

January 31, 2024

The Honorable Kirsten Gillibrand
U.S. Senate
478 Russell Senate Office Building
Washington, DC 20510

The Honorable Bill Cassidy
U.S. Senate
455 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Stephanie Bice
U.S. House of Representatives
2437 Rayburn House Office Building
Washington, DC 20515

The Honorable Chrissy Houlahan
U.S. House of Representatives
1727 Longworth House Office
Washington, DC 20515

Submitted Electronically via email

RE: Bicameral Paid-Leave Working Group to Request Input On Paid-Leave Proposal

To Whom It May Concern,

As the voice of all things work, workers and the workplace, [SHRM](#) is the foremost expert, convener and thought leader on issues impacting today's evolving workplaces. With 325,000+ members in 165 countries, SHRM impacts the lives of more than 235 million workers and families globally. SHRM's membership of HR professionals and business executives sits at the intersection of all things work, workers and the workplace, helping to set positive collaboration and workplace cultures where workers and employers thrive together. As such, SHRM welcomes the opportunity to respectfully respond to the bipartisan, bicameral Congressional working group's ("Group" or "Congressional Paid Leave Group") request for suggestions "for expanding access to paid parental, caregiving, and personal medical leave in a bipartisan, fiscally responsible and sustainable way." SHRM respectfully offers the following recommendations to the Congressional Paid Leave Group.

I. Introduction

SHRM has a long-standing commitment to advancing policies that empower people and workplaces by advancing HR practices and by maximizing human potential. Our vision is to build a world of work that works for all. HR professionals and executives who handle hiring, benefits design and legal compliance can offer valuable insights on the need for regulatory clarity and consistency in paid-leave policy. As such, SHRM's involvement extends beyond theoretical recommendations and into policy-driven best practice recommendations.

Outside of policy work, SHRM has an ample research department, which is committed to advancing the HR profession by providing evidence-based insights, recommendations and innovations at the intersection of people and work. The intended outcomes for our research are to improve the employee experience and advance business performance in organizations. As such, every year, SHRM conducts a comprehensive benefits survey to capture emerging trends in the popularity and prevalence of various employer-sponsored benefits. SHRM's benefits survey is one

of the longest-running annual surveys of employee benefits in the U.S. Additionally, SHRM's HR Knowledge Advisors offer guidance, real-life personal and professional experiences, and resources to assist our members with their HR-related inquiries.

As the leading resource for HR professionals, SHRM possesses a wealth of data and expertise on employee benefits, leave policies and workforce trends. We stand ready to share this knowledge with the Congressional Paid Leave Group, providing valuable insights into current leave utilization, employer challenges encountered with existing programs, and best practices in program design and administration. Through ongoing collaboration and data-driven decision-making, SHRM can ensure the development of a national paid-leave program that addresses the needs of both employers and employees in the most effective and efficient manner possible.

II. Leading with Harmonization and Clarity

In answering the RFI's first question, the federal government undoubtedly has a role in the paid-leave discussion and has the opportunity to play a pivotal role in weaving together the patchwork of existing state paid-leave programs by establishing a national framework that creates a common language and sets a minimum floor for leave benefits. A federal plan would act as a guiding thread, providing clarity and regulatory consistency, which reasonably cannot be achieved at the state level without such a federal plan given the many significant substantive variations that exist today across state mandatory paid family leave or paid family medical leave (collectively referred to as "PFML") programs. Employers with multistate or nationwide operations are faced with a complicated maze of inconsistent and burdensome PFML programs. The current mandatory PFML patchwork includes 13 states, plus Washington, D.C.,¹ and is seemingly in a constant state of growth and change. The constantly shifting landscape is a major reason why the state PFML patchwork is so difficult to navigate. Another core reason is that each mandatory PFML program consists of more than 30 substantive conditions, many of these conditions have additional layers in terms of definitions and administrative standards, and these conditions often deviate from law to law.

The Congressional Paid Leave Group has a rare and crucial opportunity to strive for and achieve clarity and consistency across existing and future statutory PFML mandates. While this is no easy task, it is exactly the type of undertaking that the federal government can and should pursue. Clarity would offer much-needed guidance for all organizations, even those not subject to existing mandates, enabling organizations to shape their benefits in a way that aligns with national standards and resonates with their employees. SHRM notes that the House bipartisan Paid Family Leave Working Group's ("House Working Group") inclusion of coordination and harmonization of paid-leave benefits across states as a core pillar of its legislative framework is an encouraging step forward. The creation of an "Interstate Paid Leave Action Network" (I-PLAN) to foster

¹ This count does not include other related layers of the PFML patchwork, namely state laws involving standalone temporary disability insurance benefits, voluntary PFML programs, and states that formally recognize family leave as a class of insurance. Temporary disability insurance benefits, which can also be thought of as "paid medical leave," exist in five states—California, Hawaii, New Jersey, New York and Rhode Island. Only Hawaii is not included in the list of 13 states, plus Washington, D.C., noted above. The latter two groups—voluntary PFML programs and states where family leave is a class of insurance—have blossomed into their own parts of the patchwork over the last two years. If these various programs were included in the state PFML patchwork count, they would bring the count to 23 programs.

improvements in coordination and harmonization of benefits across the state paid-leave patchwork could form a helpful foundation for future efforts to equalize and harmonize mandatory PFML. As the House Working Group and larger Congressional Paid Leave Group continue to flesh out a national framework for paid leave, it is important that in addressing the predicament created by the patchwork at the state and local levels, Congress take care and be mindful that any future federal paid-leave program not perpetuate another layer of confusion.

Any national plan should seek to lean into existing structures of leave programs, like the Family and Medical Leave Act (FMLA), to minimize the need for employers to navigate entirely new frameworks or comply with duplicative reporting requirements. According to SHRM research, employers in the study favored several leave criteria in line with the FMLA (see attachment C for topline from the survey). For example, many employers would approve of the inclusion of a job restoration clause and the ability for employees to take leave intermittently if paid family and medical leave were legislated at the federal level. Also, in line with the FMLA, employers in the study strongly favored requiring employees to have worked for them at least 1,250 hours in the last 12 months to qualify for benefits. Tying employee eligibility to tenure is aligned with the way in which companies design their leave programs. SHRM research found that a significant majority of organizations—80%—determine the amount of available leave based on an employee’s service time (i.e., their tenure at the organization). Additionally, 46% of organizations consider the number of hours worked when determining available leave, up 5 percentage points since 2022. By comparison and offering another example of the variations across mandatory state PFML programs and why harmonization and consistency is of such import to employers and employees, the employee eligibility standards under state PFML programs very often are set at a much lower threshold than the FMLA eligibility standards. This and the many other divergences between state PFML mandates and the FMLA (i.e., employer coverage, qualifying absences, covered family members, length of benefits, etc.) can trigger a “stacking” of leave benefits such that the leaves under the two laws cannot be counted together (i.e., do not run concurrently). This “stacking” in turn often leads to a number of downsides for the employer and its employees, such as greater absenteeism, greater costs, and a greater burden on managers and co-workers to maintain consistency of operations.

It is well noted that discussions and debates surrounding these proposed paid-leave programs—both on the state and federal levels—traditionally center around themes of societal importance of access to leave balanced against fiscal impact of funding. Meanwhile, the day-to-day discussions surrounding regulations, implementation and impact on other state benefits are pushed aside to be addressed through the regulatory process or even trial and error. SHRM is well aware of the consequences of not fully considering these important issues, as our Knowledge Advisors are consistently inundated with questions surrounding themes of FMLA, leave management and paid leave. Any federal plan should be consistent and clear, leaving minimal room for ambiguity or misinterpretation. It is imperative that employers and HR professionals readily understand their obligations and employees have easy access to information about their rights and responsibilities. This can be accomplished through transparent and readily available guidance materials, coupled with dedicated support channels, and will be essential in fostering compliance and minimizing confusion.

III. Allowing for Flexibility as One Size Will Not Fit All

SHRM research indicated that when considering the level of support any federal paid-leave framework might garner, policymakers must be aware that not all employers will see eye to eye. To increase meaningful access to paid family and medical leave, Congress should support legislation that creates a voluntary national paid family and medical leave insurance market to enable cost-pooling and ensure regulatory consistency for participating employers (see attachment A for SHRM’s Workplace Flexibility and Leave policy position). A balanced approach with bipartisan appeal should seek to offer a path to expand access to paid family and medical leave for workers, provide flexibility in the design of benefits programs, and increase regulatory consistency and harmonization for multistate employers. The concept of flexibility in designing PFML programs has support in existing statutory PFML mandates. In particular and importantly, 12 of the 14 states that have enacted a mandatory PFML program contain a private plan option for employers as an alternative to the relevant public PFML program. In order to reach a level of regulatory consistency and harmonization while also providing flexibility in design, Congress should explore the concept of an “Actuarial Equivalency Standard.”

While establishing core principles and minimum standards is crucial, any national program should seek to empower businesses to customize their implementation based on company size, industry, workforce needs and existing leave policies. Because of the myriad different organizational aspects, flexibility will be vital in ensuring program sustainability and minimizing disruption for employers, particularly small and medium-size businesses that are the backbone of our economy. By tailoring solutions to the individual employer, this will promote equitable participation and allow each company to leverage the program in a way that strengthens their unique workforce. The reality that there is a fundamental difference in organizational capacity is recognized on the state level, with many of the state PFML programs offering payroll exemptions for small businesses, reduced offerings or even exemption from the requirements of the program.

SHRM strongly advocates flexibility and a recognition that a “one-size-fits-all” approach will fall short. Leading with flexibility will also avoid the unintended consequence of stifling organizations and creating a national framework that would end up reducing benefits. The diverse needs of businesses across the country, spanning industries, sizes and existing leave policies, demand a program that empowers customization and the ability to tailor solutions to unique contexts.

IV. Creating a Care Infrastructure that Works for All

Underscoring the urgency of this action is clear evidence from SHRM’s 2023 Employee Benefits Survey. Within SHRM’s 2023 Employee Benefits Survey, HR professionals once again rated benefits categories on how important they believed each one was to their workforce. Listed at the top were leave, flexible work and family care at 81%, 70% and 68% respectively (see attachment B for the Executive Summary for Leave Benefits). Compared with other benefits categories (e.g. health-related benefits, education, etc.), leave benefits were tied with retirement for second in importance among benefits categories and have maintained this level of importance since 2019 (with leave actually surpassing retirement benefits in 2020). Organizations that seek to thrive in the increasingly competitive talent market look to benefit from offerings that attract and retain top

talent. SHRM research indicates that providing paid leave has a positive effect on an organization's ability to compete for talent and on employee productivity.

SHRM's advocacy for a national framework for paid leave is rooted in the belief that leave benefits are a critical tool for employers attempting to attract talent; combat employee turnover and improve retention; enhance employee morale and productivity; and further inclusion, equity, and diversity efforts. And, for their part, it appears that employers are taking note of this trend and are expanding their leave options, particularly the various types of leave available for new parents. However, while the desire to support employees and offer valuable leave options exists in many businesses, harsh realities like resource constraints, operational limitations and financial pressures often hinder their ability to translate good intentions into action. Although many employers may want to offer greater paid-leave benefits, SHRM research found that many organizations report that high costs associated with self-funding are a major impediment.

By the federal government investing in a broader care infrastructure, employers will be better able to create workplaces that prioritize well-being and benefit both employees and employers. By creating structures wherein employers could potentially tap into pooled resources, this would allow them to offset the cost associated with self-funding, allowing them to offer paid leave without jeopardizing their financial stability. This empowers organizations to compete in the job market and attract and retain valuable talent. This levels the playing field, preventing smaller businesses from being at a disadvantage when competing for talent and fostering a more equitable landscape for employees across the country, creating a win-win situation for businesses, employees, and ultimately, the nation as a whole.

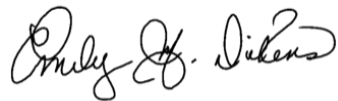
In specifically answering the RFI's second question, SHRM would urge for the Paid Leave Group to consider the vast array of caregiving responsibilities that workers may have and not seek to prioritize any type of leave over another. A common thread within SHRM's Knowledge Advisors questions makes it clear that HR professionals are trying to manage leave requests from workers to attend to a variety of caregiving needs. This may be taking parental leave, caring for a parent, attending to a spouse or addressing the worker's own serious health condition. Any sort of arbitrary ranking of these reasons to take leave would only seek to cause unintentional inequities in the way that workers attempt to balance personal and professional responsibilities. SHRM research found that it has become slightly more common for employers to voluntarily provide paid leave to care for immediate family members, with one-third of employers (33%) now offering it. Almost 2 in 10 employers (18%) voluntarily provide paid leave to care for extended family.

V. Conclusion

To empower workers, it is SHRM's belief that a national paid-leave program should prioritize expanding meaningful access to compensated leave, while granting flexibility to organizations in designing their benefits packages. This requires addressing the inconsistent patchwork of state and local laws by fostering regulatory clarity for multistate employers. An "Actuarially Equivalent Standard" with safeguards would ensure fairness, while a shared market for pooled resources eases burdens on smaller companies. Ultimately, by minimizing administrative costs and acknowledging industry and size differences, any federal paid-leave proposal can truly support both employees and employers and pave the way for a healthy and productive workforce.

SHRM appreciates the work of the bipartisan, bicameral Congressional Paid Leave Group and the opportunity to offer assistance as the Group considers a federal paid-leave plan. SHRM shares the Group's dedication to "expand access to paid leave for all Americans." In support of those who are charged with the day-to-day application of these important workplace guidelines, it is SHRM's ardent belief that any plan should seek to provide as much clarity and consistency as possible for employers to implement them correctly. Creating a national plan for paid leave that seeks to increase harmonization, promotes flexibility and creates a reliable care infrastructure is not a one-time event but rather an ongoing process to identify and address any unforeseen complexities or unintended consequences. This collaborative approach will ensure the program continues to function smoothly and effectively over time and will require regular engagement with all interested stakeholders. As always, SHRM is committed to elevating the collective experience and expertise of our membership to assist Congress in creating policies that protect work, workers and the workplace.

Sincerely,

A handwritten signature in cursive script that reads "Emily M. Dickens".

Emily M. Dickens
Chief of Staff, Head of Public Affairs & Corporate Secretary

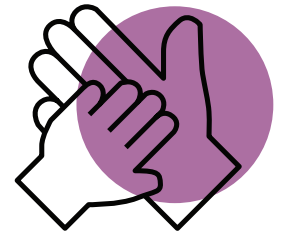
Attachments:

- A. Workplace Flexibility and Leave Policy Priorities
- B. 2023 Employee Benefits Survey: Executive Summary (Leave)
- C. SHRM Research Findings: Paid Leave Priorities for HR Professionals

Workplace Flexibility and Leave

As SHRM marks its 75th anniversary, the organization is looking towards its centennial year by advancing policy recommendations that will make the world of work better. SHRM calls on Congress to adopt a national paid leave framework that would increase access to compensated leave for workers while achieving continuity of benefits for employers operating in different states and jurisdictions.

As the bipartisan, bicameral paid leave working group continues to explore options for a national paid leave program, Congress has the opportunity to expand access to paid leave to more workers, provide flexibility to employers in program design and increase regulatory consistency for multi-state employers.



A Commonsense Approach to Paid Leave

Congress should support legislation that creates a voluntary national paid family and medical leave insurance market to enable cost pooling and ensure regulatory consistency for participating employers. Under this approach, participating employers would be required to meet minimum benefit requirements.

“If you are an hourly employee living check to check, having unpaid leave is tantamount to no leave, so we believe we should expand access for all workers.”
– Johnny C. Taylor, Jr., SHRM-SCP,
President and Chief Executive Officer, SHRM

Why this approach works:

- ✓ The creation of an insurance market for paid family and medical leave could **increase the availability** of such programs for independent workers and small employers that lack the ability to self-fund.
- ✓ The use of a voluntary insurance-based approach would **expand access** to paid family and medical leave by allowing the financial burden to be shared among a group of employers instead of being borne by a single employer.
- ✓ The implementation of **regulatory consistency** would reduce administrative costs, increase participation by large employers and insulate the market from risk.
- ✓ The adoption of an “actuarially equivalent standard” with appropriate safeguards would **allow for flexibility** in benefit design at the organizational level.

SHRM’s paid leave proposal provides a **balanced approach with bipartisan appeal**. It offers a path to expand access to paid family and medical leave for workers, provide flexibility in the design of benefit programs and increase regulatory consistency for multi-state employers.

75TH ANNIVERSARY



Workplace Flexibility and Leave

Organizations that seek to thrive in the increasingly competitive talent market look to benefit from offerings that attract and retain top talent. SHRM research indicates that providing paid leave has a positive effect on an organization's ability to compete for talent and on employee productivity. SHRM has also found that many employers look to paid leave benefits as a powerful tool in fighting burnout and supporting employee well-being.

“By advancing our recommendations, Congress can remove barriers to access for workers caring for loved ones and help employers who are unable to fund their own plans and provide this vital benefit to workers.” – Emily M. Dickens, J.D., Chief of Staff, Head of Public Affairs, and Corporate Secretary, SHRM

SHRM offers the following guidelines for inclusion in any national proposal moving forward:

- ✓ **Expand** Meaningful Access to Compensated Paid Leave to U.S. Workers
- ✓ **Provide** Flexibility to Organizations in Benefit Design
- ✓ **Increase** Regulatory Consistency for Multi-State Employers
- ✓ **Address** the Patchwork of State and Local Laws
- ✓ **Adopt** an “Actuarially Equivalent Standard” With Appropriate Safeguards
- ✓ **Create** a Shared Market for Employers To Tap Into Pooled Resources
- ✓ **Mitigate** the Burdens Associated With Self-Funding
- ✓ **Reduce** Administrative Costs Associated With Compliance
- ✓ **Accommodate** for Differences in Work Environments, Industries and Organizational Size

According to SHRM's 2023 Employer Benefits survey, leave remained among the top-ranked benefits that employers felt an organization should offer. Although many employers want to offer this benefit, many report that high costs associated with self-funding are a major impediment. The United States lags behind other countries on paid family leave because of a failure to reach bipartisan consensus on a plan that represents all stakeholders — employees, employers and taxpayers.

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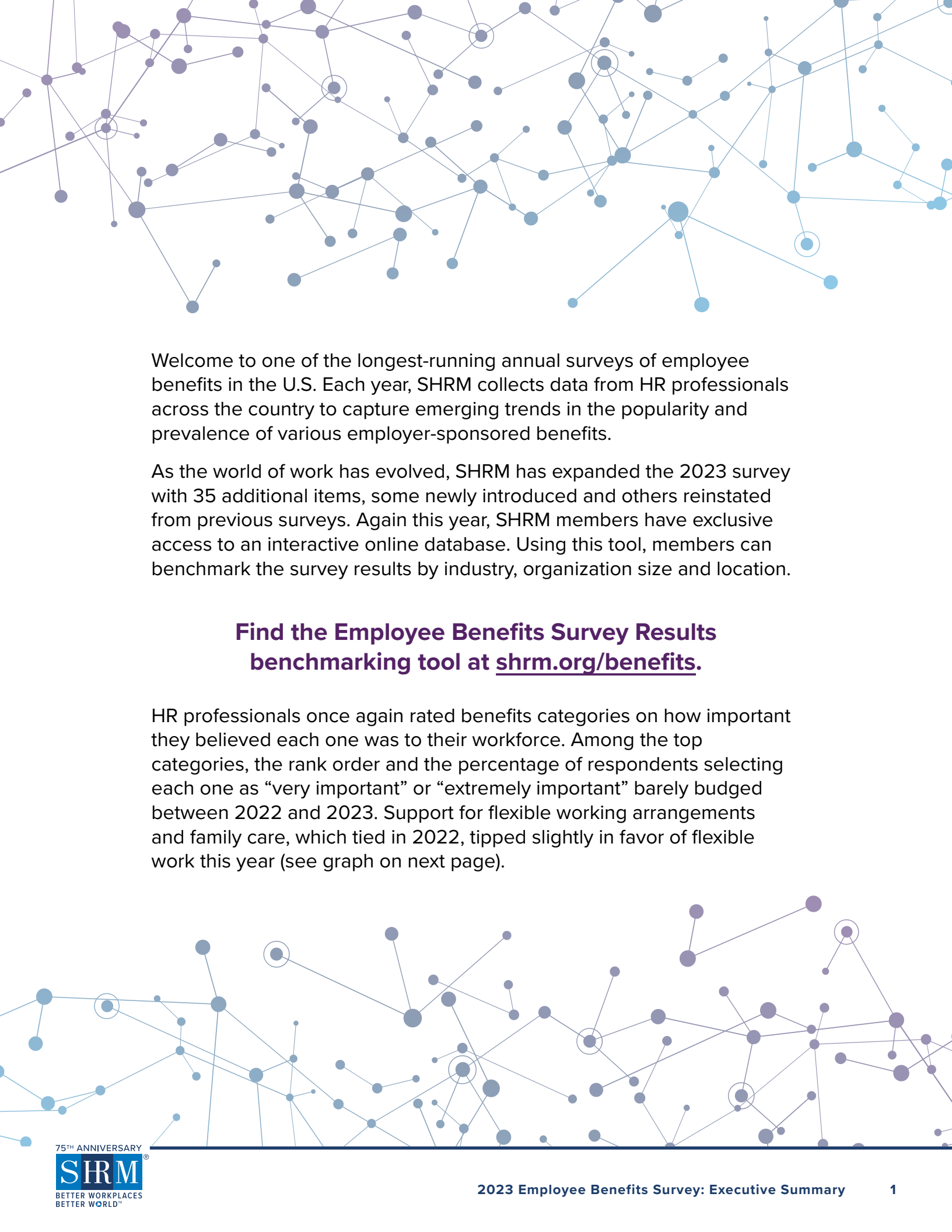
**Policy
Not
Politics**



2023

EMPLOYEE BENEFITS SURVEY: EXECUTIVE SUMMARY





Welcome to one of the longest-running annual surveys of employee benefits in the U.S. Each year, SHRM collects data from HR professionals across the country to capture emerging trends in the popularity and prevalence of various employer-sponsored benefits.

As the world of work has evolved, SHRM has expanded the 2023 survey with 35 additional items, some newly introduced and others reinstated from previous surveys. Again this year, SHRM members have exclusive access to an interactive online database. Using this tool, members can benchmark the survey results by industry, organization size and location.

Find the Employee Benefits Survey Results benchmarking tool at shrm.org/benefits.

HR professionals once again rated benefits categories on how important they believed each one was to their workforce. Among the top categories, the rank order and the percentage of respondents selecting each one as “very important” or “extremely important” barely budged between 2022 and 2023. Support for flexible working arrangements and family care, which tied in 2022, tipped slightly in favor of flexible work this year (see graph on next page).

BENEFITS SNAPSHOT: LEAVE

Leave benefits are tied with retirement for second in importance among benefits categories.

Paid **vacation** (99%) and **sick leave** (95%) remain nearly universal, with 70% of organizations combining them as **paid time off** (PTO). Paid open or unlimited leave increased slightly, with 8% offering this benefit.

Paid family care leave: Paid leave to care for immediate family members became slightly more common, with one-third of employers (33%) now offering it. Almost 2 in 10 employers (18%) provide paid leave to care for extended family.

Unpaid family care leave: Meanwhile, 83% of employers provide leave to care for immediate family as defined by the federal Family and Medical Leave Act, and 27% allow employees to extend the length of their unpaid leave beyond state or federal requirements. Just over a third (36%) of organizations allow employees to take unpaid leave to care for extended family.

With many employers identifying [mental health as a major priority for 2023](#), almost 1 in 5 continue to offer designated **paid mental health days** (separate from regular sick time).

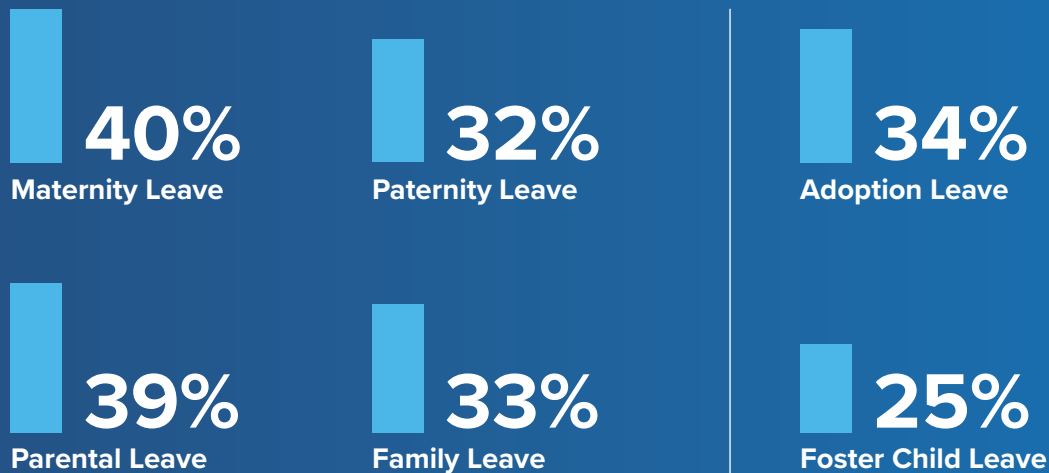
Find out more at shrm.org/benefits.

Civic leaves: Voting leave beyond what may be required by law is virtually unchanged from 2022, whether offered as paid (54%) or unpaid (45%) time. Paid leave for volunteering has been inching up each year, reaching 28% in 2023. Recently emerging in the leave portfolio is time off for protests or activism. A minority of employers (14%) have begun allowing unpaid time off for this purpose, while a tiny percentage (4%) provide paid time off.

Though the concept of **sabbaticals from work** has garnered much attention, paid and unpaid sabbaticals remain rare outside of academic and pastoral settings. Overall, fewer than 1 in 10 employers offer either paid (7%) or unpaid (8%) sabbatical leave.

NEW AND NOTABLE IN 2023

PAID LEAVE FOR NEW PARENTS



More employers are supporting employees who welcome children into their homes. Five-percentage-point jumps occurred in designated paid **maternity** and **paternity leaves** (separate from parental leave), now offered by 40% and 32% of employers, respectively. Simultaneously, paid **parental leave** is now offered by nearly 4 in 10 employers (39%), a six-point jump this year. Paid **family leave** for new parents has been creeping slowly upward in recent years, now reaching 33%. Meanwhile, paid **adoption leave** also rose by 6 percentage points, with about a third of employers (34%) now offering it. Lastly, paid **foster child leave** increased 3 percentage points to 25%.

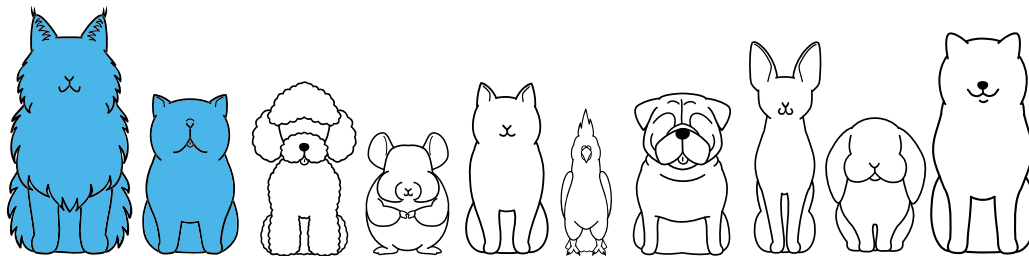
BENEFITS SNAPSHOT: FAMILY CARE

The main family care benefit employers offer is a **dependent care flexible spending account**, which allows employees to set aside pretax money for child care expenses. Yet the prevalence of this offering has eroded to 57% today. Perhaps fewer companies are offering it as an option because it is becoming less popular among employees who have been burned by the use-it-or-lose-it provision. Another potential deterrent for employees is that expenses paid through a dependent care FSA are ineligible for the child care tax credit, so many employees must choose whichever option benefits them the most.

Perhaps spurred by the federal Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), **onsite lactation facilities** continue to become more prevalent and are now available at 54% of employers.

About a third of employers (32%) allow employees to **bring children to work** in an emergency. Only a small minority of employers offer any additional family care benefits.

NEW AND NOTABLE IN 2023



NEARLY 20% OF EMPLOYERS NOW OFFER PET INSURANCE

Whether furry, feathered or scaly, pets are vital members of many U.S. families. Now offered by almost 1 in 5 employers (19%), up from 14% in 2022, **pet insurance** may be a new star on the horizon. With the [cost of routine and specialty animal care](#) skyrocketing, it seems more families may be finding insurance protection attractive and more employers may be recognizing the value of offering it.

SHRM Research Findings

Paid Leave Priorities for HR Professionals

SHRM Research asked members to weigh in on what would make for a successful federal paid leave framework – and what to avoid. These priorities are front and center in all SHRM discussions with members of Congress:

Employers Need Options

The survey was clear that when it comes to paid family and medical leave, different employers prefer different solutions. For example, employers that provide paid leave now were more open to proposals offering longer durations of leave and larger benefit amounts than employers who don't currently offer paid leave.

Financing Matters

The survey found that paid leave options financed exclusively by employers are highly unlikely to attract employer support. When asked to select the federal paid leave proposals their employer would prefer, how the program is financed had the second most influence on members' views (duration was the top choice).

Plans Can Cover More Family Members

Many employers would approve of expanding the list of "covered family members" that allow employees to take paid family leave. Notably, employers preferred including more immediate family members (e.g., domestic partners, adult children) than extended family members (e.g., aunts, uncles, cousins).

The FMLA Offers a Roadmap

Employers favored several criteria in line with the FMLA. For example, many would approve of a job restoration clause and the ability for employees to take leave intermittently. Also, employers strongly favored requiring employees to have worked 1,250 hours in the last 12 months to qualify for benefits.

Methodology: The survey was fielded electronically to a random sample of HR professionals from the active SHRM membership from February 17, 2022, to March 14, 2022. In total, **1,651** members participated. Academics, students, consultants and retired HR professionals were excluded. Respondents represented organizations of all sizes in a wide variety of industries across the United States.