

member of the National Guard or Reserves, 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."

Pub. L. 111-84, §565(a)(1)(A)(ii), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Par. (19). Pub. L. 111-84, §565(a)(3), added par. (19).

Pub. L. 111-84, §565(a)(1)(A)(ii), redesignated par. (19) as (18).

2008—Pars. (14) to (19). Pub. L. 110-181 added pars. (14) to (19).

2004—Par. (4)(A)(iv). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1995—Par. (4)(A)(iv). Pub. L. 104-1 added cl. (iv).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-92, div. F, title LXXVI, §7604(c), Dec. 20, 2019, 133 Stat. 2308, provided that: "The amendments made by this section [amending this section and section 2612 of this title] shall not be effective with respect to any birth or placement occurring before October 1, 2020."

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-1 effective one year after transmission to Congress of the study under section 1371 of Title 2, The Congress, see section 1312(f)(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, except that, in the case of collective bargaining agreements in effect on that effective date, section applicable on the earlier of (1) the date of termination of such agreement, or (2) the date that occurs 12 months after Feb. 5, 1993, see section 405(b) of Pub. L. 103-3, set out as a note under section 2601 of this title.

REGULATIONS

Pub. L. 111-84, div. A, title V, §565(a)(5), Oct. 28, 2009, 123 Stat. 2311, provided that: "In prescribing regulations to carry out the amendments made by this subsection [amending this section and sections 2612 and 2613 of this title], the Secretary of Labor shall consult with the Secretary of Defense and the Secretary of Veterans Affairs, as applicable."

§ 2612. Leave requirement

(a) In general

(1) Entitlement to leave

Subject to section 2613 of this title and subsection (d)(3), an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

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

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

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

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

(E) Because of any qualifying exigency (as the Secretary shall, by regulation, deter-

mine) 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) Expiration of entitlement

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

(3) Servicemember family leave

Subject to section 2613 of this title, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 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) Combined leave total

Subject to subsection (d)(3), during the single 12-month period described in paragraph (3), an eligible employee shall be entitled to a combined total of 26 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.

(5) Calculation of leave for airline flight crews

The Secretary may provide, by regulation, a method for calculating the leave described in paragraph (1) with respect to employees described in section 2611(2)(D) of this title.

(b) Leave taken intermittently or on reduced leave schedule

(1) In general

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 employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and subsection (b)(5) or (f) (as appropriate) of section 2613 of this title, 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 2613(f) of this title, leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) Alternative position

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

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

(c) Unpaid leave permitted

Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 213(a)(1) of this title, the compliance of an employer with this subchapter by providing unpaid leave shall not affect the exempt status of the employee under such section.

(d) Relationship to paid leave

(1) Unpaid leave

If an employer provides paid leave for fewer than 12 workweeks (or 26 workweeks in the case of leave provided under subsection (a)(3)), the additional weeks of leave necessary to attain the 12 workweeks (or 26 workweeks, as appropriate) of leave required under this subchapter may be provided without compensation.

(2) Substitution of paid leave

(A) In general

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

(B) Serious health condition

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this subchapter shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave. An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided under subsection (a)(3) for any part of the 26-week period of such leave under such subsection, except that nothing in this subchapter requires an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide any such paid leave.

(3) Special rule for GAO employees

(A) Substitution of paid leave

An employee of the Government Accountability Office may elect to substitute for any leave without pay under subparagraph (A) or (B) of subsection (a)(1) any paid leave which is available to such employee for that purpose.

(B) Amount of paid leave

The paid leave that is available to an employee of the Government Accountability Office for purposes of subparagraph (A) is—

- (i) the number of weeks of paid parental leave in connection with the birth or placement involved that corresponds to the number of administrative workweeks of paid parental leave available to employees under section 6382(d)(2)(B)(i) of title 5; and
- (ii) during the 12-month period referred to in subsection (a)(1) and in addition to the administrative workweeks described in clause (i), any additional paid vacation, personal, family, medical, or sick leave provided by such employer.

(C) Limitation

Nothing in this section shall be considered to require or permit an employer to require that an employee first use all or any portion of the leave described in subparagraph (B)(ii) before being allowed to use the paid parental leave described in clause (i) of subparagraph (B).

(D) Additional rules

Paid parental leave under subparagraph (B)(i)—

- (i) shall be payable from any appropriation or fund available for salaries or expenses for positions with the Government Accountability Office;
- (ii) if not used by the employee of such employer before the end of the 12-month period (as referred to in subsection (a)(1)) to which it relates, shall not accumulate for any subsequent use; and
- (iii) shall apply without regard to the limitations in subparagraph (E), (F), or (G) of section 6382(d)(2) of title 5 or section 2614(c)(2) of this title.

(4) Special rule for Library of Congress employees

Consistent with section 1301(a)(3)(J) of title 2, the rights and protections established by sections 2611 through 2615 of this title, including section 2612(d)(3), shall apply to employees of the Library of Congress under section 1312 of title 2.

(e) Foreseeable leave

(1) Requirement of notice

In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) Duties of employee

In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, parent, or covered servicemember of the employee, as appropriate; and

(B) shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(3) Notice for leave due to covered active duty of family member

In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as is reasonable and practicable.

(f) Spouses employed by same employer

(1) In general

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

(A) under subparagraph (A) or (B) of subsection (a)(1); or

(B) to care for a sick parent under subparagraph (C) of such subsection.

(2) Servicemember family leave

(A) In general

The aggregate number of workweeks of leave to which both that husband and wife may be entitled under subsection (a) may be limited to 26 workweeks during the single 12-month period described in subsection (a)(3) if the leave is—

(i) leave under subsection (a)(3); or

(ii) a combination of leave under subsection (a)(3) and leave described in paragraph (1).

(B) Both limitations applicable

If the leave taken by the husband and wife includes leave described in paragraph (1), the limitation in paragraph (1) shall apply to the leave described in paragraph (1).

(Pub. L. 103-3, title I, §102, Feb. 5, 1993, 107 Stat. 9; Pub. L. 110-181, div. A, title V, §585(a)(2), (3)(A)-(D), Jan. 28, 2008, 122 Stat. 129, 130; Pub. L. 111-84, div. A, title V, §565(a)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2309, 2311; Pub. L. 111-119, §2(b), Dec. 21, 2009, 123 Stat. 3477; Pub. L. 116-92, div. F, title LXXVI, §7604(a), Dec. 20, 2019, 133 Stat. 2307.)

APPLICABILITY OF AMENDMENT

Amendment of section by section 7604(a) of Pub. L. 116-92 not effective with respect to any

birth or placement occurring before Oct. 1, 2020. See 2019 Amendment notes below.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 102 of Pub. L. 103-3, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116-92, §7604(a)(1)(A), inserted “and subsection (d)(3)” after “section 2613 of this title” in introductory provisions.

Subsec. (a)(4). Pub. L. 116-92, §7604(a)(1)(B), substituted “Subject to subsection (d)(3), during” for “During”.

Subsec. (d)(3), (4). Pub. L. 116-92, §7604(a)(2), added pars. (3) and (4).

2009—Subsec. (a)(1)(E). Pub. L. 111-84, §565(a)(1)(B)(i), substituted “covered active duty” for “active duty” in two places and struck out “in support of a contingency operation” before period.

Subsec. (a)(5). Pub. L. 111-119 added par. (5).

Subsec. (e)(2)(A). Pub. L. 111-84, §565(a)(4), substituted “parent, or covered servicemember” for “or parent”.

Subsec. (e)(3). Pub. L. 111-84, §565(a)(1)(B)(ii), substituted “covered active duty” for “active duty” in heading and in two places in text and struck out “in support of a contingency operation” before “, the employee shall provide”.

2008—Subsec. (a)(1)(E). Pub. L. 110-181, §585(a)(2)(A), added subpar. (E).

Subsec. (a)(3), (4). Pub. L. 110-181, §585(a)(2)(B), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 110-181, §585(a)(3)(A)(i), (ii), in second sentence, substituted “subsection (b)(5) or (f) (as appropriate) of section 2613” for “section 2613(b)(5)” and inserted “or under subsection (a)(3)” after “subsection (a)(1)” and, after second sentence, inserted “Subject to subsection (e)(3) and section 2613(f) of this title, leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.”

Subsec. (b)(2). Pub. L. 110-181, §585(a)(3)(A)(iii), inserted “or under subsection (a)(3)” after “subsection (a)(1)”.

Subsec. (d)(1). Pub. L. 110-181, §585(a)(3)(B)(i), inserted “(or 26 workweeks in the case of leave provided under subsection (a)(3))” after “fewer than 12 workweeks” and “(or 26 workweeks, as appropriate)” after “attain the 12 workweeks”.

Subsec. (d)(2)(A). Pub. L. 110-181, §585(a)(3)(B)(ii), substituted “(C), or (E)” for “or (C)”.

Subsec. (d)(2)(B). Pub. L. 110-181, §585(a)(3)(B)(iii), inserted at end “An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided under subsection (a)(3) for any part of the 26-week period of such leave under such subsection, except that nothing in this subchapter requires an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide any such paid leave.”

Subsec. (e)(2). Pub. L. 110-181, §585(a)(3)(C)(i), inserted “or under subsection (a)(3)” after “subsection (a)(1)” in introductory provisions.

Subsec. (e)(3). Pub. L. 110-181, §585(a)(3)(C)(ii), added par. (3).

Subsec. (f). Pub. L. 110-181, §585(a)(3)(D), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and added par. (2).

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116-92 not effective with respect to any birth or placement occurring before Oct. 1,

2020, see section 7604(c) of Pub. L. 116-92, set out as a note under section 2611 of this title.

EFFECTIVE DATE

Section effective 6 months after Feb. 5, 1993, except that, in the case of collective bargaining agreements in effect on that effective date, section applicable on the earlier of (1) the date of termination of such agreement, or (2) the date that occurs 12 months after Feb. 5, 1993, see section 405(b) of Pub. L. 103-3, set out as a note under section 2601 of this title.

CLARIFICATION FOR MEMBERS OF THE NATIONAL GUARD AND RESERVES: GAO AND LIBRARY OF CONGRESS EMPLOYEES

Pub. L. 116-92, div. F, title LXXVI, §7605(c), Dec. 20, 2019, 133 Stat. 2308, provided that: “For purposes of determining the eligibility of an employee of the Government Accountability Office or Library of Congress who is a member of the National Guard or Reserves to take leave under section 102(a) of the Family and Medical Leave Act of 1993 [29 U.S.C. 2612(a)], any service by such employee on active duty (as defined in section 101(14) of such Act [29 U.S.C. 2611(14)]) shall be counted as time during which such employee has been employed for purposes of section 101(2)(A) of such Act [29 U.S.C. 2611(2)(A)].”

§ 2613. Certification

(a) In general

An employer may require that a request for leave under subparagraph (C) or (D) of paragraph (1) or paragraph (3) of section 2612(a) of this title be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, or of the next of kin of an individual in the case of leave taken under such paragraph (3), as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Sufficient certification

Certification provided under subsection (a) shall be sufficient if it states—

- (1) the date on which the serious health condition commenced;
- (2) the probable duration of the condition;
- (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
- (4)(A) for purposes of leave under section 2612(a)(1)(C) of this title, a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and
 - (B) for purposes of leave under section 2612(a)(1)(D) of this title, a statement that the employee is unable to perform the functions of the position of the employee;
- (5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
- (6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 2612(a)(1)(D) of this title, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the

intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 2612(a)(1)(C) of this title, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) Second opinion

(1) In general

In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 2612(a)(1) of this title, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

(2) Limitation

A health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employer.

(d) Resolution of conflicting opinions

(1) In general

In any case in which the second opinion described in subsection (c) differs from the opinion in the original certification provided under subsection (a), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) Finality

The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) Subsequent recertification

The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

(f) Certification related to covered active duty or call to covered active duty

An employer may require that a request for leave under section 2612(a)(1)(E) of this title be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe. If the Secretary issues a regulation requiring such certification, the employer shall provide, in a timely manner, a copy of such certification to the employer.

(Pub. L. 103-3, title I, §103, Feb. 5, 1993, 107 Stat. 11; Pub. L. 110-181, div. A, title V, §585(a)(3)(E), Jan. 28, 2008, 122 Stat. 130; Pub. L. 111-84, div. A, title V, §565(a)(1)(C), Oct. 28, 2009, 123 Stat. 2310.)

AMENDMENTS

2009—Subsec. (f). Pub. L. 111-84 substituted “covered active duty” for “active duty” in two places in heading.