

**BALANCING WORK, HEALTH, AND FAMILY:
THE CASE FOR EXPANDING THE FAMILY
AND MEDICAL LEAVE ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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**BALANCING WORK, HEALTH, AND FAMILY:
THE CASE FOR EXPANDING THE FAMILY
AND MEDICAL LEAVE ACT**

**Tuesday, February 11, 2020
House of Representatives,
Subcommittee on Workforce Protections,
Committee on Education and Labor,
Washington, D.C.**

The subcommittee met, pursuant to call, at 2:46 p.m., in Room 2175, Rayburn House Office Building, Hon. Alma Adams (Chairwoman of the subcommittee) presiding.

Present: Representatives Adams, DeSaulnier, Takano, Jayapal, Wild, Scott (ex officio), Cline, Murphy, and Foxx (ex officio).

Also Present: Representatives Porter and Schneider.

Staff Present: Ilana Brunner, General Counsel; Emma Eatman, Press Assistant; Eli Hovland, Staff Assistant; Eunice Ikene, Labor Policy Advisor; Stephanie Lalle, Deputy Communications Director; Jaria Martin, Clerk/Special Assistant to the Staff Director; Richard Miller, Director of Labor Policy; Max Moore, Staff Assistant; Udochi Onwubiko, Labor Policy Counsel; Veronique Pluiose, Staff Director; Ivorie Stanley, Health and Labor Policy Fellow; Banyon Vassar, Deputy Director of Information Technology; Gabriel Bisson, Minority Staff Assistant; Courtney Butcher, Minority Director of Member Services and Coalitions; Akash Chougule, Minority Professional Staff Member; Rob Green, Minority Director of Workforce Policy; Jeanne Kuehl, Minority Legislative Assistant; John Martin, Minority Workforce Policy Counsel; Hannah Matesic, Minority Director of Operations; Audra McGeorge, Minority Communications Director; Carlton Norwood, Minority Press Secretary; and Ben Ridder, Minority Professional Staff Member.

CHAIRWOMAN ADAMS. The Subcommittee on Workforce Protections will come to order. I want to welcome everyone.

I note that a quorum is present, and I note for the subcommittee that Ms. Underwood of Illinois, Mr. Schneider of Illinois, and Ms. Porter of California are permitted to participate in today's hearing. Members who sit on the subcommittee and are present shall have first priority to ask questions, followed by members who sit on the full committee and are present. And only after all Committee Members who are present have gone shall members who are not on the Committee on Education and Labor can ask questions.

The subcommittee is meeting today in a legislative hearing to hear testimony on “Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act.”

Pursuant to Committee Rule 7(c), opening statements are limited to the Chair and the Ranking Member. This allows us to hear from our witnesses sooner and provides all members with adequate time to ask questions.

I recognize myself now for the purpose of making an opening statement.

Today we are gathered to discuss our responsibility to ensure that all workers have the right to comprehensive family and medical leave to care for themselves and their loved ones.

Working people should be able to contribute to the economy knowing that if personal health or family caregiving needs demand it, they can take leave from work without losing their jobs or facing financial ruin. This means comprehensive Federal family and medical leave policy must ensure leave is guaranteed, job protected, and paid.

In 1993, Congress took an important step toward guaranteeing workers the right to family and medical leave when it passed the Family and Medical Leave Act, or FMLA. Over the past 27 years, this law has enabled millions of workers to take unpaid time off to care for themselves and their families.

Unfortunately, 27 years later, we failed to build upon that legislation. Although a patchwork of States have expanded paid and unpaid leave laws, Federal law leaves millions of workers either without the right to take unpaid family and medical leave under the FMLA or unable to afford unpaid leave when they are eligible.

Workers are often excluded from the FMLA by requirements that restrict which employers are covered, who is eligible to take leave, for whom workers can take leave, and the reasons for which workers can take leave.

To be eligible for FMLA leave, an individual must work for a covered employer, who have worked for that employer for 12 months, and also have worked for 1,250 hours in the year before taking leave. And these restrictions leave out 44 percent of private sector workers or 49 million workers from the FMLA.

A large share of the workers left out are low-income workers, working parents, and workers of color.

Even if a worker can take FMLA leave, Federal law does not guarantee that a worker can take leave to care for family members in a way that reflects today’s caregiving responsibilities and family compositions.

For example, siblings, LGBTQ couples, domestic partners, and the millions of grandparents exclusively raising their grandchildren face a patchwork of policies that allow them to take leave in some States but not in others.

Moreover, even if a worker is eligible for FMLA leave and is a caregiver under the law’s definition of family, they may still be excluded because of their reason for seeking leave.

So while the FMLA covers parental and serious health needs, it does not cover other reasons for leave, including parents taking time to be more involved in their children’s schooling, individuals

donating their organs to save lives, or parents taking time to grieve a child's death.

Finally, if working people have the right to unpaid leave under the FMLA, currently most workers cannot afford to forego wages to take unpaid FMLA leave. Nearly half of those eligible for unpaid FMLA leave cannot afford to take it, and nearly two-thirds of those who can still report financial difficulties.

All of these barriers add up to fewer workers actually able to exercise their right to take the leave they have earned.

For families, paid family and medical leave means improved maternal and infant health, as well as better long-term outcomes for children and mothers.

For businesses, it means stronger work recruitment, increased employer loyalty, and reduced employee turnover.

And for the economy, which currently loses \$22.5 billion in wages each year because of inaccessible paid leave, it means more money in the pockets of American consumers and a reduced need for public assistance.

S&P Global estimates that if women entered the workforce at the same rate as Norway, a country with a generous paid family and medical leave policy, the U.S. economy would be \$1.6 trillion larger.

Congress has the power to remedy this.

Today we will discuss how we can build on the promise of the FMLA. We will discuss how to expand who is eligible for FMLA leave by reducing or eliminating the law's 50-employee threshold, its 12-month tenure requirement, its hours worked requirement, and eliminating its marriage penalty.

We will learn about proposals to update for whom workers can take leave and the reasons for which leave would be permissible under the FMLA.

These proposals include H.R. 5456, the Family Medical Leave Modernization Act, which would expand the FMLA's range of recognized family caregiving relationships; the Family Leave for Parental Involvement and Education Act, which would allow parents and grandparents to use the FMLA to attend their children's educational activities; H.R. 983, the Parental Bereavement Act, which would add the death of a child as an allowable use of the FMLA leave; and H.R. 1224, the Living Donor Protection Act, which would include living organ donations as a serious health condition under the FMLA.

In addition, we will also discuss H.R. 1185, the FAMILY Act, which provides wage replacement for all workers so they can remain financially stable while on leave.

And at the end of the day, this hearing is about making sure that we leave here dedicated to the cause of ensuring guaranteed, job protected, paid leave for all workers. This is about ensuring working people can sustain their careers and livelihoods while giving workers and their loved ones the care needed to thrive.

Thank you.

And now I yield to the ranking member, Mr. Byrne, for an opening statement.

[The statement of Chairwoman Adams follows:]

**Prepared Statement of Hon. Alma S. Adams, Chairwoman,
Subcommittee on Workforce Protections**

Today, we are gathered to discuss our responsibility to ensure that workers have access to family and medical leave to care for themselves and their loved ones.

All workers should be able to contribute to the economy knowing that, if personal health or family needs demand it, they can take leave from work without losing their jobs and their livelihoods.

In 1993, Congress took an important step toward establishing comprehensive leave when it passed the Family and Medical Leave Act, or FMLA.

Unfortunately, 27 years later, we have failed to build upon that legislation. As a result, federal law still leaves many workers without the right to take unpaid leave or unable to afford unpaid leave where they are eligible.

Workers are often excluded from the FMLA by a layered system of requirements that restricts who is eligible to take leave, for whom workers can take leave, and the reasons for which workers can take leave.

To be eligible, an individual must work for a covered employer, have worked for said employer for 12 months, and have worked 1,250 hours in the year before taking leave.

These restrictions, alone, leave out 44 percent of private sector workers—or 49 million workers—from the FMLA. They also disproportionately exclude low-income workers, working parents, and workers of color, who face higher rates of job turnover.

Even if a worker can take FMLA leave, federal law does not guarantee coverage for all family members and caregivers. The individuals a worker can take leave for have expanded over time. Yet, LGBT couples, domestic partners, and the 2.9 million grandparents exclusively raising their grandchildren still face a patchwork of policies that allow them to take leave in some states, but not others.

However, even if a worker is eligible for FMLA leave and fulfills the law's definition of "family," they may still be excluded because of their reason for seeking leave.

While the FMLA covers personal, infant, and family health needs, it does not cover a wide range of other reasons that workers might need to take leave, including parents taking time to be more involved in their children's schooling, individuals donating their organs to save lives, or family members taking time to grieve a child's death.

Finally, even if workers fulfill all FMLA requirements, most workers may not be able to afford to lose their wages as the FMLA does not cover lost wages during leave.

Nearly half of those eligible for FMLA cannot afford to take it, and nearly two-thirds of those who can still report financial difficulties.

All of these compounding barriers leave few workers actually able to take the leave they need. Yet, we know that access to paid, job-protected leave is critical for healthy families, businesses, and communities.

For families, paid family and medical leave means improved maternal and infant health as well as better long-term outcomes for children.

For businesses, it means stronger worker recruitment and reduced employee turnover.

And for the economy—which currently loses \$22.5 billion in wages each year because of inaccessible paid leave—it means more money in the pockets of American consumers and less need for public assistance.

Congress has the power to fully realize the benefits of paid leave for communities across the country.

Today, we will discuss how we can fulfill the promise of the FMLA by updating federal law to expand who is eligible for leave, who workers can take leave for, and the eligible reasons why workers take leave.

We will also discuss legislative solutions, like the FAMILY Act, that provide wage replacement for all workers so they can remain financially stable while on leave.

At the end of the day, this hearing is about making sure we can sustain our careers and livelihoods while giving ourselves and our loved ones the care needed to thrive.

I now yield to the Ranking Member, Mr. Byrne, for an opening statement.

Mr. CLINE. I thank the chair, and I thank our witnesses for being here.

Balancing a career and a family can be a challenge for many workers, especially when life-altering events, like the birth or adop-

tion of a new child, or a serious illness occur. Allowing workers to take time away from their jobs during these moments ensures that these employees can remain in the workforce.

Committee Republicans recognize the benefits provided by the Family and Medical Leave Act, which requires employers to provide up to 12 weeks of unpaid, job-protected family and medical leave to eligible employees.

Furthermore, Republicans in Congress have encouraged workplace flexibility and support for working families through the paid family and medical leave tax credit, which rewards businesses that provide paid leave benefits, and allowing new parents to borrow from their private retirement account following the birth or adoption of a child free from penalty.

While the FMLA has helped many workers balance work and family, there are an ever-growing number of employer-provided options that Congress should continue to recognize. In fact, many businesses already provide robust leave options for their employees to help ensure a positive and productive workplace.

Family-friendly policies have become an important tool for companies to attract and retain quality employees in our competitive job market. According to the Society for Human Resource Management, the percentage of firms offering paid maternity leave nearly tripled between 2014 and 2018. The Bureau of Labor Statistics reported that 66 percent of wage and salaried workers had access to paid leave in 2018, up from 60 percent in 2011.

Companies know they need to understand their current and prospective employees' workplace concerns and be prepared to address them. Congress should allow our Nation's employers the flexibility to develop and offer personalized solutions that work best for their employees and themselves.

As this committee examines the issue of family and medical leave, we should avoid implementing one size fits all solutions and instead focus on how we can foster an environment that encourages employers to meet the needs of their workers.

Take the Tax Cuts and Jobs Act, for example. The 2017 pro-growth, pro-worker tax reform passed by Republicans and signed into law by President Trump included a tax credit for employers who voluntarily offer at least 2 weeks of paid family and medical leave to their employees, which is set to expire at the end of this year. This allows employers to claim a tax credit for up to 25 percent of the amount of wages paid to qualified employees taking between 2 and 12 weeks of paid family and medical leave.

Another Republican-led initiative, H.R. 5656, the Working Families Flexibility Act, amends the Fair Labor Standards Act to allow private sector employers to offer their employees the choice of paid or comp time in lieu of cash wages for working overtime. This provides hourly workers the choice to access additional paid leave options not currently available to them. The Working Families Flexibility Act passed the House in the 115th Congress.

These initiatives help create solutions for working individuals and families without burdening the American taxpayer and without creating new burdens on employers. Unfortunately, many of my colleagues' initiatives on the other side that we will hear about

today have a different approach, with overarching government involvement and a hefty price tag for workers and employers.

The bottom line is that Congress should avoid burdening the American taxpayer and employers through additional Washington knows best Federal mandates when the private sector is already innovating solutions that create workplace flexibility for employees.

I look forward to hearing from our witnesses today about how the Federal Government can continue encouraging employers to develop solutions that meet the needs of workers and their families.

Thank you, Madam Chair.

[The statement of Mr. Cline follows:]

Prepared Statement of Hon. Ben Cline, Representative of Congress from the State of Virginia

Balancing a career and a family can be a challenge for many workers, especially when life-altering events, like the birth or adoption of a new child, or a serious illness occur. Allowing workers to take time away from their jobs during these moments ensures that these employees can remain in the workforce.

Committee Republicans recognize the benefits provided by the Family and Medical Leave Act (FMLA), which requires employers to provide up to 12 weeks of unpaid, job-protected family and medical leave to eligible employees.

Furthermore, Republicans in Congress have encouraged workplace flexibility and support for working families through the paid family and medical leave tax credit, which rewards businesses that provide paid leave benefits, and allowing new parents to borrow from their private retirement account following the birth or adoption of a child, free from penalty.

While the FMLA has helped many workers balance work and family, there are an ever-growing number of employer-provided options that Congress should continue to recognize.

In fact, many businesses already provide robust leave options for their employees to help ensure a positive and productive workplace. Family-friendly policies have become an important tool for companies to attract and retain quality employees in our competitive job market.

According to the Society for Human Resource Management, the percentage of firms offering paid maternity leave nearly tripled between 2014 and 2018. The Bureau of Labor Statistics reported that 66 percent of wage and salary workers had access to paid leave in 2018—up from 60 percent in 2011.

Companies know they need to understand their current and prospective employees' workplace concerns and be prepared to address them. Congress should allow our nation's employers the flexibility to develop and offer personalized solutions that work best for their employees and themselves.

As this Committee examines the issue of family and medical leave, we should avoid implementing one-size-fits all solutions, and instead focus on how we can foster an environment that encourages employers to meet the needs of their workers.

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Another Republican led initiative, H.R. 5656, the Working Families Flexibility Act, amends the Fair Labor Standards Act to allow private-sector employers to offer their employees the choice of paid or comp time in lieu of cash wages for working overtime. This provides hourly workers the choice to access additional paid leave options not currently available to them. The Working Families Flexibility Act passed the House in the 115th Congress.

These initiatives help create solutions for working individuals and families without burdening the American taxpayer and without creating new burdens on employers. Unfortunately, many of the Democrats' initiatives we'll hear about today have a different approach, with overarching government involvement and a hefty price tag for workers and employers.

Bottom line, Congress should avoid burdening the American taxpayer and employers through additional Washington-knows-best, federal mandates when the private sector is already innovating solutions that create workplace flexibility for employees.

I look forward to hearing from our witnesses today about how the federal government can continue encouraging employers to develop solutions that meet the needs of workers and their families.

CHAIRWOMAN ADAMS. Thank you.

Without objection, all other Members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m. on February 24, 2020.

I will now introduce our witnesses.

Representative Sydney Batch represents District 37 in the North Carolina House of Representatives, which encompasses Holly Springs, Apex, Fuquay-Varina, Garner, and Angier. Representative Batch is also a family law attorney, child welfare advocate, and social worker. She lives in Holly Springs with her husband and two sons.

Mr. Tony Sandkamp is the owner of Sandkamp Woodworks LLC, a small independent custom architectural woodworking business. The business has been based in Jersey City, New Jersey, for the past 23 years. Mr. Sandkamp is a leader with the Main Street Alliance of New Jersey, a statewide network of small business owners.

Ms. Rachel Greszler is a research fellow in economics, budgets, and entitlements at the Heritage Foundation. Ms. Greszler provides research and commentary on workplace issues, including Federal employee compensation, women's issues in labor policies, such as minimum wage and paid family leave.

Dr. Elizabeth Jacobs is a senior fellow at the Urban Institute focusing on issues related to family economic security and economic mobility. Dr. Jacobs is a nationally recognized expert on family income and earnings instability, low wage employment, job quality, intergenerational mobility, and opportunity, as well as a wide range of related policies, including social insurance, labor market regulations, and safety net policies.

Thank you all very much for being here. We appreciate all of the witnesses. We look forward to your testimony today. But let me remind the witnesses that we will have read your written statements and they will appear in full in the hearing record.

Pursuant to Committee Rule 7(d) and committee practice, each of you is asked to limit your oral presentation to a 5-minute summary of your written statement. And let me remind the witnesses that pursuant to Title 18 of the U.S. Code, Section 1001, it is illegal to knowingly and willfully falsify any statement, representation, writing, document, or material fact presented to Congress, or otherwise conceal or cover up a material fact.

So before you begin your testimony, please remember to press the button on the microphone in front of you so that it will turn on and the members can hear you. As you begin to speak, the light in front of you will turn green. After 4 minutes, the light will turn yellow to signal that you have 1 minute remaining. And when the light turns red, your 5 minutes have expired, and we ask that you please wrap up at that time.

So we will let the entire panel make their presentations before we move to member questions. When answering a question, please remember to, once again, turn your microphone on.

I would first like to recognize Representative Batch.

STATEMENT OF MRS. SYDNEY BATCH, J.D., M.S.W., REPRESENTATIVE, NORTH CAROLINA HOUSE OF REPRESENTATIVES, RALEIGH, NC

Mrs. BATCH. Thank you. Good afternoon Chairwoman Adams, Ranking Member Cline, and members of the subcommittee. I am Sydney Batch, a State Representative in the North Carolina House representing Southern Wake County, an attorney, a part owner of a small law firm, a breast cancer survivor, the mother of two fantastic sons, and a member of MomsRising.

I am here today because I have needed family and medical leave during the happiest and hardest times in my life. I know from personal experience how important family and medical leave is to my employees and constituents, to small businesses like mine, and to my community and State. I know how badly our country needs a comprehensive family and medical leave plan that ensures all employees have the right to take leave and return to their same or similar job and one that provides wage replacement during leave.

We don't have that today. For 27 years, the Family and Medical Leave Act has helped working families and people take unpaid leave. But it has its limitations. It exempts small businesses, employees who have been at their jobs for less than a year, and many part-time workers, and it also uses a narrow definition of family.

I encourage you to expand the FMLA to address those problems and I urge you to enact national paid leave insurance.

Because the law firm my husband, business partner, and I own has eight employees, we are not covered by FMLA. I had the flexibility to take 3 months of leave and maintain my health insurance when my sons were born because I am a business owner, but few people can do that.

While my unpaid leave created financial stress for my family, I didn't have the stress of worrying whether my job would be there when I was ready to return to work because I am a part owner of the firm. Everyone deserves that same type of job protection.

What is the purpose of being able to take paid family leave if your job isn't protected, or of having job protection if you can't pay your bills while on leave? We need expanded FMLA protections and a paid leave insurance plan.

I was diagnosed with breast cancer in 2018. I had a mastectomy on a Friday and my husband returned back to work on the following Monday. In 2019, I needed a second mastectomy and reconstructive surgery. I had three surgeries and radiation treatment in 1 year, and that was while I was caring for my 6 and 8-year-old sons, working full time at my firm, and serving in the North Carolina House.

My mother, sisters, grandmother, and friends cared for me when they could negotiate time off, but their leave was not covered because FMLA does not include siblings or care for adult children. It should be expanded to cover leave taken by more relatives, domestic partners, and people who aren't blood relatives.

And many fellow North Carolinians have suffered without adequate leave as well. For instance, Jonathan in Wilmington, who didn't have FMLA coverage when his sibling, who lives 400 miles away, was dying of bladder cancer. And Meryl, in Weaverville, whose father lost his job and parents had to sell their home after her father took earned time off to care for her mother who had a stroke. Job protection and paid leave would have protected his job and their home.

Studies, in my own experience, show it is good for employees and businesses when workers can hold on to their jobs while caring for their families or recovering from an illness.

I strongly support Representative Carolyn Maloney's FMLA Modernization Act. Lack of job protection is a major barrier that prevents working people from taking leave. Ensuring that all workers, including those at small businesses, those who work part time, and those who are recent hires, have job protection through the FMLA is essential.

Another tremendous barrier to taking leave is lack of wage replacement. The FAMILY Act is the best paid family and medical insurance leave bill. Its passage is a priority for families and small businesses, and it should be for Congress.

I am proud to cosponsor a paid family and medical leave insurance bill in North Carolina. It shares costs between the employer and the employee and covers small businesses and people who are self-employed. It also uses an inclusive definition of family, provides job protection, and addresses the needs of military families.

I will continue to fight for it, but people in every State need paid leave insurance so action by Congress is essential. Please expand the Family and Medical Leave Act protections so more people can access the unpaid leave and job protection it provides, so it no longer exempts small businesses, employees who are new to their jobs, and part-time workers, and so it uses an inclusive definition of family.

And I hope that you will pass the FAMILY Act as well. When you do both, we will have the comprehensive medical and family leave coverage everyone in America deserves.

Thank you.

[The statement of Mrs. Batch follows:]

**Testimony of The Honorable Sydney Batch
Before the U.S. House of Representatives Education and Labor Committee,
Workforce Protections Subcommittee
Balancing Work, Health, and Family:
The Case for Expanding the Family and Medical Leave Act
February 11, 2020**

Good morning, Chairwoman Adams, Ranking Member Byrne, and members of the Subcommittee. My name is Sydney Batch and I'm a state representative in the North Carolina House representing District 37, located in Southern Wake County. I am an attorney, one of three co-owners of a small law firm, a recent survivor of breast cancer, and the mother of fantastic sons ages six and nine. I am also a proud member of MomsRising.

I am here today because I have needed family and medical leave during the happiest and hardest times in my life. I know from personal experience how important family and medical leave is to my employees and constituents, to small businesses like mine, and to my community and state. And I know how badly our country needs a comprehensive family and medical leave plan that ensures all employees have the right to take leave and return to their same or a similar job (job protection); and provides wage replacement during leave.

We don't have that today. For 27 years, the Family and Medical Leave Act (FMLA) has helped working people in this country take unpaid leave when they've needed it most. But that law has limitations: notably, it exempts small businesses, employees who have been at their jobs for less than a year, and part-time workers; and it uses a definition of family that is too narrow. I encourage you to expand the FMLA to address those problems, even as we work to enact the comprehensive national paid leave insurance program our country desperately needs.

I'd like to share my personal experience with family and medical leave, because it addresses all of these issues. Because the law firm my husband, business partner and I run has eight employees, we're not covered by the FMLA. I had the flexibility to take three months of leave when each of my sons was born because I am an owner of the firm, but few people have that flexibility. My husband, who does, still had to return to work days after my son's birth because we couldn't afford to both take unpaid leave.

And while my unpaid leave created financial stress for my family, I didn't have the stress of worrying about whether my job would be there when I was ready to return, because of my position as an owner of the firm. My employees and other hard-working Americans should have the same kind of job protection.

What is the purpose of being able to take paid family leave if your job is not protected upon your return to work or, in the alternative, what is the purpose of having job protection if you are unable to take medical leave because you can't pay your bills without wage replacement? That is why it is essential for the federal government to expand FMLA protections and enact a paid leave insurance plan.

Recently, I had breast cancer. It was discovered in August of 2018 and fortunately, it was at an early stage. I had a mastectomy on a Friday in September and my husband was back at work the following Monday. In 2019, I needed a second mastectomy and reconstructive surgery. So, all told, I had three surgeries and underwent radiation treatment over the course of just one year.

My mother took unpaid time off to care for me and helped me get to my medical appointments. In December 2019, I began five weeks of radiation treatment. While the radiation treatments did not last long, the long commute to and from the facility and the side effects were extremely taxing. My sisters, mother, grandmother and friends helped out when they could negotiate time away from their jobs, so that I could receive the medical care I needed. But the leave they took to help me was unpaid because the FMLA does not have an inclusive definition of "family" and does not cover siblings and care for adult children. The FMLA should be expanded to cover leave taken by relatives like my mom, sisters and grandmother, as well as domestic partners and people who aren't blood relatives but are essential to care and recovery. They all deserve to access the unpaid leave the law provides.

Let me tell you about a few constituents who also suffered without the leave they needed:

- Jonathan, in Wilmington, had a sibling who was dying of cancer. He passed away just three months after being diagnosed with stage 4 bladder cancer. Because his dying relative was a sibling, the FMLA did not apply so Jonathan could only take quick weekend trips to see his sibling. It was 400 miles each way. Covering leave to care for siblings would have made a tremendous difference for Jonathan and his brother.
- Meryl, in Weaverville, had a mom who was 59 years old when she had a stroke. Meryl's mom had been at her job for 35 years. Meryl's father was laid off when he took earned time off to care for his wife, because his leave had no guaranteed job protection. After it happened, he was too proud to tell her and didn't want to add to her stress. So he pretended to go to work each morning and instead went to the unemployment office. Eventually they had to sell their home because of the income they lost. Job protection and paid leave insurance that provided wage replacement would have made all the difference.

Sadly, their experiences are far from unique. All working people deserve to be able to get support from a range of family members when they are seriously ill. I support Rep. Carolyn Maloney's FMLA Modernization Act (H.R. 5456), as does MomsRising.

All working people also deserve the wage replacement that a paid insurance leave plan can provide. And all working people, no matter the size of their employer, deserve to know that they won't lose their jobs when they need time away from work to care for and bond with new babies, recover from illness, and care for aging parents or other relatives who are struggling with serious illness. I am no more deserving of that than my employees -- and that includes those who work part-time and those who have been with my firm for less than a year.

I want what is best for my employees because I care deeply about them and because I know that making it possible for them to hold onto their jobs while caring for their families or recovering from illness is good for them and good for our firm. In fact, a major California study noted that, although all employers report positive outcomes associated with paid leave, small businesses (those with fewer than 50 employees) report even more positive or neutral outcomes than large businesses (with 500 or more employees) in profitability, productivity, retention and employee morale.

I also know, from my own experience and the experiences of friends with small firms, that small businesses *can* afford to implement the leave provided by the FMLA. There is simply no reason to exclude people at firms with fewer than 50 employees from the protections the FMLA provides. When leave is required by law, it becomes part of a firm's standard operations, like other payroll benefits, and we are prepared when employees need leave. The FMLA structure already exists and firms of all sizes should benefit from it. That would prevent us from having to start from scratch to create and pay for a family and medical leave program when the need arises.

One of the greatest barriers that prevents working people from taking leave is the lack of wage replacement. I can emphatically say that small firms like mine would benefit from laws guaranteeing paid family and medical insurance leave as well. We pay 100 percent of our employees' health insurance and have a 401K retirement plan for them, as well. But paid family and medical leave is a benefit we simply can't provide right now. However, if a state or federal paid leave insurance program was in place and we paid into it with every payroll, it would provide a major boost to my company. In my view, the FAMILY (Family And Medical Insurance Leave) Act (H.R. 1185) is the strongest and most comprehensive national paid leave insurance program currently before Congress. If enacted it will meet the needs of working people, families and businesses, alike. Enacting the FAMILY Act will strengthen our public health and our economy. This legislation is a top priority for families and small businesses like mine, and I urge Congress to pass it as quickly as possible.

Another serious barrier that prevents working people from taking leave is the lack of job protection. Any paid family and medical leave insurance program must provide job protection or workers simply won't be able to take the paid leave it provides. That's why ensuring that all workers -- including those at small businesses, those who work part-time, and those who are recent hires -- have job protection through the FMLA is essential.

I am proud to support an executive order signed by North Carolina Gov. Roy Cooper, which offers paid parental leave to state employees. It's a start for our state, but it covers only state employees and not those in the private sector. We must do more. That's why I am co-sponsoring a bold, comprehensive paid family and medical leave insurance program in North Carolina that shares the costs of the program through an employer-employee cost share. The proposed legislation would cover all businesses, no matter their size, and people who are self-employed, like myself. It uses a more inclusive definition of family so that siblings, grandparents, domestic partners, and people whose close relationship is equivalent to family can utilize paid

leave insurance. It also provides job protection and addresses the needs of military families, many of whom live in my state.

All working people need and deserve this protection and employers of all sizes benefit from it too.

My views are grounded in my own personal experiences, but are shared by fellow small business owners and constituents I have spoken with.

Some opponents have argued that requiring small businesses to provide paid or even unpaid family and medical leave will harm their bottom lines. However, these sky-is-falling predictions have been disproven. Fortunately, we now have comprehensive paid family and medical leave insurance programs in place around the country that show us how beneficial these programs are. We need – always – to look at actual facts and see what real, on-the-ground experiences can teach us. On this, they are clear: comprehensive paid family and medical leave insurance works well, strengthening our economy, business bottom lines, families and communities. But every working person who takes family and medical leave needs job protections -- and the best way to guarantee that is to expand the FMLA to cover all working people.

I am thrilled to see Republican and Democratic leaders – from Washington state to New York state, from Utah to Tennessee – adopting paid leave insurance programs. I am a passionate supporter of comprehensive paid family and medical leave insurance. As a mom, a small business owner and a legislator, I will continue to fight for it in North Carolina.

But people move from state to state, and we need to guarantee paid leave for everyone, so Congress has an essential role. I hope you will quickly expand the Family and Medical Leave Act so more people can access the unpaid leave and job protection it provides; so it no longer exempts small businesses, employees who have been at their jobs for less than a year, and part-time workers; and so it uses a more inclusive definition of family. An expanded FMLA and the enactment of paid family and medical leave insurance legislation will finally bring the comprehensive medical and family leave coverage that every worker in America deserves.

Thank you.

CHAIRWOMAN ADAMS. Mr. Sandkamp, you have 5 minutes.

**STATEMENT OF MR. ANTHONY SANDKAMP, OWNER,
SANDKAMP WOODWORKS LLC, JERSEY CITY, NJ**

Mr. SANDKAMP. Thank you, Chairwoman Adams, Ranking Member Cline, and members of the Subcommittee on Workforce Protections.

My name is Tony Sandkamp, and I started my business, Sandkamp Woodworks, in 1991. My four full-time employees and I provide custom cabinetry and architectural woodwork from my shop in Jersey City, New Jersey. I am a member of the Main Street

Alliance, a national network of more than 30,000 small business owners.

This past week we celebrated the Family and Medical Leave Act's 27th anniversary, which allows millions of eligible American workers to take job-protected leave. While this was landmark legislation in 1993, the FMLA leaves out over 44 percent of American workers. It is past time for Congress to update the family and medical leave protections to better address the needs of today's workforce.

Today I would like to address several issues as they relate to family and medical paid leave and the importance of having a good program in place.

Family and medical leave programs should have a modernized, 21st century definition of family. To be effective, paid leave must include job protection, and small business owners overwhelmingly support and need Congress to take action to pass paid leave.

As a small business owner based in New Jersey, I have a before and after experience to share about what happens when paid leave is available to small business. And as a family member, I have a personal experience to share about family definition.

Three years ago my sister in Minnesota received a diagnosis of stomach cancer. Luckily, our other sister, Rose, who lived nearby who was not working at the time, was able to care for our ill sister for 4 months. Our parents were elderly, and they could not care for her, and if it had not been for Rose, I don't know what we would have done.

If Rose had been working, her job would have been at risk as the FMLA does not include siblings in their family definition. For far too many other families, caring for a loved one in their time of need means putting their job on the line.

New Jersey provides a great example of what can be done. Last year the New Jersey Legislature updated the definition of a family member in the State's family leave program to include siblings, grandparents, grandchildren, and close associations that are the equivalent of a family relationship.

This is particularly important to the LGBTQ community and employees who have disabilities as they are especially dependent on care by chosen family members. I want any of my employees, no matter who they love or deem as a family member, to be able to take the time they need to care for a loved one.

New Jersey also expanded job protection and increased wage replacement so more workers could afford to use the family and medical leave benefit.

Without job protection, paid leave can just end up being severance pay. Ensuring that employees can go out on leave and know that their job will be there when they return is a necessary component of any leave program.

Strong job protection ensures that all companies do the right thing so that high road businesses, like mine, are not at a competitive disadvantage.

Most significantly, small businesses and our employees need access to a paid leave program. Small firms lack the capital and scale to provide paid leave. The lack of a national paid leave program hands the advantage to large corporations that can use their size

and market power to offer such benefits, resulting in a hiring disadvantage for small business. We can change this picture.

Before New Jersey adopted paid leave, I had an employee who left my company to care for his dying mother in Florida. He was her only family and he needed leave to provide care for her. He didn't tell me why he was leaving, but even if he had, my business could not have covered his salary and the additional cost of a replacement worker.

If New Jersey had family leave insurance available during this time, we would have avoided the pain and damage that occurred to both my employee and my business. He would have had the opportunity to take paid leave without feeling like he was asking me for a personal favor and my business would have retained a valuable employee.

But the State of New Jersey did not have a paid leave program yet and my business paid the price. This employee was one of the best performers on our team. The costs in time and money to replace him were astronomical. Replacing employees is expensive, with turnover costs averaging one fifth of an employee's annual salary.

Now for the after picture. Four years later an employee came to me and informed me that his wife was pregnant with twins. He needed paid time off, and I had recently joined the Main Street Alliance and learned about the New Jersey Family Leave Insurance Program. The paperwork was straight forward, and I worked with my employee to ensure that it was completed. The program provided him with wage replacement while he was bonding with his twins.

The plan we created for him to take time off was inclusive of my entire team taking part. I had the funds to pay for a part-time employee to move to full-time and my employee had the time off he needed, and he came back after leave and remains a valuable part of my team.

A national paid leave program that covers all of us, pools our funds, and spreads costs will be a tremendous benefit and a huge relief for small business. This is why a Federal leave program is supported by 70 percent of small businesses by one recent survey, and we need Congress to act. I look forward to working with this committee and small business owners from across the country to move the family and medical paid leave across the finish line.

[The statement of Mr. Sandkamp follows:]



**U.S. House Committee on Education and Labor
Workforce Protections Subcommittee**
*“Balancing Work, Health, and Family: The Case for
Expanding the Family and Medical Leave Act”*

**February 11, 2020
2:00pm**

**Testimony of Anthony Sandkamp
Owner, Sandkamp Woodworks
Jersey City, New Jersey**

Chairwoman Adams, Ranking Member Byrne, and members of the Subcommittee on Workforce Protections:

Thank you for this opportunity to testify today on the benefits of paid family and medical leave. The timing of this hearing, a week after the 27th anniversary of Family and medical leave enactment underscores the importance of comprehensive paid leave for businesses like mine.

My name is Tony Sandkamp, and I own Sandkamp Woodworks, a cabinet and architectural woodworking business in Jersey City, New Jersey. My four full-time employees and I provide custom cabinetry to high-end clients from Boston to New York City to here in Washington, D.C. I started my business in 1991 and over that time have experienced several situations that required time off for employees and myself. I am a husband of over 25 years, a son, a brother to seven terrific siblings and a member of Main Street Alliance, a national network of more than 30,000 small business owners. Through MSA, owners of businesses like me, share their perspectives on critical public policy issues.

As we celebrate the Family and Medical Leave Act (FMLA) anniversary which allowed millions of eligible American workers to take unpaid leave - it is important to note both that it set an important workplace standard for its time and that it includes only businesses with over 50 employees -- leaving out forty-four percent of U.S. workers. While this was a landmark legislation in 1993, it's past time for Congress to update this key protection for the economic security of small business and families to better address the needs of today's workforce.

In my testimony today, I would like to address several points as they relate to family and medical paid leave and the importance of having a good program in place. First, family and medical leave must be available to all workers, no matter where they work or live. Second, family and medical leave programs should have a modernized definition of "family" which would bring family medical leave into the 21st Century. Third, to be effective, affordable paid leave must include job protection measures. Fourth, comprehensive paid family and medical leave social insurance programs that spread costs and reduce administration is the most small-business friendly solution when it comes to leave and enables small businesses to retain talent and maintain safe, efficient workplaces with focused employees, supporting our bottom line. Finally, small businesses want a paid leave program and need Congress to take action.

These improvements are necessary for family and medical leave to be effective for small business owners and our employees.

I'm a proud supporter of New Jersey's Family Leave and Temporary Disability Insurance Programs, which help small businesses. All small businesses and workers, nationwide, should be able to count on a paid family and medical leave program with the benefits and protections that my business and my employees have come to count on. I will discuss this at length shortly, but first let me address several issues that are of particular interest to this committee.

Family & Medical Leave must be available to all workers

Where you work should not be a determinant of whether you are able to access job projected family and medical leave. As I mentioned earlier, forty-four percent of U.S. workers did not receive coverage through the FMLA. Yet, everyone should receive coverage through their employer regardless of the size of the business.

Expanded Family Definition

Last year, the state of New Jersey legislature updated the definition of a "family member" to make it more representative and inclusive of families.¹ Family caregiving needs have changed dramatically in recent years and will continue to increase in the near future. By 2035, adults over the age of 65 will outnumber children in the United States for the first time in history.² Currently, 7.8 million children live in households led by a grandparent or other relative.³ As family structures change and caregiving needs increase, so should the laws designed to help these families.

The updated New Jersey law expands who is a "family member" to include siblings, grandparents, grandchildren, parents-in-law, and any blood relative. It also includes "any individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship." This is particularly important for the LGBTQ community and employees who have disabilities, as they are especially dependent on care by chosen family members. I want any of my employees, no matter who they love or deem as a family member, to be able to take the time they need to care for a loved one.

I also know how important an expansive family definition is from my own experience. Three years ago, my sister in Minnesota received a diagnosis of stomach cancer. Luckily, my other sister Rose, who lived nearby was not working at the time and was able to care for our ill sister for four months prior to her sadly succumbing to her diagnosis. Our parents were elderly and could not physically care for her. If it had not been for Rose, I do not know what we would have done. If Rose had been working, her job would have been at risk - as the FMLA does not include siblings in their family definition. For far too many other families, caring for a loved one in their time of need means putting their job on the line. In order to prevent other families from going through this, we need Congress to update this definition in the federal law.

In 2015, more than 25 percent of family caregivers provided care to a family member who did not receive coverage by FMLA, including grandparents, siblings, and adult children. Thirty-four

¹ "STATE OF NEW JERSEY" New Jersey Legislature, 31 Jan. 2019.

www.njleg.state.nj.us/2018/Bills/A4000/3975_R3.PDF

² Meinert, Maya. "Seniors Will Soon Outnumber Children, but the U.S. Isn't Ready." USC News, 21 June 2018. news.usc.edu/143675/aging-u-s-population-unique-health-challenges/

³ <https://www.gu.org/app/uploads/2018/05/Grandfamilies-Report-SOGE-2015.pdf>

percent of family caregivers who left the workforce reported doing so because their work did not allow flexible hours.⁴

No one should have to make this difficult decision to care for a loved one or lose their job.

Job Protection & other enhancements to the New Jersey Program

In addition to an expanded family definition, New Jersey made several other key improvements to the paid leave program including: expanded job protection and increased wage replacement, so more workers can afford to use the benefit. They also enhanced outreach to ensure small business and workers are aware of the program.

Without job protection, paid leave can end up just being severance pay if people come back from leave to find their jobs filled. We know from evaluations of state paid leave programs like Rhode Island, that concerns about job security discourage employees from using paid leave even when they're eligible.⁵

Ensuring that employees can go out on leave and know their jobs will be there for them when they return is a necessary component of any leave program - job protections are needed. Clear rules ensure that all companies—not just high road employers—do the right thing so that businesses who want to comply with these standards are not at a competitive disadvantage and forced into a race to the bottom.

That's not just my view—a poll by the Main Street Alliance and other business groups found that 78% of small business owners surveyed support regulations to ensure against unfair competition by big business, and enforcement of existing rules on the books.⁶

Small business owners want to do right by their employees - clear, fair rules help us do that. Another component of a successful paid leave program is providing adequate outreach and education for small business owners and workers alike. Again, we saw this as a challenge in New Jersey and think it provides a key lesson as we build out a national program.

This year, New Jersey allocated \$1.2 million for outreach and education regarding the law throughout the state, of which \$600,000 will go to community based organizations.⁷ The biggest challenge small businesses in New Jersey encountered with the state paid family and medical

⁴ "Durbin.senate.gov." Durbin.senate.gov, 12 Dec. 2019.
<https://www.durbin.senate.gov/newsroom/press-releases/durbin-announces-legislation-to-expand-family-leave-protections>.

⁵ Silver, B. E., & Mederer, H., & Djurdjevic, E. (2016, April). Launching the Rhode Island Temporary Caregiver Insurance Program (TCI): Employee Experiences One Year Later (Paid Leave Analysis Grant WB-26511-14-60-A-44 Final Report) (p. 34). The University of Rhode Island Publication. Retrieved 1 May 2019, from <http://www.dlt.ri.gov/dti/pdf/tripaidleavefinalrpt0416uri.pdf>

⁶ Opinion Polling: The Economic State of Small Business." *Congressional Record* 158, Pt. 9 (2012) p. 12214. (Text from: Congressional Record Permanent Digital Collection); Accessed: February 3, 2020.

⁷ https://www.njleg.state.nj.us/2018/Bills/S3000/2528_S4.HTM

leave program was not the cost associated to the employer or the coverage of the employee's work who takes leave, but information to know that such a program existed. Through dozens of conversations with small business owners in New Jersey,⁸ Main Street Alliance found that many are not familiar with the law and some who have heard of it are unsure if it applies to their business. But, once they know, small business owners are enthusiastic. Most said they are willing to help inform their employees about the program and that a range of educational and outreach materials would help them implement the law. The lack of knowledge among small business owners demonstrates why more marketing and outreach to small business owners about the law is critical.

Paid Family and Medical Leave Works for Small Business

In most states, lawmakers have failed to adopt paid family and medical leave, harming the country's 31 million small businesses, our 60 million employees, and our communities.⁹

Small firms lack the capital and scale to provide paid leave. The lack of a national paid leave program hands the advantage to large corporations that can use their size and market power to offer such benefits, resulting in a hiring disadvantage for small businesses. We can change this picture.

My company provides a great before-and-after snapshot of the importance of passing a comprehensive paid family and medical leave policy. Before New Jersey adopted paid leave, I had an employee who left my company because of a family member's illness. I was unaware at the time regarding his decision to leave, however I later discovered that his mother was dying of cancer in Florida. He was her only family and he needed to leave to provide her care. He never told me about the situation as he was going to take care of his mother, but even if he had, my business could not have covered his salary and the additional cost of a replacement worker.

If New Jersey had family leave insurance available during this time, we could have avoided the pain and damage that occurred to both my employee and my business. He would have had the opportunity to take paid leave without feeling like he was asking me for a personal favor, and my business would have retained a valuable employee.

The state of New Jersey did not have paid leave yet, and my business paid the price. This employee was one of the best performers on our team for several years. The costs in time and money to replace him were astronomical. I had to take time away from my responsibilities as an owner, and my business suffered. Replacing employees is expensive, with turnover costs averaging one-fifth of an employee's annual salary.

⁸<https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/meeting-the-promise-of-paid-leave.pdf>

⁹ U.S. Small Business Administration. (2019). 2019 Small Business Profile. Retrieved 3 February 2020, from <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/04/23142719/2019-Small-Business-Profiles-US.pdf>

Now, for the “after” picture. Four years ago, an employee informed me his wife was pregnant with twins. He needed paid time off. I had recently joined the Main Street Alliance and learned about the New Jersey Family Leave Insurance Program. The paperwork was straightforward and I worked with my employee to ensure it was completed. The program provided him with wage replacement while he bonding with his twins. This employee is a very important part of my business, and taking time for his family was extremely important to him.

The plan we created for him to take time off was inclusive of the entire team playing a part. We moved a part-time employee to full-time, giving that employee an opportunity to acquire new skills. As it turned out, the business needed the extra help, and we kept him on full-time when the father of the twins came back.

My experience is consistent with the research, which demonstrates that when an employee is on leave, most employers shift the work of the on-leave employee to other employees. A recent survey of small employers in New Jersey found that when it came to covering work when a woman took leave after childbirth, 84 percent of employers covered the work by assigning it to other employees.¹⁰

In the past, I have seen success with temporary employees who I hired in order to provide coverage while my employee is out on leave. In fact, a temporary hire has often added several benefits to my business. The temporary worker is able to obtain new skills and then are able to continue with me if I have the need, or they can use the newly gained skills at another job. I've had a temporary employee who used the skills he learned in my shop to start his own business, which is good for me as we continue to share referrals.

So, while we did have to develop a plan to cover the productivity loss of an employee out on leave - the long-term productivity gains of having our employee return to our shop are exponentially greater to our business.

From a business perspective, well-structured, comprehensive paid leave programs like New Jersey's make leave simple and affordable. They spread the costs without creating significant new administrative requirements. When an employee needs time off work, they draw income from the fund to get by until they return. Business owners can use the salary of on-leave employees as we see fit. Most importantly, workers with paid leave are more likely to return to their jobs. Paid leave increases employee retention by encouraging employees to stay in the labor force and with the same employer, leading to significant employer cost savings through reduced turnover expenses. And according to Harvard Business Review, nearly all of the most successful companies report that exemplary benefit programs strengthen employee loyalty and morale, increasing worker productivity. These factors correlate with a better bottom line.

Business Support for Paid Leave

¹⁰ Bartel, A. P., & Rossin-Slater, M., & Ruhm, C., & Waldfogel, J. (2017, August 31). Employer Attitudes to Paid Family Leave (p. 3). Retrieved 1 May 2019, from https://web.stanford.edu/~mrossin/Bartel_et_al_EmployerAttitudesReport_Aug2017.pdf

We need a policy that reflects reality for people who make small businesses run. Humans have fragile bodies, and none of us are immune to illness or injury. We need a social safety net that includes paid family and medical leave, paid sick days, and other supports that recognize that working people have families, dignity, and human bodies and limitations.

Many ask supporters of paid leave whether the cost could harm small businesses. It is the cost of not having these policies that hurts. I will not have a successful business if my employees come to work distracted or sick. This results in mistakes that delay or ruin projects. More importantly, safety is a priority as I need everyone operating our tools at 100 percent.

A national paid family and medical leave program that covers all of us, pools our funds, and spread costs will be a tremendous benefit and a huge relief for small businesses.

This is why a federal paid family and medical leave insurance program is supported by 70 percent of small businesses, by one recent survey.¹¹ And in a Main Street Alliance survey of more than 1,700 small businesses, 78 percent of women business owners and business owners of color supported such a program. Also, in that survey, for those that supported paid leave, 79 percent of respondents said a social insurance program would help them the most to offer paid leave to their employees. What's more, 76 percent of overall respondents view the funding of such a program as a shared responsibility and support a joint employer and employee contribution model.¹²

This problem can be solved only through good public policy and a well-crafted national social insurance program. We need Congress to act. And I look forward to working with the committee, and with the many new small business owners from across the country to move the family and medical paid leave across the finish line!

I want to thank the Chairwoman and Ranking Member for hosting this hearing on family and medical leave. FMLA and needed solutions like the FAMILY Act. I look forward to member's questions and continuing to work with you to determine if there are ways that Congress can support these important efforts.

¹¹ Small Business Majority. (30, March 2017). Opinion Poll Small Businesses Support Paid Family Leave Programs (p. 5). Retrieved 1 May 2019, from www.smallbusinessmajority.org/our-research/workforce/small-businesses-support-paid-family-leave-programs
¹² Main Street Alliance. (2018). The View From Main Street 2018 Paid Family and Medical Report (p. 4 and 5). Retrieved 1 May 2019, from <https://bit.ly/2tCUdFk>

CHAIRWOMAN ADAMS. Thank you, Mr. Sandkamp.
 Ms. Greszler, you have 5 minutes, ma'am.

**STATEMENT OF MS. RACHEL GRESZLER, RESEARCH FELLOW
 IN ECONOMICS, BUDGETS, AND ENTITLEMENTS, THE HERITAGE
 FOUNDATION, WASHINGTON, DC**

Ms. GRESZLER. Thank you for the opportunity to be here this afternoon.

As a mother of six young children and having close family members who have experienced serious medical conditions recently, I understand the need for workers to be able to take leave and I also

understand the need for that leave to be flexible and accommodating.

Flexibility is actually what workers want most. A recent Cato poll asked workers: What would help you balance your work and family needs the most? And according to that poll, 6 percent of people said more paid parental leave. Compared to that, six times as many people, 34 percent, said that they wanted more workplace flexibility.

Unfortunately, the FMLA and other regulations that put politicians and bureaucrats in charge of decisions like who qualifies to take leave and how and when they can take that, they end up limiting the ability for workers and employers to sit down together and to figure out leave plans that balance both of their needs. For example, a Harvard study that was looking at the wage gap revealed that 45 percent of all workers at a local transportation authority in Massachusetts had FMLA certifications.

It is really difficult as an employer to be able to offer flexibility to your employees if on any given day half of them might not be showing up for work.

And despite that desire for flexibility, the House passed a bill last week, the PRO Act, that would destroy flexible work options, telling workers who want to be their own bosses that they must instead answer to a boss or else form their own incorporation.

The majority of workers do support a Federal paid family and medical leave program, but that support plummets when they are faced with the actual costs. And the reality is, paid family and medical leave can't be free. So long as workers are providing value to their employers, there are going to be costs and consequences from them not being there, and a government program can't erase those costs, it can only redistribute them.

It turns out that government programs across the world and in the U.S. do a really bad job at redistribution. They end up shifting resources away from lower-income workers and families to middle- and upper-income ones. In California, five times as many workers in the highest income bracket filed paid family medical leave claims compared to those in the lowest bracket. Canada's program is said to exacerbate class inequality and, quote, "aid the social reproduction of higher income families."

Both Norway and San Francisco expanded their programs trying to attempt to remedy this redistribution, and yet low-income mothers in San Francisco were still half as likely as those in the highest income levels to take paid leave from the State, and in Norway the expansion was, quote, "costly, had no measurable effect on outcomes and poor redistribution properties."

Meanwhile, in the U.S. we have a number of large employers, companies like Starbucks, Lowe's, Target, Walmart, that have all expanded new paid family leave policies for these lower wage workers.

Government programs also have unintended consequences for women. In California and New Jersey, their programs resulted in higher unemployment rates and increased the unemployment duration for young women. And in California, the program resulted in 7 percent lower employment and 8 percent lower annual earnings for the mothers who used it.

Across the world, these programs also lead to fewer promotions for women. That is important because, according to that Cato poll, only 29 percent of workers supported a Federal program if it meant fewer benefits for them or fewer chances of promotions for women.

Another factor that reduced worker support was tax increases. A cup of coffee a week program, such as the FAMILY Act, would only finance a tiny fraction of the leaves that workers actually want to take. More realistic estimates peg the price tag at an extra \$1,500 to \$2,900 per worker. Most families can't afford to give up one or two mortgage payments a year.

What I think we all want is common sense and compassionate paid leave policies. Most employers do have compassion for their workers, and even those who don't have the common sense to know that they risk losing their workers if they refuse to help meet their needs.

The best solution that we can offer workers who face unreasonable employers is a strong economy with plentiful job opportunities. But the more rules and regulations that the government imposes, the fewer workers businesses will employ and the fewer benefits and the less flexibility that they will offer them.

As a working mom, I know the value of flexibility, and I urge you all to enact policies that will add flexibility instead of take it away. The Working Families Flexibility Act, for example, would give lower income hourly workers the choice to accumulate paid leave in exchange for overtime work, and universal savings accounts and increasing private disability insurance coverage would help workers and families balance their needs.

Thank you.

[The statement of Ms. Greszler follows:]



CONGRESSIONAL TESTIMONY

**Balancing Work, Health, and Family:
What Do Americans Want, and Can a Government Program Provide It Without
Undue Costs and Consequences?**

Testimony before the
**Workforce Protections Subcommittee
of the Education and Labor Committee**

U.S. House of Representatives

February 11, 2020

Rachel Greszler
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In my testimony today, I would like to start with what families themselves say would best help them balance work and family needs. I would then like to consider the implications of the 1993 Family and Medical Leave Act (FMLA), and the potential creation of a federal paid family leave program, such as the Family and Medical Insurance Leave (FAMILY) Act. Then I would like to suggest some ways in which policymakers can help workers balance their work, health, and families without imposing unwelcome burdens on workers and employers.

Unfortunately, government mandates and regulations can cause employers to replace compassionate and commonsense policies with rigid one-size-fits-all rules or programs that impose unnecessary costs and have unintended consequences.

What Do Families Want and Need?

Families are the foundation of society and it is important that family members be able to care for one another. Policymakers can and should strive to foster an environment that helps to equip families to cope with major life events and to thrive in their everyday lives. Families do best when they are free to make the choices that suit them, when ample opportunities exist for them to meet their needs and achieve their goals, and when they are not constrained by undue tax burdens or excessive regulations.

Priorities for Balancing Work and Family.

Virtually all Americans think that paid family leave is a good thing, but it is far from their biggest priority. A 2018 Cato Institute poll asked current workers to select which of six options “would be the best way to help you balance work and family.”¹ The results, in order of preference were:²

1. More flexible work schedules (34 percent),
2. Ability to work remotely (25 percent),
3. More affordable day care (11 percent),
4. Ability to work part-time hours (8 percent),
5. More paid parental leave (6 percent), and
6. Extended afterhours child care (4 percent).

These results indicate that more than five times as many workers would prefer more flexible work schedules than more paid parental leave. Combining the three workplace-flexibility and work-hours- flexibility responses (1, 2, and 4) covers 65 percent of workers’ highest preferences. As a working mother of six young children, this is something that I completely understand. Without the flexibility that my employer voluntarily provides me, I would not work at all. But flexibility is not something that lawmakers can impose on employers, as certain occupations and organizations are conducive to flexibility while others are not. I also believe that flexibility should be an earned privilege, not a universal right.

¹Emily Ekins, “Cato Institute 2018 Paid Leave Survey,” The Cato Institute, Released December 11, 2018, <https://www.cato.org/sites/cato.org/files/survey-reports/pdf/cato2018paidleavesurvey-updated.pdf> (accessed February 7, 2020).

²The Cato survey results also included 9 percent of respondents who chose “Other” with the option to specify something else that would best help them, and 2 percent of respondents either did not answer or responded “Don’t know.”

³H.R. 2474, **Protecting the Right to Organize Act of 2019**, <https://www.congress.gov/bills/116/protecting-the-right-to-organize-act-of-2019> (accessed February 8, 2020).

⁴H.R. 7, **Paycheck Fairness Act**, <https://www.congress.gov/bills/116/7/paycheck-fairness-act> (accessed February 7, 2020).

It is important, and unfortunate, to note that two bills passed by House Democrats recently—the Protecting the Right to Organize (PRO) Act³ and the Paycheck Fairness Act⁴—would hurt, instead of help families by making it harder or impossible for many workers to have flexible schedules, to work remotely, or to work part time.

By upending a huge portion of the labor market (including contracting, the gig-economy, franchise businesses, and virtually all independent workers), the PRO Act would take away jobs and income opportunities, with some of the biggest burdens falling on women, individuals with medical conditions or disabilities, and single parents.⁵ Moreover, the Paycheck Fairness Act would impose rigid pay scales and inflexible jobs, making it harder for families to achieve the workplace and family balance they desire.⁶

More regulations lead to less flexibility, not more. The FMLA can limit workers’ ability to create a healthy balance by prohibiting employers from asking employees to perform any work while they are on leave. In today’s economy, many kinds of work can be done remotely, and certain family and medical leave instances are conducive to performing some work while on leave. These balances of partial work and partial leave can benefit workers and

[Fairness+Act%22%5D%7D&s=1&r=1](https://www.dailysignal.com/2020/02/05/6-ways-a-union-backed-bill-will-upend-the-jobs-market/) (accessed February 8, 2020).

⁵Rachel Greszler, “6 Ways a Union-Backed Bill Will Upend the Job Market,” The Daily Signal, February 5, 2020, <https://www.dailysignal.com/2020/02/05/6-ways-a-union-backed-bill-will-upend-the-jobs-market/> (accessed February 7, 2020).

⁶Rachel Greszler, “Democrats Want to Close the Gender Pay Gap. Here Are 4 Ways Their Proposal Would Backfire,” The Daily Signal, January 31, 2019, <https://www.dailysignal.com/2019/01/31/democrats-want-to-close-the-gender-pay-gap-here-are-4-ways-their-proposal-would-backfire/> (accessed February 7, 2020).

employers alike by minimizing workplace disruptions and increasing employees' pay while on leave.

I personally know mothers who have had their access to all work systems cut off while they are on maternity leave, because even making simple phone calls or exchanging e-mails with a colleague who is on leave could be grounds for a lawsuit. Such rigid rules (which can be necessary with one-size-fits-all policies) end up hurting employers, workers, and customers—and the very families they purport to help. Individuals who take formal leave suffer the most, as significant periods away from work lead to fewer chances for promotions, and lower earnings.

How Do Americans Feel About a Federal Paid Family and Medical Leave Program?

Americans overwhelmingly support paid family and medical leave, but their support varies in terms of who should provide leave, and how much they are willing to pay or sacrifice in exchange for paid family leave.

According to a 2017 Pew Social Trends survey, 69 percent of Americans support paid leave to care for family members with serious health conditions; 69 percent support paid paternity leave; 82 percent support paid maternity leave; and 85 percent support paid leave to address a worker's own serious health condition.⁷ The majority of Americans—62 percent—believe that employers should pay for maternity leave; 13 percent think state governments should pay;

and 11 percent think the federal government should pay (this leaves an assumed 14 percent who think workers should finance their own family and medical leaves).⁸

The Cato survey found that most Americans—74 percent—support a federal paid family and medical leave program; but that support dropped precipitously when asked about the costs, or tradeoffs, of such a program.⁹

At a price tag of \$450 more in taxes each year—the likely minimum cost, for a program like the FAMILY Act¹⁰—fewer than half of Americans (48 percent) supported a national paid leave program.¹¹ In reality, however, a national paid leave program would cost much more—as much as \$11,000 in new taxes, according to the American Action Forum.¹²

Americans are not willing to exchange more debt for a federal paid family leave program as only 40 percent of Americans support paid family leave if it means higher deficits.¹³

Americans appear even less willing to give up their own personal compensation or to forgo promotions for women: Only 38 percent of Americans support a federal paid leave policy if it means lower pay raises for them, and even fewer—29 percent—are willing to exchange such a program for fewer benefits for them or for a reduced likelihood of promotions for women.¹⁴ That has unfortunately been the case with national paid family leave policies,

⁷Juliana Menasce Horowitz et al., "Americans Widely Support Paid Family and Medical Leave, But Differ Over Specific Policies," Pew Research Center, March 23, 2017,

<https://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/> (accessed February 8, 2020).

⁸Ibid.

⁹Ekins, "Cato Institute 2018 Paid Leave Survey."

¹⁰The \$450 cost is based on a critique by the AEI-Brookings Working Group on Paid Family Leave

report, arguing that the FAMILY Act's costs are likely underestimated. The CATO survey uses a 16 percent take-up rate and an average leave duration of 7 weeks.

¹¹Ekins, "Cato Institute 2018 Paid Leave Survey."

¹²Ben Gitis, "The Cost of Paid Family Leave Law," American Action Forum, October 2015, <https://www.americanactionforum.org/research/the-cost-of-paid-family-leave-law/> (accessed February 8, 2020).

¹³Ekins, "Cato Institute 2018 Paid Leave Survey."

¹⁴Ibid.

including both unpaid mandates¹⁵ and generous national programs.¹⁶

Americans were least willing to support a federal paid family leave program if it meant giving up other valued government services. Only 21 percent of Americans said they would trade lower funding for education, Social Security, and Medicare in order to implement a national paid family leave program.¹⁷

Another survey, commissioned by the Independent Women's Forum, asked Americans about their concerns over a federal paid family leave policy. Americans' biggest concern was that "people will find a way to abuse this type of policy."¹⁸ About half of all Americans were concerned about abuse, including 56 percent of conservatives, 52 percent of moderates, and 38 percent of liberals. Americans' other top concerns were that a federal paid family leave policy "only benefits workers who plan to have children, which is unfair to those who do not" (38 percent); "workers will have to pay more taxes and will have less money for themselves and their families" (37 percent); and it "discourages businesses from providing their own parental leave benefit" (34 percent).¹⁹

The Family and Medical Leave Act

Under the Family and Medical Leave Act of 1993, workers who are employed by

companies that have 50 or more employees, as well as those employed by public agencies and public or private elementary and secondary schools, can take up to 12 weeks per year of job-protected, unpaid leave.²⁰ The law requires that the employers maintain employees' health insurance coverage during that time. To qualify, employees must have worked for the employer for at least 12 months and must have worked at least 1,250 hours over the previous year.

Current FMLA policy allows workers to take leave for: their own serious health condition that renders them unable to perform their job; the serious health condition of an immediate family member (child, spouse, or parent); the birth, adoption, or foster placement of a son or daughter; or for any "qualifying exigency" arising from the active duty status of an immediate family member.²¹

Low-Income Workers Harder to Reach with Family and Medical Leave. According to a 2007 Urban Institute study, low-wage workers were two times as likely to be employed by firms with fewer than 10 workers (42 percent of all low-wage workers vs. 20 percent of all workers).²² Most notably, one out of every three low-wage, low-income workers with children was employed by a firm with fewer than 10 employees. As that study pointed out, "Because of their small size, these firms may

¹⁵Malika Thomas, "The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection," March 6, 2019, <https://irs.princeton.edu/sites/irs/files/event/uploads/Draft030619.pdf> (accessed February 8, 2020).

¹⁶Christopher J. Ruhm, "The Economic Consequences of Parental Leave Mandates: Lessons from Europe," National Bureau of Economic Research Working Paper No. 5688, July 1996, <http://www.nber.org/papers/w5688.pdf> (accessed February 8, 2020).

¹⁷Ekins, "Cato Institute 2018 Paid Leave Survey."

¹⁸Heart Mind Strategies, "Paid Leave Messaging Research. Public Report," prepared for the Independent

Women's Forum, April 29, 2019, <https://pdf.wvf.org/Paid-Leave-Poll-Hearts-and-Mind%202019.pdf> (accessed February 8, 2020).

¹⁹Ibid.

²⁰U.S. Department of Labor, "Family and Medical Leave (FMLA)," <https://www.dol.gov/general/topic/benefits-leave/fmla> (accessed February 7, 2020).

²¹Ibid.

²²Gregory Achs and Austin Nichols, "Low-Income Workers and Their Employers. Characteristics and Challenges," The Urban Institute, 2007, https://www.urban.org/sites/default/files/publication/4665/FMLA_6411532-Low-Income-Workers-and-Their-Employers.PDF (accessed February 8, 2020).

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not have the resources to pay higher wages or offer comprehensive benefits, and they likely cannot offer much flexibility to their workers.²³ Imposing mandates or additional regulations on small employers could lead to fewer jobs and lower incomes for workers in small businesses. Moreover, low-income workers are less likely to take FMLA even if they have access to it because they often cannot afford to take unpaid leave.

FMLA Not Infrequently Misused and Abused. While most employers want to be accommodating to employees' needs, the rules and regulations surrounding the FMLA are so inflexible and difficult to interpret that employees are able to abuse the provision. According to a 2007 survey by the Society for Human Resources Management, 39 percent of human resources (HR) representatives said that they have granted FMLA requests that they perceived as illegitimate because of the Department of Labor's regulations and interpretation surrounding the FMLA. The percentage is likely higher among smaller employers who do not have large HR departments or the resources to police the integrity of FMLA claims.

The fact that FMLA claims spike the Monday after the Super Bowl, the first day of hunting season, on days surrounding weekends and holidays, and on good-weather days indicates that some workers use intermittent FMLA leave as a way to take unplanned and unapproved time off from work without consequence.²⁴

Moreover, because the FMLA requires employers to allow incremental FMLA use based on the shortest time increment recognized by a company's payroll system (often only a few minutes), employers report

that workers will regularly use FMLA claims to excuse their tardiness, often calling in on their way to work to say they will be 15 minutes late because of their FMLA-approved condition.²⁵ When they claim FMLA leave, they are essentially immune from recourse, even if their tardiness has nothing to do with a legitimate family or medical leave claim.

An interesting study on the gender wage gap by researchers at Harvard University also reveals some interesting data on FMLA use and apparent misuse. The study concluded that an 11 cent wage gap between men and women working for the Massachusetts Bay Transportation Authority (a unionized workplace with otherwise rigid pay scales) was due entirely to differences in hours worked.

A big part of the difference in hours worked was due to women claiming more FMLA hours of unpaid leave. Fully 45 percent of workers had active FMLA certifications that they could use for continuous or intermittent leave as desired. On average, women used 35 hours of FMLA leave per quarter (about 4.5 days) while men used 20 hours (2.5 days).

Trends in these workers' use of FMLA suggest that many workers are misusing the policy: On average, FMLA claims increased 34 percent for women (0.85 hours) and 28 percent (0.4 hours) for men during weeks when they were prescribed a weekend shift; and by about 80 percent for women (two hours) and 70 percent for men (one hour) during weeks that included a holiday shift.

When the employer, the Massachusetts Bay Transportation Authority, hired a third-party administrator to improve the integrity of FMLA use by ensuring proper FMLA certification and use, the percentage of workers

²³Ibid.

²⁴James Sherk, "Use and Abuse of the Family and Medical Leave Act: What Workers and Employers Say," Heritage Foundation Special Report No. 16,

August 28, 2007, <https://www.heritage.org/jobs-and-labor/report/use-and-abuse-the-family-and-medical-leave-act-what-workers-and-employers-say>.

²⁵Ibid.

with FMLA certifications fell from 45 percent to 27 percent and quarterly FMLA use declined 28 percent for women (from 35 to 25 hours) and 25 percent for men (from 20 to 15 hours).

In addition to revealing misuse of the FMLA, this study also verifies gender differences in FMLA use. Such differences can impact women's earnings, their likelihood of promotions, and their possibility of facing discrimination in the hiring process.

FMLA Has Costs for Workers, Employers, and Customers. Even if employers do not provide paid FMLA leave for workers, employees' absences still have costs and consequences. To suggest that companies can easily accommodate such absences is to imply that workers provide little value to their employers, which is simply not the case. In fact, the value that workers provide is what motivates employers to accommodate workers' requests for leave, often providing paid leave, because it helps them retain their workers.

Monetarily, employers are required to continue health insurance coverage during FMLA leave (and most employers continue other benefit provisions voluntarily). Based on average premiums and worker contributions, employers would pay about \$1,370 for 12 weeks of individual health insurance coverage and \$3,360 for family coverage.²⁶ Moreover, a significant number of employers hire temporary replacements for workers who are on FMLA leave, and obtaining those workers

(often through agencies that charge fees) can be more costly.²⁷

The biggest costs of FMLA leave appear to be borne by the co-workers of absent employees. According to a 2007 Society for Human Resource Management (SHRM) survey, 88 percent of employers said that they re-assigned absent employees' work to other workers.²⁸ Typically, if employees believe that a co-worker's FMLA leave is for a legitimate reason, they are willing to work additional hours and take on added responsibilities; but when FMLA leave is perceived as illegitimate, it can engender resentment and hurt employee morale.

Employers Views of FMLA. Despite some claims that FMLA and other government paid family leave programs have few or no negative effects on employers, more comprehensive surveys show that employers, in fact, experience significant negative consequences. According to the SHRM's 2007 survey, "FMLA and Its Impact on Organizations," the following percentages of employers reported FMLA leave having negative effects on:²⁹

- employee absences (63 percent),
- employee productivity (55 percent),
- business productivity (54 percent), and
- employee morale (35 percent).

Somewhat surprisingly, these negative effects were greater for very large businesses. Among companies with 500 or more employees, 79 percent reported negative effects on employee absences; 74 percent, on employee

²⁶Author's calculations based on 2019 health insurance premium data, including employee contribution levels, from the Kaiser Family Foundation: Premiums and Worker Contributions Among Workers Covered by Employer-Sponsored Coverage, 1999–2019, <https://www.kff.org/interactive/premiums-and-worker-contributions-among-workers-covered-by-employer-sponsored-coverage-1999-2019/#/> (accessed February 7, 2020).

²⁷According to the 2007 SHRM survey, 23 percent of employers reported hiring an outside temporary

replacement for workers on FMLA leave. Society for Human Resource Management, "FMLA and Its Impact on Organizations," 2007, <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/documents/fmla%20and%20its%20impact%20on%20organizations%20survey%20report.pdf> (accessed February 7, 2020).

²⁸Ibid.

²⁹Society for Human Resource Management, "FMLA and Its Impact on Organizations."

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productivity; 68 percent, on business productivity; and 52 percent, on employee morale.

I suspect (without any evidence) that more negative effects reported by very large companies is the result of more FMLA claims made by workers in those firms, perhaps because they believe that in a larger company, their absence would be less burdensome on their fellow co-workers, and employer. Larger, more profitable companies also provide greater incentives for lawyers and plaintiffs to bring lawsuits.

Having talked with multiple employers and HR representatives about the issue of FMLA leave and paid family leave, the resounding consensus was that employers feel strongly that it should be up to them to determine the types of relationships and medical and family needs for which they will allow their employees to take leave, and in which instances they will pay them while on leave.

One Size Does Not Fit All. Employers' ability to respond to employees' needs varies significantly across industries and employer sizes. Large employers in the retail industry may have enough employees to shift duties to other workers with relatively little consequence and cost. But smaller employers and more specialized industries have a harder time adapting. The burden of employees' absences can have a large negative impact on companies operations, which spills over to consequences for customers.

Many industries and positions require skilled or licensed professionals who are extremely difficult, if not impossible, to replace within a short time period. I think of my own children's daycare, with about 20 children and eight

employees. If one or more teachers were to go on FMLA leave, they would not have enough staff to fulfill the required child-to-teacher ratios, and because of the background checks, and lengthy education and licensing required, temporary fill-ins are not really an option. In fact, my children's daycare center once had to shut down for an entire week when two employees were absent. This meant that about 15 families had only three days of notice to find substitute child care for an entire week.

In the medical field, absences can be particularly harmful—even life-threatening. An economic study found extreme consequences from Denmark's implementation of a one-year paid parental leave program within the nursing industry: The program led to a rapid and persistent 12 percent decline in nursing employment, a 17 percent increase in inpatient re-admissions, an 89 percent increase in newborn re-admissions, a delay in technology adoption, and a 13 percent increase in nursing home mortality over the three-year period following enactment.³⁰ This is not to say that leave should not be allowed, but government micromanagement of leave decisions prohibits employers and employees from flexibly balancing their needs and desires in ways that minimize costs and consequences for workers, employers, and customers.

Carrie Lukas, who directs the Independent Women's Forum and its 24 employees, expressed her concern that well-intentioned policies like this create unnecessary burdens for employers:

There are always going to be bosses who don't treat their employees well—and the best way to deal with those situations is to make sure that people have other job opportunities so

³⁰Maya Rossin-Slater, Christopher J. Ruhm, and Jane Waldfogel, "The Effects of California's Paid Family Leave Program on Mothers' Leave-taking and Subsequent Labor Market Outcomes," National

Bureau of Economic Research Working Paper No. 17715, December 2011, <http://www.nber.org/papers/w17715> (accessed June 13, 2017).

they can leave those situations. Expanding government rules about how employees have to be treated, the time they can take off, and in what circumstances just makes bosses feel like they can depend on employees less, pushes them to use fewer employees if possible, and causes employers to take away flexibility and discretion.

The minority of employers who really want to prevent or punish workers for taking leave will probably still be able to do so under proposed FMLA expansions—they will just have to be more careful and calculated about it.

FMLA: Fewer Promotions for Women. Well-intentioned and ostensibly family friendly policies can backfire on, and have unintended consequences for, the very people whom policymakers are trying to help. That has been the case, in varying degrees, with government paid family leave regulations and programs.

An economic analysis on the impact of the 1993 FMLA by Cornell University professor Mallika Thomas found that women who were hired after enactment were 3 percentage points more likely to remain employed, but 8 percentage points less likely to be promoted than similar women who were hired before the FMLA.³¹

³¹Mallika Thomas, “The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection,” Cornell University ILR School, September 6, 2016, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1015&context=ics> (accessed February 8, 2020).

³²Tirthatanmoy Das and Solomon W. Polachek, “Unanticipated Effects of California’s Paid Family Leave Program,” Institute of Labor Economics Discussion Paper No. 8023, March 2014, <http://ftp.iza.org/dp8023.pdf> (accessed May 7, 2019).

³³Joshua Reed and Donald Vandegrift, “The Effect of New Jersey’s Paid Parental Leave Policy on Employment,” Munich Personal RePEc Archive Paper

Government Paid Family and Medical Leave: Additional Consequences for Women. Beyond unpaid, job-protected leave allowances, government programs have had unintended consequences for women. Both California’s and New Jersey’s state-based paid family leave programs had the unintended consequence of increasing the unemployment rate and the duration of unemployment for young women.³² Even with low awareness and take-up rates, researchers estimated that New Jersey’s paid family leave program reduced young women’s employment rates by an estimated 8 percent to 9 percent.³³ And a recent analysis of California’s program using administrative data from the IRS found that new mothers who used California’s paid family and medical leave program had 7 percent lower employment and 8 percent lower annual earnings six years to 10 years after giving birth than new mothers who did not use the program.³⁴ (That study also has the surprising finding that California’s paid family leave program reduces women’s fertility rates).

Super-sized government programs in Europe have produced more widespread adverse impacts for women. A study of Great Britain’s paid leave and job-protected leave concluded that the policies reduced highly educated women’s prospects of being promoted or holding management positions,³⁵ and a study

No. 74794, October 28, 2016, https://mpra.ub.uni-muenchen.de/74794/1/MPRA_paper_74794.pdf (accessed March 5, 2018).

³⁴Martha J. Bailey, Tanya S. Byker, Elena Patel, and Shanthi Ramnath, “The Long-Term Effects of California’s 2004 Paid Family Leave Act on Women’s Careers: Evidence from U.S. Tax Data,” NBER Working Paper No. 26426, October 2019.

³⁵Jenna Stearns, “The Long-Run Effects of Wage Replacement and Job Protection: Evidence from Two Maternity Leave Reforms in Great Britain,” University of California, Davis, January 14, 2017, <http://economics.ucdavis.edu/events/papers/28Stearns.pdf> (accessed March 5, 2018).

of parental leave mandates in Europe found that they reduced women's relative wages.³⁶

Expansive Definitions Could Turn Into Any Leave, for Any Reason, Any Time. Although not the intent, expanding the FMLA eligibility to include anyone with whom an employee has the "equivalent of a family relationship" is incredibly broad. Many family members live together while other do not even speak to one another. Such vague expansions are more likely to increase the number of illegitimate claims than legitimate ones. That is because employers tend to know their employees better, and to be more understanding of their unique circumstances, than a government bureaucrat or judge tasked with interpreting ambiguous definitions of relationships and qualifying events. Employers should have the discretion to determine which types of leave they will allow and potentially pay their employees to take.

The FAMILY Act or Another National, One-Size-Fits-All Government Program

It is extremely difficult to design a single program that can meet the needs of all the workers who require it without being so expansive as to invite misuse, abuse, and excessive costs and consequences. A federal paid family leave program would require: one eligibility criteria, one leave allowance, one tax or funding source to pay for it, and one federal agency to administer the program across 28 million unique businesses and 159 million diverse workers.

³⁶Ruhm, "The Economic Consequences of Parental Leave Mandates: Lessons from Europe."

³⁷Achs and Nichols, "Low-Income Workers and Their Employers. Characteristics and Challenges."

³⁸Leonor Ehling, "California's Paid Family Leave Program, Ten Years After the Program's Implementation, Who Has Benefited and What Has Been Learned?" California Senate Office of Research, July 1, 2014.

<https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Ca>

Government Programs Are Regressive.

Despite their intent, most government programs are actually highly regressive, taxing everyone, but primarily benefitting middle-income and upper-income earners. The most obvious reason for this is that partial benefits are not adequate for low-income workers. The proposed FAMILY Act's 66 percent benefit levels would mean that workers who earn \$15 per hour would receive only \$396 per week while on leave instead of their usual \$600 per week. Such partial benefits would not be enough for most low-income families to cover their expenses. Moreover, low-income families are significantly less likely to be eligible for benefits based on fewer hours of work and shorter employment durations.³⁷

A few examples of the regressive nature of government-provided paid family leave programs are:

California. Workers in the highest income bracket (above \$84,000) were five times more likely to file paid family leave claims with the state as those in the lowest income bracket (below \$12,000).³⁸ Even in San Francisco, which has its own paid family leave law that provides 100 percent benefits to new mothers, low-income mothers (below \$32,000) were only half as likely as higher income ones (above \$97,000) to receive paid family leave benefits from the government.³⁹

New Jersey. New Jersey's program was characterized as "simply unaffordable, even for middle-class families, many of whom still live

[lifornias%20Paid%20Family%20Leave%20Program.pdf](#) (accessed December 7, 2019).

³⁹Julia M. Goodman, William H. Dow, and Holly Elser, "Evaluating the San Francisco Paid Parental Leave Ordinance: Employer Perspectives," University of California at Berkeley, February 2019, <https://www.populationsscience.berkeley.edu/sites/default/files/PPL0%20Issue%20Brief%20%20FINAL.pdf> accessed December 7, 2019).

paycheck to paycheck in high-cost New Jersey.”⁴⁰ Moreover, “The state’s paid family leave policy puts many workers below the poverty level for the duration of their leaves, and pushes people who are already struggling deeper into poverty.”⁴¹ And, recent expansions of the program that are intended to increase awareness and use are estimated to quadruple workers’ maximum payroll tax.⁴²

Canada. Government paid family leave programs have exacerbated class inequality: “Despite proportionate and obligatory contributions of all employers and employees to these programs, the distribution of benefits is unbalanced and aids the social reproduction of higher-income families, especially outside of Québec.”⁴³ While Québec, which operates its own program, has taken action to increase government benefits, they “are still not equally used by mothers with lower socio-economic status.”⁴⁴

Norway. In Norway, which expanded paid leave to 100 percent replacement rates for nearly

all mothers, researchers found that “paid maternity leave has negative redistribution properties,” and that “the extra leave benefits amounted to a pure leisure transfer, primarily to middle and upper income families.”⁴⁵ The researchers concluded that “the generous extensions to paid leave were costly, had no measurable effect on outcomes and poor redistribution properties.”⁴⁶

In the U.S., where substantial employer-provided paid family leave exists, a government program could be even more regressive because it would provide windfall benefits to larger companies and higher-income employees who already *have* paid family leave policies.⁴⁷

Government Programs Crowd Out Employer-Provided Benefits. A government program would also crowd out existing programs and prevent new ones from starting because employers would be unwise to pay costs that could otherwise be borne by taxpayers.⁴⁸ This is already happening with

⁴⁰Amy Dunford, “Boosting Families, Boosting the Economy: How to Improve New Jersey’s Paid Family Leave Program,” New Jersey Policy Perspective, April 27, 2017, <https://www.njpp.org/reports/boosting-families-boosting-the-economy-how-to-improve-new-jerseys-paid-family-leave-program> (accessed December 7, 2019).

⁴¹Ibid.

⁴²Samantha Marcus, “Here’s How Much Murphy’s Expansion of Paid Family Leave and Temporary Disability Will Cost You in Higher Taxes,” NJ.com, updated April 7, 2019, <https://www.nj.com/politics/2019/04/heres-how-much-murphys-expansion-of-paid-family-leave-and-temporary-disability-will-cost-you-in-higher-taxes.html> (accessed February 8, 2019).

⁴³Lindsey McKay, Sophie Mathieu, and Andrea Doucet, “Parental-Leave Rich and Parental-Leave poor: Inequality in Canadian Labour Market Based Leave Policies,” *Journal of Industrial Relations* (2016), pp. 1–20, http://www.andreadoucet.com/wp-content/uploads/2016/11/Doc-10_McKay-Mathieu-Doucet-2016-JIR-FINAL.pdf (accessed December 7, 2019).

⁴⁴Ibid.

⁴⁵Gordon B. Dahl et al., “What Is the Case for Paid Maternity Leave?” University of Southern California San Diego, April 20, 2015, <https://econweb.ucsd.edu/~gdahl/papers/paid-maternity-leave.pdf> (accessed December 7, 2019).

⁴⁶Ibid.

⁴⁷I estimate that employers provide between \$125 billion and \$275 billion worth of paid family and medical leave to workers each year. This estimate is based on a workforce of 150 million, between 12.6 percent and 18.5 percent of workers taking leave each year with an average leave length of 6.95 weeks, benefits equal to between 66 percent and 100 percent of pay, and workers annual earnings in the range of \$50,000 to \$75,000. Even if a federal program only covered 40 percent of existing costs, this implies that each worker would face between \$300 and \$700 in new taxes to cover paid leaves that employers already provide.

⁴⁸Based on a recent economic analysis that showed a 60 percent crowd-out rate of privately provided health insurance due to government provision, policymakers can expect significantly higher crowd-out from a federal paid family leave program; such benefits would be less valuable, as they would lack the special tax benefit for employer-provided health insurance. Jonathan Gruber and Kosali Simon, “Crowd-Out Ten

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state-based programs. At a July 11, 2018, Senate Finance Subcommittee hearing, Carolyn O'Boyle, representing Deloitte, explained what Deloitte does (and what one can expect other employers to do) for employees who live in states with their own state-based paid family leave programs. She said that Deloitte instructs its workers first to use the state-provided paid leave benefits, and then Deloitte tops those benefits off to meet Deloitte's maximum benefits. That is a straight transfer of costs from private-sector businesses and workers to state taxpayers, and the same thing would happen at the national level for federal taxpayers.

Government Programs Are Costly and Ever-Expansive. Paid family leave provides significant benefits, but not without substantial costs, and costs are almost always higher when benefits come through a government program instead of an employer-provided program.

Taxes often start out low, but inevitably rise over time as programs expand eligibility, benefit levels, and the length of leave in an effort to accommodate more workers' and families' needs. State-based programs have

Years Later: Have Recent Public Insurance Expansions Crowded Out Private Health Insurance?" National Bureau of Economic Research *Working Paper* No. 12858, January 2007, <http://www.nber.org/papers/w12858.pdf> (accessed March 9, 2018).

⁴⁹For example: New Jersey recently expanded its paid leave program, including doubling the maximum length of leave to 12 weeks; increasing the maximum payment level from 66 percent to 85 percent of earnings; broadening the group of employers to whom New Jersey's FMLA law applies to include those with 30 or more employees; and expanding eligibility criteria to include anyone with whom the employee has "the equivalent of a family relationship." According to an article by Samantha Marcus, "Here's How Much Murphy's Expansion of Paid Family Leave and Temporary Disability Will Cost You in Higher Taxes," these changes will more than quadruple the maximum payroll tax contribution for workers.

⁵⁰Ben Gitis, "The Fiscal Implications of the FAMILY Act: How New Paid Leave Benefits Increase Leave-

already expanded their programs and taxes, even as they remain underutilized and lacking public awareness.⁴⁹

The American Action Forum estimated that the FAMILY Act would cost \$31 billion per year (about \$200 for a worker making \$50,000) if take-up rates were as small as they have been in state-based programs; \$68 billion per year (\$430 per worker) if take-up rates resemble workers' use of the FMLA (including unpaid leave); and \$225 billion per year (\$1,425 per worker) if workers responded as indicated by their paid family leave needs in a recent Cato Institute poll.⁵⁰

I estimate that the cost of a federal program providing Social Security-level benefits would cost the average worker \$569 per year in taxes, while providing 100 percent benefits would require an additional \$1,286 per worker.⁵¹

European programs have had more time to expand than U.S. state programs. Between 1980 and 2011, the median amount of paid leave for mothers among Organization for Economic Cooperation and Development (OECD) countries increased from 14 weeks to

Taking and Drive Up Estimated Program Costs," American Action Forum, March 21, 2019, https://www.americanactionforum.org/research/the-fiscal-implications-of-the-family-act-how-new-paid-leave-benefits-increase-leave-taking-and-drive-up-estimated-program-costs/#_ftn27 (accessed May 4, 2019), and Ekins, "Cato Institute 2018 Paid Leave Survey."⁵¹

⁵¹Author's estimates based on Social Security's benefit calculation formula and a national average wage of \$52,651. These estimates assume that about 18.5 percent of workers would access the benefit and that they would take an average of 6.95 weeks of leave. The 18.5 percent take-up rate comes from a study conducted for the Department of Labor (<https://www.dol.gov/asp/evaluation/completed-studies/IMPAQ-Family-Leave-Insurance.pdf>). The average length of leave comes from another study conducted for the Department of Labor (<https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>).

42 weeks.⁵² In Canada, expansions—including increasing 17 weeks of paid maternity leave to 35 weeks of paid parental leave—caused the program’s costs to quadruple (from 0.07 percent to 0.28 percent of gross domestic product).⁵³

The United States does not have a national paid family leave program, but it has multiple other entitlement programs that have exploded in size, scope, and costs over time. That out-of-control spending growth is the driving source behind America’s unsustainable and increasingly threatening debt. A new federal paid family leave entitlement would only exacerbate this crisis and increase the likelihood of future austerity.

How to Help Americans Balance Work and Family without Costly and Rigid Government Programs and Regulations

In addition to continuing pro-growth economic policies that have contributed to huge financial gains and opportunities for families—including substantial expansion in the number of companies providing voluntary paid family leave to their workers, large wage gains across the board with the biggest gains for low-income workers, and significantly greater job opportunities drawing marginalized and discouraged workers back into the labor force—policymakers can take additional steps to help to increase access to paid family leave for workers who currently lack it. Such policies include:

⁵²Dahl et al., “What Is the Case for Paid Maternity Leave?”

⁵³Organization for Economic Cooperation and Development, “PF 2.5 Annex: Detail of Change in Parental Leave by Country,” OECD Family Database, Social Policy Division, last updated October 26, 2017, https://www.oecd.org/els/family/PF2_5_Trends_in_Leave_entitlements_around_childbirth_annex.pdf (accessed February 12, 2018).

⁵⁴Rachel Greszler, “Mike Lee’s Bill Would Boost Paid Family Leave Without Growing the Government.” The

The Working Families Flexibility Act. The Working Families Flexibility Act (H.R. 5656), which was introduced by Martha Roby (R-AL) and passed the House in 2017 (and was also introduced in the Senate in 2019 by Mike Lee), would allow private employers to give their workers the same option that state and local workers receive—to choose between receiving time-and-a-half pay or time-and-a-half worth of paid leave benefits in exchange for overtime hours.⁵⁴ For example, an employee who worked five hours of overtime every week for one year could accumulate 10 weeks of paid leave. Even working just two hours of overtime each week for a year could result in four weeks of paid leave.

This proposal would be particularly helpful to the low-wage workers who lack access to paid family leave because it would apply to hourly employees who currently earn below about \$35,600 per year.

Payroll Tax Credit for Qualified Disability Insurance Policies. Private disability insurance provides workers with medical leave benefits for themselves as well as pregnancy and maternity-related leave. Although 47 percent of full-time private-sector workers have temporary disability insurance, some policymakers, employers, and workers undercount private disability insurance as a source of personal medical and maternity leave.⁵⁵ Policymakers should consider providing a payroll tax credit to employers who provide their workers with qualified disability

Daily Signal, April 11, 2019, <https://www.dailysignal.com/2019/04/11/mike-lee-s-bill-would-boost-paid-family-leave-without-growing-government/>.

⁵⁵U.S. Bureau of Labor Statistics, National Compensation Survey, Table 16, “Insurance Benefits: Access, Participation, and Take-Up rates, Private Industry Workers,” March 2017, <https://www.bls.gov/nsc/ebs/benefits/2017/ownership/private/table16a.pdf> (accessed February 12, 2018).

insurance policies. I have advocated for such a proposal to improve the federal disability insurance program, and this policy would have the added benefit of increasing paid medical and maternity leave benefits.⁵⁶

Congress could also increase workers' enrollment in employer-sponsored temporary disability insurance policies by clarifying in legislation that employers have the same legal authority to automatically enroll employees (providing they are allowed to opt out) into their temporary disability insurance policies as they have to automatically enroll them in their retirement plans.

Universal Savings Accounts (USAs). By double-taxing savings (once when the money is first earned, and a second time after it generates investment gains), and by limiting tax-preferred savings accounts to purposes such as education and retirement savings, the U.S. discourages individuals from saving for other purposes. By allowing workers to save money for any purpose, USAs would encourage workers to save more and would help them prepare for a wider variety of life events and circumstances.

Expand on Penalty-Free Withdrawals from Retirement Accounts. The Setting Every Community Up for Retirement Enhancement (SECURE) Act, which became law at the end of 2019, allows workers to make penalty-free withdrawals from their retirement plans for the birth or adoption of a child. This is a helpful step that policymakers should build upon by removing more restrictions so that workers and families can spend their savings—without penalty—on what is best for them.

⁵⁶Rachel Greszler, "Private Disability Insurance Option Could Help Save SSDI and Improve Individual Well-being," Heritage Foundation *Background* No. 3037, July 20, 2015, http://hfh_media.s3.amazonaws.com/2015/pdf/BG3037.pdf.

Lower Taxes. Lower taxes on individuals and businesses would free up income and resources to apply toward paid family leave or whatever else workers and families need or decide is best for them. Moreover, recent reports on new and expanded paid family leave policies from large companies, such as Lowe's and Chipotle, after the Tax Cuts and Jobs Act of 2017 show that lower taxes have contributed to more paid family leave benefits.⁵⁷

Reducing Regulations. Another component of employers' ability to add and expand paid family leave policies has been the Administration's success in reducing unnecessary and costly regulations. Further regulatory relief could free up even more resources to go toward paid family leave.

Conclusion

There are many things that can help Americans balance their work, family, and health needs—and flexible work situations are what Americans overwhelmingly express a desire to achieve. A number of Democrat-backed bills, such as the PRO Act and Paycheck Fairness Act, would drastically reduce, not increase, workers' flexibility.

Paid family leave is something that Americans want and something policymakers want to help them receive. I also support workers having access to paid family leave, but on flexible and accommodating terms that work best for workers and their employers. Similarly, surveys show that Americans do not want just any policy at any cost; they want a program that meets their needs with as little cost, burden, and disruption as possible. A one-size-fits-all federal government program simply cannot

⁵⁷Patrice Lee Onwuka, "5 Companies Expanding Parental Leave Thanks to Tax Cuts," Independent Women's Forum, February 15, 2018, <http://www.iwf.org/blog/2805845/5-Companies-Expanding-Parental-L-Leave-Thanks-to-Tax-Cuts> (accessed March 5, 2018).

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achieve this. Not only would it crowd out existing programs and leave many workers with inferior and burdensome policies, it would—like all existing government-funded family leave programs—redistribute resources from low-income workers to middle-income and higher-income workers, and would fail to provide the flexibility that workers and employers increasingly want and need in the evolving labor market.

The current expansion of employer-provided (as well as state-based) paid family leave programs, along with the strong labor market, suggests that policymakers should let such growth continue instead of halting it with a federal paid family leave program. Policymakers should focus on expanding options for workers who currently lack access to paid family leave. In addition to continued pro-growth economic policies, this includes enacting policies like the Working Families Flexibility Act and allowing workers to use their tax-preferred savings to pay for their leave. In the long run, workers, employers, taxpayers, and the American economy will all be far better off with individually tailored paid family leave programs through employers instead of another costly and unsustainable federal entitlement program.

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CHAIRWOMAN ADAMS. Thank you.
Dr. Jacobs, you have 5 minutes.

**STATEMENT OF MS. ELISABETH JACOBS, PH.D., SENIOR
FELLOW, URBAN INSTITUTE, WASHINGTON, DC**

Ms. JACOBS. Thank you, Chair Adams, Ranking Member Cline, and members of the subcommittee. I am pleased to be here today to address an important topic for workers, families, and our economy as a whole: the role that family and medical leave plays in supporting the millions of Americans balancing work and caregiving responsibilities. And I will note that the views I express

today are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

My testimony draws four main conclusions.

First, the historic passage of the FMLA in 1993 has had important positive effects for families and workers with minimal evidence of negative consequences for business or economic growth.

However, family earnings dynamics, caregiving needs, and the structure of the labor market have evolved in the past quarter century. For example, women now play an equally important role as family breadwinners as they do as family caregivers. Indeed, 41 percent of mothers were the sole or primary earners for their families, earning at least half of their household's total earnings.

Family caregiving needs extend beyond parents carrying for a new baby, especially as America ages. The sheer number of baby boomers means that the number of elderly individuals grows annually, and the fastest growing group of older adults are those 80 and older.

And the structure of work is shifting. While still a relatively small share of the overall labor force, alternative work arrangements accounted for 94 percent of employment growth between 2005 and 2014.

Second, FMLA provides important protections for families balancing work and care responsibilities, but the most economically vulnerable workers too often are excluded from accessing those rights.

More than 14 million workers took FMLA leave in 2012, the most recent year for which we have available data from the BLS. However, many more workers are unable to take leave for family or medical reasons without risking job loss.

Forty-four percent of the workforce is not covered by the FMLA, and there are substantial demographic disparities in worker access to FMLA-protected leave.

For example, 42.6 percent of working women of childbearing age are not eligible for FMLA protection. Less than half of all workers living in families with incomes under \$40,000 are FMLA eligible. And Hispanic and non-White workers are less likely than White workers to be FMLA eligible.

Given FMLA's limits, it is not surprising that unmet demand for needed leave is high. Sixteen percent of workers report a time when they needed to take time off for an FMLA-qualifying reason but were unable to do so. And nearly a third of workers in low-income households were not able to take a needed leave.

Third, modernizing the FMLA to reflect contemporary work and family would expand access to needed leave for millions of workers. For instance, FMLA excludes part-time workers, including those who work a full-time schedule split across multiple employers. Updating FMLA to protect part-time workers could help millions of families.

FMLA's definition of family is limited and, as such, does not include the most important caregiving relationships for many workers.

For example, FMLA doesn't offer protection for grandparent caregivers. We know that nearly 1 million grandparents serve as their

grandchildren's primary caregiver and over half of these grandparents were in the labor force.

Updating the definition of covered family to reflect the multigenerational households of contemporary America would expand access to leave.

Fourth, job protection is one of a number of important policy elements that Congress should consider. Wage replacement is another. A growing number of States have implemented paid leave programs that allow workers to earn paid time off for parental, family, and medical leave.

All of these State programs use a social insurance model with leave funded by a very small payroll contribution, and many of those States have combined those paid parental leave policies with rights to job protection that go beyond those provided by Federal law and provide medical and caregiving leave as well.

Evidence tells us that these policies can have wide-ranging positive impacts on child and adult health as well as on earnings and employment outcomes for leave takers.

Because labor force participation rates are a critical element of economic growth, policies like paid leave that boost labor force attachment are a macroeconomic growth strategy as well as a support for working families.

Businesses in States with paid family and medical leave programs in place view these policies favorably. Paid leave programs may also improve productivity by reducing turnover.

The States have provided models for what works, but the evidence suggests that the time has come for updating Federal policy to meet the challenges of a 21st century economy.

A Federal program with uniform eligibility requirements, protections, and benefit schedules would eliminate the unevenness between the States, create a level playing field for State finances for employers and for workers.

A federally administered system, coupled with Federal protections, would be substantially more efficient to administer than 50-plus separate State and local programs.

In conclusion, the evidence tells us that working families are facing substantial challenges to combining their economic and caregiving responsibilities. But research also tells us that we have policy solutions available, solutions that work for families, for workers, for employers, and for the economy as a whole.

Thank you.

[The statement of Ms. Jacobs follows:]



EVIDENCE ON THE BENEFITS OF EXPANDED ACCESS TO FAMILY AND MEDICAL LEAVE

Statement of
Elisabeth Jacobs*
Senior Fellow, Urban Institute

before the
Subcommittee on Workforce Protections,
Committee on Education and Labor,
United States House of Representatives

**BALANCING WORK, HEALTH, AND FAMILY: THE CASE FOR
EXPANDING THE FAMILY AND MEDICAL LEAVE ACT**

February 11, 2020

*The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

I thank Chantel Boyens for helpful comments and Fernando Hernandez and Michael Marazzi for help in preparing this testimony.

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My name is Elisabeth Jacobs, and I am a senior fellow at the Urban Institute. The nonprofit Urban Institute is the nation's leading research organization dedicated to developing evidence-backed insights that improve people's lives and strengthen communities. For more than five decades, Urban has been a trusted source for rigorous analysis of complex social and economic challenges; strategic advice to policymakers, philanthropists, and practitioners; and policy insights that elevate debate. Our objective research helps expand opportunities for all.

I am pleased to be here today to address an important topic for workers, families, and our economy as a whole: the role that family and medical leave plays in supporting the millions of Americans balancing work and caregiving responsibilities. The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

The passage of the Family and Medical Leave Act (FMLA) in 1993 was a historic milestone, the first federal law to support workers balancing work and family responsibilities. FMLA allows eligible employees to take up to 12 work weeks of unpaid leave with job protection to care for a new child, to care for a seriously ill family member, or to recover from a serious illness. As I will discuss, FMLA has had important positive effects on families and workers, with limited impact on employers. At the same time, the limits of FMLA mean that too many families still face an impossible choice between economic security and caring for a loved one. Millions of the most economically vulnerable workers are excluded from taking job-protected leave under FMLA because of its outdated eligibility requirements. And, in the absence of broadly accessible paid family and medical leave, many FMLA-eligible workers cannot take the time off from work necessary to care for their loved ones. A growing body of evidence suggests that policies that provide paid earned leave with job protection for caregiving can ease the conflict between work and family responsibilities with few negative consequences for business and important positive implications for overall economic growth.

My testimony draws four major conclusions:

- The job-protected leave provided by FMLA has important benefits for workers (especially working mothers) and children, with minimal evidence of negative impacts on business outcomes or broader macroeconomic indicators.
- Access to FMLA's job protection is limited, and many of the workers who most need time off to provide care for themselves or a loved one cannot take needed leave.
- Although the job protection provided by FMLA is an important component of leave policy, it is only one of several critically important elements, including wage replacement and public awareness of policies and legal protections. How a policy is designed may affect which demographic groups are likely to use the benefits.
- Policy has a crucial role to play. States have recognized this, and many have expanded FMLA policies to go well beyond that of federal regulations in order to offer more equitable protections for their workforce. A growing number of states has implemented paid family and medical leave programs that offer wage replacement, in addition to job protection, to address the challenge faced by the millions of workers who cannot afford to take a leave without pay. Well-designed federal policy solutions should build upon the work already done by states to expand access to caregiving leave in ways that would deliver much-needed economic security and opportunity to workers and

families, with minimal impact on businesses. Federal family and medical leave policy could also have important positive impacts on economic growth for the nation as a whole.

The rest of my testimony will (1) discuss the shifts in both caregiving needs and the organization of work over the past quarter-century, which together have increased the urgency for policies supporting those balancing work and care; (2) describe the limits on access to FMLA job protection in the context of these shifts in caregiving and work; (3) examine the impacts of job-protected leave on a range of critically important outcomes, including children's health and well-being, employment and earnings for parents and other caregivers, and business productivity; (4) review several other key elements of policy design for a family leave policy that effectively supports a range of workers and worker needs, including wage replacement and implementation. I conclude by suggesting key implications for policy moving forward.

1. Family earnings dynamics, caregiving needs, and the structure of the labor market have substantially evolved in the past quarter-century.

Changes in household earning dynamics

First, women now play an equally important role as family breadwinners as they do as family caregivers. Women make up nearly half (47 percent) of all employed US workers.¹ Fifty-nine percent of women older than 20 participated in the labor market in 2020, compared with 34 percent in 1950.² In 2017, 41 percent of mothers were the sole or primary breadwinners for their families, earning at least half of their household's total earnings. This figure includes both single working mothers and married mothers who outearn their husbands. An additional 23 percent of mothers are co-breadwinners, or married mothers whose wages make up at least 25 percent of their household's total earnings.³ Between 1968 and 2017, the share of families with children younger than 18 headed by a single mother increased from 12 percent to 21 percent, with an additional 4 percent headed by a single father.⁴ The increase in single-parent families means that more workers, especially women, are juggling both work and care responsibilities with no second adult available to help.

Women's increasing contribution to household earnings has come not only from the increase in their hourly pay, but also from a substantial increase in hours worked. In the past quarter-century, the average American woman saw her annual work hours increase by 26 percent, a trend that holds across socioeconomic groups.⁵ Women's increased labor force participation has been an engine of economic growth, with one study estimating that the increase in women's work hours over the past four decades added \$1.7 trillion to gross domestic product in 2012.⁶ The combination of the successes of the women's rights movement and economic necessity means that most women work outside the home today. Yet caregiving needs persist—babies join families, workers get sick, and children and aging parents and partners need care.

Changes in caregiving needs

The aging of the population means that the caregiving challenge in the US is growing and will continue to do so for many decades. The absolute size of the baby boom generation, whose members were born between 1946 and 1964, means that the sheer number of older people grows annually. And the relative size of that

cohort, compared with those born since the mid-1960s, means that the share of working Americans with caregiving responsibilities for an aging parent (and, often, young children) is growing as well. The fastest-growing group of older adults are those ages 80 and older, who are most likely to face significant physical and/or cognitive impairments. At the same time, American families are shrinking, and the composition of families is changing as more people do not have children, never marry, divorce, or blend families through remarriage. Despite intensifying demands for family caregiving, more than half of caregivers are employed.⁷

Moreover, the labor force is aging. Advances in medicine mean that workers can be employed longer, a trend that is likely to continue. The Bureau of Labor Statistics estimates that between 2014 and 2024, the share of the labor force made up of workers ages 65 to 74 will grow by 4.5 percent and the share of workers 75 and older will grow by 6.4 percent.⁸ The probability of workers experiencing health problems that temporarily interrupt their ability to work increases with age, as does the probability that a working or nonworking spouse will need care. The working-age children of older workers are also more likely to increasingly experience work interruptions to care for their parents.

Changes in the structure of work

The blueprints for the design of labor policy in the US were drawn up in the first half of the 20th century. Policymakers laid out rules to govern stable, full-time employment at a time when most workers were employed by a single employer for the entirety of their working lives. Our current policy architecture is based on those blueprints, including FMLA. Yet employment arrangements for many workers today look very different from the full-time, lifetime-employer model of the past. Moreover, three related trends indicate that the future of work in the 21st century will be increasingly made up of unstable, contingent, and contract employment.

First, the rise of the “fissured workplace” has altered the structure of the labor market, with important implications for workers’ wages and benefits.⁹ In a fissured workplace, the business sheds secondary functions to focus on core competencies. The “fissures” deepen and spread as secondary businesses shift some activities to yet another company, and so on. Consider a hotel that outsources its cleaning services to one firm, its dining services to another, its front desk services to yet another, and its tech support to still another. The result is an increasingly complex layering of employees within businesses, to the extent that some employees may not have a clear sense of who their employers are. Profit margins grow slimmer as one travels farther down the fissure, increasing the incentive to cut costs. Research suggests that the consequences of fissuring for workers in outside firms may be decreased earnings and lower rates of access to employer-provided benefits and protections such as health, retirement, and sick-leave benefits, compared with similar workers in non-fissured firms.¹⁰

Second, and relatedly, today’s economy is increasingly characterized by alternative work arrangements in which workers take on short-term jobs, often as self-employed workers or independent contractors.¹¹ Much of this change has occurred over the past decade. A recent study finds that the share of workers engaged in alternative work arrangements—including temporary agency workers, on-call workers, and independent contractors or freelancers—grew from 11 percent in 2005 to nearly 16 percent in 2015.¹² Although the share of workers in alternative work arrangements remains a relatively small slice of the overall labor force, it accounts for 94 percent of net employment growth between 2005 and 2015.¹³ Many

of those engaged in alternative work arrangements are also employed in more traditional work arrangements. For example, a recent study from the Federal Reserve Board of Governors finds that 56 percent of those who report alternative work arrangements also report that they are "formally employed."¹⁴ An additional 20 percent of those in alternative work arrangements self-identify as multiple job holders with both full- and part-time employment, in addition to their alternative work arrangements.¹⁵ In short, work in the 21st century increasingly means having a complicated set of employment relationships.

Third, part-time workers play a key role in the US labor market, yet labor market regulations do little to recognize this fact. About 16 percent of workers are employed part time, a level that has changed relatively little since the early 1980s.¹⁶ Although the overall share of part-time workers has remained steady, the composition of the part-time workforce has shifted in important ways. Younger workers (ages 16 to 24) remain the most likely to work part time, but they account for a shrinking share of the total workforce, dropping from 23 percent of employed individuals in the late 1970s to just over 12 percent more recently. Part-time work has become increasingly prevalent for prime-age workers (ages 25 to 54) with a high school degree or less.¹⁷ Although many workers choose to work part time, the share of involuntary part-time workers has remained persistently elevated in the wake of the Great Recession.¹⁸ These involuntary part-time workers earn nearly one-fifth less per hour than comparable workers with full-time jobs, and they are five times as likely as other workers to live in poverty.¹⁹ Taken together, these data suggest that the part-time working population is an economically vulnerable group.

2. FMLA coverage provides important protections for families balancing work and care responsibilities, but the most economically vulnerable workers are too often excluded from accessing these rights.

FMLA provides a legal right to job-protected leave for millions of workers. As the sole federal family leave policy, its passage marked a turning point. FMLA was a first step in the unfinished work of updating federal social protections to recognize that the majority of American families no longer have a clean division between nonlabor market care work (historically left to women) and labor market work (historically dominated by men).²⁰

Although FMLA needs to be updated to meet the needs of today's evolving workforce, two positive policy design elements are worth noting. First, FMLA is a gender-neutral policy, allowing both men and women to take unpaid family and medical leave.²¹ Many European countries that offer paid leave are grappling with updating their policies that are not gender-neutral (e.g., those that provide only maternity leave, or policies that offer more leave for mothers) to address gender imbalances that may be creating discrimination against women in the labor force and deepening wage gaps.²² Second, FMLA provides 12 weeks of job-protected leave for a wide range of caregiving needs, including parental leave (for both mothers and fathers), caregiving leave to care for a sick loved one (including an ill child, spouse, or parent), medical leave to take care of one's own serious illness, as well as 26 weeks of leave to care for an injured or ill service member.²³ This inclusive starting place is well-matched to the diverse caregiving needs of the American workforce, especially in light of the caregiving challenges that come with an aging nation.

Taking leave for family and medical reasons is not uncommon. According to the most recently available data, 13 percent of workers took leave for an FMLA-qualifying reason in 2012. Taking leave is more

common among those eligible for FMLA (16 percent) than among those not eligible (10 percent). As table 1 shows, more than half of all FMLA-covered leaves (59 percent) are taken by workers to care for their own illness (i.e., medical leave). Eighteen percent are taken for reasons related to a new child (i.e., parental leave), and 22 percent are taken for a loved one's health condition (i.e., caregiving leave). Most of these leaves are relatively short; the average leave duration is about 35 days, and 40 percent of workers who took leave were back at work within 10 days.²⁴

TABLE 1
Share of Leaves Taken for FMLA-Qualifying Reasons, 2012

	All leaves (%)	FMLA-covered leaves (%)	Uncovered (%)
Medical	51.0	59.2	55.9
Parental	22.6	18.4	29.7
Caregiving	19.3	22.4	14.2

Source: Author's analysis of employee survey data from Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, "Family and Medical Leave in 2012: Technical Report" (Cambridge, MA: Abt Associates Inc., 2012), 72.

FMLA provides crucial protections to many workers. Sixteen percent of covered and eligible workers—more than 14 million workers—took FMLA leaves in 2011.²⁵ As I will discuss, a substantial body of research illustrates the important role that the law's provision of 12 weeks of job-protected leave have played for workers and their loved ones and the minimal impact that the law has had on business outcomes.

The most recently available data from the Bureau of Labor Statistics FMLA survey of employees suggest that about 6.1 percent of employees in 2012 had unmet needed leave in the previous 18 months, up from 2.4 percent in 2000.²⁶ However, these figures underestimate the unmet demand for leave because the FMLA survey includes only those who are employed. As a result, people who leave their jobs because of an inability to take needed leave are not included, nor are those who shift to self-employment when an employer is unwilling or unable to meet the need for temporary time away from work to care for a loved one or a serious illness. People who are involuntarily terminated by their employer as a result of a leave request or leave taken are also excluded because of the survey's design.

More recent nationally representative data from the Pew Research Center suggests that the unmet demand for leave was substantially higher in 2016 than what the Bureau of Labor Statistics FMLA survey from 2012 suggests. Among those who had been employed at any point in the previous two years, about 16 percent reported a time during that period when they needed to take time off from work for an FMLA-qualifying reason but were unable to do so. This figure rises to 30 percent for those with household incomes under \$30,000. Nineteen percent of women reported an unmet demand for leave. Twenty-six percent of black respondents and 23 percent of Hispanic respondents reported an unmet demand for needed leave, compared with 13 percent of white respondents. Fear of job loss (54 percent) and loss of wage or salary (72 percent) were the most commonly cited reasons that needed leave went unmet.²⁷

Additionally, many workers who take leave for family or medical reasons take less time off than they need. Among those who took leave in 2016, more than half (56 percent) who did so after the birth or adoption of a child reported taking less time off than they needed. Forty percent of those who took leave to

care for a family member with a serious health condition took less time than they needed, and 38 percent of those who took leave to care for their own serious health condition took less time than they needed.²⁸

The numbers on unmet and inadequately met demand for needed leave indicate that the workers most in need of job-protected leave are often those who are least able to access it because of the limits of FMLA's coverage. Forty-four percent of employees are not covered by the law's protections.²⁹ Moreover, most work sites are not covered by FMLA; only 17 percent report that the law applies to them, and an additional 30 percent are unsure.³⁰

There are substantial demographic disparities in worker access to FMLA-protected leave, too. Younger workers (ages 18 to 44) have lower eligibility rates than workers 45 and older (53.4 percent versus 59.1 percent). Although eligibility rates are somewhat higher for women compared with men, 42.6 percent of women of childbearing age are ineligible for FMLA. Just 48.5 percent of employees in families whose incomes were under \$40,000 in 2011 were FMLA-eligible.³¹ Hispanic and nonwhite workers, unmarried workers, workers with children, younger workers, and those with earnings below \$35,000 in 2011 were more likely than their counterparts to have an unmet need for leave.³² Workers in southern states were more likely than workers living elsewhere in the US to have an unmet need for leave.³³

Three elements of the law are particularly important for understanding these coverage exclusions.

First, because FMLA coverage applies only to employers with 50 or more employees within a 75-mile radius of a given work site, workers in small business are categorically excluded. As a result, most work sites are not covered by FMLA.³⁴ Shifting the eligibility threshold to include smaller firms would expand eligibility coverage. Specifically, expanding covered work sites to include those with 30 or more employees within a 75-mile radius would increase FMLA coverage by 4.1 percentage points, raising the share of private-sector workers covered by FMLA from 55.9 percent to 60.0 percent.³⁵ Because women of childbearing age are disproportionately employed by smaller employers, shifting this eligibility threshold would especially benefit these workers, raising coverage for working women ages 18 to 44 to 63.6 percent.³⁶

Second, the law's job tenure and hours requirements exclude many workers. FMLA covers only employees with at least one year of job tenure, which means that those who have recently entered the labor force or switched employers are excluded from coverage. Also, because the law applies only to employees who have worked at least 1,250 hours in the previous year (around 25 hours per week), many part-time workers are excluded from coverage, including those who work a full-time schedule via multiple part-time jobs. Lowering the hours-worked threshold from 1,250 to 750 annual hours per year with a given employer would raise the share of workers covered by FMLA by 3.2 percentage points, from 55.9 percent to 59.1 percent.³⁷

The combined effect of lowering the hours-worked threshold and expanding covered work sites to include those with 30 or more workers would raise the share of private-sector employees covered by FMLA's protections by 7.5 percentage points, from 55.9 percent to 63.4 percent.³⁸ Women especially would benefit from this combined coverage expansion because they are more likely than men to be employed in small firms and/or work part time. The combined expansion would increase FMLA coverage for working women ages 18 to 44 by 9.4 percentage points, from 55.8 percent to 65.2 percent.³⁹

Third, FMLA's definition of family excludes millions from providing care to their closest kin. Under FMLA, "family" is defined as a new child (from birth, adoption, or foster-care placement), a child younger than 18 (or a child older than 18 with a physical or mental disability as defined by the Americans with Disabilities Act), or a parent. FMLA offers no protection for working grandparents providing care to grandchildren or for working adult children providing care to grandparents. Yet millions of Americans live in multigenerational households. For example, of the 2.4 million grandparents who lived with their grandchildren in 2018, 37.9 percent were the primary caregiver (i.e., the child's parent was not present in the household).⁴⁰ Over half (55.4 percent) of these grandparent caregivers were in the labor force, but they were not eligible for FMLA leave to care for their grandchildren. Workers who need leave to care for an ill grandparent are also not eligible for FMLA leave, nor are workers who need leave to provide care for an ailing sibling.

Some states—including California, Connecticut, Hawaii, Maine, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin—and the District of Columbia have recognized the limits to the federal FMLA and expanded access to job-protected leave under state law.⁴¹

3. A growing body of evidence shows that job-protected family and medical leave has a range of positive impacts for families and workers, with minimal disruption to business.

The FMLA's job-protection provision requires that employers hold the jobs of eligible employees on family or medical leave until their return after 12 or fewer weeks of leave or offer these employees an equivalent job when they return to work. Early studies of FMLA demonstrate that the introduction of job-protected leave had an important impact on leave-taking, with the vast majority of the research focused on leave-taking among new parents, especially new mothers. FMLA increased leave-taking by 23 percent among mothers of children younger than 1.⁴² The FMLA and state-level expansions in FMLA coverage increased maternal leave-taking by 13 percent during the birth month, by 16 percent in the month after birth, and by 20 percent in the second month after birth.⁴³ Other research focused only on the effects of state-level, job-protected leave policies finds similar increases in maternal leave-taking, though the results are somewhat smaller and effect sizes are less consistent.⁴⁴ In short, providing job protection is an important first step in facilitating the ability of workers, particularly new mothers, to take needed leave.

The section that follows reviews the evidence on how job-protected family and medical leave affects children, workers, and businesses.

Children's outcomes

The impact of parental leave on children's health outcomes is one of the most powerful arguments for the expansion of leave protections; a substantial body of empirical evidence shows a range of positive effects. The channels through which parental leave may affect children's health outcomes are threefold. First, leave guarantees may reduce maternal stress, which myriad studies show adversely affects child well-being at birth and in later life.⁴⁵ Second, leave can increase the amount of time a child spends with the mother after birth. As a result, mothers may be more able to initiate and continue breastfeeding, attend well-baby doctor visits for preventive care, tend to a sick baby, and seek medical care promptly for both herself and her child when needed.⁴⁶

Although much of the literature on the impacts of parental leave uses data from outside the US (because of the absence of policies in the US), the growing body of empirical evidence from the US demonstrates important effects of job-protected parental leave guarantees on children's outcomes. After the implementation of FMLA, mothers' access to job-protected unpaid leave to care for a new baby resulted in a 10 percent reduction in infant mortality.⁴⁷

Workers' outcomes

In general, unpaid leave policies enable workers who can afford to take a family or medical leave to return to employment after a leave. Studies of the impact of FMLA on mothers' earnings and employment show that job protection increased the probability that eligible mothers return to their pre-childbirth jobs by about 30 percent.⁴⁸ However, FMLA appeared to have no impact on women's employment or wages in the years after the policy went into effect.⁴⁹ Other research studying an expansion in the duration of job-protected maternity leave in Canada finds a 22 percent increase in the likelihood that women return to their pre-birth employers.⁵⁰

One recent study suggests that job protection during maternity leave may ultimately have a greater impact on leave-taking than wage replacement. Utilizing data from Great Britain, the research finds that while access to paid maternity leave increases the probability that women return to work in the short run, it has no impact on long-run employment outcomes. Making job protection available to new mothers results in large increases in maternal employment rates and job tenure five years after childbirth.⁵¹ These findings suggest that different elements of policy design may be more or less important depending on the nature and time horizon of the outcomes.

Business outcomes

Evidence on the impact of FMLA on businesses suggests that workers' access to job-protected leave has few negative effects for employers. The majority of work sites in the most recent nationally representative survey report that FMLA-covered family and medical leaves are "very easy" or "somewhat easy" to deal with, regardless of whether those leaves are planned as long or short term and regardless of whether those leaves were episodic (one-time) or intermittent. Unsurprisingly, work sites are more likely to report that dealing with any form of unplanned leave is more difficult than dealing with a planned leave, but the majority still report that even unplanned leaves are either "somewhat difficult" to "somewhat easy" to handle (compared with the share saying that unplanned leaves were "very difficult" or "very easy").⁵² More than half (53 percent) of employees at covered work sites report that when a coworker took leave, they worked no more hours than usual, worked their usual shifts/schedules, and saw no change in their job responsibilities.⁵³

In sum, the evidence on the impacts of FMLA suggest that job-protected family and medical leave is strongly correlated with various positive outcomes for children and for workers balancing both care and labor market responsibilities. FMLA appears to have negligible impacts on covered businesses.

4. Effective family and medical leave policies include not only job protection, but also wage replacement and effective resources for implementation.

Although job protection is a key component of family and medical leave policy, it is insufficient on its own for too many workers. Several other key policy design elements are crucial to consider as policymakers look toward updating the nation's labor market policies to better match the needs of working families and in turn to better support broad-based economic growth.

Most importantly, workers need broad access to paid family and medical leave to replace wages lost while on leave. Wage replacement is especially important for low-wage workers and other economically vulnerable populations, who may not be able to afford a needed leave in the absence of income support. Indeed, among employees not covered by FMLA and unable to take a needed leave, 16.8 percent respond that a fear of job loss was their main reason for not taking needed leave, while 46.6 percent report that they could not afford to take unpaid leave.⁵⁴

Wage replacement can also help encourage leave take-up among married men. The gender wage gap means that men continue to outearn their female partners in many families. Thus, decisions based on basic household budget math mean that women take leave rather than men, because the loss of women's wages "costs" the household less.⁵⁵ Well-designed wage replacement during leave can make leave-taking a wiser economic decision for men, which in turn may help contribute to a virtuous circle of improved gender balance between care-work at home and paid work outside the home.

In addition to wage replacement, well-designed policies should include implementation strategies with a particular focus on public awareness.

Wage replacement

Although FMLA provides job-protected leave for family and medical reasons to eligible workers, the US currently has no federal policy providing wage replacement for those on leave. As a result, even some FMLA-covered workers cannot take needed leave. Nearly half (45 percent) of those who were FMLA-eligible but did not take needed leave report lack of pay as the reason.⁵⁶ More than half (62 percent) of those who take leave with partial or no pay report that making ends meet during their time away from work was difficult, including nearly a third (30 percent) who said it was very difficult.⁵⁷ Sixty-nine percent of workers who took less time off than they needed or wanted report that they did so because they could not afford to lose more wages or salary.⁵⁸ Low-income workers are especially likely to report financial consequences resulting from leave-taking. Among parental leave-takers in households earning under \$30,000, 57 percent took on debt, 46 percent put off paying bills, and 48 percent enrolled in public assistance.⁵⁹

New data from the recently released Bureau of Labor Statistics' National Compensation Survey provide key insight into access to paid family leave and highlights important disparities across demographic groups.⁶⁰ Just 19 percent of the civilian workforce has access to paid family and medical leave (table 2). A mere 6 percent of workers in the bottom 10 percent of earners and 8 percent of part-time workers have access to paid leave. Although the share of workers with access to paid leave increases as the size of firms grows, even workers in the largest firms have limited access. Just over a quarter (28 percent) of all workers in firms with 500 or more employees have access to paid family and medical leave.⁶¹

TABLE 2

Share of Workers with Access to Any Paid Family and Medical Leave, 2019

	Share
All civilian workers	19
By earnings	
Lowest 10 percent	6
Highest 10 percent	34
By work status	
Full-time	22
Part-time	8
By firm size	
Very small (1-49 workers)	14
Small (50-99 workers)	16
Medium (100-499 workers)	20
Large (500 or more workers)	28

Source: Author's analysis of Patrick Pizzella and William W. Beach, "National Compensation Survey: Employee Benefits in the United States, March 2019," bulletin 2791 (Washington, DC: US Department of Labor, Bureau of Labor Statistics, 2019).

A growing number of states have introduced paid family and medical leave policies that allow workers to earn accrued benefits for parental, caregiving, and medical leave. The introduction of these policies has allowed researchers to begin investigating the impacts of wage replacement across various outcomes, including children's and maternal health, labor market outcomes for leave-takers, business outcomes for employers in states with paid leave policies, and broader implications for the state of the economy as a whole.

HEALTH OUTCOMES RELATED TO PAID LEAVE

Paid parental leave is related to both immediate and enduring positive impacts on children's health. The introduction of paid parental leave in California resulted in a significant decrease in hospital admissions for head trauma for infants and young toddlers, a leading indicator of child maltreatment. Paid parental leave may have reduced parental stress, in turn reducing child abuse.⁶² Paid parental leave in California also correlated with improvements in health outcomes among kindergartners, including lower rates of diagnoses of attention-deficit/hyperactivity disorder, lower rates of obesity, lower rates of ear infections, and fewer hearing problems.⁶³ These longer-term benefits of paid parental leave were most apparent among children with lower socioeconomic status. Paid parental leave in California also increased both the rate and duration of breastfeeding, which research has documented has myriad short- and long-term health benefits for children.⁶⁴

Although most research investigates the impact of paid parental leave on children via mothers' leave-taking, fathers' leave-taking may also affect child health outcomes in important ways. The quality and quantity of interactions that a father has with his children in early life can contribute to their cognitive development over a lifetime, independent of mothers' interactions, and longer paternity leaves predict higher levels of paternal involvement in child caretaking activities, even many months after the leave ends.⁶⁵ Paid parental leave in California raised the probability that a working father would take leave in the first year of a child's life by 0.9 percentage points, a large increase given the very low rates of paternity leave-

taking.⁶⁶ (Although fathers are more likely to take leave when it is paid, mothers are still substantially more likely to take leave than fathers.)

Paid parental leave may also affect mothers' health. First, the link between paid maternity leave and breastfeeding may not only have positive impacts for children, but also for mothers. Breastfeeding is associated with both short- and long-term health benefits for new mothers. In the short term, evidence links breastfeeding with reduced risk of postpartum depression and a decreased risk of re-hospitalization among new mothers.⁶⁷ In the long term, breastfeeding for 12 or more months is associated with a 32 percent reduction in the risk of getting type 2 diabetes, a 26 percent reduction in the risk of getting breast cancer, and a 37 percent reduction in the risk of getting ovarian cancer.⁶⁸ In addition, longer maternity leaves are associated with lower rates of depression and higher overall levels of maternal health. Paternity leave also may be crucial to maternal health, as mothers with spouses who did not take parental leave have higher rates of maternal depression than their peers with spouses who took leave, controlling for a host of other factors.⁶⁹

EMPLOYMENT AND EARNINGS OUTCOMES RELATED TO PAID LEAVE

For workers, paid family and medical leave has had important labor market effects, especially for new mothers. Public paid parental leave policies in New Jersey and California are associated with an increase in the likelihood that women are employed or actively looking for work around the time of a birth, which has important implications for long-term employment outcomes given a rich literature on the importance of sustained labor-force participation rates on lifetime earnings and employment.⁷⁰

The labor market outcomes for paid parental leave extend beyond the first year of a child's life. In California, new mothers were estimated to be 18 percentage points more likely to be working a year after the birth, with both the number of work hours and weeks worked predicted to rise by significant amounts in the following year.⁷¹ Mothers' work hours during the second year of their children's lives increased by 18 percent, and their weeks at work increased by 11 percent, relative to their peers before the implementation of the state's paid parental leave policy.⁷² These increased work hours and weeks at work translate into higher earnings for mothers covered by paid parental leave policies.

The immediate benefits of paid parental leave policies appear to accrue most directly to workers at the bottom of the economic distribution, who are least likely to have access to paid leave in the absence of a public earned benefit. The increase in labor force attachment in the months after a birth is driven nearly entirely by less-educated women, who are less likely to have access to or to take leave in the absence of a state policy.⁷³ More than 20 percent of workers in low-quality jobs in California report that taking parental leave improved their ability to find child care, which may explain their increase in labor force attachment relative to peers without access to paid parental leave.⁷⁴ However, the longer-term benefits of paid leave appear to be stronger for higher-earning parents. High-earning mothers and fathers are more likely than lower earners to be continuously employed for five to six years after they took a paid leave using California's earned benefit policy.⁷⁵ Higher weekly benefit amounts boost labor force participation for mothers one to two years after leave, although because of research design, this finding is limited to high-wage women whose earnings are near the benefit threshold.⁷⁶

Paid leave policies also appear to substantially boost new fathers' likelihood of taking parental leave. In two-earner households, California's paid leave policy increased the probability of men taking father-only

leave (when a father cares for a new baby on his own) by 50 percent and boosted the likelihood of joint leave (when both the father and his partner take leave together to care for a new baby) by 28 percent.⁷⁷ Fathers' leave-taking may have important longer-term impacts for mothers' long-term employment and earnings outcomes, as men who take parental leave are more likely to share responsibilities with their wives or partners, which in turn frees up more time for women to engage in paid work.⁷⁸ As a result, paternity leave-taking may be an important element for closing the persistent gender wage gap and reducing the well-established motherhood wage penalty.⁷⁹

Although evidence for the labor market effects of paid medical leave (time away from work to care for one's own serious illness) and caregiving leave (time away from work to care for a seriously ill loved one) is less comprehensive than that on parental leave, the growing body of work in this area suggests similar positive associations between paid leave, employment, and earnings.

For example, early evidence from California suggests that paid caregiving leave increased the short-run labor force participation of caregivers by 8 percent in the first two years after implementation and by 14 percent in the first seven years of the program.⁸⁰ In the first two years after implementation, the majority of the increase in caregivers' labor force participation was among those from high-income households. In the longer term, however, labor force participation for low-income caregivers overtook that of higher-income households, indicating the importance of paid caregiving leave in promoting labor force attachment among lower-income workers.

Research on the impact of paid medical leave on employment and earnings outcomes is very limited despite the fact that the vast majority of claims made to the existing state paid family and medical leave programs are for time away from work to care for one's own health. The paucity of research in this area may be because medical leave covers the need to take time away from work for a host of reasons (e.g., intermittent leave for recurring cancer treatments or a concentrated period of leave for a hip replacement surgery). Pregnancy-related leave, for leave both before and after a birth, is also covered under the medical leave component of these programs. The wide variety of illnesses requiring leave may make it difficult to effectively isolate the role of paid leave in shaping labor market outcomes.

BUSINESS OUTCOMES RELATED TO PAID LEAVE

The early survey-based research on the firm-level effects of paid family and medical leave from the states suggests that businesses generally view the policies favorably.⁸¹ The existing state programs are based on a social insurance design, funded by a small payroll tax (generally between 0.5 percent and 1.5 percent, typically paid by workers rather than employers). In return, workers taking leave have a share of their wages replaced by the state programs. Across the four states with existing paid family and medical leave policies (California, New Jersey, New York, and Rhode Island), employers report significant benefits and minimal costs.

Survey-based research on California employers finds that the majority (86.9 percent) report no additional costs because of the state's paid family and medical leave policy.⁸² Research on Rhode Island employers similarly finds limited effects of the state paid leave policy on businesses, with employers noting few significant effects on business productivity and related metrics.⁸³ Sixty-three percent of small to medium-sized employers in New Jersey and New York both reported that they supported or strongly supported paid family and medical leave programs.⁸⁴

More recent studies using administrative data from California bolster the results from the earlier wave of survey research in the state. Analysis finds no evidence of higher turnover or higher total cost of compensation for employers over the decade-long period that the state policy has been in place. In fact, the opposite is true: The average California firm has a lower per-worker wage bill and a lower turnover rate now than it did before the paid leave policy was introduced.⁸⁵ Other research using both administrative and survey data from the states illustrates the efficacy of paid family and medical leave as a worker retention policy.⁸⁶ For instance, in a study using California's administrative data, the authors find that men and women who take leave and remain employed four quarters after the claim are more likely to have returned to their pre-claim firm than to have moved to a new firm, regardless of the duration of their leave.⁸⁷

Turnover is expensive for businesses. If paid leave plays a role in reducing turnover, then the small short-term cost of covering an employee's leave may result in substantial medium- and long-term rewards. Hiring and training a new employee are costly for managers, who spend less time on other productive activities as a result. And new workers require time to get fully up to speed in their new positions. Research on the cost of turnover suggests that replacing an employee costs about one-third of that worker's salary, based on a combination of the cost of recruitment, selection, and training.⁸⁸ Early research from the states with paid leave programs suggests that paid leave can reduce worker turnover, which, in turn, means lower costs and higher productivity for businesses.

BROADER ECONOMIC OUTCOMES RELATED TO PAID LEAVE

Labor force participation is a key ingredient for healthy economic growth. Decades of economic research demonstrate that per capita incomes increase as labor force participation increases, and until recently, the increase in women's labor force participation has been the main engine for this growth.⁸⁹ After several decades of increases in women's labor force participation, especially among mothers of young children, labor force participation rates for women ages 30 to 40 have decreased somewhat.⁹⁰ Research suggests that at least some of this plateau in women's labor force participation rates is due to the failure of the United States to implement work-life policies—not only paid leave, but also child care, predictable schedules, and other policies designed to help families better balance the demands of life at home and at work.⁹¹ Although early education and child care stand out as policy arenas where improvements would have a dramatic impact on US women's labor supply, paid family and medical leave also has an important role to play.⁹² Evidence from state programs suggests that paid leave positively affects women's labor supply, especially that of new mothers.⁹³

A second channel through which paid family and medical leave may shape broader economic outcomes is through its implications for the nation's fiscal picture. Caregiving comes with costs that may be shifted onto other public programs. The costs of delayed medical intervention, for example, may result in more expensive health care costs in the long term, with implications for public programs such as Medicare and Medicaid. Early retirements by caregivers unable to balance work and family may result in stress to the Social Security retirement system. Labor force exits because of disability may result in elevated Social Security Disability Insurance applications and elevate costs to taxpayers, with long-term consequences for both SSDI costs and for labor force participation among people on the margins of the labor market.

Early research suggests important interaction effects between paid family and medical leave and other public programs. For instance, one study finds that paid family leave reduces applications to other social

safety net programs, with women returning to work after a paid maternity leave having a 39 percent lower probability of receiving public assistance and a 40 percent lower chance of receiving Supplemental Nutrition Assistance Program benefits (commonly known as food stamps) in the year after a child's birth, compared with those who took no leave at all.⁹⁴

Other research finds that California's paid leave policy led to an 11 percent reduction in the share of older people residing in nursing homes.⁹⁵ Although the study does not allow for a test of a specific mechanism connecting paid leave to nursing home use, the authors hypothesize that paid caregiving leave allows family members to provide timely care to aging relatives, which may in turn reduce the need for long-term institutionalization. Specifically, access to temporary paid leave for caregiving may allow for timely, engaged responses to assist with rehabilitation from acute incidents (postsurgical rehabilitation and early interventions for dementia and Alzheimer's disease), which in turn may eliminate or delay the need for long-term institutional care.

The results of this research suggest that paid caregiving leave may not only provide valuable resources for families but also improve the broader fiscal picture—and thus the economy as a whole. Nursing home care accounts for the largest share of long-term care costs in the US, which strains both family budgets and public finances. Medicaid—a joint state-federal program financed largely by the states—is the primary payer for 62 percent of nursing home residents, some of whom deplete their assets to become eligible for the program. Medicare, which is fully federally financed and mainly covers the cost of hospitalization after an acute incident, covers about 15 percent of nursing home utilization overall. In addition to the serious strain that long-term care places on state and federal budgets, it is not especially popular. The majority of seniors prefer to receive family- or community-based care and to remain at home (or in a family member's home).⁹⁶

IMPLEMENTATION CONSIDERATIONS

Nearly one-fifth (17 percent) of workers covered by FMLA reported that they did not take needed leave because of a fear that they might lose their jobs, which runs directly counter to the protections provided by the legislation.⁹⁷ Even an impeccably designed program will do little good if eligible workers are not aware of the available benefits or if the application process is too cumbersome for people to navigate. In California, less than half of those who experienced a qualifying event for leave-taking were unaware of the state's paid family and medical leave options. Awareness is least common among those who need it most. Those who earn less than \$15 per hour are nearly 30 percent less likely than those who earn more than \$15 per hour to know about the state's paid leave program. Immigrants, Latinx workers, those without access to paid sick or vacation days, less-educated workers, and those who earn less than \$80,000 annually are all less likely than their counterparts to be aware of California's paid leave options.⁹⁸ Research on program knowledge in New Jersey suggests similar gaps in awareness.⁹⁹

These public awareness gaps are most likely due to significant underinvestments in effective public outreach and education, especially to the communities of workers who are least likely to have access to other forms of paid leave. Shortly after California's original paid leave legislation went into effect, a new administration took over the state government and slashed funds for administration and outreach. California now has a built-in funding stream for public outreach (\$6.5 million for fiscal 2015–17), yet awareness remains low.¹⁰⁰ Some other programs lack advertising and public outreach funds, so program promotion falls to employers. Employers' appetite and ability to promote public paid leave vary

dramatically. Studies note that some employers offer comprehensive explanations of their state's paid leave benefit programs, while others simply abide by minimum legislative requirements and post informational posters in their human resources offices or lunchrooms.¹⁰¹

Without further efforts to publicize paid leave options, including state paid family and medical leave benefits, these programs are unlikely to reach all eligible employees. In response, newly launched state family leave programs (e.g., in Washington and Massachusetts) are experimenting with new forms of outreach and dedicated public funds for promoting awareness, especially in high-need communities.

5. What can public policy do?

Consider the following hypothetical: Anne is a 59-year-old woman who works 40 hours a week through a combination of two part-time jobs. Her family depends on her salary to make ends meet. She receives a call from an emergency room doctor, who informs her that her mother broke her hip in a fall at her home and is showing signs of dementia. Anne quickly realizes that her mother will need substantial care, both short-term intensive care and potentially longer-term care. What does Anne need to be able to provide this needed care to her loved one? She needs time off from work, income support during that time, and reassurance that she can return to her jobs once her mother is in a stable, sustainable living situation. Anne's story illustrates that policies addressing family caregiving need to consider multiple factors, all of which may matter a great deal in determining whether Americans can balance their work and care responsibilities.

Policymakers should consider the following types of questions as they work to modernize leave policies to better meet the needs of workers like Anne:

- **Job protection.** Is leave job-protected (i.e., do leave-takers have a right to return to an equivalent job at equivalent pay)?
- **Job tenure.** What should employee tenure and/or labor force attachment look like to qualify for leave?
- **Firm size.** What is the appropriate work site size for inclusion in coverage?
- **Family definition.** What is the appropriate definition of "family" that will allow Americans to provide care to their kin in times of need?
- **Reasons for leave.** What are the appropriate reasons for allowable leave? Should eligible reasons expand beyond birth/arrival of a child, care for a seriously ill family member, or care for one's own serious illness to other important caregiving-related reasons for leave, such as domestic-violence-related reasons beyond health (e.g., time off to file paperwork in court for a restraining order)?
- **Duration.** How many weeks of leave is a worker allowed, and can the leave be intermittent?
- **Wage replacement.** Is the leave paid, and if so, at what wage replacement rate? Is the replacement rate flat, or is it progressive (i.e., do workers at lower earnings levels receive higher rates of wages replaced)? Is there a maximum cap for benefits? Is there a benefits floor?

States have led by example, showing that expanded FMLA policies in combination with paid leave policies can work. Eight states (California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington) and the District of Columbia have enacted paid family and medical leave laws that provide workers with the right to accrue replacement wages for parental, caregiving, and medical leave. All these policies follow the model originally set out by California in the implementation of its first-in-

the-nation public paid family and medical leave program in 2004, using a social insurance design that allows workers to earn benefits based on accrued total wages. As a result, the benefits are fully portable, as they are not tied to any one employer. The state policies all cover parental, medical, and caregiving leave. Many provide new job protections along with wage replacement or are layered on top of existing state laws that provide job protections beyond those offered by FMLA.¹⁰² Taken together, these state programs show that public paid family and medical leave policies that use a social insurance model combined with job protection can effectively support workers and their families with minimal disruption to business and at a manageable cost to government, particularly in light of the potential longer-term economic benefits.

A federal program with uniform eligibility requirements and benefit schedules would eliminate the existing unevenness between the states, and it would create a level playing field for state finances, for employers, and for workers. Where one lives and works in the US should not determine the availability of essential protections against economic shocks. States should not have to compete against one another to lure employers on the basis of the presence or absence of public benefits or regulations.¹⁰³ Moreover, a federally administered system would be substantially more efficient to administer than 50-plus separate state and local programs. Unified IT systems, data collection, and staffing would create fundamental efficiencies that would accrue to beneficiaries, employers (especially multistate employers, who currently must comply with a dizzying array of varying state regulations and policies), and the public in the form of administrative cost savings.¹⁰⁴

The Family and Medical Insurance Leave Act (FAMILY Act) is an example of a policy that could move the US in the right direction in supporting the needs of working families without placing undue burdens on employers.¹⁰⁵ The FAMILY Act creates a federal paid-leave program that provides workers with up to 12 weeks of partial income when they take time away from work for parental, caregiving, or medical leave and covers employees in all companies (regardless of size), as well as part-time workers and those in alternative work arrangements. However, without updating the job protection provisions provided via FMLA, many workers may not be able to take advantage of this much-needed federal program. This is a solvable problem, as a growing body of evidence from the states has demonstrated. Policies that combine well-designed earned wage replacement for workers who need family and medical leave with job protection provisions for leave-takers should be available regardless of the state in which one lives and works.

Notes

¹ Table A-1. Employment Status of the Civilian Population by Sex and Age," US Bureau of Labor Statistics, last modified January 10, 2020, <https://www.bls.gov/news.release/empsit.t01.htm>.

² Table B-5. Employment of Women on Nonfarm Payrolls by Industry Sector, Seasonally Adjusted," US Bureau of Labor Statistics, last modified January 10, 2020, <https://www.bls.gov/news.release/empsit.t21.htm>.

³ Sarah Jane Glynn, *Breadwinning Mothers Continue to Be the U.S. Norm* (Washington, DC: Center for American Progress, 2019).

⁴ Gretchen Livingston, "About One-Third of U.S. Children Are Living with an Unmarried Parent," Pew Research Center (blog), April 27, 2018, <https://www.pewresearch.org/fact-tank/2018/04/27/about-one-third-of-u-s-children-are-living-with-an-unmarried-parent/>.

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- ²⁵ Klerman, Daley, and Pozniak, "Family and Medical Leave in 2012: Technical Report."
- ²⁶ Klerman, Daley, and Pozniak, "Family and Medical Leave in 2012: Technical Report," 117.
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- ³⁶ Helene Jorgensen and Eileen Appelbaum, "Expanding Federal Family and Medical Leave Coverage."
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Society for Human Resource Management, July 6, 2018, <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/consider-state-laws-when-measuring-fmla-eligibility.aspx>.

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administration and financing, especially following the Great Recession. Substantial competition and ill will has arisen between the states willing to maintain "rainy-day" funds and those that slash payroll taxes and find themselves with little in reserve when the economy stalls. And state variation in unemployment insurance eligibility creates disparities in coverage in access and comprehensiveness. Many eligible workers do not apply for unemployment insurance at all because they find the system too daunting. See Jeffrey Wenger, "State Trends in Unemployment Insurance Eligibility, Benefits, and Take-Up, 1990-2000" (Washington, DC: Economic Policy Institute, 2001).

¹⁰⁴State-based temporary disability insurance programs provide similar cautionary lessons, suggesting a federally administered system may offer improvements. Five of the six states with paid family and medical leave insurance programs layered those programs on top of their state temporary disability insurance programs. The funds provided by these employee-side taxes were used to jump-start temporary disability insurance reserves, and doing so gave these states a leg up in providing expanded wage replacements for workers facing care-driven interruptions to employment. Until 2018, when Washington State began implementing a stand-alone paid family and medical leave program, no state had enacted a new nonoccupational medical leave benefit program. See Molly Weston Williamson, "Structuring Paid Family and Medical Leave: Lessons from Temporary Disability Insurance," *Connecticut Public Interest Law Journal* 17, no. 1 (Fall-Winter 2017): 1-57.

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CHAIRWOMAN ADAMS. Thank you very much. Thank you very much.

Under Committee Rule 8(a), we will now question witnesses under the 5-minute rule, alternating between the parties. I now recognize myself for 5 minutes.

Dr. Jacobs, you mentioned in your testimony that economically vulnerable workers are too often excluded from the right to family and medical leave. I want to talk about some of the limitations in the FMLA that lead to this exclusion.

Many low-wage workers work in industries with high turnover rates. How does this contribute to these workers being excluded from the right to FMLA leave?

Ms. JACOBS. Thank you for the question.

FMLA requires workers to have at least a year, 50 weeks of tenure with an employer to be eligible for FMLA-protected unpaid leave, and as a result, workers in industries with high turnover rates, like those that you mentioned, are less likely to be eligible for FMLA because they are more likely to have been on the job for less than a year when the need for leave arises.

And we know that turnover rates are especially high in low-wage industries such as leisure and hospitality, retail. These are places with lower-than-average medium wages, and they have also got very high turnover rates. So you have some of these most economically vulnerable workers who don't have job protection when they need to take time out of work to care for themselves or a family member.

CHAIRWOMAN ADAMS. Many workers struggle to get the hours that they need each week and may be involuntarily part time or work part-time jobs for more than one employer to make ends meet. So how does this contribute to these workers being excluded from the right to FMLA leave?

Ms. JACOBS. So in addition to the year-long tenure requirement that we just talked about, the FMLA also requires that an employee have worked at least 1,250 hours per year, and that is about 25 hours per week on average, with a covered employer in order to have the right to unpaid leave.

So this eligibility requirement means that many part-time workers are excluded. That includes workers who may be working a full-time schedule, patching together two different part-time jobs but for multiple employers, because this requires them to have hours amassed with one employer.

On top of that we know that the share of workers who are working part time for involuntary reasons, so that means folks who would really like to be working a full-time job but just haven't been able to find one, that number remains elevated above pre-recession rates. In other words, we know that more workers are stuck in these involuntary part-time jobs for longer periods in today's economy, and those workers are the folks who are excluded from FMLA protections.

CHAIRWOMAN ADAMS. Thank you.

Representative Batch, you have a bill pending in the North Carolina House—I served there for 20 years, so I am real familiar with them—that would create a State-level family and medical leave insurance program in North Carolina.

Given your efforts at the State level, why is it important that we at the Federal level ensure that all workers have the right to take time off to care for a loved one and the ability to afford to take that time off?

Mrs. BATCH. That is an excellent question.

One of the concerns and issues is that we live in a transient society, people move from State to State. And if we have protections that are only in North Carolina or only in Kentucky or only in California, those are the workers that are protected.

However, we know that we have family members, including Mr. Sandkamp who gave a perfect example of his sibling, who, if he had FMLA protections and paid insurance, he would be able to use

that. But if we don't have a national program, individuals who live in other States would not be able to care for their loved ones, and that is one of the main reasons.

I also think it is important for the Federal Government to create a clear baseline for protections, and States can do more if they choose to.

CHAIRWOMAN ADAMS. Thank you.

Dr. Jacobs, what are the impacts of job-protected paid family and medical leave on maternal mortality rates, especially for working mothers of color?

Ms. JACOBS. So I can say something about the impact of job-protected leave on infant mortality rates, which we know has been substantial. And I can say that we know that job-protected leave has also provided mothers with the chance to actually go to more well-baby visits, take care of themselves. It has reduced postpartum depression and allowed mothers to take better care of themselves. All of which, I think it is reasonable to say, connect to better women's health outcomes more generally.

CHAIRWOMAN ADAMS. Okay. I did have another question here.

So why is it important, Representative Batch, that all workers, including your employees and constituents, have access to job-protected paid family and medical leave?

Mrs. BATCH. So I think that 12 percent of North Carolinians right now are currently covered by paid leave programs, but that leaves a significant and vast majority of North Carolinians without it.

And so if you are putting in your sweat equity into businesses and, of course, contributing to society as a worker, you should have the ability to go ahead and actually have paid leave when you need it most. So I think it is essential that we take care of that now.

CHAIRWOMAN ADAMS. Thanks very much.

I want to recognize the Ranking Member for the purpose of questioning the witnesses now, 5 minutes, sir.

Mr. CLINE. Thank you, Madam Chair.

Ms. Greszler, your testimony explains that with regard to Federal paid leave programs or proposals it is difficult to design a single program that can meet the needs of all the workers who require it without being so expansive as to invite misuse, abuse, and excessive cost.

Does this rationale also apply to legislative proposals to expand the definitions and permissible use of leave under the Family and Medical Leave Act?

Ms. GRESZLER. Yes, I do think it would make it more costly and burdensome. There are definitions that are not clearly defined. In current FMLA, a serious medical condition is not well defined, and employers have had employees report conditions such as a hurt toe or a migraine or a severe cough that ends up resulting in FMLA certification.

And if we add an additional uncertainty in there in terms of what is a close family-like relationship, this could end up being any leave for any reason, and then you prevent employers from being able to have those flexible policies.

Most people would rather shoot an email or go and sit down and ask for their boss and tell them about what their circumstance is,

whether it is to attend a child's conference at school or whether it is a sick family member or maybe a sick nonrelative.

It is easier to have that conversation than it is to fill out the paperwork, go and get one, two, maybe three medical certifications, potentially have to challenge this. It is just easier for the employers to work directly with their employees.

Mr. CLINE. And again to Ms. Greszler, family-friendly policies like flexible work schedules and telework options have become an important tool for employers around the country to attract and retain quality employees. This is particularly true in more rural areas like many in my district.

Such benefits have become more important as unemployment levels remain at record lows and businesses compete for talent. Simply put, it is a buyer's market for job seekers.

How would government interference impact employer-provided benefits?

Ms. GRESZLER. It would end up taking more away. I recently saw a survey about what are employers doing to attract employees when we have such low unemployment rates, and the highest thing they are doing, 44 percent of them are offering more flexible workplace policies because that is what workers want. When we start taking those away, they can't offer those.

I had the opportunity to sit in with about 25 HR representatives and they were all representing larger companies. And I said, well, if there weren't a State-based policy there—these were in States that had them—you know, if that policy weren't there, would you provide less to your workers? And they all said, no, we would provide more because we wouldn't have to be spending so many of our resources and our employees wouldn't be spending so much time trying to figure out how they can comply with these laws.

And they have had cases where they had told workers they could take leave and then it ended up they couldn't and they had to give their checks back, or they had to dock FMLA down to every 3-minute increment. And this just prevents them from providing the flexibility and the benefits that they otherwise would offer those employees.

And then on a Federal level here, it would ring true for all of you, thinking about if you had to shift a lot of your budget to mandatory spending, you would no longer have that discretionary spending and the resources to actually address the needs of your constituents because so much of it is tied up in what mandatory spending is telling you what you need to do.

Mr. CLINE. Now, H.R. 1185, the FAMILY Act, would impose new taxes on working families and job creators. Now, the proposal is to have a 0.4 percent payroll tax.

And, Mrs. Batch, you specifically endorsed 1185, so I will ask you first. An analysis of this bill found that 0.4 percent payroll tax would only cover 15 percent of the benefit payments, and that fully funding benefit payments would require a payroll tax as high as 2.9 percent.

The Joint Committee on Taxation estimates that covering the true cost of the FAMILY Act would require a payroll tax increase of between 2.7 and 3.1 percent.

So would you not agree that is a significant burden on employers to have to meet that hidden tax increase?

Mrs. BATCH. So I can't speak to the actual research. I know what you just read. I am more than happy to follow up later on with my response to that.

But what I would say specifically is that in North Carolina the proposal in the legislation that we have introduced is \$2 per week from the paycheck of the employee and \$2 from the employer.

And so \$104 a year, as a small business owner right now, would be nothing compared to the costs in the overturn and all of the other expenses that occur when I have an employee leave, frankly, their job earlier because they have all of the other issues that they need to address.

Mr. CLINE. Ms. Greszler, from what we know of other Federal programs, should American taxpayers be assured that Uncle Sam won't come asking for more of their paycheck? And can you respond to that analysis?

Ms. GRESZLER. Yeah. Well, I think we can look back at Social Security. When it first started it cost 2 percent of payroll, and those lawmakers promised: We will never take more than 6 percent of your paycheck.

It is now 12.4 percent. It is actually costing 15.3 percent. And these proposals can start with taxes, and it is easy to specify what you are going to collect, but very quickly that is not enough.

If you look at what the FAMILY Act is collecting, this is basic math. Compared to what you would collect versus the leave that workers are already taking, some of that without pay, the FAMILY Act could only finance between 3 and 5 percent of leave—well, 3 and 5 percent of workers could take leave—but we know that 16 to 24 percent of workers either do take leave or want to take leave in a given year. And so it is easy to see that would not actually finance a program that would cover people's needs.

Mr. CLINE. Thank you.

Thank you, Madam Chair.

CHAIRWOMAN ADAMS. Ms. Jayapal, I recognize you 5 minutes, ma'am.

Ms. JAYAPAL. Thank you, Madam Chair.

And welcome to our witnesses.

For years, I have heard from workers in my home State of Washington about why they need paid leave, stories like Adrianna, a home care worker who couldn't take leave from work when her mother was dying; Angela, who struggled to decide whether or not to go to a prenatal doctor's appointment or to save her very limited vacation days for after she gave birth; at the age of 33, with a 20-month old, Jennifer, who needed paid leave so that she could get treatment for breast cancer.

These stories were horrific, but now Washington State workers are breathing a sigh of relief. The State's comprehensive paid family and medical leave program went into effect this year, and under that State-paid family and medical leave program almost every worker, regardless of the size of a workplace, can take paid leave.

But, unfortunately, many workers across the country can't enjoy these same benefits, and I wanted to focus particularly on those

employers who have a limited number of employees, so small businesses.

Dr. Jacobs, you mentioned in your testimony that many workers don't qualify for FMLA protections because their employer is too strong. As you know, workers don't qualify for FMLA unless they work for an employer with 50 or more employees in a 75-mile radius.

How many workers would have the right to the FMLA's job-protected family and medical leave if Congress expanded the FMLA to cover small businesses?

Ms. JACOBS. Thank you for the question. It is a really important one.

And I am not aware of any published estimates on the number of workers who would be eligible for FMLA leave if we lowered the threshold, the firm size requirement. But I do have preliminary estimates from Dr. Pamela Joshi at Brandeis' Heller School for Public Policy and Management that, unsurprisingly, suggests that lowering firm size could substantially increase FMLA access.

So her numbers suggest that 61 percent of the workforce would be covered by FMLA if firms with 10 or more workers were included under FMLA's threshold.

I will say that this is a good example of a space where we could use more research in particular on the various elements of job protection and of FMLA policy design to figure out exactly what would happen under each tweak, because there are a number of ways that we could change the policy, and figuring out exactly who it would impact and where would be a fantastic advance.

Ms. JAYAPAL. That sounds like a great thing to do, but I think that we can probably agree that it would be millions more workers, correct?

Ms. JACOBS. Yes.

Ms. JAYAPAL. And if we had that, what are the benefits of ensuring that every worker has FMLA coverage? And can you speak specifically to women and the disproportionate burden that women have by these restrictions on small employers?

Ms. JACOBS. So I can't speak specifically to women and small employers, but I can say that we have lots of evidence on the cost of not having both job protection and paid leave for women and on the benefits to having it.

It is exciting that States like Washington have actually put policies in place. There are other States, like California and New York and New Jersey and a number of others, that have policies on the way that have let us actually understand what happens over time. And we see, for example, in California that women's labor force attachment and employment has gone up. We see positive health outcomes.

And we know that FMLA protections nationally cover a surprisingly limited number of women of childbearing age, and there are a whole bunch of reasons we could talk about as to why. They are typically young, they are newer in the workforce, we know that job turnover rates are high, we know that women are often concentrated in service, retail, these industries that, as we discussed earlier, have high turnover rates.

These are all reasons why you have a certain segment of the population that may be disproportionately excluded given how we set up the laws now. And we have State policies that show us that it doesn't have to be that way, and we can have positive outcomes that we are looking for.

Ms. JAYAPAL. Thank you.

Mr. Sandkamp, you are the owner of a small business. How has New Jersey's paid leave insurance program increased your employees' economic security? And what is the benefit to you as an employer? We often hear that this is too costly, and it hurts employers. But tell us what your experience has been in terms of retention and financial stability of your employees.

Mr. SANDKAMP. Thank you for the question.

So it has been incredibly positive for me. Like my example in my testimony, one of my employees whose wife had twins took paternal leave. He was able to get 6 weeks at that time, and now it has been expanded this year to 12 weeks of wage replacement and had time to bond with his twins and help his wife out before her mother was able to come and help her.

For me, as an employer, I haven't had a single employee leave for any reason like that since this act has been—since the family leave has been available in the State of New Jersey. And that is a huge cost savings for me as an employer just in the terms of maintaining productivity and the cost to train a new employee to replace that employee that might have left.

Ms. JAYAPAL. Thank you, Madam Chair. My time has expired. I request unanimous consent to enter into the record a report, A Better Balance, entitled, "Paid Family and Medical Leave and Non-standard Employees."

CHAIRWOMAN ADAMS. So ordered.

[The information follows:]

CONSTRUCTING 21ST CENTURY RIGHTS FOR A CHANGING WORKFORCE: A POLICY BRIEF SERIES

Brief 2: Paid Family and Medical Leave & Nonstandard Employees

By Molly Weston Williamson, Sherry Leiwant, and Julie Kashen

EXECUTIVE SUMMARY

The way we work is changing and our laws must change with it. As workers increasingly find themselves in nonstandard, precarious, and insecure jobs, portable benefits—those that workers can take with them as they move from job to job or combine multiple sources of income—are increasingly essential. In the emerging future of work, portable benefits will be crucial to workers' economic security, to their job quality, and, ultimately, to their life quality. Paid family and medical leave laws, developed and refined through state experimentation, offer unique and innovative examples of exactly the kind of powerful portable benefits we need. Paid leave laws have pioneered new approaches to covering those workers who are all too often left out, including the self-employed. These state laws provide proven real-world models for how to meet the needs of the changing workforce.

Today, millions of people are working in ways that do not fit neatly within the traditional employer/employee framework. The experiences of these workers vary widely: some are choosing to work independently to have greater flexibility and control of their time, some are trying to start businesses that they hope will thrive, and many are simply taking the only work available to them. The rise of app-based "gig" hiring has only brought further attention to these emerging issues.¹ Further complicating the picture are those whose employers misclassify them as independent contractors when by law they are entitled to the rights and protections of employees.

¹ The needs of the self-employed in a changing workplace were addressed in the first policy brief in this series.

Even among those correctly identified as employees, the landscape is shifting. More and more people are in insecure employment situations, constantly moving in and out of increasingly tenuous positions. Many wish for the reliability of full-time, long-term employment but must make do with cobbling together part-time, temporary, or otherwise unreliable jobs, over time or all at once. Among the workers who prefer to work part-time or in seasonal employment, the differential treatment of those workers in our laws and policies often makes that work poorly paid and poorly protected. Many low-income, immigrant, and otherwise vulnerable populations have been fighting for economic stability for decades but find themselves worse off than ever today. Within workplaces, the institutions and structures that have traditionally offered job security and opportunities to get ahead, decent wages and hours, health care, retirement security, and collective power are fading. The causes are varied: increasing reliance on contracting out work (including multiple levels of subcontracting), "just-in-time" scheduling, declining unionization, lack of quality part-time work, to name just a few. The cumulative effect is one of increased instability and decreased opportunity even for employees.

Across this diverse picture, a consistent theme emerges: the laws that guarantee people basic rights were not designed with today's workforce in mind. Whether we describe it as the contingent workforce, precarious work, or some other title, for employees and the self-employed alike, making a living has become less reliable and more complicated. If the future of work is one where many Americans will be working in

Special thanks to the Ford Foundation for their support of this policy brief series.

ways that differ from conventional arrangements and many more will be in increasingly unstable situations, everyone, regardless of how they are labeled, must have access to fundamental labor rights and protections. As work changes, law and policy must adapt as well, whether that means building new safeguards or adjusting existing structures so that all workers get what they need, including both reliable, portable benefits and strong labor standards.

Against this backdrop, innovative policies like paid leave laws offer exciting opportunities to develop workplace standards that truly work for a changing workforce. Because paid leave is an emerging field, these laws can be shaped from the beginning to reflect the changing nature of work and the workforce, rather than trying to retrofit 21st century needs onto 20th century structures. Responding to today's challenges, paid family and medical leave laws can provide groundbreaking portable benefits, which workers can carry

with them across jobs and which can form a model for meeting other needs. Following a groundswell of legislative action in recent years, cities and states across the country are implementing their own workplace leave laws. Many more look to join their ranks, offering essential security to those previously denied these critical rights. These leaders provide a laboratory to identify best practices not only for workplace leave laws, but for law and policy writ large by pioneering approaches that can serve as models in other areas.

In charting this exciting path forward, some key questions remain. This series of policy briefs identifies and analyzes these issues in order to lay the groundwork for a more robust discussion and better-informed policymaking. By doing so, we can move closer to the essential goal of progressive workplace policy: ensuring that *all* workers, no matter how they are categorized, have the rights and protections they need.

For each of the issues raised in this brief, we have highlighted the key considerations below:

Issue 1: Covering all employees

Paid family and medical leave laws should cover as close as possible to all private sector employees. This must include covering employees regardless of their employer size and should also include avoiding industry exclusions. Where possible, these laws should also cover public sector employees.

Issue 2: Employment duration and portability of benefits

Policymakers may use employment duration (time in employment) requirements, earnings requirements, or a combination of both as eligibility criteria. The thresholds for these requirements should be as low as possible to ensure that nonstandard employees can qualify.

Issue 3: Portability & covering workers with multiple sources of income

Workers must be able to combine tenures or earnings from multiple jobs or source of income, including self-employment, to meet eligibility requirements. In addition, benefits must fairly reflect earnings from multiple jobs or sources of income and previously covered workers should be able to receive benefits during unemployment.

Issue 4: Benefit level and access

Wage replacement rates must be high enough for all workers, including low-income workers, to be able to afford to take leave, whether through a flat or progressive rate. At a minimum, this means providing at least two-thirds wage replacement for all workers.

Issue 5: Job protection and nonstandard employees

All paid family and medical leave laws should provide legal rights to job protection to all covered employees for all covered leaves.

Issue 6: Misclassification

Misclassified and potentially misclassified workers need meaningful opportunities to learn about benefits and well-publicized, user-friendly structures to apply for and receive them. To empower workers to come forward, they need ironclad legal rights against any and all forms of retaliation by their employers for exercising their rights.

Issue 7: Special considerations around domestic workers

All domestic workers must be covered under all paid family and medical leave laws. Ensuring that domestic workers can actually use their rights will require targeted outreach and education to both workers and employers, as well as deliberate, proactive enforcement.

Issue 8: Outreach and education

Comprehensive outreach and education to both workers and employers is essential. Employers should also be required to provide both posted and personal notice to employees of their rights.

Who are nonstandard workers?

Before we can propose meaningful policy solutions, we need a shared vocabulary. Different groups use terms like “nonstandard workers,” along with those that are sometimes used as synonyms like “the contingent workforce,” to mean different things. These divergent categorizations, in turn, make it difficult to come up with a consistent understanding.

For purposes of this series, we will use the term “nonstandard workers” to refer collectively to workers who are either often left out of existing legal labor protections or are especially likely to lack access to needed benefits without a legal right. Under this broad umbrella, we are especially interested in this brief in four distinct subgroups, whom we will collectively refer to as nonstandard employees: temporary workers, seasonal workers, part-time workers, and domestic workers. A fifth category of nonstandard workers, self-employed workers, was addressed in our prior brief.

The first two of these subcategories are defined by the time-limited nature of their employment. Temporary workers are those who, by definition, have only temporary employment, with no promise or expectation of ongoing employment beyond a discrete period. This category includes workers who find work through temporary help agencies or other staffing agencies. Similarly, seasonal workers are those whose employment is limited to a particular time of year. For example, farm workers may be hired only for a specific period of the growing season, while ski instructors may only work in the winter while lifeguards or camp counselors may only work in the summer.

Part-time workers, for purposes of this report, are defined as those who work fewer than 40 hours per week for a particular employer. Many workers, including many parents and those with other caregiving responsibilities, want or need to be working part-time. For these workers, ensuring access to the paid leave and other supports they need is a key component to creating high quality part-time jobs and reducing the harmful differential treatment that part-time workers face as compared to full-time workers. At the same time, some workers, known as involuntary part-time workers, are working part-time but would prefer to be working more hours or full time. For these workers, exclusion from leave policies due to working an insufficient number of hours is particularly cruel, adding insult to injury for workers struggling to get the hours they need to pay their bills.



Domestic workers are those who work in the homes of others, such as nannies, house cleaners, and caregivers for the elderly. For our purposes, we include both domestic workers who work through agencies and those who work directly for the people in whose homes they work. We also include both those whose employment relationships are formal and those whose relationships are less formal or recognized, including those who work “off the books.” Historically, domestic workers have shamefully been excluded from many labor laws, devaluing their work and cutting them off from vital legal protections.² While in recent years, progress has been made in ensuring access to basic rights for this workforce, especially through state and local domestic workers bills of rights, more remains to be done. We also recognize that including domestic workers on paper is not enough—to ensure that these workers are practically able to access the leave they need, policymakers must also take into account the unique realities of many domestic employment relationships, including that they are often one-to-one employer-employee relationships.

We must also account for the needs of misclassified workers, who are treated by the entities with which they work as independent contractors, but legally ought to be considered employees.³ Misclassification has gained additional attention with the rise of platform or “gig

² While not addressed in detail in this report, agricultural workers have suffered many of the same historical exclusions as domestic workers. Therefore, efforts to ensure coverage for nonstandard and vulnerable workers ought to keep this workforce in mind.

³ For more on misclassification, see Issue 6 below.

	CURRENTLY IN EFFECT				BEGINNING IN FUTURE YEARS		
	CA	NJ	NY	RI	DC	WA	MA
Number of weeks (own health)	52	26	26	30	2	12 14 with severe pregnancy complications	20
Number of weeks (family leave)	6	6	Current: 10 Fully phased in: 12	4	Family care: 6 Bonding: 8	12	12 26 for military caregiving
Wage replacement rate	60% to 70%, depending on income	67% (approx.)	Own health: 50% Family leave: Current: 55% Fully phased in: 67%	60% (approx.)	90% of income up to 40 times 150% of the D.C. minimum wage and 50% of income above that amount	90% of income up to 50% of the statewide average weekly wage and 50% of income above that amount	80% of income up to 50% of the statewide average weekly wage and 50% of income above that amount
Maximum weekly benefit (current)	\$1,252	\$650	Own health: \$170 Family leave: \$746.41	\$852	\$1,000	\$1,000	\$850

This chart offers a summary of key features of state paid family and medical leave laws. For more information on specific state laws, see A Better Balance's comprehensive comparison chart at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

economy" companies like Uber and Handy, but is also an issue in many established industries, like construction. The challenges of misclassification go beyond the scope of this brief, but policymakers must tackle these problems head on in designing effective solutions, to ensure that no one falls through the cracks.

We are also cognizant that, in many cases, these categories overlap. For example, a seasonal worker may work part-time, like a retail worker hired only for the busy holiday season. Similarly, while many domestic workers are correctly classified as employees, others may be misclassified and still others may truly qualify as self-employed. Moreover, nonstandard workers may have more than one job (including more than one nonstandard job), at one time or over the course of a year, or combine income from employment with self-employment income. As defined here, the category of nonstandard workers includes both those who rely exclusively on income from one or more forms of nonstandard work (including self-employment) and those who combine nonstandard work with more traditional employment.

In this policy brief, we recognize the diversity of experiences of the nonstandard workforce. The needs of a skilled professional taking on short-term work may be very different

from those of a part-time fast food worker or a nanny working off the books, yet all three could be considered nonstandard workers under our framework. Policymakers should take into account this range of experiences and seek to build structures that will work for all workers, not just the most privileged or prominent subset. Moreover, within the broader category of nonstandard workers, the particular challenges of covering each subgroup should be considered and addressed.

We are likewise cognizant of the intersecting impacts of race, gender, and immigration status on the needs and experiences of nonstandard workers. Access to paid family and medical leave is a gender justice issue and a racial justice issue, particularly for women of color.⁴ In a society in which women still bear a disproportionate share of the burden for caring for children and other loved ones, lack of access to paid leave falls especially heavily on women. Women make up a majority of part-time workers,⁵ and

⁴ See National Partnership for Women & Families, *Paid Family and Medical Leave: A Racial Justice Issue—And Opportunity* (August 2018), <http://www.nationalpartnership.org/research-library/work/family/paid-leave/paid-family-and-medical-leave-racial-justice-issue-and-opportunity.pdf>.

⁵ Cliff Zukin & Carl Van Ham, *A Tale of Two Workforces: The Benefits and Burdens of Working Part Time*, John J. Heldrich Ctr. for Workforce Dev., Rutgers Univ. 4 (June 2015) http://www.heldrich.rutgers.edu/sites/default/files/products/uploads/Work_Trends_June_2015.pdf.

nearly all domestic workers are women.⁶ Black, Hispanic and Latino workers make up a disproportionately large share of temporary help agency employees.⁷ Immigrant workers are present across all types of nonstandard work and make up an especially large proportion of domestic workers.⁸ Yet we know that immigrant workers, particularly undocumented workers, are especially vulnerable in the

6 National Domestic Workers Alliance et al., *Home Economics: The Invisible and Unregulated World of Domestic Work* (2017), page 41, http://www.issfwd.org/en/resources/home-economics-the-invisible-and-unregulated-world-of-domestic-work@@display-file/attachment_1.

7 Black workers make up 25.9% of temporary help agency workers, nearly double the percentage of the population that is Black or African American (13.4%). Similarly, 25.4% of temporary help agency workers are Hispanic or Latina, while only 18.1% of population is Hispanic or Latina. See Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements — May 2012*, table 6, <https://www.bls.gov/news.release/pdf/conemp.pdf>; United States Census Bureau, *Quick Facts, Population Estimates* (July 1, 2017), <https://www.census.gov/quickfacts/table/US/PT045217>.

8 National Domestic Workers Alliance et al., *supra* note 5.

workplace and may find it especially difficult to take needed leave, even with the strongest possible legal rights.

To date, all comprehensive state paid family and medical leave laws are designed as social insurance programs. Social insurance programs, as opposed to pure employer mandates like minimum wage, offer intriguing opportunities to experiment with inclusion and effective coverage of nonstandard workers. Since many of these programs are new or still being built, they provide policymakers the chance to not only incorporate nonstandard workers, but actually design a system responsive to their needs in the first instance. With thoughtful policymaking, these new inclusive insurance systems may provide templates for legacy programs, like workers compensation or unemployment benefits, as well as for new and emerging programs to better adapt to the future (and present) of work.

Background: Existing Paid Family & Medical Leave Laws

Since the middle of the last century, five states (California, New Jersey, Rhode Island, New York, and Hawaii) have provided a legal right to temporary disability insurance (TDI), which provides partial wage replacement to those unable to work due to an off-the-job illness or injury. In recent years, California, New Jersey, Rhode Island, and New York have expanded these programs to provide benefits to workers bonding with a new child or caring for a seriously ill loved one.⁹ In addition, Washington, D.C., Washington State, and Massachusetts have passed laws to create new insurance systems to provide benefits in these same situations starting in 2020 in D.C. and Washington State and in 2021 in Massachusetts. As noted above, though their exact structures vary, all existing comprehensive paid family and medical leave programs provide benefits through a social insurance model.

In each state with a paid family and medical leave law, almost all private sector (non-government) employees have an automatic legal right to coverage, including part-time, subcontracted, and otherwise vulnerable workers.¹⁰ These laws cover employees regardless of the size of their employer,

9 Hawaii's law continues to provide for TDI benefits, but has not been expanded to provide paid family leave benefits. Under the law, workers can receive TDI benefits for up to twenty-six weeks. Workers receive 58% of their own income through TDI, up to a cap. Hawaii's law does not provide a specific option for self-employed workers to opt in to coverage. Because Hawaii's law provides only disability benefits and not family leave benefits, it is not addressed in this policy brief.

10 The details of which employees are covered and when they become eligible for benefits are addressed in Issue 1 and Issue 2.

meaning that even those who work for an employer with just one employee have the right to coverage. However, in general, they do not automatically cover self-employed workers.

These laws provide benefits in a few types of situations. Workers can receive medical leave benefits (sometimes called TDI benefits) when they are unable to work due to a serious off-the-job illness or injury. Family leave benefits are available to those taking leave from work to bond with a new child (including children newly placed for foster care or adoption) or to care for a family member with a serious health condition. New York, Washington State, Massachusetts, and California also provide (or will provide) paid family leave benefits to workers dealing with certain needs in connection with a family member's military deployment.

Programs vary in the number of weeks of benefits workers can receive. For their own medical needs, workers can receive benefits for fifty-two weeks in California, thirty weeks in Rhode Island, and twenty-six weeks in New York and New Jersey. Workers will be able to receive benefits for their own medical needs for twenty weeks in Massachusetts, twelve weeks in Washington State (with an additional two weeks for severe pregnancy complications), and two weeks in Washington, D.C. For paid family leave, California and New Jersey offer six weeks of benefits, while Rhode Island offers four weeks of benefits. New York currently offers ten weeks of paid family leave benefits and, when the program is fully



phased in 2021, will offer twelve weeks. Washington State and Massachusetts will each offer twelve weeks of paid family leave benefits,¹¹ while Washington, D.C. will provide six weeks of benefits to care for a seriously ill or injured loved one and eight weeks of benefits to bond with a new child. Programs vary in the extent to which workers can combine family and medical leave benefits sequentially. Benefits are calculated as a percentage of workers' income. In some programs, this is a flat percentage (ranging from 50% to about 67%) of workers' own income, while in

.....
¹¹ Massachusetts will provide up to twenty-six weeks of family leave benefits for military caregivers.

others lower-income workers receive a higher percentage of their income (up to 90% for low-income workers).¹² In every program, benefits are subject to a cap (a maximum weekly benefit); this cap is usually set as a percentage of the state's average weekly wage, so that it adjusts each year in response to growth in wages.

As noted above, by design, all state paid family and medical leave programs are broadly inclusive, covering nearly all private sector employees. However, ensuring that nonstandard employees are able to practically access these benefits requires specific attention to the distinctive needs of this workforce. Moreover, as more states and, ultimately, the federal government look to enact their own paid leave laws, continued attention to the key policy levers identified in this brief is essential to preserve that essential inclusivity.

.....
¹² Workers receive a flat percentage of their average weekly wage in Rhode Island (approximately 60%) and New Jersey (approximately 67%). New York also uses a flat wage replacement rate, currently 50% for workers' own health needs and 55% for family leave, but will increase the rate over time for family leave until it reaches 67% in 2021. California uses a progressive wage replacement rate ranging from 60% to 70% for most workers, with lower-income workers receiving a higher percentage of their income. When their programs begin providing benefits, both Washington, D.C. and Washington State will provide workers with 90% of their income up to a threshold and 50% of their income above that threshold, though the exact inflection points vary. Massachusetts will offer a similar wage replacement rate, providing 80% of workers' income up to a threshold and 50% of their income above the threshold. As noted above, benefits are capped in all programs.

Issues to Address in Including Nonstandard Employees in Paid Family and Medical Leave Programs

KEY CONSIDERATIONS: Paid family and medical leave laws should cover as close as possible to all private sector employees. This must include covering employees regardless of their employer size and should also include avoiding industry exclusions. Where possible, these laws should also cover public sector employees.

Issue 1: Covering all employees
 By adopting paid leave laws, lawmakers make the decision that paid leave is a basic right that every employee should have, just like minimum wage or other labor standards. This reflects a basic principle: for employees, paid family and medical leave coverage should be automatic and universal. For this reason, all existing state paid family and medical

leave laws cover nearly all private sector employees in their respective states. Yet covering all employees is more complicated in practice than in theory. Policy makers working on paid leave laws should account for these complications and ensure that laws are as inclusive as possible.

Defining terms appropriately is one of the most important policy levers to ensure coverage. State laws must define terms like "employer," "employee," and sometimes "employment," which are threshold determinations as to which workers are covered. These terms should be defined as broadly as possible, to ensure that all employees are covered. Policy makers should avoid both obvious exclusions, like a minimum number of hours worked per week (excluding part-time workers), and more subtle restrictions. Where referencing existing definitions, such as those used in minimum wage or unemployment insurance statutes, are adopted, policymakers should carefully review

the standards to ensure that they do not inadvertently exclude nonstandard employees.

During many state campaigns, interest groups and legislators have floated the possibility of providing an exception for employers below a certain size. This idea may come from laws like the Family and Medical Leave Act (FMLA), a federal law providing the right to unpaid leave with job protection and related rights in connection with leave, which does not apply to employers with fewer than fifty employees. These requests derive from the speculative claim, generally made by paid leave opponents, that providing paid family and medical leave will be too burdensome for small businesses.

Today, no state paid family and medical leave law has an employer size carve-out of any kind. In other words, in each of the seven jurisdictions with comprehensive paid leave laws on the books, employees have the right to receive paid leave benefits without regard to the size of their employer, even if their employer has only one employee. It is essential that future policymakers follow the lead of pioneer states in this regard.

Paid family and medical leave laws are social insurance systems. Though the mechanics vary by state, in all states the programs work by combining small contributions from employers, employees, or both into an insurance system. When workers need family or medical leave, the insurance system pays their benefits. This means that employers do not have to pay workers' wages out of pocket when they are out on leave, making providing paid leave inexpensive to the employer. This feature may be especially important for small employers, who often cannot afford to pay for paid leave out of pocket and therefore are at a competitive disadvantage in hiring the best employees as compared to larger employers who can afford to do so.

In order for the system to function, however, there must reliably be sufficient numbers of employers and employees in the pool to spread the risk and therefore the cost. Carving out smaller employers shrinks the pool, making it harder for it to perform its essential function. Because employers may fluctuate in size over time, it is also administratively unrealistic for employers to come in and out of the system as they cross arbitrary size thresholds. These rules also risk creating cliff effects, incentivizing employers to avoid hiring needed employees—or outsource jobs—in order to stay under an artificial line.

More broadly, employer size carve-outs are unfair to workers. All workers deserve the right to the leave they

need, whether or not they happen to be employed by an employer with a particular headcount when that need (which may be unexpected) arises. Size carve-outs also compromise the portability of benefits, an especially important feature for nonstandard employees (see *Issue 2*). If employers below a certain size are excluded, a worker may have been paying into the system for years but, because the worker recently moved to a job with a smaller employer, be excluded from using benefits the worker has paid for.

In some cases, policymakers encounter requests to exempt specific industries from coverage. Industry carve-outs are harmful for the same reason as employer size carve-outs—they reduce the size of the insurance pool, interfere with portability, and are unfair to workers. They can also be especially harmful for nonstandard employees, as many of the industries where nonstandard work is common may be especially likely to seek exemptions. For example, many farm laborers, an industry excluded from coverage under New York's law and potentially subject to restricted eligibility under others, work seasonally. Domestic workers may also be especially vulnerable to requests for exemption, given their historic exclusion from many labor laws. To date, state paid family and medical leave laws have largely avoided creating industry exemptions.

Issue 2: Employment duration and portability of benefits

KEY CONSIDERATIONS: Policymakers may use employment duration (time in employment) requirements, earnings requirements, or a combination of both as eligibility criteria. The thresholds for these requirements should be as low as possible to ensure that nonstandard employees can qualify.

As discussed above, one of the key elements of ensuring that nonstandard employees can receive paid family and medical leave benefits is including them in definitions of key terms—in other words, the initial “who” is covered by the law. Another important factor in making sure that these workers can actually benefit from these laws is setting achievable eligibility criteria—in other words, setting realistic rules for when someone becomes eligible for benefits. Drafters must carefully consider the consequences of these decisions for nonstandard employees and seek rules that will meet the needs of these workers. For example,

for the reasons described in greater detail in Issue 5, the federal Family and Medical Leave Act's eligibility standards are far too restrictive and exclude too many nonstandard employees.

Like other employment-tied social insurance benefits, paid leave laws generally establish some minimum level of attachment to the workforce in order to qualify for benefits. Because existing programs are state-based, this includes establishing connection to the workforce in that particular state. The specific mechanisms policymakers choose—and the thresholds they set for those mechanisms—will determine how easy or difficult it is for workers, particularly nonstandard workers, to qualify.

One common tool is to set a minimum amount of money a worker must have earned in qualifying employment. These requirements are usually assessed over a specific time period known as the “base period” or “qualifying period.” This period is generally one year in length.¹³ California has the most straightforward minimum earnings requirement, under which workers must earn at least \$300 from qualifying employment during the base period.

The other frequently used mechanism is to set a minimum amount of time a worker must have been employed or have worked. In New York, employees generally must have been employed by their employer for twenty-six consecutive weeks (about 6 months) to qualify for family leave benefits and for four consecutive weeks (about 1 month) to qualify for TDI benefits. Some part-time workers or those working reduced schedules are subject to an alternate eligibility rule, under which they must have worked for their employer for 175 days for family leave and for 25 days for TDI benefits. In Washington State, workers will need to have worked for a covered employer for at least 820 hours in the qualifying period to qualify, which works out to an average of just under 16 hours per week over the course of a 52-week qualifying period.¹⁴

Three states use hybrid approaches. In Rhode Island, employees must meet a set of interlocking minimum earnings requirements, one of which effectively requires that the employee have earned income in at least two quarters. In practice, this has a similar effect to a minimum employment duration requirement, since the employee must have been

¹³ In many cases, workers may be able to combine their four best (highest earning) quarters over the past five quarters for purposes of the base year, providing some added flexibility to help workers qualify.

¹⁴ As with earnings-based base periods, workers can combine their four best (highest hours worked) quarters over the past five quarters.



employed during at least two quarters.¹⁵ In New Jersey, over the course of the year prior to the start of disability or leave, employees must either earn at least 20 times the minimum wage (currently \$177) per week in at least 20 weeks or earn at least 1,000 times the minimum wage (currently \$8,850) total. In Massachusetts, workers must have earned a minimum amount (currently \$4,700) during the base period and must meet an earnings requirement tied to the worker's average earnings that, in effect, means the worker must have worked at least 15 weeks.

Washington, D.C. will take a unique approach. Unlike other programs, there will be no minimum earnings amount or minimum time in employment to qualify. However, because of the unusually long time period over which a worker's average weekly wage is calculated, workers who have worked in the District for less than a year will receive a pro-rated benefit. For example, a worker who had worked in the District for six months would receive half the amount in weekly benefits that a worker making the same average amount per week who had worked in the District for a year would receive.

These different models come with different tradeoffs in terms of covering nonstandard workers. In any approach, the exact thresholds used matter as much or more than the focus of earnings or employment duration. Minimum

¹⁵ Workers must earn at least 400 times the minimum wage during the base period (currently \$4,200) including at least one quarter during which they earned at least 200 times the minimum wage (currently \$2,100). In addition to these minimum earnings requirements, an employee must have earned income across the base period of at least 1.5 times the amount the employee earned during the employee's highest earning quarter, meaning that the employee must have income in at least two quarters to qualify.

earnings requirements weigh especially heavily on low-income workers, who take longer to meet any particular fixed amount of earnings than higher earners, especially for workers with erratic earnings. Moreover, while all existing state paid leave program minimum earnings requirements are manageable, if the threshold were set too high, it could exclude some workers all together.

Conversely, while minimum employment duration requirements formally apply equally to workers at all income levels, workers who change jobs more frequently or lack steady employment have a harder time meeting these requirements. Temporary and seasonal workers, in particular, may struggle to meet these requirements, depending on how the rules (and their employment) are structured. When these requirements are framed in terms of hours worked, part-time workers take longer to qualify than full-time workers.

Issue 3: Portability & covering workers with multiple sources of income

KEY CONSIDERATIONS: Workers must be able to combine tenures or earnings from multiple jobs or source of income, including self-employment, to meet eligibility requirements. In addition, benefits must fairly reflect earnings from multiple jobs or sources of income and previously covered workers should be able to receive benefits during unemployment.

Eligibility requirements are also a key piece of making benefits portable when workers change jobs. It is especially important for nonstandard employees that they be able to meet eligibility requirements by combining income and employment tenures at multiple jobs. For example, a temp worker may work for enough weeks or earn enough income over the course of the relevant period, but do so for many employers; if that worker cannot combine those jobs, the worker will not qualify for benefits. Similarly, low-income workers may be more likely to change jobs than other workers more generally, even with employment that is not formally set up as temporary. Without eligibility standards that promote portability, a worker who happens to change jobs shortly before a life event requiring leave could be excluded, even if that worker had a long tenure and qualified in their prior position. This type of portability can also be

particularly important in sectors where working by the job is common, such as construction. Today, nearly all paid family and medical leave programs provide some measure of portability through the ability to combine multiple jobs to meet these requirements, with the exception of the paid family leave component of New York's program.¹⁶ New paid leave policies should be portable and ensure that workers with multiple sources of income have all of their work experiences fully included.

In addition to changing jobs, nonstandard employees may hold multiple jobs—including multiple nonstandard jobs—at once. Others may simultaneously be working as non-standard employees, whether full- or part-time, and be receiving income from self-employment. Workers covered for more than one job or for both employment and self-employment should be able to receive benefits reflecting their total income. Subject to reasonable restrictions, workers receiving income for work from multiple sources, whether those sources are an employer or self-employment, should be able to choose to take leave with benefits from some forms of work while continuing to do other forms of work. This is especially important as a matter of fairness where workers are paying into the program from multiple jobs.

Portability should not only extend to providing benefits during employment. Many nonstandard employees may go through periods of unemployment between periods of employment. For example, temporary workers may have gaps between engagements or seasonal workers may struggle to find sufficient work in the off-season. For these workers, it is important that they can still access benefits they previously qualified for if the need arises during a period of unemployment. The state paid leave programs currently providing benefits generally provide some benefits, though exact conditions vary, during unemployment for previously qualified workers;¹⁷ the paid leave programs in Washington State, Washington, D.C., and Massachusetts, which have not yet been implemented, look likely to do the same, though more details will be needed in some cases.¹⁸

¹⁶ New York is unique among existing programs in using different eligibility criteria for the TDI and paid family leave components of its program. As a result, workers who previously qualified for TDI benefits can qualify immediately when starting work with a new, covered employer within four weeks of the end of their previous covered employment. However, for purposes of paid family leave, employees must complete the required amount of time in employment (26 weeks or 175 days worked) with each employer, regardless of whether that employee was previously eligible.

¹⁷ New York provides TDI benefits to previously covered workers during unemployment, but does not provide paid family leave benefits during unemployment.

¹⁸ Massachusetts's law explicitly provides for coverage during unemployment.

Issue 4: Benefit level and access

KEY CONSIDERATIONS: Wage replacement rates must be high enough for all workers, including low-income workers, to be able to afford to take leave, whether through a flat or progressive rate. At a minimum, this means providing at least two-thirds wage replacement for all workers.

All paid leave programs provide partial income replacement to workers taking leave. But “partial” income replacement could include a wide range of proportions of workers’ incomes. Therefore, determining exactly how much income a program will replace—known as the wage replacement rate—is one of the most important levers of paid leave program design. If the wage replacement rate is too low, workers will not be able to afford to take the leave they need. In practice, a rate that is too low is the same as providing no leave at all—even though, in most cases, workers are paying for some or all of the cost of providing the benefit.

While an inadequate benefit can affect all workers’ ability to take leave, low-income workers are especially vulnerable. Because low-income workers already use all or very nearly all of their income to pay their bills, these workers need as close to 100% of their income in benefits as possible to make leave-taking viable. Moreover, low-income workers are more likely than other workers to be living paycheck-to-paycheck without meaningful savings, making the benefit their only source of cash during a leave. For nonstandard employees who are low-income or who, including by the nature of their unreliable employment, have limited savings to fall back on, adequate wage replacement is a threshold issue in ensuring their ability to actually take the leave they need.

There are two main ways of setting the wage replacement rate. The first is to provide a flat percentage of workers’ earnings, regardless of income level. For example, the proposed FAMILY Act would provide two-thirds (approximately 67%) of workers’ average income per month. Flat rates that are consistent across the program are used in Rhode Island (approximately 60%) and New Jersey (approximately 67%). In New York, the wage replacement

for previously covered workers. Washington State and Washington, D.C. laws are also intended to provide benefits during unemployment to previously covered workers, but regulations will be needed to explicitly spell out details.

rate for both TDI/medical leave and paid family leave benefits is currently 50%; this rate will go up over time for paid family leave (though not for TDI) until 2021, when it will reach a consistent 67%.

The other method is to provide progressive wage replacement, where lower-income workers receive a higher percentage of their income. In California, the wage replacement rate is a sliding scale from 60 to 70% of workers’ income, with lower-income workers receiving the highest percentage. All three programs that have been enacted but not yet implemented (D.C., Washington State, and Massachusetts) will also provide progressive wage replacement rates. In those programs, workers will receive a high percentage of their income (80%-90%, depending on the state) up to a threshold and 50% of their income above that threshold. This method means that the effective wage replacement rate for a particular worker depends on their income level, with those who are paid less than the threshold amount receiving the highest effective rate.

In D.C., the inflection point is set at 150% of what a full-time (40 hours per week) minimum wage worker makes per week. At the current D.C. minimum wage (\$13.25 per hour), this would make the inflection point \$795 per week. Massachusetts and Washington State use 50% of their respective state average weekly wage, which in each state is a defined technical term adapted from unemployment insurance. Currently, the state average weekly wage in Washington is \$1,190 and the state average weekly wage in Massachusetts is approximately \$1,338. This means that their inflection points, if they were calculated today, approximately \$595 (Washington) and \$669 (Massachusetts) per week.

Here, an example may help illustrate how this works. Using today’s numbers, a worker in Washington State who makes \$595 per week or less (or about \$30,940 per year) would receive the 90% of the worker’s total average weekly wage. In other words, that worker would have an effective wage replacement rate of 90%. In comparison, a worker who works 40 hours per week at Washington State’s median hourly wage (\$21.36 per hour)¹⁹ makes about \$854.40 per week or about \$44,428.80 per year. To calculate that workers’ benefit, you first calculate 90% of the worker’s weekly income up to the inflection point (\$595.00), which works out to \$535.50. Then you calculate the worker’s income above the inflection point (\$854.40 minus \$595.00,

¹⁹ Bureau of Labor Statistics, May 2017 State Occupational Employment and Wage Estimates: Washington, https://www.bls.gov/oes/current/oes_wa.htm.



which equals \$259.40) and multiply that by 50%, which works out to \$129.70. Finally, you add the two together to get the worker's benefit rate of \$665.20. As a result, that worker has an effective wage replacement rate of 77.86%. Someone who earned more than that worker would have a lower effective wage replacement rate, while someone who earned less would have a higher effective wage replacement rate.

In all programs, the benefit is subject to a cap. In most states, this cap is set as a percentage of the state's average weekly wage, ranging from 50% to 100%. In dollar terms, these percentages currently translate into a range from \$637 per week on the low end (New Jersey) to \$1,173 per week on the high end (California). Generally speaking, the cap does not affect benefits for low-income workers, who are not paid enough to hit the cap; for these workers, the wage replacement rate is the more important lever. As a result, the maximum benefit level mostly affects middle and higher income workers; workers who hit the cap have a reduced effective wage replacement rate. However, if a cap is too low, low-income workers can also be affected. For example, while New York's cap for paid family leave benefits is set as a percentage of the state's average weekly wage, the cap for TD/medical leave benefits has been fixed at \$170 per week since 1989. Because this amount has not kept pace with inflation and rising wages, today nearly all workers, except for those working part-time at or near minimum wage, hit this cap. In effect, this makes their wage replacement rate lower than the official rate and means that many workers cannot afford to take the time they need for their own health.

Issue 5: Job protection and nonstandard employees

KEY CONSIDERATIONS: All paid family and medical leave laws should provide legal rights to job protection to all covered employees for all covered leaves.

Fear of losing one's job is a constant reality for many employees, especially nonstandard employees whose job situation is, by its nature, tenuous. In some cases, like seasonal or temporary work, the work is inherently time limited. In others, the risk of being fired, whether for good reason or otherwise, looms large over the entire employment relationship. Yet these workers have often ended up in unreliable employment precisely because they are unable to find or keep more stable work and need the income to pay their bills. Policymakers should include job protection for all employees taking leave in their paid leave laws.

Against this backdrop, asking workers in already precarious employment situations to jeopardize their jobs by asking for or taking leave is unrealistic. This means that without a legal right to return to work after taking leave (and protection against other negative consequences), nonstandard employees will face a substantial, potentially insurmountable disincentive to using paid leave benefits—benefits that, in most cases, the employees themselves have paid for.

Yet, without specific legislative action, nonstandard employees may be especially likely to lack legal protection against job loss. The Family and Medical Leave Act (FMLA) provides covered employees with the right to *unpaid*, job-protected leave to deal with workers' own or a loved one's serious health needs, to bond with a new child, or to address the impact of military deployment. However, not all employees are covered by the FMLA—nationally, an estimated 41% of employees are left out.²⁰ In order to be covered by the FMLA, an employee must meet three requirements: the employee must work for an employer with at least 50 employees, must have worked for that employer for at least 12 months, and must have worked at least 1,250 hours for that employer in the last 12 months.

²⁰ National Partnership for Women & Families, *A Look at the U.S. Department of Labor's 2012 Family and Medical Leave Act Employee and Worksite Surveys* (February 2013), <http://www.nationalpartnership.org/research-library/work-family/fmla65a/fmla-survey-key-findings-2012.pdf>.

These requirements can hit nonstandard employees especially hard. Those who change jobs frequently or work time-limited jobs, like temporary workers and seasonal workers, are unlikely to have worked for a particular employer for a full year. Similarly, temporary, seasonal, and part-time workers, as well as others with erratic employment, often struggle to meet the 1,250 hours-worked requirement, which requires the equivalent of working an average of about 24 hours per week. This can be especially frustrating for involuntary part-time workers, who may be excluded from access to job protection under the FMLA for not having worked enough hours when they would have preferred to have been working full time or more hours. Many nonstandard employees may also work for employers with fewer than 50 employees.

Some states have their own laws providing a right to job protection, often with shorter required tenures before workers become eligible or lower numbers of hours-worked requirements. However, all have gaps in coverage that leave many nonstandard employees, even in states with their own unpaid leave laws, without the right to job protection.²¹

Because of these crucial gaps, it is possible that a worker who receives paid leave benefits guaranteed by law may be legally fired for taking the time needed to use those benefits. Even where some other law, such as the FMLA, may provide protection, understanding the relationship among multiple overlapping sets of laws providing interrelated rights is confusing to workers and employers alike. That confusion can, in turn, interfere with workers' ability to effectively understand and use their rights.

All paid family and medical leave laws, therefore, should provide legal rights to job protection to all covered employees for all covered leaves. Because in the legal status quo nonstandard employees are likely to lack these protections, this program element will be especially important for these workers.

Of the states with existing laws, only Massachusetts meets this standard. When benefits begin in 2021, all employees taking leave under the Massachusetts law will have the right to job protection for all medical leave or family leave taken under the law. New York and Rhode Island have gone the furthest of the implemented programs: both states provide job protection to all employees taking family leave under their respective laws, but do not guarantee job protection

²¹ For more information on state laws that have expanded job protection and other leave rights, see A Better Balance's report, *A Foundation and a Blueprint*, <https://www.betterbalance.org/resources/a-foundation-and-a-blueprint/>.

to those receiving TDI benefits. Washington State will provide job protection as part of its paid family and medical leave program only to those workers who meet the same eligibility standards as the FMLA, meaning that nonstandard workers eligible for benefits will still largely be left out of job protection. California, New Jersey, and D.C. do not provide job protection as part of their paid leave laws.

Issue 6: Misclassification

KEY CONSIDERATIONS: Misclassified and potentially misclassified workers need meaningful opportunities to learn about benefits and well-publicized, user-friendly structures to apply for and receive them. To empower workers to come forward, they need ironclad legal rights against any and all forms of retaliation by their employers for exercising their rights.

Policy solutions for reaching nonstandard employees must also address the needs of misclassified or potentially misclassified workers, who are treated by the entities with which they work as independent contractors, but who legally ought to be considered employees. Issues around misclassification have far-reaching impacts that go well beyond their effect on paid leave laws, but ensuring access to a social insurance benefit should not depend on how a worker is labeled.

As described above, universal automatic coverage for employees is a core principle in paid leave laws, while the self-employed may need a more nuanced solution. Recognizing that misclassification is likely to be an ongoing issue, policymakers should take steps to ensure that no worker falls through the cracks due to classification ambiguity.

When workers have not been incorporated into the system due to being misclassified, they should be able to receive the benefits to which they would otherwise be entitled. This requires providing meaningful opportunities for potentially misclassified workers to learn about benefits and the possibility they have been misclassified.²²

Once workers learn they may be entitled to benefits, they need well-publicized, user-friendly structures to apply for and receive them. This means more than providing

²² For more information on the critical need for outreach and education, see Issue 8.

an option on paper for misclassified workers (and others for whom employers have not complied with their legal obligations) to file for benefits. Claims processors must provide clear instructions for how these workers can seek and receive benefits, including how they can challenge an employer's erroneous classification. These processes must not place excessive burdens on workers and must provide flexible options for documenting earnings and establishing the nature of their employment relationship.

To empower workers to come forward, strong protections against retaliation by their employers are essential. Without ironclad legal rights against any and all forms of retaliation by their employers for exercising their rights, it is simply unrealistic to expect misclassified workers to take the risk of employer retribution in order to file a benefits claim. These protections must be coupled with serious, proactive enforcement with commensurately serious penalties for employers who attempt to evade their responsibilities to provide paid leave through misclassification. The state, rather than workers themselves, should bear the responsibility in the first instance for identifying and preventing misclassification.

As detailed in our prior brief in this series, paid leave programs must also provide opportunities for those who are truly self-employed to acquire coverage, whether that coverage is automatic or voluntary. This coverage will, by extension, also have important effects on the misclassified or potentially misclassified. Therefore, those who are ambiguously classified should be able to choose to pursue coverage as a self-employed person without harming any other legal claims regarding their status or risking their eligibility for benefits as an employee. Innovative policies should give workers more options, not fewer, and make it safe to exercise those options.

Issue 7: Special considerations around domestic workers

KEY CONSIDERATIONS: All domestic workers must be covered under all paid family and medical leave laws. Ensuring that domestic workers can actually use their rights will require targeted outreach and education to both workers and employers, as well as deliberate, proactive enforcement.



Historically, domestic workers have all too often been excluded from important labor protections, for reasons deeply connected to both sexism and racism. Today, thanks to years of dedicated advocacy by the domestic worker movement, domestic workers have gained some much-needed protections, especially through state domestic workers' bills of rights. Yet distinctive challenges remain for this particularly vulnerable workforce, and must be addressed.

First and foremost, paid family and medical leave laws must ensure that all domestic workers are covered. Most existing laws cover domestic workers to the same extent that those workers are covered under unemployment insurance laws. Generally speaking, this means paid leave laws cover domestic workers if their employers spend a low minimum amount of money per year on domestic worker wages. The exception is New York where, as the result of a technical error in a law designed to expand protections for domestic workers, only domestic workers who work at least forty hours per week for a single employer currently have a legal right to paid family leave or TDI coverage. This should be remedied. Moving forward, drafters of new legislation should explicitly include domestic workers in the relevant definitions (see *Issue 1*) and should carefully vet all cross-referenced or borrowed definitions.

Beyond this threshold issue, there are important practical considerations. Domestic employers—especially individual households who are not used to acting as employers—may be less informed about their legal obligations than other employers. Indeed, many may not even think of themselves as employers. Therefore, additional education (see *Issue 8*) specifically targeted toward domestic employers to ensure they know about and have the assistance they

need to comply with their legal obligations is essential. By the same token, domestic workers may have less access to information about their rights than other workers and, without specific guidance, may wrongly assume that paid leave laws do not apply to them. Therefore domestic workers should also receive targeted outreach.

There are also unique enforcement and implementation challenges in the domestic employment context. Participation in a social insurance system generally requires that employers remit contributions to pay for the system, whether those contributions come from the employer, the employee, or both. Domestic employers may be less likely than other employers to comply with this requirement. In some cases, this may be due to legitimate ignorance of their responsibilities or difficulty in navigating the process. In others, particularly given the prevalence of “off the books” employment of domestic workers, employers may simply ignore or evade their responsibilities.

Compounding these difficulties, domestic workers are often less able to exercise their rights than other workers. For a variety of reasons, the relationship between domestic employers and workers often has a different dynamic than other employment relationships. While some of these distinctive features can be positive for workers, others can be more fraught and leave workers feeling less able to exercise their rights. For example, domestic workers are often the only employee of their employer, making it impossible to file a complaint without being immediately identified as the source of that complaint. Even outside of a formal complaint process, domestic workers may feel less comfortable advocating for themselves with their employers for fear of disrupting the close but complex relationship with their employer. Because domestic workers are disproportionately likely to be immigrants, many (though certainly not all) of whom are undocumented, fear of negative immigration consequences or inability to get other work can compound these vulnerabilities.

Moreover, domestic employers usually cannot easily cover a leave by reassigning other employees or through overtime. Because so many domestic workers perform vital, continuous tasks, such as caring for children or assisting seriously ill or elderly adults, their roles cannot be left unfulfilled or postponed until their return. Ensuring that these workers are realistically able to take the leave they need, when their employers may legitimately find it difficult for them to be away, will require further attention and consideration.

While a comprehensive response to these challenges will require further consideration, some key elements are clear. Many of these are the same as those needed to protect misclassified workers (see Issue 6). It is especially important for domestic workers to provide strong safeguards such that workers are not penalized for their employer’s failure to follow the law and can access benefits regardless. Likewise, domestic workers need rock-solid protection against retaliation for using or attempting to use their rights. Finally, given the low likelihood of domestic workers filing complaint when their rights are violated, enforcement agencies should look for as many opportunities as possible to engage in proactive enforcement. This could include sharing resources with agencies looking to enforce other often-violated obligations, such as providing workers’ compensation coverage or paying into unemployment insurance on behalf of domestic workers.

Issue 8: Outreach and education

KEY CONSIDERATIONS: Comprehensive outreach and education to both workers and employers is essential. Employers should also be required to provide both posted and personal notice to employees of their rights.

The best-constructed paid leave system will only be effective if workers actually know about and can use their rights. Even in states with the longest-running paid family and medical leave programs, awareness remains low, especially among low-income workers, reducing use and effectiveness of the laws. Therefore, comprehensive outreach and education is essential. These efforts should include specific, targeted campaigns to reach nonstandard employees and ensure that they know their rights. For example, without clear, plain-language, multi-lingual, accessible information to the contrary, part-time or temporary workers may assume they are not covered, as these workers are so often left out of employer leave policies. Know-your-rights materials should also highlight and explain the portability of benefits for workers with multiple jobs or who change jobs frequently.

These campaigns should also seek to educate employers. They should specifically include information to ensure that employers recognize that nonstandard employees are



covered. This should include specific education about the relationship to other standards, particularly the FMLA; without explicit information to the contrary, employers may wrongly assume the same standards apply.

Employers are often most the important source of information about workplace rights. Studies have shown that workers expect to hear about their rights from their employers. Therefore, policymakers should also enact and enforce robust requirements for employers to provide notice to their employees. To begin, employers should be required to prominently display posted notices. Because posted notices are a common requirement in other workplace laws, workers may be used to looking for information in break

rooms or other posting locations. However, employees may also miss posted notices and in some nonstandard work arrangements, such as domestic workers, posting may be impractical. Therefore, employers should also be required to provide written notice to each employee personally at the start of employment, when the employer knows (or should know) that the employee may need leave, and at regular intervals (such as annually). This repeated notice is important given that workers may not pay attention to their rights until they are in situation where they may need them. Notice requirements should be backed with clear requirements for employers to keep records demonstrating compliance, as well as strong, enforceable penalties for failure to comply.

Conclusion

During the past several years we have seen a great deal of progress in the development of paid family and medical leave laws, with new states building upon the lessons of their predecessors and pioneers revisiting their laws to expand and improve protections. In this context, there is more work to be done to build a model paid family and medical leave program that truly serves nonstandard

workers—and all workers, regardless of classification—including addressing the issues raised here. In so doing, we can set an example not only for paid leave benefits across the country but for innovative policymaking approaches that will rise to meet the challenges and the opportunities presented by the evolving nature of work in this country.



A Better Balance is a legal advocacy organization dedicated to promoting fairness in the workplace and helping workers care for their families without risking their economic security.

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Ms. JAYAPAL. Thank you, Madam Chair. I yield back.

CHAIRWOMAN ADAMS. Thank you.

Mr. Murphy, you are recognized 5 minutes, sir.

Mr. MURPHY. Thank you, Madam Chair.

Guys, thank you very much for coming today. This is obviously a big issue that faces us in the United States. I handled it personally on two different levels, one as a small business owner, employed, depending upon the year, anywhere from 40 to 50 employees. But then also just when I would take care of patients oftentimes when they would try to take care of their mothers and anybody else in their family who is operated on. So I am not insensitive to the issue.

I am concerned, as you said, Ms. Greszler, about the unintended consequences of we start something and then it grows, and then it grows, and then it grows, and it cripples small business.

I mean, as it is right now, it is a proposed 0.4 percent payroll tax. How do you envision that given the precedent that has been before with Social Security, et cetera, how do you envision that changing in the future? And how would that relate to small business, which is the predominant employer in the country?

I see it, we want to do great things for our workers, we want to help them out, but it has to get paid for somehow. And how would that affect small business in this country?

Ms. GRESZLER. Yeah. I think we can avoid talking about the cost even though it is something that we all want workers to have access to.

And you start out small, 0.4 percent, and the other estimates have showed that it could be 2.9 percent. Well, how do we get there? We want a policy that will accommodate everybody, and it turns out that 66 percent of wages isn't enough. If you are making \$15 an hour, you can't pay your bills on \$396 a week instead of \$600. So we increase the benefits to 100 percent.

We expand who is covered. We increase the amount of time that you can take off. Twelve weeks seems relatively generous in the U.S. today, but abroad it is 52 weeks, and so we expand it to that.

And you just see the program grow and grow over time to try and meet everybody's needs. But as they are doing that you also scoop in a lot of needs that weren't necessarily a need, but workers will take them because it is an entitlement. And we don't have the room right now to have another middle class, unfunded entitlement program in this country.

Mr. MURPHY. Thank you.

I follow that argument. And having dealt with entitlement programs just in my business all the time, most folks are very good stewards of them. But, unfortunately, we do have fraud, waste, and abuse on many sides of the stream.

Do you see anything in this particular effort that we can actually work to control these issues in the future? Because there will be people, just as you suggest, that said, "Hey, it is a free benefit. I am going to take advantage of it." And, unfortunately, those type of efforts hurt the people that they are meant to help.

Ms. GRESZLER. Yeah. It is really unfortunate, because Congress passed the FMLA with the intent to try and help workers who have serious health conditions and for them to be able to help their family workers. And in some instances, it is not all, but there are some out there where it has become a get-out-of-jail-free card.

You know, I was reading through some documentation. The Department of Labor had an opportunity for employers to submit comments, and I couldn't believe some of the cases where employees would get certified for FMLA for very minor conditions and then they just use it whenever they want to, if it is, "I am 5 minutes late to work and I don't want to be penalized for that," you know.

Some people have called it the Friday-Monday Leave Act, because it turns out that the most instances of family medical leave

are taken on Fridays, on Mondays, the Monday after the Super Bowl, the first day of hunting season, and surrounding holidays.

And so it is abuse. It is really unfortunate. And that weakens the program for other people who really need to use it.

And so there are extreme concerns, if we are going to broaden the definitions further so that virtually anybody can take a leave, because we all have somebody that is a close friend or family member that has some type of medical situation going on, it creates an out for workers who don't want to do their duties at their job, and then that creates a more difficult situation for employers to provide the flexibility they really want to for the workers who need it.

Mr. MURPHY. I would agree completely.

Thank you, Ms. Chairman. I will yield back my time.

CHAIRWOMAN ADAMS. Thank you.

I want to recognize the chair of the Committee on Education and Labor.

Mr. Scott, you are recognized 5 minutes, sir.

Mr. SCOTT. Thank you, Madam Chair.

Dr. Jacobs, you mentioned—several have mentioned that 44 percent of the public is not covered by family and medical leave right now, can't take it. Can you tell us what we need to do, what initiatives we should be looking at to increase the percentage of people covered?

Ms. JACOBS. So I think there are a number of different elements of policy design that you all could consider.

First, you could consider expanding the share of covered employees, so, for example, lowering the firm size requirements in order to cover a broader range of businesses.

You could expand the number of eligible employees by considering lowering the job tenure requirements in order to include a larger share of employees, such as those with short job tenure, fewer hours worked.

I will say that you could still have eligibility requirements that require a given level of labor force attachment. So this isn't just saying like you show up at work and it is your first time on the job, and guess what, the next day you get leave.

For example, like we do with Social Security, we can track people's employment and earnings over time. And it is not just tied to one employer, so you can have policies that are tied to labor force attachment and aren't just kind of a giveaway.

You could expand the definition of family, as we have talked about earlier, consider leave taking for a broader range of family relationships, so grandparents, siblings.

For example, the State of Oregon has a new policy that is about to go into effect, or they are working on it, that allows leave taking for any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. So getting at what Mr. Sandkamp discussed earlier, the kind of chosen family is incredibly important for certain populations.

And then lastly, you could think about expanding the definition of leave, what is eligible for leave. So one example we haven't talked about yet, victims of sexual stalking, sexual violence, domestic violence. If you have a medical reason for leave that stems from one of those then you may be covered.

But the idea of needing to go to court, to move your location, there are lots of things that stem from those situations that actually we could cover under FMLA.

We could also cover grieving for the loss of a loved one and organ donation as well.

So those are a number of dimensions that I think you have got a lot of space to move.

Mr. SCOTT. Thank you.

And you mentioned grandparents. Is that all grandparents or just custodial grandparents?

Ms. JACOBS. I think that is up to you. The numbers I mentioned are specifically for custodial grandparents, and half of them are working. But there are good reasons to think that, for example, a grandchild might be their closest kin to a grandparent who needs care right now. That working grandchild wouldn't be able to take care of their grandparent even if there was no one else available to do it.

And likewise, if you have a child who is not necessarily with the custodial grandparent, but the grandparent is the person best suited to provide care for that child, they have no right to FMLA-protected leave under the current law.

Mr. SCOTT. Thank you.

Representative Batch, you were talking about who could get access to FMLA and also how to pay for it. Why is it important to deal with these policies both at the same time?

Mrs. BATCH. I think it is because most people aren't able to do one without the other. A lot of the families—I was a family law attorney for the past 15 years. I see people at the worst time in their lives. And many of them are, frankly, at this point in time dividing a lot of debt. They are worried about how they are going to still stay in their homes and take care of their children.

And many workers just can't afford to take the time off even if it is guaranteed unless they have some wage replacement. So I think it is essential that we do both at the same time, because I had the luxury, as a small business owner, of taking that time off and knowing that my job was going to be protected, but I believe that every single worker in America deserves that same right.

Mr. SCOTT. Thank you.

Ms. Greszler, you mentioned the Friday-Monday Leave Act. Do you have studies that show the days? Could you provide us with the studies that show the days people actually take off, or is that anecdotal?

Ms. GRESZLER. I would refer you to some citations in my written testimony. I believe one was the Department of Labor statistics for employees were submitting things, and I can find it in there. But it was—some of it is anecdotal, but some of it can actually track—at least each individual employer can track how long and when that leave is taking place.

And one of those was a Massachusetts Bay Transportation Authority study that I cited, and I believe the rates of leave were at least 20 percent higher in the weeks when workers were scheduled, a holiday shift—or a weekend shift—and closer to 50 percent higher in the weeks that they were scheduled a holiday shift.

Mr. SCOTT. Thank you.

Thank you, Madam Chair.

CHAIRWOMAN ADAMS. Thank you.

Dr. Foxx, you are recognized for 5 minutes.

Ms. FOXX. Thank you, Madam Chairman.

I thank our witnesses for being here today.

Ms. Greszler, the bills we are discussing today substantially expand the categories of covered leave under the Family and Medical Leave Act, FMLA, distorting this carefully balanced law. This committee must carefully consider the additional burdens and practical compliance issues that these proposals place on employers and ultimately workers.

Ms. Greszler, can you expand upon the potential compliance and regulatory burdens that expanding the FMLA would place on employers?

Ms. GRESZLER. Yes. One of the examples I think of is my children's own daycare. And so this is a small business, they have about 10 teachers, 25 families there. If they have two workers that call out on 1 day for an FMLA reason and they didn't expect that, they have no way to replace them.

Even when they do know in advance, it is really hard because those positions are skilled. They have to have appropriate hours of training. They have to have licensing. They have to have background checks. They can't get anyone in the door.

And actually we had a situation once where two people couldn't come in on a Friday. We were told the daycare was closed for the entire next week because they didn't have those two people there. So you had 25 families that were scrambling to find childcare.

The more regulations we place, the more burdensome it is. And there is also the fact that if workers qualify under FMLA as opposed to just working a policy out with their employer, the employer is prohibited essentially from asking them to do any work.

My own personal experience is that I have benefitted from being able to do some work while I am on leave, at my own option, only what I want to do, but that has let me keep my foot in the door and it has helped my employer for things not to be as disruptive. And that is something that FMLA prohibits.

Ms. FOXX. Well, you note in your testimony that well-intentioned policies, like expanding the FMLA or implementing paid leave mandates, can have unintended consequences, as you are describing, especially for working women. So how have State-based leave mandates affected employment in those States? Should Congress expect different results in a one-size-fits-all Federal program?

Ms. GRESZLER. Yeah. I think we are all trying to help workers and especially women here because we understand that they tend to be the primary caregivers. And the unfortunate consequence of some of these policies has been in States like California and New Jersey, younger women who are of childbearing age end up having lower rates of employment, higher durations of unemployment.

And in a more recent study in California that used better IRS administrative data found that they had lower earnings and employment after using this.

And so I think that we actually can expect to have higher unintended consequences with a Federal policy because that would be

a bigger policy and it would cover more people. It would be better known.

Ms. FOXX. Thank you.

Ms. Greszler, a 2018 poll conducted by the Cato Institute asked workers to rank policies that best help balance work and family. Results indicate that workers value flexible work schedules and ability to work remotely or by telework, as you have indicated.

Though the FAMILY Act's prescriptive mandate provides workers with the workplace flexibility they value, what policies options should this committee consider that would better meet these preferences?

Ms. GRESZLER. I think the FAMILY Act would limit flexibility. As I mentioned before, it doesn't provide that option for workers to do some work while they are on leave. And there are better policies out there. There is the Working Families Flexibility Act that allows those lower-wage workers to accumulate paid time off.

An important thing also would be to clarify the definition of who is an employee. Contract workers, gig economy workers, independent workers, they have more flexibility and autonomy, and they are the people that are choosing these type of options. And yet, instead of taking those options away, we could clarify it so that they know that they can choose that, and they can schedule ahead their hours.

There are also some things that would just let people have more control over their options and freeing up resources as well. The Tax Cuts and Jobs Act, that ended up with more companies coming out with paid family leave policies.

Ms. FOXX. Well, you indicated a little while ago that FMLA could create problems where if you expand this tremendously, that there could be unintended consequences. Would you like to say a little more about what the consequences of leaving ill-defined legislative text open to interpretation?

Ms. GRESZLER. Yeah. I think the unintended consequences are that we don't help the people that we really want to, and we don't let employers have the discretion to be able to say, "I want to help you with this need."

Instead we have these one-size-fits-all policies, and the broader you make them the more people they encompass. And it won't happen everywhere, but it does happen at workplaces where you have 45 percent of workers who have an FMLA certification, and they have the option to take leave whenever they want it.

That is really unworkable for employers, and that is under the current definition. The more we expand it, the more workers out there who will have these certifications, is kind of a hall pass to just check in and out when they want to. That is not what policymakers intend for this to be.

Ms. FOXX. Thank you, Madam Chair. I yield back.

CHAIRWOMAN ADAMS. Thank you very much.

The gentlelady from Pennsylvania, Ms. Wild, you are recognized for 5 minutes.

Ms. WILD. Thank you, Madam Chair.

I have to say as a general statement to everybody here that flexible work schedules, telework, generous leave policies are wonderful. But what of the workers who don't happen to have those benev-

olent employers? That is where my real concern lies, and that is where I think most of our concerns should lie. In a country that touts the importance of family values, I am consistently amazed at how unfamily friendly our laws are.

I agree, Ms. Greszler, that it would be lovely if all employers were willing to work with their employees and afford them leave as needed, but we haven't seen that actually happen in the workplace for most workers. And we know that countries that have better family leave policies have lower infant and maternal mortality rates, better educational outcomes, and their citizens overall report higher levels of happiness.

I think there is a direct correlation when we really do act in a way that is family friendly, and it affords people the ability to take care of their family members, all of their family members, in addition to working.

You seem to have, Ms. Greszler, a very negative view of employees who use FMLA. You referred to a get-out-of-jail-free card, the Friday-Monday Leave Act.

I reject the notion that most employees who avail themselves of FMLA are acting in bad faith. Is it your opinion that most people who use FMLA are acting in bad faith?

Ms. GRESZLER. Absolutely not. And I tried to highlight the fact that this is not every instance. This is a narrow subset. But I think that you tend to get certain workplace environments where it becomes an entitlement, and people learn what they can do, and they use it in ways that were never intended.

Ms. WILD. So an easy way of putting it is that the few bad apples will ruin it for all, right?

Ms. GRESZLER. I think the few bad apples will make things difficult for employers, and they will prevent more flexible policies for the workers who otherwise want and need them.

Ms. WILD. Before I go any further, I want to ask unanimous consent to include the written testimony of Barry Kluger and Kelly Farley in support of the Parental Bereavement Act into the record, Madam Chair.

CHAIRWOMAN ADAMS. Without objection.
[The information follows:]

Statement Submitted by Barry Kluger of Scottsdale, Arizona and Kelly Farley of Aurora, Illinois
House Committee on Education and Labor: Subcommittee on Workforce Protections
Hearing on "Balancing Work, Health and Family: The Case for Expanding FMLA"
Rayburn House Office Building, Room 2175, Washington, DC
February 11, 2020

Our names are Barry Kluger and Kelly Farley, and we are grieving dads. As one way to deal with this grief, we joined forces in 2011 to create the Farley-Kluger Initiative to Amend the Family Medical Leave Act (FMLA), which has now been reintroduced again in both the House and Senate as the Sarah Grace-Farley-Kluger Act of 2019 (HR 983 and S 559).

As part of our effort to advance this bill, we have met and heard from tens of thousands of parents who had lost children and then had lost their jobs because they did not have time to grieve. They were either fired or their jobs were eliminated. We believe this is fundamentally wrong, and that the death of a child should be a qualifying condition for FMLA protection.

We share our individual stories below so that members of the subcommittee may understand what we and so many other parents have gone through when they lose a child. For the bill currently in committee to enable such leave is vital. It's too late for us to benefit, but inclusion of this bill in FMLA reform will help the countless other parents who will take this walk.

Barry Kluger's Story

On April 6, 2001, I began my day with a round of golf. While on the eleventh hole, I called home to check messages and received the news every parent dreads – my 18-year-old daughter, Erica, had been in a car accident and taken by ambulance to the emergency room.

Frantically, I called the hospital and when I asked how bad it was, they said: "pretty bad," not realizing that my only child had already been dead for seventeen minutes. In the days, weeks and months that followed, I experienced the depths of grief after the loss of my joyful, enthusiastic, caring and friendly daughter to such a tragic accident.

Now, nearly 20 years later, I still miss my daughter every single day. To channel my grief, I have done my best to start a grassroots movement that helps others such as me who have faced this tragedy. Through a group of grieving dads, I came to know Kelly Farley, who has joined me in this effort.

I have been heartened that, in the past year, there has been a movement in American business to grant certain familial leave, responding to the evolution in our society of companies responding to the basic needs of their employees. But at the end of the day, it's about employee/employer loyalty and compassion.

And here, we must address a simple lifecycle that affects workers and businesses: child loss. I'm talking about the Family Medical Leave Act, created in 1993 to grant up to 12 weeks of unpaid leave, if you have a child, adopt a child, care for a sick family member, service member or you, yourself are sick. But lose a child? Most American businesses, large and small give just 3-5 days leave. Imagine: 9 months to bear a child, 3 days to bury that child.

How is it that there can be no real bereavement leave? What about the school bus driver who buried a child 3 days earlier? Or the pilot who is back in the cockpit after 5 days. The anesthesiologist working in an operating room, days after their loss. The factory worker behind that electric powered blade who has been ordered back to his station. Their loss affects the rest of us. Our lives are in the hands of these people whose life is at its most fragile.

Since 2011, in consecutive sessions of Congress, the Sarah Grace-Farley-Kluger Act has been introduced in both chambers. I am quite familiar with it. Erica Kluger, my daughter, died and her name adorns the legislation.

The key concern with this bill is small business. Under FMLA, there are minimum limits on the number of employees, and we are talking about unpaid. We are talking about valuing employees whom businesses have invested in, both financially and emotionally. Yet when grief strikes, we eliminate their jobs or just plain out fire them and that, my friends, is just bad business.

The employee we pay \$50,000 gets fired for taking off too much time, we must rehire someone at \$60,000, not to mention retrain and increase benefits. The firing leads to a loss of morale among co-workers, not to mention the company itself. We ask: why work for a company that takes the most painful experience of a parent's life and punishes that employee? I am fond of the saying: The best assets of a company get on the elevator every day at 5 o'clock.

We'd like to believe companies do the right thing on their own, but that's not always the case. Loyalty is rare these days. Data from the Bureau of Labor Statistics states U.S. workers had average job tenure of 4.6 years in 2016, the last year for which figures are available. These figures represent concern in the job market and companies' realization they need to do better to keep workers.

No one wants more government and you can't legislate morality, but obviously, there is a growing movement to at least make the FMLA fair and equitable and put value on the backbone of America's success — people who work.

I am a member of a club that has no dues and no membership card, yet the stakes are very high to join. And I can't bring back my daughter Erica. It's too late for me, but if we can ease the burden for those who may face this tragedy, then we can "repair the world." In Hebrew, it's called "Tikkun Olam." And if not now, when?

Kelly Farley's Story

My name is Kelly Farley and I am a grieving dad to two beautiful babies. I lost my daughter Katie in November of 2004 and my son Noah in June 2006. Those two days will forever be etched into my memory. The death of my only two children has shaped me into a different person than I was prior to their deaths.

The naivete I held throughout my life was quickly taken away and replaced with a brokenness after Katie and Noah's deaths. A brokenness that cannot be described or understood unless you too have had to bury a child. It's a pain that goes to the core of your being and stays there until you have the courage to face it head on.

I personally wasn't equipped to deal with the pain and I certainly didn't have the courage, at that time, to deal with it. I was facing an adversary I knew nothing about. What I did know was that I couldn't control the emotional pain I was facing. It was almost impossible for me to get up every day like nothing had happened and to get back to work after three days of bereavement leave my employer offered to their employees.

After the loss of Katie, I went back to work right away because that is what I thought was expected of me as a dad. I didn't show any emotion on the outside, but on the inside, I was screaming in pain. I should have taken a few weeks of vacation time to start processing the impact I had been dealt, but I didn't. Instead, I tried to run from the pain by not addressing it or seeking help. Looking back, I can say it is one of the biggest mistakes I have made in my life. To this day, I have no idea of the psychological damage that has been done because of my unwillingness to ask for help.

About 18 months later, we lost our son Noah. This time, I didn't return to work right away. I decided I was going to take time to process and figure out what had been dealt to me and my wife. Fortunately, my wife and I both took three months off work. We didn't ask our employers if it was okay, we just did it and knew that we would figure it out later if we were both fired. The pain was so excruciating we really didn't have a choice. Our employers were very understanding and stood by us during this time, we were lucky.

The three months helped my wife and I to start the grieving process without a lot of pressure. We spent our time trying to survive the best way we knew how to, together. I learned during that time that I personally needed help and had the time to seek professional counseling and attend support groups. I learned it was important for me as a grieving dad to surrender to the process. To learn to be transparent and vulnerable with the pain that had stored up inside. I believe this time away saved me from a complete emotional breakdown.

What I learned during that time away and the months and years that followed, empowered me to be a leader and advocate for bereaved parents. One of my biggest accomplishments was starting the Grieving Dads Project that eventually evolved into one of the most honest and powerful books about grieving dads and the aftermath of burying a child.

My work has drawn national attention by many large media outlets, but more importantly, I have heard from thousands of grieving dads around the world that have found me while searching for insight into their pain. One of those dads is my dear friend Barry Kluger who had found my blog in 2011.

During our discussions, Barry and I decided that we could do more to help other bereaved parents. One of the topics we discussed was the difficulty of losing a child and the pressure to get back to work 3 to 5 days afterwards. It was at the time we developed the framework of our mission to amend the Family Medical Leave Act of 1993 to include the death of a child. Although we have had success of getting this proposed legislation introduced in every congress since 2011, it has unfortunately not made its way out of the respected committees that it has sat in.

The question is, why? Is it too much to ask for 12 weeks of unpaid time off after the death of a child? It is not mandatory for the parents to take the time, it's just time set aside in case a parent needs it. Some parents will take it, and some will not, but at least it provides an option for the parents on days that they just cannot seem to function. I hope that you agree and will take action to move this bill in the US House of Representatives. Thank you for your consideration.

Ms. WILD. Thank you. I just didn't want to forget to do that.

Ms. Greszler, your written testimony says, and I quote, "I also believe that flexibility should be an earned privilege, not a universal right."

My question to you is, is the message to a really good worker that has been with a company of, say, only 15 employees for a decade, who finds himself or herself in desperate need of accommodation to take care of a family member who is ill or of his or her own health needs, that they haven't earned the coverage or flexibility that FMLA affords to other workers who might happen to work for an employer with 50 or more employees?

Ms. GRESZLER. By saying that I think that workers should be able to earn that flexibility, what I mean is that it should be at the discretion of the employer. There are some positions and there are also some workers who are more conducive to being able to work remotely or to have more flexible hours, and it needs to be at the discretion of that employer to be able to determine that.

When you have small family businesses, it is difficult to have a one-size-fits-all policy because that doesn't actually meet everybody's needs. When you can have more flexible and accommodative policies is when you can meet all those needs.

Ms. WILD. But we know that not every employer will act in good faith. Isn't that true?

Ms. GRESZLER. Yes.

Ms. WILD. And we know that not every employer will act in the best interests of their employees. And sometimes it is necessary to impose broader rules, broader regulations to make sure that employees are treated fairly. Fair enough?

Ms. GRESZLER. I agree. But I think it is a really hard thing to legislate intentions and to legislate employers to have good hearts.

The alternative is for us to encourage them to do the right thing. But you can't force people to do something. The best thing is for workers to have options and opportunities so that if they are in that bad situation, they have another job to go to and they have a higher ladder that they can climb up.

Ms. WILD. Let me just stop you there because my time is running out. Let me just suggest to you that a really hard thing is when somebody has just suffered the loss of a child, or somebody has a very sick child and isn't able to take time off from work because they work perhaps for an employer who has 15 employees or not 50 or more.

That, I would submit to you, is a really difficult thing, much more difficult than the employer who might have to accommodate an employee who is in need of FMLA.

With that, I yield back.

CHAIRWOMAN ADAMS. Thank you very much.

Mr. Takano, you are recognized 5 minutes, sir.

Mr. TAKANO. Thank you, Chairwoman Adams, for this very important hearing on the need to enhance protections under the Family and Medical Leave Act, otherwise known as FMLA.

We need to ensure that the conversation about paid family leave includes robust wage replacement, expanded protections to allow more workers to qualify, and more importantly, an assurance of job protection without penalty if someone decides to take leave.

According to a December 2019 report by Pew that looked at 41 countries, the United States was the only country that did not have a Federal paid family leave program. Countries like Japan, Norway, and Austria all offer over 1 year of paid family leave for their workers.

Why has the United States, a global leader, been so slow to follow in their footsteps?

Dr. Jacobs, I understand that there are different variations on paid family proposals across the United States at the State level and in underdeveloped countries. What are the components of the

European models that allows those countries to have thriving economies and guaranteed job security for their workers?

Ms. JACOBS. So I should start by saying that I am not an expert on the international policies, but I can say a little bit about the components of the policies that I know of that have been borrowed by the States and that we see working here in the U.S. and that in turn kind of add up to the backbone of what the FAMILY Act is, the act here.

Mr. TAKANO. Sure.

Ms. JACOBS. So why don't I start by just describing the FAMILY Act, which is very similar in some ways to what we have in the States. It is an earned benefit. It would provide 66 percent wage replacement to individuals who would be able to earn that over time.

It would provide up to 12 weeks of 66 percent wage replacement for their own serious health condition, including pregnancy and childbirth recovery, so maternity leave, as well as paternity leave, as well as leave for the serious health condition of a child, a parent, a spouse, a domestic partner, the birth or adoption of a child, and for particular military caregiving and leave purposes.

It would cover workers in all companies. This is similar to what many European countries have done as well, by having a social insurance program, that means that it is funded by a very small payroll contribution from employees and employers. It means that it travels with the worker, so it doesn't actually matter what company you are with.

You, as an individual, who has been working, earns this benefit. And when you need leave, if it is for the happy event of the birth of a child or for the very sad event of having to take care of a dying parent and everything in between, that earned benefit is there for you.

And then finally, like many European countries that have done this in the past, much like our Social Security system, it would be administered by a new Office of Paid Family and Medical Leave. And so we would take advantage of some existing Federal systems and not have to reinvent the wheel, which is something that States are having to do as they try and borrow pieces of this model and have really shown us that it works.

We have seven States-plus who are trying to do that on their own rather than replicating it over and over and over again in each State and creating this patchwork that workers and employers have to navigate. We have the potential to do it at the Federal level and really simplify things and add some more dynamism to the workforce that we risk kind of squashing if we keep on doing it the way we have been going.

Mr. TAKANO. Well, thank you very much for that very thorough answer.

Mr. Sandkamp, there has been a bit of discussion about the loss of flexibility for employees and employers if we adopt a Federal paid leave program. As a small business owner, have your employees experienced any loss in flexibility?

Mr. SANDKAMP. Thank you for the question. Meaning a loss in flexibility on my employees' behalf?

Mr. TAKANO. Yes.

Mr. SANDKAMP. I am not seeing that, no. In New Jersey we have had a Family Leave Act in place for about 10 years, and it has been all positive. My employees love it.

Last year the deduction was about \$34. So while some people claim it to be something that is going to blow up and become something really unsustainable or be a Social Security type deduction, \$34 is not that for the year. It is less than a cup of coffee every 2 weeks.

Mr. TAKANO. Well, did you experience high turnover rates when the law went into effect and you started offering paid leave?

Mr. SANDKAMP. I am sorry?

Mr. TAKANO. Did you experience high turnover rates when the law went into effect and you started offering paid leave?

Mr. SANDKAMP. Right. I had more turnover prior when the law went into effect. Now I retain employees, and it has been net positive. I am able to have a benefit that an employee can feel less anxiety about what is going to happen when they have a problem in their family, and they can feel like that benefit is there for them. And being a small employer of less than 10 employees, I don't get cherry picked by a large company that might come in and offer those benefits that I don't have the money to afford.

Mr. TAKANO. So I have run out of time. If you could just tell the committee for the record if the New Jersey law has had any impact on your ability to remain competitive in your industry.

But my time has run out. I have to yield back. Thank you.

Ms. JACOBS. Would it be possible for me to add a few things? I have a couple points that are directly relevant.

Ms. WILD. [Presiding.] We need to move on to the next question.

The chair recognizes Mr. Schneider from Illinois.

Mr. SCHNEIDER. First, let me say thank you, and then I am going to come back to you, Dr. Jacobs.

But I want to thank the chairwoman for having this committee. I want to thank the witnesses for being here and sharing your perspectives. And importantly, I want to thank the subcommittee for allowing me to join you. This is not my traditional committee.

Dr. Jacobs, you had a couple points you wanted to make real quickly.

Ms. JACOBS. I just thought I would add, because we have heard some anecdotes and we have very compelling information from Mr. Sandkamp about the consequences for a business, but we also do have some representative surveys and published research on the consequences of the paid leave programs in Rhode Island and in California on business. So I just thought it would be useful to have some of those statistics.

Mr. SCHNEIDER. Do you want to share those? I will submit them for the record.

Ms. JACOBS. Okay. Yeah, they are in my written testimony as well.

Mr. SCHNEIDER. And, Mr. Sandkamp, again, real briefly, I am going to follow up on what my colleague, Mr. Takano, was talking about.

How has your culture changed since the new law has been in place? You talked about your turnover is down, which would be a reflection. How has it changed?

Mr. SANDKAMP. Well, I find that if an employee thinks that I have their—I am doing something for them that is helping them, they are going to also want to have that same kind of feeling about my business.

Mr. SCHNEIDER. And you haven't had a sense of, "oh, boy, they now can take advantage of you"? I am going to guess it is a culture of we are in this together and we are going to make sure we back each other up but help each other succeed.

Mr. SANDKAMP. Yeah, and especially in a small business, less than 10 employees, you get to know each other very well. And I think that my employees tend to have more care for my business because they feel that same thing coming from me.

Mr. SCHNEIDER. And my experience was similar, that is why I asked that.

But I want to expand on that because the emphasis is that offering paid leave is a smart business decision. It reduces employee turnover and increases employee retention. I think it can change the culture of a company, as has been laid out.

Now, I introduced legislation that would provide this much needed protected leave to workers following every parent's worst nightmare, the death of a child. My colleague, Ms. Wild, had introduced that. The Sarah Grace-Farley-Kluger Act is named after the brave families who lost children and have been tireless advocates for this cause, and their experience illustrates how critically important it is for parents to have protected leave after losing a child.

Barry Kluger, who lost his daughter Erica in 2001, says in his testimony submitted for the record: New parents are given 12 weeks of unpaid leave under FMLA, but most employers only give their workers 3 or 5 days, up to 5 days to grieve. Imagine receiving the most Earth-shattering news, having to bury your child, and then returning to work only a few days later, and that is for those lucky enough to work for employers who provide even that minimal leave.

According to the National Academy of Sciences, the death of a child is one of the greatest and often most enduring stresses a parent can experience. No parent should see their child be lowered into the ground.

Kelly Farley's experience speaks to how vitally important this protected time is for grieving families. He and his wife lost both his daughter and their son in the course of 2 years. When his daughter Katie died, he dove right back into his work. He said, and I quote, "I thought that was expected of me as a dad, but on the inside, I was screaming in pain."

To this day, Kelly describes the decision to go right back to work as one of the biggest mistakes of his life. Eighteen months later, Kelly lost his son Noah. This time he and his wife took off 3 months to start the grieving process. Having time allowed them to begin to heal and to get the support they needed. Kelly says it literally saved the couple from a complete emotional breakdown.

Kelly and his wife were fortunate enough to have employers who were understanding, but it is not the case for every one of the estimated 20 million parents who have lost a child. By age 60, nearly 10 percent of parents have experienced the death of a child.

Illinois, my State, is one of two States that has passed protected work leave for grieving parents. My bill would allow workers nationally to take up to 12 weeks of protected leave.

I appreciate our witnesses for highlighting the incredibly important reasons why we need national paid leave. Research shows—and stories like Barry and Kelly’s demonstrate—how important it is to include bereavement within FMLA.

Dr. Jacobs, in your testimony, you also touched on the big impact leave has on the health and well-being of new mothers and fathers. With the few seconds we have left, could you expand on how Federal leave laws provide leave circumstances, like bereavement in the case we have talked about, how the Federal laws don’t have that for critical health and well-being of working families?

Ms. JACOBS. So I can’t speak specifically to the impact of bereavement leave on health outcomes for families. I can say, as a mother of two children, the idea of having to go back to work immediately after losing a child is breathtaking, and so I can only imagine.

A few things that I can say based on the data, first of all, we know there are demographic differences in terms of child mortality, so minority families are much more likely to experience the loss of a child. So I will say that, that there is a demographic dimension to this as well.

And the second thing I will say is that we know that the opioid crisis has expanded the range of the kinds of families who are losing children. This isn’t just about young children. It is also about parents losing older adult children. And so I think when we think about bereavement and who this impacts and the ripple effects it is having on the labor market, that it is important to actually take a step back and think bigger, and I am very happy to have mentioned that.

Mr. SCHNEIDER. I am going to steal 2 more seconds. I spoke to a constituent yesterday about other issues, which she shared, that she is raising her 9-year-old grandson because her 28-year-old son died of opioid overdose and the child’s mother died a year after that. So this is something we are seeing across the country and it does not discriminate.

Thank you. I yield back.

CHAIRWOMAN ADAMS. [Presiding.] Thank you very much.

Ms. Porter from California, 5 minutes, ma’am.

Ms. PORTER. Thank you very much to the committee for allowing me to join here today. This is also not my usual committee. But I am the first single mother of young children to ever serve in the United States Congress and paid family leave and paid medical leave made it possible for me to stay in my career, and so this is something I care a great deal about.

Dr. Jacobs, the FMLA has a provision often referred to as the marriage penalty. Could you explain this provision and how it works?

Ms. JACOBS. Yes. So the marriage penalty is a stipulation in the FMLA that if you have two partners, spouses who work for the same employer, they can’t both take their 12 weeks of FMLA-protected leave assuming they work for a covered employer and they

are eligible. They have to decide that either one parent will take that or one of the workers will take it or that they will split it.

So compared to another working family where you have a couple where one works for one employer, one works for another employer, if they are both covered and eligible, they would have a total of 24 weeks of leave, which if you can imagine for the birth of a child, for taking care of an aging parent or an in-law, it is really useful to have that time. Many of these conditions really do require more than 12 weeks. But if you happen to be with a partner who works for your same employer, that marriage penalty means that protection isn't available to you.

Ms. PORTER. And is it also correct that if an unmarried couple were to be expecting a baby, they could each claim 12 weeks, but if they were a married couple, they would be unable to do so, hence, this is a penalty for couples that give birth while married?

Ms. JACOBS. That is correct.

Ms. PORTER. Okay. And is there any research on when you have this situation where the couple must split, divide the 12 weeks between the two of them? Let's say it is a man and a woman couple. Is there any evidence on how that divides along gender lines if it is a heterosexual man-woman couple?

Ms. JACOBS. The evidence suggests that because women are typically paid less than men, not always, obviously, but on average that is what happens in a couple, and if a household is making an economic calculation based on a household budget and you have to choose who is going to take the leave, it often ends up being the economically rational—and putting that in scare quotes because we all know that rational varies a lot depending on your situation—but from a household budget perspective, it ends up making the most sense for the woman to be the one who takes the leave.

Which in turn perpetuates exactly the gender wage gap, because you have a woman who, in many cases, is out of the labor force. If it is not a paid leave, if it is not a job-protected leave, she may stay out of the labor force. And in turn, when she is ready to come back, she may actually earn less.

Ms. PORTER. Yeah. And then that is on top of the physical effects of giving birth, as well as the responsibilities of breast-feeding and nursing in the workplace, which is a challenge for many women that men don't face after they give birth.

In November, I introduced the bipartisan FAIR Leave Act. It is H.R. 5075. It would eliminate this marriage penalty so that married couples would not have to split their leave and choose, which often means that the woman is the one taking the leave, rather than a balanced approach. With the FAIR Act each parent would get 12 weeks of FMLA leave, regardless of whether they work for the same employer or a different employer.

So, Representative Batch, I know you took time off. Would the ability to have had to choose affected your ability—if you had to share your unpaid leave, how would that have affected your ability to recover from cancer treatment?

Mrs. BATCH. Absolutely. Actually, so my husband is my law partner, and so this actually does affect us directly. And so he went back to work after the births of both of my sons and then also right after both of my surgeries and through my radiation treatment be-

cause he didn't have the ability to just be able to take off when I was home. And so that actually directly affects me.

If we had paid leave, and especially being a small business owner, then we would have been able to actually balance our budget better and he would have been able to bond with our children instead of returning to work immediately.

And so I think it is absolutely essential. And I think that your bill is definitely one that everyone should support because you shouldn't be penalized for simply being married.

Ms. PORTER. With my remaining time, I just wanted to ask Ms. Greszler, I am struggling to understand your testimony on page 5 that you have made reference to. You are making claims of data that you are saying shows the misuse of FMLA leave, and you are citing the study particularly of the MBTA.

But all that study really shows is that women took more FMLA leave than men and therefore there is a gender pay gap. But wouldn't we expect, given the nature and the historical structural barriers, that we would expect women to take more leave than men? How is that evidence of misuse?

Ms. GRESZLER. Yeah. The fact that women took more leave is what contributed to the wage gap.

The evidence of the misuse happened when you looked at—well, first of all, they hired a company to come in and to try and more appropriately regulate the FMLA and make sure it was properly certified and properly used, and you saw their certifications drop from 45 percent of workers to 27 percent of workers.

And then you also saw the period, amount of leave that was taken, drop by 27 and 28 percent for men and women. And there were also statistics there looking at just the differences in leave taken if it is a holiday week or a weekend week, and you see spikes, both men and women, if it is a Monday/Friday surrounding a weekend and if it is a week that they were assigned a holiday shift.

Ms. PORTER. My time is expired, but that seems utterly consistent to me with needing to cover medical care and child care when I am assigned to an unusual shift.

CHAIRWOMAN ADAMS. Thank you very much. Thank you to all of the witnesses.

I want to remind my colleagues that pursuant to committee practice materials for submission to the hearing record must be submitted to the Committee Clerk within 14 days following the last day of the hearing, preferably in Microsoft Word format. The materials submitted must address the subject matter of the hearing. Only a Member of the committee or an invited witness may submit materials for inclusion in the hearing record.

Documents are limited to 50 pages. Documents longer than 50 pages will be incorporated into the record via an internet link that you must provide to the Committee Clerk within the required timeframe. But please recognize that years from now that link may no longer work.

Again, I want to thank all of the witnesses for their participation today. What we have heard is very valuable. Members of the committee may have some additional questions for you, and we ask the witnesses to please respond to those questions in writing. The

hearing record will be held open for 14 days in order to receive those responses.

I remind my colleagues that pursuant to committee practice, witness questions for the hearing record must be submitted to the Majority Committee Staff or Committee Clerk within 7 days. The questions submitted must address the subject matter of the hearing.

I now recognize the distinguished Ranking Member for his closing statement.

Mr. CLINE. Madam Chair, I just want to echo your comments and thank the witnesses for being here. And I agree with you that it was a very interesting hearing on an important issue.

I yield back.

CHAIRWOMAN ADAMS. Thank you.

I am going to recognize myself for the purpose of making my closing statement.

Thank you again to the witnesses for sharing your experiences and expertise with us. We heard compelling testimony on the need for Congress to build upon the successes of the Family and Medical Leave Act to ensure that workers have the right to take job-protected time off to care for themselves and their families.

We also heard compelling testimony on the imperative for a national comprehensive job-protected paid family and medical leave program. And we must update the Family and Medical Leave Act to not only provide FMLA eligibility for all workers, but also to expand the permissible reasons for which workers can take job-protected leave.

At the same time, Congress must pass the FAMILY Act so that workers do not have to risk their financial security in order to care for themselves and their families. If we work together to achieve these combined efforts, we can improve the health of families and children, we can improve employee retention for our Nation's businesses, and we can put millions of dollars of income back into the economy, into workers' pockets.

More importantly, though, we can ensure that all Americans have the right to sustain their livelihoods while giving themselves and their loved ones the care that they need to thrive.

I ask unanimous consent to enter into the record a letter from the National Partnership for Women and Families, whose advocacy was critical in passing the FMLA. And without objection, so ordered.

[The information follows:]



February 11, 2020

The Honorable Alma Adams
 Chair
 Committee on Education & Labor
 Subcommittee on Workforce Protections
 United States House of Representatives

The Honorable Bradley Byrne
 Ranking Member
 Committee on Education & Labor
 Subcommittee on Workforce Protections
 United States House of Representatives

Dear Chairwoman Adams and Ranking Member Byrne,

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy organization based in Washington, D.C. Our mission is to improve the lives of women and families by achieving equality for all women. We promote fairness in the workplace, reproductive health and rights, access to quality, affordable health care, and policies that help all people meet the dual demands of their jobs and families. We work toward creating a society that is free, fair and just, where nobody has to experience discrimination, all workplaces are family friendly, and every family has access to quality, affordable health care and real economic security.

The National Partnership has been working to solve the paid leave crisis for decades. Since our founding in 1971 as the Women's Legal Defense Fund, the National Partnership has fought for every major federal policy advance that has helped women and families, including our leadership in passing the nation's unpaid leave law, the Family and Medical Leave Act (FMLA) of 1993. Today, we convene the National Work and Family Coalition, which includes hundreds of organizations nationwide working to advance national paid leave and other policies to create a more family friendly and equitable economy and country. We are also a founding member of the Paid Leave For All Campaign, a coordinated effort by a diverse set of organizations fighting for a universal, comprehensive national paid family and medical leave program.

THE HISTORY OF THE FMLA

When the demands of a job are in conflict with the needs of a family, too often the result has been harm and inequity for women and families: women pushed out of the labor market and deprived of economic power; workers of color denied an equal ability to care for their health, their children and other loved ones; low-income families thrown into poverty after a health crisis and a lost job. Workers, activists, policy experts and political leaders in the women's, civil rights and labor movements recognized the conflict between family and work is unsustainable and fought for much of the 20th century for a national law to address this problem.

The National Partnership led a diverse coalition of organizations – representing the women’s movement and labor, older adults and children, faith groups, people with disabilities and more – to fight for and win the FMLA. Our goal was to win paid comprehensive family and medical leave. A unique opportunity was found in 1984 when a California state maternity leave law was struck down on the basis of sex discrimination. The need for a national leave law that would meet the needs of families, and the Constitution, was clear.

Because its history is rooted in efforts to end discrimination, from its earliest iterations, the United States’ national leave law marked an innovative departure from the maternity leave programs more common in Europe. The FMLA was designed as an inclusive, gender-neutral law that would not only pass legal muster, but also address gender bias. If women were not the only ones taking leave to care for children and other family members, employers could not use caregiving and leave-taking as an excuse for inequitable hiring or promotion practices. As the proposal developed, its comprehensive design, incorporating medical and family caregiving leave as well as parental leave, came to reflect the needs of the broad-based coalition that would push for its passage.¹

When the FMLA became law in 1993, it marked a key moment in the evolution of family, work, and health policy in the United States. At that time, paid leave was a bridge too far, but the compromise was important to give families time and job protection.² But 27 years later, that time has passed and its limitations are clear: a lack of pay makes FMLA leave unaffordable for many workers, stringent eligibility rules mean about 40 percent of the workforce is not covered, and an outdated definition of family leaves too many families unable to care for the loved ones who need it most. We always knew the FMLA was the first step, and 27 years later, the next step towards paid, universal, comprehensive leave is long overdue.

THE FMLA

The FMLA Has Helped Millions

In the 27 years since the it was signed into law, the FMLA has been used nearly 280 million times to help working people meet their health and family caregiving needs. For eligible workers, the FMLA provides up to 12 weeks of job-protected leave to address one’s own serious medical condition, bond with a newborn, newly adopted or foster child, care for a spouse, parent or child with a serious health condition, or address needs related to a family member’s deployment, and up to 26 weeks to care for a seriously ill or injured service member or veteran.

When a worker takes leave under the FMLA, their employer must continue paying the employer share of any health insurance provided, and the worker has the right to be reinstated to the same or a similar position upon their return to work. Importantly, the FMLA ensures workers who experience violations of their rights under the law can request help from the Department of Labor or seek remedies through the courts.

The FMLA covers employers with 50 or more employees within a 75-mile radius, and to be eligible, an employee must have been employed for at least one year and have worked at

least 1,250 hours in the past year. About 60 percent of the workforce is covered by and eligible for FMLA leave.

FMLA helps about 1 in 6 workers each year. Overall, just under 16 percent of workers who are covered and eligible for FMLA took some leave in the past year. A slightly higher share of women (just under 18 percent) than men (just over 14 percent) took leave, and just 15 percent of workers paid less than \$35,000 per year took leave, compared to 17 percent of workers at higher income levels.³ As discussed later, making sure that leave is adequately paid is critical to support gender equity and to guarantee that leave is accessible to the lowest-income workers.

Workers use leave for the range of FMLA purposes. The majority of FMLA leaves (55 percent) are taken for a worker's own health condition. Twenty-one percent are for parental leave, including adoption and foster care, 18 percent for family caregiving and about 2 percent for military exigencies.⁴ Among workers who take FMLA for personal medical needs, nearly half (46 percent) are addressing a one-time health matter such as acute illness; one-quarter (25 percent) an ongoing health condition, such as multiple sclerosis; and about one-sixth (13 percent) for routine scheduled care for an illness or injury, such as physical therapy.⁵ Similarly, family caregiving leave is most commonly for a one-time matter, followed by an ongoing condition and routine scheduled care.⁶ Just over one-third (35 percent) of family caregiving leaves are taken to care for a worker's parent and more than one-quarter for a child (28 percent) or spouse (26 percent).⁷

Leaves are typically modest in length. The duration of a person's leave generally depends on a health provider's recommendation and is based on the health condition being treated. The average length of an FMLA leave is just over five weeks; more than 40 percent are 10 days (two weeks) or less, and another 35 percent are between 11 and 40 days (eight weeks).⁸ Close to one-quarter of FMLA leave-takers (24 percent) – representing 3 percent of workers – have taken leave on an intermittent basis in the past year.⁹

Employers have adapted well. Most covered worksites (64 percent) use a computer system, designated human resources staff or both to administer FMLA, and most (83 percent) process FMLA leave claims internally, rather than outsourcing to another firm.¹⁰ The majority of worksites report that complying with FMLA is somewhat or very easy (66 percent) or had no noticeable effect (28 percent); just 6 percent reported it was somewhat difficult, and less than 1 percent very difficult.¹¹ Fewer than 3 percent of worksites reported even suspecting misuse of FMLA, and just 1.6 percent confirmed any misuse.¹²

THE FMLA MUST BE PAID

The Lack of Paid Leave Hurts America

No one should have to risk their job or face financial ruin when they need to welcome a new child, care for a seriously ill or injured family member or address their own major health condition. These are needs that nearly every working person will face at some point in their lives. Yet more than 110 million workers – 81 percent of the workforce – do not have paid family leave through an employer. More than 80 million do not have access to personal medical leave through an employer's short-term disability insurance program. Only 60

percent of the workforce has access to job-protected leave under the FMLA,¹³ and less than 40 percent are both eligible and can afford to take unpaid leave.¹⁴ The paid leave crisis has far-reaching impacts: families' health and economic security suffers, businesses lose valued employees, economic growth is reduced, and progress toward gender and racial equity stalls.

Solving the paid leave crisis should be at the top of the agenda for all members of Congress. Across the country, voters and lawmakers not only agree that the time has come for paid leave – they have been taking action. Nine states including the District of Columbia have enacted paid leave programs. Governors and state legislatures across the country – Virginia, Indiana, Tennessee, Missouri, Idaho – have enacted paid leave for state employees, and dozens of city and county governments have done the same. Last year, lawmakers on both sides of the aisle came together to pass paid parental leave for federal employees, putting families first.

It is past time for the United States to pass the FAMILY Act, an inclusive, comprehensive, common sense national paid family and medical leave program.

Families and Businesses Face High Costs and Impossible Choices

Without a comprehensive, inclusive national paid leave program, working families are faced with impossible choices between jobs and care. The consequences are expensive for families, businesses and the economy. Two-thirds of voters (66 percent) say they would face serious financial hardship if they had to take up to a few months of unpaid leave,¹⁵ and racial wage and wealth gaps mean families of color are even less able to weather the effects of an income shock.¹⁶ Families lose an estimated \$22.5 billion in wages each year due to inadequate or no paid leave.¹⁷ For women, who continue to do the majority of unpaid caregiving in most families, lack of paid leave often means being held back from fully participating in the workforce, costing the national economy an estimated \$500 billion dollars each year.¹⁸ Employers bear high costs of turnover, ranging between 16 percent and more than 200 percent of a worker's annual wages, when people leave their jobs¹⁹ – as more than one-quarter of those who take a leave without pay do.²⁰

But dollar amounts alone cannot fully capture the costs of America's paid leave crisis. An unmet and growing need for family caregivers for older adults increases stress on families and the health care system.²¹ Older adults in the workforce, who are more likely to develop serious or chronic health conditions,²² face heightened risks of being pushed out of the workforce without paid medical leave. When parents don't have paid leave, infants are less likely to attend well-child visits or receive on-time vaccinations.²³ Mothers return to work too quickly after giving birth,²⁴ harming their physical and mental health,²⁵ and parents of all genders lack time to form nurturing bonds with their children, which is critical for child development.²⁶

These costs are not felt equally. Access to paid leave varies dramatically by job type and wage level, which perpetuates disparities and means the working people least likely to be able to afford to take unpaid time away from their jobs are also least likely to have access to paid leave.²⁷ In one study, nearly 60 percent of low-income fathers reported taking no paid time away from work after the birth or adoption of a child.²⁸ Less than half (45 percent) of LGBTQ workers say their employer has inclusive leave policies, and often face

discrimination or other challenges related to gender identity, family status or health status.²⁹ People with disabilities are twice as likely as people without disabilities to hold part-time jobs, which typically lack paid leave and other benefits, and 4 in 5 lack any “rainy day fund” to help cover expenses during an unpaid leave.³⁰

Women of color, whose health and economic well-being are undermined by the combined effects of racism and sexism, are acutely harmed by the paid leave crisis. About 2 in 5 Latinas and Asian American Pacific Islander women and about 1 in 4 Native American and Black women say family caregiving has had a negative impact on their ability to keep a job or advance at work just in the past two years.³¹ Due in part to job segregation and wage discrimination, Latinas, Native American/Alaska Native women and Black women are disproportionately likely not to be covered by the Family and Medical Leave Act or to be unable to afford a period of unpaid leave without financial distress.³² The consequences for the health and well-being of women of color and their families, and for their ability to achieve financial stability and build wealth, are severe.³³

The FAMILY Act: A Common Sense Solution Based on Successful State Models

The Family and Medical Insurance Leave (FAMILY) Act (H.R. 1185) is a comprehensive, inclusive and common sense plan to update the FMLA by ensuring nearly all working people can take paid time away from their jobs to care for themselves or a loved one.

The FAMILY Act is modeled on successful state programs. Nine states including the District of Columbia have passed comprehensive paid family and medical leave programs, five of which have been fully implemented. These state programs have provided more than 13 million paid leaves since 2004, when California became the first state to implement paid family leave, building on its longstanding temporary disability insurance program.³⁴ All programs have remained financially sound and affordable, even for workers with the lowest wages. A large and growing body of evidence from these tried and tested models shows that paid leave programs help working people meet their caregiving needs, with clear benefits to families’ health and economic security, small and large businesses and state economies.

Based on these models, the FAMILY Act would establish a national paid family and medical leave fund, financed through small payroll contributions shared equally by employees and employers, that would replace a share of a worker’s usual income for up to 12 weeks when they needed to address their own serious health condition, care for a family member with a serious health condition, bond with a newborn, newly adopted or foster child, care for a seriously ill or injured servicemember or address needs related to active duty.

States’ Paid Leave Programs Improve Public Health, Strengthen Families and Benefit Small and Large Businesses

A large and growing body of research on state paid leave programs has documented how paid leave improves health outcomes and helps working people be economically secure. For young children, paid leave provides time to establish a strong bond with parents during the first months of life, with significant benefits to early childhood health and development.³⁵ Families of new children are less likely to need SNAP or other public programs after a child’s birth,³⁶ women’s wages increase,³⁷ and single mothers are less likely to be in

poverty.³⁸ For opposite-sex couples, when both parents can take paid leave for a new child, it improves fathers' involvement in care³⁹ and mothers' physical and mental health.⁴⁰ Paid leave has even been shown to improve the labor force participation of family caregivers⁴¹ and reduce nursing home utilization.⁴²

Small and large employers have adapted well to state programs, and many report improvements to productivity, morale and turnover. Analyses of California's law have documented that the average firm experienced reduced turnover and no increase in wage costs, and an even larger share of small employers report positive or neutral outcomes than large employers.⁴³ Regardless of size, New Jersey businesses say they have had little trouble adjusting to the state's law.⁴⁴ In Rhode Island, a majority of small- and medium-sized employers were in favor of the program one year after it took effect.⁴⁵ The majority of small business owners support the creation of a national paid family and medical leave insurance program.⁴⁶

All programs are financially sound and self-sustaining. State paid leave programs are serving working people across the income spectrum: our own analysis of state program claims in Rhode Island and New Jersey found that the majority of claims are made by individuals earning \$50,000 per year or below. Program use has also become more gender-equal over time, and early data suggests improvements to public outreach and program design, such as a higher wage replacement rate in California, have improved utilization.⁴⁷ Early adopter states – California, New Jersey, Rhode Island and New York – each have enacted or are exploring ways to make them even more accessible to people who need family leave, including higher and more progressive wage replacement rates, more inclusive definitions of "family" for family caregiving, improved provisions for job protection, and greater funding for public outreach and education, including for small employers.

Voters are ready for a change. Eight in 10 voters – including 94 percent of Democrats, 80 percent of Independents, and 71 percent of Republicans – feel that it is time to update the FMLA. With similarly strong support across party identification, voters want a comprehensive, national paid family and medical leave program that includes all workers. And voters value paid leave: More than 7 in 10 who are currently working would be willing to contribute at least 1 percent of their income to fund a national paid leave program.

THE FMLA MUST BE INCLUSIVE

The FMLA Leaves Out Too Many Workers

About 40 percent of the workforce is not protected by the FMLA,⁴⁸ based on three criteria: (1) you must work at a place of employment with at least 50 employees in a 75 mile radius; (2) you must have worked for the same employer for at least 12 months; and (3) you must have worked for at least 1,250 hours over the previous 12 months. More than one-quarter of workers (about 34 million people) work for employers with fewer than 50 employees,⁴⁹ and another two percent are excluded by the 75-mile radius rule.⁵⁰

The FMLA's job tenure and hours-worked requirements cannot contend with the reality of work in today's economy. Sixteen percent of workers overall work fewer than 30 hours a week on average, and 28 percent of women workers work part time,⁵¹ likely falling below

the annual hours-worked threshold. More than one-fifth of all workers, and one-quarter of Black and Latinx workers, have been with their employer for 12 months or less.⁵² About 5 percent of workers – more than 8 million people – hold at least two jobs,⁵³ making it difficult to qualify for FMLA leave at either one.

Stringent job tenure and work-hour requirements are particularly harmful for workers with low incomes and in industries such as food service and retail – which employ 17 percent of the workforce⁵⁴ – where just-in-time scheduling practices make it impossible for many workers to predict how many hours they will work from week to week, much less over the course of a year. One-third of food service and retail employees report working part-time involuntarily.⁵⁵ Four in 10 have a variable schedule, nearly 1 in 7 has had at least one shift cancelled in the past month and less than half even receive their schedule more than two weeks in advance.⁵⁶ Black and Latinx workers are especially likely to be subject to unpredictable scheduling, even within the same firm, most likely the result of discriminatory practices in addition to occupational segregation.⁵⁷

The FMLA should be amended to expand access to full job protection and ensure that workers do not lose access to health insurance during a period of leave.

The FMLA Doesn't Reflect the Diversity of Our Families

Nearly 1 in 5 leaves taken under the FMLA are to care for a family member.⁵⁸ But in the FMLA, family is only defined as a parent, dependent child, or spouse. Family should be defined inclusively to reflect the full range of caregiving relationships that working families have, recognizing that families come in all forms. More than 80 percent of households today do not fit the so-called nuclear family model (a married couple living together with minor children).⁵⁹ For example, 1 in 5 people (about 64 million nationwide) live in a multigenerational household, and people of color are especially likely to do so.⁶⁰ In part as a result of the opioid crisis, more than 2 million children are living with grandparents.⁶¹ And, whether due to small family size, living a great distance from relatives, or even divorce or estrangement from a birth family, many adults – in fact, nearly one-third of people in the United States – report having needed to care for a friend, neighbor or other person who does not have a legal tie.⁶² Coverage for these “chosen family” members, which is included in New Jersey’s, Connecticut’s and Oregon’s paid leave programs, is particularly important for LGBTQ people, people with disabilities,⁶³ and servicemembers and veterans: around 15 percent of caregivers for pre-9/11 veterans and nearly one-quarter (23.4 percent) of post-9/11 servicemembers and veterans are friends or neighbors.⁶⁴

Updating the FMLA Will Help Create an Economy That Works for All Families

The nationwide paid family and medical leave program created under the FAMILY Act, along with expanded eligibility under the FMLA, will promote gender and racial equity, help working families achieve financial security, and strengthen small and large businesses and the economy. This transformational program will provide families financial security and peace of mind at some of the most challenging moments in life, making the largest impacts on the families currently struggling the most. It will enable more women to remain in the workforce, allow parents to invest more time and care in their children, and help older Americans to age with dignity and support from their loved ones. More than 100 million working people in this country cannot afford to wait.

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CHAIRWOMAN ADAMS. If there is no further business before the committee, without objection, the subcommittee stands adjourned.

[Additional submissions by Chairwoman Adams follow:]

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February 10, 2020

The Honorable Alma S. Adams
Chair
Workforce Protections Subcommittee
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable Bradley Byrne
Ranking Member
Workforce Protections Subcommittee
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

RE: Hearing on "Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act"

Dear Chair Adams and Ranking Member Byrne:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the rights of all persons in the United States, we thank you for the opportunity to submit our views regarding family and medical leave and ask that this statement be entered into the record of the Subcommittee hearing entitled, "Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act," scheduled for Tuesday, February 11, 2020.

Twenty-seven years ago, this country took its first step toward helping individuals meet the dual demands of work and family with the enactment of the Family and Medical Leave Act (FMLA), which provides eligible workers with up to 12 weeks of job-protected, unpaid leave in a year to care for themselves, a new child, or a seriously ill family member. While an important first step, the FMLA left behind more than six in ten working people, either because of eligibility restrictions or because they cannot afford to take unpaid leave.¹

Working people across the country deserve a family and medical leave policy that protects the well-being and economic security of all families. **We urge this Subcommittee consider expanding the FMLA by supporting the Family and**

¹ Pamela Joshi et al, Brandeis University, The Heller School, "Unequal Access to FMLA Leave Persists," Jan. 16, 2020, <http://new.diversitydatakids.org/research-library/data-visualization/unequal-access-fmla-leave-persists>.

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Medical Insurance Leave (FAMILY) Act (H.R. 1185) and the Family Medical Leave Modernization Act (H.R. 5456).

Everyone needs dedicated time off to welcome a new child or to care for themselves or a loved one with a serious illness, but too many families across this country are forced to make an impossible choice between providing for their families' well-being and making ends meet. More than 80 percent of working people do not have paid family leave through their jobs, and 60 percent lack access to paid personal medical leave through their employer.² Working people in the low-wage workforce, those who are the most economically vulnerable, have the least access to paid leave benefits,³ and people of color have limited access to any meaningful leave benefits, paid or unpaid. About 71 percent of Latinx workers, 67 percent of American Indian and Alaska Native workers, 61 percent of Black workers, and 54 percent of Asian American and Pacific Islander workers are either not eligible for, or cannot afford to take, unpaid FMLA leave.⁴

Lack of paid leave makes it difficult, if not impossible, for many people to care for themselves or to provide care to family members at crucial moments in their lives. The FAMILY Act would create a national family and medical leave insurance program to help ensure that working people can afford to take the time they need to address serious health and caregiving needs.

The FAMILY Act would:

- Provide workers with up to 12 weeks of paid time off to address their own serious health issue, including pregnancy or childbirth; to deal with the serious health issue of a family member; to care for a new child; and for certain military caregiving and leave purposes;
- Enable workers to earn two-thirds of their monthly wages, up to a cap, while on leave;
- Cover workers in all companies, no matter their size, and make part-time, low-wage, contingent, and self-employed workers eligible for benefits; and
- Be funded through payroll contributions of two-tenths of one percent each (two cents per \$10 in wages) from employee, employer, and self-employed workers, which would fund both insurance benefits and the administrative costs of a new Office of Paid Family and Medical Leave.

The health benefits of paid family and medical leave for new parents are clear. New mothers who take paid leave are more likely to breastfeed, and their children are more likely to receive

² U.S. Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in the United States, March 2019 (Sept. 2019), Tables 16 and 31, <https://www.bls.gov/news/ebs/benefits/2019/employee-benefits-in-the-united-states-march-2019.pdf>.

³ National Partnership for Women & Families, "New Data Show Slow Progress on Increasing Access to Paid Leave and Paid Sick Days," Sept. 19, 2019, <https://www.nationalpartnership.org/our-impact/news-room/new-data-show-slow-progress-on-access-to-paid-leave-paid-sick-days.html>.

⁴ Joshi et al., *supra* note 1.



medical check-ups and recommended immunizations.⁵ Families, however, need paid family and medical leave for a wide range of caregiving in addition to parental leave.

More than 75 percent of people who take unpaid FMLA leave each year do so for reasons other than maternity or paternity care.⁶ The most common reason workers use FMLA benefits is to care for themselves during their own illness (55 percent), and almost one-fifth of employees take leave to care for a spouse, parent, or child.⁷ Changing demographics also suggest that in the coming years, more adults will need elder care even as the number of potential family caregivers will shrink.⁸ Most caregivers are also employed at full-time jobs outside of the home and rely on that income to make ends meet.⁹ Paid leave allows people to support themselves and their families financially while also allowing them to support family members with serious health conditions, helping them fulfill treatment plans, manage their care, and avoid complications; and for children who are seriously ill, parental involvement in a child's hospital care may speed recovery, prevent future health problems, and reduce costs.¹⁰ Given the reality of caregiving, it is imperative that Congress support the FAMILY Act, which provides a comprehensive paid leave plan that is inclusive of all forms of caregiving.

The FAMILY Act also provides meaningful, real-time wage replacement for individuals who need to take time away from their jobs. Working families lose an estimated \$20.6 billion in wages each year due to a lack of access to paid family and medical leave.¹¹ Families need a paid leave system that will provide replacement wages, not a system that offers a Child Tax Credit (CTC) loan followed by reduced CTC payments. This plan, the Advancing Support for Working Families Act (H.R. 5296), which would only be available to new parents, would leave out millions of people who need paid time off to care for themselves or a family member, would not guarantee job-protected leave for workers who are ineligible for FMLA, and would result in a \$500 CTC penalty for families every year for ten years.

Similarly, a paid leave plan like the New Parents Act (H.R. 1940), which forces new parents to accept lifetime cuts in Social Security benefits in exchange for paid time off, does not meet the economic and caregiving needs of families. Social security cuts would also harm low-wage

⁵ Jody Heymann et al., "Paid Parental Leave and Family Wellbeing in the Sustainable Development Era," Public Health Reviews (2017), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5810022/pdf/40985_2017_Article_67.pdf.

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⁹ National Alliance for Caregiving and AARP Public Policy Institute, *Caregiving in the U.S.* (June 2015),

http://www.caregiving.org/wp-content/uploads/2015/05/2015_CaregivingintheUS_Final-Report-June-4_WEB.pdf.

¹⁰ National Partnership for Women & Families, Fact Sheet: The Family and Medical Insurance Leave (FAMILY) Act (Sept. 2019), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/family-act-fact-sheet.pdf>.

¹¹ *Id.*

workers, women, and people of color who are most likely to need paid leave and most likely to rely on Social Security benefits during retirement. By contrast, the FAMILY Act would cut by nearly 75 percent the share of families who fall into poverty after taking unpaid FMLA leave,¹² promoting long-term economic security.

Not only must a plan include all forms of caregiving—not just parental leave—it must also cover all families. Currently, FMLA is only available to individuals providing care to a spouse, parent, minor child, or child with a disability. This narrow definition of family fails to recognize the family bonds of around 85 million people who live in either multigenerational households (defined as including two or more adult generations or including grandparents and grandchildren) or in extended families (defined to include multigenerational families as well as individuals living with their own adult siblings or other relatives of the same generation).¹³ In 2016, about 20 percent of the U.S. population lived with multiple generations, and though multigenerational living is growing across racial groups, Asian, Hispanic, and Black families are more likely than whites to live in multigenerational households.¹⁴ For these communities, and especially for women of color who provide the lion's share of caregiving, access to paid leave to care for a broader range of family members is critical.

Women of color still experience pernicious wage gaps that threaten their economic security. Black women, for example, are paid just 62 cents for every dollar paid to a white man. Latina women are paid only 55 cents, and some Asian American and Pacific Islander women are paid as low as 50 cents for every dollar paid to a white man.¹⁵ These inequities together with structural racism in voting, housing, employment, health care, education, and access to capital, have resulted in racial wealth gaps that make it more difficult for women of color to financially withstand a serious family or medical event. Paid leave does not resolve these underlying issues, but it will help women of color make ends meet when they must address serious health and caregiving needs and potentially mitigate the particular harm women of color face as a result of compounded racial and gender inequities.

The Family Medical Leave Modernization Act would honor all types of families while promoting racial and gender equity. This bill would expand the definition of “family” under the FMLA to include: domestic partners, grandchildren, grandparents, nephews, nieces, parents-in-law, siblings, sons- and daughters-in-law, uncles, aunts, adult children, children of a domestic partner, and any other individual related by blood or affinity, a designation that is especially

¹² *Id.*

¹³ Michela Zonta, Center for American Progress, “Housing the Extended Family,” Oct. 19, 2016, <https://www.americanprogress.org/issues/economy/reports/2016/10/19/146422/housing-the-extended-family/>.

¹⁴ D’Vera Cohn and Jeffrey S. Passel, Pew Research Center, “A Record 64 Million Americans Live in Multigenerational Households,” Apr. 5, 2018, <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.

¹⁵ Ariane Hegewisch & Adiam Tesfaselassie, Institute for Policy Research, *The Gender Wage Gap: 2018: Earnings Differences by Gender, Race, and Ethnicity* (Sept. 11, 2019), <https://iwpr.org/publications/annual-gender-wage-gap-2018/>; Morgan Harwood, National Women’s Law Center, *Equal Pay for Asian American and Pacific Islander Women* (Mar. 2019), <https://nwlc-ciw49tixgw5lbb.stackpathdns.com/wp-content/uploads/2019/03/Asian-Women-Equal-Pay-3.7.19-v2.pdf>.

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important for LGBT individuals and people with disabilities who are more likely to take time off to care for “chosen family.”¹⁶ This change would also apply to the definition of “family” in the FAMILY Act.

Caregiving trends also support the need for the Family Medical Leave Modernization Act to meet the current and future needs of working families. Millennial family caregivers, those ages 18-34, are more racially and ethnically diverse than older generations of caregivers. More than half are Hispanic/Latino, African-American/Black, or Asian American/Pacific Islander.¹⁷ Millennial family caregivers are also more likely to identify as LGBT.¹⁸ Unsurprisingly, given the rise of extended family households within these communities, millennial family caregivers are providing care to a wide range of family members, including grandparents (22 percent of caregiving), siblings, parents-in-law, and other relatives.¹⁹ These caregivers are also the most likely of any generation to be employed—and more than half work full-time—but around one in three millennial family caregivers has an annual income of less than \$30,000.²⁰ With an expanded definition of “family,” and access to paid leave, this group of young caregivers would have increased opportunity to maintain or achieve economic security while maintaining the dignity and well-being of their families.

All working people in America deserve the opportunity to care for themselves and their families without jeopardizing their economic security. The FAMILY Act, together with the Family Medical Leave Modernization Act, would create a national family and medical insurance program that recognizes within a diversity of families the range of family caregiving responsibilities that people face and provides the support families need to be able to meet those responsibilities. Please contact Gaylynn Burroughs, Senior Policy Counsel, at burroughs@civilrights.org or (202) 466-3311, with any questions.

Sincerely,

Vanita Gupta
President & CEO

¹⁶ Katherine Gallagher Robbins et al., Center for American Progress, *People Need Paid Leave Policies that Cover Chosen Family*, Oct. 30, 2017, <https://www.americanprogress.org/issues/poverty/reports/2017/10/30/441392/people-need-paid-leave-policies-that-cover-chosen-family/>.

¹⁷ Brendan Flinn, AARP Policy Institute, “Millennials: The Emerging Generation of Family Caregivers,” May 2018, <https://www.aarp.org/content/dam/aarp/ppi/2018/05/millennial-family-caregivers.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*



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February 7, 2020

Dear Member of Congress:

On behalf of the Lawyers' Committee for Civil Rights Under Law, we urge you to co-sponsor and push for swift passage of the Family And Medical Insurance Leave (FAMILY) Act, (H.R. 1185/S. 463), to ensure workers, particularly African American and other workers of color, can afford to take the time they need to care for a new child or address a serious illness without losing their economic security.

The Lawyers' Committee is a nonprofit civil rights organization founded in 1963 by the leaders of the American bar, at the request of President John F. Kennedy, to help defend the civil rights of racial minorities and the poor. For over fifty years, the Lawyers' Committee has been at the forefront of many of the most significant cases involving race and national origin discrimination and fighting for equal access to economic opportunities for African Americans and other people of color.

The FAMILY Act would create a national family and medical leave insurance program to help ensure that people who work can take the time they need to address serious health and caregiving needs. These benefits would have a significant positive impact on communities of color. Employees would earn two thirds of their wages (up to a cap) for a limited period of time (up to 60 workdays, or 12 workweeks in a year) to address their own serious health issue, including pregnancy or childbirth, the serious health issue of a family member, to care for a new child, and for certain military caregiving and leave purposes.¹ Employees, employers and self-employed workers would fund both the benefits and the administrative costs of the program by contributing a small amount in each pay period to a self-sustaining fund, administered through a new Office of Paid Family and Medical Leave.² Eligibility rules would allow younger, part-time,

¹ FAMILY Act of 2019, H.R. 1185/S. 463, 116th Cong., § 5(a) (2019).

² FAMILY Act of 2019, H.R. 1185/S. 463, 116th Cong., § 7(a)(1) (2019).



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low-wage and contingent workers to contribute and benefit, regardless of their employer's size or their length of time on the job.³

National paid family and medical leave has broad support from voters across party lines. Recent polling shows that eight in ten voters support a comprehensive, inclusive, sustainably funded national paid family and medical leave law modeled on the FAMILY Act, including 76 percent of Republicans, 74 percent of independents and 89 percent of Democrats.⁴ When asked to rank four paid leave proposals, the FAMILY Act model was the top choice across party lines. When asked how much they would be willing to contribute toward a paid leave fund, seven in 10 voters said they would be willing to contribute one percent of their wages, or one cent for every dollar earned, which is much more than the FAMILY Act would actually cost.⁵ Additional qualitative research shows voters prefer a national plan that covers all family relationships and includes employment protections.⁶

Paid family and medical leave is vital to African Americans and other communities of color because it is more difficult for families of color to afford the cost of family or medical leave without any additional income due to the racial wealth gap and systemic discrimination. Although many families suffer from lack of financial assets – 40% of families cannot afford a \$400 emergency expense – the issue is worse for families of color.⁷ Notably, 31% of Black families and 25% of Hispanic families would not be able to fully pay their current month's bills if they had an additional \$400 emergency expense, as compared to 16% of white

³ FAMILY Act of 2019, H.R. 1185/S. 463, 116th Cong., § 5(a) (2019).

⁴ Perry Udem Research and Bellwether Consulting, *Voters' Views on Paid Family + Medical Leave*, Oct. 2018, <http://www.nationalpartnership.org/our-work/resources/workplace/paid-leave/voters-views-on-paid-family-medical-leave-survey-findings-august-2018.pdf>.

⁵ Perry Udem Research and Bellwether Consulting, *Voters' Views on Paid Family + Medical Leave*, Oct. 2018, <http://www.nationalpartnership.org/our-work/resources/workplace/paid-leave/voters-views-on-paid-family-medical-leave-survey-findings-august-2018.pdf>.

⁶ Lake Research Partners and MomsRising.org, *Interested Parties Memo on Key Findings from Recent Qualitative Research*, https://s3.amazonaws.com/s3.momsrising.org/images/MomsRising_LPR_Interested_Parties_memo_on_paid_leave.pdf.

⁷ The Federal Reserve, *Report on the Economic Well-Being of U.S. Households in 2017*, May 2018, <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf> at 21.



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families.⁸ Additionally, 25% “of Black households would have less than \$5 if they liquidated all of their financial assets.”⁹ With a more robust law providing for paid family and medical leave, wealth outcomes for families of color would improve by allowing employees to take the necessary time off without worrying about being unpaid during these periods of leave. The FAMILY Act is a national paid family and medical leave plan voters want and our country needs.

Unpaid leave through the Family and Medical Leave Act (FMLA) is inaccessible to nearly two-thirds of working people, either because of eligibility restrictions or because they simply cannot afford to take unpaid leave.¹⁰ The problem only grows more severe when looking specifically at women. In 2013, 32% of white single mothers were in poverty, while 46% of African American and 47% of Latina single mothers were in poverty.¹¹ Coupled with the fact that Black and Hispanic mothers are more likely than white mothers to be the breadwinner of their household,¹² it is clear that these households cannot afford to take unpaid leave and lose their primary source of income to care for a new child or for themselves in the event of a serious illness. Higher poverty rates mean that these women would be unable to afford unpaid leave if necessary. **The outcomes under the FMLA are worse for people of color – Black and Hispanic workers are less likely than white workers to be able to afford unpaid leave under the FMLA without falling into financial hardship.**¹³ This means that when serious personal or family health needs inevitably arise, people of color disproportionately face impossible choices between their families’ well-being, their financial security, and their jobs.

⁸ *Id.*

⁹ The PEW Charitable Trusts, *The State of American Family Finances*, <https://www.pewtrusts.org/en/research-and-analysis/articles/2016/01/07/the-state-of-american-family-finances>.

¹⁰ Diversity Data Kids, *Working Adults Who are Eligible For and Can Afford FMLA Unpaid Leave*, <http://www.diversitydatakids.org/data/ranking/530/working-adults-who-are-eligible-for-and-can-afford-fmla-unpaid-leave-share-by-race/#loc=2&cat=44,25&tf=17&ch=1,2,3,4>.

¹¹ Center for Global Policy Solutions, *The Wealth Gap for Women of Color*, <http://globalpolicysolutions.org/wp-content/uploads/2014/10/Wealth-Gap-for-Women-of-Color.pdf> at 3.

¹² Institute for Women’s Policy Research, *Breadwinner Mothers by Race/Ethnicity and State* (Sept. 2016), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/Q054.pdf> at 1.

¹³ Diversity Data Kids, *Challenges with Taking FMLA Leave*, <http://www.diversitydatakids.org/files/Policy/FMLA/Capacity/Challenges%20with%20taking%20family%20leave.pdf>.



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Meanwhile, parents who have paid leave available to them, such as through their employer, are 39% less likely to need public assistance in the year following their child's birth than parents who do not have the opportunity to take paid leave.¹⁴ The benefits of paid family and medical leave are well documented, yet the vast majority of working people in the United States do not have access to this basic protection. More than 100 million people – or 83 percent of workers – do not have paid family leave through their jobs, and more than 60 percent lack access to paid personal medical leave through their employer.¹⁵ With paid leave, new mothers are more likely to stay in the workforce and even report wage increases after the birth of a child.¹⁶

The FAMILY Act builds on successful state programs. Evidence from the existing state programs shows their value and affordability as all are financially sound and self-sustaining, and each state that has paid leave in place has or is exploring ways to make paid leave even more accessible to people who need it. California's paid leave program offers proof that legislating on paid leave encourages equity across races.¹⁷ Before California's program went into effect, Black women in the state on average took just one week of maternity leave while white, non-Hispanic women took four weeks. After implementation, Black and white mothers took an average of seven weeks of leave,¹⁸ a major improvement for both groups.

¹⁴ Rutgers Center for Women and Work, *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public*, https://smfr.rutgers.edu/sites/default/files/images/CWW_Paid_Leave_Brief_Jan_2012_0.pdf at 8.

¹⁵ U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2018*, from <https://www.bls.gov/news/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf>.

¹⁶ Linda Houser and Thomas P. Vartanian, *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public*, RUTGERS CENTER FOR WOMEN AND WORK (Jan. 2012), https://smfr.rutgers.edu/sites/default/files/images/CWW_Paid_Leave_Brief_Jan_2012_0.pdf at 8.

¹⁷ Paid Family Leave Act of 2002, S.B. 1661, Chapter 901 (2002), http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=200120020SB1661&search_keywords=family+temporary.

¹⁸ Maya Rossin-Slater, Christopher Ruhm, and Jane Waldfogel, *The Effects of California's Paid Family Leave Program on Mothers' Leave-Taking and Subsequent Labor Market Outcomes*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Jul. 4, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3701456/>.



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The FAMILY Act is the only federal paid family and medical leave proposal that reflects what all workers and families in the United States need. We urge you to co-sponsor this essential legislation today and push for swift passage to make equitable access to paid family and medical leave a reality for workers and families of color. Thank you for your consideration of our support for the FAMILY Act.

Sincerely,

Erinn D. Martin
Policy Counsel
Lawyers' Committee for Civil Rights Under Law



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February 11, 2020

Workforce Protections Subcommittee
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of our 3 million members and the 50 million students they serve, we would like to submit for the record the comments below in connection with today's hearing, "Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act." The need for action is clear: 81 percent of workers do not have paid family leave through their jobs, and 60 percent lack access to paid personal medical leave through their employer.

We urge you to modify the Family and Medical Leave Act (FMLA) to address the need to:

- Cover education support professionals—like classroom aides, cafeteria workers, bus drivers, and school nurses—as well as other state and local government employees not currently covered by the law
- Guarantee that workers can keep their health insurance while on leave and return to their jobs, without penalty, after taking leave
- Broaden the scope of acceptable reasons for taking paid leave to include circumstances such as organ donations and parental bereavement
- Define "family" in an inclusive way that reflects today's realities—for example, including members of LGBTQ couples and guardian grandparents among those eligible for paid leave

The overwhelming majority of voters—Democrats, Republicans, and Independents alike—support legislation to achieve these goals. We thank you for the opportunity to submit these comments and stand ready to work with you to advance them.

Sincerely,

Marc Egan
Director of Government Relations
National Education Association



February 11, 2020

The Honorable Bobby Scott
 Chair
 Committee on Education and Labor
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Virginia Foxx
 Ranking Member
 Committee on Education and Labor
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Alma Adams
 Subcommittee Chair
 Workforce Protections Subcommittee
 Committee on Education and Labor
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Bradley Byrne
 Subcommittee Ranking Member
 Workforce Protections Subcommittee
 Committee on Education and Labor
 U.S. House of Representatives
 Washington, DC 20515

Re: Letter for the Record, Workforce Protections subcommittee hearing: *Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act*, February 11, 2020

Dear Chair Scott, Ranking Member Foxx, Subcommittee Chair Adams and Subcommittee Ranking Member Byrne:

New America is a think and action tank based in Washington, D.C., with a national network of fellows and local offices in California, New York, Arizona, Indiana and Illinois. We are dedicated to renewing America by continuing the quest to realize our nation's highest ideals, honestly confronting the challenges caused by rapid technological and social change, and seizing the opportunities those changes create.

New America's Public Interest Technology program and our Better Life Lab, which is our work-life and gender equity program, thank you for your leadership in considering expansions to the Family and Medical Leave Act (FMLA). We write today to share new research findings that underscore the importance of job protection in making workplace leave available and accessible to workers, and especially to lower-wage, vulnerable workers. Nationwide, gaps in FMLA eligibility and coverage currently result in approximately 41 percent of workers falling outside



the FMLA's protections.¹ Expanding the FMLA is critically important as Congress simultaneously advances the Family And Medical Insurance Leave (FAMILY) Act, which would create a national paid family and medical leave program. Moreover, ensuring that workers understand both their right to paid leave and their right to job protection is essential to the functional accessibility of a paid family and medical leave program.

Our Research Project and Background on New Jersey's Paid Leave Program

In the fall of 2019, New America's Public Interest Technology program and our Better Life Lab partnered with the New Jersey Department of Labor and Workforce Development (NJDOLE) to complete a research and technology "sprint" focused on the user experience of the state's Temporary Disability Insurance (TDI) and Family Leave Insurance (FLI) programs. Our project in New Jersey was aimed at improving NJDOLE's delivery of TDI and FLI benefits, with a particular focus on people with lower incomes. Our research included guided interviews with program beneficiaries, NJDOLE staff and employers; materials testing with beneficiaries; mapping of business processes; and data analysis. Our findings included insights on application processes, benefit delivery barriers, data collection and tracking and information technology.

As you may know, TDI and FLI function in New Jersey as a state paid family and medical leave program. In 2008, New Jersey became the second state in the country to adopt a state paid family leave program, laying that new benefit on top of its decades old TDI program. Recently, in 2019, these programs were amended to improve the paid family and medical leave benefit (beginning in 2020), and the New Jersey Family Leave Act (FLA) was amended to expand job protection to workers in smaller companies.

Our Findings

One of our key insights had nothing to do with benefit delivery itself and had more to do with policy design and public education: **Barriers to accessing job protection are key hurdles for understanding and using paid leave.** Specifically, we found that:

- (1) Job protection is absolutely essential to ensuring workers' feelings of security in using the paid leave benefits they have paid for and are entitled to; and
- (2) helping workers understand how job protection and paid leave benefits intersect or diverge over the course of their leave is also critical.

¹ Klerman, J. A., Daley, K., & Pozniak, A. (2012, September 7). *Family and Medical Leave in 2012: Technical Report*. Abt Associates Publication. Retrieved 8 February 2020, from <http://www.dol.gov/asp/evaluation/fmla/fmla2012.htm>



These two findings reinforce those of other research on barriers to using paid family and medical leave in the United States.² Below we share more about each.

- (1) **Gaps in job protection – which disproportionately exclude lower-wage workers – are a huge barrier to using paid leave benefits.** When workers who are not covered by either state FLA or federal FMLA protections learn that their job may be at risk if they use TDI or FLI to take leave from work, they may forgo the paid leave they need for fear of losing their job. We heard from potential users that using paid leave without job protection may be too risky. As one beneficiary said, “I knew that I was able to get time off, but I wasn’t exactly sure the amount of time with family leave, and the federal FMLA and everything. So, it was a little bit anxiety-provoking figuring that out, and not wanting to take too long because I didn’t want my employer to come back over time and saying you know what, you took too much time.” In contrast, as one interviewee said, “Once I realized I was protected, it was instant Xanax. This is not going to throw my life off any more than it already is.”

Implication 1:

We urge the committee to expand job protection well beyond the FMLA’s current scope to include workers in businesses of all sizes and those who work part-time and those with less than one year of tenure at their job. This is especially important if Congress simultaneously creates a national paid family and medical leave program funded by small payroll deductions, as the FAMILY Act would do. People with caregiving responsibilities who pay into a paid leave program should be able to access the benefits they have already paid for.

- (2) **Helping workers understand the differences between paid leave benefits and job protection is critically important too.** In our research, we found that very few beneficiaries understood that the benefits available through NJDOL’s TDI and FLI programs are distinct from the job protections offered to some workers through New Jersey’s FLA and the federal FMLA. They expect benefits and protections to run

² Mason, J. (2019). *Meeting the Promise of Paid Leave: Best Practices in State Paid Leave Implementation*. National Partnership for Women & Families. Retrieved 8 February 2020, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/meeting-the-promise-of-paid-leave.pdf>; Setty, S., Skinner, C., & Wilson-Simmons, R. (2016, March). *Protecting Workers, Nurturing Families: Building an Inclusive Family Leave Insurance Program Findings and Recommendations from the New Jersey Parenting Project*. National Center for Children in Poverty Publication. Retrieved 8 February 2020, from http://www.nccp.org/publications/pub_1152.html; State of California Employment Development Department. (2015, December 14). *Paid Family Leave Market Research*. Retrieved 8 February 2020, from https://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf



through the same program and expect to see information about each aspect of leave in one place.

Beneficiaries we interviewed in less stable work relied on their company to provide information on job protection, and they faced challenges if their employer shared incorrect information. For example, when employers tell workers that they are not eligible for FMLA, workers may fail to apply for TDI or FLI because they believe these programs are the same and that ineligibility for one means they are ineligible for the other, which is not always the case. We also found that beneficiaries who did not have job protection experienced substantially poorer service from human resources representatives in their companies.

Implication 2:

Our findings are leading NJDOL to improve their materials to include information about both TDI/FLI benefits and job protection and to coordinate more closely with the Department of Justice Office of Civil Rights, which enforces New Jersey's FMLA law. At the federal level, our research suggests that any paid leave program must be closely coordinated with DOL's FMLA public education and enforcement efforts and that each program and agency must make information available about the other. Providing clear information to employers and working with employers to understand the different aspects of leave programs and laws are also critically important because employers are the first line of information for most workers.

We commend your thoughtful work and look forward to seeing the committee take action to make protected, paid family and medical leave available to all working people in the United States, no matter their employer or their job. We would be glad to meet with you and your staff members to provide more information about our research findings.

Sincerely,

/s/
Vicki Shabo
Senior Fellow for Paid Leave Policy and Strategy

/s/
Tara McGuinness
Senior Fellow - Cities and Innovation,
Senior Advisor, Policy and Technology
National Network

/s/
Brigid Schulte
Director, Better Life Lab



February 11, 2020

Dear Chairwoman Adams, Ranking Member Bryne, Chairman Scott, Ranking Member Foxx, and Members of the House Committee on Education and Labor:

On behalf of YWCA USA, an organization dedicated to eliminating racism and empowering women, I write to thank the U.S. House of Representatives Committee on Education and Labor, Subcommittee on Workforce Protections for holding a hearing titled *Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act* and accepting this letter for the hearing record.

We submit this letter today to emphasize the need for a comprehensive and inclusive national paid family and medical leave policy, particularly for working women of color, and urge the Committee to consider the Family and Medical Insurance Leave (FAMILY) Act (H.R. 1185) and the Family Medical Leave Modernization Act (H.R. 5456). If passed, the FAMILY Act would establish a national paid family and medical leave policy to help working individuals address serious health conditions or caregiving needs. The Family Medical Leave Modernization Act would update the definition of who is considered "family" under the Family Medical Leave Act (FMLA) to ensure all individuals, specifically those in non-traditional families, can take leave and meet family care needs. The FAMILY Act as well as the Family Medical Leave Modernization Act are legislative solutions that working women and families, particularly communities of color, need and we urge the Committee to consider these important bills.

The need for paid family and medical leave

At YWCA USA, we are doing the work of justice every day – through our advocacy, our leadership, and our on-the-groundwork across America. We have been at the forefront of the most pressing social movements for more than 160 years – from voting rights to civil rights, from affordable housing to ensuring economic security for women and families. Today, we serve over 2 million women, girls and their families through a network of local YWCA associations in over 1,300 communities big and small across 45 states and the District of Columbia.

YWCA's mission to empower women includes a dedication to improving women's health, security, and economic advancement. We believe that no one should have to choose between their livelihood and their health, their family, or their safety. Yet far too many women and families, particularly women and families of color, must make this choice every day. Today, women are a primary source of financial support for many families and bear significant caretaking responsibilities at home. For example:

- Half of all households in the U.S. with children under age 18 have either a single mother who heads a household or a married mother who provides at least 40 percent of a family's earnings.¹
- More than four in five Black mothers (81.1%), 67.1% of Native American mothers, and 52.5% of Latina mothers are breadwinners.² Many of these women are raising families on their own (60.9% of Black mothers, 44.2% of Native American mothers, and 31.2% of Latina mothers)³
- More than four million African American families with children have a female head of household – most often a mother, grandmother or other relative who is her family's only source of financial support.⁴ The same is true for nearly three million Latinx families.⁵
- According to a recent report from the U.S. Department of Labor, women held more jobs than men in December 2019, a first in nearly a decade.⁶ The report further highlighted that women were more prone to hold multiple jobs.⁶ Today women earn on average 82 cents to a man's dollar and widens for women of color.⁶ Despite this positive increase in representation of women in the workforce, the persistent pay gap compounds economic challenges for women and women of color, underscoring a need for action.

As a result of their dual roles as caregivers and primary breadwinners, many women in the workforce are often forced to choose between their family's economic security and their health when they or their loved ones need care. While the Family and Medical Leave Act (FMLA) makes it possible to take twelve weeks of unpaid job protected leave to care for themselves or a loved one, not all workers qualify. Unfortunately, FMLA fails to cover 40 percent of workers. Even if covered, many cannot afford to take unpaid leave without jeopardizing their family's economic security. Without paid family and medical leave, missing a few days, or even just one day, of paid work can have significant economic consequences.

The lack of job-protected paid leave also has a direct effect on survivors of domestic violence and sexual assault. Survivors often need to take time off from work for court appearances or medical attention, and abusers can actively interfere with or sabotage victims' employment. While violence impacts all women and their ability to obtain and maintain economic independence, survivors of

color face an even greater financial consequence being they already experience lower wages, lower lifetime earnings, and other employment disparities.⁶⁴

Equitable time offered to men and women to care for a new family member or tend to an illness is critical to LGBTQ+ families. According to a study by Paid Leave for All, dads as well as adoptive parents at the majority of the nation's top companies are given little to no parent leave time when compared to their maternal counterparts.⁶⁵ These decisions have a disproportionate effect on LGBTQ+ people who are more likely to be adoptive parents or dual-father households, limiting the time to bond and care for a new child. Policies such as these also make breaking down gender roles, equity, and inclusion of family responsibilities difficult. Action must be taken to ensure all family members, particularly those in non-traditional roles, have the necessary time to care for their families.

Finally, the need to provide paid leave for employees can also be felt across all areas of employment, including the nonprofit sector. In particular, mission-driven nonprofits that provide human services and empower their employees to develop equitable work-life balance are often under resourced in both human and financial capital. The lack of a national paid leave program for all has varying effects on different communities but the overall agreement on the need to take action to address this disparity is urgent.

Working women and families call for paid family and medical leave

YWCA's recent bipartisan study, YWomenVote 2020, presents a comprehensive examination of [women's](#) concerns, priorities, and experiences. With its in-depth focus on women whose voices are critical yet frequently overlooked in policy discussions, YWomenVote 2020 frames clear expectations for legislative action that are held by women of color, Gen Z (age 18-22) and Millennial women (age 23-38), and white rural women.

Women today are worried about a broad range of health, safety, caregiving, and economic concerns that they and their families face. According to the study, an overwhelming number of women surveyed (89%) agree that Congress and the next President should address an array of key priorities including creating a national paid family and medical leave program. When disaggregating this number by race, the intensity of support for creating a national paid family and medical leave program is notably high among women of color with 86% of Black women, 81% of Latina women, 81% Asian Pacific Islander women, and 73% of Native American and Alaska Native women raising concerns for this issue, respectively. Most notably, Latinas are more worried about every concern tested when compared to women overall, showing particular concern (18% more

than women overall) about having paid leave from work to care for themselves or a family member who is seriously ill among other issues.

As we head into a historic 2020, women – particularly women of color – are primed to continue their unprecedented rise and will serve as a decisive voting block in local, state, and federal elections across the country. The data is clear: women, particularly women of color, demand a national paid family and medical leave program and we urge Congress to hear and meet these needs.

Working women and families need the FAMILY ACT (H.R. 1185)

The FAMILY Act (H.R. 1185) is comprehensive, cost effective, and self-sustaining solution that would benefit working people and their families and provide affordable solutions for employees. This bill would:

- Provides working individuals up to twelve weeks of partial income when they take time from their jobs to care for themselves or a loved one.
- Be funded through small employee and employer payroll contributions equaling to two-tenths of 1 percent, or less than \$2.00 per week for an average worker.
- Cover workers in all companies, no matter their size.
- Be administered through a new Office of Paid Family and Medical Leave within the Social Security Administration.

Through today's system, working families lose an estimated \$20.6 billion in wages each year due to a lack of access to paid family and medical leave.⁹ Similarly, on average, workers 50 or older who leave the workforce to care for a parent lose more than \$300,000 in wages and retirement. The FAMILY Act would help keep more family caregivers as well as people with personal health conditions employed and strengthen their economic security over time.¹⁰ It would also help new parents meet the growing expenses experienced as a result of a growing family while contributing to improved newborn and child health by allocating both parents additional caregiving time. Finally, paid leave helps retain workers and reduce the high costs of turnover, such as advertising, interviewing and training new hires. The approach outlined by the FAMILY Act builds upon the success of several state paid family and medical leave programs and has a demonstrated history of success.

Recently, legislators on both sides of the aisle have identified paid leave proposals, acknowledging the urgent need for paid family and medical leave. While we welcome debate on comprehensive solutions to address the current lack of paid family and medical leave in this country, the FAMILY

Act remains the only comprehensive solution that inclusive of all needs to take leave and ensures the long-term economic security for working individuals, specifically low-wage workers, women and women of color.

Families need the Family Medical Leave Modernization Act (H.R. 5456)

The Family Medical Leave Modernization Act (H.R. 5456) builds on the FAMILY Act and updates the definition of who is considered "family" under the Family and Medical Leave Act (FMLA) for caregiving purposes. The updated definition would include: domestic partners, grandchildren, grandparents, nephews, nieces, parent-in-laws, siblings, sons and daughters-in-law, uncles, aunts, adult children, children of a domestic partner, and other individuals related by blood or affinity whose close association is the equivalent of a family relationship. This bill would also expand the purposes for which FMLA can be taken to include 24 hours of "small necessities leave," including attendance at a child's school activities or meeting certain family medical care needs. These changes are necessary and inclusive additions to the FAMILY Act and would maximize the number of workers who would have a right to be reinstated to the same or a similar job after taking leave. All caregivers, including those in non-traditional families and caregiving roles, must have the ability to take time to meet family care needs. A national paid family and medical leave policy that is comprehensive and inclusive of all family roles is crucial to securing the strength and vitality of working women and families, particularly communities of color, across the country. We thank the Subcommittee for investigating this critical issue and look forward to working with you to achieve this goal. Please do not hesitate to contact Pam Yuen, Government Relations Manager, at pyuen@ywca.org or 202-559-7022, if you have any questions.

Sincerely,



Alejandra Y. Castillo
Chief Executive Officer

¹ Institute for Women's Policy Research. (September 2016). Breadwinner Mothers by Race/Ethnicity and State. Retrieved 10 January 2017 from <http://www.iwpr.org/publications/pubs/breadwinner-mothers-by-race-ethnicity-and-state/> [hereinafter Breadwinner Mothers]

² Breadwinner Mothers, *supra* note 1

³ *Id.*

⁴ National Partnership for Women and Families. (September 2015). Women of Color Need A Paid Sick Days Standard. Retrieved 10 January 2017, from <http://www.nationalpartnership.org/research-library/work-family/psd/women-of-color-need-a-paid-sick-days-standard.pdf>.

⁵ *Id.*

⁶ U.S. Bureau of Labor Statistics. (January 2020). The Employment Situation – December 2019. Retrieved 27 January 2020 from https://www.bls.gov/news.release/pdf/emp/sit.pdf?mod=article_inline&mod=article_inline.

¹⁶ Id.

¹⁷ American Association of University Women (AAUW). (September 2019). The Simple Truth about the Gender Pay Gap. Retrieved 27 January 2020 from <https://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/>.

¹⁸ Center for American Progress. (April 2012). The Effects of Paid Family and Medical Leave on Employment Stability and Economic Security. Retrieved 10 January 2017 from <https://www.americanprogress.org/wpcontent/uploads/issues/2012/04/pdf/BousheyEmploymentLeave1.pdf>.

¹⁹ PL•US: Paid Leave for the United States. (June 2017). Left Out: How Corporate America's parental leave policies discriminate against dads, LGBTQ+, and adoptive parents. Retrieved 8 February 2020 from https://edpionetwork.org/user_files/user_files/000019089/original/plus_leftoutreport_2017-7-11.pdf.

²⁰ National Partnership for Women and Families. (September 2019). The Family and Medical Insurance Leave (FAMILY) Act. Retrieved January 2020 from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/family-act-fact-sheet.pdf>.

²¹ Id.



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Testimony from A Better Balance for the House Committee on Education and Labor, Workforce Protections Subcommittee, Hearing on Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act, February 11, 2020, by Sherry Leiwant, Co-President and Co-Founder, Molly Weston Williamson, Director of Paid Leave and Future of Work, and Cassandra Gomez, Law Clerk

We submit testimony on behalf of A Better Balance, a legal advocacy organization whose mission is to fight for policies protecting American workers from having to choose between caring for themselves and their families and maintaining their economic security. We have been working on paid family and medical leave—including the critical need for job protection—throughout the country for over a decade and are delighted that this committee is considering expanding federal law to better protect our working families.

The passage of the watershed Family and Medical Leave Act (FMLA) of 1993 broke new ground by guaranteeing covered workers the right to time off to bond with a new child, deal with a serious health need, or care for an ailing loved one. Millions of workers have benefited from these essential protections and millions more continue to rely upon the FMLA to care for themselves and their families today.

Yet despite the FMLA's profound impact, too many workers—and their families—are left out of its protections. Today, more than 40% of American workers are not covered by the FMLA.¹ Even for those who are covered, the FMLA may not protect their family in the event of a serious health need, because of the law's outdated and restrictive definition of the family members for whom workers can provide care. And for still more workers, leave under the FMLA remains out of reach because leave under the law is *unpaid*, making it inaccessible to those who cannot afford to go without a paycheck.

While the FMLA has remained largely the same since its passage over a quarter-century ago, states have continued to innovate. Learning from state policies, we can find strong models for federal legislation to expand access to workers left out of the FMLA and to ensure protection for all families. These improvements go hand-in-hand with the need to provide *paid* leave, another area where strong state models can offer important examples for the ongoing work to enact federal legislation to provide the right to pay during leave through a social insurance system, like the proposed FAMILY Act. To truly meet the needs of working families, we urge Congress to heed these lessons from the states and ensure that all workers have *both* the right to job-protected leave and the right to the pay they need to afford to take it.

I. The FMLA offers essential protections that all workers need.

For those covered by it, the FMLA offers a suite of critical protections to ensure workers can take the leave they need when they and their families need it. Chief among these invaluable



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rights is the right to job protection—the right to come back to work following leave. Job protection for all employees covered by a paid family and medical leave program is an essential element—without it, although it is a money benefit, it's not leave. For these reasons, providing the comprehensive leave rights that working families truly need requires ensuring that all workers have security to take the leave they need without risking their livelihood.

The need for job protection for workers in a paid family and medical leave program cannot be overstated. The need for such leave occurs at some of the most stressful times in a person's life: the arrival of a new child, a health crisis in the family, or a looming deployment. At these times, workers shouldn't have to worry whether they will have a job to return to after their leave. Without a legal right to get their job back, many workers will be unwilling to risk their livelihood by taking the leave they need—the risk to their long-term economic security will be too great. Without job protection, workers will pay for a program they can only use by risking their long-term economic survival. In one California study, fear of being fired was a commonly cited reason workers who were eligible for paid family leave under that state's program did not take it.² In Rhode Island, 45% of workers who took leave under their state's paid family leave law (which provides job protection) said that without the law's protection of their jobs, they would not have taken leave for fear of losing their job.³

Job protection keeps workers attached to the workforce. When workers are unable to take short-term leave and then return to their job, they are often pushed out of the workforce altogether. One study estimated that men who leave the labor force early due to caring for an aging parent lose almost \$90,000 in wages, while women who do so lose over \$140,000 in wages.⁴ Women who take paid leave after having a baby are more likely to be working nine to twelve months after the birth than women who take no leave.⁵ And keeping workers on the job saves taxpayers money. Both men and women who return to work after taking paid leave are much less likely to be receiving public assistance or food stamps in the year following their child's birth than those who return to work without taking family leave.⁶

In addition to the right to job protection, the FMLA also offers other critical rights to covered workers that are essential to ensuring workers can truly access the leave they need. It protects workers against retaliation for using their rights. No one should be punished for taking the time they need and which they are guaranteed by law. This protection is especially important in light of the rise of punitive absence control policies, where workers are assigned points for each absence and subject to punishment when they receive too many points.⁷

The FMLA also guarantees covered workers the right to continuation of their health insurance while they are on leave, under the same terms as when they are working. The times that workers need leave—in the face of major illness or when welcoming a new child—are often when workers and their families need health coverage the most. Yet without specific legal protections,



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workers may be cut off or face insurmountable increases in cost due to the loss of employer contributions.

II. All workers deserve the protections provided in the FMLA.

In order to qualify for FMLA leave, an employee must work for an employer with at least fifty employees within a seventy-five-mile radius of the employee's worksite, must have worked for that employer for at least twelve months, and must have worked at least 1,250 hours for that employer within the last twelve months.⁸ Taken together, these requirements mean that more than 40% of American workers are not covered by the FMLA.⁹

Lower-income workers are disproportionately left out of coverage. One study estimated that just 39.8% of workers making less than \$35,000 per year were likely to be eligible for FMLA coverage, as compared to 73.4% of those making between \$35,000 and \$75,000 per year and 77.8% of those making above \$75,000 per year.¹⁰ Studies looking at household income have found similar results.¹¹ Less-educated workers are also especially likely to lack coverage.¹²

Moreover, many of those workers most likely to need FMLA leave are excluded. Workers between the ages of 18 and 33, a group that includes many people having children, are less likely than the population as a whole to be covered by the FMLA.¹³ Across all age groups, an estimated half of all working parents are not covered by the FMLA.¹⁴

In the face of these gaps, states have stepped up to cover workers left out of the FMLA. At the federal level, we can learn from the examples of these pioneering states and expand coverage to meet the needs of today's workers.

Employees should be protected regardless of their employer's size.

Employees' rights should not depend on their employer's headcount. Yet the FMLA excludes workers whose employers have fewer than fifty employees. Nationwide, as of 2018, approximately 52.7 million private sector workers work for employers with fewer than fifty employees, representing about 44% of the private sector workforce.¹⁵ Many industries that employ vulnerable workers include large numbers of these employers. For example, in accommodation and food services, which employs many low-income workers,¹⁶ 61% of employees work for employers with fewer than fifty employees.¹⁷ Similarly, the construction industry employs one of the highest proportions of undocumented workers of any industry;¹⁸ 60% of construction workers work for firms with fewer than fifty employees.¹⁹ Approximately two-thirds of employees excluded from coverage under the FMLA are excluded due to their employer's size.²⁰



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But the passage of paid family and medical leave programs has made a huge difference on this issue in the states. States enacting paid family and medical leave laws have recognized the injustice of expecting workers to pay for a benefit they then must risk their jobs to take and as part of those programs are providing job protection regardless of employer size—in other words, covering workers whose employers have as few as one employee. Massachusetts and Oregon will provide FMLA-like rights to employees regardless of employer size under their state paid family and medical leave laws.²¹ Connecticut, as part of the same law that created its state paid family and medical leave program, expanded coverage under the Connecticut Family and Medical Leave Act to cover workers regardless of the size of their employer. New York and Rhode Island already provide FMLA-like rights to employees taking leave under their paid family leave laws regardless of employer size.²² There is no minimum number of employees to qualify for job-protected, unpaid leave in connection with pregnancy in Montana or adoption in Kentucky.²³ While not yet enacted, California Governor Gavin Newsom has recently introduced legislation that would cover employees under California's state FMLA, as well as the state's pregnancy-specific unpaid leave law, regardless of the size of their employer.²⁴ In addition, many states provide job protection to employees of smaller employers through state unpaid leave laws, including laws for particular types of leave.²⁵

Employees should be protected regardless of how many hours they work.

Currently the FMLA requires that employees have worked for their current employer for at least 1,250 hours in the last 12 months in order to be covered.²⁶ This works out to an average of about 24 hours per week over the course of a year. This requirement shuts out many part-time workers, including those who cumulatively work full-time hours across more than one employer.

Low-income workers are more likely to work part-time than other workers,²⁷ and women, who make up 51% of the population, are 65% of the part-time workforce.²⁸ The hours-worked requirement penalizes workers who have willingly chosen part-time work, including those who chose part-time work for health or caregiving reasons—often the very reasons workers may need leave. Excluding part-time workers also hurts part-time workers who would prefer to be working more hours, a phenomenon known as “involuntary part-time” work. Nationwide, about 6.4 million workers are involuntary part-time workers, a number that has grown substantially since before the Great Recession.²⁹ Involuntary part-time workers are disproportionately people of color and disproportionately low-income.³⁰ This problem is especially pronounced in certain largely low-income industries, like retail, where workers are nearly twice as likely to be involuntarily part-time than the general population. Within retail, women, especially women of color, are especially likely to be working part time involuntarily.³¹

The hours-worked requirement is also especially hard on particular populations with many part-time workers. Military spouses are both more likely to work part-time and more likely to be involuntary part-time workers (meaning they would prefer to be working more hours) than the



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general workforce, making it harder to meet the 1,250 hours requirement.³² Similarly, people with disabilities are more likely to work part-time, making those workers especially likely to be affected by the hours-worked requirement.³³

The requirement that a worker must work 1,250 hours for one employer means that those often low wage workers who work full time—or even more than full time—who cobble together a number of jobs to make ends meet are excluded from coverage, a situation that is increasingly common with respect to low wage workers. Such exclusion of workers from job protection at each of their jobs when there is a need to take time for a new child, sick family member, or their own serious illness is contrary to the purposes of the FMLA.

However, as with employer size, states enacting paid family and medical leave programs are leading the way in providing the protections of the FMLA to workers without requiring a specific minimum number of hours worked. Massachusetts and Oregon will provide FMLA-like rights under their state paid family and medical leave laws with no minimum number of hours worked.³⁴ Connecticut, as part of the same law that created its state paid family and medical leave program, expanded coverage under the Connecticut Family and Medical Leave Act to cover workers with no minimum number of hours worked.³⁵ In Rhode Island, there is no formal minimum amount of time a worker must have been employed or number of hours worked in order to qualify for paid family leave, including job protection.³⁶ In New York, with one limited exception, there is no minimum number of hours worked to qualify for paid family leave, including job protection.³⁷ Note that state paid leave laws require that workers demonstrate attachment to that state's workforce, typically by meeting an earnings requirement across all employers in the state, similar to those used for unemployment insurance but unfair hours requirements are not typically imposed.

Other states have reduced these barriers in their state unpaid leave laws. There is no minimum number of hours worked required to qualify for family or medical leave in Maine,³⁸ for family leave in Hawaii,³⁹ or for bonding leave in Oregon (under the state's existing unpaid leave law),⁴⁰ California, Iowa,⁴¹ Kansas,⁴² Louisiana,⁴³ Montana,⁴⁴ and Washington⁴⁵ all provide leave in connection with pregnancy and childbirth with no minimum number of hours worked. Kentucky extends leave for up to six weeks to new adoptive parents of a child under the age of seven with no minimum number of hours worked.⁴⁶

Employees should be protected without burdensome duration requirements.

Employees who work for FMLA covered employers must have worked for that employer for at least 12 months to be covered.⁴⁷ This requirement excludes many workers, but its burden falls disproportionately on low-income workers, who change jobs more often than other workers.⁴⁸ Industries that employ low-income workers often have very high turnover rates: for example,



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turnover in hospitality rose to 72.1% in 2015, while among home care workers turnover was 60% in 2015.⁴⁹

The one-year requirement may also be especially hard on military spouses and other military family members. Military spouses and other military family members need leave in connection with deployment and to care for those ill or injured as a result of their military service—distinctive needs recognized by the FMLA for over a decade—as well as for health and family needs that affect all families. Yet the combination of frequent moves due to a spouse’s service (on average, every two to three years) combined with difficult and often lengthy job searches in a new location make it difficult for military spouses to meet the one-year requirement.⁵⁰

Similarly, workers in specific industries where it is common to change jobs frequently based on the nature of the work may be particularly likely to be excluded by lengthy employment tenure requirements. For example, construction workers typically move from job to job, sometimes staying as little as a few days or weeks at a particular position.⁵¹ This can make it especially difficult for workers in those industries to meet the FMLA’s one-year requirement.

Again, states are leading the way in providing job protection and related rights to employees without requiring any minimum duration of employment with an employer. Massachusetts will provide job protection to employees who qualify for paid family and medical leave benefits with no minimum time with a particular employer.⁵² Rhode Island already provides job protection to employees who qualify for paid family leave benefits with no minimum time with a particular employer.⁵³ California, Iowa,⁵⁴ Kansas,⁵⁵ Louisiana,⁵⁶ Montana,⁵⁷ and Washington⁵⁸ all provide leave in connection with pregnancy and childbirth with no minimum employment duration. Kentucky extends leave for up to six weeks to new adoptive parents of a child under the age of seven with no minimum employment duration.⁵⁹

Other states allow workers to qualify after a much shorter period of time than under the FMLA. Oregon will provide job protection to workers taking paid family and medical leave under its state law who have been employed by their current employer for ninety days.⁶⁰ Similarly, Connecticut’s state FMLA was recently amended, as part of the package that created the state’s paid leave program, to cover employees who have been with their current employer for at least three months.⁶¹ In New York, most employees qualify for paid family leave, including job protection, after 26 consecutive weeks of employment (about six months) with their employer, while low-hour part-time workers qualify when they have worked for 175 days for their employer.⁶² Employees can qualify for unpaid, job-protected family leave after approximately six months in Hawaii.⁶³ In addition, while Oregon and Massachusetts are working to implement their more inclusive *paid* leave laws (which include job protection and related rights), employees can already qualify for job-protected *unpaid* leave under pre-existing laws after six months in Oregon⁶⁴ and for bonding leave after three months in Massachusetts.⁶⁵



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II. All families deserve the right to care under the FMLA.

Families today take many forms: they are multi-generational, blended,⁶⁶ LGBTQ,⁶⁷ and increasingly include close loved ones who aren't biologically or legally related.⁶⁸ Yet under the FMLA, workers generally only have the right to leave to care for a seriously ill loved one if that loved one is their spouse, parent, or child (and only if that child is under the age of 18 or unable to care for themselves due to a disability).⁶⁹ This outdated and exclusionary vision has concrete consequences for workers and their families.

To work for all American families, a strong leave law would include a broad family definition that specifically covers spouses, domestic partners, children (regardless of age), parents, parents of a spouse or domestic partner, grandchildren, grandparents, siblings, nieces and nephews, aunts and uncles, and any other individual related by blood or affinity whose close association with the worker is the equivalent of a family relationship. Nationwide trends regarding family structures show that broad family coverage is imperative for strong paid leave laws.

Today, adults ages 18 to 44 are more likely to have lived with an unmarried significant other than to have ever been married,⁷⁰ and as of 2016, the rising number of cohabiting adults in the U.S. reached about 18 million.⁷¹ Thus, coverage of domestic partners and significant others is critical to many workers in long-term, committed relationships.

In addition to caring for spouses, children, and parents, workers often provide care to—or rely on care from—other biological, legal, and extended relatives with whom they share a close relationship. Since 1980, for example, the number of Americans living in multi-generational households has doubled to 57 million.⁷² Given the prevalence of multi-generational households across the country, it is extremely important that any paid family and medical leave program cover grandparents and grandchildren. Furthermore, children of all ages should be covered because adult children with a serious illness are no less in need of care from their parents than any other adult to whom the worker is related; and older children, especially those who have not formed a family, will still rely on their parents for care in the face of a serious illness. Nationwide, 82% of children under the age of 18 live with at least one sibling, and as a long-lasting family relationship, many siblings look to their sisters or brothers as the first person to whom they would turn for care in the event of a serious illness.⁷³ This is often true for people with disabilities; as more people with disabilities outlive their parents, an increasing number of individuals are receiving primary care from siblings and extended family.⁷⁴

Lastly, when an individual is sick or has a medical emergency, they often rely on individuals they live with—even absent a blood or legal relationship—for help and caregiving. While relationships with such close loved ones are important to many workers, a 2016 national survey showed that they are even more significant for LGBTQ people and people with disabilities, who



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reported taking time off to care for their “chosen family” in higher percentages than the population as a whole.⁷⁵ An inclusive family definition is also important to current and former members of the armed forces because many of those injured or ill as a result of their military service rely on friends or neighbors for care. This is particularly true for those who were ill or injured as a result of their service after September 11, 2001, as those service members are nearly twice as likely as their civilian counterparts to rely on care from friends and neighbors.⁷⁶

States with paid family and medical leave laws understand the demographics of working families and have led the way with inclusive family definitions. All paid family leave jurisdictions cover at least workers’ parents, spouses, children, grandparents, and parents-in-law.⁷⁷ Additionally, in all jurisdictions the definition of “child” includes adult children,⁷⁸ and in eight of nine states with paid family and medical leave, domestic partners are explicitly covered.⁷⁹ California, Massachusetts, New Jersey, Washington, D.C., Washington State, Connecticut, and Oregon also cover workers’ siblings.⁸⁰ California, Massachusetts, New Jersey, New York, Washington State, Connecticut, and Oregon also cover workers’ grandchildren.⁸¹ In New Jersey, Connecticut, and Oregon workers can also take leave to care for other loved ones—whether biologically or legally related or not—to whom the worker has a close association that is the equivalent of a family relationship, though their exact definitions slightly differ; this definition includes close relationships with biological or legally related family members (such as aunts, uncles, nieces, and nephews), as well as close loved ones with whom the worker lacks a biological or legal relationship (such as a significant other or a best friend who is like a sibling).⁸²

Many state unpaid leave laws—also known as state FMLAs—provide more inclusive family definitions, expanding the range of loved ones for whom workers have a legal right to time off to provide care. While the FMLA only provides protection for a legal spouse, New Jersey,⁸³ Vermont,⁸⁴ and Colorado⁸⁵ also cover civil union partners. California,⁸⁶ Colorado,⁸⁷ Maine,⁸⁸ Wisconsin,⁸⁹ and Washington⁹⁰ cover domestic partners, though most states require that domestic partners be registered in order to qualify; Rhode Island covers domestic partners of state employees.⁹¹ The District of Columbia’s law allows workers to take unpaid leave to care for “[a] person with whom the employee shares or has shared, within the last year, a mutual residence and with whom the employee maintains a committed relationship,” protecting a potentially broader range of relationships and without requiring registration.⁹²

Similarly, while the FMLA generally does not cover care for their adult children, Maine, Hawaii,⁹³ Oregon,⁹⁴ Rhode Island,⁹⁵ and Vermont⁹⁶ allow employees to take leave under their unpaid leave laws to care for a seriously ill child of any age. Oregon also allows leave to care for an employee’s seriously ill grandchild,⁹⁷ while Maine covers the children of an employee’s domestic partner.⁹⁸

Five states, through their unpaid leave laws, cover workers’ parents-in-law: Connecticut,⁹⁹ Hawaii,¹⁰⁰ Oregon,¹⁰¹ Rhode Island,¹⁰² and Vermont.¹⁰³ Connecticut¹⁰⁴ and Hawaii¹⁰⁵ also cover



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stepparents. Oregon¹⁰⁶ covers grandparents, while both grandparents and grandparents-in-law are covered in Hawaii.¹⁰⁷ Hawaii covers siblings broadly,¹⁰⁸ while Maine covers siblings who live together and share finances.¹⁰⁹

Subject to certain restrictions, Hawaii allows two blood-related adults who are not married to other people to designate one another as “reciprocal beneficiaries,” for whom they can care even if that relationship is not otherwise protected by the state’s law. For example, an aunt and nephew (who are not married to other people) could designate one another as reciprocal beneficiaries.¹¹⁰

Most broadly, the District of Columbia allows covered employees to leave to care for “[a] person to whom the employee is related by blood, legal custody, or marriage.”¹¹¹ This covers a broad range of family relationships, including those covered by the FMLA and many enumerated family relationships covered in other jurisdictions.

Surprisingly, the FMLA itself contains an expanded family definition with regard to comparatively new military provisions. For purposes of deployment-related leave, FMLA regulations have interpreted the law as covering adult children, meaning that a parent can take leave in connection with their child’s deployment.¹¹² When it comes to caring for a covered servicemember (a person with a qualifying service-connected illness or injury), the FMLA allows parents to care for their adult children and allows the servicemember’s “next of kin”—or nearest blood relative not otherwise covered—to provide care, potentially extending protections to certain siblings, grandparents, aunts and uncles, or first cousins.¹¹³

The federal government also has a successful track record of providing essential protections for the varied forms of working families. For over 50 years, the federal government, our nation’s largest employer with over two million employees, has used an inclusive family definition. For example, an expansive family definition that covers workers’ spouses, domestic partners, adult and minor children, parents, grandparents, grandchildren, siblings, and those whose close association with the employee is the equivalent of a family relationship has been used in the context of funeral leave since 1969, voluntary leave since 1989, and sick and annual leave since 1994.¹¹⁴ Additionally, today, federal workers can accumulate and use up to 12 weeks of sick leave to care for family members with serious health conditions, including extended relatives and other loved ones who aren’t biologically or legally related.¹¹⁵

Thank you for your consideration and your attention to this important issue. We welcome the opportunity to continue working with you to pass the strong, comprehensive paid family and medical leave law America’s working families need.



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¹ Helen Jorgenson & Eileen Appelbaum, *Expanding Federal Family and Medical Leave Coverage: Who Benefits from Changes in Eligibility Requirements?*, Ctr. for Econ. & Policy Research 3 (Feb. 2014), <http://cepr.net/documents/fmla-eligibility-2014-01.pdf>.

² Eileen Appelbaum & Ruth Milkman, *Leaves That Pay: Employer and Worker Experience with Paid Family Leave in California*, Ctr. for Econ. & Policy Research 4, 30 (2011), <https://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.

³ Barb Silver, Helen Mederer, & Emilija Djurdjevic, *Rhode Island's Temporary Caregiver Insurance Program: Findings from the First Year* (2015).

⁴ MetLife Mature Mkt. Inst., *The MetLife Study of Caregiving Costs to Working Caregivers* (2011), <https://www.caregiving.org/wp-content/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf>.

⁵ Linda Houser & Thomas P. Vartanian, *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Business and the Public*, Ctr. for Women & Work 2 (2012), <https://www.nationalpartnership.org/our-work/resources/economic-justice/other/pay-matters.pdf>.

⁶ Cal. Senate Office of Research, *California's Paid Family Leave Program: Ten Years After the Program's Implementation, Who Has Benefited and What Has Been Learned?* 6 (July 1, 2014), http://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Paid_Family_Leave_FINAL_A1b.pdf; Andrew Chang & Co., *Paid Family Leave Market Research*, Cal. Emp. Dev. Dept' 86 (July 13, 2015), https://www.cdd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf.

⁷ See A Better Balance, *Pointing Out: How Walmart Unlawfully Punishes Workers for Medical Absences* (June 2017), <https://www.abetterbalance.org/wp-content/uploads/2017/05/Pointing-Out-Walmart-Report-FINAL.pdf> (explaining that Walmart, the world's largest private employer, has used point-based absence control policies).

⁸ 29 U.S.C. § 2611(2); § 2611(4).

⁹ Jorgenson & Appelbaum, *supra* note 1.

¹⁰ Gerald Mayer, *The Family and Medical Leave Act (FMLA): Policy Issues*, Congressional Research Service 11 (Sept. 4, 2013) http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2316&context=key_workplace.

¹¹ Jorgenson & Appelbaum, *supra* note 1, at 6.

¹² Mayer, *supra* note 10, at 10.

¹³ *Id.* at 9.

¹⁴ *Inequities in Eligibility for FMLA leave*, The Heller Sch. for Soc. Policy & Mgmt., Brandeis Univ., <http://www.diversitydatakids.org/files/Policy/FMLA/Capacity/Inequities%20in%20FMLA%20eligibility.pdf>.

¹⁵ These numbers were calculated by averaging monthly data over the first quarter. *Quarterly Census of Employment and Wages, 2017 First Quarter*, U.S. Bureau of Labor Statistics, https://data.bls.gov/cew/apps/table_maker/4/table_maker.htm#type=12&year=2017&size=0,1,2,3,4&agg=21&supp=0. We thank Jeff Hayes of the Institute for Women's Policy Research for suggesting this approach.

¹⁶ See *Characteristics of Minimum Wage Workers*, U.S. Bureau of Labor Statistics (Apr. 2017) <https://www.bls.gov/opub/reports/minimum-wage/2016/home.htm>; Gregory Acs & Austin Nichols, *Low-Income Workers and Their Employers: Characteristics and Challenges*, The Urban Inst. 6 (2007) <https://www.urban.org/sites/default/files/publication/46656/411532-Low-Income-Workers-and-Their-Employers.PDF>.

¹⁷ This number was calculated by averaging monthly data over the first quarter. *Quarterly Census of Employment and Wages, 2017 First Quarter*, U.S. Bureau of Labor Statistics, https://data.bls.gov/cew/apps/table_maker/4/table_maker.htm#type=14&year=2017&size=0,1,2,3,4&hlind=72&supp=0.

¹⁸ Jeffrey S. Passel & D'Vera Cohn, *Industries of unauthorized immigrant workers*, Pew Research Ctr., Nov. 3, 2016, <http://www.pewhispanic.org/2016/11/03/industries-of-unauthorized-immigrant-workers/>.

¹⁹ This number was calculated by averaging monthly data over the first quarter. *Quarterly Census of Employment and Wages, 2017 First Quarter*, U.S. Bureau of Labor Statistics, https://data.bls.gov/cew/apps/table_maker/4/table_maker.htm#type=14&year=2017&size=0,1,2,3,4&hlind=1012&supp=0.

²⁰ Jorgenson & Appelbaum, *supra* note 1, at 3.

²¹ Mass. Gen. Laws Ann. ch. 175M, § 2(e) (West 2019); H.B. 2005, 80th Leg. Assemb., Reg. Sess. § 10(1), (7) (Or. 2019).



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- ²² N.Y. Workers' Comp. Law § 203-b (McKinney 2019); 28 R.I. Gen. Laws Ann. § 28-41-35(f) (West 2019).
- ²³ Mont. Code Ann. § 49-2-310(2) (leave rights); *id.* § 49-2-101(11) (defining "employer"); Ky. Rev. Stat. Ann. § 337.010(d) ("employer"); *id.* § 337.015 (adoption leave).
- ²⁴ Governor's Budget 2020-21 Trailer Bill, RN 2008625 (proposed Feb. 3, 2020), <https://esd.dof.ca.gov/dofpublic/public/trailerBill/pdf/18>.
- ²⁵ Employees of smaller employers can take leave to bond with a new child in New Jersey (30 employees), Minnesota (21 employees), California (20 employees), Vermont (10 employees), and Massachusetts (6 employees). N.J. Stat. Ann. § 34:11B-3(f)(4) (West 2019); Minn. Stat. § 181.940(3); S.B. 63 (2017), to be codified at Cal. Gov. Code § 12945.6, available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20170180SB63; Vt. Stat. Ann. tit. 21, § 471(1); Mass. Gen. Laws ch. 149 § 105D(a) (applying definition of "employer" from Mass. Gen. Laws ch. 151B § 1(5)).
- ²⁶ Vermont extends leave for one's own serious health needs or those of a family member to employees of with as few as 15 employees. Vt. Stat. Ann. tit. 21, § 471(1). Employees of smaller employers can take pregnancy-related leave in Louisiana (25 employees), Minnesota (21 employees), Washington (8 employees), California (5 employees), Kansas (4 employees), and Iowa (4 employees); La. Rev. Stat. § 23:341(A); Minn. Stat. § 181.940(3); Wash. Admin. Code § 162-30-020(4) (leave rights); Wash. Admin. Code § 162-16-200(3) (restricting to eight employees); Cal. Code Regs. tit. 2, § 11035(b); Kan. Admin. Regs. § 21-32-6 (leave rights); *id.* § 21-40-1 (incorporating by reference Kan. Stat. Ann. 44-1002(b)).
- ²⁷ 29 U.S.C. § 2611(C)(A)(ii).
- ²⁸ *Who Are Low-Wage Workers?* Office of the Assistant Sec'y for Planning & Eval., U.S. Dep't of Health & Human Servs. (Feb. 2009) <https://aspe.hhs.gov/system/files/pdf/180021/rb.pdf>.
- ²⁹ Cliff Zukin & Carl Van Horn, *A Tale of Two Workforces: The Benefits and Burdens of Working Part Time*, John J. Heldrich Ctr. for Workforce Dev., Rutgers Univ. 4 (June 2015) http://www.heldrich.rutgers.edu/sites/default/files/products/uploads/Work_Trends_June_2015.pdf.
- ³⁰ Lonnie Golden, *Still Falling Short on Hours and Pay: Part-time Work Becoming New Normal*, Econ. Policy Inst. (Dec. 5, 2016) <http://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/>.
- ³¹ Zukin & Van Horn, *supra* note 28, at 4-5.
- ³² Claire McKenna, *Data Points: A Look at Involuntary Part-Time Work in Retail*, Nat'l Emp't Law Project, Mar. 4, 2015, <http://www.nelp.org/blog/data-points-a-look-at-involuntary-part-time-work-in-retail/>.
- ³³ Nelson Lim & David Shulker, *Measuring Underemployment Among Military Spouses*, RAND Corporation, https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG918.pdf, page 36; "Military Spouses in the Workplace-Understanding the Impacts of Spouse Unemployment on military recruitment retention, and readiness." *Hiring Our Heroes*. June 2017 <https://www.usechamberfoundation.org/sites/default/files/Military%20Spouses%20in%20the%20Workplace.pdf>, page 7.
- ³⁴ Kali Grant et al., *Security & Stability Paid Family and Medical Leave and its Importance to People with Disabilities and their Families*, Georgetown Center on Poverty and Inequality and The Arc, https://thearc.org/wp-content/uploads/forchapters/Georgetown_PFML-report_Dec17.pdf.
- ³⁵ Mass. Gen. Laws Ann. ch. 175M, § 1, 2(e) (West 2019); H.B. 2005, 80th Leg. Assemb., Reg. Sess. § 10(1), (7) (Or. 2019).
- ³⁶ Conn. Gen. Stat. Ann. § 31-51nn(a) (West 2019).
- ³⁷ R.I. Gen. Laws § 28-41-11(b).
- ³⁸ Due to a technical error in a previous piece of legislation, domestic workers must work at least forty hours per week for a single employer to have a right to coverage. N.Y. Workers' Comp. Law § 202(2).
- ³⁹ See Maine Rev. Stat. tit. 26, § 844(1).
- ⁴⁰ See Haw. Rev. Stat. § 398-1 (defining "employee" as "a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter").
- ⁴¹ Or. Rev. Stat. § 659A.156(2).
- ⁴² Cal. Gov. Code § 12945(a)(1) (leave rights); Cal. Code Regs. tit. 2, § 11037 (defining eligibility requirements); Iowa Code § 216.2(6) ("employee"); *id.* § 216.6(2)(c) (providing leave rights).
- ⁴³ Kan. Admin. Regs. § 21-32-6 (leave rights); *id.* § 21-40-1 (incorporating by reference Kan. Stat. 44-1002(b)).



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⁴³ La. Rev. Stat. Ann. § 23:342.

⁴⁴ Mont. Code Ann. § 49-2-310(2) (leave rights); *id.* § 49-2-101(10) (defining "employee").

⁴⁵ See Wash. Admin. Code § 162-30-020.

⁴⁶ Ky. Rev. Stat. Ann. § 337.010(d) ("employer"); *id.* § 337.015 (adoption leave).

⁴⁷ 29 U.S.C. § 2611(2)(A)(i).

⁴⁸ Jacquelyn Anderson, Linda Yuriko Kato, & James A. Riccio, *A New Approach to Low-Wage Workers and Employers*, MDRC 5 (Mar. 2006) https://www.mdrc.org/sites/default/files/full_9.pdf.

⁴⁹ Nell Abernathy & Rebecca Smith, *Work Benefits: Ensuring Economic Security in the 21st Century*, Nat'l Emp't Law Project & The Roosevelt Inst. 11 (Jan. 2017) http://rooseveltinstitute.org/wp-content/uploads/2017/02/WorkBenefits_RooseveltNELP.pdf.

⁵⁰ Jeremy Burke & Amalie Miller, *The Effect of Military Change-of-Station Moves on Spousal Earnings* (2016), RAND Corporation, https://www.rand.org/pubs/research_briefs/RB9920.html. (servicemembers make permanent change of stations moves on average every 2 to 3 years); U.S. Chamber of Commerce Foundation, *Military Spouse in the Workplace: Understanding the Impacts of Unemployment on Military Recruitment, Retention, and Readiness*, page 9,

<https://www.uschamberfoundation.org/sites/default/files/Military%20Spouses%20in%20the%20Workplace.pdf>. (65% of military spouses who quit a job due to relocation needed at least four months to find a new employer, while 25% reported it took more than a year to find a new job).

⁵¹ Emily H. Sparer et al., *Length of Time Spent Working on a Commercial Construction Site and the Associations with Worker Characteristics*, 58 Am. J. Indus. Med. 964 (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC473608/pdf/nihms870393.pdf>.

⁵² Mass. Gen. Laws Ann. ch. 175M, § 1, 2(e) (West 2019).

⁵³ R.I. Gen. Laws § 28-41-11(b).

⁵⁴ Cal. Gov. Code § 12945(a)(1) (leave rights); Cal. Code Regs. tit. 2, § 11037 (defining eligibility requirements); Iowa Code § 216.2(6) ("employee"); *id.* § 216.6(2)(e) (providing leave rights).

⁵⁵ Kan. Admin. Regs. § 21-32-6 (leave rights); *id.* § 21-40-1 (incorporating by reference Kan. Stat. 44-1002(b)).

⁵⁶ La. Rev. Stat. Ann. § 23:342.

⁵⁷ Mont. Code Ann. § 49-2-310(2) (leave rights); *id.* § 49-2-101(10) (defining "employee").

⁵⁸ See Wash. Admin. Code § 162-30-020.

⁵⁹ Ky. Rev. Stat. Ann. § 337.010(d) ("employer"); *id.* § 337.015 (adoption leave).

⁶⁰ H.B. 2005, 80th Leg. Assemb., Reg. Sess. § 10(1), (7) (Or. 2019).

⁶¹ Conn. Gen. Stat. Ann. § 31-51n(a) (West 2019). Note that workers receiving benefits for domestic violence-related purposes do not have job protection under that law, although they may have employment protection under Connecticut's family violence leave law.

⁶² N.Y. Workers' Comp. Law § 203; N.Y. Comp. Codes R. & Regs. tit. 12, § 380-2.5(a)-(b).

⁶³ Haw. Rev. Stat. § 398-1. Note that Hawaii's law is more restrictive than the FMLA in other ways and does not cover workers' own serious health conditions.

⁶⁴ Technically, Oregon's law covers employees who have been employed for 180 days, which is approximately six months. Or. Rev. Stat. § 659A.156(1)(a).

⁶⁵ Mass. Gen. Laws ch.149, § 105D(b). Full-time employees can qualify for parental (bonding) leave in Massachusetts after three consecutive months of employment by their employer or at the end of their employer's probationary period, whichever is shorter. *Id.*

⁶⁶ According to the U.S. Census Bureau, 16% of children live in "blended families," or households with a stepparent, stepsibling, or half-sibling. *Parenting in America: Outlook, Worries, Aspiration Are Strongly Linked to Financial Situation*, Pew Research Center 19 (2015), https://www.pewresearch.org/wp-content/uploads/sites/3/2015/12/2015-12-17_parenting-in-america_FINAL.pdf.

⁶⁷ It is estimated that 4.5% of Americans, or over 11 million people, self-identify as lesbian, gay, bisexual, or transgender. Frank Newport, *In U.S., Estimate of LGBT Population Rises to 4.5%*, Gallup (May 22, 2018), <https://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx>. Additionally, estimates show that between 2 million and 2.7 million minor children have an LGBTQ parent. Gary J. Gates, *Marriage and Family: LGBT Individuals and Same-Sex Couples*, Future Child., Fall 2015, at 67, 72.



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⁶⁸ Nearly 33 million households in the United States, or 28% of all households, consist of an individual who lives alone, and in an emergency or during an illness, many of these individuals rely on care from close loved ones. See *Selected Social Characteristics in the United States, 2013-2017 American Community Survey 5-Year Estimates*, U.S. Census Bureau,

[https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP02&prodType=table%20e%20\(last%20accessed%20September%202018](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP02&prodType=table%20e%20(last%20accessed%20September%202018) (last visited Jan. 30, 2020). Additionally, in a 2016 national survey, 32% of people in the U.S. reported that they took time off work to provide care for a chosen family member. Katherine Gallagher Robbins *et al.*, *People Need Paid Leave Policies That Cover Chosen Family*, Center for American Progress 2 (2017),

<https://cdn.americanprogress.org/content/uploads/2017/10/26135206/UnmetCaregivingNeed-brief.pdf>.

⁶⁹ 29 U.S.C. § 2612(a)(1)(C); *id.* § 2611(12) (defining “son or daughter”).

⁷⁰ “[T]he share of adults ages 18 to 44 who have ever lived with an unmarried partner (59%) has surpassed the share who has ever been married (50%)” Juliana Menasce Horowitz *et al.*, *Marriage and Cohabitation in the U.S.*, Pew Research Center (Nov. 6, 2019), <https://www.pewsocialtrends.org/2019/11/06/marriage-and-cohabitation-in-the-u-s/>.

⁷¹ Renee Stepler, *Number of U.S. Adults Cohabiting with a Partner Continues to Rise, Especially Among Those 50 and Older*, Pew Research Center (Apr. 6, 2017), <https://www.pewresearch.org/fact-tank/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older/>.

⁷² Richard Fry & Jeffrey S. Passel, *In Post-Recession Era, Young Adults Drive Continuing Rise in Multi-generational Living*, Pew Research Center (July 17, 2014), <https://www.pewsocialtrends.org/2014/07/17/in-post-recession-era-young-adults-drive-continuing-rise-in-multi-generational-living/#fn-19695-1>. Multi-generational households are particularly prevalent in communities of color; approximately 25% of Latinx and Black Americans, and 27% of Asian Americans live in a multi-generational household. *Id.*

⁷³ Rachel Danifon *et al.*, *Siblings and Children’s Time Use in the United States*, 37 Demographic Res. 1611, 1612 (2017).

⁷⁴ As more people with disabilities outlive their parents, an increasing number of adult siblings have taken on primary caregiving responsibilities. Rajan A. Sonik *et al.*, *Sibling Caregivers of People With Intellectual and Developmental Disabilities: Sociodemographic Characteristics and Material Hardship Prevalence*, 54 *Intell. & Developmental Disabilities* 332 (2016). Over 50% of sibling caregivers report having an annual income of less than \$25,000, making paid leave crucial. John Reagan *et al.*, *Research Brief: Sibling Caregivers Experience Less Choice and Control*, Family Support Research and Training Center at the University of Illinois at Chicago (2016), https://fsrtc.ahslabs.uic.edu/wp-content/uploads/sites/9/2016/11/FSRTC-Data-Brief_1_2016-3-3.pdf.

⁷⁵ 42% of LGBT individuals and people with disabilities reported “taking time off to care for chosen family,” compared with 31% of non-LGBT people and 30% of people without disabilities. Gallagher Robbins *et al.*, *supra* note 68, at 3. Family networks are particularly important to older LGBTQ adults who are especially likely to rely on those loved ones. MetLife Mature Mkt. Inst. & Am. Soc’y of Aging, *Still Out, Still Aging: The MetLife Study of Lesbian, Gay, Bisexual, and Transgender Baby Boomers* 15-17 (Mar. 2010), <https://www.asaging.org/sites/default/files/files/mmi-still-out-still-aging.pdf>.

⁷⁶ Rajeev Ramchand *et al.*, *Hidden Heroes: America’s Military Caregivers*, RAND Corp. 34 (2014), https://www.rand.org/pubs/research_reports/RR499.html (explaining that nearly a quarter of caregivers for post-9/11 military care recipients are friends or neighbors, while nearly 13% of caregivers for civilian care recipients are friends or neighbors).

⁷⁷ Nine states have passed paid family and medical leave laws with inclusive family definitions that can be found at: Rhode Island (28 R.I. Gen. Laws Ann. § 28-41-34 (West 2019)); California (Cal. Unemp. Ins. Code § 3302(f) (West 2019)); New Jersey (N.J. Stat. Ann. § 43:21-27(n) (West 2019)); New York (N.Y. Workers’ Comp. Law § 201(20) (McKinney 2019)); Washington, D.C. (D.C. Code Ann. § 32-541.01(7) (West 2020)); Washington State (Wash. Rev. Code Ann. § 50A.05.010(10) (West 2020)); Massachusetts (Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019)); Connecticut (S.B. 1, 2019 Gen. Assemb. (Conn. 2019)). The law is only partially codified. The full text of the law can be found at <https://www.cga.ct.gov/2019/lcoamd/pdf/2019LCO09302-R00-AMD.pdf>.; Oregon (H.B. 2005, 80th Legis. Assemb., Reg. Sess. (Or. 2019)). The full text of the law can be found at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>.



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⁷⁸ 28 R.I. Gen. Laws Ann. § 28-41-34(1) (West 2019); Cal. Unemp. Ins. Code § 3302(c); N.J. Stat. Ann. § 43:21-27(k) (West 2019); N.Y. Workers' Comp. Law § 201(16) (McKinney 2019); D.C. Code Ann. § 32-541.01(7)(A) (West 2020); Wash. Rev. Code Ann. § 50A.05.010(1) (West 2020); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); 458 Mass. Code Regs. 2.02 (2019); S.B. 1, 2019 Gen. Assemb. § 17(6), (15) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(b), (6) (Or. 2019).

⁷⁹ While Rhode Island, California, New Jersey, Washington, D.C., Washington State, and Oregon require that domestic partners be registered, New York and Massachusetts both have flexible domestic partner definitions that do not require legal registration. 28 R.I. Gen. Laws Ann. § 28-41-34(6) (West 2019); Cal. Unemp. Ins. Code § 3302(d) (West 2019); N.J. Stat. Ann. § 43:21-27(1) (West 2019); D.C. Code Ann. § 32-541.01(7)(C) (West 2020); Wash. Rev. Code Ann. § 50A.05.010(22) (West 2020); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(g), (9) (Or. 2019); N.Y. Workers' Comp. Law § 201(17) (McKinney 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); 458 Mass. Code Regs. 2.02 (2019).

⁸⁰ Cal. Unemp. Ins. Code § 3302(f) (West 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); N.J. Stat. Ann. § 43:21-27(n) (West 2019); D.C. Code Ann. § 32-541.01(7)(E) (West 2020); Wash. Rev. Code Ann. § 50A.05.010(10) (West 2020); S.B. 1, 2019 Gen. Assemb. § 17(6) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(d) (Or. 2019).

⁸¹ Cal. Unemp. Ins. Code § 3302(f) (West 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); N.J. Stat. Ann. § 43:21-27(n) (West 2019); N.Y. Workers' Comp. Law § 201(20) (McKinney 2019); Wash. Rev. Code Ann. § 50A.05.010(10) (West 2020); S.B. 1, 2019 Gen. Assemb. § 17(6) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(f) (Or. 2019).

⁸² N.J. Stat. Ann. § 43:21-27(n) (West 2019) ("Family member" means . . . any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship."); S.B. 1, 2019 Gen. Assemb. § 17(6) (Conn. 2019) ("Family member" means . . . an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships."); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(h) (Or. 2019) ("Family member" means . . . [a]ny individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship").

⁸³ N.J. Stat. Ann. § 34:11B-3(j).

⁸⁴ Vermont law gives civil union partners the same rights as spouses. Vt. Stat. Ann. tit. 15, § 1204(b).

⁸⁵ Col. Rev. Stat. § 8-13.3-203(1)(a).

⁸⁶ Regulations under the California Family Rights Act define the term "spouse" to include a domestic partner. Cal. Code Regs. tit. 2, § 11087(r).

⁸⁷ Col. Rev. Stat. § 8-13.3-203(1)(b).

⁸⁸ Maine Rev. Stat. tit. 26, § 843(4)(d).

⁸⁹ Wis. Stat. § 103.10(b)(4).

⁹⁰ Wash. Rev. Code § 49.78.020(7).

⁹¹ R.I. Gen. Laws § 28-48-1(5).

⁹² D.C. Code § 32-501(4)(c).

⁹³ Haw. Rev. Stat. § 398-1; Me. Rev. Stat. tit. 26, § 843(4)(D).

⁹⁴ Or. Rev. Stat. § 659A.150(4).

⁹⁵ R.I. Gen. Laws § 28-48-1(5).

⁹⁶ Vt. Stat. Ann. tit. 21, § 472(a)(2).

⁹⁷ Or. Rev. Stat. § 659A.150(4).

⁹⁸ Me. Rev. Stat. tit. 26, § 843(4)(d).

⁹⁹ Conn. Gen. Stat. § 31-51kk(7) (defining parent to include stepparent).

¹⁰⁰ Haw. Rev. Stat. § 398-1 (defining parent to include parent-in-law).

¹⁰¹ Or. Rev. Stat. § 659A.150(4).

¹⁰² R.I. Gen. Laws § 28-48-1(5).

¹⁰³ Vt. Stat. Ann. tit. 21, § 472(a)(2).

¹⁰⁴ Conn. Gen. Stat. § 31-51kk(7) (defining parent to include stepparent).

¹⁰⁵ Haw. Rev. Stat. § 398-1 (defining parent to include stepparent).

¹⁰⁶ Or. Rev. Stat. § 659A.150(4).

¹⁰⁷ Haw. Rev. Stat. § 398-1 (defining parent to include grandparent or grandparent-in-law).



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¹⁰⁸ Haw. Rev. Stat. § 398-3(a)(2).

¹⁰⁹ Me. Rev. Stat. tit. 26, § 843(8).

¹¹⁰ Haw. Rev. Stat. §§ 398-3(a)(2), 572C-4.

¹¹¹ D.C. Code § 32-501(4)(A).

¹¹² 29 C.F.R. § 825.126(a)(5).

¹¹³ 29 U.S.C. § 2612(3); 29 C.F.R. §§ 825.122(e), (j).

¹¹⁴ The relevant language covers "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Absence and Leave: Funeral Leave, 34 Fed. Reg. 13,655 (Aug. 26, 1969) (codified at 5 C.F.R. pt. 630) (first implemented during the Vietnam War, allowing federal workers to take funeral leave for the combat-related deaths of loved ones); Absence and Leave: Voluntary Leave Transfer Program, 54 Fed. Reg. 4749 (Jan. 31, 1989) (codified at 5 C.F.R. pt. 630); Absence and Leave: Sick Leave, 59 Fed. Reg. 62,266 (Dec. 2, 1994) (codified at 5 C.F.R. pt. 630).

¹¹⁵ 5 C.F.R. § 630.401(c) (2020); *see also* 5 C.F.R. § 630.902.



Overview of Paid Family & Medical Leave Laws in the United States

Eight U.S. states and the District of Columbia have paid family and medical leave laws on the books. This document provides an overview of these laws.

	RI ¹	CA ²	NP ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
What purposes can leave be used for?	Temporary disability insurance (TDI) can be used for a worker's own serious off-the-job illness or injury. Temporary caregiver insurance (TCI) can be used to (1) bond with a child within one year of the child's birth or placement for foster care or adoption; or (2) care for a family member with a serious health condition.	Disability insurance (DI) can be used for a worker's own serious off-the-job illness or injury. Paid family leave (PFL) can be used to (1) bond with a child within one year of the child's birth or placement for foster care or adoption; or (2) care for a family member with a serious health condition. <i>Beginning on January 1, 2021, PFL can also be used to address certain military family needs.</i>	Temporary disability insurance (TDI) can be used for a worker's own serious off-the-job illness or injury. Family leave insurance (FLI) can be used to (1) bond with a child within one year of the child's birth or placement for foster care or adoption; (2) care for a family member with a serious health condition; or (3) address certain non-medical needs arising from domestic or sexual violence, also known as "safe time."	Temporary disability insurance (TDI) can be used for a worker's own serious off-the-job illness or injury. Paid family leave insurance (PFL) can be used to (1) bond with a child within one year of the child's birth or placement for foster care or adoption; (2) care for a family member with a serious health condition; or (3) address certain military family needs.	Universal paid leave (UPL) can be used to (1) care for a worker's own serious health condition; (2) to bond with a child within one year of the child's birth or placement for foster care or adoption; or (3) to care for a family member with a serious health condition. <i>Benefits begin on July 1, 2020.</i>	Medical leave can be used for a worker's own serious health condition. Family leave can be used to (1) bond with a child within one year of the child's birth or placement; (2) care for a family member with a serious health condition; or (3) address certain military family needs.	Medical leave can be used for a worker's own serious health condition. Family leave can be used to (1) bond with a child within one year of the child's birth or placement for foster care or adoption; (2) care for a family member with a serious health condition; or (3) address certain military family needs. <i>Benefits begin on January 1, 2021, except for benefits for family caregiving, which will begin on July 1, 2021.</i>	Medical leave can be used for a worker's own serious health condition. Family leave can be used to (1) bond with a child within one year of the child's birth or placement for foster care or adoption; (2) care for a family member with a serious health condition; (3) address certain military family needs; or (4) address certain medical and non-medical needs arising from domestic violence, also known as "safe time." <i>Benefits begin between January 1 and February 1, 2022.</i>	Medical leave can be used for a worker's own serious health condition. Family leave can be used to (1) bond with a child within one year of the child's birth or placement for foster care or adoption; or (2) care for a family member with a serious health condition. Safe leave can be taken to address certain medical and non-medical needs arising from domestic violence, harassment, sexual assault or stalking. <i>Benefits begin January 1, 2023.</i>



	RI ¹	CA ²	NP ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
Who is covered?	Employees covered by the state unemployment insurance law, except for public employees, are covered.	Employees covered by the state unemployment insurance law, except for most public employees, are covered.	Employees covered by the state unemployment insurance law are covered, with some exceptions for public sector employees.	Most private sector employees are covered. ¹²	Most private sector employees are covered.	All employees are covered.	Employees covered by the state unemployment insurance law, except for some public employees, are covered.	All private sector and many public sector employees are covered.	Almost all employees are covered.
Are public sector workers automatically covered?	No. Public employees can opt in to coverage, as can some unions covering public sector workers through the collective bargaining process.	No, with a few exceptions. Many public employees can opt in to coverage, but may need to do so through a negotiated agreement with an authorized bargaining unit.	Own health: No, with a few exceptions. Public employees can opt in to coverage. Paid family leave: Yes.	No. Public employees can opt in to coverage and unions covering public sector workers can opt in to paid family leave through the collective bargaining process.	No.	Yes.	State employees are automatically covered. Local government employees are not automatically covered. Public sector employees not covered by the law can opt in to coverage.	State employees are covered if their collective bargaining unit has negotiated coverage or if they are not in a collective bargaining unit. Municipal employees and employees of a local or regional board of education are covered if their collective bargaining unit has negotiated coverage or if they are not in a collective bargaining unit and their employer has negotiated coverage for members of any collective bargaining unit.	Yes, except employees of federal and tribal governments. Tribal governments may opt in to coverage.



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	RI ¹	CA ²	NP ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
Are domestic workers covered?	Yes, subject to a low minimum payment requirement.	Yes, subject to a low minimum payment requirement.	Yes, subject to a low minimum payment requirement.	Full-time domestic workers (those who work at least 40 hours per week for a single employer) are covered.	Yes, subject to a low minimum payment requirement.	Yes.	Yes.	Yes.	Yes.
Can self-employed workers opt in to coverage?	No.	Yes.	No.	Yes.	Yes.	Yes.	Yes. <i>Certain self-employed workers may be covered automatically.</i>	Yes.	Yes.
What are the requirements to qualify for benefits?	Workers must have earned wages in 1 quarter of the base period of at least 200 times the minimum wage (currently, \$2,100). Workers must have earned income across the base period of at least 1.5 times the worker's highest earning quarter, and must have earned at least 400 times the minimum wage (currently, \$4,200) over the	Workers must have earned at least \$300 during the base period. The base period is the first 4 of the 5 most recently completed quarters or may include earlier quarters if the worker was unemployed during part of the base	Workers must have either earned at least 20 times the minimum wage (currently, \$172) in at least 20 weeks or earned at least 1,000 times the minimum wage (currently, \$8,600) during the base year. The base year is the first 4 of the 5 most recent completed quarters	Own health: Workers generally must have been employed for at least 4 consecutive weeks by a single employer; ¹⁰ previously qualified workers qualify immediately upon the start of employment with a new covered employer. Paid family leave: Workers generally must have been employed by their current employer for at least 26 consecutive weeks; those who	While there are no formal eligibility requirements specified in the statute, workers who have worked for covered D.C. employers for less than 1 year may receive a prorated benefit amount. <i>Regulations will provide additional guidance on</i>	Workers must have worked at least 820 hours in the qualifying period. The qualifying period means the first 4 of the 5 most recently completed quarters or the 4 most recent completed quarters. This can combine hours worked at more than one employer.	Workers must have earned a minimum amount (currently, \$4,700) during the base period and must meet an earnings requirement tied to the worker's average earnings that, in effect, means the worker must have worked at least 15 weeks. The base period is the last 4 completed quarters or the 3 most recent	Workers must have earned at least \$2,325 during the highest earning quarter within the base period. The base period is the first 4 of the 5 most recently completed quarters. This can combine income from more than one employer.	Workers must have earned at least \$1,000 during the base year. The base year is the first 4 of the last 5 completed quarters or the 4 most recently completed quarters. This can combine income from more than one employer.



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	RI ¹	CA ²	NP ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
entire base period. The base period is the first 4 of the 5 most recently completed quarters or the 4 most recent completed quarters. This can combine income from more than one employer.	entire base period. ¹⁴ This can combine income from more than one employer.	This can combine income from more than one employer. This can combine income from more than one employer.	or the 3 most recent completed quarters and the portion of the current quarter that has already occurred. This can combine income from more than one employer.	work less than 20 hours per week must have worked at least 175 days for their current employer.	specific eligibility requirements.		completed quarters and the portion of the current quarter that has already occurred. This can combine income from more than one employer.		
What family members are covered?	A family member includes a worker's child, parent, parent-in-law or parent of the worker's registered domestic partner, grandparent, spouse, or registered domestic partner.	A family member includes a worker's child, parent, grandparent, grandchild, sibling, spouse, registered domestic partner, or the parent of a worker's spouse or registered domestic partner. ¹⁵	A family member includes a worker's child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, registered domestic partner, any other person related to the worker by blood, and any other person that the worker shows to have a close association with the worker which is the equivalent of a family relationship.	A family member includes a worker's child, parent, parent-in-law, spouse, grandparent, or domestic partner. ¹⁷ The law's definition of domestic partner is flexible and does not require registration. ¹⁸	A family member includes a worker's child, parent, parent-in-law, spouse, grandparent, or registered domestic partner.	A family member includes a worker's child, grandchild, grandparent, parent, parent-in-law or parent of the worker's registered domestic partner, sibling, spouse, or registered domestic partner.	A family member includes a worker's spouse, domestic partner, child, grandparent, grandchild, parent, parent-in-law, or an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships. ¹⁹	A family member includes a worker's spouse, sibling, son or daughter, grandparent, grandchild, parent, parent-in-law, or an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships. ²⁰	A family member includes a worker's spouse or registered domestic partner, sibling, child, child-in-law, grandparent, grandchild, parent, parent-in-law or parent of the worker's registered domestic partner, or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. ²¹



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	RI ¹	CA ²	NJ ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
How is the program funded?	Workers cover the full cost of both TDI and TCI. Both programs are funded by a single payroll deduction, currently set at 1.3% of wages. This deduction does not apply to wages above \$72,300/year.	Workers cover the full cost of both DI and PFL. Both programs are funded by a single payroll deduction, currently set at 1.0% of wages. This deduction does not apply to wages above \$122,900/year.	Workers and employers share the cost of TDI. Workers contribute 0.20% of their wages. Employers contribute a percentage of workers' wages ranging from 0.10% to 0.75%. The percentage contribution for employees does not apply to a worker's wages above \$134,500/year; the percentage contribution for employers does not apply to a worker's wages above \$35,300/year. Workers cover the full cost of FLA. The program is funded by a payroll deduction, currently set at 0.10% of wages. This deduction does not apply to wages above \$134,900/year. ²¹	Workers and employers share the cost of TDI. Employers can withhold 0.5% of workers' wages to pay for coverage, up to \$0.60/week; employers cover the remaining cost. Workers cover the full cost of PFL. The program is funded by a payroll deduction, currently set at 0.270% of wages. This deduction does not apply to wages above an average of \$1,401.17/week.	Employers cover the full cost of UPL. Employers contribute 0.62% of the wages of covered employees.	Workers and employers share the cost of medical leave. Employers can withhold up to 45% of the premium from workers' wages; employers cover the remaining cost. Employers with fewer than 50 employees in Washington State are not required to pay the employer portion. ²² Initially, the total premium for medical leave will be about 0.27% of wages. Workers cover the full cost of family leave. Initially, the premium will be about 0.13% of wages. ²³ Premiums do not apply to wages above the Social Security contribution base.	Workers and employers share the cost of medical leave. Employers can withhold up to 40% of the premium from workers' wages; employers cover the remaining cost. Employers with fewer than 25 employees in Massachusetts are not required to pay the employer portion. ²⁴ Workers cover the full cost of family leave. Initially, the total premium for family and medical leave will be 0.75% of wages. ²⁵ Premiums do not apply to wages above the Social Security contribution base.	Workers cover the full cost of all leave. Workers contribute a percentage of wages set by the state, which will not exceed 0.5% of wages. Contributions do not apply to wages above the Social Security contribution base. Contributions begin between January 1 and February 1, 2021.	Workers and employers share the costs of all leave. Employers can withhold up to 60% of the contribution from workers' wages; employers cover the remaining costs. Employers with fewer than 25 employees are not required to pay the employer contribution. ²⁶ The total premium will not exceed 1% of wages. Premiums do not apply to wages above \$132,900/year. Contributions begin January 1, 2022.



the work and family legal center

	RI ¹	CA ²	NJ ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
What percentage of wages do workers receive?	About 60% of a worker's average weekly wage (biennially, 4.62% of a worker's wages in the highest earning quarter of the base year) ¹⁷ .	Between 60% and 70% of a worker's average weekly wage, depending on their income ¹⁸ .	2/3 of a worker's average weekly wage. Starting July 1, 2020, workers will receive 85% of their average weekly wage.	Own health: 50% of a worker's average weekly wage. Family leave: 60% of a worker's average weekly wage. When the program is fully phased in in 2021, workers will receive 67% of their average weekly wage for family leave.	90% of a worker's average weekly wage up to an amount equal to 40 times 150% of the D.C. minimum wage and 50% of a worker's average weekly wage above an amount equal to 40 times 150% of the D.C. minimum wage ¹⁹ .	90% of a worker's average weekly wage up to an amount equal to 50% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 50% of the statewide average weekly wage.	80% of a worker's average weekly wage up to an amount equal to 50% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 50% of the statewide average weekly wage.	95% of a worker's average weekly wage up to an amount equal to 40 times the state minimum wage and 60% of a worker's average weekly wage above an amount equal to 40 times the state minimum wage.	100% of a worker's average weekly wage up to an amount equal to 65% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 65% of the statewide average weekly wage.



	RI ¹	CA ²	NJ ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
What is the maximum weekly benefit?	85% of the statewide average weekly wage Current: \$667/week	About 100% of the statewide average weekly wage Current: \$1,300/week	55% of the statewide average weekly wage Current: \$667/week Starting July 1, 2020, the cap will be 70% of the statewide average weekly wage.	Own health: \$170/week Family leave: 60% of the statewide average weekly wage Current: \$840.70/week When the program is fully phased in in 2021, the cap for family leave will be 67% of the statewide average weekly wage.	\$1,000 per week, adjusted annually based on inflation	\$1,000 per week initially, adjusted annually after the first year to 90% of the statewide average weekly wage	\$850 per week initially, adjusted annually after the first year to 64% of the statewide average weekly wage	60 times the state minimum wage When benefits begin in 2022, the minimum weekly benefit will be \$700.	120% of the statewide average weekly wage.



	RI ¹	CA ²	NJ ³	NY ⁴	D.C. ⁵	WA ⁶	MA ⁷	CT ⁸	OR ⁹
For how long can a worker receive benefits?	Own health: Up to 30 weeks in a 52-week period. ¹⁰ Family leave: Up to 4 weeks in a 52-week period. Total: Up to 30 weeks in a 52-week period.	Own health: Up to 52 weeks for any period of disability. ¹¹ Family leave: Up to 6 weeks in a 12-month period. California does not specify a cumulative limit. Starting July 1, 2020, workers will be able to take up to 8 weeks of family leave.	Own health: Up to 26 weeks for any period of disability. ¹² Family leave: Up to 6 weeks in a 12-month period. New Jersey does not specify a cumulative limit. Starting July 1, 2020, workers will be able to take up to 12 weeks of family leave.	Own health: Up to 26 weeks for any period of disability or in any 52-week period. Family leave: Up to 10 weeks in a 52-week period. Total: Up to 26 weeks in a 52-week period. When the program is fully phased in in 2021, workers will be able to take up to 12 weeks of family leave. ¹³	Own health: Up to 2 weeks in a 52-week period. Caring for a seriously ill relative: Up to 6 weeks in a 52-week period. Bonding with a new child: Up to 8 weeks in a 52-week period. Total: Up to 8 weeks in a 52-week period.	Own health: Up to 12 weeks in a 52-week period. ¹⁴ Family leave: Up to 12 weeks in a 52-week period. ¹⁵ Total: Up to 16 weeks in a 52-week period. ¹⁶ Workers with certain pregnancy-related health needs may receive up to an additional 2 weeks of benefits, which can be combined with other uses up to a total of 18 weeks in a 52-week period.	Own health: Up to 20 weeks in any benefit year. Family leave: Up to 12 weeks in any benefit year. Total: Up to 26 weeks in any benefit year. Military caregivers can receive up to 26 weeks of family leave in any benefit year.	Own health: Up to 12 weeks in a 12-month period. Family leave: Up to 12 weeks in a 12-month period. Total: Up to 12 weeks in a 12-month period. Workers with certain pregnancy-related health needs may receive up to an additional 2 weeks of benefits, which can be combined with other uses up to a total of 14 weeks in a 12-month period.	Own health: Up to 12 weeks in any benefit year. Family leave: Up to 12 weeks in any benefit year Safe leave: Up to 12 weeks in any benefit year. Total: Up to 12 weeks in any benefit year. Workers with certain pregnancy- and children-related health needs (including lactational) may receive up to an additional 2 weeks of benefits, which can be combined with other uses up to a total of 14 weeks in any benefit year.



¹¹ California, New Jersey, and Rhode Island also provide some coverage for previously covered workers who have a qualifying need for family or medical leave while they are unemployed, while New York and Hawaii also provide some coverage for previously covered workers who have a qualifying need related to the worker's own health. Details vary by state. States that aren't currently implementing their programs will also likely provide some coverage for previously covered workers during unemployment, though final regulations will be needed to specify details.

¹² For a list of exceptions, visit https://www.dhs.gov/commerce/health/2016/covered_tdlr.asp.

¹³ Note that no state law covers federal employees.

¹⁴ If a worker was unemployed and actively seeking work for at least 60 days of a quarter or quarters during the base period, that quarter or quarters is excluded from the base period and an equal number of quarters from the period immediately prior to the base period are substituted.

¹⁵ Employees who are regularly in the employment of a single employer on a work schedule that is less than the employer's normal work week become eligible for disability leave benefits on the 25th day of such employment.

¹⁶ This list covers family members for whom a worker can take leave to care for when they are seriously ill. Starting January 1, 2021, paid family leave can also be used to address certain needs arising from the active duty military service of a worker's spouse, domestic partner, child, or parent.

¹⁷ This list covers family members a worker can take leave to care for when they are seriously ill. Paid family leave can also be used to address certain needs arising from the active duty military service of a worker's spouse, domestic partner, child, or parent.

¹⁸ The definition of domestic partner includes any person who is at least 18 years old and "is dependent upon the employee for support as shown by either unilateral dependence or mutual interdependence, as evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or personal property; (B) common householding; (C) children in common; (D) signs of intent to marry; shared budgeting; and the length of the personal relationship with the employer. . . ."

¹⁹ The definition of domestic partner includes any person who is at least 18 years old and "is dependent upon the covered individual for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or personal property; (B) common householding; (C) children in common; (D) signs of intent to marry; (E) shared budgeting; and (F) the length of the personal relationship with the covered individual. . . ."

²⁰ This list covers family members a worker can take leave to care for when they are seriously ill. Paid family leave can also be used to address certain needs arising from the active duty military service of a worker's spouse, child, parent, or next of kin. Note that safe time can only be used when the worker, not a family member, is a victim of domestic violence.

²¹ Workers can also take leave to care for the spouse or registered domestic partner of the worker's parent, sibling, grandparent, and grandchild. This list covers family members a worker can take leave to care for when they are seriously ill. Paid family leave can also be used to address certain medical and non-medical needs arising out of the worker or the worker's minor child or dependent being a victim of domestic violence, harassment, sexual assault, or stalking.

²² These percentages are based on participation in the state plan. If an employer chooses a private plan, employees can only be required to contribute as much as they would have contributed to the state plan; these employees can only be required to contribute if a majority of employees agree to the private plan before it goes into effect. See https://www.dir.ca.gov/dlse/dlse_employee_benefits_index.shtml#pfl.

²³ Employees with 50-150 employees who must pay all of the premium or employers with fewer than 50 employees who choose to cover the employee portion of the premium may apply to receive certain grants from the state.

²⁴ The initial total premium for both family and medical leave will be set at 0.7% of employees' wages, one third of which shall be associated with family leave and two thirds of which shall be associated with medical leave. The state will set the premium in subsequent years based on a formula set by statute. In addition, the state will set the maximum wages subject to premium contributions based on the maximum wages subject to social security taxation. Employers may choose to cover all or part of employees' share of the premium for family and/or medical leave.

²⁵ For purposes of determining the number of employees, self-employed people who are part of the employer's workforce are considered employees if self-employed people make up more than fifty percent of the employer's workforce.

²⁶ Employees with less than 25 employees may apply to receive certain grants if they elect to pay the employer contribution.

²⁷ In addition, workers may also be entitled to a dependency allowance for minor children or adult children who are incapacitated due to physical or mental illness.

²⁸ Very low-wage workers receive a fixed benefit amount set by statute, which may result in higher wage replacement rates.

²⁹ Workers with less than a year of total covered employment will receive a smaller benefit, pro-rated based on the number of weeks the worker has worked in covered employment.

³⁰ While technically there is no time limit on receiving benefits, workers cannot receive benefits worth more than 30 times their weekly benefit rate in a year, in effect limiting workers to 30 weeks per year.

³¹ While technically there is no time limit on receiving benefits, workers cannot receive benefits worth more than 52 times their weekly benefit rate for any continuous period of disability, in effect limiting workers to 52 weeks per continuous period of disability.

³² In addition, no worker can receive benefits worth more than 26 times their weekly benefit amount in a year.

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³³ Workers may take up to a cumulative total of 26 weeks of TDLR and PFL in a 52-week period.

³⁴ Technically, workers are entitled to medical leave benefits for up to 12 times their typical workweek hours. As noted above, medical leave may be extended by an additional 2 weeks (2 times a worker's typical workweek hours) if the worker experiences a serious health condition with a pregnancy that results in incapacity.

³⁵ Technically, workers are entitled to family leave benefits for up to 12 times their typical workweek hours.

³⁶ Technically, workers are entitled to up to a cumulative 16 times the worker's typical workweek hours of family and medical leave in a 52-week period or up to a cumulative 18 times the worker's typical workweek hours of family and medical leave in a 52-week period if the worker experiences a serious health condition with a pregnancy that results in incapacity.

³⁷ A worker returning from TCI leave must be restored to the worker's prior position or "a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment including fringe benefits and service credits that the employee had been entitled to at the commencement of leave." Workers who receive health insurance through their employers are entitled to continuation of those benefits while on TCI.

³⁸ A worker returning from PFL must be restored to the worker's prior position or "a comparable position with comparable employment benefits, pay and other terms and conditions of employment." Workers who receive health insurance through their employers are entitled to continuation of those benefits while on PFL.

³⁹ Workers are entitled to job protection under the state paid family and medical leave law only if they work for an employer with at least 50 employees, have been employed by that employer for at least 12 months, and/or equivalent worked for that employer for at least 1,250 hours during the 12-month period immediately preceding leave. A worker entitled to job protection under the law must be restored to the worker's prior position or "an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." Some highly paid employees may be subject to a very narrow exception. Workers who receive health insurance through their employers are entitled to continuation of those benefits while on leave if their employers would be required to continue benefits under the Family and Medical Leave Act.

⁴⁰ A worker returning from paid family or medical leave must be restored to the worker's prior position or "an equivalent position, with the same status, pay, employment benefits, length of service credit and seniority as of the date of leave." Workers who receive health insurance through their employers are entitled to continuation of those benefits while on paid family and medical leave.

⁴¹ Through the law creating its paid leave program, Connecticut amended the Connecticut Family and Medical Leave Act (CFMLA), which provides job protection, to cover essentially all employees entitled to paid leave benefits except those receiving benefits for safe time purposes. Note that CFMLA does not protect workers' health insurance. Workers receiving benefits for safe time purposes may have employment protections under Connecticut's family violence leave law.

⁴² A worker returning from leave under Oregon's law must be restored to the worker's prior position or "any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment." If a worker's employer has fewer than 25 employees and the worker's prior position no longer exists, the worker's employer may, at the employer's discretion based on business necessity, restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay. Workers who receive health insurance through their employers are entitled to continuation of those benefits while on paid family and medical leave.

⁴³ See https://www.dir.ca.gov/dlse/dlse_employee_benefits_index.shtml. For a list of exceptions to covered workers, visit https://www.capitol.hawaii.gov/committees/Vol07_C06046-0208108507021085_0202-0090.html.

⁴⁴ See https://www.dir.ca.gov/dlse/dlse_employee_benefits_index.shtml. For a list of exceptions to covered workers, visit https://www.capitol.hawaii.gov/committees/Vol07_C06046-0208108507021085_0202-0090.html.

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[Questions submitted for the record and their responses follow:]

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The Honorable Sydney Batch, J.D., M.S.W.
 Representative
 North Carolina House of Representatives
 120 Penmarc Drive, Suite 101
 Raleigh, NC 27603

Dear Mrs. Batch:

I would like to thank you for testifying at the February 11th Workforce Protections Subcommittee hearing entitled "*Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act.*"

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Tuesday, March 10, 2020 for inclusion in the official hearing record. Your responses should be sent to Eunice Ikene of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
 Chairman

Enclosure

Workforce Protections Subcommittee Hearing
“Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act”
Tuesday, February 11, 2020 2:00 p.m.

Chairman Scott (D-VA)

- In your testimony you discuss how the Family and Medical Leave Act has helped many workers, but notably “uses a definition of family that is too narrow.” We need to better acknowledge non-traditional family structures. This might be a couple who are in a long-term relationship and financially intertwined but neither domestically partnered nor married, or it could be an immigrant who doesn’t have a biological family in the U.S. but has built a chosen family.
 - How should states and Congress expand this definition to recognize various family and caregiving relationships?

Representative Haley Stevens (D-MI)

- The FMLA allows eligible employees to take parental leave or leave to care for themselves or a close family member with a serious health condition.
 - Should we examine additional reasons for leave?
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Ms. Elisabeth Jacobs, Ph.D.
Senior Fellow
Urban Institute
500 L'Enfant Plaza, SW
Washington, D.C. 20024

Dear Dr. Jacobs:

I would like to thank you for testifying at the February 11th Workforce Protections Subcommittee hearing entitled "*Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act.*"

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Tuesday, March 10, 2020 for inclusion in the official hearing record. Your responses should be sent to Eunice Ikene of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

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Chairman

Enclosure

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*“Balancing Work, Health, and Family: The Case for Expanding the Family and Medical
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Tuesday, February 11, 2020 2:00 p.m.

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- This Committee just concluded the third hearing in our Future of Work series. In our hearings many witnesses explained, as you suggested in your testimony, that “employment arrangements for many workers today look very different from the full-time, lifetime-employer model of the past.”
 - How has the structure of the labor market itself unintentionally left workers out of accessing benefits under the FMLA?
 - How should Congress consider those evolving employment conditions when addressing job protection in federal family and medical leave laws?

Representative Lucy McBath (D-GA)

- Dr. Jacobs, what does the evidence tell us about the impact of leave policies on children’s health outcomes? What does it tell us about the importance of expanding who can take leave?

Representative Haley Stevens (D-MI)

- Dr. Jacobs, how do our current federal leave laws fail to fully recognize the various caregiving relationships today? How can we address this shortfall?



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JEFFERSON VAN DREW, NEW JERSEY

Mr. Anthony Sandkamp
Owner
Sandkamp Woodworks LLC
430 Communipaw Avenue
Jersey City, NJ 07304

Dear Mr. Sandkamp:

I would like to thank you for testifying at the February 11th Workforce Protections Subcommittee hearing entitled *"Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Tuesday, March 10, 2020 for inclusion in the official hearing record. Your responses should be sent to Eunice Ikene of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Workforce Protections Subcommittee Hearing
*“Balancing Work, Health, and Family: The Case for Expanding the Family and Medical
Leave Act”*
Tuesday, February 11, 2020 2:00 p.m.

Representative Lucy McBath (D-GA)

- How does a comprehensive federal paid family and medical leave program help small businesses remain competitive?

[Mrs. Batch response to questions submitted for the record follows:]

March 11, 2020

The Honorable Robert C. "Bobby" Scott
Chairman, Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Chairman Scott:

Thank you for the opportunity to testify at the February 11- Workforce Protections Subcommittee Hearing entitled, "Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act." It was an honor and a privilege and I commend the Committee for devoting time to an issue that matters tremendously to families in North Carolina and across the country.

It is my pleasure to respond to the additional questions from Committee members.

Chairman Scott (D-VA)

• In your testimony you discuss how the Family and Medical Leave Act has helped many workers, but notably "uses a definition of family that is too narrow." We need to better acknowledge non-traditional family structures. This might be a couple who are in a long-term relationship and financially intertwined but neither domestically partnered nor married, or it could be an immigrant who doesn't have a biological family in the U.S. but has built a chosen family.
o How should states and Congress expand this definition to recognize various family and caregiving relationships?

Answer:

Since the Family and Medical Leave Act is a federal law, I believe the responsibility falls to Congress to broaden the definition of family.

I absolutely agree that family covered by this law should include a couple in a long-term relationship and financially intertwined but neither domestically partnered nor married, and an immigrant who does not have a biological family in the United States but has built a chosen family.

In my testimony, I said the FMLA should be expanded to cover leave taken by relatives like my mom, sisters and grandmother, as well as domestic partners and people who aren't blood relatives but are essential to care and recovery. In addition to my husband, that is the family I relied on as I recovered from breast cancer.

I believe it should also cover workers who need time to care for other loved ones who fall within a broad definition of family that reflects the reality of life today. That includes time to care for a child (biological, adoptive, de facto or foster, including adult children), grandchild, grandparent, parent (biological, adoptive, de facto or foster, stepparent or legal guardian or an individual who stood in loco parentis to an employee when the employee was a child), sibling, aunt, uncle, niece, nephew, spouse (husband or wife, or domestic partner), or other individuals related by blood or affinity who are like family to the worker.

Representative Haley Stevens (D-MI)

- The FMLA allows eligible employees to take parental leave or leave to care for themselves or a close family member with a serious health condition.
 - o Should we examine additional reasons for leave?
 - o Are there other life events and activities that are not only essential to individual and family health and well-being, but are essential to our society?

Answer:

We should. The FMLA should be expanded to cover workers who need time to attend a child's school meetings or other important activities for their children, or for elder care needs such as nursing home visits. I support The Family Medical Leave Modernization Act (H.R.5456/S.2071), which would expand the FMLA to provide up to 24 hours of "small necessities" leave to parents and family caregivers as well.

Thank you for the opportunity to provide these answers. I look forward to the Committee taking action on this vitally important issue.

Sincerely,

Rep. Sydney Batch
North Carolina General Assembly

[Ms. Jacobs response to questions submitted for the record follows:]



QUESTIONS FOR THE RECORD

Elisabeth Jacobs*
Senior Fellow, Urban Institute

For the
Subcommittee on Workforce Protections,
Committee on Education and Labor,
United States House of Representatives

BALANCING WORK, HEALTH, AND FAMILY: THE CASE FOR EXPANDING THE
FAMILY AND MEDICAL LEAVE ACT

February 11, 2020 (Questions submitted March 11, 2020)

*The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

Chairman Scott (D-VA)

This Committee just concluded the third hearing in our Future of Work series. In our hearings many witnesses explained, as you suggested in your testimony, that “employment arrangements for many workers today look very different from the full-time, lifetime-employer model of the past.” How has the structure of the labor market itself unintentionally left workers out of accessing benefits under the FMLA?

The labor market has changed in three key ways.

First, the rise of the “fissured workplace” has altered the structure of the labor market, with important implications for workers’ wages and benefits. In a fissured workplace, the business sheds secondary functions to focus on core competencies. The “fissures” deepen and spread as secondary businesses shift some activities to yet another company, and so on. Consider a hotel that outsources its cleaning services to one firm, its dining services to another, its front desk services to yet another, and its tech support to still another. The result is an increasingly complex layering of employees within businesses, to the extent that some employees may not have a clear sense of who their employers are. Profit margins grow slimmer as one travels farther down the fissure, increasing the incentive to cut costs. Research suggests that the consequences of fissuring for workers in outside firms may be decreased earnings and lower rates of access to employer-provided benefits and protections such as health, retirement, and sick-leave benefits, compared with similar workers in non-fissured firms. Today, workers in fissured firms may work for smaller employers, or for firms with fewer than 50 employees within a 75-mile radius of a given work-site. Current job protections for family and medical leave under FMLA categorically exclude these employees.

Second, and relatedly, today’s economy is increasingly characterized by alternative work arrangements in which workers take on short-term jobs, often as self-employed workers or independent contractors. Much of this change has occurred over the past decade. A recent study finds that the share of workers engaged in alternative work arrangements—including temporary agency workers, on-call workers, and independent contractors or freelancers—grew from 11 percent in 2005 to nearly 16 percent in 2015. Although the share of workers in alternative work arrangements remains a relatively small slice of the overall labor force, it accounts for 94 percent of net employment growth between 2005 and 2015. Many of those engaged in alternative work arrangements are also employed in more traditional work arrangements. For example, a recent study from the Federal Reserve Board of Governors finds that 56 percent of those who report alternative work arrangements also report that they are “formally employed.” An additional 20 percent of those in alternative work arrangements self-identify as multiple job holders with both full- and part-time employment, in addition to their alternative work arrangements. In short, work in the 21st century increasingly means having a complicated set of employment relationships. This shift toward alternative work arrangements may mean that fewer workers are covered by FMLA’s job protections than in the past.

Third, part-time workers play a key role in the US labor market, yet labor market regulations do little to recognize this fact. About 16 percent of workers are employed part time, a level that has changed relatively little since the early 1980s. Although the overall share of part-time workers has remained steady, the composition of the part-time workforce has shifted in important ways. Younger workers (ages 16 to 24) remain the most likely to work part time, but they account for a shrinking share of the total workforce, dropping from 23 percent of employed individuals in the late 1970s to just over 12 percent more recently. Part-time work has become increasingly prevalent for prime-age workers (ages 25 to 54) with a high school degree or less. Although many workers choose to work part time, the share of involuntary part-time workers has remained persistently elevated in the wake of the Great Recession. These involuntary part-time workers earn nearly one-fifth less per hour than comparable workers with full-time jobs, and they are five times as likely as other workers to live in poverty. Taken together, these data suggest that the part-time working population is an economically vulnerable group. Because FMLA applies only to employees who have worked 1,250 hours for a given employer in the previous year, many of part-time workers are excluded from the law’s job protection coverage.

How should Congress consider those evolving employment conditions when addressing job protection in federal family and medical leave laws?

Congress should recognize that employment conditions can play an important role in shaping both the total number of workers and the types of workers who are covered by job protection provisions in federal family and medical leave laws. The status quo excludes many of the most economically vulnerable workers, and shifting employment conditions may exacerbate that inequality.

For instance:

- Workers who patch together full-time schedules based on several part-time jobs remain ineligible for legal protections, because current law requires a lengthy work history with a single employer.
- Many part-time workers, including those who wish to work full-time but are unable to find work, will remain excluded from job protection unless hours requirements are lowered. Because part-time workers have become increasingly made up of prime-age workers with low-wages, this means an especially economically vulnerable group is currently excluded from job protections absent a policy change.
- Fissuring may mean fewer covered work sites. It may also mean that fewer covered workers are aware of their right to job protected family and medical leave, as employment relationships become less transparent.
- Workers in low-wage jobs, including part-time workers, may have lower rates of job tenure with a given employer than those in higher-wage, full-time positions. Because current law requires only employees with one full year of tenure with an employer, many vulnerable workers are excluded from current job protection for family and medical leave.

Representative Lucy McBath (D-GA)

Dr. Jacobs, what does the evidence tell us about the impact of leave policies on children's health outcomes? What does it tell us about the importance of expanding who can take leave?

The impact of parental leave on children's health outcomes is one of the most powerful arguments for the expansion of leave protections; a substantial body of empirical evidence shows a range of positive effects. The channels through which parental leave may affect children's health outcomes are threefold. First, leave guarantees may reduce maternal stress, which myriad studies show adversely affects child well-being at birth and in later life. Second, leave can increase the amount of time a child spends with the mother after birth. As a result, mothers may be more able to initiate and continue breastfeeding, attend well-baby doctor visits for preventive care, tend to a sick baby, and seek medical care promptly for both herself and her child when needed. Although much of the literature on the impacts of parental leave uses data from outside the US (because of the absence of policies in the US), the growing body of empirical evidence from the US demonstrates important effects of job-protected parental leave guarantees on children's outcomes. After the implementation of FMLA, mothers' access to job-protected unpaid leave to care for a new baby resulted in a 10 percent reduction in infant mortality.

Representative Haley Stevens (D-MI)

Dr. Jacobs, how do our current federal leave laws fail to fully recognize the various caregiving relationships today? How can we address this shortfall?

FMLA provides 12 weeks of job-protected leave for a wide range of caregiving needs, including parental leave (for both mothers and fathers), caregiving leave to care for a sick loved one (including an ill child, spouse, or parent), medical leave to take care of one's own serious illness, as well as 26 weeks of leave to care for an injured or ill service member. This inclusive starting place regarding the types of care covered is well-matched to the diverse caregiving needs of the American workforce, especially in light of the caregiving challenges that come with an aging nation. However, FMLA's definition of "family" excludes millions from providing care to their closest kin. Under FMLA, "family" is defined as a new child (from birth, adoption, or foster-care placement), a child younger than 18 (or a child

older than 18 with a physical or mental disability as defined by the Americans with Disabilities Act), or a parent. FMLA offers no protection for working grandparents providing care to grandchildren or for working adult children providing care to grandparents. Yet millions of Americans live in multigenerational households. For example, of the 2.4 million grandparents who lived with their grandchildren in 2018, 37.9 percent were the primary caregiver (i.e., the child's parent was not present in the household). Over half (55.4 percent) of these grandparent caregivers were in the labor force, but they were not eligible for FMLA leave to care for their grandchildren. Workers who need leave to care for an ill grandparent are also not eligible for FMLA leave, nor are workers who need leave to provide care for an ailing sibling.

Congress could address these exclusions by broadening the definition of "family" to more accurately reflect the contemporary reality of kinship and care in the United States today.

[Mr. Sandkamp response to questions submitted for the record follows:]

How does a comprehensive federal paid family and medical leave program help small businesses remain competitive?

A comprehensive federal paid family and medical leave program helps small business owners to be competitive not only amongst other small businesses, but larger corporations. Only 19 percent of the U.S. workforce has paid family leave through their employers and only 40 percent have personal medical leave through an employer-provided temporary disability program.¹ For small businesses the numbers are starker: only 14 percent of workers in firms with 100 or fewer employees have access to paid family leave, compared to 28 percent of workers in firms with 500 or more employees.² Small business owners want paid family and medical leave for themselves and their employees, yet the private market does not offer good, affordable leave policies.³ Small business owners overwhelmingly support paid family and medical leave and identify a social insurance model as what would most help them offer paid leave to their employees.⁴

Paid family and medical leave social insurance programs help businesses reduce costs and level the playing field for employers of all sizes while allowing workers to meet their health needs and caregiving responsibilities. Paid leave improves worker retention, which saves employers money through reduced turnover costs. Replacing workers is expensive. Turnover costs are estimated to average one-fifth of an employee's annual salary⁵, and when workers do not have access to paid leave, they are more likely to need to leave their jobs. Paid leave reduces these turnover costs and encourages valued workers to stay in the labor force and with the same employer. I experienced this in my business as I was forced to replace a worker before New Jersey had a paid leave program and I retained workers after the paid leave program was in place, as a direct result of the program.

With modest bottom lines small businesses often have trouble matching more generous paid leave benefits offered by some larger employers resulting in a hiring disadvantage.⁶ In the current labor market, small businesses lose talented employees to larger employers, which wield the market power to provide paid leave.

Paid leave social insurance programs help smaller businesses compete with larger businesses. Small businesses often have trouble matching the more generous leave

¹ <https://www.bls.gov/ncs/ebs/benefits/2019/employee-benefits-in-the-united-states- march-2019.pdf>

² <https://www.bls.gov/ncs/ebs/benefits/2019/employee-benefits-in-the-united-states- march-2019.pdf>

³ <https://www.minnpost.com/community-voices/2019/04/the-cost-of-inaction-on-paid-family-and-medical-leave/>

⁴ <https://smallbusinessmajority.org/our-research/workforce/small-businesses-support-paid-family-leave-programs>

⁵ Boushey, H., & Glynn, S. J. (2012, November 16). There Are Significant Business Costs to Replacing Employees. Center for American Progress Publication. Retrieved 26 September 2018, from <https://cdn.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>

⁶ https://mainstreetalliance.org/2018_pfml_report

benefits offered by larger employers – potentially resulting in a hiring disadvantage. When all employers must abide by the same rules and have access to a social insurance program, the playing field is more level. In California, although all employers reported positive outcomes overall, small- and medium-sized businesses (those with fewer than 50 employees and those with 50 to 99 employees) reported more positive outcomes than large businesses (100+ employees).⁷ Paid leave heightens American businesses' competitiveness in the global economy. Out of 185 countries and territories in the world surveyed by the International Labor Organization, the United States is one of only two countries to offer no paid maternity leave.⁸ Among all developed economies, the United States is the only country that does not guarantee paid maternity leave.⁹ Other countries have recognized that providing leave is a matter of economic competitiveness and, in fact, the most competitive countries in the world offer paid leave to workers. It's past time for the United States to catch up.

A 2019 study by Panorama and the American Sustainable Business Council, stated that large, publicly traded U.S. companies that offered or expanded a paid leave policy between 2013 and 2018 averaged increases of 4.6 percent in revenue and 6.8 percent in profit on a full-time equivalent (FTE) basis.¹⁰ Small businesses deserve a shot at the same healthy growth in revenue and profit.

⁷ Applebaum, E., & Milkman, R. (2011, January 19). Paid Family Leave Pays Off in California. Harvard Business Review, HBR Blog Network. Retrieved 26 September 2018, from <http://blogs.hbr.org/2011/01/paid-family-leave-pays-off-in/>

⁸ The two countries that do not offer paid maternity leave are Papua New Guinea and the United States. In Oman, one of the other countries the ILO lists as not having paid maternity leave, paid maternity leave became a statutory right in 2011. United Nations' International Labor Organization. (2014). Maternity and paternity at work: Laws and practices across the world. Geneva: International Labor Office. Retrieved 26 September 2018, from <https://www.ilo.org/global/topics/equality-and-discrimination/maternityprotection/publications/maternity-paternity-at-work-2014/lang-en/index.htm>

⁹ Ibid.

¹⁰ <https://www.asbcouncil.org/media-release/panorama-and-american-sustainable-business-council-new-study-shows-positive-return>

[Whereupon, at 4:22 p.m., the subcommittee was adjourned.]

