

Statutory Notes and Related Subsidiaries

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.

§ 2620. Public health emergency leave**(a) Definitions**

The following shall apply with respect to leave under section 2612(a)(1)(F) of this title:

(1) Application of certain terms

The definitions in section 2611 of this title shall apply, except as follows:

(A) Eligible employee**(i) In general**

In lieu of the definition in sections 2611(2)(A) and 2611(2)(B)(ii) of this title, the term “eligible employee” means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 2612(a)(1)(F) of this title.

(ii)¹ Rule regarding rehired employees

For purposes of clause (i), the term “employed for at least 30 calendar days”, used with respect to an employee and an employer described in clause (i), includes an employee who was laid off by that employer not earlier than March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee’s layoff, and was rehired by the employer.

(ii)¹ Special rule

For purposes of applying section 2612(a)(1)(F) of this title and this section under the Congressional Accountability Act of 1995 [2 U.S.C. 1301 et seq.], in lieu of the definition in section 202(a)(2)(B) of that Act (2 U.S.C. 1312(a)(2)(B)), the term “eligible employee” means a covered employee (as defined in section 101 of that Act (2 U.S.C. 1301)) who has been employed for at least 30 calendar days by the employing office (as so defined) with respect to whom leave is requested under section 2612(a)(1)(F) of this title.

(B) Employer threshold

Section 2611(4)(A)(i) of this title shall be applied by substituting “fewer than 500 employees” for “50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year”.

(2) Additional definitions

In addition to the definitions described in paragraph (1), the following definitions shall apply with respect to leave under section 2612(a)(1)(F) of this title:

(A) Qualifying need related to a public health emergency

The term “qualifying need related to a public health emergency”, with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

(B) Public health emergency

The term “public health emergency” means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

(C) Child care provider

The term “child care provider” means a provider who receives compensation for providing child care services on a regular basis, including an “eligible child care provider” (as defined in section 9858n of title 42).

(D) School

The term “school” means an “elementary school” or “secondary school” as such terms are defined in section 7801 of title 20.

(3) Regulatory authorities

The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(3) of title 5—

(A) to exclude certain health care providers and emergency responders from the definition of eligible employee under subsection (a)(1)(A);

(B) to exempt small businesses with fewer than 50 employees from the requirements of section 2612(a)(1)(F) of this title when the imposition of such requirements would jeopardize the viability of the business as a going concern; and

(C) as necessary to carry out the purposes of this Act, including to ensure consistency between this Act and Division E and Division G of the Families First Coronavirus Response Act.

(4) The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the requirements under subsection (b) certain employers of the United States Government with respect to certain categories of Executive Branch employees.

(b) Relationship to paid leave**(1) Unpaid leave for initial 10 days****(A) In general**

The first 10 days for which an employee takes leave under section 2612(a)(1)(F) of this title may consist of unpaid leave.

(B) Employee election

An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave under section 2612(a)(1)(F) of this title in accordance with section 2612(d)(2)(B) of this title.

¹ So in original. Two cls. (ii) have been enacted.

(2) Paid leave for subsequent days**(A) In general**

An employer shall provide paid leave for each day of leave under section 2612(a)(1)(F) of this title that an employee takes after taking leave under such section for 10 days.

(B) Calculation**(i) In general**

Subject to clause (ii), paid leave under subparagraph (A) for an employee shall be calculated based on—

(I) an amount that is not less than two-thirds of an employee's regular rate of pay (as determined under section 207(e) of this title); and

(II) the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)).

(ii) Limitation

An employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee for paid leave under this section.

(C) Varying schedule hours calculation

In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave under section 2612(a)(1)(F) of this title, the employer shall use the following in place of such number:

(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.

(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

(c) Notice

In any case where the necessity for leave under section 2612(a)(1)(F) of this title for the purpose described in subsection (a)(2)(A) is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

(d) Restoration to position**(1) In general**

Section 2614(a)(1) of this title shall not apply with respect to an employee of an employer who employs fewer than 25 employees if the conditions described in paragraph (2) are met.

(2) Conditions

The conditions described in this paragraph are the following:

(A) The employee takes leave under section 2612(a)(1)(F) of this title.

(B) The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer—

(i) that affect employment; and
(ii) are caused by a public health emergency during the period of leave.

(C) The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

(D) If the reasonable efforts of the employer under subparagraph (C) fail, the employer makes reasonable efforts during the period described in paragraph (3) to contact the employee if an equivalent position described in subparagraph (C) becomes available.

(3) Contact period

The period described under this paragraph is the 1-year period beginning on the earlier of—

(A) the date on which the qualifying need related to a public health emergency concludes; or

(B) the date that is 12 weeks after the date on which the employee's leave under section 2612(a)(1)(F) of this title commences.

(Pub. L. 103-3, title I, §110, as added Pub. L. 116-127, div. C, §3102(b), Mar. 18, 2020, 134 Stat. 189; Pub. L. 116-136, div. A, title III, §§3601, 3604(a), 3605, 3611(1), (3), (7), div. B, title IX, §19008, Mar. 27, 2020, 134 Stat. 410, 411, 414, 415, 579.)

Editorial Notes

REFERENCES IN TEXT

The Congressional Accountability Act of 1995, referred to in subsec. (a)(1)(A)(ii), is Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to chapter 24 (§1301 et seq.) of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note under section 1301 of Title 2 and Tables.

This Act, referred to in subsec. (a)(3)(C), 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.

The Families First Coronavirus Response Act, referred to in subsec. (a)(3)(C), is Pub. L. 116-127, Mar. 18, 2020, 134 Stat. 178. Division E (§§5101-5112) of the Act, known as the Emergency Paid Sick Leave Act, is set out as a note under section 2601 of this title. Division G (§§7001-7005) of the Act is set out as notes under sections 1401 and 3111 of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 2601 of this title and Tables.

AMENDMENTS

2020—Subsec. (a)(1)(A). Pub. L. 116-136, §19008(1), which directed amendment of subpar. (A) by inserting cl. (i) designation and heading before “In lieu of”, was not executed due to intervening amendment by Pub. L. 116-136, §3605, see below.

Pub. L. 116-136, §3605, amended subpar. (A) generally. Prior to amendment, text read as follows: “In lieu of the definition in sections 2611(2)(A) and 2611(2)(B)(ii) of this title, the term ‘eligible employee’ means an employee who has been employed for at least 30 calendar

days by the employer with respect to whom leave is requested under section 2612(a)(1)(F) of this title.”

Subsec. (a)(1)(A)(ii). Pub. L. 116-136, §19008(2), added cl. (ii) related to special rule regarding eligible employees.

Subsec. (a)(3). Pub. L. 116-136, §3611(1), substituted “553(d)(3)” for “553(d)(A)” in introductory provisions.

Subsec. (a)(3)(C). Pub. L. 116-136, §3611(7), added subpar. (C).

Subsec. (a)(4). Pub. L. 116-136, §3604(a), added par. (4).

Subsec. (b)(2)(B)(ii). Pub. L. 116-136, §3601, added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: “In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.”

Subsec. (c). Pub. L. 116-136, §3611(3), substituted “subsection (a)(2)(A)” for “subsection (a)(2)(A)(iii)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-127, div. C, §3106, Mar. 18, 2020, 134 Stat. 192, provided that: “This Act [div. C of Pub. L. 116-127, enacting this section, amending section 2612 of this title, and enacting provisions set out as notes under this section] shall take effect not later than 15 days after the date of enactment of this Act [Mar. 18, 2020].”

EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS

Pub. L. 116-127, div. C, §3103, Mar. 18, 2020, 134 Stat. 192, provided that:

“(a) EMPLOYERS.—An employer signatory to a multi-employer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under section 110(b)(2) of title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2620(b)(2)], as added by the Families First Coronavirus Response Act [Pub. L. 116-127], by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to under such section while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2612(a)(1)(F)], as added by the Families First Coronavirus Response Act.

“(b) EMPLOYEES.—Employees who work under a multi-employer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multi-employer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.”

SPECIAL RULE FOR CERTAIN EMPLOYERS

Pub. L. 116-127, div. C, §3104, Mar. 18, 2020, 134 Stat. 192, as amended by Pub. L. 116-136, div. A, title III, §3611(4), Mar. 27, 2020, 134 Stat. 414, provided that: “An employer under section 110(a)(1)(B) of the Family and Medical Leave Act of 1993 [29 U.S.C. 2620(a)(1)(B)] shall not be subject to section 107(a) of such Act [29 U.S.C. 2617(a)] for a violation of section 102(a)(1)(F) of such Act [29 U.S.C. 2612(a)(1)(F)] if the employer does not meet the definition of employer set forth in section 101(4)(A)(i) of such Act [29 U.S.C. 2611(4)(A)(i)].”

SPECIAL RULE FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS

Pub. L. 116-127, div. C, §3105, Mar. 18, 2020, 134 Stat. 192, provided that: “An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of [sic]

section 3102 of this Act [div. C of Pub. L. 116-127, enacting this section and amending section 2612 of this title].”

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 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.)

Editorial Notes

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.