



# Paid Leave 101

## Demystifying Paid Sick Days, Paid Family and Medical Leave, and Unsatisfactory Alternatives

By Kaitlin Holmes and Sarah Jane Glynn | November 2, 2016

Every day, millions of Americans are forced to juggle work and family responsibilities. At the same time, U.S. policies have not kept pace with the needs of modern workers. Without family-friendly workplace policies such as paid sick days and paid family and medical leave, employees often find achieving a work-life balance to be a herculean task—and in many cases, a myth. Employees deserve protections that enable them to take care of themselves and their families as they strive to do their best work for their employers.

As Americans increasingly discuss work-life policies, it is important to understand the nuances of paid sick days and paid family and medical leave. Paid sick days are not a substitute for paid family and medical leave or vice versa; working families need both to remain financially stable. It is also necessary to separate proposals that would help workers from those that serve as political rhetoric.<sup>1</sup>

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### The basics

Many people do not fully understand the differences between paid sick days and paid family and medical leave. Although both policies are a form of paid leave, they play different but complementary roles for workers.

Paid sick days, also known as earned sick days, refer to leave that workers can use for short-term medical needs such as a temporary illness or a dentist appointment. Workers typically earn paid sick time based on the number of hours they work. They accrue time that they can use for medical, family, domestic violence, stalking, or sexual assault reasons and that is usually capped at a maximum number of days or hours per year.<sup>2</sup>

Paid family and medical leave helps workers through longer-term, more serious medical or family challenges that require lengthier absences from work. Workers often use this type of leave program after childbirth or adoption, to recover from a serious illness, or to care for an ill or elderly loved one. Paid family and medical leave, similar to paid sick days, is gender neutral, so women and men are able to take the same amount of paid time off.<sup>3</sup>

## How it works

The differences between paid sick days and paid family and medical leave—as well as the complementary roles they play—can be seen by comparing two hypothetical workers. Alexander and Samantha are both anticipating the arrival of a new baby and are trying to map out a plan for the short and long term. Their families rely on their incomes to make ends meet, so they want to take time off to care for their new babies without putting their jobs or financial stability at risk.

Alexander has paid sick days and paid family and medical leave through his employer. He is able to use his paid family and medical leave to take time off to adopt, care for, and bond with his child. Once back to work, Alexander will be able to use his short-term paid sick days to take his child to necessary doctor's appointments—or to attend his own. Not all parents are so lucky.

Samantha does not have any paid leave. Without paid family and medical leave, she cannot afford to take more than a few weeks' unpaid time off after childbirth; just like one-quarter of American mothers, she is back at work within two weeks.<sup>4</sup> And because Samantha does not have access to paid sick days, once back at work, she struggles to find time to go to the doctor for her own and her baby's checkups. Samantha's work attendance and performance suffer as a result. Millions of U.S. families face this painful reality on a daily basis.

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## Understanding the landscape

Despite tremendous need, few employers provide policies that help today's families. In the United States, only 13 percent of private-sector employees have paid family leave through their employers.<sup>5</sup> Thirty-six percent of private-sector workers do not have a single paid sick day, and low-income, African American, and Hispanic workers are disproportionately affected.<sup>6</sup>

Across the country, momentum to expand paid sick days and paid family and medical leave is building. California, New Jersey, Rhode Island, and New York each have passed their own paid family and medical leave policies, and more than 36 states and localities have passed paid sick leave laws.<sup>7</sup> Many more states and localities have introduced proposals for both policies. Further, recent polling shows that a majority of voters in the 15 states surveyed support two laws: one that would create a national paid family and medical leave program and one that would guarantee all workers the right to earn paid sick days.<sup>8</sup>

## Paid sick days

Without paid sick days, workers are regularly forced to work when they should not. In 2015, chain restaurant Chipotle Mexican Grill gained notoriety when its sick employees caused foodborne illness outbreaks. In response, Chipotle decided to protect its workers and the public health, announcing that it would begin to offer paid sick days to its employees in an effort to prevent future outbreaks.<sup>9</sup>

A recent study found that flu rates have decreased significantly in cities with paid sick days—by 5.5 percent to 6.5 percent. It also found that paid sick leave laws in seven U.S. cities helped prevent 100 flu infections per week for every 100,000 people.<sup>10</sup>

Working parents without paid sick days are often forced to send sick children to school or day care, potentially spreading illness. In fact, parents without paid sick days are twice as likely than parents with paid sick days to send a sick child to school or day care.<sup>11</sup> They are also five times more likely to take a child or family member to the emergency room after business hours, which tends to be much more expensive than going to a regular clinic.<sup>12</sup>

One study of Connecticut's paid sick days law suggests that statewide business support for the law is strong. The study showed that a year and a half after the policy's implementation, almost 77 percent of employers supported it.<sup>13</sup> Other studies have shown strong business support for paid sick ordinances in cities such as San Francisco, Seattle, and states such as Maryland.<sup>14</sup>

There is no national law that ensures paid sick days, however, leaving millions of workers without this basic workplace protection. A strong national policy, such as The Healthy Families Act—re-introduced by Rep. Rosa DeLauro (D-CT) and Sen. Patty Murray (D-WA) in 2015—would allow all U.S. workers at businesses with 15 or more employees the right to earn up to seven paid sick and safe days per year.<sup>15</sup> Paid safe days are earned days that allow survivors of domestic violence, sexual assault, or stalking to recover and seek help. Paid days off of work are critical to survivors' safety, recovery, and financial stability in the wake of an incident.<sup>16</sup>

## Paid family and medical leave

Only two out of the 185 countries for which data are available have no national paid maternity leave program: the United States and Papua New Guinea.<sup>17</sup> This leaves U.S. working families in a precarious financial situation.<sup>18</sup> A CAP analysis shows that because there is no national paid family and medical leave program in the United States, working families lose \$20.6 billion in wages every year.<sup>19</sup>

However, the United States does provide workers the right to unpaid family and medical leave. The Family and Medical Leave Act of 1993, or FMLA, allows eligible workers to take 12 weeks of unpaid, job-protected time off.<sup>20</sup> While the FMLA was a critical step forward, it fails to address the realities of the 21st century economy. Forty percent of workers are not covered under the law, for example, as eligibility requirements restrict access to workers at firms with 50 or more employees within a 75-mile radius. Workers also need to have worked for such a company for at least 12 consecutive months and at least 1,250 hours within those months.<sup>21</sup> Furthermore, the FMLA would likely not cover small-business workers. If a small business does not offer any paid leave, for example, workers may lose a paycheck or job if a family or medical emergency requires them to miss work.

A national paid family and medical leave program would ideally cover all workers, regardless of their gender or employer size. Part-time, full-time, and self-employed workers could also use it. Such a program would cover adequate reasons to use leave and would offer sufficient time off. It would be cost-effective for the government, workers, and employers. A modern paid family and medical leave program would be inclusive, defining family in a way that reflects the diversity of families and their caregiving needs—for example, covering eldercare and recognizing families with same-sex parents.<sup>22</sup>

Programs in California, New Jersey, and Rhode Island have helped millions of families remain economically secure while meeting their family and medical needs. Small and large employers in California and New Jersey have reported that these programs have had either positive or neutral outcomes on their business—and they did not have much trouble adapting to the laws.<sup>23</sup> Motivated by the success of these programs, lawmakers in states and cities across the country have introduced numerous similar proposals.

And not only states have put forth potential programs. For example, the Family and Medical Insurance Leave Act, or FAMILY Act—introduced by Sen. Kirsten Gillibrand (D-NY) and Rep. DeLauro—spells out a national program that would provide up to 12 weeks of paid leave with 66 percent wage replacement for all eligible employees, regardless of employer size. The law also creates a social insurance program that employers and employees would fund through a small payroll tax. The Social Security Administration would administer this program.<sup>24</sup> A national paid family and medical leave program, such as that proposed in the FAMILY Act, would be a step forward, expanding access to the most vulnerable workers and their families.

## Alternative proposals

In an effort to respond to voters' overwhelming approval of family-friendly policies, lawmakers have introduced other proposals as alternatives to comprehensive paid leave and paid sick days policies. Two federal proposals—the Family Friendly and Workplace Flexibility Act and the Working Families Flexibility Act—have introduced the concept

of comp time. Both bills—the first introduced by Sen. Kelly Ayotte (R-NH) and Rep. Martha Roby (R-AL), and the second put forth by Sen. Mike Lee (R-UT)—propose that if employees who are eligible for overtime pay work unpaid overtime, they can earn up to 20 days paid time off per year.<sup>25</sup>

Conservatives tout comp time as an alternative to paid sick days proposals—even though it requires employees to work unpaid overtime to earn time off.<sup>26</sup> To earn 20 days off per year, workers would have to work 160 hours of overtime. And the laws give employers the option to cut earned time and pay employees the difference, down to half of the days that employees earned. These proposals include other potentially detrimental caveats as well. Only overtime-eligible employees would be able to earn time off, for example, which would leave out scores of overtime-exempt employees. This would be the case even with the U.S. Department of Labor’s new overtime rule.<sup>27</sup> Further, employees can only use earned time off if their boss approves—and employers aren’t required to approve medical- or family-related requests.

Essentially, comp time policies ask workers to gamble with their financial stability by working many hours of unpaid overtime for unguaranteed time off. These laws would most affect low-wage workers, who are already in a vulnerable position. Comp time falls far short of being an acceptable substitute for paid sick days.<sup>28</sup>

Lawmakers have also introduced unsatisfactory alternatives to paid family and medical leave. The Strong Families Act, introduced by Sen. Deb Fischer (R-NE), would give tax credits to businesses that offer paid leave to their employees.<sup>29</sup> However, studies have shown that tax credits offer little incentive for businesses to implement new paid leave programs.<sup>30</sup> This plan would likely only benefit employers with existing paid leave programs.

Another policy idea—which has not been introduced as legislation—is personal care accounts, also known as pregnancy 401(k)s. Under this type of program, workers would have to save for their own leave. This would likely only help wealthy workers, who are able to put aside savings instead of spending their entire paycheck on necessities. Wealthy workers are also significantly more likely to have paid family and medical leave than low-wage workers, so this idea is unlikely to do much to help those who need paid leave the most.<sup>31</sup>

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## Conclusion

To meet the diverse needs of 21st century families—and to catch up with the overwhelming majority of countries around the world—U.S. policymakers need to create a national paid family and medical leave program and pass a law allowing workers to earn

paid sick days.<sup>32</sup> Proposals that are unlikely to affect much change, such as comp time or tax credits for businesses, are inadequate. Other policies would only benefit wealthy workers, such as personal care accounts. Ultimately, these policies do a disservice to hardworking employees and their families.

As the conversation around work-life policy continues to expand as lawmakers pass paid leave, Americans need to understand how paid sick days and paid family and medical leave work together to support working families. It is crucial that workers are able to detect which proposals are merely giving lip service to voters' overwhelming support for comprehensive work-family policies and which proposals are truly likely to support employees.

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## Endnotes

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