




§ 2612. Leave requirement, 29 USCA § 2612

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-  KeyCite Red Flag - Severe Negative Treatment  
Enacted Legislation Amended by [PL 116-92, December 20, 2019, 133 Stat 1198](#),
-  KeyCite Red Flag - Severe Negative Treatment  
Unconstitutional or Preempted
-  KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

[United States Code Annotated Title 29. Labor Chapter 28. Family and Medical Leave \(Refs & Annos\)](#)  
[Subchapter I. General Requirements for Leave \(Refs & Annos\)](#)

29 U.S.C.A. § 2612

§ 2612. Leave requirement

Effective: December 21, 2009

[Currentness](#)

**(a) In general**

**(1) Entitlement to leave**

Subject to [section 2613](#) of this title, 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, determine) 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**

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

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(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**

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**(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.

**(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

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(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

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(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).

**CREDIT(S)**

(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) to (D), Jan. 28, 2008, 122 Stat. 129; Pub.L. 111-84, Div. A, Title V, § 565(a)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2309 to 2311; Pub.L. 111-119, § 2(b), Dec. 21, 2009, 123 Stat. 3477.)

**VALIDITY**

<The United States Supreme Court has held that Congress did not, under the Enforcement Clause of Fourteenth Amendment, validly abrogate states' sovereign immunity from suits for money damages in enacting FMLA's self-care provision (section 102(a)(1)(D) of the Family Medical Leave Act of 1993, Pub.L. 103-3; 29 U.S.C.A. § 2612(a)(1)(D)). *Coleman v. Court of Appeals of Maryland*, 566 U.S. 30, 132 S.Ct. 1327, 182 L.Ed. 2d 296 (2012).>

[Notes of Decisions \(224\)](#)

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Current through P.L. 116-91.

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**FMLA allows eligible employees to take up to 12 work weeks of unpaid leave during any 12-month period to care for a new child (through birth, adoption, or foster care), to care for a family member's illness (a spouse, son, daughter, or parent), or to care for their own serious health condition.**