

### 付属資料 3 調査対象国における主な法律

- (1) スウェーデン      差別法  
                              (Discrimination Act)  
                              育児休暇法  
                              (Parental Leave Act)
  
- (2) 韓国                1995年 女性発展基本法
  
- (3) アメリカ合衆国    1993年家族・医療休暇法  
                              (The Family and Medical Leave Act of 199)

## 1. スウェーデン

### 差別法 (Discrimination Act)

Swedish Code of Statutes  
SFS 2008:567

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Discrimination Act

issued on 5 June 2008.

In accordance with a decision by the RiksdagTPF1FPT, the following is enactedTPF2FPT.

Chapter 1. Introductory provisions

The purpose of the Act

Section 1 The purpose of this Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

The contents of the Act

Section 2 The first chapter of the Act contains definitions and other introductory provisions. The second chapter contains provisions on prohibitions against discrimination and reprisals. The third chapter contains provisions on active measures. The fourth chapter contains provisions on supervision. The fifth chapter contains provisions on compensation and invalidity. The sixth chapter contains provisions on legal proceedings.

TP1PT Government Bill 2007/08:95, Committee Report 2007/08: AU7, Riksdag Communication 2007/08:219.

TP2PT Cf. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ L 045, 19/02/1975, p. 19, Celex 31975L0117), Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 039, 14/02/1976, p. 40, Celex 31976L0207), amended by Directive 2002/73/EC of the European Parliament

and of the Council of 23 September 2002 amending Council Directive 76/207/EEC (OJ L 269, 05/10/2002, p. 15, Celex 32002L0073), Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 006, 10/01/1979, p. 24, Celex 31979L0007), Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359, 19/12/1986, p. 56, Celex 31986L0613), Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (OJ L 014, 20/01/1998, p. 6, Celex 31997L0080), Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19/07/2000, p. 22, Celex 32000L0043), Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02/12/2000, p. 16, Celex 32000L0078), Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21/12/2004, p. 37, Celex 32004L0113) and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26/07/2006, p. 23, Celex 32006L0054).

The Act is binding

Section 3 A contract or agreement that restricts someone's rights or obligations under this Act is of no legal effect in that regard.

Discrimination

Section 4 In this Act discrimination has the meaning set out in this Section.

1. Direct discrimination: that someone is disadvantaged by being treated less

favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if this disadvantaging is associated with sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

2. Indirect discrimination: that someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of a certain sex, a certain transgender identity or expression, a certain ethnicity, a certain religion or other belief, a certain disability, a certain sexual orientation or a certain age at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

3. Harassment: conduct that violates a person's dignity and that is associated with one of the grounds of discrimination sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

4. Sexual harassment: conduct of a sexual nature that violates someone's dignity.

5. Instructions to discriminate: orders or instructions to discriminate against someone in a manner referred to in points 1–4 that are given to someone who is in a subordinate or dependent position relative to the person who gives the orders or instructions or to someone who has committed herself or himself to performing an assignment for that person.

Sex, transgender identity or expression, ethnicity, disability, sexual orientation and age

Section 5 In this Act the following terms have the meaning set out in this Section.

1. Sex: that someone is a woman or a man.

2. Transgender identity or expression: that someone does not identify herself or himself as a woman or a man or expresses by their manner of dressing or in some other way that they belong to another sex.

3. Ethnicity: national or ethnic origin, skin colour or other similar circumstance.

4. Disability: permanent physical, mental or intellectual limitation of a person's

functional capacity that as a consequence of injury or illness existed at birth, has arisen since then or can be expected to arise.

5. Sexual orientation: homosexual, bisexual or heterosexual orientation.

6. Age: length of life to date.

A person who intends to change or has changed the sex they belong to is also covered by sex as a grounds of discrimination.

Chapter 2. Prohibition of discrimination and reprisals

Working life

Prohibition of discrimination

Section 1 An employer may not discriminate against a person who, with respect to the employer,

1. is an employee,

2. is enquiring about or applying for work,

3. is applying for or carrying out a traineeship, or

4. is available to perform work or is performing work as temporary or borrowed labour.

The prohibition of discrimination also applies in cases where the employer, by taking reasonable support and adaptation measures, can see to it that an employee, a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability.

A person who has the right to make decisions on the employer's behalf in matters concerning someone referred to in the first paragraph shall be equated with the employer.

Section 2 The prohibition in Section 1 does not prevent

1. differential treatment based on a characteristic associated with one of the grounds of discrimination if, when a decision is made on employment, promotion or education or training for promotion, by reason of the nature of the work or the context in which the work is carried out, the characteristic constitutes a genuine and determining occupational requirement that has a legitimate purpose and the requirement is appropriate and necessary to achieve that purpose,

2. measures that contribute to efforts to

promote equality between women and men and that concern matters other than pay or other terms of employment,

3. the application of age limits with regard to the right to pension, survivor's or invalidity benefits in individual contracts or collective agreements, or

4. differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Obligation to investigate and take measures against harassment

Section 3 If an employer becomes aware that an employee considers that he or she has been subjected in connection with work to harassment or sexual harassment by someone performing work or carrying out a traineeship at the employer's establishment, the employer is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future.

This obligation also applies with respect to a person carrying out a traineeship or performing work as temporary or borrowed labour.

Information about qualifications

Section 4 If a job applicant has not been employed or selected for an employment interview, or if an employee has not been promoted or selected for education or training for promotion, the

applicant shall, upon request, receive written information from the employer about the education, professional experience and other qualifications that the person had who was selected for the employment interview or who obtained the job or the place in education or training.

Education

Prohibition of discrimination

Section 5 A natural or legal person conducting activities referred to in the Education Act (1985:1100) or other educational activities (an education provider) may not discriminate against any child, pupil or student participating in or applying for the activities. Employees and contractors engaged in the activities shall be equated with the

education provider when they are acting within the context of their employment or contract.

The prohibition of discrimination also applies in cases where an education provider, by taking reasonable measures regarding the accessibility and usability of the premises, can see to it that a person with a disability who is applying or has been accepted for education under the Higher Education Act (1992:1434) or for education that can lead to a qualification under the Act concerning authority to award certain qualifications (1993:792), is put in a comparable situation to people without such a disability.

Section 6 The prohibition in Section 5 does not prevent

1. measures that contribute to efforts to promote equality between women and men in admissions to education other than that referred to in the Education Act (1985:1100),

2. the application of provisions that take account of age with regard to preschool activities, school-age childcare, education in a preschool class, the compulsory school system or an independent school equivalent to compulsory school, special needs school for pupils with learning disabilities or special school for children with disabilities, or

3. differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Nor does the prohibition prevent a folk high school or a study association from taking measures that contribute to efforts to promote equal rights and opportunities regardless of ethnicity, religion or other belief.

Obligation to investigate and take measures against harassment

Section 7 If an education provider becomes aware that a child, pupil or student participating in or applying for the provider's activities considers that he or she has been subjected in connection with these activities to harassment or sexual harassment, the education provider is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take

the measures that can reasonably be demanded to prevent harassment in the future.

Information about qualifications

Section 8 If an applicant has been refused admission to an educational programme, or has not been selected for a test or interview if such a procedure is used in the admissions process, the applicant shall, upon request, receive written information from the education provider about the education or other qualifications that the person had who was admitted to the educational programme or who was selected for the test or interview.

Labour market policy activities and employment services not under public contract

Section 9 Discrimination against applicants or employees is prohibited with regard to labour market policy activities and employment services not under public contract.

However, this prohibition does not prevent

1. measures that contribute to efforts to promote equality between women and men or equal rights and opportunities regardless of ethnicity, or
2. differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Starting or running a business and professional recognition

Section 10 Discrimination is prohibited with regard to

1. financial support, permits, registration or similar arrangements that are needed or can be important for someone to be able to start or run a business, and
2. recognition, certification, authorisation, registration, approval or similar arrangements that are needed or can be important for someone to be able to exercise a certain profession.

These prohibitions do not prevent differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Nor does the prohibition in the first paragraph, point 1 prevent measures concerning support that contributes to

efforts to promote equality between women and men or equal rights and opportunities regardless of ethnicity.

Membership of certain organisations

Section 11 Discrimination is prohibited with regard to

1. membership of or participation in an employees' organisation, employers' organisation or professional organisation, and
2. benefits that any such organisation provides to its members.

This prohibition does not prevent an organisation from providing benefits to members of one sex so as to contribute to efforts to promote equality between women and men.

Goods, services and housing etc.

Section 12 Discrimination is prohibited on the part of a natural or legal person who

1. supplies goods, services or housing to the general public, outside the private and family sphere, or
2. organises a meeting or event that is open to the public.

A person who represents a person referred to in the first paragraph in relation to the public, shall be equated with that person.

However, this prohibition does not apply to discrimination associated with age. The prohibition of discrimination associated with sex does not apply to the supplying of insurance services, nor does it prevent women and men being treated differently with regard to other services or housing if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Health and medical care and social services etc.

Section 13 Discrimination is prohibited with regard to

1. health and medical care and other medical services, and
2. social services activities and support in the form of special transport services and national special transport services and housing adaptation allowances.

However, these prohibitions do not apply to discrimination associated with age.

The prohibitions applying to health and medical care and other medical services

or social services activities do not prevent women and men being treated differently if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Social insurance system, unemployment insurance and financial aid for studies

Section 14 Discrimination is prohibited with regard to

1. social insurance and related benefit systems,
2. unemployment insurance, and
3. state financial aid for studies.

However, these prohibitions do not apply to discrimination associated with age.

With regard to social insurance and related benefit systems, the prohibition of discrimination associated with sex does not prevent the application of provisions concerning widow's pension, wife's supplement or payment of child allowance.

National military service and civilian service

Prohibition of discrimination

Section 15 Discrimination is prohibited in connection with enrolment inspection, admission tests or other examination of personal circumstances under the National Total Defence Service Act (1994:1809) and in connection with enlistment for and during the performance of national military service or civilian service.

However, this prohibition does not apply to discrimination associated with age.

Nor does the prohibition prevent the application of provisions concerning

1. the obligation for men only to report for enrolment inspection and service, or that a person liable for national total defence service shall not be called for enrolment inspection or called up for national military service or civilian service if he or she refers to her or his membership of a certain religious association, or
2. the opportunity for women to perform national military service or civilian service provided in the Act concerning Opportunities for Women to perform National Military Service or Civilian Service involving extended Basic Training (1994:1810).

Obligation to investigate and take measures against harassment

Section 16 If a government agency or an organisation covered by the prohibition in Section 15 becomes aware that a person liable for national total defence service considers herself or himself to have been subjected in connection with activities described in that Section to harassment or sexual harassment, the government agency or organisation is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future.

However, the first paragraph does not apply to harassment associated with age.

Public employment

Section 17 Discrimination is also prohibited in cases other than those referred to in Section 5 or Sections 9–15 when a person who is wholly or partly subject to the Public Employment Act (1994:260)

1. assists the public by providing information, guidance, advice or other such help, or
2. has other types of contacts with the public in the course of her or his employment.

However, this prohibition does not apply to discrimination associated with age.

Prohibition of reprisals

Section 18 An employer may not subject an employee to reprisals because the employee has

1. reported or called attention to the fact that the employer has acted contrary to this Act,
2. participated in an investigation under this Act, or
3. rejected or given in to harassment or sexual harassment on the part of the employer.

The prohibition also applies in relation to a person who, with respect to the employer,

1. is enquiring about or applying for work,
2. is applying for or carrying out a traineeship, or
3. is available to perform work or is performing work as temporary or borrowed labour.

A person who has the right to make decisions on the employer's behalf in

matters concerning someone referred to in the first or second paragraph shall be equated with the employer.

Section 19 A person who is alleged to have acted contrary to the provisions of Chapter 2, Section 5, 7, 9, 10, 11, 12, 13, 14, 15, 16 or 17 or Chapter 3, Section 15 or 16 may not subject an individual to reprisals because that individual has

1. reported or called attention to such actions,
2. participated in an investigation under this Act, or
3. rejected or given in to harassment or sexual harassment on the part of the person who is alleged to have engaged in discrimination.

Chapter 3. Active measures

Working life

Cooperation between employers and employees

Section 1 Employers and employees are to cooperate on active measures to bring about equal rights and opportunities in working life regardless of sex, ethnicity, religion or other belief, and in particular to combat discrimination in working life on such grounds.

Section 2 Employers and employees are in particular to endeavour to equalise and prevent differences in pay and other terms of employment between women and men who perform work which is to be regarded as equal or of equal value. They are also to promote equal pay growth opportunities for women and men.

Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.

Goal-oriented work

Section 3 Within the framework of their activities, employers are to conduct goal-oriented work to actively promote equal rights and opportunities in working life regardless of sex, ethnicity, religion or other belief.

More detailed regulations on the

obligations of employers are provided in Sections 4–13.

Working conditions

Section 4 Employers are to implement such measures as can be required in view of their resources and other circumstances to ensure that the working conditions are suitable for all employees regardless of sex, ethnicity, religion or other belief.

Section 5 Employers are to help enable both female and male employees to combine employment and parenthood.

Section 6 Employers are to take measures to prevent and hinder any employee being subjected to harassment or reprisals associated with sex, ethnicity, religion or other belief, or to sexual harassment.

Recruitment

Section 7 Employers are to work to ensure that people have the opportunity to apply for vacant positions regardless of sex, ethnicity, religion or other belief.

Section 8 Employers are to promote an equal distribution of women and men in different types of work and in different employee categories, by means of education and training, skills development and other appropriate measures.

Section 9 When the distribution of women and men is not more or less equal in a certain type of work or in a certain employee category at a place of work, the employer is to make a special effort when recruiting new employees to attract applicants of the under-represented sex. The employer is to attempt to see to it that the proportion of employees from the under-represented sex gradually increases.

However, the first paragraph shall not be applicable if there are special grounds not to take such measures or if the measures cannot reasonably be required in view of the employer's resources and other circumstances.

Matters of pay

Section 10 In order to discover, remedy and prevent unfair gender differences in pay and other terms of employment, every three years the employer is to survey and analyse

– provisions and practices regarding pay

and other terms of employment that are used at the employer's establishment, and

– pay differences between women and men performing work that is to be regarded as equal or of equal value.

The employer is to assess whether existing pay differences are directly or indirectly associated with sex. The assessment is to refer in particular to differences between

– women and men performing work that is to be regarded as equal, and

– groups of employees performing work that is or is generally considered to be dominated by women and groups of employees performing work that is to be regarded as of equal value to such work but is not or is not generally considered to be dominated by women.

Section 11 Every three years employers are to draw up an action plan for equal pay in which they report the results of the survey and analysis described in Section 10. The plan is to indicate the pay adjustments and other measures that need to be taken to bring about equal pay for work that is to be regarded as equal or of equal value. The plan is to contain a cost estimate and a time plan based on the goal of implementing the necessary pay adjustments as soon as possible and within three years at the latest.

A report on and evaluation of how the planned measures were implemented is to be included in the next action plan.

The obligation to draw up an action plan for equal pay does not apply to employers who employed fewer than 25 employees at the start of the latest calendar year.

Section 12 Employers are to provide employees' organisations with respect to which they are bound by a collective agreement with the information needed for the organisations to be able to cooperate in the survey, analysis and drawing up of an action plan for equal pay.

If the information concerns data on pay or other circumstances that relate to an individual employee, the rules on confidentiality and damages contained in Sections 21, 22 and 56 of the Employment (Co-determination in the Workplace) Act (1976:580) apply. In public sector

activities, Chapter 14, Sections 7, 9 and 10 of the Secrecy Act (1980:100) apply instead.

Gender equality plan

Section 13 Every three years employers are to draw up a plan for their gender equality work. The plan is

to contain an overview of the measures under Sections 4–9 that are needed at the place of work and an account of which of these measures the employer intends to begin or implement during the coming years.

The plan is also to contain a summary account of the action plan for equal pay that the employer is required to draw up under Section 11.

An account of how the planned measures under the first paragraph have been implemented is to be included in the next plan.

The obligation to draw up a gender equality plan does not apply to employers who employed fewer than 25 employees at the start of the latest calendar year.

Education

Goal-oriented work

Section 14 An education provider conducting education or other activities under the Education Act (1985:1100), education under the Higher Education Act (1992:1434) or education that can lead to a qualification under the Act concerning authority to award certain qualifications (1993:792) is to conduct goal-oriented work within the framework of these activities to actively promote equal rights and opportunities for the children, pupils or students participating in or applying for the activities, regardless of sex, ethnicity, religion or other belief, disability or sexual orientation.

More detailed regulations on the obligations of education providers are provided in Sections 15 and 16.

Preventing and hindering harassment

Section 15 An education provider referred to in Section 14 is to take measures to prevent and hinder any child, pupil or student who is participating in or applying for their activities from being subjected to harassment associated with sex, ethnicity, religion or other belief, disability or sexual orientation, or to



sexual harassment.

Equal treatment plan

Section 16 An education provider referred to in Section 14 is to draw up a plan each year containing an overview of the measures needed to (1) promote equal rights and opportunities for the children, pupils or students participating in or applying for the activities, regardless of sex, ethnicity, religion or other belief, disability or sexual orientation, and (2) prevent and hinder harassment referred to in Section 15. The plan is to contain an account of which of these measures the education provider intends to begin or implement during the coming year.

An account of how the measures planned under the first paragraph have been implemented is to be included in the next year's plan.

Chapter 4. Supervision

The Equality Ombudsman

Duties of the Equality Ombudsman

Section 1 The Equality Ombudsman is to supervise compliance with this Act. The Ombudsman is to try in the first instance to induce those to whom the Act applies to comply with it voluntarily.

Provisions on the duties of the Ombudsman are also contained in the Act concerning the Equality Ombudsman (2008:568).

Section 2 Chapter 6, Section 2 states that the Equality Ombudsman may bring a court action on behalf of an individual who consents to this.

Obligation to provide information

Section 3 A natural or legal person who is subject to the prohibitions of discrimination and reprisals, the obligation to investigate and take measures against harassment or the provisions on active measures in this Act is obliged, at the request of the Equality Ombudsman,

1. to provide information about circumstances in their activities that are of importance for the supervision exercised by the Ombudsman,
2. to provide information about qualifications when the Ombudsman is assisting in a request from an individual under Chapter 2, Section 4 or 8,
3. to give the Ombudsman access to workplaces and other premises where the

activities are conducted for the purpose of investigations that may be of importance to the supervision exercised by the Ombudsman, and

4. to attend discussions with the Ombudsman.

The obligations specified in points 1–3 do not apply if there are special grounds against their doing so in an individual case.

Financial penalty

Section 4 A natural or legal person who does not comply with a request under Section 3 may be ordered by the Equality Ombudsman to fulfil his or her obligation subject to a financial penalty. A decision to order a financial penalty may be appealed to the Board against Discrimination.

Section 5 A natural or legal person who does not fulfil his or her obligations concerning active measures under Chapter 3, Section 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 or 16 may be ordered to fulfil them subject to a financial penalty. Such orders are issued by the Board against Discrimination on application from the Equality Ombudsman. They can also be directed towards the State as an employer or as the entity responsible for educational activities.

If the Ombudsman has declared that he or she does not want to apply to the Board for a financial penalty to be ordered, a central employees' organisation with respect to which the employer is bound by a collective agreement may make an application concerning active measures in working life under Chapter 3, Sections 4–13.

The application is to state the measures that should be required of the party that the application concerns, the grounds referred to in support of the application and what investigation has been made of the matter.

Prohibition against appeals

Section 6 No appeal may be made against decisions of the Equality Ombudsman under this Act other than decisions under Section 4 concerning the ordering of financial penalties.

Board against Discrimination

Duties of the Board

Section 7 The Board against

Discrimination examines applications for financial penalties under Section 5 and appeals against decisions concerning orders for financial penalties under Section 4. In processing these cases, Sections 8–15 are to be applied.

Processing of an application for a financial penalty

Section 8 A natural or legal person who is the subject of an application for a financial penalty shall be ordered to comment within a certain time on the application and to supply the information concerning circumstances in their activities that the Board against Discrimination needs for its examination. When an employees' organisation has made the application, the Equality Ombudsman shall be given an opportunity to comment.

Section 9 The Board against Discrimination shall ensure that cases are adequately investigated. When necessary, the Board shall arrange for additional investigation. Superfluous investigation may be refused.

Section 10 Cases before the Board against Discrimination are decided after an oral hearing, unless the Board considers such a hearing unnecessary.

Section 11 The Board against Discrimination shall call the party that has made the application to the Board and the party that is the subject of the application to a hearing. If necessary for the investigation, the Board may also call others to the hearing.

The Board may order the party that the application concerns or that party's representative to attend in person, subject to a financial penalty.

Section 12 A case concerning the ordering of a financial penalty may be decided even if the party that the application concerns does not comment on the case, does not cooperate in the investigation or fails to attend an oral hearing.

If the Equality Ombudsman or the employees' organisation that has made the application for a financial penalty fails to attend a hearing, the application for a financial penalty becomes void.

Section 13 In deciding a case concerning the ordering of a financial penalty, the Board against Discrimination may

instruct the party that the application concerns to take measures other than those sought in the application, if these other measures are not obviously more burdensome for the party.

In its decision the Board shall state how and by when the measures are to be started or implemented.

The Board's decision shall be in writing and shall be delivered to the party that the application concerns.

Processing of an appeal against a decision to order a financial penalty

Section 14 In processing an appeal against a decision to order a financial penalty, Sections 9 and 10 shall be applied.

Section 15 The Board against Discrimination shall call the party that has appealed against the decision to order a financial penalty and the Equality Ombudsman to a hearing. If necessary for the investigation, the Board may also call others to the hearing.

The Board may order the party that has appealed against the decision or that party's representative to attend in person, subject to a financial penalty.

Prohibition against appeals

Section 16 No appeal may be made against a decision of the Board against Discrimination under this Act.

Imposition of a financial penalty

Section 17 Proceedings for the imposition of a financial penalty that has been ordered under this Act are brought before a district court by the Equality Ombudsman.

In cases concerning the imposition of a financial penalty, the district court may also assess the appropriateness of the penalty.

Board of Appeals for Higher Education

Section 18 A decision of a university or other higher education institution for which the State, a municipality or a county council is the responsible entity may, if it concerns education under the Higher Education Act (1992:1434), be appealed to the Board of Appeals for Higher Education on the grounds that the decision is contrary to

1. the prohibition of discrimination in Chapter 2, Section 5, first paragraph, if the decision concerns

- a) admission to education,
- b) credit for education,
- c) deferment of studies or resumption of studies after time off from studies,
- d) a change of supervisor,
- e) withdrawal of a supervisor and other resources in postgraduate education,
- f) grants for research students, or
- g) a disciplinary measure against a student,

2. the prohibition of discrimination in Chapter 2, Section 5, second paragraph, or

3. the prohibition of reprisals in Chapter 2, Section 19.

If the Board of Appeals finds that the appealed decision is contrary to one of the prohibitions and that this can be assumed to have influenced the outcome, the decision shall be set aside and the case, if necessary, referred back to the university or other higher education institution for re-examination.

If a decision can be appealed under another statute, the appeal shall be made as prescribed there instead of as directed in the first paragraph.

Section 19 No appeal may be made against a decision of the Board of Appeals for Higher Education under this Act.

#### Chapter 5. Compensation and invalidity Compensation

Section 1 A natural or legal person who violates the prohibitions of discrimination or reprisals or who fails to fulfil their obligations to investigate and take measures against harassment or sexual harassment under this Act shall pay compensation for discrimination for the offence resulting from the infringement. When compensation is decided, particular attention shall be given to the purpose of discouraging such infringements of the Act. The compensation shall be paid to the person who has been offended by the infringement.

An employer who violates Chapter 2, Section 1, first paragraph or Section 18 shall also pay compensation for the loss that arises. However, this does not apply to a loss that arises in connection with a decision concerning employment or promotion.

If there are special grounds, the compensation can be reduced or set at

zero.

Section 2 If an employer in activities referred to in Chapter 2, Section 9, 10, 11, 13, 14, 15 or 17 discriminates against someone or subjects someone to reprisals, the compensation for discrimination shall be paid by the employer. A person performing work on behalf of another person in circumstances resembling those in an employment relationship shall be equated with an employee.

If an education provider violates Chapter 2, Section 5, 7 or 19 the compensation shall be paid by the entity responsible for the activities.

#### Invalidity

Section 3 If someone is discriminated against by a provision in an individual contract or in a collective agreement in a manner that is prohibited under this Act, the provision shall be modified or declared invalid if the person discriminated against requests this. If the provision is of such significance for the contract or agreement that it cannot reasonably be demanded that the contract or agreement shall apply in other respects without material changes, the contract may also be modified in other respects or be declared invalid in its entirety.

If someone is discriminated against by termination of a contract or agreement or by some other such legal act, the legal act shall be declared invalid if the person discriminated against requests this.

If someone is discriminated against by a rule or similar internal provision at the place of work, the provision shall be modified or declared without effect if the person discriminated against requests this.

#### Chapter 6. Legal proceedings

##### Applicable rules

Section 1 Cases concerning the application of Chapter 2, Section 1, 2, 3 or 18 shall be dealt with under the Labour Disputes (Judicial Procedure) Act (1974:371). In such cases a person enquiring about or applying for work, a person applying for or carrying out a traineeship or a person who is available to perform work or who is performing work as temporary or borrowed labour shall be regarded as an employee. The

person at whose establishment the traineeship or work is being or would have been carried out shall be regarded as employer. This also applies when the regulations on negotiations concerning disputes in the Employment (Co-determination in the Workplace) Act (1976:580) are applied.

Cases concerning the application of Chapter 2, Section 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 or 19 shall be examined by a general court and dealt with in accordance with the provisions of the Swedish Code of Judicial Procedure concerning procedures in civil cases in which out-of-court settlement of the matter is permitted.

#### Right to bring an action

Section 2 The Equality Ombudsman, or a non-profit organisation whose statutes state that it is to look after the interests of its members and that is not an employees' organisation referred to in the third paragraph, may bring an action, as a party, on behalf of an individual who consents to this. When the Ombudsman or the association brings such an action, the Ombudsman or association may also bring another action on behalf of the individual as part of the same proceedings, if he or she consents to this. In cases under Section 1, first paragraph the Ombudsman's action is brought before the Labour Court. For unmarried children under 18 years of age the consent of the custodian or custodians is required.

To be allowed to bring an action, the association must be suited to represent the individual in the case, taking account of its activities and its interest in the matter, its financial ability to bring an action and other circumstances.

When an employees' organisation has the right to bring an action on behalf of the individual under Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371), the Ombudsman or association may only bring an action if the employees' organisation does not do so.

#### Burden of proof

Section 3 If a person who considers that he or she has been discriminated against or subjected to reprisals demonstrates

circumstances that give reason to presume that he or she has been discriminated against or subjected to reprisals, the defendant is required to show that discrimination or reprisals have not occurred.

#### Statute of limitations

##### Working life

Section 4 If someone brings an action on the basis of notice of termination or summary dismissal, the following provisions of the Employment Protection Act (1982:80) shall be applied:

- Section 40 concerning the time limit for actions for a declaration of invalidity,
- Section 41 concerning the time limit for damages or other claims, and
- Section 42 concerning the expiry of the right to bring an action on the grounds that it is time-barred.

If someone brings an action against an employer other than an action referred to in the first paragraph, the following provisions of the Employment (Co-determination in the Workplace) Act (1976:580) shall be applied:

- Section 64 on the time limit for calling for negotiations,
- Section 65 on the time limit for bringing an action,
- Section 66 on the extended time limit for a person who is not represented by an employees' organisation, with the difference that the time limit referred to in Section 66, first paragraph, first sentence shall be two months, and
- Section 68 concerning the expiry of the right to bring an action on the grounds that it is time-barred.

If the action concerns compensation on grounds of an employment decision announced by an employer in the public sector, the time limits specified in the second paragraph are calculated from the day on which the employment decision gained legal force.

Section 5 In cases under Section 1, first paragraph the Equality Ombudsman can toll the statute of limitations, except in cases concerning a declaration that a notice of termination or summary dismissal is invalid, by informing the employer in writing that the Ombudsman is making use of her or his right to toll the statute of limitations. If the running

of the statute of limitations has been tolled by such a communication, a new statute of limitations under Section 4 runs from the day of tolling.

A statute of limitations cannot be tolled more than once.

Other areas of society

Section 6 A legal action other than actions referred to in Section 4 must be brought within two years

from the date on which the act to which attention is called was performed or from the last date on which an obligation should have been fulfilled. Otherwise the right to bring legal action expires.

If the action concerns a person who was under 18 years of age when the act was performed or the obligation should have been fulfilled at the latest, the time limit specified in the first paragraph is calculated from the day on which the person reached the age of 18.

Litigation costs

Section 7 In cases under Section 1, second paragraph, each party may be ordered to bear its litigation costs, if the party that has lost the case had reasonable grounds for bringing the dispute to court. However, this does not apply when the Equality Ombudsman brings an action on behalf of an individual under Section 2.

In cases under Section 1, first paragraph, Chapter 5, Section 2 of the Labour Disputes (Judicial Procedure) Act (1974:371) applies instead.

Other provisions

Section 8 If someone brings an action on the basis of notice of termination or summary dismissal, the following provisions of the Employment Protection Act (1982:80) are to be applied:

- Section 34 concerning the validity of a notice of termination etc.,
- Section 35 concerning the validity of a notice of summary dismissal etc.,
- Section 37 concerning suspension from work when a notice of termination or summary dismissal has been declared invalid,
- Section 39, first paragraph, first sentence concerning the dissolution of an employment relationship, and
- Section 43, first paragraph, second sentence and second paragraph concerning expeditious conduct of

proceedings etc.

Section 9 An action for compensation based on a decision on employment that has been announced by an employer in the public sector may not be examined before the employment decision has gained legal force.

Section 10 The provisions of the Swedish Code of Judicial Procedure concerning parties shall also apply to a person on whose behalf the Equality Ombudsman or an association brings an action under this Act in so far as they regard disqualifying circumstances, ongoing legal proceedings and personal attendance, as well as hearing of witnesses on oath and other issues concerning evidence.

When an individual brings an action under this Act, the Equality Ombudsman or an association may not bring an action on the individual's behalf in the same matter.

Section 11 The decision of the court in a case where the Equality Ombudsman or an association brings an action on behalf of an individual may be appealed by the individual, if it may be appealed by the Ombudsman or the association.

When the decision of the court in a case referred to in the first paragraph has become final and non-appealable, the matter may not be reviewed on the action either of the individual or of the Equality Ombudsman or the association.

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1. This Act enters into force on 1 January 2009.

2. This Act supersedes

- the Equal Opportunities Act (1991:433),
- the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (1999:130),
- the Prohibition of Discrimination in Working Life on Grounds of Disability Act (1999:132),
- the Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999:133),
- the Equal Treatment of Students at Universities Act (2001:1286),
- the Prohibition of Discrimination Act (2003:307), and
- the Act Prohibiting Discriminatory and

Other Degrading Treatment of Children and Pupils (2006:67).

3. The superseded acts continue to apply with regard to discrimination and reprisals that have taken place before this Act entered into force. After this Act enters into force, the duties incumbent on an ombudsman under the superseded acts shall be fulfilled by the Equality Ombudsman. After this Act has entered into force, the duties incumbent under the superseded acts on the Equal Opportunities Commission or the Board against Discrimination shall be fulfilled by the Board against Discrimination.

4. The obligation of the employer under Chapter 3, Section 10 shall be performed for the first time in 2009 or the year in which the provision first becomes applicable.

5. The obligations of the employer under Chapter 3, Sections 11 and 13 shall be performed for the first time in the year immediately following the start of the calendar year when the employer employed at least 25 employees or the year after that, if the obligation under Chapter 3, Section 10 is to be performed that year.

On behalf of the Government

FREDRIK REINFELDT

NYAMKO SABUNI

(Ministry of Integration and Gender Equality)

#### 育児休暇法 (Parental Leave Act)

Non-official translation

Parental Leave Act (1995:584)

Issued 24 May 1995

Amendments: up to and including SFS 2006:442

The persons who are subject to the Act

Section 1 An employee has the right, as a parent, to leave from her or his employment in accordance with this Act.

The same right extends to an employee who:

1. although not a parent, is the legal custodian and takes care of a child;
2. has taken a child for permanent care and fosterage into her or his home;
3. is permanently living together with a parent provided that the employee is, or

has been, married to, or has, or has had, a child with that parent.

Section 16 contains provisions on the prohibition of disfavourable treatment of job applicants and employees. (SFS 2006:442)

Agreement between employer and employee

Section 2 An agreement which limits an employee's rights under this Act is invalid in that respect.

However, by a collective bargaining agreement that has been entered into or approved on behalf of the employees by a central employees' organisation which is referred to in the Employment (Co-determination in the Workplace) Act (1976:580), deviations from the Act may be made in respect of issues regarding:

-- notice regarding leave (Section 13),

-- the time for the employee's notification of her or his return to work (Section 15, second paragraph),

-- the time that the employer is entitled to postpone the employee's return to work (Section 15, third paragraph).

By a collective bargaining agreement that has been concluded in the manner described in the second paragraph, the detailed application may also be determined regarding issues relating to:

-- the distribution of leave (Sections 11 and 12),

-- the prohibition of disfavourable treatment (Section 16).

Non-official translation

Employers who are bound by collective bargaining agreements according to the second or third paragraph may also apply the agreement to employees who are not members of the contracting employees' organisation if the employees are engaged in the type of work referred to in the agreement and are not covered by any other applicable collective bargaining agreement. (SFS 2006:442)

The right to leave

Overview of the different types of parental leave for employees

Section 3 There are five types of parental leave for care of children, etc., namely:

1. Full leave for a female employee in connection with her child's birth and for breast feeding (maternity leave, Section 4).

2. Full leave for a parent until the child has reached 18 months or, subject to the parent's receipt of full parental benefit, for time thereafter (full leave with or without full parental benefit, Section 5).

3. Leave for a parent in the form of a reduction of normal working hours by three quarters, one half, one quarter or one eighth while the parent has three quarters, one half, one quarter or one eighth parental benefit respectively (partial leave with parental benefit, Section 6).

4. Leave for a parent in the form of a reduction of normal working hours by up to one quarter until, in most cases, the child reaches the age of eight years (partial leave without parental benefit, Section 7).

5. Leave for an employee's temporary care of a child (leave with temporary parental benefit, etc., Section 8).

Sections 18 – 21 contain special provisions concerning leave and transfer of female employees who are expecting children, have recently given birth to children, or who are breast feeding. (SFS 2006:442)

#### Maternity leave

Section 4 A female employee is entitled to full leave in connection with her child's birth during a continuous period of at least seven weeks prior to the estimated time for delivery and seven weeks after the delivery. If she is not on leave for another reason, two weeks of this maternity leave shall be obligatory during the period prior to or after the delivery.

The employee is also entitled to be on leave for breast feeding the child.

Maternity leave need not be taken in conjunction with the payment of parental benefit. Sections 10 - 15 do not apply to leave for breast feeding. (SFS 2000:580)

Full leave with or without parental benefit

#### Non-official translation

Section 5 A parent is entitled to full leave for the care of a child until the child reaches 18 months, irrespective of whether the parent receives parental benefit.

In addition, a parent is entitled to full leave during the period when the parent

receives full parental benefit under Chapter 4 of the National Insurance Act (1962:381).

With respect to an employee who has adopted a child or received a child with the intention of adopting it, the eighteen month period shall instead be counted from the time when the employee received the child into her or his care. If the matter involves the adoption of the employee's spouse's child or of her or his own child, the employee is not entitled to a period of leave that is greater than that which would apply if the adoption had not taken place. The right to leave for adoptive parents terminates when the child reaches the age of eight years or, when the child concludes its first year of school, whichever occurs later. (SFS 2006:442)

#### Partial leave with parental benefit

Section 6 During the period of time that a parent receives three quarters, one half, one quarter or one eighth parental benefit under Chapter 4 of the National Insurance Act (1962:381), the parent is entitled to a reduction of the normal working hours by three quarters, one half, one quarter or one eighth respectively. (SFS 2006:442)

#### Partial leave without parental benefit

Section 7 A parent is entitled to a reduction of the normal working hours by up to one quarter for the care of a child which has not yet reached the age of eight years or which is older but has not yet concluded its first year of school. (SFS 2006:442)

Leave with temporary parental benefit, etc.

Section 8 An employee is entitled to leave during the period in which the employee receives temporary parental benefit under Chapter 4, Section 10, 10a, 10b, 11 or 11a of the National Insurance Act (1962:381).

A parent is entitled to leave to care for her or his child in circumstances where the ordinary care provider has become sick or contagious, notwithstanding that the parent is not entitled to temporary parental leave because the child is younger than 240 days. (SFS 2004:1251)

#### Distribution of leave

The number of periods of leave

Section 10 Leave may be divided into a maximum of three periods for each calendar year. If a period of leave continues into the following year, it shall be regarded as relating to the calendar year in which the leave was commenced.

Non-official translation

Notwithstanding this limitation, leave with temporary parental benefit, etc., under Section 8, or leave for parental education, etc. under Chapter 4, Section 4, second paragraph of the National Insurance Act (1962:381) may be divided into non-consecutive periods.

How leave may be taken out as full leave

Section 11 The employee is entitled to take full leave on the day or days the employee requests.

How leave may be taken out as reduced working hours

Section 12 When the working hours are reduced, the leave may be distributed over all days of the working week or distributed to a certain day or certain days of the working week. (SFS 2001:143)

Notice and decisions regarding leave

Section 13 An employee who wishes to exercise her or his right to leave under Section 4, 5, 6 or 7 shall give notice of this to her or his employer not later than two months prior to commencement of the leave or, if this is impracticable, as quickly as practicable. The employee shall, when giving notice, indicate the planned duration of the leave.

An employee who wishes to exercise her or his right to leave with temporary parental benefit under Section 8, shall give notice regarding the leave to her or his employer not later than one week prior to the commencement of the leave. However, if the reason for the leave is, however, illness or contagion, no period of notice is required.

Section 14 The employee shall discuss the distribution of the leave and any other issues concerning the leave with her or his employer. Where it is not inconvenient for the employee, the employee shall take leave as contemplated in Section 11 in such a manner that the employer's activity may continue without substantial disturbance.

In cases of reduced working hours, if an

agreement cannot be reached regarding how the leave shall be taken, the employer shall distribute the leave according to the wishes of the employee, if such distribution does not cause substantial disturbance to the employer's activity. The employer may not without the employee's consent, distribute the leave in any manner other than spreading it over all days of the working week, dividing the leave during the working day or distribute it to any other time other than the beginning or end of the working day.

If a decision relating to an issue referred to in the second paragraph has been made in any manner other than according to the wishes of the employee, the employer shall inform the employee and the employee's local employees' organisation regarding the decision. This shall, if practicable, be done not later than two weeks prior to the commencement of the leave. (SFS 2001:143)

Resumption of work

Section 15 An employee may discontinue her or his leave which has already been commenced and resume her or his work to the same extent as before the leave.

Non-official translation

If the employee wishes to exercise her or his right to resume work, the employee shall give notice to the employer to that effect as soon as practicable.

In the event the leave was intended to continue for one month or more, the employer may postpone the resumption by no more than one month after the employer has received notice.

Prohibition of disfavourable treatment

Section 16 An employer may not disfavour a job applicant or an employee for reasons related to parental leave under this Act, when the employer

1. decides on an employment issue, selects a job applicant for an employment interview or implements other measures during the employment procedure,
2. decides on promotion or selects an employee for training for promotion,
3. decides on or implements other measures concerning vocational training,
4. decides on or implements other measures concerning other training or



vocational  
counselling,

5. applies pay or other terms of  
employment,

6. manages and distributes work, or

7. gives notice of termination, summarily  
dismisses, lays-off or implements other  
significant measures against an  
employee.

However, this prohibition does not apply  
if the different terms and conditions or  
different treatment are a necessary  
consequence of the leave. (SFS 2006:442)

Section 17 If an employee is given notice  
of termination or is summarily dismissed  
solely for reasons related to parental  
leave under this Act, the notice of  
termination or summarily dismissal shall  
be declared invalid, if the employee so  
requests. (SFS 2006:442)

Specific conditions relating to an  
employee who is expecting a child, has  
recently given birth to a child or is breast  
feeding

Section 18 A female employee who is  
expecting a child, has recently given birth  
to a child or is breast feeding is entitled to  
be transferred to other work while  
retaining her employment benefits,  
provided that she has been prohibited  
from continuing her regular work under a  
regulation issued under Chapter 4,  
Section 6 of the Work Environment Act  
(1977:1160). (SFS 2003:373)

Section 19 A female employee who is  
expecting a child and, as a result, cannot  
carry out physically demanding work  
duties, is entitled to be transferred to  
other work while retaining her  
employment benefits.

The right to transfer, however, applies  
only from and including the sixtieth day  
prior to the estimated date of delivery.

Section 20 The right to transfer under  
Sections 18 and 19 applies only to the  
extent that the employer can be  
reasonably required to provide the  
woman with other work within the  
activity.

Non-official translation

In the event that the transfer is not  
practicable, the woman is entitled to  
leave, under the provisions of Sections 18  
and 19, insofar as it is necessary to  
protect her health and safety, though

without retaining employment benefits  
during the period to which the leave  
relates.

If an opportunity for transfer arises  
which is estimated to last a minimum of  
one month, the employer shall offer the  
position to the woman.

Section 21 Any person who wishes to  
exercise her or his right to transfer under  
Section 18 or 19 shall give notice thereof  
to the employer. In the event that the  
need for transfer is necessitated by the  
fact that the woman, due to pregnancy,  
cannot perform physically demanding  
work tasks, notice shall be given not later  
than one month in advance. In other  
cases, notice shall be given as soon as is  
practicable. Following notice, the  
employer shall provide information  
regarding the possibility of transfer as  
soon as is practicable. If a transfer cannot  
be made, the employer shall periodically  
review the possibility of a transfer.

Damages

Section 22 An employer who violates this  
Act shall pay damages for any losses  
suffered and for any infringement that  
occurred.

Where reasonable, the damages may be  
reduced, in whole or in part.

Procedure

Section 23 Proceedings regarding the  
application of this Act shall be dealt with  
in accordance with the Proceedings in  
Labour Disputes (Judicial Procedure) Act  
(1974:371). In the event a claim is  
pursued by reason of notice of  
termination or summary dismissal,  
Sections 34 and 35, Section 37, Section 38,  
second paragraph, second sentence,  
Sections 39 - 42 and Section 43, first  
paragraph, second sentence and second  
paragraph of the Employment Protection  
Act (1982:80) shall apply in relevant  
parts. As regards other actions, Sections  
64 - 66 and Section 68 of the Employment  
(Co-determination in the Workplace) Act  
(1976:580) shall apply mutatis mutandis.

Burden of proof

Section 24 If a job applicant or an  
employee proves circumstances that give  
cause to assume that he or she has been  
disfavoured for reasons related to  
parental leave, it is the employer who  
shall prove that no such disfavour has

occurred or that the disfavour is a necessary consequence of the parental leave. (SFS 2006:442)

Right to bring an action

Non-official translation

Section 25 In a dispute under Section 16 or 17, the Equal Opportunities Ombudsman may bring an action on behalf of an individual employee or job applicant. The action shall be brought in the Labour Court. When an employee's organisation is entitled to bring an action on behalf of the individual under Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371), the Equal Opportunities Ombudsman may only bring an action if the organisation does not do so.

Actions that are brought by the Equal Opportunities Ombudsman shall be dealt with as if the action had been brought by the employee or job applicant on their own behalf. The provisions of the Labour Disputes (Judicial Procedure) Act governing matters relating to the standing of an individual in the litigation shall also apply when actions are brought by the Ombudsman. (SFS 2006:442)

## 2. 韩国

### THE WOMEN'S DEVELOPMENT ACT Ministry of Political Affairs - REPUBLIC OF KOREA

Recognizing the reality of discrimination based on gender deeply rooted in our society, this Act is enacted, by prescribing the forwarding system and the concrete plan for women's policy, and the responsibilities of the State and the society for promoting the gender equality, expanding the social participation by women, and advancing the women's welfare, in order to promote the gender equality and ensure the expansion of women's participation in all political, economic, social and cultural fields in accordance with the Constitutional basic principles, to ensure that both women and men may, on equal basis, participate in and take responsibilities of realizing the healthy family and society as a whole.

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#### ESSENTIAL SUBSTANCE

1. The Women's Development Act is composed of six Chapters and thirty six Articles, of which the main contents are the Basic Women's Policy Plan, the basic measures on women's policy, the Women's Development Fund, and the support for women's organization, etc.

2. The purpose of the Act is to promote

the gender equality and increase women's participation in all the aspects of political, economic, social and cultural fields by prescribing the responsibilities of the State and the local government to realize the Constitutional principles of equality based on the gender (Article 1).

3. The fundamental principle of the Act is to ensure that both women and men, on an equal basis may take part in, and share the responsibilities of realizing the healthy family and through promoting the gender equality, protecting the maternity, eliminating the gender discrimination and developing the ability of women (Article 2).

4. The State and the local government shall be responsible for providing the appropriate legal and institutional arrangements and for procuring the financial resources necessary for promoting gender equality, expanding women's social participation and enhancing women's welfare and may take interim affirmative actions, in accordance with the relevant statutes, to promote the participation of women in the fields where the participation is quite inactive (Article 5 and 6).

5. The State shall establish the basic plan for the women's policy every five years and the Central Administrative Agencies and local government, in accordance with the Basic Plan, establish and execute the annual execution program; And, the Central Administrative Agencies, the local government, public institutions, or other juristic person or organization shall cooperate therewith (Article 7 through 9).

6. The source of legal authority for establishing the National Committee on Women's Policies, the Gender Discrimination Elimination Committee, and the Korean Women's Development Institute shall be provided in this Act (Article 10 through 12)

7. The Act prescribes the scope of basic

measures on women's policy which shall include, but not limited to, the political process, public office, employment, education, social welfare, family and international cooperation, and the responsibilities of the State and the local government for the development of women(Article 15 through 28).

8. The State shall establish the Women's Development Fund in order to secure the financial resources necessary for supporting the projects for fulfilling the purpose of the Act, which shall be administered and operated by the Government(Article 29).

9. The State and the local government may support expenses required for activities of the women's organization, etc.  
(Article .3 2) .

10. The Minister who will administer the governmental affairs prescribed under this Act, including the establishment of basic plan on women's policy, and the management and the operation of fund, etc., shall be designated by the President(Article 36).

## I. GENERAL PROVISIONS

### Article 1 - Purpose

The purpose of this Act is to promote the gender equality and to ensure the development of women in all the aspects of political, economic, social and cultural fields by prescribing the basic matters including, but not limited to, the responsibilities of the State and the local government necessary for embodying the Constitutional principles of gender equality.

### Article 2 - Fundamental Principle

The fundamental principle of this Act is to ensure that women and men on an equal basis may take part in, and share the responsibilities of realizing the healthy family and society as a whole, under the basic principles of human dignity, promoting the gender equality,

protecting the maternity, eliminating the bias of gender discrimination and developing the ability of women.

### Article 3 - Definitions

The definition of the terms used in this Act is as follows;

1. the term "women's policy" means those policies relating to the promotion of gender equality, the expansion of women's social participation, and the enhancement of women's welfare, which shall be prescribed by the Presidential Decree.

2. the term "women's organization" means those organizations which shall be established for the purpose of promoting gender equality, expanding women's social participation and enhancing women's welfare, or other organizations which shall be prescribed by the Presidential Decree.

3. the term "women's facilities" means those facilities intended for promotion of gender equality, expansion of women's social participation and enhancement of women's welfare, which shall be prescribed by the Presidential Decree.

### Article 4 - Responsibility of Citizens

All citizens shall recognize the importance of, and endeavor to realize the promotion of gender equality and the development of women

### Article 5 - Responsibility of State and Local Government

The State and the local government shall be responsible for providing the appropriate legal and institutional arrangements and for procuring the financial resources necessary for promoting gender equality, expanding women's social participation and enhancing women's welfare.

### Article 6 - Interim Affirmative Actions

The State and the local government may, in a reasonable scope, adopt interim affirmative actions, in accordance with the relevant statutes, in order to promote the participation of women in the fields where the participation is quite inactive.

## II. BASIC WOMEN'S POLICY PLAN, ETC.

### Article 7 - Establishment of Basic Women's Policy Plan

(1)The State shall establish the basic plan on the women's policy(hereinafter referred to as "Basic Plan") every five years.

(2)The basic plan shall include the following matters.

1. Basic direction for women's policy
2. Forwarding Goal of women's policy
  - a. Promotion of gender equality
  - b. Expansion of women's social participation
  - c. Enhancement of women's welfare
  - d. Other important measures related to women's policy
3. Measures of procuring financial resources for executing women's policy

### Article 8 - Establishment of Annual Execution Program

(1)The head of the Central Administrative Agencies, the mayor of the Special City, the mayor of the Megalopolitan City, and the governor of the Province(hereinafter referred to as

"city/province governor) shall, in accordance with the basic plan, establish and execute the annual execution program(hereinafter referred to as "execution program").

(2)The Government shall adjust the execution program and review the progress thereof.

### Article 9 - Cooperation for Establishment and Execution of Plan

(1 ) The Government, the head of the Central Administrative Agencies, or the city/province governor may request cooperation, if required for establishment and execution of the basic plan or the execution program, to the relevant Central Administrative Agencies, the local government, public institutions, or other juristic person or organization.

(2) Any one, who is requested cooperation under paragraph(1 ), shall comply with it unless there are any special causes which may justify the exemption.

### Article 10 - National Committee on Women's Policies

(1)The National Committee on Women's Policies(hereinafter referred to as "National Committee") shall be established under the control of the Prime Minister in order to deliberate the major policies with regard to women's policy.

(2) Any matters necessary for function, organization and operation, etc. of the National Committee shall be prescribed by the Presidential Decree.

### Article 11 - Gender Discrimination Elimination Committee

(1)The Gender Discrimination Elimination Committee(hereinafter referred to as "Elimination Committee") shall be established by the Government in order to correct the gender discrimination in the fields of law, institution, administrative actions, and custom, etc., and to ensure the development of women.

(2) Any matters necessary for function, organization and operation, etc. of the Elimination Committee shall be prescribed by the Presidential Decree.

### Article 12 - Establishment of Korean Women's Development Institute

(1)The Korean Women's Development Institute(hereinafter referred to as "Development Institute") shall be established in order to undergo research and study efficiently on the issues related to women.

(2) Any matters necessary for establishment, organization, and scope of duty, etc. shall be prescribed by other statute.

### Article 13 - Research on Women's Issues

(1)The Government shall conduct researches on the women's issues in order to establish the efficient women's policy through taking the public opinion poll or

formulating the gender statistics.

(2) The Government shall endeavor to provide the information about women through building the information system.

#### Article 14 - Women's Week

The Government shall designate one week a year as the Women's Week in order to enhance the development of women, and to attract the nation wide attention of people on the promotion of gender equality.

### III. BASIC MEASURES ON WOMEN'S POLICY

#### Article 15 - Participation in Decision-Making Process and Politics

(1) The State and the local government shall take measures to expand the women's participation in the policy making process including various government-affiliated committees, etc.

(2) The State and the local government shall endeavor to support for the expansion of women's participation in the political process through various measures.

#### Article 16 - Participation in Public Office

The State and the local government shall create the conditions for the expansion of women's holding of public office through the reasonable administration of hiring, job assignment, promotion, reward, and education and training, etc.

#### Article 17 - Equal Employment

(1) The State and the local government shall, in accordance with the relevant statutes, ensure that the gender equality for employees in the various areas of hiring, education and training, promotion, and retirement, etc. will be fulfilled.

(2) The State and the local government shall provide institutional arrangements, including but not limited to the maternity leave, for employees to harmonize family obligations with workplace responsibilities.

(3) The State, the local government or the employers shall take appropriate measures, including but not limited to sexual harassment preventing measures, required for fostering equal working environments on a gender basis in the work-place.

#### Article 18 - Strengthening Maternity Protection

(1) The State, the local government and the employers shall, in a special manner, protect women who are in the period of pregnancy, procreation and lactation, which must not be a basis for disadvantages.

(2) The State and the local government shall, through the social insurance and the public finance, etc. under the Social Security Basic Act, share social expenditure in the cost for protecting the maternity in relation with working women's pregnancy, procreation and lactation

#### Article 19 - Home Education

The State and the local government shall make an effort that the education and discipline on gender equality must be provided at home.

#### Article 20 - School Education

The State and the local government shall ensure that the school education will inspire the consciousness of gender equality and shall expand the opportunity of education for women

#### Article 21 - Community Education

The State and the local government shall make an effort that the national and public training institution, the community educational institution, and the enterprise training center will provide the education enhancing the consciousness of gender equality.

#### Article 22 - Promotion of Women's Welfare

(1) The State and the local government shall provide measures to meet the demands of women's welfare in accordance with the change of social

structure.

(2)The State and the local government shall, in accordance with the relevant statutes, prevent the occurrence of low income fatherless families, unmarried mothers, runaway women, and other needy women and shall guide and protect them.

(3) The State and the local government shall endeavor to promote the welfare of those women in the rural areas and women elderly.

#### Article 23 - Infant and Child Care

(1)The State and the local government shall, in accordance with the relevant statutes, expand the child care facilities and take other necessary measures required for the protection and education for infants and children.

(2) The State and the local government shall provide the appropriate after-school care programs to protect and guide children at school age.

#### Article 24 - Promotion Equality in the Family Relationship

(1)The State and the local government shall endeavor to establish the democratic and equal values and norms in thefamily relationship.

(2) The State and the local government shall provide thenecessary supports for the dual-income family and thesingle-parent family in accordance with the change of family structure.

#### Article 25 - Prevention of Sexual Assault and Domestic Violence

( 1 ) The State and the local government shall, in accordance with the relevant statutes, prevent the sexual assault crime and protect the victim thereof.

(2)The State and the local government shall provide the measures to solve the violence problem occurring in the family.

#### Article 26 - Estimating Value of Housework

The State and the local government shall estimate the proper

economic value of housework and endeavor to reflect it on the law, institution or policy.

#### Article 27 - International Cooperation for Women

(1 ) The State and the local government shall expand the opportunity for women to participate in the work of international organization or international conference and shall support the activities of women for promoting the international peace and strengthening the international cooperation.

(2)The State and the government shall endeavor to enter into and observe the interlational treaties relating to women including the "United Nations Convention on the Elimination of All Forms of Discrimination Against Women," etc.

#### Article 28 - Elimination of Gender Discrimination Through Mass Media

The State and the local government shall provide the support to improve the sexually discriminatory content in the mass media and to disseminate the principle of gender equality through the mass media.

### IV. WOMEN'S DEVELOPMENT FUND

#### Article 29 - Establishment of Fund

(1)The State s all establish the Women's Development Fund

(hereinafter referred to as "fund") in order to secure the financial resources necessary for supporting the projects for fulfilling the purpose of this Act.

(2)The fund shall be raised from the following financial resources;

1. Contribution by the State

2. Cash, goods, and other property contributed by any individuals and organizations other than the State

3. Proceeds accruing from management of the fund

4. Other revenues prescribed by the Presidential Decree.

(3)The fund shall be managed and operated by the Government.

#### Article 30 - Usage of fund

The fund shall be appropriated for the following projects.

1. Support of projects for advancing women's right and interest
2. Subsidy in activities of women's organization
3. Support of establishing and operating women's facilities
4. Subsidy in women's international cooperative activities
5. Other projects for attaining gender equality and developing women, which shall be prescribed by the Presidential Decree.

#### Article 31 - Accounting Office for Fund

(1) The Government shall appoint, among the government officials, the fund accounting director and the fund accounting officer who shall take charge of revenue and expenditure of the fund.

(2) Among the provisions of the Accounting Officer Responsibilities Act, those pertaining to the financial officer and the revenue officer shall apply mutatis mutandis to the fund accounting director, and those pertaining to the expenditure officer and accounting officer shall apply mutatis mutandis to the fund accounting officer.

### V. SUPPORT FOR WOMEN'S ORGANIZATION, ETC.

#### Article 32 - Support for Women's Organization

- (1) The State and the local government may provide administrative supports necessary for organization and operation of the women's organization, and assist a part of expenses necessary for its activities, etc. within budget capability.
- (2) Any individuals, juristic persons or organizations may contribute money or other property in order to support the facilities and operation of the women's organizations.

#### Article 33 - Establishment and Operation of Women's Facilities

The State and the local government may establish and manage the women's facilities whose purposes are to promote the women's right and interest, and welfare.

#### Article 34 - Support of Women Volunteer Activities

The State and the local government shall provide the support necessary for activating the women's volunteer service.

### VI. SUPPLEMENTARY PROVISIONS

#### Article 35 - Delegation and Assignment of Authority

The Government may, in accordance with the Presidential Decree, delegate a part of its authority vested under this Act to the city/province governor, or assign a part of its duty to the development institution or the women's organization.

#### Article 36 - Designation of Minister for Administering Affairs

The governmental affairs prescribed under this Act, including the establishment of Basic Plan, and the management and the operation of fund, etc., may be administered, as prescribed by the Presidential Decree, by the Minister other than the head of Board, Ministry, or Office, who shall be designated by the President in accordance with Article 18(1) of the Government Organization Act.

### ADDENDA

#### 1 Enforcement Date

This Act shall enter into force six month after its promulgation ( 1996. 7.1 )

#### 2 Revision of Other Laws

The Fund Administration Basic Act shall be amended as follows;

Section 119 shall be added to the separate table as follows. 119. The Women's Development Act



### 3 Interim Measures

The National Committee on Women's Policies established under the National Committee on Women's Policies Regulation at the time of enforcement of this Act shall be regarded as the National Committee on Women's Policies established under the Article 10 of this Act.

3. アメリカ合衆国

**The Family and Medical Leave Act of 1993**

**Public Law 103-3 Enacted February 5, 1993**

**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.

**TITLE II--LEAVE FOR CIVIL SERVICE**

**EMPLOYEES**

- Sec. 201. Leave requirement.

**TITLE III--COMMISSION ON LEAVE**

- Sec. 301. Establishment.
- Sec. 302. Duties.
- Sec. 303. Membership.
- Sec. 304. Compensation.
- Sec. 305. Powers.

- Sec. 306. Termination.

**TITLE IV--MISCELLANEOUS PROVISIONS**

- Sec. 401. Effect on other laws.
- Sec. 402. Effect on existing employment benefits.
- Sec. 403. Encouragement of more generous leave policies.
- Sec. 404. Regulations.
- Sec. 405. Effective dates.

**TITLE V--COVERAGE OF CONGRESSIONAL EMPLOYEES**

- Sec. 501. Leave for certain Senate employees.
- Sec. 502. Leave for certain House employees.

**TITLE VI--SENSE OF CONGRESS**

- Sec. 601. Sense of Congress.

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**SEC. 2. FINDINGS AND PURPOSES.**

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.

PURPOSES.--It is the purpose of this Act--

- 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;
- 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;
- to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;
- 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
- to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

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**TITLE I--GENERAL REQUIREMENTS FOR LEAVE**

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**TITLE II--LEAVE FOR CIVIL SERVICE EMPLOYEES****SEC. 201. LEAVE REQUIREMENT.**

(a) CIVIL SERVICE EMPLOYEES.-- IN GENERAL.--Chapter 63 of title 5, United States Code, is amended by adding at the end the following new subchapter:

**SUBCHAPTER V--FAMILY AND MEDICAL LEAVE****"6381. Definitions**

For the purpose of this subchapter--

1. "the term 'employee' means any individual who--
  - " is an 'employee', as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and
  - " has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));
2. " the term 'health care provider' means--
  - " a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and
  - " any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;
3. " 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;
4. " 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;
5. " the term 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves--

- " inpatient care in a hospital, hospice, or residential medical care facility; or
  - " continuing treatment by a health care provider; and
6. " 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--
- " under 18 years of age; or
  - " 18 years of age or older and incapable of self-care because of a mental or physical disability.

"6382. Leave requirement

(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

- " Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
- " Because of the placement of a son or daughter with the employee for adoption or foster care.
- " 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.
- " Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

"(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the 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)(1) 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 employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and

section 6383(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. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

"(2) 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 employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that--

- "has equivalent pay and benefits; and
- " better accommodates recurring periods of leave than the regular employment position of the employee.
- " Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.
- " An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.
- "(1) 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 employing agency 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) 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--

- " shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, 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
- " shall provide the employing agency 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.

"6383. Certification

"(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the 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 employing agency.

"(b) A 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 6382(a)(1)(C), a statement that the 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 such son, daughter, spouse, or parent; and "(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

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.

"(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

"(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

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

"(2) 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 employing agency and the employee.

"(e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.

"6384. Employment and benefits protection

" Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave--

1. " to be restored by the employing agency to the position held by the employee when the leave commenced; or
2. " to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

" The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

" Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to--

1. " the accrual of any employment benefits during any period of leave; or
2. " 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.

□ " As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agency 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.

□ " Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on

leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

"6385. Prohibition of coercion

"(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

"(b) For the purpose of this section--

1. " the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and
2. " the term 'employee' means any 'employee', as defined by section 2105.

"6386. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

"6387. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be consistent with the regulations prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993."

TABLE OF CONTENTS.--The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end the following:

- "SUBCHAPTER V--FAMILY AND MEDICAL LEAVE
- "6381. Definitions.
- "6382. Leave requirement.

- "6383. Certification.
- "6384. Employment and benefits protection.
- "6385. Prohibition of coercion.
- "6386. Health insurance.
- "6387. Regulations."

EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.--Section 2105(c)(1) of title 5, United States Code, is amended--

1. by striking "or" at the end of subparagraph (C); and
2. by adding at the end the following new subparagraph:

"(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or".

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**TITLE III--COMMISSION ON LEAVE  
SEC. 301. ESTABLISHMENT.**

There is established a commission to be known as the Commission on Leave (referred to in this title as the "Commission").

**SEC. 302. DUTIES.**

The Commission shall--

1. conduct a comprehensive study of--
  - existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;
  - the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;
  - possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;
  - the impact of family and medical leave policies on the availability of

employee benefits provided by employers, including employers not covered under this Act;

- alternate and equivalent State enforcement of title I with respect to employees described in section 108(a);
- methods used by employers to reduce administrative costs of implementing family and medical leave policies;
- the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and
- the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.

2. not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report concerning the subjects listed in paragraph (1).

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**SEC. 303. MEMBERSHIP.**

COMPOSITION.--

APPOINTMENTS.--The Commission shall be composed of 12 voting members and 4 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

SENATORS.--One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

MEMBERS OF HOUSE OF REPRESENTATIVES.--One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

ADDITIONAL MEMBERS.--

- APPOINTMENT.--Two members each shall be appointed by
  - the Speaker of the House of Representatives;
  - the Majority Leader of the Senate;
  - the Minority Leader of the House of Representatives; and
  - the Minority Leader of the Senate.
- EXPERTISE.--Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

EX OFFICIO MEMBERS.--The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

VACANCIES.--Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

CHAIRPERSON AND VICE CHAIRPERSON.--The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

QUORUM.--Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

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**SEC. 304. COMPENSATION.**

- PAY.--Members of the Commission shall serve without compensation.
- TRAVEL EXPENSES.--Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with

section 5703 of title 5, United States Code, when performing duties of the Commission.

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**SEC. 305. POWERS.**

- MEETINGS.--The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.
- HEARINGS AND SESSIONS.--The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.
- ACCESS TO INFORMATION.--The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.
- USE OF FACILITIES AND SERVICES.--Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.
- PERSONNEL FROM OTHER AGENCIES.--On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Commission or assist the Commission in carrying out the duties of the Commission. Any



detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

- **VOLUNTARY SERVICE.**--Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

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**SEC. 306. TERMINATION.**

- The Commission shall terminate 30 days after the date of the submission of the report of the Commission to Congress.

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**TITLE IV--MISCELLANEOUS PROVISIONS**

**SEC. 401. EFFECT ON OTHER LAWS.**

- **FEDERAL AND STATE ANTIDISCRIMINATION LAWS.**--Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.
- **STATE AND LOCAL LAWS.**--Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

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**SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.**

- **MORE PROTECTIVE.**--Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or

plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.

- **LESS PROTECTIVE.**--The rights established for employees under this Act or any amendment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

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**SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.**

Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act.

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**SEC. 404. REGULATIONS.**

The Secretary of Labor shall prescribe such regulations as are necessary to carry out title I and this title not later than 120 days after the date of the enactment of this Act.

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**SEC. 405. EFFECTIVE DATES.**

**TITLE III.**--Title III shall take effect on the date of the enactment of this Act.

**OTHER TITLES.**--

1. **IN GENERAL.**--Except as provided in paragraph (2), titles I, II, and V and this title shall take effect 6 months after the date of the enactment of this Act.
2. **COLLECTIVE BARGAINING AGREEMENTS.**--In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I shall apply on the earlier of
  - o the date of the termination of such agreement; or
  - o the date that occurs 12 months after the date of the enactment of this Act.

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**TITLE V--COVERAGE OF**

**CONGRESSIONAL EMPLOYEES  
SEC. 501. LEAVE FOR CERTAIN  
SENATE EMPLOYEES.**

**COVERAGE.**--The rights and protections established under sections 101 through 105 shall apply with respect to a Senate employee and an employing office. For purposes of such application, the term "eligible employee" means a Senate employee and the term "employer" means an employing office.

**CONSIDERATION OF ALLEGATIONS.**

**1. APPLICABLE**

**PROVISIONS.**--The provisions of sections 304 through 313 of the Government Employee Rights Act of 1991 (2 U.S.C. 1204-1213) shall, except as provided in subsections (d) and (e)--

- o apply with respect to an allegation of a violation of a provision of sections 101 through 105, with respect to Senate employment of a Senate employee; and
- o apply to such an allegation in the same manner and to the same extent as such sections of the Government Employee Rights Act of 1991 apply with respect to an allegation of a violation under such Act.

**2. ENTITY.**--Such an allegation shall be addressed by the Office of Senate Fair Employment Practices or such other entity as the Senate may designate.

**RIGHTS OF EMPLOYEES.**--The Office of Senate Fair Employment Practices shall ensure that Senate employees are informed of their rights under sections 101 through 105.

**LIMITATIONS.**--A request for counseling under section 305 of such Act by a Senate employee alleging a violation of a provision of sections 101 through 105 shall be made not later than 2 years after the date of the last event constituting the alleged violation for which the counseling is requested, or not later than 3 years after such date in the case of a willful

violation of section 105.

**APPLICABLE REMEDIES.**--The remedies applicable to individuals who demonstrate a violation of a provision of sections 101 through 105 shall be such remedies as would be appropriate if awarded under paragraph (1) or (3) of section 107(a).

**EXERCISE OF RULEMAKING POWER.**--The provisions of subsections (b), (c), (d), and (e), except as such subsections apply with respect to section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. No Senate employee may commence a judicial proceeding with respect to an allegation described in subsection (b)(1), except as provided in this section.

**SEVERABILITY.**--Notwithstanding any other provision of law, if any provision of section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), or of subsection (b)(1) insofar as it applies such section 309 to an allegation described in subsection (b)(1)(A), is invalidated, both such section 309, and subsection (b)(1) insofar as it applies such section 309 to such an allegation, shall have no force and effect, and shall be considered to be invalidated for purposes of section 322 of such Act (2 U.S.C. 1221).

**DEFINITIONS.**--As used in this section:

**1. EMPLOYING OFFICE.**--The term "employing office" means the office with the final authority described in section 301(2) of such Act (2 U.S.C. 1201(2)).

**2. SENATE EMPLOYEE.**--The term "Senate employee" means an employee described in subparagraph (A) or (B) of section 301(c)(1) of such Act (2 U.S.C. 1201(c)(1)) who has been employed for at least 12 months on other than a temporary or intermittent basis by any employing office.

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**SEC. 502. LEAVE FOR CERTAIN HOUSE EMPLOYEES.**

- IN GENERAL.--The rights and protections under sections 102 through 105 (other than section 104(b)) shall apply to any employee in an employment position and any employing authority of the House of Representatives.
- ADMINISTRATION.--In the administration of this section, the remedies and procedures under the Fair Employment Practices Resolution shall be applied.
- DEFINITION.--As used in this section, the term "Fair Employment Practices Resolution" means rule LI of the Rules of the House of Representatives.

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**TITLE VI--SENSE OF CONGRESS  
SEC. 601. SENSE OF CONGRESS.**

- It is the sense of the Congress that:
  - The Secretary of Defense shall conduct a comprehensive review of current departmental policy with respect to the service of homosexuals in the Armed Forces;
  - Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;
  - The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;
  - The Senate Committee on Armed Services shall conduct (i) comprehensive

hearings on the current military policy with respect to the service of homosexuals in the military services; and (ii) shall conduct oversight hearings on the Secretary's recommendations as such are reported.

Approved February 5, 1993.

LEGISLATIVE HISTORY--H.R. 1(S. 5):  
HOUSE REPORTS: No. 103-8, Pt. 1 (Comm. on Education and Labor) and Pt. 2 (Comm. on Post Office and Civil Service).

SENATE REPORTS: No. 103-3 accompanying S. 5 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 139 (1993):

- Feb. 2, S. 5 considered in Senate.
- Feb. 3, considered in Senate; H.R. 1 considered and passed House.
- Feb. 4, H.R. 1 considered and passed Senate, amended, in lieu of S. 5. House concurred in Senate amendment.
- WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):
- Feb. 5, Presidential remarks and statement.