

# PUBLICATION

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## Paid to Watch T-Ball? Proposed Amendments to Family Medical Leave Act Say Yes

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Recently proposed legislation would amend the FMLA to require employers to provide unpaid leave for parental involvement and family wellness. These new proposed amendments would require employers to grant up to 24 hours of unpaid FMLA per year for employees to attend extra-curricular activities involving their children or grandchildren and to attend to everyday medical issues, such as medical and dental appointments, as well as care for aging relatives.

The Family Medical Leave Act (FMLA) was enacted over twenty years ago to provide Americans with job security when faced with serious illness, child birth, adoption or the need to care for an immediate family member who has a serious medical condition. Specifically, the law requires employees with 50 or more employees to provide up to 12 weeks of **unpaid** leave to qualifying employees.

Twenty years later, some social interest groups and politicians contend the law does not go far enough in protecting American workers who are trying to balance the demands of work and family. Chief among them is President Obama who, in the most recent State of Union address, called for legislation that would require employers to provide paid parental and family leave. Democrats in Congress have heeded President Obama's call and have recently proposed two separate bills which would greatly expand employee rights to paid and unpaid family leave.

The first of the two bills is the Family and Medical Insurance Leave Act (FAMILY Act), which was introduced in the House of Representatives on December 13, 2013, by Representative Rosa DeLauro (D - Ct.). The FAMILY Act would create a government entitlement program that would provide employees who qualify for FMLA leave with 66 percent of their monthly income for 12 weeks. The program would cover all employees and employers regardless of size, part-time status or length of employment. The program would be funded by new taxes on employers and an additional payroll tax on employees. The Family Act creates a new division of the Social Security Administration called the "Office of Paid Family and Medical Leave" that would administer the program.

The second bill (H.R. 3999), which was proposed by Representative Carolyn Maloney (D - N.Y.) in the House of Representatives on February 5, 2014, seeks to amend the FMLA as follows:

1. lower the minimum employee count for FMLA-covered employers from 50 to 25; and
2. provide 24 hours of additional **unpaid** leave for "parental involvement and family wellness" for eligible employees to:
  1. participate in or attend school and community activities that are also attended by the employees' children or grandchildren such as scout meetings or athletic events;
  2. meet routine family medical care needs, including medical and dental appointments; and
  3. attend to the care needs of elderly individuals who are related to the employees including visits to nursing homes.

Under the proposed amendments, the qualifications for eligible employees remain unchanged. Thus, to be eligible for parental involvement and family wellness leave, employees must have been employed for a full year and worked 1,250 hours.

The parental and family wellness leave may not exceed four hours in any 30-day period or 24 hours total during a 12-month period. In addition, the proposed amendments would allow the employer to require or the employee to elect to substitute paid leave, if available, for unpaid leave. The employer would also be able require the employee to provide seven-days advance notice of the need for leave if foreseeable. Employees would be required to "make a reasonable effort" to schedule the leave so as not to disrupt business operations.

What's an employer to do? Don't scrap your current FMLA policy yet. These two pieces of legislation have far to go before they are enacted into law. At present, it does not appear either bill has any Republican supporters. But as more employee advocacy groups push for greater rights, it is not outside the realm of possibility that the proposed FMLA amendments could garner some bi-partisan support. In addition, if Republicans were to lose control of the House of Representatives in the next election, amendments to the FMLA would be close to a guarantee. Stay tuned to for updates to be sure that your company's policies and procedures comply with the latest legal developments.