

AMERICAN FAMILIES PLAN INCLUDES PROPOSAL FOR FEDERAL PAID LEAVE PROGRAM

Insights
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President Biden's latest infrastructure proposal – called [the American Families Plan](#) – includes a plan that would establish the nation's first permanent federal paid leave program. [Unveiled on April 28](#), the proposed legislation would permit workers to receive paid leave for their own health problems, parental purposes, or to care for sick family members, feathering in benefits to eventually offer a full 12 weeks of leave by 2031. What do employers need to know about this groundbreaking proposal?

Summary of Paid Leave Proposal

The paid leave portion of the American Families Plan would create a federally run program that would pay workers who take time off for a variety of reasons:

- a worker's own serious health problems;
- to care for seriously ill family members;
- bond with a newborn or newly adopted child;
- reasons related to a family member's military deployment; and
- seeking safety from sexual assault, stalking, or domestic violence.

The proposal also calls for three days per year for paid bereavement leave as necessary.

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The program would be phased in over time. The maximum of 12 weeks of paid leave benefits would not be fully available until 10 years after passage of the legislation.

The proposal would not necessarily be a dollar-for-dollar replacement for a workers' typical salary, but instead include a sliding-scale benefit amount that would be more generous for lower-wage workers. The paid leave program would pay workers at least two-thirds of their wages while on eligible leave, but the rate of pay would increase to 80% for certain low-income workers. The proposal calls for a maximum benefit cap at \$4,000 per month.

What's Uncertain

It's important to note that draft legislation has not yet even been introduced or released, so there are many details not yet known. At this time, we don't know whether there will be employer-size thresholds and hours-worked requirements as exist in the federal Family and Medical Leave Act (FMLA). Also unknown: whether the proposed statute will include the type of job protections provided under FMLA permitting workers to bring claims if they believe they have had their rights violated.

Finally, the proposal contains no mention of how its requirements would interact with existing state paid leave laws. Currently, at least nine states, the District of Columbia, and various local governments mandate some form of paid leave, creating a patchwork of compliance obligations for multistate employers. It is unclear how the American Families Plan paid leave plan would impact these obligations.

Who Would Pay for the Paid Leave?

The key question on employers' minds: who would pay for this leave? The good news is that the plan does not appear to rely on any direct contributions from businesses, instead gaining funding through federal budget appropriations raised through tax increases on wealthy individuals. White House officials have proposed \$1.5 trillion in tax hikes aimed primarily at wealthy Americans and investors, which could include a 100% increase on the capital gains tax rate for those earning over \$1 million per year. The White House also believes that an announced boost in enforcement efforts by the Internal Revenue Service will raise significant funds. It appears unlikely, however, that the administration would



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seek to raise payroll taxes to help fund the proposal, given that the Biden White House has pledged not to raise taxes on people earning less than \$400,000 per year.

There are some who believe that the plan would need to raise much more in order to fully fund the promises made in the proposal. Although the White House release estimates that it would have a projected cost of \$225 billion over a decade, at least one think tank – the Institute for Women's Policy Research – [believes it would take \\$460 billion over 10 years to match the paid leave promises contained in the release](#), which is more than double the amount allotted in the White House proposal.

Rationale for Paid Leave Program

The Biden administration's release provides detailed policy reasons for the paid leave program. "The United States has fallen behind our economic competitors in the number of women participating in the labor force," the Biden release said. "The pandemic has exacerbated this problem, pushing millions of people — especially women — out of the workforce, eroding more than 30 years of progress in women's labor force participation and resulting in a \$64 billion loss in wages and economic activity per year."

The White House also notes that the United States is one of the only industrialized countries in the world that doesn't guarantee paid leave, with only 19% of employees across the country eligible for paid leave benefits through state and local requirements.

Meanwhile, Biden maintains that the federal leave statute – FMLA – is woefully short in several respects. Not only does it fail to provide paid leave, it excludes about 40% of the U.S. workforce due to various eligibility requirements.

What's Next?

You should expect the White House and political opponents to gear up for a fight over the next several months over the American Families Plan. The administration has already passed one massive stimulus package, and has another piece of infrastructure legislation – the American Jobs Plan – in motion. It is unclear whether the White House and Congress will ask lawmakers to consider this latest proposal at the same time as the first infrastructure package or whether the two will be separated.

We will keep a close eye on negotiations and provide updates as warranted. You should ensure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions about any aspect of this legislative proposal and its impact on your workplace, contact your Fisher Phillips attorney or any attorney in our [Employee Leaves and Accommodations Practice Group](#).