September 14, 2020

Submitted via regulations.gov

The Honorable Joan Harrigan-Farrelly
Deputy Director, Room S-3002
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Paid Leave; Request for Information (RIN 1290-ZA03)

Dear Ms. Harrigan-Farrelly:

The Society for Human Resource Management's (SHRM) mission is to create better workplaces where employers and employees thrive together. As such, SHRM encourages our 300,000+ HR professional and business executive members who impact the lives of more than 115 million workers and families to voluntarily offer paid leave and flexible-work options to their employees. We also acknowledge that U.S. employers must navigate a fragmented patchwork of state and local paid-leave laws, resulting in a significant compliance burden. Now more than ever, employers are struggling to balance the needs of their businesses as they offer competitive paid-leave programs and flexible-work arrangements necessary to attract and retain employees during a national crisis. Therefore, we appreciate the opportunity to respond to the Department's Request for Information on Paid Leave.

HR professionals strive to develop attractive, cost-effective employee benefit plans that meet the needs of employers and employees alike. Employers understand that a well-designed paid-leave program can have a measurable effect on employee productivity and satisfaction, and SHRM members work tirelessly to provide the correct mix of benefits to meet employee needs while aligning with their employer's business strategies.

As the nation came to grips with the pandemic and its effects on the workplace, even more employers called on their HR departments to re-examine and revamp their leave policies amid significant labor market turmoil. HR professionals have led the charge to find innovative benefits solutions that will keep businesses running and workers employed so that all stakeholders can contribute to a successful national recovery effort.

As the foremost expert and convener on all things work, SHRM continues to provide helpful thought leadership on a myriad of leave topics, including:

- How to structure leave packages to maintain productivity in the midst of unavoidable downsizing;
- How to accommodate the human needs of employees as they face challenges such as child care insecurity, school closures and emergency health crises; and
- How to comply with the provisions of the Families First Coronavirus Response Act (FFCRA).

While the FFCRA provided temporary relief for some employers and workers, many uncertainties remain. It is clear that once the pandemic has been contained, employers and policymakers must have a serious and thoughtful conversation about a modern, 21st century workplace-flexibility and paid-leave policy. SHRM has long advocated for a voluntary, comprehensive and uniform federal paid-leave framework, and we look forward to working with policymakers to develop a policy solution that incorporates these principles.

As the Department's recent request for information suggests, a comprehensive overview of paid-leave offerings and usage in the U.S. is surprisingly hard to come by. To that end, Oxford Economics and SHRM recently surveyed over 1,000 HR managers within SHRM's membership across the U.S. and more than 500 senior executives in the U.S. from outside SHRM's membership to understand this area.

SHRM's findings include statistics about paid-leave offerings and usage, insights into the motivations of employers considering various paid-leave policies, and perceptions about the value and cost of providing these benefits. While the survey results and analytics presented were completed prior to the COVID-19 pandemic, we believe this information will help inform paid-leave policy discussions going forward. Among the survey's key findings:

- **Most employers offering paid leave do so voluntarily**. Overall, employers in our HR survey offered paid leave between 35% and 55% of the time, depending on the type of leave. Although most employers that offer the benefit do so voluntarily, there is a sizable minority of those offering leave programs that operate in one of the four states that mandated paid-leave benefits in 2019.

- **Paid-leave offerings are expected to stay the same or increase over the coming years,** and a majority of HR respondents expect their paid-leave offerings to remain the same for both salaried and hourly employees over the next two years. Another one-fifth (19%) of HR respondents expect to voluntarily increase paid-leave offerings to employees.

- **Women are more likely than men to utilize the full paid-leave benefits available to them for new-child bonding**.

- **State mandates have a ripple effect on employer offerings throughout the nation.** Employers that operated in one of the states that mandated paid leave as of the end of 2019 were significantly more likely to offer those same paid-leave benefits through the organization.

- **State and local regulation of paid leave continues to make this a complex area for employers to navigate and administer.** More-detailed accounts of this complexity are discussed below.

- **Employers' most commonly cited reason for not offering paid-leave programs was cost.** The cost of a comprehensive national paid-leave program would likely range between $21.5 billion and $43.0 billion annually, depending on policy.

In general, the survey confirmed the following:

- The majority of employers that offer paid leave voluntarily do so because they understand the positive impact this benefit has on talent retention and recruitment in a competitive labor market, and because the practice aligns with their core values.

- The significant cost of paid leave is a deterrent to employers offering paid leave or expanding existing paid-leave coverage.

Comments on the Department's Specific Requests for Information:

I. New Parents, Particularly Women, Benefit Most from Existing Paid Leave.

SHRM's survey shows that between 35% and 55% of employers offer paid leave, depending on the type of leave in question. Further details on employer offerings and employee usage for each type of paid leave—including eligibility rates, average time off offered and taken, and average wage-replacement rates—are covered in Fig. 1 below.

Fig. 1: Summary statistics for paid leave in the United States

	Firms offering paid leave		Percentage of employees eligible at firms that offer this benefit	Weeks of leave		Average wage-replacement rate while on leave
	Full sample	Among firms not subject to government mandates anywhere they operate		Maximum paid weeks offered (average)	Average weeks taken	
New child (women)	55%	39%	68%	8.9	9.4	80%
New child (men)	45%	31%	66%	5.9	3.9	81%
Personal extended medical	43%	28%	71%	15.3	8.1	70%
Extended family care	35%	16%	64%	8.6	5.7	73%

Source: Oxford Economics analysis of SHRM membership survey.

New-child leave for women is the most commonly offered type of paid leave, with 55% of HR respondents reporting that their organization provides it. Among organizations that do not operate in a location where paid leave is mandated, 39% offer this type of leave voluntarily. New-child leave for men is the next most common type of paid leave offered, followed by personal extended medical leave and extended family-care leave. These numbers will likely go up in the coming years as an increasing number of state mandates are implemented. Even without increasing mandates, however, roughly one-fifth of employers plan to expand paid-leave benefits. In fact, almost none of the HR respondents expect to reduce paid-leave benefits in the next two years.

II. Employers Need Consistency and Simplicity to Expand Paid Leave.

State and local governments have recently stepped in to fill what they perceive as a vacuum left by the absence of a federal paid-leave program, resulting in an inconsistent patchwork of leave laws applicable to multi-state employers. As of year-end 2019, four states (California, Rhode Island, New York and New Jersey) required companies to offer paid-leave benefits to eligible employees or to participate in an equivalent partial-wage-replacement program. By early 2020, Washington, Nevada and the District of Columbia had also mandated paid family leave.

The complexity of paid leave and HR benefits decisions—especially for those operating in states or countries with their own regulations—can be difficult for companies to navigate. Meeting compliance and reporting obligations takes a lot of time and resources, and it can be confusing for even the most knowledgeable individual. This kind of administrative burden may be one reason why larger employers have standardized their paid-leave offerings. Many large companies offer a basic level of paid leave that they adjust as needed based on state laws by incorporating additional leave for vacation, personal sick time and bereavement.

Still, employers continue to face challenges in complying with the existing patchwork of paid-leave laws. For example, existing state paid-leave laws contain a variety of employee eligibility criteria. These criteria are inconsistent with each other and with the federal Family and Medical Leave Act of 1993 (FMLA). Understanding when an employee becomes eligible for which set of paid-leave benefits, and then allowing potentially greater absenteeism due to benefits beginning at different times for different employees, are just some of the complications employers face due to paid-leave employee eligibility discrepancies. In addition, with existing state and local paid-leave laws, there is no single standard for handling intermittent absences, particularly when paid-leave benefits are used for child bonding time. Permitting employees to start and stop work on an intermittent basis, specifically in the context of bonding with a new child, can create major disruptions in the workplace.

This need for consistency could be the driving reason behind why surveyed employers with operations in any of the four states that mandated paid leave as of the end of 2019 were more likely to offer more paid leave, even in other states. In other words, it appears that when an employer operates in multiple states—including at least one that requires paid leave—its policies tend to resemble those of companies operating only in a state that mandates paid leave. This trend is stronger with respect to new-child leave than extended family-care leave.

III. Paid Leave Offers a Competitive Advantage, but Cost Remains a Significant Deterrent.

SHRM's survey found that employers are looking to paid-leave programs as one benefit to help recruit and retain talent. When asked how paid-leave offerings affect various factors, many employers said such offerings strengthen employee health and wellness (61%) and engagement (60%); well over half said paid-leave offerings strengthen the ability to attract (58%) or retain (55%) talent. In addition, about half of HR respondents whose firms offer paid leave said such benefits are offered because they are in line with one or more leadership priorities—which may include both performance and personal value systems.

That said, it remains true that cost is a significant impediment to offering paid-leave benefits. Nearly half of surveyed companies that do not offer paid leave cite cost as the primary deterrent. Oxford Economics used the data collected in SHRM's survey to estimate what a mandated national paid-leave program would cost. To do this, Oxford Economics relied on the insights of HR respondents to estimate the number of employees likely to use each benefit program in a given year, as well as the average duration of the leave taken by employees that use it.

Specifically, the survey calculates costs under several scenarios, two of which are depicted below.

Scenario 1: No weekly cap. This scenario assumes that workers receive 100% of their wages during their leave. The amount of leave taken corresponds to the average amount of leave that employees actually use for that particular benefit as reported by HR respondents.

Scenario 2: $800 weekly cap. This scenario assumes that workers receive 100% of wages up to a weekly cap of $800 (an amount roughly equal to the weekly median wage for U.S. workers). Note that workers earning below this amount will receive 100% of their actual wage, whereas workers earning above this amount will see their benefit capped.

Fig. 2: Cost scenarios under a national paid-leave mandate

Leave type	Eligible workers	Annual usage		Average weeks taken	Scenario 1: Full salary replacement		Scenario 2: $800 weekly cap on wages	
		%	Workers		Average weekly benefit	Total cost	Average weekly benefit	Total cost
	CPS	Survey	Calculation	Survey	CPS	Calculation	CPS	Calculation
New child (women)	68 m	2.2%	1.5 m	9.4	$867	$12.0 bn	$601	$8.3 bn
New child (men)	76 m	1.3%	1.0 m	3.9	$1,132	$4.4 bn	$672	$2.6 bn
Personal extended medical	143 m	1.6%	2.2 m	8.1	$1,005	$18.1 bn	$638	$11.5 bn
Extended family care	143 m	1.0%	1.5 m	5.7	$1,005	$8.5 bn	$638	$5.4 bn
Total	**143 m**	**4.3%**	**6.2 m**	**7.1**	**$973**	**$43.0 bn**	**$629**	**$27.8 bn**

Notes: Includes full- and part-time workers; excludes self-employed. Weeks taken and weekly benefits in “Total” row represent weighted averages; Total cost is the sum across the four leave programs, and does not exactly equal the product of these averages and the number of workers. Average annual usage represents the percentage of employees eligible for that program who take leave for that purpose during a given year. Full salary replacement assumes 100% of regular pay. Weekly cap scenario assumes 100% of regular pay up to $800 max.

Source: Oxford Economics calculations based on SHRM survey and Current Population Survey (CPS) data.

As noted, the “weeks taken” calculation reflects the actual length of leave taken by employees working for employers in SHRM’s survey that currently offer paid-leave benefits. For example, based on actual experience, SHRM’s survey found that men utilize less paid leave than women. Hence, women who take new-child leave are assumed to take 9.4 weeks, whereas men are assumed to take 3.9 weeks.

There are a number of interesting insights reported in Fig. 2:

- Imposing a cap equal to the median national wage ($800) cuts the total cost of these four programs by slightly more than one-third (from $43.0 billion to $27.8 billion).

- Medical leave is the most expensive program, and under each scenario costs more than the combined cost of new-child leave for men and women.
- Paternity leave costs roughly one-third that of maternity leave despite men's average wages being higher than women's average wages. This is a result of men's apparent reluctance to fully utilize the benefit, according to our HR survey.

Calculating how much a program is likely to cost is only half the question; the other half is how that cost will be paid. One way to finance paid-leave programs at the national level, should they be introduced, is to use a funding methodology comparable to that used by the states that mandated paid leave as of year-end 2019. Those programs are funded in a manner roughly comparable to how states fund unemployment insurance. In 2019, employees paid a tax (generally between 0.2% and 1% of wages) up to a certain wage level or capped dollar amount. The taxes collected were then pooled into a paid-leave fund (administered either publicly or privately) that was used to pay for benefits.

Using tax rates comparable to those currently used by the states, we examined the impact on employee wages of funding a national program costing $43.0 billion (i.e., Scenario 1 in Fig. 2). We estimate that taxing 1% of wages up to $686 per week would achieve that result. To fund a national program with paid-leave benefits capped at $800 per week (i.e., Scenario 2 in Fig. 2), taxing 1% of wages up to $399 per week would likely suffice.

IV. Larger Employers Are More Likely to Offer More Kinds of Paid Leave, but Smaller Employers Surpass Midsize Employers.

SHRM found that the largest employers are more likely than others to offer paid-leave programs of all types. However, small employers tend to offer more paid leave than some midsize employers. This could be due to a range of factors, including competition for talent, stronger personal relationships between executives and the workforce, or other factors related to company size.

Fig. 3: Paid-leave offerings by employer size

Company size (number of employees)	Percentage of employers offering			
	New child (women)	New child (men)	Personal medical	Extended family care
0–100	54%	44%	43%	34%
101–250	47%	39%	34%	31%
251–1,000	54%	45%	44%	31%
1,001–5,000	64%	52%	49%	40%
5,001+	64%	58%	59%	49%

Conclusion

SHRM appreciates the Department's efforts to explore the costs and benefits of a state versus national paid-leave program and offers additional insights and information from its members. A complete copy of the referenced survey is available at [https://advocacy.shrm.org/wpcontent/uploads/2020/09/SHRM_Paid_Leave_US_Report_Final.pdf]. We thank the Department for the opportunity to comment.

Sincerely,

Emily M. Dickens
Corporate Secretary, Chief of Staff &
Head, Government Affairs
Society for Human Resource Management

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