



Workplace Flexibility

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Background

Enacted in 1993, the Family and Medical Leave Act (FMLA) provides unpaid leave for the birth, adoption or foster care placement of an employee's child, as well as for the "serious health condition" of a spouse, son, daughter, or parent, or for the employee's own medical condition. To be eligible for the leave, employees must work in organizations of 50 or more employees and work at least 1,250 hours in a 12-month period. In 2008, the Act was amended to provide up to 26 weeks of unpaid leave to an employee to care for a family member who is injured while serving on active military duty and up to 12 weeks of leave for urgent needs related to a family member's call to active service.

To help balance work, family and personal needs, many employers are already voluntarily providing paid sick, personal, vacation and maternity leave for employees. According to the *SHRM 2008 Employee Benefits Survey*, 74 percent of employers offer paid sick leave, 82 percent of employers offer paid vacation leave, and 15 percent offer paid maternity leave outside of what is covered by a short-term disability benefit.

Recently, more employers have offered Paid Time Off (PTO) plans in lieu of other employer-sponsored paid leave programs. These plans typically combine all common leave benefits (vacation, sick leave, holidays and personal days) into one leave program that can be used in any circumstance by the employee. According to the *SHRM 2008 Employee Benefits Survey*, 60 percent of employers offer PTO plans to their employees.

Issue

Several recent legislative initiatives have proposed various expansions to the FMLA including requiring FMLA leave to be paid, expanding the circumstances and individuals eligible for FMLA, as well as expanding the duration of the leave provided under the statute.

The FMLA represents a somewhat outdated and rigid approach to mandated employee benefits. Many employers believe the FMLA and its implementing regulations are not responsive to the evolving needs and lifestyles of today's workforce. Many employers also continue to encounter challenges in implementing existing leave requirements that do not reflect the changing nature of the 21st Century workforce. As a result, the focus is on documentation of incremental leave and the reasons for the leave rather than on seeking innovative ways to help employees balance the demands of both work and family life.

In addition, lawmakers have been considering various forms of mandated paid leave, including the Healthy Families Act, which would require employers to provide paid sick leave to their employees.

Status

Key lawmakers have identified paid sick leave legislation as an important priority for the 111th Congress.

Healthy Families Act

Senator Edward Kennedy (D-MA) and Representative Rosa DeLauro (D-CT) introduced the Healthy Families Act in the 110th Congress and will likely reintroduce the legislation in the current Congress. This bill would require employers to provide paid sick leave to full- and part-time employees. SHRM strongly opposes the Healthy Families Act. Key provisions of interest to HR professionals include:

- Applies to employers with 15 or more employees working 20 or more calendar work weeks in the current or preceding year
- Provides up to seven days of paid sick leave for full-time employees working more than 30 hours per week; part-time employees working more than 20 hours per week receive pro rata share of paid leave
- Leave may be used on an hour-by-hour basis or in the smallest increment that the employer's payroll system uses to account for absences or use of leave
- Prohibits employers from eliminating existing leave coverage upon enactment
- Provides for a civil right of action against an employer for violations of the Act

SHRM Position

SHRM believes that the United States must have a 21st Century workplace flexibility policy that meets the needs of both employers and employees. As opposed to a one-size fits all government mandate, the policy should be a new approach that reflects different work environments, representation, industries and organizational size. The policy should support employees in balancing their work and family obligations and at the same time provide certainty, predictability and stability to employers in offering the program.

SHRM also believes current government leave laws need to be improved, strengthened and streamlined. For example, while SHRM believes that the FMLA must be available to employees, the Act needs to be strengthened to prevent misuse and abuse of the leave, which currently threatens the integrity of the Act.

SHRM generally opposes any form of government mandate on employee benefits or leave requirements. SHRM believes employers, not the government, are best situated to know the benefit preferences of their employees. Any government initiative that removes or restricts an employer's flexibility in shaping such leave policies often creates undue hardships for both employees and employers.

Talking Points:

- Since its enactment in 1993, the FMLA has guaranteed invaluable work and family flexibility for millions of Americans, allowing employees to feel secure in their jobs while attending to important personal and family needs.
- The new FMLA rules will improve FMLA implementation in the workplace for both employers and employees, but additional regulatory clarifications are still needed.
- SHRM shares Congress' interest in providing families additional work flexibility, but the Healthy Families Act represents an unworkable one-size-fits-all mandate that will come at a significant cost to both employers and employees.
- At a time when employers are struggling to avoid layoffs and/or cuts in employee benefits, imposing paid leave mandates on employers is unwise policy that threatens jobs and the viability of many of the nation's small businesses.
- SHRM believes employers should offer voluntary paid sick leave. However, employers, not the government, best understand the benefit preferences of their employees and must retain flexibility in benefit design in order to meet the needs of their unique workforce.
- SHRM welcomes dialogue and debate on a workplace flexibility policy for the 21st Century. HR professionals have decades of experience in designing and implementing leave benefits and programs that work for both employers and employees and are eager to share this expertise with policymakers.
- **TELL YOUR STORY:** *What has been your professional experience in complying with the FMLA? What has been your professional experience in offering employer-sponsored leave benefits? What type of leave benefits does your organization offer?*

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