

PROPOSED CHANGES TO AND EXPANSION OF THE FAMILY AND MEDICAL LEAVE ACT AND OTHER PROPOSED FAMILY-FRIENDLY LEGISLATION

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Now that the 2011 school year is underway, many families are again struggling to balance the competing needs of work, child care, school activities, care of elderly parents, and the never-ending tension between those commitments. For some families, these struggles are not seasonal, but are part of everyday life. In June 2011, Rep. Lynn Woolsey D. California), filed *Balancing Act of 2011* (H.R. 2346), which is intended, in her words, to:

improve the lives of working families by expanding access to the Family and Medical Leave Act, and by making it easier for workers to take advantage of it.

However, a close reading of the proposed legislation makes it clear that H.R. 2346 is far more than a minor amendment to the Family and Medical Leave Act of 1993 ("FMLA"); instead, it both expands its application and fundamentally changes its character from a leave statute to one of mandatory disability insurance. Moreover, the proposed legislation creates several additional laws, many of which would have huge implications for employers. These include mandating paid sick leave and requiring employers to grant additional leave time to employees with family obligations.

Proposed Changes to the FMLA- H.R. 2346 amends the FMLA to direct the Secretary of Labor to establish a Family and Medical Insurance Program (which may involve contracts with state programs) which would allow many individuals eligible for FMLA leave (currently unpaid) to receive an "out of work" benefit for the period of leave. As proposed, this Family and Medical Insurance Program would be funded through a "family and medical leave premium," that would be paid by both employees and employers.

In addition, the Act expands FMLA coverage to include employers with 25 or more employees. The Act would also decrease the length of employment and the number of hours of work required before an employee becomes eligible for leave from one year to six months, and from 1,250 hours to 625 hours, respectively. It also expands the FMLA to include leave to care for same-sex spouses, domestic partners and their children.

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“Family and Medical Leave Enhancement Act”- this provision would entitle employees to take additional leave (up to 24 hours) in a 12 month period to “participate in or attend an activity that is sponsored by a school or community organization and relates to a program of the school or organization that is attended by a son or daughter or a grandchild of the employee. . .” or to “meet routine family medical care needs, including for medical and dental appointments of the employee or a son, daughter, spouse, or grandchild of the employee, or to attend to the care needs of elderly individuals who are related to the eligible employee, including visits to nursing homes and group homes.”

“Healthy Families Act” – this provision would require employers who employ 15 or more employees to provide paid sick time to their employees, including time to address domestic violence, sexual assault, or stalking. The proposed legislation specifically prohibits such employers from discriminating against employees for their legitimate use of paid sick time.

The Balancing Act would also amend the Employee Retirement Income Security Act of 1974 (ERISA) to require that certain employees working at less than full-time under participation, vesting, and accrual rules governing pension plans be treated as full time employees for purposes of meeting year-of-service criteria. Part time employees would also qualify for participation in employer sponsored group health plans. The Act would also extend ERISA coverage to certain leased or contract personnel not currently considered “employees” for purposes of participation in retirement plans.

United States Business Telework Act – this provision directs the Secretary of Labor to conduct a pilot program in up to five states to raise awareness about telework among employers and to encourage them to offer telework options to employees.

Many of these proposals are not new ideas- the bill sponsor was the individual who was behind the successful amendments to the FMLA in 2008 (service member leave and leave for qualified exigency). Given the polarization in Congress, it is unlikely that this bill will be passed. However, it is indicative of the increased difficulty faced by many workers in balancing work and life commitments. Those employers who are sensitive to these concerns, even in the absence of government mandates, are likely to be advantaged in competing for good employees and enjoy the benefits of a workforce that is less distracted by personal commitments

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