



Federal Paid Leave Proposal Introduced In Congress

WORKFLEX IN THE 21ST CENTURY ACT WOULD SOLVE LOCAL LAW PATCHWORK PROBLEM

Insights

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If a proposal introduced in the U.S. House of Representatives yesterday were to pass Congress and be signed into law by President Trump, the country's employers would find themselves facing the first-ever federal paid leave act. There's good news, however: employers would choose whether to opt in to the paid leave program, and if they do, they would receive a safe harbor ostensibly absolving them from complying with state and local paid leave laws.

This measure is bound to be controversial and faces uncertain odds of success; however, given the large-scale impact it could have on your business, you should stay up to speed on it to make sure you don't get caught unaware. Here are some Frequently Asked Questions (FAQs) to help you make sense of the proposal as it currently stands.

In a nutshell, what is this bill?

Introduced by Rep. Mimi Walters, a Republican from California's 45th District in Orange County, the "Workflex in the 21st Century Act" (HR 4219) would drastically alter the paid leave landscape across the country. You would have the option of providing a certain number of paid leave hours (to be determined based on your organization's size and the employee's length of service) and a workplace flexibility (workflex) option. In exchange for providing these two benefits, you would be relieved of the obligation to follow any paid leave proposals at the state or local level.

What is the reasoning behind this bill?

Those sponsoring the bill, along with several employer advocacy groups, are concerned about the fact that eight states and more than 30 local jurisdictions require employers to provide some form of paid leave or paid sick leave. Employers operating in more than one location have become increasingly frustrated while attempting to comply with this patchwork of local laws to administer these leaves, particularly where employees travel in and out of local jurisdictions that require their laws to apply to any employee in the jurisdiction for more than two hours. This proposal would solve that conundrum by offering employers an opportunity to avoid state and local laws by providing these easily defined benefits.

At the same time, the proponents of this bill are quick to point out that this is not a one-size-fits-all model. The bill would facilitate a creative solution intended to benefit both worker and employer:

creating an expanded paid leave bank, offering new flexible work options, and providing predictability for employers across the country.

What is the amount of leave that would be required?

If you choose to participate in the plan, you would first need to offer a minimum number of paid leave days per plan year. That amount would be determined by examining both your organizational size and the tenure of the employee in question.

Number Of Employees	Amount Of Leave For Employees With Five Or More Years Of Service	Amount Of Leave For Employees With Fewer Than Five Years Of Service
1,000 or more	20 days	16 days
250 to 999	18 days	14 days
50 to 249	15 days	13 days
Fewer than 50	14 days	12 days

You would also be entitled to apply up to six days of paid holidays into this requirement.

Who would be eligible to receive the leave?

All employees, including part-time workers. However, the entitlement to receive the leave would only kick in after an employee’s first 90 days. Moreover, part-time workers would receive a reduced set of paid leave hours on a pro rata basis based on a proportional calculation of the hours they work per week.

How would employees earn the paid leave hours?

Under the proposal, employees could either accrue the leave throughout the plan year, or you could offer the entire bank to them in a lump sum at the start of the plan of year if you would prefer an easier method of administering the benefits.

What workflex options would need to be provided?

In addition to the paid leave hours, you would also need to provide a workplace flexibility (workflex) benefit to a portion of your workforce. That could include a compressed work schedule (allowing employees to increase their daily hours so as to qualify for a four-day workweek), a biweekly work program (permitting employees to work a total of 80 hours over a two-week period), a telecommuting program, a job-sharing program, flexible scheduling, or a predictable schedule. You would only need to offer whichever option you select to those who have worked at your organization for at least a year, and who have worked at least 1,000 hours in the past 12 months.

How is it possible for federal law to trump state and local paid leave laws?

The proposal would amend the Employee Retirement Income Security Act (ERISA), the federal benefits law that establishes minimum requirements for employee pension plans and other benefits

offerings. ERISA is drafted in such a way as to prevent state and local governments from including additional requirements on employee benefit plans, which is why federal law controls the benefits sphere and blocks local legislatures from imposing their own varying benefits requirements. By amending ERISA, the Workflex Act would take advantage of the statute's existing preemption mechanism and block state and local paid leave laws.

How would federal contractors be impacted?

If you choose to opt in to the Workflex Act, you would satisfy the requirements of the paid leave requirements put into place for federal contractors that were effective as of January 1, 2017.

How would this bill affect Family and Medical Leave Act (FMLA) leave?

It wouldn't. The legislation would not affect coverage protections afforded by FMLA (or any similar FMLA-like state laws for that matter). However, you could require your workers to use available paid leave time concurrently with FMLA leave.

Would this bill impact state parental leave laws?

No. Those laws, such as one about to take effect in New York, are based on a leave insurance system, and therefore would not be preempted by the Workflex Act.

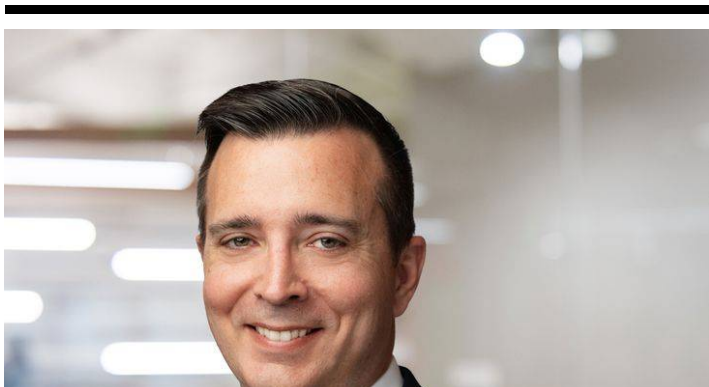
What's next?

The future of this bill is uncertain. Although it enjoys the support of the Society for Human Resource Management (SHRM), the U.S. Chamber of Commerce, and the H.R. Policy Association, others have already lined up against the proposal, and the White House has not yet commented on the position it would take should it reach the president's desk. We will continue to monitor the legislation and will provide regular updates as it proceeds through Congress.

If you have any questions about this bill or how it may affect your business, please contact your regular Fisher Phillips attorney.

This Legal Alert provides an overview of proposed federal legislation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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James C. Fessenden

Partner

858.597.9600

Email



Richard R. Meneghello

Chief Content Officer

503.205.8044

Email

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