



The ERISA Industry Committee

Driven By and For Large Employers

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Statement by The ERISA Industry Committee re: House Committee on Ways and Means May 8, 2019 Hearing on “Paid Family and Medical Leave: Helping Workers and Employers Succeed.”

Chairman Neal, Ranking Member Brady, and Members of the Committee, thank you for this opportunity to submit a statement for the record on behalf of The ERISA Industry Committee (ERIC) on the issue of paid family and medical leave. ERIC appreciates the attention you are bringing to the issue and urge you to consider the perspective of large, multi-state employers as they were not represented at the hearing. We are writing to provide that perspective and offer our assistance as you continue to work on these issues.

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation policies at the federal, state, and local levels. ERIC's large employer member companies operate in every industry sector, employing workers in every state in nation and providing comprehensive paid leave programs that benefit millions of workers and their families. ERIC represents them exclusively as providers of benefits to their own workforce and therefore, has a strong interest in state and federal paid leave proposals that would affect the ability of its member companies to continue to provide quality and uniform paid leave benefits to their employees.

Introduction

ERIC supports the goal of increasing employee access to paid family and medical leave benefits; however, we caution against any state or federal paid leave program that either creates administrative and compliance burdens on large employers who already provide paid leave benefits to their employees or hinders large employers' ability to design their own leave benefits to best meet the specific needs of their business and workforce.

Comments

I. Large Employers are Leaders in Providing Paid Leave Benefits.

Providing paid family and medical leave is a major goal of any employer seeking to attract and retain the best and brightest employees possible. As such, ERIC's member companies are all proud to have established and administered generous and flexible paid family and medical leave benefits for their employees. In pursuit of providing such valuable benefits, ERIC members have always been at the forefront of developing new and ingenious ways to tailor paid leave

benefits to the specific needs of their workforce. As such, our member companies rarely utilize a one-size-fits-all model and instead offer a range of different benefit structures to achieve important employee leave goals. These benefits take the form of paid sick leave, paid personal leave, paid maternity leave, paid family leave, “bucket” paid time off programs, and disability insurance. Some large employers even offer unlimited leave benefits. These various paid leave approaches have ensured that millions of Americans and their families are both financially secure and ultimately have a better relationship with their work.

The generous benefits offered by ERIC members reflect the Bureau of Labor Statistics¹ data showing that private employees working for large employers are more than twice as likely to have access to critical paid family and medical leave benefits. Thus, large employers are an essential part of this conversation not only to ensure that they can continue providing benefits but also for the experience and expertise they have from offering these benefits for several decades. Congress should avoid advancing policies that negatively impact large employers or cause them to cut back benefits to meet new standards.

II. State Policies and Programs Have Created an Inconsistent Patchwork of Rules for Large, Multi-State Employers

Recently, the ability of large employers to provide paid leave benefits to their employees has been significantly challenged by the proliferation of state paid leave programs. Under the federal Family and Medical Leave Act (“FMLA”), employers have been able to refer to a uniform, consistent set of standards when attempting to comply with federal family and medical leave requirements. As states continue to propose the creation of new paid family and medical leave programs, the uniform compliance standards established by federal law has given way to a patchwork of state standards, creating significant compliance burdens for large employers, especially those operating across multiple states. In addition, a number of municipalities have passed, or considered, their own paid family and medical leave ordinances. This creates an even more convoluted patchwork of conflicting laws that makes it extremely difficult for employers to comply while employing American workers across the nation.

Currently, the states of California, New Jersey, New York, and Rhode Island have active paid family and medical leave insurance programs while The District of Columbia, Massachusetts, and Washington State have passed legislation and are developing regulations creating similar benefit programs to come into effect this year. During the 2019 state legislative sessions, over 30 states proposed legislation to either create or augment programs related to paid family and medical leave. Furthermore, 16 states currently have active laws requiring employers to provide paid sick leave to employees or otherwise requiring an employee’s sick leave to be used to care for a sick family member.

These programs and proposals cannot be administered uniformly and contain a wide range of variable standards related to funding, duration, and eligibility, among others. For example, paid family and medical leave insurance programs can either be administered by a state

¹ Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, Access to paid and unpaid family leave in 2018 on the Internet at <https://www.bls.gov/opub/ted/2019/access-to-paid-and-unpaid-family-leave-in-2018.htm> (visited May 14, 2019).

agency or handled by a third-party insurance provider. These programs can either be funded by employee or employer contributions, or otherwise divided between the two parties. The duration of paid leave provided by state programs vary significantly from four weeks of paid leave to as long as 32 weeks. While many current state laws require employees to work for an employer or make contributions to the state program for a certain period of time before becoming eligible for benefits, several proposed programs suggest allowing employees to access paid leave benefits immediately upon being hired by a new employer. Also, states have begun to adopt standards of qualified reasons for leave and definitions of family member that extend far beyond those established by the federal FMLA and that drastically fluctuate from state to state; as an example, some states add grandchildren and siblings to the FMLA standards, whereas, others have extended this definition to include any and all associations that are akin to a blood relationship. These variable standards lead to major differences in their requirements and administration that fall upon the employer.

It is easy to see the complexities that multi-state employers face when trying to comply with programs that have so many different moving pieces and are different between each state and sometimes within a state. More importantly, these variable standards make it impossible to offer and administer uniform benefits across an employer's workforce. Thus, any attempt to create a comprehensive benefit scheme within a single multi-state employer is impossible. Consideration of any action on the federal level should recognize the impact that this patchwork has on large, multi-state employers. Such consideration should include ensuring that employers that already offer generous paid leave benefits are not burdened by state and local paid leave programs and are able to continue providing generous and consistent paid leave benefits throughout their workforce.

III. Federal Policy Should Minimize Unintended Consequences

ERIC member companies already offer paid family and medical leave benefits to employees that are equal to or more generous than those required by many state programs coming on line. Nonetheless, these employers are still required to comply with various burdensome aspects of state laws which end up debilitating employers' ability to expand their own paid leave programs. Such unintended consequences should be avoided on the federal level in order to allow administration of the most generous paid leave benefits for the greatest number of employees.

The burdens faced by large employers are mainly due to the administrative and reporting requirements that accompany employer compliance with state paid family and medical leave programs. Employers must not only provide a minimum number of weeks of leave to employees, but also must implement costly procedures to comply with state administrative requirements. Employers must navigate and conform to the numerous variable standards of each state, as detailed above, to make sure they are meeting all of the state requirements. Employers must then record and report compliance information related to thousands of employees, a process which necessitates the creation of new systems and the hiring of new staff.

Moreover, these costs continue to multiply as additional states implement programs and systems and procedures must be changed to accommodate the new requirements. For

example, recently proposed reporting requirements under Massachusetts's paid family and medical leave program requires employers to report any and all prior requests or approvals for a qualifying reason and the amount of leave taken for a qualifying reason in the prior benefit year. Not only does this requirement add to the current compliance burdens already on employers but is also redundant since these requests are also submitted by covered individuals to the Department. Consequently, our members are subject to an increasing number of administrative and reporting requirements that strain their ability to provide their current paid leave programs.

The cost to an employer, however, is far outweighed by the cost to employees who lose paid leave benefits. For example, an employer who offers 60 days of paid time off, regardless of reason, may have to split that into paid sick leave, paid family and medical leave, and paid vacation to comply with state requirements. As a consequence, an employee who does not qualify for the full sick leave or family medical leave will end up with less paid leave than the employer initially wanted to offer. This result cannot be the intended result of state paid leave programs and must not be the result of any action taken by the federal government.

Therefore, eliminating employer flexibility to create and operate employer-provided paid family and medical leave programs would ultimately reduce or eliminate the access that American employees have to employer-provided paid family and medical leave programs that are generally more generous than the standards provided by a government administered program. As Congress considers a federal program, we urge you to work to ensure that policies support existing employer efforts to provide paid leave and not impose mandates or other compliance burdens that make paid leave more costly without enhancing the leave available to employees.

Conclusion

ERIC encourages the important and admirable goal of increasing access to paid family and medical leave benefits for American workers. We urge Congress to recognize that the current proliferation of state and local regulations is a costly and unproductive impediment to the generous paid leave benefits that large employers currently provide, and ensure that any federal paid leave program maintains employer flexibility to create and administer paid leave programs that are best suited to their workforce without unnecessary compliance and reporting burdens on these employers. As Congress continues to address the issue of paid family and medical leave, we hope to work with this Committee and others to provide the unique perspective of large, multi-state employers.

ERIC appreciates your consideration of our concerns. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400 or arobinson@eric.org.

Sincerely,

A handwritten signature in cursive script that reads "Aliya Robinson".

Aliya Robinson
Senior Vice President, Retirement and Compensation Policy