

Paid Sick Leave Remaining in Focus, Congress Weighs Alternative Measures

Employers may be required to provide seven days of paid sick time per year under a bill introduced in Congress. The measure, titled the Pandemic Protection for Workers, Families, and Businesses Act (H.R. 4092/S. 2790), was introduced by Representative Rosa DeLauro (D-Conn.) in the House and Senator Christopher Dodd (D-Conn.) in the Senate on the heels of another, less expansive, emergency paid sick leave bill proposed earlier. If passed, the Pandemic Protection Act would be a temporary law that expires two years from enactment. Some believe Congress would make it permanent once it has gone into effect.

Under the proposal, employees would be entitled to paid sick time off due to a contagious illness or to care for a child with a contagious illness. It seeks to contain the spread of H1N1 and other influenza strains by ensuring sick employees can stay home from work without financial sacrifice from loss of work.

The Pandemic Protection Act would require most employers with 15 or more employees to provide full-time employees with seven days of paid sick time to be used for the following reasons:

- The employee or his or her child is experiencing symptoms of a contagious illness, such as the 2009 H1N1 virus or other influenza-like illness, including time off for medical and preventive care;
- A health authority or health care provider has determined that the employee's presence at work or the child's presence in the community would expose others to a contagious illness; or
- The employee's worksite or the child's school, child care or early childhood program has been closed due to a contagious influenza-like illness.

Part-time employees would be entitled to a pro-rata share of paid sick days. Employees must have worked for their employer for 30 days before they are covered under the bill.

Although employees would be allowed to determine when to use paid sick days, the bill gives the Secretary of Labor the opportunity to issue regulations that would permit employers to require employees who request paid sick leave to provide medical certifications.

The proposal makes clear that state and local paid sick leave laws providing a greater amount of paid leave remain in force. Employers would be bound by existing employment benefit programs and collective bargaining or other agreements with more paid sick time.

If the Act becomes law, employers' existing paid time off (PTO) policies may need to be modified. According to the bill, employers who already provide seven days of paid sick leave that "may be used for the same purposes and under the same conditions as the purposes and conditions [covered in the legislation] shall not be required to provide additional paid sick time...." It is unclear what effect the

legislation would have on PTO plans that allot a certain amount of time off without specifying the permitted purposes of use. The proposal also leaves unanswered the question whether an employee who has exhausted his or her PTO allotment would be entitled to paid leave for the reasons in the bill.

Employers would have to post notices of employees' rights and would be prohibited from interfering with the exercise of such rights under the bill, such as by counting the paid sick time under a no-fault attendance policy or other absence-control policy.

Congress Considering Alternative Paid Sick Leave Legislation

Earlier, amid concern over H1N1 and influenza-related illnesses, the Emergency Influenza Containment Act (EICA) was proposed in Congress. EICA provides up to five days of paid leave and would cover only employees "directed" or "advised" by their employer to leave work or not come in because of a contagious illness. Furthermore, it would allow an employer to cut short an employee's paid sick leave allotment by notifying the employee of its belief that he or she can return to work.

Another paid sick leave bill pending in Congress is the Healthy Families Act (H.R. 2460/S. 1152). It would require employers to provide up to seven paid sick days each year for an employee's own or a family member's physical or mental illness, injury, medical condition, or preventive care, as well as paid sick time for absences related to domestic violence, sexual assault, or stalking. Employees would be entitled to accrue one hour of paid sick time for every 30 hours worked, up to a total of 56 hours.

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Regardless of the outcome of these paid sick leave measures, employers should develop and implement contingency plans to address widespread absences due to pandemic illness in the workplace.