Designing a State-Based Social Insurance Program for Paid Family and Medical Leave
Preface

ABOUT THE CHAPTER

This chapter explores policy options for states seeking to develop a paid family and medical leave program. It was developed during a year of deliberations by a Working Group of 13 experts on child and family policy, poverty and inequality, social policy, and tax law, representing a variety of perspectives and fields of expertise. It is part of a larger Study Panel project on Universal Family Care. While addressed primarily to state policymakers, the report may also interest federal policymakers, administrators, and advocacy organizations, as well as workers, families, business owners, and others directly affected by the sometimes competing needs to earn income and care for themselves and/or their families.
Early Child Care and Education / Paid Family and Medical Leave Working Group

Heidi Hartmann*
Chair
President and CEO, Institute for Women’s Policy Research; Economist in Residence, American University; MacArthur Fellow

Indivar Dutta-Gupta*\(^{\ddagger}\)
Co-Executive Director, Economic Security and Opportunity Initiative, Georgetown Center on Poverty and Inequality

Kathryn Edwards*
Associate Economist, RAND Corporation; Professor, Pardee RAND Graduate School

Joan Entmacher*
Senior Fellow, National Academy of Social Insurance

Jocelyn Frye
Senior Fellow, Center for American Progress

Jeffrey Hayes*
Program Director, Job Quality and Income Security, Institute for Women’s Policy Research

Elaine Maag
Principal Research Associate, Urban-Brookings Tax Policy Center, The Urban Institute

Aparna Mathur*
Resident Scholar, Economic Policy, American Enterprise Institute; Co-Director, AEI-Brookings Project on Paid Family and Medical Leave

Michelle McCready
Chief of Policy, Child Care Aware of America

Ray Pepin
Temporary Disability Insurance (TDI) Administrator, Rhode Island Department of Labor & Training

Erik Rettig
Senior Manager, SMB/Economic Policy, Intuit

Christopher Ruhm*
Professor of Public Policy and Economics, University of Virginia

Marci Ybarra
Associate Professor, School of Social Service Administration, University of Chicago

* Member, National Academy of Social Insurance
\(^{\ddagger}\) Board Member, National Academy of Social Insurance
Project Staff

Benjamin W. Veghte, Study Panel Director
Vice President for Policy
National Academy of Social Insurance
(until June 2018)

Caregiving Policy Consultant
National Academy of Social Insurance
(July 2018 – June 2019)

Alexandra L. Bradley
Lead Policy Analyst, Health and Caregiving
National Academy of Social Insurance
(until November 2018)

Caregiving Policy Consultant
National Academy of Social Insurance
(December 2018 – June 2019)

Suggested Citation
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>69</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>75</td>
</tr>
<tr>
<td>I. Introduction</td>
<td>76</td>
</tr>
<tr>
<td>II. The Landscape of Paid Family and Medical Leave Policies in the United States</td>
<td>92</td>
</tr>
<tr>
<td>III. Policy Options for State Paid Family and Medical Leave Programs</td>
<td>108</td>
</tr>
<tr>
<td>IV. Key Policy Design Elements and Considerations</td>
<td>116</td>
</tr>
<tr>
<td>V. Integration and Implementation Considerations</td>
<td>126</td>
</tr>
<tr>
<td>VI. Conclusion</td>
<td>132</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

At some point during their lives, virtually all workers will need time away from work to care for a loved one and/or cope with a health problem of their own. While this need for time off is nearly universal, a significant share of workers in the United States currently lacks access to any kind of guaranteed leave to provide or receive care. Thus, many workers are forced to choose between caring for themselves or a loved one and losing wages or even their job. Paid leave benefits are also highly inequitably distributed; workers who earn more, work for large employers, or hold white-collar jobs are much more likely to have access to paid family and/or medical leave.

This chapter describes how, in the absence of a national policy, states have stepped up as critical leaders in advancing paid family and medical leave (PFML) programs. To date, ten jurisdictions have adopted some form of paid leave policy (CA, CT, DC, HI, MA, NJ, NY, PR, RI, WA). The experiences of these states can offer valuable lessons for future programs. In particular, states have learned the importance of providing sufficient wage replacement rates to permit lower-wage workers to actually use the benefits, conducting robust education and outreach campaigns to inform the public about the program, and simplifying the administrative burden of applying for benefits for both applicants and administrators.

Next, the chapter discusses three policy options for states interested in developing a paid family and medical leave program:

1. **Universal, contributory social insurance program, exclusive state fund**—Throughout their careers, all workers contribute to a state social insurance fund—out of which all benefits are paid—in return for an earned benefit should a PFML need arise.

2. **Contributory social insurance program with regulated private options**—Employers are required to offer a certain level and type of coverage and to comply with specified anti-discrimination and other consumer protections. Employers are free to choose between utilizing the state fund, self-insuring, and/or purchasing a private plan for coverage.

3. **Employer mandate**—Employers are obligated to provide paid leave benefits directly to their workers, either by self-insuring or by purchasing private coverage.

After choosing a model for the program, policymakers must determine other important design features, including eligibility requirements, qualifying events, the definition of family, benefit design, and job protection. There are also factors surrounding program implementation and integration to consider, such as program administration, education and outreach, evaluation, integration with other state policy mechanisms, coordination with existing employee benefit plans, and coverage for self-employed workers. Ultimately, however, absent a robust national program, states can substantially improve quality of life and financial security for workers and their families by implementing well designed paid family and medical leave programs.
Section I.

INTRODUCTION
At some point during their lives, virtually all workers will need time away from work to care for a loved one and/or cope with a health problem of their own. While this need for time off is nearly universal, a significant share of workers in the United States currently lacks access to any kind of guaranteed leave to provide or receive care, and particularly to the types of financial support—such as wage replacement—that would make such leave possible. As a result, many workers are forced to choose between caring for themselves or a loved one and losing wages or even their job.

The current landscape of family and medical leave policies in the United States leaves substantial gaps in workplace supports for family caregiving and personal medical needs. The Family and Medical Leave Act of 1993 (FMLA) provides many U.S. workers with access to unpaid, job-protected time off to provide or receive care. Under this law, a worker is eligible for 12 weeks of unpaid leave in the event of the birth, adoption, or foster placement of a child; the serious health condition of a close family member; a worker’s own serious health condition; or the military deployment of a worker’s spouse, child, or parent. Family members of qualified veterans, reservists, and active duty military personnel may also take up to 26 weeks of leave from their jobs to care for the military member or veteran who is injured or ill under the Military Caregiver Leave extension of the FMLA. This legislation undeniably marked a significant shift in U.S. work-family policy, but the coverage remains insufficient for a substantial portion of the workforce. Due to restrictive eligibility requirements, roughly 40 percent of workers are excluded entirely.

---

from FMLA coverage, and even those who are covered often cannot afford time away from work without any compensation. As many families across the nation struggle with economic insecurity, and as workers increasingly juggle work and caregiving responsibilities, paid family and medical leave is being offered or discussed in a growing number of states and by an increasing number of employers across the country.

The United States is the only industrialized country—and one of only a handful of countries across the world—without a national program offering workers some form of paid caregiving leave. Only 17 percent of civilian workers have paid caregiving leave coverage through an employer-provided benefit. Similarly, no national policy provides or mandates that workers be paid for time off to address their own health-related issues. Although paid sick leave is more common than paid family leave, coverage remains far from universal:

The U.S. is the only industrialized country with no national program offering workers some form of paid caregiving leave.

among civilian workers, 74 percent have access to paid sick leave, 39 percent have access to short-term disability insurance benefits, and 34 percent have access to long-term disability insurance. Access to paid leave benefits is also unequally distributed across the workforce. Only 8 percent of the lowest-earning quartile has access to paid family leave, and only 19 percent has access to short-term disability insurance; for workers in the highest-earning quartile, those numbers jump to 28 percent and 54 percent, respectively. Coverage also varies by employer size: the larger the employer, the more likely its employees are to have access to paid family leave and temporary disability insurance.

---

5 Ibid.
10 Ibid.
Occupational disparities exist as well. For example, nearly 1 in 3 workers in the fields of finance and management have access to employer-provided paid family leave, while that proportion is closer to 1 in 20 for workers in the construction and hospitality industries (see Figure 1).

Proposals to implement universal paid family and medical leave programs have been gaining traction at both the state and federal level. Paid family and medical leave refers to a program that incorporates both paid medical leave—also known as temporary or short-term disability insurance—and paid family leave—where workers can take time to provide care for a family member or loved one. (See text box on p. 91: Paid Leave Terminology.) Although this report chapter focuses on options for state-level paid leave policies, many of the issues discussed are also integral to the design of a federal paid leave policy. Several states have already implemented their own paid family and medical leave programs (see Section II of this chapter), and others are starting up or passing new laws that establish such programs. A number of employers are also voluntarily offering paid leave to employees, (see text box on p. 90: Employer-Provided Paid Family and Medical Leave) although low-wage workers frequently receive little or no benefit under these programs. Limiting paid leave to full-time or higher-earning

---

**FIGURE 1: Employer-Provided Paid Leave Benefits: Civilian Workers**

![Graph showing employer-provided paid leave benefits by occupation and worker size.](source)


---

employees may exclude those who need the benefit the most; workers with the greatest need—such as people with disabilities\(^\text{14}\) or mothers with young children\(^\text{15}\)—are more likely to hold part-time and/or lower-wage positions.

A universal program offers a promising avenue for workers to access these critical benefits regardless of their income, industry, job title, gender, or family composition. But programs must be carefully designed to ensure that policy choices do not unduly or unwittingly exclude many of the workers most in need of protection and coverage.

This chapter describes the variety of design options available to policymakers considering a paid leave policy and discusses the effects of different options on the equity, efficiency, affordability, and adequacy of a new (or updated) paid family and medical leave program.

\(\quad\text{Several states have implemented paid family and medical leave programs, and others are starting up new programs.}\)
Paid Leave Terminology

**Paid Family Leave** provides workers with paid time off to care for a loved one. Qualifying events typically include the birth, adoption, or foster placement of a child; the need to care for a loved one with a serious health condition; and, in some cases, contingencies surrounding the military deployment of a close family member. Some employers voluntarily offer paid family leave to some or all employees and pay the costs of that coverage out of pocket (i.e., self-insure). Several states have developed family leave insurance programs for workers, typically funded through employee payroll contributions.

**Paid Medical Leave** (or **Short-Term or Temporary Disability Insurance**) compensates workers for lost wages in the event of a longer-term health condition that is not related to work. Common conditions include pregnancy, long-term illness, or recovery from a surgical procedure. Paid medical leave typically provides partial wage replacement for up to a designated number of weeks, but some employers do offer total wage replacement throughout the leave period. Currently, coverage for paid medical leave, including temporary disability insurance (TDI), may be funded either by a public state-level program or by private coverage purchased by the employer or employee. Eligibility for benefits is typically determined by the state administrative agency or private plan provider, which may limit employer influence on the coverage decision and give workers a right to appeal benefit denials. Benefits often begin after a brief waiting period (e.g., one week) and, in some cases, decrease over the duration of leave (i.e., workers may receive a high portion of wages for a designated period, followed by lower wage replacement for subsequent days/weeks).

In addition to paid family and medical leave, there are several other ways in which workers can receive wage replacement and medical benefits in case of inability to work for health reasons:

**Paid Sick Days** provide workers with paid time off to address acute personal health or safety needs. Employers generally fund and manage sick leave programs directly, either voluntarily or as a result of a state- or local-level mandate. Particularly for state or locally mandated programs, employees can typically use paid sick days for short-term, non-work-related illnesses and injuries; medical appointments; and accessing services or care related to domestic violence, sexual assault or abuse, or stalking. Some programs and employer policies permit workers to use paid sick days to attend to a family member with one of these acute needs. Workers typically accrue sick leave based on hours worked, and employers usually impose relatively strict limits on workers’ ability to accrue sick days. Some employers, however, permit workers to accrue relatively high numbers of sick days, sometimes allowing leave to be carried over from year to year. These more generous benefits can support longer periods of leave for serious health conditions or events such as childbirth.

**Long-Term Disability Insurance** provides cash benefits in the event of an illness or injury that is expected to impede a worker’s ability to remain
gainfully employed, either permanently or for a substantial period of time (i.e., years). In addition to the coverage available to all eligible workers through the Social Security Disability Insurance program, some employers offer private long-term disability insurance coverage as a benefit, and some workers purchase private coverage directly.

**Workers’ Compensation** helps compensate for lost wages and pays medical expenses associated with an injury or illness that occurs on the job. Coverage is funded by employers, except for three states where employers and employees contribute towards premium costs. Employers typically decide whether to obtain coverage through a private carrier plan, self-insuring, or a state Workers’ Compensation insurance fund. Workers’ Compensation coverage is required by law in all states except Texas, where coverage is voluntary. While there is consistency among central features of Workers’ Compensation programs, benefits, program administration, eligibility requirements, and other program design features vary tremendously across the country.

---

**The Changing Nature of Work and Family Life**

The dynamics of work and family life in the U.S. have changed substantially over the past several decades, and national policy has been slow to adapt to this shifting reality. The vast majority of children are now growing up in households where every parent is working, and nearly one in three children lives in a single-parent household. Women also now make up a substantial proportion of the workforce. Most of today’s families need all parents’ earnings to make ends meet; 64 percent of mothers bring in at least one quarter of family earnings, including 41 percent who bring in half or more, and the proportional contributions of low-income mothers and women of color to family earnings are even higher.

Since the mid-20th century, the proportion of women in the workforce has increased

---

substantially, from roughly 34 percent in 1950 to about 57 percent in 2015. At the same time, women still often retain the primary caregiving responsibilities for children, family members with disabilities and/or chronic illnesses, and aging family members. As a result, working women often suffer stagnated earnings, heightened barriers to professional growth, and employer discrimination. Men are also—and increasingly—confronting the financial consequences of caregiving, as they become more involved in providing care, desire to spend more time with their children, and face stigma in the workplace. As a result of these changing workplace and gender dynamics, most families have no one to provide full-time care for a child and/or family member when needed. Without access to paid leave, family income and financial security suffer regardless of who takes time off to provide or receive care.

---

However, the need for caregiving has not disappeared—and will not—simply because the number of stay-at-home caregivers has decreased. In fact, families are coping with a variety of care needs. Many modern families extend well beyond the scope of the “nuclear” household. Workers are providing care for a broad range of family members, from spouses, children, and parents; to extended family members such as grandparents, siblings, aunts, uncles, and cousins; to “chosen family” and others in their extended communities.24 The Baby Boomer generation is also aging at a rapid pace, and the number of caregivers available for each senior is in steady decline.25 As of 2010, there were roughly seven potential caregivers (defined as people aged 45-64) for each person aged 80 or older; that ratio is projected to drop to 4:1 by 2030 and 3:1 by 2050.26 Roughly 1 in 6 working adults is already providing care for a family member over the age of 65. Some adults leave the workforce altogether because they cannot manage the competing demands of work and caregiving. Additionally, almost a quarter of these family eldercare providers also have children.27 While family caregiving leave-taking currently comprises a smaller portion of FMLA claims than personal medical leave (which accounts for over half of claims), family caregiving claims do not lag far behind new child bonding claims (18 versus 21 percent of claims in a given 12-month period, respectively),28 demonstrating the importance of covering caregiving beyond new parenthood.


Research in the United States29 and across OECD nations30 has found that access to paid

---


leave increases maternal workforce attachment after giving birth, reduces poverty for households with children, and may also be associated with increased earnings for mothers. Access to paid parental leave for new fathers has been demonstrated to increase women’s employment and future earnings. Paid medical leave can help workers with disabilities avoid income loss, separation from the workforce, or unwanted reductions in hours. Workers who experience a serious medical incident are also more likely to return to work when paid leave is available, though further research is needed on the long-term effects of paid medical leave.

Additionally, as the Baby Boomer generation ages, the demand for family caregivers who can provide support to their parents and other aging loved ones will grow. As the challenges of balancing work and caregiving responsibilities mount, many workers—particularly women, people of color, and low-wage workers, who may have more care responsibilities and less access to paid family leave—risk negative economic outcomes, such as lost earnings, undesired shifts from full- to part-time work, or being pushed out of the workplace altogether. One study found that women over the age of 50 who left the labor force early to care for an elder suffered forgone wages averaging $142,693 and reductions in lifetime Social Security benefits averaging $131,351; for men, forgone wages and Social Security benefits averaged $89,107 and $144,609, respectively.

Access to paid leave increases maternal workforce attachment after giving birth and reduces poverty for households with children.

In addition to the financial benefits for workers and their families, access to paid parental leave has been associated with  

---

positive health outcomes for both children and parents. Research reveals that paid parental leave is correlated with substantial reductions in mortality for infants and young children; this effect increases as the duration of benefits is extended. \(^{38}\) Infants whose parents have access to paid parental leave are more likely to be breastfed \(^{39}\) and to receive vaccinations according to the medically recommended schedule. \(^{40}\) Recent research suggests that access to paid leave may play a role in reducing physical abuse and maltreatment of young children. \(^{41}\) New mothers also benefit from the time to recover and bond with their infants; women with more generous leave benefits showed decreased depressive symptoms and higher overall health status after childbirth compared to those who took shorter leaves. \(^{42}\) Additionally, paid leave is correlated with higher participation in preventive health screenings and care, both for workers themselves and for their dependent children. \(^{43}\)

---

Access to paid parental leave has been associated with positive health outcomes for both children and parents.

---

To date, few studies have examined the effects of paid leave on adult loved ones and older children with care needs. The available literature does suggest that health outcomes for sick older children and aging individuals alike are improved with support from family members. \(^{44}\) One recent study on paid family leave in California found that the program is correlated with an 11 percent relative decline in nursing home utilization among seniors. \(^{45}\)

---


Impact of Paid Leave on Business and the Economy

Paid leave’s effects on the economy as a whole represent an important metric by which to gauge the policy’s success. To date there is little evidence that paid leave has any negative impact on business or the economy. Research on the existing programs in California, Rhode Island, and New Jersey demonstrates no substantial negative impact on business. To the contrary: employers report benefits from paid leave including improved employee retention (particularly among women), morale, engagement, and productivity. 49

Although some have suggested that businesses below a certain number of employees should be exempt from paying contributions into a state-level paid leave program, a national poll of small businesses found that a substantial majority supported

---

a social insurance model for paid leave, particularly when the program is financed by shared costs between employees and their employers. This is in part because a universal paid leave program can help to level the playing field between larger companies and small businesses, who often want to provide such benefits to their employees and understand the value of paid leave benefits, but simply cannot afford the financial shock of paying fully out of pocket. A social insurance program that spreads costs widely across all workers and/or employers in a state (or country) can offer a more predictable and affordable option than self-insurance.

Survey research has also found widespread support among small- and medium-sized businesses for state-level paid family leave programs. A representative sample of employers from New Jersey and New York found that over 60 percent of small- and medium-sized employers—those with 10-19 or 20-49 employees, respectively—supported their states’ paid family leave programs. Only about 15 percent of businesses in both states expressed opposition. Additionally, an early analysis of Rhode Island’s program found that two-thirds of small business employees reported experiencing no impact from a coworker’s leave, while their employers adjusted in ways generally comparable to larger employers.

It is important to note that research from the United States that assesses the effects of paid leave policies on business practices and outcomes has been limited. Current state paid leave policies offer relatively modest benefits in terms of wage replacement and—for paid family leave—duration (between 4 and 6 weeks, although some newer state programs

---

Research has found widespread support among small- and medium-sized businesses for state-level paid family leave programs.

will offer leaves up to 12 weeks). Furthermore, they are funded either exclusively by employees or by shared contributions from employers and employees. These factors limit the cost of these programs for employers, as well as their broader impact on the economy. A paid family and medical leave program funded entirely by employers,\textsuperscript{53} or an employer mandate,\textsuperscript{54} might affect businesses more than current programs. Employers might seek to offset these effects by reducing wages, especially for employees perceived to be the most likely program users.\textsuperscript{55} Successful implementation of new state-level programs should include funding and a plan for program evaluation to shed light on these issues.\textsuperscript{56}

\textsuperscript{53} As of June 2019, Washington, DC has passed—but not yet implemented—an employer-funded social insurance program for paid family and medical leave.

\textsuperscript{54} Hawaii has an employer mandate for paid medical leave (TDI) only. There has been little research evaluating this policy and its effects on businesses, the workforce, or the economy.


\textsuperscript{56} Analysis of employer attitudes and outcomes resulting from the recently implemented paid leave program in New York state and the ordinance mandating employers to finance increased paid leave benefits in the city of San Francisco is already underway. [Jane Waldfogel, “Paid Family and Medical Leave: Evidence from Employers. Symposium on Paid Family and Medical Leave,” Federal Reserve Bank of Boston, January 22, 2018.] Studies of programs with different funding mechanisms and/or benefit levels will be particularly revealing; these include programs in the District of Columbia (fully employer-funded) and Washington State (longer duration of leave and jointly funded between employees and employers).
Employers have long been aware that a generous employee benefits package can play a significant role in recruiting and retaining talented workers. Many high-road businesses are already offering paid family and medical leave to their employees. Recently, some employers have expanded benefits by increasing the generosity of benefit duration and/or by offering benefits to a broader range of their employees. The generosity of those benefits varies by employer, but it is worth examining the range of what employers are already offering when considering what could be appropriate versus excessively burdensome on employers when designing a state or federal program.

- **Leave duration**: The duration of voluntary paid leave benefits varies substantially across employers and type of leave. Most companies that provide paid leave limit its duration to 4 to 20 weeks; birth mothers sometimes may extend their leaves by combining paid medical and parental leave allowances. The Bill & Melinda Gates Foundation offers employees unlimited time off for a personal health issue. Etsy provides 26 weeks of paid parental leave; after the first 8 weeks, leave may be spread over the first two years following the birth or adoption of a child, offering added flexibility to new parents.

- **Wage replacement**: While not all companies are fully transparent regarding their wage replacement rate policies, a notable and growing number of employers offer paid parental leave, and in some cases also family caregiving leave, at 100 percent wage replacement, just as they would for vacation or sick leave (e.g., Discovery Communications, Ernst & Young LLP, and Microsoft). A recent survey of major U.S. employers shows that employers generally offer somewhere in the range of 60-100 percent wage replacement for paid medical leave. Some employers have tiered structures...

---


58 Ibid.


where workers with longer tenures at the organization receive higher wage replacement rates.\(^{64}\)

- **Qualifying events:** Qualifying events triggering a paid family leave benefit vary widely across employers. Many firms offer paid leave only for new parents, often with more generous benefits for new mothers than for new fathers.\(^{65}\) Other companies provide paid leave for a wider range of family care needs, such as a close family member’s serious health condition or bereavement following the death of a loved one. For example, Deloitte now offers 16 weeks of fully paid family caregiving leave.\(^{66}\) As of 2019, General Mills provides 2 weeks of paid family caregiving leave and 4 weeks of bereavement leave upon the death of an immediate family member.\(^{67}\)

- **Inclusiveness across employees:** As with many benefits, employers may offer different paid leave benefits to different groups of workers. For example, at Netflix, salaried employees are offered up to a year of unlimited paid parental leave, but hourly employees are offered just 12 to 16 weeks (depending on their department).\(^{68}\) Other companies offer benefits more equitably; for example, eBay provides 24 weeks of paid maternity leave and 12 weeks of paid parental, family caregiving, and medical leave to all employees working over 20 hours a week, regardless of whether they are salaried or hourly workers.\(^{69}\)


Section II.

THE LANDSCAPE OF PAID FAMILY AND MEDICAL LEAVE POLICIES IN THE UNITED STATES
The United States lacks many family-friendly employment policies that characterize peer nations, including national paid leave. Several bills have been introduced in Congress that offer varying approaches to a national paid family and medical leave program, and Congressional support for such a program at the federal level has been steadily growing, but none has yet passed either chamber of Congress.

The New Parents Act of 2019 (S. 920) would offer parents of a new child the option to pull forward a portion of their Social Security benefits to use for paid parental leave after the birth or adoption of a child. Parents may elect to take up to three months (benefit selections must be in monthly increments) of parental leave upon the birth or adoption of a child against their future retirement benefits. [116th Congress, 1st Sess., S.920 - New Parents Act of 2019, https://www.congress.gov/bill/116th-congress/senate-bill/920/text.]

In the current absence of any large-scale national policy, states have stepped up as critical leaders in advancing paid family and medical leave programs. These programs are summarized in Table 1. A timeline of state-level PML and/or PFL programs is presented in Figure 2. The maximum duration of leave benefits varies considerably across states, as illustrated in Figures 3 and 4.

70 The Family and Medical Insurance Leave (FAMILY) Act (S. 337/H.R. 947) would create a national paid family and medical leave social insurance program offering up to 12 weeks of leave for any event covered under the FMLA. As of June 2019, the bill has 34 cosponsors in the Senate and 189 cosponsors in the House. [For more information, see: National Partnership for Women and Families, “The Family And Medical Insurance Leave (FAMILY) Act: Fact Sheet,” 2019, http://www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf.]

71 The Tax Cuts and Jobs Act of 2017 includes a business tax credit for employers who voluntarily offer paid family and medical leave to all qualifying full-time employees; part-time employees can be offered benefits on a pro-rated basis. This credit gives employers an incentive to offer paid leave voluntarily to their employees earning under $72,000 per year. It does not provide universal paid family and medical leave.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>Social insurance with limited employer opt outs; Funded through employee payroll tax</td>
<td>California Employment Development Department</td>
<td>Employee: 1.0% of the first $118,371 in earnings</td>
<td>Up to 52 weeks</td>
<td>Up to 6 weeks</td>
<td>70% of worker’s average weekly wage (AWW) for workers earning at least $929 but &lt; 1/3 of state average quarterly wage (AQW); 60% of the worker’s AWW OR 23.3% of state AWW—whichever is greater—for all earnings &gt; 1/3 of state AQW, up to weekly max of $1,252</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Social insurance with regulated employer opt outs; Funded through employee/employer payroll tax; Employers may request approval to opt out of state plan to self-insure or provide insurance through private carrier</td>
<td>Social insurance with limited employer opt outs; Funded through employee payroll tax; Employers may request approval to opt out of state plan to self-insure or provide insurance through private carrier</td>
<td>Employee: 0.17% on the first $34,400 in earnings; New employers: 0.5%; All other employers: experience rated, maximum wage base = $34,400</td>
<td>Up to 26 weeks</td>
<td>Up to 6 weeks in 2019; up to 12 weeks in 2020</td>
<td>67%, weekly max of $650, in 2019; 85%, maximum benefit of 70% of the statewide AWW, in 2020</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Social insurance with exclusive state fund; Funded through employee payroll tax</td>
<td>Rhode Island Department of Labor and Workforce Development</td>
<td>Employee: 1.1% of the first $71,000 in earnings</td>
<td>Up to 30 weeks</td>
<td>Up to 4 weeks</td>
<td>60%, with a weekly maximum of $852 plus dependent benefits</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Architecture and Funding</td>
<td>Administrative Agency</td>
<td>Contributions</td>
<td>Length of Leave Available</td>
<td>Wage Replacement</td>
<td>Eligibility Requirements</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------</td>
<td>-----------------------</td>
<td>--------------</td>
<td>--------------------------</td>
<td>-----------------</td>
<td>--------------------------</td>
</tr>
</tbody>
</table>
| New York     | Hybrid social insurance program with regulated private options; Funded through employee / employer payroll tax; Employers must provide coverage either through private insurance or the state plan, or request approval to self-insure; Employers may waive the employee contribution to fully fund coverage | New York State Workers’ Compensation Board | Employee: 0.5% of wages paid, up to $0.60 per week; Employee: all additional costs | PML: Up to 10 weeks in 2019; up to 12 weeks in 2021 | PML: 50%, with a weekly maximum of $170; PFL: 55% up to cap of 55% of state AWW in 2019; 60% up to cap of 60% of state AWW in 2020; 67% up to a cap of 67% of state AWW in 2021 | For medical leave: Worked at least four weeks for a covered employer OR Work for an employer who provides voluntary coverage OR Work at least 40 hours per week for one employer as a domestic or personal employee for a minimum of 30 days in a calendar year
For family leave: Currently employed by a covered employer & worked at least 26 consecutive weeks for a covered employer OR Worked at least 175 days for a covered employer if part-time
Self-employed workers may opt in to the program
Certain public employers can opt in to both PML and PFL; state government, some public employers, and workers represented by an employee organization can opt in to PFL only |
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
</table>
| **Hawaii**                    | Employer mandate         | Hawaii Department of Labor and Industrial Relations | Employee: up to 0.5% of weekly wages, up to $5.44  
Employer: all additional costs | Up to 26 weeks | n/a                 | Worked at least 20 hours per week for at least 14 weeks AND  
Earned at least $400 in the 52 weeks prior to the claim date AND  
Be in current employment |
| **District of Columbia**      | Social insurance with exclusive state fund; Funded through employer payroll tax  
District of Columbia Department of Employment Services | Employer: 0.62% of the annual salary of each covered employee | Up to 2 weeks | Up to 8 weeks of parental leave & up to 6 weeks of family caregiving leave; No more than 8 weeks of total leave in a 52-week period | For workers with weekly earnings <150% of D.C. min wage ($795 in 2019), 90% of AWW;  
For workers with weekly earnings >150% of D.C. min wage, 90% of earnings up to 150% of D.C. min wage, plus 50% of earnings above this threshold, with weekly max of $1,000 | Worked more than 50% of the time for a covered employer in DC AND  
Worked for a covered employer for at least some time in last 52 weeks, OR  
Self-employed with self-employment income for work performed more than 50% of the time in DC AND  
Opted into paid leave program & paid appropriate taxes into system  
Employees of the District and federal government are not covered, nor are employees of any other entity that the District cannot tax |
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Paid Medical Leave (PML)</td>
<td></td>
<td>PML</td>
<td>PML</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Paid Family Leave (PFL)</td>
<td></td>
<td>PFL</td>
<td>PFL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington State</td>
<td>Social insurance with limited employer opt outs; Funded through an employee / employer payroll tax</td>
<td>Washington State Employment Security Department</td>
<td>0.4% of wages, with a minimum of 37.5% paid for by employers and the remaining amount, up to 62.5% by employees Employers with fewer than 50 workers are not required to pay the employer portion, but receive special incentives and offsets if they do</td>
<td>Up to 12 weeks; Combined family/medical leave may not exceed 16 weeks, or 18 weeks in case of serious pregnancy-related complication</td>
<td>For workers with earnings &lt;50% of statewide AWW, 90% of worker's AWW; For workers earning over 50% of statewide AWW, 90% AWW up to 50% of state-wide AWW, plus 50% of employee's AWW for all earnings above 50% of statewide AWW, with weekly max of $1,000, to be adjusted annually to equal 90% of state AWW</td>
<td>Worked at least four out of five completed quarters prior to application AND Must have worked for at least 820 hours in the qualifying period Self-employed workers may opt in to the program if they have worked at least 820 hours in the qualifying period</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enacted 2017, effective 2019 premiums) / January 2020 (benefits)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Paid Medical Leave (PML)</td>
<td></td>
<td>PML</td>
<td>PML</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Paid Family Leave (PFL)</td>
<td></td>
<td>PFL</td>
<td>PFL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington State</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enacted 2017, effective 2019 premiums) / January 2020 (benefits)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Paid Medical Leave (PML)</td>
<td></td>
<td>PML</td>
<td>PML</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Paid Family Leave (PFL)</td>
<td></td>
<td>PFL</td>
<td>PFL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington State</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enacted 2017, effective 2019 premiums) / January 2020 (benefits)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Paid Medical Leave (PML)</td>
<td></td>
<td>PML</td>
<td>PML</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Paid Family Leave (PFL)</td>
<td></td>
<td>PFL</td>
<td>PFL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington State</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enacted 2017, effective 2019 premiums) / January 2020 (benefits)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Paid Medical Leave (PML)</td>
<td></td>
<td>PML</td>
<td>PML</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Paid Family Leave (PFL)</td>
<td></td>
<td>PFL</td>
<td>PFL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington State</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enacted 2017, effective 2019 premiums) / January 2020 (benefits)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Architecture and Funding</th>
<th>Administrative Agency</th>
<th>Contributions</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Paid Medical Leave (PML)</td>
<td></td>
<td>PML</td>
<td>PML</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Paid Family Leave (PFL)</td>
<td></td>
<td>PFL</td>
<td>PFL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington State</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enacted 2017, effective 2019 premiums) / January 2020 (benefits)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Architecture and Funding</td>
<td>Administrative Agency</td>
<td>Contributions</td>
<td>Length of Leave Available</td>
<td>Wage Replacement</td>
<td>Eligibility Requirements</td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------</td>
<td>--------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Social insurance with limited employer opt outs;</td>
<td>Massachusetts Executive Office of Labor and Workforce Development</td>
<td>0.63% of wages</td>
<td>Up to 20 weeks; Combined family/medical leave may not exceed 26 weeks</td>
<td>Up to 12 weeks for family leave; Up to 26 weeks to care for a covered service member; Combined family/medical leave may not exceed 26 weeks, with 2 extra weeks in the case of serious pregnancy complications</td>
<td>Employee must be financially eligible for state unemployment insurance coverage: As of 2018, $4,700 in the last 4 completed calendar quarters and at least 30 times the weekly unemployment benefit amount that the employee would be eligible to collect. Private sector and state government employees are covered. Self-employed workers and local governments may opt in to the program.</td>
</tr>
<tr>
<td></td>
<td>Funded through an employee / employer payroll tax</td>
<td></td>
<td>Employees: at least 60% of the PML premium; Employers may opt to pay for some or all of the remaining cost of PML and/or PFL coverage if desired</td>
<td>Up to 26 weeks; Combined family/medical leave may not exceed 26 weeks</td>
<td>For workers with earnings &lt; 50% of statewide average weekly wage (AWW), 80% of worker’s AWW; For workers earning &gt; 50% of statewide AWW, 80% of the employee’s AWW up to 50% of the statewide AWW, plus 50% of the employee’s AWW over 50% of state AWW; Weekly maximum benefit: $850, to be adjusted annually to equal 64% of state AWW</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employers with fewer than 25 workers are not required to pay the employer portion</td>
<td>Up to 26 weeks; Combined family/medical leave may not exceed 26 weeks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>Social insurance with limited employer opt outs;</td>
<td>Paid Family and Medical Leave Insurance Authority; Department of Revenue Services; Department of Labor</td>
<td>0.5% of wages up to Social Security cap</td>
<td>Up to 12 weeks</td>
<td>Up to 12 weeks; Combined family/medical may not exceed 12 weeks (14 for serious pregnancy complications); Compensation will be capped at 60 times the hourly minimum wage.</td>
<td>Employee must earn at least $2325 in the highest earning quarter within the base period (four of the five most recently completed quarters). Self-employed workers may opt in to the program for an initial period of three years.</td>
</tr>
<tr>
<td></td>
<td>Funded through an employee payroll tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In California, the base period covers 12 months and is divided into four consecutive quarters. The base period includes wages subject to state disability insurance (SDI) taxes that were paid approximately 5 to 18 months before the claim began. The base period does not include wages paid at the time the claim begins. If a claim begins on or after January 1, 2018:

- January, February, or March, the base period is the 12 months ending last September 30.
- April, May, or June, the base period is the 12 months ending last December 31.
- July, August, or September, the base period is the 12 months ending last March 31.
- October, November, or December, the base period is the 12 months ending last June 30.

In New Jersey, the base year is defined as the first four of the last five completed calendar quarters before the worker files a claim.

In Rhode Island, the base period is defined as the first four of the last five completed calendar quarters before the starting date of a new claim. If an individual is not eligible due to insufficient earnings using the base period, the state will recalculate earnings from an alternate base period consisting of the last four completed calendar quarters before the starting date of a claim. While the same earnings requirements must be met to qualify for this alternate base period, it allows for wage replacement to be set based on more recent earnings when the employee might have been earning higher wages that would permit them to qualify for benefits.

Sources:
*FIGURE 2: A Timeline of State Paid Family and Medical Leave Programs*

- **1942** – Rhode Island is the first state to adopt a Temporary Disability Insurance (TDI; also known as paid medical leave) program in the US. RI used a social insurance model with an exclusive state fund.
- **1946** – California enacts a new TDI program – a social insurance program with limited opt-outs.
- **1948** – New Jersey becomes the first state to develop a TDI program. New York’s program involves much greater participation by highly regulated private TDI providers, complemented by a state fund as an alternative to private coverage.
- **1949** – New York becomes the fourth state to enact a TDI program. New York’s program involves much greater participation by highly regulated private TDI providers, complemented by a state fund as an alternative to private coverage.
- **1969** – Hawaii enacts an employer mandate for TDI.
- **2002** – California becomes the first state to develop a Paid Family Leave (PFL) program. This program was layered on top of the state’s existing TDI program.
- **2008** – New Jersey layers a PFL program on top of the state’s existing TDI program.
- **2013** – Rhode Island adds a PFL program to the state’s existing TDI program.
- **2016** – New York state enacts legislation developing a PFL program, built on the state’s existing TDI program (implemented 2018).
- **2017** – The District of Columbia enacts the nation’s first combined paid family and medical leave program – a social insurance program with an exclusive state fund. (to be fully implemented in 2020).
- **2017** – Washington State follows the same year with a social insurance program with limited opt-outs for employers (to be fully implemented in 2020).
- **2018** – Massachusetts enacts a combined paid family and medical leave program as a social insurance program with limited opt-outs for employers (to be implemented 2021).
- **2019** – Connecticut enacts a combined paid family and medical leave program as a social insurance model with limited opt-outs for employers (to be fully implemented in 2022).

SECTION II. THE LANDSCAPE OF PAID FAMILY AND MEDICAL LEAVE POLICIES IN THE UNITED STATES


Note: In Washington and Connecticut, workers may be eligible for up to 14 weeks of paid medical leave in the event of serious pregnancy complications.
Five states and Puerto Rico have longstanding temporary disability insurance (TDI) programs that cover paid medical leave. Four of these have added paid family leave coverage over the past two decades, and Puerto Rico has required 8 weeks of paid leave for mothers following the birth or adoption of a child since 1942. As of June 2019, another four jurisdictions are in the process of implementing new paid family and medical leave programs. A brief overview of these existing paid leave programs in the United States is provided below. For full descriptions of the broader range of structural design and financing options that a state could utilize in developing a paid family and medical leave program, see Section IV: Overview of Key Design Elements and Considerations.

**California** was the first state to add paid family leave to its longstanding TDI program (also known as paid medical leave) in 2002. This social insurance program is funded by a payroll tax on employees, though limited options for employer self-insurance are permitted under certain strict conditions.
The program allows workers to take up to 52 weeks of paid medical leave and up to 6 weeks of paid family leave in a 12-month period.

**New Jersey** added paid family leave to its longstanding TDI program in 2008. As in California, this is principally a social insurance program, though employers may self-insure or provide coverage through a private carrier. The TDI program affords workers up to 26 weeks of paid medical leave in a 12-month period, funded by a shared employee-employer payroll tax. The paid family leave policy, which is funded entirely by a payroll tax levied on employees, currently offers up to 6 weeks of leave in a 12-month period, though the maximum leave period benefit will expand to 12 weeks as of July 1, 2020.

**Rhode Island** extended its existing TDI program to offer paid family leave in 2013. This social insurance model is financed entirely by an employee payroll tax. Rhode Island uses a social insurance model with an exclusive state fund—that is, a public, pooled fund that covers every eligible worker in the state. Employers have no option to self-insure or obtain other private coverage. The program allows workers to take up to 30 weeks of paid medical leave and up to 4 weeks of paid family leave (limited to 30 weeks total of paid family and/or medical leave per year) within a 52-week period.

**New York** extended its TDI program to include paid family leave in 2018. Its paid family and medical leave program is similar to a traditional social insurance program, but it allows employers a substantial amount of choice in how benefits are delivered. Employers can choose to purchase a competitive state fund insurance plan, buy a highly regulated private market policy, or self-insure. Paid medical leave is funded through shared employee-employer payroll contributions, where employers are permitted to charge workers for a portion of their premiums for coverage and then are required to cover the remaining share. Workers pay the full premium amount for paid family leave, and these payroll contributions are community rated. Workers are currently entitled to up to 26 weeks of paid medical leave and up to 10 weeks of family leave, which will increase to 12 weeks by 2021 (limited to a total of 26 weeks of paid family and/or medical leave in a 52-week period).

**Hawaii** has an employer mandate that entitles workers to up to 26 weeks of paid medical leave. Employers are permitted

---


73 Ibid.


to charge workers for a portion of their premiums for coverage. Employers can choose a private insurance company to provide the benefits or can self-insure. The state has no provision for paid family leave.

Puerto Rico's longstanding TDI program, which follows a social insurance model, offers up to 26 weeks of paid medical leave. Employers and employees share the cost of the payroll tax, but, with state Department of Labor approval, employers can purchase private short-term disability insurance in lieu of participating in the state program. Under a 1942 law, employers in Puerto Rico are required to provide up to 8 weeks of leave at full pay to mothers after the birth or adoption of a child.

The District of Columbia enacted a paid family and medical leave social insurance program as one integrated program in 2017, to become fully effective in July 2020. The system will be funded through an employer payroll tax and is designed as an exclusive state fund. Workers are eligible for up to 2 weeks of paid medical leave, 8 weeks of paid parental leave, and 6 weeks of

---

78 In 2017, Hawaii adopted the “Kūpuna Caregivers Program,” which helps workers remain in the workforce while they care for an aging family member. Caregivers can receive financial assistance to cover some of the costs, up to a daily maximum, of professional services and supports required by the care recipient (e.g., adult day care, transportation, respite care, etc.). This program will be discussed further in Chapter 3: Long-Term Services and Supports. While the Kūpuna Caregivers Program provides financial assistance and relief to workers caring for an aging family member, it is not a paid family leave program, because benefits may be remitted only to a qualified service provider—not directly to working family caregivers.[For more information, see: http://www.care4kupuna.com/]
paid family caregiving leave (limited to 8 weeks of paid family and/or medical leave total in any 52-week period). 80

**Washington** State adopted a combined paid family and medical leave program in 2017. This social insurance program, funded by a payroll tax on employers and employees, will take full effect in 2020. Employers have limited opportunities to choose private coverage. Workers are eligible for up to 12 weeks of paid medical leave (14 weeks in the case of serious pregnancy-related complications) and up to 12 weeks of paid family leave (limited to 16 weeks of paid family and/or medical leave total in any given year, or 18 weeks in the case of serious pregnancy complications). 81

**Massachusetts** chose a social insurance model for its combined paid family and medical leave program, though employers may self-insure or provide coverage through a private carrier if they meet or exceed the benefits provided under the state program. Enacted in 2018, and scheduled to become fully effective in 2021, the program will be funded through a payroll tax on employees. Employers are permitted to deduct from wages up to 100 percent of paid family leave contributions and up to 40 percent of paid medical leave contributions. Workers can take as many as 12 weeks of paid family leave, 20 weeks of paid medical leave, and 26 weeks of leave to provide care for a family member experiencing a serious injury or illness arising from service in the military (limited to 26 weeks total leave per year). 82

**Connecticut** adopted a combined paid family and medical leave program in 2019. The social insurance program, funded by a payroll tax on employees, will take full effect in 2022. Employers may apply to self-insure if they exceed the state program’s generosity and meet strict requirements surrounding employee rights and protections. Workers are eligible for up to 12 weeks of paid medical leave (14 weeks in the event of serious pregnancy complications) and up to 12 weeks of paid family leave (limited to 12 weeks total, or 14 weeks for serious pregnancy complications, in a 12-month period). 83

The city of **San Francisco** adopted a Paid Parental Leave Ordinance (PPLO) in 2016, which since 2018 has required employers with 20 or more employees to provide supplemental compensation to workers who are receiving benefits for bonding with a new child via California’s Paid Family Leave (PFL) program. 84 Under the ordinance, many workers in San Francisco receive 100 percent of their usual wages; the ordinance requires employers to pay the difference between the California PFL benefit amount (currently between 60 percent and 70 percent of a worker’s usual wages, up to a cap of $1252/week in 2019) and the employee’s typical full weekly wages (capped at the ordinance’s weekly maximum benefit level, which is $2087/week in 2019), for up to the full 6 weeks of leave to which new parents are entitled in the state. 85

---

Early Lessons from State Paid Family and Medical Leave Programs

Because jurisdictions have adopted a range of different design elements in their paid leave programs, they serve as laboratories for others considering the adoption of paid leave. New programs can benefit from some of the lessons learned in existing programs—namely, that to make take-up feasible for all workers, particularly those from low-income and disadvantaged backgrounds, programs need to offer higher and more progressive wage replacement and make significant investments in education and outreach.

**California:** At the program’s original wage replacement rate of 55 percent, many workers could not afford to take leave. In 2013, fewer than 4 percent of PFL claimants earned less than $12,000 per year, while nearly 21 percent of claimants earned over $84,000 per year. In response to concerns about benefit inadequacy, the state raised its wage replacement rate in 2016 to between 60 and 70 percent of earnings, with lower-earning employees receiving a higher percentage of their typical wages.

**New Jersey:** Early research on New Jersey’s PFL program suggested that the state has struggled with education and public promotion, at least in part due to a lack of funding for and investment in outreach about the program, which has led to disparities in knowledge of the PFL program’s existence. After three years of implementation, over 60 percent of surveyed individuals said they had never heard of the program. Knowledge of the program was particularly low among residents who are young (aged 18-29), Black, and lower-income. In 2017, the state rolled out new computer systems and outreach information for employees and employers. In 2019, the state enacted updates to its program to enhance accessibility for lower-wage workers and better meet the needs of all workers: namely, the wage replacement rate for lower-income workers will increase to 85 percent, job protection will be expanded to workers in smaller businesses, and the duration of family leave will increase to 12 weeks. The law also allocated $1.2 million for an education and outreach campaign, at least half of which must go to community-based organizations.

---


Rhode Island: Rhode Island made a concerted effort to streamline its application process. In a survey of beneficiaries, over two-thirds of applicants reported being satisfied or very satisfied with the application process, and over half received their first benefit check within two weeks of applying.\textsuperscript{90} Much like in New Jersey, Rhode Island reported that knowledge of the program was much lower among those with lower income and education and non-White populations, as well as among older workers and those who work for smaller employers.\textsuperscript{91}


\textsuperscript{91} Ibid.
Section III.

POLICY OPTIONS FOR STATE PAID FAMILY AND MEDICAL LEAVE PROGRAMS
States seeking to establish a program for paid family and medical leave may choose from three principal design options: a universal, contributory social insurance program; a hybrid social insurance program with regulated private options; and an employer mandate. What follows is a description of each design, noting which states have adopted it and why, and summarizing their experiences to date. Funding options and their suitability for each design choice are explained thereafter. The discussion of each design option concludes with an analysis of its implications for fiscal sustainability, program stability, political feasibility, administrative simplicity, and effects on workers and employers.

**Option 1. Universal, contributory social insurance program, exclusive state fund**

A universal, contributory model is a classic social insurance program design. Other programs at the national level (e.g., Social Security) that have used this model for decades offer valuable experience. It is also the prevailing design choice among the vast majority of paid leave programs in industrialized nations across the world.92 With this policy option, workers contribute to an exclusive state social insurance fund throughout their careers in return for an earned benefit should the need arise. Social Security and Unemployment Insurance operate in similar fashion, and Rhode Island and the District of Columbia (effective 2020) use an exclusive state fund approach for their PFML programs.

Universal, contributory social insurance is the prevailing design choice for paid leave programs across the world.

**Financing:** Social insurance programs are traditionally financed through payroll contributions paid by workers and/or their employers. However, payroll contributions could be supplemented with general revenues or an earmarked tax, particularly for expenses such as administrative costs; infrastructure and technological startup, maintenance, and improvement; and program evaluation.

---

Policy Assessment: Option 1. Universal, contributory social insurance program, exclusive state fund

**Fiscal sustainability:** Using dedicated payroll taxes to fund a program makes it highly sustainable from a fiscal standpoint, as the funding stream is likely to be relatively consistent from year to year. As benefit amounts fluctuate over time, due to inflation or other causes, states may need periodically to adjust their tax rates and/or the wage base subject to taxation. Social Security has made such adjustments many times during its eight-decade history.

**Program stability:** Like all insurance plans, a universal social insurance program is designed to provide stability by sharing costs and benefits as broadly as possible. A state’s entire workforce comprises a large pool of funders and beneficiaries, thus reducing the likelihood of dramatic swings from year to year.

**Political feasibility:** The vast majority of states with programs in place have adopted a universal contributory social insurance model, as have the majority of parental leave programs in other countries with advanced economies. This experience suggests that this model is very politically feasible.

**Administrative simplicity:** State and federal governments have decades of experience administering social insurance programs, including Social Security, Unemployment Insurance, and Medicare, among others. A new state paid leave program could readily draw upon the administrative processes and structures developed in those well-established programs, making program management relatively straightforward. From an administrative standpoint, the simplest option would be an exclusive state fund. Allowing employers to opt out of the state fund by self-insuring or purchasing private coverage would increase complexity for state administrators, who then would be required to both manage the state fund and monitor compliance by employers who chose alternate coverage options. States may consider putting a surcharge on employers who opt for private coverage or self-insurance to compensate for the costs of the additional administrative burden associated with monitoring these programs.

**Effect on workers:** Although universal contributory paid leave social insurance programs reduce workers’ take-home pay, these reductions are typically quite low. Additionally, workers who obtain paid leave from a state program (as opposed to a self-insured employer program) are typically spared the need to reveal highly personal details of their family or personal health circumstances to their employers.

**Effect on employers:** Most existing state paid leave programs are financed entirely by employee payroll taxes. In those states where employers share in the contributions, they typically pay very modest costs. State-managed programs may also save employers the time and money required to administer paid leave benefits themselves, which is particularly challenging for small businesses and the self-employed.

---

Option 2. Contributory social insurance program with regulated private options

A contributory social insurance program with regulated private options requires employers to offer a certain level and type of coverage, and to comply with specified anti-discrimination and other consumer and employment law protections. In this model, state law would set a minimum required benefit level and a maximum permissible employee contribution, and would regulate both benefit provision and enforcement to ensure employees are receiving the insurance and employment protections the law requires. As long as the program meets these requirements, employers are free to choose how to provide coverage. They can purchase private insurance coverage, participate in the state social insurance fund, or self-insure. State Workers’ Compensation programs frequently offer flexibility of this sort.94

Two variants of this approach exist in the United States:

- **State fund with limited private options:** California, New Jersey, Washington State (effective 2020), Massachusetts (effective 2021), and Connecticut (effective 2022) have adopted a state fund with limited private options. The vast majority of employers participate in the state fund. If employers meet certain regulatory requirements, they are permitted to use self-insurance and/or a private plan to provide equal or greater benefits.

- **Hybrid social insurance program with regulated private options:** The state of New York has adopted a hybrid social insurance model for its paid leave program. Employers can choose between purchasing private insurance coverage, participating in the state social insurance fund, or self-insuring, as long as they offer the statutorily prescribed level and type of coverage and comply with anti-discrimination and other consumer protections.

**Financing:** As with an exclusive state fund social insurance program, a contributory paid leave program with regulated private options could be funded in whole or in part by employee payroll contributions. Depending on the model selected by the employer, these funds would be channeled to the private plan provider, the state fund, or an employer-managed self-insurance pool. Employers could make their program more generous to workers by waiving some or all of the required employee contributions and/or offering benefits above and beyond the state-mandated levels.

---


Policy Assessment: Option 2. Contributory social insurance program with regulated private options

**Fiscal sustainability:** Like other programs that rely on payroll taxes for funding, this design option is likely to be quite sustainable from a fiscal standpoint. However, the flexibility inherent in this model presents more fiscal risk than the exclusive state fund model. For states with limited options for private coverage (versus the robust, highly regulated, competitive market in New York state), employers whose employees were disproportionately women of childbearing age and/or older workers—that is, who might be expected to avail themselves of paid leave benefits more than those from other demographics—might opt into the state fund for administrative or cost reasons. This in turn might require increasing the funding required for the state program relative to other program models, though such a model might decrease funding needs in other areas (e.g., claims processing and determination, since this is conducted to some degree by private carriers).

**Program stability:** For decades, many state Workers’ Compensation programs have used a hybrid social insurance model. New York’s long-standing TDI program and more recent PFL program likewise employ this design. These experiences suggest that a hybrid paid leave model might be similarly stable over time. Employers’ ability to choose among different providers in states with more limited and less robustly regulated private options might lead to concentrations of certain employee groups in one program type, however, with the potential of destabilizing the overall program framework.

**Political feasibility:** State Workers’ Compensation programs throughout the U.S. have used a hybrid design for many decades. As recently as 2018, New York adopted this model for its paid family leave program. Increasing employer options while simultaneously ensuring workers’ access to state-protected benefits would likely prove popular selling points and render the enactment of such a model politically feasible.

**Administrative simplicity:** Administering a contributory paid leave program with regulated private options would be complex for the state administrative agency and employers. A state agency would be required both to administer the state fund and to monitor compliance among the private plans and self-insured employers. Employers would be responsible for choosing among a plethora of available options, as they do currently with health insurance and other benefits.

**Effect on workers:** A contributory system with private options could very closely resemble an exclusive state fund program for workers, since contributions would be deducted from their pay as with any other standard employment benefit. Absent appropriate state regulation, workers might face discrimination based on their perceived level of “risk” to employers. To mitigate this hazard, states could require private plans to use community rating, where everyone contributes at the same rate or level, rather than experience rating, where rates are set based on the actual or perceived risk of an individual or group.

**Effect on employers:** Giving employers choice in how to provide paid leave for employees increases employers’ flexibility, but also requires them to spend time and effort determining which type of plan best meets their needs. Small businesses in particular might find it challenging to research fully the available options.
**Option 3. Employer mandate**

An employer mandate model would simply impose a state-mandated requirement for employers to provide a meaningful number of weeks or months of paid leave coverage and benefits directly to their workers. Hawaii is the only state to adopt this option for its paid medical leave program; to date no state has enacted an employer mandate for paid family leave. Outside the United States, an employer mandate has been adopted principally by less affluent, emerging economies, often with limited enforcement. ⁹⁶ As with the hybrid social insurance model, employers could elect to exceed the required coverage.

**Funding:** In this model, the employer typically funds benefits either by self-insuring or by purchasing a paid leave insurance policy. Depending on the language of the legal mandate, employees may be required to contribute as well. Any monitoring or enforcement of the mandate would require funding from general revenues or an earmarked tax on employers, employees, and/or some other broad-based source, such as a sales tax.

---

Policy Assessment: Option 3. Employer mandate

**Fiscal sustainability:** Predicting the employer mandate’s fiscal sustainability is difficult. Any governmental monitoring and enforcement of the mandate would require funding from general revenues or an earmarked tax. Regardless of whether the employer chooses to self-insure or to purchase private insurance coverage, the availability of paid leave benefits depends heavily on each employer’s long-term solvency. Because private insurance coverage would reduce administrative requirements for employers, and perhaps cost less as well, the sustainability of an employer mandate would depend on a strong private market for such coverage. An employer mandate may also impose disproportionate burdens on small businesses and employers whose labor force is heavily dependent on workers who are statistically more likely to use paid family and/or medical leave.

**Program stability:** It is difficult to assess the stability of an employer mandate model for paid leave. Any state that enacted such a policy would need to monitor employer compliance with the policy as well as whether or not the appropriate receipt of benefits was achieved in order to determine whether or not the program was stable.

**Political feasibility:** Because no state has adopted an employer mandate for paid family and medical leave, the political feasibility of enacting such a model is uncertain.

Presumably, some employers would prefer to control every aspect of the paid leave policy applicable to their employees. Other businesses might wish to outsource all or part of the administrative burden to a governmental or private agency. Concentrating full control of paid leave in the employer’s hands might deter some workers from using the benefits out of concern for privacy and/or discrimination.

**Administrative simplicity:** An employer mandate standing alone would require little or no governmental administration. But absent some monitoring mechanism, employers could simply ignore the mandate. In order to ensure that employees have access to the leave the mandate requires, some government administrative effort would be necessary. In addition, employers would bear significant administrative responsibility for making eligibility determinations, maintaining records, and demonstrating compliance with the law.

**Effect on workers:** Requiring employers to shoulder the costs of providing paid family and medical leave brings unique policy challenges for workers and, in some cases, unintended consequences. International research has suggested that employer mandates for paid parental leave may lead to employment discrimination against women, though employee contributions to financing coverage may temper that effect.\(^9^7\) If employers are funding the entirety of paid

---

leave for their workers, it may be appropriate that workers serve longer in their jobs before becoming eligible for benefits. Such requirements might force employees who anticipate a need to use paid leave to remain in jobs longer than is optimal. Conversely, workers perceived as “high risk” for requiring paid leave (e.g., women of childbearing age, individuals with disabilities, older workers) might confront discrimination in hiring, wages, or working conditions from employers seeking to minimize their paid leave costs. An employer mandate model would also make it all but impossible for self-employed workers to participate in the program, leaving out a substantial portion of the workforce, and would raise questions regarding whether and how other nonstandard workers (e.g., temporary workers) would be covered.

**Effect on employers:** An employer mandate imposes higher and less predictable costs on employers than does a social insurance. Accordingly, employers might choose to avoid opening or expanding operations in a state with such a mandate. These considerations might be particularly salient for small businesses and/or for firms in industries that rely heavily on workers who are or are perceived to be more likely to use paid leave. To the extent that such perceptions are accurate, the impact of an employer mandate might be to deny benefits to the very workers who need them most.
Section IV.
KEY POLICY DESIGN ELEMENTS AND CONSIDERATIONS
Choosing a paid leave model is only the first step for states seeking to adopt such a policy. Thereafter, policymakers must determine other important features, including eligibility requirements, qualifying events (circumstances that trigger worker eligibility for paid leave), the definition of family, benefit design, and job protection.

**Eligibility Requirements**

**What work history and/or earnings levels are prerequisites for worker eligibility?**

Requiring lengthy job tenure and/or high wage levels reduces access to paid leave, particularly for younger and lower-income workers, who often have shorter and more fragmented work histories. For example, under the FMLA, only employees who have worked for their current employer for at least 1,250 hours in the last 12 months are eligible for leave. As a result, the policy covers only about 60 percent of U.S. workers.\(^{98}\) By contrast, in California, where workers are eligible for coverage if they earned at least

---

To determine eligibility, states typically designate a base period of employment, and then require workers to demonstrate a certain number of hours worked and/or wages earned during that period. Predicating eligibility on continuous tenure with a single employer may lead workers to remain in suboptimal jobs solely in order to ensure access to paid leave. This so-called “job lock” may result in workers clinging to lower-wage positions, perhaps with poor or even hazardous working conditions, that may not draw upon all their skills—with predictable negative consequences for individuals, employers, and the economy as a whole. By contrast, basing eligibility on a minimum earnings level could extend benefits to workers with sporadic employment histories—including self-employed, part-time, temporary, seasonal, and “gig economy” workers—as long as the earnings threshold is not set at too high a dollar amount. The vast majority of existing state policies have made their paid leave benefits portable by allowing workers to combine earnings and/or job tenure periods across multiple places of employment in order to meet the eligibility criteria. Linking eligibility to earnings may also be easier to administer, as states typically already have mechanisms in place to track earnings but not hours worked.

Is eligibility based on where you work or where you live? To date, state paid leave laws have tied eligibility to the location of the individual’s job, rather than residence. The reasons for this choice include:

- Making paid leave consistent with other employment-related social insurance programs, such as Workers’ Compensation, and preventing conflicting eligibility issues across state lines
- Ensuring that, even if they live in different states, employees who work for the same employer have access to the same benefits
- In employer contribution models, reducing employers’ reporting and payroll deduction complexities, as well as avoiding the need for state administrators to locate and collect contributions from out-of-state employers that employ state residents
- Potentially helping to attract new talent to in-state employers

Alternatively, basing eligibility on a worker’s state of residence might advance other policy priorities, including:

- Facilitating access to benefits for self-employed workers, who may have no formal workplace
- Potentially attracting new residents to the state

---


$300 during the base period, nearly all private sector workers are covered.99
Qualifying Events

When may a worker take paid leave? Most paid leave programs in the United States permit workers to use leave for some or all of the following:

- The birth, adoption, or foster placement of a child
- Providing care for a family member or loved one in the event of a serious health-related need, including one related to a physical or mental illness, injury, disability, or medical condition, or a safety concern such as domestic violence, sexual assault or abuse, and/or stalking
- Receiving care for an employee’s own serious health-related needs—including those related to a physical or mental illness, injury, disability, or medical condition—or to access services and supports related to domestic violence, sexual assault or abuse, and/or stalking
- Deployment or notification of impending deployment of a close family member on active military service

Definition of Family

Who is considered a qualifying family member for the purpose of taking leave? States define the term “family member” differently under their paid family leave policies. To date, these definitions typically include some or all of the following relationships: spouse, child, parent, domestic...
partner, grandparent, grandchild, or sibling.\textsuperscript{101} A state might define the term more broadly to include any person, regardless of biological or legal ties, with whom the employee had a significant personal bond akin to that traditionally associated with a family relationship, as is the case in New Jersey’s recent amendment to its PFL law and Connecticut’s recently passed PFML law.\textsuperscript{102} This expanded definition would benefit workers whose primary relationships are with “chosen family,” which is especially common among people with disabilities and the LGBTQ+ community.\textsuperscript{103} As household composition in the United States becomes more diverse, broadening the definition of family member could help ensure access to paid leave benefits for those who need it most.

Expanding the definition of family would benefit people with disabilities and the LGBTQ+ community.

**Benefit Design**

**Duration: How much time can a worker take off to provide or receive care?** Different jurisdictions have adopted a wide range of leave duration periods. At the national level, the FMLA offers workers up to 12 weeks of unpaid leave for all purposes that qualify under the statute. By contrast, many states provide different periods of leave for each qualifying event. The duration of paid medical leave ranges from 2 weeks in the District of Columbia (effective in 2020) to 52 weeks in California. For paid family leave, workers may take 4 weeks in Rhode Island but 12 weeks in New York (as of 2021), Washington (as of 2020), Massachusetts (as of 2021), and Connecticut (effective 2022) (see Figures 3 and 4). International policies typically offer longer leave periods, particularly for new parents: many countries provide 6, 12, or even 18 months of paid leave to workers upon the birth or adoption of a child.\textsuperscript{105}

To date, every state paid family leave program permits workers to take leave intermittently, as the need arises. Some states require workers to take leave in 8-hour increments, while others do not specify any minimum leave duration. This flexibility is not necessarily applicable, however, to the paid medical leave programs in those same states, which often are subject to much more restrictive criteria, including waiting periods in some cases.

Policymakers face many—sometimes competing—considerations when determining the duration of paid leave benefits. Research


offers some guidance regarding the health and employment effects of varying leave durations, especially for maternity leave. Medical evidence suggests that at least 4 to 6 weeks to recover physically from vaginal childbirth, and up to 8 weeks is required for cesarean deliveries.\textsuperscript{106} Other studies reveal that new mothers experience an increase in depressive symptoms and lower overall health status when they take fewer than 8 weeks of leave.\textsuperscript{107} Some studies have concluded that maternal return to work before 12 weeks after giving birth has a negative effect on breastfeeding, timely immunizations, child behavioral outcomes,\textsuperscript{108} and infant mortality.\textsuperscript{109} Additionally, the American Academy of Pediatrics,\textsuperscript{110} the World Health Organization,\textsuperscript{111} and other public health organizations recommend that infants be breastfed exclusively for the first six months of life. Achieving that goal can be challenging when mothers are back at work. Women's wages may also be affected by maternity leave. While moderate leave periods have a neutral or positive effect on women's earnings, maternity leave in excess of six months seems to have a negative impact on maternal wages.\textsuperscript{112}

The appropriate duration of medical leave is often more variable and less robustly researched, regardless of whether the health condition needing treatment is the worker's own or a family member's. Medical events such as a heart attack can often require a minimum of four weeks of recovery time, while severe illnesses such as cancer can require up to six months of treatment, depending on the severity of the individual case and the physical demands of the employee's job. Additionally, regardless of the amount of leave permitted by law, medical providers typically determine what is considered the “medically appropriate” duration of leave for a worker’s or family member’s medical needs, which can mean that workers will experience limits on the duration of leave for which they are eligible depending on their relevant medical condition. An employee may or may not be capable of returning to work, performing so-called “light duty” tasks, and/or working part-time while receiving treatment for a severe medical condition. States might address this complex set of considerations by offering a range of leave periods for different circumstances.

Wage replacement: How much compensation will workers receive while on leave? When deciding how much to pay workers while they are on leave, states typically consider two important factors. First, states choose whether to set a single wage replacement rate for all workers regardless of income, or to replace a higher share of wages for lower earners. Second, states determine the level at which to cap weekly benefits. A state might choose to support longer leaves for certain qualifying events (e.g., a serious personal medical need) by varying the wage replacement rate over time. For example, a worker might receive a high wage replacement rate in the early weeks of leave, followed by a lower rate after a certain point. Some private insurance plans follow this “stepwise” model. A new paid leave program should also specify whether paid leave benefits constitute taxable income under state law, as well as whether benefits are counted when determining eligibility for means-tested benefits (e.g., WIC, SNAP).

Setting an appropriate wage replacement rate is essential to ensure that workers at all income levels can afford to take paid leave. The first state paid leave programs established flat wage replacement rates, ranging from 55 to 67 percent of earnings (CA, NJ, RI). In practice, these programs showed that many low-wage workers could not afford the income reduction and thus did not use paid leave (see text box on

---

Wage Replacement Rate: The wage replacement rate is the percentage of a worker’s wages paid out as benefits. Some countries’ programs provide workers their full standard pay for the entirety of their leave. State programs in the U.S. require only that workers receive part of their typical wages while on leave.

---

In spite of concerns that higher benefit levels might disincentivize return to work, particularly for new mothers, a recent study of California’s administrative data found that there was no adverse effect of higher benefits on women's labor market outcomes. In fact, research has shown that there was a small positive effect on the labor force attachment of new mothers over the two years immediately following the period of paid leave.\footnote{Sarah Bana, Kelly Bedard, and Maya Rossin-Slater, “The Impacts of Paid Family Leave Benefits: Regression Kink Evidence from California Administrative Data,” IZA Discussion Paper No. 11381, IZA Institute of Labor Economics, 2018.}

More recent paid leave programs (DC, WA, MA, CT) have adopted a graduated wage replacement approach. These four states will provide a higher wage replacement rate up to a certain percentage of the state’s average weekly wage (AWW) or the minimum wage, and a lower rate of wage replacement for all earnings above that amount, up to a weekly benefit cap. For example, workers in the District of Columbia with weekly earnings below 150 percent of the minimum wage will receive 90 percent of their AWW. Any earnings above 150 percent of the District’s minimum wage will be replaced at a rate of 50 percent of the worker’s AWW, with a weekly benefit cap of $1,000.\footnote{Sarah Jane Glynn, Alexandra L. Bradley, and Benjamin W. Veghte, “Paid Family and Medical Leave Programs: State Pathways and Design Options,” Washington, DC: National Academy of Social Insurance, 2017, https://www.nasi.org/research/2017/paid-family-medical-leave-programs-state-pathways-design.} As of 2018, California adopted a graduated wage replacement rate: the lowest-income workers receive a higher proportion of their income (70 percent) than the highest earners (60 percent).
For a full-time worker earning $14/hour in the District of Columbia, average weekly wages are $560. During a PFML claim period, that worker would earn $504 per week in benefits.

For a full-time worker earning $30/hour in the District of Columbia, average weekly wages are $1,200. During a PFML claim period, that worker would earn $824 per week in benefits.  

Workers employed at companies that voluntarily offer paid family and/or medical leave benefits can often receive full (100 percent) wage replacement for the duration of their leave. However, access to voluntary employer-provided benefits is highly concentrated among workers near the top of the income spectrum. A state might consider adopting full wage replacement for all workers, but the cost of any such program, along with concerns about misuse or fraud, might render that option politically unfeasible.

States could consider making paid leave more widely accessible by providing some form of monetary bonus to families with particularly high levels of need. A dependency allowance, for example, could boost the compensation of workers who need to take time off due to illness but also have dependents in the home.

Some countries pay all workers, regardless of income, a flat rate for paid leave. To date no state has adopted this approach. In order to enact such a program, policymakers would need carefully to calibrate the benefit amount to ensure it could support workers and their families during difficult circumstances. Periodic cost-of-living adjustments would likely be required.

**Job Protection**

Is the worker’s job guaranteed after they return from paid leave? Job protection is a key issue for policymakers considering any type of paid

---

116 Authors’ calculations. The DC minimum wage will increase to $14/hour effective July 1, 2019. The calculations for this example are determined based on this imminent minimum wage adjustment.

117 For example, Rhode Island’s dependency allowance for temporary disability leave offers the greater of either $10 per week or an additional 7 percent of weekly benefits for up to five dependents, who are defined as children under the age of 18 or adult children with disabilities who are incapable of independently earning wages. [Rhode Island Department of Labor and Training, “Common TDI References and Terms,” http://www.dlt.ri.gov/tdi/commonref.htm#7.]
leave program. Guaranteeing workers the right to return to their positions after taking leave is particularly important for low-income families, who often may not have the financial reserves to adequately weather a family member’s job loss. By definition, paid leave is designed to fill a temporary gap in employment, not compensate for a permanent job loss. The federal FMLA provides job-protected leave, but, as discussed earlier, roughly 40 percent of the workforce is ineligible for FMLA benefits. Several states have passed laws designed to expand access to job protection coverage for workers taking family or medical leave.\footnote{National Partnership for Women and Families, “State Paid Family and Medical Leave Insurance Laws: February 2019,” 2019, http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf.} Some states have separate laws that expand job protection beyond FMLA qualifications (e.g., NJ, DC), while others have incorporated job protection into their paid leave laws (NY and RI for PFL only, MA and CT for both PFML and PFL). Tying job protection to a state’s paid leave law can help to prevent gaps in coverage between who is covered for paid leave benefits and who is eligible for job protection. Policymakers in states without this expanded FMLA coverage should consider including job protection directly in any new paid leave program.

*Providing job-protected leave is particularly important for low-income families.*
Section V.

INTEGRATION AND IMPLEMENTATION CONSIDERATIONS
Once a state has selected and refined the design of a new paid leave program, policymakers will face a number of issues surrounding the program’s execution. These include matters of program administration, education and outreach, evaluation, integration with other state policy mechanisms, and coordination with existing employee benefit plans, among others.

**Program Administration**

Like every state program, a new paid leave plan will require management. An effective paid leave administration must perform at least three key functions: (1) determining eligibility, which requires finding that the worker or the worker’s covered family member or loved one has experienced a qualifying event, and ensuring that the worker meets any work history and/or earnings requirements; (2) calculating the duration of leave and amount of compensation to which the employee is entitled; and (3) giving the worker an opportunity to appeal the denial of a claim or the amount of weekly benefits. If a state permits employers to self-insure and/or purchase private market coverage, administering the program must also include monitoring and enforcing compliance with regulations governing those options. States will need to guard against hiring discrimination and/or wrongful claim denial, particularly when an employer self-insures, against workers who may be perceived as more likely to use paid leave and thus be burdensome and costly (e.g., younger women, people with disabilities, older adults).

*State PFML programs should guard against hiring discrimination and/or wrongful claim denial.*
Program funding must cover the costs of program start-up, maintenance, and development. While it will always be necessary (and important) to build up sufficient staff and infrastructural capacity to address the various responsibilities that come with managing a new program, it can be especially efficient and cost-effective to build upon existing processes, procedures, and resources, rather than to start from scratch. States with existing paid leave policies have located their program administration either in the state’s employment/labor agency—where the state’s Unemployment Insurance program is housed—or in the state’s Workers’ Compensation administration. The former would be better suited to administer an exclusive state fund social insurance program, while the latter might work more effectively for a model with regulated private options, as these agencies frequently already monitor private carriers and/or self-insuring employers.

At present, the four states that have implemented paid family leave (California, New Jersey, Rhode Island, and New York) added those benefits to existing temporary disability insurance (TDI) programs; both sets of benefits are managed by the same government agency. Future states will have no existing TDI infrastructure upon which to build, and may elect to create an entirely new agency to administer paid leave. The four newest jurisdictions (DC, WA, MA, and CT) have all developed new administrative agencies to implement their programs. Regardless of the option chosen, however, states should capitalize on existing infrastructure, particularly when state agencies already collect a substantial portion of the data needed to manage a paid family and medical leave program. Wherever a state paid leave program is housed, collaboration will doubtless be required with the state’s tax collection authority, among others.

**Education and outreach**

An effective paid leave policy requires significant education and outreach to workers and employers. Policymakers should include adequate funding for this function in the program's budget from the beginning. Absent a comprehensive effort, a state program could mirror the early experience of states such as California, where many employees—especially low-wage workers—were not aware that a paid leave program existed. Employers, too, must be educated about the program's existence, scope, and funding mechanisms, as well as any new reporting or administrative obligations.

To ensure that all affected parties are aware of the new program, a state might consider dedicating staff members or recruiting community volunteers to conduct outreach efforts, particularly in the months leading up to the program's full implementation. The state administrative agency could engage stakeholder groups and local government officials to determine the best avenues for widespread communication and education. In addition, the state should coordinate education on the paid leave program with enrollment in and access points to other social services and benefits (including federally qualifying health centers, Medicaid, WIC, SNAP, and TANF, among others) and state lawmakers should consider including legislative language to ensure sufficient cooperation and coordination. Employers might also be encouraged to share educational materials directly with their employees through posters, digital messages, and other channels of communication.

**Program evaluation**

Ongoing assessment of the paid leave program is critical to its long-term success. Researchers from academic and other external institutions can often be a resource for this process, but the program's administration should provide data and other assistance as needed. Ideally, data should be collected before the program takes effect, in order to establish a baseline for comparison. Among other metrics, evaluators should assess labor force attachment, employee retention, child health and development outcomes, productivity and morale, impact on businesses, knowledge of the availability of the program, and patterns of leave-taking among different demographic groups (for example, by gender, race, socio-economic status, and type of job).

**Interaction with employer plans**

Although most workers in the United States have no access to paid leave of any type, certain employers do provide paid family leave and/or temporary disability benefits.

---

In these circumstances, the state program will need to coordinate carefully with the existing employer plans. In the case of a social insurance fund or state-run program, employers could be permitted to require their employees to exhaust leave provided under the state program before tapping into employer-provided benefits. State program administrators should ensure that employers retain the ability to provide benefits that are more generous than those available under the state plan if they so desire.

A state PFML program will need to coordinate carefully with existing employer plans.

Some states that elect to design their program as a social insurance or state-funded program may also consider permitting employers to opt out of the state-run program and instead choose to either self-insure or provide coverage available through the private market. There are a few factors to consider when determining whether or not to allow employers to opt out of the state program. First, in order to maintain equity in access to paid leave coverage, any law permitting private options should stipulate that employers must provide coverage equal to or greater than what is available through the state plan. Second, it is important that the law protects equal access to the program by stipulating that all employees eligible under the state program would receive benefits under the employer-provided coverage.

Many private employers do currently offer paid leave to some of their workers, but that coverage is often not equally available to all employees. While 28 percent of workers in the highest earnings quartile have access to paid family leave and 54 percent have access to temporary disability coverage, those numbers drop to 8 percent and 18 percent, respectively, for workers in the lowest earnings quartile.\(^{121}\) Finally, it is important that states that choose to allow employers to provide private coverage and/or to self-insure also provide coverage immediately for workers who change jobs, regardless of which method of coverage their new employer has chosen. States should also consider the increased administrative capacity that would be required to monitor and enforce compliance among employers who opt out of state coverage, in addition to the staff already necessary to run the state plan.

Coverage of self-employed workers

State paid leave programs may address self-employed workers in one of three ways: provide full, automatic coverage; permit workers to opt into the program; or exclude them from the program entirely. Several states (CA, NY, DC, WA, MA, CT) allow self-employed workers to opt into the program. While this policy decision advances individuals’ freedom of choice, it also poses certain risks. First is the likelihood of selection bias. Because workers are more likely to opt into a program whose benefits they anticipate

---

needing—soon—the stability of the program’s funding may be jeopardized. Further, education and outreach efforts may be complicated by the need to ensure that self-employed workers understand the costs, benefits, and mechanisms to access paid leave benefits. A state might categorically exclude self-employed workers, which would reduce administrative complexity but also raise concerns about inequitable treatment of workers in similar situations.

To avoid these problems, a state could automatically cover all self-employed workers in the program. This policy choice would both reduce administrative complexity and increase equity across types of workers. For programs funded in part or in whole by employer contributions, states would need to determine how to collect the employer-equivalent share of contributions for self-employed workers. In that case, states could potentially supplement the employer portion through general revenues or require employers to contribute a percentage of all payments made to independent contractors to the paid leave fund. Alternatively, self-employed workers could be required to pay both the employer and employee share of contributions, as is currently the case for Social Security. However, this model places a significant (and, for lower-income workers, unmanageable) financial burden on the self-employed and independent contractors.

---

122 Massachusetts’ program will require such payments, for example, but only for businesses where self-employed workers make up more than half of the workforce. Workers in these businesses will be covered automatically and be required to pay the employee contribution. [Molly Weston Williamson, Sherry Leiwant, and Julie Kashen, “Constructing 21st Century Rights for a Changing Workforce: A Policy Brief Series; Brief 1: Paid Family and Medical Leave & Self-Employment,” 2019, https://www.abetterbalance.org/resources/report-constructing-21st-century-rights-for-a-changingworkforce-a-policy-brief-series/]
Section VI.

CONCLUSION
As human beings, workers inevitably will get sick and need time to recover. As family members, workers will have loved ones who need care. At some point, then, virtually every worker will need time away from work to provide or receive care. However, the United States stands virtually alone among nations across the world in failing to give workers the tools required to address these universal human needs. The Family and Medical Leave Act offers only unpaid leave and leaves roughly 40 percent of the workforce without access even to this inadequate benefit. In the absence of a federal program, states have begun to implement their own paid family and medical leave policies. To date, eight states plus the District of Columbia and Puerto Rico have adopted some form of paid family and/or medical leave legislation. Universal, contributory social insurance is the prevailing design choice for state paid leave programs. Policymakers and advocates interested in developing new paid leave policies will benefit from the growing body of research into the experiences of these existing state-level—and international—programs.

This chapter examines several options for designing a paid leave program, and considers each model from the perspective of fiscal, administrative, and political sustainability, among other concerns. Policymakers seeking to provide paid leave benefits for their constituents will need to weigh all these considerations—and more. In the interim, however, the country continues to bear the burden of the cost of doing nothing. Workers, families, and employers—large and small—all are waiting for action.