

5 USC 6382: Leave requirement

Text contains those laws in effect on December 12, 2023

From Title 5-GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III-EMPLOYEES

Subpart E-Attendance and Leave

CHAPTER 63-LEAVE

SUBCHAPTER V-FAMILY AND MEDICAL LEAVE

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§6382. Leave requirement

(a)(1) Subject to section 6383 and subsection (d)(2) of this section, 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) Subject to subsection (d)(2), 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-

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

(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

(d)(1) An employee may elect to substitute for leave under subparagraph (C), (D), or (E) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave. An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave for any part of the 26-week period of leave under such subsection.

(2)(A) An employee 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) The paid leave that is available to an employee for purposes of subparagraph (A) is-

(i) 12 administrative workweeks of paid parental leave under this subparagraph in connection with the birth or placement involved; and

(ii) during the 12-month period referred to in subsection (a)(1), and in addition to the 12 administrative workweeks under clause (i), any annual or sick leave accrued or accumulated by such employee.

(C) Nothing in this subsection shall be considered 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 subparagraph (B)(i).

(D) Paid parental leave under subparagraph (B)(i)-

(i) shall be payable from any appropriation or fund available for salaries or expenses for positions within the employing agency;

(ii) shall not be considered to be annual or vacation leave for purposes of section 5551 or 5552 or for any other purpose; and

(iii) if not used by the employee 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.

(E) Nothing in this paragraph shall be construed to modify the requirement to complete at least 12 months of service as an employee (within the meaning of section 6381(1)(A)) before the date of the applicable birth or placement involved to be eligible for paid parental leave under subparagraph (B)(i) of this paragraph.

(F)(i) An employee may not take leave under this paragraph unless the employee agrees (in writing), before the commencement of such leave, to work for the applicable employing agency for not less than a period of 12 weeks beginning on the date such leave concludes.

(ii) The head of the agency shall waive the requirement in clause (i) in any instance where the employee is unable to return to work because of the continuation, recurrence, or onset of a serious health condition (including mental health), related to the applicable birth or placement of a child, of the employee or the child.

(iii) The head of the employing agency may require that an employee who claims to be unable to return to work because of a health condition described under clause (ii) provide certification supporting such claim by the health care provider of the employee or the child (as the case may be). The employee shall provide such certification to the head in a timely manner.

(G)(i) If an employee fails to return from paid leave provided under this paragraph after the date such leave concludes, the employing agency may recover, from such employee, an amount equal to the total amount of Government contributions paid by the agency under section 8906 on behalf of the employee for maintaining such employee's health coverage under chapter 89 during the period of such leave.

(ii) Clause (i) shall not apply to any employee who fails to return from such leave due to-

(I) the continuation, recurrence, or onset of a serious health condition as described under, and consistent with the requirements of, subparagraph (F); or

(II) any other circumstance beyond the control of the employee.

(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency 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) 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 employing agency, 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 employing agency 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) 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.

(Added Pub. L. 103-3, title II, §201(a)(1), Feb. 5, 1993, 107 Stat. 20 ; amended Pub. L. 110-181, div. A, title V, §585(b)(2)-(3)(C), Jan. 28, 2008, 122 Stat. 132 ; Pub. L. 110-417, [div. A], title X, §1061(b)(2), Oct. 14, 2008, 122 Stat. 4612 ; Pub. L. 111-84, div. A, title V, §565(b)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2311 , 2312; Pub. L. 116-92, div. F, title LXXVI, §7602(a), (b), Dec. 20, 2019, 133 Stat. 2304 , 2305; Pub. L. 116-283, div. A, title XI, §1103(f)(3), Jan. 1, 2021, 134 Stat. 3889 .)

EDITORIAL NOTES

AMENDMENTS

2021-Subsec. (d)(1). Pub. L. 116–283, §1103(f)(3)(A), struck out "under subchapter I" before "for any part" in two places.

Subsec. (d)(2)(B)(ii). Pub. L. 116–283, §1103(f)(3)(B), struck out before period at end "under subchapter I".

2019-Subsec. (a)(1). Pub. L. 116–92, §7602(b)(1), which directed amendment of section 6382(a)(1), without specifying the title to be amended, by inserting "and subsection (d)(2) of this section" after "section 6383" in introductory provisions, was executed to this section, to reflect the probable intent of Congress.

Subsec. (a)(4). Pub. L. 116–92, §7602(b)(2), which directed amendment of section 6382(a)(4), without specifying the title to be amended, by substituting "Subject to subsection (d)(2), during" for "During", was executed to this section, to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 116–92, §7602(a), designated existing provisions as par. (1), substituted "subparagraph (C)," for "subparagraph (A), (B), (C),", and added par. (2). Amendment made by section 7602(a)(1) directing substitution of "(1) An employee" for "An employee" was executed to "An employee" appearing at the beginning of the subsection, to reflect the probable intent of Congress.

2009-Subsec. (a)(1)(E). Pub. L. 111–84, §565(b)(1)(B)(i), added subpar. (E).

Subsec. (b)(1). Pub. L. 111–84, §565(b)(1)(B)(ii), inserted after second sentence "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."

Subsec. (d). Pub. L. 111–84, §565(b)(1)(B)(iii), substituted "(D), or (E)" for "or (D)".

Subsec. (e)(2)(A). Pub. L. 111–84, §565(b)(4), substituted "parent, or covered servicemember" for "or parent".

Subsec. (e)(3). Pub. L. 111–84, §565(b)(1)(B)(iv), added par. (3).

2008-Subsec. (a)(3), (4). Pub. L. 110–181, §585(b)(2), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 110–181, §585(b)(3)(A)(i), in second sentence, substituted "subsection (b)(5) or (f) (as appropriate) of section 6383" for "section 6383(b)(5)" and inserted "or under subsection (a)(3)" after "subsection (a)(1)".

Subsec. (b)(2). Pub. L. 110–181, §585(b)(3)(A)(ii), inserted "or under subsection (a)(3)" after "subsection (a)(1)".

Subsec. (d). Pub. L. 110–181, §585(b)(3)(B), inserted at end "An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 26-week period of leave under such subsection."

Subsec. (e). Pub. L. 110–181, §585(b)(3)(C), as amended by Pub. L. 110–417, inserted "or under subsection (a)(3)" after "subsection (a)(1)" in par. (1) and in introductory provisions of par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. F, title LXXVI, §7602(c), Dec. 20, 2019, 133 Stat. 2306, provided that: "The amendments made by this section [amending this section] shall not be effective with respect to any birth or placement occurring before October 1, 2020."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title X, §1061(b), Oct. 14, 2008, 122 Stat. 4612, provided that the amendment made by section 1061(b)(2) is effective as of Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted.

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.

CLARIFICATION FOR MEMBERS OF THE NATIONAL GUARD AND RESERVES: EXECUTIVE BRANCH EMPLOYEES

Pub. L. 116–92, div. F, title LXXVI, §7605(a), Dec. 20, 2019, 133 Stat. 2308, provided that: "For purposes of determining the eligibility of an employee who is a member of the National Guard or Reserves to take leave under section 6382(a) of title 5, United States Code, or to substitute such leave pursuant to subsection (d)(2)(A) of section 6382 of such title (as added by section 1102 [probably means section "7602" of Pub. L.

116–92]), any service by such employee on active duty (as defined in section 6381(7) of such title) shall be counted as service as an employee for purposes of section 6381(1)(B) of such title."