Twin State Voluntary Leave Plan

Since its enactment in 1993, the federal Family and Medical Leave Act (FMLA) has helped to promote work-life balance for many American workers struggling to meet the demands of the workplace while also meeting the needs of their families and their own health. The FMLA helps to protect the jobs of workers who need to take leave for specified family related or medical reasons. However, some employers are exempt from FMLA, and even when FMLA applies to an employer, a worker's income is not protected while on leave, and this in itself can be a significant barrier to the goal of promoting a healthy work-life balance.

Family Medical Leave Insurance (FMLI) provides wage replacement while an individual is on a qualifying FMLA absence from work regardless of the employer being subject to the provisions of the act. It is attractive to employees and can help bolster a company's recruitment, retention and productivity. This wage replacement program can be particularly attractive to younger employees looking to start or expand their family and to employees caring for an elderly parent or a child struggling with opioid dependence.

Many larger employers purchase FMLI through private insurance carriers or self-insure. Unfortunately, these are not viable options for most small businesses as insurers won't offer them policies due to their size and self-insurance is not affordable. Over 90% of New Hampshire and Vermont businesses have fewer than 50 employees and face the difficulties associated with providing FMLI to their employees.

During each of New Hampshire's and Vermont's last legislative sessions, there were unsuccessful attempts to pass paid leave programs. These proposals were not enacted due largely to concerns surrounding the risks and costs of implementing such programs.

Governors Sununu and Scott now join together to propose an innovative plan that leverages the buying power of the two states on behalf of their own state government employees in order to create a broad market for competitively priced FMLI that will be available to all Granite State and Green Mountain State employers.

To promote the development of FMLI plans in the Twin States, New Hampshire and Vermont propose creating a new wage replacement plan for their 18,500 combined state government employees administered through a private insurance carrier that would also allow private and public employers in both states the option of participating. By leveraging the economies of scale of the combined employment base of the two state governments, insurance carriers will be able to write a competitively priced FMLI plan, which does not currently exist in either market.

There are a number of advantages to New Hampshire and Vermont working together on this proposal:

- The larger combined state government employee risk pool will help make pricing more predictable, stable and affordable than if either state were to act separately;
- The larger risk pool will increase the interest of private insurance carriers to bid for the opportunity, which will ensure options and competitive pricing; and
- The economies of scale will reduce the administrative costs for both states.

Similarly, there are advantages to having an insurance carrier rather than a state administer the benefit:

- The risk of insolvency for a paid leave fund is shifted from tax payers to the insurance carrier;
- The startup and ongoing administrative costs of establishing the new programs, estimated in the millions for both states, is shifted from tax payers to the insurance carrier; and
- The coverage would likely be offered more quickly as it will not be necessary for each state to establish a program or initially fund a paid leave trust.

Here are some of the details of how it would work:

1. The two states would select an insurance carrier or carriers through a coordinated RFP process to assume the risk and manage the coverage and claims under the plan. This carrier or these carriers would then develop a "State Rate" for the combined population of employees of the two states. This is the per employee cost that each state would pay to provide an FMLI plan as insurance to its employees. Each state will cover the full costs of providing FMLI coverage to its employees, and employees will not have to incur any additional cost for the product. In addition, the winning carrier(s) would be required to offer FMLI plans to all employers in the state with specified rates for the following categories of employer:

    a. Employers that have 100% employee participation and have 20 employees or more would receive the State Rate.

    b. Employers that have 100% employee participation and have fewer than 20 employees would receive a small employer rate which is expected to be modestly higher than the State Rate.

    c. Employers that have less than 100% employee participation would receive a scaled rate that would depend on their participation rate and whether they had 20 employees or more.

2. Individuals who work for employers who do not choose to offer FMLI coverage in any form will have the opportunity to join a plan set up as an adjunct to the state government employee plans. In order to keep the coverage affordable, the plan rates for this group would be limited in the amount by which it could exceed the State Rate, effectively subsidizing the rates for this group. In this way, all employees in each state would have access to a competitively priced FMLI product.

3. Employees will be able to access coverage in a number of ways. First, their employer can provide the insurance at no cost to the employee. Alternatively, the employer may choose to sponsor the coverage as elective insurance with an

employee contribution requirement and specified enrollment windows. Finally, the employee could access coverage through the state sponsored group and not through the employer.

4. Enabling legislation would be required in each state to authorize this program and to set the framework for an agreement between the two states setting out the details of how the two states will work together to carry out a coordinated RFP process. No new governmental agency would be created. Rather, the framework will provide a coordination mechanism between the independent authorities in each state responsible for the different components of the program.

5. The following coverage would be offered:

   a. Qualified leave will match the types of leave protected under the FMLA, which includes leave for:

      i. the birth of a child and to care for the newborn child within one year of birth;
      ii. the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
      iii. caring for the employee's spouse, child, or parent who has a serious health condition;
      iv. a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
      v. any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty," or to care for a covered service-member with a serious injury or illness if the eligible employee is the service-member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

   b. The employee will receive 60% of their weekly wage.

   c. The maximum duration of wage replacement will be six weeks per year, with no minimum duration required.

   d. There will be a cap on wages eligible for 60% FMLI coverage equal to the Social Security Taxable Wage Maximum (currently $132,900).

   e. There will be a tenure requirement of 12 months of work before an employee would be eligible to be covered. This requirement would not apply when an employee has met the requirement and then changes jobs.

6. Because the insurance carrier who wins the state bidding process will be assuming the actuarial risk for the benefit provided, there is not a solvency concern from a state program standpoint. The insurance regulatory authority in each state would oversee the carrier to ensure compliance with applicable insurance laws and solvency standards just as they do for all carriers.

7. Because this proposal would not require either state to administer the program or to assume the insurance risk, the state staffing requirements to implement this program would be modest.

8. It is anticipated that there would be a development period as more and more businesses could chose to offer FMLI. Over time more insurance carriers would likely offer FMLI plans in the New Hampshire and Vermont markets, and employers would have the option to purchase plans that provide a benefit greater than the state's FMLI plan. As the market develops, the state's plan would serve as a base plan or market reference.