

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 10

To amend the Internal Revenue Code of 1986 to provide tax incentives for the adoption of flexible family leave policies by employers.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. CRAIG (for himself, Mr. DOLE, Mr. HATCH, Mr. GRASSLEY, Mr. BURNS, Mr. SIMPSON, Mr. HATFIELD, and Mr. KEMPTHORNE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax incentives for the adoption of flexible family leave policies by employers.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Flexible Family Leave  
5 Tax Credit Act of 1993”.

6 **TITLE I—FAMILY LEAVE CREDIT**

7 **SEC. 101. CREDIT CREATED.**

8 Subpart D of part IV of subchapter A of chapter 1  
9 of the Internal Revenue Code of 1986 (relating to business

1 related credits) is amended by adding at the end the fol-  
2 lowing new section:

3 **“SEC. 45A. FAMILY LEAVE CREDIT.**

4 “(a) AMOUNT OF CREDIT.—

5 “(1) IN GENERAL.—For purposes of section 38,  
6 the amount of the family leave credit for any em-  
7 ployer for any taxable year is 20 percent of the  
8 qualified compensation with respect to an employee  
9 who is on family leave.

10 “(2) LIMITATIONS ON AVAILABILITY AND  
11 AMOUNT OF CREDIT.—

12 “(A) FEWER THAN 500 EMPLOYEES.—An  
13 employer is not entitled to a family leave credit  
14 for any taxable year unless—

15 “(i) in the case of an employer that is  
16 in its first taxable year, the employer had  
17 fewer than 500 employees at the close of  
18 that year, and

19 “(ii) in the case of other employers,  
20 the employer averaged fewer than 500 em-  
21 ployees for its preceding taxable year.

22 An employer is considered to average fewer  
23 than 500 employees for a taxable year if the  
24 sum of its employees on the last day of each

1 quarter in that year divided by the number of  
2 quarters is fewer than 500.

3 “(B) DOLLAR CAP ON QUALIFIED COM-  
4 PENSATION.—The amount of qualified com-  
5 pensation that may be taken into account with  
6 respect to an employee may not exceed \$100  
7 per business day.

8 “(C) MAXIMUM PERIOD OF FAMILY  
9 LEAVE.—No family leave credit will be available  
10 to the extent that the period of family leave for  
11 an employee exceeds 12 weeks, defined as 60  
12 business days, in any 12-month period.

13 “(D) ADDITIONAL LIMITATION ON LEAVE  
14 FOR PERSONAL SERIOUS HEALTH CONDI-  
15 TIONS.—Leave from an employer in connection  
16 with a qualified purpose described in subsection  
17 (b)(2)(D) will qualify as family leave only if the  
18 employee on leave has no unused sick, disability  
19 or similar leave.

20 “(b) FAMILY LEAVE.—For purposes of this section—

21 “(1) IN GENERAL.—Except as otherwise pro-  
22 vided in this section, an employee is considered to be  
23 on ‘family leave’ if the employee is on leave from the  
24 employer in connection with any qualified purpose.

1           “(2) QUALIFIED PURPOSES.—The term ‘quali-  
2       fied purposes’ means—

3           “(A) the birth of a child,

4           “(B) the placement of a child with the em-  
5       ployee for adoption or foster care,

6           “(C) the care of a child, parent or spouse  
7       with a serious health condition, or

8           “(D) the treatment of a serious health con-  
9       dition which makes the employee unable to per-  
10      form the functions of his or her position.

11          “(3) DEFINITIONS OF CHILD, PARENT AND SE-  
12      RIOUS HEALTH CONDITION.—

13          “(A) CHILD.—The term ‘child’ means an  
14      individual who is a son, stepson, daughter, step-  
15      daughter, eligible foster child as described in  
16      sections 32(c)(3)(B)(iii) (I) and (II), or legal  
17      ward of the employee or employee’s spouse, or  
18      a child of a person standing in loco parentis  
19      and who either has not reached the age of 19  
20      by the commencement of the period of family  
21      leave or is physically or mentally incapable of  
22      caring for himself or herself.

23          “(B) PARENT.—The term ‘parent’ means  
24      an individual with respect to whom the em-  
25      ployee would be considered a ‘child’ within the

1 meaning of subsection (b)(2)(A) without regard  
2 to the age limitation.

3 “(C) SERIOUS HEALTH CONDITION.—The  
4 term ‘serious health condition’ means an illness,  
5 injury, impairment, or physical or mental condi-  
6 tion that involves the inpatient care in a hos-  
7 pital, hospice or residential health care facility,  
8 or substantial and continuing treatment by a  
9 health care provider.

10 “(c) CREDIT REFUNDABLE.—In the case of so much  
11 of the section 38 credit as is attributable to the family  
12 leave credit—

13 “(1) section 38(c) will not apply, and

14 “(2) for purposes of this section, such credit  
15 will be treated as if it were allowed under section  
16 103 of the Flexible Family Leave Tax Credit Act of  
17 1993.

18 “(d) NONDISCRIMINATION REQUIREMENT.—The  
19 family leave credit is available to an employer for a taxable  
20 year only if the employer provides family leave to its em-  
21 ployees for that year on a nondiscriminatory basis.

22 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

23 “(1) IN GENERAL.—For purposes of this sec-  
24 tion—

1           “(A) EMPLOYER.—Except as otherwise  
2 provided in this subpart, the term ‘employer’  
3 has the meaning provided by section 3306(a)(1)  
4 and (3).

5           “(B) EMPLOYEE.—The term ‘employee’ in-  
6 cludes only permanent employees who have been  
7 employed by the employer for at least 12  
8 months and have provided over 1000 hours of  
9 service to the employer during the 12 months  
10 preceding commencement of the family leave.

11           “(C) QUALIFIED COMPENSATION.—The  
12 term ‘qualified compensation’ means the greater  
13 of—

14           “(i) cash wages paid or incurred by  
15 the employer to or on behalf of the em-  
16 ployee as remuneration for services during  
17 the period of family leave, and

18           “(ii) cash wages that would have been  
19 paid or incurred by the employer to or on  
20 behalf of the employee as remuneration for  
21 services during the period of family leave  
22 had the employee not taken the leave.

23           “(D) COMPUTATION.—For purposes of  
24 subsection (e)(1)(C)(ii), the amount of cash  
25 wages that would have been paid to the em-

1           employee for any business day the employee is on  
2           family leave is the average daily cash wages of  
3           that employee for the four calendar quarters  
4           preceding the commencement of the family  
5           leave.

6           “(E) AVERAGE DAILY CASH WAGES.—For  
7           purposes of the computation described in sub-  
8           section (e)(1)(D), an employee’s average daily  
9           cash wages is his or her total cash wages for  
10          the period described in such subsection divided  
11          by the number of business days in that period.

12          “(F) BUSINESS DAY.—The term ‘business  
13          day’ includes any day other than a Saturday,  
14          Sunday or legal holiday.

15          “(2) EMPLOYMENT AND BENEFITS PROTEC-  
16          TION.—

17                  “(A) IN GENERAL.—Leave taken under  
18                  this section shall qualify an employer for a fam-  
19                  ily leave credit only if—

20                          “(i) upon return from such leave, the  
21                          employee is entitled to be restored by the  
22                          employer to the position of employment  
23                          held by the employee when the leave com-  
24                          menced, or to be restored to an equivalent  
25                          position with equivalent employment bene-

1 fits, pay, and other terms and conditions of  
2 employment;

3 “(ii) the taking of such leave does not  
4 result in the loss of any employment bene-  
5 fit accrued prior to the date on which the  
6 leave commenced; and

7 “(iii) the employer maintains coverage  
8 under any ‘group health plan’ (as defined  
9 in section 5000(b)(1)) for the duration of  
10 such leave, at the level and under the con-  
11 ditions coverage would have been provided  
12 if the employee had continued in employ-  
13 ment continuously during the leave period.

14 “(B) LIMITATION.—Nothing in this para-  
15 graph shall be construed to require an em-  
16 ployer, as a condition of qualifying for a family  
17 leave credit, to entitle any employee taking  
18 leave to—

19 “(i) the accrual of any seniority or  
20 employment benefits during any period of  
21 leave; or

22 “(ii) any right, benefit, or position of  
23 employment other than any right, benefit,  
24 or position to which the employee would

1           have been entitled had the employee not  
2           taken the leave.

3           “(3) EXPECTATION THAT EMPLOYEE WILL RE-  
4           TURN TO WORK.—No family leave credit will be  
5           available for any portion of a period of family leave  
6           during which the employer does not reasonably be-  
7           lieve that the employee will return from leave to  
8           work for the employer.

9           “(4) SPECIAL RULES.—Rules similar to the  
10          rules of section 52 shall apply for purposes of this  
11          section.

12          “(5) REGULATORY AUTHORITY.—The Secretary  
13          may prescribe such regulations or other guidance as  
14          may be necessary or appropriate to carry out the  
15          purposes of this section, including guidance relating  
16          to ensuring adequate employment and benefits pro-  
17          tection and guidance to prevent abuse of this sec-  
18          tion.”.

19 **SEC. 102. COORDINATION WITH REFUND PROVISION.**

20          For purposes of section 1324(b)(2) of title 31 of the  
21          United States Code, section 45A of the Internal Revenue  
22          Code of 1986 (as added by this Act) will be considered  
23          to be a credit provision of the Internal Revenue Code of  
24          1954 enacted before January 1, 1978.

1 **SEC. 103. CONFORMING AMENDMENTS.**

2 (a) Section 38 is amended by deleting the “plus”  
 3 after subsection (b)(7) and “.” after subsection (b)(8), by  
 4 inserting “, plus” after subsection (b)(8), and by adding  
 5 a new subsection (b)(9) to read as follows:

6 “(9) the family leave credit under section 45A.”

7 (b) The table of sections for subpart D of part IV  
 8 of subchapter A of chapter 1 is amended by adding at  
 9 the end the following new item:

“Sec. 45A. Family leave credit.”

10 **SEC. 104. EFFECTIVE DATE.**

11 The amendments made by this title shall apply to  
 12 family leave that commences 90 days after the date of the  
 13 enactment of this Act.

14 **TITLE II—DEFICIT NEUTRAL**  
 15 **REVENUE OFFSET**

16 **SEC. 201. CORPORATE ESTIMATED TAX PROVISIONS.**

17 (a) INCREASE IN ESTIMATED TAX.—

18 (1) IN GENERAL.—Subsection (d) of section  
 19 6655 of the Internal Revenue Code of 1986 (relating  
 20 to amount of required installments) is amended—

21 (A) by striking “91 percent” each place it  
 22 appears in paragraph (1)(B)(i) and inserting  
 23 “100 percent”,

1 (B) by striking “91 PERCENT” in the head-  
 2 ing of paragraph (2) and inserting “100 PER-  
 3 CENT”, and

4 (C) by striking paragraph (3).

5 (2) CONFORMING AMENDMENTS.—

6 (A) Clause (ii) of section 6655(e)(2)(B) of  
 7 such Code is amended by striking the table con-  
 8 tained therein and inserting the following new  
 9 table:

<b>“In the case of the following required installments:</b>	<b>The applicable percentage is:</b>
1st .....	25
2nd .....	50
3rd .....	75
4th .....	100.”

10 (B) Clause (i) of section 6655(e)(3)(A) of  
 11 such Code is amended by striking “91 percent”  
 12 and inserting “100 percent”.

13 (b) MODIFICATION OF PERIODS FOR APPLYING  
 14 ANNUALIZATION.—

15 (1) Clause (i) of section 6655(e)(2)(A) of such  
 16 Code is amended—

17 (A) by striking “or for the first 5 months”  
 18 in subclause (II),

19 (B) by striking “or for the first 8 months”  
 20 in subclause (III), and

21 (C) by striking “or for the first 11  
 22 months” in subclause (IV).

1           (2) Paragraph (2) of section 6655(e) of such  
2 Code is amended by adding at the end thereof the  
3 following new subparagraph:

4                   “(C) ELECTION FOR DIFFERENT  
5 ANNUALIZATION PERIODS.—

6                   “(i) If the taxpayer makes an election  
7 under this clause—

8                           “(I) subclause (II) of subpara-  
9 graph (A)(i) shall be applied by sub-  
10 stituting ‘4 months’ for ‘3 months’,

11                           “(II) subclause (III) of subpara-  
12 graph (A)(i) shall be applied by sub-  
13 stituting ‘7 months’ for ‘6 months’,  
14 and

15                           “(III) subclause (IV) of subpara-  
16 graph (A)(i) shall be applied by sub-  
17 stituting ‘10 months’ for ‘9 months’.

18                   “(ii) If the taxpayer makes an election  
19 under this clause—

20                           “(I) subclause (II) of subpara-  
21 graph (A)(i) shall be applied by sub-  
22 stituting ‘5 months’ for ‘3 months’,

23                           “(II) subclause (III) of subpara-  
24 graph (A)(i) shall be applied by sub-

1                   stituting ‘8 months’ for ‘6 months’,  
2                   and

3                   “(III) subclause (IV) of subpara-  
4                   graph (A)(i) shall be applied by sub-  
5                   stituting ‘11 months’ for ‘9 months’.

6                   “(iii) An election under clause (i) or  
7                   (ii) shall apply to the taxable year for  
8                   which made and such an election shall be  
9                   effective only if made on or before the date  
10                  required for the payment of the second re-  
11                  quired installment for such taxable year.”

12                  (3) The last sentence of section 6655(g)(3) of  
13                  such Code is amended by striking “and subsection  
14                  (e)(2)(A)” and inserting “and, except in the case of  
15                  an election under subsection (e)(2)(C), subsection  
16                  (e)(2)(A)”.

17                  (c) EFFECTIVE DATE.—The amendments made by  
18                  this section shall apply to any installment due date occur-  
19                  ring more than 90 days after the date of enactment of  
20                  this Act.

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