



## **The Healthy Families Act (HFA, S. 910/H.R. 1542)**

### **Background**

While the Family and Medical Leave Act (FMLA) of 1993 provides up to 12 work weeks of job protected leave for employees to bond with a new family member, to care for a seriously ill family member or to use for their own serious health condition, many workers are also eligible for paid-time-off benefits provided by their employer. Many employers offer generous voluntary paid leave programs to better assist employees in balancing work and personal needs. In fact, according to Department of Labor data, more than 75 percent of employers provide some form of paid leave, including paid sick leave. As part of an employee's total compensation package, voluntary paid leave programs work precisely because they are voluntary, thereby offering flexibility to both employees and employers.

### **Issue Summary**

Rather than supporting employer efforts to provide flexible, voluntary leave benefits for their workforce, Congress is considering legislation that would require employers with as few as 15 employees to provide seven days of paid sick leave to all full-time employees, and a pro-rated amount of leave to part-time employees. This "one-size-fits-all" approach may actually cause more harm than good. Employers, not the federal government, are best situated to know the benefit and compensation needs of their employees. Moreover, the National Coalition to Protect Family Leave is concerned with the practical implementation of the Healthy Families Act (HFA). Specific areas of concern include:

**Effect on Existing Leave Benefits:** The HFA would "lock-in" existing employer leave programs and would limit or eliminate an employer's flexibility in making even minor adjustments in leave provisions.

**Employer Mandate:** The HFA's one-size-fits-all approach would force employers to reduce wages or other benefits to pay for the leave mandate and associated compliance costs, thereby limiting employees' benefit and compensation options.

**Intermittent Leave:** The HFA allows employees to take leave by the hour or in the smallest increment of time available under the employer's payroll system, which for many employers is six minutes. Allowing employees to take the leave on an intermittent basis, without prior notice or documentation (e.g., doctor's note), invites unscheduled absences, tardiness and misuses of leave, all of which place greater burdens on employees and employers. Intermittent leave under the FMLA has resulted in numerous challenges for employers, including tracking the leave and managing absenteeism in the workplace. When employees take unscheduled, intermittent leave with little or no notice, organizations must cover the absent employee's workload by reallocating the work to other employees. A recent survey found that in 95 percent of unscheduled absences employers are forced to have co-workers do

the work or leave the work temporarily uncompleted.<sup>1</sup> As a result, the HFA raises concerns about employee morale as some employees would face last-minute schedule changes or unwanted overtime when their colleagues fail to show up without notice.

**Impact on Small Employers:** This legislation represents an unprecedented employment mandate on small employers, applying to organizations with as few as 15 employees. Payroll costs alone would average more than \$850 per full-time employee or \$70 billion annually<sup>2</sup>, and this does not include the significant costs the legislation imposes in recordkeeping and paperwork burdens. In the past, Congress has recognized the disproportionate impact that leave mandates have on small employers, providing an exemption to the FMLA for employers with fewer than 50 employees and other exemptions for small businesses within the Americans with Disabilities Act (ADA).

**Definitions:** The Fair Labor Standards Act recognizes a full-time employee as one who works 40 hours per week, yet the HFA defines full-time employees as those working 30 or more hours per week. In addition, part-time employees working 20 hours a week would be eligible for paid leave on a pro-rata basis. These definitions would be inconsistent with most employer leave programs and practices.

**Eligibility:** The HFA allows employees to take leave for “an absence for the purpose of caring for a child, a parent, a spouse, or *any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.*” This broad definition would allow a variety of individuals to take leave under the law, and could easily result in misuse of the leave. Under the HFA, leave could presumably be taken to care for a roommate in a group-house setting, a close neighbor, or even a fellow co-worker.

**Verification:** The HFA only permits employers to require third-party verification of the need for leave (e.g. a doctor’s note) when the leave exceeds three consecutive days. Even in those circumstances, the employer is limited in what it may request and the employee has over 30 days after the leave commences to provide the documentation. Given the well-documented problems with misuse of leave under the FMLA for an employee’s own condition, restrictions on third-party verification raise concerns. Under the FMLA, employers can require employees taking leave for their own or a family member’s serious health condition to obtain a doctor’s certification. Yet even obtaining a doctor’s certification has not been enough to combat abuse under the FMLA. In multiple surveys, a majority of HR professionals reported that they had to grant FMLA requests that were not legitimate.<sup>3</sup>

**Coordination:** It is unclear how leave under the HFA would be coordinated with other state and federal leave laws. Employers consistently report challenges in navigating the various conflicting requirements of overlapping state and federal leave and disability laws, including the FMLA, the ADA, and workers’ compensation laws. The HFA would only add to the already complex web of inconsistent but overlapping leave obligations under federal and state laws.

---

<sup>1</sup> *Health, Productivity and Absence Management Programs, 2006 Survey Report*, Marsh/Mercer Health and Benefits

<sup>2</sup> Calculated using average annual wage and salary data compiled by the Departments of Labor and Commerce for individuals working for employers with 20 or more employees

<sup>3</sup> Mary Elizabeth Burke, SHRM 2003 Family and Medical Leave Act Survey Report