

111TH CONGRESS  
1ST SESSION

# S. 1441

To amend title 38, United States Code, to grant family of members of the uniformed services temporary annual leave during the deployment of such members.

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## IN THE SENATE OF THE UNITED STATES

JULY 10, 2009

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title 38, United States Code, to grant family of members of the uniformed services temporary annual leave during the deployment of such members.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Family Leave  
5 Act of 2009”.

1 **SEC. 2. ANNUAL LEAVE FOR FAMILY OF DEPLOYED MEM-**  
 2 **BERS OF THE UNIFORMED SERVICES.**

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

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

“Sec.

“4401. Definitions.

“4402. Leave requirement.

“4403. Certification.

“4404. Employment and benefits protection.

“4405. Prohibited acts.

“4406. Enforcement.

“4407. Miscellaneous provisions.

9 **“§ 4401. Definitions**

10 “In this chapter:

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

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

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

20 “(A) a family member of a member of a  
 21 uniformed service; and

1           “(B) an employee of the employer with re-  
2           spect to whom leave is requested under section  
3           4402 of this title.

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

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

8                   “(B) A son or daughter of the other indi-  
9           vidual.

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

11           “(5) The term ‘reduced leave schedule’ means a  
12           leave schedule that reduces the usual number of  
13           hours per workweek, or hours per workday, of an  
14           employee.

15           “(6) The terms ‘spouse’, ‘son or daughter’, and  
16           ‘parent’ have the meaning given such terms in sec-  
17           tion 101 of the Family and Medical Leave Act of  
18           1993 (29 U.S.C. 2611).

19   **“§ 4402. Leave requirement**

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

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

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

4           “(B) is deployed in connection with a contin-  
5           gency operation.

6           “(b) LEAVE TAKEN INTERMITTENTLY OR ON RE-  
7           DUCED LEAVE SCHEDULE.—(1) Leave under subsection  
8           (a) may be taken by an eligible employee intermittently  
9           or on a reduced leave schedule as the eligible employee  
10          considers appropriate.

11          “(2) The taking of leave intermittently or on a re-  
12          duced leave schedule pursuant to this subsection shall not  
13          result in a reduction in the total amount of leave to which  
14          the eligible employee is entitled under subsection (a) be-  
15          yond the amount of leave actually taken.

16          “(c) PAID LEAVE PERMITTED.—Leave granted  
17          under subsection (a) may consist of paid leave or unpaid  
18          leave as the employer of the eligible employee considers  
19          appropriate.

20          “(d) RELATIONSHIP TO PAID LEAVE.—(1) If an em-  
21          ployer provides paid leave to an eligible employee for fewer  
22          than the total number of workweeks of leave that the eligi-  
23          ble employee is entitled to under subsection (a), the addi-  
24          tional amount of leave necessary to attain the total num-

1 ber of workweeks of leave required under subsection (a)  
2 may be provided without compensation.

3 “(2) An eligible employee may elect, and an employer  
4 may not require the eligible employee, to substitute any  
5 of the accrued paid vacation leave, personal leave, or fam-  
6 ily leave of the eligible employee for leave provided under  
7 subsection (a) for any part of the total period of such leave  
8 the eligible employee is entitled to under such subsection.

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

### 13 **“§ 4403. Certification**

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

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

20 “(c) SUFFICIENT CERTIFICATION.—A copy of the no-  
21 tification, call, or order described in section 4402(a)(2) of  
22 this title shall be considered sufficient certification of enti-  
23 tlement to leave for purposes of providing certification  
24 under this section. The Secretary may prescribe such addi-  
25 tional forms and manners of certification as the Secretary

1 considers appropriate for purposes of providing certifi-  
2 cation under this section.

3 **“§ 4404. Employment and benefits protection**

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

8 “(1) to be restored by the employer to the posi-  
9 tion of employment held by the eligible employee  
10 when the leave commenced; or

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

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

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

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

21 “(2) any right, benefit, or position of employ-  
22 ment other than any right, benefit, or position to  
23 which the employee would have been entitled had the  
24 employee not taken the leave.

1 **“§ 4405. Prohibited acts**

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

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

10 **“§ 4406. Enforcement**

11       “The provisions of subchapter III of chapter 43 of  
12 this title shall apply with respect to the provisions of this  
13 chapter as if such provisions were incorporated into and  
14 made part of this chapter.

15 **“§ 4407. Miscellaneous provisions**

16       “The provisions of subchapter IV of chapter 43 of  
17 this title shall apply with respect to the provisions of this  
18 chapter as if such provisions were incorporated into and  
19 made part of this chapter.”.

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

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

