

# Paid Leave in Budget Reconciliation



*Curran McSwigan, Senior Economic Policy Advisor, Zach Moller, Director of the Economic Program*

Getting 60 senators to agree on anything and bypass a filibuster is a feat. Because it's hard to overcome that magic threshold, policymakers on both sides of the aisle look to a process called budget reconciliation to fast-track legislation with only a simple majority. If one party controls the White House, Senate, and the House next year, this budgetary maneuver will be a key tool to address a variety of priorities.

Paid leave is poised to be one of those priority issues—no matter which party controls government. The first major federal *paid* leave policy became law in the form of a tax credit for employers under Trump's Tax Cuts and Jobs Act. And while a more comprehensive and spending-based paid leave program fell out of the final version of the Inflation Reduction Act, Vice President Harris continues to emphasize her commitment to making progress on the issue if elected.

But passing policy priorities using reconciliation is no simple task. It mandates that policymakers abide by strict rules and requirements while navigating other political constraints. Below, we

explore how paid leave has shown up in previous reconciliation bills, what this might mean for future efforts, and potential new ideas for making progress on paid leave through reconciliation.

Budget reconciliation is a special legislative process that allows the Senate to get around the filibuster. The process has numerous rules and limitations but has been used extensively over the last 25 years when one party controls the House, Senate, and White House. If one party has control of government in 2025, it is widely expected they will use this process for major priorities and to address the expiration of parts of the Trump tax cuts.

The budget reconciliation process is governed by more rules than we can cover here, but here are some key guidelines:

- A congressional budget resolution is needed to start the reconciliation process. The budget resolution determines which committees can participate and their specific budget targets.
- Policies must have a fiscal impact, changing outlays or revenues. <sup>1</sup>
- Policies that increase the deficit must be temporary or paid for outside the budget window.

Because of those rules, policies that thrive under reconciliation tend to have a few characteristics: they spend money or change taxes, have minimal regulatory language, and lean on existing authorizations or tax policies.

For further explanations of budget reconciliation, see: The Committee for A Responsible Federal Budget's, *Reconciliation 101*; the Center on Budget and Policy Priorities' *Introduction to Budget "Reconciliation"*; and Third Way's *Reconciliation: How It Works and How to Use It to Help American Workers Recover*.

## **Paid Leave in Past Reconciliation Bills**

There have been two recent efforts to make progress on paid leave through reconciliation.

## **45S Tax Credit (2017 Tax Cuts and Jobs Act)**

As part of the Tax Cuts and Jobs Act of 2017, policymakers enacted the 45S tax credit, which incentivizes employers to provide paid leave by offsetting some of the cost of the benefit.<sup>2</sup> The 45S tax credit was based on the Strong Families Act, a bipartisan bill that was modified to fit under the rules of reconciliation. While the credit was renewed after its initial two-year pilot, it is now set to expire along with other parts of TCJA in 2025.<sup>3</sup>

The value of the credit depends on how much of a worker's wages are covered by their employer. Employers covering at least 50% of their employee's wages are eligible for a 12.5% tax credit, and a higher wage replacement yields a higher tax credit (up to 25% of the benefit's value).<sup>4</sup> The tax credit can be used for up to 12 weeks of paid leave. To be eligible for the benefit, workers must have worked at their employer for at least a year and earned no more than 60% of the "highly compensated employee" limit (\$130,000), which was around \$78,000 in 2021.<sup>5</sup>

Earlier this year, a bipartisan group of members of Congress released a bill aimed at updating the 45S tax credit to expand access and uptake. The new credit would reduce the amount of time an employee must work to be eligible (from one year to six months), increase marketing and outreach efforts to small businesses, cut red tape surrounding eligibility for employers that operate across different states, and make the credit permanent.<sup>6</sup> These additions are important to the proper functioning of the tax credit. However, any marketing funds would need to be done as direct spending from an appropriate committee of jurisdiction, and cutting red tape may require additional changes to align with reconciliation rules.

## **Ways and Means' Version of Paid Leave (2021 Build Back Better Act)**

In 2021, when Democrats held the White House and both chambers of Congress, the House passed a paid leave plan under their Build Back Better (BBB) Act. The proposal would have created a national paid leave program by adding a new title to the Social Security Act.<sup>7</sup>

Under the legislation, workers could get four weeks of paid leave to cover caregiving, parental, or medical-related needs. The program focused on prioritizing benefits for lower- and middle-income workers by adopting a more generous wage replacement rate for those making lower wages, with replacement rates for a worker's pay decreasing as they earned more.<sup>8</sup> The paid leave plan under BBB was estimated to cost \$205 billion over a decade, according to the Congressional Budget Office (CBO).<sup>9</sup>

Notably, the paid leave program was a departure from the FAMILY Act, a comprehensive 12-week paid leave bill with significant Democratic support.<sup>10</sup> Specifically,

- BBB limited the number of weeks of leave available to workers to four, which greatly reduced estimated costs associated with the legislation.
- Unlike the FAMILY Act or other proposals, the paid leave plan under BBB would not have relied on a payroll tax. Instead, it was funded through permanent mandatory spending.<sup>11</sup> As part of the larger legislative package, other policies were aimed at offsetting costs associated with the program.<sup>12</sup>
- The cost of the BBB program was less than half the FAMILY Act.<sup>13</sup>
- BBB’s paid leave program did not include any provisions on job protection due to concerns it would not be allowed under Senate reconciliation requirements.<sup>14</sup> If included, job protection provisions potentially would have increased uptake of the program because it would have extended job security to many workers who are not currently eligible for protections under FMLA.<sup>15</sup> Job protection provisions could be included in separate legislation even if it’s blocked under reconciliation.

It is important to note that although aspects of the paid leave program put forth under BBB may have been discussed with the Senate Parliamentarian, it never underwent the formal “Byrd Bath” process. This process would provide Republicans ample opportunities to challenge provisions included in the bill.

## **More Ways to Make Progress in Reconciliation**

Looking ahead, there are numerous other ways to make progress on paid leave through reconciliation. For example:

### **A Tax Credit for Lost Wages Due to Caregiving**

When someone’s loved one becomes seriously ill, they may have to take time off work—and lose pay—to care for them. In the absence of a comprehensive paid leave program, many workers face the difficult choice: keep working to provide a paycheck or sacrifice work hours to provide care.<sup>16</sup> A refundable tax credit aimed at supplementing caregivers’ lost wages would mean fewer workers have to confront this painful decision.

Congress is no stranger to caregiving-related tax credits. The bipartisan Credit for Caregiving Act would provide working family caregivers with up to \$5,000 for 30% of long-term care expenses that exceed \$2,000 in a year.<sup>17</sup> While this approach is certainly helpful, Congress can do more to supplement wages lost to caregiving responsibilities.

Tax credits are often a means of accomplishing policy goals through reconciliation, as we have seen in both Republican- and Democratic-controlled governments. In the absence of a fully comprehensive paid leave program that covers caregiving leave, reconciliation may provide an opportunity to support caregivers as they navigate the demands of work and family.

## **Paid Leave through UI**

In several of his annual budgets, President Trump proposed requiring states to create a paid parental leave program through their existing unemployment insurance systems.<sup>18</sup> Specifically, he called for six weeks of paid leave just for new parents (excluding anyone needing leave for medical or caregiving needs). Aside from federal funding for start-up costs, the responsibilities for implementing the parental leave programs would be left to the states who would also decide on eligibility and benefit levels.<sup>19</sup>

If policymakers try and resurrect this approach, they might amend the Social Security Act to reflect this new requirement on states. Given that states already set their own benefit levels for unemployment insurance, this could mean states who don't want to raise taxes to increase their UI trust funds could decide to slash benefits for the unemployed in favor of a parental leave program.<sup>20</sup> It is also possible that parental leave benefit levels provided through this mechanism would be quite low. In most states, the average worker received an unemployment benefit that is below 50% of their previous wages. Such a low replacement rate for paid leave benefits would likely mean much fewer parents taking the time off they need.<sup>21</sup>

Regardless, the Byrd rule requires that policies included in a reconciliation bill must directly impact the federal budget. This means that a paid leave program mandated through a state's UI system must include significant federal spending or impacts to federal taxes. Just funding the program's start-up costs is likely not enough of a budget effect to pass through reconciliation without a challenge.

## **CTC as a Baby Bonus**

The expiration of the 2017 Child Tax Credit (CTC) levels will be a central point of debate during any reconciliation bill in 2025. As part of that, policymakers will have the opportunity to enhance benefits and expand refundability. One additional feature of a new CTC policy could include a "baby bonus," where parents of newborn babies receive an increased payment in their child's first year.

The baby bonus could be structured legislatively like the advanced payments (monthly payments) in the American Rescue Plan Act—but done just once. However, an additional challenge is that legislators will need to figure out how reporting a new child to the IRS would work. Under the American Rescue Plan the IRS knew who had children based on prior tax years, which wouldn't be

applicable with a new baby. Guidance in legislation will need to be carefully done as not to violate the Byrd Rule.

It can also be structured to ensure lower-income families are not left behind. This is especially important because under current law, families must show they earned at least \$2,500 in a year, and then the credit phases in at a rate of 15% per dollar of earnings over \$2,500. As a result, many lower-income families see a much smaller credit—or none at all. Considering lower-income workers are significantly less likely to have access to paid leave, a baby bonus type payment could provide critical support to many families needing to take unpaid leave. <sup>22</sup>

The Harris administration actually includes a baby bonus type initiative through the CTC in her initial economic policy plan, proposing a \$6,000 tax credit for families with new babies, while also boosting the value of the CTC for all families. <sup>23</sup>

## **Conclusion**

If there's one-party control in 2025, expect to see reconciliation as a vehicle to move policy priorities. Paid leave is an issue that has come up in recent reconciliation efforts by both parties and is likely to make a reappearance. Looking at how policymakers on both sides of the aisle have used reconciliation to address paid leave and what they might do if they have control again in 2025 helps us understand how we might make progress on paid leave in the next administration.

## ENDNOTES

1. Spending in budget reconciliation is done through direct spending from an authorizing committee. This can often look and feel like an appropriation just because it is temporary mandatory spending.
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- 9.** “Estimated Budgetary Effects of Title XIII, Committee on Ways and Means, H.R. 5376, the Build Back Better Act.” *Congressional Budget Office*, 18 Nov. 2021, <https://www.cbo.gov/publication/57626>. Accessed 18 Sep. 2024. And; “Full Estimates of the House Build Back Better Act.” *Committee for a Responsible Federal Budget*, 18 Nov. 2021, <https://www.crfb.org/blogs/full-estimates-house-build-back-better-act>. Accessed 18 Sep. 2024.
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