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Senate Finance Committee Examines Need for Federal Paid Leave Program, Results from State Programs

Witnesses Debate Costs for Employers and Workers, Need for Flexibility, Benefits vs. Burdens

The Senate Finance Committee yesterday (Wednesday, October 25) held a hearing on “Exploring Paid Leave: Policy, Practice, and Impact on the Workforce.” Materials from the hearing are posted [here](#). The witnesses were:

- **Ben Verhoeven**, president of Peoria Gardens Inc.
- **Jocelyn Frye**, president of the National Partnership for Women & Families
- **Rachel Greszler**, senior research fellow for budget and entitlements at the Heritage Foundation
- **Elizabeth Milito**, executive director of the Small Business Legal Center at the National Federation of Independent Business

In his prepared [statement](#), **Chairman Ron Wyden** (D-OR) said that “according to poll after poll, 70 percent of Americans want national paid leave. They know that too often without it, workers are forced to make the impossible choice of a paycheck or caring for a loved one in need.... If a nation as powerful and prosperous as ours sits on this issue, we’re going to have to have an answer to the fact that somehow the United States is the only developed nation in the world without a national paid leave program. Today, only one out of four workers in America have access to paid leave.” Wyden said witness Ben Verhoeven’s story “is an illustration of what we can do if we, as a committee... sit down and represent how to solve a problem in a bipartisan way. Too many workers are falling between the cracks, and paid leave is a missing piece of our agenda.”

In his prepared [statement](#), Ranking Member **Mike Crapo** (R-ID) noted that the committee had also examined this issue in 2018 under Chairman Chuck Grassley (R-IA), and had convened a bipartisan Paid Leave Working Group that he had served on. “Paid leave can greatly benefit workers and their families, from improving employee morale to helping families meet caregiving responsibilities,” Crapo said. “However, there are many approaches to expanding paid leave, and the details matter.” He said that in a recent survey from the National Federation of Independent Business, 43 percent of small-business owners reported job openings they could not fill in the current period. “In light of these workforce challenges, Congress must be careful not to interfere with employers existing paid leave offerings,” he said. Crapo cited Bureau of Labor Statistics figures showing that in 2023, 78% of private-sector workers have access to paid sick leave, while 79% have access to paid vacation and 73% of small-business employers offer paid time off to the majority of their full-time employees, while 67% offer two weeks or more of that leave. “Imposing a one-size-fits-all paid leave program could actually limit employers’ ability to offer paid leave policies that meet the unique needs of their workforce, or significantly diminish existing employer-provided paid leave altogether,” Crapo said.

“Creating a new federal paid leave program also raises questions about implementation challenges and costs to taxpayers,” Crapo continued. “Several states that have enacted paid leave programs have had difficulty setting up even the most basic components of the program, leading to implementation delays. For example, applicants in multiple states have experienced delays with getting their claims approved, with processing times in one state expected to increase from about five weeks to four months by 2025. Absent additional staffing, one state has had to repeatedly increase the revenue going to the program to avoid a funding deficit.” Crapo said that in another state, “analysts have raised concerns that revenues may be too low to pay future benefits.”

Witnesses

[Jocelyn Frye](#), President of the National Partnership for Women & Families, said, “We believe paid family and medical leave is a core labor standard that is necessary. It’s long overdue, and essential to creating stronger workplaces... Even before the pandemic, our nation’s lack of comprehensive care policies undermined the full participation of women in our economy,” forcing too many to choose between caring for their family and their financial security. Frye said that women workers, “especially women of color, who are more likely to provide care, are less likely to work in jobs with paid leave. Major disparities in paid leave access also exist for workers in the lowest income brackets for workers of color and for workers with disabilities, many of whom need medical leave to attend to ongoing health conditions.” Frye said that 13 states and the District of Columbia have already enacted paid leave, and “research in communities where paid leave has been implemented shows significant gains in the health and financial stability of workers.” Frye said an effective law “must offer meaningful, sufficient benefits which are universal, and guaranteed for as many workers as possible in as many employment settings as possible, so no one is left behind. It must provide enough weeks of leave and enough income to actually meet the needs of workers, and enable them to afford to take time off. And [it] must be comprehensive enough to meet the full breadth of caregiving needs, not only for newborn children, but also loved ones such as aging parents and ailing spouses.” She said an effective law “should guarantee that paid medical leave is available for workers themselves when they face a serious health condition.”

[Ben Verhoeven](#) is president of Peoria Gardens Inc., a family-owned greenhouse in rural Albany, Oregon. “I’m proud to say my 26 year-round and 24 seasonal employees receive great benefits, which in the big picture don’t cost me much but mean a lot to everyone, and they’re good for business,” he said. “My workers can get paid family leave, which covers parental leave, medical leave, and leave to care for a loved one.” Verhoeven said that many industry groups claim that such policies will hurt business, but “that’s just not true. Paid family leave costs me less per year than truck repairs, and has a much greater effect on the lives of the people I work with... Before my workers had paid family leave, they told me stories of draining their retirement savings to care for a dying brother. This is now a thing of the past. I know a mother who no longer must rely on donated sick time to plan for a second child.” He said a crop failure “affects our business the same way a sudden illness affects the family. This is why I feel strongly that coverage should be expanded to include all businesses and workers. Life events like birth, illness and ailing parents happen to all of us, regardless of the size of company we work for.”

Verhoeven added that “as a farmer and a small-business owner, national paid family leave is a good bargain... I cannot afford comprehensive paid family leave on my own, which is why a program like the one we have in Oregon is the best way forward. Our state’s program costs businesses like mine less than offering stand-alone plans, and I know that my workers are also contributing. As a small-business owner, I am the HR Department... Our state program has been much easier to set up than the private insurance options also allowed under Oregon’s new law that we explored.” Verhoeven said that working with the state government “has been as simple as a software update to our payroll and a preprinted poster in the break room. Oregon’s program manages the process, confirms if a worker qualifies, and of course pays for the leave itself out of the fund. This is a real service both for me and for my workers.”

[Elizabeth Milito](#), executive director of the Small Business Legal Center at the National Federation of Independent Business, said, “There is no such thing as a one-size-fits-all policy that works for every business or every industry. I understand the good intentions behind various proposals that mandate leave, but NFIB and its members have long opposed leave requirements for two reasons: flexibility and cost.” Milito said innovation and flexibility “are critical to small-business survival.... To establish employee benefits, which includes paid time off, the majority of small businesses provide flexible, mutually beneficial arrangements that allow employees time off when necessary in a fiscally responsible way for that business.” She said that “to the extent they can, small businesses provide paid leave voluntarily to remain competitive and to attract top talent... To the extent that small firms do not offer paid leave, this reflects the reality that some small firms simply cannot financially afford to offer this benefit. If you can only afford to give your workers 10 days of paid time off and the government mandates five days of paid sick leave, then your employees have only five days left for vacation.” Milito said that any leave, paid or unpaid, “is not a free benefit. The

unanswered question with a leave [program] is, who is going to pay? There's a cost with these proposals and not all business owners can absorb the cost."

Milito said that nearly all leave mandates, "paid or unpaid, impose recordkeeping requirements, including leave tracking, notification documentation and reporting. When one state considered and adopted a paid sick leave proposal a few years ago, the legislative record was replete with opposition from small business owners... The bottom line is that we farmers don't make enough to subsidize all the wonderful benefits that you would like to see employees entitled to. I have workers asking for work and there is plenty for them to do. But at the high costs that the state requires me to pay, I have to limit the number that I can hire. It may seem great to mandate more benefits to employees, but the hidden costs are fewer jobs."

[Rachel Greszler](#), senior research fellow for budget and entitlements at the Heritage Foundation, said the good news is that "paid family leave has shot up over the past six years. Surveys show that three out of four workers have access to some type of paid family leave at work... Contrary to common belief, only one in four leaves are for the birth or adoption of a new child. Half of the leaves are for workers' own medical conditions, and the other quarter are to care for a family member." Greszler said that employer-provided leave "is inherently more accommodating than one-size-fits-all government programs." She told the story of her niece, who was diagnosed with stage four cancer when she was 18 months old. "Like many medical conditions, my niece's cancer did not give advance warning, and it did not follow a predictable schedule. She endured nine months of intensive treatments, multiple ER visits and spent more than 60 nights in a hospital over an hour away from her home. A government program with 12 weeks of partially paid leave [entailed] a bureaucratic administration process that required my sister to specify the precise days of leave that she would take in advance, [and] did not work well for her and her husband. It was only through working directly with their employers that they were able to keep their jobs and care for their now-healthy and adorable 3-year-old little girl."

Greszler said some might argue that "even a bureaucratic and flawed government program is better than none. But a federal government program would take away many existing programs and hinder new ones from starting. " She said government programs "have a terrible track record at helping low income families," citing figures indicating that the paid leave programs in California and Canada mostly benefited higher-income families. "While government paid family leave programs aimed to help women, they can have the unintended effects of reducing women's prospects for promotion, diminishing relative wage gains and reducing employment." Greszler said Denmark implemented a generous paid family leave program, but a study found that it led to a 12 percent reduction in nursing employment." As alternatives, Greszler cited: 1) The Working Families Flexibility Act (S. 247 in the previous Congress, sponsored by Sen. **Mike Lee**, R-UT), which she said would give lower-income workers the opportunity to choose between accumulating paid leave or overtime; 2) Universal savings accounts, which she said would enable Americans to save in one account that they could use for any life need without incurring a penalty and would be helpful for part-time and independent workers; 3) Making it easier for workers to get private disability insurance; 4) Minimizing taxes on workers and employers - she said the 2017 Tax Cuts and Jobs Act "put an additional \$1,400 per year into the average household," leading to "a fourfold increase in employer-provided paid family leave in the six years since that passed"; and 5) "Passing laws to prevent harmful labor regulations from taking away flexible work options and making it harder for employers to offer paid family leave."

QUESTIONS

[Costs to Businesses](#)

In his questions, **Chairman Wyden** asked Verhoeven if the cost of his company's paid leave programs was really as low as he had said. "It is a very, very small part of our payroll and the costs that we have to do business," Verhoeven said. "Especially with our new government program. Now, not only do... my workers have access to paid parental leave, they also now have access to paid medical leave, paid leave to care for a loved one, paid safe leave if someone's experiencing domestic abuse. And that's all for literally less than the cost to run my five trucks." Wyden noted that many members of the committee "support write-offs for machinery for matters like equipment and tractors and...

helping small businesses like yours... those investments in machinery are important. And equally important is to make some investments in people and... human capital."

Ranking Member Crapo asked the NFIB's Milito about the costs to small businesses she had mentioned. Milito first noted that nearly 80 percent of small businesses do offer paid leave to their workers because "that's the way they retain talent. But a paid leave mandate - there is a cost because it would hinder the business owner's ability to maybe offer other benefits that are more desirable for the employees they are trying to recruit." Milito said she hears from her members that "the No. 1 way that I recruit and retain employees is they want higher wages... [The] second benefit employers are looking for is health insurance. So if you... add on something else... there's going to be strain, and you're going to have to retract on... either wages or potentially the health insurance."

Debbie Stabenow (D-MI) asked Verhoeven if the costs associated with Oregon's mandated paid family leave program were as affordable as he had testified. Verhoeven reiterated that the program "costs less than truck repairs -- [workers] get paid family leave, which includes paid parental leave, care for a loved one, time to care for a loved one, paid medical leave and paid safe leave... It's been really, really simple to set up, I can't afford this kind of comprehensive paid family leave on my own. Our government program makes it really easy to do that... it really is as simple as a software update to our payroll poster in the break room." When Stabenow asked if the program was funded through matching funds or through the tax code, Verhoeven said the program "is done through a payroll tax. So as an employer, I pay four-tenths of 1/100th of my payroll... and my workers also contribute six-tenths of 1/100 of their pay. So while it's not free, I would argue it's a really, really good bargain."

Boosting Economic Growth

Chairman Wyden asked the National Partnership's Frye about the additional economic growth that would come about through paid leave. She said, "The way we do that is that we make sure that women can participate in the workforce... [by ensuring] that they have access to pay leave. We know that if you had prime-aged women in the workforce equal to that of some of our counterparts internationally, you could boost our economy by \$650 billion, which is just under three 3 percent in additional GDP."

Importance of 'Flexibility'

Sen. Crapo asked Greszler to elaborate on how some of the national paid leave proposals would be inherently inflexible. Greszler described it as the difference between emailing a supervisor directly to say you will be out for a certain length of time, versus "having to go through a bureaucratic application process, get a medical approval, and then have somebody who doesn't know who you are, doesn't know the work you do, doesn't know the workplace, be in charge of deciding when you are eligible for benefits, how much you're going to get. And to just have a strict 12 weeks, or you must specify this day, and if you do work on a day that you specified, now you have to repay it." Crapo said that "in the end, the chairman and I both indicated [that] we believe in flexibility. And if there's a way to find that, that bipartisan solution here it will involve flexibility."

When Crapo asked Greszler to repeat the alternative approaches she listed in her testimony, she mentioned the Working families Flexibility Act, which applies to workers who are paid hourly wages. "Currently, if you're paid hourly, you are entitled to overtime pay. So if you work 45 hours in one week, than you actually get paid for those 5 hours at a rate of a time and a half, 7 ½ hours' worth of pay. So for that worker who worked an extra 5 hours, they could choose between the overtime pay or accumulating 7 ½ hours of paid time off -- it's a pure choice, nobody has to take it and the employer can't force them to use universal savings accounts."

Debbie Stabenow (D-MI) told Greszler, "In listening to your options, my concern is that for instance, with low-income workers, you say 'Well, you can work overtime and then choose to get paid for overtime, or you can work overtime and not get paid for overtime, and get paid family leave... So the those don't sound like great choices for low-income people as I'm listening, but I certainly support flexibility."

New Jersey Law

Robert Menendez (D-NJ) mentioned New Jersey's own paid family leave program, which "guarantees all workers 12 weeks of family leave with the lowest wage workers receiving 85 percent of their pay. And this legislation, I believe, should be an example for the country." He asked Frye what lessons could be drawn from New Jersey's effort for a federal program. Frye said the state law had helped with "labor force participation and retention, particularly for women workers. There's data that shows greater retention of workers who are family caregivers. There is very good research from employers that shows that, for the most part, employers say it's either improved morale or productivity or at worst, it's neutral... one of the reasons that paid leave is growing is because you do see those benefits for workers and for employers."

Need for a Federal Program

Thom Tillis (R-NC) asked the NFIB's Milito, "What are the market demands, the competition for labor, everything else going out there? How much of the gap is being filled there? And to what extent [does] the federal government need to be involved?" Milito told him that "any proposed policy should be simple. So keep it simple... allowing more flexibility... Most of our members use a tax preparer. So they're doing payroll in-house, sometimes still manually... so awareness on the part of the tax preparer community of any sort of tax credit is also very important."

Tillis asked Greszler about "government programs that in your view are falling short." Greszler said, "The reality of government programs is... they can't reduce the costs, they can simply redistribute the costs... I've been in discussions with HR managers at large companies, and they have said that complying with these state-based programs has been so difficult, and they've ended up telling workers you can take leave, and then they had to pay it back." She said "businesses simply didn't apply for [tax credits, because of] having to go through the process and fill out these forms... If that's burdensome for a business owner, how much more burdensome is it for the low-income worker who's also managing the medical condition for the leave?"

Value of 'Comprehensive' Paid Leave

Maggie Hassan (D-NH) said there is "strong public support for a national paid leave program. And I'm encouraged that there's going bipartisan support in Congress, because the current patchwork system isn't working. Without access to comprehensive guaranteed paid leave, many hard-working Americans are forced to reduce their hours or leave their jobs altogether when they welcome a child into their family when they go through their own medical emergencies, or when they need to care for a sick family member or aging parents." Hassan mentioned the story of a constituent named Carrie who had to care for a parent with Alzheimer's "with no paid leave... in order to take her father to critical medical appointments, Carrie had to forgo hours of pay, choosing between caregiving and critical financial support for her family. She continues to struggle with lack of access to paid leave, as she cares for her daughter who has complex medical needs." Frye told her, "You really hit the nail on the head that comprehensive paid leave is comprehensive... A small percentage, less than a quarter of the leaves that are taken under the FMLA... are for parental purposes. The majority of leave is for personal [reasons] and a little over quarter is for family care. So you need comprehensively to ensure that a person like your constituent can actually take the time that they need to care for their parent."

Hassan also asked about service members in the National Guard and Reserves, who lack access to parental leave. She noted that the Reserve Component Parental Leave Parity Act (S. 1095, HR 2597) she has sponsored with Sen. **Lisa Murkowski** (R-AK), which would expand parental leave to fathers and adoptive and foster parents serving in the Reserves and National Guard, was included in the pending National Defense Authorization Act (NDAA).

\$5,000 Advance on Child Tax Credit

Bill Cassidy (R-LA) mentioned that he and Sen. **Kyrsten Sinema** (I-AZ) have [sponsored a bill](#) "that would allow the pull-forward of a portion of earned income. Shouldn't we have a child tax credit to allow a lump-sum payment of \$5,000 at the birth of our adoption, and the parent can use it either as income replacement, if he chooses to stay home... or for child care if they if they choose to go back to work?" Cassidy said, "It's great that Oregon has done this. [But] on the federal level, I don't see a path forward. In terms of raising the payroll tax... when I researched this a few years ago, as

I was working on this with Sen Sinema, the research I did at the time said that most workers... who make over \$70,000 a year, have paid leave of some sort." Heritage's Greszler told him, the latest data we have is from 2018, and that shows that about 73 percent of workers, across all income levels, report that they have access to some type of paid leave for an FMLA condition at work... It's still disproportionately those that are upper income, but we have seen the most significant growth in paid family leave policies in those lower-income groups over recent years."

Chairman Wyden said later, "It just strikes me that you shouldn't have to sacrifice the child tax credit to get paid leave when you have a child. And that's especially true when [witness Ben Verhoeven] has given us a path to basically say, 'Look, we can offer paid leave that cost less than truck repairs.' So we've got a lot of work to do to try to bring this together. I'm going to work very closely with Senator Cassidy. He's put in a lot of time on this, and I appreciate it."

Interplay of State & Employer Leave Programs

Sen. Cassidy said that when he had researched the issue years earlier, "some companies like Google, Deloitte and others were in California providing paid leave as a government as a company policy. And then when California put in their program, they actually pulled back on their business-offered paid leave, and they discharged the obligation to the taxpayer. And so on net, there was no increased benefit to the worker, there was just less obligation in the case of businesses." Greszler said, "That's exactly what happens with these state policies. It's a windfall benefit to the employer that already provides a policy they send their workers to the state program first. Once they've used up all of those benefits and had to go through that burdensome application process, then the employer will top them up to bring them to the same level that they had been before, so the worker has to go through two programs to get same thing that they were."

Tennessee - Optional Private Family Leave Insurance

Marsha Blackburn (R-TN) noted that Tennessee has created a new line of optional family leave insurance that employers can choose. She said the Tennessee Paid Family Leave Insurance Act "amends the insurance code in the state... So you now have a paid family leave insurance as a new line of insurance that insurers can offer in Tennessee, and how important is it and that your federal and state law allows employers to have that flexibility to opt in and make a benefit like that available?" Milito told her, "Something like that, that removes sort of the economic strain on a business from offering a benefit, is something that certainly we would be open to exploring at NFIB and hearing more about... that would allow the benefit to be more widely available to employees too. I think that's a great thing... But then when you ask if it means a smaller paycheck, 60 percent [of NFIB members] oppose. So if there's a way to get at it that removes economic strain from employers and employees, that could be a very good thing."

Need for a Federal Mandate

Sen. Blackburn asked about the "unintended consequences that could result from changing the idea of something that's considered a benefit that employers can offer, to something that is federally mandated." Greszler said. "You get a more rigid structure. That doesn't work very well, for most people, if three out of four workers who are taking leave are taking it for their own medical condition or caring for a family member. Those aren't things that are usually anticipated. And they're often not things that fit nicely into a '12 weeks fully off, back on the job the next day,' it's often caring for an elderly parent that might be needing to be home, but not constantly needing to be with them." Blackburn got Greszler to agree that "leaving it as a benefit for employers to provide, like Tennessee has done... and having that line of insurance that allows the flexibility that employees want" is preferable to a federal mandate.

Chairman Wyden again said the fact that witness Verhoeven was able to offer paid leave for less than the annual cost of truck repair "doesn't suggest to me that we're arming up for some kind of huge, rigid kind of structure."

Massachusetts' Paid Family Leave Program

Elizabeth Warren (D-MA) asked Frye to explain how Massachusetts' paid family and medical leave programs are set up. Frye said the program "offers 12 weeks of paid leave for family reasons, I think 20 weeks for medical purposes. They have progressive wage replacement, so lower-wage workers get more of their pay, about 80 percent of which is

significant, and it has job protections so that people who take leave, their job is protected... It also allows additional time from military service members as well.... What we know from the early data is that the majority of people who've taken claims are women, a little over 60 percent, more than half of those women have been taking it for their own personal leave. So it's working." Warren said, "Clearly there is a need for leave programs, especially for women workers. But the state you live in shouldn't determine whether you can take off time for work to care for a sick family member, at the same time that you're trying to put food on the table. We need a national paid leave program."

If you have questions, please contact Will Heyniger or Heather Meade at (202) 293-7474 or wcey@ey.com.

Links embedded in this alert:

- **Hearing page** - <https://www.finance.senate.gov/hearings/exploring-paid-leave-policy-practice-and-impact-on-the-workforce>
- **Wyden statement** - https://www.finance.senate.gov/imo/media/doc/10252023_wyden_statement.pdf
- **Crapo statement** - https://www.finance.senate.gov/imo/media/doc/10252023_crapo_statement.pdf
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- **Milito statement** - https://www.finance.senate.gov/imo/media/doc/10252023_milito_testimony.pdf
- **Cassidy-Sinema bill using Child tax Credit** - <https://www.cassidy.senate.gov/imo/media/doc/Cassidy%20Sinema%20Proposal%20FAQs.pdf>

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