

5 February 1988  
OCA88-0355

MEMORANDUM FOR THE RECORD

SUBJECT: Markup of Leave Bills: H.R. 3757 and H.R. 925

1. During the morning of 3 February 1988, the House Compensation and Employee Benefits Subcommittee of the Post Office and Civil Service Committee marked up H.R. 3757, the Federal Employees' Leave-Transfer Act of 1988. Only three amendments were accepted: to change the date from 1987 to 1988 in the title; to correct a typographical error; and to state that shared leave is not a gift violative of 5 U.S.C. § 7351, so that employees in lower grades can donate leave to employees in higher grades. [redacted] chastised the Office of Personnel Management (OPM) for opposing the bill at a late date. (An OPM representative had presented the subcommittee with a letter opposing the bill shortly before commencement of the markup; a copy of the letter is attached.) However, they indicated willingness to work with OPM to iron out the problems before the bill goes to the floor. The bill was reported out to the full committee.

STAT

2. The full committee marked up the bill during the afternoon. Mr. Ackerman offered an amendment (attached) exempting the Agency from the bill and requiring it to establish its own internal leave transfer program. John [redacted] and myself had presented arguments before the subcommittee markup to subcommittee staff members Joe Sisk, David Adams, Heea Vazirani-Fales, and Alan Lopatkin, explaining the problems the bill posed to the Agency. There was also an amendment introduced to aid OPM by defining personal emergency to include prolonged absence from work and substantial loss of income and apparently placing a 10-day cap on the accrual and accumulation of leave.

STAT

3. The full committee also marked up H.R. 925, Family and Medical Leave Act of 1988. Ms. Schroeder indicated that amendment 906A conforms this bill to the Education and Labor (private sector) bill, requiring employees to take the leave within a year of the birth or adoption of the child. The

amendments offered were adopted and unanimously reported to the floor. There was no amendment exempting the Agency from the bill. Agency employees will meet with staff members of the House intelligence committee next week to discuss problems with the bill and to seek their assistance in offering the Agency's amendments, which were shown to the committee staffers before markup, on the floor.



Legislation Division  
Office of Congressional Affairs

Attachments

OCA/Leg/ [redacted] (5 February 1988)

Distribution:

- Original - OCA/Leg/Subject File: Miscellaneous Personnel (w/att)
- 1 - D/OCA (w/att)
- 1 - [redacted]/Liaison (w/att)
- 1 - OCA/ISC (w/att)
- 1 - RH Signer (w/o att)
- 1 - OCA Read (w/o att)



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, D.C. 20415

Office of the Director

FEB - 2 1988

Honorable William D. Ford  
Chairman  
Committee on Post Office and  
Civil Service  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the views of the Office of Personnel Management on H.R. 3757, entitled the "Federal Employees' Leave-Transfer Act of 1987."

H.R. 3757 would establish, for a 3-year period, a Government-wide program under which employees would be able to donate annual leave to other employees who need such leave because of a medical or family emergency or other hardship situation. In addition, the bill would require 3 single-agency alternative leave transfer experiments: one involving a "leave fund" rather than individual-to-individual leave transfers; one involving the transfer of sick leave as well as annual leave; and one involving the transfer of sick leave only if insufficient annual leave is donated.

The Office of Personnel Management has strongly supported the establishment of a program permitting individual employees to transfer annual leave to fellow employees who encounter a serious personal emergency, and we are about to begin operating such a program on a Governmentwide basis during fiscal year 1988 under a temporary authority granted by Public Law 100-202.

While our support for the concept of leave transfers is definite, we regret to advise you that H.R. 3757 is so seriously flawed in some of its aspects that we must strongly object to this particular bill.

We believe one of the keys to the success of a leave transfer program is to ensure that only very serious personal emergencies be covered, so that the popularity of the program among employees is not diluted by overuse. Accordingly, we believe the definition of "personal emergency" in proposed 5 U.S.C. 6331(2) should make clear that the employee's absence from duty will be for a prolonged period of time, and that the employee's loss of income in the absence of transferred leave would be substantial.

Honorable William D. Ford

2

Under proposed 5 U.S.C. 6337, an employee who benefits from transferred annual leave would accrue annual and sick leave for the duration of the personal emergency, and this leave would then be made available for the use of the employee after the emergency ends. We believe this provision would be an unwise and unnecessary complication of the leave transfer program. Proposed 5 U.S.C. 6333(b) properly requires that a leave recipient have exhausted all of his or her own paid leave before using transferred leave, and we believe that the recipient should similarly continue to use any leave he or she accrues during the emergency before using transferred leave. It would seriously damage the credibility of the leave transfer program for an employee to have benefited from his or her fellow employees' donation of leave, and then to emerge from the personal emergency with a large paid leave balance. Of course, the employee could be advanced annual and sick leave under normal provisions of law if such leave is needed after the end of the emergency.

With respect to the 3 single-agency alternative leave transfer programs under proposed 5 U.S.C. 6339, we are unconvinced of the need for one of the alternatives, the "leave fund," and are strongly opposed to even any experimentation with the transfer of sick leave, as would be provided under the other 2 alternatives. A "leave fund" or "leave bank" approach would necessarily involve considerably more administrative machinery than an employee-to-employee transfer program, and might well, by depersonalizing the program, reduce employee support. Furthermore, it could entail additional cost for the Government, since it would give employees a ready means to utilize unused annual leave that would otherwise be forfeited.

With respect to the 2 alternatives incorporating sick leave transfer, we remain adamantly opposed to any program that would involve sick leave, since the transfer of sick leave would inevitably result in additional costs to the Government. In this regard, we are pleased to note that H.R. 3757 as introduced has been modified from an earlier draft version by eliminating any vestige of sick leave transfer from the Governmentwide leave transfer program, and we urge that this elimination of sick leave transfer be extended to the rest of the bill.

Finally, we believe consideration must be given to the issue of whether employees may donate leave to superiors or employees at a higher grade or pay level. Under 5 U.S.C. 7351, an employee is prohibited from soliciting a contribution from

Honorable William D. Ford

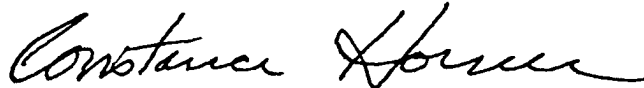
3

another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less pay. Under the temporary leave transfer program under Public Law 100-202, this restriction is requiring us to prohibit leave donations that would be in violation of section 7351. We would have no objection if OPM were to be given regulatory authority to provide appropriate exceptions from section 7351 for the leave transfer program.

In summary, we are strongly opposed to H.R. 3757 as the bill now stands, but if the objectionable features discussed above were to be corrected, we would wholeheartedly endorse the establishment of this beneficial program throughout the Government.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this bill.

Sincerely,



Constance Horner  
Director

SUMMARY OF H.R. 3757

PURPOSE: To amend title 5, U.S. Code, to permit voluntary transfers of leave by Federal employees where needed because of medical or other emergency situation.

SOURCE: Introduced by Representative Gary L. Ackerman on December 14, 1987.

BACKGROUND: Public law 99-500, the Continuing Resolution for Fiscal Year 1987, established a limited program to allow Federal employees to transfer annual leave to co-workers who are forced to be absent from work for extended periods of time due to personal or medical emergencies. This program was limited to four individual cases. Public law 100-202, the Continuing Resolution for Fiscal Year 1988, extended this program and removed the cap on the number of cases that could be considered.

Congressman Wolf introduced H.R. 2487, The Federal Employees Leave Act of 1987, on May 20, 1987. The bill would authorize a government-wide leave sharing program for 5 years. The Subcommittee on Compensation and Employee Benefits held a hearing on H.R. 2487, on August 4, 1987. Subsequently, Congressman Ackerman introduced H.R. 3757, the Federal Employees Leave-Transfer Act of 1987, which incorporates changes suggested at the hearing.

EXPLANATION: Section 1 of H.R. 3757 establishes the short title of the bill as the "Federal Employees Leave-Transfer Act of 1987".

Section 2 of the bill creates a new subchapter III of chapter 63 of title 5, U.S. Code, to authorize the transfer of annual leave to Federal employees who have exhausted their sick and annual leave and are facing a prolonged personal or medical emergency.

Section 2 of the bill also establishes the criteria for determining who may receive donated leave as well as who may donate; the circumstances that constitute a personal emergency; and restoration of annual leave to the donors at the end of a personal emergency.

This section also establishes three agency-wide alternative leave-transfer experiments including a leave fund, the transfer of sick leave as well as annual leave, and the transfer of sick leave only in cases where donations of annual leave prove insufficient.

This section authorizes the government-wide program as well as the experimental programs for 3 years.

COST:

A cost estimate has been requested from the Congressional Budget Office.

ACKERM061

AMENDMENTS TO H.R. 3757  
OFFERED BY MR. ACKERMAN

Page 1, line 5, strike ``1987`` and insert ``1988``.

Page 14, line 20, strike ``(A)(i)`` and insert  
``(A)(ii)``.

Page 18, line 2, strike the quotation marks and the last  
period.

Page 18, after line 2, insert the following:

``§6344. Nonapplicability of certain provisions

``Nothing in section 7351 shall apply with respect to a  
solicitation, donation, or acceptance of leave under this  
subchapter.``.

Page 18, after line 5, strike the closing quotation marks  
and the last period in the item relating to section 6343 and  
add after such item the following:

``6344. Nonapplicability of certain provisions.``.



ACKERM064

AMENDMENT TO H.R. 3757  
OFFERED BY MR. ACKERMAN

Page 18, line 2, strike the quotation marks and the last period.

Page 18, after line 2, insert the following:

1 ``§6344. Transfers within the Central Intelligence Agency  
2 `` (a) Notwithstanding any other provision of this  
3 subchapter, neither the Central Intelligence Agency nor any  
4 individual employed in or under the Central Intelligence  
5 Agency may be included in a leave-transfer program  
6 established under any of the preceding provisions of this  
7 subchapter.  
8 `` (b)(1) The Director of Central Intelligence shall, by  
9 regulation, establish a program under which annual leave  
10 accrued or accumulated by an employee of the Central  
11 Intelligence Agency may be transferred to the annual-leave  
12 account of any other employee of the Central Intelligence  
13 Agency if such other employee requires additional leave  
14 because of a personal emergency.  
15 `` (2) To the extent practicable, and consistent with the  
16 protection of intelligence sources and methods, the program  
17 under this section shall be established--

ACKERM064

2

1           ``(A) in a manner consistent with the provisions of  
2           this subchapter applicable to the program under sections  
3           6331 through 6338 (including sections 6340 and 6343), but  
4           ``(B) without regard to any provisions relating to  
5           transfers or restorations of leave between employees in  
6           different agencies and the provisions of section 6338.  
7           ``(c) Not later than 6 months before the scheduled  
8           termination date of the program under this section, the  
9           Director of Central Intelligence shall submit a written  
10          report to the President and the Congress with respect to the  
11          operation of such program.  
12          ``(d) The Office of Personnel Management shall provide  
13          the Director of Central Intelligence with such advice and  
14          assistance as the Director may request in order to enable the  
15          Director to carry out the purposes of this section.''.  
16

Page 18, after line 5, strike the closing quotation marks  
and the last period in the item relating to section 6343 and  
add after such item the following:

``6344. Transfers within the Central Intelligence Agency.''.  
17

## SUMMARY

H.R. 925  
FAMILY AND MEDICAL LEAVE ACT  
TITLE IISOURCE

H.R. 925 was introduced by Rep. Clay on February 3, 1987. It was referred jointly to the Committee on Post Office and Civil Service and the Committee on Education and Labor. Only the provisions of title II fall within the jurisdiction of the Committee on Post Office and Civil Service, and the committee's consideration of the bill is confined to these provisions. (Title I provides the general requirements for family leave and temporary medical leave for non-civil service employees; title III establishes a commission on paid family and medical leave; and, title IV contains miscellaneous provisions) H.R. 925 is similar to H.R. 4300 (H. Rpt. 99-699) which was approved by the Committee on Post Office and Civil Service on June 11, 1986 (99th Congress) by a record vote of 18 to 0. On April 2, 1987, the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits held a hearing on the bill. The Subcommittee on Civil Service reported the bill without amendment on May 5, 1987. The Subcommittee on Compensation and Employee Benefits reported the bill on May 19, 1987 without amendment.

PURPOSE

Title II of H.R. 925 provides 18 weeks of job-protected family leave without pay for Federal employees upon the birth, adoption or serious health condition of a son, daughter, or parent. It provides 26 weeks of job-protected medical leave without pay for Federal employees who experience a serious health condition.

SUMMARY

Title II of H.R. 925 establishes a family and medical leave program specifically for Federal employees. It entitles employees to 18 weeks during any 24-month period of job-protected leave without pay for the birth, adoption, placement for foster care or serious illness of their child. In an addition to the bill from the 99th Congress, H.R. 4300, employees may also take the leave for the serious health condition of their parents. The bill entitles Federal employees to take up to 26 weeks during any 12-month period of job-protected leave without pay for their own serious health condition.

Both family leave and temporary medical leave are to be in addition to any annual leave, sick leave, or other leave or compensatory time off otherwise available to the employee. An employee may choose to coordinate family leave or medical leave with any other leave time available. An employee may take the leave under a method involving a reduced workday, a reduced

workweek, or some other alternative work schedule. The leave may be taken on a continuing or intermittent basis or any combination of the two.

Federal employees who use family or medical leave would be entitled to be restored to the positions they held immediately prior to taking leave. Any interference with an employee's right to take family or medical leave, through coercion, intimidation, or threat is prohibited.

H.R. 925 adds two provisions to help minimize any impact on the agency. First, the employee is charged with providing, when possible, prior notice to the agency of the leave to be taken and with trying, when possible, to schedule the leave to accommodate the needs of the employing agency. Second, in cases involving the serious illness of the employee or the employee's child or parent, the agency may require certification of the problem from the health care provider.

Federal employees who are enrolled in a Federal employees health insurance plan may continue their health insurance enrollment while on family or medical leave by making arrangements to pay the employee's contribution to the health benefits fund through their employing agencies.

The Office of Personnel Management (OPM) will prescribe regulations necessary for the administration of the family and medical leave provisions.

#### BACKGROUND

Existing law (5 U.S.C. 6307) entitles Federal employees to sick leave but provides no guarantee of time off for extended periods of illness or injury. Similarly, there is no leave time available for the serious illness of a parent or child, or for the birth or adoption of a child. Leave without pay may be requested, but it is granted at the discretion of the employing agency. There is no certainty that the employee will receive the needed leave.

In a staff study conducted in the fall of 1985, the Subcommittee on Civil Service found that some Federal agencies have developed parental leave policy statements. Others have collective bargaining agreements providing specific maternity or parental leave benefits. Yet, all 53 Federal agencies responding to the study left the final decisions involving maternity, paternity and adoption leave up to the discretion of the supervisor concerned.

On July 8, 1986, the Office of Personnel Management issued "New Personnel Guidance on Leave for Parental and Family Responsibilities." This guidance does not change existing personnel policy for Federal employees.

ADMINISTRATION POSITION

The Administration opposed H.R. 925 as introduced.

COST

A cost estimate will be requested from the Congressional Budget Office when the bill is ordered reported. However, in 1986, CBO was unable to estimate the budgetary impact of title II of H.R. 4300 "because little information is available on current leave practices for federal employees and on how agencies would function if H.R. 4300 is enacted."

EL906A

AMENDMENT TO H.R. 925  
OFFERED BY MRS. SCHROEDER

Page 28, after line 22, insert the following:

1       ``(d) Notwithstanding any other provision of this  
2 section--

3           ``(1) a request for leave under this section based on  
4 the birth of a child may not be granted if, or to the  
5 extent that, such leave would be used after the end of  
6 the 12-month period beginning on the date of such child's  
7 birth; and

8           ``(2) a request for leave under this section based on  
9 the placement for adoption or foster care of a child may  
10 not be granted if, or to the extent that, such leave  
11 would be used after the end of the 12-month period  
12 beginning on the date on which such child is so placed.

Page 28, line 23, strike ``(d)(1)`` and insert  
``(e)(1)``.

EL907A

AMENDMENT TO H.R. 925  
OFFERED BY MRS. SCHROEDER

Page 31, line 2, strike ``subsection`` and all that follows thereafter through ``6332`` and insert ``section 6332(a)(3)``.

Page 31, line 6, strike ``employees' child`` and insert ``employee's child``.

Page 33, line 7, insert ``and`` before ``subchapter``.