THE NATIONAL LAW REVIEW

Happy 25th Birthday, FMLA! 25 Years Later – Where Are We Now?

Monday, February 12, 2018

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Labor and Employment Law Perspectives

Labor & Employment
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The Family and Medical Leave Act (FMLA) is celebrating its 25th anniversary this month. On February 5, 1993, President Bill Clinton signed the FMLA into law guaranteeing certain employees up to 12 unpaid weeks off of work a year to care for children or ill family members, or to recover from one's own serious health condition. During the time off, an employee's medical benefits would remain intact.

When initially passed, the statute's purpose was to address the rising number of American households with working parents who were concerned about losing their jobs when taking time off to care for a child or a sick family member. It was also meant to allow people who had serious health conditions to remain employed when taking time off work for temporary periods.

Since that time, the FMLA has become a source of contention for employers and employees alike. Employers often feel overburdened by the paperwork's technical requirements, the ever-increasing threat of litigation, and the costs of complying with the statute. Employees and workers' rights groups are concerned about the FMLA's lack of coverage for part-time and small-business workers and the narrow definition of family. Either way you slice it, the FMLA is due for a revamp, but are the Trump administration's budget proposal and tax cuts pushing the FMLA in the right direction?

FY2018 Budget Proposal

Although in its nascent form, President Donald Trump followed up on a campaign promise and included a proposal for paid parental leave in his FY2018 Budget Proposal. The Budget Proposal would give new mothers and fathers up to six weeks of paid parental leave. The funding for the proposal would come from the Unemployment Insurance system and be funded and run, at least in part, by the states. A reduction in improper payments, assistance finding new jobs, and the ability to keep reserves in the Unemployment Trust Fund accounts are listed as possible vehicles to fund the program.

As we previously reported, some state and local governments have already enacted their own Paid Family Leave measures. It is unclear at this point how the new proposal would affect these state and local laws. Although making coverage mandatory and taking the burden off of employers to pay for leave are attractive goals for many, there are practical concerns about how this proposal would be funded and which employees would be covered.

Tax Act

In December, a bill formally known as the Tax Cut and Jobs Act was signed into law. Beginning in 2018, employers who voluntarily provide paid family and medical leave are eligible to receive a tax credit of between 12.5 percent and 25 percent of the cost of each hour of paid leave based on the amount of compensation provided during the leave. The employer must provide at least two weeks of leave and compensate the worker for at least 50 percent of the worker's earnings to be eligible. The tax credit will only be applied toward paid leave for employees who make less than $72,000. The employer must also make the paid leave available to both full-time and part-time employees who are employed at the organization for at least a year to receive the credit.

The tax act also broadens the scope of paid leave to cover part-time employees and may incentivize employers to voluntarily provide paid leave, but the act ends in 2019 and may not provide enough credit for all employers to buy into the program.

As the policy landscape shifts at the federal and state level towards paid leave, employers should consider which approach is best for their current situation. If relying on the tax incentive for purely financial reasons, an employer should analyze the numbers to make sure that the tax incentive is worth offering the paid leave, taking into consideration that the tax incentive may extinguish at the end of 2019 unless extended by Congress. Employers would also be wise to review state and local laws to make sure that their policies align with local paid leave mandates. Employers could proceed ahead of any mandatory change and voluntarily implement paid leave based on intangibles such as recruitment, retention, and worker productivity or wait and see if the family and medical leave winds change direction yet again.