

The Journey to Federal Paid Leave – Are We There Yet?

Lynne Sousa – Voya Financial

Joshua Seidman – Seyfarth Shaw LLP

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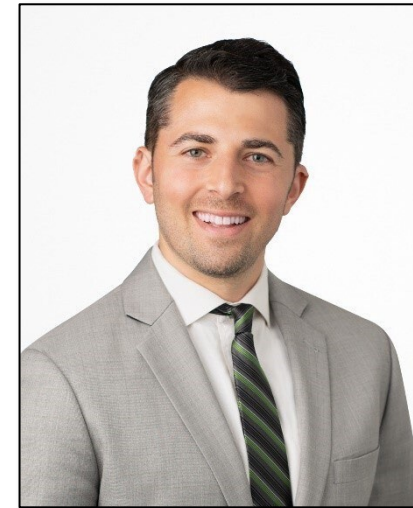


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Joining You Today



Lynne Sousa, Esq.
Senior Leave Management Counsel
Voya Financial



Joshua Seidman, Esq.
Partner – Labor & Employment
Co-Lead Leaves of Absence Management
and Accommodations Team
Seyfarth Shaw

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Program Overview

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02	Federal Leave and Accommodation Laws Today
03	Federal Paid Leave Prospects – Historical Review
04	Latest Activity on Federal Paid Leave
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Terminology and State PFML Patchwork



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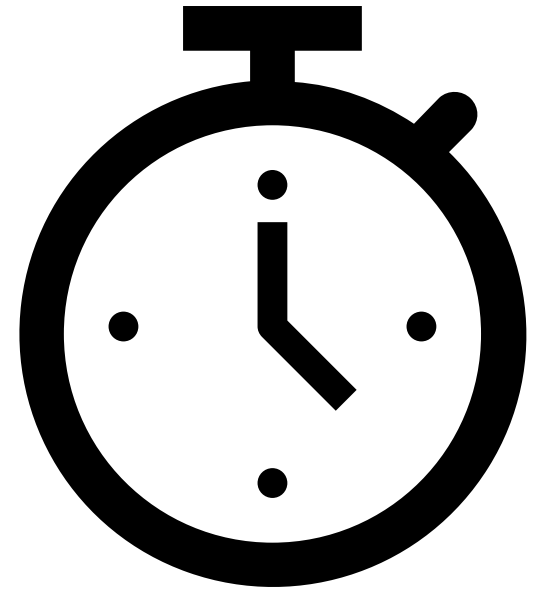
Polling Question 1:

How many different types of paid leave are there?

A. 3

B. 6

C. Too many to count in 30 seconds



Answer 1:

All the answers are correct depending on what characteristics you choose to define the categories.



Terminology

Company-Provided/Voluntary Leave (STD, LTD, PPL, etc.): Companies may choose to provide paid leave benefits to employees such as short-term disability or paid parental leave to attract or retain employees.

Statutory Unpaid Family and Medical Leave (FML): Provides up to a specified number of weeks of unpaid, job-protected leave for eligible employees who take leave for covered reasons.

Statutory Disability Insurance (SDI, TDI): Provides partial wage replacement to employees who are temporarily disabled and unable to work because of non-occupational illness or accident.

Terminology (continued)

Statutory Paid Family Leave (PFL): Provides up to certain number of weeks of paid leave for eligible employees who take leave for family care related covered reasons.

Statutory Paid Family and Medical Leave (PFML): Provides up to certain number of weeks of paid leave for eligible employees who take leave for covered reasons, including their own illness or to care for family member with a serious health condition.

Statutory Paid Sick Leave Law (PSL): Employees earn a certain amount of paid leave based on hours worked that can be used for various reasons. Employees receive their full pay (with potential nuances) for PSL and they are paid by their employer for the time.

Paid Family and Medical Leave

Existing Mandatory SDI Laws – 5 States:

CA (1946), HI (1969), NJ (1948), NY (1949) & RI (1942)

Existing Mandatory PFML Laws – 13 States + DC

Paid Family Leave - **CA, NJ, NY & RI**

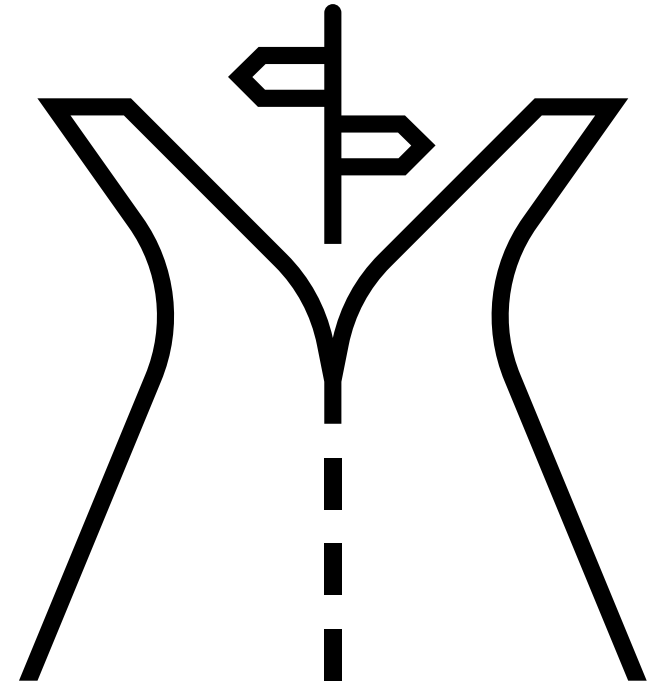
Paid Family and Medical Leave – **CO, CT, DC, DE** (benefits effective 1/1/2026), **MA, ME** (benefits effective 5/1/2026), **MD** (benefits effective 1/3/2028), **MN** (benefits effective 1/1/2026), **OR, & WA**



Paid Family and Medical Leave – More Options

Other states have taken a different route to help employers make paid family and medical benefits available to employees:

- NH and VT have instituted **Voluntary PFML** programs
- AL, AR, FL, KY, SC, TN, TX, VA have added **Family Leave Insurance** as a class of insurance



Federal Leave and Accommodation Laws Today

Family and Medical Leave Act (FMLA)

FMLA provides eligible employees of covered employers with 12 workweeks* of unpaid, job-protected leave in a 12-month period to be used for any of the following reason:

- Employee's own serious health condition
- To care for a spouse, child, or parent who has a serious health condition
- To bond with a newborn child, or for the placement of a child for adoption or foster care
- Qualifying exigency

Employees may also take up to 26 workweeks of leave to care for a covered servicemember.

The Americans with Disabilities Act (ADA)

Title I of the ADA prohibits employers with 15 or more employees from discriminating against qualified individuals with disabilities in all aspects of employment.

Employers are required to provide reasonable accommodations to qualified individuals with disabilities, unless doing so would cause undue hardship.

Leave may be a reasonable accommodation.



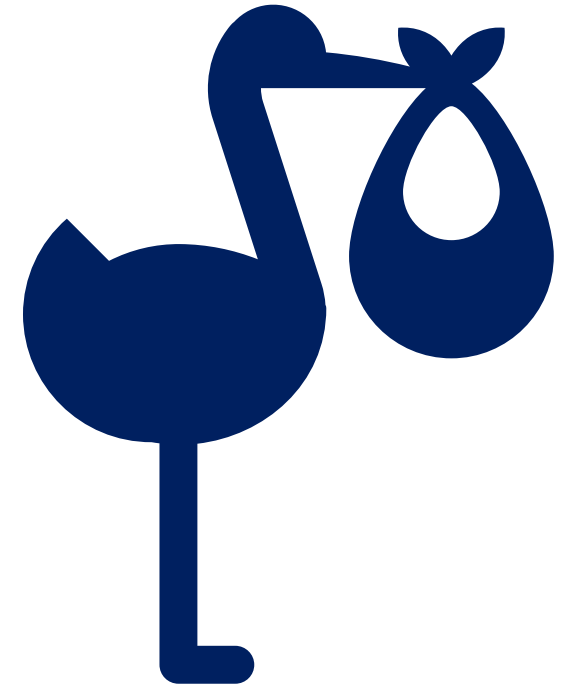
Pregnant Workers Fairness Act (PWFA)

The PWFA requires employers with 15 or more employees to provide a reasonable accommodation to an employee's known limitation related to:

- Pregnancy
- Childbirth, or
- Related medical conditions

Employers are not required to provide an accommodation if doing so would cause an undue hardship.

Reasonable accommodation includes leave.



Federal Paid Leave Prospects – Historical Review



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Build Back Better Act (BBBA) – H.R. 5376, 117th Congress

The House version of the bill included a federal paid family and medical leave program that would have provided up to four weeks of paid family and medical leave for all workers for the reasons covered by FMLA with the addition of bereavement.

The benefits would have been paid through either the public program administered by the Social Security Administration, existing state paid leave programs, or employer programs.

Funding would have come from general federal revenues:

- **Eligible employers would have received partial reimbursement for paid leave benefits that they provided to their workers instead of their workers accessing the federal benefits**
- **Existing state PFML programs that met the program requirements would have been reimbursed for their costs**

The BBBA was passed by the House in 2021 but failed to pass the Senate.



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Family and Medical Insurance Leave Act (FAMILY Act) – H.R. 3481/S. 1714, 118th Congress

The FAMILY Act bill would create a national paid family and medical leave program to provide partial wage replacement benefits for employees who need up to 12 weeks of leave for family or medical reasons.

- **Applies to all workers.**
- **Paid leave could be used for caring for a new child, caring for a seriously ill family member, caring for your own serious health condition, and handling needs related to a family member's military deployment.**
- **Partial wage replacement benefits would be paid through a national trust fund financed by payroll contributions from both employers and employees – approximately 0.2% of wages each in the current version of the bill.**

This legislation has been introduced every session since 2013, but it has never progressed.



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Freedom for Families Act – H.R. 74, 119th Congress

The Freedom for Families Act proposes to amend the Internal Revenue Code of 1986 to allow taxpayers to use distributions from health savings accounts (HSAs) during periods of family or medical leave.

Employees could use the funds to cover lost wages and expenses while on leave.

The bill does not guarantee access to leave or protect workers' jobs if they take leave.

Instead, the bill attempts to reduce the financial burden associated taking leave for family and medical reasons.

The bill was first introduced in 2019 and has been reintroduced in every session but has died in the House each time.

It was reintroduced on January 3, 2025.



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New Parents Act of 2023 – S. 35, 118th Congress

The New Parents Act of 2023 would allow parents to use a portion of their Social Security benefits for up to three months of paid parental leave after the birth or adoption of a child.

To receive the parental leave benefit, parents would have to choose to either increase their retirement age or temporarily receive a reduction in Social Security benefits upon retirement.

The bill is like the Freedom for Families Act in that it does not guarantee access to leave or protect the employee's job if they take leave, instead it provides funds to reduce the financial burden associated taking leave.

The bill was first introduced in 2019 and was reintroduced in 2021 and 2023.

It has died in the House each time.



Other Bills Supporting Parental Leave

The **Supporting Working Families Act** (S.2437, 116th Congress) would allow taxpayers the option to receive a refundable parental leave tax credit. The tax credit would later be repaid through increased taxes during a future recapture period.

The **Working Parents Flexibility Act of 2019** (H.R. 1859, 116th Congress) would create a tax-advantaged parental leave savings account.

The **Advancing Support for Working Families Act** (S. 2976, 116th Congress) would allow taxpayers to elect to advance up to \$5,000 of the child tax credit in the year of birth or adoption of an applicable qualifying child.

All these bills died at the end of the session.



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Polling Question 2:

What went wrong with the various proposals?

- A. The proposals were too costly
- B. The proposals did not provide actual leave
- C. The proposals did not account for the existing patchwork of PFML laws
- D. All the above



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Answer 2:

D. All the above

But there must be a way to implement a federal paid family and medical leave benefit while addressing the issues that have stood in the way up until now ...



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Latest Activity on Federal Paid Leave



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Why Is It So Hard to Agree on A National Policy?

- The **cost** of developing and maintaining a national program of any kind is high
- **Changing views of paid leave:**
 - DI grew from a manufacturing-intensive economy
 - Shift from “I can’t work” to “how can I work?”
- The debate over **whether to mandate coverage** or provide incentives to employers
- Widely varying views on **where to start** and how quickly to move



Why Is It So Hard to Agree on A National Policy? (continued)

- **Wide variations in state and local paid leave requirements have created employer concerns and backlash:**
 - **Surveys continue to find that employers understand the value of paid leave benefits, but don't want a "one-size-fits-all" mandatory requirement**
 - **Employer concerns about expansive eligibility and "leave reasons"**
 - **Concerns about moving away from a "serious health condition" standard**
 - **Concerns about the increasing patchwork of state requirements**
 - **Concerns about ability to maintain business functions during leaves (especially smaller employers)**



Importance of National Standards on Paid Family Leave

- The current **patchwork** of state standards is considered **untenable** by employers
- PFML is **not** like other types of coverage where employer purchases but relationship is mainly between insurer and employee. **In PFML context, employer is more involved:**
 - Employer is significantly impacted when an employee takes leave
 - Employer works with administrator or insurer to manage the leave (e.g., job-protection, intermittent leave, etc.) and understand timing and potential needs of the returning worker
 - Certain employers rely on private carriers and administrators to guide their employees through the leave process and coordinate future needs
 - Employers must comply with all leave laws and regulations
 - Employers must coordinate legal standards with leaves offered directly from the company to its employees (e.g., parental leave; short-term disability, etc.)



Importance of National Standards on Paid Family Leave (continued)

- **Starting with the FMLA leads to several considerations, among them:**
 - **(a) most states with PFL or PFML have expanded well beyond FMLA**
 - **Eligibility**
 - **Covered reasons – Leave reasons such as SAFE leave, bereavement leave, and organ donation, are becoming more common**
 - **Covered family members - Definition of family member expanding to include domestic partners, grandparents, grandchildren, in-laws, and other relatives (in some states it includes those that have a close affiliation/significant personal bond)**
 - **(b) some aspects of FMLA do not reflect modern workforce e.g., small employer (under 50 exemption, employee must live within 75 miles of employer)**



Congressional Bipartisan PFL Working Groups

– Recap

- **Overall:** Formally announced in late-2022, a group of 6 bipartisan Representatives began meetings in February 2023 with various stakeholders interested in a federal PFL solution.
- **Notable Legislators:** House group is led by Representatives Stephanie Bice (R-OK) and Chrissy Houlahan (D-PA); Senate group is led by Senators Bill Cassidy (R-LA) and Kristin Gillibrand (D-NY).
- **Timeline:**
 - **2023:** Met with various stakeholders, including employee advocacy groups, insurance carriers, small employer organizations, large employers and related advocacy groups, and members of existing state PFML programs.
 - **Jan. 2024:** House Working Group releases Legislative Framework
 - **Dec. 2024:** Introduction of Interstate Paid Leave Action Network (I-PLAN) Act Discussion Draft
 - **April 30, 2025:** I-PLAN Act (HR 3090) and “More Paid Leave for More Americans Act” (HR 3089) formally introduced



Federal Paid Leave Updates – I-PLAN Act

- **I-PLAN (HR 3090):** Creates an “Interstate Paid Leave Action Network (I-PLAN)” that would drive PFML improvements in coordination and harmonization across states.
- **National intermediary would oversee I-PLAN requirements, which are to create a single:**
 - **Policy standard**—i.e., definitions for common terms like base period, family member, etc.
 - **Administrative standard**—i.e., processes like record keeping, notice requirements, and the development of an equivalency standard to compare an employer-provided paid leave plan to a state program; and
 - **Data standardization** – Process for claims from eligible individuals with work history across multiple I-PLAN member states, ensuring they receive benefits from a single state program based on their combined work history



Federal Paid Leave Updates – I-PLAN Act (continued)

- **I-PLAN (HR 3090) – Additional Details**
 - **Voluntary**
 - **Would need significant incentives to states to standardize/mitigate the patchwork → two types of annual grants – Conforming Grants and Implementation Grants**
 - **Tax credits/incentives (could include Fisher tax credit, caregiver tax credits, subsidies, etc.)**
 - **House and Bicameral Working Groups are coordinating efforts.**



Federal Paid Leave Updates – Public / Private Partnership

- **“More Paid Leave for More Americans Act” (HR 3089):** Establishes a **competitive grant pilot program** to be run by the U.S. DOL for 3 years that creates a modest incentive for **states to establish their own PFML programs** that use a public-private partnership model.
- **Eligibility Criteria:** State must enact a paid leave program that:
 - **Exists in the form of a partnership between the state and a private partner (i.e., TPA, insurance carrier)**
 - **Reasons for Use – Covers at least FMLA category of Birth/Adoption**
 - **Length of Leave – Must provide at least 6 weeks of paid leave**
 - **Benefit Payments – At least (a) Max benefit amount is 150% of state AWW, and (b) either (i) 67% wage replacement rate for individuals earning at or below \$31,200, or (ii) 50% wage replacement for individuals earning more than \$62,400, up to the maximum benefit amount.**



Federal Paid Leave Updates – Public / Private Partnership (continued)

- **Grant: Min Amt: \$1.5M; Max Amt: \$7M;**
 - **The current draft includes 9 different pay-fors that total \$500.5 million.**
 - **The PFL PPP Act has a total cost of \$265M; I-PLAN Act has a total cost of \$235M.**
- **What About I-PLAN???**
 - ***State MUST participate in I-PLAN to receive grant under HR 3089.***
 - **BUT practical challenges AND concerns exist**



Federal Paid Leave Updates – 45S Tax Credit

- **Overview: 45S Tax Credit**
 - **Started in 2017 (Sen. Deb Fischer (R-Nebraska))**
 - **Internal Revenue Code Section 45S provides a tax credit for ERs who provide PFML to their EEs.**
 - **Eligible employers may claim the credit, which is equal to a percentage of wages they pay to qualifying employees while on family and medical leave.**
 - **Low usage: Only 12,700 businesses claimed the credit in 2021, the most recent year with complete statistics available, filing \$207 million in claims.**
- **Reconciliation Bill:** Although many differences existed between House-and Senate-passed versions, the paid leave provisions remained intact – i.e., a permanent/modified version of the 45S tax credit
 - **Key Change: Allow companies to claim the credit for insurance premiums, giving them the option to buy short-term disability insurance to cover wages rather than paying workers directly during their absences**
 - **Additional Goal: Insurance provisions would raise awareness**



Are We There Yet?

45S

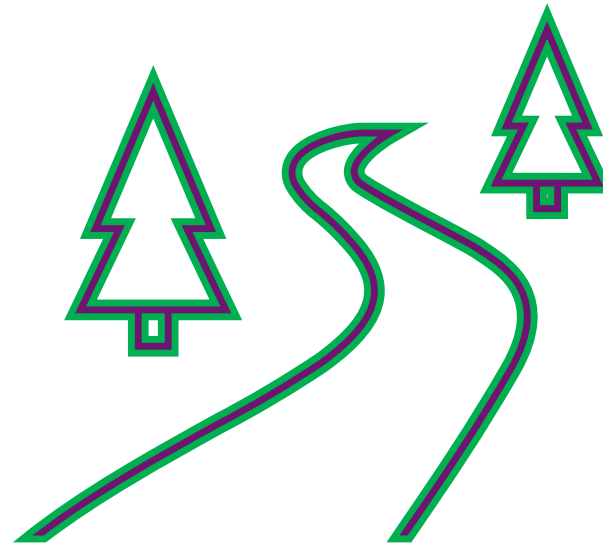
BBBA

**More Paid Leave for
More Americans Act**

FAMILY Act

I-PLAN Act

NCOIL Model



Final Thoughts



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Seyfarth Paid Leave Resources

If you're struggling with or have questions about the country's Paid Leave "Patchwork" here are some ways Seyfarth can help:

(A) PFML & PSL Surveys: Seyfarth maintains *comprehensive PFML & PSL surveys* breaking down the specific requirements of *each* existing state and local PFML and PSL law.

For more information contact: paidleave@seyfarth.com

(B) Paid Leave Mailing List: Seyfarth regularly publishes Legal Updates and Blog Posts on PFML/PSL and other paid leave law developments.

You can sign up here:

<https://communication.seyfarth.com/9/7/landing-pages/subscription.asp>



Seyfarth Paid Leave Resources (continued)

(C) Webinar Series – Guidance on PSL & PFL: Seyfarth hosts two separate webinar series—one on PFML and another on PSL.

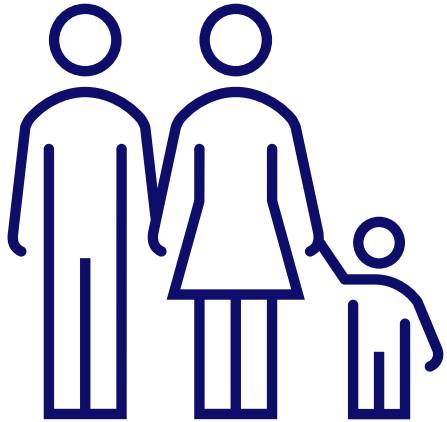
(D) “Take It or Leave It” Podcast: In late 2021, Seyfarth launched a podcast focused exclusively on workplace leaves, absence management, and accommodations. More than +40 episodes streaming on Spotify, SoundCloud, and Apple Podcasts, and available on Seyfarth’s website.

More info at:

<https://www.seyfarth.com/trends/take-it-or-leave-it-podcast.html>



Questions??



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thank you

For more information please contact:

Joshua Seidman

Email: jseidman@seyfarth.com

Lynne Sousa

Email: lynne.sousa@voya.com



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