September 11, 2020

Submitted via www.regulations.gov

Joan Harrigan-Farrelly
Deputy Director
Women's Bureau
U.S. Department of Labor
Room S-3002
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Request for Information; Paid Leave (RIN 1290-ZA03)

Dear Deputy Director Harrigan-Farrelly,

We write on behalf of the American Benefits Council ("the Council") to provide comments in connection with the Request for Information (RFI) regarding paid leave published in the Federal Register on July 16, 2020, by the Women's Bureau of the U.S. Department of Labor (DOL). The RFI seeks information concerning the effectiveness of current state and employer-provided paid family and medical leave (PFL) programs, how access or lack of access to paid leave programs affects America's workers and their families and challenges faced by employers. We appreciate the opportunity to provide comments on this important issue.

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of 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 and collectively either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

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 tool and contribute to the success of the business.

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.

THE NEED FOR UNIFORM FEDERAL STANDARDS

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. Compliance, administrative simplicity and parity - cornerstones of nationwide benefit policies - are becoming ever more challenging to achieve. Currently, eight states, the District of Columbia and San Francisco have enacted paid family and medical leave programs with varying requirements. For example, the definitions of family members, reasons for leave, eligibility requirements, benefit amounts or funding mechanisms differ from jurisdiction to jurisdiction. As a result, employers have had to design their leave programs to meet administrative and other requirements, rather than meet employer and employee objectives.

With a number of other states proposing paid family and medical leave legislation, the administrative burden and compliance challenge for multistate employers could become even more significant. 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.

We ask DOL to appreciate the challenge presented by the increasingly complex myriad of state and local paid leave laws. DOL asks for information about the benefits and costs associated with different approaches to paid leave. The fact that states have differing approaches to paid leave is itself a significant burden on employers seeking to provide uniform standards nationwide. In the absence of federal legislation allowing for uniform standards that would apply nationwide, this burden will only increase. In response to this critical issue, the Council supports federal standards for paid leave programs to 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. Under a system of federal standards, employers that adopt and comply with federal paid family and

medical leave standards would be deemed in compliance with all state or local requirements. Changes along these lines are essential because it is critical that employers have the ability, if desired, to design uniform paid leave policies that do not vary based on the state or local jurisdiction in which they operate. Moreover, to simplify the administration of paid family and medical leave benefits, the federal Family and Medical Leave Act (FMLA) definitions and standards should also apply to any uniform federal paid leave standards.

Such an approach would enable companies to follow uniform standards that benefit their employees and their families wherever they may live or work rather than on a fragmented, jurisdiction-by-jurisdiction basis. As such, this approach would respond to the need for programs that fit increasingly mobile and remote workforces. This is not just a matter of allowing employers to avoid administrative costs and burdens, which have become truly extraordinary and complex. It is also a matter of fundamental fairness and equity for employees.

THE NEED FOR FLEXIBILITY TO PROTECT AND PROMOTE PRIVATE-SECTOR SOLUTIONS

DOL is seeking input on the features of the existing public (*e.g.* state-administered) and private (employer-provided) programs that work well, reasons those features work well and features that make a paid leave program successful for all stakeholders. We begin our response by stating that a paid leave program that works best for one particular company's workforce or industry, may not be well-suited for another. Employers need the flexibility to make decisions about program design and administration that are best suited for their company and workforce and in a cost-effective manner. Under any federal paid leave standards, flexibility for employers should allow for tailoring paid leave benefit administration and design based on categories of similarly situated employees so long as all minimum federal standard requirements are met. Employers are in the best position to make these decisions, not a one-size fits all government administered program.

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 cannot be realized without leveraging private sector solutions.

Protection for an employee's own health conditions has traditionally been provided by an employer through short-term disability insurance or a self-funded program. These programs already provide six to eight weeks of paid leave following childbirth and commonly replace 60% of a worker's income for up to 26 weeks for a medical condition. The average premium cost is approximately $3 to $4 per week for a middle-income worker. Disability insurance carriers currently process over 2 million short-term

disability insurance claims per year. We note that the private market is highly regulated and highly competitive, leading to a better customer service experience for employees.

THE NEED TO FILL GAPS IN ACCESS, WHILE SOLIDIFYING EXISTING EMPLOYER PLANS

As noted above, 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, including generous paid leave arrangements. However, we recognize that not all workers have access to the generous paid leave benefits offered by larger employers. A Congressional Research Service (CRS) report, citing data from the Bureau of Labor Statistics, noted that paid family leave "was more prevalent among managerial and professional occupations; information, financial and professional and technical service industries; high-paying occupations; full-time workers; and workers in large companies (as measured by number of employees)."[1]

Gaps remain that need to be filled. Efforts by policymakers should focus on filling these gaps while protecting and solidifying existing employer plans. States and local governments certainly have a valid interest in ensuring that workers are protected from the hazards to health, family and income that may result from a lack of access to paid leave. However, the federal government plays an essential role in effectively filling the gaps nationwide and protecting and solidifying existing employer plans at the same time.

The Council commends DOL for its recognition of the importance of this issue for working families and employers alike and for seeking input that will inform the ongoing public policy debate on paid leave. However, while, as discussed later, there are limited regulatory actions DOL can take in this area, it is Congress that needs to act to pass legislation that expands access to paid leave across the county, allows for uniform federal standards for nationwide employers, promotes workable programs best-suited for a company's workforce and business needs and leverages private sector solutions. Such legislation is necessary to ensuring a solution that will work for employees and employers alike. We look forward to working with the policymakers and all stakeholders towards this goal.

DOL has suggested 23 questions to frame the responses. We note that some questions appear directed toward individuals or individual employers. Our responses to select questions posed in the RFI that are more broadly applicable to employers and/or of particular interest to our member companies are below:

[1] https://fas.org/sgp/crs/misc/R44835.pdf

1. Who benefits from paid leave and who bears the costs?

The benefit to employees of helping them care for a new child or tend to their own – or a family member's – serious health issue is clear and profound. Our member companies recognize that the business can also benefit from paid leave through greater employee productivity and engagement as well as recruitment and retention of talent. As the CRS report states: "In general, expected benefits of expanded access to PFL include stronger labor force attachment for family caregivers and greater income stability for their families and improvements to worker morale, job tenure, and other productivity-related factors."

Yet the CRS report also points out the potential costs of such paid leave, including the financing of payments made to workers on leave, other expenses related to periods of leave (e.g., hiring a temporary replacement or productivity losses related to an absence) and administrative costs. "The magnitude and distributions of costs and benefits will depend on how the policy is implemented, including the size and duration of benefits, how benefits are financed, and other policy factors." The costs to employers of paid lead are significant and must be taken into account by policymakers. Yet, the costs to multistate employers are unnecessarily magnified by the administrative burden created by a patchwork of different and often conflicting state and local rules. This cost will only increase as additional states and localities consider paid leave mandates and Congress fails to act to enable uniform federal standards nationwide.

2. What are the needs of workers and employers when it comes to paid time off for care obligations? What elements of the existing public (e.g., state administered) and private (employer provided) options work well? Why do they work well? Are there any features and provisions that make a paid leave program successful for all stakeholders?

Employees need the flexibility to use paid leave to meet their individual family and health needs. Employers also need flexibility to design and administer a paid leave program that best meets the needs of their company's workforce and industry and allows consideration of employee priorities. For example, in response to employee feedback, an employer may choose to structure their program to allow paid leave to be used for a marriage celebration or bereavement, which are not typically covered by paid family and medical leave programs.

Flexibility also includes allowing employers to provide coverage either through self-funding or private insurance rather than a government administered program

We note that all existing state paid family and medical leave programs, other than Washington, D.C. and Rhode Island, allow employers to apply for and obtain approval to use a private plan instead of using the state program if certain conditions are met. However, these conditions often differ from one law to the next, thereby leaving

multistate employers who seek to take advantage of private plan exemptions with no single system or application process to follow to avoid the state administered program that may not be the most effective for their workforce.

Employers also need to be able to standardize system programming, benefits administration and paperwork forms based on the details of the paid leave program requirements. For nationwide employers with many employees in multiple states, the complex patchwork of state program mandates makes this increasingly complex and costly. With different requirements based on where an employer lives and works, the simplicity and ease of administration that employers need is difficult if not impossible to achieve. These are administrative costs to the employer that do not inure to the benefit of employees.

3. What does not work well and why; and what are the existing gaps? What could be done to improve the existing patchwork of programs, which include state and employer-sponsored paid options? What are the impediments, costs and otherwise, faced in implementing those improvements?

What does not work well for multistate employers is the patchwork of state and local paid leave mandates. It is critical that companies have the ability, if desired, to design uniform paid leave policies that do not vary based on the state or local jurisdiction in which they operate. Uniform standards allow for consistent treatment of the same categories of employees and ease of mobility for workers. The only way to truly improve the existing patchwork of programs is to enact federal legislation that allows nationwide companies to maintain uniform paid leave practices across the country by conforming to a single set of rules so long as they provide at least a specified level of paid leave to their workforce. Those companies that choose to adopt a federal minimum standard should be deemed to satisfy all federal, state and local paid leave requirements.

Many state programs include definitions that are inconsistent with the 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. Also deeply concerning is that some states have not set appropriate funding for their programs nor allow for flexibility for private plan solutions.

5. Are individual businesses, localities, states, or the government best equipped to provide standards for paid leave? Are employer-based or state-based programs more effective in the administration of paid leave programs?

States and localities certainly have a valid interest in ensuring access to paid leave for their residents. However, for nationwide employers with operations in different

states and localities, the burden of administering and complying with multiple and oftentimes conflicting state and local standards for paid leave is overwhelming. Nationwide companies should be allowed to maintain uniform paid leave practices across the country by conforming to a single set of federal rules that preempt state and local paid leave requirements.

Furthermore, allowing employers to choose a private, employer-based paid leave plan as part of its one-stop administration, coordination, tracking solution in support of its existing employment benefits, helps both employers and employees. State-based programs are simply not positioned to make decisions around program administration that work best for an individual company's workforce. Nor are state-based programs necessarily the best equipped to be timely and responsive to employee needs. Indeed, employers cannot be sure if employees are being timely paid by the states.

Employers traditionally have the authority to be the single point of administration of the entirety of their benefits programs, including whether to outsource any or all it to vendors, third-party administrators and/or carriers as is best suited to that particular company and their particular benefits program needs. 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 models 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 its employees (e.g. paid time off (PTO), sick leave, medical, dental and vision insurance, life insurance, disability coverage, parental leave, bereavement leave, military leave, Employee Assistance Programs (EAP) and other wellness programs and other possible benefit options). Beyond these, employers must address the requirements and employee protections under federal and state laws, such as those under the Americans with Disabilities Act relative to job accommodations for disabled employees, federal FMLA job and health benefits protections, state FMLA laws and the list goes on.

If employers have a private plan option for the purposes of meeting the requirements of a state-based paid leave program such that they are responsible for administering a state-based paid leave program, these employers would – as part of the above-mentioned holistic process – calculate and pay the benefit and track the time taken by the employee. Administering the state-based program and all the remaining benefits of the employment program together ensures that the employer can determine

all applicable benefits and entitlements and also can pay the appropriate number and not more than the employee would otherwise earn (i.e. not over-insuring and dis-incentivizing their return to work). Also, the employer would be able to track the amount of weeks, days, hours and/or minutes of leave taken by the employee in real time. This is important because employees often file for leave in advance of a foreseeable leave event where the leave time claimed and what leave is actually taken may differ.

Additionally, though still a complex process, when integrated and holistic, employers are able to 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 in 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.

In contrast, if a state-based paid leave program does not allow an employer to administer a private plan, then it disrupts this single point of administration and the benefits of an integrated program solution and creates inefficiency and unnecessary complexity for the employer. The state-based agency's claims administration of paid leave is done in a vacuum, meaning the agency is determining only whether the employee meets the state-specific eligibility requirements, claim certification requirements and other related requirements in order to be paid a benefit that replaces their average wage at less than 100%. This is only one step in this much longer and complex process for employers that must holistically evaluate the employee's leave to determine eligibility and, in fact, breaks the informational chain in the employer's ability to coordinate and integrate benefits efficiently and seamlessly. Generally, although the leave process starts with the employee notifying the employer of the need for leave, the employer then is left in the dark until informed by the state agency as to whether the claim was even payable, if so, the exact amount paid and for what specific time periods, to ensure the employee is paid but not overpaid. In addition, the employer retains its multiple overlapping administrative and legal obligations.

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. In this regard, we would encourage DOL to further explore how ERISA-covered association sponsored multiple employer plans (MEPs), including disability plans, might serve to close the current coverage gap. This could be particularly valuable for employees of smaller employers and for both traditional and non-traditional workers, such as the gig workforce. Potential guidance along these lines could build on related efforts regarding retirement and health plans made by the DOL Employee Benefits Security Administration (EBSA) over the last several years.

7. Do employers who already offer paid leave programs continue to do so when state mandates or programs are instituted, or does the state mandate standardize the paid leave program offered by employers in the state, leading some employers to drop more generous programs?

As the number of state mandates and programs has increased, employers have had to design their leave programs to meet administrative and other requirements rather that meet the needs of their workforce. These administrative costs do not serve to benefit working families and, in fact, undermine efforts of nationwide employers to offer generous paid leave programs. State programs that do not allow employers to use more generous private plans or make the use of private plan options confusing or onerous also undermine these efforts and lead some employers to drop more generous programs.

The compliance burden is compounded by variations in state and local laws and the range of requirements, forcing employers to apply limited resources to navigating a minefield of administrative complexities rather than on program design and delivery to benefit employees and enhance employee engagement. Consider the following scenario: an employer in Washington, D.C. that already provides paid parental bonding leave must now pay into the Washington, D.C. program that offers among other benefits paid parental bonding leave. In this hypothetical, the employer-paid parental bonding leave is more generous at full pay for 12 weeks. Thus, employees would inevitably opt into their employer-provided benefits. Yet without flexibility, this employer must simultaneously pay its employees for paid parental bonding leave while also paying contributions to the District of Columbia for the very same benefits that its employees do not need or want. Employers in this situation may understandably be inclined to terminate their parental bonding policy rather than paying twice for the same benefits.

One-size-fits-all mandates without flexibility for employers may drive employers to reduce or eliminate benefits. Eliminating inconsistent and competing requirements could encourage more companies to voluntarily provide paid sick leave and/or paid family and medical leave benefits to employees without regard to whether or not required.

8. What are the features of an ideal paid leave program, from the perspective of a worker or employer? For example, should it be permissible to take leave intermittently? Should there be a time period within which intermittent leave must be taken?

What is essential for both employers and workers is that a paid leave program provide predictability and ease of administration and access. Nationwide employers need nationwide standards – they need to be able to design uniform paid leave policies that can apply across the country and that employees can easily understand and access. The features of an ideal paid leave – eligibility, qualifying absences, covered family

members, amount and duration of benefits – should not be subject to variance based on the state or locality in which the employer operates. To promote a common set of features well-understood by employers and to simplify program administration, the federal FMLA definitions and standards should also apply to any uniform federal paid leave standards.

It is also essential that, to minimize disruption in union workplaces, the terms of existing collective bargaining agreements are protected. Employers and unions must be able to negotiate over the terms and conditions of employment to apply over the course of a collective bargaining agreement with the security of knowing that the bargain will not be changed midcycle by federal, state or local legislative changes. Accordingly, federal, state or local paid leave legislative changes should not require any party to a collective bargaining agreement to reopen negotiations of the agreement or to apply until the existing agreement is reopened or renegotiated by the parties or expires.

17. What are the benefits and/or burdens of operating a business in a jurisdiction that has paid leave laws?

The most significant burden for an employer is not operating a business in *a* jurisdiction that has a paid leave law, it is operating a business in *multiple* jurisdictions with paid leave laws with varying rules and procedures.

Today's current paid family and medical leave patchwork consists of 10 laws and ordinances – eight states (California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island and Washington)[2], Washington D.C. and San Francisco. In addition to the statutory framework of laws, there often are multiple layers of complex regulations and often from more than one agency within each state. As the paid leave patchwork expands in the coming months and years, both at the state and local level, so too will the practical and legal hurdles that covered employers must review, digest and then comply with. These hurdles are especially prevalent for businesses with nationwide operations.

Employers must deal with the complicated web of state and local paid family and medical leave benefit mandates and understand how those benefits coordinate with paid leave and time off benefits offered by the company (i.e., paid parental leave, short term disability, paid time off, paid vacation, paid sick leave, etc.), coordination with unpaid leave laws and what steps are needed to properly run those benefits concurrently, where legally permissible. Other challenges for employers relate to

[2] The Massachusetts paid family and medical leave premium withholdings began on October 1, 2019. As of January 1, 2021, eligible workers can start receiving benefits for all qualifying events other than to care for a family member with a serious condition, the benefits for which do not begin until July 1, 2021. Connecticut premium withholdings begin January 1, 2021, and eligible employees can start receiving benefits as of January 1, 2022. In Oregon, premium withholdings begin January 1, 2022. Note that it is well in advance of premiums becoming payable that employers will have to decide whether to participate in a private plan, where allowed, and begin to prepare administratively.

employees' ability to defer use of state paid family and medical leave while receiving employer-provided paid leave benefits, or vice versa, thereby creating the potential for employees to take greater amounts of often job-protected leave during a single benefit year.

There is also the potential for multiple paid family and medical leave mandates to exist within a single state where the statewide law does not preempt localities from passing legislation in the same space. We have seen this in the related, yet distinct topic of mandatory paid sick and safe leave law. Where a state law lacks preemption provisions, such as with paid sick leave in California and Washington, it can lead to municipalities imposing differing, onerous obligations and a complex intrastate patchwork.

In the context of an increasingly mobile and remote workforce, complying with state paid leave mandates is increasingly challenging. This is particularly the case with respect to workers who spend substantial work hours in multiple locations.

Variations among state and local paid family and medical leave laws on many substantive topics, including employer coverage, employee eligibility, qualifying absences, intermittent leave and coordination of benefits make the administration and compliance burden overwhelming for nationwide employers. We address some of these points below.

Employer Coverage

Employer coverage standards under existing state and local paid family and medical leave laws are significantly broader than the federal FMLA's employer coverage criteria. The latter covers employers that employ no less than 50 employees for at least 20 workweeks in the current or preceding year. However, several existing PFL laws cover employers that have just one lone employee in the relevant jurisdiction. These locations include Rhode Island, Washington, Massachusetts, Connecticut and Oregon. Other existing PFL programs follow a comparable workforce size standard (i.e., one or more employees), but also impose other standards. For example, in New Jersey, employer coverage criteria also includes paying the employee a particular amount over a particular period of time, while in New York and California, coverage also includes employing the worker for a certain amount of time in a particular year. In contrast, the Washington, D.C. law will apply to an employer if the employer is covered by a separate insurance program operated by the jurisdiction.

For purposes of consistency and in light of the distinct concerns facing certain employers in terms of financial, operational and administrative burdens created by state and local PFL mandates, federal legislation should mirror or at least closely align with the employer coverage and other standards under the federal FMLA.

Employee Eligibility

Existing state and local PFL laws contain a variety of employee eligibility criteria. These criteria are inconsistent with each other and the federal FMLA. To be eligible for leave under the FMLA, the employee must (1) have worked for that employer for at least 12 months, (2) have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave and (3) work at a location where at least 50 employees are employed at the location or within 75 miles of the location. By comparison, employee eligibility standards include wage earnings over a certain timeframe under the California, Connecticut, Massachusetts, New Jersey, Oregon and Rhode Island laws. In New York and San Francisco, the length of employment is an employee eligibility criteria while hours and/or percentage of time worked is a criteria in Washington D.C. and Washington. Contributions to the paid family and medical leave program, submitting a claim or using a certain amount of paid time off are criteria in some jurisdictions. The challenge of applying some of the criteria is exacerbated by temporary remote workers due to COVID-19 and other public emergencies where benefits may be required to be provided or taken away depending on the jurisdiction in which an employee's work is localized or performed.

Inconsistent employee eligibility standards prevent employers with multistate and nationwide operations from developing a unified eligibility threshold for the multiple overlapping leaves available to employees (e.g., federal FMLA, state PFL, company-provided paid leave). Understanding when an employee is eligible for which set of paid leave benefits and then absorbing potentially greater absenteeism due to benefits beginning at different times for different employees are just some of the complications employers face due to PFL employee eligibility discrepancies.

Furthermore, the above state and local PFL law eligibility criteria cover many individuals, generally including new hires, seasonal employees and certain part-time employees, who are not currently eligible for FMLA leave. Employers with a sizeable number of part-time employees, those that rely on large numbers of seasonal workers during particular months, or those that undergo high employee turnover can face expansive administrative and financial challenges if employees currently ineligible for FMLA leave are entitled to PFL benefits, either currently under state and local PFL laws or as part of a future federal PFL legislation. These challenges and costs include greater absenteeism; complicated recordkeeping; needed policy updates and legal reviews; training of managers, human resources personnel and benefits teams; and integration with payroll and timekeeping systems.

Qualifying Absences and Covered Family Members

All 10 existing PFL laws provide benefits for bonding absences after birth, adoption or foster placement. All PFL laws other than San Francisco provide benefits to care for certain covered family members with a serious health condition. However, from there, qualifying absences under PFL laws begin to vary. For example, employees can receive

PFL benefits for their own serious health condition under the Connecticut, D.C., Massachusetts, Oregon and Washington laws, but not the other five PFL laws. While the California, New Jersey, New York and Rhode Island laws do not contain this as a qualifying absence, each of these states afford many employees access to a separate disability insurance program. "Safe time" absences, those absences relating to domestic violence, sexual assault and/or stalking, are considered qualifying events under the Connecticut, New Jersey and Oregon laws. State PFL laws also vary in terms of defining covered family members.

Employers with nationwide operations or operations in multiple PFL locations who seek to comply with all PFL laws at once would need to extend the company's own paid leave policy to cover all qualifying absences under all applicable PFL laws, in addition to meeting other divergent private plan exemption criteria. However, while this one-size-fits-all concept may sound attractive, it has downsides. For instance, if an employee uses company paid leave benefits for a reason that is covered under the company policy but not the state PFL law that applies to the employee and then has a covered PFL need under the applicable state law, the employee would still be able to receive job protected paid time off under the state law. In some cases, this could amount to an additional 10-12 weeks of paid leave, thereby resulting in greater absenteeism as the two buckets of time off would "stack" and inconsistent treatment of employees. As the number of states enacting paid leave laws grows, so too does the problem and complexity regarding coordination of benefits with existing employer-provided paid leave.

Intermittent Leave

Existing state and local PFL laws inconsistently handle intermittent PFL absences, particularly in terms of qualifying bonding leave. Connecticut and Massachusetts (neither of which is currently in effect) and the federal FMLA only permit intermittent bonding absences with employer and employee consent. That said, certain state PFL programs afford intermittent PFL benefits to employees who are absent for a qualifying reason. Some of these locations allow intermittent leave in increments as small as one day. Where a PFL law allows employees to start and stop work intermittently, specifically in the context of bonding with a new child, it can create significant operational challenges.

For nationwide employers, the burden of administering the patchwork of state and local paid leave mandates is significant. Employers need to have sufficient staffing to administer all the nuances of the varying paid leave requirements and may need to spend substantial resources for a more robust Human Resource Information System (HRIS) that may offer some assistance with the administration. With so much variation and complexity, complying with the myriad of state and local requirements has become an increasing difficult task.

To ease this burden and simplify the administration of paid leave benefits, there must be uniform federal standards for multistate plans. As stated above, employers that adopt and comply with federal paid leave standards would be deemed to be in compliance with all state or local requirements. Moreover, federal FMLA definitions and standards, which are already well understood by employers, should apply to the federal standard.

We recognize that not all workers have access to paid leave benefits. There are gaps to be filled to expand access to paid leave. However, filling these gaps does not mean adding to the already complex state and local paid leave patchwork. Only Congress can act to help fill these gaps while also providing the uniformity than multistate employers need to offer paid leave benefits to millions of workers nationwide.

* * * * *

Thank you for the opportunity to provide input on paid leave. We appreciate DOL's focus on this important issue for Council member companies and working families. We greatly appreciate your attention to these comments.

If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,

Ilyse Schuman
Senior Vice President, Health Policy