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Should Connecticut Adopt a Paid Family and Medical Leave Insurance Program?

An Alternate View

PRESENTED BY

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INTRODUCTION

The Connecticut General Assembly created a Family and Medical Leave Insurance (FMLI) Task Force through **Special Act 13-13**, and charged the group with studying the feasibility of providing short-term insurance benefits to those unable to work due to pregnancy, birth of a child, nonwork-related illness or injury, or for the care of a seriously ill child, spouse, or parent.

Required to report its findings and recommendations to the legislature's Labor and Public Employees Committee by Oct. 1, 2014, the task force recently outlined a plan for a new state-administered program.

Here are the concerns of the task force's business representatives:

- ▶ The proposal gives short consideration to the costs or administrative burdens the program would place on Connecticut employers, nor does it contemplate how employers might have to adjust other employee-related conditions or benefits in order to implement the proposal.
- ▶ The proposal ignores the fact that nationally recognized and widespread business practices in Connecticut, as well as the abundant insurance options available in Connecticut's marketplace, already fulfill the goals identified by the task force.
- ▶ As Connecticut's economy recovers slowly from the recession, some of the non-business members of the task force are recommending a proposal that expands the size and cost of state government, and goes far beyond any similar initiative in any other state.
- ▶ Very few states have successfully implemented—or even considered—such a proposal.

A CLOSER LOOK

In this report, we will address several significant factors that should be considered in the debate:

- ▶ **Washington State:**
 - The Only Appropriate Comparison 1**
- ▶ **Expanding the Cost, Size of State Government 2**
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WASHINGTON STATE: THE ONLY APPROPRIATE COMPARISON

One of the critical flaws in the proposal is the argument that its cost and administrative burden would be similar to those in states that have pre-existing short-term disability programs.

We believe this is, however, similar to comparing apples to oranges.

While many Connecticut employers provide access to short-term disability insurance, there is no state mandate to do so. Only Washington State—where a paid family leave law was enacted in 2007 without any prior short-term disability mandate in place—is in a position similar to the one Connecticut now faces.

Although requested to do so, Connecticut's FMLI task force presented very little information on Washington's paid family leave law that was enacted *but never fully implemented*.

This is particularly problematic, given that Washington is the only state to undertake such a proposal without having a pre-existing short-term disability requirement on employers.

What we do know is that:

- ▶ Washington State has not implemented its law because lawmakers have not identified a source to fund the prohibitively high costs of the program.
- ▶ The model proposed by Connecticut's task force is significantly more expansive than Washington's model.

The table on page 3 compares Washington State's paid family leave plan with the recommendations made by the non-business, majority members of the task force.

If we accept that Washington's model of paid family leave is the only true comparison to Connecticut's proposal, given the states' similar starting points (no pre-existing short-term disability mandate on employers), then Washington's estimated fiscal note is instructive as Connecticut tries to determine the cost of implementing a program of its own.

No Way to Pay

Since enacting this legislation in 2007, Washington State has repeatedly avoided implementing it until a way to pay for the enormous costs of the program could be identified. The state chose to delay implementation of the bill indefinitely.

The proposal from the non-business members of Connecticut's Family and Medical Leave Insurance task force is more far-reaching than the unimplemented Washington model in almost every major category. Given its larger scope and richer benefits, Connecticut's proposal for paid family leave would be more costly to implement per capita than Washington State's model.

The proposal also attempts to force Connecticut down a similar path as Washington—albeit a more expensive path—and one that is already known to be a budgetary dead end.

EXPANDING THE COST, SIZE OF STATE GOVERNMENT

The non-business members of the FMLI Task Force recommend that the proposed program be administered by the Connecticut Department of Labor, given the department's experience in handling work-related benefits, interpreting and enforcing workplace laws, and collecting and disbursing tax and benefit payments based on employee payrolls.

Because nearly all employers would be impacted by FMLI, and payment and enforcement infrastructure would need to be in place, the proposed program would be very similar in scope and function to the state's unemployment compensation system—which is administered with the help of hundreds of state employees, according to a Department of Labor (DOL) representative serving on the FMLI task force.

The DOL representative also noted that federal restrictions on the state's unemployment program prohibit employees hired to administer the

PROGRAM ASPECTS	WASHINGTON LAW	CT FMLI TASK FORCE PROPOSAL	NOTES
Reasons for paid leave	1. Pregnancy or the birth or adoption of a child <i>Failed 2013 legislation would have added:</i> 2. A non-work related illness or injury 3. The need to care for a family member with a serious health condition	1. Pregnancy or the birth or adoption of a child 2. A non-work related illness or injury 3. The need to care for a family member with a serious health condition	Connecticut's proposal is more expensive
Definition of family member	Does not apply to 2007 law (<i>Failed 2013 legislation would have included spouses, domestic partners, and parents.</i>)	Includes spouses, parents (defined as biological, foster, adoptive, step parent, anyone who served in loco parentis, and parent in laws), and siblings	Connecticut's proposal is more expensive
Maximum length of paid leave	Five weeks (<i>Failed 2013 legislation would have increased this to 12 weeks.</i>)	Six weeks	Connecticut's proposal is more expensive
Minimum amount of paid leave time	Eight hours	Four hours/half a workday	Connecticut's allowance for half days is more difficult for employers to administer and arrange half-day job coverage for the absent employee
Employee eligibility requirements	1. Must establish a qualifying year (have worked 4 out of 5 quarters prior to leave application) 2. Must have been employed at least 680 hours in the qualifying year	Employee must have earned at least \$9,300 in a 12-month base period with one or more employers	Connecticut's proposal is more expensive, potentially allowing employees to use leave without working a single hour with a new employer
Size of employer covered	All employers; self-employed can opt in	All employers; self-employed can opt in	
Benefit amount	\$250/week for individuals working 35+ hours a week, pro-rated for part-time workers (<i>Failed 2013 legislation would have increased this to a maximum of \$1,000 per week.</i>)	66% of an employee's average weekly earnings, up to a maximum of \$1,000 per week	
Waiting period before benefits can be received	One week	One week	
Department administering program	Employment Security Department (administers the state's UI program)	Labor Department (administers the state's UI program)	
Approximate # of employees in state	3,273,300 (July 2014)	1,749,300 (July 2014)	
Unemployment rate	5.6%	6.6%	
Estimated cost to implement	Increases contained in failed 2013 legislation would have cost \$1.2 billion ¹ per biennium	Undetermined	

¹ Fiscal note to Washington bill 1457 S HB, Family & Medical Leave Insurance (2013)

unemployment compensation system from administering other programs, such as the one proposed by the non-business members of the FMLI task force.

Therefore, the state of Connecticut would have to hire hundreds of employees in order to properly implement the proposed FMLI program—increasing the cost to taxpayers and the state’s obligation under the state employee retirement plan.

KEY UNKNOWNNS, KEY CONSIDERATIONS

Judging a legislative proposal by its intentions is not enough.

It is equally important to determine whether a proposed policy or program is truly needed, and whether it is fiscally prudent.

Largely absent from the proposal is an environmental scan (e.g., an accounting of current and anticipated needs and what accommodations or capabilities already exist) and a cost-benefit analysis.

The most significant unknowns are:

- ▶ The price tag for implementing a paid family leave program, including the cost of hiring additional state employees to administer and enforce the program. The Connecticut Department of Labor, in consultation with the Permanent Commission on the Status of Women, has applied for, but has not yet been awarded, a federal grant to study the cost factors.
- ▶ How many businesses in the state already offer access to a short-term disability insurance product,

which could be used to provide income coverage for employees during periods of illness or disability.

- ▶ How employees might be affected as employers adjust their business practices, or other wages or benefits, in order to afford the increased state taxes needed to pay the cost of state employees to administer the proposed FMLI program.
- ▶ The impact of increased employee absence on employers as a result of enactment of the program proposed by the non-business, majority members of the FMLI task force.

And More

A number of other factors should be considered prior to adoption of a paid family leave program:

Connecticut’s Budget Deficit

Recent estimates by the legislature’s nonpartisan office of fiscal analysis put Connecticut’s budget deficit in the coming fiscal year at approximately \$1.37 billion, with potentially larger shortfalls in the years thereafter. Not surprisingly, surveys of Connecticut taxpayers—residents and business owners alike—underscore that lawmakers’ primary focus should be on getting their fiscal house in order. Spending upwards of a billion dollars on a new state-mandated benefit would seem contrary to that goal.

State Competitiveness Rankings

In CNBC’s America’s Best States for Business 2014 rankings, Connecticut once again lost ground vis-à-vis the rest of the country, sinking to 46th place.

One of the chief reasons for this lost ground are poor rankings in two categories: the cost of doing business (Connecticut ranked 47th out of 50 states) and the cost of living (Connecticut is 48th). Right or wrong, these business rankings reflect the nationwide perception that Connecticut is a prohibitively expensive place to live and do business. This negative image damages business confidence, hampers private-sector investment, and gives businesses reason to expand in states other than Connecticut.

To change this perception, Connecticut lawmakers need to focus on reducing costs for both employers and employees, not adding to them through the implementation of a paid family and medical leave program. Such a program only reduces the bottom line on both employee wages and employers' ability to operate.

Demonstrated Need

In its rationale for a paid family and medical leave plan, the non-business members of the FMLI task force note that women are more likely to suffer economic consequences from the use of unpaid family and medical leave because they are more likely to use the benefit.

However, a recent study by economist Steven P. Lanza, published in the summer 2014 edition of *The Connecticut Economy* ("The Best States to Be Female"), ranks Connecticut 3rd overall in a U.S. state ranking of women's economic opportunity (WEO) index, which looks at variables such as the gender pay gap, educational attainment, provisions for maternity leave, workforce participation, and the prevalence of women in traditionally male occupations.

In addition to recognizing Connecticut as a WEO leader among states, the study observes that Connecticut earns "perfect scores in maternity leave provisions," which calls into question the need for a state-mandated paid FMLI program.

Recent research by Gretchen Livingston at the Pew Research Center ("The Link Between Parental Leave and the Gender Pay Gap") notes that in many countries with more liberal parental leave policies than the United States, the gender pay gap is also wider. For example, The Czech Republic and Austria both offer up to 10 months of paid parental leave after the birth of a child, and both have higher gender pay gaps than the United States. Conversely, New Zealand and Belgium provide little by way of paid time off for new parents, and both have much lower pay gaps than the United States.

ADDRESSING QUESTIONS OF ADVOCACY

The non-business members of the Family and Medical Leave Insurance task force developed their recommendations based on the input of several people who are acknowledged advocates of paid family and medical leave. These advocates included:

- **Vicki Shabo**, director of work and family programs, National Partnership for Women and Families

While Ms. Shabo claims that paid family and medical leave programs are "wildly popular," she concedes that only three states (New Jersey, California, and Rhode Island) have fully implemented such programs. In all three cases, these state programs were based on pre-existing employer temporary disability mandates that

had been on the books for 60 to 70 years.

Three states (Connecticut, New Hampshire, and Vermont) have created task forces to explore paid family and medical leave programs yet, to date, none of these states has implemented such a program.

Only Washington State established a stand-alone paid family leave policy, Shabo points out, while adding that the program was never implemented and that “implementation challenges and delays provide important lessons.” (An earlier section of this report discusses Washington State’s paid family leave policy.)

While Shabo and her organization support Connecticut’s adoption of a paid family leave program, she admits that states with these programs are facing significant challenges and roadblocks.

Moreover, she acknowledges that her organization’s true goal is to see the adoption of a federal policy on paid family leave and notes that Sen. Kirsten Gillibrand (NY) and Rep. Rosa DeLauro (CT) have introduced legislation that would create a national insurance program covering all U.S. employers.

A federal policy could mitigate the concerns held by some of the business representative members of Connecticut’s FMLI task force about the additional burdens a state program at this time would put on employers in the state, including reducing their ability to compete with businesses in other states.

- ▶ **State Sen. Gayle Goldin**, Rhode Island
- ▶ **Marcia Cone**, CEO, Women’s Fund of Rhode Island

The testimony of Goldin and Cone centers on Rhode Island’s experience with the Temporary Caregiver Insurance (TCI) program, which took effect in early 2014.

Rhode Island’s TCI provides for job-protected leave for up to four weeks for bonding with a new child (birth, adoption, foster), care of a family member with a serious health condition, or care of one’s own illness or disability.

It should be noted that Rhode Island’s TCI program expands on a pre-existing state mandate in place since 1942, which requires that employers provide their employees with access to temporary disability insurance. (California and New Jersey, two of the four states that have passed a paid family leave law, also had pre-existing employer mandates to provide access to temporary disability insurance.)

In addition to being built upon a state agency framework that has been in place for more than 70 years, Rhode Island’s program is entirely employee-funded and has significant fraud prevention and enforcement language—measures not included in the recommendations of the non-business, majority members of Connecticut’s FMLI task force.

Goldin says that employees in Rhode Island’s TCI program haven’t raised any objections to 1.2% of their paychecks (or more, for family care) being used to fund the program. Conversely, requiring employers to contribute to the TCI program, she adds, would “make it a far more complicated system.”

- ▶ **Lynn Feinberg**, senior strategic policy advisor, AARP’s Public Policy Institute

Ms. Feinberg notes that Connecticut’s aging population means working adults in the state can expect to take on increasing responsibility for eldercare—a trend that carries economic consequences for both employees and employers. (Nationwide, 61% of family caregivers are working adults, and according to data that Feinberg

supplied, the average annual cost to employers in lost productivity per full-time working caregiver is \$2,110.)

Feinberg's presentation stops short of endorsing a paid family leave policy but emphasizes that "supportive workplace benefits that help workers remain in the workforce and continue as family caregivers are 'win-wins' for employers and for caregiving families."

No data was provided on the number of employers who have already adopted more flexible work-week policies to accommodate their employees' needs.

Perhaps state policies or incentives for employers to adopt more flexible work weeks would be more cost-effective than creating and administering a new state program and bureaucracy.

► **Erik Retting**, outreach manager, Small Business Majority

Mr. Retting shared the results of a survey conducted by the Small Business Majority in 2013 regarding publicly administered family and medical leave insurance pools.

Unlike the Connecticut Business & Industry Association (CBIA), the Small Business Majority does not purport to represent any businesses, nor are any of its members business entities, which should call into question the organization's advocacy on behalf of businesses.

The Small Business Majority receives its funding not from businesses, but from foundations that support causes largely *opposed* by businesses—including those to increase the federal minimum wage and require employers either to provide health insurance to their employees or pay a penalty tax. The polling firm used by the Small Business Majority to reach its conclusions is also known for its roster of clients with liberal ideologies.

According to the group's survey, 45% of respondent businesses owners support publicly administered family and medical leave insurance pools, while 41% do not. These results are unusual, given that the business representatives on the FMLI task force—including a representative from CBIA, which represents approximately 10,000 businesses in the state of Connecticut—are decidedly opposed to many aspects of the program designed by the non-business, majority members of the FMLI task force.

CONCLUSION

For many practical reasons, Connecticut should not enact a new mandate for paid family and medical leave, particularly the one designed by the Family and Medical Leave Insurance Task Force.

Besides its likely prohibitive expense, such a policy would cause unintended consequences for employees in Connecticut and their employers. It would also adversely impact the state budget and Connecticut's economic competitiveness, both nationally and internationally.

Most important, no evidence conclusively points to the need for such a program or its efficacy at reducing economic hardships on women in the state. (In fact, "The Best States to Be Female" notes that an area where Connecticut scores low—affordable childcare—is linked to the state's high cost of living.)

By increasing costs on employers and taxpayers overall, and with the evidence suggesting such a program cannot be justified at this time, the FMLI task force's proposal would not necessarily solve a problem but create new, unintended ones with an impact on jobs and economic opportunities.