

PUBLICATION

Is a Federal Paid Leave Law on the Horizon? Maybe. . . Employers Should Stay Tuned

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On November 2, 2017, three Republican members¹ of the House of Representatives introduced the Workflex in the 21st Century Act (the "Workflex Bill" or "HR 4219"). The bill is intended to help employees have a better work-life balance. Congressman Mimi Walters explained that "[w]e're all leading increasingly busy lives at home and at work. Hard-working Americans deserve to have scheduling options that will help them find a better work-life balance."²

It is uncertain whether the bill will pass Congress and ultimately be signed into law. If it is, it will be the first-ever federal paid leave act. Nonetheless, the workflex program would not be mandatory. Instead, employers choose to opt-in to the paid leave program. Participating employers would be required to provide (1) a certain number of paid leave hours *and* (2) at least one of six voluntary flexible scheduling options. Participation would exempt the employer from complying with state and local paid leave laws.³ The bill would also amend the Employee Retirement Income Security Act (ERISA), which is essentially a federal benefits law, to create a qualified flexible work arrangement plan that must comply with the above two components: paid leave and flexible work arrangements for all employees.

The minimum amount of compensable leave days depends on the employee's tenure and the employer's size. The Society for Human Resource Management (SHRM), which assisted with drafting the bill, provided the following information:

Employer Size	Employees with FIVE or More Years of Service at beginning of plan period would receive:	Employees with less than five years of service at beginning of plan period would receive:
1,000 or more employees	20 days	16 days
250 to 999 employees	18 days	14 days
50 to 249 employees	15 days	13 days
Fewer than 50 employees	14 days	12 days

Both full and part-time⁴ employees would be eligible for the paid leave, which is accrued over the course of a plan year. To be eligible, the employee must have worked for the company at least one year and 1,000 hours in the past 12 months. Entitlement to the paid leave begins after the employee's first 90 days. Notably, the leave can run concurrently with Family and Medical Leave Act (FMLA) leave to avoid a "stacking issue," and employers have the option of allowing employees to carry over the leave or cash it out at the end of the plan

year. The employer also has the option of having employees accrue the leave throughout the plan year or offering all of the hours at the start of the plan year.

The employer must also offer at least one of the following flexible work arrangements to every eligible employee: compressed work schedule (working increased daily hours to qualify for a four-day work-week), biweekly work program (working 80 hours over the course of a two-week period), telecommuting, job sharing, flexible scheduling, and predictable scheduling. Employees are not required to adopt a flexible work schedule in order to receive paid time off. Consequently, all employees would receive paid leave even if they don't adopt a flexible work schedule. Importantly, there are no restrictions on the employee's use of the paid leave. The employee may use the leave as he or she sees fit.

The bill, in its current form, provides flexibility not only for the employee but also for the employer. SHRM president and CEO Hank Jackson said the bill "addresses employers' concerns over navigating a myriad of complex and confusing state and local paid leave mandates while answering employees' call for flexibility on the job." In contrast, Family Values @ Work co-president Ellen Bravo, whose group has helped pass sick time laws in seven states and 33 cities and counties, told *Law360* that the law "undermines the will of the people" by undercutting state and local laws.

This bill is in its very early stages, however, and employers should monitor the bill given its potential to create federal paid leave.

¹ The bill is sponsored by GOP Representatives Mimi Walters (Calif.) and co-sponsored by Elise Stefanik (NY) and Cath McMorris Rodgers (Wash.).

² See <https://walters.house.gov/media-center/press-releases/rep-mimi-walters-introduces-new-workplace-flexibility-legislation>.

³ It would not exempt the employer from complying with state and local laws that mandate unpaid leave or temporary disability insurance requirements.

⁴ Part-time workers would receive a reduced set of hours of paid leave based on the hours they work per week.