

VSHRM Legislative update November 10, 2009

1. Unemployment benefits extended up to 20 additional weeks
2. Bill in House to require up to 5 days of paid sick leave where employer sends employees from work due to contagious disease
3. As of Nov. 21, GINA in effect and new EEO poster required even if employer does not engage in genetic testing.

Unemployment Extension

As expected, the U.S. House of Representatives acted quickly to pass legislation ([H.R. 3548](#)) that will extend unemployment benefits for up to 20 additional weeks. The House voted overwhelmingly on Nov. 5, 2009, to pass the legislation that the Senate approved with a unanimous vote just one day before.

The measure will provide an extra 14 weeks of benefits in states with unemployment rates less than 8.5 percent. Unemployment benefits will be extended by 20 weeks in states with jobless rates above the 8.5 percent threshold.

The legislation now goes to the White House. President Barack Obama has indicated that he supports the extension and will sign the measure into law.

The benefits extension will apply to jobless workers whose unemployment insurance benefits are set to run out on Dec. 31, 2009. Anyone whose benefits have already expired will be eligible to reapply for the additional aid.

During the economic downturn, Congress has voted to extend unemployment benefits twice. With the extensions, jobless workers in some states have been eligible to receive unemployment benefits for up to 79 weeks.

The most recent extension did meet with some political opposition and many unemployed workers worried that they would lose a valuable lifeline. To ensure the measure's passage, the benefits extension was combined with an expansion of a popular homebuyers' tax credit. After the measure passed both houses, several Republican leaders warned that it would be the final extension of unemployment benefits.

Congress was expected to turn its attention to another popular program for the unemployed. A government subsidy of COBRA health insurance premiums for unemployed workers was set to start expiring in December 2009.

The subsidy program was part of the massive \$789 billion economic stimulus and pays 65 percent of COBRA health insurance premiums for people who lost or will lose their jobs between Sept. 1, 2008 and Dec. 31, 2009. The subsidy payments are set to last for nine months and are available only to jobless workers who don't have another way to get group health insurance coverage. An analysis from Hewitt Associates revealed that enrollments in COBRA health plans have doubled since the Congress enacted the subsidy in February 2009.

Rep. Joe Sestak, D-Pa., has introduced legislation ([H.R. 3930](#)) that would extend the COBRA

subsidy for six more months and expand the program's window of eligibility for people who lose their jobs until June 30, 2010. Sestak's proposal was referred to the House Education and Labor Committee. Democratic leaders in the House and Senate had not indicated if they will push for passage of the legislation.

However, sources familiar with the issue say the measure could be included as an amendment to the health care reform package.

Bill Leonard is senior writer for SHRM.

Congress to Consider Emergency Paid Leave Bill

11/5/2009

By Bill Leonard

In response to the outbreak of the H1N1 flu virus, U.S. Rep. George Miller, D-Calif., introduced emergency legislation ([H.R. 3991](#)) that would provide five paid sick days to workers with contagious diseases who are told by their employers to stay home.

Miller, who chairs the House Education and Labor Committee, told reporters that the legislation was needed to help stop the spread of the expanding H1N1 pandemic. To emphasize that point, Miller named the proposal the Emergency Influenza Containment Act.

"Sick workers advised to stay home by their employers shouldn't have to choose between their livelihood, and their co-workers' or customers' health," Miller said. "This will not only protect employees, but it will save employers money by ensuring that sick employees don't spread infection to co-workers and customers, and will relieve the financial burden on our health system swamped by those suffering from H1N1."

By tying it to government efforts to quell the flu outbreak, the legislation could gain traction and might be approved by the House of Representatives soon, according to sources familiar with the issue. Miller said it was important to pass the bill quickly. The Education and Labor Committee will hold a hearing on the legislation on Nov. 16, 2009.

Under the proposal, workers would be given five paid sick days if their employers sent them home or advised them to stay home due to a contagious illness—such as the flu. By leaving it up to the employer's discretion, supporters of the bill hoped to sidestep issues that have bogged down and stalled other paid-leave proposals in Congress. In May, the late Sen. Edward Kennedy, D-Mass., and Rep. Rosa DeLauro, D-Conn., introduced bills ([S. 1152](#), [H.R. 2460](#)) that would provide seven paid sick days to workers at businesses with 15 or more employees. Kennedy's and DeLauro's proposals remain stalled in committees.

Miller's bill also has the 15-employee threshold but would be temporary and would expire two years after taking effect. Employers and business groups that oppose Kennedy and DeLauro's proposals were analyzing Miller's emergency legislation and declined to comment on the proposal.

Miller and other supporters of the bill were careful to point out that the bill would not require employers

to offer paid leave to their workers. However, if the employer advised the worker to stay home because they were ill, then the worker would be entitled to up to five days of paid leave.

Several articles and recent reports have highlighted the fact that many workers face a tough choice of not being paid or coming to work sick. The Centers for Disease Control and Prevention estimate that a sick employee reporting to work could infect at least 10 percent of the people with whom he or she has contact.

Miller pointed to data from the U.S. Bureau of Labor Statistics that showed 39 percent of all private-sector workers or nearly 40 million workers in the U.S. did not have paid sick days—and that many of those workers were employed by restaurants, hotels and school cafeterias.

Miller's proposal would apply to businesses with 15 or more employees. Under the proposed legislation, workers who follow their employer's direction to stay home because of contagious illness cannot be fired, disciplined or retaliated against for staying home. The measure would take effect 15 days after being signed and would expire after two years.

"We would like to move it to the House floor as soon as possible," Miller said during a news briefing. "The influenza isn't going to wait for the legislative calendar."

The bill is co-sponsored by Rep. Lynn Woolsey, D-Calif., who chairs the House Workforce Protections Subcommittee.

"This bill will ensure that workers who are directed to stay home by their employers can do so without paying a financial penalty," Woolsey said.

STATUTORY LANGUAGE

Emergency Influenza Containment Act (Introduced in House) HR 3991 IH

111th CONGRESS
1st Session
H. R. 3991

To ensure that American workers are able to follow, without financial harm, the recommendations of their employer and public health authorities to stay home when they have symptoms of a contagious disease that may put co-workers, customers, or the public at risk.

IN THE HOUSE OF REPRESENTATIVES
November 3, 2009

Mr. GEORGE MILLER of California (for himself, Mr. KILDEE, Ms. WOOLSEY, Ms. HIRONO, Mr. HARE, Ms. CLARKE, Mr. PIERLUISI, and Mr. SABLAN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To ensure that American workers are able to follow, without financial harm, the recommendations of their employer and public health authorities to stay home when they have symptoms of a contagious disease that may put co-workers, customers, or the public at risk.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Emergency Influenza Containment Act'.

SEC. 2. PURPOSE.

The purpose of this Act is to ensure that American workers are able to follow, without financial harm, the recommendations of their employer and public health authorities to stay home when they have symptoms of a contagious disease that may put co-workers, customers, or the public at risk.

SEC. 3. PAID SICK LEAVE REQUIREMENT.

(a) In General- An employer who directs an employee to leave work or not to come in to work because the employer believes the employee has symptoms of a contagious illness, or has been in close contact with an individual who has symptoms of a contagious illness, shall provide paid sick leave to the employee for each workday (or portion thereof) the employee complies with such direction, up to a maximum of 5 workdays per 12-month period.

(b) Employee Compliance With Employer Direction- An employee shall be considered to be in compliance with an employer's direction to leave work or not come in to work if the employee leaves work or does not come in to work when the employer instructs or advises the employee to do so because the employer believes that the employee--

- (1) has symptoms of a contagious illness; or
- (2) has been in close contact with an individual who has symptoms of a contagious illness.

(c) Duration of Leave-

(1) IN GENERAL- An employee shall be provided paid sick leave (as calculated in accordance with paragraph (2)) by the employer of the employee for each workday (or portion thereof) the employee complies with the employer's direction to leave work or not come in to work, up to a maximum of 5 days per 12-month period.

(2) CALCULATION OF PAID SICK LEAVE-

(A) CALCULATION- The amount of paid sick leave shall be calculated based on the employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work.

(B) GUIDELINES- The Secretary of Labor shall issue guidelines to assist employers in calculating the amount of paid sick leave under subparagraph (A).

(3) REASONABLE NOTICE- After the first workday (or portion thereof) an employee receives paid sick leave under this Act, an employer may

require the employee to follow reasonable notice procedures in order to continue receiving such paid sick leave.

(4) Employer'S TERMINATION OF PAID SICK LEAVE- Paid sick leave provided to an employee under this Act shall cease beginning with the employee's next scheduled workshift immediately following notification by the employer to the employee that the employer believes the employee no longer has symptoms of a contagious illness or poses a threat of contagion to other employees of the employer or to the public.

SEC. 4. NOTICE.

Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor of the requirements described in this Act.

SEC. 5. PROHIBITED ACTS.

It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who--

- (1) complies, in accordance with this Act, with an employer's direction to leave work or not come in to work; or
- (2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.

SEC. 6. ENFORCEMENT.

(a) Unpaid Sick Leave- An employer who fails to pay sick leave in violation of this Act shall--

- (1) be considered to have failed to pay minimum wages in violation of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); and
- (2) be subject to the penalties described in section 16 of such Act (29 U.S.C. 216) with respect to such violation.

(b) Unlawful Termination- An employer who willfully violates section 5(2) shall--

- (1) be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)); and
- (2) be subject to the penalty described in section 16(a) of such Act (29 U.S.C. 216(a)) with respect to such violation.

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to in any way diminish the rights or benefits that an employee is entitled to under any--

- (1) other Federal, State, or local law;
- (2) collective bargaining agreement; or
- (3) existing employer policy.

SEC. 8. EFFECTIVE DATE.

This Act, and the requirements under this Act, shall be effective not later than 15 days after the date of enactment of this Act.

SEC. 9. SUNSET.

This Act, and the requirements under this Act, shall expire 2 years after the effective date of this Act.

SEC. 10. DEFINITIONS.

For purposes of the Act:

(1) CONTAGIOUS ILLNESS- The term `contagious illness' includes influenza-like-illnesses such as the novel H1N1 virus.

(2) EMPLOY; EMPLOYEE- The terms `employ' and `employee' have the same meanings given such terms in subsections (e) and (g) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (e) and (g)).

(3) EMPLOYER- The term `employer' has the meaning given such term in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)),

except that the term does not include an employer who--

(A) employs fewer than 15 employees; or

(B) with respect to an employee being directed to leave work or not come in to work, provides such employee with at least 5 days of paid sick leave per 12-month period that may be used at such employee's discretion.

GINA POSTER

10/30/2009

By Jackson Lewis

Federal law requires postings in workplaces informing individuals of their rights under federal employment discrimination laws. The U.S. Equal Employment Opportunity Commission (EEOC) has published a notice revising its "Equal Employment Opportunity is the Law" poster to reflect changes required by the employment provisions (Title II) of the Genetic Information Nondiscrimination Act (GINA), which becomes effective on Nov. 21, 2009.

The new poster can be found at <http://www.eeoc.gov/posterform.html>.

According to the EEOC, the poster will be available in Spanish, Chinese and Arabic.

Employers may want to update handbook policies to incorporate language concerning GINA, consistent with the new posting requirement.