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S. 984

To allow Americans to earn paid sick time so that they can address their own health needs and the health needs of their families.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

Mr. HARKIN (for himself, Ms. MIKULSKI, Mrs. MURRAY, Mr. SANDERS, Mr. CASEY, Mr. MERKLEY, Mr. FRANKEN, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Mr. INOUE, Mr. LEVIN, Mr. KERRY, Mr. AKAKA, Mr. DURBIN, Mr. SCHUMER, Mr. LAUTENBERG, Mr. BROWN of Ohio, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To allow Americans to earn paid sick time so that they can address their own health needs and the health needs of their families.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Healthy Families Act”.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

1 (1) Working Americans need time to meet their
2 own health care needs and to care for family mem-
3 bers, including their children, spouse, parents, and
4 parents-in-law, and other children and adults for
5 whom they are caregivers.

6 (2) Health care needs include preventive health
7 care, diagnostic procedures, medical treatment, and
8 recovery in response to short- and long-term ill-
9 nesses and injuries.

10 (3) Providing employees time off to meet health
11 care needs ensures that they will be healthier in the
12 long run. Preventive care helps avoid illnesses and
13 injuries and routine medical care helps detect ill-
14 nesses early and shorten their duration.

15 (4) When parents are available to care for their
16 children who become sick, children recover faster,
17 more serious illnesses are prevented, and children's
18 overall mental and physical health improve. In a
19 2009 study published in the American Journal of
20 Public Health, 81 percent of parents of a child with
21 special health care needs reported that taking leave
22 from work to be with their child had a "good" or
23 "very good" effect on their child's physical health.
24 Similarly, 85 percent of parents of such a child

1 found that taking such leave had a “good” or “very
2 good” effect on their child’s emotional health.

3 (5) When parents cannot afford to miss work
4 and must send children with contagious illnesses to
5 child care centers or schools, infection can spread
6 rapidly through child care centers and schools.

7 (6) Providing paid sick time improves public
8 health by reducing infectious disease. Policies that
9 make it easier for sick adults and children to be iso-
10 lated at home reduce the spread of infectious dis-
11 ease.

12 (7) Routine medical care reduces medical costs
13 by detecting and treating illness and injury early,
14 decreasing the need for emergency care. These sav-
15 ings benefit public and private payers of health in-
16 surance, including private businesses.

17 (8) The provision of individual and family sick
18 time by large and small businesses, both here in the
19 United States and elsewhere, demonstrates that pol-
20 icy solutions are both feasible and affordable in a
21 competitive economy. A 2009 study by the Center
22 for Economic and Policy Research found that, of 22
23 countries with comparable economies, the United
24 States was 1 of only 3 countries that did not provide

1 any paid time off for workers with short-term ill-
2 nesses.

3 (9) Measures that ensure that employees are in
4 good health and do not need to worry about unmet
5 family health problems help businesses by promoting
6 productivity and reducing employee turnover.

7 (10) The American Productivity Audit com-
8 pleted in 2003 found that lost productivity due to ill-
9 ness costs \$226,000,000,000 annually, and that 71
10 percent of that cost stems from presenteeism, the
11 practice of employees coming to work despite illness.
12 Studies in the Journal of Occupational and Environ-
13 mental Medicine, the Employee Benefit News, and
14 the Harvard Business Review show that
15 presenteeism is a larger productivity drain than ei-
16 ther absenteeism or short-term disability.

17 (11) The absence of paid sick time has forced
18 Americans to make untenable choices between need-
19 ed income and jobs on the one hand and caring for
20 their own and their family's health on the other.

21 (12) Nearly 40 percent of the private-sector
22 workforce (about 40,000,000 workers) lack paid sick
23 time. Another 4,000,000 theoretically have access to
24 sick time, but have not been on the job long enough

1 to use it. Millions more lack sick time they can use
2 to care for a sick child or ill family member.

3 (13) Workers' access to paid sick time varies
4 dramatically by wage level. For private-sector work-
5 ers in the lowest quartile of earners, 68 percent lack
6 paid sick time. For workers in the next 2 quartiles,
7 34 and 25 percent, respectively, lack paid sick time.
8 Even for workers in the highest income quartile, 16
9 percent lack paid sick time. In addition, millions of
10 workers cannot use paid sick time to care for ill
11 family members.

12 (14) Due to the roles of men and women in so-
13 ciety, the primary responsibility for family caregiving
14 often falls on women, and such responsibility affects
15 the working lives of women more than it affects the
16 working lives of men.

17 (15) An increasing number of men are also tak-
18 ing on caregiving obligations, and men who request
19 paid time for caregiving purposes are often denied
20 accommodation or penalized because of stereotypes
21 that caregiving is only "women's work".

22 (16) Employers' reliance on persistent stereo-
23 types about the "proper" roles of both men and
24 women in the workplace and in the home continues
25 a cycle of discrimination and fosters stereotypical

1 views about women's commitment to work and their
2 value as employees.

3 (17) Employment standards that apply to only
4 one gender have serious potential for encouraging
5 employers to discriminate against employees and ap-
6 plicants for employment who are of that gender.

7 (18) It is in the national interest to ensure that
8 all Americans can care for their own health and the
9 health of their families while prospering at work.

10 (19) Nearly 1 in 3 American women report
11 physical or sexual abuse by a husband or boyfriend
12 at some point in their lives. Domestic violence also
13 affects men. Women account for about 85 percent of
14 the victims of domestic violence and men account for
15 approximately 15 percent of the victims. Therefore,
16 women disproportionately need time off to care for
17 their health or to find solutions, such as obtaining
18 a restraining order or finding housing, to avoid or
19 prevent physical or sexual abuse.

20 (20) One study showed that 85 percent of do-
21 mestic violence victims at a women's shelter who
22 were employed missed work because of abuse. The
23 mean number of days of paid work lost by a rape
24 victim is 8.1 days, by a victim of physical assault is
25 7.2 days, and by a victim of stalking is 10.1 days.

1 Nationwide, domestic violence victims lose almost
2 8,000,000 days of paid work per year.

3 (21) Without paid sick days that can be used
4 to address the effects of domestic violence, these vic-
5 tims are in grave danger of losing their jobs. One
6 survey found that 96 percent of employed domestic
7 violence victims experienced problems at work re-
8 lated to the violence. The Government Accountability
9 Office similarly found that 24 to 52 percent of vic-
10 tims report losing a job due, at least in part, to do-
11 mestic violence. The loss of employment can be par-
12 ticularly devastating for victims of domestic violence,
13 who often need economic security to ensure safety.

14 (22) The Centers for Disease Control and Pre-
15 vention has estimated that domestic violence costs
16 over \$700,000,000 annually due to the victims' lost
17 productivity in employment.

18 (23) Efforts to assist abused employees result
19 in positive outcomes for employers as well as em-
20 ployees because employers can retain workers who
21 might otherwise be compelled to leave.

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are—

24 (1) to ensure that all working Americans can
25 address their own health needs and the health needs

1 of their families by requiring employers to permit
2 employees to earn up to 56 hours of paid sick time
3 including paid time for family care;

4 (2) to diminish public and private health care
5 costs by enabling workers to seek early and routine
6 medical care for themselves and their family mem-
7 bers;

8 (3) to assist employees who are, or whose fam-
9 ily members are, victims of domestic violence, sexual
10 assault, or stalking, by providing the employees with
11 paid time away from work to allow the victims to re-
12 ceive treatment and to take the necessary steps to
13 ensure their protection;

14 (4) to accomplish the purposes described in
15 paragraphs (1) through (3) in a manner that is fea-
16 sible for employers; and

17 (5) consistent with the provision of the 14th
18 Amendment to the Constitution relating to equal
19 protection of the laws, and pursuant to Congress'
20 power to enforce that provision under section 5 of
21 that Amendment—

22 (A) to accomplish the purposes described
23 in paragraphs (1) through (3) in a manner that
24 minimizes the potential for employment dis-
25 crimination on the basis of sex by ensuring gen-

1 erally that paid sick time is available for eligible
2 medical reasons on a gender-neutral basis; and
3 (B) to promote the goal of equal employ-
4 ment opportunity for women and men.

5 **SEC. 4. DEFINITIONS.**

6 In this Act:

7 (1) CHILD.—The term “child” means a biologi-
8 cal, foster, or adopted child, a stepchild, a legal
9 ward, or a child of a person standing in loco
10 parentis, who is—

11 (A) under 18 years of age; or

12 (B) 18 years of age or older and incapable
13 of self-care because of a mental or physical dis-
14 ability.

15 (2) DOMESTIC VIOLENCE.—The term “domestic
16 violence” has the meaning given the term in section
17 40002(a) of the Violence Against Women Act of
18 1994 (42 U.S.C. 13925(a)), except that the ref-
19 erence in such section to the term “jurisdiction re-
20 ceiving grant monies” shall be deemed to mean the
21 jurisdiction in which the victim lives or the jurisdic-
22 tion in which the employer involved is located.

23 (3) EMPLOYEE.—The term “employee” means
24 an individual who is—

1 (A)(i) an employee, as defined in section
2 3(e) of the Fair Labor Standards Act of 1938
3 (29 U.S.C. 203(e)), who is not covered under
4 subparagraph (E), including such an employee
5 of the Library of Congress, except that a ref-
6 erence in such section to an employer shall be
7 considered to be a reference to an employer de-
8 scribed in clauses (i)(I) and (ii) of paragraph
9 (4)(A); or

10 (ii) an employee of the Government Ac-
11 countability Office;

12 (B) a State employee described in section
13 304(a) of the Government Employee Rights Act
14 of 1991 (42 U.S.C. 2000e-16c(a));

15 (C) a covered employee, as defined in sec-
16 tion 101 of the Congressional Accountability
17 Act of 1995 (2 U.S.C. 1301), other than an ap-
18 plicant for employment;

19 (D) a covered employee, as defined in sec-
20 tion 411(c) of title 3, United States Code; or

21 (E) a Federal officer or employee covered
22 under subchapter V of chapter 63 of title 5,
23 United States Code.

24 (4) EMPLOYER.—

1 (A) IN GENERAL.—The term “employer”
2 means a person who is—

3 (i)(I) a covered employer, as defined
4 in subparagraph (B), who is not covered
5 under subclause (V);

6 (II) an entity employing a State em-
7 ployee described in section 304(a) of the
8 Government Employee Rights Act of 1991;

9 (III) an employing office, as defined
10 in section 101 of the Congressional Ac-
11 countability Act of 1995;

12 (IV) an employing office, as defined in
13 section 411(c) of title 3, United States
14 Code; or

15 (V) an employing agency covered
16 under subchapter V of chapter 63 of title
17 5, United States Code; and

18 (ii) is engaged in commerce (including
19 government), or an industry or activity af-
20 fecting commerce (including government),
21 as defined in subparagraph (B)(iii).

22 (B) COVERED EMPLOYER.—

23 (i) IN GENERAL.—In subparagraph
24 (A)(i)(I), the term “covered employer”—

1 (I) means any person engaged in
2 commerce or in any industry or activ-
3 ity affecting commerce who employs
4 15 or more employees for each work-
5 ing day during each of 20 or more
6 calendar workweeks in the current or
7 preceding calendar year;

8 (II) includes—

9 (aa) any person who acts,
10 directly or indirectly, in the inter-
11 est of an employer to any of the
12 employees of such employer; and

13 (bb) any successor in inter-
14 est of an employer;

15 (III) includes any “public agen-
16 cy”, as defined in section 3(x) of the
17 Fair Labor Standards Act of 1938
18 (29 U.S.C. 203(x)); and

19 (IV) includes the Government
20 Accountability Office and the Library
21 of Congress.

22 (ii) PUBLIC AGENCY.—For purposes
23 of clause (i)(III), a public agency shall be
24 considered to be a person engaged in com-

1 merce or in an industry or activity affect-
2 ing commerce.

3 (iii) DEFINITIONS.—For purposes of
4 this subparagraph:

5 (I) COMMERCE.—The terms
6 “commerce” and “industry or activity
7 affecting commerce” mean any activ-
8 ity, business, or industry in commerce
9 or in which a labor dispute would
10 hinder or obstruct commerce or the
11 free flow of commerce, and include
12 “commerce” and any “industry affect-
13 ing commerce”, as defined in para-
14 graphs (1) and (3) of section 501 of
15 the Labor Management Relations Act,
16 1947 (29 U.S.C. 142 (1) and (3)).

17 (II) EMPLOYEE.—The term “em-
18 ployee” has the same meaning given
19 such term in section 3(e) of the Fair
20 Labor Standards Act of 1938 (29
21 U.S.C. 203(e)).

22 (III) PERSON.—The term “per-
23 son” has the same meaning given
24 such term in section 3(a) of the Fair

1 Labor Standards Act of 1938 (29
2 U.S.C. 203(a)).

3 (C) PREDECESSORS.—Any reference in
4 this paragraph to an employer shall include a
5 reference to any predecessor of such employer.

6 (5) EMPLOYMENT BENEFITS.—The term “em-
7 ployment benefits” means all benefits provided or
8 made available to employees by an employer, includ-
9 ing group life insurance, health insurance, disability
10 insurance, sick leave, annual leave, educational bene-
11 fits, and pensions, regardless of whether such bene-
12 fits are provided by a practice or written policy of
13 an employer or through an “employee benefit plan”,
14 as defined in section 3(3) of the Employee Retirement
15 Income Security Act of 1974 (29 U.S.C.
16 1002(3)).

17 (6) HEALTH CARE PROVIDER.—The term
18 “health care provider” means a provider who—

19 (A)(i) is a doctor of medicine or osteopathy
20 who is authorized to practice medicine or sur-
21 gery (as appropriate) by the State in which the
22 doctor practices; or

23 (ii) is any other person determined by the
24 Secretary to be capable of providing health care
25 services; and

1 (B) is not employed by an employer for
2 whom the provider issues certification under
3 this Act.

4 (7) PAID SICK TIME.—The term “paid sick
5 time” means an increment of compensated leave that
6 can be earned by an employee for use during an ab-
7 sence from employment for any of the reasons de-
8 scribed in paragraphs (1) through (4) of section
9 5(b).

10 (8) PARENT.—The term “parent” means a bio-
11 logical, foster, or adoptive parent of an employee, a
12 stepparent of an employee, or a legal guardian or
13 other person who stood in loco parentis to an em-
14 ployee when the employee was a child.

15 (9) SECRETARY.—The term “Secretary” means
16 the Secretary of Labor.

17 (10) SEXUAL ASSAULT.—The term “sexual as-
18 sault” has the meaning given the term in section
19 40002(a) of the Violence Against Women Act of
20 1994 (42 U.S.C. 13925(a)).

21 (11) SPOUSE.—The term “spouse”, with re-
22 spect to an employee, has the meaning given such
23 term by the marriage laws of the State in which the
24 employee resides.

1 (12) STALKING.—The term “stalking” has the
2 meaning given the term in section 40002(a) of the
3 Violence Against Women Act of 1994 (42 U.S.C.
4 13925(a)).

5 (13) VICTIM SERVICES ORGANIZATION.—The
6 term “victim services organization” means a non-
7 profit, nongovernmental organization that provides
8 assistance to victims of domestic violence, sexual as-
9 sault, or stalking or advocates for such victims, in-
10 cluding a rape crisis center, an organization carrying
11 out a domestic violence, sexual assault, or stalking
12 prevention or treatment program, an organization
13 operating a shelter or providing counseling services,
14 or a legal services organization or other organization
15 providing assistance through the legal process.

16 **SEC. 5. PROVISION OF PAID SICK TIME.**

17 (a) ACCRUAL OF PAID SICK TIME.—

18 (1) IN GENERAL.—An employer shall permit
19 each employee employed by the employer to earn not
20 less than 1 hour of paid sick time for every 30 hours
21 worked, to be used as described in subsection (b).
22 An employer shall not be required to permit an em-
23 ployee to earn, under this section, more than 56
24 hours of paid sick time in a calendar year, unless
25 the employer chooses to set a higher limit.

1 (2) EXEMPT EMPLOYEES.—

2 (A) IN GENERAL.—Except as provided in
3 paragraph (3), for purposes of this section, an
4 employee who is exempt from overtime require-
5 ments under section 13(a)(1) of the Fair Labor
6 Standards Act of 1938 (29 U.S.C. 213(a)(1))
7 shall be assumed to work 40 hours in each
8 workweek.

9 (B) SHORTER NORMAL WORKWEEK.—If
10 the normal workweek of such an employee is
11 less than 40 hours, the employee shall earn
12 paid sick time based upon that normal work
13 week.

14 (3) DATES OF ACCRUAL AND USE.—Employees
15 shall begin to earn paid sick time under this section
16 at the commencement of their employment. An em-
17 ployee shall be entitled to use the earned paid sick
18 time beginning on the 60th calendar day following
19 commencement of the employee’s employment. After
20 that 60th calendar day, the employee may use the
21 paid sick time as the time is earned. An employer
22 may, at the discretion of the employer, loan paid
23 sick time to an employee in advance of the earning
24 of such time under this section by such employee.

25 (4) CARRYOVER.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), paid sick time earned under
3 this section shall carry over from 1 calendar
4 year to the next.

5 (B) CONSTRUCTION.—This Act shall not
6 be construed to require an employer to permit
7 an employee to accrue more than 56 hours of
8 earned paid sick time at a given time.

9 (5) EMPLOYERS WITH EXISTING POLICIES.—
10 Any employer with a paid leave policy who makes
11 available an amount of paid leave that is sufficient
12 to meet the requirements of this section and that
13 may be used for the same purposes and under the
14 same conditions as the purposes and conditions out-
15 lined in subsection (b) shall not be required to per-
16 mit an employee to earn additional paid sick time
17 under this section.

18 (6) CONSTRUCTION.—Nothing in this section
19 shall be construed as requiring financial or other re-
20 imbursement to an employee from an employer upon
21 the employee's termination, resignation, retirement,
22 or other separation from employment for earned
23 paid sick time that has not been used.

24 (7) REINSTATEMENT.—If an employee is sepa-
25 rated from employment with an employer and is re-

1 hired, within 12 months after that separation, by the
2 same employer, the employer shall reinstate the em-
3 ployee's previously earned paid sick time. The em-
4 ployee shall be entitled to use the earned paid sick
5 time and earn additional paid sick time at the re-
6 commencement of employment with the employer.

7 (8) PROHIBITION.—An employer may not re-
8 quire, as a condition of providing paid sick time
9 under this Act, that the employee involved search for
10 or find a replacement worker to cover the hours dur-
11 ing which the employee is using paid sick time.

12 (b) USES.—Paid sick time earned under this section
13 may be used by an employee for any of the following:

14 (1) An absence resulting from a physical or
15 mental illness, injury, or medical condition of the
16 employee.

17 (2) An absence resulting from obtaining profes-
18 sional medical diagnosis or care, or preventive med-
19 ical care, for the employee.

20 (3) An absence for the purpose of caring for a
21 child, a parent, a spouse, or any other individual re-
22 lated by blood or affinity whose close association
23 with the employee is the equivalent of a family rela-
24 tionship, who—

1 (A) has any of the conditions or needs for
2 diagnosis or care described in paragraph (1) or
3 (2); and

4 (B) in the case of someone who is not a
5 child, is otherwise in need of care.

6 (4) An absence resulting from domestic vio-
7 lence, sexual assault, or stalking, if the time is to—

8 (A) seek medical attention for the em-
9 ployee or the employee's child, parent, or
10 spouse, or an individual related to the employee
11 as described in paragraph (3), to recover from
12 physical or psychological injury or disability
13 caused by domestic violence, sexual assault, or
14 stalking;

15 (B) obtain or assist a related person de-
16 scribed in paragraph (3) in obtaining services
17 from a victim services organization;

18 (C) obtain or assist a related person de-
19 scribed in paragraph (3) in obtaining psycho-
20 logical or other counseling;

21 (D) seek relocation; or

22 (E) take legal action, including preparing
23 for or participating in any civil or criminal legal
24 proceeding related to or resulting from domestic
25 violence, sexual assault, or stalking.

1 (c) SCHEDULING.—An employee shall make a reason-
2 able effort to schedule a period of paid sick time under
3 this Act in a manner that does not unduly disrupt the
4 operations of the employer.

5 (d) PROCEDURES.—

6 (1) IN GENERAL.—Paid sick time shall be pro-
7 vided upon the oral or written request of an em-
8 ployee. Such request shall—

9 (A) include the expected duration of the
10 period of such time;

11 (B) in a case in which the need for such
12 period of time is foreseeable at least 7 days in
13 advance of such period, be provided at least 7
14 days in advance of such period; and

15 (C) otherwise, be provided as soon as prac-
16 ticable after the employee is aware of the need
17 for such period.

18 (2) CERTIFICATION IN GENERAL.—

19 (A) PROVISION.—

20 (i) IN GENERAL.—Subject to subpara-
21 graph (C), an employer may require that a
22 request for paid sick time under this sec-
23 tion for a purpose described in paragraph
24 (1), (2), or (3) of subsection (b) be sup-
25 ported by a certification issued by the

1 health care provider of the eligible em-
2 ployee or of an individual described in sub-
3 section (b)(3), as appropriate, if the period
4 of such time covers more than 3 consecu-
5 tive workdays.

6 (ii) TIMELINESS.—The employee shall
7 provide a copy of such certification to the
8 employer in a timely manner, not later
9 than 30 days after the first day of the pe-
10 riod of time. The employer shall not delay
11 the commencement of the period of time on
12 the basis that the employer has not yet re-
13 ceived the certification.

14 (B) SUFFICIENT CERTIFICATION.—

15 (i) IN GENERAL.—A certification pro-
16 vided under subparagraph (A) shall be suf-
17 ficient if it states—

18 (I) the date on which the period
19 of time will be needed;

20 (II) the probable duration of the
21 period of time;

22 (III) the appropriate medical
23 facts within the knowledge of the
24 health care provider regarding the

1 condition involved, subject to clause
2 (ii); and

3 (IV)(aa) for purposes of paid sick
4 time under subsection (b)(1), a state-
5 ment that absence from work is medi-
6 cally necessary;

7 (bb) for purposes of such time
8 under subsection (b)(2), the dates on
9 which testing for a medical diagnosis
10 or care is expected to be given and the
11 duration of such testing or care; and

12 (cc) for purposes of such time
13 under subsection (b)(3), in the case of
14 time to care for someone who is not a
15 child, a statement that care is needed
16 for an individual described in such
17 subsection, and an estimate of the
18 amount of time that such care is
19 needed for such individual.

20 (ii) LIMITATION.—In issuing a certifi-
21 cation under subparagraph (A), a health
22 care provider shall make reasonable efforts
23 to limit the medical facts described in
24 clause (i)(III) that are disclosed in the cer-
25 tification to the minimum necessary to es-

1 tabish a need for the employee to utilize
2 paid sick time.

3 (C) REGULATIONS.—Regulations pre-
4 scribed under section 13 shall specify the man-
5 ner in which an employee who does not have
6 health insurance shall provide a certification for
7 purposes of this paragraph.

8 (D) CONFIDENTIALITY AND NONDISCLO-
9 SURE.—

10 (i) PROTECTED HEALTH INFORMA-
11 TION.—Nothing in this Act shall be con-
12 strued to require a health care provider to
13 disclose information in violation of section
14 1177 of the Social Security Act (42 U.S.C.
15 1320d–6) or the regulations promulgated
16 pursuant to section 264(c) of the Health
17 Insurance Portability and Accountability
18 Act of 1996 (42 U.S.C. 1320d–2 note).

19 (ii) HEALTH INFORMATION
20 RECORDS.—If an employer possesses
21 health information about an employee or
22 an employee’s child, parent, spouse or
23 other individual described in subsection
24 (b)(3), such information shall—

1 (I) be maintained on a separate
2 form and in a separate file from other
3 personnel information;

4 (II) be treated as a confidential
5 medical record; and

6 (III) not be disclosed except to
7 the affected employee or with the per-
8 mission of the affected employee.

9 (3) CERTIFICATION IN THE CASE OF DOMESTIC
10 VIOLENCE, SEXUAL ASSAULT, OR STALKING.—

11 (A) IN GENERAL.—An employer may re-
12 quire that a request for paid sick time under
13 this section for a purpose described in sub-
14 section (b)(4) be supported by 1 of the fol-
15 lowing forms of documentation:

16 (i) A police report indicating that the
17 employee, or a member of the employee's
18 family described in subsection (b)(4), was
19 a victim of domestic violence, sexual as-
20 sult, or stalking.

21 (ii) A court order protecting or sepa-
22 rating the employee or a member of the
23 employee's family described in subsection
24 (b)(4) from the perpetrator of an act of
25 domestic violence, sexual assault, or stalk-

1 ing, or other evidence from the court or
2 prosecuting attorney that the employee or
3 a member of the employee's family de-
4 scribed in subsection (b)(4) has appeared
5 in court or is scheduled to appear in court
6 in a proceeding related to domestic vio-
7 lence, sexual assault, or stalking.

8 (iii) Other documentation signed by
9 an employee or volunteer working for a vic-
10 tim services organization, an attorney, a
11 police officer, a medical professional, a so-
12 cial worker, an antiviolence counselor, or a
13 member of the clergy, affirming that the
14 employee or a member of the employee's
15 family described in subsection (b)(4) is a
16 victim of domestic violence, sexual assault,
17 or stalking.

18 (B) REQUIREMENTS.—The requirements
19 of paragraph (2) shall apply to certifications
20 under this paragraph, except that—

21 (i) subclauses (III) and (IV) of sub-
22 paragraph (B)(i) and subparagraph (B)(ii)
23 of such paragraph shall not apply;

24 (ii) the certification shall state the
25 reason that the leave is required with the

1 facts to be disclosed limited to the min-
2 imum necessary to establish a need for the
3 employee to be absent from work, and the
4 employee shall not be required to explain
5 the details of the domestic violence, sexual
6 assault, or stalking involved; and

7 (iii) with respect to confidentiality
8 under subparagraph (D) of such para-
9 graph, any information provided to the em-
10 ployer under this paragraph shall be con-
11 fidential, except to the extent that any dis-
12 closure of such information is—

13 (I) requested or consented to in
14 writing by the employee; or

15 (II) otherwise required by appli-
16 cable Federal or State law.

17 **SEC. 6. POSTING REQUIREMENT.**

18 (a) IN GENERAL.—Each employer shall post and
19 keep posted a notice, to be prepared or approved in ac-
20 cordance with procedures specified in regulations pre-
21 scribed under section 13, setting forth excerpts from, or
22 summaries of, the pertinent provisions of this Act includ-
23 ing—

24 (1) information describing paid sick time avail-
25 able to employees under this Act;

1 (2) information pertaining to the filing of an
2 action under this Act;

3 (3) the details of the notice requirement for a
4 foreseeable period of time under section 5(d)(1)(B);
5 and

6 (4) information that describes—

7 (A) the protections that an employee has
8 in exercising rights under this Act; and

9 (B) how the employee can contact the Sec-
10 retary (or other appropriate authority as de-
11 scribed in section 8) if any of the rights are vio-
12 lated.

13 (b) LOCATION.—The notice described under sub-
14 section (a) shall be posted—

15 (1) in conspicuous places on the premises of the
16 employer, where notices to employees (including ap-
17 plicants) are customarily posted; or

18 (2) in employee handbooks.

19 (c) VIOLATION; PENALTY.—Any employer who will-
20 fully violates the posting requirements of this section shall
21 be subject to a civil fine in an amount not to exceed \$100
22 for each separate offense.

23 **SEC. 7. PROHIBITED ACTS.**

24 (a) INTERFERENCE WITH RIGHTS.—

1 (1) EXERCISE OF RIGHTS.—It shall be unlawful
2 for any employer to interfere with, restrain, or deny
3 the exercise of, or the attempt to exercise, any right
4 provided under this Act, including—

5 (A) discharging or discriminating against
6 (including retaliating against) any individual,
7 including a job applicant, for exercising, or at-
8 tempting to exercise, any right provided under
9 this Act;

10 (B) using the taking of paid sick time
11 under this Act as a negative factor in an em-
12 ployment action, such as hiring, promotion, or
13 a disciplinary action; or

14 (C) counting the paid sick time under a
15 no-fault attendance policy or any other absence
16 control policy.

17 (2) DISCRIMINATION.—It shall be unlawful for
18 any employer to discharge or in any other manner
19 discriminate against (including retaliating against)
20 any individual, including a job applicant, for oppos-
21 ing any practice made unlawful by this Act.

22 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
23 IES.—It shall be unlawful for any person to discharge or
24 in any other manner discriminate against (including retali-

1 ating against) any individual, including a job applicant,
2 because such individual—

3 (1) has filed an action, or has instituted or
4 caused to be instituted any proceeding, under or re-
5 lated to this Act;

6 (2) has given, or is about to give, any informa-
7 tion in connection with any inquiry or proceeding re-
8 lating to any right provided under this Act; or

9 (3) has testified, or is about to testify, in any
10 inquiry or proceeding relating to any right provided
11 under this Act.

12 (c) CONSTRUCTION.—Nothing in this section shall be
13 construed to state or imply that the scope of the activities
14 prohibited by section 105 of the Family and Medical Leave
15 Act of 1993 (29 U.S.C. 2615) is less than the scope of
16 the activities prohibited by this section.

17 **SEC. 8. ENFORCEMENT AUTHORITY.**

18 (a) IN GENERAL.—

19 (1) DEFINITION.—In this subsection:

20 (A) the term “employee” means an em-
21 ployee described in subparagraph (A) or (B) of
22 section 4(3); and

23 (B) the term “employer” means an em-
24 ployer described in subclause (I) or (II) of sec-
25 tion 4(4)(A)(i).

1 (2) INVESTIGATIVE AUTHORITY.—

2 (A) IN GENERAL.—To ensure compliance
3 with the provisions of this Act, or any regula-
4 tion or order issued under this Act, the Sec-
5 retary shall have, subject to subparagraph (C),
6 the investigative authority provided under sec-
7 tion 11(a) of the Fair Labor Standards Act of
8 1938 (29 U.S.C. 211(a)), with respect to em-
9 ployers, employees, and other individuals af-
10 fected.

11 (B) OBLIGATION TO KEEP AND PRESERVE
12 RECORDS.—An employer shall make, keep, and
13 preserve records pertaining to compliance with
14 this Act in accordance with section 11(c) of the
15 Fair Labor Standards Act of 1938 (29 U.S.C.
16 211(c)) and in accordance with regulations pre-
17 scribed by the Secretary.

18 (C) REQUIRED SUBMISSIONS GENERALLY
19 LIMITED TO AN ANNUAL BASIS.—The Secretary
20 shall not require, under the authority of this
21 paragraph, an employer to submit to the Sec-
22 retary any books or records more than once
23 during any 12-month period, unless the Sec-
24 retary has reasonable cause to believe there
25 may exist a violation of this Act or any regula-

1 tion or order issued pursuant to this Act, or is
2 investigating a charge pursuant to paragraph
3 (4).

4 (D) SUBPOENA AUTHORITY.—For the pur-
5 poses of any investigation provided for in this
6 paragraph, the Secretary shall have the sub-
7 poena authority provided for under section 9 of
8 the Fair Labor Standards Act of 1938 (29
9 U.S.C. 209).

10 (3) CIVIL ACTION BY EMPLOYEES OR INDIVID-
11 UALS.—

12 (A) RIGHT OF ACTION.—An action to re-
13 cover the damages or equitable relief prescribed
14 in subparagraph (B) may be maintained
15 against any employer in any Federal or State
16 court of competent jurisdiction by one or more
17 employees or individuals or their representative
18 for and on behalf of—

19 (i) the employees or individuals; or

20 (ii) the employees or individuals and
21 others similarly situated.

22 (B) LIABILITY.—Any employer who vio-
23 lates section 7 (including a violation relating to
24 rights provided under section 5) shall be liable
25 to any employee or individual affected—

- 1 (i) for damages equal to—
2 (I) the amount of—
3 (aa) any wages, salary, em-
4 ployment benefits, or other com-
5 pensation denied or lost by rea-
6 son of the violation; or
7 (bb) in a case in which
8 wages, salary, employment bene-
9 fits, or other compensation have
10 not been denied or lost, any ac-
11 tual monetary losses sustained as
12 a direct result of the violation up
13 to a sum equal to 56 hours of
14 wages or salary for the employee
15 or individual;
16 (II) the interest on the amount
17 described in subclause (I) calculated
18 at the prevailing rate; and
19 (III) an additional amount as liq-
20 uidated damages; and
21 (ii) for such equitable relief as may be
22 appropriate, including employment, rein-
23 statement, and promotion.
24 (C) FEES AND COSTS.—The court in an
25 action under this paragraph shall, in addition to

1 any judgment awarded to the plaintiff, allow a
2 reasonable attorney's fee, reasonable expert wit-
3 ness fees, and other costs of the action to be
4 paid by the defendant.

5 (4) ACTION BY THE SECRETARY.—

6 (A) ADMINISTRATIVE ACTION.—The Sec-
7 retary shall receive, investigate, and attempt to
8 resolve complaints of violations of section 7 (in-
9 cluding a violation relating to rights provided
10 under section 5) in the same manner that the
11 Secretary receives, investigates, and attempts to
12 resolve complaints of violations of sections 6
13 and 7 of the Fair Labor Standards Act of 1938
14 (29 U.S.C. 206 and 207).

15 (B) CIVIL ACTION.—The Secretary may
16 bring an action in any court of competent juris-
17 diction to recover the damages described in
18 paragraph (3)(B)(i).

19 (C) SUMS RECOVERED.—Any sums recov-
20 ered by the Secretary pursuant to subparagraph
21 (B) shall be held in a special deposit account
22 and shall be paid, on order of the Secretary, di-
23 rectly to each employee or individual affected.
24 Any such sums not paid to an employee or indi-
25 vidual affected because of inability to do so

1 within a period of 3 years shall be deposited
2 into the Treasury of the United States as mis-
3 cellaneous receipts.

4 (5) LIMITATION.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), an action may be brought
7 under paragraph (3), (4), or (6) not later than
8 2 years after the date of the last event consti-
9 tuting the alleged violation for which the action
10 is brought.

11 (B) WILLFUL VIOLATION.—In the case of
12 an action brought for a willful violation of sec-
13 tion 7 (including a willful violation relating to
14 rights provided under section 5), such action
15 may be brought within 3 years of the date of
16 the last event constituting the alleged violation
17 for which such action is brought.

18 (C) COMMENCEMENT.—In determining
19 when an action is commenced under paragraph
20 (3), (4), or (6) for the purposes of this para-
21 graph, it shall be considered to be commenced
22 on the date when the complaint is filed.

23 (6) ACTION FOR INJUNCTION BY SECRETARY.—

24 The district courts of the United States shall have

1 jurisdiction, for cause shown, in an action brought
2 by the Secretary—

3 (A) to restrain violations of section 7 (in-
4 cluding a violation relating to rights provided
5 under section 5), including the restraint of any
6 withholding of payment of wages, salary, em-
7 ployment benefits, or other compensation, plus
8 interest, found by the court to be due to em-
9 ployees or individuals eligible under this Act; or

10 (B) to award such other equitable relief as
11 may be appropriate, including employment, re-
12 instatement, and promotion.

13 (7) SOLICITOR OF LABOR.—The Solicitor of
14 Labor may appear for and represent the Secretary
15 on any litigation brought under paragraph (4) or
16 (6).

17 (8) GOVERNMENT ACCOUNTABILITY OFFICE
18 AND LIBRARY OF CONGRESS.—Notwithstanding any
19 other provision of this subsection, in the case of the
20 Government Accountability Office and the Library of
21 Congress, the authority of the Secretary of Labor
22 under this subsection shall be exercised respectively
23 by the Comptroller General of the United States and
24 the Librarian of Congress.

1 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
2 COUNTABILITY ACT OF 1995.—The powers, remedies, and
3 procedures provided in the Congressional Accountability
4 Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as de-
5 fined in section 101 of that Act (2 U.S.C. 1301)), or any
6 person, alleging a violation of section 202(a)(1) of that
7 Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies,
8 and procedures this Act provides to that Board, or any
9 person, alleging an unlawful employment practice in viola-
10 tion of this Act against an employee described in section
11 4(3)(C).

12 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
13 3, UNITED STATES CODE.—The powers, remedies, and
14 procedures provided in chapter 5 of title 3, United States
15 Code, to the President, the Merit Systems Protection
16 Board, or any person, alleging a violation of section
17 412(a)(1) of that title, shall be the powers, remedies, and
18 procedures this Act provides to the President, that Board,
19 or any person, respectively, alleging an unlawful employ-
20 ment practice in violation of this Act against an employee
21 described in section 4(3)(D).

22 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
23 5, UNITED STATES CODE.—The powers, remedies, and
24 procedures provided in title 5, United States Code, to an
25 employing agency, provided in chapter 12 of that title to

1 the Merit Systems Protection Board, or provided in that
2 title to any person, alleging a violation of chapter 63 of
3 that title, shall be the powers, remedies, and procedures
4 this Act provides to that agency, that Board, or any per-
5 son, respectively, alleging an unlawful employment prac-
6 tice in violation of this Act against an employee described
7 in section 4(3)(E).

8 (e) REMEDIES FOR STATE EMPLOYEES.—

9 (1) WAIVER OF SOVEREIGN IMMUNITY.—A
10 State's receipt or use of Federal financial assistance
11 for any program or activity of a State shall con-
12 stitute a waiver of sovereign immunity, under the
13 11th Amendment to the Constitution or otherwise,
14 to a suit brought by an employee of that program
15 or activity under this Act for equitable, legal, or
16 other relief authorized under this Act.

17 (2) OFFICIAL CAPACITY.—An official of a State
18 may be sued in the official capacity of the official by
19 any employee who has complied with the procedures
20 under subsection (a)(3), for injunctive relief that is
21 authorized under this Act. In such a suit the court
22 may award to the prevailing party those costs au-
23 thorized by section 722 of the Revised Statutes (42
24 U.S.C. 1988).

1 (3) APPLICABILITY.—With respect to a par-
2 ticular program or activity, paragraph (1) applies to
3 conduct occurring on or after the day, after the date
4 of enactment of this Act, on which a State first re-
5 ceives or uses Federal financial assistance for that
6 program or activity.

7 (4) DEFINITION OF PROGRAM OR ACTIVITY.—In
8 this subsection, the term “program or activity” has
9 the meaning given the term in section 606 of the
10 Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

11 **SEC. 9. COLLECTION OF DATA ON PAID SICK TIME AND**
12 **FURTHER STUDY.**

13 (a) COMPILATION OF INFORMATION.—Effective 90
14 days after the date of enactment of this Act, the Commis-
15 sioner of Labor Statistics shall annually compile informa-
16 tion on the following:

17 (1) The number of employees who used paid
18 sick time.

19 (2) The number of hours of paid sick time
20 used.

21 (3) The number of employees who used paid
22 sick time for absences necessary due to domestic vio-
23 lence, sexual assault, or stalking.

1 (4) The demographic characteristics of employ-
2 ees who were eligible for and who used paid sick
3 time.

4 (b) GAO STUDY.—

5 (1) IN GENERAL.—The Comptroller General of
6 the United States shall annually conduct a study to
7 determine the following:

8 (A)(i) The number of days employees used
9 paid sick time and the reasons for the use.

10 (ii) The number of employees who used the
11 paid sick time for periods of time covering more
12 than 3 consecutive workdays.

13 (B) The cost and benefits to employers of
14 implementing the paid sick time policies.

15 (C) The cost to employees of providing cer-
16 tification to obtain the paid sick time.

17 (D) The benefits of the paid sick time to
18 employees and their family members, including
19 effects on employees' ability to care for their
20 family members or to provide for their own
21 health needs.

22 (E) Whether the paid sick time affected
23 employees' ability to sustain an adequate in-
24 come while meeting needs of the employees and
25 their family members.

1 (F) Whether employers who administered
2 paid sick time policies prior to the date of en-
3 actment of this Act were affected by the provi-
4 sions of this Act.

5 (G) Whether other types of leave were af-
6 fected by this Act.

7 (H) Whether paid sick time affected reten-
8 tion and turnover and costs of presenteeism.

9 (I) Whether the paid sick time increased
10 the use of less costly preventive medical care
11 and lowered the use of emergency room care.

12 (J) Whether the paid sick time reduced the
13 number of children sent to school when the chil-
14 dren were sick.

15 (2) AGGREGATING DATA.—The data collected
16 under subparagraphs (A) and (D) of paragraph (1)
17 shall be aggregated by gender, race, disability, earn-
18 ings level, age, marital status, family type, including
19 parental status, and industry.

20 (3) REPORTS.—

21 (A) IN GENERAL.—Not later than 18
22 months after the date of enactment of this Act,
23 the Comptroller General of the United States
24 shall prepare and submit a report to the appro-
25 priate committees of Congress concerning the

1 results of the study conducted pursuant to
2 paragraph (1) and the data aggregated under
3 paragraph (2).

4 (B) FOLLOWUP REPORT.—Not later than
5 5 years after the date of enactment of this Act,
6 the Comptroller General of the United States
7 shall prepare and submit a followup report to
8 the appropriate committees of Congress con-
9 cerning the results of the study conducted pur-
10 suant to paragraph (1) and the data aggregated
11 under paragraph (2).

12 **SEC. 10. EFFECT ON OTHER LAWS.**

13 (a) FEDERAL AND STATE ANTIDISCRIMINATION
14 LAWS.—Nothing in this Act shall be construed to modify
15 or affect any Federal or State law prohibiting discrimina-
16 tion on the basis of race, religion, color, national origin,
17 sex, age, or disability.

18 (b) STATE AND LOCAL LAWS.—Nothing in this Act
19 shall be construed to supersede (including preempting)
20 any provision of any State or local law that provides great-
21 er paid sick time or leave rights (including greater paid
22 sick time or leave, or greater coverage of those eligible for
23 paid sick time or leave) than the rights established under
24 this Act.

1 **SEC. 11. EFFECT ON EXISTING EMPLOYMENT BENEFITS.**

2 (a) MORE PROTECTIVE.—Nothing in this Act shall
3 be construed to diminish the obligation of an employer to
4 comply with any contract, collective bargaining agreement,
5 or any employment benefit program or plan that provides
6 greater paid sick leave or other leave rights to employees
7 or individuals than the rights established under this Act.

8 (b) LESS PROTECTIVE.—The rights established for
9 employees under this Act shall not be diminished by any
10 contract, collective bargaining agreement, or any employ-
11 ment benefit program or plan.

12 **SEC. 12. ENCOURAGEMENT OF MORE GENEROUS LEAVE**
13 **POLICIES.**

14 Nothing in this Act shall be construed to discourage
15 employers from adopting or retaining leave policies more
16 generous than policies that comply with the requirements
17 of this Act.

18 **SEC. 13. REGULATIONS.**

19 (a) IN GENERAL.—

20 (1) AUTHORITY.—Except as provided in para-
21 graph (2), not later than 180 days after the date of
22 enactment of this Act, the Secretary shall prescribe
23 such regulations as are necessary to carry out this
24 Act with respect to employees described in subpara-
25 graph (A) or (B) of section 4(3) and other individ-

1 uals affected by employers described in subclause (I)
2 or (II) of section 4(4)(A)(i).

3 (2) GOVERNMENT ACCOUNTABILITY OFFICE; LI-
4 BRARY OF CONGRESS.—The Comptroller General of
5 the United States and the Librarian of Congress
6 shall prescribe the regulations with respect to em-
7 ployees of the Government Accountability Office and
8 the Library of Congress, respectively, and other indi-
9 viduals affected by the Comptroller General of the
10 United States and the Librarian of Congress, re-
11 spectively.

12 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
13 COUNTABILITY ACT OF 1995.—

14 (1) AUTHORITY.—Not later than 120 days
15 after the date of enactment of this Act, the Board
16 of Directors of the Office of Compliance shall pre-
17 scribe (in accordance with section 304 of the Con-
18 gressional Accountability Act of 1995 (2 U.S.C.
19 1384)) such regulations as are necessary to carry
20 out this Act with respect to employees described in
21 section 4(3)(C) and other individuals affected by em-
22 ployers described in section 4(4)(A)(i)(III).

23 (2) AGENCY REGULATIONS.—The regulations
24 prescribed under paragraph (1) shall be the same as
25 substantive regulations promulgated by the Sec-

1 retary to carry out this Act except insofar as the
2 Board may determine, for good cause shown and
3 stated together with the regulations prescribed
4 under paragraph (1), that a modification of such
5 regulations would be more effective for the imple-
6 mentation of the rights and protections involved
7 under this section.

8 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
9 3, UNITED STATES CODE.—

10 (1) AUTHORITY.—Not later than 120 days
11 after the date of enactment of this Act, the Presi-
12 dent (or the designee of the President) shall pre-
13 scribe such regulations as are necessary to carry out
14 this Act with respect to employees described in sec-
15 tion 4(3)(D) and other individuals affected by em-
16 ployers described in section 4(4)(A)(i)(IV).

17 (2) AGENCY REGULATIONS.—The regulations
18 prescribed under paragraph (1) shall be the same as
19 substantive regulations promulgated by the Sec-
20 retary to carry out this Act except insofar as the
21 President (or designee) may determine, for good
22 cause shown and stated together with the regula-
23 tions prescribed under paragraph (1), that a modi-
24 fication of such regulations would be more effective

1 for the implementation of the rights and protections
2 involved under this section.

3 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
4 5, UNITED STATES CODE.—

5 (1) AUTHORITY.—Not later than 120 days
6 after the date of enactment of this Act, the Director
7 of the Office of Personnel Management shall pre-
8 scribe such regulations as are necessary to carry out
9 this Act with respect to employees described in sec-
10 tion 4(3)(E) and other individuals affected by em-
11 ployers described in section 4(4)(A)(i)(V).

12 (2) AGENCY REGULATIONS.—The regulations
13 prescribed under paragraph (1) shall be the same as
14 substantive regulations promulgated by the Sec-
15 retary to carry out this Act except insofar as the Di-
16 rector may determine, for good cause shown and
17 stated together with the regulations prescribed
18 under paragraph (1), that a modification of such
19 regulations would be more effective for the imple-
20 mentation of the rights and protections involved
21 under this section.

22 **SEC. 14. EFFECTIVE DATES.**

23 (a) EFFECTIVE DATE.—This Act shall take effect 6
24 months after the date of issuance of regulations under sec-
25 tion 13(a)(1).

1 (b) COLLECTIVE BARGAINING AGREEMENTS.—In the
2 case of a collective bargaining agreement in effect on the
3 effective date prescribed by subsection (a), this Act shall
4 take effect on the earlier of—

5 (1) the date of the termination of such agree-
6 ment; or

7 (2) the date that occurs 18 months after the
8 date of issuance of regulations under section
9 13(a)(1).

○