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Congress Poised to Enact Federal Paid Leave Mandate as Biden Signals Support

Democrats in Congress have been pushing for a federal paid leave mandate for quite some time. Democrats in both the U.S. Senate and House of Representatives reintroduced legislation that would create a paid leave program on the national level.

By **Jeffrey Campolongo** | February 18, 2021



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Democrats in Congress have been pushing for a federal paid leave mandate for quite some time. Democrats in both the U.S. Senate and House of Representatives reintroduced legislation that would create a paid leave program on the national level. Sen. Kirsten Gillibrand (D-NY) and Rep. Rosa DeLauro (D-Conn.) reintroduced the Family and Medical Insurance Leave (FAMILY) Act (S. 463 (<https://www.congress.gov/bill/116th-congress/senate-bill/463/text>)/H.R. 1185

(<https://www.congress.gov/bill/116th-congress/house-bill/1185/cosponsors?searchResultViewType=expanded>)), which would allow workers to receive up to 12 weeks of paid leave for reasons such as health conditions, pregnancies, childbirth or to care for a family member. The two legislators first introduced the FAMILY Act in 2013 and in every Congress since then, but it has so far failed to gain sufficient support to become law. President Joe Biden has signaled his support to push for the enactment of the FAMILY Act, as well as a national sick leave bill known as the Healthy Families Act.

The Healthy Families Act

The Healthy Families Act (S. 840 (<https://www.congress.gov/bill/116th-congress/senate-bill/840>)/H.R. 1784 (<https://www.congress.gov/bill/116th-congress/house-bill/1784>)) would provide employees the opportunity to earn a minimum of seven paid sick days per year to care for themselves or their families. The impetus for the legislation is to provide a safety net for workers forced to choose between caring for themselves or a loved one versus losing necessary income, or even losing their job altogether. The bill would provide paid sick time to employees if they become ill, or if they need time to care for a child, a parent, a spouse or “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” The Healthy Families Act was first introduced in the House of Representatives by DeLauro and in the Senate by Sen. Patty Murray (D-WA) on March 14, 2019. The Healthy Families Act has yet to be reintroduced in the 117th Congress.

This bill provides for paid and unpaid sick leave for employees to meet their own medical needs and those of their families. It requires employers with 15 or more employees to provide their employees with at least one hour of earned paid sick leave for every 30 hours worked, up to a maximum of 56 hours of paid sick leave in a year. An employer with fewer than 15 employees may also provide the same amount of paid sick leave, but may opt out of such requirement, in which case such an employer must provide its employees at least 56 hours of unpaid leave in a year. The reason for the leave is broad enough to encompass absences resulting from a physical or mental illness, injury or medical condition; resulting from obtaining professional medical diagnosis or care, or preventive medical care; to care for a child, parent, spouse, a domestic partner, or other blood or close relative; and resulting from domestic violence, sexual assault or stalking.

The Healthy Families Act would make it unlawful for any employer to interfere with, restrain or deny the exercise of an employee’s right to accrue sick leave, however, unlike the Family & Medical Leave Act (FMLA), there is no job restoration requirement.

Passing a national sick leave bill has been a priority for many in Congress, particularly as states and local municipalities have stepped in where the federal government has not. Locally, the city of Philadelphia enacted its paid sick leave law known as the “Promoting Healthy Families and Workplaces” ordinance that has been in effect since Aug. 1, 2015. This law requires employers to provide covered employees who work in Philadelphia with one hour of sick leave for every 40 hours worked and also allows employees to use up to 40 hours of sick leave a year. The Philadelphia law applies to employers with 10 or more employees. Employers with nine or fewer employees must provide unpaid sick leave.

Family and Medical Insurance Leave (FAMILY) Act

According to the National Partnership for Women and Families (NPWF), nearly 80% of American workers do not have access to paid leave through their employer. A disproportionate share of those workers are women and people of color who are hit the hardest by the absence of paid leave. A national paid family

and medical leave program has the support of more than eight in ten voters, in large part because a national paid leave program would strengthen the workforce, families, businesses and an economy still battling a deadly pandemic.

Last April, an emergency paid leave bill was introduced as part of the federal Cares Act. Biden has since pledged to expand and extend it as part of the \$1.9 trillion COVID-19 relief package that is making its way through Congress. Many questions surround the ability of Congress to pass the FAMILY Act with this round of negotiations in the reconciliation phase. Many have speculated that it will require 60 votes in the Senate for the act to pass. Nevertheless, with the current state of politics, divisive though it may be, this seems like the most likely and opportune time for this bill to pass.

Let's take a closer look at what's in the bill. The FAMILY Act would cover workers no matter the size of their employer or if they are self-employed and regardless of their full or part-time status when a serious medical event occurs. It is modeled on state-based programs, creating a permanent fund for all workers providing up to 66% of their average weekly wage for 12 weeks.

The FAMILY Act's wage replacement rate builds on lessons from state paid leave programs in California, New Jersey and Rhode Island to help ensure that caregiving time is affordable for lower-wage workers. As long as a worker has paid into the system and is engaged in eligible caregiving or has a serious illness, then s/he could receive FAMILY Act benefits, even if s/he earned the benefits while working or living in another state or for another employer.

One of the major concerns is how the benefits would be paid. Employers have consistently rejected any bill that would solely saddle the employer with the costs. Under the current proposal of the FAMILY Act, employees and employers would contribute a small amount from each paycheck to an insurance fund. A new Office of Paid Family and Medical Leave within the Social Security Administration (SSA) would be created to administer the fund and make benefit determinations and distributions. Contributions would cover both benefits and administrative costs. The new office would be responsible for determining eligibility, making payments, maintaining records, preventing fraud and abuse, providing employers with notices about the availability of benefits to share with employees, data collection, education and outreach.

Benefits would amount to 66% of an individual's monthly wages (based on highest annual earnings from the prior three years), up to a capped monthly amount, which would be indexed to the national average wage index. If a person takes the maximum number of days, the benefits would range from a minimum benefit of \$580 to a maximum benefit of \$4,000 per month in the program's first year. For a person who is paid the nation's median wage or salary income of \$38,427 per year, the benefit would cost about \$1.48 per week, or \$76.85 per year.

FAMILY Act benefits would be available to every individual who has the earnings and work history necessary to qualify for Social Security disability insurance; eligibility is not tied to Family and Medical Leave Act (FMLA) eligibility. This will allow young, part-time and lower-wage workers to access FAMILY Act benefits even if their employer's size or their attachment to their current employer makes them ineligible for the job protection offered through the FMLA. Self-employed people also contribute and receive benefits based on their self-employment income.

Moreover, the FAMILY Act would run parallel to but separate from the FMLA. An important similarity is that the reasons for which a person can take leave under the FAMILY Act and the FMLA are the same. In other words, the reasons that qualify a worker for FMLA leave are the same reasons that qualify a worker

for FAMILY Act insurance benefits. Individuals who qualify for FMLA leave would also be able to apply for FAMILY Act benefits. One major distinction, however, is that the FAMILY Act provides partial wage replacement during a period of leave to eligible workers regardless of their current employer's size or their time at that job.

Lastly, the FAMILY Act would make it illegal to fire or discriminate against an individual who has applied, intends to apply for, or who uses family and medical leave insurance benefits. This means that employers would not be able to take an adverse employment action against an employee simply because the employee applied for or received FAMILY Act benefits. Employers with fewer than 50 employees would not be required to hold employees' jobs or reinstate employees, as long as their reasons for doing so were not discriminatory.

The fate of the two bills, the FAMILY Act and the Healthy Families Act, while still undetermined, seems much more certain with a new administration and Democratic control in both houses of Congress. Those of us who practice on the front lines would like to think that providing a safety net to folks suffering from a serious illness or caring for a dying loved one, particularly during a deadly pandemic, would not be a partisan issue. Time will tell.

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