

U.S. HOUSE PASSES FEDERAL PAID FAMILY LEAVE BILL – COULD IT BE COMING YOUR WAY SOON?

Insights
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The U.S. remains one of only a handful of developed countries without a federal paid family leave law – but we are one step closer to such a plan becoming reality as the U.S. House of Representatives recently passed a program that would provide four weeks of paid family and sick leave to many workers beginning in 2024. As we previously [discussed](#), the Biden administration has made this legislation a priority, originally proposing 12 weeks of paid family leave in the Build Back Better Act. After briefly jettisoning paid family leave altogether, the House passed a slimmed-down version on November 19. It now faces an uncertain future at the Senate, where its prospects for survival and passage are hazy at best. What do employers need to know about this legislative provision and what can you expect in the coming weeks and months?

Who Would be Eligible?

If the paid family and sick leave program ultimately passes the Senate in its current form, most workers would be in line to receive paid leave each year. Eligible workers would include full-time and part-time workers — including gig economy workers and other self-employed workers — without regard to employer size, and in both the private and public sector. Individuals who are covered by a state plan or a comprehensive

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employer-sponsored program would not be eligible for the federal benefit. Rather, those employees would continue to receive benefits through their respective state plans and employer-sponsored programs. The federal government would then reimburse those states and employers.

In addition, workers who receive paid sick leave, paid vacation, or other paid time off while performing qualified caregiving activities would *not* be eligible for the federal cash benefit. However, a worker may receive compensation from their employer to “top up” their weekly federal benefit amount, so long as the combined amount does not exceed the worker’s regular rate of pay. Individuals would also be ineligible for any leave benefits for five years after any finding that they used false statements to secure such benefits.

What Circumstances Would Justify Leave?

Eligible workers would be able to apply for and receive up to four weeks of paid leave for “qualified caregiving.” Workers must provide their employer notice of the need to be absent from work for qualified caregiving no later than seven days after such need arises. In addition, the worker must complete a one-week waiting period before benefits can start — they may use employer-provided leave benefits (including sick days, vacation, or other paid time off) during this waiting period.

Similar to the Family and Medical Leave Act (FMLA), workers would be entitled to the paid benefit for their own serious medical condition, to care for a family member, or to welcome a child. But unlike the FMLA, paid leave would be available to an expanded list of family relationships, including grandparents, siblings, siblings’ children, grandchildren and their spouses, and “any other association by blood or affinity that is equivalent to a family relationship.”

More About Benefits

The size of the benefit itself would be tied to a worker's past earnings and annual income and would gradually phase-out as the worker's pay increases. Workers would receive 90% of the first \$290 made per week, 73% of their next \$290 to \$659, and 53% of additional wages between \$659 and \$1,192. The maximum amount would be capped at \$814 a week.

How Would Benefits be Paid for and Distributed?

Although past proposals paid for this benefit using a payroll tax, this program would be funded by revenue raisers such as a new corporate minimum tax rate and a new tax on stock buybacks. The program is not scheduled to sunset and could run indefinitely if these measures continue to cover its costs.

Benefits paid to workers would be distributed through several channels. The federal government would establish a program to be run by the Social Security Administration, through which workers could submit applications. Workers that receive paid leave through a state or employer would continue to receive benefits through those channels.

Next Steps

Although the Build Back Better Act passed the House through broad support from Democrat representatives, the paid family leave program faces a steep challenge in the Senate. Republicans have been unified against the Build Back Better Act, leaving Democrats with the chore of crafting legislation that is approved by all 50 of their senators – and that appears to be an uphill battle when it comes to several key proposals.

Senator Joe Manchin (D-W.Va.), a prominent moderate, has repeatedly questioned whether the paid leave program should be included in the Build Back Better Act. For a new entitlement program like paid family leave, he has indicated a strong preference for a bill that includes Republican support. Given that Senator Manchin effectively holds veto power in the 50-50

Senate, a separate bipartisan bill may perhaps be the only option moving forward.

Conclusion

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Employee Leaves and Accommodations Practice Group](#).