

**FAMILY AND MEDICAL LEAVE ACT OF 1993**

**(PUBLIC LAW 103-3, February 5, 1993)**

# CONGRESSIONAL FINDINGS AND PURPOSES

- HELP BALANCE THE DEMANDS OF THE WORKPLACE WITH THE NEEDS OF FAMILIES
- PROMOTE FAMILY UNIT
- ENSURE THAT FAMILY AND MEDICAL LEAVE IS AVAILABLE ON A GENDER-NEUTRAL BASIS
- MANDATE JOB SECURITY FOR EMPLOYEES WHO TAKE LEAVE
- ACCOMPLISH THESE PURPOSES IN A MANNER THAT ACCOMMODATES THE LEGITIMATE INTERESTS OF EMPLOYERS

# EMPLOYEE ELIGIBILITY

## COVERED EMPLOYEES

- EMPLOYEES COVERED BY TITLE 5 ANNUAL AND SICK LEAVE SYSTEM
- PHYSICIANS, DENTISTS, AND NURSES IN THE VETERANS HEALTH ADMINISTRATION
- TEACHERS IN DOD OVERSEAS SCHOOLS
- NONAPPROPRIATED FUND EMPLOYEES

# EMPLOYEE ELIGIBILITY

## EXCLUDED EMPLOYEES

- TEMPORARY EMPLOYEES
- INTERMITTENT EMPLOYEES
- DC GOVERNMENT EMPLOYEES
- FEDERAL EMPLOYEES COVERED BY TITLE I

## SERVICE REQUIREMENT

- EMPLOYEE MUST HAVE COMPLETED AT LEAST 12 MONTHS OF SERVICE AS A CIVIL SERVICE EMPLOYEE

# LEAVE ENTITLEMENT

## PURPOSES FOR WHICH FAMILY AND MEDICAL LEAVE MAY BE USED

- (A) BIRTH OF A SON OR DAUGHTER AND CARE OF NEWBORN CHILD (WITHIN 1 YEAR AFTER BIRTH);
- (B) PLACEMENT OF A SON OR DAUGHTER WITH EMPLOYEE FOR ADOPTION OR FOSTER CARE (WITHIN 1 YEAR AFTER PLACEMENT);
- (C) CARE OF SPOUSE, SON, DAUGHTER, OR PARENT WITH SERIOUS HEALTH CONDITION; OR
- (D) SERIOUS HEALTH CONDITION OF EMPLOYEE THAT MAKES EMPLOYEE UNABLE TO PERFORM DUTIES OF HIS OR HER POSITION.

# LEAVE ENTITLEMENT

- TOTAL OF UP TO 12 ADMINISTRATIVE WORKWEEKS OF UNPAID LEAVE DURING ANY 12-MONTH PERIOD
- "UNPAID LEAVE" IS LEAVE WITHOUT PAY
- THE 12-MONTH PERIOD BEGINS ON THE DATE AN EMPLOYEE FIRST TAKES FMLA LEAVE AND CONTINUES FOR 12 MONTHS
- EMPLOYEE MUST INVOKE ENTITLEMENT TO FMLA LEAVE
- EMPLOYEE MAY ELECT TO SUBSTITUTE ANNUAL LEAVE, SICK LEAVE, OR OTHER PAID TIME OFF, CONSISTENT WITH APPLICABLE LAWS AND REGULATIONS

# LEAVE ENTITLEMENT

## ● INTERMITTENT LEAVE AND REDUCED LEAVE SCHEDULE

- MAY BE USED WHEN MEDICALLY NECESSARY FOR LEAVE UNDER (C) OR (D)
- MAY NOT BE USED FOR LEAVE UNDER (A) OR (B) UNLESS AGENCY AND EMPLOYEE AGREE OTHERWISE

## ● "REDUCED LEAVE SCHEDULE" MEANS:

- EMPLOYEE'S USUAL NUMBER OF HOURS OF WORK PER WORKWEEK OR WORKDAY ARE REDUCED BY THE NUMBER OF HOURS OF LEAVE TAKEN FOR PURPOSES OF FAMILY AND MEDICAL LEAVE

# LEAVE ENTITLEMENT

## ● NOTIFICATION REQUIREMENTS

-- FOR LEAVE UNDER (A), (B), (C), or (D):

WHEN NEED FOR LEAVE IS FORESEEABLE,  
EMPLOYEE SHALL PROVIDE 30 DAYS NOTICE OF  
INTENT TO TAKE LEAVE, AS PRACTICABLE

-- FOR LEAVE UNDER (C) OR (D):

WHEN NEED FOR LEAVE IS FORESEEABLE,  
BASED ON PLANNED MEDICAL TREATMENT,  
EMPLOYEE SHALL MAKE A REASONABLE EFFORT  
TO SCHEDULE TREATMENT SO AS NOT TO  
DISRUPT AGENCY OPERATIONS, AS PRACTICABLE

# RETURN TO EMPLOYMENT

- EMPLOYEE MUST BE RESTORED TO:
  - SAME POSITION, OR
  - "EQUIVALENT POSITION, WITH EQUIVALENT BENEFITS, PAY, STATUS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT"
- NO LOSS OF ANY BENEFIT ACCRUED BEFORE LEAVE BEGAN

# RETURN TO EMPLOYMENT

- UNLESS OTHERWISE PROVIDED BY OR UNDER LAW,
  - NO NEW ENTITLEMENT TO ACCRUE ADDITIONAL BENEFITS DURING FMLA LEAVE
  - NO NEW ENTITLEMENT TO ANY ADDITIONAL RIGHT, BENEFIT, OR POSITION OF EMPLOYMENT
- AGENCY MAY REQUIRE MEDICAL CERTIFICATION BEFORE EMPLOYEE MAY RETURN TO WORK IF EMPLOYEE IS IN A POSITION THAT HAS SPECIFIC MEDICAL STANDARDS
- AGENCY MAY REQUIRE EMPLOYEE TO REPORT ON STATUS AND INTENT TO RETURN TO WORK
- PROHIBITION OF COERCION

# HEALTH INSURANCE

- **EMPLOYEE:**

- **MAY ELECT TO CONTINUE FEDERAL EMPLOYEE HEALTH BENEFITS (FEHB) COVERAGE**
- **WILL MAKE ARRANGEMENTS TO PAY EMPLOYEE CONTRIBUTION**

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

February 5, 1993

STATEMENT BY THE PRESIDENT

Today, I am pleased to sign into law H.R. 1, the "Family and Medical Leave Act of 1993." I believe that this legislation is a response to a compelling need -- the need of the American family for flexibility in the workplace. American workers will no longer have to choose between the job they need and the family they love.

This legislation mandates that public and private employers with at least fifty workers provide their employees with family and medical leave. At its core is the provision for employees to take up to 12 weeks of unpaid leave for the care of a newborn or newly adopted child, for the care of a family member with a serious medical condition, or for their own illness. It also requires employers to maintain health insurance coverage and job protection for the duration of the leave. It sets minimum length of service and hours of work requirements before employees become eligible.

The need for this legislation is clear. The American workforce has changed dramatically in recent years. These changes have created a substantial and growing need for family and medical leave for working Americans.

In 1965, about 35 percent of mothers with children under 18 were labor force participants. By 1992, that figure had reached 67 percent. By the year 2005, one of every two people entering the workforce will be women.

The rising cost of living has also made two incomes a necessity in many areas of this country, with both parents working or looking for work in 48 percent, or nearly half, of all two parent families with children in the United States.

Single parent families have also grown rapidly, from 16 percent of all families with children in 1975 to 27 percent in 1992. Finally, with America's population aging, more working Americans have to take time off from work to attend to the medical needs of elderly parents.

As a rising number of American workers must deal with the dual pressures of family and job, the failure to accommodate these workers with adequate family and medical leave policies has forced too many Americans to choose between their job security and family emergencies. It has also resulted in inadequate job protection for working parents and other employees who have serious health conditions that temporarily prevent them from working. It is neither fair nor necessary to ask working Americans to choose between their jobs and their families -- between continuing their employment and tending to their own health or to vital needs at home.

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(OVER)

Although many enlightened companies have recognized the benefits to be realized from a system providing for family and medical leave, not all do. We all as a nation must join hands and extend the ethic of long-term workplace relationships and reciprocal commitment between employer and employee. It is only when workers can count on a commitment from their employer that they can make their own full commitments to their jobs. We must extend the success of those forward-looking workplaces where high-performance teamwork has already begun to take root and where family and medical leave already is accepted.

Data from the Bureau of Labor Statistics support the conclusion that American business has not been fully responsive to the need of workers for family and medical leave. This data showed that, in 1991, for private business establishments with 100 workers or more, 37 percent of all full-time employees (and 19 percent of all part-time employees) had unpaid maternity leave available to them, and only 26 percent of all full-time employees in such establishments had unpaid paternity leave available. The most recently available data for smaller business establishments (those with fewer than 100 workers) are for 1990, and show that only 14 percent of all these employees had unpaid maternity leave available, and only 6 percent had unpaid paternity leave available.

The insufficient response to the family and medical leave needs of workers has come at a high cost to both the American family and to American business. There is a direct correlation between health and job security in the family home and productivity in the workplace. When businesses do not give workers leave for family needs, they fail to establish a working environment that can promote heightened productivity, lessened job turnover, and reduced absenteeism.

We all bear the cost when workers are forced to choose between keeping their jobs and meeting their personal and family obligations. When they must sacrifice their jobs, we all have to pay more for the essential but costly safety net. When they ignore their own health needs or their family obligations in order to keep their jobs, we all have to pay more for social services and medical care as neglected problems worsen.

The time has come for Federal legislation to bring fair and sensible family and medical leave policies to the American workplace. Currently, the United States is virtually the only advanced industrialized country without a national family and medical leave policy. Now, with the signing of this bill, American workers in all 50 States will enjoy the same rights as workers in other nations. This legislation balances the demands of the workplace with the needs of families. In supporting families, it promotes job stability and efficiency in the American workplace.

The Family and Medical Leave Act of 1993 sets a standard that is long overdue in working America. I am very pleased to sign this legislation into law.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
February 5, 1993.

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(Optional add end)

Tigert, meanwhile, had nothing to do with Whitewater, but Republicans were angry that in her confirmation hearings in February she did not pledge to recuse herself from any Whitewater-related issues that might come before her as a banking regulator at the FDIC. She said she would review such issues with her ethics officer when the time came, but that was not enough for the Republicans. A senior administration source said Thursday her nomination is all but dead.

## Family Issues Matter in This House

By Elizabeth Mehren=

(c) 1994, Los Angeles Times=

In the middle of a meeting with President Clinton last spring, U.S. domestic policy adviser William A. Galston quietly folded his papers, took a deep breath and walked out.

Galston had something more important to do, he explained in a note to the White House chief of staff. His son was playing a Little League game and if the choice was between running the country and watching 10-year-old Ezra hit a triple, there was no choice.

To the charge of putting his family before his profession, Galston quipped, "I plead guilty."

The incident, in its small way, symbolizes an increased emphasis on family issues that many say occurred in Washington with the arrival of the Clinton administration. This new visibility has continued, say those on the front lines, despite major foreign crises and domestic scandals such as Whitewater and Paula Jones. And even in the frenzy to reform health care and welfare, they say, family issues have remained central.

But the administration's efforts have nonetheless drawn mixed reviews, often split along party lines.

"Clinton has definitely put his priorities where his mouth was," said Cathy Collette, director of the women's rights department at the American Federation of State, County and Municipal Employees in Washington.

But after keeping close tabs on family-centered legislation on Capitol Hill, Rep. Nancy Johnson, R-Conn., has concluded that "President Clinton's rhetoric outstrips his commitment." The programs Clinton has introduced have failed to provide direct benefits to most families, Johnson contended, explaining: "The bottom-line truth is that the best thing we can do for families is to increase the child tax deduction for families."

Discussion of a new emphasis on the family almost invariably begins with the Family and Medical Leave Act. Nine years in the making, the bill granting employees unpaid time off to care for babies or ailing relatives was signed into law weeks after Clinton took office.

"The steam had been building up for years," said David Blankenhorn, president of the Institute for American Values, a non-partisan research organization in New York.

He credits Clinton with fulfilling a campaign promise to enact the legislation, but he cautioned: "The final bill was so watered down and had so many exemptions that maybe it was a bit of a symbolic advance rather than substantive."

Family and child advocates also point to the debate over health-care reform as proof of a focus on family. "Universal coverage for all Americans is a tremendous family policy boon," said Sammie Moshenberg, director of Washington operations for the National Council of Jewish

Women.

But, Moshenberg added, "The jury's still out on this one. When the heat is turned on in Congress, we have to wait to see if the president will pull out all the stops on universal care for families the way he did for NAFTA."

The welfare reform package that the White House has put before Congress also troubles some family specialists.

"We're worried about it," said Eve Brooks, head of the National Association of Child Advocates in Washington. She described current efforts to revamp this social aid package as "basically an anti-child approach to welfare reform that focuses on the parents, with the theory being that the bitter pill will somehow help the child."

(Begin optional trim)

Away from the glare of publicity, a number of other Clinton initiatives on behalf of the family have been proposed or enacted:

The National Youth Service bill, enacted Sept. 22, 1993. Wendy Lazarus describes this legislation allowing college students to trade public service work for tuition as "sending the message to families that service is part of what everyday life should include."

Expansion of the Head Start program to include services for children from birth to age 3. Dozens of schoolchildren were present on May 19, 1994, when Clinton signed this measure.

The Family Preservation and Support Act, passed by Congress in August 1993. Domestic policy adviser Galston called this "a program that was declared dead 1,000 times, and resurrected 1,001."

The Earned Income Tax Credit, signed into law Aug. 10, 1993. It provides tax credits for working families with incomes of less than \$23,050 and at least one child living with them. More than 15 million families qualify for the credit, which averages between \$1,000 and \$1,500 annually, and which is available both to single and married parents.

Goals 2000, a comprehensive education reform package that provides \$700 million in federal funds in 1995 for states and school districts that meet new guidelines. It was signed into law on March 31.

The federally funded Vaccines for Children program, set to begin Oct. 1.

Pending domestic violence legislation.

A recently signed executive order declaring the federal government's intention to be a "family friendly" workplace.

Still, the Clinton administration's first 18 months have been "very bad for the family generally," said Gary Bauer, who served on the White House Domestic Policy Council under President Reagan. He took particular issue with this administration's push to "zero-fund the only federally funded program that helps parents and teachers teach abstinence."

(End optional trim)

Many other experts in family policy say while the family, vintage 1994, may not be basking in the legislative spotlight, it certainly is more prominent than it used to be.

"In all seriousness, you have to ask, 'compared to what?'" said Amitai Etzioni, author of "The Spirit of Community" (Simon & Schuster, 1994) and founder of the Communitarian Network.

"Compared to where we were before, we've made important steps forward. Compared to where we were before, the government's heart is definitely in the right place," said Etzioni, who is also on the faculty at George Washington University in Washington, D.C.

But Arnold Fege, director of governmental relations for

the national office of the PTA, called family policy under the Clinton administration "about as unrecognizable as our foreign policy."

David Liederman, head of the Child Welfare League of America, said while many good things have happened in the name of the family since Clinton took office, "I'd feel an awful lot better if all of this good stuff was part of an overall plan. To tackle the problems of children and the family, you need a national vision and that's what's missing."

Blankenhorn of the Institute for American Values, for one, says for all the good intentions, many potential services for families had been overlooked.

"What about opportunities through changes in the tax code, regulations and changes that would allow parents to spend a longer period of time at home after a child is born?" Blankenhorn said. "Why not double the child exemption in the first year of a child's life? Why not have a kind of GI bill for parents?"

(Optional add end)

Fege, at the PTA, said in the early days of the Clinton administration, "we had recommended that there be an Office of Family and Children in the White House. We're still proposing it."

Perhaps Clinton, who frequently ventures into schoolrooms to talk to children, could hold regular town meetings on subjects of interest to families, Fege said.

But merely "by using the White House as a bully pulpit" on family issues, the president has helped advance these matters, Etzioni, of the Communitarian Network, pointed out.

Family matters are at least out on the table, agreed Collette and that already represents an improvement.

"As much as we would like revolution," Collette said, "I think we have to settle for evolution."

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## **Panel to Recommend NIH End Moratorium on Laboratory Embryo Research**

**By Robert Lee Hotz=**

**(c) 1994, Los Angeles Times=**

A federal panel is preparing to recommend that the National Institutes of Health the world's largest biomedical research organization end a 20-year moratorium on publicly funded research on human embryos created in laboratories.

The 19 policy-makers, legal experts and medical specialists on the NIH advisory panel are not expected to make their findings public until next month. Interviews with several panel members and a report in the journal *Science*, released Friday, however, indicate the group is prepared to lower the barriers to such research for the first time in a generation, signaling a new turn in one of medicine's most bitter controversies.

Despite a de facto ban on federal funding, researchers in the United States conduct hundreds of human embryo experiments every year with no public control or regulation. The work is carried out at many of the hundreds of U.S. infertility clinics with embryos created through in vitro fertilization. Researchers experiment with spare embryos created during the course of infertility treatments or with embryos that are later implanted in the hope they will develop into healthy children.

(Begin optional trim)

The experiments include efforts to improve an infertile couple's ability to conceive a child or to ensure the offspring's genetic health. So little is known about the biochemistry and genetics of early human development that, for most purposes, every human embryo created in the laboratory is an experiment. Researchers today routinely probe them, implant them, transplant them, freeze them, or operate on them, with only their own professional judgment as guidance.

"We are talking about creating life," said Patricia A. King, a Georgetown University law professor who is the panel's policy chairperson. "There is a fine balance between doing something that has scientific merit and is also sensitive to the different perspectives and fears about the beginning of human life. There are concerns about going too far in the name of science."

(End optional trim)

NIH Director Harold Varmus appointed the panel in January to address the profound moral and ethical issues arising from research using human embryos in laboratory experiments. The move stemmed in part from an international furor over a team of George Washington University researchers who asserted they had cloned human embryos.

The panel's meetings stirred such strong feelings that NIH was obliged to hire security guards to monitor its most recent session. The panelists, who have received hate mail and numerous threats, also are being sued by a pro-life group in Pittsburgh intent on halting their deliberations.

The federal government has not funded any research using human embryos since 1973, when a Nashville University embryologist triggered a political firestorm over the propriety of such experiments by proposing that NIH fund a study investigating the health of human embryos created in the laboratory.

The panel is expected to recommend that NIH permit research on surplus embryos created during the course of infertility treatments up to their 14th day of development.

The panel also is expected to endorse a new technique called blastomere biopsy, in which a single cell is extracted from a laboratory-created embryo and used to diagnose inherited diseases such as muscular dystrophy. Those clinics that use the technique today discard any embryos that they determine carry a genetic defect.

(Optional add end)

Experts said the technique offers one measure of how far government oversight has lagged behind research in the field. Although the first federally funded embryo experiment has yet to be approved, several children already have been born who were conceived and screened using the blastomere technique, then deemed healthy and implanted for normal development.

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## **California Leads Nation in Industrial Accidents, Study Finds (Wash)**

**By Jeff Leeds=**

**(c) 1994, Los Angeles Times=**

WASHINGTON California leads the nation in industrial accidents that release hazardous chemicals, according to a study released Thursday by two environmental advocacy groups who suggested many of the nation's chemical plants are catastrophes waiting to happen.

Nearly 11 chemical spills, leaks or fires occur per day

# Veterans' Ranks Thinning on Capitol Hill

By Al Kamen  
Washington Post Staff Writer

**N**ot long ago there was a time when being a veteran was virtually a prerequisite for anyone seeking political office.

No more.

Last month's congressional elections show a sea change. Whereas 20 years ago, 73 percent of the Senate had served in the armed forces, the Senate next year will have a bare majority, 51 members, with military service of some sort.

And only two of the 11 Republican freshman senators, James M. Inhofe of Oklahoma and Craig Thomas of Wyoming, are veterans.

The downward trend of veterans, reflecting a national slide, is the same on the House side. Fewer than a quarter of the 86 new House members are veterans, and that pushes down the overall presence of veterans in the new House to about one-third of the members, or 148. In contrast, about 70 percent of the House members in 1975 listed military service in their backgrounds.

This may not say anything about how the Defense Department will fare in budget battles to come, but it's clear that more lawmakers with no hands-on knowledge of military matters will be voting.

## Kemp's Kansas Caper

■ Things got a bit surreal late Tuesday for former representative and prospective presidential candidate Jack Kemp. Accompanied by his son, Jimmy Kemp, after a weekend of skiing in Vail, Kemp was driving to Kansas City where he planned to catch a plane back to Washington.

But he was trapped en route in a snowstorm that ripped through the Midwest. He looked at a road sign and discovered he was smack-dab in the middle of Russell, Kan., home of Robert J. Dole (R-Kan.), the incoming Senate majority leader.

Kemp was so taken with the idea of being in the home town of a likely rival for the 1996 Republican nomination, that he took a picture of himself to record his entry and safe exit from Dole country.

## Public Relations Giant Adding GOP Clout

■ Sources say public relations giant Hill & Knowlton is working to beef up its Republican resources, bringing in John Timmons, who used to be legislative counsel to Sen. John McCain (R-Ariz).

There are rumblings that the firm is making a very serious run at signing on veteran reporter David C. Beckwith, press secretary to former vice president Dan Quayle and more recently communications director for Sen. Kay Bailey Hutchison (Tex.). H&K vice chairman Frank Mankiewicz, asked if the rumblings were true, said: "I sure hope they are."

## Regula Passes 'Non-Green' Test

■ Veteran Rep. Ralph Regula (R-Ohio), fended off a mini-sagebrush rebellion against his ascension to chair a key appropriations subcommittee with control over environmental matters.

Conservative activists said Regula's record was

way too green when it came to mining, grazing and other matters.

About 30 Republicans from the Western States Caucus met with him Monday to hear Regula's assurances that their concerns would be addressed.

Regula insisted he was not as green as environmentalists claimed, sources said.

## Former TV Anchor Takes Family Leave Post

■ Former Channel 7 anchor Susan King, who has been doing various television stints since leaving the station about a year ago, is going to be the new executive director of the Commission on the Family Medical Leave Act, which was the Clinton administration's first legislative achievement.

The commission is to review how the law is being implemented and to make recommendations for changes.

Administration folks are tickled to have hooked King for the job, feeling this puts a public face both on the law and on the commission at the same time. King wrote a moving account in May 1992 in Washingtonian magazine describing her efforts to adopt a baby and the importance of family leave.

## Harvard Misspoke on Session for Lawmakers

■ Harvard University's Kennedy School of Government says it was wrong to claim, as was stated in Wednesday's column, that its orientation sessions for freshman lawmakers were mostly open—in contrast to the Heritage Foundation's mostly closed-session policy.

That claim was made by a "green staff assistant," says Steve Singer, the school's communications director. The sessions have been, in fact, mostly closed at Harvard too, he says.

Seems an aversion to sunshine is widely shared these days.

## New in Transportation Circles

■ A convoy of new transportation public affairs officers has arrived in official Washington.

The National Transportation Safety Board, which has lost two public affairs officers lately, now has a new chief, Julie N. Beal. Beal has held several Transportation Department jobs and was NTSB member John K. Lauber's special assistant for a number of years.

At Transportation itself, William S. Adams Jr. was named associate director of the Office of Public Information, the post held for years by the late Bob Marx, who left some large shoes to fill. Adams was most recently press secretary to the Senate Judiciary Committee.

The Federal Railroad Administration also has a new public relations chief, David A. Bolger, who comes from the Bethesda-based public relations firm, Global Exchange Inc. Many of his clients involved sports, including the National Collegiate Athletic Association. He also worked in the 1992 Clinton-Gore campaign.

# This Is the Story I Will Tell My Daughter

By Susan King

Last Summer  
TV Anchor  
Susan King and  
Her Husband  
Jumped on a  
Plane for  
Paraguay.  
Three Nerve-  
Racking Weeks  
Later, They  
Returned With  
a Baby Girl.

**I** was on deadline and I was late. It was past 5 PM and I was still writing for the 5:30 newscast.

When the phone rang, I answered "This is Susan King" in my "I-don't-have-time-to-talk" voice. It was my husband, Mike. "I'm crashing," I told him. Usually, he'd call me back after the news. Not this night.

"We have a baby."

Everything stopped.

Then the questions: "What is it? What happened? Who did you hear from?"

Mike said that World Child, our adoption agency, had just called. "We have a daughter," he said, his voice full of laughter. He had only the bare facts. The baby had been born on April 9 and weighed a little more than three kilos, which is just over seven pounds. Her name, he said, was Marla Suzanne.

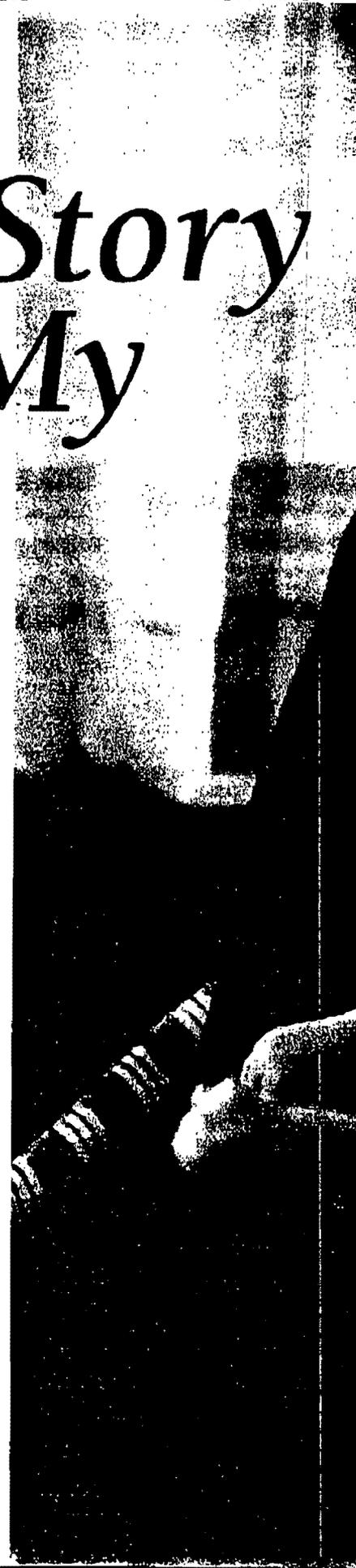
*Marla Suzanne.*

It was a variation of my own name, and that seemed a good omen. I let myself start to believe.

"Congratulations, mom," Mike said with excitement as we hung up.

With 25 minutes to airtime, I had little chance to celebrate. As I walked from my office in search of the final script, the newsroom looked as it always does moments before air. Writers and producers were burrowed in their computers. Assignment-desk editors were getting ready for the next day. Any deadline panic was in the editing room downstairs. Here, everything seemed normal, belying the hectic nature of TV news.

But for me nothing was normal. I wanted to stand in the middle of the newsroom and shout, "Hey, I'm going to be a mother. I just got a baby girl." Instead, I picked up my script and walked into the studio as if nothing had changed.



**I** always figured I would be one of the first "mother-reporters" in Washington. I was married at 23, while I was getting my master's degree at night and my start in television. In 1975 I came to Washington from Buffalo to join what was then Jim Snyder's Channel 9 news team. It was a time when women still had to prove they could cover a story "like a man." Within two years I felt I was there.

As I reached the end of my twenties, I decided the time was right to plunge into motherhood, even though I had no idea how I was going to juggle the chaotic demands of reporting with the constant demands of a child. Yet I was determined to show I could do it.

It never happened. I didn't become a mother. At the same time, I moved into more and more demanding jobs. I decided to be a super-aunt and also a big sister to a number of young women. That helped. I gained much in sharing experiences, travel, theater, and time with nieces, nephews, and "little sisters." Still, I always felt an emptiness that I couldn't resolve.

At the end of 1990, my husband and I began cautiously walking the adoption trail. At first we had ruled out adoption. There were the unspoken taboos: My mother's best friend had been adopted and she had committed suicide, a story that affected me more deeply than I was aware. There were the fears that a demanding career might not permit me to give the time to a child who needed to know that her family loved her. There was the uneasiness over having to submit to some agency's probing of our lives and convince a social worker that we were worthy parents.

All of that seems silly now. But then, every thing seemed so abstract, so uncertain. We had started down a path whose ending was unfathomable. Only the anxieties were real.

There is a maze of adoption possibilities, none of them foolproof, none of them easy. World Child had a track record that encouraged me, a network of proud parents with beautiful children. And in the end, I had found the idea of being connected intimately to Latin America very appealing. Mike and I didn't just want a child, we wanted a child who needed a home.

Because so many things can go wrong in a foreign adoption, we wanted to wait until we were given a date for traveling to Paraguay before we let people know that we were "parents-to-be." It was the biggest news of our lives, but we were almost afraid that talking about it would jinx everything.

We made an exception for our families. We

**The long-awaited meeting: King is introduced to her daughter by foster mother Haydee.**



decided to tell mine when we went home to New Jersey for my godchild's first communion. Up till then we had not talked to others about the ups and downs of the adoption process, not even our biggest setback, an adoption that had fallen

through after we were given the baby's name, weight, and date of birth. This time—maybe because the baby and I shared a name—I felt confident.

"We have a little girl," I announced.

It was enough to stop the multiple conversations that always have been a part of my family—we usually can juggle three at a time. My parents, who had tried to hide early doubts about our adoption plans, were delighted. They and my sisters asked a dozen questions, most of which we couldn't answer. We did know that Maria Suzannec had been born in a hospital, that she was seen by experienced doctors and was healthy. Other than that and her birth statistics, we didn't have much information to pass on.

My niece asked what should have been a simple question: "What are you going to name her?"

Mike and I had been writing down names all week. He even had bought a name book, which we looked through. But I was stumped. I could only think of this baby as Maria Suzanne. That was her identity, the name that she had been given at birth. I liked the idea of telling our little girl that her name was the one her birth mother had chosen for her. I

thought our daughter should have roots in her Latin culture. I wanted her to have her feet planted firmly in our family, but in her Paraguayan family as well.

My father, who always speaks his mind, said, "I think you should keep her name Maria Suzanne. It's her given name and it's beautiful. And it's yours as well. Why change it?"

Then the agency called with a few updates. "Everything is on track. The baby is doing fine. We have a bit more information. It seems she was born April eighth, not the ninth, and her name isn't Maria Suzanne. It's Raquel."

I said nothing.

"I know what you're thinking," our agency contact said. "Is this the same little girl? It seems information was garbled. We expect to have a picture within a few days."

I refused to let myself get upset. But it was an



**Wanting to avoid the hotel, which was filling up with other anxious Americans hoping to adopt, King took Mia sightseeing in Asunción.**

example of what was ahead. We were realizing that we could not control events, that this experience would require a leap of faith. We would have to hope that our child would be getting the proper attention during her foster care, that her health really was okay, and that the process would go through with integrity.

As for the name, many of our reasons for choosing Maria Suzanne no longer applied. But by now both Mike and I were having a hard time thinking of her as anything else. We decided not to change it.

Due to another mix-up, the baby's photos didn't come when we expected them. When they finally arrived, I felt troubled because the truth was that I didn't feel anything.

I had been told that when parents got the first baby pictures, they felt an immediate bonding, that they often stuck them on the refrigerator and began thinking of the baby as theirs.

The two color photos, mounted on cardboard, showed a month-old baby who looked knowing and rather mature. She was padded, with full cheeks and a lot of baby fat, and was dressed in a pink, short-sleeved, one-piece outfit. Everything in the photo was pink—the chair she was lying in, the background. And she did look cute—but expressionless. I'm not sure what I expected to see, but somehow I couldn't relate to this little girl. Her eyes didn't look alive.

I told myself that once I saw and held the baby,

my feelings would change. All I could do was wait. I was too superstitious to get organized. I was not about to fix up a bedroom and outfit the house for a baby who might not arrive.

Mike and I kept our normal schedule, all the time realizing that if the baby did come, "normal" would mean something very different.

**A**fter sixteen years as a Washington broadcast journalist, I had no desire to give up my career. My ambitions still were there. And Mike felt fulfilled by his job, teaching business and law at Northern Virginia Community College. But our desire for a child, our yearning for a family, was stronger than ever. We had few qualms about weekends at home and switching the center of attention from our needs to a child's.

Still, I was anxious about telling my colleagues and my bosses that I was about to be a mother. In the news business, you don't have set schedules. You cancel vacations and weekend trips when the news demands it. You always have to be available.

I had been working for the 11 PM broadcasts for eight years, which meant I had been on call all day and evening. I had a reputation for being consumed with the news. Having a child, I feared, would send a different signal.

I'm not sure what Channel 7 news director Gary Wordlaw expected when I walked into his office

*Continued on page 141*

**"It's easy to forget that Mia doesn't resemble us," says King with husband Mike. "I know there will be moments when we'll have to deal with discrimination."**



## Susan King

Continued from page 61

and said I had something I wanted to tell him in confidence. He showed me to a chair and sat down behind his desk.

"Are you pregnant?" he asked.

"Not exactly. But Mike and I are adopting."

He couldn't have been more supportive. The father of four, Gary began regaling me with stories of being a dad, a side of him I hadn't seen before. He wanted to know how long I expected to be gone and agreed to keep my confidence. He did want to share my news with the president of WJLA. That was fine with me. I told him if all went well I'd be gone only during the slower vacation period of the summer.

Now, if all would only go well.

**W**ithin two weeks I got word from the agency that we could begin to make travel plans. Our lawyer in Paraguay expected to have a court date late in July.

I was more numb than excited when we arrived at National Airport on Friday, July 19. My suitcase was full of baby things, two sizes because I didn't know how big a three-month-old would be. But I wasn't sure I felt prepared. I hadn't changed diapers since I was a baby sitter in high school, and I hadn't gotten very far in my baby books.

At the airport, we were surprised by two friends, TV journalist Judy Woodruff, my co-chair at the International Women's Media Foundation, and Ellen Morgenstern, our executive director. Both adoptive mothers, they came to provide support, plus two gifts that would prove invaluable: diaper-rash ointment and baby Tylenol. Our new life was becoming more real, taking a clearer shape. But although we could be seeing our baby in less than 24 hours, I still didn't know what to expect.

When we arrived in Paraguay after a long flight spent reading baby books and travel guides, we were met by our lawyer, Augustine Gavilan, who spoke little English, and his son, who spoke a good high school rendition of it. They recognized us from the pictures that had preceded us.

I had only one question: "How is the baby?" Mr. Gavilan's answer worried me. "She has a cold. But no worry, all babies in Paraguay have colds."

The city of Asunción has lovely wide, tree-lined boulevards with old colonial-style homes, but the Hotel Chaco, which we would call home for the next few weeks, was not on one of them. A small hotel on a side street in the heart of

downtown, it was home to a half-dozen American couples who also were waiting for babies.

Our room wasn't ready when we arrived, and since our attorney said he wouldn't return with the baby and foster mother for several hours, we took out our maps and started walking the city. Usually we're curious travelers, but not this morning. We walked around distractedly, stopped at a restaurant and a few stores recommended by the other adopting parents, then headed back to the hotel. We said little as we waited in our small room with its two beds, refrigerator, and TV. There was little to say.



After Mia's baptism by Monsignor Thomas Duffy at Blessed Sacrament Church, King felt "all the years of frustration and feigned acceptance" of a life without children fall away.

We assumed Mr. Gavilan would phone from downstairs when he arrived, so the knock on the door caught us off guard.

"They're here."

I grabbed my camera, a protective move I've learned as a journalist to shield me from my own emotions. When Mike opened the door, there was our baby, dressed like a collector's doll, in a big white dress embroidered with pink flowers, wearing a white cyclot hat, lace socks, and little satin shoes. The dress was so big I couldn't tell how big or small she was. Her eyes were large and laughing.

Her foster mother, Haydee, held her proudly and offered her to us. Mike let me take her first, and while making noises that only babies understand we welcomed her with high-pitched laughter and love. I handed the baby to Mike, wanting to hide behind my video camera so I could take in the whole scene without having to feel all the emotion of it.

She looked beautiful and happy and very healthy. Everyone dutifully posed as the camera recorded it all. When Haydee called the baby Raquel, we told her we were naming her Maria Suzanne and explained why. Her nickname, I said, would be Mia, a derivative suggested by

my mother. It was days later, as I watched television in our hotel room, that I realized that Mia, in Spanish, means "my own."

I was anxious for the others to leave so we could feel our own emotions. Haydee turned over the bottle, a half-empty can of formula, and the two medicines for Mia's cold, with a note, half in Spanish, half in English, on when to feed her, when to give her the pink medicine and when the white medicine. That's all the instructions we had.

By the time everyone left, Mia had fallen asleep. Mike and I looked at her and hugged. We had no words.

Asleep on the bed, she seemed a mystery. I didn't know her and yet she was mine. Her head was warm, her hair sweaty. All I could think was that she was our daughter. There was still an absence of feeling, but, to my surprise, also an absence of doubt. Only touching her made the situation feel real, so I sat on the bed and stroked her.

When she awoke I changed and dressed her. There was no sense of awkwardness or fear, even though nothing around was familiar. I realized that I had connected to the woman I had been ten years ago, before I gave up believing that I could be both mother and professional. And I remember feeling the bitter traces of having been shortchanged begin to melt away.

Our tiny room, with its view of the air shaft, was not the most pleasant home for our new family, so we took Mia to the roof for the late-afternoon sun. As she napped on my shoulder, we began to truly feel the enormity of our life's change. Sitting together quietly, we watched the fiery sunset over the city below us. I noticed how much I liked feeling Mia needing me. Within six hours I had discovered the deepest sensation of motherhood: fiercely protective, intensely proud, and wholly connected to another.

**W**e were expected in court the first thing Monday morning. We spent the weekend in a blur, feeding Mia every three hours. I lost all track of time and found myself recording in my journal not my insights or emotions, but her eating habits and diaper changes.

Early Monday morning I awoke, afraid that I wouldn't be able to get Mia bathed, fed, and dressed in time for our 7:30 appointment with the judge. It turned out we were so early we even had time to eat breakfast in the hotel dining room.

Outside, it was cold and windy, and I had only a cotton blanket to cover Mia. I

started to worry about what the judge would think when he saw her bare legs.

My nervousness grew as we waited on the backless bench in the courthouse. Finally, an hour later than scheduled, we were taken into the judge's chambers. It was a large, disheveled office, and the judge spoke no English and offered no smile. In a brusque voice, he began asking us questions repeated by a translator. I remember only one of them: Would we promise not to hide our child's Paraguayan heritage from her? I was pleased to see that he felt as I did, that Mia should always remain a daughter of Paraguay.

We signed documents, and Mia cried as her fingerprints and footprints were recorded. When everything was finished, I asked the judge to pose for a picture with us. Without comment he agreed and formally shook our hands.

By noon we were back at the hotel, the most important part of the adoption done. All that was left was to wait for word that the judge had signed the adoption decree. Our attorney promised to call us the next day with any news.

**F**eeling more claustrophobic than ever, we dressed Mia warmly, tucked her in the Snuggli, and set out to explore her city. We found it old-fashioned and appealing.

I wanted to be able to tell her stories about her country. I also wanted to keep moving so that I wouldn't feel the fear that shadows foreign adoptions. Too many things can go wrong. I knew that bureaucracies could cause delays. I knew that without warning a country could change policies about allowing foreigners to adopt their children. They were fears I didn't want to face, and I wore Mike out with three-hour hikes.

I was also aware that hotels like ours become adoptive-parent ghettos. About eight other American families were at the Hotel Chaco, and each day, it seemed, another couple would arrive. We would share stories and information, but there was a competitiveness about the conversations that made me uneasy. Some of the would-be parents had no time for the Latin culture, and seemingly had little desire to learn about their child's heritage. Some of the talk centered around whose agency was best, which lawyer was most competent. We would avoid the hotel, I concluded. I wanted to meet Paraguayans, not frightened Americans.

**M**r. Gavilan called the next day. "The judge signed the decree," he said. "Maria Suzanne is yours."

It was the moment we had hoped for. But before Mike and I could savor it, there was a knock at the door.

It was an American woman whom I had seen in the hotel but had not met. "Hello," she said, not introducing herself. "Did the judge sign your adoption decree?"

Caught off guard, I answered, "Yes, I just got a call."

"That's all I want to know."

She turned and stalked down the hall. Later I was told she had been in Paraguay for three months and was having trouble getting through the courts. She

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**In the lobby, we got a call  
from our foster mother's  
husband. He urged us not  
to leave the hotel—people  
were out looking for  
Americans with babies.**

---

never spoke to me again, though she often passed me in the lobby.

Other adoptive parents had traumatic experiences. One of our first nights there, we heard banging on our bathroom wall. It turned out to be the three-year-old boy adopted by a couple who had arrived on the plane with us. He refused to sleep and banged his head repeatedly against the wall.

Friendly at first, the couple turned reclusive, hiding out in their hotel room. Three days after we arrived, we passed them in the hallway. Their faces terrified, they were carrying their son bundled in a blanket. The next morning at breakfast they told us that the boy was autistic and that they had returned him to the orphanage. Others also discovered that the child they had come to claim had serious medical problems.

For some it was not medical problems but red tape and indecision. Some couples were told to be ready for court dates and then were never picked up. They felt abandoned by their lawyers and ended up calling agencies back home.

Our agency, World Child, had prepared me for the worst, but seemed to have an organization that worked. The key was our Paraguayan lawyer, the real link with the birth mothers and the courts. Mr. Gavilan was experienced and truthful. His demeanor reassured us at a time when we could have felt at the mercy of a strange court system.

**O**ur life at the Hotel Chaco was a series of naps, meals, and formula-making sessions. Every day seemed

to mean another trip to pick up or deliver documents paperwork for the child welfare agency or petitions for Mia's passport. On slow days, we'd spend hours roaming around Asunción. We had fallen into a familiar pattern that cushioned us from the anxiety of waiting for the last pieces to fall into place.

Then we started hearing rumors. There were problems with the courts, we heard. What was worse, the adoption program might close down.

We had no idea how true any of this was. All we knew was that we wanted to get back home with our baby.

We checked with the American Embassy and were told that they could process our paperwork quickly. We booked the first Air Paraguay flight leaving the next week.

The night before we were to leave, we decided to go out and do some souvenir shopping. But we didn't get far. In the lobby, we got a phone call from our foster mother's husband. He had heard rumors that our judge had been forced to resign. He urged us not to leave the hotel, that people were out looking for Americans with babies.

We turned around and headed back to the room, terrified about what it all might mean. I began packing. We needed diapers and more formula, but I didn't want Mike to leave the hotel. I imagined that any American could be stopped. The once-appealing city of Asunción now gave me a fear I had never known before.

Mike ventured out—we couldn't leave without diapers and formula—and I spent anxious moments waiting with Mia for him to return.

He had no trouble, and found that nothing had changed from other nights. But in our minds, everything had.

**W**e went to the American Embassy the next morning, telling them we had tickets on the evening flight and needed our documents by then. We were told to return at three that afternoon.

That would seem to have given us enough time to catch our flight at six, but all we could think of was all the things that could happen to make us miss it. I was determined to push every button to make sure we didn't.

We arrived at the embassy on time, and Mike went inside while I waited in the car with Mia. It was a muggy afternoon, but for the first 45 minutes she played quietly. Then she started to cry.

I kept re-calculating what we still needed to do and how much time we had to do it. I knew the drive to the airport would take 30 to 45 minutes, and we still needed to pick up our tickets, plus buy another one for Mia.

At 4:15 Mike emerged from the embassy with Mia's visa. We took off for the airport.

Because neither of us was fluent in Spanish, getting our tickets was an ordeal. I kept looking at the time, frustrated by how complicated such a transaction had become.

With ten minutes to spare, we got our tickets. As much of a tie I now felt with this country, I felt no sadness in leaving. All I wanted was to be home.

It wasn't until the wheels went up that I finally began to relax. Mike took my hand and squeezed it. Mia was ours.

**A**fter another long flight, we touched down in Miami. Mia looked me in the eyes, gurgled and laughed. "You're home, Mia." I laughed back. "Welcome to the USA."

When we landed in Washington twelve hours later, WJLA's cameras greeted us at the gate, with Mia the only one of us looking the least bit alert. In the cab home she gazed out at everything passing by, and I couldn't help pointing out the highlights. "That's the Lincoln Memorial." I told her. "There's the Jefferson Memorial. That's the Kennedy Center."

The phone rang about an hour after we arrived at home. It was my colleague Renee Poussaint with welcome-home greetings. She asked the basic question of journalism: "How's it feel?"

I couldn't find anything profound to say. "Rence, it just feels right."

There would be no doubts, no second-guessing, no questions about the process or worries that I could be the kind of mother to Mia I would hope to be. When I heard her morning stirrings that announced she was hungry, I would fight through my grogginess and find a mysteriously seductive little person gurgling good morning and looking to me for what she needed. Each morning, I was filled with the deepest love I had ever known.

**W**e christened Mia early last October. She wore the handmade cotton christening gown, with embroidered white flowers, that Mike and the other 14 Kings had worn, along with most of the 32 King grandchildren.

My parents and sisters were also with us, and as my mother and I dressed Mia in the long, fragile gown before the antique mirror in her room, I saw a freeze frame of the future. This was the kind of picture that wedding books always recorded, and I could see us years from now sending Mia off with another of life's ceremonies. I was so aware that hers is a life I didn't create but one in

which we will share, her personality one we will discover.

Monsignor Thomas Duffy greeted us at the back of the Blessed Sacrament Church, and then, during the Saturday-night children's mass, welcomed Mia into the church. Later, during her baptism, I watched with a deep sense of contentment. My parents were witnessing the baptism of their oldest child's first, but it was their tenth grandchild. I was now a part of that ongoing family, and Mia was my link with the past and to the future.

I was caught unaware when Monsignor Duffy asked us to join him at the altar as mass ended. It was the final blessing, and I had to muster all my strength to maintain my composure as he read the blessing for mothers. Mia was giving me the opportunity to become all I hoped to be in life, and as I stood at the altar I was being acknowledged as her mother. All the buried yearnings, all the years of frustration and the feigned acceptance, finally had fallen away.

**M**ia is now a year old. Friends and colleagues keep asking, "Your life has changed, hasn't it?" Of course it has. I never spent my mornings on the floor playing with blocks, reading Dr. Seuss, or just goofing off. But I've been surprised at how Mia's routine has worked into our lives.

Day to day I rarely deal with the fact that Mia is adopted, or with her Paraguayan roots. I'm much more involved in her latest food experience, encouraging her explorations, and diverting her from near calamities. I know that there will be moments when we'll have to deal with discrimination. It's easy to forget that Mia doesn't resemble us. When I look into her eyes, I see my daughter and a reflection of my love.

But I've already felt the stares of people who whisper that Mia is foreign. I've been questioned by check-out clerks who ask why I adopted a Latin American baby. Those experiences haven't made me question our decision; they've only reminded me of how deep our love is.

Nor have I lost my ambition or my journalistic drive. I find I have little conflict between my daughter and my career. I know what I want. I want to give Mia my love, my attention, my knowledge and experience. My career is the challenge that takes me on a constantly changing journey. It is something I want to share with her.

Mia is a gift. We've welcomed her into a large and boisterous community of friends and family where her life will unfold. We don't know what she will discover for herself, but we already know what she has given to us. □

## Soul Brothers

*Continued from page 79*

Graham and her children, Don and Lally, were Harvard schoolmates of Gray's. He plays tennis with them and dines at Kay Graham's house several times a year.

White House officials say Gray also boasts of a relationship with the Post's Bob Woodward, but Gray says that overstates the case. "He's a neighbor. I see him once every six months," Gray claims. "Have I been an occasional source? Probably. But I'm not going to talk about that. I don't think I've been a source of anything salacious."

**G**RAY'S FINANCIAL-DISCLOSURE FORM reveals a net worth of at least \$8 million, but his true worth is probably many times that. He was born in 1943 in Winston-Salem, North Carolina. His grandfather, Rowman Gray, served as chairman of R.J. Reynolds, and his father, Gordon, had a distinguished public and private career. "My father was an extraordinary man who had an enormous influence on me as a role model, a teacher, and a father," Gray says.

Gordon Gray, who died ten years ago, served as Secretary of the Army under President Truman and was national security adviser to President Eisenhower. During his years in Washington he played golf with Prescott Bush, a US senator from Connecticut, but their sons never met in that period. Gordon Gray also was a newspaper publisher, and he acquired a group of radio stations that has grown into the Atlanta-based Summit Communications. The family enterprise owns radio stations and cable-television systems worth about \$250 million, Gray estimates.

Some of Gray's fondest memories are from the early 1950s in Chapel Hill, where his father served as president of the University of North Carolina. "I had a wonderful childhood," he recalls. "We had the run of the place. We could play tennis on the university courts, go to the baseball diamond, use the gym, run through the woods. It was all very informal and cozy and you could just go anywhere. People knew who you were, not because my father was famous, but because everybody knew everybody."

Gray, the third of four sons, says he was not aware of his family's wealth at the time. "People talk about it a lot now, but in those days people didn't treat you as anybody special."

His childhood was different from Bush's early years in Connecticut, where the future president sometimes was squired around by a chauffeur. "Judging by people who aren't as for-

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From Dolores Board

U.S. Department of Labor  
Employment Standards Administration  
Office of Public Affairs - FPB, C-4325

Phone - (202) 219-8743

Fax - (202) 219-8740

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

### Job Restoration

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "key" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten

percent of employees within 75 miles of the work site.

### Notice And Certification

Employees seeking to use FMLA leave may be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions and periodic recertifications (at the employer's expense); and
- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific information when an employee gives notice of FMLA leave on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

(over)

## Unlawful Acts

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

## Enforcement

FMLA is enforced, including investigation of complaints, by the U.S. Labor Department's Employment Standards Administration, Wage and Hour Division. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance. An eligible employee may also bring a private civil action against an employer for violations.

## Other Provisions

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

## Further Information

For more information, please contact the nearest office of the **Wage and Hour Division**, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

# Your Rights Under The Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered

employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

## Reasons For Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

## Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

## Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Unlawful Acts By Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

## For Additional Information:

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

WH Publication 1420  
June 1993

## Subchapter 13. Leave for Parental and Family Responsibilities

### 13-1. INTRODUCTION

This subchapter gives agencies guidelines on leave for various types of parental and family responsibilities. Leave for the birth of a child, leave for child care, leave for adoption and foster care, and leave for other parental and family responsibilities are discussed here. Agencies should use these guidelines as a reference in reviewing or establishing policies on these subjects. Leave for parental and family responsibilities consists of appropriate combinations of annual leave, sick leave, and leave without pay. Sick and annual leave can also be advanced to employees. For more specific guidance on these kinds of leave, please consult other parts of this chapter.

### 13-2. GENERAL

a. Most of us, whether we are parents or not, know that being a parent or prospective parent carries certain responsibilities that cannot be ignored or even postponed. Maternity is certainly chief among them, and we have become increasingly accustomed to dealing with leave needs of expectant parents in a responsible and sensitive way. We need to show the same concern for other aspects of child care and family life as well.

b. We know that prolonged absences of employees make it harder to reach organizational goals. We also know that the work pressures make it hard, at times, for managers to empathize with the problems of parents. Still, we think it is possible through sound judgment and agency policies to strike a proper balance between the needs of the organization, and the needs of the family. Indeed, responsiveness to family needs works, in the long run, to the advantage of the organization. Good morale and the retention of experienced and productive employees contribute to a healthier organization.

### 13-3. EMPLOYEE AND AGENCY RESPONSIBILITIES

a. **Employee responsibility.** An employee should

ask for leave as far in advance as possible, particularly if the absence is to be prolonged, as is usually the case in leave for childbirth, for the care of a newborn child, or adoption of a child. This gives the agency time to make necessary adjustments to cope with the absence, such as finding someone to fill in temporarily or changing work assignments.

b. **Agency responsibility.** (1) The overall objective of the agency should be to develop policy on leave for parental and family responsibilities that is compassionate and flexible for the employee. Yet in exercising this discretion, agencies should not establish policies that will adversely affect mission accomplishment.

(2) Managers should administer leave policies equitably and reasonably. But since individual needs will vary both for the employee and the organization, we advise building flexibility into agency leave policies.

### 13-4. CONTINUED EMPLOYMENT AFTER CHILDBIRTH OR ADOPTION

a. **Employees who plan to return to work.** Agencies have an obligation to assure continued employment for an employee for whom extended leave has been approved unless termination is otherwise required by expiration of appointment, by reduction in force, for cause, or for other reasons unrelated to the absence. The employee must be allowed to return to the position formerly occupied or to a position, within the same commuting area, of like seniority, status, and pay.

b. **Employees who do not plan to return to work.** An employee who has given birth and does not plan to return to work should submit her resignation at the expiration of her period of incapacitation. She may, however, be separated earlier for other reasons, such as expiration of appointment, reduction in force, cause, or other reasons unrelated to the maternity absence.

### 13-5. LEAVE FOR CHILDBIRTH

a. **Physical incapacitation and recuperation.** (1) Many women want to work virtually up to their expected date of delivery. Other women may need to stop work at some point before the due date for their own

health and that of their unborn child. Sick leave may be used for this purpose. The Pregnancy Disability Amendment (P.L. 95-555) of Title VII of the Civil Rights Act provides that pregnancy must be treated in the same manner as any other short-term disability and employers may not set an arbitrary date at which maternity leave must begin.

(2) Agencies should always be aware of working conditions or strenuous requirements in the workplace that could have an adverse effect on an expectant mother. If, after consulting her doctor, an employee asks for a change in duties or assignment, every reasonable effort should be made to accommodate her. Agencies may request medical certification of the nature of the limitations recommended by the employee's doctor. Sick leave may also be used for physical examinations.

(3) Sick leave is appropriate for the period of incapacitation for delivery and recuperation. Periods of recuperation will vary because of the physical condition of the mother and the physician's instructions. Agencies should bear in mind that it takes longer to recuperate from a Caesarean delivery.

b. **Infant care.** A new mother may need time beyond her recuperation period to adjust to a new family member and develop a close relationship with the infant. At the same time, additional responsibilities may fall upon a father who may be needed at home during and after a mother's hospitalization to help with household duties or to care for other children. In addition, fathers may need time to build a close relationship with the newborn. Single parents or couples will often need some time to make arrangements for the care of children before returning to work. Agencies should consider the importance of this period for the well being of both parents and children. Annual leave and leave without pay are appropriate to meet these needs.

### 13-6. LEAVE FOR ADOPTION AND FOSTER CARE

a. **The adoption process.** Adoption is often a long and arduous process for a prospective parent. There are many arrangements that adoptive parents must make. For example, an adoptive parent often must make a commitment to stay home with the adopted child for the first several months. This is why agencies should be flexible and compassionate in the granting of leave during this important time. Certainly, agencies need to give adoptive parents the same consideration as natural parents. Leave for adoption may be annual leave or

leave without pay. Sick leave for this purpose is not appropriate.

b. **Foster care.** As with adoptive parents, agencies need to be flexible and compassionate in the granting of leave for employees who are foster parents. Annual leave and leave without pay are appropriate for employees who must take care of the needs of foster children.

c. **Children with special needs.** There has been increasing emphasis in recent years on encouraging the adoption of children who have historically been difficult to place; for example, children with mental or physical handicaps. Employees who take on this enormous responsibility may need even more support and encouragement than parents of children who are not disadvantaged. Annual leave and leave without pay are appropriate for such purposes.

### 13-7. LEAVE FOR CHILD CARE

a. **Well-baby care.** Parents take their babies to the pediatrician periodically for check-ups to make sure the baby is exhibiting the normal developmental signs and is otherwise healthy. These check-ups continue, at decreasing intervals, as the child grows older. These responsibilities only require leave for a few hours or, at most, a day here and there. But they are responsibilities that cannot be postponed as readily as other leave plans. Annual leave and leave without pay are appropriate.

b. **Routine illness.** Children often suffer minor maladies such as ear infections, colds, stomach ailments, and mysterious rashes. As a result, supervisors may find that parents take more unscheduled leave than other employees. There is often nothing a working parent can do other than stay home with the child. Fortunately, these routine illnesses are usually short-term. Annual leave and leave without pay are appropriate for this purpose.

c. **Other illness.** Unfortunately, children still get highly contagious diseases for which public health officials require the child to be quarantined, isolated, and restricted. Employees who must stay home to care for a child with such a disease, or who have been exposed to such a disease, should be granted sick leave.

### 13-8. LEAVE FOR OTHER PARENTAL AND FAMILY RESPONSIBILITIES

a. **School schedules and activities.** From time to

a. **School schedules and activities.** From time to time parents are obligated to attend events such as teacher conferences, school plays, pageants, sporting events, and other activities. Agencies should be flexible in granting leave for these occasions. Annual leave and leave without pay are appropriate for these activities.

b. **Sitters.** Young children of a single working parent or a working couple are usually placed in some kind of day care situation outside the home. Some children are placed with a sitter, rather than in a day care center. Sitters get sick, need time off for personal reasons, and

have emergencies. This means that the working parent may have no alternative but to stay home with the child. Annual leave and leave without pay are appropriate for this purpose.

c. **Elderly parents and other dependents.** We should not forget that among the more typical family responsibilities is the care for the elderly and the infirm. There will be times when employees will need time off to attend to the medical and personal needs of these dependents. Annual leave and leave without pay are appropriate for this purpose.



# Veterans' Ranks Thinning on Capitol Hill

By Al Kamen  
Washington Post Staff Writer

**N**ot long ago there was a time when being a veteran was virtually a prerequisite for anyone seeking political office.

No more.

Last month's congressional elections show a sea change. Whereas 20 years ago, 73 percent of the Senate had served in the armed forces, the Senate next year will have a bare majority, 51 members with military service of some sort.

And only two of the 11 Republican freshman senators, **James M. Inhofe** of Oklahoma and **Craig Thomas** of Wyoming, are veterans.

The downward trend of veterans, reflecting a national slide, is the same on the House side. Fewer than a quarter of the 86 new House members are veterans, and that pushes down the overall presence of veterans in the new House to about one-third of the members, or 148. In contrast, about 70 percent of the House members in 1975 listed military service in their backgrounds.

This may not say anything about how the Defense Department will fare in budget battles to come, but it's clear that more lawmakers with no hands-on knowledge of military matters will be voting.

## Kemp's Kansas Caper

■ Things got a bit surreal late Tuesday for former representative and prospective presidential candidate **Jack Kemp**. Accompanied by his son, **Jimmy Kemp**, after a weekend of skiing in Vail, Kemp was driving to Kansas City where he planned to catch a plane back to Washington.

But he was trapped en route in a snowstorm that ripped through the Midwest. He looked at a road sign and discovered he was smack-dab in the middle of Russell, Kan., home of **Robert J. Dole** (R-Kan.), the incoming Senate majority leader.

Kemp was so taken with the idea of being in the home town of a likely rival for the 1996 Republican nomination, that he took a picture of himself to record his entry and safe exit from Dole country.

## Public Relations Giant Adding GOP Clout

■ Sources say public relations giant Hill & Knowlton is working to beef up its Republican resources, bringing in **John Timmons**, who used to be legislative counsel to **Sen. John McCain** (R-Ariz.).

There are rumblings that the firm is making a very serious run at signing on veteran reporter **David C. Beckwith**, press secretary to former vice president **Dan Quayle** and more recently communications director for **Sen. Kay Bailey Hutchison** (Tex.). H&K vice chairman **Frank Mankiewicz**, asked if the rumblings were true, said: "I sure hope they are."

## Regula Passes 'Non-Green' Test

■ Veteran Rep. **Ralph Regula** (R-Ohio), fended off a mini-sagebrush rebellion against his ascension to chair a key appropriations subcommittee with control over environmental matters.

Conservative activists said Regula's record was

way too green when it came to mining, grazing and other matters.

About 30 Republicans from the Western States Caucus met with him Monday to hear Regula's assurances that their concerns would be addressed.

Regula insisted he was not as green as environmentalists claimed, sources said.

## Former TV Anchor Takes Family Leave Post

■ Former Channel 7 anchor **Susan King**, who has been doing various television stunts since leaving the station about a year ago, is going to be the new executive director of the Commission on the Family Medical Leave Act, which was the Clinton administration's first legislative achievement.

The commission is to review how the law is being implemented and to make recommendations for changes.

Administration folks are tickled to have hooked King for the job, feeling this puts a public face both on the law and on the commission at the same time. King wrote a moving account in May 1992 in Washingtonian magazine describing her efforts to adopt a baby and the importance of family leave.

## Harvard Misspoke on Session for Lawmakers

■ Harvard University's Kennedy School of Government says it was wrong to claim, as was stated in Wednesday's column, that its orientation sessions for freshman lawmakers were mostly open—in contrast to the Heritage Foundation's mostly closed-session policy.

That claim was made by a green staff assistant, says **Steve Singer**, the school's communications director. The sessions have been, in fact, mostly closed at Harvard too, he says.

Seems an aversion to sunshine is widely shared these days.

## New in Transportation Circles

■ A convoy of new transportation public affairs officers has arrived in official Washington.

The National Transportation Safety Board, which has lost two public affairs officers lately, now has a new chief, **Julie N. Beal**. Beal has held several Transportation Department jobs and was NTSB member **John K. Lauber**'s special assistant for a number of years.

At Transportation itself, **William S. Adams Jr.** was named associate director of the Office of Public Information, the post held for years by the late **Bob Marx**, who left some large shoes to fill. Adams was most recently press secretary to the Senate Judiciary Committee.

The Federal Railroad Administration also has a new public relations chief, **David A. Bolger**, who comes from the Bethesda-based public relations firm, Global Exchange Inc. Many of his clients involved sports, including the National Collegiate Athletic Association. He also worked in the 1992 Clinton-Gore campaign.

**EXECUTIVE OFFICE OF THE PRESIDENT**  
**Office of Management and Budget**  
**Veterans Affairs/Personnel Division**

**FAX COVER SHEET**

**DATE:**

**TO:** ROSALYN MILLER

**AGENCY:** DOMESTIC POLICY

**FAX NUMBER:** 6-2878

**PHONE NUMBER:** 6-2249

**FROM:** CHRIS HENSEL

**Personnel, Postal and EXOP Branch**

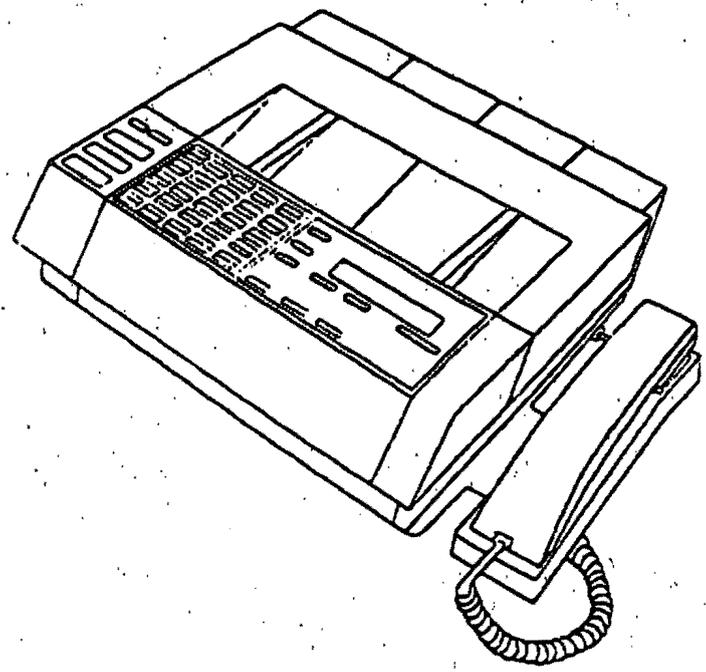
**PHONE NUMBER:** 202/395-5017

**FAX NUMBER:** 202/395-5738

**COMMENTS:** PER OUR CONVERSATION

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**Number of Pages (including this page)** 5

*If you do not receive all the pages, please call as soon as possible.*



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

August 3, 1993

MEMORANDUM FOR DEPUTY ASSOCIATE DIRECTORS  
DEPUTY ADMINISTRATORS  
DEPUTY ASSISTANT DIRECTORS

FROM: *[Signature]*  
John B. Arthur  
Assistant Director for Administration

SUBJECT: Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 was enacted on February 5, 1993 and will become effective on August 5, 1993. Attached for your information is a summary of the major provisions of this act concerning Federal employees.

Under this act, employees are entitled to receive up to 12 workweeks of leave without pay during any 12-month period for any of the following reasons:

1. birth and/or care of a newborn child;
2. adoption of a child; placement of a foster child;
3. care for spouse, child, or parent with a serious health condition;
4. serious health condition of employee.

An employee may choose to substitute annual leave, sick leave, or compensatory time off for any part of the leave without pay. However, the granting of this leave must be consistent with leave policies described in OMB Manual Chapter 315.

You should ensure that your staff is familiar with the requirements of the Family and Medical Leave Act of 1993 and that leave is granted consistent with the requirements of this act.

If you or your staff have any questions concerning the requirements of this act, please call Teri Ellison (x3970) or Steve Weigler (x4855).

Attachment

c: Associate Directors  
Assistant Directors  
Administrators

## Attachment 1

**HIGHLIGHTS OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993  
(Public Law 103-3, February 5, 1993)****Title II - Leave for Civil Service Employees****ELIGIBILITY**

- Employee means an employee as defined under the current annual and sick leave system (5 U.S.C. 6301(2)), plus physicians, dentists, and nurses in the Veterans Health Administration of the Department of Veterans Affairs; teachers in overseas schools operated by the Department of Defense (20 U.S.C. 901); and employees paid from nonappropriated funds. Temporary and intermittent employees are excluded from coverage.
- Eligible employees must have completed at least 12 months of civilian service with the Federal Government.
- Title I of the Act provides family and medical leave for non-Federal employees and certain Federal employees not covered by Title II. There are differences between some Title I and Title II provisions, and agencies should be aware that in some instances they may have to follow different statutory and/or regulatory requirements. (The remainder of this summary addresses Title II provisions only.)

**LEAVE BENEFITS****Total of 12 Workweeks of Leave**

- An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave (leave without pay) during any 12-month period for one or more of the following reasons:
  - (A) birth of a son or daughter and care of newborn (within 1 year after birth);
  - (B) placement of a son or daughter with employee for adoption or foster care (within 1 year after placement);
  - (C) care for spouse, son, daughter, or parent with a serious health condition; or
  - (D) serious health condition of employee that makes employee unable to perform duties of his or her position.

### Intermittent Leave and Reduced Leave Schedule

- An employee must obtain agreement with the agency to take leave intermittently or on a "reduced leave schedule" under (A) or (B).
- Leave may be taken intermittently or on a "reduced leave schedule" under (C) or (D) when medically necessary. An agency may require temporary transfer to an alternative position with equivalent pay and benefits that can better accommodate intermittent leave under (C) or (D).
- On a "reduced leave schedule," the employee's usual number of hours of work per workday or workweek are reduced. The hours of leave taken by an employee under a reduced leave schedule will be subtracted, on an hour-for-hour basis, from the total amount of the 12 workweeks of leave remaining available to the employee for purposes of the 12-month period involved.

### Substitution of Accrued Leave for Leave Without Pay

- An employee may elect to substitute annual leave or sick leave (consistent with existing sick leave regulations) for unpaid leave (leave without pay) for any part of the 12-week leave entitlement.

### Notification of Request for Leave

- An employee shall provide up to 30 days notice of need for leave, as practicable.
- When leave is being requested for a serious health condition under (C) or (D), an employee should make a reasonable effort to schedule treatment, subject to the approval of the health care provider, so as not to disrupt unduly the operations of the agency.

### MEDICAL CERTIFICATION

- For leave under (C) or (D), an agency may require medical certification with the date of onset, prognosis, statement of need for care, etc. An agency may require a second opinion, at its expense, if the agency doubts the validity of original certification.
- An agency may require a third opinion, at its expense, from a health care provider jointly approved by the employee and agency when the second opinion differs from the original certification. (The third opinion is limited to the information in the original certification.) The third opinion is final and binding on the agency and the employee.

3

- An agency may require periodic recertification at its expense.
- The term "health care provider" includes a physician or any other person determined by the Director of OPM to be capable of providing health care services.

#### RETURN TO EMPLOYMENT

- An employee who takes leave is entitled to be restored to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment.
- This leave shall not result in the loss of any employment benefit accrued before leave began. Except as otherwise provided by or under law, the new law will not entitle any restored employee to the accrual of any employment benefits during any period of leave or to any right, benefit, or position of employment other than those to which the employee would have been entitled had the employee not taken the leave.
- An agency may have a uniformly applied practice or policy that requires each employee to obtain certification from a health care provider concerning the employee's ability to resume work. An agency may also require periodic status reports on the employee's ability or intention to return to work.

#### HEALTH INSURANCE

- An employee may elect to continue Federal Employee Health Benefits (FEHB) coverage and make arrangements to pay the employee contribution. (Note: FEHB coverage is limited to 1 year on leave without pay at the employee's option and expense.)

#### EFFECTIVE DATE

- Public Law 103-3 will become effective on August 5, 1993.

#### REGULATIONS

- OPM's regulations for Title II must be consistent, to the extent appropriate, with the Department of Labor's regulations implementing Title I. Not later than 120 days after enactment, the Secretary of Labor is required to prescribe regulations to implement Title I (providing leave entitlement to non-Federal employees).

# **APPLICATION OF THE FAMILY AND MEDICAL LEAVE ACT TO WHITE HOUSE STAFF AND POLITICAL APPOINTEES**

## ***PURPOSE OF PROPOSED EXECUTIVE ORDER***

To apply the provisions of the Family and Medical Leave Act (FMLA), once enacted, to White House staff and political appointees.

## ***OVERVIEW OF POLICY CONSIDERATIONS***

As currently drafted, the Family and Medical Leave Act would not apply to political appointees — the only government employees to receive guaranteed unpaid leave under the act are career civil servants. This EO would extend the provisions of the Family and Medical Leave Act to White House staff and political appointees. Note that this action could only be taken after passage of the act itself.

## ***SUMMARY OF EXECUTIVE ORDER***

The Executive Order will apply the provisions of the Family and Medical Leave Act, once enacted, to White House staff and political appointees. Presently, under 5 U.S.C. sec. 6301(2), leave provisions in current law do not apply to: (x) an officer in the executive branch or the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of Title V; or (xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal; or (xiii) an officer in the legislative or judicial branch who is appointed by the President. The Title V leave provisions also do not apply to appointees who are not "officers" and who are not in position covered by the General Schedule or the Executive Schedule. This order will apply the provisions of the FMLA to these exempted employees.

The FMLA provides generally that all covered employees may take up to 12 weeks per year for the combined purposes of childbirth, adoption, foster care placement, or the serious health condition of the employee or the employee's child, spouse or parent. There are also provisions for continuation of health insurance during the leave period.

## ***LEGAL AUTHORITY***

The legal authority for issuance of the Order is the President's general Constitutional executive powers and certain provisions of Title V. The strongest source of Title V authority is section 6603(2)(x), (xi), and (xiii). These are the exemptions from

annual and sick leave that apply to Presidential employees. Since Congress has not legislated the leave policies for these employees, then the President implicitly retains the authority to set policy for them under Article II and 5 U.S.C. section 7301.

# ADOPTION LEAVE

## *PURPOSE OF EXECUTIVE ORDER*

The purpose of this Executive Order is to allow federal government employees to obtain paid leave in connection with the process of adopting children.

## *OVERVIEW OF POLICY CONSIDERATIONS*

Allowing federal employees to use sick leave for adoption-related procedures is a cost-free statement by the President on the importance of adoption and its place in the policies of his administration. Further, this Order supports the concept of family.

## *SUMMARY OF EXECUTIVE ORDER*

The Order would allow federal employees, to the extent permitted by law, to use sick leave for adoption-related procedures (house visits, visits to the state or country where the child lives, court proceedings, etc.) The Order would direct OPM to consult with the Civil Service Commission and issue guidelines to federal agencies to coordinate such leave.

## *LEGAL AUTHORITY*

The President has authority under Article II of the Constitution to issue this Order, although it must be drafted in a manner that does not infringe upon Congressional legislation on the specific subject of federal employee leave. In 1990, Congress enacted a temporary one-year modification of the sick-leave statute that allowed sick leave to be used for purposes related to the adoption of a child. By enacting such a measure dealing with adoptive leave, Congress may have indicated that such a leave was not authorized by 5 U.S.C. section 6307. To avoid any argument that the President had invaded an area occupied by Congress, any Presidential action should be harmonized with the leave provisions of Title 5.

Alternative authorities might support adoptive parental leave. For example, Congress has recognized the President's authority to create "holidays" (5 U.S.C. sec. 6103(b)) and to arrange "nonworkdays" by Executive Order (5 U.S.C. sec. 6302(a)).

# MAKING THE FEDERAL GOVERNMENT A "FAMILY-FRIENDLY" EMPLOYER

## *PURPOSE OF EXECUTIVE ORDER*

The purpose of this Executive Order is to make the federal government a "family friendly" employer.

## *OVERVIEW OF POLICY CONSIDERATIONS*

This Order demonstrates the President's commitment to helping employees balance the demands of family and work. It is part of our effort to make the federal government a pro-family employer.

## *SUMMARY OF EXECUTIVE ORDER*

This Executive Order will direct all departments and executive agencies to increase the opportunities for: (1) child care services; (2) part-time employment and job-sharing; (3) flex-time; and (4) telecommuting for their employees.

## *LEGAL AUTHORITY*

This executive action is supported by both Constitutional and statutory authority. Generally, the President may take these actions pursuant to Article II, sections 1 and 3. Various statutory law has been identified which further supports these actions. In all cases where a statutory framework exists, the executive order will need to be drafted to be consistent with the dictates of that law. For example, where unionized employees are involved, there is the question as to whether the part-time program may be implemented unilaterally outside the context of a collective bargaining agreement. The Order should be drafted taking this into account to avoid interfering with negotiations in any particular bargaining unit.

Moreover, the difference in legal status between independent agencies vis-a-vis executive agencies will need to be accounted for in the drafting of the Order.

LEVEL 1 - 1 OF 10 STORIES

Copyright 1994 The Times Mirror Company  
Los Angeles Times

August 28, 1994, Sunday, Orange County Edition

SECTION: Business; Part D; Page 1; Column 2; Financial Desk

LENGTH: 1535 words

HEADLINE: FEW WORKERS USING FAMILY LEAVE LAW;  
ONLY 1% OF PERSONNEL AT MOST CALIFORNIA FIRMS ARE TAKING THE 12 WEEKS. BUSINESS  
WONDERS WHAT THE FUSS WAS ABOUT.

BYLINE: By DON LEE, TIMES STAFF WRITER

BODY:

Linda Kopps, personnel manager at Fireplace Manufacturers Inc. in Santa Ana, remembers worrying last August when the national family leave law took effect. "I thought a slew of workers would use it," she says. "It seemed so perfect for abuse."

But in the past 12 months, Kopps says, not a single one of her company's 202 workers has asked for the federal leave. What does Kopps think about the law now? "It's not that big of a deal," she concludes.

While not universal, Kopps' opinion reflects a broad sentiment among employers in the state and nation. The Family and Medical Leave Act -- which allows up to 12 weeks of unpaid, job-protected leave for childbirth, adoption or serious illness of an employee or family member -- hasn't been as burdensome as employers feared.

For California employers, the worst has been some confusion between the federal law and a similar state-leave rule, which has been in place since 1992. But last October, California's law was changed to closely conform with the federal act.

"What it looks like is a lot of business leaders made a big stink about nothing," says Ron Seide, marketing manager at Kingston Technology Corp. in Fountain Valley, adding that he can not recall anyone at his 300-employee firm who has used the federal leave law.

Patricia Callahan, executive vice president of personnel at San Francisco-based Wells Fargo Bank, isn't sure how many of the company's 19,000 workers have taken the federal leave. Tracking workers on family leave hasn't been easy, she says, and the law has led Wells Fargo to hire more contract workers and to revise its leave policy. Still, Callahan said, "I don't know if we have denied it. The company has learned to survive it quite well."

For some workers, the federal leave has been a godsend. Dawn Gaskill, a sales coordinator at the Costa Mesa Marriott Suites, took almost four months off work for the birth of her second child by combining the state's pregnancy disability leave time and the amount of time granted under the federal law.

"It was a very big relief to know I would have a job when I got back," said the 29-year-old Anaheim resident. By contrast, when Gaskill had her first

Los Angeles Times, August 28, 1994

child four years ago, she says she quit her data-entry job because she could not get such an extended leave.

Taking leave to bond with a newborn, as Gaskill did, probably accounts for most of the people taking the federal leave. But experts say increasingly, workers are using the year-old law to care for an elderly parent.

Barbara Aguil, a lab technician at North American Chemical Co. in Trona, northeast of Bakersfield, had only two vacation days and no sick leave left for this year when her 71-year-old father became critically ill. Aguil says she considered calling in sick, but then her supervisor reminded her of the federal leave. "I had read about (the law) last year, but you don't think you're going to need it."

She did, and the federal law allowed her to care for her father during his last two weeks of life. "It meant the world to me," Aguil said. "I talked to him, I held his hand, I knew he knew I was there."

On average, it appears that only 1% or fewer of employees at most California companies are using the family leave, according to a private survey and other reports.

Experts believe that many more people would ask for the federal leave if companies got the word out about the year-old law. "The bottom line is employers haven't actively been communicating the law," says Janice Stanger, an associate at the consulting firm of William M. Mercer Inc., whose survey in January found that fewer than 50% of the California employers questioned had provided information about the federal leave law to their workers.

In one such dispute in Southern California, Paul Worthman, research director at the Service Employees International Union Local 399 in Los Angeles, accuses Kaiser Permanente of failing to post notices about the leave law in various Kaiser centers, as the law requires. "Kaiser never notified employees of the act's existence," said Worthman, whose union represents 12,000 workers at eight Kaiser centers. Kathy Logan, a nurse at a Kaiser Permanente clinic in Anaheim, adds that she was written up by her supervisor for taking a leave that Logan believes qualifies under the federal law. "They need to learn about this," she says.

Kaiser spokeswoman Kathleen Barco, while declining to comment on Logan's case, says that the health maintenance organization has posted notices and provided information about the federal law through employee newsletters. "I think we've met the letter of the law," Barco says, adding: "In fact, I think we've gone beyond it."

The Service Employee union's accusation against Kaiser, which has yet to be resolved, is one of 965 complaints lodged nationwide through June 30 with the Labor Department. About 11% of those were filed on the West Coast. Nationwide, labor officials say that six in 10 of the complaints against employers were valid.

In Orange County, the Santa Ana office of the Labor Department says it has received just four complaints, but information about those cases was not made immediately available.

Los Angeles Times, August 28, 1994

But even if employers were to do a better job of promoting the federal leave law, it's not clear there would be a surge of requests. The main reason is that the federal act provides for unpaid leave, and most people simply can't afford it.

Others don't want to jeopardize their careers by taking extra time off, which may explain why relatively few people are using the family leave law.

"There's probably a fear that their co-worker will take the occasion to rise and shine," says Tom Gardner, the Orange County regional manager of the Employers Group, a statewide association with 5,000 member businesses.

Many workers also cannot use the federally sanctioned leave because the law does not cover businesses with fewer than 50 employees or workers who have been at their jobs less than a year. And some companies, especially big employers, have long had sick leave and personal leave policies that are as generous as the federal law.

"We've always had the ability to take leave," said Angela Keefe, president of the Hotel Employees and Restaurant Employees Union Local 681 in Santa Ana, which represents workers at Disneyland and the Disneyland Hotel in Anaheim.

Perhaps because of the federal leave law, more employers now are also allowing employees to use company sick leave to care for a family member and allowing people to have flexible work schedules, says Renee Christensen, president of Employee Support Systems Co., an Orange-based firm that provides employee assistance and counseling for companies.

But on the whole, were it not for the federal regulations, workers would not be able to take extended leaves, as Steven Meade of Irvine is about to do.

Meade and his wife, Susan, have been saving for a year so he can spend three months with their first child, expected in late September. Meade, an engineer at the Marriott Suites Costa Mesa, has already received approval for the leave from his employer. "Without the law," Meade says, "I don't think I would have taken a lot of time, probably not even the full month."

Sharon Lockwood, the human resources director for three Marriott hotels in Orange County, including the one at which Meade works, said that in the past Marriott employees had no job guarantee if they took a personal leave of more than 30 days. Lockwood says that at her three hotels, which collectively employ 700 people, about 10 workers have taken the federal leave so far.

To cover for those on leave, Lockwood says she has hired temporary help and juggled employee schedules. But it has not been burdensome, she says, and it has helped build employee loyalty to the company. "It's extra paperwork, but that's about it."

#### Family-Leave Provisions

Employers with more than 50 employees are required under the Family and Medical Leave Act to provide 12 weeks of unpaid, job-protected leave to eligible employees. Details on the year-old federal law:

Los Angeles Times, August 28, 1994

## REASONS FOR TAKING LEAVE

Birth, adoption or placement of a foster-care child

To care for an ill spouse, child or parent with a serious health condition

Serious health condition affecting employee's ability to work

## ELIGIBILITY AND ADVANCE NOTICE

Applies to all employees who have been at a job for one year or 1,250 hours in the past 12 months

Employee must provide at least 30 days' notice, except in emergencies

Employer may require doctor's certification to support a request for serious health condition

## BENEFITS AND PROTECTION

Employees must be restored to original or equivalent positions with equivalent pay, benefits and other terms

Employer must maintain employee's group health coverage for duration of the leave

Act does not supersede any state, local or collective bargaining agreement providing greater family or medical leave rights

## FOR MORE INFORMATION

Want to know more about the Family and Medical Leave Act? Contact the Orange County office of the U.S. Department of Labor, Wage & Hour Division, (714) 836-2156.

Source: U.S. Department of Labor; Researched by JANICE L. JONES / Los Angeles Times

GRAPHIC: Photo, COLOR, Dawn Gaskill, right, worker at Marriott Suites Costa Mesa, took four months off by combining time granted by state, federal laws. ; Photo, Sharon Lockwood, employment director for 3 Orange County Marriott hotels, says company has adjusted to family leave laws with few problems. KEVIN P. CASEY / Los Angeles Times; Chart, Family-Leave Provisions, Los Angeles Times

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 29, 1994

## LEVEL 1 - 2 OF 10 STORIES

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August 13, 1994 Saturday, FINAL / ALL

SECTION: ARTS & LIVING; Pg. 1F

LENGTH: 904 words

HEADLINE: MORE CLOUT FOR FAMILY CONCERNS;  
FEDERAL LEAVE LAW HAS IMPACT ON WORKPLACE

BYLINE: By PAMELA MENDELS

DATELINE: NEWSDAY

BODY:

When his wife was pregnant with their first child last year, Christopher Given, a longtime oil company employee in Houston, heard a news report about a new federal law allowing many workers unpaid leave and continued health benefits for such events as the birth of a child.

Given, 36, who said he attended every prenatal checkup with his wife and hopes to be a 50/50 partner in the rearing of their child, made mental note of the item.

Several months later, he applied for leave and was able to witness the birth of Christopher Jr. and to spend the first 2 months of his son's life being a full-time dad.

Then, Given said, the other shoe dropped. He alleges - in an account disputed by his former employer, Shell Oil Co. - that shortly after he returned in January to his job as a senior purchasing assistant, he was fired; punishment, he said, for having taken time off. "They were retaliating because I took the Family and Medical Leave Act," Given said.

But, armed with the ammunition of the new statute, Given returned fire: He has sued Shell in federal court, accusing it of violating federal law. Shell calls Given's allegations "groundless" and "untrue."

The Family and Medical Leave Act just marked its first anniversary, and its main effect on the workplace may be that it has given thousands of employees clout when they encounter problems getting time off to tend to family emergencies or illnesses. Given's case is unusual in that he has taken his grievance against Shell to court; his lawsuit, requesting, among other things, restoration of his job, back wages and modest damages, is one of only a handful of such actions nationwide.

But thousands of others have turned to the U.S. Department of Labor and advocacy groups for assistance, either requesting printed notice of their rights or an informational phone call to their employer.

Not everyone is thrilled about the law. Family and women's advocates say it has had little impact because it applies to so few workers, yet business officials complain that it has proved an administrative headache. Almost

The Plain Dealer, August 13, 1994

everyone agrees that ignorance of the law, by both employers and employees, remains vast.

Nonetheless, many also agree on another point: that the act has ushered into the workplace new honesty about the weight of family concerns on employees. "There is not as much secrecy now about 'Yes, I'm pregnant,' or 'Yes, I have elder-care responsibilities,' said Dana Friedman, co-president of the Families and Work Institute, a New York-based research group. The Family and Medical Leave Act "is really opening up the door to talking about these issues and having companies better understand employees and what their family needs are."

The law allows eligible workers at employers of 50 or more to take up to 12 weeks of unpaid, job-protected leave - with continuation of health benefits - when they or a family member face serious illness or such things as birth or adoption.

During the law's first year, one of its chief problems has been its newness, according to employment lawyers, Labor Department officials and others who say employers and employees still have a lot to learn about the law.

One small example: Only 46% of employees responding to an informal survey by 9to5, a national association of working women, reported that their workplaces had posted information about the law, as required.

But labor officials, who note that they have answered 130,000 requests for information, also point to what they consider a low number of complaints as evidence that the law is taking root. In the first 11 months, the Labor Department fielded 965 complaints, a relatively small number, officials say, considering that 1.5 million to 2 million employees were estimated to be eligible for leave in that period.

About 590 complaints proved to be violations of the law - primarily refusals of employers to return leave-takers to the same or similar jobs as required by the law - and 90% were resolved after labor officials contacted employers.

So far, the department has filed no suits in connection with the law.

For their part, many employers and employer groups concede that the law has not caused the large-scale workplace disruption that some opponents of the legislation had predicted. At the same time, some say the administrative burden has been too heavy.

"Each leave has to be evaluated to see how much leave the person has already taken, what is the reason for the leave, does it qualify under the law, how much time does the employee have left under family leave vs. how much time the employee is going to be out," said Libby Sartain, director of employee benefits for Dallas-based Southwest Airlines, which has 15,000 employees.

Some advocates of the act believe that the law itself should be changed to include more people. Because it excludes small companies and many part-timers, the act covers only about 40% of the work force. The 9to5 report said some employers may be trying to lower even that number by hiring part-timers to work fewer than the 1,250 hours a year - about 25 hours a week - that help make an employee eligible for leave coverage.

The Plain Dealer, August 13, 1994

"If something is good and it's the right thing to do, you need to make it right for everybody," said Ellen Bravo, executive director of 9to5 and a member of a commission established by Congress to evaluate the law.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 14, 1994 .

## LEVEL 1 - 3 OF 10 STORIES

Copyright 1993 The New York Times Company  
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August 1, 1993, Sunday, Late Edition - Final

SECTION: Section 3; Page 23; Column 3; Financial Desk

LENGTH: 1056 words

HEADLINE: At Work;  
Interpreting the Family Leave Act

BYLINE: By Barbara Presley Noble

BODY:

FEW people are wildly ecstatic about the version of the Family and Medical Leave Act that will go into effect on Thursday. Many businesses would like no version of the measure, which requires them to grant employees up to 12 weeks of unpaid leave a year for family medical emergencies, arguing they already shoulder more than their share of expensive Washington-imposed social policy. Employee advocates wanted a stronger version, along the European model of extended paid leave, pointing out that few workers can afford to forgo a paycheck for three months.

Yet both sides will acknowledge what several surveys on leave benefits show: that the new law, if less generous than some state laws, is nevertheless in line with policies already in place at many companies, and thus is not likely to provoke a dramatic increase in the number of work days lost.

The measure is, however, likely to make taking time off a more formal process than it is now in many companies and in the process make an intimate knowledge of leave policy crucial for employer and employee alike. Because the law makes leave a right, not a benefit the employer may withdraw arbitrarily, employers who do not think through the details of their leave policies may find themselves in the middle of that clarity-inspiring process known as litigation. "Now employers must sit down and write rules," said John T. Koss, a vice president at the Segal Company, the benefits consultant. "Now they must pay attention to the minutiae."

And though the Labor Department's F.M.L.A. regulations, published last month, offer detailed implementation guidelines, there is still considerable room for interpretation -- an opportunity for an employee with a good grasp of his or her rights.

The Family and Medical Leave Act of 1993 requires employers with 50 or more employees to grant up to 12 weeks of unpaid leave annually, according to the Labor Department, "for the birth or adoption of a child, to care for a spouse or an immediate family member with a serious health condition, or when unable to work because of a serious health condition. Employers covered by the law are required to maintain any pre-existing health coverage during the leave period and, once the leave period is concluded, to reinstate the employee to the same or an equivalent job."

To be eligible, employees must have worked at a company for at least 12 months and have put in at least 1,250 hours in the year before the leave. The

The New York Times, August 1, 1993

employer must employ at least 50 total -- not just "eligible" -- employees within a 75-mile radius.

Employees must provide 30 days' notice when possible and may be required to submit medical certification.

Employers may not, according to the Wage and Hour Division's "Notice to Employees," "interfere with, restrain or deny the exercise of any right provided under the F.M.L.A." The Labor Department may investigate and resolve complaints, and employees may pursue civil actions for violations.

The Labor Department, having spoken through its regulations, may now sit back. However clear the mandate or straightforward the regs -- and benefits experts say they are unusually straightforward, as far as they go -- the action shifts to the talmudists in human relations departments, who must analyze the sacred writings for illumination.

What's a 12-month period, for example? (Up to the company.) Calendar or fiscal year, and if it's calendar year, may employees stretch out their leave to 24 weeks by taking the last 12 weeks of one year and the first 12 weeks of the next? (Ditto.) Must they take paid sick leave before taking unpaid family leave? (Ditto.) What can a supervisor who suspects a medical form is forged do about it? (The Labor Department forbids "pursuing" employees. Don't confirm with the doctor. Require, and pay for, second and third opinions from independent doctors.)

Can employees stretch out their family/ medical leave by taking it intermittently, say, two hours at a time? If they can, in effect becoming part-time employees, how does that affect official part-time employees, who may be working the same hours but not receiving benefits. (Up to the company, but with problematic equity ramifications.) May employer determine if an employee is critical to the care of an elderly parent? (Employer may not ask about the details of an employee's family situation.) What if an employee who goes on leave decides not to return? (Employer may recover the cost of health benefits paid during the leave.)

Segal's Mr. Koss advises employers to do the obvious: Review current policies and make sure they conform with the statute and let employees know about company policies. Though companies have some concerns about abuse of the leave law, no one is expecting a rash of bogus chemotherapy to break out. "People who take leave have pretty compelling reasons," Mr. Koss said. "They are not people staying home to watch the soaps." Companies know, as Mr. Koss put it, that "life happens." "They know it's inevitable these situations will arise," he said. The leave act will work to companies' advantage, he said, if they use it to communicate their concern about employees' lives outside the office.

#### WHAT EMPLOYEES NEED TO KNOW

If employers are worried about what the Family and Medical Leave Act will do, employee advocates are worried about what it won't do and are working on strategies to strengthen the measure. 9 to 5, the Milwaukee-based National Association of Working Women, is launching an effort to inform employees of their rights under the act. People, including well-educated people, often don't know what the law entitles them to in the workplace. "Our view is that you

The New York Times, August 1, 1993

don't have rights if you don't know them and can't exercise them," said Ellen Bravo, 9 to 5's executive director.

Come the revolution, 9 to 5, like other employee groups, would prefer a national policy of paid leave and more extensive coverage. In the short term, the organization is preparing for an increase of family and medical leave-related calls to its telephone hotline (800-522-0925). It is training its hotline operators to answer the legal questions that undoubtedly will arise. The hotline can also provide advice on how to work for and negotiate favorable policies at one's company, within the framework of the current law.

GRAPHIC: Graphs: "Cross-Pressures of Family and Job," show some of the demographic statistics that signal employees' growing need for flexibility in the workplace. (Source: "The Family and Medical Leave Act," Panel Publishers)

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 1, 1993

LEVEL 1 - 4 OF 10 STORIES

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St. Louis Post-Dispatch

February 11, 1993, THURSDAY, FIVE STAR Edition

SECTION: EDITORIAL; Pg. 2C

LENGTH: 1544 words

HEADLINE: LETTERS FROM THE PEOPLE

BODY:

Is Family Leave Act A Trick Or Treat?

The Family and Medical Leave Act is a sham. It is heart rending to see how excited President Bill Clinton and his party are in providing "the basic right for employees to take off from their job to care for a newborn child or a critically ill child, parent or spouse without fear of losing their job."

Wake up and read between the lines. This right doesn't apply to more than half of the nation's total work force, since it excludes private employers with 50 or fewer workers and 10 percent of the highest paid workers in businesses having more than 50 workers. If the 25 percent of the work force in the public or government sectors is excluded, it means that almost 70 percent of the private work force won't enjoy this right.

But not to worry. If it creates a problem in the public sector, the Democrats can justify tax increases or divert other tax resources to fund this right. If it is a burden on business, watch the burden passed to consumers, large business workers or stock holders.

If this legislation is a good example of the leadership we can expect from Clinton and the Democrats, God help us. John Sowers O'Fallon, Ill.

The Family and Medical Leave Act is true family-values legislation. It is sad that with all of the rhetoric emanating from the Republicans this past fall regarding family values, it took a Democratic administration to sign the bill. It is refreshing finally to see some legislation aimed at improving the lot of the middle class.

What is most unfortunate is that our newest member of Congress, Rep. Jim Talent, voted against the bill. Talent ran on a platform of support for the middle class and middle-class values, but those more familiar with his legislative record in the Missouri House of Representatives know that he is truly allied with the radical right. Thus, his vote against the Family Medical Leave Act is not a big surprise. But it is still disappointing and a glimpse of things to come.

Lee Erwin Creve Coeur

While the Family and Medical Leave Act exemplifies an entirely unnecessary intrusion of the government into the private sector, and while the bill will inevitably be the forerunner of a Family and Medical Paid Leave Act, the support of this legislation by President Bill Clinton offers pro-lifers a bit of irony: A pro-abortion president has signed a bill that actually encourages fathers

St. Louis Post-Dispatch, February 11, 1993

and mothers to give birth to their unborn children. Carl H. Mohme Florissant

I searched the Feb. 6 article about the Family and Medical Leave Act, but I couldn't find the information that Congress exempted itself from the bill. Does the Post-Dispatch think that the public isn't interested in this information?

The bill provides workers with an opportunity to handle family medical emergencies while not jeopardizing their employment. It's a shame that we have to pass legislation to give people that alternative. But it's a bigger shame that our elected officials think that they're too good to follow the same rules.

Douglas Hoener Florissant School Days

Recently, Monroe School was destroyed by arson. I graduated from Monroe in 1946. My memories are as vivid today as they were then.

This was your typical neighborhood school. Everyone either walked or was driven to school. When I walked my 10 blocks home after school, I knew that if I did anything wrong on the way home, my mother would know about it and would be waiting for me at the door. Earlier, we lived only a block from school, and I would go home for lunch or go to one of my friends' houses, where his mother would welcome us even though she didn't know I was coming.

There was no busing. There were minorities, mostly Hispanic, or in my case Irish-German. Don't think for one minute we weren't subject to ethnic slurs. We grew up; we got jobs, served our country and most students got an excellent education.

It breaks my heart to see the end of neighborhood schools. These schools were the foundation for morals and family involvement. My mother was always visiting teachers; but today, when a student is bused 20-plus miles, how can you expect families to be involved?

My thoughts won't change anything regarding neighborhood schools, but I want all of my former teachers and classmates to know I thank them for helping to make me the man I am today.

Vernon S. Eckert Affton Choice For Catholics

I take issue with the Feb. 3 letter from the Catholics for Choice. I was in church that Sunday, and no one forced anyone to sign any cards against the Freedom of Choice Act or, for that matter, made anyone stay for the pro-life sermon.

The people who checked their rights at the door were those who signed the Feb. 3 letter. It is apparently their belief that only those who agree with them are able to make responsible decisions.

They are the ones who are demeaning mature adults by their innuendo that those attending services would be so intimidated that they would not be able to decide the issue based on their own conscience. Free discussion of all sides of an issue is what creates change. Trying to shut off discussion of the opposing view is not the way to work toward understanding. Tom Zurheide Ballwin

St. Louis Post-Dispatch, February 11, 1993

This is a rebuttal and a censure to Harriette Lane Baggett, Mary Jane Schutzius and Kathleen Sharkey in regard to their Feb. 3 letter.

These and some other lukewarm Catholics need to be censured for their unconscionable and irresponsible remarks concerning the Freedom of Choice Act.

If anyone is a true believing Catholic, he or she is unconditionally opposed to the Freedom of Choice Act and other ramifications of abortion. By now, everyone should know how the Catholic Church stands on this issue.

William Hulub St. Louis

In reply to the Feb. 3 letter from Catholics For Choice, Catholics were given a choice. We were not forced to sign the postcards against the Freedom of Choice Act. They were given to us, and if we wanted to sign them, OK; if not, nothing was said - it was our choice.

The really sad part is that people who proclaim to be Christians can believe in any act that allows 4,000 babies to be murdered every day. I wonder how these women will feel if their children make the choice to have abortions and deprive them of one of the greatest pleasures in life - becoming a grandparent! Ruby L. Howarth Hannibal, Mo.

The Feb. 3 letter from three members of Catholics For Choice was most disturbing to me. These women imply that Catholics attending services on Jan. 24 were coerced into signing postcards opposing the Freedom of Choice Act.

No one was forced, pressured or intimidated into signing anything. Those who oppose the Freedom of Choice Act do so because we believe that abortion kills the unborn. We are not mindless puppets who fear to disagree with our church. Barbara Copple Kirkwood

I am puzzled by the Feb. 3 letter in which Harriette Lane Baggett, Mary Jane Schutzius and Kathleen Sharkey state that Catholics "apparently checked their rights and responsibilities at the door" in being asked to sign an anti-freedom-of-choice card at a service.

Why then didn't the troubled trio exercise their rights by walking out the door? Further, isn't their chosen sobriquet, Catholics for Choice, oxymoronic by definition? Raymond Ytzaina Catholics Against Catholics For Choice St. Louis Baseball Bigotry

Although I applaud the decision to suspend and fine Cincinnati Reds owner Marge Schott for her racist behavior, I believe the decision exemplifies the double standard held by baseball and by society.

That being, baseball continues to allow team mascots and team names that are offensive and degrading to members of our society on a daily basis.

American Indians are portrayed as feather-wearing, tomahawk-bearing primitives. Every time an individual sees the Atlanta Braves emblem, the name Braves is associated with the tomahawk. One only needs to look at Atlanta Braves T-shirts and the "tomahawk chop" to see how society has interpreted this symbol. In reality, the tomahawk is a sacred item and a very important symbol of American Indian culture in ways unassociated with warfare.

St. Louis Post-Dispatch, February 11, 1993

Similarly, the Cleveland Indians' goofy and comical "Chief Wahoo" is another blatant stereotype of American Indian lifestyle.

I don't feel baseball is entirely to blame, however. The double standard held by society, as well as the lack of American Indian political power, has made society apathetic toward protests.

It is time that baseball and society listen to the protests of American Indians and realize that the names and mascots of the Atlanta and Cleveland organizations are offensive and should be changed. Craig Foster University City

Now let me get this straight. Jesse Jackson publicly calls New York City Hymietown and uses other words derogatory to Jews, and that is OK. No outcries of bigotry. No punishment for Jackson.

Marge Schott uses uncomplimentary terms referring to blacks in a private conversation, and she is called a bigot. She must be punished for exercising her right of free speech and is also castigated by none other than Jackson. I guess I don't get it. Or are there different strokes for different folks? Ray Lambert St. Charles

LANGUAGE: English

LOAD-DATE-MDC: September 29, 1993

LEVEL 1 - 5 OF 10 STORIES

Copyright 1992 Star Tribune  
Star Tribune

July 12, 1992, Metro Edition

SECTION: News; Pg. 25A

LENGTH: 721 words

HEADLINE: U.S. should join the world in helping new parents

BYLINE: Marlene Johnson; Staff Writer

BODY:

The United States has the dubious distinction of being the only developed country in the world with no family leave policy, as well as no focused policy to address the needs of families with young children.

All of our international competitors enable parents of newborn or adopted children to adjust to their new roles by granting them paid leave with job security. Family leave is an essential cornerstone of a country's family policy.

Every new parent needs to realize his or her potential as a nurturer. It has long been recognized that it takes a minimum of three months for parents and a new infant to bond. We cannot afford to deny new parents that time, if we expect them to succeed at the long-term caretaking and nurturing responsibilities of parenthood.

Last fall, Congress passed the Family and Medical Leave Act. However, Congress has not sent the bill to President Bush because he promises to veto it. Congressional leaders fear there may not be enough votes to override his veto - the House vote fell short of the two-thirds support necessary by 37 votes.

That's why it's essential that parents tell their members of Congress and the president that they want and need family leave.

Family and Medical Leave provides an employee with 12 weeks of unpaid, job-protected leave per year after the birth or adoption of a child, or for the serious illness of the employee or an immediate family member. Only firms with 50 or more employees would be covered by the act.

Without protection from job loss, workers must rely on a boss' compassion to take time off to spend the first few months with a newborn. And since infant care is virtually unavailable in many communities, many parents must stay home with their newborns - whether or not they will be allowed to return to their jobs. The tension caused by the threat of job loss escalates the stress that new parents already feel.

By any standard, the Family and Medical Leave Act is a modest proposal. Virtually every other developed nation in the world protects families with parental or maternity leave.

Most European nations permit time off with pay. Canada allows up to 41 weeks of leave - 15 of those at 60 percent of an employee's normal pay. France provides 16 weeks at 90 percent pay; Japan covers 12 weeks at 60 percent

Star Tribune, July 12, 1992

regular pay.

Since the president says that parents should be the primary caretakers of their children, and that they must meet the financial needs of their families as well, he should square his policies with his rhetoric.

The president objects to the imposition of new labor standards. However, the Family and Medical Leave bill is in keeping with mandated leaves for jury duty and for participation in armed services - events which occur with much shorter notice.

Aetna Life and Casualty Co. estimates that its general family leave program saved approximately \$ 2 million in 1991 by reducing employee turnover and training costs.

Opponents of the Family and Medical Leave Act who use the argument that it costs too much apparently overlook the effect on the economy of lost family earnings and the tax dollars spent on unemployment insurance and service to workers who must choose between their families and their jobs. Taken together, these costs amount to over \$ 800 million each year.

Currently, Minnesota is one of 14 states that has enacted some version of family and medical leave. A recent survey of six of those states, including Minnesota, conducted by the Families and Work Institute in New York, found that the laws had not imposed a financial or management burden on Minnesota employers.

The Family and Medical Leave Act would provide Minnesota parents with additional job protection they badly need. There are two opponents of the proposal in the Minnesota delegation: Reps. Vin Weber and Jim Ramstad. Both of them need to hear from parents. They need to know that they cannot credibly call themselves "pro-family" if they oppose the Family and Medical Leave Act.

Marlene Johnson, former lieutenant governor of Minnesota, is senior fellow for the Universal Family Agenda Project at the Center for Policy Alternatives and co-chair of the National Advisory Panel for the Child Care Action Campaign.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: July 15, 1992

FRIDAY  
JULY 23, 1993

Friday  
July 23, 1993

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Part III

**Office of Personnel  
Management**

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5 CFR Parts 630 and 890

Family and Medical Leave; Interim Rule

OFFICE OF PERSONNEL  
MANAGEMENT

5 CFR Parts 630 and 890

RIN 3206-AF 51

## Family and Medical Leave

AGENCY: Office of Personnel  
Management.ACTION: Interim regulations with request  
for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations on family and medical leave to implement Title II of the Family and Medical Leave Act of 1993 (Pub. L. 103-3, February 5, 1993). Public Law 103-3 will become effective on August 5, 1993. The interim regulations provide certain Federal employees a total of 12 administrative workweeks of unpaid leave during any 12-month period for: (a) The birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son, daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. The employee may continue health benefits while he or she is on leave and is entitled to be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

**DATES:** Interim regulations are effective on August 5, 1993. Comments must be received on or before October 21, 1993.

**ADDRESSES:** Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** For information on the Family and Medical Leave Act of 1993, contact Jo Ann Perrini, (202) 606-1413. For information on the Federal Employees Health Benefits Program, contact Abby L. Block, (202) 606-0191.

**SUPPLEMENTARY INFORMATION:** The Family and Medical Leave Act of 1993 (also called "FMLA" or "the Act"), Public Law 103-3, was enacted on February 5, 1993, and will become effective on August 5, 1993. Title II of the Act provides certain Federal employees with entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. The

purpose of these regulations is to implement the requirements set forth in sections 6381 through 6387 of title 5, United States Code, as added by Title II of the FMLA.

Title I of the FMLA covers non-Federal employees and certain Federal employees not covered by Title II. The Secretary of Labor has issued interim regulations implementing Title I of the FMLA at 29 CFR part 825 (58 FR 31794, June 4, 1993). Title II of the FMLA covers most Federal employees covered by the annual and sick leave system established under chapter 63 of title 5, United States Code, plus certain employees covered by different Federal leave systems. OPM's regulations set forth below implement Title II of the Act and are, to the extent appropriate, consistent with the interim regulations issued by the Department of Labor (DOL). Title III of the FMLA establishes a Commission on Leave. Title IV contains miscellaneous provisions, including rules governing the effect of the Act on more generous leave policies, other laws, and existing employment benefits. Title V provides entitlement to family and medical leave for certain employees of the United States Senate and the U.S. House of Representatives.

**Background**

The House Committee Report for Title I and Title II of the Family and Medical Leave Act of 1993 (Rept. 103-8, 103d Cong., 1st Sess., Parts 1 and 2, February 2, 1993) (hereinafter referred to as the "congressional report" or "legislative history") provides additional information on the intent of Congress in enacting the FMLA. The FMLA is intended to allow employees to balance their work and family life by taking reasonable amounts of leave for medical reasons, for the birth or adoption/foster care of a child, and for the care of a child, spouse, or parent who has a serious health condition. The Act is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote the national interest in preserving family integrity. Congress intended that the Act accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner that minimizes the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women. As stated in DOL's interim regulations implementing Title I of the Act, accommodating employee leave needs will work best and produce the greatest payback in the long term when done in a spirit of cooperation,

openness, and in recognition of the fact that both the employer and employee will benefit. By treating employees fairly and equitably, with concern and understanding of the stressful situations they face, and with a minimum of unnecessary requirements, employers will find employees to be more loyal, dedicated, and productive, and a greater asset to their organization.

The congressional report (Part 2) states that the law should not create a burden for the Federal Government as an employer, but will result in significant benefits to the Government through enhanced worker morale, productivity, and retention of quality employees. Congress recognizes that many Federal agencies already provide employees needed time off for medical problems or family needs. The Act simply establishes a clear Federal policy and ensures that all employees are treated fairly and equitably. In addition, in light of the intent of this legislation to assist employees, the committee sees no inconsistency in OPM issuing regulations different from those issued by the Secretary of Labor "where the effect of OPM's regulations is to better enable Federal employees to benefit from the leave provided by this legislation."

**Employees Covered**

Sections 6381 through 6387 of title 5, United States Code, provide entitlement to unpaid family and medical leave to any individual who (1) meets the definition of "employee" in section 6301(2) of title 5, United States Code; (2) is employed as a physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs appointed under section 7401(1) of title 38, United States Code; (3) is a "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code; or (4) is an employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds; and (5) has completed 12 months of service as an employee, as defined in (1), (2), (3), or (4) above. Section 6381(1)(A) of title 5, United States Code, specifically excludes temporary or intermittent employees and individuals employed by the government of the District of Columbia.

The interim regulations set forth below under 5 CFR part 630, subpart L, are applicable only to those individuals who meet the definition of "employee" in 5 U.S.C. 6301(2), excluding temporary or intermittent employees and individuals employed by the government of the District of Columbia.

Service that is *not* creditable for meeting the 12 months of service requirement under section 6381(1)(B) of title 5, United States Code, includes service under a temporary appointment or as an intermittent employee, service as an employee of the government of the District of Columbia, and military service (other than military duty performed while in a civilian position). In addition, service in a position covered by Title I or Title V of the FMLA is not creditable for meeting the 12 months of service requirement. Up to 6 months of leave without pay is creditable for meeting the 12 months of service requirement.

Sections 6381 through 6387 of title 5, United States Code, also cover physicians, dentists, and nurses in the Veterans Health Administration of the Department of Veterans Affairs appointed under section 7401(1) of title 38, United States Code; "teachers" or individuals holding "teaching positions," as defined in section 901 of title 20, United States Code; and employees identified in section 2105(c) of title 5, United States Code, who are paid from nonappropriated funds. However, OPM does not have responsibility for administration of the leave systems for these Federal employees. Therefore, under the authority of section 1104(a)(2) of title 5, United States Code, OPM has delegated responsibility for issuing regulations to implement section 6381 through 6387 of title 5, United States Code, to (1) the Secretary of Veterans Affairs for physicians, dentists, and nurses in the Veterans Health Administration appointed under section 7401(1) of title 38, United States Code; (2) the Secretary of Defense for "teachers" or individuals holding "teaching position," as defined in section 901 of title 20, United States Code, and certain employees identified in section 2105(c) of title 5, United States Code, who are paid from nonappropriated funds; and (3) the Secretary of Transportation for employees in the U.S. Coast Guard identified in section 2105(c) of title 5, United States Code, who are paid from nonappropriated funds. The regulations prescribed by the Secretary of Veterans Affairs, the Secretary of Defense, and the Secretary of Transportation must, to the extent appropriate, be consistent with the regulations issued by OPM implementing Title II of the FMLA at 5 CFR part 630, subpart L, and the regulations issued by the Secretary of Labor implementing Title I of the FMLA at 29 CFR part 825.

#### Effective Date

The Family and Medical Leave Act of 1993 will become effective on August 5, 1993. An employee on leave for one of the purposes defined in the Act when the Act becomes effective is entitled to invoke his or her entitlement to 12 administrative workweeks of family and medical leave beginning on or after August 5, 1993. No leave taken prior to August 5, 1993, may be counted against this entitlement. If an employee is on leave on August 5, 1993, as a result of a birth or placement for adoption or foster care that occurred prior to August 5, 1993, the 12-month period begins on the date of the birth or placement, and the entitlement to 12 workweeks of leave begins on or after August 5, 1993. For example, if the birth or placement occurred on May 23, 1993, the 12-month period begins on that date and expires 12 months later on May 22, 1994, and the employee's entitlement to 12 administrative workweeks of leave begins on or after August 5, 1993. This may entitle an employee who has already taken leave prior to August 5, 1993, for a birth or placement to additional leave. However, this circumstance will exist only in the initial implementation and transition period.

#### Entitlement to Leave

Under 5 U.S.C. 6382(a)(1), an employee is *entitled* to a total of 12 administrative workweeks of unpaid leave during any 12 month period for one or more of the following reasons:

- (1) The birth of a son or daughter of the employee and the care of such son or daughter;
- (2) The placement of a son or daughter with the employee for adoption or foster care;
- (3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or
- (4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. Under 5 U.S.C. 6382, a father and a mother are *each* entitled to 12 administrative workweeks of unpaid leave for a birth, adoption, or foster care or for the care of a son or daughter with a serious health condition.

An employee must invoke his or her entitlement to leave under the FMLA. An agency may not require an employee to invoke entitlement to leave under the FMLA. An employee who meets the criteria for leave and has complied with the requirements and obligations under the FMLA may not be denied family and

medical leave. An agency must confirm that an employee is invoking his or her entitlement to FMLA leave before the agency may subtract any hours of leave from the employee's entitlement to 12 administrative workweeks of leave. This requirement is intended to foster communication between employees and supervisors. To clarify and protect the rights of both agencies and employees, supervisors may wish to ascertain in advance whether any unpaid leave is being requested under the FMLA.

An employee may elect to substitute paid time off—i.e., annual leave, sick leave, compensatory time off, or credit hours under a flexible work schedule—for leave without pay under the FMLA, consistent with applicable laws and regulations. An agency may not deny an employee's right to substitute paid time off, or require an employee to substitute paid time off, for leave without pay under the FMLA. In addition, an employee may not retroactively substitute paid time off for leave without pay under the FMLA.

Leave without pay under the FMLA is in addition to annual leave, sick leave, advanced annual or sick leave, other leave without pay, leave made available to an employee under the voluntary leave transfer and leave bank programs, and compensatory time off or credit hours available to an employee. However, an employee must obtain approval and/or meet statutory requirements to take additional leave or other periods of paid time off.

#### Serious Health Condition

The FMLA defines a "serious health condition" as "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."

The congressional report (parts 1 and 2) explains that the term "serious health condition" is intended to cover various types of physical and mental conditions or illnesses that require an employee to be absent from work on a recurring basis or for more than a few days. Likewise, with respect to a spouse, child, or parent, the term "serious health condition" is intended to cover conditions or illnesses that make the spouse, child, or parent unable to participate in school or in his or her regular daily activities. Further, the term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. It is expected that such conditions will fall within the scope of an agency's normal sick leave policy.

Examples of serious health conditions cited in the legislative history include, but are not limited to, heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy (such as severe morning sickness), the need for prenatal care, childbirth, and recovery from childbirth. All of these conditions meet the general test that either the underlying health condition or the treatment for it requires absences on a recurring basis or for more than a few days for treatment or recovery. They also involve either inpatient care or continuing treatment and/or supervision by a health care provider, and frequently involve both.

The regulations require that to be considered a "serious health condition," the condition must require an absence from work, school, or other regular daily activities of more than 3 calendar days. In addition, a "serious health condition" must require continuing treatment by, or under the supervision of, a health care provider. This provision is similar to a statutory provision under the Federal Employees' Compensation Act (FECA), which generally provides for a 3-day waiting period before compensation is paid to an employee for a temporary disability after a period of "continuation of pay." (See 5 U.S.C. 8117.)

The FMLA also contemplates that employees would be entitled to leave in some cases because of doctor visits or therapy—i.e., that the absence requiring leave need not be due to a condition that is incapacitating at that point in time. The legislative history explains that absences to receive treatment for early stage cancer, to receive physical therapy after a hospital stay or because of severe arthritis, or for prenatal care are covered by the Act. Therefore, the regulations provide that a "serious health condition" includes treatment for a serious chronic health condition that, if left untreated, would likely result in an absence from work, school, or regular daily activities of more than 3 calendar days.

For any condition other than one that requires inpatient care, the regulations provide that the employee or the employee's spouse, son, daughter, or parent must be receiving continuing treatment by a health care provider. Continuing treatment means that the

patient must be treated: (1) Two or more times by the health care provider or by another health care provider under the orders of, or on referral by, the primary health care provider, or (2) on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider—e.g., a course of medication or therapy—to resolve the health condition. The regulations encompass medical conditions where the patient is under the continuing supervision of the health care provider, but may not be receiving active treatment, such as individuals suffering from Alzheimer's disease or late-stage cancer or who have suffered a severe stroke. In addition, leave may be taken to care for a spouse or parent of any age who is unable to care for his or her own basic hygienic or nutritional needs or safety—e.g., a spouse or parent whose daily living activities are impaired by Alzheimer's disease, stroke, clinical depression, recovery from major surgery, the final stages of a terminal illness, or other similar conditions.

Conditions or medical procedures that would not normally be covered by the Act include minor illnesses that last only a few days and surgical procedures that typically do not involve hospitalization and require only a brief recovery period. Complications arising out of such procedures that develop into serious health conditions are covered. Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) that are not medically necessary would not be covered, unless overnight inpatient hospital care is required. Restorative dental surgery after an accident or removal of cancerous growths would be included if the other conditions of the regulations are met—e.g., the condition requires an absence of more than 3 days. Treatments for allergies and stress may be included if the conditions of the regulations are met. Routine physical examinations are excluded.

Treatment of substance abuse may also be included, such as when a stay in an inpatient treatment facility is required. On the other hand, absence because of the employee's use of the substance, without treatment, does not qualify for leave under the FMLA. Also, note that inclusion of substance abuse as a "serious health condition" does not prevent an agency from taking disciplinary action against an employee who is unable to perform the essential functions of the employee's position, provided the agency complies with the Rehabilitation Act of 1973 (29 U.S.C. 701) and the agency does not take action against the employee because the employee has exercised his or her right

to take leave under the FMLA for treatment of that condition.

#### Health Care Provider

The congressional report (Part 1) states that "we have had \* \* \* a well-established principle of religious tolerance for those who seek and obtain treatment for a serious medical condition through prayer alone." Further, the congressional report (Part 2) states that "in some circumstances, a medical doctor will be the most expensive alternative among other qualified health care providers. It is, therefore, in the interest of both Federal employees and the taxpayers for the Director of OPM to exercise the discretionary authority granted by the legislation to designate other appropriate health care providers." Further, the congressional report notes that, "if administered too narrowly, the requirement that an employee or family member be receiving continuing treatment from a health care provider in order for the employee to qualify for medical leave or leave to care for a family member with a serious health condition could have the effect of denying any leave to practicing Christian Scientists on the basis of their religious beliefs. The committee, therefore, strongly urges that, for the purposes of this legislation, the Director designate Christian Science practitioners as health care providers in appropriate circumstances."

Consistent with the Act and the intent of the legislative history, the regulations include a broad definition of "health care provider" to include a Doctor of Medicine, a Doctor of Osteopathy, or a physician serving on active duty in the uniformed services; a health care practitioner certified by a national organization and licensed by the State; or a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

#### Unable to Perform Functions of the Position

The regulations provide that an employee is entitled to leave under the FMLA if he or she has a serious health condition that prevents the employee from performing the essential functions of his or her position. The legislative history states that it is not necessary that an employee literally be so physically or mentally incapacitated that he or she is unable to work in order to meet the requirement of being unable to perform the functions of his or her position. An employee who must be away from work to receive medical treatment or for continuing medical supervision meets this requirement. For example, an

employee undergoing kidney dialysis must be away from work to receive dialysis treatment, an arthritic employee may need periodic physical therapy, a cancer patient may require chemotherapy treatments, an individual who has suffered a serious accident may require periodic physical therapy under medical supervision, and an employee recovering from major heart surgery may be required to report periodically to a physician for examination or monitoring.

#### Intermittent Leave or Leave on a Reduced Leave Schedule

An employee must obtain approval from his or her employing agency to take leave on an intermittent basis or under a reduced leave schedule for the birth of a child or for placement for adoption or foster care. An employee may choose to take leave on an intermittent basis or under a reduced leave schedule when medically necessary to care for his or her spouse, son, daughter, or parent with a serious health condition or for the employee's own serious health condition. An employee's intermittent leave or reduced leave schedule necessary to care for a spouse, son, daughter, or parent includes not only a situation where the individual's health condition itself is intermittent, but also where an employee is only needed intermittently because care is also provided by a third party. The employee must consult with the agency and make a reasonable effort to schedule treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. In addition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which can better accommodate recurring periods of leave.

OPM encourages the agency and the employee to work together in developing a schedule for treatment that meets both the employee's family or medical needs and the agency's need to manage work. The anticipated duration of the intermittent leave or leave under a reduced leave schedule must be clearly understood by both the employee and the agency. The employee must be informed of any major changes in duties and responsibilities that may result from reassignment to an alternative position. The congressional report (Part 1) states that the committee anticipates that a reduced leave schedule will often be perceived as desirable by employers who would prefer to retain a trained and experienced employee part-time for the

weeks the employee is on leave rather than hire a full-time temporary replacement.

#### Notice of Leave

When the need for leave is foreseeable, an employee must provide notice to the agency of his or her intent to take leave not less than 30 days before the date leave is to commence. If a birth, placement for adoption or foster care, or medical treatment must begin within less than 30 days, the employee must provide such notice as is practicable. The congressional report (Part 2) states that the committee recognizes there will be events beyond the control of the employee that require an employee to begin family or medical leave before the employee is able to provide the full 30 days notice. The notice requirement is intentionally qualified (i.e., to provide such notice as is practicable) in order that employees in such circumstances are not denied leave. In such circumstances, the employee remains responsible, however, for providing the agency as much notice as is practicable, given the individual situation. Employees are encouraged to give the agency as much notice as is possible so that the agency has ample opportunity to plan the work during the employee's absence.

An agency may wish to waive the 30-day notice requirement under the FMLA and impose its own usual and customary policy for notification of leave. However, the agency's policy may not be more stringent than the requirements under the FMLA.

An employee's notice of his or her intention to take leave may be provided in person, in writing, or by telephone, FAX, telegraph, or other electronic means. Of course, in emergency situations, notice from an employee's spouse, domestic partner, family member, or other responsible party would suffice until the employee is able to contact the agency to provide additional information.

OPM is considering revising the SF-71, Application for Leave, to allow its use to obtain an employee's notice of his or her intent to take leave under the FMLA. In the meantime, agencies may wish to use the current SF-71 (or the agency's equivalent form) and add remarks to (1) identify the leave as "FMLA leave" for either family leave (for a birth, adoption or foster care, or the care of a spouse, son, daughter, or parent with a serious health condition) or medical leave (for the employee's serious health condition), and (2) document the beginning and ending dates of the employee's "12 month period" of FMLA leave entitlement.

OPM invites comments on agencies' experience in using a written form to obtain an employee's notification of his or her intent to take FMLA leave.

#### Medical Certification

Under 5 U.S.C. 6383, an agency may require that leave to care for a spouse, son, daughter, or parent of the employee or for the employee's own serious health condition be supported by certification issued by the health care provider and provided to the agency in a timely manner. The medical certification must include the information required by the interim regulations.

The medical certification supporting the need for leave to care for an employee's spouse, son, daughter, or parent must include a statement that the employee is "needed to care for" the individual. The legislative history makes clear that this provision is to be broadly construed to accommodate leave to provide psychological comfort, as well as physical care, to a seriously ill spouse, child, or parent or to arrange "third party" care for such family member (e.g., care by a visiting nurse or in a nursing home, placement in a special school, etc.). The medical certification must include a statement that the patient requires assistance for basic medical, hygiene, nutritional, safety, or transportation needs or that the employee's presence would be beneficial or desirable for the care of the individual. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period during which care will be provided.

The medical certification supporting the need for leave for the employee's serious health condition must include a statement that the employee is unable to perform the essential functions of his or her position. An agency may provide a statement of the essential functions of the employee's position (such as a copy of the employee's position description and/or performance standards) to assist the health care provider in making this determination.

The Act allows the agency to require medical certification from a second health care provider if the agency doubts the validity of the original medical certification. If the second opinion differs from the original certification, the agency may require certification from a third health care provider. The employee selects the health care provider to provide the original medical certification, the agency selects the second health care provider, and the agency and the employee must agree jointly on the health care provider that will provide

the third opinion. The third opinion is final and binding on the employee and the agency. OPM strongly encourages the agency and the employee to attempt in good faith to reach agreement on the third health care provider. For example, an employee who refuses to agree to see a particular health care provider in the specialty in question may be failing to act in good faith. On the other hand, an agency that refuses to agree to any health care provider on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

The Department of Labor has provided a medical certification form in Appendix B to its regulations implementing Title I of the FMLA at 29 CFR part 825. The use of this medical certification form is optional. OPM plans to transmit a copy of DOL's medical certification form to the agencies for their review. Agencies may wish to use DOL's medical certification form or develop their own form for obtaining medical certification from a health care provider. Agencies must comply with any recordkeeping requirements of the Privacy Act if they choose to develop a medical certification form. Agencies also are to protect an employee's confidentiality by ensuring that disclosure of the medical certification is made in accordance with the disclosure provisions of the Privacy Act at 5 U.S.C. 552a(b). OPM invites comments on whether it is necessary for OPM to develop a medical certification form. If necessary, OPM will publish the medical certification form either in its final regulations implementing Title II of the FMLA or in guidance in the Federal Personnel Manual (FPM).

The regulations allow that if an employee is unable to provide the requested medical certification before leave is to begin, the agency must grant leave on a provisional basis (i.e., "provisional leave") pending final written medical certification. OPM's regulations providing provisional leave are consistent with the congressional report (Part 2), which states, "[T]he committee recognizes, however, that an employee may not be able to provide certification at the same time that it is necessary to begin leave. The committee also recognizes that, in circumstances where an agency questions the initial certification, there is likely to be a time lapse before the employee is able to see a second or third health care provider. It is the committee's intent that, to the extent that an employee is unable to provide certification at the time it is necessary to begin leave or if the agency

questions the validity of the initial certification provided by the employee, an agency should, nevertheless, grant provisional leave pending final certification. If, ultimately, the employee is unable to provide the required certification, the leave granted provisionally should be charged to the employee's appropriate paid leave account. In addition, appropriate disciplinary action should be taken against an employee who knowingly provides false certification of the need for leave." (See 5 CFR part 752, Adverse Actions.)

The regulations state that to remain entitled to leave under the FMLA, the employee or his or her spouse, son, daughter, or parent, as appropriate, must comply with any requirement from an agency to submit to examination (though not treatment) by a health care provider (other than the individual's health care provider) to obtain a second or third medical certification. If the individual refuses to submit to such examination and the employee fails to provide a completed medical certification to the agency, the employee may be denied leave under the FMLA.

The regulations allow an agency to require an employee on leave to obtain medical recertification, not more often than every 30 calendar days, on the continuing need for leave. It is reasonable to require recertification less frequently when the health care provider has certified that a course of treatment will last a specified period of time—e.g., 6 weeks.

#### Protection of Employment and Benefits

An employee who takes family and medical leave is entitled, upon return from the leave, to be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment." The legislative history provides very strong language on what "equivalent" means. The congressional report (Part 1) states, "First, the standard of 'equivalence'—not merely 'comparability' or 'similarity'—necessarily requires a correspondence to the duties and other terms, conditions and privileges of an employee's previous position. Second, the standard encompasses all 'terms and conditions' of employment, not just those specified." The congressional report (Part 2) states that "it is the committee's intent that, whenever possible, an employee should be returned to the same position. In the exceptional case where doing so would impose extreme hardship on the agency, it is the committee's intent that the employee be placed in a position that offers

equivalent responsibilities as well as equivalent benefits, pay status, and other terms and conditions of employment."

An employee returning from family and medical leave should be treated the same as employees returning from leave without pay are currently treated, except where different entitlements and limitations are provided under the FMLA. For example, since an employee returning from FMLA leave is entitled to be returned to the same position or to an "equivalent position," an employee in a position subject to the Performance Management and Recognition System (PMRS) prior to FMLA leave must be returned to an equivalent PMRS position. An employee in a position covered by special salary rates under 5 U.S.C. 5305 prior to FMLA leave must be returned to an equivalent position providing equivalent special salary rates. In addition, an employee on leave without pay under the FMLA will be subject to the requirements under 5 CFR 531.406(b) to extend a waiting period for a within-grade increase for any time in excess of that allowed under that section. An employee's entitlement to be restored to an equivalent position does not extend to intangible or unmeasurable aspects, such as the perceived loss of potential or future promotion opportunities or the increased possibility of being subject to a future reduction in force.

If an employee's position was eliminated due to a reduction in force, the fact that the employee was on family or medical leave does not protect the employee from displacement. If an employee was hired only for a defined period or specific project, such as seasonal work, the agency is not required to return the employee if the period of employment has expired and the agency would not otherwise have continued to employ the employee. If, for reasons independent of the FMLA, an employee was reassigned to another position while he or she was on FMLA leave, the employee would be entitled to be returned to the position to which he or she was reassigned or an equivalent position.

The Act allows an agency to establish a uniformly applied practice or policy that requires each employee who takes leave under the FMLA for his or her serious health condition to obtain medical certification to return to work. The interim regulations allow agencies to require such medical certification to return to work only for employees in positions that have specific medical standards, physical requirements, or are covered by a medical evaluation program, as provided under 5 CFR part

339. The required medical certification is limited to documentation necessary to establish that the employee meets the specific physical qualifications and/or medical standards for his or her position—i.e., an agency may not require medical certification for conditions that are not directly related to the specific medical qualifications for the employee's position. If the employee refuses to provide the medical certification, appropriate disciplinary or adverse action may be taken.

If an employee is not fully recovered when he or she returns to work, the employee may request additional leave, including advanced annual or sick leave, donated annual leave from the Voluntary Leave Transfer Program or Voluntary Leave Bank Program, and additional leave without pay. In addition, the employee may request a reassignment or demotion to a different position, work schedule, or type of appointment that better suits the employee's personal needs. If the employee has exhausted all leave and reassignment or demotion to another position is not a viable alternative, the agency may take further action under 5 CFR part 752 (Adverse Actions) based on the employee's inability to perform the duties of the position. As provided in 5 CFR 752.404(c)(3), an agency may provide information concerning disability retirement to an employee who is eligible. The agency must be aware of the affirmative obligations established in 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

#### Federal Employees Health Benefits Program

Under the Federal Employees Health Benefits (FEHB) law, coverage continues for up to 365 days in a nonpay status. OPM regulations provide that the employee may pay the employee share of the premiums on a current basis or may incur a debt and pay his or her share upon return to a pay and duty status. The FMLA provides that employees who are granted leave under the Act must pay their share of the health benefits premium on a current basis; however, the Act also provides that an employer must comply with any employment benefits program that provides greater family and medical leave rights than established under the Act. Therefore, for employees who are granted leave under the FMLA that does not exceed the 365 days of continued coverage provided under FEHB law and regulations, the existing FEHB regulations will apply. That is, these employees may choose to incur a debt

and pay their contributions when they return to pay and duty status, just as they could before the FMLA was enacted. However, employees whose leave without pay granted under the FMLA exceeds the 365 days of continued coverage allowed under FEHB law and regulations are subject to the requirement to pay their share of the premiums on a current basis. The interim regulations, therefore, provide that employees granted leave without pay under the FMLA in excess of the 365 days of continued coverage under the FEHB law and regulations must pay their share of the premiums directly to the employing office on a current basis.

Employees whose coverage is terminated for nonpayment under these interim regulations are not penalized when they return to duty for their failure to make payments. They may reenroll upon their return to pay and duty status in the same way as employees whose coverage terminates because of the expiration of the period of continued coverage allowed during nonpay status.

#### Greater Leave Entitlements

The FMLA provides that an agency must continue to comply with any employment policy or collective bargaining agreement that provides greater family or medical leave entitlements to employees than those established under the FMLA. Conversely, the entitlements established under the FMLA may not be diminished by any collective bargaining agreement or any employment benefit program or plan. Nothing in the FMLA prevents an agency from amending existing leave and employee benefit programs, provided they comply with the Act. However, agencies may adopt or retain leave policies more generous than those provided in the FMLA, except that such policies may not provide entitlement to paid time off greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

The FMLA provides a basic statutory entitlement to 12 administrative workweeks of unpaid leave. The Act does not mandate a limit on the amount of leave without pay that can be provided to an employee for the purposes cited in the Act. Nothing in the Act would prevent an agency from providing greater leave entitlements—e.g., providing 12 administrative workweeks of unpaid leave to employees who are not entitled to FMLA leave because their Federal service cannot be counted as creditable in meeting the 12 months of service

requirement, granting more than 12 administrative workweeks of leave without pay, or allowing care for additional "family members" (as this term is defined in 5 CFR 630.902). Such policies should be non-discriminatory and made known to all affected employees.

#### Relationship to Current FPM Guidance

OPM has previously issued guidance to Federal agencies on leave without pay (LWOP) and leave for parental and family responsibilities. (See Federal Personnel Manual (FPM) chapter 630, subchapters 12 and 13.) This guidance encourages Federal agencies to develop policies that are compassionate and flexible for the employee, but indicates that in exercising this discretion, agencies should not establish policies that will adversely affect mission accomplishment. Nothing in the FMLA suggests that this FPM guidance requires substantial modification. Indeed, as indicated above, agencies may adopt or retain leave policies more generous than those provided in the FMLA. Since the FMLA establishes certain minimum entitlements for covered employees, however, it is important that each agency review its policy on LWOP and leave for parental and family responsibilities to ensure that it complies with the minimum requirements of the FMLA and the interim regulations set forth below.

#### Interaction with Other Laws

Nothing in the FMLA modifies or affects any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability. An agency must, therefore, comply with whichever statute provides the greater rights to the employee. If an agency violates both the FMLA and a discrimination law, an employee may be able to recover under either or both statutes. This is an important issue when merging the requirements of both the FMLA and the Rehabilitation Act of 1973 (29 U.S.C. 701). The following example demonstrates how the two laws would interact:

If, because of an illness or injury, a full-time employee cannot perform the essential functions of his or her position, the FMLA entitles an employee to take leave either on an intermittent or continuous basis and to retain the full-time position of record. This entitlement continues until the 12 workweeks of leave are exhausted. At the end of the FMLA entitlement, an employee is entitled to be returned to his or her same position or placed in an equivalent position with pay and benefits equivalent to those held by the

employee when leave commenced—i.e., those of a full-time position. If the employee is unable to perform the essential duties of the previous position, the Rehabilitation Act may, depending on the nature of the employee's disability, require an agency to attempt accommodation. If, for example the effort to accommodate results in the employee being placed in a part-time position, the employee would be entitled only to those benefits provided to part-time employees.

If the employee decides not to exercise his or her right to leave under the FMLA, the agency may still, depending on the nature of the employee's disability, be required to offer accommodation. In any case, an agency may not require an employee to accept an offer of accommodation under the Rehabilitation Act in lieu of exercising his or her entitlement to leave under the FMLA.

#### Recordkeeping and Reporting Requirements

The regulations require agencies to maintain records on an employee's use of FMLA leave and to provide such records and reports to OPM upon request. OPM believes this information is necessary to evaluate the effectiveness of the program and may be requested by interested parties, such as the Congress, the new Commission on Leave (as established under Title III of the FMLA), the General Accounting Office, and others on the use of this entitlement. The regulations require agencies to maintain information on: (1) The employee's rate of basic pay, as defined in 5 CFR 550.103(j); (2) the occupational series of the employee's position; (3) the number of hours of FMLA leave taken; and (4) whether the leave was family leave (for a birth or adoption/foster care or the care of a spouse, son, daughter, or parent) or medical leave (for the employee's serious health condition). The employee's rate of basic pay may be obtained from the SF-50, Notification of Personnel Action, blocks 12C or 20C, Adjusted Basic Pay. When an employee transfers to a different agency, the losing agency must provide the gaining agency with information on the employee's use of leave under the FMLA. OPM is considering revising the SF-1150, Record of Leave Data, to record information on an employee's use of leave under the FMLA when the employee transfers to a different agency. OPM invites comments from the agencies on the need to revise the SF-1150 based on their experience in administering this new entitlement to unpaid leave. Agencies may wish to maintain additional information on an

employee's use of FMLA leave, such as the dates FMLA leave was taken, in the event of litigation or employee grievances.

#### Miscellaneous

If an employee believes an agency has not fully complied with the rights and requirements provided under sections 6381 through 6387 of title 5, United States Code, and the regulations set forth below, the employee may file a grievance under an agency's administrative grievance procedures or negotiated grievance procedures.

Agencies are reminded that 5 U.S.C. 6385 specifically provides that 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 the FMLA.

An agency may not extend the notification and medical certification requirements under the FMLA to other periods of leave—e.g., annual leave, sick leave, and leave without pay. Current agency policies for granting annual leave, sick leave, and leave without pay continue to apply when an employee requests those types of leave.

When an employee requests leave under the FMLA, the agency must provide information on the employee's rights and obligations under the FMLA. In addition, OPM encourages agencies to provide information on additional programs, such as the voluntary leave transfer and leave bank programs, flexible and compressed work schedules, flexiplace, or any other agency program that will assist the employee in balancing his or her need to take family or medical leave and his or her responsibilities at work.

#### Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. A proposed rule would be impracticable and contrary to the public interest, since the entitlements provided in the FMLA must be effective on August 5, 1993.

#### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities,

since it applies only to Federal employees and agencies.

#### List of Subjects

##### 5 CFR Part 630

Government employees.

##### 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 630 and 890 of title 5 of the Code of Federal Regulations as follows:

#### PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as follows:

**Authority:** 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100-566; subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100-566; subpart K also issued under Pub. L. 102-25; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3.

2. Subpart L is added to read as follows:

#### PART 630—ABSENCE AND LEAVE

##### Subpart L—Family and Medical Leave

###### Sec.

- 630.1201 Purpose, applicability, and administration.
- 630.1202 Definitions.
- 630.1203 Leave entitlement.
- 630.1204 Intermittent leave or reduced leave schedule.
- 630.1205 Substitution of paid leave.
- 630.1206 Notice of leave.
- 630.1207 Medical certification.
- 630.1208 Protection of employment and benefits.
- 630.1209 Health benefits.
- 630.1210 Greater leave entitlements.
- 630.1211 Records and reports.

##### Subpart L—Family and Medical Leave

§ 630.1201 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement sections 6381 through 6387 of title 5, United States Code. This subpart must be read together with those sections of law. Sections 6381 through 6387 of title 5, United States Code, provide a standard approach to providing family and medical leave to Federal employees by

prescribing an entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs, as specified in § 630.1203(a) of this part.

(b) *Applicability.* (1) Except as otherwise provided in this paragraph, this subpart applies to any employee who—

(i) Is defined as an "employee" under 5 U.S.C. 6301(2), excluding employees covered under paragraph (b)(2) of this section; and

(ii) Has completed at least 12 months of service (not required to be 12 recent or consecutive months) as—

(A) An employee, as defined under 5 U.S.C. 6301(2), excluding any service as an employee under paragraph (b)(2) of this section;

(B) A physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code;

(C) A "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code; or

(D) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds.

(2) This subpart does not apply to—

(i) An individual employed by the government of the District of Columbia;

(ii) An employee serving under a temporary appointment with a time limitation of 1 year or less;

(iii) An intermittent employee, as defined in 5 CFR 340.401(c); or

(iv) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103-3, February 5, 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

(3) For the purpose of applying sections 6381 through 6387 of title 5, United States Code—

(i) A physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs appointed under section 7401(1) of title 38, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

(ii) A "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense; and

(iii) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds shall be governed by the terms

and conditions of regulations prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate.

(4) The regulations prescribed by the Secretary of Veterans Affairs, Secretary of Defense, or Secretary of Transportation under paragraph (b)(3) of this section shall, to the extent appropriate, be consistent with the regulations prescribed in this subpart and the regulations prescribed by the Secretary of Labor to carry out Title I of the Family and Medical Leave Act of 1993 at 29 CFR part 825.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

#### § 630.1202 Definitions.

In this subpart:

*Accrued leave* has the meaning given that term in § 630.201(b)(1) of this part.

*Accumulated leave* has the meaning given that term in § 630.201(b)(2) of this part.

*Administrative workweek* has the meaning given that term in § 610.102(a) of this chapter.

*Adoption* refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave under this subpart.

*Continuing treatment by a health care provider* means one or more of the following situations where an employee or an employee's spouse, son, daughter, or parent—

(1) Is treated two or more times for an illness or injury by a health care provider;

(2) Is treated two or more times for an illness or injury by a health care provider under the orders of, or on referral by, the individual's health care provider or is treated for the illness or injury on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider—e.g., a course of medication or therapy—to resolve the health condition; or

(3) Is under the continuing supervision of the health care provider, but may not necessarily be actively treated by the health care provider, due to a serious long-term or chronic condition or disability which cannot be cured—e.g., Alzheimer's disease, severe stroke, or terminal stages of a disease.

*Employee* means an individual to whom this subpart applies.

*Essential functions* means the fundamental job duties of the

employee's position, as defined in 29 CFR 1630.2.

*Family and medical leave* means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

*Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child.

*Health care provider* means—

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

(2) A person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question; or

(3) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

*In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

*Intermittent leave or leave taken intermittently* means leave taken in separate blocks of time rather than for one continuous period of time, and may include leave periods of less than 1 hour to several weeks.

*Leave without pay* means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

*Parent* means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. This term does not include parents "in law."

*Reduced leave schedule* means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave for the purpose of this subpart.

*Regularly scheduled* has the meaning given that term in § 610.102(g) of this chapter.

*Regularly scheduled administrative workweek* has the meaning given that term in § 610.102(b) of this chapter.

*Serious health condition* means an illness, injury, impairment, or physical or mental condition that involves—

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than 3 calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 calendar days; or for prenatal care.

*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—

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "ADLs." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office. A mental or physical disability refers to a "disability," as defined in 29 CFR 1630.2(g).

*Spouse* means a husband or wife, as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized.

*Tour of duty* has the meaning given that term in § 610.102(h) of this chapter.

#### § 630.1203 Leave entitlement.

(a) An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a spouse, son, daughter, or parent of the employee; if such spouse, son, daughter, or parent has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

(b) An employee shall take only the amount of family and medical leave that is necessary to manage the circumstance that prompted the need for leave under paragraph (a) of this section.

(c) Except as provided in paragraph (d)(2) of this section, the 12-month period referred to in paragraph (a) of this section begins on the date an employee first takes leave for a family or medical need specified in that paragraph and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(d) The entitlement to a total of 12 administrative workweeks of leave under paragraphs (a) (1) and (2) of this section—

(1) May begin prior to or on the actual date of birth or placement for adoption or foster care; and

(2) Shall expire 12 months after the date of birth or placement. Leave for a birth or placement must be concluded within 12 months after the date of birth or placement.

(e) Leave under paragraph (a) of this section is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for this calculation.

(f) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and

medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(g) When an employee requests leave under paragraph (a) of this section, the agency must provide guidance concerning an employee's rights and obligations under this subpart.

(h) An agency may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (a) of this section. An employee's notice of his or her intent to take leave under § 630.1206 of this part may suffice as the employee's confirmation.

#### § 630.1204 Intermittent leave or reduced leave schedule.

(a) Leave under § 630.1203(a) (1) or (2) of this part shall not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.

(b) Leave under § 630.1203(a) (3) or (4) of this part may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1206 and 630.1207(b)(6) of this part.

(c) If an employee takes leave under § 630.1203(a) (3) or (4) of this part intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1208(a) of this part.

(d) For the purpose of applying paragraph (c) of this section, an alternative position must be in the same commuting area and must provide—

(1) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; any applicable locality-based comparability payment under 5 U.S.C. 5304; or any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law;

(2) The same type of appointment, work schedule, status, and tenure; and

(3) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual).

(e) The agency shall determine the available alternative position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 (29 U.S.C. 701) and the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e).

(f) The number of hours of leave taken intermittently or on a reduced leave schedule shall be subtracted, on an hour-for-hour basis, from the total amount of leave available to the employee under § 630.1203 (e) and (f) of this part.

#### § 630.1205 Substitution of paid leave.

(a) Except as provided in paragraph (b) of this section, leave taken under § 630.1203(a) of this part shall be leave without pay.

(b) An employee may elect to substitute the following paid time off for any or all of the period of leave taken under § 630.1203(a) of this part—

(1) Accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, consistent with current law and regulations governing the granting and use of annual or sick leave;

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other agency employee who requests advanced annual or sick leave;

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of part 630 of this chapter;

(4) Compensatory time off; and

(5) Credit hours accrued under a flexible work schedule.

(c) An agency may not deny an employee's right to substitute paid time off under paragraph (b) of this section for any or all of the period of leave taken § 630.1203(a) of this part.

(d) An agency may not require an employee to substitute paid time off under paragraph (b) of this section for any or all of the period of leave taken under § 630.1203(a) of this part.

(e) An employee shall notify the agency of his or her intent to substitute paid time off under paragraph (b) of this section for the period of leave to be taken under § 630.1203(a) of this part prior to the date such paid time off commences.

#### § 630.1206 Notice of leave.

(a) If leave taken under § 630.1203(a) of this part is foreseeable based on an

expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the agency of his or her intention to take leave not less than 30 days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 days, the employee shall provide such notice as is practicable.

(b) If leave taken under § 630.1203(a) (3) or (4) of this part is foreseeable based on planned medical treatment, the employee shall consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

(c) If the need for leave is not foreseeable—e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 days' notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

(d) If the need for leave is foreseeable, and the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under § 630.1203(a) of this part until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.

(e) An agency may waive the notice requirements under paragraph (a) of this section and instead impose the agency's usual and customary policies or procedures for providing notification of leave. The agency's policies or procedures for providing notification of leave must not be more stringent than the requirements in this section.

However, an agency may not deny an employee's entitlement to leave under § 630.1203(a) of this part if the employee fails to follow such agency policies or procedures.

#### § 630.1207 Medical certification.

(a) An agency may require that a request for leave under § 630.1203(a) (3) or (4) of this part be supported by

written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An employee shall provide the written medical certification to the agency in a timely manner.

(b) The written medical certification shall include—

(1) The date the serious health condition commenced;

(2) The probable duration of the serious health condition;

(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

(4) For the purpose of leave taken under § 630.1203(a)(3) of this part—

(i) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

(ii) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;

(5) For the purpose of leave taken under § 630.1203(a)(4) of this part, a statement that the employee is unable to perform the essential functions of his or her position, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under § 630.1203(a) (3) or (4) of this part for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

(c) The agency shall not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this section.

(d) If the agency doubts the validity of the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under paragraph (b) of this section. Any

health care provider designated or approved by the agency shall not be employed by the agency or be under the administrative oversight of the agency on a regular basis unless the agency is located in an area where access to health care is extremely limited—e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the agency.

(e) If the opinion of the second health care provider differs from the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified under paragraph (b) of this section. The opinion of the third health care provider shall be binding on the agency and the employee.

(f) To remain entitled to family and medical leave under § 630.1203(a)(3) or (4) of this part, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from an agency that he or she submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

(g) If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.

(h) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may—

(1) Charge the employee as absent without leave (AWOL); or

(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

(i) While an employee is on family and medical leave, the agency may require, at the agency's expense, subsequent medical recertification from the health care provider on a periodic basis, not more often than every 30 calendar days. An agency may require subsequent medical recertification more frequently than every 30 calendar days if the employee requests that the original leave period be extended, the circumstances described in the original

medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

(j) To ensure the security and confidentiality of any written medical certification under §§ 630.1207 or 630.1208(h) of this part, the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A or part 293 of this chapter.

#### § 630.1208 Protection of employment and benefits.

(a) Any employee who takes leave under § 630.1203(a) of this part shall be entitled, upon return to the agency, to be returned to—

(1) The same position held by the employee when the leave commenced; or

(2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) For the purpose of applying paragraph (a)(2) of this section, an equivalent position must be in the same commuting area and must carry or provide at a minimum—

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority;

(2) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; any applicable locality-based comparability payment under 5 U.S.C. 5304; or any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law;

(3) The same type of appointment, work schedule, status, and tenure;

(4) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual);

(5) The same or equivalent opportunity for a within-grade increase, merit pay increase, performance award, incentive award, or other similar discretionary and non-discretionary payments consistent with applicable laws and regulations;

(6) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E; and

(7) The same or equivalent opportunity for training or education

benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.

(c) As a result of taking leave under § 630.1203(a) of this part, an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

(d) Except as otherwise provided by or under law, a restored employee shall not be entitled 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.

(e) For the purpose of applying paragraph (d) of this section, the same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status shall apply to any employee taking leave without pay under this part, except where different entitlements and limitations are specifically provided in this subpart.

(f) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(g) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

(h) As a condition to returning an employee who takes leave under § 630.1203(a)(4) of this part, an agency may establish a uniformly applied practice or policy that requires an employee to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency's policy or practice to require written medical certification attesting to an employee's recovery from a serious health condition shall apply only to those employees in positions that have specific medical standards, physical requirements, or who are covered by a medical evaluation program, as provided under 5 CFR part 339. Consistent with 5 CFR 339.301, the written medical certification shall be limited to documentation necessary to prove that the employee meets the

specific physical qualifications and/or medical standards for his or her position.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency shall notify each employee of this requirement before leave commences and pay the expenses for obtaining the written medical certification. An employee's refusal to provide written medical certification under paragraph (h) of this section is grounds for appropriate disciplinary or adverse action, as provided in 5 CFR 339.102(c).

(j) An agency may require an employee to report periodically to the agency on his or her status and intention to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

#### § 630.1209 Health benefits.

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave without pay status as a result of entitlement to leave under § 630.1203(a) of this part may continue his or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under section 8909 of title 5, United States Code). The employee shall make such contributions consistent with 5 CFR 890.502.

#### § 630.1210 Greater leave entitlements.

(a) An agency shall comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or medical leave entitlements to employees than those provided under this subpart.

(b) The entitlements established for employees under this subpart may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off greater than that otherwise authorized by law or provide sick leave in any situation in

which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart do not modify or affect any Federal law prohibiting discrimination. If the entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

#### § 630.1211 Records and reports.

(a) So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency shall maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency shall maintain the following information concerning each employee who takes leave under this subpart:

(1) The employee's rate of basic pay, as defined in 5 CFR 550.103(j);

(2) The occupational series for the employee's position;

(3) The number of hours of leave taken under § 630.1203(a) of this part; and

(4) Whether leave was taken—  
(i) Under § 630.1203(a) (1), (2) or (3) of this part; or

(ii) Under § 630.1203(a)(4) of this part.

(c) When an employee transfers to a different agency, the losing agency shall provide the gaining agency with information on leave taken under § 630.1203(a) of this part by the employee during the 12 months prior to the date of transfer. The losing agency shall provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under § 630.1203(c) of this part; and

(2) The number of hours of leave taken under § 630.1203(a) of the part during the employee's 12-month period, as determined under § 630.1203(c) of this part.

### PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

3. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec.

599C of Pub. L. 101-513, 104 Stat. 2064, as amended.

4. In § 890.502, paragraph (h) is added to read as follows:

#### § 890.502 Employee withholdings and contributions.

(h) *Direct payment of premiums during periods in nonpay status in excess of 365 days.* (1) An employee who is granted leave without pay under subpart L of part 630 of this chapter which exceeds the 365 days of continued coverage under § 890.303(e) must pay the employee contributions directly to the employing office on a current basis.

(2) Payment must be made after the pay period in which the employee is covered in accordance with a schedule established by the employing office. If the employing office does not receive the payment by the date due, it must notify the employee by certified mail, return receipt requested, that continuation of coverage depends upon payment being made within 15 days (45 days for employees residing overseas) after receipt of the notice, or, if the employing office does not receive certification of the receipt of the notice, 60 days after the date of the notice (90 days for enrollees residing overseas).

(3) If the enrollee was prevented by circumstances beyond his or her control from making payment within the timeframe specified in paragraph (b)(2) of this section, he or she may request reinstatement of the coverage by writing to the employing office. The request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the enrollee was prevented by circumstances beyond his or her control from paying within the time limit.

(4) The employing office determines whether the individual is eligible for reinstatement of coverage. If the determination is affirmative, coverage is reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM under the provisions of § 890.104 of this part.

(5) An employee whose coverage is terminated under this paragraph may register to enroll upon his or her return to duty in a pay status in a position in which the employee is eligible for coverage under this part.

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