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ERISA will Rescue Employers Stuck in the Paid Family, Disability and Sick Leave Quagmire

Over the past several years various state and local governments have passed paid family leave, paid disability leave and paid sick leave requirements for employers operating in those jurisdictions. California and New York are particularly troublesome as employers must navigate through a maze of state and local paid family, disability, and sick leave requirements. Employers must then try to integrate those requirements with the employer's own paid leave policies which could include parental leave, short term disability, vacation and sick leave. As the amount of state and local requirements continue to increase, the burden on employers increases exponentially as they attempt to administer and try to offset competing leave requirements.

Enter ERISA and the Workflex in the 21st Century Act (the "Act"). The Act is an interesting approach because it uses the existing framework of ERISA to provide preemption of state and local paid leave laws. The Act would establish a new Part 8 of ERISA that allows employers to voluntarily "elect into" paid leave by providing a certain number of paid leave days based on the employee's year of service and the total number of the employer's employees. The paid leave days could be used for any purpose, including parental leave, family leave, sick leave or vacation.

The Act has only been introduced at this point, and will unlikely become law in its current form. But, it is a wonderful first start for multi-state employers who desperately need a way to simply existing leave requirements.