

of days of annual leave and sick leave, respectively, which may accrue to such employee in connection with such medical emergency shall be the same as if all of that leave had been made available to such employee under this subchapter.

(Added Pub. L. 100-566, §2(a), Oct. 31, 1988, 102 Stat. 2843; amended Pub. L. 103-103, §5(a)(1), Oct. 8, 1993, 107 Stat. 1023.)

#### AMENDMENTS

1993—Pub. L. 103-103 substituted “Authority to participate in both programs” for “Limitation on employee participation” in section catchline and amended text generally. Prior to amendment, text read as follows: “An employee in a unit of an agency that establishes a leave bank program under the provisions of this subchapter may not participate in a leave transfer program under the provisions of subchapter III.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-103 effective as of the 120th day after Oct. 8, 1993, or such earlier date as the Office of Personnel Management may by regulation prescribe, see section 6 of Pub. L. 103-103, set out as a note under section 6331 of this title.

### SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

#### § 6381. Definitions

For the purpose of this subchapter—

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

(A) is an “employee”, as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia<sup>1</sup> any individual employed on a temporary or intermittent basis, and any employee of the Government Accountability Office or the Library of Congress; and

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

(2) the term “health care provider” means—

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and

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

(3) the term “parent” means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter;

(4) the term “reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

(5) the term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves—

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

(B) continuing treatment by a health care provider;

(6) the term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

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

(7) the term “covered active duty” means—

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code;

(8) the term “covered servicemember” means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy;

(9) the term “outpatient status”, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients;

(10) the term “next of kin”, used with respect to an individual, means the nearest blood relative of that individual;

(11) the term “serious injury or illness”—

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (8)(B), means an injury or illness

<sup>1</sup> So in original. Probably should be followed by a comma.

that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran; and

(12) the term "veteran" has the meaning given the term in section 101 of title 38, United States Code.

(Added Pub. L. 103-3, title II, §201(a)(1), Feb. 5, 1993, 107 Stat. 19; amended Pub. L. 104-1, title II, §202(c)(2), Jan. 23, 1995, 109 Stat. 9; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-181, div. A, title V, §585(b)(1), Jan. 28, 2008, 122 Stat. 131; Pub. L. 111-84, div. A, title V, §565(b)(1)(A), (2), (3), Oct. 28, 2009, 123 Stat. 2311, 2312.)

#### AMENDMENTS

2009—Par. (7). Pub. L. 111-84, §565(b)(1)(A), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "the term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10;"

Par. (8). Pub. L. 111-84, §565(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: "the term 'covered servicemember' means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness;"

Pars. (11), (12). Pub. L. 111-84, §565(b)(3), added pars. (11) and (12) and struck out former par. (11) which read as follows: "the term 'serious injury or illness', in the case of a member of the Armed Forces, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating."

2008—Pars. (7) to (11). Pub. L. 110-181 added pars. (7) to (11).

2004—Par. (1)(A). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1995—Par. (1)(A). Pub. L. 104-1 struck out "and" after "District of Columbia" and inserted ", and any employee of the General Accounting Office or the Library of Congress" before semicolon.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-1 effective 1 year after transmission to Congress of the study under section 1371 of Title 2. The Congress, see section 1312(e)(2) of Title 2. The study required under section 1371 of Title 2, dated Dec. 31, 1996, was transmitted to Congress by the Board of Directors of the Office of Compliance on Dec. 30, 1996.

#### EFFECTIVE DATE

Section effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103-3, set out as a note under section 2601 of Title 29, Labor.

#### REGULATIONS

Pub. L. 111-84, div. A, title V, §565(b)(5), Oct. 28, 2009, 123 Stat. 2312, provided that: "In prescribing regulations to carry out the amendments made by this subsection [amending this section and sections 6382 and 6383 of this title], the Office of Personnel Management shall consult with the Secretary of Defense and the Secretary of Veterans Affairs, as applicable."

### § 6382. Leave requirement

(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative

workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

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

(E) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) Subject to section 6383, an employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 administrative workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

(4) During the single 12-month period described in paragraph (3), an employee shall be entitled to a combined total of 26 administrative workweeks of leave under paragraphs (1) and (3). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (1) during any other 12-month period.

(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and subsection (b)(5) or (f) (as appropriate) of section 6383, leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) may be taken intermittently or on a reduced leave schedule when medically necessary. Subject to subsection (e)(3) and section 6383(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3), that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—