



75 Milford Drive, Suite 110, Hudson, Ohio 44236

Date: March 31, 2009

Re: Family Leave Insurance Act 2009

Overview:

The proposed Family Leave Insurance Act of 2009 (“FLI”) is recently introduced legislation designed to supplement the Family and Medical Leave Act (“FMLA”) so as to provide the ability for eligible employees to receive wage replacement payments during FMLA Leave through a Family and Medical Insurance Program (“FMLI”). As support for the bills necessity, the drafters cite numerous statistics regarding the impact of unpaid leave on employees decisions to take FMLA leave, including a Department of Labor survey showing that 78 percent of eligible employees who forego FMLA leave don’t take it because they can’t afford unpaid leave.

Who is Covered

The FLI covers “eligible employees” who have earned wages from a covered employer for a minimum of 6 months prior to the leave request and have worked over 625 hours during that time frame. Under the FLI, a “covered employer” is one that is:

- An employer under the definitions of the FMLA;
- A small employer who employs 2-19 employees for more than 20 calendar work weeks and that has elected to participate in the program;
- A self-employed individual who has elected to participate in the program.

Program Entitlements:

Under the FLI, an eligible employee of a covered employer is entitled to 12 weeks paid leave for the following reasons;

- Birth of a child and to care for the child;
- Adoption of a child;
- To care for a child, parent, domestic partner, spouse, grandchild, grandparent or sibling with a serious health condition;
- Because of the employee’s own serious health condition; and,

- To care for a family member who is a covered military service member who has a serious health condition or a qualifying exigency.

Benefit Entitlement:

The proposed benefit entitlement each individual employee is as follows

Annual Income	Entitlement as Percentage of Daily Earnings	Alternative Amount (if Greater)
\$20,000	100%	N/A
\$20,000 - \$30,000	75%	100% of daily earnings for individual earning \$20,000
\$30,000 - \$60,000	55%	75% of daily earnings for individual earning \$30,000
\$60,000 - \$97,000	40%	55% of daily earnings for individual earning \$60,000
Greater than \$97,000	40%	N/A

FLI payments are not available to employees receiving workers compensation or unemployment insurance compensation.

As with the FMLA, the employee will be required to provide medical certification to the appropriate agency to be eligible for benefits. An employee submitting false certification is liable for up to 100 percent of the benefits paid as a result of the false statement.

Administration:

Similar to OSHA, the federal government is tasked with creating a Family and Medical Insurance Program, but individual states can contract to provide benefits outlined in the FMLI. Any employee seeking FMLI, must similar to FMLA submit documents from a health care provider certifying the need for the leave and be eligible under the terms of the FLI.

Employers may also adopt their own FLI program, as long as the program offers rights and benefits equal or greater to the FLI program, and is approved by the Secretary of Labor.

Prohibited Activities:

It is unlawful for an employer under the FLI to interfere with any rights under the FLI or to discriminate against any employee. An employer violating the provisions of the FLI is liable to an amount equal to the lost wages, salary, etc. or the actual monetary losses up to a sum equal to 8 weeks wages, plus interest and liquidated damages.

Funding Mechanism:

The FMLI will be funded equally through contributions from employees and employers amounting to .2% of the employee' pay for normal employers and .1% of employees pay for small employers (2-19 employees).

Conclusion:

While it is still too early to tell whether this legislation will pass, employers should be aware of its possible impact on their employment tax responsibilities.