



## Legislation Details (With Text)

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<b>File #:</b>	05-23	<b>Version:</b>	0	<b>Name:</b>	Personnel Rule 9.
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<b>File created:</b>	10/24/2005	<b>In control:</b>		<b>In control:</b>	County Legislature
<b>On agenda:</b>	10/24/2005	<b>Final action:</b>		<b>Final action:</b>	10/24/2005
<b>Title:</b>	Having withdrawn Executive Order #05-22 as being an incomplete statement of amendments to Jackson County, Missouri Personnel Rule 9, I hereby now promulgate the following amendments to Sections 9.3, 9.16, and 9.21, and establish one new section, 9.23:				

### RULE 9 - HOLIDAYS AND OTHER LEAVE

#### Section 9.3 - Holiday Pay

Holiday pay shall be the employee's actual rate of pay not to exceed eight hours of pay. An employee who works on County designated holiday shall receive holiday pay and shall also receive [time and one-half] two times his regular rate of pay for actual hours worked. An employee whose regularly scheduled day off falls on a County designated holiday shall receive only holiday pay. Employees shall not receive holiday pay while on leaves of absence without pay.

#### Section 9.16 - Death in the Immediate Family

A full time employee with the prior approval of the appointing authority shall be granted time off with pay not to exceed three working days for a death in his immediate family. Compensation shall not exceed eight hours of pay per day with a maximum benefit of twenty-four hours. In the event the services are to be conducted outside of a four hundred (400) mile radius, an additional two (2) days off with pay will be granted. Immediate family is defined as the employee's spouse, children (including step and adopted children), mother, father, mother-in-law, father-in-law, daughter-in-law, son-in-law, sisters, half sisters, step sisters and sisters-in-law, brothers, half brothers, step brothers and brothers-in-law, grandparents, stepparents, grandchildren and any other person if they reside permanently with the employee.

#### Section 9.21 - Family and Medical Leave

This rule is promulgated pursuant to the requirements of Public Law 103-3, The Family and Medical Leave Act of 1993 and the official rules and regulations promulgated thereunder by the appropriate agency of the United States, (hereinafter referred to simply as "FMLA"). For the purposes of this rule, all provisions of the FMLA, codified as 29 U.S.C. § 2601 et seq. (2005), are hereby adopted and incorporated herein by reference as is fully set forth herein, as the official personnel rule of Jackson County. The material set forth hereafter is intended to be a summary and clarification of the application of the FMLA to all employees, whether merit or nonmerit, of Jackson County, and the official text of said public law and the regulations promulgated thereunder shall govern to the extent of any conflict between said summary and the FMLA.

The appointing authority shall grant an eligible employee leave in accordance with the FMLA, not to exceed 12 weeks during any 12 month period. To be eligible for this leave, an employee must have worked at least 12 months for the County and at least 1250 hours in the year immediately preceding the commencement of the leave. Nothing herein shall prevent the County from discretionary denial or the placement of reasonable limitations or conditions upon privileges otherwise granted under the FMLA in accordance with the terms thereof.

Eligible employees are entitled to a total of 12 weeks leave during any 12 month period for one or

more of the following: [1) birth of a child, 2) placement of child for adoption or foster care 3)] 1) caring for a spouse, child, or parent with a serious health condition, or [4)] 2) the serious health condition of the employee. Eligible employees are entitled to a total of 14 weeks leave during any 12 month period for one or more of the following: 1) birth of a child, or 2) placement of child for adoption or foster care. The employee shall provide their appointing authority with a written statement from a physician certifying the condition for which the leave is required in cases of serious health condition.

The employee is required to give the appointing authority thirty days notice of foreseeable leaves, as well as to make reasonable efforts in scheduling leaves to avoid disrupting the County's business operations, as more specifically set forth in [Sec. 102 (e)] 29 U.S.C. § 2612(e) (2005) of the Act.

The employee's right to leave for the birth or adoption of a child ends 12 months after the child's birth or placement with the employee.

In the case where both spouses are employees of the County, their combined total leave in any 12 month period may be limited to [12] 14 weeks if the leave is taken for the birth or adoption of a child, or 12 weeks to care for a sick parent. This limitation does not apply to leave taken by either spouse to care for the other who is seriously ill, to care for a child with a serious illness or to take care of his or her own illness.

The employee is entitled to take leave on an intermittent or reduced schedule basis, only when an employee is requesting leave because of a serious health condition, either their own or that of a family member. The employee cannot take leave on an intermittent or reduced schedule basis for the birth or adoption of a child unless the appointing authority agrees to permit the leave.

The payment and accrual of sick leave, vacation leave, and payment or accrual of other benefits shall be governed by the medical leave rule (Section 9.11 hereof), except as otherwise required by FMLA and that Jackson County will require that employees substitute accrued paid leave for unpaid FMLA leave in the following order: 1) Accrued sick leave balance will be substituted until such accrual is exhausted; 2) Accrued compensatory time balance will be substituted until such accrual is exhausted; 3) Accrued vacation balance will be substituted until such accrual is exhausted; and 4) All other accrued leave balance. Once all accrued time has been exhausted, employees will be placed on leave without pay status.

Employees who are qualified for FMLA leave for the birth of a child or placement of child for adoption or foster care shall be granted the first five (5) weeks of leave with pay and without a decrease in any accrued leave benefit.

[A complete and accurate copy of Title I of the FMLA is hereby made a part hereof by reference and shall be included in the text of the Personnel Rules of Jackson County. In addition,] Each appointing authority shall post and keep posted the notice required under [Section 109] 29 U.S.C. § 2619 of the FMLA.

[One Hundred Third Congress  
of the  
United States of America  
AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fifth day of January, one thousand nine hundred and ninety-three

An Act  
To grant family and temporary medical leave under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title. -- This Act may be cited as the "Family and Medical Leave Act of 1993".

(b) Table of Contents. -- The table of contents is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

#### TITLE I- GENERAL REQUIREMENTS FOR LEAVE

Sec. 101. Definitions.

Sec. 102. Leave requirement.

Sec. 103. Certification.

Sec. 104. Employment and benefits protection.

Sec. 105. Prohibited acts.

Sec. 106. Investigative authority.

Sec. 107. Enforcement.

Sec. 108. Special rules concerning employees of local educational agencies.

Sec. 109. Notice.

#### SEC. 2. FINDINGS AND PURPOSES.

(a) Findings. -- Congress finds that –

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;

(3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;

(4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;

(5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) Purposes. -- It is the purpose of this Act –

(1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

## TITLE I-- GENERAL REQUIREMENTS FOR LEAVE

### SEC. 101. DEFINITIONS.

As used in this title:

(1) Commerce. -- The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (1) and (3)).

(2) Eligible Employee. --

(A) In General. -- The term "eligible employee" means an employee who has been employed --

(i) for at least 12 months by the employer with respect to whom leave is requested under section 102; and

(ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) Exclusions. -- The term "eligible employee" does not include

(i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act); or

(ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) Determination. -- For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(3) Employ; Employee; State. -- The terms "employ", "employee", and "State" have the same meanings given such terms in subsections (c), (e), and (g) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

(4) Employer. --

(A) In General. -- The term "employer" --

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes --

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer; and

(iii) includes any "public agency", as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(B) Public Agency. -- For purposes of subparagraph (A)(iii), a public agency shall be considered to be

a person engaged in commerce or in an industry or activity affecting commerce.

(5) Employment Benefits. -- The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(6) Health Care Provider. -- The term "health care provider" means

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(B) any other person determined by the Secretary to be capable of providing health care services.

(7) Parent. -- The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(8) Person. -- The term "person" has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(9) Reduced Leave Schedule. -- The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(10) Secretary. -- The term "Secretary" means the Secretary of Labor.

(11) Serious Health Condition. -- The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves –

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

(12) Son or Daughter. -- The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is –

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(13) Spouse. -- The term "spouse" means a husband or wife, as the case may be.

## SEC. 102. LEAVE REQUIREMENT.

(a) In General. –

(1) Entitlement to Leave. -- Subject to section 103, 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.

(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.

(b) Leave Taken Intermittently or on a 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 section 103(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. 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), 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 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer with this title 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, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) Substitution of Paid Leave. --

(A) In General. -- An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) 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 title 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.

(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) 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, or parent of the employee, as appropriate; and

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

(f) Spouses Employed by the Same Employer. -- 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 –

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

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

#### SEC. 103. CERTIFICATION.

(a) In General. -- An employer may require that a request for leave under subparagraph (C) or (D) of section 102(a)(1) be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Sufficient Certification. -- Certification provided under subsection (a) shall be sufficient if it states –

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and

(B) for purposes of leave under section 102(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee;

(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent

leave or reduced leave schedule.

(c) Second Opinion. –

(1) In General. -- In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 102(a)(1), the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

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

(d) Resolution of Conflicting Opinions. –

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

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

(e) Subsequent Recertification. -- The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

## SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.

(a) Restoration to Position. –

(1) In General. -- Except as provided in subsection (b), any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave –

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) Loss of benefits. -- The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) Limitations. -- Nothing in this section shall be construed to entitle any restored employee to –

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) Certification. -- As a condition of restoration under paragraph (1) for an employee who has taken leave under section 102(a)(1)(D), the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.

(5) Construction. -- Nothing in this subsection shall be construed to prohibit an employer from



requiring an employee on leave under section 102 to report periodically to the employer on the status and intention of the employee to return to work.

(b) Exemption Concerning Certain Highly Compensated Employees. –

(1) Denial of restoration. -- An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if –

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) Affected Employees. -- An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) Maintenance of Health Benefits. –

(1) Coverage. -- Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any "group health plan" (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(2) Failure to Return from Leave. -- The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if –

(A) the employee fails to return from leave under section 102 after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than –

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

(ii) other circumstances beyond the control of the employee.

(3) Certification. --(A) Issuance. -- An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by –

(i) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(C); or

(ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(D).

(B) Copy. -- The employee shall provide, in a timely manner, a copy of such certification to the employer.

(C) Sufficiency of Certification. –

(i) Leave Due to Serious Health Condition of Employee. -- The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

(ii) Leave Due to Serious Health Condition of Family Member. -- The certification described in subparagraph (A)(i) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

#### SEC. 105. PROHIBITED ACTS.

##### (a) Interference with Rights. --

(1) Exercise of Rights. -- It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) Discrimination. -- It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) Interference With Proceedings or Inquiries. -- It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual --

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or

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

#### SEC. 106. INVESTIGATIVE AUTHORITY.

(a) In General. -- To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) Obligation To Keep and Preserve Records. -- Any employer shall make, keep, and preserve records pertaining to compliance with this title in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.

(c) Required Submissions Generally Limited to an Annual Basis. -- The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 107(b).

(d) Subpoena Powers. -- For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

#### SEC. 107. ENFORCEMENT.

##### (a) Civil Action by Employees. --

(1) Liability. -- Any employer who violates section 105 shall be liable to any eligible employee affected

—

(A) for damages equal to –

(i) the amount of –

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) Right of action. -- An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of –

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) Fees and costs. -- The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) Limitations. -- The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate –

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1), unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) Action by the Secretary. –

(1) Administrative action. -- The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 105 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) Civil Action. -- The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A).

(3) Sums Recovered. -- Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee

affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Limitation. –

(1) In General. -- Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) Willful Violation. -- In the case of such action brought for a willful violation of section 105, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) Commencement. -- In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) Action for Injunction by Secretary. -- The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary –

(1) to restrain violations of section 105, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) Solicitor of Labor. -- The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

#### SEC. 108. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.

(a) Application. –

(1) In General. -- Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this title shall apply to –

(A) any "local educational agency" (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and an eligible employee of the agency; and

(B) any private elementary or secondary school and an eligible employee of the school.

(2) Definitions. -- For purposes of the application described in paragraph (1):

(A) Eligible Employee. -- The term "eligible employee" means an eligible employee of an agency or school described in paragraph (1).

(B) Employer. -- The term "employer" means an agency or school described in paragraph (1).

(b) Leave Does Not Violate Certain Other Federal Laws. -- A local educational agency and a private elementary or secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this title.

(c) Intermittent Leave or Leave on a Reduced Schedule for Instructional Employees. –

(1) In General. -- Subject to paragraph (2), in any case in which an eligible employee employed

principally in an instructional capacity by any such educational agency or school requests leave under subparagraph (C) or (D) of section 102(a)(1) that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require that such employee elect either –

(A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that –

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) Application. -- The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 102(e)(2).

(d) Rules Applicable to Periods Near the Conclusion of an Academic Term. -- The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) Leave more than 5 weeks prior to end of term. -- If the eligible employee begins leave under section 102 more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if –

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) Leave less than 5 weeks prior to end of term. -- If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if –

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) Leave less than 3 weeks prior to end of term. -- If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) Restoration to Equivalent Employment Position. -- For purposes of determinations under section 104(a)(1)(B) (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) Reduction of the Amount of Liability. -- If a local educational agency or a private elementary or secondary school that has violated this title proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of this title, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 107(a)(1)(A) to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

SEC. 109. NOTICE.

(a) In General. -- Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) Penalty. -- Any employer that willfully violates this section may be assessed a civil money penalty not to exceed \$100 for each separate offense.]

Section 9.23 - Shared Leave Program

Full-time employees may donate accrued sick leave or other accrued leave to other full-time employees who are on an approved Medical Leave of Absence as set forth below.

Full-time employees may submit a Shared Leave Donation form to the Appointing Authority of their department requesting that a specified number of hours of leave be transferred from his/her annual sick leave or vacation account to the sick leave account of a specified recipient. The donor must have a combined total of 120 hours of sick leave and vacation leave after the donation unless the donation is to the account of his/her own spouse, child, or parent. Any leave time donated is irrevocable.

Any full-time employee can request to become a leave recipient if:  
He/she makes a written application for donated leave by submitting a Shared Leave Request form.

The full-time employee must provide a letter from a licensed physician that the employee or a member of his or her immediate family (spouse, child, mother, father, stepmother, stepfather, or domestic partner) has a medical condition that requires the employee to be absent from work, and

The employee has exhausted (or will exhaust within the period for which the request is made) all of his/her accrued sick leave and accrued vacation leave.

Notwithstanding the above limitation(s) an employee can donate sick leave to their spouse, child or parent at any time so that the spouse, child or parent does not have to be in a leave without pay status if required to be absent from work due to any illness in their immediate family. The donor recipient is not required to exhaust all of his/her accrued vacation before receiving sick leave donation from his/her spouse, child, or parent.

If the donor recipient exhausts all donated time, the donor recipient can make subsequent application requests.

Each application for the Shared Leave Program shall be approved or denied by the Appointing Authority within ten (10) calendar days after receipt of the application and the donor recipient must be notified within five (5) calendar days thereafter advising them that the application was approved or disapproved. If disapproved, the reasons why the application was denied shall be stated.

If the donor recipient does not use all of the donated leave, the leave shall be returned to the donors on a first donated, first returned basis.

A recipient donor can request up to twelve (12) weeks of donated leave.

**Sponsors:**

**Indexes:** 2000 - 2006 EXO'S, PERSONNEL RULES

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
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**EXECUTIVE ORDER #05-23**

**TO: MEMBERS OF THE LEGISLATURE  
CLERK OF THE LEGISLATURE**

**FROM: KATHERYN J. SHIELDS  
JACKSON COUNTY EXECUTIVE**

**DATE: OCTOBER 12, 2005**

**RE: PERSONNEL RULE 9**

Having withdrawn Executive Order #05-22 as being an incomplete statement of amendments to Jackson County, Missouri Personnel Rule 9, I hereby now promulgate the following amendments to Sections 9.3, 9.16, and 9.21, and establish one new section, 9.23:

**RULE 9 - HOLIDAYS AND OTHER LEAVE**

**Section 9.3 - Holiday Pay**

Holiday pay shall be the employee's actual rate of pay not to exceed eight hours of pay. An employee who works on County designated holiday shall receive holiday pay and shall also receive [time and one-half] two times his regular rate of pay for actual hours worked. An employee whose regularly scheduled day off falls on a County designated holiday shall receive only holiday pay. Employees shall not receive holiday pay while on leaves of absence without pay.

**Section 9.16 - Death in the Immediate Family**

A full time employee with the prior approval of the appointing authority shall be granted time off with pay not to exceed three working days for a death in his immediate family. Compensation shall not exceed eight hours of pay per day with a maximum benefit of twenty-four hours. In the event the services are to be conducted outside of a four hundred (400) mile radius, an additional two (2) days off with pay will be granted. Immediate family is defined as the employee's spouse, children (including step and adopted children), mother, father, mother-in-law, father-in-law, daughter-in-law, son-in-law, sisters, half sisters, step sisters and sisters-in-law, brothers, half brothers, step brothers and brothers-in-law, grandparents, stepparents, grandchildren and any other person if they reside permanently with the employee.

**Section 9.21 - Family and Medical Leave**

This rule is promulgated pursuant to the requirements of Public Law 103-3, The Family and Medical Leave Act of 1993 and the official rules and regulations promulgated thereunder by the appropriate agency of the United States, (hereinafter referred to simply as "FMLA"). For the purposes of this rule, all provisions of the FMLA, codified as 29 U.S.C. § 2601 et seq. (2005), are hereby adopted and incorporated herein by reference as is fully set forth herein, as the official personnel rule of Jackson County. The material set forth hereafter is intended to be a summary and clarification of the application of the FMLA to all employees, whether merit or nonmerit, of Jackson County, and the official text of said public law and the regulations promulgated thereunder shall govern to the extent of any conflict between said summary and the FMLA.

The appointing authority shall grant an eligible employee leave in accordance with the FMLA, not to exceed 12 weeks during any 12 month period. To be eligible for this leave, an employee must have worked at least 12 months for the County and at least 1250 hours in the year immediately preceding the commencement of the leave. Nothing herein shall prevent the County from discretionary denial or the placement of reasonable limitations or conditions upon privileges otherwise granted under the FMLA in accordance with the terms thereof.

Eligible employees are entitled to a total of 12 weeks leave during any 12 month period for one or more of the following: [1) birth of a child, 2) placement of child for adoption or foster care 3)] 1) caring for a spouse, child, or parent with a serious health condition, or [4)] 2 the serious health condition of the employee. Eligible employees are entitled to a total of 14 weeks leave during any 12 month period for one or more of the following: 1) birth of a child, or 2) placement of child for adoption or foster care. The employee shall provide their appointing authority with a written statement from a physician certifying the condition for which the leave is required in cases of serious health condition.

The employee is required to give the appointing authority thirty days notice of foreseeable leaves, as well as to make reasonable efforts in scheduling leaves to avoid disrupting the County's business operations, as more specifically set forth in [Sec. 102 (e)] 29 U.S.C. § 2612(e) (2005) of the Act.

The employee's right to leave for the birth or adoption of a child ends 12 months after the child's birth or placement with the employee.

In the case where both spouses are employees of the County, their combined total leave in any 12 month period may be limited to [12] 14 weeks if the leave is taken for the birth or adoption of a child, or 12 weeks to care for a sick parent. This limitation does not apply to leave taken by either spouse to care for the other who is seriously ill, to care for a child with a serious illness or to take care of his or her own illness.

The employee is entitled to take leave on an intermittent or reduced schedule basis, only when an employee is requesting leave because of a serious health condition, either their own or that of a family member. The employee cannot take leave on an intermittent or reduced schedule basis for the birth or adoption of a child unless the appointing authority agrees to permit the leave.

The payment and accrual of sick leave, vacation leave, and payment or accrual of other benefits shall be governed by the medical leave rule (Section 9.11 hereof), except as otherwise required by FMLA and that Jackson County will require that employees substitute accrued paid leave for unpaid FMLA leave in the following order: 1) Accrued sick leave balance will be substituted until such accrual is exhausted; 2) Accrued compensatory time balance will be substituted until such accrual is exhausted; 3) Accrued vacation balance will be substituted until such accrual is exhausted; and 4) All other



accrued leave balance. Once all accrued time has been exhausted, employees will be placed on leave without pay status.

Employees who are qualified for FMLA leave for the birth of a child or placement of child for adoption or foster care shall be granted the first five (5) weeks of leave with pay and without a decrease in any accrued leave benefit.

[A complete and accurate copy of Title I of the FMLA is hereby made a part hereof by reference and shall be included in the text of the Personnel Rules of Jackson County. In addition,] Each appointing authority shall post and keep posted the notice required under [Section 109] 29 U.S.C. § 2619 of the FMLA.

[One Hundred Third Congress  
of the  
United States of America  
AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fifth day of January, one thousand nine hundred and ninety-three

An Act

To grant family and temporary medical leave under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title. -- This Act may be cited as the "Family and Medical Leave Act of 1993".

(b) Table of Contents. -- The table of contents is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

TITLE I- GENERAL REQUIREMENTS FOR LEAVE

Sec. 101. Definitions.

Sec. 102. Leave requirement.

Sec. 103. Certification.

Sec. 104. Employment and benefits protection.

Sec. 105. Prohibited acts.

Sec. 106. Investigative authority.

Sec. 107. Enforcement.

Sec. 108. Special rules concerning employees of local educational agencies.

Sec. 109. Notice.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings. -- Congress finds that -

- (1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;
- (2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;
- (3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;
- (4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;
- (5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and
- (6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) Purposes. -- It is the purpose of this Act -

- (1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;
- (2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;
- (3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;
- (4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and
- (5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

## TITLE I-- GENERAL REQUIREMENTS FOR LEAVE

### SEC. 101. DEFINITIONS.

As used in this title:

(1) Commerce. -- The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (1) and (3)).

(2) Eligible Employee. -

(A) In General. -- The term "eligible employee" means an employee who has been employed -

(i) for at least 12 months by the employer with respect to whom leave is requested under section 102; and

(ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) Exclusions. -- The term "eligible employee" does not include

(i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act); or

(ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) Determination. -- For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(3) Employ; Employee; State. -- The terms "employ", "employee", and "State" have the same meanings given such terms in subsections (c), (e), and (g) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

(4) Employer. -

(A) In General. -- The term "employer" -

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes -

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer; and

(iii) includes any "public agency", as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(B) Public Agency. -- For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(5) Employment Benefits. -- The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(6) Health Care Provider. -- The term "health care provider" means

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(B) any other person determined by the Secretary to be capable of providing health care services.

(7) Parent. -- The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(8) Person. -- The term "person" has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(9) Reduced Leave Schedule. -- The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(10) Secretary. -- The term "Secretary" means the Secretary of Labor.

(11) Serious Health Condition. -- The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves -

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

(12) Son or Daughter. -- The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is -

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical

disability.

(13) Spouse. -- The term "spouse" means a husband or wife, as the case may be.

## SEC. 102. LEAVE REQUIREMENT.

### (a) In General. -

(1) Entitlement to Leave. -- Subject to section 103, 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.

(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.

### (b) Leave Taken Intermittently or on a 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 section 103(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. 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), 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 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer with this title 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, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) Substitution of Paid Leave. -

(A) In General. -- An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) 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 title 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.

(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) 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, or parent of the employee, as appropriate; and

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

employee shall provide such notice as is practicable.

(f) Spouses Employed by the Same Employer. -- 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 -

- (1) under subparagraph (A) or (B) of subsection (a)(1); or
- (2) to care for a sick parent under subparagraph (C) of such subsection.

#### SEC. 103. CERTIFICATION.

(a) In General. -- An employer may require that a request for leave under subparagraph (C) or (D) of section 102(a)(1) be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Sufficient Certification. -- Certification provided under subsection (a) shall be sufficient if it states -

- (1) the date on which the serious health condition commenced;
- (2) the probable duration of the condition;
- (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
- (4)(A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and
- (B) for purposes of leave under section 102(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee;
- (5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
- (6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
- (7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) Second Opinion. -

(1) In General. -- In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 102(a)(1), the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

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

(d) Resolution of Conflicting Opinions. -

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

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

(e) Subsequent Recertification. -- The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

## SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.

(a) Restoration to Position. -

(1) In General. -- Except as provided in subsection (b), any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave -

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) Loss of benefits. -- The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) Limitations. -- Nothing in this section shall be construed to entitle any restored employee to -

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.



(4) Certification. -- As a condition of restoration under paragraph (1) for an employee who has taken leave under section 102(a)(1)(D), the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.

(5) Construction. -- Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to report periodically to the employer on the status and intention of the employee to return to work.

(b) Exemption Concerning Certain Highly Compensated Employees. -

(1) Denial of restoration. -- An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if -

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) Affected Employees. -- An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) Maintenance of Health Benefits. -

(1) Coverage. -- Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any "group health plan" (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(2) Failure to Return from Leave. -- The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if -

(A) the employee fails to return from leave under section 102 after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than -

(i) the continuation, recurrence, or onset of a serious health condition that

entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

(ii) other circumstances beyond the control of the employee.

(3) Certification. --(A) Issuance. -- An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by -

(i) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(C); or

(ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(D).

(B) Copy. -- The employee shall provide, in a timely manner, a copy of such certification to the employer.

(C) Sufficiency of Certification. -(i) Leave Due to Serious Health Condition of Employee. -- The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

(ii) Leave Due to Serious Health Condition of Family Member. -- The certification described in subparagraph (A)(i) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

## SEC. 105. PROHIBITED ACTS.

(a) Interference with Rights. -

(1) Exercise of Rights. -- It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) Discrimination. -- It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) Interference With Proceedings or Inquiries. -- It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual -

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding

relating to any right provided under this title; or

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

## SEC. 106. INVESTIGATIVE AUTHORITY.

(a) In General. -- To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) Obligation To Keep and Preserve Records. -- Any employer shall make, keep, and preserve records pertaining to compliance with this title in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.

(c) Required Submissions Generally Limited to an Annual Basis. -- The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 107(b).

(d) Subpoena Powers. -- For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

## SEC. 107. ENFORCEMENT.

(a) Civil Action by Employees. -

(1) Liability. -- Any employer who violates section 105 shall be liable to any eligible employee affected -

(A) for damages equal to -

(i) the amount of -

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount

described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) Right of action. -- An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of -

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) Fees and costs. -- The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) Limitations. -- The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate -

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1), unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) Action by the Secretary. -

(1) Administrative action. -- The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 105 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) Civil Action. -- The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A).

(3) Sums Recovered. -- Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to

each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Limitation. -

(1) In General. -- Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) Willful Violation. -- In the case of such action brought for a willful violation of section 105, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) Commencement. -- In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) Action for Injunction by Secretary. -- The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary -

(1) to restrain violations of section 105, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) Solicitor of Labor. -- The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

SEC. 108. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.

(a) Application. -

(1) In General. -- Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this title shall apply to -

(A) any "local educational agency" (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and an eligible employee of the agency; and

(B) any private elementary or secondary school and an eligible employee of the school.

(2) Definitions. -- For purposes of the application described in paragraph (1):

(A) Eligible Employee. -- The term "eligible employee" means an eligible employee of an agency or school described in paragraph (1).

(B) Employer. -- The term "employer" means an agency or school described in paragraph (1).

(b) Leave Does Not Violate Certain Other Federal Laws. -- A local educational agency and a private elementary or secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this title.

(c) Intermittent Leave or Leave on a Reduced Schedule for Instructional Employees. -

(1) In General. -- Subject to paragraph (2), in any case in which an eligible employee employed principally in an instructional capacity by any such educational agency or school requests leave under subparagraph (C) or (D) of section 102(a)(1) that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require that such employee elect either -

(A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that -

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) Application. -- The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 102(e)(2).

(d) Rules Applicable to Periods Near the Conclusion of an Academic Term. -- The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) Leave more than 5 weeks prior to end of term. -- If the eligible employee begins leave under section 102 more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if -

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) Leave less than 5 weeks prior to end of term. -- If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to

continue taking leave until the end of such term, if -

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) Leave less than 3 weeks prior to end of term. -- If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) Restoration to Equivalent Employment Position. -- For purposes of determinations under section 104(a)(1)(B) (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) Reduction of the Amount of Liability. -- If a local educational agency or a private elementary or secondary school that has violated this title proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of this title, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 107(a)(1)(A) to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

## SEC. 109. NOTICE.

(a) In General. -- Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) Penalty. -- Any employer that willfully violates this section may be assessed a civil money penalty not to exceed \$100 for each separate offense.]

### **Section 9.23 - Shared Leave Program**

Full-time employees may donate accrued sick leave or other accrued leave to other full-time employees who are on an approved Medical Leave of Absence as set forth below.

Full-time employees may submit a Shared Leave Donation form to the Appointing Authority of their department requesting that a specified number of hours of leave be transferred from his/her annual sick leave or vacation account to the sick leave account of a specified recipient. The donor must have a combined total of 120 hours of sick leave and vacation leave after the donation unless the donation is to the account of his/her own spouse, child, or parent. Any leave time donated is irrevocable.

Any full-time employee can request to become a leave recipient if:

He/she makes a written application for donated leave by submitting a Shared Leave Request form.

The full-time employee must provide a letter from a licensed physician that the employee or a member of his or her immediate family (spouse, child, mother, father, stepmother, stepfather, or domestic partner) has a medical condition that requires the employee to be absent from work, and

The employee has exhausted (or will exhaust within the period for which the request is made) all of his/her accrued sick leave and accrued vacation leave.

Notwithstanding the above limitation(s) an employee can donate sick leave to their spouse, child or parent at any time so that the spouse, child or parent does not have to be in a leave without pay status if required to be absent from work due to any illness in their immediate family. The donor recipient is not required to exhaust all of his/her accrued vacation before receiving sick leave donation from his/her spouse, child, or parent.

If the donor recipient exhausts all donated time, the donor recipient can make subsequent application requests.

Each application for the Shared Leave Program shall be approved or denied by the Appointing Authority within ten (10) calendar days after receipt of the application and the donor recipient must be notified within five (5) calendar days thereafter advising them that the application was approved or disapproved. If disapproved, the reasons why the application was denied shall be stated.

If the donor recipient does not use all of the donated leave, the leave shall be returned to the donors on a first donated, first returned basis.

A recipient donor can request up to twelve (12) weeks of donated leave.

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Katheryn J. Shields, County Executive  
Date: \_\_\_\_\_