection (d)(3) of this section) by striking "or (c)(2)" and inserting "or (b)(2)";

(13) in section 8435(e)(1)(A) (as so redesignated by subsection (d)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(14) in section 8435(e)(2) (as so redesignated by subsection (d)(3) of this section) by striking "section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1)" and inserting "section 8433(g) of this title shall not be approved if approval would have the result described under subsection (c)(1)";

(15) in section 8435(g) (as so redesignated by subsection (d)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(16) in section 8437(c)(5) by striking "section 8433(i)" and inserting "section 8433(g)"; and

(17) in section 8440a(b)(6) by striking "section 8351(b)(7)" and inserting "section 8351(b)(5)".

Definitions.

(C) 8351 note.

(j) **EFFECTIVE DATE.**—This section shall take effect 1 year after the date of the enactment of this Act or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation.

#### SEC. 10. AMENDMENTS TO ALASKA RAILROAD TRANSFER ACT OF 1982 REGARDING FORMER FEDERAL EMPLOYEES.

(a) **APPLICABILITY OF VOLUNTARY SEPARATION INCENTIVES TO CERTAIN FORMER FEDERAL EMPLOYEES.**—Section 607(a) of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1206(a)) is amended by adding at the end the following:

"(4)(A) The State-owned railroad shall be included in the definition of 'agency' for purposes of section 3 (a), (b), (c), and (e) of the Federal Workforce Restructuring Act of 1994 and may elect to participate in the voluntary separation incentive program established under such Act. Any employee of

the State-owned railroad who meets the qualifications as described under the first sentence of paragraph (1) shall be deemed an employee under such Act.

"(B) An employee who has received a voluntary separation incentive payment under this paragraph and accepts employment with the State-owned railroad within 5 years after the date of separation on which payment of the incentive is based shall be required to repay the entire amount of the incentive payment unless the head of the State-owned railroad determines that the individual involved possesses unique abilities and is the only qualified applicant available for the position."

(b) LIFE AND HEALTH INSURANCE BENEFITS.—Section 607 of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1206) is amended by striking subsection (e) and inserting the following:

"(e)(1) Any person described under the provisions of paragraph (2) may elect life insurance coverage under chapter 87 of title 5, United States Code, and enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with the provisions of this subsection.

"(2) The provisions of paragraph (1) shall apply to any person who—

"(A) on the date of the enactment of the Federal Workforce Restructuring Act of 1994, is an employee of the State-owned railroad;

"(B) has 20 years or more of service (in the civil service as a Federal employee or as an employee of the State-owned railroad, combined) on the date of retirement from the State-owned railroad; and

"(C)(i) was covered under a life insurance policy pursuant to chapter 87 of title 5, United States Code, on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

"(ii) was enrolled in a health benefits plan pursuant to chapter 89 of title 5, United States Code, on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1).

"(3) For purposes of this section, any person described under the provisions of paragraph (2) shall be deemed to have been covered under a life insurance policy under chapter 87 of title 5, United States Code, and to have been enrolled in a health benefits plan under chapter 89 of title 5, United States Code, during the period beginning on January 5, 1985, through the date of retirement of any such person.

"(4) The provisions of paragraph (1) shall not apply to any person described under paragraph (2) until the date such person retires from the State-owned railroad."

Approved March 30, 1994.

LEGISLATIVE HISTORY--H.R. 3345 (S. 1535):

HOUSE REPORTS: Nos. 103-386 (Comm. on Post Office and Civil Service) and 103-435 (Comm. of Conference).

SENATE REPORTS: No. 103-223 accompanying S. 1535 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 140 (1994):

Feb. 10, considered and passed House.

Feb. 11, considered and passed Senate, amended.

Mar. 11, Senate concurred in House amendment with an amendment.

Mar. 23, House agreed to conference report.

Mar. 24, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 30 (1994):

Mar. 30, Presidential statement.



Public Law 108-172  
103d Congress

An Act

To amend title 5, United States Code, to provide for the establishment of programs to encourage Federal employees to commute by means other than single-occupancy motor vehicles.

Dec. 2, 1993  
(H.R. 3318)

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

SECTION 1. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the "Federal Employees Clean Air Incentives Act".

(b) PURPOSE.—The purpose of this Act is to improve air quality and to reduce traffic congestion by providing for the establishment of programs to encourage Federal employees to commute by means other than single-occupancy motor vehicles.

SEC. 2. AUTHORITY TO ESTABLISH PROGRAMS.

(a) IN GENERAL.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

§ 7905. Programs to encourage commuting by means other than single-occupancy motor vehicles

"(a) For the purpose of this section—

"(1) the term 'employee' means an employee as defined by section 2105 and a member of a uniformed service;

"(2) the term 'agency' means—

"(A) an Executive agency;

"(B) an entity of the legislative branch; and

"(C) the judicial branch;

"(3) the term 'entity of the legislative branch' means the House of Representatives, the Senate, the Office of the Architect of the Capitol (including the Botanic Garden), the Capitol Police, the Congressional Budget Office, the Copyright Royalty Tribunal, the Government Printing Office, the Library of Congress, and the Office of Technology Assessment; and

"(4) the term 'transit pass' means a transit pass as defined by section 132(f)(5) of the Internal Revenue Code of 1986.

Federal  
Employees  
Clean Air  
Incentives  
Act.  
Conservation.  
Environmental  
protection.  
5 USC 7901  
note.  
5 USC 7905  
note.

"(b)(1) The head of each agency may establish a program to encourage employees of such agency to use means other than single-occupancy motor vehicles to commute to or from work.

"(2) A program established under this section may involve such options as—

"(A) transit passes (including cash reimbursements therefor, but only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the agency);

"(B) furnishing space, facilities, or services to bicyclists; and

"(C) any non-monetary incentive which the agency head may otherwise offer under any other provision of law or other authority.

"(c) The functions of an agency head under this section shall—

"(1) with respect to the judicial branch, be carried out by the Director of the Administrative Office of the United States Courts;

"(2) with respect to the House of Representatives, be carried out by the Committee on House Administration of the House of Representatives; and

"(3) with respect to the Senate, be carried out by the Committee on Rules and Administration of the Senate.

resident.

"(d) The President shall designate 1 or more agencies which shall—

"(1) prescribe guidelines for programs under this section;

"(2) on request, furnish information or technical advice on the design or operation of any program under this section; and

reports.

"(3) submit to the President and the Congress, before January 1, 1995, and at least every 2 years thereafter, a written report on the operation of this section, including, with respect to the period covered by the report—

"(A) the number of agencies offering programs under this section;

"(B) a brief description of each of the various programs;

"(C) the extent of employee participation in, and the costs to the Government associated with, each of the various programs;

"(D) an assessment of any environmental or other benefits realized as a result of programs established under this section; and

"(E) any other matter which may be appropriate."

(b) CHAPTER ANALYSIS.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7905. Programs to encourage commuting by means other than single-occupancy motor vehicles."

**SEC. 5. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall take effect on January 1, 1994.

5 USC 7905  
note.

Approved December 2, 1993.

**LEGISLATIVE HISTORY—H.R. 2318:**

HOUSE REPORTS: No. 103-356, Pt. 1 (Comm. on Post Office and Civil Service).  
CONGRESSIONAL RECORD, Vol. 139 (1993):  
Nov. 15, considered and passed House.  
Nov. 19, considered and passed Senate.



PUBLIC LAW 103-103—OCT. 8, 1993

**FEDERAL EMPLOYEES LEAVE SHARING  
AMENDMENTS ACT OF 1993**

Public Law 103-103  
103d Congress

An Act

Oct. 8, 1993  
(S. 1150)

To provide for continuing authorization of Federal employee leave transfer and leave bank programs, and for other purposes.

Federal  
Employees  
Leave Sharing  
Amendments  
Act of 1993.  
5 USC 6301 note.  
6 USC 6331 note.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Employees Leave Sharing Amendments Act of 1993".

**SEC. 2. REPEAL OF TERMINATION PROVISION.**

Section 2(d) of the Federal Employees Leave Sharing Act of 1988 (5 U.S.C. 6331 note) is repealed, effective as of October 30, 1993.

**SEC. 3. ADVANCED LEAVE NOT TO BE CONSIDERED IN DETERMINING WHETHER ANY PAID LEAVE IS AVAILABLE.**

(a) **IN GENERAL.**—Sections 6331(4) and 6361(6) of title 5, United States Code, are each amended by striking "leave." and inserting "leave (disregarding any advanced leave)."

(b) **TECHNICAL CORRECTION.**—Section 6331(4) of title 5, United States Code, is amended by inserting "the term" after "(4)".

**SEC. 4. ACCRUAL OF LEAVE.**

Section 6337(c) of title 5, United States Code, is amended to read as follows:

"(c)(1) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of such employee under subchapter 1, and shall be available for use—

"(A) as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in paragraph (1) or (2) of section 6335(a); or

"(B) if the employee's medical emergency has not yet terminated, once the employee has exhausted all transferred leave made available to such employee under this subchapter.

"(2) In the event that the employee's medical emergency terminates as described in section 6335(a)(3)—

"(A) any leave accrued but not yet transferred under this section shall not be credited to such employee; or

"(B) if there remains, as of the date the emergency so terminates, any leave which became available to such employee under paragraph (1)(B), such leave shall cease to be available for any purpose.

"(d) Nothing in this section shall be considered to prevent, with respect to a continuing medical emergency, further transfers of leave for use after leave accrued under this section has been exhausted by the employee."

**SEC. 5. EMPLOYEE PARTICIPATION IN LEAVE BANK AND LEAVE TRANSFER PROGRAMS.**

**(a) AUTHORITY TO PARTICIPATE IN BOTH PROGRAMS.—**

(1) **IN GENERAL.**—Section 6373 of title 5, United States Code, is amended to read as follows:

**"§ 6373. Authority to participate in both programs**

"(a) The Office of Personnel Management shall prescribe regulations under which an employee participating in a leave bank program under this subchapter may, subject to such terms or conditions as the Office may establish, also make or receive donations of leave under subchapter III. Regulations

"(b) Notwithstanding any provision of section 6337 or 6371, if an employee uses leave transferred to such employee under subchapter III and leave made available to such employee under this subchapter in connection with the same medical emergency, the maximum number of days of annual leave and sick leave, respectively, which may accrue to such employee in connection with such medical emergency shall be the same as if all of that leave had been made available to such employee under this subchapter."

(2) **TECHNICAL AMENDMENT.**—The table of sections for chapter 63 of title 5, United States Code, is amended by striking the item relating to section 6373 and inserting the following:

"6373. Authority to participate in both programs."

(b) **ELIMINATION OF PROVISION TREATING LEAVE BANK PROGRAM AS A DEMONSTRATION PROJECT.**—Section 6362 of title 5, United States Code, is amended—

- (1) by striking subsection (b); and
- (2) in subsection (a) by striking "(a)".

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USC 6331 note. SEC. 6. EFFECTIVE DATE.

Except as provided in section 2, this Act and the amendments made by this Act shall take effect as of the 120th day after the date of the enactment of this Act or such earlier date as the Office of Personnel Management may by regulation prescribe.

Approved October 8, 1993.

LEGISLATIVE HISTORY—S. 1130:

HOUSE REPORTS: No. 103-246 (Comm. on Post Office and Civil Service).

CONGRESSIONAL RECORD, Vol. 139 (1993):

July 14, considered and passed Senate.

Sept. 21, considered and passed House, amended.

Sept. 23, Senate concurred in House amendment.

