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Provisions Related to Universal Paid Family and Medical Leave Developed by the House Committee on Ways and Means in Response to Reconciliation Directives

The reconciliation language developed by the House Ways and Means Committee in response to reconciliation directives included in S.Con.Res. 14 includes provisions related to universal paid family and medical leave. The reconciliation language, often referred to as the Build Back Better Act, proposes a new federal cash benefit for eligible individuals engaged in certain types of family and medical caregiving (including self-care). The reconciliation language would amend the Social Security Act (42 U.S.C. 301 et seq.) by adding Title XXII: Paid Family and Medical Leave Benefits.

Qualified Caregiving

The proposed cash benefits would be payable—no sooner than July 2023—to eligible individuals engaged in *qualified caregiving* for at least four hours in a week. *Qualified caregiving* is defined as an unpaid activity engaged in by an individual in lieu of work that would qualify as a reason for leave under the Family and Medical Leave Act (FMLA, P.L. 103-3, as amended), except that the reconciliation language would permit individuals to care for a wider group of close family members than does the FMLA. Also, the reconciliation language would permit individuals to use a limited number of caregiving hours for bereavement (in general, 24 hours, per death, in a benefit year for a full-time worker), which is not an FMLA-protected use of leave under current law.

Activities Included Under Qualified Caregiving

In particular, the proposed benefits may be claimed by eligible individuals for the following:

- the birth and care of the individual’s child, within 12 months of the child’s birth;
- the placement of an adopted or fostered child with the individual, within 12 months of the child’s placement;
- to care for a *qualified family member* with a *serious health condition*;
- the individual’s own serious health condition if the individual is unable to perform the essential functions of his or her job;
- qualified military exigencies arising from the fact that a qualified family member is on *covered active duty*;
- to care for a qualified family member who is a *covered servicemember* with a serious injury or illness; and
- the death of a spouse, parent, or child of the individual.

The reconciliation language defines the term *qualified family member*, with respect to the claimant, as a spouse (including a domestic partner) and a spouse’s parent; a child and a child’s spouse; a parent and a parent’s spouse; a sibling and a sibling’s spouse; a grandparent, a grandchild, or a spouse of a grandparent or grandchild; and any other individual who is related by blood or affinity and whose association with the individual is equivalent of a family relationship (as determined under regulations issued by the Secretary of the Treasury).

The reconciliation language uses terms, as established under the FMLA, to define certain qualified caregiving activities. Under FMLA a *serious health condition* is one that requires inpatient care or continuing treatment by a health care provider. A *covered active duty* for a regular Armed Forces member means duty “during the deployment of the member with the Armed Forces to a foreign country.” For reserve components, it refers to duty during the “deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.” A *covered servicemember*, in general, is a current member of the Armed Forces or a recent veteran (released under conditions other than dishonorable) who has a serious injury or illness that was sustained or aggravated in the line of duty while on active duty and for which the servicemember is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list.

Benefit Duration and Amount

Benefits would be paid on a monthly basis for up to a maximum of 12 workweeks of qualified caregiving in a benefit period (generally a 12-month period), although paid monthly benefits would be calculated on a weekly basis. The monthly benefit would be equal to the sum of the weekly benefit amounts for the weeks ending in that month. Benefits would be payable after the individual’s waiting period, defined as the first week during an individual’s benefit period in which at least four caregiving hours occur.

Initial Weekly Benefit Rate Formula

The weekly benefit amount would be equal to the product of the *weekly benefit rate* multiplied by the ratio of number of creditable caregiving hours in the week to number of hours in the regular workweek (i.e., weekly benefit rate x [hours of caregiving/ hours in regular workweek]). Creditable caregiving hours may not exceed the number of hours in an individual’s regular workweek.

For July 2023 through December 2024, the weekly benefit rate would be the sum of

- 85% x (the first \$290.00 of average weekly earnings [AWE])
- 75% x (the portion of AWE between \$290.01 and \$658.62)
- 55% x (the portion of AWE between \$658.63 and \$1,384.62)
- 25% x (the portion of AWE between \$1,384.63 and \$1,923.08)
- 5% x (the portion of AWE between \$1,923.09 and \$4,807.69)

For qualified caregiving that occurs in weeks that end within the year 2024, the maximum weekly benefit would be of \$1,201.09. A minimum benefit has not been proposed.

An individual's AWE would be calculated as the quotient of total wages (including self-employment income) during the most recent eight-quarter calendar quarter period (a two-year period) that ends four months prior to the beginning of the individual's benefit period by 104 (i.e., the number of weeks in two years). After calendar year 2024, the "bend points" of the weekly benefit formula—the dollar amounts used to calculate the weekly benefit rate—would increase annually by the growth in the national average wage index (42 U.S.C. §409(k)(1)) or would remain at the previous year's level if the average wage index does not increase.

Eligibility Requirements

In general, in order to claim the proposed federal benefit, an individual must have filed an application for benefits and have (or anticipate having) at least four caregiving hours in a week ending at any time during the period that begins 90 days before the date on which such application is filed or not later than 180 days after such date. In addition, the individual must have wages or self-employment income at any time during the period that begins with the most recent calendar quarter that ends at least four months prior to the beginning of the individual's benefit period and ends with the month before the month in which such benefit period begins. (For example, to be eligible for benefits starting in August 2024, an applicant would need to show earnings at any time during the period from January 2024 to July 2024.) Individuals would not need to be employed to claim the benefit.

In general, individuals who receive wage compensation (including fully paid leave) from an employer while engaged in caregiving may not claim the proposed benefit. However, individuals who receive employer-provided paid leave may claim the benefit if the sum of employer-provided paid leave and the proposed federal benefit do not exceed 100% of the individual's regular rate of pay. Individuals who have been found to have used false statements or representation to obtain the federal benefit are disqualified from benefits for five years following such a finding.

Administration

Benefits would be administered by the Secretary of the Treasury. States that had enacted state leave insurance program laws by the time the reconciliation language is enacted would be permitted to administer the federal benefit for individuals in their states if certain conditions are met. Such states—called *legacy states*—would be reimbursed for program costs up to a maximum amount. The reconciliation language would also permit certain employers to pay benefits through an approved employer-sponsored leave program if certain conditions are met. Such employers would be reimbursed for a portion of the actual or national average costs associated with providing such paid leave benefits, up to a maximum amount. Individuals who are eligible for leave benefits from approved employer-sponsored plans or under a legacy state program may not claim the federal benefit paid by the Treasury Department.

Small Business Assistance Grants

Certain small businesses with no more than 50 employees may apply for federal grants to help cover costs associated with paid family and medical leave costs that are in excess of the cost of providing wages to employees on leave (e.g., the cost of hiring a temporary replacement for an employee on leave). Eligible employers can receive up to one grant per employee on leave per year, and up to 10 grants total per year, in an amount equal to 2.5 times the average weekly wage in the state in which the employee works.

Relationship to Job-Protected Leave

In general, the reconciliation language does not propose to create a new entitlement to job-protected leave. Exceptions are employers who are reimbursed for providing paid family and medical leave or who receive small business assistance grants. Such employers must return an employee to the same job or to one that is equivalent in terms of pay, benefits, and employment terms and conditions to the one held prior to taking leave. Individuals claiming the benefit may otherwise receive job protection if they are entitled to leave under the FMLA, state leave laws, or their employer's leave policy and coordinate such job-protected leave with the receipt of the proposed benefit.

Financing

The reconciliation language proposes that there would be appropriated "out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay" for benefits and associated program costs (e.g., administrative costs, small business assistance, assistance to legacy states). The reconciliation language also proposes to finance education and outreach activities—to facilitate awareness of and access to the new benefit—from "any funds in the Treasury not otherwise appropriated" in the amount of \$150,000,000 for each of FY2022-FY2026 and research activities from "any funds in the Treasury not otherwise appropriated" in the amount of \$150,000,000 for each of FY2023-FY2027.

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