



Congress Looking to Overhaul FMLA: Proposed Legislation Could Present New Compliance Challenges

Insights

9.01.09

(Retail Industry Update, No. 3, September 2009)

Although sometimes lost in the buzz over health care reform and union card-check legislation, over the past several months, Congress has also been considering a slew of aggressive proposals designed to expand various aspects of the Family and Medical Leave Act (FMLA). While these changes could affect employers in all industries, retailers should be especially concerned due to the possible lowering of requirements for coverage of part-time employees.

The Devil's In The Details

To facilitate passage, a number of proposals were recently consolidated within a single bill that could bring about the most sweeping reforms since FMLA became law sixteen years ago. On June 25, 2009, Representative Lynn Woolsey (D. CA) introduced "The Balancing Act of 2009," which incorporates multiple expansion efforts. Taken together, these provisions could have significant implications for employers and employees alike.

The most controversial proposal within Woolsey's bill would essentially convert FMLA to a paid-leave statute, allowing employees to take upwards of 12 weeks of paid leave over a 12-month period for qualifying family, medical or military exigency reasons. At present, covered employers are only required to extend such leave to eligible employees on an unpaid basis.

Pursuant to this provision, a federal "Family and Medical Leave Insurance Fund" would be established to finance paid leave distributions. Based upon similar models that have already been implemented in California and New Jersey, employers and employees would jointly subsidize the trust fund by contributing a premium of 0.2 percent of employee earnings.

Applying this to the median household income in the United States, which according to the U.S. Census Bureau was \$49,901 in 2007, employees and employers would each pay approximately \$100 into the fund per year. The fund would be managed by the Department of Labor, much like the states presently administer unemployment compensation.

The Balancing Act also purports to expand the FMLA by creating new forms of protected leave for both "parental involvement" and "family wellness." Parental-involvement leave would allow workers to participate in certain academic and extracurricular activities of their children and

grandchildren, while "family wellness" leave would enable employees to assist family members in attending medical appointments and to care for elderly relatives.

The consolidated legislation contains additional provisions that would: 1) require covered employers to provide a minimum of seven days of paid sick leave per year; 2) extend protection to victims of domestic violence and sexual assault; and, 3) allow leave to care for a broader category of family members, which would include domestic partners and same-sex spouses.

The bill would extend these obligations to a broader scope of small to mid-sized businesses. While the FMLA currently covers only those employers with 50 or more employees, the Balancing Act would expand the coverage threshold to encompass those with 15 or more employees, so even smaller retailers should be concerned. The bill would also extend eligibility to certain part-time employees who work 1,050 or more hours per year, a substantial reduction from the current minimum threshold of 1,250 hours per year.

What's Already On The Table

This has already been a busy year for the FMLA, which saw the issuance of a new set of regulations for the first time in fourteen years, implementing military-qualifying exigency leave based on amendments that had been signed into law a year earlier. It remains to be seen whether these proposals will survive once the bill makes its way through the House and into the Senate.

Nonetheless, supporters of the bill are optimistic as to its passage, and many are already speculating that the Administration would be willing to sign it into law. Retail employers will want to monitor these developments closely as the bill makes its way through Congress.