



AMERICAN BENEFITS COUNCIL

January 30, 2024

AMERICAN BENEFIT COUNCIL RESPONSE TO PAID LEAVE REQUEST FOR INFORMATION

Dear Members of the Bipartisan, Bicameral Congressional Working Group:

The American Benefits Council (“the Council”) is writing in response to your request to share suggestions for expanding access to paid parental, caregiving, and personal medical leave in a bipartisan, fiscally responsible and sustainable way. The Council applauds you for exploring solutions to expand access to paid leave for all Americans and for your strong interest in hearing diverse stakeholder input.

The Council is dedicated to strengthening employer-sponsored benefit plans. The Council represents more major employers – over 220 of the world’s largest corporations – than any other association that exclusively advocates on the full range of employee benefit issues. Members also include organizations supporting employers of all sizes. Collectively, Council members directly sponsor or serve benefit plans covering virtually all Americans participating in employer-sponsored programs.

The Council’s member companies recognize the importance of paid leave and provide generous paid leave benefits to their employees. Employer-provided paid leave is valuable to both business and employees. Federal, state and local governments and taxpayers also benefit from employer-sponsored paid leave plans.

However, multi-state companies face the significant challenge of navigating a maze of increasingly complex and inconsistent state paid leave mandates that undermines their ability to offer valuable paid leave benefits to their employees on a consistent basis nationwide. To reach the goal of expanding access to paid leave for all Americans, federal legislative solutions must support and leverage employer-provided paid leave benefits. To support and leverage employer-provided paid leave benefits, it is critical that federal legislation promote the harmonization of existing and potential forthcoming state paid leave programs so that multi-state employers can treat their employees equitably across the country.

The Council supports federal legislation expanding access to paid leave in keeping with the Council's [principles on paid leave](#) and proposes a voluntary federal private plan option for paid family and medical leave (PFML) benefits. Employers who opt to provide paid family and medical leave benefits to their employees nationwide that meet the minimum standards of the voluntary federal private plan option would be deemed in compliance with state requirements.

Nationwide harmonization is a bedrock principle of employer-provided benefits for multi-state employers. Congress has previously passed legislation to enable federal uniformity and make health and retirement benefits more easily administered when it passed ERISA. For 50 years, federal uniformity under ERISA has strongly contributed to the growth of these programs. As you consider the contours of potential federal paid leave proposals, future legislation should incentivize employers to provide innovative, generous paid leave plans via a similar approach that can be consistently and equitably applied to their employees regardless of where they live or work.

Toward this end, we commend the House bipartisan Paid Family Leave Working Group for putting forth a legislative framework about possible legislative options that includes the “Coordination and Harmonization of Paid Leave Benefits Across States” as a core pillar.

Indeed, the mission of expanding access to paid leave in a fiscally responsible and sustainable way cannot be accomplished without supporting employer-provided paid leave programs. Nationwide harmonization, in turn, is essential to sustaining valuable employer-provided paid leave benefits for millions of American employees. We are encouraged by the House Working Group's recognition of the need for and value of harmonization and the prominence given to this issue.

The core pillars for federal legislation to expand access to paid leave must be complementary and work in concert. Accordingly, any efforts to help more states set up new paid leave programs must not undermine employer-provided paid leave benefits by adding even more complexity, variation and nuance to an already complex patchwork of state paid leave laws. In fact, the need for meaningful nationwide harmonization of paid leave benefits for multi-state employers becomes even more critical if additional state paid leave programs are to be created.

As we explain in our responses below:

- The patchwork of state laws can stifle employer innovation and force employers to instead spend their time just trying to achieve compliance in each jurisdiction.
- If it becomes more difficult for employers to sponsor a private paid leave plan and more employees migrate to public programs, the cost and administrative burden of public plans will rise. The incentive to cease sponsoring the employer

plan will grow as more states pass new and different requirements, and by extension, the cost of federal or state government paid leave programs will also grow.

- The patchwork of state laws is transforming the traditional role of employers as the single point of contact for employee benefit programs and can negatively impact the employee experience.
- The divergence of substantive and procedural requirements for approval by each state undermines the goal of protecting and leveraging private-sector benefits.

We understand that states have a strong interest in ensuring access to paid leave for their residents. The ability of multi-state employers to have nationwide harmonization of paid leave for their employees, regardless of where they live or work, need not conflict with state interest. Our objective is not to negate state paid leave laws. Quite the contrary. Under our proposal, state PFML programs would continue to operate and play a core role in delivering paid leave benefits to employees who are not covered by an employer-provided plan that satisfies the standards of a voluntary, federal private plan. State paid leave programs would continue to offer benefits to employees via both public and private plan options. The only adjustment under our proposal is that employers who meet the standards of a voluntary, federal private plan – *i.e.*, an alternative or second private plan option that avoids the inconsistencies and burdens of existing state private plan standards – would be in compliance with the state law.

It is from the perspective of large employers that we offer responses below to your questions most relevant to the Council's member companies. However, in the wake of the COVID-19 pandemic and the growth of remote work, even small and mid-size employers are finding themselves to be "multi-state" employers, challenged by the patchwork of differing state paid leave laws, and in need of consistency. Our responses to your specific questions follow.

1. What should the federal role be, if any, in providing, promoting, and/or incentivizing paid leave? And how should this interact with the role of state government programs, and/or employer programs?

Council member companies understand the importance of helping employees care for a new child or tend to their own – or a family member's – serious health issue. Council member companies are at the forefront of comprehensive and innovative

programs to help their employees balance personal and work responsibilities, including generous paid leave benefits. We recognize that not all workers have access to paid leave benefits and gaps remain that need to be filled. However, filling these gaps does not mean adding more layers of differing standards and unique requirements to the already complex state and local paid leave patchwork.¹ The federal government plays an essential role in helping to fill the gaps in leave benefits nationwide and can do so while simultaneously supporting and utilizing employer paid leave plans.

A federal legislative solution to expand access to paid family and medical leave benefits cannot be realized without leveraging private-sector solutions. The Council strongly supports universal paid family and medical leave, as reflected in our [statement of principles on paid leave](#) and urges Congress to pass federal paid leave legislation that builds on private-sector solutions and allows employers to treat employees equitably regardless of where they live or work. Nationwide harmonization of paid leave benefits for multi-state employers is foundational to leveraging employer-provided paid leave benefits.

Congressional action is essential for the nationwide harmonization of paid leave benefits for multi-state employers and must be a key component of federal efforts to provide, promote and/or incentivize paid leave. For this reason, we commend the House Working Group for including the coordination and harmonization of paid leave benefits across states as one of the four core pillars in its recently published legislative framework. Such coordination and nationwide harmonization must be meaningful, long-term, and embedded in any federal legislative policies intended to help more states establish paid leave programs. Federal legislation that addresses the current patchwork of varied state PFML requirements, and in so doing supports employer-provided paid leave, is beneficial for employers, employees, federal and state governments and taxpayers. Here's how:

Employer-provided paid leave is valuable for business. Large employers are uniquely positioned to offer paid leave programs intended to meet the needs of their employees and their businesses in an efficient and cost-effective manner. Employer-based paid leave plans can be designed and delivered as a one-stop administration, coordination and tracking solution that is harmoniously integrated with existing

¹ While this request for information and our response pertains to paid parental, caregiving and personal medical leave, there are numerous other state and local paid leave requirements, such as paid sick and safe leave, earned paid leave (i.e., what is also referred to as paid "any reason" leave), public health emergency leave, COVID-leave, jury duty, voting leave, organ, bone marrow and blood donation leave, etc. that make the full picture of the "paid leave" patchwork even more complex.

employment benefits. Employers traditionally have the ability to be the single point of administration for their entire benefits package and thus are most attuned to the benefit program details that are best suited to their respective companies and their particular employees' needs. Our member companies understand that paid leave is also good business. The business case for employers offering paid leave benefits is compelling, including increased talent attraction and retention, improved employee productivity and morale, advancing diversity, equity and inclusion initiatives and the ability to manage the costs of the program through thoughtful policy design.²

Employer-provided paid leave is valuable for employees. Employees can obtain and manage their valued employer-provided leave seamlessly and promptly through regular, familiar channels (i.e., via the company human resources or benefits team, via the employer's existing third-party administrator or insurance carrier, etc.), rather than being required to apply for, and correspondingly waiting to receive, government benefits. Swift and easy access to paid family and medical leave is particularly significant for employees who are seeking such leave, and the related financial security, while facing some of life's most significant moments or challenges, such as bonding with a new child, caring for an ill or injured family member or the worker's own serious health needs.

Employer-provided paid leave is valuable to federal, state and local governments and taxpayers. Federal, state and local governments and taxpayers benefit from employer-sponsored plans that mitigate the cost and complexity of public programs. By looking to create federal legislative paid leave solutions that make it possible for employer-sponsored paid leave plans to function, Congress can support access to paid leave benefits without imposing direct costs on the federal, state or local governments or taxpayers. Minimizing such direct costs to governments and taxpayers is important in general and can be especially impactful in the event of a major unexpected disruption, such as what we experienced with the COVID-19 pandemic. By contrast, if it becomes more difficult for employers to sponsor a private paid leave plan and more employees migrate to public programs, the cost and administrative burden of public plans will rise.

In crafting federal paid leave legislation, it is important for Congress to be aware of the significant challenges facing multi-state and nationwide companies that support paid family and medical leave but are required to navigate a maze of increasingly

² See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9535467/> and <https://www.bcg.com/publications/2017/human-resources-people-organization-why-paid-family-leave-is-good-business>; <https://hbr.org/2017/02/the-most-desirable-employee-benefits>

complex and inconsistent state paid leave mandates. Council members typically have nationwide operations – often in all 50 states. Currently, 13 states, plus Washington, D.C., have enacted a patchwork of inconsistent mandatory PFML programs.³ And the patchwork is perpetually growing and evolving.

Since the start of 2022, four states have joined the PFML patchwork with their programs coming online in the near future. During this same timeframe, *every* other existing PFML program has been updated, whether through statutory amendments, revised regulations, additional administrative guidance or some combination of these three. Accordingly, it has become increasingly difficult for multi-state employers to consistently offer and administer paid leave to employees nationwide. Another wrinkle with PFML compliance that causes additional challenges for employers with multi-state and nationwide operations is the existence of related state laws involving paid family and medical leave, namely states with voluntary PFML programs and states that have added family leave as a class of insurance. The introduction of these related PFML programs, which predominantly has taken place over the last two years, brings the total state PFML program count to 22.⁴

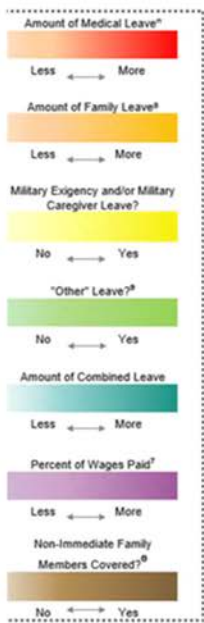
The existing patchwork of mandatory state PFML programs is so challenging because of how varied these laws are in terms of their substantive and procedural components. Mandatory state paid family and medical leave programs are comprised of more than 30 substantive, technical requirements, many of which have additional layers, such as definitions, formulas and administrative standards. When examined, it is clear that many of these measures are mismatched and misaligned. [A detailed infographic](#) prepared by the Council and the law firm Seyfarth Shaw LLP describes these state law differences.

³ In addition to the 14 mandatory PFML programs, five states also maintain standalone statutory temporary disability insurance (TDI) benefits. Four of these states, California, New Jersey, New York and Rhode Island maintain corresponding paid family leave programs. The fifth state, Hawaii, only offers a TDI program, not both TDI and paid family leave. While statutory TDI programs can be thought of as “paid medical leave,” the Council has not included Hawaii in the above headcount of existing PFML programs. More information on Hawaii TDI can be found at <https://labor.hawaii.gov/dcd/home/about-tdi/>.

⁴ This total does not include (a) Hawaii TDI (see above footnote), (b) the San Francisco Paid Parental Leave Ordinance (more information available at the following site – <https://www.sf.gov/information/paid-parental-leave-ordinance>), or (c) states that have disability as a class of insurance.



Weaving the Patchwork: How Mandatory Paid Family Leave Laws Stitch Together



Locations with Mandatory PFL Laws ⁶	Medical Leave (weeks) ⁶	Family Leave (weeks) ⁶	Military Exigency And/Or Military Caregiver Leave?	"Other" Leave? ⁹	Combined Leave (weeks)	Percent of Wages Paid ⁷	Non-Immediate Family Members Covered? ⁸
CA	52 ¹	8	Yes ⁵	None	52 ¹	60 - 70%	None
CO (eff. 1/1/2024)	12 or 16 ³	12	Yes ⁵	1 type	12 or 16 ³	90% then 50%	2 types
CT	12 or 14 ³	12	Yes	2 types	12 or 14 ³	95% then 60%	1 type
DC	12	12	No	1 type	12 or 14 ⁴	90% then 50%	None
DE (eff. 1/1/2026)	6 ²	6 or 12 ²	Yes ⁵	None	12	80%	None
ME (eff. 5/1/2026)	12	12	Yes	3 types	12	90% then 66%	1 type
MD (eff. 1/1/2026)	12	12	Yes	None	24	90% then 50%	None
MA	20	12	Yes	None	26	80% then 50%	None
MN (eff. 1/1/2026)	12	12	Yes	1 type	20	90% then 66% then 55%	3 types
NJ	26 ¹	12	No	2 types	38 ¹	85%	1 type
NY	26 ¹	12	Yes ⁵	1 type	26 ¹	67%	None
OR (eff. 9/3/2023)	12 or 14 ³	12	No	1 type	12 or 14 ³	100% then 50%	3 types
RI	30 ¹	6	No	None	30 ¹	4.62% ⁸	None
WA	12 or 14 ³	12	Yes ⁵	1 type	16 or 18 ³	90% then 50%	2 types

- ⁰ Effective date represents date benefits become available for all forms of leave
- ¹ Length of absence from statutory disability insurance (SDI) laws
- ² 6 weeks in 24-month period = employee or family member serious health condition; 12 weeks in 12-month period = bonding
- ³ Additional weeks possible if pregnancy complications
- ⁴ Additional weeks possible for prenatal care and bonding
- ⁵ Military Exigency Only
- ⁶ For this graphic, Immediate Family Members are: child, parent, in-laws, spouse, domestic partner, sibling, grandparent, grandchild
- Non-Immediate Family Members Include: equivalent of family relationship by close association, individual who lives in employee's home, expectation of care, etc.
- ⁷ Amount of pay to Employee will depend on certain factors, such as their average weekly wage ("AWW"), the statewide AWW and the maximum weekly pay established by each program
- ⁸ Unlike other PFL laws, which typically measure amount of pay based on the employee's AWW, RI measures based on the employee's highest earning quarter in the base period
- ⁹ "Other" Leave can include, but is not limited to, Bereavement Leave, Safe Time, Bone Marrow or Organ Donation, Prenatal Care, Public Health Emergencies, or COVID related absences.
- ¹⁰ For this graphic, Medical Leave refers to qualifying absences related to the employee's own serious health condition or disability depending on applicable law
- ¹¹ For this graphic, Family Leave refers to qualifying absences related to bonding or caring for a family member with a serious health condition

As described in the infographic, wide variation and nuance exists across four select key PFML substantive areas – (1) qualifying absences, (2) covered family members, (3) duration of leave benefits and (4) amount of pay. Some non-exclusive examples of these variations include:

- Each of the 14 PFML programs covers absences related to the employee's own serious health condition (or the employee's own disability in the context of SDI laws). However, the length of benefits for this "medical leave" ranges from 6 weeks in Delaware, to 12 weeks in several states, including Colorado and Oregon, to 20 weeks in Massachusetts, to 26 weeks in New York and New Jersey, to 52 weeks in California.
- Six of the existing 14 mandatory PFML programs include "safe time" (i.e., absences related to being a victim of domestic violence) as a qualifying absence.
- Among these six "safe time" PFML programs, the corresponding "safe time" duration of leave benefits is generally 12 weeks per year, except in Connecticut which limits the amount of available PFML that can be used for "safe time" to 12 days annually.

- Two existing PFML programs cover bereavement leave, another two programs cover absences related to public health emergencies or COVID-19, and another two programs cover absences related to prenatal care. Organ and/or bone marrow donation are covered absences under two PFML programs.
- While a majority of state mandatory PFML programs go beyond the FMLA's definition of "family member" and cover siblings, grandparents, grandchild, and domestic partners, five of the existing 14 mandatory PFML programs go a large step further and also cover individuals whose association with the employee is equivalent to a family relationship.
- The percentage of wage replacement for employees who utilize PFML under existing PFML laws spans from the 60-70% range in California, to 67% in New York, to 80% in Massachusetts, to 90% in Washington to 100% in Oregon. These percentages are only a part of the formulae that state PFML programs impose when determining employee wage replacement. Other unique factors include the employee's average weekly wage, the relevant statewide average weekly wage, and the maximum weekly pay established by the PFML program.
- In 2023, the maximum weekly wage replacement amounts across PFML programs ranged from \$840 in Connecticut during the first five months of the year (it increased to \$900 for the rest of the year) to \$1,620 in California.

However, and notably, these topics account for only a small portion of state PFML law substantive criteria. For example, differences with respect to standards on coordination of statutory PFML with employer policies on leave and time off, deviations in the private plan option approval standards, and inconsistency with the federal Family and Medical Leave Act (FMLA) create considerable challenges and complexities for employers and employees alike. Mandatory PFML laws are inconsistent with the federal FMLA on a number of topics, including having much lower thresholds for employee eligibility and employer coverage, broader reasons for use and covered family members, and greater length of benefits. These differences lead to "stacking" of benefits whereby the leaves under two laws do not run concurrently, thus leading to increased absenteeism and costs to the business, and a greater burden on co-workers and managers.

Another aspect of state PFML mandates that imposes administrative and practical hardship on employers involves intermittent leave. Existing state PFML laws lack a unified standard for handling intermittent absences, particularly when PFML benefits are used to bond with a new child. Unlike the FMLA, which only permits intermittent bonding absences with employer and employee consent, a majority of mandatory state PFML laws allow employees to receive benefits for qualifying bonding absences intermittently, often in increments as small as one day. Permitting employees to start and stop work on an intermittent basis, specifically in the context of bonding with a

new child, can create major disruptions in the workplace that put unnecessary strain on the employee's co-workers and managers, as well as the individuals responsible for administering the PFML absence.

As noted above, inconsistencies exist across PFML laws in terms of the formula states impose for determining how to calculate the wage replacement amount to which employees on approved PFML are entitled. For many employees, the statutory wage replacement benefits do not provide full wage replacement of their normal pay. Employers very often want to find ways to "top up" employee pay in these situations to help their employees financially and receive full pay. However, doing so is incredibly complicated and fraught with potential missteps and legal risk. This is because it requires employers to navigate:

- PFML law standards on which benefits (i.e., paid time off versus paid leave) legally can be run concurrently with PFML based on the PFML statute and other applicable leave laws (i.e., paid sick and safe leave laws),
- applicable federal, state and local wage and hour law,
- PFML law standards on calculating wage replacement, and
- potentially unique aspects of employee compensation within the company (i.e., employees who earn commissions, employees who work varying schedules, employees who are paid at multiple rates, employees who receive "extra" types of compensation like bonuses, shift differentials, premiums, etc.).

Piecing these components together requires careful analysis and coordination between employer legal, payroll, benefits and/or human resources departments. And, because of variations in PFML law wage replacement calculation standards, employers who endeavor to properly calculate the "top-up" must adjust their determinations based on each PFML program's unique formula.

The increasingly remote and mobile nature of the workforce in the wake of the COVID-19 pandemic makes this picture even more complex. With more employees working remotely, more employers – including small and mid-size companies – have become multi-state employers. Multi-state employee eligibility also adds to the complexity. There is confusion over how to coordinate between state PFML plans when an employee is employed in multiple states, such as a sales person working the tri-state area (Connecticut, New York and New Jersey) or Pacific Northwest (California, Oregon and Washington) where each state has a PFML program. Not every mandatory PFML jurisdiction has a standard on determining whether a remote, hybrid or mobile employee is eligible for PFML benefits. In addition, even where multiple laws do contain such standards, they often are unclear as to how PFML eligibility and coverage operates for employees who split time between the jurisdictions.

The burden of compliance and the range of different requirements mean that the resources designated for such programs are applied to navigating administrative complexities. This also results in employers being compelled to treat employees inconsistently based upon where they work or live. In the Council's 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." However, this is not just a matter of administrative cost and burden for employers.

The maze of applicable paid leave mandates and processes is also overwhelming and confusing for employees facing significant life events, who are not sure which laws apply to them and to which leaves they may be entitled. This patchwork is transforming the traditional role of employers as the single point of contact for employee benefit programs and can negatively affect the employee experience.

Moreover, employees are often frustrated and confused by the fact that co-workers who live or work in other locations have a different set of benefits based solely on their location, which may be more advantageous. This employee frustration has been exacerbated by the COVID-19 pandemic and remote and hybrid work arrangements that ballooned during the pandemic and in its wake because many employers' internal employee teams have members who are scattered across the country. These team members work together, perform the same role and have the same responsibilities, and because they communicate regularly they are aware of dissimilarities and divergences in their paid leave entitlements. While employers can point to state law differences as the culprit, this does not remedy the employee team's frustrations and confusion due to their inequitable treatment.

Our member companies report that the dual claim process when an employer coordinates with the state plan is a confusing process because of the different rules. The intake process varies between employer plan and the state. The employee must submit two sets of medical documentation – one to the employer plan and one set to the state plan. Providers may charge the employee for documentation, completing forms or copies of medical records. The state plans may have different restrictions on covered providers, which confuses employees and may result in claims being denied. The claim deadlines are different between the employer plan and the state plan, and the appeals process is also different with different appeal deadlines. All of this creates confusion, complexity and delay for employees when they are already dealing with the stress of a serious medical or family event.

In the Council's informal poll, 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 underscores 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.

States certainly have a valid interest in ensuring access to paid leave for their residents. In crafting federal legislation, some members of Congress may want states to be able to impose their own requirements for paid family and medical leave. But protecting the interests of employers and their employees on one hand, and states on the other, need not be in conflict. As noted above, our objective is not to negate state paid leave laws. States should continue to play an important role in ensuring access to paid leave for their residents while federal legislation also ensures that employers can offer valuable paid leave benefits to employees on an equitable basis nationwide.

We note that the challenge facing multi-state employers of varied requirements across different jurisdictions is similar to the problems some states have confronted when localities within those states pass their own leave laws. These states can appreciate the need to be able to treat all their residents consistently throughout the state. More than 15 states have passed their own laws preempting local ordinances to ensure statewide uniformity.⁵

The Council proposes that federal legislation include a “voluntary federal private plan option,” as detailed below, that would allow employers to offer uniform paid family and medical leave benefits to their employees nationwide, including in jurisdictions with existing and potential future PFML mandates, while preserving a role for state programs to apply to employees who are not covered by an employer-provided plan that satisfies the standards of a voluntary, federal private plan.

Under this approach, state programs and employer-provided paid leave benefits work in concert, not in conflict, to reach the goal of expanding access to paid leave for American workers.

⁵ Ala. Code § 25-7-41(c); Ark. Code Ann. § 11-4-222(a)(3); Fla. Stat. § 218.077(1)(d); Ga. Code Ann. § 34-4-3.1(b)(1)(2); Ind. Code § 22-2-16-3; Iowa Code § 331.304(12); Iowa Code § 364.3(12); Kan. Stat. Ann. § 12-16,130(a); Ky. Rev. Stat. Ann. § 65.016; La. Stat. Ann. § 23:642(b); Me. Rev. Stat. tit. 26, § 637; Mich. Comp. Laws § 123.1388; Miss. Code Ann. § 17-1-51; Mo. Rev. Stat. § 290.528(2); NC LEGIS 2023-134 (2023), 2023 North Carolina Laws S.L. 2023-134 (H.B. 259) (amending N.C. Gen. Stat. § 95-25.1); Ohio Rev. Code Ann. § 4113.85(B)(9); Okla. Stat. tit. 40, § 160; S.C. Code Ann. § 41-1-25 (A)(1); Tenn. Code Ann. § 7-51-1802 (b)(1)(A); Tex. Labor Code Ann. § 1.005; Wis. Stat. § 103.10(1m)(c).

2. What types of leave should a potential federal program cover, at what length, and why? How should different types of leave be prioritized? Should different types of leave be treated differently or does doing so create adverse effects?

What is essential for both employers and employees is that a paid leave program provide predictability, ease of administration and access. 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.

Nationwide and multi-state 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 federal paid leave program, including qualifying leave, covered family members, length and amount 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 that has withstood the test of time for more than 30 years and that is well-understood by employers and their employees, and to simplify program administration for internal employer departments, such as human resources, benefits, legal, people relations and payroll, as well as third-party administrators and insurance carriers, the federal FMLA definitions and standards should also apply to any uniform federal paid leave standards. Failure to do so will lead to greater “stacking” of legally required and employer-provided leaves, increased absenteeism, increased costs for many employers and increased confusion among employees, their managers and employer and third-party administrators.

As noted above, the infographic prepared by the Council and the law firm Seyfarth Shaw LLP depicts wide variation and nuance between state PFML laws regarding qualifying absences (and covered family members), duration of leave benefits and the amount of pay. For example, bonding and caring for a family member with a serious health condition are qualifying events under all mandatory state PFML laws. For an employee's own serious health condition, states that were early adopters of paid family leave laws maintain separate statutory disability laws (i.e., the TDI law referred to above) such as California, Rhode Island, New York and New Jersey.

The length of benefits provided under the state PFML laws varies between the states and often within the state based on the nature of the qualifying absence. There is also much variation in how states calculate the benefits under the programs and what the percentage of wage replacement is under each law.

The variations across these four substantive topics, let alone the many other variations across the more than two dozen additional substantive criteria contained

within state PFML programs, make it difficult, if not impossible, for a multi-state employer to design a paid family and medical leave program that meets the requirements of state PFML laws nationwide.

In 12 of the 14 jurisdictions with mandatory PFML laws, a private plan option is available for employers to offer their own employer-provided paid leave benefits to their employees instead of following the state public PFML program and having their employees access PFML through the available public channel. However, private plan approval standards are burdensome and varied. Notably, an employer generally must show that it meets or exceeds the jurisdiction's substantive PFML criteria to obtain approval. As noted in detail above, PFML substantive requirements are scattered and inconsistent across each of multiple dozen criteria, thereby making a single private plan design that works nationwide elusive and almost impossible. Furthermore, employers must satisfy mismatched, burdensome administrative standards in order to obtain PFML private plan approval and maintain the private plan on an ongoing basis.

To address this challenge and facilitate employer-provided paid family and medical leave benefits, federal legislation should promote the use of a quantitative "equivalency" standard regarding certain key metrics, such as the length of benefits and wage replacement. An equivalency standard along these lines would provide structural flexibility to paid family and medical leave program setups while maintaining the quality of paid leave provided to employees as each setup would be pre-determined to be sufficiently "equivalent." Such a standard would in turn facilitate multi-state employers offering a uniform paid family and medical leave program nationwide that will satisfy the quantitative elements of a voluntary federal private plan option and, by extension, state-based private plan requirements.

3. Please describe your recommended framework/s, focusing on what you believe could be a bipartisan and passable solution/s to expanding paid leave nationally?

The Council supports federal legislation to expand access to paid family and medical leave and paid sick leave consistent with our [principles on paid leave](#). Namely:

- 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.
- Employers must have the ability to treat employees equitably, regardless of their location. Similarly situated employees 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 Council had the honor and opportunity to share the perspective of large employers at a briefing for the House Working Group. As summarized in that group's ["A Year in Review" report](#), "for large employers, the question is not whether they can provide family leave, but rather how a federal solution can assist them in navigating the complexities of administering benefits across the intricate landscape of 22 existing state laws."

A Voluntary Federal Private Plan Option

In keeping with the Council's principles and as noted in the Year in Review report, a federal solution should enable large employers to deliver consistent benefits to their entire workforce, regardless of their state of residence or employment. The Council proposes federal legislation establishing a voluntary, national standard for paid family and medical leave benefits ("voluntary federal private plan option") that would deem employers who choose to meet this minimum standard in compliance with diverse state requirements. We stress that 12 of the 14 states with enacted PFML mandates recognize the importance of employer-provided paid leave by offering a private plan option. However, the divergence of substantive and procedural requirements for approval by each state undermines the goal of protecting and leveraging private-sector benefits. A voluntary federal private plan option would:

- Standardize PFML conditions such as, but not limited to: eligibility requirements, qualifying absences, definition of covered family members, coordination of benefits, treatment of remote and hybrid employees, intermittent leave, and confidentiality. To simplify the administration of paid family and medical leave benefits, the federal FMLA definitions and standards should apply where applicable.
- Standardize administrative requirements, such as application, reapproval, appeal, and complaint processes, reporting, recordkeeping and data collection.
- Standardize substantive requirements, such as the length of benefits and wage replacement, incorporating a quantitative equivalency standard that provides structural flexibility for program setups on the identified substantive standards.
- Be reasonable, affordable and administrable.
- Provide that employers who opt to offer the federal standard to employees nationwide would be deemed in compliance with existing and potential future state PFML requirements through the state's recognition of an alternative or

second private plan option (or in the case of Rhode Island and Washington, D.C., i.e., the two existing PFML jurisdictions without a current private plan offering, a first private plan option).

- Not negate state paid leave laws, and instead would work in conjunction with state paid leave laws to harmoniously deliver paid leave benefits to greater numbers of employees than ever before.

This approach would also reduce the administrative burden imposed on states regarding the private plan approval process as these processes and procedures would be consolidated at the federal level for any employer that opts into the voluntary federal private plan option. To minimize disruptions in union workplaces, federal 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.

Federal legislation could either specify the standard for the voluntary federal private plan option and/or create an advisory committee of states, the U.S. Department of Labor and the private sector to recommend or establish harmonized standards. Again, we commend the House Working Group for including the coordination and harmonization of paid leave benefits across states as a core pillar of its legislative framework. The creation of an “Interstate Paid Leave Action Network (I-PLAN)” to drive improvements in the coordination and harmonization of benefits across the growing number of states with their own paid leave programs could lay helpful and needed groundwork. To “do so in a way that works for states, employers, and employees,” the harmonization must be meaningful, reasonable, long-term, administrable and actionable.

The inclusion of coordination and harmonization across states as a core pillar of the House Working Group’s legislative framework and the creation of the I-PLAN is a positive step forward. However, we are concerned that another core pillar of the legislative framework – the “public-private partnership paid leave pilot” pillar that would help more states establish a paid leave program – could be step backward in the drive for harmonization. If more states will be encouraged to establish paid family and medical leave programs, then a reasonable voluntary national private plan option that does not impede states from establishing programs but automatically qualifies employer plans meeting the nationwide standards as being deemed to have satisfied those state laws would be vital. Otherwise, the paid leave patchwork will remain intact, with substantive and administrative inconsistencies continuing to frustrate multi-state employers and their employees.

The framework states the House Working Group will consider a variety of issues related to the pilot program, including potential standards or harmonization of rules for state programs. The Council appreciates the inclusion of this language in the legislative

framework's first core pillar, and looks forward to continuing to work with lawmakers on these and other legislative solutions that work for multi-state employers and employees who provide and utilize paid leave benefits.

Voters agree with an approach that supports employer-provided paid leave benefits and harmonization across the states. According to a statistically valid nationwide poll of 850 likely voters, conducted by ALG Research in 2021, working Americans prefer to have their paid leave benefits administered by their employer alone and support a more careful approach that emphasizes administrative simplicity and equity in the workplace.⁶ By a two-to-one margin (59% to 29%), a majority of voters would prefer to have their paid leave benefits administered by their employer alone, rather than a combination of their employer and their state government or the federal government. By a similar margin (53% to 23%), a majority of voters believes that "employees working the same job for the same company should receive the same amount of paid leave regardless of the state in which they work," as opposed to receiving "the amount of leave determined by their state government." Voters who already have employer-provided paid family and medical leave feel especially strongly about this, by a nearly three-to-one margin (68% to 23%). This data speaks to the need for harmonization, so multi-state employers are allowed to provide equitable and uniform benefits across their nationwide workforce.

4. Please describe alternative ways any proposed framework can be financed, including possible pay-fors. What financial mechanisms should be considered to expand paid leave?

Employer-provided paid leave is valuable for employees, employers, federal and state governments and taxpayers. Maintaining employer-sponsored programs is essential to avoid disruption for millions of employees and their families who value this coverage and for whom it is administratively efficient to receive these benefits through their employers.

By focusing on nationwide harmonization to enable employer paid leave programs to function better, Congress can expand access to paid leave by encouraging employers to provide these valuable benefits rather than having federal or state government pick the up tab. Conversely, as it becomes more challenging for employers to offer a paid leave plan that meets the needs of their employees and is consistent with company culture, expectations, and benchmarks, the cost and administrative burden of public

⁶ <https://www.americanbenefitscouncil.org/pub/30B714C6-1866-DAAC-99FB-E18AFA825CAE>

plans to cover employees will increase. By providing administrative simplicity and nationwide harmonization for multi-state employers, the voluntary federal private plan option discussed above will support and leverage employer-provided paid leave benefits nationwide. Without employer sponsorship the complexity of setting up and administering any new federal program, and its ongoing costs, will rise dramatically.

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 diluted⁷ to finance new governmental programs. Additional taxes or fees should not be imposed on employers to fund expansion of paid leave benefits by the government.

5. How can proposed paid leave frameworks avoid creating unintended distortions, such as marriage penalties, reductions of private-sector paid leave coverage, etc.?

Efforts to expand access to paid leave for workers not currently offered paid leave benefits must also protect and promote – rather than disrupt – existing employer-provided paid leave programs. Employees of companies that currently do not provide paid leave deserve to have financial security when personal and family needs require them to miss work. But this cannot be accomplished by disrupting programs serving millions of Americans who currently have employer-provided paid leave in order to achieve that worthy objective. Proposed paid leave frameworks can help avoid reductions of private-sector paid leave by addressing administrative complexity and operational challenges for employers.

If the existing patchwork of state PFML laws remain in place and new state laws are enacted, employers will find it increasingly difficult to continue to offer generous paid leave benefits to their employees nationwide. Absent a mechanism to provide nationwide uniformity, the complexity of administering this benefit will increase, rather than simplify sponsorship for multi-state employers providing generous benefits. For many employers the logical consequence will be to forgo sponsoring the plan and directing employees to a federal or state program. Naturally, the incentive to cease sponsoring the employer plan will grow as more states pass new and different

⁷ https://d3n8a8pro7vhmx.cloudfront.net/silverman/pages/115/attachments/original/1481037935/Economic_and_Policy_Impact_Statement_UPLAA.PDF?1481037935 (stating “Without adequate controls in place, officials may be tempted to divert money from their disability and family leave funds for other purposes, as happened in New Jersey and California” and providing examples of same).

requirements, and by extension, the cost of federal or state government paid leave programs will also grow.

Consistency with the FMLA is essential to avoid unintended distortions, namely reductions in private-sector employer-provided paid leave. As noted above, mandatory PFML laws are inconsistent with the federal FMLA on a number of key topics, including having much lower thresholds for employee eligibility and employer coverage, broader reasons for use and covered family members, and greater length of benefits. These differences lead to “stacking” of benefits whereby the leaves under the two laws do not run concurrently, thus leading to increased absenteeism and costs to the business.

“Stacking” of benefits becomes even more prevalent when incorporating employer-provided paid leave (i.e., paid parental leave, short-term disability, etc.) as those company-offered benefits may diverge from the FMLA and/or state PFML standards and further the benefit “stacking.” Thus, if a federal paid leave framework diverges from the FMLA’s established, time-tested standards and allows the existing state PFML patchwork to remain in place and potentially further proliferate to greater levels of variation than what multi-state employers are currently faced with today, many of those same employers will be forced to discontinue their company-provided paid leave benefits in the hope of removing at least one layer of their administrative tribulations.

It is important to note that when larger employers administer paid leave benefits, it is often in partnership with a third party vendor. Accordingly, it be beneficial for any legislation to provide sufficient time for employers and vendors to ramp up their systems and staffing to accommodate any such changes.

6. Should government support for paid leave be focused only on the most vulnerable individuals in our society, or on all Americans regardless of means or need?

One of the important benefits of employer-provided paid leave programs is that they generally provide the same level of benefits for employees across the wage scale. With harmonization of paid leave benefits, employers would be able to treat employees equitably nationwide. We recognize, however, that not all workers have access to employer-provide paid leave benefits. For workers without access to employer-provided paid leave programs, we see the merit of targeting government support to expanding access to paid leave for low-income workers.

7. What supports do small and mid-sized businesses need from the federal government to provide paid leave to workers?

As noted earlier, the increasingly remote nature of the workforce in the wake of the pandemic has resulted in more and more small and mid-sized businesses becoming multi-state employers. Our large employer members find the patchwork of state paid leave laws exceedingly complex, confusing and burdensome to administer. The challenge and burden to small and mid-sized employers is even more profound.⁸ Thus, small and mid-sized business in context of the remote and mobile workforce and fewer dedicated staff to navigate complexity of the current patchwork of state PFML mandates are in need of consistency and simplicity as well.

8. What does research say about the impact of providing paid leave on worker health, job satisfaction, economic mobility, child development, breastfeeding rates and related health outcomes, fertility rate, infant mortality, elderly health, public assistance levels, family income, and recruitment and retention efforts?

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 employer-provided paid leave. Such employer-provided paid leave programs, if effectively designed and administered, can foster greater productivity, serve as a valuable recruitment and retention tool, promote diversity, equity and inclusion efforts, and contribute to the success of the business.

An article by H. Kristl Davison from Appalachian State University summarized the benefits for employers and employees of paid leave.⁹ Employers can offer better leave as a way to help employees manage their work-life balance, leading to enhanced attraction and retention of employees (citing [Hurrell & Keiser, 2020](#); [Zaharee et al.](#),

⁸ See Colorado FAMLI Task Force Final Report, Jan. 8, 2020, *available at* <https://www.abetterbalance.org/wp-content/uploads/2022/03/Final-FAMLI-Task-Force-Recommendations-1-6-2019-1.pdf> (stating “The Task Force recognizes that small employers, new employers and those with a majority of low-wage workers face unique challenges in providing PFML. These challenges include paying premiums for a public or private program; reinstating an employee who needs to take PFML; or struggling to comply with any basic administrative requirements of a private or public plan.”); *see also* https://www.nber.org/system/files/working_papers/w28672/w28672.pdf (stating “a small share is very opposed [to the New York paid family leave policy], and this fraction grows over our study period, particularly among the smallest employers”).

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9535467/>

[2018](#)). As the article states, “to differentiate one’s company from other labor market competitors, paid leave may be particularly advantageous.”

The article points to a study by [Jones \(2017\)](#) finding that of the top five benefits most valued by job seekers, four of these involved flexibility and work-life balance. The article validates the appeal of paid leave to current employees as well. Permitting one’s employees flexibility to take care of growing families, medical dilemmas, and caregiving without having to make financial trade-offs assists with improving retention and productivity while improving labor force participation ([Romig & Bryant, 2021](#))

Pew Research Center conducted a study to better understand the experiences of U.S. adults in the workplace that similarly found the value of paid family and medical leave to employees.¹⁰ Almost 75% of workers surveyed responded that paid parental, family or medical leave was a top priority - 43% of workers surveyed responded that it is extremely important to them to have paid parental, family or medical leave and 31% said this is very important. The importance of paid family and medical leave to employees is borne out by anecdotal evidence from our member companies who cite numerous examples of paid leave benefits being a determining factor in attracting and retaining employees.

According to a report from the Congressional Research Service (CRS) on Paid Family and Medical Leave in the United States,¹¹ “Expected benefits of expanded access to PFML 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.” The CRS report also points out the potential costs of such paid leave, including the financing of payments made to employees 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 would 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 leave are significant and must be taken into account by policymakers. Yet, the costs to multi-state employers are unnecessarily magnified by the administrative burden and complexity 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 if Congress fails to act to enable voluntary, uniform federal standards nationwide.

¹⁰ <https://www.pewresearch.org/social-trends/2023/03/30/how-americans-view-their-jobs/>

¹¹ <https://sgp.fas.org/crs/misc/R44835.pdf>

9. What lessons should the federal government learn from successful or failed attempts at expanding paid leave in U.S. states or other countries?

States and localities certainly have a valid interest in ensuring access to paid leave for their residents. However, for nationwide and multi-state employers, the burden and complexity of administering and complying with multiple inconsistent, and oftentimes conflicting, state and local standards for paid leave is time-consuming and overwhelming.

The maze of applicable state and local paid leave mandates and processes is time-consuming, overwhelming and confusing for employees too. 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 essential for a highly desired simplified claim reporting experience for employees, including those filing for leave. Employers and/or their third-party administrators have over three decades of experience managing FMLA leave, along with other leaves and company-provided disability benefits. Having the employer or third-party administrator run the paid leave program also ensures the employees provide proper notice to the company of their absences and that employers inform employees of their FMLA rights when an absence could be for an FMLA qualifying event.

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 time off to deal with personal and family obligations.

Employees receiving benefits through the state program can experience a pay gap waiting for the state PFML claim payments to begin, particularly in states where claim payments take 6-8 weeks. This income disruption places a significant hardship on the many employees who live paycheck-to-paycheck and are dealing with an already stressful medical or family issue. Often times, as they wait for state benefits, they cannot pay for basic needs, like food, rent or transportation. We understand that a number of states have experienced significant fraud and note instances where the employee account was frozen because someone had used their state ID.

Our member companies hear reports from their employees about poor customer service from the state program. Employees cannot reach a person on the customer service line and may also experience challenges with getting services during an in-person visit at a local claim office (if the state provides one). Employees often expect their employer to step in to help with poor customer service and/or claim issues.

However, most existing paid family and medical leave public programs will only work directly with the employee so the employer cannot advocate on behalf of the worker.

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 paid in a timely fashion by the states.

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 than to meet the needs of their workforce. These administrative costs do not serve to benefit working families and, in fact, undermine the efforts of nationwide employers to offer generous paid leave programs. State programs that do not allow employers to use private plans or make the use of private plan options confusing or onerous also undermine these efforts.

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. On occasion, state agencies have failed to timely notify the employer of an employee's approved state paid leave or the agencies have been unwilling to share sufficient information to allow the company to determine if the employee is also eligible for unpaid FMLA leave, which creates a risk that the absence could be incorrectly designated as an unexcused. It is especially challenging when state-run programs lack enforceable requirements for the notice that employees must provide to their employers when using or planning intermittent absences.

Also deeply concerning is that some states have not set appropriate funding for their programs nor allow for flexibility for private plan solutions. The lesson learned from the growing patchwork of state and local paid leave laws is that clarity, consistency, harmonization, administrative ease and sustainability are critical components of a federal solution to expand access to paid leave.

10. What other information would you like us to consider as we attempt to chart a bipartisan path forward?

We strongly believe that the bipartisan path forward on federal paid leave legislation should lead to a voluntary federal private plan option that addresses the complexity, burden and inconsistency created by the growing patchwork of state paid leave laws. This framework outlines a common-sense approach for supporting and building on the generous leave programs already provided by the Council's national employer members.

We recognize that charting a bipartisan path forward will not be easy, but are encouraged by your commitment to working together to find solutions and strong interest in seeking stakeholder feedback. On this path, there are helpful steps that Congress could take to drive greater harmonization of requirements among the growing number of states with their own paid family and medical leave laws. For example:

- Facilitate communication and coordination among the states and with stakeholders to harmonize varied state administrative requirements, PFML conditions and substantive requirements.
- Along those lines, efforts can focus on identifying key inconsistent qualitative conditions, such as eligibility requirements, qualifying absences, definition of covered family members, coordination of benefits, treatment of remote and hybrid employees, intermittent leave, and confidentiality, and then recommending adjustments that promote harmonization and consistency.
- Study and adopt quantitative equivalency standards on certain key metrics, such as the length of benefits and wage replacement, to enable multi-state companies to design paid leave programs that meet the requirements of each state's private plan option.
- Adopt uniform recordkeeping, reporting and data collection requirements.

These steps could help lay critical groundwork for enabling employers to provide valuable paid leave benefits to their employees in a uniform, efficient and user-friendly manner nationwide. The creation of the I-PLAN outlined in the House Working Group's legislative framework is a positive step forward in acknowledging the need for harmonization of paid leave benefits across states and provides an opportunity to drive greater harmonization. We stress that it must be structured and implemented in a way that achieves meaningful harmonization of paid leave benefits that is long-term and administrable by multi-state employers for their employees.

The Council looks forward to collaborating with you and other stakeholders to work through solutions for expanding access to paid leave that address the needs of employees and employers alike. As reflected in the Year in Review Report describing the large employer perspective, “Regardless of the precise solution, simplifying and harmonizing laws on the books would not only benefit large employers, but also their employees.” The Council stands ready to assist you in any way possible. Please do not hesitate to reach out with any questions.

Sincerely,

A handwritten signature in black ink, reading "Ilyse Schuman". The signature is written in a cursive, flowing style. The first name "Ilyse" is written with a large, stylized 'I' and 'y'. The last name "Schuman" is written with a large, stylized 'S' and 'h'.

Ilyse Schuman
Senior Vice President, Health and Paid Leave Policy