

FMLA Expansion Sees State Progress Despite Federal Barriers

By **Heather Boshak and Johanna Zelman** (July 7, 2025)

The recent legislative efforts to address family and medical leave, at both the federal and state levels, reflect the sustained and growing demand from U.S. workers who continue to struggle with attaining a work-life balance.

With millennials now raising families and the oldest members of Gen Z, who value a work-life balance more than any other generation, now firmly within the workforce, the need for employers to better support working families is at an all-time high.

In fact, the U.S. is the only member of the Organisation for Economic Co-operation and Development without national paid parental or family leave. And employers, including the federal government, often fall short in accommodating working parents.

To highlight this, Rep. Brittany Pettersen, D-Colo., recently brought her four-week-old infant to the floor of the U.S. House of Representatives because there was no mechanism for representatives to vote remotely, even after childbirth.

Public support for expanding family and medical leave continues to grow, but the question remains: Will this occur in the near future?

There are federal proposals to do so, but significant hurdles — including funding, employer mandates and political gridlock — persist. Meanwhile, states have stepped in, creating a labyrinth of leave laws and compliance headaches for multistate employers.

In this article, we will explore the current landscape of family leave policies and how legislative efforts continue to evolve.

At the Federal Level: The Family and Medical Leave Act

The Family and Medical Leave Act, enacted in 1993, allows eligible employees to take up to 12 weeks of unpaid, job-protected leave per year for specific family and medical reasons.

The FMLA covers the birth or adoption of a child, as well as a serious health condition affecting the employee or their child, spouse or parent.

However, it has its limits, the most prominent being that employees of smaller employers do not benefit from it — it only applies to employers that have 50 or more employees within a 75-mile radius of the work site.

Additionally, in order to take leave, an employee must have worked at least 1,250 hours in the preceding 12 months. Further, if a married couple works for the same employer, they share a total of 12 weeks of leave.



Heather Boshak



Johanna Zelman

Save for an amendment pursuant to the Families First Coronavirus Response Act, which was **passed** in March 2020, and the extended military family protections discussed below, the FMLA has largely remained unchanged.

Critics maintain that the FMLA does not go far enough, and that is outdated and insufficient for the needs of modern working families. Multiple attempts by Congress to expand the law have been unsuccessful.

Previous Attempts to Expand the FMLA

The attempts to expand FMLA coverage have focused on four main areas: (1) paid leave, (2) employer coverage, (3) eligibility requirements and (4) military families.

Paid leave proposals are generally the most contentious — and the most unsuccessful.

The Family and Medical Insurance Leave Act, which was first introduced in 2013 and has since been reintroduced multiple times, would have created a national 12-week partial wage replacement insurance program that would be funded by a payroll tax, mirroring programs like those in New Jersey and California. It failed each time it was introduced, primarily due to its cost and concerns of federal overreach.

Similar bills, such as the **American Families Plan** of 2021, which had an estimated cost of \$225 billion over 10 years,[1] and the House-passed **Build Back Better Act** of 2021, also failed to gain support.

Other amendment efforts have included proposals to lower the 50-employee threshold, potentially expanding access to several million more workers, but they have been hotly contested by small business lobbyists and have failed to gain bipartisan traction.

Bills that sought to lower the 1,250-hour eligibility threshold, and to expand the definition of a family, met a similar fate.

In contrast, expanding the FMLA to enhance military family leave, which it did not initially include, has been successful.

The 2008 and 2009 National Defense Authorization Acts amended the FMLA to grant 26 weeks of unpaid leave to care for injured service members, and to include qualifying exigencies for families of active-duty service members.

Additional proposals to further expand benefits for military families are pending, including for mental health and extended family caregivers.

Current Proposals

Amending the FMLA continues to gain purchase, and there are three notable bills currently pending in Congress.

More Paid Leave for More Americans Act

On April 30, the More Paid Leave for More Americans Act was **introduced** by Reps. Stephanie Bice, R-Okla., and Chrissy Houlahan, D-Pa.

The act would create a three-year U.S. Department of Labor pilot grant program for states to implement a minimum of six weeks of partial wage replacement for new parents. It would also form an interstate paid leave action network for coordination among states and benefit access.

Making it Likely for Families of the Military to Live With Leave Access Act

In May, the Making it Likely for Families of the Military to Live With Leave Access Act was introduced by Rep. April McClain Delaney, D-Md.; Del. James Moylan, R-Guam; and Sens. Amy Klobuchar, D-Minn.; Richard Blumenthal, D-Conn.; and Angela Alsobrooks, D-Md.

The act would expand military family coverage to include members of the reserve, consider domestic deployments as covered active duty and eliminate a five-year limitation on coverage to care for a veteran, among other enhancements. There are currently more than 20 additional co-sponsors from both parties.

Fair Access for Individuals to Receive Leave Act

The Fair Access for Individuals to Receive Leave Act, which was **introduced** on May 14 by Reps. Brian Fitzpatrick, R-Pa.; Sarah McBride, D-Del.; and Haley Stevens, D-Mich., would eliminate the shared leave cap for married couples who have the same employer, instead giving each spouse 12 weeks of leave.

Notably, these proposals have bipartisan support. They are also narrower in scope than the stalled Family and Medical Insurance Leave Act. As such, their supporters hope they may have greater legislative viability.

Judicial Interpretation: Slowly Expanding Coverage?

As limiting as the FMLA may be, courts have expanded its parameters, especially in the post-pandemic world following COVID-19.

For example, last year in *Chapman v. Brentlinger Enterprises*, the U.S. Court of Appeals for the Sixth Circuit **held** that while the FMLA limits leave availability to care for a child, spouse or parent, a sibling who is in loco parentis can be entitled to protected leave.

The court held that this is the case even if the in loco parentis relationship began after the age of 18 or after the onset of disability, so long as the sibling can demonstrate that they intended to, and did, assume a parental role over their sibling.

The DOL's interpretative guidance for nontraditional family circumstances and coverage under the FMLA for in loco parentis relationships with a child supports the Sixth Circuit's conclusion.[2]

Although this opens the door for more in loco parentis requests, other courts, such as the U.S. Court of

Appeals for the Second Circuit in its 2017 ruling in *Coutard v. Municipal Credit Union*, have restricted such claims in circumstances where the in loco parentis relationship is clear at the time that leave is requested.

While the Sixth Circuit's ruling reflects some expansion of coverage, the statutory language itself is limiting. Absent federal legislation, any enhanced family and medical leave will be mainly up to the state legislatures, which have shown more willingness to increase benefits in this area.

State-Level Action: Laboratories of Paid Leave

In the absence of federal legislation, states have become innovative, focusing on providing coverage for more employees and, specifically, developing paid leave programs.

As of mid-2025, 13 states and Washington, D.C., have enacted or approved mandatory paid family leave programs with greater flexibility and enhanced coverage.[3]

Additionally, 10 states have voluntary systems that provide paid leave through private insurance, and the governments in New Hampshire and Vermont are proactively establishing private marketplaces.[4]

Several other states, including Pennsylvania, New Mexico, South Carolina and others, are currently pursuing paid leave laws.[5]

Moreover, states have also expanded the types of leave that are available.

For example, in May, Colorado amended its family and medical leave insurance program to provide an additional 12 weeks of paid leave starting Jan. 1, 2026, on top of the existing 12 weeks of leave, for parents of newborns in neonatal intensive care units.[6]

Effective Jan. 1, 2025, New York **enacted** paid prenatal leave, providing an additional 20 hours of paid leave for prenatal care.

Beginning this year, Connecticut **expanded** its paid sick leave law to cover employers with at least 25 employees. This threshold will decrease to 11 employees in 2026, and will apply to all employers by 2027. The law provides up to 40 hours of pay per year, which can be used for a mental health day, and an employer is prohibited from asking for medical documentation to support the need for leave.

Paid sick leave mandates exist in more than 15 states,[7] and pursuant to ballot initiatives last November, others are being introduced in Missouri,[8] Nebraska and Alaska.[9]

Conclusion: A Tipping Point for Family Leave?

The growing number of state leave laws reflects the demands of today's workforce. Although sweeping federal reform remains elusive, bipartisan support for targeted change is gaining ground. However, the most significant changes will continue to come from the states.

For employers — particularly those operating across multiple states — this rapidly evolving landscape is

challenging to administer, but it also offers opportunities to create a compassionate work environment by recognizing the pull between work and family obligations.

So, what should employers do? A good first step is to audit current policies to ensure compliance, not just with the FMLA, but with all applicable state-level leave laws.

Multistate employers should develop procedures to ensure compliance with overlapping state and federal rules. They should also develop companywide leave policies that work across jurisdictions, allowing for a single policy to be used in every state when possible.

This streamlines the approval process and ensures that employees across the organization, even those who work in states that offer no leave protections beyond the FMLA, receive the same benefits.

Likewise, reevaluate benefits packages. Meeting the minimum requirements of applicable federal, state and local laws is not always enough, even if the most generous state and local requirements are applied companywide.

An employer is always free to offer leave programs that exceed those required by law. Doing so helps retain talent and boost morale, especially given increased workforce mobility.

Providing generous paid, partially paid and unpaid leave programs while maintaining job protection shows employees that their well-being is at the forefront. This could potentially even increase revenue, as many customers now look to do business with companies that put employees first.

Additionally, it is essential to maintain robust training programs for staff who administer the company's leave policies and evaluate requests for leave to make sure not only that laws and policies are being followed, but also to limit the company's liability should any litigation result from a denied request.

It is also important to focus on federal, state and local laws, as well as the company's own policy, to ensure that leave policies are applied effectively and equitably to all employees.

Further, make sure employees are familiar with what constitutes an in loco parentis relationship under federal law, and pay close attention to state laws that have expanded the types of relationships that are eligible for caregiver leave.

Lastly, instruct the company's legal representatives to proactively keep up with pending legislation so the company can quickly pivot when a new law goes into effect.

There is little doubt that leave laws will continue to expand. It remains unknown whether any amendments to enhance the FMLA will be enacted, and while the courts can continue to interpret the FMLA liberally, there are limits to how far they can go.

Nonetheless, as evidenced by the proliferation of state laws providing protected paid leave, it is clear that legislation in this area will continue into the foreseeable future.

As the web of leave laws is drawn state by state, and sometimes city by city, employers have a hefty task in keeping track of them all and administering them appropriately, fairly and equitably.

Heather R. Boshak and Johanna G. Zelman are partners at FordHarrison LLP.

FordHarrison summer associate Rang Ramji contributed to this article.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] The White House, Fact Sheet: The American Families Plan (Apr. 28, 2021), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2021/04/American-Families-Plan-Fact-Sheet-FINAL.pdf>.

[2] Administrator's Interpretation No. 2010-3 (2010). See also Fact Sheet #28C.

[3] This includes California, Colorado, Connecticut, Delaware (effective January 1, 2026), District of Columbia, Maine (effective May 1, 2026), Maryland (effective January 3, 2028), Massachusetts, Minnesota (effective January 1, 2026), New Jersey, New York, Oregon, Rhode Island, and Washington. See, e.g., S.B. 951, 2021-2022 Reg. Sess. (Cal. 2022); S.B. 25-144, 75th Gen. Assemb., 1st Reg. Sess. (Colo. 2025); S.B. 1, 2019 Leg., Reg. Sess. (Conn. 2019); S.B. 1, 151st Gen. Assemb., 1st Reg. Sess. (Del. 2022); D.C. Code § 32-541.04(d), (e-1); Me. Rev. Stat. tit. 26, § 850-A (2023); H.B. 102, 2025 Reg. Sess. (Md. 2025); Mass. Gen. Laws ch. 175M, § 2 (2023); H.F. 2, 93rd Leg., Reg. Sess. (Minn. 2023); A 3975, 218th Leg., Reg. Sess. (N.J. 2019); N.Y. Workers' Comp. Law § 204(2)(a); S.B. 1515, 82nd Or. Legis., 2024 Reg. Sess. (Or. 2024); R.I. Gen. Laws § 28-41-35; H.B. 1213, 69th Leg., Reg. Sess., ch. 304, Laws of Wash. (2025).

[4] The states are Alabama, Arkansas, Florida, Kentucky, New Hampshire, South Carolina, Tennessee, Texas, Virginia, and Vermont. See, e.g., Ala. H.B. 141, 2023 Leg., Reg. Sess. (Ala. 2023); S.B. 111, 2023, 94th Gen. Assemb., Reg. Sess. (Ark. 2023); 2023 Fla. Sess. L. 149; Ky. H.B. 179, 2024 Gen. Assemb., Reg. Sess., ch. 99 (Ky. 2024); N.H. RSA §§ 21-I:99; S.C. H. 4832, 125th Gen. Assemb., Reg. Sess. (S.C. 2023-2024); Tenn. S.B. 454, Pub. Ch. 91 (2023); Tex. H.B. 1996, 88th Leg., Reg. Sess. (2023); Va. S.B. 15 & H.B. 1156, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); Vt. Stat. Ann. tit. 21, § 472 (West).

[5] H.B. 200, Gen. Assemb., Reg. Sess. (Pa. 2025); H.B. 11, 56th Leg., Reg. Sess. (N.M. 2025); H.B. 3490, 126th Gen. Assemb., Reg. Sess. (S.C. 2025).

[6] S.B. 25-144, 75th Gen. Assemb., Reg. Sess. (Colo. 2025).

[7] See, e.g., Ariz. Rev. Stat. Ann. 23-373; Cal. Lab. Code § 246 (f); Colo. Rev. Stat. § 8-13.3-403; Conn. Gen. Stat. § 31-511l; 820 Ill. Comp. Stat. 192/15; 26 Me. Rev. Stat. Ann. Tit. 26 § 637; Md. Code Ann., Lab. & Empl. § 8.3-101 to -1001; Mass. Gen. Laws ch. 149, § 148C; Mich. Comp. Laws § 408.961 to 408.974; Minn. Stat. §§ 181.9445-.9448; Nev. Rev. Stat. § 608.0197; N.J. Stat. Ann. §§ 34:11D-1 to -13; N.M. Stat. Ann. §§ 50-17-1 to -

12; N.Y. Lab. Law § 196-b; Or. Admin. R. 839-007-0000 to -0510 ; R.I. Gen. Laws §§ 28-57-1 to -13; 21 Vt. Stat. Ann. §§ 481–487, 384; Wash. Rev. Code § 49.46.210.

[8] Missouri Proposition A, Minimum Wage & Earned Paid Sick Time Statute (Nov. 5, 2024); RSMo §§ 290.600–290.642. The Missouri state legislature recently passed a bill to repeal the new sick leave law that is awaiting action by the Governor. If signed, Proposition A would be repealed as of August 28, 2025.

[9] Nebraska Initiative 436, Gen. Election (Nov. 5, 2024), Nebraska Revised Statutes sections 48-3801 to 48-3806, LB415; Alaska Ballot Measure 1, Gen. Election (Nov. 5, 2024), Alaska Statute 23.10.050 – 23.10.150.