

January 31, 2024

Sen. Kirsten Gillibrand (D-NY)
Sen. Bill Cassidy (R-LA)
Sen. Bob Casey (D-PA)
Sen. Maggie Hassan (D-NH)
Sen. Cynthia Lummis (R-WY)
Sen. Thom Tillis (R-NC)
Sen. Kyrsten Sinema (I-AZ)
Sen. Todd Young (R-IN)

Rep. Chrissy Houlahan (D-PA)
Rep. Stephanie Bice (R-OK)
Rep. Colin Allred (D-TX)
Rep. Julia Letlow (R-LA)
Rep. Mariannette Miller-Meeks (R-IA)
Rep. Haley Stevens (D-MI)

Re: Congressional Working Group Request for Information on Federal Paid Leave Proposal

Dear Bipartisan, Bicameral Paid Leave Working Group Members,

On behalf of [HR Policy Association](#) (the Association) and our membership, thank you for your leadership in the pursuit of a federal paid leave program. The Association views this Request for Information (RFI) as a positive stride towards acknowledging how the federal government can establish a national standard on paid leave for the benefit of all stakeholders. We value the chance to express our perspectives in response to the RFI, given our historical advocacy for a federal paid leave program that allows employers to offer uniform benefits to all employees regardless of work location.

Background

HR Policy Association is the lead public policy association of chief human resource officers (CHROs) representing nearly 400 of the largest employers doing business in the United States and globally. Our member companies employ more than 10 million individuals in the United States. Our Association and its members offer a distinctive viewpoint on the present and future possibilities of a federal paid leave program.

Members of the HR Policy Association 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.

Given the significant shifts in the work landscape, it is expected that the number of employers voluntarily offering paid leave benefits will only grow, further aligning with the changing needs

of the workforce. The primary challenge for large, multi-state employers is not the level of benefits mandated by relevant laws, but the inability to offer uniform benefits to all workers, stemming from conflicting state and local leave regulations. Varying requirements pose a challenge for employers with operations in multiple states. They hinder the ability to implement consistent benefit plans and carry a heavy compliance burden. Acknowledging these complexities, a federal program should function as a national standard, providing employers a pathway to offer standardized benefits amid the patchwork of state and local requirements. As you craft legislative text for a federal paid leave program, we urge you to consider our responses to the RFI questions provided below.

Q: What should the federal role be, if any, in providing, promoting, and/or incentivizing paid leave? And how should this interact with the role of state government programs, and/or employer programs?

The primary emphasis of the federal government's involvement in providing, promoting, and incentivizing paid leave should be on creating a comprehensive national standard and framework. This entails formulating guidelines, regulations, and policies to safeguard workers and guarantee equitable access to paid leave with consistent requirements and benefits for all workers across the nation.

Increasing the harmonization and coordination of varying and conflicting state and local requirements should be the priority of any federal paid leave program. This is particularly important in guaranteeing that employees receive consistent benefits regardless of their geographical location. The absence of a national paid leave standard has resulted in a complex patchwork of diverse state and local laws, leading to confusion for both employers and employees, along with increased compliance costs.

A standardized federal approach to paid leave simplifies compliance for businesses operating across state lines, promoting clarity and equitable access to essential benefits for workers nationwide. As experience has shown under the Employee Retirement Income Security Act (ERISA), providing a consistent framework helps alleviate disparities, enabling businesses to operate nationally without encountering a multitude of divergent requirements.

We commend the Bipartisan Working Group's legislative framework, which includes the establishment of an "Interstate Paid Leave Action Network (I-PLAN)" to coordinate and harmonize paid leave benefits across states, which would address the state patchwork issue that employers currently confront. This initiative contributes to creating a unified and streamlined approach to paid leave benefits.

Regarding employer programs, the federal government should establish mechanisms that minimize administrative burdens on employers and avoid discouraging them from providing more generous paid leave benefits. This can be accomplished by offering exemptions or offsets for employers already offering comparable or more generous benefits, allowing them to opt out of the federal program or receive credits for their existing offerings. A federal program should

also be flexible, permitting employers to maintain their current leave programs without imposing additional substantial compliance burdens. Additionally, the federal government should set clear guidelines for coordination between employer programs and the national standard, ensuring that employees receive their entitled benefits without duplication or overlap. Overall, the federal role in providing, promoting, and incentivizing paid leave should be to establish a national standard, provide financial support and incentives, and coordinate with state governments and employer programs to ensure consistent and comprehensive coverage for all workers.

Q: How should different types of leave be prioritized? Should different types of leave be treated differently or does doing so create adverse effects?

A prospective federal program should encompass a range of leave categories, including parental leave, medical leave, and family care leave. The inclusion of these leave programs is essential to meet the diverse needs of a modern workforce and offer support to individuals in varying situations. Regarding prioritization, it is necessary to consider all types of leave as essential and important. Each type serves distinct purposes and addresses different needs. The objective of a federal program should be to offer comprehensive and effective support and leave options for individuals, enabling them to prioritize their health, family, and personal well-being as necessary. The emphasis should be on guaranteeing that individuals can access the suitable amount of leave for their specific needs.

Q: Please describe alternative ways any proposed framework can be financed, including possible payfors. What financial mechanisms should be considered to expand paid leave?

Existing state and local programs for paid family and medical leave are typically financed through payroll taxes, with contributions from either the employer, the employee, or both. This funding mechanism is familiar to many employers. In contrast, previous legislative proposals have suggested financing the program through general revenues. There are distinct advantages and disadvantages to both approaches.

When contemplating a payroll tax affecting both employers and employees, there is a compelling rationale for ensuring that both parties have a vested interest in the benefit program. Additionally, a payroll tax serves as a dependable funding source, providing stability to the federal program without imposing additional financial burdens on either employers or employees. This approach not only offers the possibility for employers providing equivalent paid leave benefits to opt out of the government program but also enables them to autonomously finance paid leave from their own budgets rather than relying on the government program fund.

Moreover, it is imperative for the government to acknowledge and provide incentives for existing employer-sponsored paid leave programs. Employers currently offering paid leave benefits should either be exempt from a new tax or receive a tax credit equivalent to their existing contributions. The lack of such recognition poses the risk of dissuading employers from sustaining their more generous paid leave benefits in comparison to those offered by state or federal programs, with the potential result of reducing benefits for employees. Acknowledging

and promoting existing employer initiatives is essential to foster a supportive framework for employee benefits, contributing to a positive and competitive work environment.

Alternatively, funding a federal program exclusively through general revenues avoids directly imposing new financial obligations on employers or employees associated with the paid leave program. The key advantage lies in the absence of a payroll tax burden. However, this approach necessitates careful consideration of alternative funding sources.

In summary, the choice between funding a federal paid leave program through a payroll tax or general revenues involves weighing the advantages and disadvantages of each approach. A balanced consideration of stakeholder interests, financial stability, and potential funding sources is crucial in designing a program that effectively supports workers while addressing the concerns of employers and the broader economic landscape.

Q: How can proposed paid leave frameworks avoid creating unintended distortions, such as marriage penalties, reductions of private sector paid leave coverage, etc.?

Proposed paid leave frameworks can avoid creating unintended distortions by carefully considering the potential consequences and implementing specific measures to address them. One way to avoid marriage penalties is to ensure that paid leave benefits are available to all individuals, regardless of their marital status – which is why providing comprehensive paid leave programs for family (parental and caregiving) and medical (own serious health condition) helps all workers regardless of their age or family structure. Both married and unmarried individuals should have equal access to paid leave benefits, without any negative impact on their eligibility or coverage based on their marital status.

To prevent reductions of private sector paid leave coverage, it is important to consider the impact of the proposed framework on existing employer-provided paid leave benefits. Employers who already offer paid leave benefits that meet or exceed the requirements of the proposed framework should be allowed to opt out of the program or receive offsets based on the benefits they already provide. This recognizes and rewards employers who have already taken steps to provide generous leave benefits to their employees. Importantly, it also means that states need to evaluate the merits of an employer-based paid leave program for its true equivalent value. Unlike state programs, for instance, employer-provided paid leave plans often do not have weekly maximum benefit caps and the availability of leave is often provided in distinct buckets (not aggregated as a total allotment across multiple types of leave).

Additionally, the proposed framework should not create financial burdens for employers or employees. If the framework is funded through a payroll tax, it should be structured in a way that minimizes the financial impact on both parties. For example, placing the tax on both the employer and the employee could ensure that both have a stake in the benefit program and prevent employers from shouldering the entire burden.

Furthermore, it is important to consider the potential impact on other existing benefit programs. The proposed paid leave framework should be designed in a way that complements and does not conflict with other benefit programs, such as paid family leave. Careful coordination and alignment with existing programs can help avoid unintended distortions and ensure that individuals have access to a comprehensive set of benefits without any negative consequences.

Overall, avoiding unintended distortions in proposed paid leave frameworks requires careful consideration of the potential consequences and implementation of measures to address them. This includes ensuring equal access to benefits regardless of marital status, allowing employers to opt out or receive offsets for existing benefits, minimizing financial burdens on employers and employees, and coordinating with existing benefit programs to create a comprehensive and aligned set of benefits.

Q: What other information would you like us to consider as we attempt to chart a bipartisan path forward?

As the Working Group attempts to chart a bipartisan path forward towards a legislative proposal, there are several additional pieces of information that would be useful to consider:

Stakeholder Input: It is important to gather input from a wide range of stakeholders, including employers of various sizes, employees, advocacy groups, and community organizations. Their perspectives and expertise can help identify potential areas of agreement and highlight any concerns or considerations that need to be addressed in the proposed legislation.

Economic Impact: A thorough analysis of the economic impact of implementing a paid leave program is essential. This should include an assessment of the costs to employers, potential costs for employees and savings for government programs. Understanding the financial implications will be essential in making informed decisions and designing a program that is both sustainable and effective.

Compliance: Consideration should be given to how the program will be implemented and what will be in place to ensure compliance. Exploring options for educating employers about the program and providing clear guidelines on compliance, including coordination with existing employer paid leave benefits and the various state and local requirements, like the establishment of the I-PLAN, will be important to ensure successful implementation.

Flexibility: Due to the evolving and diverse demographics of the United States, the dynamic landscape of work, and the variations across industries, it is important to contemplate the flexibility and adaptability of the program to meet the needs of the US population in the coming decades. This might entail accommodating different leave durations or eligibility criteria and offering resources to empower employers to implement the program according to their unique business circumstances and workforce requirements. By considering these additional factors, policymakers can work towards developing a comprehensive, bipartisan paid leave program that addresses the needs of both employers and employees.

Conclusion

While an increasing number of states are passing legislation that provides paid leave benefits for workers, there is a need for federal policymakers to find ways that increase the coordination and harmonization of these programs to enable employers to offer uniform, consistent, and effect paid leave benefits to employees across the United States.

Over the course of several years, and in the ongoing discourse surrounding paid leave and the federal government's role, there has been a collective call to prioritize ensuring that every American worker has access to paid leave. Our member companies take pride in offering comprehensive paid leave packages to their workforce, considering it a highly appealing and vital benefit. It is central that any federal paid leave program removes barriers and incentivizes the business community to continue to provide essential benefits to a dynamic, diverse, and modern workforce. This commitment is integral to fostering a work environment that values employee well-being and overall job satisfaction.

In closing, HR Policy Association appreciates this opportunity to respond to your RFI and looks forward to serving as a resource to you and your staff on these critical issues. For questions, additional information, or general inquiries about paid leave, feel free to contact me at Cbirbal@HRPolicy.org.

Sincerely,



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