



# Family and Medical Leave Insurance

A Basic Standard for Today's Workforce

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# Introduction and summary

President Franklin D. Roosevelt signed the Fair Labor Standards Act, or FLSA, into law on June 25, 1938, outlawing child labor, establishing the minimum wage, and putting limits on the number of hours employees could work without additional compensation.<sup>1</sup> President Roosevelt's secretary of labor, Frances Perkins, crafted the legislation, incorporating policies that states had been implementing in the decades before and drawing on what she had learned from her many years in social work. Seventy-five years later, this law is still the foundation of our nation's basic labor standards, but the workforce has changed markedly. As we celebrate the strength of the FLSA, we also need to think about how to update basic labor standards for a workforce in which most workers are also family caregivers.

In 1938, most workers had a family member who was a full-time, stay-at-home caregiver.<sup>2</sup> That is not the case for today's workers. Women are now half of all workers on U.S. payrolls, and mothers are now breadwinners or co-breadwinners in the majority of families with children.<sup>3</sup> Most workers are responsible for the care of either children or older family members, which means that there are times when they need to be away from their jobs without fear of reprisal.<sup>4</sup>

We have made some progress adapting to the new realities of work and care. This year, we will celebrate the 21st anniversary of the Family and Medical Leave Act, or FMLA, a law developed to address the challenges of today's workforce. The FMLA provides workers with up to 12 weeks of unpaid, job-protected leave to recover from an illness, care for a newborn or ill family member, or for certain military purposes.<sup>5</sup> The FMLA was an important step forward, as it addresses the new realities of who works and who provides care, building on the basic labor protections of the FLSA and creating a new standard that fits the modern workforce. But it does not go far enough. Too many workers cannot make use of it, either because they are ineligible or because they cannot afford to take unpaid leave.

The next step to ensure that basic labor standards are accessible to all is to implement a national family and medical leave insurance program that would be available to all workers. Family and medical leave insurance—also known as paid family and medical leave or paid leave—provides wage replacement to workers who take temporary leave to recover from a serious illness or care for an ill family member or a newborn, newly adopted, or foster child.<sup>6</sup> Just as former Secretary of Labor Perkins did when she helped write the FLSA, we have state-level models we can look to for guidance on what works. Three states have implemented family leave insurance—California, New Jersey, and Rhode Island.<sup>7</sup> These states added the program to a long-standing statewide temporary disability insurance program.<sup>8</sup> In 2007, Washington was the first state without a statewide temporary disability insurance program to pass paid leave legislation, but there is not yet a plan to actually implement the program.<sup>9</sup>

Family and medical leave insurance would fill an important gap for workers. Even though new parents and family caregivers typically are employed outside the home, most do not have access to paid, job-protected leave when they need time away from work to meet caregiving responsibilities.<sup>10</sup> This not only creates stress for families and is potentially unhealthy for children, the elderly, and the sick, but it also poses significant costs to our economy. Women who have paid leave are more likely to return to their employers after taking leave, cutting down on firms' turnover costs. More generally, workers who have access to policies that allow them to balance their care responsibilities are more likely to stay employed, adding to the nation's productivity and allowing them to provide for their families today and save for retirement tomorrow.<sup>11</sup>

The Family and Medical Insurance Leave, or FAMILY, Act of 2013, introduced by Rep. Rosa DeLauro (D-CT) and Sen. Kirsten Gillibrand (D-NY), would establish a national family and medical leave insurance program, expanding access to paid leave.<sup>12</sup> This program would relieve the financial burden of taking unpaid time off for many families, particularly low-income families, who are significantly less likely to have access to paid leave through their employers.

This paper outlines how the workforce has changed since the passage of the FLSA and what kinds of basic labor standards we now need. We discuss why the current standards set by the FLSA and the FMLA are good but not good enough. We also explain how we can learn from state experiences, as well as the experiences of other countries, to implement a national family and medical leave insurance program such as the one that the FAMILY Act proposes.

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