

De Lauro Paid Leave Insurance Proposal FAMILY Act

Overview

A new proposal for family and medical leave insurance, currently in development, would:

- Provide eligible employees with up to 60 workdays (12 weeks) of *paid* leave within a one-year period for their own serious illness; the illness of a family member (including domestic partners) who requires care; or the birth or adoption of a child.
- Establish an independent trust fund (similar to the Social Security Trust Fund) to provide benefits that will be funded by employee and employer contributions of .2% of wages each.
- Make leave available to every individual regardless of the size of their current employer and regardless of whether such individual is currently employed by an employer, self-employed or currently unemployed, as long as the person has sufficient earnings and work history. In this way it would apply to young, part-time and low-wage workers.
- Provide benefit levels based on the best elements of the two successful state paid leave programs already in place in California and New Jersey. Benefits would equal 66% of an individual's typical monthly wages up to a capped monthly amount, and would be indexed for inflation.
- Require an application that includes a statement that a person is or will be engaged in caregiving or self-care and certification from a health care provider, consistent with the current certification requirements for leave under the Family and Medical Leave Act.
- Make it illegal to fire or discriminate against an individual because they have applied or intend to apply for family and medical leave insurance benefits.
- Establish a Paid Family and Medical Leave Office within the Social Security Administration to administer the program. The office of Paid Family and Medical Leave would be responsible for determining eligibility, making payments, maintaining records, preventing fraud and abuse, providing employers with notices about the availability of benefits to share with employees, data collection, education and outreach.

Section-by-Section Summary

Sec. 1. Short Title.

Family and Medical Insurance Leave Act or FAMILY Act

Sec. 2. Findings and Purpose.

- **Findings.** This subsection describes the need for paid family and medical leave and the benefits that would result if all workers had access to such leave.

Benefits include: positive economic outcomes for working families, businesses and the public; greater equity in parental leave-taking between women and men; financial security; better health and well-being for workers and their children; enhanced worker safety; greater workforce attachment; savings to the health care system, and fewer women on public assistance and food stamps.

- **Purpose.** The Act helps working families to afford time off to care for family members and their own health by providing reasonable wage replacement during leaves in a manner that accommodates the legitimate interests of employers.

Sec. 3. Paid Family and Medical Leave Benefits for Certain Individuals.

This section sets out the eligibility requirements, benefit amounts, application and certification requirements, and other administrative matters.

- **In General.** Every individual who is insured for Social Security disability insurance benefits under section 223(c) of the Social Security Act, has filed an application for insurance benefits and is/was engaged in qualified caregiving shall be entitled to benefits.
- **Benefit Amount.** An individual's paid leave benefit shall equal approximately 66% of an individual's monthly earnings and will be paid monthly. An individual's monthly benefit amount will be no more than \$4,000 per month and no less than \$580 per month in the program's first year. The minimum benefit is equal to the benefit level of an individual working full-time year-round at a minimum wage of \$7.25 per hour. After the first year, the maximum and minimum monthly benefit amount will be indexed to increases in the national average wage index.
- **Benefit Period.** The benefit period begins on the first day of the first month in which the individual qualifies and lasts 365 days.
- **Monthly Benefits Claim Report.** The Commissioner receives an individual report of the number of caregiving days taken by an individual in a given month.
- **Waiting Period.** All individuals are subject to an "initial waiting period" of five (5) caregiving days, during which benefits will not be paid. However, the waiting period can also be satisfied if an individual is engaged in caregiving for 15 or more days in the month prior to the start of the benefit period.
- **Length of Leave.** Individuals are eligible for 60 caregiving days in a calendar year, with no more than 20 caregiving days payable in any one month.

- **Reduction in Benefit Amount.** An individual's FAMILY Act benefits will be reduced if they are receiving benefits under a workmen's compensation plan or law; under a disability law or plan of a State, or another political subdivision; or unemployment insurance.
- **Application.** An application for family and medical leave insurance shall include
 - a statement that the individual was engaged in qualified caregiving, or anticipates being so engaged, and
 - if the qualified caregiving described in the application is because of serious health condition of the individual or a relative, certification from a health care provider is required; or
 - if the qualified caregiving is for another reason, certification by a relevant authority is required.
 - attestation that the employee has notified the employer of his or her intent to take family or medical leave.
- **Certification.** The employee must provide a certification that contains the same information that is required in a Family and Medical Leave Act certification.
- **Eligibility and Benefits Determinations.** The Commissioner of Social Security shall provide notice of eligibility for benefits and estimated benefit amount; notices must be provided as soon as is practicable. The Commissioner shall pay benefits or provide notice of the reason for not paying a claim; benefits shall be paid or notice of non-payment must be provided within 20 calendar days of receiving claims. Claimants may request timely review of the determination.
- **Ineligibility and Disqualification.** An individual is ineligible for benefits if they are receiving Social Security disability benefits.
- **Relationship with State Law and Employer Benefits.** The Act does not preempt or supersede State or local laws that provide for paid family and medical leave benefits. The Act should not diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid leave.
- **Prohibited Acts and Enforcement.** It shall be unlawful for an employer to discharge or in any other manner discriminate against an individual who has applied or intends to apply for family and medical leave insurance benefits. Suits may be brought by the Commissioner, individuals or similarly situated individuals and they will be entitled to recover lost wages and damages. An action must be brought within three (3) years of the alleged violation.

- **Definitions.**

- **Caregiving Day.** A calendar day in which an individual is engaged in “qualified caregiving.”
- **Qualified Caregiving.** Any activity engaged in by an individual, other than regular employment, for which an individual would be entitled to leave under the Family and Medical Leave Act (the birth and care of a child, the adoption and care of a child, or the placement of a child in foster care; caring for a spouse, child, or parent with a serious health condition; for the employee’s own serious health condition; and to address a “qualifying exigency” arising out of a servicemember’s deployment.). For the purposes of determining what “qualified caregiving” is, the term “spouse” includes the individual’s domestic partner and the term “son or daughter” includes a son or daughter of an individual’s domestic partner.
- **Domestic Partner.** An individual in a “committed relationship.”
- **Committed Relationship.** A relationship between two individuals age 18 or older who share responsibility for a significant measure of each other’s common welfare. This includes, but is not limited to, same-sex partners whose marriages, civil unions, or analogous relationships are granted recognition by a State.

- **Office of Paid Family and Medical Leave.** The Commissioner of Social Security shall establish within the Social Security Administration an Office of Paid Family and Medical Leave and appoint a director. The director shall be responsible for determining eligibility, benefit amounts and making timely payments; maintaining records; preventing fraud and abuse; answering questions about the program from individuals; annually providing employers with notices about the availability of benefits to share with employees; data collection and reporting; and education and outreach.

Sec. 4. Establishment of Family and Medical Leave Insurance Trust Fund.

This section amends the Social Security Act to create the “Federal Family and Medical Leave Insurance Trust Fund” and gives the Internal Revenue Service permission to levy taxes for this purpose of operating the Office of Paid Family and Medical Leave and paying benefits. The Family and Medical Leave Trust Fund is separate and independent from the Social Security Trust Fund and would not impact its solvency.

Sec. 5. Internal Revenue Code Provisions.

This section outlines amendments to the Internal Revenue Code to include a 0.2 percent tax on wages earned by employees in any calendar year after

implementation, a 0.2 percent tax on the wages employers paid to employees in any calendar year, a 0.4 percent tax on the self-employment income of every individual.

Sec. 6. Conforming Amendments.

This section describes amendments to other parts of the Social Security Act and Railroad Retirement Tax Act that are necessary to implement this Act.