

Employer Paid Leave Tax Credits Will Not Close Gaps in Access to Paid Leave: **Why S. 1716/H.R. 3595 is Wrong for the Country**

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S. 1716/H.R. 3595 – the deceptively named Strong Families Act – would do little to increase working people’s access to paid family and medical leave. The proposal would offer small tax credits to employers who voluntarily offer paid family and medical leave to certain employees, but it would do nothing to put paid leave within reach for the millions of working people who have not won the “boss lottery.”

Research shows that employer tax credits do not lead to widespread changes in business practices and policies, which means that S. 1716/H.R. 3595 does not offer working families or the nation’s economy real, positive change. In addition, tax credits could disadvantage smaller and mid-size businesses relative to larger ones, and offer tax breaks to employers who are already offer paid leave.

At a time when just 15 percent of workers in the United States have access to paid family leave at their jobs and fewer than 40 percent have personal medical leave through employer-provided short-term disability insurance, the country needs to invest in working people, families, businesses and the economy by creating a real national paid family and medical leave standard – one that is inclusive and affordable for all working people and businesses of all sizes.

What is Wrong With the Strong Families Act?

The Strong Families Act refers to **S.1716/H.R. 3595**, a federal proposal that would allow employers that provide paid leave to claim small credits on their tax returns for the wages paid to select employees during family or medical leave.

Key elements of the flawed proposal include:

- ▶ **Offers tax credits of as little as 12.5 percent of the wages paid to an employee on leave.** Employers would receive a scaled tax credit of between 12.5 and 25 percent, which means employers could shoulder as much as 87.5 percent of the cost of an employee’s paid leave.
- ▶ **Sets a low bar of as little as two weeks of leave to qualify for a credit.** An employer’s policy could provide as little as two weeks of paid leave to make them eligible for a credit, which is much less than the 12-week leave standard established by the nation’s unpaid federal leave law – the Family and Medical Leave Act (FMLA).

- ▶ **Employers’ policies could address as few as just one of the reasons people need leave.** An employer could receive a tax credit even if its policy is to provide paid leave for just one of the family and medical reasons people qualify for under the FMLA – parental leave, family care leave, personal medical leave, military caregiving leave or military deployment leave – rather than all reasons, which could exclude older workers, workers caring for seriously ill or injured family members or workers with serious health needs.
- ▶ **Credits are available on wages employers pay only to select employees within a worksite or workforce.** Employers would only receive credits for wages paid to employees with compensation in the prior year that was at or below 60 percent of the compensation threshold for “highly compensated employees” under the Internal Revenue Code. In 2017, that means employers only receive a credit for the paid leave they provide to employees paid \$72,000 or less.
- ▶ **No designated funding source.** The bill would create an unfunded government expenditure because it does not specify a source of funding to pay for the tax credits.

Employer Tax Credits Would Not Offer Meaningful Incentives – and Could Result in Corporate Giveaways

Many companies want to be able to ensure their employees have access to paid leave, but S. 1716/H.R. 3595 does not offer a workable solution. In a recent Ernst & Young (EY) survey, fewer than 40 percent of employers, and just 35 percent of companies with fewer than 100 employees, said tax credits would influence their decision about whether to offer paid leave.¹

Under the proposal, people whose employers are not already inclined to offer paid leave would remain in their current, often precarious position when a serious family or medical situation arises. At worst, the proposal would result in tax giveaways to companies that have already determined that providing paid leave is good business.

- ▶ **Employers who are concerned about the costs of offering paid leave will find little relief in small, deferred tax credits.** S. 1716/H.R. 3595 would

The Strong Families Act would require significant business expenses without timely or meaningful relief.

Example 1 – Jim is typically paid \$48,000 per year as a worker at a factory that employs 100 people. He needs to take two months away from his job for knee replacement surgery and recovery. His company’s policy sets medical leave wage replacement at 50 percent of a worker’s usual wages, which is the minimum required to be eligible for the *Strong Families Act* tax credit.

Jim’s company pays him **\$4,000**, or 50 percent of his usual wages, for those two months. In exchange, the company will receive a credit of 12.5 percent of the amount it paid, or just **\$500**, toward the company’s liability on its tax returns at the end of the tax year. Moreover, Jim may still face significant financial hardship because he is only receiving half of his usual wages.

Just like more than 40 percent of people in his income bracket who take medical leave without full pay, Jim may need to dip into emergency savings or take on debt during this time, which may lead to lower morale and productivity when he returns to work. He may even need to cut his leave time short, impairing his recovery and risking higher long-term health costs. Therefore, Jim’s employer has paid a substantial sum, but neither Jim nor his employer may see the value of paid leave.

require employers to make substantial out-of-pocket expenditures when employees take leave in exchange for a small amount of tax relief that would not be available until year-end tax returns.

- ▶ **S. 1716/H.R. 3595 would exacerbate the uneven playing field among companies.** The proposal offers tax breaks to larger companies that can afford or already provide paid leave while leaving paid leave out of reach for smaller companies and those that have thinner margins or variable cash flows.
- ▶ **The proposal is unlikely to encourage companies that do not offer paid family and medical leave to do so.** When the government has offered tax credits to businesses to incentivize the hiring of people who are unemployed² or people with disabilities,³ or the offering of child care benefits⁴ or purchase of health insurance,⁵ businesses have not been very responsive. Tax credits are viewed, even by conservative researchers, as an ill-suited approach to changing business decisions and behavior.

- ▶ **S. 1716/H.R. 3595 could encourage companies to scale back existing benefits.** The credit applies to designated paid family and medical leave and not to payments companies make pursuant to their paid sick days or paid vacation time policies. This provision could incentivize employers to reduce or re-designate existing benefits. In order to guard against employees losing access to paid time off benefits, any paid leave tax credit – if offered at all – should only be available to employers who also offer reasonable amounts of paid sick time and paid vacation time.

Example 2 – Pam is typically paid \$48,000 per year as an executive assistant at a small firm. Her doctor says she needs three months away from her job at the end of her pregnancy to deal with a complication, to recover after giving birth and to care for her new baby. Her company considers whether it can provide 100 percent of her typical wages for these three months, or **\$12,000**. In exchange, her employer would receive a credit of 25 percent of the amount paid, or **\$3,000**, toward its tax liability at the end of the tax year.

In this case, Pam would have full financial support while on leave, but Pam’s employer determines that the \$12,000 cost is too much and the \$3,000 credit is too little. Pam cannot afford unpaid leave, so she uses two weeks of paid sick time and then her vacation time for a third week. Then, like nearly one-quarter of women in the United States, she returns to work two weeks after giving birth.

Moreover, if Pam worked for a large, multinational company, a small tax break is unlikely to change the outcome of her story. It is possible that her company – such as Nestle, Amazon, Campbell’s Soup and a select group of other forward-thinking businesses – would already offer the leave. In that case, the company would receive the credit and taxpayer dollars would subsidize a company that had already determined that providing paid leave is a worthwhile investment.

Employer Tax Credits Do Not Guarantee Expanded Access to Paid Leave and May Have Adverse Effects

Working families’ financial challenges often grow when serious family and medical needs arise and paid leave is not available. Among workers in households with incomes below \$75,000 per

year who took leave with partial or no pay, more than half reported dipping into savings set aside for another purpose, about four in 10 reported taking on debt and/or delayed paying bills, and more than one-fifth reported needing to use public assistance.⁶ All working people deserve the security of paid leave for serious personal and family health issues. Employer tax credits won't achieve that goal and may exacerbate financial challenges and inequities by:

- ▶ **Suppressing wages for working people.** Wage stagnation is a key challenge facing working people. As the economy has recovered from the 2007-08 recession, median household income remains 1.6 percent below its 2007 level.⁷ However, by providing tax credits to employers for providing leave only to workers with compensation at or below \$72,000, the proposed tax credits could encourage employers to keep wages below that threshold, costing workers who would otherwise be on the cusp of moving from middle- to higher-wage jobs a pay raise.
- ▶ **Leading to discrimination and resentment within workplaces.** To be eligible for the tax credit, employers only need to offer paid leave for *one* of the five reasons included in the FMLA – for example, offering parental leave but not family caregiving leave, military leave or leave for a workers' own serious health condition. This could lead managers to avoid hiring workers they perceive as more likely to take leave. It could also heighten tensions among co-workers by favoring some workers' serious family and medical needs over others.
- ▶ **Leaving decisions about access to paid leave in bosses' hands.** Offering small incentives to businesses to offer paid leave means the current "boss lottery" continues and workers' access to paid family and medical leave is solely in employers' hands. There is no guarantee that employees who are currently without paid leave will gain it through S. 1716/H.R. 3595. People who work for large companies with predominantly hourly, lower-wage workforces – disproportionately women and people of color – would be unlikely to see meaningful changes to employers' policies as a result of the proposal.
- ▶ **Rewarding employers who adopt very limited paid leave plans while employees continue to struggle with financial hardship and inadequate leave time.** The proposal would allow employers who provide as little as half of an employee's typical wages for as little as two weeks to be eligible for a tax credit. Research shows that lower- and middle-wage workers often face adverse financial effects when they do not receive adequate wage replacement. State paid family leave experiences suggest that anything less than two-thirds of an employee's wages is not an adequate level of wage replacement, especially for workers whose typical wages are low. Moreover, employers could use their eligibility for the credit to publicly tout and receive praise and recognition for their family friendly policies when the policies are too limited to be helpful.
- ▶ **Failing to support self-employed and contingent workers who face serious health or caregiving needs.** A growing share of working people are self-employed or working on a temporary or contract basis.⁸ The proposal would provide no income support to a self-employed or contingent worker who needs to take time away from work for a serious health condition or family caregiving.

Employer Tax Credits Could Negatively Affect Government Spending

Addressing the United States' paid leave crisis requires investments – and research suggests those investments will lead to higher wages, greater labor force participation, higher retirement savings and reduced use of public assistance programs. However, investments must be meaningful and effective in order to see these results.

Employer tax credits do not pass the cost-benefit test. Tax credits to employers would do little or nothing to improve paid leave access and, to the extent employers use the credit at all, would create liabilities borne by taxpayers. In addition, the insignificant requirements associated with the credit would mean little chance of reduced savings elsewhere.

- ▶ **If employers claim paid leave tax credits, S. 1716/H.R. 3595 could mean higher costs for all taxpayers.** The proposal does not include a funding source, potentially subjecting all taxpayers – individuals and corporations – to additional tax liabilities. This could create a dual penalty for smaller taxpaying businesses, in effect forcing them to subsidize competitors that offer paid leave while doing little to help them provide paid leave for their own employees.
- ▶ **The proposed requirements are not rigorous enough to reduce use of income support and public assistance programs.** One of the benefits of ensuring working people have access to paid leave is the relationship between paid leave and reduced use of public assistance and the Supplemental Nutrition Assistance Program (formerly known as food stamps).⁹ However, plans that offer as little as 50 percent wage replacement for as little as two weeks are unlikely to have a positive effect on workers' use of other government programs and may still result in common financial challenges associated with inadequate access to paid leave, including using savings earmarked for other purposes, taking on debt and falling behind on bills.

America's Need for Paid Leave is Best Addressed Through a Real, Inclusive Policy

Paid leave employer tax credits would exacerbate the status quo, which would mean children suffer, working people are hurt and smaller and low-margin companies can't compete. In contrast, a meaningful, inclusive plan – a real national paid leave plan that applies to all employers and covers all working people no matter where they live or work or their jobs – would offer personal, family and business security that would truly create stronger families, a stronger workforce and a stronger economy. A plan funded through small, shared contributions, such as the **Family And Medical Insurance Leave (FAMILY) Act (S. 337/H.R. 947)**, would also make leave more affordable and fair, without imposing large and unpredictable costs on employers.

Learn more about paid leave and the need for a strong national policy at SupportPaidLeave.org or NationalPartnership.org/theFAMILYAct.

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The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at NationalPartnership.org.

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