

### **New Leave Mandate Proposed as Part of Violence Against Women Act Reauthorization**

On June 8, 2005, U.S. Senators Joseph R. Biden, Jr. (D-DE), Orrin Hatch (R-UT) and Arlen Specter (R-PA) introduced the Violence Against Women Act (VAWA) of 2005 (S. 1197). The larger bill is an important measure for a number of Democrats and Republicans (it renews several programs and provides funding for training, education and outreach in an effort to prevent violence against women).

Title VII of the bill includes a new mandate, modeled after the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 (FMLA), to permit employees to take leave from work for certain purposes related to domestic or sexual violence. Covered employees would be eligible to take up to 10 days of leave per year, which could be taken intermittently. This entitlement is in addition to leave provided under the FMLA or other federal, state, or local laws and regulations.

The VAWA builds on a number of state laws protecting victims of domestic and sexual violence. It is doubtless well-intentioned, and would assist some victims who would not otherwise be protected by federal or state laws. Nonetheless, some of the bill's particulars indicate it would be difficult to administer in many instances. For example, some of the leave provisions set forth in Title VII of S. 1197 are troubling. Among other reasons, they do not track the allegedly parallel model provisions of the FMLA. The following table summarizes some initial concerns:

#### **CONCERNS IN COMPARING THE FMLA WITH TITLE VII OF S. 1197**

ISSUE	FMLA	S. 1197 (Title VII)	CONCERN
<b>Length of Service Requirement and Coverage of Part-Time Workers</b>	Requires leave for covered employees who have worked 1,250 hours in the 12 months prior to the requested leave and who have worked for the employer for at least one year prior to the requested leave.	<p>“Employee” is defined as any person employed by an employer.</p> <p>(S. 1197 arguably covers workers immediately upon commencement of work, workers who are part-time or temporary, and independent contractors.)</p>	No recognition of the burden imposed (and acknowledged by Congress when it passed the FMLA) on a business if required to provide leave for new hires or workers working considerably reduced schedules.
<b>No Geographic Limitation—More Locations Covered</b>	Covers all public employers and private employers with 50 or more employees and limits leave to employees who work at a facility with 50 or more employees within a 75 mile geographic radius of the worksite at which worker employed.	Employer covered if employing 50 or more individuals (without regard to geographic location) for each working day during each of the 20 or more calendar weeks in the current or preceding calendar year.	Facilities which have never been covered by FMLA and which do not have the infrastructure to handle compliance will now be covered.
<b>Scope of Coverage</b>	Covers leave for birth, adoption or foster care, the employee’s own serious health condition or to care for a parent, child or spouse with a serious health condition.	Permits an eligible employee to take leave to help a “family or household member” address issues related to domestic violence, such as to seek medical attention or legal or law enforcement assistance.	“Family or household member” is defined extremely broadly to include “a <b>nonabusive</b> spouse, former spouse, parent, son or daughter, or person residing or <b>formerly residing</b> in the same dwelling unit as the individual.” Nonabusive is not defined.
<b>Certification Provisions</b>	Employer may require certification <b>by a health care provider</b> for an employee’s leave due to own serious health condition or to care for the employee’s parent, child or spouse.	Employer may require certification which is satisfied by, among other things, providing “a police or court record,” or “other corroborating evidence.”	Not only is this provision vague and lenient (no third party verification is necessary), but one can imagine numerous privacy concerns related to providing “corroborating evidence.”

*If you have any questions concerning S. 1197 or the FMLA, please contact the Seyfarth Shaw LLP Employment Group attorney with whom you work or any Labor or Employment attorney on the website at [www.seyfarth.com](http://www.seyfarth.com).*

**Seyfarth Shaw LLP**

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This email was sent by:  
Seyfarth Shaw LLP  
55 East Monroe Street, Suite 4200  
Chicago, IL 60603  
Attention: Client Relations Department  
[seyfarthshaw@seyfarth.com](mailto:seyfarthshaw@seyfarth.com)

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