



States Impose Paid Family Leave as Congress Weighs National Policy

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SHRM urges employers to share their concerns with state and federal lawmakers

Twenty-five years ago, the Family and Medical Leave Act (FMLA) was passed, requiring large organizations to offer workers up to 12 weeks of unpaid leave to care for a new baby or sick family member. Today, U.S. employers face a growing patchwork of state paid leave laws, while momentum is building for federal paid family leave legislation.

Employers should ensure that state and federal lawmakers hear their opinions about the proposed legislation, urged Lisa Horn, vice president for congressional affairs at the Society for Human Resource Management (SHRM), and Adrienne Schweer, leader of the Paid Family Leave Task Force at the Bipartisan Policy Center, a Washington, D.C. think tank. They spoke March 19 at the 2019 SHRM Employment Law & Legislative Conference in Washington, D.C.

"Paid leave and flexible work options help attract and maintain an engaged, productive workforce," Horn said, "but a fragmented patchwork of state and local leave requirements creates a compliance conundrum, [and] rigid government mandates stifle employer flexibility and innovation."

A 2016 study by the Pew Research Center found that Americans largely support paid leave for new mothers and fathers, as well as for workers who need to care for a family member with a serious health condition or to deal with their own medical issues. But the public is sharply divided over whether the government should require employers to offer this benefit or let employers decide for themselves, Horn noted.

According to SHRM's 2018 Employee Benefits survey of more than 3,500 HR professionals, 27 percent of organizations offer paid family leave of some kind. Most employers doing so are outside the states that have imposed paid leave, she said. Employers offer these benefits because they recognize paid leave is a top concern among Millennials who are raising families and caring for aging relatives, and who will represent more than 75 percent of the workforce within the next decade.

States Mandates Vary

Currently, five states mandate paid family leave. California and Rhode Island fund their programs through an employee payroll tax while New Jersey, New York and Washington impose payroll taxes on employees and employers. Wage replacement rates among the states range from 50 percent to 90 percent, while the length of family leave varies from 4 to 12 weeks (with longer periods for medical disability).

The District of Columbia enacted but hasn't yet implemented a paid leave law, with the details still being worked out by the City Council.

These initiatives, however, only hint at what's coming, Horn and Schweer said. In 2018, 21 states were considering paid family leave laws, and in 2019 even more are expected to consider legislation, they pointed out.

A National Interest

A poll of HR professionals attending the Horn and Schweer's session showed that many were unaware that the 2017 tax act included a pilot program offering a 25 percent tax credit to employers who offer paid leave to employees earning up to \$72,000. Among those who were aware of the tax credit, most are taking advantage of it.

Beyond this limited program, momentum is building for a federal paid leave initiative, Schweer said, but a deep partisan divide will likely prevent legislation from being passed by the current Congress, where Democrats hold the House while Republicans control the Senate. But paid family leave proposals could become an issue in the 2020 presidential and congressional campaigns.

Some of the measures that have been introduced or that may be reintroduced in Congress include:

- The Working Parents Flexibility Act, which establishes tax-exempt parental leave savings accounts for child care that can be funded by employees and employers. This measure has some bipartisan support.
- The Economic Security for New Parents Act, which allows new parents to draw from Social Security for paid leave lasting at least two consecutive months in exchange for delaying retirement. Similarly, the Child Rearing and Development Leave Empowerment (CRADLE) Act would let parents receive one, two or three months of paid leave by giving them the option to postpone Social Security benefits. Neither measure has Democratic co-sponsors.
- The Family and Medical Insurance Leave (FAMILY) Act, which provides partial wage replacement for all FMLA qualifying events funded by a payroll tax on employers and employees. With 179 Democratic co-sponsors to date and no Republican support, the measure "is expected to pass the House but then to have little chance in the Republican Senate," Horn said. If Democrats take both the House and Senate as well as the presidency in 2020, however, enactment of this or a similar measure would be likely.

In addition, presidential advisor Ivanka Trump has made paid family leave a top priority. The administration's fiscal year 2020 budget includes a proposal to establish a federal-state parental leave benefit program that would provide six weeks of benefits for mothers, fathers and adoptive parents, funded within the unemployment insurance program. Legislation has not yet been introduced, and the measure isn't expected to attract Democratic support, Schweer said.

A 2018 Paid Leave Survey of 1,700 adults by the Cato Institute, a libertarian think tank, found that 74 percent of respondents support a new federal government program to provide 12 weeks of paid leave to new parents or to people to deal with their own or a family member's serious medical condition. Support slips, however, after costs are considered, Horn and Schweer noted. While 54 percent would be willing to pay \$200 a year in new taxes to fund a 12-week federal

paid leave program, most oppose establishing a federal paid leave program if it would cost them \$450 a year or more.

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Shaping Policy

With state activity picking up speed and the growing potential for passing federal legislation—if not now, then after the 2020 elections—"the HR community needs to be in the discussion to help guide good policy," Horn said.

Both Democrats and Republicans "agree that we need a federal policy on parental leave. Family care is a tough issue" for working parents and those with caregiving responsibilities, Schweer said. "We understand why employees want it and why it makes sense," but the approach and the details—whether the employee, employer or government pays, what share of their salary employees receive, and how much time off employees should get—are points of contention.

Nevertheless, "the Republican Senate is talking about it for the first time, and the Democratic House is moving forward with legislation," Schweer said. Particularly at the state level, the employer community "isn't always at the table" when legislation is taking form, she observed, but by engaging in advocacy with lawmakers and becoming part of conversation, "you can help shape policy so it makes sense for your employees and your companies."

Added Horn, "We're all advocates for paid family leave if we can get the policy right, so that it works for both employers and employees."