

The Importance of an Inclusive, Realistic Family Definition in Federal Paid Family and Medical Leave and Paid Sick Time Policies

Families in the United States take diverse forms. Due to cultural, economic, and social forces, the overwhelming majority of households today depart from the “nuclear family” model of a married couple and their biological children—instead, they are blended,¹ LGBTQ,² and increasingly include close loved ones who aren’t biologically or legally related.³

The proposed FAMILY Act and Healthy Families Act use family definitions that reflect the reality of today’s families, since these critically important federal bills would ensure that all workers can use their leave to care for those who are most important in their lives. As detailed in this fact sheet, an inclusive family definition will provide essential protections to workers in non-nuclear families without any significant cost increase or abuse. Furthermore, the inclusive family coverage in these bills is backed by a track record of success.

I. There is strong precedent for coverage of domestic partners, grandparents, grandchildren, siblings, and adult children in state paid family and medical leave laws. There is also a growing movement, backed by popular support and reflected in 5 state paid family and medical leave laws and 11 state and local paid sick time laws, to cover close loved ones who are not biologically or legally related to the worker.

- **Domestic partners:** Eleven of the 12 statewide paid family and medical leave laws—in California, Massachusetts, New Jersey, New York, Rhode Island, Washington State, Washington D.C., Connecticut, Oregon, Colorado, and Maryland—cover domestic partners.⁴ Of the 35 paid sick time laws in the United States, 27 cover domestic partners.⁵
- **Grandparents and adult children:** Eleven of the twelve statewide paid family and medical leave laws cover grandparents and adult children. Of the 34 paid sick time laws in the U.S., 33 cover adult children and 31 cover grandparents.⁶
- **Grandchildren and siblings:** California’s, New Jersey’s, New York’s Washington State’s, Massachusetts’, Connecticut’s, Oregon’s, Colorado’s, and Maryland’s paid family and medical leave laws cover grandchildren and siblings, while Washington D.C.’s law covers siblings (and not grandchildren). Of the 35 paid sick time laws in the U.S., 33 cover grandchildren and 32 cover siblings.⁷
- **Close loved ones who are not biologically or legally related:** The statewide paid family and medical leave laws in New Jersey, Connecticut, Oregon, Colorado, and Washington State cover certain individuals—regardless of a biological or legal connection—who have a close association with the employee that is equivalent to a family relationship.⁸ Additionally, the paid family and medical leave laws in New York and Massachusetts both have flexible domestic partner definitions that do not require legal registration. Advocates in states ranging from California and Montana, to Maine and New Mexico, among many others, are working to include relationships that are equivalent to family members. Currently, 11 paid sick time laws cover people whose relationships are equivalent to family members.⁹
- **Use of the well-established *In Loco Parentis* standard in the parent and child definition:** The federal Family and Medical Leave Act (FMLA), as well as 11 of the 12 paid family and medical leave laws, define family to include *in loco parentis* relationships, or relationships where an individual has acted as a parent despite lacking a formal legal or biological parent-child relationship.¹⁰ Moreover, almost all of the 35 state and local paid sick time laws include this or similar language as well. *In loco parentis* is a well-established legal standard that is highly

regarded and utilized due to its functional parenting test that reflects the lived reality and best interests of a child.

- **Eleven states have expanded upon the FMLA’s family definition in statewide unpaid leave laws:** In addition to the 12 state paid family and medical leave laws, 10 states and Washington D.C. have passed laws that expand upon the federal FMLA by guaranteeing unpaid family leave to care for a broader list of family members.¹¹
- **Early public opinion polls show strong support for expansive family definitions in state paid leave laws:** In a 2019 survey of Democrats and Independent voters in several states across the nation, 84% of respondents support passing paid sick and paid family leave policies, including those with expansive definitions of family.¹²
- **The Families First Coronavirus Response Act also used an inclusive family definition:**
 - In 2020 with bipartisan support, Congress enacted the Families First Coronavirus Response Act, which temporarily guaranteed COVID-19 emergency paid sick leave to covered workers; regulations explained that this federal leave could be used to care for “an Employee's immediate family member, a person who regularly resides in the Employee's home, or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined.”¹³

II. The federal government’s model family definition for the federal workforce comes with a track record of success.

- The federal government, the nation’s largest employer with more than two million civilian employees, has used—and repeatedly expanded—a chosen family standard for more than 50 years. The definition includes individuals whose close association with the federal employee is the equivalent of a family relationship (event absent a blood relationship) and has been used in the context of funeral leave since 1969 (allowing workers to take funeral leave for chosen family during the Vietnam War), for voluntary leave transfers since 1989, and for sick leave generally since 1994.¹⁴
- Federal workers are entitled to use up to 12 weeks of sick leave a year to care for a family member—including chosen family—with a serious health condition. There are also opportunities under federal regulations to accumulate leave and transfer it.¹⁵
- The Office of Personnel Management reported to Congress favorably about usage rates of sick leave after paid sick time was expanded in 1994 to cover chosen family through this standard, noting that even after the federal government expanded the definition of family, employees used less than a third of the sick leave available.¹⁶

III. The existing paid sick time and paid family and medical leave laws show that an inclusive family definition provides important protection to a small subset of workers without leading to abuse or a significant increase in program costs.

- Workers don’t abuse paid sick time. After New York City implemented its paid sick time law, 98% of employers reported no cases of employee abuse of sick days.¹⁷
- Only a minority of paid family leave claims are to care for a seriously ill family member; the overwhelming majority of paid family leave claims in California, New Jersey, and Rhode Island are for bonding with a child.
 - Only 13.4% of claims processed in California in fiscal year 2021 were to care for a seriously ill relative.¹⁸
 - In 2021, even during the COVID-19 pandemic, only 15.8% of eligible claims in New Jersey were to care for a seriously ill relative.¹⁹
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- In 2022, only 23.5% of eligible claims in Rhode Island were to care for a seriously ill relative.²⁰
- When paid family leave is used for care of a seriously ill family member, a small percentage of these claims are used to care for family other than a child, parent, or spouse. Only a minority of claims are used for more extended family members; such usage statistics show that coverage of more extended relatives like grandparents, siblings, and domestic partners will create an important right for workers with non-nuclear family structures *without* leading to significant increases in usage.
 - In New Jersey, where workers can take paid family and medical leave to care for a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, registered domestic partner, civil union partner, any other person related to the worker by blood, and any other person that the worker shows to have a close association with the worker which is the equivalent of a family relationship, only 2.27% of all eligible claims in 2020 were to care for relatives other than a child or spouse.²¹
 - In Rhode Island, where workers can take paid family and medical leave to care for a child, spouse, registered domestic partner, parent, parent of a spouse or registered domestic partner, or grandparent, only 0.07% of all approved paid family and medical leave claims in 2022 were used to care for a seriously ill family members other than a spouse, child, parent, or registered domestic partner.²²
 - In California, where workers can take paid family and medical leave to care for a child, spouse, registered domestic partner, parent, sibling, grandparent, grandchild, or parent of a spouse or registered domestic partner, only 0.306% of all paid family and medical leave claims filed in the 2021 fiscal year were to care for relatives other than a spouse, parent, child, or registered domestic partner.²³

IV. Coverage of grandparents and grandchildren are important given the prevalence of multigenerational households.

- 66.7 million Americans live in multi-generational family households, more than double the number who lived in such households in 1980. This figure is higher among communities of color. People of color are more likely than white people to live in multi-generational households—45% of Latinxs and 33% of Black people in the U.S. live in a multi-generational household.²⁴
- In 2014, 85 million people were living in extended families—up from 58 million in 2001.²⁵ Extended families, defined as those departing from the “nuclear family” model of married parents and their minor children, are disproportionately people of color.²⁶
- Over one third (35%) of children in the U.S. have lived in an extended family household.²⁷ Compared to white children, Black children are more than two times as likely and Latinx children are more than 1.5 times as likely to have lived with extended family.²⁸

V. Coverage of domestic partners is critical to many workers in long-term, committed relationships with a partner, including many heterosexual seniors.

- As in all of the states with a paid family and medical leave law and the vast majority of states and localities with paid sick time laws, workers should be able to access paid family leave when a domestic partner is seriously ill—for example, with cancer or another life-threatening illness.
- A record number of Americans have never married, and moreover, approximately 20.2 million Americans live with an unmarried significant other. Because of this fact, it is important to cover domestic partners with flexible definitions that don’t require legal registration—like the paid family and medical leave laws in New York and Massachusetts—as well as significant others who

are likely to care for each other if one has a serious illness, even if their relationship hasn't been legally formalized.²⁹

- Many long-term couples have chosen—for various reasons—to live together as domestic partners and not marry; for example, many heterosexual seniors face unique, negative financial consequences under federal law if married.³⁰

VI. Many people have strong, enduring relationships with siblings or were raised by siblings.

- According to the U.S. Census Bureau, 79.4% of children in the country—nearly 60 million children—live with at least one sibling.³¹ These relationships are often enduring, and a worker should be able to provide care to a seriously ill sibling who may depend upon him or her. In the United States, nearly 2.8 million children do not live with a parent.³² In many of these families, children grow up receiving critical care and support from their siblings.
- As described earlier, experience from other states with paid family and medical leave laws show that usage to care for extended family members, like siblings, is minimal. Nevertheless, such coverage would provide an important right for those workers who are primary caregivers for a sibling.

VII. Many workers have family-like relationships with “chosen family” or loved ones with whom they lack a legal or biological relationship.

- Over 34.2 million households in the United States, or approximately 28% of all households, consist of an individual who lives alone.³³ In an emergency or during an illness, many of these individuals rely on care from chosen family—like close friends and loving neighbors—or extended family.
- More than 11.7 million people in the United States live with nonrelatives—such as roommates, friends, or significant others.³⁴ 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.
- In a 2017 national survey conducted by the Center for American Progress, 32% of people in the United States reported that they took time off work to provide care for a chosen family member.³⁵ That rate is higher among LGBTQ individuals. In a 2020 national survey, 63% of LGBTQ workers (including 71% of transgender workers) reported having to take time off work to care for a close friend or chosen family member.³⁶

VIII. Many workers who provide care to aging adults are partners, neighbors, or friends, and these workers may provide care to several individuals with whom they do not share a home.

- Fifty-three percent of Americans who care for an older adult provide that unpaid care to a friend or loved one other than a spouse or parent.³⁷ Therefore, the U.S. Department of Labor stated in 2016 that “[t]o ensure [paid leave laws] meet the needs of caregivers of the elderly, state- and local-level programs should allow care for a variety of family members and other loved ones, defined broadly to encompass those who lack marital or blood relationship.”³⁸
- Among Americans who provide care to an adult age 65 or older, more than 23% care for a friend, neighbor or other unrelated person, while more than 24% care for a relative *other than* a spouse, unmarried partner, parent, or grandparent.³⁹
- Eighty-three percent of individuals who provide care to an adult age 65 or older do not live with the care recipient.⁴⁰

¹ 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 Res. Ctr. 19 (2015), https://www.pewresearch.org/wp-content/uploads/sites/3/2015/12/2015-12-17_parenting-in-america_FINAL.pdf.

² It is estimated that 7.2% of adults in the U.S. identify as lesbian, gay, bisexual, or transgender. Jeffrey M. Jones, *What Percentage of Americans Are LGBT?*, Gallup (Mar. 3, 2022), <https://news.gallup.com/poll/332522/percentage-americans-lgbt.aspx>. Additionally, estimates show that between 2 million and 3.7 million minor children have an LGBTQ parent. *Facts About LGBTQ+ Families*, Family Equality, (June 2020), <https://www.familyequality.org/resources/facts-about-lgbtq-families/>.

³ 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*, Ctr. for Am. Progress 2 (2017), <https://cdn.americanprogress.org/content/uploads/2017/10/26135206/UnmetCaregivingNeed-brief.pdf>.

⁴ See A Better Balance’s comparison chart of paid family and medical leave laws at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

⁵ See A Better Balance’s comparison chart of paid sick time laws at <https://www.abetterbalance.org/paid-sick-time-laws/search/>.

⁶ *Id.*; While paid sick time in Colorado does not explicitly include siblings, grandparents, or grandchildren, the law covers a broad range of family relationships.

⁷ *Id.*

⁸ Exact family definition varies between jurisdictions. For more information, see A Better Balance’s comparison chart of paid family and medical leave laws at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

⁹ See A Better Balance’s comparison chart of paid sick time laws at <https://www.abetterbalance.org/paid-sick-time-laws/search/>.

¹⁰ The California paid family leave law defines children, regardless of age, to include “a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands *in loco parentis*”; the California law also defines “parent” to mean “a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood *in loco parentis* to the employee when the employee was a child” and defines “parent-in-law” to mean “the parent of a spouse or a domestic partner.” Cal. Unemp. Ins. Code § 3302(i)-(j). Under the Rhode Island paid family leave law, child “means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who stands *in loco parentis* to that child.” R.I. Gen Laws § 28-41-34(1). Furthermore, the federal FMLA recognizes biological, adopted, foster, and step relationships, as well as a legal ward and a child of a person standing *in loco parentis*. 29 U.S.C. § 2611(12).

¹¹ California, Colorado, New Jersey, Washington D.C., Hawaii, Maine, Oregon, Washington State, Wisconsin, Vermont and Rhode Island have expanded upon the federal FMLA’s family definition through state law.

¹² On file with the authors.

¹³ 29 C.F.R. § 826.20(a)(5); see *Fact Sheet: The Families First Coronavirus Response Act (FFCRA) & the Coronavirus Aid, Relief and Economic Security (CARES) Act*, A Better Balance (Jan. 8, 2021), <https://www.abetterbalance.org/resources/federal-coronavirus-proposal-the-families-first-coronavirus-response-act-h-r-6201/>.

¹⁴ 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); 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).
¹⁵ 5 C.F.R. § 630.401(c).

¹⁶ *Report to Congress on the “Federal Employees Family Friendly Leave Act” (Public Law 103-388)*, United States Office of Personnel Management (June 1997), <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/federal-employees-family-friendly-leave-act/>.

¹⁷ Eileen Appelbaum & Ruth Milkman, No Big Deal: The Impact of New York City’s Paid Sick Days Law on Employers, Ctr. for Econ. & Pol’y Res. 17 (Sept. 2016), <https://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>.

¹⁸ This percentage was calculated by totaling the PFL claims that were paid in FY 2021, along with totaling the “care claims” paid in FY 2021, and then dividing the latter by the former. California Employment Development Department Monthly Paid Family Leave Data, <https://data.edd.ca.gov/Disability-Insurance/Paid-Family-Leave-PFL-Monthly-Data/r95e-fvkm/data>.

¹⁹ *Family Leave Insurance and Temporary Disability Insurance: Combined Annual Activity Report*, New Jersey Department of Labor and Workforce Development, Office of Research and Information, at Table 4 (Dec. 2022), <https://nj.gov/labor/myleavebenefits/assets/pdfs/Annual%20FLI%20TDI%20Report%20for%202021.pdf>.

²⁰ *Temporary Disability Insurance Program: January-December 2022*, Rhode Island Department of Labor and Training, <https://dlt.ri.gov/media/17696/download?language=en>.

²¹ This figure was calculated by adding the total number of eligible family leave insurance claims and the total number of eligible temporary disability insurance claims and dividing the number of eligible claims filed to care for “other sick family members” by the sum. *Family Leave Insurance and Temporary Disability Insurance Workload in 2020: Combined Summary Report*, New Jersey Department of Labor and Workforce Development, Office of Research and Information, Tables 1, 4, & 6 (Dec. 2021), <https://nj.gov/labor/myleavebenefits/assets/pdfs/CY%202020%20FLI%20TDI%20Combined%20Report.pdf>.

²² *Temporary Disability Insurance Program: January-December 2022*, Rhode Island Department of Labor and Training, <https://dlt.ri.gov/media/17696/download?language=en>.

²³ See California EDD Paid Family Leave Program Statistics, https://www.edd.ca.gov/about_edd/pdf/qspfl_PFL_Program_Statistics.pdf; California EDD Disability Insurance Program Statistics, https://www.edd.ca.gov/about_edd/pdf/qsdi_DI_Program_Statistics.pdf. Note that the figure reflects the percentage of claims filed and not the percentage of claims approved by the state.

²⁴ Amy Goyer, *Family Matters: Multigenerational Living is on the Rise and Here to Stay* (2021), <https://www.gu.org/app/uploads/2021/04/21-MG-Family-Report-WEB.pdf>.

²⁵ Michela Zonata, “Housing the Extended Family,” Center for American Progress (October 2016), <http://www.americanprogress.org/issues/economy/reports/2016/10/19/146422/housing-the-extended-family/>.

²⁶ *Id.*

²⁷ Christina H. Cross, *Extended Family Households Among Children in the United States: Differences by Race/Ethnicity and Socio-Economic Status*, 72 *Population Studies* 235, 242 (2018).

²⁸ Note that we use “Latinx” where the source uses “Hispanic.” *Id.* at 247.

²⁹ *Living Arrangements of Adults 18 and Over, 1967 to Present*, U.S. Census Bureau, Table AD-3 (Nov. 2021), <https://www.census.gov/data/tables/time-series/demo/families/adults.html>.

³⁰ See, e.g., Lornet Turnbull, “Heterosexual Seniors Lost in the Furor Over Domestic Partnership,” *Seattle Times* (September 6, 2009), <http://www.seattletimes.com/seattle-news/heterosexual-seniors-lost-in-the-furor-over-domestic-partnership/>.

³¹ *Living Arrangements of Children Under 18 Years and Marital Status of Parents, by Age, Sex, Race, and Hispanic Origin and Selected Characteristics of the Child for All Children: 2021*, U.S. Census Bureau, Table C-3, <https://www2.census.gov/programs-surveys/demo/tables/families/2021/cps-2021/tabc3-all.xls>.

³² *Id.*

³³ See *Selected Social Characteristics in the United States* U.S. Census Bureau, *2020 American Community Survey 5-Year Estimates*, https://data.census.gov/cedsci/table?g=0100000US_0400000US06&tid=ACSDP5Y2019.DP02&hidePreview=true (last accessed May 2022).

³⁴ *Id.*

³⁵ Katherine Gallagher Robbins et al., *People Need Paid Leave Policies That Cover Chosen Family*, Washington: Center for American Progress (2017), <https://www.americanprogress.org/issues/poverty/reports/2017/10/30/441392/people-need-paid-leave-policies-that-coverchosen-family/>.

³⁶ Lindsay Mahowald & Diana Boesch, *Making the Case for Chosen Family in Paid Family and Medical Leave Policies*, Ctr. for Am. Progress (Feb. 16, 2021), <https://www.americanprogress.org/issues/lgbtq-rights/news/2021/02/16/495680/making-case-chosen-family-paid-family-medical-leave-policies/>.

³⁷ *Navigating the Demands of Work and Eldercare*, U.S. Department of Labor (2016), p. 25, <https://ecommons.cornell.edu/handle/1813/78429> (referring to unpaid, nonprofessional caregivers).

³⁸ *Id.*

³⁹ *Unpaid Eldercare in the United States (2017-2018): Data from the American Time Use Survey*, U.S. Department of Labor, Bureau of Labor Statistics (Nov. 22, 2019), <https://www.bls.gov/news.release/pdf/elcare.pdf>.

⁴⁰ *Id.*