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Paid family and medical leave has been a topic of discussion and near the top of the wish list of employee advocates since the passage of the Family and Medical Leave Act (FMLA) in 1993. Paid leave has had the support of numerous Democratic presidential candidates and many Democratic members of Congress. It has consistently been part of the Democratic Party's platform in presidential elections. In recent years it has begun to garner support from Republican officeholders as well. As a Republican presidential primary candidate, Donald Trump called for a national paid family leave plan. Since early in the Trump administration Ivanka Trump has been a vocal advocate for paid family leave. In addition, a number of high-profile

Republican members of Congress have demonstrated support for paid family and

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taking their Social Security benefits in exchange for two months of paid benefits. The proposed bill made little progress in Congress. Much of the discussion focused on the impact on the continued viability of Social Security if funds were used to finance nonretirement needs. Some expressed concern that a paid leave program funded by Social Security benefits could lead to other uses of the funds.

There is little question that a paid leave program enabling new parents to balance the competing demands of work and family is an attractive benefit. In fact, a recent poll found that 54% of Americans think that the government should require employers to provide 12 weeks of paid family and medical leave. Only 29% of respondents disagreed. The obvious popular support and increasing political pressure from both sides of the aisle for some type of leave program makes federal action is more probable than not.

President Trump's most recent budget proposal, as part of its focus on support for working families, includes a provision calling for access to paid family leave for all new parents. It proposes at least six weeks of paid family leave to new mothers and fathers, including adoptive parents. It makes no mention of paid leave for their own or a family member's health issues. In response, the Democrats have put forward a proposal that addresses both issues and would give families 12 weeks paid leave. How such leave would be funded remains a thorny issue. In addition to concerns that use of Social Security benefits could erode the program, there is no consensus on whether it should be funded by employers or rather a combination of employee and employer contributions. Other open issues are what the percentage of pay replacement should be and for how many weeks. Despite these open questions, momentum is steadily building for some form of federal paid family and medical leave, even if the details remain unclear.

We are not likely to see any action until well after the 2020 election. However, the bipartisan support for a federal mandate on paid leave virtually assures that it will

become a reality no matter which party is in control after the election.

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to act. Most states today have a minimum wage substantially higher than \$7.25 per hour. The same type of state action has been true on the issue of paid family and medical leave as well. More than 24 states are currently working on their own paid family leave policies, and 7 have in fact enacted legislation, with the list of additional states growing rapidly.

On June 25, 2019, Connecticut became the 7<sup>th</sup> state to sign into law a paid family and medical leave benefit for both public and private employees. It is being cited as among the most generous in the country. Employees will be entitled to 12 weeks of paid leave as well as two additional weeks for “a serious health condition resulting in incapacitation that occurs during a pregnancy.” Employees taking such leave will be entitled to as much as 95% wage replacement. The amount of benefits will be tied to the states minimum wage, which is progressively increasing to \$15.00 up to June 1, 2023. The other states to have enacted paid leave laws are California, Massachusetts, New Jersey, New York, Rhode Island, and Washington state. Washington D.C. has similarly enacted a paid leave law.

The number of paid weeks of leave each state law allows varies, as do the dates when benefits may be taken. For example, the Washington D.C. law provides 2 to 8 weeks of paid leave which could be taken as of July 1, 2020. The California paid leave, already being utilized, grants up to six weeks of benefits. On July 1, 2020 the benefit period went to eight weeks. The Massachusetts plan, which will begin paying benefits in 2021, will provide 12 weeks of paid family leave or 20 weeks of medical leave per year. The plan in New Jersey, also already in effect, currently provides benefits for up to 6 weeks. On July 1, 2020, the benefit period increased to 12 weeks. The New York law currently provides 10 weeks of paid family and medical leave, which will be raised to 12 weeks in 2021. The Rhode Island plan is already providing 4 weeks of leave. The Washington plan, which began paying benefits on January 1,

2020, provides up to 12 weeks of paid leave with two additional weeks of paid leave

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state governments. It may only be a matter of time before we see such a proposal.

Maine's May 2019 passage of legislation that provides employees 40 hours of paid leave for any reason, not limited to family or medical reasons, represented another significant expansion to the paid leave concept. A virtually identical law was passed in June 2019 in Nevada. Moving forward, there seems to be no question that more states will move in the direction of mandatory paid family and medical leave, with a handful already moving beyond.

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Rick Alaniz, JD, of [Alaniz Associates](#), has been at the forefront of labor and employment law for over forty years. He began his legal career as a trial attorney with the U.S. Department of Labor, served on the President's Cost of Living Council during the Nixon Administration and also held prominent posts within the National Labor Relations Board, first in Washington D.C. and later in Minneapolis where he coordinated the NLRB's enforcement actions in the five-state Midwestern region.

A Partner in private practice since 1985, his experience has only deepened Rick's enthusiasm for labor and employment law and his drive for continued excellence in the field. He is Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization. Rick contributes dozens of articles per year on labor and employment law to trade journals and conducts numerous seminars each month to client companies and trade associations across the country.

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