

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

- (i) has equivalent pay and benefits; and
- (ii) better accommodates recurring periods of leave than the regular employment position of the employee.

**(2) Application**

The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 2612(e)(2) of this title.

**(d) Rules applicable to periods near conclusion of academic term**

The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

**(1) Leave more than 5 weeks prior to end of term**

If the eligible employee begins leave under section 2612 of this title more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

- (A) the leave is of at least 3 weeks duration; and
- (B) the return to employment would occur during the 3-week period before the end of such term.

**(2) Leave less than 5 weeks prior to end of term**

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 2612(a)(1) of this title or under section 2612(a)(3) of this title during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

- (A) the leave is of greater than 2 weeks duration; and
- (B) the return to employment would occur during the 2-week period before the end of such term.

**(3) Leave less than 3 weeks prior to end of term**

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 2612(a)(1) of this title or under section 2612(a)(3) of this title during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

**(e) Restoration to equivalent employment position**

For purposes of determinations under section 2614(a)(1)(B) of this title (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or secondary school, such determination shall be made on the basis of

established school board policies and practices, private school policies and practices, and collective bargaining agreements.

**(f) Reduction of amount of liability**

If a local educational agency or a private elementary or secondary school that has violated this subchapter proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of this subchapter, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 2617(a)(1)(A) of this title to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

(Pub. L. 103-3, title I, § 108, Feb. 5, 1993, 107 Stat. 17; Pub. L. 103-382, title III, § 394(e), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 107-110, title X, § 1076(v), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 110-181, div. A, title V, § 585(a)(3)(H), Jan. 28, 2008, 122 Stat. 131.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

2008—Subsecs. (c)(1), (d)(2), (3). Pub. L. 110-181 inserted “or under section 2612(a)(3) of this title” after “section 2612(a)(1) of this title”.

2002—Subsec. (a)(1)(A). Pub. L. 107-110 substituted “section 7801 of title 20” for “section 8801 of title 20”.

1994—Subsec. (a)(1)(A). Pub. L. 103-382 substituted “section 8801 of title 20” for “section 2891(12) of title 20”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

**§ 2619. Notice**

**(a) In general**

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

**(b) Penalty**

Any employer that willfully violates this section may be assessed a civil money penalty not to exceed \$100 for each separate offense.

(Pub. L. 103-3, title I, § 109, Feb. 5, 1993, 107 Stat. 19.)

## SUBCHAPTER II—COMMISSION ON LEAVE

**§ 2631. Establishment**

There is established a commission to be known as the Commission on Leave (referred to in this subchapter as the “Commission”).

(Pub. L. 103–3, title III, §301, Feb. 5, 1993, 107 Stat. 23.)

**§ 2632. Duties**

The Commission shall—

(1) conduct a comprehensive study of—

(A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;

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

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

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

(E) alternate and equivalent State enforcement of subchapter I of this chapter with respect to employees described in section 2618(a) of this title;

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

(G) the ability of the employers to recover, under section 2614(c)(2) of this title, the premiums described in such section; and

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

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

(Pub. L. 103–3, title III, §302, Feb. 5, 1993, 107 Stat. 23.)

## REFERENCES IN TEXT

This Act, referred to in par. (1)(A), (D), is Pub. L. 103–3, Feb. 5, 1993, 107 Stat. 6, known as the Family and Medical Leave Act of 1993, which enacted this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

**§ 2633. Membership****(a) Composition****(1) Appointments**

The Commission shall be composed of 12 voting members and 4 ex officio members to be appointed not later than 60 days after February 5, 1993, as follows:

**(A) Senators**

One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

**(B) Members of House of Representatives**

One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

**(C) Additional members****(i) Appointment**

Two members each shall be appointed by—

(I) the Speaker of the House of Representatives;

(II) the Majority Leader of the Senate;

(III) the Minority Leader of the House of Representatives; and

(IV) the Minority Leader of the Senate.

**(ii) Expertise**

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

**(2) Ex officio members**

The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

**(b) Vacancies**

Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

**(c) Chairperson and vice chairperson**

The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

**(d) Quorum**

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

(Pub. L. 103–3, title III, §303, Feb. 5, 1993, 107 Stat. 24.)

**§ 2634. Compensation****(a) Pay**

Members of the Commission shall serve without compensation.

**(b) Travel expenses**

Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of