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Bill Introduced to Give Sick Leave Bonus to Wounded Warriors who Are new Federal Employees

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9.0--Miscellaneous

On January 13, 2015, Representative Stephen F. Lynch (MA) introduced H.R. 313. So far, there are six co-sponsors: Representatives G.K. Butterfield (NC), Gerald E. Connolly (VA), Elijah Cummings (MD), Blake Farenthold (TX), and Walter B. Jones, Jr. (NC) and Delegate Eleanor Holmes Norton (DC). If enacted, this bill would give each new federal civilian employee up to 104 hours of leave with pay during the first year of federal employment, if the new employee is a disabled veteran (30% disability or more) as determined by the Department of Veterans Affairs (VA). This special leave would have to be used for medical treatment *for such disability*. If the new employee has not used the 104 hours during the first year of federal employment, the excess leave is forfeited—it does not carry forward into subsequent years.

To see how this bill would work if enacted, let us consider two hypothetical veterans who are new federal employees. Joe Smith served on active duty in the Marine Corps for seven years, including service in both Iraq and Afghanistan, and he has suffered from Post-Traumatic Stress (PTS) and other medical problems. Smith has a service-connected disability rated at 40% by the VA. Within a month after starting his new federal job, Smith needs medical treatment for anxiety, dizziness, and other symptoms that are attributable to the PTS. Under this new law (if enacted), Smith would have the right to paid sick leave (attributable to the 104 hours) for medical treatment of the PTS and the symptoms thereof.

Now let us consider the possibility that the PTS symptoms make it impossible for Smith to go to work for seven days, including five days when he was recovering at home and not receiving medical treatment. Is Smith entitled to use this special sick leave for days when he does not receive medical treatment? The bill, as currently drafted, is unclear on this point. It provides that the special sick leave is to be used for *medical treatment*, but it also provides that this special sick leave can be used for circumstances “for which sick leave could normally be used.” Federal employees are entitled to use sick leave for days when they are too sick to go to work,

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find more than 1,300 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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even if they do not have medical appointments on those days. Perhaps this bill could be amended to clarify the intent of the sponsors on this issue.

Mary Adams served on active duty in the Army and was wounded in action, and as a result of her wound she lost her left leg. She has a service-connected disability rated in excess of 30%. She starts a new federal job. Six months later, she needs medical treatment because she has developed a serious case of pneumonia. She is not entitled to use the special sick leave for this medical treatment unless she can show that the pneumonia is related to her service connected disability.

Each federal employee (regardless of seniority) receives four hours of paid sick leave per two-week pay period. A federal employee with 0-3 years of seniority receives four hours of paid annual leave per pay period. An employee with 3-15 years of seniority receives six hours of annual leave per pay period. A federal employee with more than 15 years of seniority receives eight hours of annual leave per pay period. A new federal employee will need some time on the job to develop a significant positive balance of sick leave and annual leave. H.R. 313 would be very helpful to the wounded warrior who is a new federal employee.

The Family Medical Leave Act (FMLA) applies to the Federal Government just as it applies to large private sector employers. The FMLA gives an employee of a covered employer the right to up to 12 weeks of *unpaid* but job-protected leave for a serious illness, but to have the right to FMLA leave an employee must have worked for a covered employer for at least one year. Under current law, a new federal employee who is a disabled veteran may not even have the right to *unpaid* sick leave.

Under Executive Order 5396, signed by President Herbert Hoover in 1930, a federal employee who is a disabled veteran has the right to *unpaid* leave apparently without limit for medical treatment. It is unclear whether the right to unpaid medical leave under Executive Order 5396 must be for the condition for which the individual was determined to be a disabled veteran, or whether it also applies to an unrelated condition which develops many years later.³

³ Please see Law Review 13080 (June 2013) for a detailed discussion of Executive Order 5396.