

**AMENDMENT TO H.R. 5136, AS REPORTED
OFFERED BY MR. SMITH OF WASHINGTON**

At the end of subtitle I of title V, insert the following:

**1 SEC. 5 ____ . ANNUAL LEAVE FOR FAMILY OF DEPLOYED
2 MEMBERS OF THE UNIFORMED SERVICES.**

3 (a) IN GENERAL.—Part III of title 38, United States
**4 Code, is amended by adding at the end the following new
5 chapter:**

**6 “CHAPTER 44—ANNUAL LEAVE FOR FAM-
7 ILY OF DEPLOYED MEMBERS OF THE
8 UNIFORMED SERVICES**

“Sec.

“4401. Definitions.

“4402. Leave requirement.

“4403. Certification.

“4404. Employment and benefits protection.

“4405. Prohibited acts.

“4406. Enforcement.

“4407. Miscellaneous provisions.

9 “§ 4401. Definitions

10 “In this chapter:

**11 “(1) The terms ‘benefit’, ‘rights and benefits’,
12 ‘employee’, ‘employer’, and ‘uniformed services’ have
13 the meaning given such terms in section 4303 of
14 this title.**

1 “(2) The term ‘contingency operation’ has the
2 same meaning given such term in section 101(a)(13)
3 of title 10.

4 “(3) The term ‘eligible employee’ means an in-
5 dividual who is—

6 “(A) a family member of a member of a
7 uniformed service;

8 “(B) an employee of the employer with re-
9 spect to whom leave is requested under section
10 4402 of this title; and

11 “(C) not entitled to leave under section
12 102(a)(1)(E) of the Family Medical Leave Act
13 of 1993 (29 U.S.C. 2612(a)(1)(E)).

14 “(4) The term ‘family member’ means an indi-
15 vidual who is, with respect to another individual, one
16 of the following:

17 “(A) The spouse of the other individual.

18 “(B) A son or daughter of the other indi-
19 vidual.

20 “(C) A parent of the other individual.

21 “(5) The term ‘reduced leave schedule’ means a
22 leave schedule that reduces the usual number of
23 hours per workweek, or hours per workday, of an
24 employee.

1 “(6) The terms ‘spouse’, ‘son or daughter’, and
2 ‘parent’ have the meaning given such terms in sec-
3 tion 101 of the Family and Medical Leave Act of
4 1993 (29 U.S.C. 2611).

5 **“§ 4402. Leave requirement**

6 “(a) ENTITLEMENT TO LEAVE.—In any 12-month
7 period, an eligible employee shall be entitled to two work-
8 weeks of leave for each family member of the eligible em-
9 ployee who, during such 12-month period—

10 “(1) is in the uniformed services; and

11 “(2)(A) receives notification of an impending
12 call or order to active duty in support of a contin-
13 gency operation; or

14 “(B) is deployed in connection with a contin-
15 gency operation.

16 “(b) LEAVE TAKEN INTERMITTENTLY OR ON RE-
17 DUCED LEAVE SCHEDULE.—(1) Leave under subsection
18 (a) may be taken by an eligible employee intermittently
19 or on a reduced leave schedule as the eligible employee
20 considers appropriate.

21 “(2) The taking of leave intermittently or on a re-
22 duced leave schedule pursuant to this subsection shall not
23 result in a reduction in the total amount of leave to which
24 the eligible employee is entitled under subsection (a) be-
25 yond the amount of leave actually taken.

1 “(c) PAID LEAVE PERMITTED.—Leave granted
2 under subsection (a) may consist of paid leave or unpaid
3 leave as the employer of the eligible employee considers
4 appropriate.

5 “(d) RELATIONSHIP TO PAID LEAVE.—(1) If an em-
6 ployer provides paid leave to an eligible employee for fewer
7 than the total number of workweeks of leave that the eligi-
8 ble employee is entitled to under subsection (a), the addi-
9 tional amount of leave necessary to attain the total num-
10 ber of workweeks of leave required under subsection (a)
11 may be provided without compensation.

12 “(2) An eligible employee may elect, and an employer
13 may not require the eligible employee, to substitute any
14 of the accrued paid vacation leave, personal leave, or fam-
15 ily leave of the eligible employee for leave provided under
16 subsection (a) for any part of the total period of such leave
17 the eligible employee is entitled to under such subsection.

18 “(e) NOTICE FOR LEAVE.—In any case in which an
19 eligible employee chooses to use leave under subsection
20 (a), the eligible employee shall provide such notice to the
21 employer as is reasonable and practicable.

22 **“§ 4403. Certification**

23 “(a) IN GENERAL.—An employer may require that
24 a request for leave under section 4402(a) of this title be
25 supported by a certification of entitlement to such leave.

1 “(b) TIMELINESS OF CERTIFICATION.—An eligible
2 employee shall provide, in a timely manner, a copy of the
3 certification required by subsection (a) to the employer.

4 “(c) SUFFICIENT CERTIFICATION.—A copy of the no-
5 tification, call, or order described in section 4402(a)(2) of
6 this title shall be considered sufficient certification of enti-
7 tlement to leave for purposes of providing certification
8 under this section. The Secretary may prescribe such addi-
9 tional forms and manners of certification as the Secretary
10 considers appropriate for purposes of providing certifi-
11 cation under this section.

12 **“§ 4404. Employment and benefits protection**

13 “(a) IN GENERAL.—An eligible employee who takes
14 leave under section 4402 of this title for the intended pur-
15 pose of the leave shall be entitled, on return from such
16 leave—

17 “(1) to be restored by the employer to the posi-
18 tion of employment held by the eligible employee
19 when the leave commenced; or

20 “(2) to be restored to an equivalent position
21 with equivalent rights and benefits of employment.

22 “(b) LOSS OF BENEFITS.—The taking of leave under
23 section 4402 of this title shall not result in the loss of
24 any employment benefit accrued prior to the date on which
25 the leave commenced.

1 “(c) LIMITATIONS.—Nothing in this section shall be
2 construed to entitle any restored employee to—

3 “(1) the accrual of any seniority or employment
4 benefits during any period of leave; or

5 “(2) any right, benefit, or position of employ-
6 ment other than any right, benefit, or position to
7 which the employee would have been entitled had the
8 employee not taken the leave.

9 **“§ 4405. Prohibited acts**

10 “(a) EXERCISE OF RIGHTS.—It shall be unlawful for
11 any employer to interfere with, restrain, or deny the exer-
12 cise of or the attempt to exercise, any right provided under
13 this chapter.

14 “(b) DISCRIMINATION.—It shall be unlawful for any
15 employer to discharge or in any other manner discriminate
16 against any individual for opposing any practice made un-
17 lawful by this chapter.

18 **“§ 4406. Enforcement**

19 “The provisions of subchapter III of chapter 43 of
20 this title shall apply with respect to the provisions of this
21 chapter as if such provisions were incorporated into and
22 made part of this chapter.

23 **“§ 4407. Miscellaneous provisions**

24 “The provisions of subchapter IV of chapter 43 of
25 this title shall apply with respect to the provisions of this

1 chapter as if such provisions were incorporated into and
2 made part of this chapter.”.

3 (b) CLERICAL AMENDMENTS.—The table of chapters
4 at the beginning of title 38, United States Code, and at
5 the beginning of part III of such title, are each amended
6 by inserting after the item relating to chapter 43 the fol-
7 lowing new item:

“44. **Annual Leave for Family of Deployed Members of**
the Uniformed Services **4401.”.**

