

TRANSMITTED VIA EMAIL
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HR Policy Association: Workplace Provisions in the American Jobs and American Families Plan

Dear Capitol Hill Colleagues:

As Congress works towards developing legislative text for the American Jobs and American Families Plan, HR Policy Association staff and members have broad expertise in workplace issues and can be a helpful resource for you on topics such as paid leave, workforce development, diversity, equity and inclusion – all timely and critical in recovery efforts as the U.S. emerges from the pandemic.

[HR Policy Association](#) is the lead organization representing the Chief Human Resource Officers of major employers. The Association consists of more than 390 of the largest corporations doing business in the United States and globally, and these employers are represented in the organization by their most senior human resource executive. Collectively, their companies employ more than ten million employees in the United States—nearly nine percent of the private sector workforce—and 20 million employees worldwide. The Association brings these executives together not simply to discuss how human resource practices and policies should be improved, but also to create a vision for successful HR strategies and pursue initiatives that promote job growth, employment security and competitiveness.

On the issue of paid leave, HR Policy member companies understand the importance of paid family and medical leave and already provide generous benefits that generally extend beyond what is currently required under federal, state, and local law. According to an HR Policy Association 2017 survey of its membership, 83% of respondents said they offer their own short-term disability plan that employees can use for Family and Medical Leave Act (FMLA) purposes, a separate paid family leave program, or both. Since then, the world of work has been altered dramatically and we expect that the number of employers voluntarily offering paid leave benefits has increased to meet the evolving needs of the workforce.

As you pursue legislative text regarding a Federal paid leave insurance program, consider the questions below raised by the leading proposals. The questions were informed by HR Policy's Future Workplace Policy Council, a group of members who are directly responsible for employment and labor relations matters in their respective companies. The Future Workplace Policy Council's mission is to guide the Association's advocacy on workplace policies of concern to HR Policy Association members.

Q: How would a federal paid family and medical leave insurance program coordinate and interact with existing employer programs?

It is critical that a federal program be tailored to allow flexibility to employers that choose to continue their existing leave programs without imposing additional, substantial compliance burdens associated with a federal program. In addition, will there be a mechanism in place for employers to know, in real time, the benefits current employees are receiving under the federal program? Transparent and timely information will be paramount to the success of any federal paid FMLA program. If employees become eligible to receive federal paid leave benefits, are there ways the program should be structured to remove any disincentives for employers to provide their own benefits, such as those that may have already been subject to collective bargaining with unions?

Q: How will a federal program coordinate and interact with existing state and local programs?

Most large employers already offer competitive paid family and medical leave benefits, often exceeding what is required under state and local laws and what would likely be required under a potential federal program. The central issue for multi-jurisdictional employers is not the level of benefits required under applicable laws, but the compliance burden (including the coordination and administration of benefits) associated with the increasing patchwork of conflicting state and local leave laws. Differing state and local requirements make it difficult for employers with operations in several jurisdictions to offer uniform benefit plans for all or most of their employees. For example, the only way to offer concurrent paid leave programs is for the state to be primary and the employer plan to be secondary. In doing so, the employee must apply and receive pay from the state (which is generally not timely) and supplement from the employer instead of receiving full pay from the employer for a company benefit they are already entitled to and employees from other states automatically receive. In recognition of this, a federal program should operate as a national standard, under which an employer would be exempted from state and local requirements if it was in compliance with such a standard. The *Workflex in the 21st Century Act (H.R. 4248)* addresses this issue.

Q: How will a federal program be funded?

Existing state and local paid family and medical leave programs are funded through some form of a payroll tax – either on the employer, the employee, or both. Many employers are therefore already familiar with a leave program being funded through a payroll tax. Alternatively, the Building an Economy for Families Act proposes to fund the program through general revenues. There are pros and cons with both approaches.

Placing the tax on both the employer and the employee could ensure that both parties have an appropriate stake in the benefit program, which could disincentivize abuses. Additionally, a payroll tax affords a level of stability in ensuring that a federal program would remain adequately funded without further financial burdens placed on employers or employees. If a payroll tax is used under a federal program, employers who already provide paid leave benefits comparable to what would be required under the program should be

entitled to opt out of the program and/or receive an offset based on what they are already providing. Without such an opt-out or offset mechanism, employers would be disincentivized from continuing to offer their own generous leave benefits exceeding what is required under a federal standard, resulting in benefit reductions for employees.

With regard to funding a federal program through general revenues only, the obvious advantage to this approach is that, in theory, there would not be any new financial burdens placed on employers or employees directly associated with the federal paid leave program. Nevertheless, to ensure the program remains adequately funded, funding through general revenue would likely require increased corporate tax rates and/or increased taxes on high-income earners, either in conjunction with the rollout of a federal program and/or in future years.

Q: Under a federal program, who would make eligibility determinations?

Currently, employers make decisions regarding who is eligible for leave under the FMLA. If an employee disagrees with an employer's decision, their remedy is to sue or bring an administrative charge. Under a federal paid family and medical leave program, would eligibility determinations be made by specialized federal claim adjudicators? Such an approach would inappropriately leave employers out of a process that they are best equipped to manage. Alternatively, would employers continue to make eligibility determinations for unpaid leave under FMLA, while federal claim adjudicators make decisions for paid leave benefits? This could result in divergent conclusions for similar or identical requests for leave, creating numerous complications for both employers and their employees.

Q: Under a federal program, which party/parties will police potential abuse of benefits?

A federal program should include a transparent process for policing potential abuse of benefits. Unchecked leave abuse can leave employers strained for sufficient workers, threatening the viability of their operations. Although employers may be best placed to police potential leave abuse, this approach may place an unsustainable administrative burden on employers. If the federal government is responsible for policing potential leave abuse, employers should be given an administrative process to submit claims of potential leave abuse that are resolved in a timely and transparent manner.

For questions, additional information, or general inquiries about workplace matters, feel free to contact me at Cbirbal@HRPolicy.org.

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