Workplace Flexibility

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Background: While the Family and Medical Leave Act (FMLA) of 1993 provides up to 12 weeks of job-protected leave for employees to bond with a new family member, to care for a seriously ill family member or to use for their own serious health condition, many workers are also eligible for paid-time-off benefits provided by their employer. Many employers offer generous voluntary paid-leave programs to better assist employees in balancing work and personal needs. According to the 2016 National Study of Employers, 99 percent of employers with 50 or more employees in the U.S. have some form of paid-leave option for some portion of their full-time employees. Offered as part of an employee’s total rewards package, voluntary paid-leave programs work precisely because they are voluntary, thereby offering flexibility to both employees and employers. In addition, to better support the work/life needs of today’s diverse workforce, a growing number of employers offer flexible work arrangements such as compressed workweeks, telecommuting and flexible schedules.

Issue: Even though most employers are already offering some form of paid leave and flexible work options, federal, state and local policymakers continue to pursue mandated approaches to these benefits. Several proposals would expand the FMLA to require family and medical leave to be paid. Lawmakers also continue to pursue various forms of mandated paid sick leave. Other policy initiatives include requiring employers to establish predictable work schedules or guaranteeing an employee’s right to request a flexible work schedule. As a result, employers now have to navigate a fragmented system of state and local paid-leave mandates and requirements, causing numerous challenges for employers, especially multistate employers.

Outlook: Federal, state and local policymakers continue to pursue mandated approaches to paid leave. Representative Rosa DeLauro (D-CT) and Senator Patty Murray (D-WA) are expected to reintroduce the Healthy Families Act, which would require nearly all employers to provide employees with up to 56 hours of paid sick time in a calendar year. In 2016, the Department of Labor issued regulations to implement former President Barack Obama’s executive order to require that federal contractors allow employees to earn not less than 1 hour of paid sick leave for every 30 hours worked, accruing up to 56 hours of paid sick leave per year. However, this regulation is a target for repeal under the Trump administration.

Additionally, Representative DeLauro and Senator Kirsten Gillibrand (D-NY) have introduced the Family and Medical Insurance Leave Act (H.R. 947/S. 336), which would provide partial wage replacement funded through a payroll tax for eligible leaves under the FMLA. Other members of Congress, including Senator Deb Fischer (R-NE) and Senator Angus King (I-ME), have introduced a tax credit approach to incentivizing more employers to offer paid leave.

While these legislative efforts are unlikely to advance in the 115th Congress, now is the time to talk about alternative, voluntary approaches to incentivizing more employers to offer paid leave and flexible work options, especially as more states and localities continue to adopt leave mandates. Seven states (Arizona, California, Connecticut, Massachusetts, Oregon, Vermont and Washington), along with over 30 jurisdictions, have passed
paid-sick-leave laws, and four states (California, New Jersey, New York and Rhode Island) have paid-leave insurance laws.

In the coming days, Representative Mimi Walters (R-CA) is expected to introduce SHRM-developed legislation that would expand paid leave and workplace flexibility opportunities for all employees. Under this bill, employers that choose to opt in to the proposal by offering a minimum threshold of paid leave and a flexible work option to all employees will automatically satisfy all state and local requirements. By amending the Employee Retirement Income Security Act (ERISA), this legislation will provide participating employers flexibility and predictability in designing workplace flexibility offerings, rather than a patchwork of conflicting government mandates.

**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. SHRM supports efforts to assist employees in meeting the dual demands of work and personal needs and believes that employers should be encouraged to voluntarily offer paid leave to their employees. Rather than promoting a one-size-fits-all government mandate, policy proposals should accommodate varying work environments, employee representation, industries and organizational size.

**SHRM Talking Points:**

- SHRM supports employers offering paid leave and flexible work options to employees and has worked with Representative Walters to craft public policy that encourages, rather than mandates, more employers to adopt these programs *voluntarily*.

- Representative Walters’ legislation expands paid leave to all employees, fosters workplace flexibility, and provides employers with certainty and predictability rather than a fragmented patchwork of state and local laws. To make the new workplace work, we can’t go by the old rules. ‘Work’ is more flexible than ever, so workplace rules need to be too.

- SHRM has strong concerns with the one-size-fits-all mandate contained in the Healthy Families Act and former President Obama’s paid-leave executive order for federal contractors, and it believes Representative Walters’ legislation is a much better approach to achieve greater employer adoption of workplace flexibility for employees.

- Mandates are not effective in the workplace. Some employers subject to a mandate have scaled back existing leave coverage or been disinclined to expand coverage in reaction to new federal minimum standards. As indicated in the 2016 National Study of Employers, after passage of the FMLA, providing 12 weeks of leave became the new norm for most employers.

- Employers tend to restructure and scale back leave as a result of federal standards because coverage deemed too generous—coverage that goes above and beyond the protected federal minimum requirements—can result in the “stacking” of paid leave (employer paid leave on top of mandated paid-leave requirements) and limits employers’ flexibility in controlling their leave policies and the flexibility they offer employees.

- There is no federal requirement for employers to offer paid leave. But, according to the 2016 National Study of Employers, 58 percent of employers offer paid maternity leave, 15 percent offer paid paternity leave, and 99 percent offer some form of paid leave (sick, vacation, paid time off).

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