

**United States Senate Committee  
on Health, Education, Labor and Pensions**

**Tuesday, May 18, 2021**

**Written Testimony of Marianne McManus,  
Vice President of Health and Benefits, IBM  
on behalf of the American Benefits Council**

**Paid Leave for Working Families:  
Examining Access, Options, and Impacts**

Good morning Chair Murray, Ranking Member Burr, and esteemed members of the Committee. I am Marianne McManus, Vice President of Health and Benefits at IBM Corporation. I am responsible for overseeing global benefits design, strategy, and delivery, along with Corporate Health & Safety across IBM globally. I am here today on behalf of the American Benefits Council (“the Council”).

The Council is a Washington, D.C.-based employee benefits public policy organization. It advocates for employers dedicated to best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees, and families. Council members include over 220 of the world’s largest corporations. Collectively, Council members either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans. IBM has been a longtime

member of the Council and, most recently, I served as the chair of the Executive Board of Directors.

Specifically, I am here to communicate our strong and enthusiastic support for a federal paid leave program that builds on private-sector solutions.

Council member companies agree that we are most successful recruiting and retaining top talent when our employees are confident in their ability to take paid time off when they need it. Furthermore, paid leave is good for business. According to an E&Y study entitled “Viewpoints on paid family and medical leave: Findings from a survey of US employers and employees, March 2017,” showed that employers offering paid leave benefits overwhelmingly saw a positive effect when it came to operating outcomes.

We recognize the important role paid leave benefits have in the lives of our employees and agree that paid family and medical leave, in addition to sick leave, are essential. This past year, the COVID-19 pandemic underscored the vital role paid leave policies serve for the health and wellbeing of our workforce. Let me say it unequivocally on the record that IBM and the Council believe that all workers in United States deserve access to paid leave benefits.

We recognize that not every U.S. employer has the ability to offer the same level of paid leave that IBM provides to our workforce. At IBM, we have a long history of providing flexible time off to employees as part of a generous and competitive benefits package. As a large, multi-national employer with employees in all 50 states and operations in over 170 countries worldwide, we understand the value of a comprehensive and uniform paid leave policy. Our benefit programs are generous and expansive: Our regular full time and part time U.S. employees receive a minimum of 15 days of paid vacation; up to 26 weeks of short term disability benefits; specifically, all eligible employees can receive up to 13 weeks of short-term disability benefits at 100 percent pay and another 13 weeks at a minimum of two-thirds of their pay; up to 12 weeks for all new parents at full pay; paid care leave at full pay for family care, marriage, or bereavement ranging from three days to four weeks depending on the use; in addition to a minimum of 56 hours of paid sick leave annually. We also offer long-term disability benefits for eligible employees.

In response to the COVID-19 pandemic, we quickly pivoted and rolled out enhanced paid time off offerings, which include additional paid sick leave for illness or the need to quarantine; paid leave to care for an ill family

member; and up to four weeks of emergency paid care leave for parents and caregivers for emergency family back-up care. These benefits were renewed for 2021. IBM also offers employees paid time off and flexibility to get vaccinated, should they choose to do so.

### **Administrative and Complex Compliance Challenges**

It is important for this Committee to be aware of the significant challenges facing nationwide companies who support paid leave but are required to navigate a maze of increasingly complex, inconsistent, administratively burdensome, and overlapping paid leave mandates across the country.

Meeting compliance and reporting obligations is inherently time consuming and can be confusing for even the most knowledgeable benefits professionals. Council member companies typically have nationwide operations in numerous states and localities, making it increasingly difficult to offer and administer consistent and uniform paid leave benefits to employees wherever they work. Variations among state and local paid leave laws, such as employee eligibility rules, qualifying absences, benefit duration and amount, and ability to coordinate statutory and company benefits make the administration and compliance burden overwhelming for

nationwide employers. One of the most widely-used and valuable resources the Council offers its members is a National Paid Leave Atlas, which identifies detailed requirements imposed by the various state and local paid leave laws. This type of summary is an essential tool for nationwide employers to keep track of requirements and ensure compliance. This is not just a matter of administrative cost and burden for employers. It is also a matter of fundamental fairness and equity for employees, particularly in light of increasingly mobile and remote workforces.

### **Impact on employees**

The numerous state and local leave laws have a significant adverse effect on employees and their families. Employees who previously received benefits at no additional cost from their employers in some cases must now pay an employee contribution, imposed by some state programs, for those same benefits. Employees who previously enjoyed a user-friendly experience in going directly to their employer to request benefits in some cases must now go to the state agency administering the applicable Paid Family and Medical Leave Program in addition to their employer. That places an unnecessary burden on employees who are already facing a challenging situation dealing with personal and family obligations. Furthermore, when the required time

off is related to a medical condition, the employee may also incur additional cost if the treating health provider charges for copies of records or completion of additional forms. This often results in pay cycles being out of sync (e.g., the employer benefit is approved in a week; but state benefits may take several weeks to be approved) and causes unnecessary stress for the employee. To simplify this process for employees, IBM has, at added cost to the company, implemented private plans in most jurisdictions.

We want the Committee to understand that our challenge is not in providing paid time off benefits to our employees. Instead, the growing challenge is created by the patchwork of inconsistent and increasing number of state and local laws, the speed at which new laws and changes to existing laws take effect, and the sheer number of requirements applicable to IBM's operations around the country. Moreover, compounding these challenges is the need to coordinate IBM benefits, which are frequently more generous, with these state and local mandates.

The burden of compliance and the range of different requirements mean that the resources designated for such programs are applied to navigating administrative complexities rather than program design and execution, which add value and enhance employee engagement. By contrast,

standardizing inconsistent and competing requirements could encourage more companies to *voluntarily* provide paid sick leave and/or paid family and medical leave benefits to employees regardless of whether they are required. One-size-fits all mandates are not the right solution for employers that already offer rich, generous benefit programs.

Rather than referencing general challenges posed by the various requirements across the country, let me be specific. Because IBM is a federal contractor, we comply with the federal Executive Order establishing paid sick leave, as well as all state and local laws on paid sick, family, and medical leave. As noted in the Council's National Paid Leave Atlas, as of July 1, 2021, there will be 16 states, the District of Columbia, and roughly 21 counties or municipalities with paid sick leave requirements, and the list is growing each year. Two other states have paid time off requirements, which allow the paid time off to be used for sick leave or for any other reason. These laws also vary in requirements, including eligibility criteria, differences in waiting periods, rate of accrual, accrual and use caps, qualifying uses, covered family members, ability to frontload (provide all time off up front), and notification requirements -- making it nearly impossible for an employer to craft a uniform and consistent policy for its national workforce.

In the wake of COVID-19, at least three states and 12 counties or municipalities passed public health emergency paid sick leave laws to supplement their regular paid sick leave laws and address employee needs due to the public health emergency. Likewise, IBM created its own paid time off program in response to the pandemic while also complying with all other applicable requirements imposed by the varying state and local laws.

There are also six states, plus the District of Columbia, that have paid family and medical leave laws, with three more states that have passed such laws to take effect in the near future.

Before COVID-19, an IBM employee could be covered by *as many as four different laws* simultaneously addressing the duration and amount of paid leave available to them for an illness or the illness of a covered family member (not to mention the federal Family and Medical Leave Act, which covers unpaid leave in similar circumstances).

For example, an employee working on a federal contract in San Francisco would be covered by (1) Executive Order 13706, (2) the California Healthy Workplace, Healthy Family Act, (3) the San Francisco Paid Sick Leave Ordinance, and (4) the California Paid Family Leave Law, all of which may have different eligibility, time off qualifying reasons, duration, covered



family members, reporting and record keeping requirements. During the height of the COVID-19 pandemic, that same employee also would have been eligible for leave under two other leave laws: San Francisco's Public Health Emergency Leave and California Supplemental Paid Sick Leave. While all of the laws provide that the most generous provisions apply, it requires significant time and resources to identify the most generous entitlement and ensure compliance with all applicable requirements. For employees, it can be overwhelming and confusing to determine which laws apply and to which leaves they may be entitled.

IBM's workforce is not alone in this predicament. For employees at similar companies, navigating the complexities and rules across these differing programs is deflating and stressful. For nationwide employers, the burden of administering the numerous state and local paid leave mandates is significant. According to a survey conducted by Mercer<sup>1</sup> of nationwide employers, associated administrative expenses will typically range from 8 percent-20 percent of total leave costs. Employers need to have sufficient staffing to administer all the nuances of the varying paid leave requirements

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<sup>1</sup> All data from: Mercer, Survey of Absence and Disability Management, 2021

and may need to spend substantial resources to gain access to a more robust administration assistance system. In fact, the Mercer study also shows that 66 percent of employers experienced an increase in resources in the last five years to handle state and local paid leave mandates.

We would speculate that, given our own challenges – despite our significant resources and sophisticated HR systems – it must be far more burdensome and costly for smaller companies or companies with fewer resources. This labyrinth of leave requirements can overwhelm employers, leading to non-compliance. Significantly, the new normal of multiple applicable leave mandates and processes is transforming the traditional role of employers as the single point of contact for employee benefit programs and can negatively impact the employee experience.

### **Key Features of a Paid Leave Program**

Predictability and flexibility are important in a paid leave program for both employees and employers. It is important for employees to understand available benefits in advance as well as how to seamlessly apply for those benefits. Employees should not be required to contribute a portion of their paycheck to fund paid family medical leave benefits if they already receive

those benefits at no additional cost. Employers should be permitted to efficiently administer a uniform benefits program that matches the specific needs of its workforce. The current model is not ideal for a national employer who wants to offer consistent and uniform benefits that employees may access in a user-friendly way.

Both before and during COVID-19, IBM has continually sought feedback from our employees about how they are doing and to determine their needs. We design our benefit programs accordingly and customize leave benefits to address employee priorities. For example, in response to employee feedback, we added paid care leave to support IBMers and their families through personal and family situations. Paid care leave can be used to care for a family member, celebrate a marriage, or for bereavement. Family care, one aspect of paid care leave, is typically covered by paid family and medical leave laws, yet marriage and bereavement leave are not. Our focus continues to be addressing the particular needs of our employees whether or not a particular leave type is required by law.

We recognize that not all workers have access to generous paid leave benefits, and gaps remain that need to be filled. All workers in our country

should have access to robust paid leave benefits. The federal government plays an essential role in filling the gaps in leave benefits nationwide and can do that while preserving effective employer plans at the same time.

### **The Need for Uniform Federal Standards**

In our view, the dual concerns of enabling employee equity with respect to paid leave benefits and eliminating administrative and compliance burdens created by inconsistencies in the various state and local leave laws should be addressed through a federal legislative solution. We believe that any federal solution should consider as a starting point the Council's Statement of Principles on Paid Leave [see Appendix 1.] These principles outline a common-sense approach for building on the generous leave programs already provided by the Council's national employer members. Those companies are at the forefront of innovative benefit solutions for their employees. The goal of ensuring access to paid leave programs for all workers on an equitable basis cannot be realized without leveraging private sector solutions.

As such, IBM strongly supports a federal legislative solution that would provide employers the flexibility to offer a paid leave program that meets a

single set of standards for employees nationwide. If this can be established, employers could offer paid leave programs that meet uniform criteria while satisfying compliance requirements throughout the country. This would also offer employees nationwide consistent benefits regardless of where they work or live. This approach would not be new or novel. Congress has made possible both flexibility within certain parameters for different employers and workforces as well as federal uniformity for employers who operate in more than one state, in the design and operation of their health and retirement plans.

This proposed national approach to paid leave provides the kind of flexibility required for employers to ensure their paid leave policies address employees' specific needs and priorities, while also reducing costs and eliminating administrative complexity.

## **Outlook**

We remain optimistic about the prospects for a federal legislative solution that can achieve two important goals: create an environment where all American workers gain access to paid leave benefits and enable nationwide employers to provide uniform and consistent benefits to their employees

while relieving the administrative and compliance burdens imposed by inconsistent state and local laws. Most recently, President Biden's American Families Plan and the Building an Economy for Families Act released by U.S. House of Representatives Ways and Means Committee Chairman Richard Neal, are important steps forward in this dialogue. The acknowledgement of a need for a federal solution is significant, and we are encouraged that Chairman Neal's discussion draft recognizes the important role of employer plans.

We similarly applaud the bipartisan commitment of the leaders of the HELP committee to thoughtfully gather information and perspectives from a range of stakeholders in order to craft a federal solution that meets the nation's needs. IBM and The American Benefits Council stand ready and eager to support you in this important effort.

Thank you again for the opportunity to testify today. We are committed to working closely with Congress and the Biden Administration to find a balanced solution that allows large employers to continue providing innovative and competitive benefits to their employees. I look forward to answering any questions you may have.



## STATEMENT OF PRINCIPLES ON PAID LEAVE

- American Benefits Council member companies recognize the importance of paid family and medical leave and paid sick leave benefits and they provide generous paid leave to their workforces.
- Paid family and medical leave programs are important for workers so they can meet the needs of parenting, care for a member of their family who is ill or address their own illness.
- Paid sick leave is an important public health and safety measure because it helps ensure that individuals who are ill do not feel compelled to come to the workplace, where they might infect co-workers and members of the public.
- The American Benefits Council supports federal legislation to expand access to paid family and medical leave and paid sick leave consistent with the following principles:
  - Employers must have the ability to treat workers equitably. Similarly situated workers for the same employer should expect their eligibility to receive paid leave, and the benefits and administration of the leave program, to be consistent wherever in the United States they live or work.
  - Federal standards for paid leave programs must ensure that employers operating in more than one jurisdiction are not subject to the cost and administrative burden of complying with various state or local paid leave requirements that may be inconsistent or even contradictory.
  - The federal standards for national employers must be reasonable, affordable and administrable.
  - To simplify the administration of paid family and medical leave benefits, the federal Family and Medical Leave Act definitions and standards should apply.
  - Employers that adopt and comply with federal paid leave standards must be deemed to be in compliance with all state or local paid leave requirements.

- Employers should have flexibility to design and administer innovative paid leave benefits since what is best suited for one company's workforce or industry may not be best suited for another.
- Federal paid family and medical leave legislation should protect and build on private sector solutions that would allow employers to provide coverage either through self-funding and/or private insurance.
- Paid family and medical leave programs should be designed, operated and funded by the private sector for maximum efficiency and to ensure that payroll taxes needed to fund existing government programs are not diluted in order to finance new governmental programs.
- Federal, state and local governments should address gaps in access to paid leave benefits for workers not covered by private sector employer plans to ensure that workers are protected from the hazards to health, family and income that may result from a lack of paid leave.
- To minimize disruptions in union workplaces, federal, state or local paid leave legislative changes should defer to the collective bargaining process and not require any party to a collective bargaining agreement to reopen negotiations of the agreement or to apply until the existing agreement is renegotiated by the parties or expires.