



AMERICAN BENEFITS  
COUNCIL

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THE AMERICAN BENEFITS COUNCIL'S  
WRITTEN STATEMENT FOR THE RECORD:

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON WORKER AND FAMILY SUPPORT

HEARING ON UNIVERSAL PAID LEAVE AND GUARANTEED  
ACCESS TO CHILD CARE

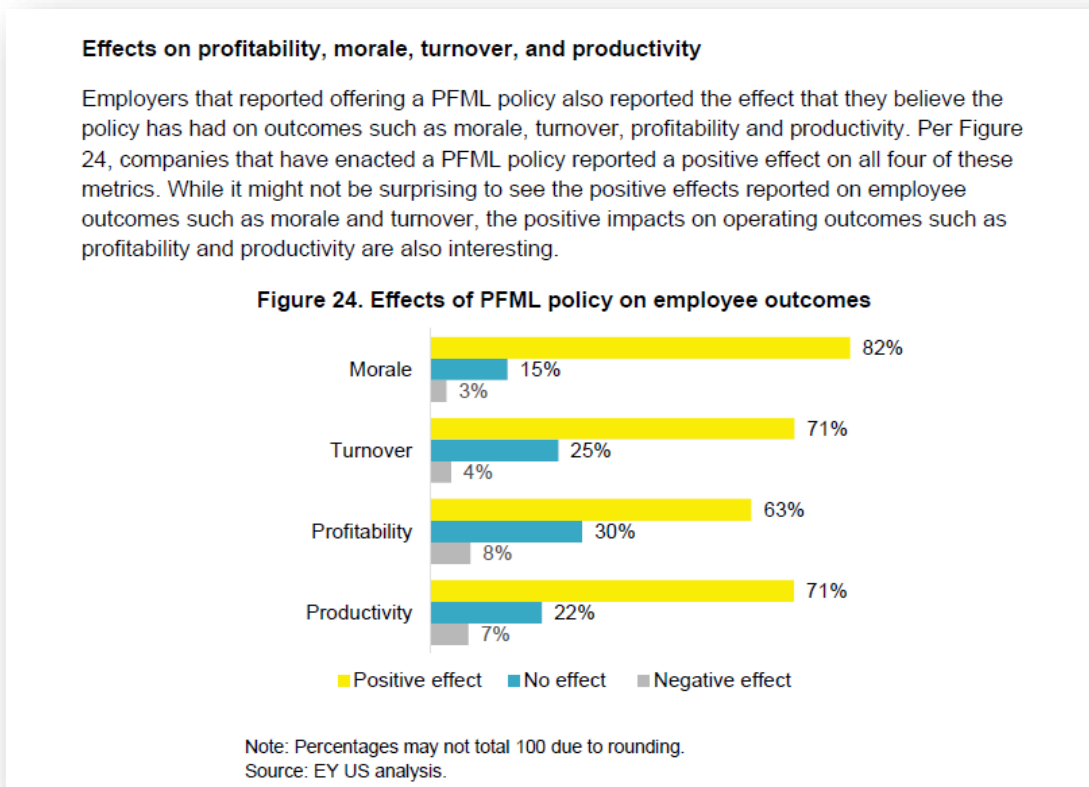
The American Benefits Council (“the Council”) commends the Subcommittee for holding a legislative hearing on universal paid leave and guaranteed access to child care, and we appreciate the opportunity to provide comments on this important issue.

The Council is a Washington, D.C.-based employee benefits public policy organization, advocating for employers dedicated to best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees, and families. Council members include over 220 of the world’s largest corporations. Collectively, Council members either directly sponsor or administer employee benefit plans for virtually all Americans receiving employer-sponsored benefits.

Our member companies recognize the importance of helping employees care for a new child or tend to their own – or a family member’s – serious health issue. Financial pressure makes unpaid leave out of reach for many working families seeking to address the demands of parenting, health and family. As with all types of employee benefits, Council member companies are at the forefront of comprehensive and innovative programs to provide essential protections to employees and to help them balance personal and work responsibilities. This includes generous paid leave benefits.

Our member companies recognize that paid leave is also good business. Such paid leave programs, if effectively designed and administered, can also foster greater

productivity, serve as a valuable recruitment and retention tool, and contribute to the success of the business. According to the Ernst & Young study “Viewpoints on paid family and medical leave: Findings from a survey of U.S. employers and employees March 2017,”<sup>1</sup> employers offering paid leave benefits overwhelmingly reported positive impacts on business outcomes like profitability and productivity:



In the context of the COVID-19 pandemic, these programs take on an even greater significance as the challenge of balancing the needs of work, family and one’s own health has become even more difficult. What before the pandemic was a valuable employee benefit to help workers address family and personal health needs has become a critical component of protecting public health as well.

It is therefore more important than ever to ensure that efforts to expand access to paid leave for workers not currently offered paid leave benefits also protect and promote existing employer-provided paid leave programs. Managing the plethora of state and local employee paid leave mandates is extremely frustrating and costly for multi-state employers and forces them to treat employees differently based on where they live or work. It is going to become even more complex in a post-pandemic world,

<sup>1</sup> <https://pdf4pro.com/view/viewpoints-on-paid-family-and-medical-leave-ey-4e80d.html>

as employees continue to work remotely and even relocate while working from home. The Council strongly supports federal paid leave legislation that builds on private-sector solutions and allows employers to treat workers equitably regardless of where they live or work.

## **ADMINISTRATIVE AND COMPLEX COMPLIANCE CHALLENGES**

Council members typically have nationwide operations – often in all 50 states and numerous localities. As more states and localities enact paid leave laws, it has become increasingly difficult for large, multistate employers to consistently offer and administer paid leave to employees wherever they live or work. Compliance, administrative simplicity and parity – cornerstones of nationwide benefit policies – are becoming ever more challenging to achieve.

There are six states, plus the District of Columbia, that have paid family and medical leave laws, with three more states that have passed such laws to take effect in the near future, each with varying requirements. Differences between and among these laws with respect to issues such as employee eligibility, qualifying absences, benefit duration and amount, and ability to coordinate statutory and company benefits make the administration and compliance burden overwhelming for nationwide employers. As a result, employers have had to design their leave programs to meet administrative and other requirements, rather than meet employer and employee objectives. These administrative costs do not inure to the benefit of working families and, in fact, undermine efforts of nationwide employers to offer generous paid leave benefits to their workforce.

It is vitally important for the subcommittee to be aware of the extraordinary challenges facing nationwide companies who support paid leave but are required to navigate this maze of increasingly complex, inconsistent, administratively burdensome and overlapping paid leave mandates across the country. Meeting compliance and reporting obligations is inherently time consuming and can be confusing for even the most knowledgeable benefits professionals.

For nationwide employers, the burden of administering the numerous state and local paid leave mandates is significant. According to a survey conducted by Mercer<sup>2</sup> of nationwide employers, administrative expenses will typically range from 8%-20% of total leave costs. Employers need to have sufficient staffing to administer all the nuances of the varying paid leave requirements and may need to spend substantial resources to gain access to a more robust administration assistance system. In fact, the Mercer study also shows that 66% of employers experienced an increase in resources required in the last five years to handle state and local paid leave mandates.

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<sup>22</sup> Mercer, Survey of Absence and Disability Management, 2021

In the Council's recent [informal poll of large employers](#) on state paid leave laws, 45 of 66 (68%) nationwide businesses characterized the administrative burden imposed by multiple state and local paid leave laws as "very significant," with an additional 18 (27%) calling it "somewhat significant."

One of the most widely-used and valuable resources the Council provides its members is a National Paid Leave Atlas, located on the association's website, that provides comprehensive information on all state and local paid leave laws. It is a challenge for the Council just to regularly update the atlas as laws are continually enacted or modified. You can imagine, therefore, what a monumentally greater challenge it is for the employers who then must keep current and comply with the plethora of state and municipal requirements. However, this is not just a matter of administrative cost and burden for employers. It is also a matter of fundamental fairness and equity for employees, particularly in light of increasingly mobile and remote workforces.

On the question of employers' chief concerns about the growing number of state and local laws (they were allowed to choose more than one option), 97% of the Council's survey respondents selected "administrative burden," 88% selected "employee confusion" and 74% selected "inequitable treatment of employees" all significantly greater than the 56% who cited cost as a concern. This point underscored the message that Council member companies are committed to providing paid leave. It is the administrative burden on employers and confusion and inequities for workers caused by state and local laws that are the principal concerns.

## **IMPACT ON EMPLOYEES**

The numerous state and local paid leave laws have a significant adverse effect on employees and their families. Employees who previously received benefits at no additional cost from their employers in some cases must now pay an employee contribution, imposed by some state programs, for those same benefits. Employees who previously enjoyed a user-friendly experience in going directly to their employer to request benefits in some cases must now go to the state agency administering the applicable paid family and medical leave program in addition to their employer. That places a complicated and time-consuming burden on employees at the very time that what they need and are requesting is time off to deal with personal and family obligations.

We want the subcommittee to understand that our member companies' challenge is not in providing paid time off benefits to their employees. Instead, the growing challenge is created by the myriad inconsistent and increasing number of state and local laws, the speed at which new laws and changes to existing laws take effect, and the

sheer number of often inconsistent requirements applicable to operations around the country.

The burden of compliance and the range of different requirements mean that the resources designated for such programs are applied to navigating administrative complexities that result in the company being compelled to treat its workers inconsistently based upon where they work, rather than program design and execution, which add value and enhance employee engagement. The requirements of state and local paid leave laws vary, including with respect to eligible employees, differences in waiting periods, rate of accrual, accrual and use caps, qualifying uses, covered family members, and notification requirements. All of this makes it nearly impossible for an employer to craft a uniform and consistent policy for its national workforce. For employees, it can be overwhelming and confusing to determine which laws apply to them and to which leaves they may be entitled.

The maze of applicable leave mandates and processes is transforming the traditional role of employers as the single point of contact for employee benefit programs and can negatively impact the employee experience. For many employers that want to provide the best and most efficient experience for employees relative to the various benefits offered, a single point of administration is frequently foundational to a highly desired simplified claim reporting experience for employees, including those filing for leave. One leave event can take multiple pathways and often implicates a number of employment-based benefits and protections, including those that are not leave related.

To make this process efficient, many employers have online claim portals, telephonic claim intake, text capabilities for claim and status reporting, and a robust employee service model to assist with questions and challenges. Moreover, employers often integrate their benefits programs by establishing information sharing arrangements between and among the employer and its various service providers. Employers often establish this type of comprehensive administrative scheme to be able to holistically evaluate all employment benefits potentially available to employees.

Predictability and flexibility are important in a paid leave program for both employees and employers. It is important for employees to understand available benefits in advance as well as how to seamlessly apply for those benefits. Employees should not be required to contribute a portion of their paycheck to fund paid family medical leave benefits if they already receive those benefits at no additional cost. Employers should be permitted to efficiently administer a uniform benefits program that matches the specific needs of its workforce. The current model is not hospitable for a national employer who wants to offer consistent and uniform benefits that employees may access in a user-friendly way. Many state programs include definitions that are inconsistent with the federal Family and Medical Leave Act (FMLA) or those in employer-sponsored plans. Vague provisions that neither employers nor employees

fully understand lead to frustration on both sides, compounded by complex benefit calculations and staggered implementation of benefits.

When integrated and holistic, employers can schedule their workforce appropriately, and can leverage certain occurrences pertaining to employees as part of their administrative processes to have timely insight into their employees' health and welfare often through sophisticated reporting capabilities. Employers can then use all relevant information to build into wellness programs, Employee Assistance Programs, childcare support, workplace safety programs, and to inform the employer's future decisions on what benefits and additional programs might best support and help its employee population. Because of the growing patchwork of state and local paid leave laws, employers have had to design their leave programs to meet administrative and other requirements, rather than meet employer and employee objectives.

#### **A FEDERAL LEGISLATIVE SOLUTION: THE NEED FOR UNIFORM FEDERAL STANDARDS AND BUILDING ON PRIVATE SECTOR SOLUTIONS**

We recognize that not all workers have access to generous paid leave benefits, and gaps remain that need to be filled. The Council believes that all workers in our country should have access to robust paid leave benefits. The federal government plays an essential role in filling the gaps in leave benefits nationwide and can do that while preserving effective employer plans at the same time.

The dual concerns of enabling employee equity with respect to paid leave benefits and eliminating administrative and compliance burdens created by inconsistencies in the various state and local leave laws should be addressed through a federal legislative solution. We believe that any federal solution should consider as a starting point the Council's Statement of Principles on Paid Leave [see Appendix]. These principles outline a common-sense approach for building on the generous leave programs already provided by the Council's national employer members.

The Council strongly supports a federal legislative solution that would provide employers the flexibility to offer a paid leave program that meets a single set of standards for employees nationwide. If this can be established, employers could offer paid leave programs that meet uniform criteria while satisfying compliance requirements throughout the country. This would allow their employees nationwide to be offered consistent benefits regardless of where they work or live. Employers should have flexibility to design and administer innovative paid leave benefits since what is best suited for one company's workforce or industry may not be best suited for another.

This approach would not be new or novel. Congress has made possible both flexibility within certain parameters for different employers and workforces, alongside

federal uniformity for employers who operate in more than one state, in the design and operation of their health and retirement plans.

This proposed national approach to paid leave provides the kind of flexibility required for employers to ensure their paid leave policies address employees' specific needs and priorities, while also reducing costs and eliminating administrative complexity.

Our member companies are at the forefront of innovative benefit solutions for their employees. Federal and state government policy must preserve and build on innovative private sector solutions that would allow employers to provide coverage either through self-funding or private insurance rather than a government administered program. The goal of ensuring access to paid leave programs for all workers on an equitable basis cannot be realized without leveraging private sector solutions.

## OUTLOOK

We remain optimistic about the prospects for a federal legislative solution that can achieve two important goals: create an environment where all American workers gain access to paid leave benefits and enable nationwide employers to provide uniform and consistent benefits to their employees while relieving the administrative and compliance burdens imposed by inconsistent state and local laws.

President Biden's American Families Plan proposes the creation of a national comprehensive paid family and medical leave program. The Building an Economy for Families Act (BEFA) discussion draft released by Ways and Means Committee Chairman Richard Neal would guarantee paid family and medical leave for all workers, which would be available through one of three sources: (1) a new public program administered by the U.S. Department of the Treasury (2) existing state paid leave programs, or (3) employer paid leave benefits. BEFA is significant as an acknowledgement of the need for a federal solution and represents an important step forward in this dialogue. We are encouraged by Chairman Neal's discussion draft that recognizes the disparities brought about by the current environment as well as the important role of employer plans.

However, BEFA does not address the pressing need for multistate employers to be able to offer uniform paid leave benefits nationwide. We are seeking important changes to the legislation to give multistate employers the option to offer a single paid leave program that meets federal standards to workers in all U.S. jurisdictions. We urge Congress to seize the opportunity to finally enable nationwide employers to provide consistent paid leave benefits to their workers and relieve severe administrative burdens imposed by wildly inconsistent state and local laws.

We are committed to working closely with Congress and the White House on a solution that treats workers fairly and consistently and is affordable and administrable for employers and promotes private sector solutions. The Council stands ready and eager to support the subcommittee in this important effort.

Please let us know how the Council can be of assistance.

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## AMERICAN BENEFITS COUNCIL

### APPENDIX: STATEMENT OF PRINCIPLES ON PAID LEAVE

- American Benefits Council member companies recognize the importance of paid family and medical leave and paid sick leave benefits and they provide generous paid leave to their workforces.
- Paid family and medical leave programs are important for workers so they can meet the needs of parenting, care for a member of their family who is ill or address their own illness.
- Paid sick leave is an important public health and safety measure because it helps ensure that individuals who are ill do not feel compelled to come to the workplace, where they might infect co-workers and members of the public.
- The American Benefits Council supports federal legislation to expand access to paid family and medical leave and paid sick leave consistent with the following principles:
  - Employers must have the ability to treat workers equitably. Similarly situated workers for the same employer should expect their eligibility to receive paid leave, and the benefits and administration of the leave program, to be consistent wherever in the United States they live or work.
  - Federal standards for paid leave programs must ensure that employers operating in more than one jurisdiction are not subject to the cost and administrative burden of complying with various state or local paid leave requirements that may be inconsistent or even contradictory.
  - The federal standards for national employers must be reasonable, affordable and administrable.
  - To simplify the administration of paid family and medical leave benefits, the federal Family and Medical Leave Act definitions and standards should apply.

- Employers that adopt and comply with federal paid leave standards must be deemed to be in compliance with all state or local paid leave requirements.
- Employers should have flexibility to design and administer innovative paid leave benefits since what is best suited for one company's workforce or industry may not be best suited for another.
- Federal paid family and medical leave legislation should protect and build on private sector solutions that would allow employers to provide coverage either through self-funding and/or private insurance.
- Paid family and medical leave programs should be designed, operated and funded by the private sector for maximum efficiency and to ensure that payroll taxes needed to fund existing government programs are not diluted in order to finance new governmental programs.
- Federal, state and local governments should address gaps in access to paid leave benefits for workers not covered by private sector employer plans to ensure that workers are protected from the hazards to health, family and income that may result from a lack of paid leave.
- To minimize disruptions in union workplaces, federal, state or local paid leave legislative changes should defer to the collective bargaining process and not require any party to a collective bargaining agreement to reopen negotiations of the agreement or to apply until the existing agreement is renegotiated by the parties or expires.