

Federal Paid Leave Proposals

Despite interest by members of both parties in Congress and the White House, consensus has yet to emerge on federal paid leave legislation. None of the proposals released in this Congress contain a federal preemption provision that would address the challenge to employers across the country who have to contend with a growing number of state and local paid leave requirements. The federal spending package enacted in December 2019 does extend through 2020, however, the federal tax credit for certain employers providing paid family and medical leave.

The leading Democratic bill in Congress is the Family and Medical Insurance Leave (FAMILY) Act ([HR 1185/S 463](#)), which would provide employees with up to 12 weeks of paid family and medical leave through a new program funded by employer and employee payroll contributions within the Social Security Administration. Although the FAMILY Act, which would not preempt state or local mandates, could pass the Democrat-controlled House, it would not be taken up by the Senate.

Republican proposals in the Senate focus more narrowly on parental leave funded by a drawdown of an employee's Social Security benefits, and then delay their checks past retirement age. Neither the New Parents Act ([S 920](#)) or similar legislation have garnered much support. The White House and Ivanka Trump are interested in paid parental leave legislation, but have not advocated for a specific proposal.

Recently introduced bipartisan legislation, the Advancing Support for Working Families Act ([S 2976](#)), would give new parents the option to bring forward their recently increased Child Tax Credit to receive a \$5,000 benefit, giving them flexibility to cover costs after having or adopting a child. Similarly, a new retirement plan reform — enacted as part of broader retirement legislation in the December 2019 spending package — gives employers the option to allow defined contribution plan participants to take penalty-free withdrawals of up to \$5,000 for expenses related to the birth or adoption of a child.

But the broader partisan stalemate on paid leave is set to continue in 2020 and fuel more state and local activity. Employer groups, meanwhile, continue to explore potential legislative and regulatory pathways that would address the resulting compliance challenges for multi-state employers. A Republican proposal — Workflex in the 21st Century Act — offered in the prior Congress would have established a voluntary, national standard under ERISA for paid leave and flexible work scheduling programs, but never got traction and hasn't been reintroduced.