

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4178

To amend the Internal Revenue Code of 1986 to provide that periods of leave required to be permitted by the Family and Medical Leave Act of 1993 shall be treated as hours of service for purposes of the pension participation and vesting rules.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

Mr. PRICE of North Carolina introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to provide that periods of leave required to be permitted by the Family and Medical Leave Act of 1993 shall be treated as hours of service for purposes of the pension participation and vesting rules.

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 “Family Leave Pension  
5 Relief Act of 1998”.

1 **SEC. 2. PERIODS OF FAMILY AND MEDICAL LEAVE TREAT-**  
2 **ED AS HOURS OF SERVICE FOR PENSION**  
3 **PARTICIPATION AND VESTING.**

4 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

5 (1) PARTICIPATION.—

6 (A) IN GENERAL.—Paragraph (3) of sec-  
7 tion 410(a) of the Internal Revenue Code of  
8 1986 (relating to minimum participation stand-  
9 ards) is amended by adding at the end the fol-  
10 lowing new subparagraph:

11 “(E) FAMILY AND MEDICAL LEAVE TREAT-  
12 ED AS SERVICE.—

13 “(i) IN GENERAL.—For purposes of  
14 this subsection, in the case of an individual  
15 who is absent from work on leave required  
16 to be given to such individual under the  
17 Family and Medical Leave Act of 1993,  
18 the plan shall treat as hours of service—

19 “(I) the hours of service which  
20 otherwise would normally have been  
21 credited to such individual but for  
22 such absence, or

23 “(II) in any case in which the  
24 plan is unable to determine the hours  
25 described in subclause (I), 8 hours of  
26 service per day of absence.

1           “(ii) YEAR TO WHICH HOURS ARE  
2 CREDITED.—The hours described in clause  
3 (i) shall be treated as hours of service as  
4 provided in this subparagraph—

5           “(I) only in the year in which the  
6 absence from work begins, if a partici-  
7 pant would have a year of service sole-  
8 ly because the period of absence is  
9 treated as hours of service as provided  
10 in clause (i); or

11           “(II) in any other case, in the  
12 immediately following year.”

13           (B) COORDINATION WITH TREATMENT OF  
14 MATERNITY AND PATERNITY ABSENCES UNDER  
15 BREAK IN SERVICE RULES.—Subparagraph (E)  
16 of section 410(a)(5) of such Code is amended—

17           (i) by inserting “NOT UNDER FAMILY  
18 AND MEDICAL LEAVE ACT OF 1993” after  
19 “ABSENCES” in the heading, and

20           (ii) by adding at the end of clause (i)  
21 the following new sentence: “The preceding  
22 sentence shall apply to an absence from  
23 work only if no part of such absence is re-  
24 quired to be given under the Family and  
25 Medical Leave Act of 1993.”

1 (2) VESTING.—

2 (A) IN GENERAL.—Paragraph (5) of sec-  
3 tion 411(a) of such Code (relating to minimum  
4 vesting standards) is amended by adding at the  
5 end the following new subparagraph:

6 “(E) FAMILY AND MEDICAL LEAVE TREAT-  
7 ED AS SERVICE.—

8 “(i) IN GENERAL.—For purposes of  
9 this subsection, in the case of an individual  
10 who is absent from work on leave required  
11 to be given to such individual under the  
12 Family and Medical Leave Act of 1993,  
13 the plan shall treat as hours of service—

14 “(I) the hours of service which  
15 otherwise would normally have been  
16 credited to such individual but for  
17 such absence, or

18 “(II) in any case in which the  
19 plan is unable to determine the hours  
20 described in subclause (I), 8 hours of  
21 service per day of absence.

22 “(ii) YEAR TO WHICH HOURS ARE  
23 CREDITED.—The hours described in clause  
24 (i) shall be treated as hours of service as  
25 provided in this subparagraph—

1                   “(I) only in the year in which the  
2                   absence from work begins, if a partici-  
3                   pant would have a year of service sole-  
4                   ly because the period of absence is  
5                   treated as hours of service as provided  
6                   in clause (i); or

7                   “(II) in any other case, in the  
8                   immediately following year.”

9                   (B) COORDINATION WITH TREATMENT OF  
10                  MATERNITY AND PATERNITY ABSENCES UNDER  
11                  BREAK IN SERVICE RULES.—Subparagraph (E)  
12                  of section 411(a)(6) of such Code is amended—

13                   (i) by inserting “NOT UNDER FAMILY  
14                   AND MEDICAL LEAVE ACT OF 1993” after  
15                   “ABSENCES” in the heading, and

16                   (ii) by adding at the end of clause (i)  
17                   the following new sentence: “The preceding  
18                   sentence shall apply to an absence from  
19                   work only if no part of such absence is re-  
20                   quired to be given under the Family and  
21                   Medical Leave Act of 1993.”

22                  (b) AMENDMENTS OF ERISA.—

23                   (1) PARTICIPATION.—

24                   (A) IN GENERAL.—Paragraph (3) of sec-  
25                   tion 202(a) of the Employee Retirement Income

1 Security Act of 1974 (relating to minimum par-  
2 ticipation standards) is amended by adding at  
3 the end the following new subparagraph:

4 “(E)(i) For purposes of this subsection, in the case  
5 of an individual who is absent from work on leave required  
6 to be given to such individual under the Family and Medi-  
7 cal Leave Act of 1993, the plan shall treat as hours of  
8 service—

9 “(I) the hours of service which otherwise would  
10 normally have been credited to such individual but  
11 for such absence, or

12 “(II) in any case in which the plan is unable to  
13 determine the hours described in subclause (I), 8  
14 hours of service per day of absence.

15 “(ii) The hours described in clause (i) shall be treated  
16 as hours of service as provided in this subparagraph—

17 “(I) only in the year in which the absence from  
18 work begins, if a participant would have a year of  
19 service solely because the period of absence is treat-  
20 ed as hours of service as provided in clause (i); or

21 “(II) in any other case, in the immediately fol-  
22 lowing year.”

23 (B) COORDINATION WITH TREATMENT OF  
24 MATERNITY AND PATERNITY ABSENCES UNDER  
25 BREAK IN SERVICE RULES.—Subparagraph (A)

1 of section 202(b)(5) of such Act is amended by  
2 adding at the end of clause (i) the following  
3 new sentence: “The preceding sentence shall  
4 apply to an absence from work only if no part  
5 of such absence is required to be given under  
6 the Family and Medical Leave Act of 1993.”

7 (2) VESTING.—

8 (A) IN GENERAL.—Paragraph (2) of sec-  
9 tion 203(b) of such Act (relating to minimum  
10 vesting standards) is amended by adding at the  
11 end the following new subparagraph:

12 “(E)(i) For purposes of this subsection, in the case  
13 of an individual who is absent from work on leave required  
14 to be given to such individual under the Family and Medi-  
15 cal Leave Act of 1993, the plan shall treat as hours of  
16 service—

17 “(I) the hours of service which otherwise would  
18 normally have been credited to such individual but  
19 for such absence, or

20 “(II) in any case in which the plan is unable to  
21 determine the hours described in subclause (I), 8  
22 hours of service per day of absence.

23 “(ii) The hours described in clause (i) shall be treated  
24 as hours of service as provided in this subparagraph—

1           “(I) only in the year in which the absence from  
2 work begins, if a participant would have a year of  
3 service solely because the period of absence is treat-  
4 ed as hours of service as provided in clause (i); or  
5           “(II) in any other case, in the immediately fol-  
6 lowing year.”

7           (B) COORDINATION WITH TREATMENT OF  
8 MATERNITY AND PATERNITY ABSENCES UNDER  
9 BREAK IN SERVICE RULES.—Clause (i) of sec-  
10 tion 203(b)(3)(E) of such Act is amended by  
11 adding at the end of clause (i) the following  
12 new sentence: “The preceding sentence shall  
13 apply to an absence from work only if no part  
14 of such absence is required to be given under  
15 the Family and Medical Leave Act of 1993.”

16       (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply with respect to plan years begin-  
18 ning on or after January 1, 1999.

19 **SEC. 3. PROVISIONS RELATING TO PLAN AMENDMENTS.**

20       (a) IN GENERAL.—If this section applies to any plan  
21 amendment—

22           (1) such plan shall be treated as being operated  
23 in accordance with the terms of the plan during the  
24 period described in subsection (b)(2)(A), and

1           (2) such plan shall not fail to meet the require-  
2           ments of section 411(d)(6) of the Internal Revenue  
3           Code of 1986 or section 204(g) of the Employee Re-  
4           tirement Income Security Act of 1974 by reason of  
5           such amendment.

6           (b) AMENDMENTS TO WHICH SECTION APPLIES.—

7           (1) IN GENERAL.—This section shall apply to  
8           any amendment to any plan which is made—

9                   (A) pursuant to any amendment made by  
10                  section 2, and

11                   (B) before the first day of the first plan  
12                  year beginning on or after January 1, 2000.

13           In the case of a governmental plan (as defined in  
14           section 414(d) of the Internal Revenue Code of  
15           1986), this paragraph shall be applied by substitut-  
16           ing “2001” for “2000”.

17           (2) CONDITIONS.—This section shall not apply  
18           to any amendment unless—

19                   (A) during the period—

20                           (i) beginning on the date the legisla-  
21                           tive amendment described in paragraph  
22                           (1)(A) takes effect (or in the case of a plan  
23                           amendment not required by such legislative  
24                           amendment, the effective date specified by  
25                           the plan), and

1                   (ii) ending on the date described in  
2                   paragraph (1)(B) (or, if earlier, the date  
3                   the plan amendment is adopted),  
4                   the plan is operated as if such plan amendment  
5                   were in effect, and  
6                   (B) such plan amendment applies retro-  
7                   actively for such period.

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