

Balancing Act of 2009

Introduced by Rep. Lynne Woolsey on June 25, 2009 (with 35 co-sponsors including Reps. George Miller, Carolyn Maloney, Rosa DeLauro, and Fortney Stark – all with individual workplace flexibility bills), the “Balancing Act of 2009” is an omnibus workplace flexibility bill. It combines many of the bills WorldatWork has been watching recently including bills impacting paid sick leave and FMLA.

Title I: Paid Leave for New Parents and FMLA Enhancement Act of 2009

- Subtitle A Part 1: Family Medical Leave Insurance Program
 - Establishes an FMLA insurance fund in the states to provide a family and medical leave insurance benefit for a total of 12 workweeks of leave during any 12-month period for and qualifying, current FMLA reason. Also includes “qualifying exigency” but leaves the definition of that up to regulators
 - The benefit the employee is entitled to is scaled:
 - Less than \$20,000/year: 100% of their daily earnings
 - \$20,001-\$30,000/year: the greater of 75% of that employee’s daily earnings; or 100% of the daily earnings of an employee with an annual income of \$20,000
 - \$30,001-\$60,000/year: the greater of 55% of that employee’s daily earnings or 75% of the daily earnings of an employee with an annual income of \$30,000
 - \$60,001-\$97,000/year: the greater of 40% of that employee’s daily earnings or 55% of the daily earnings of an employee with an annual income of \$60,000
 - Greater than \$97,000/year: 40% of the daily earnings of an employee with an annual income of \$97,000.
 - Indexed to inflation
 - Cannot receive the benefits if on workers comp or on a voluntary paid leave plan provided by employer
 - Voluntary plans have to be approved by the Secretary of Labor and have to meet the following requirements:
 - Has to be at least as generous as the plan outlined in the bill;
 - Has to be made available to all employees of the applicant employed in the US;
 - A majority of the employees have consented to the plan;
 - Plan provides for insurance to be issued by an admitted disability insurer approved by the Secretary or equivalent insurance;
 - Plan provides for the inclusion of future employees;
 - Plan has to be in place for at least a year and applicant agrees to give at least 30 days notice and pay a fee to the Secretary of Labor when cancelling the plan.
 - Covered employers include employers covered by FMLA and any person who employs 2 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.
 - Small employers: any person engaged in commerce or in any industry or activity affecting commerce who employs not less than 2 and not more than 19 employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year
 - Penalties: employers held liable for damages equal to

- Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; OR
 - In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 8 weeks of wages or salary for the employee
- Subtitle A Part 2: Civil Service Family and Medical Leave Insurance Program
 - Establishes an FMLA program for civil service employees
 - Creates a trust fund in the Treasury and appropriates sufficient money to cover 100% of the necessary funds to cover family and medical leave premium the legislation imposes.
- Subtitle A Part 3: Family and Medical Leave Insurance Fund
 - Trust fund to pay for the FMLI portion of the bill through employer and employee contributions to the Treasury
 - Employee Contributions: 0.1% of salary on employees employed by participating small employer and 0.2% of salary on employees of all other employers
 - Employer Contributions: 0.1% for participating small employers and 0.2% of all other employers
 - 0.4% of the amount of the self employment income for such taxable year
- Subtitle B: Family and Medical Leave Enhancement Act
 - Expands FMLA covered employers to those with 25 or more employers
 - Allows an employee covered by FMLA to take up to 4 hours during any 30-day period, and up to 24 hours during any 12-month period, of parental involvement leave to participate in or attend activities that are sponsored by a school or community organization; and (2) relate to a program of the school or organization that is attended by the employee's child or grandchild.
 - Permits the use of such parental involvement leave to meet routine family medical care needs, including: (1) such employee's medical and dental appointments, or their spouse, child, or grandchild; and (2) the care needs of their related elderly individuals, including visits to nursing homes and group homes.
 - Allows an employee to elect, or an employer to require, substitution of any of the paid or family leave or paid medical or sick leave of the employee for any leave provided under this Act.
 - Applies the parental involvement and family wellness leave allowance to federal employees.
- Subtitle C: Domestic Violence Leave Act
 - Would permit a qualified employee to take FMLA leave to seek medical attention, legal assistance, or psychological counseling, or to attend support groups, as a result of domestic violence, sexual assault, or stalking directed at the employee or a family member.
 - Would permit leave to participate in safety planning or other activities necessitated by domestic violence, sexual assault, or stalking
 - Includes same sex spouses and domestic partners
 - Applies to Federal employees
- Subtitle D: Healthy Families Act

- Requires certain employers, who employ 15 or more employees for each working day during 20 or more workweeks a year, to permit each employee to earn at least one hour of paid sick time for every 30 hours worked.
- Declares that an employer shall not be required to permit an employee to earn more than 56 hours of paid sick time in a calendar year, unless the employer chooses to set a higher limit.
- Allows employees to use such time to: (1) meet their own medical needs; (2) care for the medical needs of certain family members; or (3) seek medical attention, assist a related person, take legal action, or engage in other specified activities relating to domestic violence, sexual assault, or stalking.
- Includes same sex spouses and domestic partners
- Applies to Federal employees

Title IV: Improving the Workplace for Families

- Subtitle A: Part Time and Temporary Workers Benefits
 - For pension plans:
 - Amends ERISA to treat employees who have customarily completed 500 or more hours of service per year but less than 1,000 hours of service per year, or is employed in a type of position in which employment customarily constitutes 500 or more hours of service per year but less than 1,000 hours of service per year as having completed 1,000 hours of service if they complete 500 hours.
 - The extent to which employment in any type of position customarily constitutes less than 1,000 hours of service per year shall be determined with respect to each pension plan in accordance with such regulations as the Secretary of Labor may prescribe.
 - For group health plans:
 - Amends ERISA to say that employers can only reduce their premium contributions for certain part-time workers and only by the amount outline below.
 - Covered employees: PT employees who work less than 30 hours/week OR who are “employed in a type of position in which employment customarily constitutes less than 30 hours of service per week” are the only employees for which employers can reduce their premium contributions
 - Premium contribution cannot be less than a ratable portion of the employer-provided premium which would be provided under such plan for such period of coverage with respect to an employee who completes 30 hours of service per week.
 - Amends the ERISA definition of “employee” to include anyone who has, pursuant to an agreement with the employer, worked for at least a year (6 months in the case of health benefits) at the rate of at least 500 hours of service per year and the services performed are of a type historically performed, in the field of the employer, by employees
- Subtitle B: United States Business Telework Act
 - Designates the Secretary of Labor to start a pilot program in no more than 5 states to raise awareness of telework among employers and to encourage them to offer telework options to employees
 - Secretary is encouraged to:

- Use educational materials and conduct awareness presentations about benefits and ease of telework;
 - Conduct outreach to businesses currently offering telework;
 - Acquire telework technologies for demonstration purposes;
 - Ensure that expectant and new mothers who are employed by businesses that participate in the pilot program are given the option to telework during the 1-year period after the date of birth
- Will report the results to Congress within 2 years with recommendations about expanding the program, with or without modifications

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