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Richard D. Alaniz, JD • Sep. 07, 2021



On April 28, 2021, in his first Presidential address to Congress, President Biden announced his American Families Plan. President Biden intended it as a follow up to the American Rescue Plan, which provided relief to families and communities impacted by the Coronavirus pandemic. Among the elements in the plan is one calling for a paid family and medical leave program. The Families Plan version of the paid leave takes several of the elements of the Family Act, which was proposed by House Democrats in 2019 but failed to reach a floor vote.

The currently proposed Families Plan would provide paid leave on a basis similar to

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earners would receive a minimum of 80% of their average weekly wages. The leave could be used for the birth of a child, to treat an employee's own serious illness, to care for a sick family member, to handle the military deployment of a spouse or immediate family member, and to address issues related to sexual assault, stalking, or domestic violence.

The amount of paid leave available would gradually increase to twelve weeks by the 10th year of the program. Unlike the FMLA, which only applies to employers with 50 or more employees within a 75-mile radius, the provisions of the proposed plan would apply to employers with 15 or more employees.

Recently, more than eighty Democrats in the House, including several well-known progressives, sent a letter to the White House urging the Biden administration to include paid family and medical leave in the proposed infrastructure bill. They see it as another means of helping families recover from the effects of the Coronavirus pandemic.

While it was not included in the infrastructure bill recently passed by the Senate, as of this writing, preliminary reports are that paid family and medical leave will be prepared as part of the pending, 2022 Budget Reconciliation. However, the final version of the legislation has yet to be prepared. Given the numerous other social safety net items that are being discussed as possible inclusions, it is difficult to predict whether or not it will be included in the final legislation.

Some form of a national, paid family and medical leave program is supported by a majority of U.S. workers. One of the findings supporting the proposed 2019 Family Act was that such a program "has the support of more than eight in ten voters across demographic and party lines."

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yet to result in legislation to be voted on. For example, in 2018 Senator Marco Rubio of Florida proposed a bill that would permit parents to apply for at least two months of paid leave, funded by a delay in receipt of Social Security benefits. The proposal made little progress due to concern that utilizing Social Security benefits would erode the program and/or lead to the benefit's use for other non-retirement reasons.

At about the same time, Senators Joni Ernst of Iowa and Mike Lee of Utah joined in proposing a paid leave bill similar to Senator Rubio's. There was also a bipartisan paid leave proposal from Democratic Senator Kyrsten Sinema of Arizona and Republican Senator Bill Cassidy of Louisiana. Also, as noted earlier, House Democrats proposed the Family Act in 2018, provisions of which have been incorporated into the current Families Plan.

There is no question that paid family and medical leave remains a popular benefit that a majority of American workers support. In fact, several states, generally those with Democratic legislatures and governors, have already adopted some form of paid family leave. It remains to be seen whether at the federal level the priority that Democrats have placed on the issue will be sufficient to result in legislation that can become law in a sharply divided Congress.

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