

# First impressions on the Build Back Better Act's payroll impact

Lots of House and Senate committees have their fingers in the Build Back Better Act pie. The BBB—the budget reconciliation bill—already passed the House. The Senate Finance Committee released its [title](#) Saturday night, but it's not the final product.

Most of the provisions in the Finance Committee's release aren't payroll-related. But of those that are, if you don't like what you see, don't worry. The provisions will change for a couple of reasons. First, the bill will be subject to the amendment process by the entire Senate. Second, Sen. Joe Manchin (D. - W. Va.) still opposes some provisions, like paid leave.

There's still some debate about whether this bill will be signed into law this year, because once the Senate finishes up, it will need to go back to the House. Nevertheless, we'll go through the broad outline now and we'll provide a more comprehensive analysis once it's clear what's in the bill and what's not.

## **Paid leave**

Like the House's version of the BBB, paid leave would start in 2024 and would be administered by the Social Security Administration. Employees would be entitled to up to four weeks of paid-leave benefits if they have or anticipate having at least four caregiving hours a week.

Paid leave would follow the FMLA, granting leave:

- For the birth of a child.
- For the placement of a child for adoption or foster care.
- For the employees' own serious health condition if they're unable to perform the essential functions of their jobs.
- To care for a family member with a serious health condition.

Employees who are on paid leave from their employers wouldn't be considered to be participating in caregiving activities. Similarly, employees claiming paid-leave benefits under state paid FMLA laws wouldn't be eligible for federal paid-leave benefits.

The bill would reimburse employers for providing paid leave. Employers opting for reimbursement would have to guarantee employees' jobs; job guarantees wouldn't otherwise be required.

*Twist:* Employer-provided paid leave is taxable to employees and this bill wouldn't change this. But federal paid leave benefits wouldn't be taxable. Employees, therefore, would have an incentive to opt for the federal paid benefits and hold onto their other paid-leave time. Right now, the bill doesn't seem to prevent this.

## **Provisions following the House bill**

The Senate bill will undoubtedly differ from the House bill in many respects. However, these provisions are the

same in both bills:

- The percentage used to determine whether employer-provided health benefits are affordable would drop to 8.5%, from 9.61% (for 2022), and wouldn't be inflation-adjusted through 2025.
- Bicycle fringe benefits would be restored as a qualified transportation fringe benefit and would be expanded to include scooters, electric bikes, and bike-sharing, effective for tax years beginning after Dec. 31, 2021.