

Healthy Families Act (Mandatory Paid Leave)

Issue

Advancing legislation imposing a cumbersome and costly paid sick leave requirement on private employers remains a priority of organized labor and groups such as ACORN. However, even under the guise of legislation deceptively titled “Healthy Families,” supporters of mandatory paid sick leave have been largely unsuccessful in their aggressive campaigns in several states including West Virginia in recent years. In 2009, organized labor has focused its efforts in Congress, where the Healthy Families Act was introduced in the House and Senate in May of 2009. Advancing this legislation, whether at the state or federal level, during a time of serious economic stress and severe, continued job losses would undoubtedly result in further reduced wages and job opportunities. It is also largely unnecessary, given that a recent report by economists from the U.S. Bureau of Labor Statistics demonstrating that 83 percent of workers in private industry have access to illness leave.

Background

The Healthy Families Act, (H.R. 2460; S. 1152) (“the HFA”) requires that “covered employers” provide up to 56 hours of paid sick leave each year for their employees, both full-time and part-time. However, the HFA’s definition of “covered employers” includes not only employers with 15 or more workers during the current year but also any employer who had 15 or more workers during the previous year. Thus, the bill creates a tremendous burden on very small businesses, even after their workforces may be reduced below the 15-employee threshold, and makes no distinction between small and large businesses and their ability to deal with the business cycle.

The HFA also imposes tremendous administrative burdens and uncertainty on employers. For example, the HFA imposes an accrual scheme that is much different than most employer policies (not less than one hour of mandatory sick leave accrued for every 30 hours worked up to a maximum of 56 per year). In addition, under the HFA employers must permit paid sick leave to be used in increments as small as one hour. The legislation is inconsistent with the federal Family and Medical Leave Act (FMLA) in many respects and, for example, is unclear as to whether paid sick leave under the HFA counts as leave under the Family and Medical Leave Act (FMLA). It also features broad definitions entitling employees to paid sick leave for a seemingly limitless group of family and friends. Leave is available to care for children, parents and spouses as well as “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship,” although no standards for determining “the equivalent of a family relationship” are provided.

The HFA provides for the recovery of liquidated damages in an amount similar to those available for FMLA violations. However, the bill inexplicably eliminates the good faith defense of employers and the discretion of the court in awarding liquidated damages. Rather, the HFA applies liquidated damages as a matter of course without question or review.

The HFA recognizes that employers may have existing paid leave policies or paid time off banks and allows employers essentially to substitute their existing paid leave policy for the requirements of the bill. This is an

improvement over prior versions of the HFA. However, employers must provide the same amount of leave as provided under the HFA and allow for its use under exactly the same terms and conditions as outlined in the bill. When combined with the certification requirements and restrictions on those certifications provided by the HFA, which may include disregarding employer procedural requirements for requesting leave and employer call-in procedures (the bill is unclear on this point), along with the fact that the legislation seems to prohibit the use of “any absence control policy” in relation to the use of this leave, there is little regard to employers’ existing leave policies.

The Chamber’s Position

The West Virginia Chamber of Commerce opposes such a broad and sweeping mandatory paid sick leave law imposing further burdens on employers already facing considerable economic challenges. Employers large and small would be negatively affected by additional administrative costs, a new cause of action for discrimination and compliance requirements that are different than the federal Family Medical Leave Act. The vast majority of employers already provide paid leave in the event of illness, rendering the HFA or comparable legislation in West Virginia unnecessary and burdensome.