

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

Testimony from A Better Balance for the House Committee on Ways and Means Hearing on Legislative Proposals for Paid Family and Medical Leave, January 28, 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 throughout the country for over a decade and are delighted that this committee is considering a federal law to protect our working families.

From the experience of the states, we know that there are certain key policy elements that must be included for a strong paid family and medical leave program. The federal program should learn from the experience of the states and craft a federal law along the same lines as successful state programs.¹ The following are key policy points that should be included in a comprehensive bill.

All workers should be covered, with achievable and equitable eligibility standards.

First and foremost, universal coverage is a key principle for a national paid leave system. All American workers deserve access to the paid family and medical leave they need. The FAMILY Act must cover as many people as possible. However, FAMILY currently uses the Social Security Disability Insurance standard to determine eligibility.² This standard leaves out two important groups of people:

- Those who work (or, often, have previously worked) for local government, states, municipalities, and school districts in states where public employees do not pay into Social Security. Currently fifteen states, including California, Illinois and Ohio, exempt all or many public employees from paying into Social Security.³
- Those who have taken time out of the work force (including for caregiving reasons), young workers, and those who enter the workforce later in life have prohibitive waiting periods that are likely to mean they will not be entitled to benefits when they need them. Many workers take time away from the labor market to care for a new child or a seriously ill family member or to care for their own disability and then return to work when that caregiving need is ended. These caregivers are exactly the workers who should be covered by this law if they have a subsequent caregiving need. But the use of the disability standard requires earnings in five of the last ten years for most workers, meaning that those who have taken time out will have a waiting period of years before they can access the FAMILY benefit. (See Appendix for the ways in which the disability standard requires long waiting periods for different workers by age.)

This is unacceptable. A national paid leave system that leaves entire groups of workers out, failing to protect those working or who have worked in public service or those who take time out of the workforce to care for themselves or their families is not a strong, comprehensive system.

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

Leaving out public workers leaves out millions of hard working people just because their earnings, through no fault of their own, are not covered by Social Security. Under the current eligibility definition nearly 40% of public school teachers would be denied paid family and medical leave.⁴ Leaving out workers who may have taken time out of the workforce for a period of time to engage in caregiving also makes no sense in the context of a program that is supposed to serve caregivers and enables them to stay connected to the workforce. That standard is especially harmful to women who are the most likely to have taken time out of the workforce to care for family members.⁵

There are a number of more specific reasons the disability eligibility standard is inappropriate for a paid family and medical leave program:

- The disability standard is not an appropriate standard for a twelve week program for those who provide care or have their own serious but not permanently disabling health need. It was designed to ensure that permanently disabled workers who would receive benefits for the rest of their lives had contributed enough to the system to entitle them to lifelong support. Multiple years of work are unnecessary in a twelve-week program.
- The disability standard is extremely complicated and difficult to understand. This will make it hard for workers to determine whether they qualify and therefore harder for workers to rely on the program when they need it.
- Women are particularly hurt by the use of the disability eligibility standard for time out of the workforce. Women are a large proportion of public workers.⁶ In addition, according to the Social Security Administration, women are likely to spend 12 years of their working lives out of the workforce due to caregiving responsibilities.⁷ When women come back to the workforce they should be entitled to coverage if they have another child, a need to care for a seriously ill family member or for their own illness.

Although we recognize some attachment to the workforce should be a requirement for eligibility for family, we note that the FAMILY Act provides that there must have been earnings during the preceding year in order for there to be benefit eligibility.⁸ If something more is required, we would suggest looking to state programs for paid family and medical leave as well as state programs for unemployment insurance coverage. State paid family and medical leave programs, like state unemployment compensation programs, generally require a minimum amount of total earnings across a base period of four of the last five quarters prior to the need for the benefit, ensuring that there is workforce attachment but not the onerous years of work required under the disability standard.⁹ These state requirements allow workers to combine income from multiple employers, ensuring that benefits are portable.

Workers need a decent wage replacement in order to be able to take time off, especially workers at the bottom of the economic spectrum.

A strong bill would provide a progressive wage replacement rate that workers, especially low-income workers can afford to use. Under progressive wage replacement systems, lower-income

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

workers, who need to use all of their income to meet their basic needs, receive a higher proportion of their income while they are on leave. Progressive wage replacement systems strike a reasonable balance between meeting the needs of low-wage workers and offering a reasonable maximum benefit to help protect the solvency of the fund.

The wage replacement rate (the percentage of their own income workers receive while on leave) is an extremely important element of a paid family and medical leave law: if the rate is too low, workers will not be able to afford to take the leave they need. This problem can be especially acute for low-income workers living paycheck to paycheck, who need every dollar of their income to pay their bills. Moreover, for programs like the proposed FAMILY Act that are partially worker-funded, it is particularly essential to ensure that workers will not be required to pay for a program they cannot afford to use.

Though low-income workers are the most vulnerable, workers of any income level can find themselves unable to afford to take leave if the wage replacement rate is too low. In a major California study, workers across income levels reported that the 55% wage replacement level made it difficult to afford to use the program, potentially contributing to low rates of use.¹⁰ For this reason, California amended their statute to raise the wage replacement rate, especially for low-wage workers. Congress can learn from the experience of existing programs and create a benefit level that works for workers.

Most state paid family and medical leave laws provide a progressive wage replacement rate.¹¹ Typically, this means that the program replaces a higher percentage of income up to a threshold amount (often called the “bend point”), then replaces a lower percentage of income above that amount. In effect, this creates a sliding scale of income replacement. For example, the paid family and medical leave program in Washington State provides 90% of workers’ wages up to a bend point of 50% of the state average weekly wage (currently, approximately \$627.50) and provide 50% of workers’ wages above that amount.¹² Washington State’s program currently caps benefits at \$1,000 per week, but benefits will be adjusted to 90% of the state average weekly wage in subsequent years.¹³ Washington, D.C.; Massachusetts; Connecticut; and Oregon will all use progressive wage replacement systems following this model, though their exact bend points and rates of replacement vary.¹⁴ California already provides progressive wage replacement benefits, though it uses a somewhat more complex system.¹⁵

Job protection is critical to the ability of a worker to take this benefit for which the worker is paying.

A strong paid family and medical leave law protects the jobs of workers taking paid family and medical leave under the law by ensuring they have the right to return to work following leave. Job protection for all employees covered by the program is an essential element—without it, although it is a money benefit, it’s not leave. This is especially important for low-income workers, who will often have less job security than other workers, and because they change jobs

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

more often than other workers¹⁶ and are more likely to be working part time¹⁷ (including many part-time workers who would prefer to be working full time) may be less likely to be covered by leave laws like the Family and Medical Leave Act.¹⁸

States are leading the way in providing paid leave with job protection. Massachusetts will provide job protection to all employees covered by its paid family and medical leave law.¹⁹ Connecticut and Oregon will provide job protection to workers taking family or medical leave who have been employed by their current employer for approximately three months.²⁰ New York and Rhode Island provide job protection to all employees covered by their paid family leave laws.²¹

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.²² 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 they would not have taken leave for fear of losing their job.²³

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.²⁴ Women who take paid leave after having a baby are more likely to be working 9 to 12 months after the birth than women who take no leave.²⁵ 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.²⁶

A strong paid family and medical leave law would also ensure that all workers are protected against retaliation for using their rights under the law. 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 assigned points for each absence and subject to punishment when they receive too many points.²⁷ States are also leading the way in prohibiting retaliation. For example, Massachusetts's paid family and medical leave law offers particularly robust protections against retaliation. The law includes a rebuttable

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

presumption that any adverse action taken within six months of the exercise of a protected right was retaliatory.²⁸ Similarly, as part of a set of recent amendments to expand and improve their paid family and medical leave law, New Jersey added new strong anti-retaliation protections.²⁹

In addition, a strong paid family and medical leave would ensure that workers won't lose their health insurance coverage while they are on leave. 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, workers may be cut off or face insurmountable increases in cost due to the loss of employer contributions. Many states already provide this needed protection. Massachusetts guarantees continuation of coverage for workers taking paid family or medical leave under its law; Oregon guarantees continuation of coverage for workers taking paid family or medical leave under its law, so long as they have been employed by their employer for at least 90 days prior to taking leave.³⁰ New York and Rhode Island guarantee continuation of coverage to all workers taking paid family leave under their laws.³¹

A strong paid family and medical leave bill reflects and protects the diversity of today's American families.

Families today take many forms: they are multi-generational, blended,³² LGBTQ,³³ and increasingly include close loved ones who aren't biologically or legally related.³⁴ To work for all American families, a strong paid 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,³⁵ and as of 2016, the rising number of cohabiting adults in the U.S. reached about 18 million.³⁶ 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.³⁷ 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.

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

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.³⁸ 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.³⁹

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 reported taking time off to care for their “chosen family” in higher percentages than the population as a whole.⁴⁰ 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.⁴¹

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.⁴² Additionally, in all jurisdictions the definition of “child” includes adult children,⁴³ and in eight of nine states with paid family and medical leave, domestic partners are explicitly covered.⁴⁴ California, Massachusetts, New Jersey, Washington, D.C., Washington State, Connecticut, and Oregon also cover workers’ siblings.⁴⁵ California, Massachusetts, New Jersey, New York, Washington State, Connecticut, and Oregon also cover workers’ grandchildren.⁴⁶ 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).⁴⁷

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 1994.⁴⁸ Additionally, today, federal workers can accumulate and use up to 12 weeks of sick leave

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

to care for family members with serious health conditions, including extended relatives and other loved ones who aren't biologically or legally related.⁴⁹

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.

¹ For more detailed information on state paid family and medical leave laws, please see our comparative chart at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

² FAMILY Act, S. 463, 116th Cong. § 5(a)(1) (2019); see also 42 U.S.C.A. § 423(c) (West 2019).

³ See *Social Security Offsets: Frequently Asked Questions*, Nat'l Educ. Ass'n, <http://www.nea.org/home/16819.htm> (last visited Feb. 5, 2020).

⁴ Cory Turner, "Why More than a Million Teachers Can't Use Social Security", NPR (Apr. 20, 2018, 6:33 AM), <https://www.npr.org/sections/ed/2018/04/20/602846417/why-more-than-a-million-teachers-cant-use-social-security>.

⁵ Meghan M. Skira, *Dynamic Wage and Employment Effects of Elder Parent Care*, 56 Int'l Econ. Rev. 63, 63 (2015) ("Women who spend time away from work to provide care may later struggle to find a job or return to their previous wage."); Patricia Cohen, *Why Women Quit Working: It's Not for the Reasons Men Do*, The New York Times (Jan. 24, 2017), <https://www.nytimes.com/2017/01/24/business/economy/women-labor-force.html>.

⁶ David Cooper et al., *The Public-Sector Jobs Crisis: Women and African Americans Hit Hardest by Job Losses in State and Local Governments*, Econ. Pol'y Inst. 3 (May 2, 2012), <https://www.epi.org/files/2012/bp339-public-sector-jobs-crisis.pdf> ("[I]n 2011 women comprised 48.3 percent of overall employment, yet accounted for 59.5 percent of employment in state and local government, significantly higher than their 46.7 percent share of private-sector employment.").

⁷ Social Security Administration. (2002, February). *Women and Social Security* (Fact Sheet). Washington, DC: Author.

⁸ FAMILY Act, S. 463, 116th Cong. § 5(a)(2) (2019).

⁹ 28 R.I. Gen. Laws Ann. § 28-41-11(b) (West 2019); Cal. Unemp. Ins. Code §§ 3302(n), 2652 (West 2019); N.J. Stat. Ann. § 43:21-27(i)(4), -41(d) (West 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); *id.* at ch. 151 A, § 24; S.B. 1, 2019 Gen. Assemb., Reg. Sess. § 1(4) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(11) (Or. 2019). In some states, these earnings must be spread out over a certain period of time within the four-quarter base period. 28 R.I. Gen. Laws Ann. § 28-41-11(b)(1) (West 2019); N.J. Stat. Ann. § 43:21-27(i)(4), -41(d) (West 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); *id.* at ch. 151 A, § 24. Washington, uniquely, uses a minimum number of hours worked (from any combination of employers) over a similar four-quarter base period, reflecting the state's distinctive unemployment insurance eligibility standard. Wash. Rev. Code Ann. § 50A.30.020(1) (West 2020). New York uses a non-earnings based system. See N.Y. Workers' Comp. Law § 203 (McKinney 2019). Washington, D.C. has no minimum workforce attachment standard for paid leave benefits, but those who have been employed in the District for less than a year receive a pro-rated benefit. D.C. Code Ann. § 32-541.01(3)-(6) (West 2020).

¹⁰ Andrew Chang & Co, *supra* note 26, at 70.

¹¹ Cal. Unemp. Ins. Code §§ 3301(b), 2655(e) (West 2019); D.C. Code Ann. § 32-541.04(g)(1)-(2) (West 2020); Wash. Rev. Code Ann. § 50A.15.020(4) (West 2020); Mass. Gen. Laws Ann. ch. 175M, § 3(b) (West 2019); S.B. 1, 2019 Gen. Assemb., Reg. Sess. § 3(c)(2) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 7 (Or. 2019).

¹² Wash. Rev. Code Ann. § 50A.15.020(4) (West 2020).

¹³ Wash. Rev. Code Ann. § 50A.15.020(5)(a) (West 2020).

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

¹⁴ D.C. Code Ann. § 32-541.04(g)(1)-(2) (West 2020) (provides 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); Mass. Gen. Laws Ann. ch. 175M, § 3(b) (West 2019) (provides 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); S.B. 1, 2019 Gen. Assemb., Reg. Sess. § 3(c)(2) (Conn. 2019) (provides 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); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 7 (Or. 2019) (provides 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).

¹⁵ California uses a system that creates three tiers of wage replacement. The first tier applies to workers who earn less than a fixed amount set in statute (approximately \$71.46 per week); workers in this tier receive \$50 per week. The second tier applies to workers who earn at least as much as a fixed amount set in statute (approximately \$71.46 per week) but less than approximately 33% of the state average weekly wage (for 2019, this works out to approximately \$414.26 per week); workers in this tier receive 70% of their *total* average weekly wage. The third tier applies to workers who earn at least approximately 33% of the state average weekly wage (for 2019, this works out to approximately \$414.26 per week); workers in this tier receive either approximately 60% of the worker's *total* average weekly wage or an amount equal to 23.3% of the state average weekly wage (for 2019, this works out to approximately \$289.57), whichever is greater. *See* Cal. Unemp. Ins. Code §§ 3301(b), 2655(e) (West 2019).

¹⁶ Jacquelyn Anderson et al., *A New Approach to Low-Wage Workers and Employers*, MDRC 5 (Mar. 2006), https://www.mdrc.org/sites/default/files/full_9.pdf.

¹⁷ Pamela Loprest et al., *Who Are Low-Wage Workers?*, U.S. Dep't Health & Hum. Servs. (Feb. 2009) <https://aspe.hhs.gov/system/files/pdf/180021/rb.pdf>.

¹⁸ 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/>.

¹⁹ Mass. Gen. Laws Ann. ch. 175M, § 2(e) (West 2019).

²⁰ Oregon will provide job protection to all covered workers who have been employed with their current employer for at least 90 days. H.B. 2005, 80th Leg. Assemb., Reg. Sess. § 10(1), (7) (Or. 2019). Connecticut made substantial amendments to its existing state unpaid leave law as part of the same bill that created its paid leave program. The amended unpaid leave law provides job protection to nearly all private sector employees in the state who have been employed with their employer for at least three months. 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. Conn. Gen. Stat. Ann. § 31-51nn(a) (West 2019).

²¹ N.Y. Workers' Comp. Law § 203-b (McKinney 2019); 28 R.I. Gen. Laws Ann. § 28-41-35(f) (West 2019).

²² Appelbaum & Milkman, *supra* note 33.

²³ Barb Silver, Helen Mederer, & Emilija Djurdjevic, *Rhode Island's Temporary Caregiver Insurance Program: Findings from the First Year* (2015).

²⁴ 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>.

²⁵ Houser & Vartanian, *supra* note 8.

²⁶ 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. Dep't 86 (July 13, 2015), https://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf.

²⁷ *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).

²⁸ Mass. Gen. Laws Ann. ch. 175M, § 9(c) (West 2019).

²⁹ N.J. Stat. Ann. § 43:21-55.2 (West 2019).

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

³⁰ Mass. Gen. Laws Ann. ch. 175M, § 2(f) (West 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 10(2), (7) (Or. 2019).

³¹ N.Y. Workers' Comp. Law § 203-c (McKinney 2019); 28 R.I. Gen. Laws Ann. § 28-41-35(g) (West 2019).

³² 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.

³³ 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.

³⁴ 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%20c%20\(last%20accessed%20September%202018](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP02&prodType=table%20c%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>.

³⁵ “[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/>.

³⁶ 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/>.

³⁷ 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.*

³⁸ Rachel Dunifon *et al.*, *Siblings and Children’s Time Use in the United States*, 37 *Demographic Res.* 1611, 1612 (2017).

³⁹ 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.

⁴⁰ 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 3, 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>.

⁴¹ 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



the work and family legal center

military care recipients are friends or neighbors, while nearly 13% of caregivers for civilian care recipients are friends or neighbors).

Headquarters

40 Worth Street, 10th Floor
New York, NY 10013
tel: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office

2301 21st Avenue South, Suite 355
Nashville, TN 37212
tel: 615.915.2417

⁴² 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>).

⁴³ 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).

⁴⁴ 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(l) (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).

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ 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”).

⁴⁸ 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).

⁴⁹ 5 C.F.R. § 630.401(c) (2020); *see also* 5 C.F.R. § 630.902.