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House Legislation Proposes Up to 12 Weeks of Annual Paid Leave for U.S. Workers

On March 25, 2009, Rep. Pete Stark (D-CA), chair of the Committee on House Ways and Means Subcommittee on Health, introduced the Family Leave Insurance Act of 2009 (HR 1723), a bill that would provide workers up to 12 weeks of paid family and medical leave benefits annually. Workers who need time off to care for a new child, recover from an illness, care for an ill family member (including a domestic partner or the child of a domestic partner), or deal with an exigency caused by the military deployment of a family member could receive benefits under the proposed legislation. The bill is co-sponsored by Representatives George Miller (D-CA), Lynn Woolsey (D-CA) and Carolyn Maloney (D-NY).

Bill Intended to Supplement the Family and Medical Leave Act

According to the Act's sponsors, the bill aims to supplement, rather than replace, the Family and Medical Leave Act of 1993 (FMLA). "While the [FMLA] is vitally important, it is incomplete because it only requires unpaid leave and only protects employees of companies with 50 or more workers," Stark said in a statement on his Web site. "Many workers are not protected by the FMLA or simply can't afford to take unpaid leave—especially in these tough economic times."

The Congressional findings in the bill reference statistics describing the economic need for paid family and medical leave. A 2000 survey by the Department of Labor found that 78% of employees who need FMLA leave do not take it because they can not afford to do so. Other statistics cited in the bill include a 2006 Bureau of Labor Statistics survey that found that 43% of private-sector employees do not have access to paid sick leave, and a 2008 Harvard Law study that showed that 49% of all respondents' foreclosures were caused, at least in part, by a medical crisis. According to the bill, California, which provides workers access to paid family medical leave benefits through a state program, had a lower rate of foreclosures caused by caring for a sick household member.

The State of California provides up to 6 weeks of paid leave and, according to Stark's Web site, the bill seeks to build on that experience. Washington and New Jersey also have implemented programs that supplement the FMLA's benefits to workers in their states.

Bill Intended to Have a Self-Financing Structure

The program is designed to be self-financing. To pay benefits, the bill creates a federal trust fund, similar to the federal unemployment insurance scheme, that is financed equally by employers and employees. The program requires employees to contribute 0.2% of their annual earnings with employers matching the employee payments; employers with fewer than 20 employees would pay a 0.1% premium. Monthly payments for the average worker would be less than \$7 a month, according to a statement by the bill sponsors.

Rep. Stark says the program has a tiered wage replacement structure that is designed to provide the greatest protections to lower income workers. At the lowest tier, a worker making \$20,000 a year would receive 100% of his or her daily earnings while on leave. At the highest tier, a worker making more than \$97,000 a year would receive 40% of the daily earnings of a worker with an annual income of \$97,000.

The bill allows employees to use other leave to supplement paid leave benefits, and health insurance would continue uninterrupted. All employees who contribute to the fund for at least six months and work

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at least part-time for their current employer during that time would be eligible to take paid leave under the proposed program. The Department of Labor would run the program, contracting administration to the states.

Bill Marks Another Bite at the Apple

This bill is not Rep. Stark's first attempt at passing such legislation. He proposed the Paid Family and Medical Leave Act of 2005 during the 109th Congress and proposed a modified version of the legislation during the 110th Congress. The prior bills never made it out of committee. It remains to be seen whether the new political landscape and current economic climate will provide the weight necessary to tip the scales in the bill's favor this time.

Since Rep. Stark last introduced the legislation, there has been a shift in the makeup of Congress, making it more favorable to this type of legislation. Additionally, the bill both supports the Obama Administration's "pro family" agenda, to expand paid leave to all workers, and aligns with the "pro employee" (e.g., employee free choice and misclassification challenges) position that the Administration has indicated it wants to advance. Moreover, the bill appears to be in line with public demands for economic reform. These political and economic conditions make this bill one to watch.

The bill has been referred to the House Committee on Education and Labor, the House Committee on Oversight and Government Reform, and the House Committee on Ways and Means. If enacted, the bill would take effect on January 1, 2011, and apply to periods of leave that commence on or after January 1, 2012.



If you have any questions regarding this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

George H. Bostick	202.383.0127	george.bostick@sutherland.com
Daniel M. Buchner	202.383.0869	daniel.buchner@sutherland.com
Thomas R. Bundy, III	202.383.0716	thomas.bundy@sutherland.com
Nathan D. Chapman	404.853.8079	nathan.chapman@sutherland.com
Nicholas T. Christakos	202.383.0184	nicholas.christakos@sutherland.com
Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
Lisa Combs Jern	404.853.8474	lisa.jern@sutherland.com
Allegra J. Lawrence-Hardy	404.853.8497	allegra.lawrence-hardy@sutherland.com
Jamala S. McFadden	404.853.8448	jamala.mcfadden@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Robert J. Neis	404.853.8270	robert.neis@sutherland.com
Harry S. Pangas	202.383.0805	harry.pangas@sutherland.com
Elena C. Parent	404.853.8180	elena.parent@sutherland.com
Abigail J. Politzer	404.853.8565	abigail.politzer@sutherland.com
S. Gail Reid	404.853.8167	gail.reid@sutherland.com
Vanessa A. Scott	202.383.0215	vanessa.scott@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
Robert B. Smith	404.853.8221	robert.smith@sutherland.com
Steuart H. Thomsen	202.383.0166	steuart.thomsen@sutherland.com
William J. Walderman	202.383.0243	william.walderman@sutherland.com
Carol A. Weiser	202.383.0728	carol.weiser@sutherland.com
Gail L. Westover	202.383.0353	gail.westover@sutherland.com