

# A Foundation and A Blueprint: Building the Workplace Leave Laws We Need After Twenty-Five Years of the Family & Medical Leave Act



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# A Foundation and A Blueprint:

## Building the Workplace Leave Laws We Need After Twenty-Five Years of the Family & Medical Leave Act

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### Who We Are

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace. We help workers across the economic spectrum care for themselves and their families without risking their economic security. Through legislative advocacy, litigation, and public education, A Better Balance leverages the power of the law to ensure that no workers have to make the impossible choice between their job and their family. We believe that when all working parents and caregivers have a fair shot in the workplace, our families, our communities, and our nation are healthier and stronger.

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## Executive Summary

Twenty-five years ago, the passage of the watershed Family and Medical Leave Act (FMLA) 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.

The FMLA was always intended as a first step. Yet in the intervening quarter-century

national progress has stalled while the existing legislation's limitations have become increasingly apparent. Though federal action remains elusive, states and cities have stepped up with policies that go beyond the FMLA to better protect working families. At A Better Balance, we have been at the heart of these efforts, from our firsthand experience as key champions of the landmark New York paid family leave and New York City paid sick time laws to our ongoing national role as legal advisors and policy experts to coalitions around the country.

Innovative state and local laws offer key insights into the necessary national next steps. As this Report highlights, these laws are:

- **Providing *paid* leave benefits,** ensuring that workers, including those who are self-employed or part-time, won't have to choose between caring for themselves or their families and paying the bills,
- **Increasing access to job-protected leave** by reducing barriers that disproportionately exclude the most vulnerable workers,
- **Expanding the meaning of family** to better reflect and protect the diversity of modern families, and
- **Securing paid sick days** to improve economic security and public health.

These pioneers have proven that the right workplace leave policies are not only good for workers, but also benefit businesses, families, and our communities. Their experiences offer a roadmap for paid, job-protected leave that covers all workers and all families. It's time for federal lawmakers to follow states' lead—America has waited long enough.

## Introduction

In 1993, the passage of the Family and Medical Leave Act enshrined in federal law for the first time the right to workplace leave when a serious health need hits or a new child arrives. This landmark enactment—the result of a decade-long campaign bringing together advocates from across the country—was rightly hailed as an important victory, but was always intended as just a first step. As one supporter put it at the time, “We’re not saying this bill is the final answer. We’ve just built a foundation.”<sup>1</sup>

Twenty-five years later, the FMLA remains the only significant federal workplace leave law in this area—at least to date the final word, if not the final answer. As a result, though countless Americans each day benefit from the FMLA’s invaluable protections, too many are still left out of a law that does not cover them or does not meet their needs.

While progress at the national level has remained out of reach, states and cities have filled in many of the gaps, providing legal protections that go beyond the FMLA. These laws, which expand on the who, the what, and the how of the FMLA, offer experience-tested models for what more robust, fairer legal architecture could look like.

The FMLA is a strong foundation. States and localities have given us a blueprint for building on that foundation. This Report aims to combine the two, so that we can get to work on constructing the workplace leave laws we need.

# The Family and Medical Leave Act

On February 5, 1993, President Bill Clinton signed the Family and Medical Leave Act into law—the first of his presidency. But the story of the FMLA dates back to 1984, when the bill that would become the FMLA was first drafted by the Women’s Legal Defense Fund (now the National Partnership for Women & Families).<sup>2</sup>

Champions brought together a broad coalition of advocates including women’s groups, labor unions, disability groups, religious organizations, health leaders, and senior citizens' groups to fight for the bill over the next decade.<sup>3</sup>

Once drafted, the FMLA faced an uphill battle. Predecessor legislation was introduced for the first time in the House in 1985 and in the Senate in 1986.<sup>4</sup> In 1990, Congress passed a family and medical leave bill, only to have it vetoed by President George Bush.<sup>5</sup> Two years later, history repeated itself: Congress once again sent a bill to the president’s desk and President Bush once again vetoed.<sup>6</sup>

Things changed dramatically after the 1992 election. Bills were quickly introduced in both houses once the 103<sup>rd</sup> Congress convened. On February 4, 1993, the House and Senate each passed the Family and Medical Leave Act of 1993 in quick succession. President Clinton signed the bill into law the following day. The FMLA went into effect six months later on August 5, 1993.<sup>7</sup>

## The FMLA has been used more than 100 million times

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Today, the FMLA is a crucial part of the legal infrastructure of our workplaces. Since its enactment, American workers have used the law more than 100 million times.<sup>8</sup> From the first precious weeks with a new baby to the last priceless moments with a dying parent, the FMLA has let workers be there for their families when they needed them the most. Moreover, the FMLA has empowered workers to manage chronic conditions, get essential mental health care, go to chemotherapy or dialysis, or recover from life-saving surgery without risking their jobs.

### FMLA 101

The FMLA gives covered employees the right to up to twelve workweeks of family or medical leave in a 12-month period.<sup>9</sup> To qualify, an employee must meet three requirements: the 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 for that employer at least 1,250 hours in the last twelve months.<sup>10</sup>

This leave can be used in one of four situations. The first is bonding leave, which can be used when a new child joins a worker’s

family, whether through birth, adoption, or foster care.<sup>11</sup> Bonding leave can be taken within twelve months of a child's birth or placement for foster care or adoption<sup>12</sup> and is gender-neutral: a parent of any gender can take the full twelve weeks of leave.<sup>13</sup> If a child has two parents who are both covered by the FMLA, each parent is entitled to twelve weeks of bonding leave (unless both parents are employed by the same employer).<sup>14</sup>



The second purpose is medical leave: workers can take FMLA leave when they have a serious health condition that makes them unable to do their job.<sup>15</sup> This means a physical or mental illness, injury, or condition that requires either some form of in-patient treatment (like hospitalization) or ongoing treatment by a health care provider.<sup>16</sup> Serious health conditions can include chronic conditions like asthma, diabetes, or arthritis, as well as acute conditions like cancer or recovery from significant surgery.<sup>17</sup> Ordinary illnesses like the flu, an upset stomach, or routine dental

care are not covered by the FMLA unless serious complications arise.<sup>18</sup> Workers can take medical leave for prenatal care or for serious health needs in connection with pregnancy or childbirth.<sup>19</sup> Substance abuse treatment is also considered a serious health condition.<sup>20</sup>

The third purpose is family care leave. This leave can be taken to care for a parent, child, or spouse who has a serious health condition.<sup>21</sup> The same types of health needs are covered for both medical leave and family care leave. For example, a worker might take family care leave for an elderly parent with Alzheimer's or to take a child with kidney disease to dialysis.

The fourth and final purpose lets military families address the impact of a family member's deployment. Employees can take leave for certain needs, known as "qualifying exigencies," that arise when a family member is on active duty abroad or has been notified of an impending call or order to active duty abroad.<sup>22</sup> This can include, for example, making financial or legal arrangements for a servicemember, attending military events, or rearranging childcare or eldercare. This type of leave can also be taken to prepare for a short-notice deployment (less than seven days notice) or to be with a servicemember home on short-term rest and recuperation leave.<sup>23</sup>

FMLA leave is, in general, unpaid.<sup>24</sup> Employers are not required to pay employees taking FMLA leave, though they can allow (and in some circumstances require) employees to use their accrued paid time off, such as vacation or sick time, during FMLA leave.<sup>25</sup>

FMLA leave can be used all at once or, under some conditions, on an intermittent or reduced schedule, meaning that an employee takes smaller units of leave over a period of time.<sup>26</sup> For example, an employee might use intermittent FMLA to go to physical therapy for severe arthritis or to address a flare-up of a chronic condition.<sup>27</sup>

Subject to a narrow exception for certain highly paid employees, employees have the right to be reinstated either to the exact job they held before taking FMLA leave or to an equivalent position.<sup>28</sup> If an employee receives health insurance through his or her employer, the employer must maintain that coverage while the employee is on FMLA leave on the same terms as while they are working.<sup>29</sup> It is illegal for an employer to punish or retaliate

against an employee for exercising his or her rights under the FMLA or to interfere with the use of those rights.<sup>30</sup>

## **Changes to the FMLA**

Since its passage, the FMLA has been amended three times. The first time was as part of the National Defense Authorization Act (NDAA) for Fiscal Year 2008,<sup>31</sup> which added the right to leave in connection with a family member's deployment. This is the only time an entirely new purpose for leave has been added to the FMLA since its enactment. As originally written, this provision only authorized leave for families of servicemembers involved in a contingency operation,<sup>32</sup> which effectively limited coverage to family members of those serving in the National Guard and Reserves.<sup>33</sup>





The same act added what is known as military caregiver leave, which allows the parent, child, spouse, or next of kin of a “covered servicemember” to take up to twenty-six weeks (rather than twelve weeks) of FMLA leave per year.<sup>34</sup> Initially, a covered servicemember was defined as a current member of the Armed Forces with a serious illness or injury arising out of his or her active duty service who meets certain criteria.<sup>35</sup>

In 2009, the FMLA was amended for a second time to make changes to the then-new military provisions.<sup>36</sup> First, deployment-related leave was extended to cover family members of those serving in the Regular Armed Forces.<sup>37</sup> At the same time, leave was limited to deployments in foreign countries (for both Regular Armed Forces and National Guard and Reserves), excluding coverage for state-side service.<sup>38</sup> Second, the provision granting extended leave time for military caregivers was expanded to cover those caring for certain veterans with serious service-connected illnesses or injuries.<sup>39</sup>

The third and final time the FMLA was amended was in December 2009 by the Airline Flight Crew Technical Corrections Act.<sup>40</sup> Because of the unusual way their hours are tracked, even full-time flight crewmembers had been effectively excluded from FMLA coverage. The amendments fixed this problem by setting alternate eligibility criteria for flight crew members, restoring a provision that was apparently originally intended to be included in the FMLA but was left out for unclear reasons.<sup>41</sup>

## ***Building on a federal baseline, states have stepped up to fill in the gaps.***

With a few critical exceptions, the FMLA remains essentially the same as when it was initially passed and in the intervening twenty-five years, its limitations have become apparent. Because of restrictive eligibility requirements, the FMLA does not cover all workers and low-income workers are especially likely to be left out. For those who are covered, it provides only *unpaid* leave. Moreover, the FMLA also covers only a narrow set of family members, and does not cover everyday illness.

Unfortunately, despite ongoing efforts from advocates, the FMLA is not just an important federal workplace leave law—for most situations, it is the *only* federal law giving workers a right to leave. While progress has been elusive at the federal level, states and localities have pioneered new approaches and more inclusive protections. These laws offer models for the next generation of workplace leave progress that can truly meet the needs of modern families, just as the original FMLA benefited from the passage of similar state laws in the 1980s.<sup>42</sup>

# States are providing *paid* leave benefits.

The FMLA gives covered employees the right to *unpaid* leave. This means that for many workers, especially low-income workers living paycheck to paycheck, FMLA leave is out of reach—they simply cannot afford to forego the income, particularly at these pivotal life junctures.

This is why, in one survey, nearly half of surveyed FMLA-eligible workers who needed time off but did not take it attributed their decision to lack of pay for FMLA leave.<sup>43</sup> In the same survey, among employees who took some FMLA leave, half reported they cut needed leave short for financial reasons.<sup>44</sup>

Without a legal right, most American workers do not have access to paid family and medical leave. Only 13% of private sector workers receive paid family leave through their employers to bond with a new child or care for a seriously ill or injured family member; among low-income workers, the number is even lower.<sup>45</sup> This absence is especially jarring given that the United States is one of only two countries in the world, along with Papua New Guinea, with no national paid maternity leave benefit of any kind.<sup>46</sup>

The situation is little better for workers' own health: a majority of private sector workers do not have access to short-term disability insurance through their employers and low-income workers are especially likely to be left out.<sup>47</sup> Though many workers have access to paid sick days through their employers,

most have only a limited number of days,<sup>48</sup> on average, just seven sick days per year.<sup>49</sup> This is far too little for a serious illness or injury. Moreover, more than 30% of private sector workers have zero paid sick days, including an even larger percentage of low-income workers.<sup>50</sup>

## Just 13% of private sector workers have paid family leave through their employers

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Research shows that access to *paid* leave is a crucial factor in ensuring that workers can take the leave they need. Women without paid leave are more likely to be pushed into lower-paying jobs or to drop out of the work force entirely.<sup>51</sup> Conversely, women who take paid leave after a child's birth are more likely to be employed nine to twelve months after the child's birth than working women who take no leave and new mothers who take paid leave are also more likely to report wage increases in the year following the child's birth.<sup>52</sup>

Across the board, paid leave alleviates economic strain at critical moments in workers' lives. The birth of a new child can lead to severe financial strains that may result in poverty or bankruptcy, with one quarter of poverty spells resulting from a child's birth.<sup>53</sup> Medical problems are a leading cause of personal bankruptcy in this country, due

in part to the impacts of lost income.<sup>54</sup> In a study of home foreclosures, nearly half of respondents indicated that the foreclosure was due at least in part to medical problems, with 27% specifically referencing lost work due to their medical needs.<sup>55</sup>

Paid leave also translates into concrete health benefits. Ill children have better vital signs, faster recoveries, and reduced hospital stays when cared for by parents.<sup>56</sup> Paid leave is an essential part of this equation, because parents with paid leave are more than five times more likely to care for their sick children than those without.<sup>57</sup> In one study, parents of children with special needs who received paid leave were more likely to report positive effects on their children's physical and mental health than those who took leave without pay.<sup>58</sup>

Recent research on cancer patients and survivors and their families highlights these effects. While many patients and survivors reported that having access to paid leave made an important difference in their treatment, the results were especially stark among those who actually used paid leave. A majority of patients and survivors reported that using paid leave had a positive impact on being able to complete treatment (80%), managing symptoms or side effects (70%), and even the ability to afford treatments (64%).<sup>59</sup> In the same study, among caregivers with access to paid medical/family leave, a majority reported a positive impact on their ability to go to their loved one's doctor or treatment appointments (72%), to provide care for their loved one (70%), and even their own health (53%).<sup>60</sup>

### MAP OF PAID FAMILY & MEDICAL LEAVE LAWS



## **State paid leave laws provide workers with crucial wage replacement.**

Thanks to the efforts of a network of national and state advocates, including A Better Balance, several states have stepped up to bridge this gap by providing pay during leave. These states have enacted new laws or expanded existing programs to provide workers with paid benefits that partially replace lost income while they are on leave.

Historically, five states have long given workers the right to temporary disability insurance (TDI) benefits.<sup>61</sup> TDI provides income when workers are unable to work due to an off-the-job illness or injury (meaning one that is not covered by workers' compensation), including pregnancy-related disabilities and recovery from childbirth. In recent years, four of these states have expanded their TDI programs to provide income replacement for time away from work to bond with a new child or care for a seriously ill loved one. California was the first in 2002,<sup>62</sup> followed by New Jersey in 2008,<sup>63</sup> Rhode Island in 2013,<sup>64</sup> and New York in 2016.<sup>65</sup> New York's law, which A Better Balance played a key leadership role in enacting,<sup>66</sup> also includes paid benefits to address needs arising out of a close family member's military deployment, following the model set by the FMLA's expansion.<sup>67</sup>

Even more recently, jurisdictions without pre-existing TDI laws have established their own leave insurance benefit programs. In

2017, Washington, D.C. and Washington State each enacted laws that will begin providing benefits in 2020.<sup>68</sup> Both laws will provide wage replacement when workers take leave for their own or a family member's serious health condition or to bond with a new child;<sup>69</sup> Washington State will also provide benefits for deployment-related leave.<sup>70</sup>



The seven state laws are similar in many ways.<sup>71</sup> Though the exact structures differ, they all provide benefits through an insurance system that pools contributions (from employers, employees, or both) to pay for benefits, rather than requiring employers to pay out of pocket.<sup>72</sup> They also all offer broad coverage, reaching nearly all private sector (non-government) employees in their respective states and, in Washington and New Jersey (for family leave only) also covering public sector employees.<sup>73</sup>

However, they differ in other ways. The number of weeks of benefits for one's own health varies from two weeks in the District

of Columbia<sup>74</sup> to fifty-two weeks in California.<sup>75</sup> Washington State will offer up to twelve weeks, with an additional two weeks for serious pregnancy complications,<sup>76</sup> while Hawaii, New Jersey, and New York each offer twenty-six weeks and Rhode Island offers thirty weeks.<sup>77</sup> For family leave purposes, the number of weeks of leave benefits varies from four weeks in Rhode Island<sup>78</sup> to twelve weeks in Washington State<sup>79</sup> and New York (once fully phased in).<sup>80</sup> California and New Jersey each provide six weeks<sup>81</sup> and D.C. will offer six weeks for family care and eight weeks for bonding.<sup>82</sup>

Similarly, the amount of money workers can receive varies in two ways. First, the wage replacement rate—the percentage of their own income workers can receive—ranges from 50% to 70% in the programs already providing benefits.<sup>83</sup> In Washington State and the District of Columbia, some workers will be able to receive up to 90% of their income, while higher-income workers will receive a lower percentage.<sup>84</sup> The maximum amount a worker can receive in benefits per week also varies and in most places is set by a formula based on the state's average weekly wage. California's maximum benefit is the highest at approximately 100% of the state's average weekly wage (currently putting the cap at \$1,173),<sup>85</sup> while other states cap benefits at between 50% and 85% of their state's average weekly wage.<sup>86</sup>

In California and New York and the soon-to-be implemented Washington State and Washington, D.C. laws, self-employed workers can also opt in to coverage if they

choose to.<sup>87</sup> By even conservative measures, more than one in ten American workers are self-employed (as of 2015),<sup>88</sup> though some counts place the number even higher.<sup>89</sup> A disproportionately high number of caregivers—in one study, as many as one in six—are self-employed.<sup>90</sup> Self-employment can be a double-edged sword for the ability to take leave, trading off (at least theoretically) greater control of one's work schedule with less reliable income and fears of losing clients or work due to absence.

Recently, the rise of the so-called "gig economy" has placed increasing importance on ensuring basic protections for independent contractors and other self-employed workers, even as it raises significant questions regarding whether these workers are in fact employees who have been misclassified as contractors.<sup>91</sup> Despite their claims to provide flexibility, in practice platform companies like Uber often punish workers for not being available during profitable time slots, making it risky to take needed leave.<sup>92</sup> Moreover, as with other low-income workers, taking unpaid time away from work may be economically unfeasible for many gig economy workers who struggle to find enough hours of work.<sup>93</sup> New laws must, therefore, account for the needs of these workers and ensure that they can access the tools they need to take real leave regardless of whether they are considered traditional "employees."

## ***State paid leave laws can also provide the right to job protection.***

When we say the FMLA provides a right to “leave,” we mean it provides the right to be away from work for a period of time for a specified purpose and then return to work (be reinstated) and the right to not be punished (retaliated against) for taking this time. Together, these two rights are referred to as job protection. In addition, the FMLA protects workers’ health insurance while on leave and prohibits employers from interfering with the use of leave.

Although the state laws described above are sometimes described as “paid leave” laws, many of them do not provide a right to leave in the same sense that the FMLA does. They provide a right to a benefit (pay) during the time that a worker is away from work for a specified purpose, but do not necessarily include a right to job protection (or continuation of health insurance).

Put another way, the FMLA provides a right to leave without a right to pay, while many state laws creating social insurance programs provide a right to pay without a right to leave. These two types of laws can work together, when a worker is simultaneously covered by a law providing a right to leave (job protection) and a right to pay (benefits). For example, a worker may receive TDI benefits under a state law while also taking covered FMLA leave for a serious health condition; together, the

two laws provide that worker with income and protect the worker's job. The same can be true under state laws that, like the FMLA, provide a right to unpaid leave with job protection. The relationship between the two types of laws, which cover similar situations and often have similar names, can be very confusing to workers, especially when different eligibility criteria apply.

Some state laws, however, provide a right to both leave and pay. Specifically, New York and Rhode Island’s paid family leave laws provide both a right to paid benefits through a social insurance system and a right to job protection while receiving those benefits for all workers covered by those laws.<sup>94</sup> These laws also protect the health insurance of all workers who are receiving paid family leave benefits.<sup>95</sup> Job protection was one of the core pillars A Better Balance and our partners fought for and won in New York’s paid family leave law.<sup>96</sup> As described below, including these rights within paid leave laws can

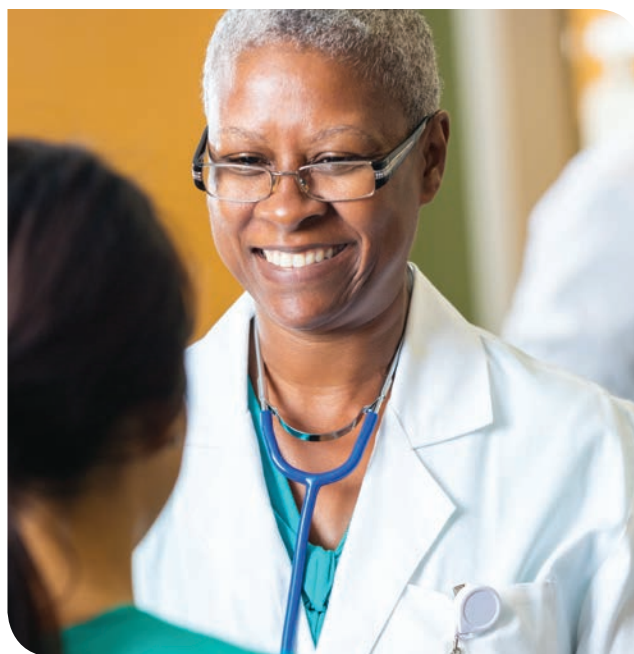


substantially expand the number of workers who have the right to job protection in these states. Washington State's paid leave benefits law provides job protection to *some* workers receiving benefits, but for the most part does not go beyond the protection offered by the FMLA.<sup>97</sup> As of January 2018, the remaining states with paid family leave benefit laws do not offer job protection as part of those laws and no state provides job protection as part of its medical leave benefits or TDI law.<sup>98</sup>

### ***Momentum is building for paid leave laws in states across the country.***

The experiences of these states have shown that it is possible to provide critically needed benefits at an affordable cost and without burdening businesses. Contrary to opponents' claims, these laws do not hurt businesses and can even help. In California, 92.8% of employers reported that paid family leave had a positive or neutral effect on employee turnover,<sup>99</sup> saving employers the costly step of replacing an existing employee.<sup>100</sup> A majority of California employers also reported positive or neutral effects on productivity (88.5%), profitability/performance (91.0%), and employee morale (98.6%).<sup>101</sup>

Nor is it true that paid family and medical leave is bad for small businesses. Without a state program, small businesses that cannot afford to offer the same generous leave benefits as larger companies are at a competitive disadvantage in hiring.<sup>102</sup>



Providing paid leave benefits through a social insurance program levels the playing field for small businesses. That is why, for example, one year after Rhode Island's paid family leave law went into effect, a majority of small employers reported they were in favor of the program.<sup>103</sup>

Following in the lead of these trailblazers, new states are now looking to enact their own paid family and medical leave laws.<sup>104</sup> At the start of 2018 legislative sessions, bills have already been filed in states all over the country, with more expected soon.<sup>105</sup> The past two years have been a period of unprecedented progress in this area and the pace of change is only accelerating. The effect is cumulative and powerful: each subsequent state can learn from its predecessors, while the states that led the way are now looking to expand their own laws to match those that followed.

# State laws are covering workers left out of 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.<sup>106</sup>

Taken together, these requirements mean that more than 40% of American workers are not covered by the FMLA.<sup>107</sup>

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.<sup>108</sup> Studies looking at household income have found similar results.<sup>109</sup> Less-educated workers are also especially likely to lack coverage.<sup>110</sup>

## More than 40% of American workers are not covered by FMLA

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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.<sup>111</sup> Across all age groups, an estimated half of all working parents are not covered by the FMLA.<sup>112</sup>

## States are covering employees of smaller employers.

The FMLA excludes workers whose employers have fewer than fifty employees. Nationwide, approximately 52.7 million private sector workers work for employers with fewer than fifty employees, representing about 44% of the private sector workforce.<sup>113</sup>

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,<sup>114</sup> 61% of employees work for employers with fewer than fifty employees.<sup>115</sup> Similarly, the construction industry employs one of the highest proportions of undocumented workers of any industry;<sup>116</sup> 60% of construction workers work for firms with fewer than fifty employees.<sup>117</sup> Approximately two-thirds of employees excluded from coverage under the FMLA are excluded due to their employer's size.<sup>118</sup>

As noted above, New York and Rhode Island include the right to job-protected leave for all employees receiving paid family leave benefits under their laws. These laws apply to employers with as few as one employee. This means that, in New York and Rhode Island, workers are entitled to job-protected family leave *regardless of the size of their employer*.<sup>119</sup>

Other states have extended job-protected leave to employees of smaller employers through their state's unpaid leave laws, sometimes known as "state FMLAs."<sup>120</sup> Oregon extends leave to employees of employers with as few as 25 employees,<sup>121</sup> the District of Columbia for as few as 20 employees,<sup>122</sup> and Maine for as few as 15 employees.<sup>123</sup>

Some states have lowered the employer size thresholds only for certain purposes of leave. Employees of smaller employers can take leave to bond with a new child in Minnesota (21 employees),<sup>124</sup> California (20 employees, beginning in 2020),<sup>125</sup> Vermont (10 employees),<sup>126</sup> and Massachusetts (6 employees).<sup>127</sup> Vermont extends leave

for one's own serious health needs or those of a family member to employees of employers with as few as 15 employees.<sup>128</sup>

## Approximately **52.7 million** private sector employees work for employers with **fewer than 50** employees

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Several states have laws specifically covering unpaid leave for health needs in connection with pregnancy or childbirth with more relaxed eligibility criteria. These laws vary in terms of the exact needs covered and some of these laws offer fewer protections than the FMLA or provide less time off. Employees of smaller employers can take pregnancy-related leave in Louisiana (25 employees),<sup>129</sup> Minnesota (21 employees),<sup>130</sup> Washington (8 employees),<sup>131</sup> California (5 employees),<sup>132</sup> Kansas (4 employees),<sup>133</sup> and Iowa (4 employees);<sup>134</sup> there is no minimum number of employees to qualify for pregnancy-related leave in Montana.<sup>135</sup> Workers may also have additional leave-related protections under state and local laws giving workers the right to reasonable accommodations for pregnancy and childbirth-related health needs, which may have lower employer size thresholds.<sup>136</sup> 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 employees to qualify.<sup>137</sup>

## **States are lowering barriers to eligibility, especially for low-income workers.**

Employees who work for FMLA covered employers must meet two additional criteria to qualify for FMLA leave. First, they must have worked for that employer for at least 12 months.<sup>138</sup> Second, they must have worked for that employer at least 1,250 hours in the last 12 months.<sup>139</sup> This works out to an average of about 24 hours per week over the course of a year.

Low-income workers change jobs more often than other workers,<sup>140</sup> which can make it difficult to meet the one-year duration requirement. Industries that employ low-income workers often have very high turnover rates: for example, turnover in hospitality rose to 72.1% in 2015, while among home care workers turnover was 60% in 2015.<sup>141</sup>

The 1,250 hours-worked requirement also 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,<sup>142</sup> and women, who make up 51% of the population, are 65% of the part-time workforce.<sup>143</sup> Excluding part-time workers is especially cruel to the many 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.<sup>144</sup> Involuntary part-time workers are disproportionately people of color and disproportionately low-income.<sup>145</sup> 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.<sup>146</sup>

States that have extended job protection through their paid family leave insurance laws have made more workers eligible for protection by using less stringent eligibility criteria. In New York, most employees qualify for paid family leave, including job protection, after 26 consecutive weeks of employment (about six months), while low-hour part-time workers qualify when they have worked for 175 days for their employer.<sup>147</sup> With one limited exception, there is no minimum number of hours worked to qualify for paid family leave in New York.<sup>148</sup>

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. Instead, employees qualify when they meet a low minimum earnings threshold, which must be earned over at least two quarters.<sup>149</sup>

**Number of Americans working part-time involuntarily:  
6.4 million**

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Other states have reduced these barriers in their state unpaid leave laws. Employees can qualify for leave after approximately six months in Hawaii<sup>150</sup> and Oregon<sup>151</sup> and for bonding leave after three months in Massachusetts.<sup>152</sup> In Connecticut,<sup>153</sup> the District of Columbia,<sup>154</sup> and New Jersey,<sup>155</sup> employees can qualify for leave under their state FMLAs if they have worked 1,000 hours in the last 12 months or an average of 19.2 hours per week. There is no minimum number of hours worked required to qualify for family or medical leave in Maine,<sup>156</sup> for family leave in Hawaii,<sup>157</sup> or for bonding leave in Oregon.<sup>158</sup>

As with employer size thresholds, some states have more relaxed criteria for hours worked and employment duration for leave in connection with pregnancy and childbirth, though these laws are often less protective

in other ways. Minnesota allows employees to qualify for bonding leave and leave in connection with pregnancy with a reduced number of hours worked, depending on the employee's specific job classification.<sup>159</sup> California, Iowa,<sup>160</sup> Kansas,<sup>161</sup> Louisiana,<sup>162</sup> Montana,<sup>163</sup> and Washington<sup>164</sup> all provide leave in connection with pregnancy and childbirth with no minimum employment duration and no minimum number of hours worked. Workers may also have additional leave-related protections under state and local laws giving workers the right to reasonable accommodations for pregnancy and childbirth-related health needs, which may have lower employment duration and hours-worked thresholds.<sup>165</sup> 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 or number of hours worked.<sup>166</sup>



# States are expanding the meaning of family.

Under the Family and Medical Leave Act, 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 himself or herself due to a disability).<sup>167</sup> This outdated and exclusionary vision has concrete consequences for workers and their families.

With a growing number of people living with and relying upon partners or significant others to whom they are not married, many of whom are raising children together, paid leave protection should not be limited to legal spouses.<sup>168</sup> The advent of nationwide marriage equality after the Supreme Court's landmark decision in *Obergefell v. Hodges* removed an unconscionable barrier to marriage, but did not end the need for broader protections. Our laws must still respect those who formed their families under existing domestic partnership laws or who, for a variety of reasons, choose not to marry.<sup>169</sup>

As of 2014, 85 million people in the United States, disproportionately people of color, were living in extended families, such as with a grandparent.<sup>170</sup> For many people, extended family ties with grandparents, grandchildren, aunts, uncles, and other relatives are core relationships and yet, in general, the FMLA does not recognize the right to care for these loved ones.



At the same time, the FMLA takes a limited view of even the so-called nuclear family. By limiting the definition of “son or daughter” to children under age 18, the FMLA acts as if the bonds of parent and child snap at age eighteen, something any parent and most children would refute. By excluding siblings, the FMLA concludes that sharing a crib is an insufficient credential to count as family. Outdated understandings of family are often compared to the 1950s television show “Leave It to Beaver,” with the show’s married parents, Ward and June, and two biological sons, Wally and Beaver. Yet the FMLA would disqualify the tie between Wally and Beaver and put a clock on Ward and June’s connection to their sons.

Fortunately, as in other areas, states have stepped up to better reflect and protect the diversity of American families. Under Rhode Island’s paid family leave law, workers can take paid, job-protected leave to care for a parent-in-law, grandparent, or registered domestic

partner, as well as a child (of any age), parent, or spouse.<sup>171</sup> Under New York's paid family leave law, workers can take paid, job-protected leave to care for a parent-in-law, grandchild, grandparent, or domestic partner, as well as a child (of any age), parent, or spouse.<sup>172</sup> New York's law's definition of "domestic partner" is broad, can cover partners of any gender, and does not require registration.<sup>173</sup>

When Washington State's paid family and medical leave program begins, workers will be able to receive paid benefits to care for a grandchild, grandparent, parent, parent-in-law, spouse, or registered domestic partner, as well as a child (of any age), spouse, or parent.<sup>174</sup> For workers who meet the FMLA's eligibility criteria in terms of employer size, employment duration, and hours worked, this law will also provide job protection even for workers caring for family members not protected by the FMLA.<sup>175</sup>

While they do not provide the right to job protection, other state paid leave benefit laws have recognized the importance of a broader range of family members. In addition to the family members covered by the FMLA, California, New Jersey, and the District of Columbia provide (or will provide) benefits to care for registered domestic partners.<sup>176</sup> California and D.C.'s laws also include grandparents, siblings, parents-in-law, and adult children.<sup>177</sup> California's law also provides benefits to workers caring for a grandchild or a domestic partner's parent,<sup>178</sup> while New Jersey's does so for workers caring for a civil union partner.<sup>179</sup>

Many state unpaid leave laws also 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,<sup>180</sup> Vermont,<sup>181</sup> and Colorado<sup>182</sup> also cover civil union partners. California,<sup>183</sup> Colorado,<sup>184</sup> Maine,<sup>185</sup> Wisconsin,<sup>186</sup> and Washington<sup>187</sup> cover domestic partners, though most states require that domestic partners be registered in order to qualify; Rhode Island covers domestic partners of state employees.<sup>188</sup> 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.<sup>189</sup>



Similarly, while the FMLA generally does not cover care for adult children, Maine, Hawaii,<sup>190</sup> Oregon,<sup>191</sup> Rhode Island,<sup>192</sup> and Vermont<sup>193</sup> allow employees to take leave to care for a seriously ill child of any age. Oregon also allows leave to care for an employee's seriously ill grandchild,<sup>194</sup> while Maine covers the children of an employee's domestic partner.<sup>195</sup>

Five states cover workers' parents-in-law: Connecticut,<sup>196</sup> Hawaii,<sup>197</sup> Oregon,<sup>198</sup> Rhode Island (under its unpaid leave law),<sup>199</sup> and Vermont.<sup>200</sup> Connecticut<sup>201</sup> and Hawaii<sup>202</sup> also cover stepparents. Oregon<sup>203</sup> covers grandparents, while both grandparents and grandparents-in-law are covered in Hawaii.<sup>204</sup> Hawaii covers siblings broadly,<sup>205</sup> while Maine covers siblings who live together and share finances.<sup>206</sup>

## Number of people in the United States living in extended families: 85 million

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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.<sup>207</sup>

Most broadly, the District of Columbia allows covered employees to take leave to care for "[a] person to whom the employee is related

by blood, legal custody, or marriage."<sup>208</sup> This covers a broad range of family relationships, including those covered by the FMLA and the many enumerated other family relationships covered in other jurisdictions.

Surprisingly, the FMLA itself contains an expanded family definition with regard to the 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.<sup>209</sup> 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.<sup>210</sup>

Though there has been important progress in the realm of paid sick days, state family and medical leave laws still largely exclude chosen family—loved ones to whom workers may not have a legal or biological relationship, like a close friend or neighbor. Chosen families are especially important to LGBTQ people, particularly LGBTQ older adults, and people with disabilities, though the need to protect chosen family affects all kinds of families.<sup>211</sup> A Better Balance has helped lead the fight for inclusive family definitions, including coverage of chosen families, through our joint LGBTQ-Work Family Project with Family Values @ Work.

# States and cities are protecting workers by guaranteeing paid sick days.

The FMLA provides critical protection to covered workers when they or their families are facing serious health challenges. This protection has helped countless people dealing with major injuries, acute illnesses like cancer, chronic conditions like diabetes and asthma, and many other significant health needs.

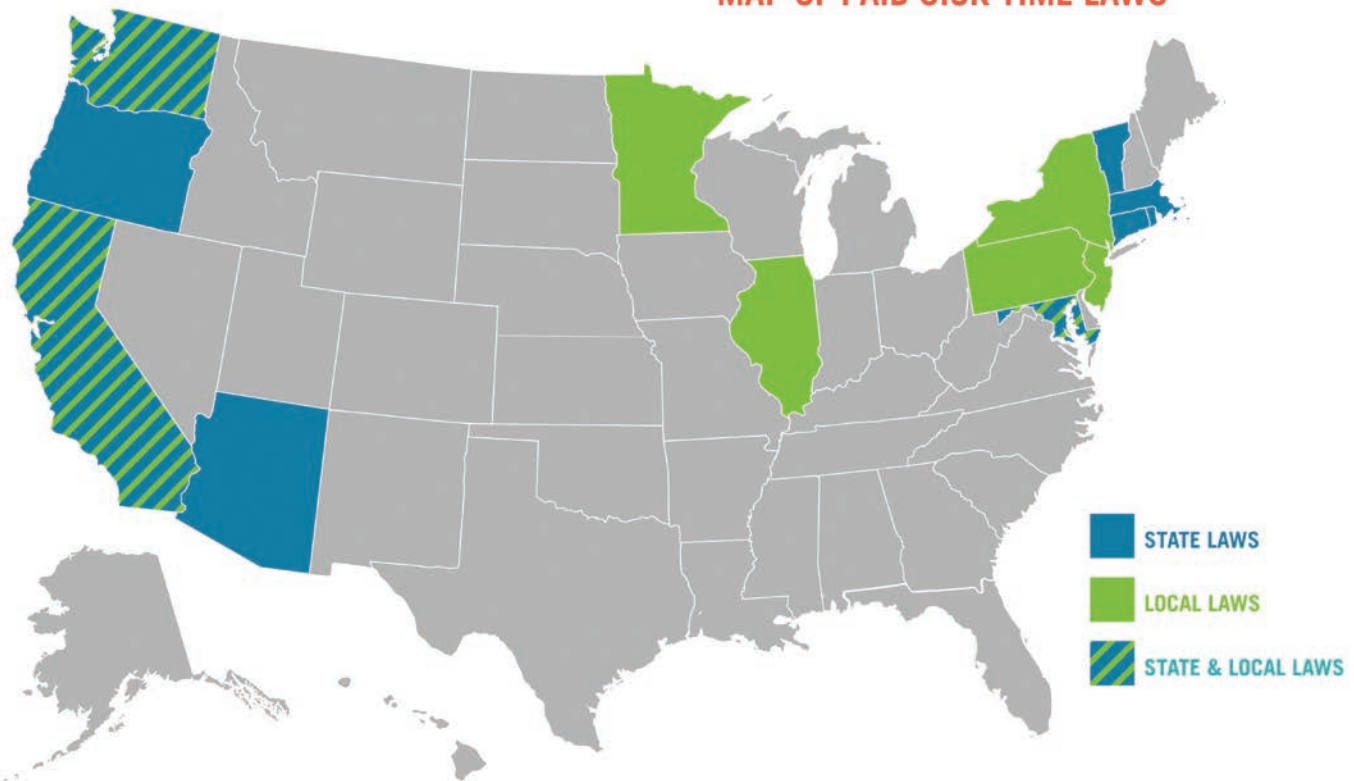
However, the FMLA offers no assistance in the face of everyday illnesses like a cold or the flu. This means that, for many workers, taking even a single day off when they or their families are sick can mean risking not only their paychecks, but their jobs.

Nationwide, over 30% of private sector workers do not have even one day of paid

sick time.<sup>212</sup> Those without paid sick time are disproportionately low-income: 57% of workers in the lowest quarter of income-earners have no paid sick days, including a shocking 70% of those in the lowest ten percent of income-earners.<sup>213</sup> Even those with paid sick time often cannot use that time for a sick child or other loved one.<sup>214</sup>

In this context, the right to pay and the right to take leave without punishment go hand in hand. Without effective legal prohibitions, fear of retribution is a powerful motivator not to take needed time off: in one study, 23% of respondents reported either having lost a job or having been told they would lose a job if they took time off for their own or a

## MAP OF PAID SICK TIME LAWS



family member's illness.<sup>215</sup> This has devastating effects on the economic stability of working families. Since those without paid leave are disproportionately likely to be low-income, the "sick penalty"—wages lost due to a few days of missed work—can be equivalent to a monthly grocery or transportation budget for many families.<sup>216</sup> For single parents, the risks from even temporarily losing the family's sole source of income are even greater.<sup>217</sup>

## **More than 30% of private sector workers have zero paid sick days.**

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Working without paid sick days also causes "presenteeism": going to work or school while sick. Adults without paid sick days are more than 1.5 times more likely to report going to work with a contagious illness than those with paid sick days.<sup>218</sup> Less presenteeism would mean greatly reduced spread of infection and fewer sick people.<sup>219</sup> For example, one study estimated that universal access to paid sick days could have prevented 5 million cases of swine flu in the United States.<sup>220</sup> Compounding the problem, workers in some industries likely to spread infection are especially likely to lack paid time off: for example, less than a quarter of food service workers have access to paid sick days.<sup>221</sup> Parents without paid sick time are nearly twice as likely to send a sick child to school or daycare, where he or she can spread infection, than those with paid time.<sup>222</sup>



Moreover, paid sick days policies allow better, less expensive care. Because those without paid sick days are likely to delay care, increased access could prevent 1.3 million hospital emergency department visits per year, which would reduce medical costs by \$1.1 billion annually.<sup>223</sup> Workers without paid sick leave are also significantly less likely to get preventive screenings like mammograms, Pap smears, and endoscopies, crucial tools in the early diagnosis and treatment of cancer and other diseases.<sup>224</sup>

Starting with San Francisco in 2006, cities and states across the country have enacted laws guaranteeing workers the right to paid sick days. A Better Balance Co-President and Co-Founder Sherry Leiwant participated in the drafting of the New York City Earned Sick Time Act and helped negotiate the final legislation in 2013, after a hard-fought four-year campaign with a broad coalition of advocates.<sup>225</sup> The passage of New York City's law marked a key turning point in the national movement for paid sick days, in



which A Better Balance continues to serve as key legal and policy advisors.

In total, nine states (Arizona, Connecticut, California, Maryland, Massachusetts, Oregon, Rhode Island, Vermont, and Washington State) and the District of Columbia have enacted paid sick days laws.<sup>226</sup> They have also been passed in 29 cities, including 13 cities in New Jersey,<sup>227</sup> 7 cities in California,<sup>228</sup> and 9 other cities across the country,<sup>229</sup> as well as two counties (Montgomery County, MD and Cook County, IL).

Though the exact details vary, the over forty state and local laws follow the same basic structure. Workers earn time off based on the hours they work, usually at a rate of one hour of sick time for every thirty hours worked.<sup>230</sup> These laws vary in the amount of time workers have the right to earn or use per year, from 24 hours (three eight-hour days) to 72 hours (nine eight-hour days), with forty hours (five eight-hour days) being the most common. In some cases, the amount of time workers have the right to earn or use depends on the size of their employer.<sup>231</sup>

Learning from the lessons of existing workplace leave laws, all sick time laws protect workers against retaliation for the use of covered sick time under the law.<sup>232</sup> In most cases this time off must be paid.<sup>233</sup> Unlike paid family and medical leave laws, which typically replace only a percentage of workers' income, paid sick time laws require that workers be paid at 100% of their pay (or, for tipped workers who may be paid a

sub-minimum wage by their employer, at least full minimum wage).<sup>234</sup>

Except for Connecticut's unusually narrow law, all sick time laws require that even the smallest employers allow workers to take sick time without punishment, and exclude only the smallest employers from needing to provide *paid* sick time.<sup>235</sup> Typically, workers begin accruing sick time as soon as they start work and are eligible to use that time after they have been employed for ninety calendar days.<sup>236</sup> This means that workers are generally eligible to use paid sick time much sooner than they would qualify for FMLA leave and do not need to meet a minimum number of hours worked to be covered at all.

Under all sick time laws, workers can use this time when they or their families are sick, injured, or getting medical attention (including mental health and preventive care).<sup>237</sup> Most sick time laws have comparatively inclusive family definitions, including a growing number of jurisdictions that protect workers' right to care for their chosen families.<sup>238</sup>

In a majority of jurisdictions, this time can also be used as "safe time," time off to address non-medical needs when a worker or worker's family are victims of sexual assault, domestic violence, or stalking.<sup>239</sup> This complements older laws giving victims of domestic violence (or crime victims more generally) the right to *unpaid* leave and protection against retaliation when they need to, for example, obtain restraining orders or go to court.<sup>240</sup>

## States have expanded upon the FMLA in additional, often creative ways.

Beyond these categories, states have also expanded and improved upon federal law in other ways. In particular, some states have provided additional time off or allowed time to be used for purposes not covered by the FMLA, just as the FMLA itself evolved to provide extended time for military caregiving and to add a new deployment-related purpose for military families.

### *States are providing the right to additional weeks of leave.*

Twelve weeks represents a minimum benchmark for family and medical leave. Research shows that taking at least 12 weeks of leave has important health benefits for

both children and parents.<sup>241</sup> Leading health groups, including the American Academy of Pediatrics, recommend that even healthy, full-term infants should not be placed in day care until they are at least twelve weeks old due to the health risks.<sup>242</sup>

However, twelve weeks is a floor, not a ceiling. That is why some states have stepped up to provide additional time. Washington State's paid family and medical leave law, which will provide job protection to workers who meet the FMLA's eligibility requirements, will provide more protected time than the FMLA in some circumstances. Generally, workers will be able to take only twelve weeks each of family or medical leave under the law. However, workers experiencing serious



pregnancy complications will be able to take up to fourteen weeks of medical leave and workers who combine family and medical leave will be able to take up to sixteen weeks in a year (eighteen weeks for those with serious pregnancy complications).<sup>243</sup>

Under the Rhode Island Parental and Family Medical Leave Act, the state's unpaid leave law, covered employees can take up to thirteen weeks of family leave.<sup>244</sup> Connecticut<sup>245</sup> and the District of Columbia<sup>246</sup> give covered employees the right to up to sixteen weeks of unpaid family and medical leave.

Some states provide extended time specifically in connection with pregnancy and childbirth. In California, "an employee disabled by pregnancy, childbirth, or a related medical condition" has the right to up to four months of leave (17 and 1/3 weeks),<sup>247</sup> which is separate from leave under the state's FMLA (the California Family Rights Act).<sup>248</sup> The Oregon Family Leave Act (OFLA) provides twelve weeks of leave for workers unable to work due to a condition connected to pregnancy or childbirth in addition to the twelve weeks provided by OFLA to bond with a new child.<sup>249</sup> Tennessee, under a law with more exclusive eligibility criteria than the FMLA (and less strong protections), provides up to four months of leave for adoption, pregnancy, childbirth, or nursing.<sup>250</sup>

### ***States are giving workers the right to leave for new needs.***

The FMLA provides leave only for certain purposes in connection with a worker's

health or family. While, as detailed above, states have expanded on the availability of leave for those purposes, some states have gone even further, providing leave rights for purposes not contemplated by the FMLA. Note that, in some circumstances, different eligibility criteria may apply and different amounts of leave may be available for these purposes as compared to other laws.

While the FMLA only covers serious health needs, Massachusetts and Vermont's state unpaid leave laws give workers the right to leave to attend routine medical and dental appointments with certain loved ones.<sup>251</sup> Oregon provides additional leave for covered employees to care for a child with a non-serious health condition that requires home care<sup>252</sup> and Vermont allows workers to take leave to address a family medical emergency.<sup>253</sup> Connecticut and Maine extend leave to organ donors, while Connecticut also extends leave to bone marrow donors.<sup>254</sup>

Other states provide leave in a broader set of situations. Oregon allows workers to take leave in connection with the death of a family member;<sup>255</sup> Maine allows leave following the death of a family member that occurs during military service.<sup>256</sup> Covered employees can also take limited amounts of leave to attend their child's school activities in Massachusetts,<sup>257</sup> Minnesota,<sup>258</sup> Rhode Island,<sup>259</sup> and Vermont.<sup>260</sup> In Vermont, workers can take leave to accompany a family member to appointments for professional services related to the family member's care or wellbeing or to attend town meetings.<sup>261</sup>

# Building from the blueprint: An agenda for federal action

On this twenty-fifth anniversary of the FMLA, it is time for twenty-first century leave laws, learning from the lessons of the FMLA and the innovative efforts of states and localities. Millions of Americans who were born with the protection of the FMLA and who grew up benefiting from it—and too many of their counterparts who grew up without those protections—are now starting families of their own. At the same time, others are using the FMLA to care for aging relatives, facing a different type of generational pressure.

For all Americans, we need the next generation of legal protections, which as the experiences of the last twenty-five years have shown, must:

- **Protect workers' jobs:** The FMLA has shown just how much a real right to leave—and to come back—can mean. The intertwined elements of the FMLA's powerful employee protections, including robust protection against retaliation, prohibition on interference, and above all the affirmative right to return to work are all essential components of a meaningful right to leave.
- **Provide pay, at a rate low-income workers can afford to use:** For too many workers, the promise of the FMLA has remained just a promise because they could not afford to forego a paycheck. A growing number of states have shown that a

thoughtfully structured social insurance system can provide real wage replacement at an affordable cost and without harming businesses. We can and must do the same at the national level.

- **Cover all workers:** The events that shape our lives—new children, illness and injury, deployment—do not wait for us to meet arbitrary cut points or defer to our employers' headcounts. Neither should our leave laws. In our changing economy, workers need portable, accessible, universal leave rights, regardless of how many hours they work or the size of their employer. This is especially important for self-employed and “gig economy” workers.
- **Recognize all families:** The way our laws define family sends a signal about who our country sees and values. But these choices are more than symbols—they have powerful practical consequences for real people's ability to care for those they love. An inclusive family definition is not a luxury or side issue, it is an essential element.
- **Guarantee paid sick time:** Getting the flu should never cost you your job. As the wave of state and local laws ensuring this basic right have shown, paid sick days mean increased economic security and healthier communities.



- **Continue innovating:** Just as the FMLA itself adapted to meet the needs of military families, states have already recognized problems not addressed by the FMLA and risen to solve them, from bereavement leave in Oregon to educational leave in New England. Our federal leave laws must keep evolving as well.

Legislation is already before Congress that will meaningfully move America forward, like the FAMILY Act and the Healthy Families Act. Those who say that it is impossible to protect workers and businesses must get out of the way of the trailblazers who are already doing so. We know what we need to do, we know how to do it, and we know that it works. **The enactors of the FMLA took the first step—let's take the next steps together.**

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59. Elizabeth Harrington & Bill McInturff, *Key Findings—National Surveys of Cancer Patients, Survivors, and Caregivers*, Pub. Op. Strategies, on behalf of the American Cancer Society Cancer Action Network, Dec. 8, 2017, <https://www.acscan.org/sites/default/files/ACS%20CAN%20Paid%20Leave%20Surveys%20Key%20Findings%20Press%20Memo%20FINAL.pdf>.
60. *Id.*
61. These states are Rhode Island, California, New Jersey, New York, and Hawaii. For more information on the history of temporary disability insurance laws, see Molly Weston Williamson, *Structuring Paid Family and Medical Leave: Lessons from Temporary Disability Insurance*, CONN. PUB. INT. L.J. (forthcoming), available at SSRN: <https://ssrn.com/abstract=3042223>.
62. Laws of Cal. 2002, ch. 901.
63. Laws of N.J. 2008, ch. 17.
64. Laws of R.I. 2013, ch. 13–187.
65. Laws of N.Y. 2016, ch. 54, § 2.
66. For more information on A Better Balance's role in the passage of the New York paid family leave law, see *Family Leave Works: Learn More*, A Better Balance, <https://www.abetterbalance.org/family-leave-works-new-york/learn-more/>.
67. N.Y. Workers' Comp. Law § 201(15)(c).
68. Universal Paid Leave Act of 2015, Bill No. 21–415 § 104(h), Amendment in the Nature of a Substitute (Mendelson), available at <http://ims.dccouncil.us/Download/34613/B21-0415-Amendment-in-the-Nature-of-Substitute-Mendelson---12-19-1684.pdf>, codified at D.C. Code Ann. § 32–541.01 *et seq.*; S.B. 5975, 65th Leg., 3rd Spec. Sess. (Wash. 2017), <http://lawfilesexternal.wa.gov/>

- biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/5975-S.PL.pdf#page=1.
69. D.C. Code § 32-541.01; S.B. 5975 (2017) §§ 2(9) (family leave), § 2(14) (medical leave).
70. S.B. 5975 (2017) § 2(9)(c).
71. For a summary of key features of these laws, see *Overview of Paid Family & Medical Leave Laws in the United States*, <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.
72. See Williamson, *supra* note 61.
73. See Cal. Unemp. Ins. Code § 2606; D.C. Code § 32-541.01; Haw. Rev. Stat. § 392-3; N.J. Stat. Ann. § 43:21-27; N.Y. Workers' Comp. Law § 201(5); R.I. Gen. Laws § 28-39-3; S.B. 5975 (2017) § 2(6)(a).
74. D.C. Code § 32-541.04(f).
75. Cal. Unemp. Ins. Code § 2653.
76. S.B. 5975 (2017) § 6(3)(b).
77. Haw. Rev. Stat. § 392-23; N.J. Stat. § 43:21-39; N.Y. Workers' Comp. Law § 205(1)(a); R.I. Gen. Laws § 28-41-7.
78. R.I. Gen. Laws § 28-41-35(d)(1).
79. S.B. 5975 (2017) § 6(3)(b).
80. New York's law currently offers up to eight week of family leave benefits and will phase in over time to twelve weeks by 2021. N.Y. Workers' Comp. Law § 204(2)(a).
81. Cal. Unemp. Ins. Code § 3301(d); N.J. Stat. § 43:21-38.
82. D.C. Code § 32-541.04(f).
83. Cal. Unemp. Ins. Code § 3301(b); id. § 2655(e); N.J. Stat. § 43:21-40; N.Y. Workers' Comp. Law § 204(2)(a); R.I. Gen. Laws § 28-41-41(5).
84. D.C. Code § 32-541.04(g); S.B. 5975 (2017) § 6(4)-(5).
85. See Cal. Unemp. Ins. Code § 2655.
86. New York's temporary disability insurance benefit is, anomalously, capped at \$170 per week, where it has stood since 1989. N.Y. Workers' Comp. Law § 204(2)(b). New York's paid family leave benefit, however, is currently capped at 50% of the state average weekly wage and will rise over time to 67% of the state average weekly wage. N.Y. Workers' Comp. Law § 204(2)(a). For other states, see Haw. Rev. Stat. § 392-22(2) (approximately 58% of state average weekly wage); N.J. Stat. § 43:21-40 (53% of state average weekly wage); R.I. Gen. Laws § 28-41-5(a)(1) (85% of state average weekly wage).
87. Cal. Unemp. Ins. Code § 708.5; D.C. Code § 32-541.05; N.Y. Workers' Comp. Law § 212(4)(b); S.B. 5975 (2017) § 10.
88. Steven F. Hipple & Laurel A. Hammond, *Self-employment In The United States*, U.S. Bureau of Labor Statistics (Mar. 2016) <https://www.bls.gov/spotlight/2016/self-employment-in-the-united-states/pdf/self-employment-in-the-united-states.pdf>.
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91. See, e.g., Rebecca Smith & Sarah Leberstein, *Rights On Demand: Ensuring Workplace Standards and Worker Security in the On-Demand Economy*, Nat'l Emp't Law Project (Sept. 2015) <http://www.nelp.org/content/uploads/Rights-On-Demand-Report.pdf>.
92. *Id.* at 6.
93. See *id.* at 5-6.
94. N.Y. Workers' Comp. Law § 203-a (prohibiting retaliation); N.Y. Workers' Comp. Law § 203-b (affirmatively requiring reinstatement); R.I. Gen. Laws § 28-41-35(f) (affirmatively requiring reinstatement).
95. N.Y. Workers' Comp. Law § 203-c; R.I. Gen. Laws § 28-41-35(g).
96. For an example of campaign materials lifting up the importance of this protection, see *Protect Workers' Jobs*, A Better Balance, <https://www.abetterbalance.org/resources/paid-family-leave-protect-workers-jobs/>.
97. S.B. 5975 (2017) § 31(6)(a).
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99. Eileen Appelbaum & Ruth Milkman, *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*, Ctr. for Econ. & Policy Research 8 (2011), available at <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.
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101. Appelbaum & Milkman, *supra* note 99, at 8.
102. Eileen Appelbaum & Ruth Milkman, *Achieving a Workable Balance: New Jersey Employers' Experiences Managing Employee Leaves and Turnover*, Ctr. for Women & Work 23 (2006), available at <http://www.mobilityagenda.org/achieve.pdf?attredirects=0>.
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104. For more information, see *Our Campaigns: Paid Leave*, A Better Balance, <https://www.abetterbalance.org/our-campaigns/paid-family-leave/>.
105. For an up-to-date list, see *Paid Family Leave Legislative Tracker*, PLUS, [http://paidleave.us/statetracker?utm\\_source=npwf&utm\\_medium=email](http://paidleave.us/statetracker?utm_source=npwf&utm_medium=email).
106. 29 U.S.C. § 2611(2); § 2611(4).
107. 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>.
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109. Jorgenson & Appelbaum, *supra* note 107, at 6.
110. Mayer, *supra* note 108, at 10.
111. *Id.* at 9.
112. *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>.
113. 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/v4/table\\_maker.htm#type=12&year=2017&size=0,1,2,3,4&agg=21&supp=0](https://data.bls.gov/cew/apps/table_maker/v4/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.
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116. 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/>.
117. 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/v4/table\\_maker.htm#type=14&year=2017&size=0,1,2,3,4&hblind=1012&supp=0](https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm#type=14&year=2017&size=0,1,2,3,4&hblind=1012&supp=0).
118. Jorgenson & Appelbaum, *supra* note 107, at 3.
119. See N.Y. Workers' Comp. Law § 202(1); R.I. Gen. Laws § 28-39-2(12) (applying definition of "employer" from unemployment insurance); id. § 28-42-3(16) (defining "employer" for purposes of unemployment insurance). Washington State's paid family and medical leave law only extends the right to reinstatement following leave to employees of firms with at least fifty

- employees, S.B. 5975 (2017) § 31(6)(a), and only extends the right to continuation of health insurance to employees covered by the FMLA, *id.* § 70. Note that New York and Rhode Island do not provide job protection as part of their state temporary disability insurance programs, which provide partial wage replacement to covered workers addressing their own serious health needs.
120. The other requirements of state FMLAs do not necessarily match those of the FMLA and in some cases may result in the exclusion of workers covered by the federal FMLA.
121. Or. Rev. Stat. § 659A.153(1).
122. D.C. Code § 32-516(2).
123. Maine Rev. Stat. tit. 26, § 844(1).
124. Minn. Stat. § 181.940(3).
125. S.B. 63 (2017), to be codified at Cal. Gov. Code § 12945.6, available at [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=2017201805B63](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=2017201805B63).
126. Vt. Stat. Ann. tit. 21, § 471(1).
127. Mass. Gen. Laws ch. 149 § 105D(a) (applying definition of “employer” from Mass. Gen. Laws ch. 151B § 1(5)).
128. Vt. Stat. Ann. tit. 21, § 471(1).
129. La. Rev. Stat. § 23:341(A).
130. Minn. Stat. § 181.940(3).
131. Wash. Admin. Code § 162-30-020(4) (leave rights); Wash. Admin. Code § 162-16-200(3) (restricting to eight employees).
132. Cal. Code Regs. tit. 2, § 11035(h).
133. Kan. Admin. Regs. § 21-32-6 (leave rights); *id.* § 21-40-1 (incorporating by reference Kan. Stat. Ann. 44-1002(b)).
134. Iowa Code § 216.6(6).
135. Mont. Code Ann. § 49-2-310(2) (leave rights); *id.* § 49-2-101(11) (defining “employer”).
136. See, e.g., R.I. Gen. Laws § 28-5-7.4(b)(1).
137. Ky. Rev. Stat. Ann. § 337.010(d) (“employer”); *id.* § 337.015 (adoption leave).
138. 29 U.S.C. § 2611(2)(A)(i).
139. *Id.* § 2611(2)(A)(ii).
140. 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](https://www.mdrc.org/sites/default/files/full_9.pdf).
141. 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](http://rooseveltinstitute.org/wp-content/uploads/2017/02/WorkBenefits_RooseveltNELP.pdf).
142. *Who Are Low-Wage Workers?* Office of the Assistant Sec’y for Planning & Eval., U.S. Dept’t of Health & Human Servs. (Feb. 2009) <https://aspe.hhs.gov/system/files/pdf/180021/rb.pdf>.
143. 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](http://www.heldrich.rutgers.edu/sites/default/files/products/uploads/Work_Trends_June_2015.pdf).
144. 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/>.
145. Zukin & Van Horn, *supra* note 143, at 4–5.
146. 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/>.
147. N.Y. Workers’ Comp. Law § 203; N.Y. Comp. Codes R. & Regs. tit. 12, § 380-2.5(a)–(b).
148. 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).
149. R.I. Gen. Laws § 28-41-11(b).
150. 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.
151. 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).
152. 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.*
153. Conn. Gen. Stat. § 31-51kk(1)(B).
154. D.C. Code § 32-501(1).
155. N.J. Stat. Ann. § 34:11B-3(e). Note that the New Jersey Family Leave Act does not cover leave for one’s own serious health condition.
156. See Maine Rev. Stat. tit. 26, § 844(1).
157. 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”).
158. Or. Rev. Stat. § 659A.156(2).
159. Pregnancy and parenting leave is available to a qualifying employee “who performs services for hire for an employer from whom a leave is requested . . . for an average number of hours per week equal to one-half the full-time equivalent position in the employee’s job classification as defined by the employer’s personnel policies or practices or pursuant to the provisions of a collective bargaining agreement, during the 12-month period immediately preceding the leave.” Minn. Stat. § 181.940(2)(2).
160. Cal. Gov. Code § 12945(a)(1) (leave rights); Cal. Code Regs. tit. 2, § 11037 (defining eligibility requirements); Iowa Code § 216.2(6) (“employee”); *id.* § 216.2(2)(e) (providing leave rights).
161. Kan. Admin. Regs. § 21-32-6 (leave rights); *id.* § 21-40-1 (incorporating by reference Kan. Stat. Ann. 44-1002(b)).
162. La. Rev. Stat. Ann. § 23:342.
163. Mont. Code Ann. § 49-2-310(2) (leave rights); *id.* § 49-2-101(10) (defining “employee”).
164. See Wash. Admin. Code § 162-30-020.
165. See, e.g., NYC Commission on Human Rights *Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78 (2013)*; N.Y.C. Admin. Code § 8-107, N.Y.C. Comm’n on Human Rights 8 (2016) [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy\\_Interpretive\\_Guide\\_2016.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_Interpretive_Guide_2016.pdf).
166. Ky. Rev. Stat. Ann. § 337.010(d) (“employer”); *id.* § 337.015 (adoption leave).
167. 29 U.S.C. § 2612(a)(1)(C); *id.* § 2611(12) (defining “son or daughter”).
168. See Moira Bowman, Laura E. Durso, Sharita Gruberg, Marcella Kocolas, Kalpana Khrisnamurthy, Jared Make, Ashe McGovern, & Katherine Gallagher Robbins, *Making Paid Leave Work for Every Family*, Ctr. for Am. Progress, Family Values @ Work, Forward Together, & A Better Balance 6 (Dec. 2016), available at <https://www.americanprogress.org/issues/lgbt/reports/2016/12/01/292886/making-paid-leave-work-for-every-family/>.
169. *Id.*
170. *Id.*
171. R.I. Gen. Laws § 28-41-35(a)(2).
172. N.Y. Workers’ Comp. Law § 201(20).
173. *Id.* § 201(17) (cross-referencing N.Y. Workers’ Comp. Law § 4).
174. S.B. 5975 (2017) §§ 2(10), 90.
175. *Id.* at § 31.
176. Cal. Unemp. Ins. Code § 3302(e)(2); D.C. Code § 32-541.01(7)(c); N.J. Stat. Ann. § 43:21-27(n).
177. Cal. Unemp. Ins. Code § 3302(e)(2); D.C. Code § 32-541.01(7).
178. Cal. Unemp. Ins. Code § 3302(e)(2); *id.* § 3302(j).
179. N.J. Stat. Ann. § 43:21-27(n).
180. *Id.* § 34:11B-3(j).
181. Vermont law gives civil union partners the same rights as spouses. Vt. Stat. Ann. tit. 15, § 1204(b).
182. Col. Rev. Stat. § 8-13.3-203(1)(a).
183. Regulations under the California Family Rights Act define the term “spouse” to include a domestic partner. Cal. Code Regs. tit. 2, § 11087(r).
184. Col. Rev. Stat. § 8-13.3-203(1)(b).
185. Maine Rev. Stat. tit. 26, § 843(4)(d).
186. Wis. Stat. § 103.10(b)(4).
187. Wash. Rev. Code § 49.78.020(7).
188. R.I. Gen. Laws § 28-48-1(5).
189. D.C. Code § 32-501(4)(c).
190. Haw. Rev. Stat. § 398-1; Me. Rev. Stat. tit. 26, § 843(4)(D).
191. Or. Rev. Stat. § 659A.150(4).



192. R.I. Gen. Laws § 28-48-1(5).
193. Vt. Stat. Ann. tit. 21, § 472(a)(2).
194. Or. Rev. Stat. § 659A.150(4).
195. Me. Rev. Stat. tit. 26, § 843(4)(d).
196. Conn. Gen. Stat. § 31-51kk(7) (defining parent to include stepparent).
197. Haw. Rev. Stat. § 398-1 (defining parent to include parent-in-law).
198. Or. Rev. Stat. § 659A.150(4).
199. R.I. Gen. Laws § 28-48-1(5).
200. Vt. Stat. Ann. tit. 21, § 472(a)(2).
201. Conn. Gen. Stat. § 31-51kk(7) (defining parent to include stepparent).
202. Haw. Rev. Stat. § 398-1 (defining parent to include stepparent).
203. Or. Rev. Stat. § 659A.150(4).
204. Haw. Rev. Stat. § 398-1 (defining parent to include grandparent or grandparent-in-law).
205. Haw. Rev. Stat. § 398-3(a)(2).
206. Me. Rev. Stat. tit. 26, § 843(8).
207. Haw. Rev. Stat. §§ 398-3(a)(2), 572C-4.
208. D.C. Code § 32-501(4)(A).
209. 29 C.F.R. § 825.126(a)(5).
210. 29 U.S.C. § 2612(3); 29 C.F.R. §§ 825.122(e), (j).
211. Bowman et al., *supra* note 168, at 5–7; Katherine Gallagher Robbins, Laura E. Durso, Franke J. Bewkes, & Eliza Schultz, *People Need Paid Leave Policies That Cover Chosen Family*, Ctr. for Am. Progress (Oct. 20, 2017) <https://cdn.americanprogress.org/content/uploads/2017/10/26135206/UnmetCaregiving-Need-brief.pdf>.
212. National Compensation Survey, *supra* note 45.
213. *Id.*
214. Vicky Lovell, *Women and Paid Sick Days: Crucial for Family Well-Being*, Inst. for Women's Policy Research (Feb. 2007), available at: <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B254.pdf>.
215. *Paid Sick Days: Attitudes and Experiences; Key findings from the 2010 NORC/Public Welfare Foundation national survey on Paid Sick Days*, Nat'l P'ship for Women & Families, <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences-presentation.pdf>
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217. *Id.*
218. *Paid Sick Days*, *supra* note 215.
219. See Supriya Kumar, John J. Grefenstette, David Galloway, Steven M. Albert, & Donald S. Burke, *Policies to Reduce Influenza in the Workplace: Impact Assessments Using an Agent-Based Model*, 103 AM. J. PUB. HEALTH 1406, 1409 (2013) (finding that universal access to paid sick days would reduce flu infections in the workplace by almost six percent).
220. Supriya Kumar, Sandra Crouse Quinn, Kevin H. Kim, Laura H. Daniel, & Vicki S. Freimuth, *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness During the 2009 H1N1 Pandemic*, 102 AM. J. PUB. HEALTH 134, 139 (2012).
221. *Paid Sick Days: Good for Business, Good for Workers*, Nat'l P'ship for Women & Families (Aug. 2012) <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-good-for-business-and-workers.pdf>.
222. *Paid Sick Days*, *supra* note 215.
223. Kevin Miller, Claudia Williams, & Youngmin Yi, *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*, Inst. for Women's Policy Research iii (2011) <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B301-PSD&ED.pdf>.
224. Lucy A. Peipins, Ashwini Soman, Zahava Berkowitz, & Mary C. White, *The Lack of Paid Sick Leave as a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, BMC PUB. HEALTH (2012) <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>.
225. For more information on A Better Balance's role, see *Background on Paid Sick Time in New York City*, A Better Balance, <https://www.abetterbalance.org/resources/background-on-paid-sick-time-in-new-york-city/>.
226. For more information on these laws, see *Overview of Paid Sick Time Laws in the United States*, A Better Balance, <https://www.abetterbalance.org/resources/paid-sick-time-legislative-successes/>.
227. Newark, Passaic, East Orange, Paterson, Irvington, Trenton, Montclair, Bloomfield, Jersey City, Elizabeth, Plainfield, Morristown, & New Brunswick.
228. San Francisco, Oakland, Emeryville, Santa Monica, San Diego, Los Angeles, & Berkeley.
229. Chicago, IL; Seattle, WA; New York, NY; Tacoma, WA; Spokane, WA; Philadelphia, PA; Pittsburgh, PA; Minneapolis, MN; St. Paul, MN.
230. Workers earn one hour of sick time for every forty hours worked in Connecticut; Washington State; Cook County & Chicago, IL; Tacoma, WA; & Philadelphia, PA. Different rates are used in the laws in Pittsburgh (one hour of sick time for every 35 hours worked) and Vermont (one hour of sick time for every 52 hours worked). In Washington, DC; Seattle, WA; and New Brunswick, NJ, the rate at which workers earn sick time varies based on the number of people employed by the worker's employer.
231. See *Overview*, *supra* note 226.
232. See, e.g., Cal. Lab. Code § 246.5(c).
233. See *Overview*, *supra* note 226.
234. See, e.g., Mass. Gen. Laws ch.149, § 148C(a).
235. See, e.g., N.Y.C. Admin. Code § 20-913(1)-(2).
236. See, e.g., Wash. Rev. Code § 49.46.210(1)(d).
237. See, e.g., Ariz. Rev. Stat. § 23-373(A).
238. *5 Facts About Chosen Family*, A Better Balance, Family Values @ Work, & Ctr. for Am. Progress, <https://www.abetterbalance.org/resources/5-facts-chosen-family/>.
239. For more information, see *Fact Sheet: Paid Safe Time* (Oct. 2017), <https://www.abetterbalance.org/resources/paid-safe-time-factsheet/>.
240. *Id.*
241. See, e.g., Lawrence M. Berger, Jennifer Lynn Hill, & Jane Waldfogel, *Maternity Leave, Early Maternal Employment and Child Health and Development in the U.S.*, 115.501 ECON. J. F29 (2005); Pinka Chatterji & Sara Makowitz, *Family Leave After Childbirth and the Mental Health of New Mothers*, 15.2 J. MENTAL HEALTH POLICY ECON. 61 (2012).
242. AMERICAN ACADEMY OF PEDIATRICS, AMERICAN PUBLIC HEALTH ASSOCIATION, AND NATIONAL RESOURCE CENTER FOR HEALTH AND SAFETY IN CHILD CARE AND EARLY EDUCATION, *CARING FOR OUR CHILDREN: NATIONAL HEALTH AND SAFETY PERFORMANCE STANDARDS* (3rd ed. 2011).
243. S.B. 5975 (2017) § 6(3).
244. Covered employees can take up to thirteen weeks of leave in any two calendar years. R.I. Gen. Laws § 28-48-2(a). The RIFFMLA does not cover leave for a worker's own serious health condition and has some additional restrictions. Note that this law is different from Rhode Island's paid family leave law (Temporary Caregiver Insurance), which is limited to four weeks.
245. Conn. Gen. Stat. § 31-511(a)(1).
246. D.C. Code §§ 32-502 (family leave), 32-503 (medical leave).
247. Cal. Gov. Code § 12945(a)(1); see also Cal. Code Regs ch. 2, § 11035(l) (defining four months).
248. Cal. Gov. Code § 12945.2(c)(3)(C) (defining "family and medical leave" to exclude "leave taken for disability on account of pregnancy, childbirth, or related medical conditions").
249. Or. Rev. Stat. § 659A.162(3)(a).
250. Tenn. Code Ann. § 4-21-408.
251. Mass. Gen. Laws ch.149, § 52D(b)(2)-(3); Vt. Stat. Ann. tit. 21, § 472a(a)(2).
252. Or. Rev. Stat. § 659A.159(1)(d).
253. Vt. Stat. Ann. tit. 21, § 472a(a)(4).
254. Conn. Gen. Stat. § 31-511(a)(2)(E); Me. Rev. Stat. tit. 26, § 843(4)(E).
255. Or. Rev. Stat. § 659A.159(1)(e).
256. Me. Rev. Stat. tit. 26, § 843(4)(F).
257. Mass. Gen. Laws ch.149, § 52D(b)(1).
258. Minn. Stat. § 181.9412.
259. R.I. Gen. Laws, § 28-48-12.
260. Vt. Stat. Ann. tit. 21, § 472a(a)(1).
261. *Id.* §§ 472a(a)(3), 472b.



*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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