Congress Considers Paid FMLA Leave – And New Taxes To Pay For It

Insights
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On March 25, 2009, four House Democrats introduced a bill that would create a new federal insurance fund to provide employees with up to 12 weeks of paid family and medical leave each year.

The bill, called the Family Leave Insurance Act of 2009 (FLIA), would supplement the existing Family and Medical Leave Act (FMLA), which presently provides for such leave on an unpaid basis. As the Family Leave Insurance Act is now constructed, employers and employees would each pay premiums into the fund equivalent to 0.2 percent of each worker's earnings. Those employers with fewer than 20 workers would pay a 0.1 percent premium, and would then have the option of participating in the fund.

The Main Provisions
The fund would provide up to 12 weeks of annual paid leave for workers who need time off to care for a family member with a serious health condition, a new child, or to tend to their own serious health condition. Employees who pay into the fund for six consecutive months and accumulate at least 625 work hours during the prior six-month period would be eligible for benefits.

Other protections under the FMLA would remain intact. For example, employees would retain current FMLA protections, such as benefits continuation and job restoration upon their timely return to work.

The FLIA also prohibits employers from "interference, discrimination, or retaliation" concerning employees' exercise of their rights under the Act, and gives employees a private cause of action for alleged interference with the exercise of these rights. The Secretary of Labor would have concurrent investigative authority and would be authorized to bring an administrative or civil action. The bill also provides criminal penalties for knowingly submitting false certification in order to fraudulently collect benefits.

According to a study accompanying the bill, an employee making the national median income would pay approximately $80 a year into the fund. Benefits to employees are tiered based upon their wages. For example, a worker earning $20,000 per year would receive 100% of weekly pay while on leave; a worker making between $30,000 and $60,000 would receive 55%; a worker earning between

$60,001 and $97,000 a year would receive 45%; and those earning more than $97,000 a year would receive 40% of their weekly pay.

Where's It Headed?

While proponents of the bill claim the legislation is necessary to expand coverage and benefits currently in place under the FMLA, others see more expansive workplace regulation and taxation. Of potentially greater concern, paid leave of this magnitude could certainly give rise to employee abuse, which is already a challenge for many employers under the current framework.

The legislation is modeled after a current program in California where state law provides employees with access to paid leave of up to six weeks and flexible use of sick days. The bill has been referred to the House Committees on Education and Labor, Oversight and Government Reform, and Ways and Means. In other words, the bill is still in the first steps of the legislative process. Bills introduced in Congress ordinarily go to committees that deliberate, investigate, and revise them before they go to the floor for general debate. We'll keep you posted as any new developments occur.