



## Rewards Policy Insider 2021-18



### In this Issue:

1. [Key House Committee Approves Universal Paid Leave Bill](#)
2. [COBRA Premium Subsidy Coming to an End](#)
3. [Biden Administration Announces Requirements for Employers to Mandate COVID Vaccines](#)

---

## Key House Committee Approves Universal Paid Leave Bill

The House Ways and Means Committee has approved the Build Back Better Act ("BBBA"), a legislative package

that would establish a Federal paid family and medical leave program that would affect almost all U.S. workers and their employers. A full House vote on the BBBA is expected in the near future.

## Overview

The foundation of the BBBA's universal paid family and medical leave proposal is a new government program that would provide these benefits directly to individuals who need to take time off from work to care for themselves or their families.

The new federal program would provide for paid family and medical leave for up to 12 weeks during a 12-month benefit period. The paid family and medical leave would be available in increments of as few as four "caregiving hours" in a week.

A "caregiving hour" would be defined as an hour in which an individual is engaged in "qualified caregiving," which generally would incorporate the basic reasons for unpaid leave under the Family and Medical Leave Act (FMLA) – i.e., to address a serious personal or family health issue; to care for a newborn, newly adopted child, or new foster child; or for circumstances arising from a loved one's military deployment or serious injury. But the Federal paid family and medical leave benefit would be available to care for a wider range of family members than those prescribed under FMLA.

Additionally, the new benefit would provide up to three full paid workdays of bereavement leave at the death of a spouse, parent, or child.

Benefits would be based on the individual's weekly earnings, with replacement rates ranging from 85% for the lowest wage band to 5% for the highest (i.e. between \$100,000 and \$250,000 per year).

To avoid "double-dipping," qualified caregiving would not include any time for which an individual is receiving paid time off, sick pay, or other compensation from an employer. However, employers could supplement the Federal benefit so long as total payments to the individual would not exceed her regular rate of pay for the week.

Finally, the Federal paid family and medical leave benefit would be available to all workers, including full- and part-time, without regard to tenure, job classification, or employer size. It also would be available to independent contractors and other self-employed individuals.

States that already have paid family and medical leave programs would be able to continue to operate them and receive reimbursements from the Federal government. However, these "legacy States" would have to make sure their programs provide at least as good a benefit as the Federal program and meet certain other requirements to qualify for these reimbursements.

## Options for Employers

Employers that would prefer to provide the Federal paid family and medical leave benefit directly to their employees could do so and recover up to 90% of the cost (for up to 12 weeks of paid leave) in the form of a Federal grant. As discussed below, an employer's program would have to satisfy a number of specific requirements in order for the employer to qualify for the grant.

These employer programs would have to be in writing and be at least as generous as the Federal program benefit. In general, these programs could not impose any fees or costs for coverage, and would have to, among other things:

- Provide at least 12 weeks of benefits for all of the same qualifying reasons as the Federal program benefit, without any preexisting condition restrictions;
- Provide equal or higher wage replacement than the Federal program at all wage levels;
- Provide for “intermittent leave” (although the bill does not provide additional details on what that means);
- Pay benefits at least monthly, or more frequently; and
- Give participants the right to appeal adverse benefit determinations first internally, and then to the Treasury Department.

Additionally, employers offering their own programs would have to guarantee certain FMLA-type job protections to employees upon returning from paid leave. Also, like the FMLA, employers would have to allow employees taking paid family and medical leave to continue their group health plan benefits while on leave.

Anyone covered by an employer’s program that meets all of these requirements would not be eligible to participate in the Federal program.

## Next Steps

The BBBA is the \$3.5 trillion reconciliation bill that Congressional Democrats are trying to advance under special rules to avoid a Republican filibuster in the Senate. First it has to get out of the House, where controversial provisions to allow the Secretary of Health and Human Services to negotiate prescription drug prices has potentially put the entire bill in jeopardy.

Assuming the House passes the BBBA, it must then get through the evenly divided Senate. Two Democrats – Senators Joe Manchin (WV) and Kyrsten Sinema (AZ) – have indicated they would prefer a smaller bill, and other Senators have issues with the prescription drug price negotiation provisions. In order to get all 50 Democrats on board, the Senate may end up crafting a very different bill than the one the House initially passes. If so, the House would then have to approve the Senate bill before it could go to the President.

Whatever changes happen during this process, universal paid family and medical leave appears to be a top priority, and it likely will be a part of the final package. Whether the final version is as ambitious as the one passed by the Ways and Means Committee remains to be seen.

Updates will be provided in future editions of Rewards Policy Insider.

---

## COBRA Premium Subsidy Coming to an End

The 100% COBRA premium subsidy that was enacted as part of the American Rescue Plan (ARP) Act is set to end

for COBRA coverage periods that start after September 30, 2021. What does that mean for COBRA coverage periods that start on or before September 30, but end in October?

COBRA beneficiaries generally pay premiums in monthly installments. However, some group health plans allow premiums to be paid in other intervals, such as biweekly to correspond with the employer's payroll periods. In this case, a biweekly period that begins on September 26, 2021 would not end until October 9, 2021. In that case, is the premium subsidy still available for COBRA coverage from October 1 – October 9?

IRS Notice 2021-31 confirms that the COBRA premium subsidy will continue to apply, in this case, through the end of the last period of coverage that started on or before September 30, 2021. In other words, the COBRA premium subsidy will apply in this scenario through October 9.

---

## **Biden Administration Announces Requirements for Employers to Mandate COVID Vaccines**

Citing the need to increase the number of Americans vaccinated against COVID-19, President Biden on September 9 announced a six-point plan to increase the vaccination rate and otherwise limit the spread of the virus. The plan includes a new requirement for employers with at least 100 employees to mandate vaccines or weekly testing for those who are not vaccinated. Federal contractors and certain health care providers and facilities also must mandate vaccines and will not be allowed to offer a weekly testing alternative.

### **New Employer Mandate**

According to the President, the Department of Labor's Occupational Safety and Health Administration (OSHA) will issue a temporary emergency order requiring all private sector employers with 100 or more employees to mandate that employees either be vaccinated or tested weekly for COVID-19. The application of this order to remote workers is unclear. Additionally, the Department of Labor will require employers with 100 or more employees to give employees paid time off to get vaccinated.

For workers at hospitals, home health care providers, and other medical facilities that treat Medicare or Medicaid patients, the President is using his executive authority to require vaccinations. This is an expansion of the requirement that President Biden announced last month for employees of

nursing homes that care for Medicare or Medicaid patients. It does not include a testing option. Failure to comply will result in a loss of Federal funding.

Details of the broad private sector mandate are not yet available, but they should be available soon. Nonetheless, several States and certain employer groups have already indicated they plan to file legal challenges to the vaccine mandate.

Regardless of the ultimate fate of the new mandate, a number of employers are moving forward with employee vaccine mandates. A trend that started mostly in the health care sector has spread to other industries, in part due to guidance issued earlier this year by the Equal Employment Opportunity Commission (EEOC) and the Food and Drug Administration's (FDA) recent decision to give full approval to the Pfizer vaccine.

A full summary and analysis of the relevant rules will be published in an upcoming edition of Rewards Policy Insider.

## Executive Orders for Federal Employees and Federal Contractors

Pursuant to the President's plan, he also issued two executive orders on September 9. One requires all Federal executive branch agencies to implement COVID-19 vaccination mandates for employees. The second imposes a similar requirement on Federal contractors.

These executive orders do not provide for any weekly testing alternatives, although they do contemplate exceptions otherwise required by Federal law. Thus, exceptions required by the Americans with Disabilities Act and Title VII of the Civil Rights Act will continue to apply.

[Get in touch](#)

[Subscribe/Unsubscribe](#)

*This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.*

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the "Deloitte organization") serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 330,000 people make an impact that matters at [www.deloitte.com](http://www.deloitte.com).

None of DTTL, its member firms, related entities, employees or agents shall be responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2021 Deloitte Consulting LLP

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.