

Alert | Labor & Employment



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Federal Labor & Employment Legislation to Watch: Paycheck Fairness Act, PRO Act, and FAMILY Act

In recent weeks, a number of federal legislative measures have been introduced that, if passed, will have significant impacts on federal labor and employment policies.

Paycheck Fairness Act

On Jan. 28, Democrats in the House of Representatives reintroduced the Paycheck Fairness Act. The proposed bill will update the Equal Pay Act of 1963 by, among other things, requiring employers to demonstrate that wage differentials between men and women employees are based on factors other than sex. Other key provisions include prohibiting retaliation against workers who inquire about their employers' wage practices or disclose their own wages; strengthening penalties for equal pay violations; and prohibiting employers from inquiring about salary history during the hiring process.

Former President Obama signed an executive order in 2014 prohibiting federal government contractors from retaliating against employees who disclose salary information. Likewise, many states and local jurisdictions have recently enacted laws restricting employer inquiry into applicants/employees' prior salary information (California, Colorado, Connecticut, Hawaii, Illinois, Maine, Massachusetts, New Jersey, New York, Oregon, Vermont and Washington). These laws have required national employers to

adjust employment practices and policies. If the Paycheck Fairness Act passes and is signed into law, it will codify different and varying laws throughout the country (and Puerto Rico).

The bill is co-sponsored by every House Democrat, two House Republicans, and every Democrat member of the Senate. Iterations of this bill have been introduced in every Congress since 1997.

PRO Act

On Feb. 4, the Senate Committee on Health, Education, Labor and Pensions (HELP) reintroduced the Protecting the Right to Organize (PRO) Act. The proposed legislation will significantly amend the National Labor Relations Act (NLRA). Some key features of the bill include narrowing the definitions of “independent contractor” and “supervisor,” broadening and clarifying the definition of “employee,” codifying the National Labor Relations Board’s (NLRB) joint employer definition during the Obama administration; implementing “interest arbitration” if initial bargaining fails to generate an agreement; broadening the scope of employer unfair labor practices; narrowing an employer’s rights under the employer-speech provision of NLRA section 8(c); removing restrictions on secondary and recognition picketing; broadening an employer’s obligation to bargain collectively; expanding the remedies available to employees for NLRA violations committed by their employers; prohibiting employers from requiring employees to waive their rights to collective and class action litigation; and creating a whistleblower cause of action. The bill was first passed in the House in February 2020 but subsequently stalled in the Senate.

FAMILY Act

On Feb. 5, Democrats in both the Senate and House reintroduced companion legislation, the Family and Medical Insurance Leave Act (FAMILY Act), for a national paid leave policy. The key differences between the benefits available under the FAMILY Act and other current family leave benefits are that FAMILY Act benefits will (i) expand the *paid* leave available to employees and (ii) provide the paid leave through the federal government rather than through private employers.

The current Family and Medical Leave Act (FMLA) provides up to twelve (12) weeks of *unpaid* leave per year for certain family and medical reasons for qualifying employees. If passed, the FAMILY Act will provide workers up to 66% of their monthly wages and 12 weeks of leave for health conditions, pregnancy, childbirth, child adoption, a family member’s injury or sickness, and reasons related to military service members’ deployment; a significant change in benefits currently unavailable under the FMLA. The FAMILY Act will be permanent and available to all employees, regardless of company size, and further would include self-employed and part-time workers.

The FAMILY Act was first introduced in 2013 and in every Congress since then, but it has not yet had sufficient support to pass.

All of these pieces of legislation previously have been introduced in some form, but they have stalled. Given the new composition of both chambers of Congress, some may pass this session.

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