



# Administering Paid Family and Medical Leave

Learning from International and Domestic Examples

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By Sarah Jane Glynn

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# Introduction and summary

Everyone needs to receive care at some point in their lives, and nearly all workers will experience a caregiving challenge during their working years. Every year millions of working families welcome newborns or newly adopted children, care for sick family members or aging parents, or need time to address their own personal illnesses or injuries. But in spite of the universal need for time to provide care, the United States has yet to implement national policy solutions for workers who need to integrate family responsibilities with their responsibilities as employees. Successful paid leave programs have been implemented throughout the rest of the world and within individual states, but the United States has not yet adopted a national solution that would guarantee workers the right to any amount of paid leave for any reason.

Over the past 11 years—since the first state paid family leave program was put into place—two additional states and more and more companies have created paid family and medical leave policies for their workers. Often, their programs are announced and implemented with great fanfare and positive media attention.<sup>1</sup> While companies that voluntarily administer paid leave policies should be recognized for taking a positive step forward for workers, this is simply not enough. Companies are doing well, and corporate profits as a share of gross domestic product have rebounded to nearly as high as they were before the Great Recession.<sup>2</sup> But while productivity is up, business investment in workers is declining. The majority of workers still do not have access to paid family and medical leave, and having the ability to care for yourself or your family should not depend where you live or where you are employed.<sup>3</sup> A national policy providing paid family and medical leave is necessary because there is no evidence to suggest that the landscape will change dramatically or quickly without policy interventions.

The United States is an extreme outlier among all other advanced economies—and among developing nations as well—because U.S. workers have no right to access paid leave for any reason at all.<sup>4</sup> Virtually every other country in the world guarantees workers the right to paid maternity leave, and a growing number guarantee the right to paid paternity leave for fathers as well.<sup>5</sup> Out of the 185 countries for which data are readily available, only two do not provide paid maternity leave:

the United States and Papua New Guinea.<sup>6</sup> To help put this into context, the gross domestic product, or GDP, in Papua New Guinea was \$15.4 billion in 2014.<sup>7</sup> U.S. GDP was \$16.7 trillion in 2013.<sup>8</sup> In short, the U.S. GDP is more than 1,000 times larger than the only other country in the world without a maternity leave policy, undercutting arguments that it is too expensive to take federal action.

In addition to time off for parents to care for new babies, many other wealthy countries have provisions to ensure that workers also have access to paid time off in order to provide other types of family care or to address their own serious health concerns.<sup>9</sup> The United States has no national policies to address these issues either.

The only piece of federal legislation that currently exists to help workers when the need to provide family care or address a serious health concern conflicts with work is the Family and Medical Leave Act, or FMLA.<sup>10</sup> The FMLA was signed into law in 1993 and remains a groundbreaking and vitally important piece of legislation. Under the FMLA, qualifying workers can take job-protected time off to care for a new child or seriously ill family member, to address their own serious health condition, or to address contingencies that arise out of military deployment. However, in order to qualify, workers must have been at their job for at least one year and must have worked at least 1,250 hours in the previous 12 months. Additionally, they must work for an employer with a minimum of 50 employees within a 75-mile radius.<sup>11</sup>

As a result of these relatively stringent eligibility requirements, roughly 40 percent of all workers are not covered for job protection under the FMLA.<sup>12</sup> Additionally, even if an individual does qualify for job-protected leave, there is no guarantee that the leave will be paid. Only 48 percent of workers who take FMLA-type leaves receive full pay while they are out, while another 17 percent receive partial pay. As a point of comparison, nearly half—46 percent—of workers who reported needing to take leave but did not said it was because they could not afford to go without pay.<sup>13</sup> And more than 60 percent of leave takers who did not receive full pay during leave reported that they had difficulty making ends meet as a result, while 84 percent of those who took unpaid or partially paid leave reported limiting spending.<sup>14</sup>

The dearth of public policies for paid family and medical leave belies the realities facing working families today. Only a generation ago, many families had an adult who stayed home full time to provide family care; this role was usually filled by mothers.<sup>15</sup> But times have changed, and today the majority of women—and the majority of parents—are in the labor force.<sup>16</sup> Most mothers work outside the home,



including the majority of mothers with children who are under school age.<sup>17</sup> And in most cases, women's earnings are vital to their families' economic security. Roughly two-thirds of mothers are either breadwinners—40.9 percent—or co-breadwinners—22.4 percent—for their families.<sup>18</sup> Moreover, if married women had not increased their earnings from 1963 to 2013, income inequality would have grown more than 50 percent faster.<sup>19</sup>

While nearly half of children—44.7 percent—had a stay-at-home parent in 1975, only one in five—20.7 percent—did by 2008.<sup>20</sup> In most families with children, all of the adults work, either because they are headed by a dual-earning married couple or by a single working parent. In addition, babies and children are not the only family members who may need care; working adults are increasingly caring for their aging parents. As of 2014, 16 percent of Americans, or 40.4 million people, provided unpaid elder care, and of those caregivers, 61 percent were employed.<sup>21</sup> When women leave the workforce early to provide elder care, they lose an estimated \$142,693 in lifetime wages, while men lose \$89,107.<sup>22</sup>

While the United States lags behind the rest of the world on the issue of paid leave, there is no compelling reason why the United States could not create a national paid family and medical leave, or PFML, program. In fact, the United States has lower labor force participation rates and less economic activity because it does not have a national system in place.

Women are the most affected by the lack of a PFML program due to the biological realities of childbirth and because mothers and adult daughters are the family members who are most likely to provide care to children or aging parents.<sup>23</sup> And while women's labor force participation remains high, the United States' international ranking is falling relative to other advanced economies—and a significant portion of that decline can be linked to a lack of work-family policies such as paid leave.<sup>24</sup> U.S. Department of Labor Chief Economist Heidi Shierholz has estimated that there would be more than 5 million more women in the labor force and more than \$500 billion in additional economic activity per year if women in the United States participated in the labor force on the same level as their counterparts in Canada or Germany.<sup>25</sup> Additionally, women who live in one of the five states with paid family leave that can be taken to care for a new child and/or temporary disability leave that can be taken for pregnancy are significantly less likely to utilize public assistance programs, such as Temporary Assistance for Needy Families, or TANF, or the Supplemental Nutrition Assistance Program, or SNAP, formerly known as food stamps.<sup>26</sup>

While women continue to provide the majority of family care, men have much to gain from a national PFML program. Men today report experiencing more work-life balance issues than they did in the past, and some surveys show that men report these problems more frequently than women.<sup>27</sup> While fathers still provide less child care than mothers, today's dads spend three times more hours per week caring for children than their counterparts did a generation ago.<sup>28</sup> Millennial men in particular report that family time is significant to them, with 93 percent of those polled saying that paid family leave is an important issue.<sup>29</sup>

Access to paid, gender-neutral parental leave is not just a nice thing to do. As with maternity leave, it is associated with a host of positive results for families and the economy.<sup>30</sup> Men are more likely to take parental leave when it is paid, in no small part because many dual-earner families cannot afford to have both parents taking unpaid leave. As a result, in the current policy landscape, more than half of the men who take parental leave take two weeks or less.<sup>31</sup> Men are also more likely to take paternity leave when it is nontransferable to the mother, which is why an increasing number of countries are creating parental leave that is specifically earmarked for fathers.<sup>32</sup> When fathers have access to paid parental leave and are able to actually utilize it, they report feeling more confident in their ability to care for their new baby and are more involved in caring for their children; these effects persist even after the leave ends and as their children age.<sup>33</sup>

Ensuring that men also have access to parental leave is important in facilitating fathers' involvement with their children and promoting greater gender equity within homes, but it also has positive effects in the workplace. If parental leave is gender neutral—and men take leave as frequently as women—it helps reduce some of the stigma around taking leave. Currently, about 10.5 percent of the gender wage gap is due to the fact that women have, on average, shorter job tenures and longer gaps in their work histories than men, much of which is due to childbearing and family caregiving responsibilities.<sup>34</sup> Gender-neutral parental leave would help decrease the differences between men and women, potentially shrinking the gender wage gap.

The United States stands to gain quite a bit from creating a national paid family and medical leave program, and it is not an impossible goal. There are a number of examples and best practices from other countries that the United States can draw upon to develop and implement paid leave. The three states that have implemented their own PFML programs provide domestic examples as well.

There are three broad types of structures for ensuring access to paid leave that have been used at the state and international levels:<sup>35</sup>

- Employer requirement programs, in which businesses are responsible for providing paid leave
- Social insurance programs, in which risk and resources are pooled to provide a fund for wage replacement during leave
- Publicly funded programs, in which government resources are utilized to provide workers with paid leave

This report outlines how each general structure works and how it could function in the United States.



# Fundamentals of a national paid family and medical leave program

In order to meet the needs of the current U.S. workforce, a national paid family and medical leave program should be developed with the goals of supporting women's labor force attachment, promoting gender equity, and reducing inequality. Therefore, in order to be truly effective, a national PFML program must be universal, accessible, comprehensive, affordable, and inclusive.<sup>36</sup>

Currently, the overwhelming majority of workers in the United States do not have access to paid family or medical leave, and universal access is necessary to reap the benefits of a PFML program.<sup>37</sup> Ensuring equal access to all genders is necessary in order to support women's labor force attachment and to promote gender equity, while equal access across the income spectrum must be ensured in order to help reduce inequality. Any serious proposal for a PFML program should ensure that all workers are able to gain eligibility to the program, regardless of where they live, the size or sector of their employer, whether they are contractors or self-employed, or whether they work full or part time.

Any wage replacement program is only beneficial to workers if they are able to access it. This means, in part, that wage replacement must be set at a level that allows workers to make use of the program. If the level of wage replacement is too low, many workers will still be unable to afford to take leave—an issue that is particularly salient for the low-wage workforce that is currently the least likely to have access to employer-provided paid leave of any type.<sup>38</sup> Workers must also be able to access the program without experiencing negative employment consequences. A national PFML program should include provisions to shield workers from retaliation for requesting or taking leave. Similarly, workers should not be required to forfeit their right to workplace protections in order to access paid leave.

In order to be comprehensive, a national paid family and medical leave program must reflect the key reasons why workers need time away from work. Both men and women are responsible for caring for family members, ranging from new babies to aging parents, and all workers have the potential to need time off to address their

own medical condition. The Family and Medical Leave Act has already set a nationally agreed-upon precedent that workers may reasonably need up to 12 weeks of time away from work in order to address a personal serious health condition or the serious health condition of a loved one; to care for a new baby or newly adopted or newly placed foster child; or to address exigencies arising from a family member's military deployment. This should be reflected in any new proposal for paid leave.

While providing a significant portion of a worker's normal wages is important in order to ensure the accessibility of paid leave, a program should also be affordable for employers, employees, and the government. This can be achieved in part by building upon already existing programs and infrastructures whenever possible in order to reduce program administration costs, as well as ensuring that program funding is reasonable and cost-effective. Additionally, any new program should coordinate with existing state paid leave programs and employer benefits.

Finally, a realistic paid family and medical leave program should reflect the diversity of workers' lives. A PFML program should include a definition of "family" that is inclusive of both the family structures and care responsibilities that individuals face. The existing paid family leave and temporary disability insurance programs in California, New Jersey, and Rhode Island meet these five criteria. This report takes these criteria as a starting point and assumes that any credible national proposal would also need to meet these five principles.

# Existing models for crafting a national paid family and medical leave program

A number of examples already exist from which the United States might craft a national paid family and medical leave program. However, there is considerable variation across countries with paid leave programs, in part because different programs were implemented at different times with different goals. In some instances, programs were developed primarily to increase the birth rate; in others, the intended goal was increasing women’s labor force participation rate; and in some, there were a number of desired effects.<sup>39</sup> Public policies passed and implemented decades ago under different social and economic circumstances may also be advanced and reformed as times change.

TABLE 1  
Types of international paid leave program structures

	Employer requirement	Social insurance	Publicly funded	Unpaid leave only
Total number of countries (n = 185)	78	139	10	2
By region				
Africa (n = 52)	32	32	0	0
Asia (n = 26)	17	10	2	1
Eastern Europe and Central Asia (n = 19)	0	18	3	0
Developed economies (n = 42)	5	37	6	1
Latin America and the Caribbean (n = 34)	13	31	0	0
Middle East (n = 12)	11	1	0	0

Note: Countries that use a combination of structures—such as both employer requirements and public funds—are counted separately in each category. Regional divisions are based on International Labour Organization categorization.

Source: Laura Addati, Naomi Cassirer, and Katherine Gilchrist, “Maternity and Paternity at Work: Law and practice across the world” (Geneva: International Labour Organization, 2014), available at [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_242615/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_242615/lang--en/index.htm).

Broadly speaking, there are three main ways that paid leave programs are structured around the world: employer requirement programs, social insurance programs, and publicly funded programs. In some instances, a combination of structures is used—for example, combining an employer requirement with public funds—but these formats will not be addressed at length in this report.

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## Employer requirements

With the exception of those in California, New Jersey, and Rhode Island, the only workers in the United States who currently have access to paid family and medical leave are those whose employers voluntarily chose to provide the benefit. The federal Family and Medical Leave Act is an important requirement placed on employers, but it involves little governmental intervention unless alleged noncompliance occurs, and, as previously mentioned, it only guarantees unpaid leave. Under individual employer requirements, also known as employer mandates, businesses would be responsible for providing and financing paid leave.

There is a strong business case to be made for why employers should provide paid family and medical leave, which is at least part of why an increasing number of employers are choosing to voluntarily provide the benefit.<sup>40</sup> Much of the benefit to employers comes from increased retention of women workers as a result of implementing paid leave policies<sup>41</sup> because replacing a worker costs roughly 20 percent of that worker's salary, on average.<sup>42</sup> Google, for example, reported that it was able to increase its retention of women workers who gave birth by 50 percent after it increased its maternity leave policy to cover full wage replacement for five months.<sup>43</sup> And after implementing workplace flexibility policies that included a paid family and medical leave program, Ernst & Young was able to nearly close its gender retention gap.<sup>44</sup> Many employers, similar to Google and Ernst & Young, understand that benefits such as paid family and medical leave can be valuable tools in recruiting and retaining workers. However, there are drawbacks to utilizing an employer requirement for guaranteeing workers the right to paid leave.

International experience with maternity leave shows that requiring employers to provide paid leave to mothers can be fraught with a number of negative outcomes, particularly in the absence of other strong workplace protections. Under this model, employers are required to provide paid leave to their workers and must finance the leave themselves.<sup>45</sup>

The closest analogy in the United States is the way that workers' compensation works in most U.S. states. Workers' compensation is intended to cover medical expenses and paid leave for employees who are injured during the course of their work duties. In most states, all employers regardless of size are required to cover all of their workers.<sup>46</sup> Coverage can be achieved by self-insuring—proving that the employer is capable of paying for leave out of company coffers—or by purchasing insurance products on the private, or in some cases public, market.<sup>47</sup> However, workers' compensation operates differently than paid family and medical leave in that the employer incentives are focused on providing better, safer workplace conditions so as to avoid the need for workers to take leave at all. In contrast, the very purpose of paid family and medical leave is to ensure that employees can take leave, which may prompt different employer responses even though there are significant benefits to those who provide such leave.

Research on the international examples of employer-required maternity leave shows that these types of programs actually can work in opposition to the best interests of working women. In countries where maternity leave is an employer mandate, employers are often less likely to hire, promote, and retain women workers and may seek reasons to terminate pregnant workers in order to avoid paying for the benefit.<sup>48</sup> International enforcement of individual employer liability for maternity leave has also been problematic, in part because this structure is more common in developing nations that have fewer resources to enforce legislation when employers do not pay the required wage replacement to eligible workers.<sup>49</sup>

The international experience with these employer-required maternity leave programs raises significant questions about the merits of utilizing a similar approach in the United States. First, such an approach would limit the availability of paid family and medical leave solely to those who are working for employers, thus excluding self-employed individuals and those who are looking for work. Second, not all employers would be able to self-finance a paid family and medical leave policy that meets the requirements outlined here. While the benefits of PFML are felt across the economy in terms of greater labor force participation rates and subsequent greater economic activity, as well

## Malaysia

Working women in Malaysia are eligible for 60 days of maternity leave fully paid at 100 percent of normal wages by their employer. In order to be eligible, a woman must have been employed at some point in the four months prior to giving birth and for no less than 90 days in the nine months prior to childbirth. Leave cannot begin earlier than 30 days prior to the birth, although women may begin maternity leave two weeks before childbirth. Women who already have five or more surviving children are not eligible for the cash benefit.<sup>50</sup>

Slightly more than one-third—36.6 percent—of the members of the Malaysian labor force are women, and women's labor force participation has been static over the past 30 years.<sup>51</sup> Malaysian women of childbearing age are likely to exit the labor force in spite of the official maternity leave policy—an effect that contradicts much of the research on maternity leave and labor force attachment conducted in countries where paid leave is provided through the government rather than employer requirements.<sup>52</sup>

as reduced demand for public benefits, workers' need to take leave is not evenly distributed across firms. In short, it would be much harder for some businesses to self-finance paid leave than others—small employers, employers with low revenue, and employers whose workers are more likely to have a need for leave, such as workers of childbearing age.

Additionally, there is not currently a private-market product to cover PFML similar to workers' compensation. It is possible that such a product could be created—for example, Hawaii's temporary disability insurance program functions as an employer mandate, with employers either self-financing or purchasing qualifying private-market plans.<sup>53</sup> However, the introduction of a for-profit model could potentially create a scenario in which private insurers are incentivized to deny workers' claims, similar to problems faced in the health insurance industry.<sup>54</sup> It is also likely that rates for a private-market product would be experience rated, with organizations employing many leave takers paying significantly higher premiums than those with few. This could create incentives for employers to discourage leave taking, lead to employment discrimination against those believed to be more likely to need leave, and be overly burdensome to some types of employers, which would replicate some of the same problems as self-financing leave.

Finally, employer liability for maternity leave at the international level is associated with negative employment consequences for women, such as discrimination and wage inequality.<sup>55</sup> Although the legal framework in the United States is different and there are existing, important protections in place prohibiting pregnancy, sex, and wage discrimination, there are already challenges with detecting and targeting these types of discrimination problems. For example, there are limited tools available to allow for close monitoring of employer practices on a regular basis. Additionally, enforcement agencies have budgetary constraints that limit their investigatory capacity and also need more investigatory tools to better monitor employers. An employer-required paid family and medical leave program would add to these pressures by requiring a robust set of new protections coupled with a sizable investment in new resources for vigorous enforcement. In the absence of this type of strong regulatory and resource investment to ensure that workers who are perceived as more likely to need or take paid family or medical leave are treated fairly, it is likely that a national employer requirement would encounter problems similar to those that have emerged internationally. These are not patterns that the United States should risk replicating when better, more equitable options exist.



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## Social insurance

The most common way that paid leave programs are structured around the world is through social insurance systems. Social insurance functions similar to private insurance plans, with individual premiums paid into a fund from which wage replacement can later be drawn. Much like motorists pay a car insurance premium every month and then have the cost of repairs covered if they are involved in an accident, this type of PFML program would require workers to pay premiums into the government-run social insurance fund. Then, they would receive wage replacement if they need to take leave for a qualifying reason. In the majority of cases, employers and employees both contribute to the fund, usually in the form of a tax on insurable wages; although in some instances, employers fund the programs entirely or the government also contributes a portion.<sup>56</sup>

In the United States, Social Security and Medicare are the two best-known examples of social insurance. Under these programs, employers and employees make matching contributions in the form of payroll taxes on earnings up to a certain cap—set at the first \$118,500 in taxable earnings in 2015.<sup>57</sup> Workers are eligible to receive Social Security benefits when they reach retirement age, if they become disabled for at least one year, or if they experience a disability that is expected to be fatal.<sup>58</sup> Spousal and survivor benefits are also available under certain circumstances.<sup>59</sup> Social Security benefits are paid using a progressive formula, with low-income workers receiving a higher percentage of their wages compared with high-income workers.<sup>60</sup>

One option for a national PFML social insurance system was originally proposed and developed by the Center for American Progress’ former Economist and current Senior Fellow Heather Boushey.<sup>65</sup> This plan would create a national social insurance program that would be administered through the Social Security Administration, or SSA, and funded through a small payroll tax split between employers

### Norway

Norway has one of the highest labor force participation rates of any country in the Organisation for Economic Co-operation and Development, or OECD, with 75.9 percent of women in the labor force.<sup>61</sup> It is also famous for having one of the most generous parental leave policies in the world. Norwegian birth parents have differing lengths of leave available to them depending on which level of wage replacement they choose: either 49 weeks at 100 percent wage replacement or 59 weeks at 80 percent wage replacement.<sup>62</sup> The Norwegian National Insurance Scheme is funded through a combination of contributions from employers, employees, and the government.

Mothers must take three of these weeks prior to giving birth or that time is forfeited and may choose to start their parental leave up to 12 weeks before their due date. Mothers and fathers—or co-mothers—each have 10 weeks of leave that cannot be transferred, and birth mothers must take six of these weeks after giving birth as they are intended for medical recovery. Depending on the level of wage replacement chosen, there are then a total 26 weeks or 36 weeks left of shared parental leave that can be taken by either parent. Leave can be taken intermittently but must be utilized in the first three years of the child’s life or it is forfeited.<sup>63</sup>

Workers qualify for paid parental leave as long as they have been employed and receiving pensionable income for a minimum of 6 months of the 10 months prior to taking the leave.<sup>64</sup>

and employees. Originally called “Social Security Cares,” this concept has been explained in detail in a number of reports published through CAP<sup>66</sup> and was proposed in Congress as the Family and Medical Insurance Leave, or FAMILY, Act.<sup>67</sup>

Under the FAMILY Act, workers would be able to take leave for the same conditions covered under the Family and Medical Leave Act—namely, to care for a new child or seriously ill family member or to recover from their own serious health condition. The SSA would administer the program, which would build off of the agency’s existing infrastructure while establishing a new, separate trust fund that would be used exclusively for paid family and medical leave. The program would be self-financing and would not touch or in any way overlap with the trust funds for Social Security retirement or long-term disability benefits.

In order to be eligible for the program, individuals would need to meet the age-adjusted work history requirements that determine eligibility for Social Security Disability Insurance, or SSDI, and would also need to have had some taxable earnings in the previous year. Qualifying leave takers would receive two-thirds of their normal wages up to a cap of \$1,000 per week. The program would be funded by a payroll tax on earnings split evenly between employers and employees, with each party contributing 0.2 percent of taxable earnings up to the Social Security taxable earnings cap.<sup>68</sup>

Because the FAMILY Act would be administered by the SSA, all workers with Social Security taxable income would pay into the program and be potentially eligible for benefit receipt. CAP estimates that between 76.8 percent and 83.8 percent of all workers would meet the eligibility criteria for the program, meaning that they both have had taxable earnings in the previous year and meet the SSDI work history requirements.<sup>69</sup> The FAMILY Act is a practical and sustainable option for providing universal, accessible, comprehensive, affordable, and inclusive paid family and medical leave.

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## Publicly funded systems

Publicly funded systems are the least common system for paid leave programs. Notably, however, Australia—the country that implemented paid maternity leave most recently, in 2011—structured its program this way. Under this model, the government still controls and administers the paid leave program similar to a social insurance model, but it is funded through alternate revenue sources rather than dedicated premiums contributed by or on behalf of individual workers.

## Australia

Australia took a slightly different approach to paid leave compared to most other advanced economies. Leave takers receive a flat benefit of 657 Australian dollars per week, equivalent to approximately \$503.<sup>70</sup> In order to be eligible for parental leave, individuals must have been employed continuously for 13 months prior to the birth or adoption of a child and have logged 330 hours of paid work in the previous 10 months. The program is only available to workers who have an individual adjusted taxable income of less than AU\$150,000 per year, or \$117,022.50.

Workers who have been with their current employer for at least one year receive their benefits through their employers' payroll systems, meaning they receive wage replacement through the same mechanism as their normal earnings. The government makes an advance pay-

ment to employers to cover the cost of the leave benefit, paid out of general revenue.<sup>71</sup> Leave can only be taken by the primary caregiver of the new child, thus women take the majority of leaves; however, time can be transferred to the second parent if the birth mother is not the primary caregiver. Eligible self-employed individuals and workers who have been at their current job for less than one year are also eligible to receive wage replacement as a benefit directly from the government.

Additionally, father and partner pay is available to partners of the primary caregiver of a newborn or newly adopted child. Eligibility is calculated using the same criteria as parental leave, and the program offers the same level of wage replacement for up to two weeks of leave. This benefit is paid directly by the government and is transferred in one lump installment.

Australia's program is unique because it administers cash benefits through employers, rather than through a government agency. While this may initially seem outside the norm for federal or state benefits in the United States, it allows for some administrative efficiencies and is in keeping with other existing Australian programs and laws. It would be possible to structure a national paid family and medical leave program similarly in the United States: Policymakers could develop a partnership between businesses and the federal government to deliver wage replacement to workers when they need to take time away from work to provide family care or to recover from a serious health condition.

A business-government partnership program to provide paid family and medical leave would cover the same Family and Medical Leave Act qualifying conditions—birth or adoption of a child, caregiving responsibilities for a seriously ill family member, or the worker's own serious health condition—and provide access to up to 12 weeks of paid leave, during which workers would receive two-thirds of their normal wages up to a capped amount of \$1,000 per week.<sup>72</sup> Employers would disperse wage replacement to leave takers, and the Internal Revenue Service, or IRS, would reimburse them for the amount of the benefit and the cost of administration.

The U.S. Department of Labor, or DOL, would be responsible for processing applications for leave, making eligibility determinations, and authorizing benefit payments. Workers who are self-employed, independent contractors, or recently unemployed and meet the program eligibility requirements would also be able to file claims with the DOL and receive payments directly from the IRS.

## Business-government partnership in a nutshell

Employees would be eligible for leave to address the same conditions outlined under the Family and Medical Leave Act—namely, the arrival of a new child, family caregiving, temporary disability, or exigencies arising out of a military family member’s active duty or call to active duty in support of a contingency operation.

- In order to be eligible, workers would need to have reported a minimum of \$300 in earnings on the previous year’s federal income tax return. While workers would not have to be currently employed to receive benefits, they could not simultaneously collect unemployment insurance, state temporary disability insurance, or Social Security Disability Insurance benefits.
- Workers could take up to 12 weeks of leave, as under the FMLA. Leave could be taken all at once or on an intermittent basis. In the case of intermittent leave, the total amount of leave could not be more than 480 hours—the equivalent of 12 weeks of leave, working five days per week for eight hours per day.
- Wage replacement would be calculated based on current earnings for employed workers. Nonhourly workers would receive a percentage of their normal wages, and hourly workers’ wage replacement would be calculated based on their average earnings in the current quarter or the previous quarter, whichever is higher. Qualifying unemployed or self-employed workers would have wage replacement calculated based on their average earnings in the previous

year. Workers would receive two-thirds of their normal earnings. The total benefit amount for a full work week—five days—could not be less than \$145 or exceed \$1,104 per week.

- Individual employers would be responsible for dispersing approved benefit payments. The U.S. Department of Labor would create a new office that would be responsible for processing and verifying individual applications and authorizing the Internal Revenue Service to release reimbursement to employers.
- All employers would be covered under the program, similar to the state paid leave programs and different from the FMLA, which only covers employers with 50 or more employees. Very small employers with less than 10 workers would have the ability to opt out of administering the benefit if they choose. In these cases, workers would still be able to collect wage replacement but would receive a monthly benefit from the IRS rather than through their employer’s payroll system.
- While employers who are not covered under the FMLA would not be required to extend job protection, they would be obligated to continue providing the benefit through their payroll system until the leave is exhausted. Additionally, employers would be prohibited from discriminating or retaliating against workers for requesting leave.
- Self-employed or unemployed workers would be able to receive monthly benefits directly from the IRS.

Any paid family and medical leave program must have information about workers' employment history and earnings in order to determine eligibility and the appropriate level of wage replacement. The proposed social insurance program, the FAMILY Act, would use the Social Security Administration's detailed data on individuals in order to accomplish these goals. The current, state-level paid family leave programs determine program eligibility using data on individual workers that are provided to state agencies by employers on a quarterly basis. While every state collects employment data on workers—primarily in association with their individual state unemployment insurance, or UI, programs—these data are uneven at best, with some states collecting more information than others.<sup>73</sup> In addition, many UI programs are currently insolvent, making it unlikely that there would be much appetite at the state level to partner with the federal government to provide detailed individual-level data on workers. Furthermore, if these data were intended to be used to determine eligibility for a national paid family leave program, states could not be required to share this information with the federal government. Therefore, it would be easy for states to opt out of participation for political reasons. The latter could potentially result in a scenario in which access to the federal program depends on where workers live, which is fundamentally unfair to workers.

Federally, the IRS receives detailed information about individuals' employment and earnings records through federal tax filings. This information may be shared with select other agencies, including the SSA for the limited purposes of determining Social Security and Medicare eligibility; with state taxing authorities; and with law enforcement agencies pursuant to court orders.

Under a business-government partnership, workers who experience a qualifying condition would apply online with the U.S. Department of Labor to receive paid leave benefits. First, workers would initiate a claim to receive wage replacement by applying to a paid family and medical leave office created and housed within the DOL. In most instances, workers would need to submit parental leave forms 4 weeks to 12 weeks prior to the anticipated birth or adoption date. Family care and medical leave forms would need to be submitted as soon as is reasonably possible. The information required would include the type of leave being requested—new child, family caregiving, or temporary disability—and the length of leave needed. Workers would then indicate to their employer, through the submission of a DOL-developed form, their intent to take leave for a specified amount of time of up to 12 weeks. This system could be easily crafted by building upon existing DOL forms that are used for requesting unpaid leave under the FMLA.

The workers' employers would then be required to submit verification that the individuals are employed within their organization and informed them of their desire to take leave, while also verifying the employees' salary and usual work hours. The information would need to be submitted no more than five working days after workers file their initial paperwork with their employer in order to ensure timely claims processing.

The business-government partnership utilizes the IRS and employers as the best existing sources of data in order to fairly and efficiently determine program eligibility without imposing new costs for data collection.

The state models also provide examples of how determinations can be made for qualifying conditions. Unlike long-term Social Security Disability Insurance benefits that are intended to cover disabling conditions that last for at least one year or are expected to be terminal, the short-term medical benefits proposed here would cover much more modest lengths of time, resulting in a vastly simplified medical determination process. State temporary disability insurance programs currently evaluate qualifying events after receiving official documentation from the licensed medical professionals who treat individual workers, while parental leave can be easily verified through state birth records.

In California, for example, medical certification is provided directly to the state from a wide variety of licensed medical professionals.<sup>74</sup> In addition to providing proof of licensing, medical practitioners must provide the state with either a diagnosis or detailed statement of disabling symptoms and an International Classification of Diseases, or ICD, code—a system that is used internationally and by U.S. hospitals, health care facilities, and the Centers for Medicare & Medicaid Services to track and understand the clinical needs of patients. Medical professionals who submit documentation to the state must also provide an anticipated date when the individual is likely to be able to return to work. Falsely certifying a medical condition is punishable by imprisonment, fines, and a penalty to repay a portion of any benefits that may have been paid as a result of a fraudulent medical certification.<sup>75</sup> The state also has the ability to request an exam from a member of its panel of independent medical examiners in order to verify disability status.

Individual businesses offering paid leave generally rely on the same types of information, although the level of certification needed may vary from organization to organization, and often follow the same guidelines and reporting documentation used for job-protected leave under the FMLA.



Under a business-government partnership, in the case of medical or caregiving leave, the worker's medical provider or the medical provider caring for the worker's family would also file an online form, similar to those used under the FMLA, verifying a medical need for leave. In the case of parental leaves, the parent would submit an official birth certificate, or the agency—whether state or private—arranging the adoption would be required to submit proof of the adoption.

The DOL would then make two determinations: verification that the workers are experiencing a condition covered by the terms of the program—the birth or adoption of a child, a serious health condition that prevents the individual from working, or caregiving responsibilities for a seriously ill or injured parent, child, spouse, or domestic partner—and confirmation that the individuals are eligible for leave based on their labor force attachment. Workers would be eligible for the program provided they had claimed a minimum of \$300 in earnings on the previous year's federal income tax return, similar to the eligibility requirements for temporary disability or paid family leave in the state of California.<sup>76</sup>

The DOL would need to create a new office equipped to receive and process paid leave applications since this is a new administrative function that is unlike any other role currently played by the agency. In order to claim benefits, individuals would have the option of providing a valid birth certificate or foster or adoption verification in the case of parental leave, while medical certification would be accepted from licensed medical or osteopathic physicians or practitioners; authorized medical officers of a U.S. government facility; chiropractors; podiatrists; optometrists; dentists; psychologists; nurse practitioners after examination and collaboration with a physician and/or surgeon; licensed midwives, nurse midwives, or nurse practitioners for normal pregnancy or childbirth; and/or accredited religious practitioners. The existing state temporary disability insurance programs serve as examples from which to learn fraud detection and application review processes.<sup>77</sup>

Finally, a national paid family and medical leave program must have the ability to transfer wage replacement to leave takers in a timely and efficient manner. With a business-government partnership, once the DOL establishes that individuals are qualified for leave, employers would disperse funds by providing partial wage replacement through their normal payroll system. Benefit levels would be calculated by replacing two-thirds of normal wages. In the case of nonhourly workers, the benefit calculation would be very straightforward since their earnings do not vary from week to week. In the case of hourly workers, weekly expected earnings would be used as the baseline for calculating wage replacement. Expected earnings would be generated by averaging earnings in the current quarter or the previous quarter, whichever is higher. Weekly benefits could be no less than \$145

and no more than \$1,000. In cases of intermittent leave, weekly benefits would be calculated and then divided by the average number of days worked per week in the current quarter or the previous quarter, depending on which was used to calculate expected earnings. The IRS would reimburse businesses for these funds on a monthly, quarterly, or annual basis, depending on the schedule chosen by the employer. Any efforts by employers—or employees—to falsify or otherwise manipulate workers' benefit levels or receipt would be considered tax fraud with the potential for federal prosecution.

Benefit payments for self-employed workers would be calculated based on their previous earnings as indicated through their federal income tax return. Self-employed or qualifying unemployed workers would be eligible to receive payments directly from the IRS provided that they meet the eligibility requirements. The IRS has the ability to process benefits through direct deposit or paper checks. In 2015, nearly 80 percent of tax refunds were processed via direct deposit.<sup>78</sup> Because self-employed workers are likely to have bank accounts, it is reasonable to assume that the vast majority of paid leave benefits could be administered through direct deposit for qualifying self-employed workers.

## Streamlining the administration of paid leave benefits for workers and businesses

Most governmental programs have moved away from dispersing paper checks in favor of electronic transfers of funds in order to save money and to simplify and expedite individuals' receipt of benefits. Social Security and Supplemental Security Income benefits can only be received through direct deposit into a recipient's bank account, or they can be transferred to a Direct Express account, which can be accessed using a Direct Express Debit MasterCard. Electronic benefits transfer cards, provided by independent contractors, are similar to debit and credit cards and are used to disperse benefits for the Supplemental Nutrition Assistance Program; the Temporary Assistance for Needy Families program; and the Special Supplemental Nutrition Program for Women, Infants, and Children, or WIC.

California and New Jersey have partnered with Bank of America to provide debit cards that allow beneficiaries to access their paid leave funds, while Rhode Island provides Visa-branded cards to recipients who do not sign up for direct deposits. While the use of such cards is not without downsides—such as increased costs for recipients and potential difficulties accessing cash benefits<sup>79</sup>—the state of California

estimated it would save \$4 million as a result of the switch from mailing checks to the use of debit cards.<sup>80</sup>

Each of these options involve contracting with outside vendors in order to administer accounts and ensure access to benefits. The largest governmental agencies that currently have the ability to disperse cash benefits directly to individuals are the Social Security Administration, through direct deposit, and the Internal Revenue Service, through either direct deposit or mailed paper checks. However, the administration of a benefit for workers can be achieved through the same means as their normal wages, as Australia has shown, by using employer's payroll systems as the mechanism for benefit payment. Rather than contracting with a bank or credit card company, a system that costs billions of dollars and often imposes fees on benefit recipients,<sup>81</sup> the government essentially contracts directly with the employers of the individuals who are receiving leave. In the case of Australia, employers can receive a tax deduction for the cost of processing the paid leave benefit, which is nominal and should not be any more difficult or burdensome than processing normal payroll under most circumstances.

## Lessons learned from the states

Currently three states—California, New Jersey, and Rhode Island—have active paid leave programs that cover both temporary disability and family caregiving through social insurance programs. Washington passed legislation in 2007 to create a paid family leave program but has not been able to implement it yet due to a lack of start-up funds.<sup>82</sup> In 2014, the U.S. Department of Labor, awarded \$500,000 in grants through a competitive application process to Massachusetts, Montana, Rhode Island, and Washington, D.C., to conduct feasibility studies and cost estimates for creating new programs and, in the case of Rhode Island, to study the effects of paid leave.<sup>83</sup> In 2015, DOL awarded another \$1.55 million in grant money to California; Montgomery County, Maryland; New Hampshire; Tennessee; Rhode Island; Vermont; New York City; and Washington state.<sup>84</sup> And as of 2015, at least 18 states have introduced more than 20 pieces of legislation to create their own programs or to fund studies in order to determine how such programs could be created and administered in their states.<sup>85</sup>

California, New Jersey, and Rhode Island have all implemented paid family and medical leave programs for workers using social insurance models. In all three cases, paid family leave was established by expanding upon already existing temporary disability insurance, or TDI, programs that had been in place for decades.

California has had a TDI program since 1946, which currently offers up to 52 weeks of paid leave, administered through its Employment Development Department, or EDD, to workers who cannot work due to a serious illness or injury that occurred outside of work.<sup>86</sup> In 2002, the California Legislature passed a bill to provide paid family leave, building off of the existing TDI infrastructure.<sup>87</sup> Under this program, which went into effect in 2004, eligible workers can receive up to six weeks of paid leave, also administered through the EDD, to care for a newborn, newly adopted child, or a seriously ill or injured family member. In order to qualify for either program, workers must have earned a minimum of \$300 in either the first four of the previous five completed quarters—the base period—or the previous four completed quarters—the alternate base period—

before requesting leave.<sup>88</sup> Workers receive 55 percent of their normal wages up to a cap of \$1,104 per week, and the programs are financed by a payroll tax contributed by all workers in the state.<sup>89</sup> The tax rate is reassessed each year depending on the health of the trust fund and, as of 2015, stands at 0.9 percent.<sup>90</sup> The paid leave program in California does not guarantee job protection, however, and workers must file separately for that under the federal Family and Medical Leave Act.

The programs in New Jersey and Rhode Island were crafted similarly to the program in California. New Jersey's program, passed in 2008 and implemented in 2009, provides up to 26 weeks of TDI and up to six weeks of family caregiving leave for the same conditions as California.<sup>91</sup> In order to qualify, workers must have earned at least \$8,300 in the base period or at least \$165 per week for a minimum of 20 weeks in the previous year.<sup>92</sup> The New Jersey program provides 66 percent of wages up to a weekly maximum of \$604 per week.<sup>93</sup> New Jersey's program is also funded through a small 0.09 percent payroll tax on workers' first \$32,000 in covered wages as of 2015.<sup>94</sup>

Rhode Island provides up to 30 weeks of TDI and up to four weeks of caregiving leave. To qualify, workers must have earned at least \$10,800 in base period or alternate base period or have earned at least \$3,600 in the base period and earned at least \$1,800 in at least one quarter with total base period earnings of at least 150 percent of the highest quarter's earnings.<sup>95</sup> Leave takers receive 55 percent of normal wages up to a cap of \$795 per week.<sup>96</sup> Rhode Island also funds its social insurance program through a 1.2 percent payroll tax on workers' first \$64,200 in earnings as of 2015.<sup>97</sup>

While there was business opposition to each of the state programs before they were implemented, their positive effects have overshadowed initial concerns. For example, research in California shows that business concerns were unfounded, and the vast majority of employers have reported either no changes or positive effects on employee turnover (96 percent), profitability and/or performance (91 percent), and productivity (89 percent) as a result of the paid family leave program.<sup>98</sup> Low-income workers, who previously may have been forced out of the labor market when faced with caregiving needs, are now more likely to take leave—and are also more likely to return to work.<sup>99</sup> Black mothers in California are now 12 percent more likely to be able to take leave, and high school graduates are 8 percent more likely, highlighting the difficult choices many families have to make in the absence of a paid leave program.<sup>100</sup> And mothers in California are significantly more likely to return to work compared with women in states without paid leave programs.<sup>101</sup> Mothers who take paid leave and return to work are 39 percent less likely to receive public assistance compared with women who return to work after giving birth without taking family leave.<sup>102</sup>

TABLE 2

## Comparison between existing leave programs

Current national and state family and medical leave policies

	Length of leave available		Wage replacement	Eligibility requirements
	Temporary disability, including pregnancy- related medical leave	Parental and family caregiving leave		
California	Up to 52 weeks	Up to 6 weeks	55 percent, with a weekly maximum of \$1,104	Earned at least \$300 in base period
New Jersey	Up to 26 weeks	Up to 6 weeks	66 percent, with a weekly maximum of \$604	Earned at least \$8,300 in base year <b>OR</b> Earned at least \$165 per week for a minimum of 20 weeks
Rhode Island	Up to 30 weeks	Up to 4 weeks	55 percent, with a weekly maximum of \$795	Earned at least \$10,800 in base period or alternate base period <b>OR</b> Earned at least \$3,600 in base period, and earned a minimum of \$1,800 in at least one base period quarter, with total base period earnings of at least 150 percent of the highest quarter's earnings

Source: For Rhode Island benefits, see Rhode Island Department of Labor and Training, "Temporary Disability Insurance/Temporary Caregiver Insurance," available at <http://www.dlt.ri.gov/tdi/tdifaqs.htm> (last accessed August 2015); For California benefits, see State of California Employment Development Department, "Disability Insurance (DI) and Paid Family Leave (PFL) Benefit Amounts," available at [http://www.edd.ca.gov/disability/State\\_Disability\\_Insurance\\_\(SDI\)\\_Benefit\\_Amounts.htm](http://www.edd.ca.gov/disability/State_Disability_Insurance_(SDI)_Benefit_Amounts.htm) (last accessed August 2015); For New Jersey benefits, see State of New Jersey Department of Labor and Workforce Development, "Frequently Asked Questions – New Jersey Temporary Disability Insurance," available at <http://lwd.dol.state.nj.us/labor/tdi/content/faq.html> (last accessed August 2015).

# Investing in working families

The economy is strongest when consumers have money to spend on the basics of life, and the lack of work-family policies such as paid family and medical leave in the United States undermines the nation's economic growth and prosperity. The current landscape pushes workers with caregiving responsibilities out of the labor force, which can have a negative impact on individual families' economic security, as well reduce potential economic output. Sensible investments in working families, including PFML, would pay dividends in a number of different ways, including healthier children and families,<sup>103</sup> increased labor force participation,<sup>104</sup> and increased potential GDP—along with a host of other economic benefits.<sup>105</sup>

One of the primary concerns surrounding the implementation of a national paid family and medical leave program is the associated cost and how it would be funded. Most social insurance programs are funded through taxation, and the existing state temporary disability and family leave insurance programs are funded through small payroll taxes. For example, New Jersey workers are taxed at 0.25 percent on their first \$32,000 in taxable earnings with a maximum contribution of \$80 in 2015, while employers pay between \$32 and \$240 in payroll taxes annually per employee.<sup>106</sup> In 2012, the latest year for which data are available, the state temporary disability and family leave insurance programs had a combined revenue of \$428.5 million from worker and employer contributions, or an average of about \$115 per worker.<sup>107</sup> However, taxation is not the only available option for program funding.

Assuming that the eligible populations are similar and that the same qualifying conditions, wage replacement rate, and length of leave are used, the cost differences between a social insurance program and a business-government partnership would be negligible. While in-depth modeling must be completed in order to determine a more precise estimate for the projected cost of a national PFML program, data from the existing state paid leave programs can serve as a guide. Detailed data on usage of California's paid family leave program, which has been in place for more than a decade, were used to calculate a rough cost estimate of \$35 billion per year, or approximately \$4.50 per U.S. worker per week.<sup>108</sup>



Last year, the Center for American Progress identified a number of adjustments to the tax code that adhere to bipartisan calls for tax reform. If enacted, these proposals would raise revenue by \$1.4 trillion dollars over 10 years.<sup>109</sup> That is equivalent to \$940 per worker per year in the United States—more than enough to fund either a social insurance or business-government partnership model for paid family and medical leave.

## Incomplete paid leave proposals

Two additional proposals to provide paid leave have been put forward as alternative options that do not meet the five principles outlined above and, thus, are not explored in depth throughout this report: voluntary tax credits and compensatory time.

Legislation was introduced in the 113th Congress by Sen. Deb Fischer (R-NE) and Sen. Angus King (I-ME) that would have created a tax credit intended to incentivize businesses to voluntarily provide paid family or medical leave. Their bill would have provided a 25 percent nonrefundable tax credit to businesses that offered at least four weeks of paid leave, and employers would not be able to retaliate against workers for taking leave.<sup>110</sup>

However, this approach does not meet the criteria essential for any paid leave program. Most notably, it would not be universal because it would not guarantee increased access or coverage for all workers, and there is little reason to suspect that it would alter employer behavior. Analysis of the Work Opportunity Tax Credit, which provides subsidies to employers who hire disadvantaged workers, and the Welfare-to-Work tax credit, which offers even larger subsidies for hiring long-term welfare recipients, shows that they have not had a meaningful effect on employment rates for these populations.<sup>111</sup> Similarly, a tax credit included in the 1981 Economic Recovery Tax Act that was intended to encourage employers to create child care centers for their workers has had almost no effect on employer behavior in this regard.<sup>112</sup>

Sen. Mike Lee (R-UT) and Sen. Mitch McConnell (R-KY) introduced the Working Families Flexibility Act of 2015, which would amend the Fair Labor Standards Act to allow private-sector employers to provide compensatory time, also known as comp time.<sup>113</sup> Under comp time, workers who log overtime hours are not paid at the normal rate of 1.5 percent of their typical wages. Instead, workers bank 1.5 hours of

comp time for every overtime hour they work, which can theoretically be used as paid time off in the future.<sup>114</sup> Workers agreeing to receive comp time in lieu of wages would relinquish their legal right to overtime pay in the hopes of using the accrued time off as paid leave at some future date.

In addition to not being universal, the proposal limits the amount of comp time that can be accrued to 160 hours, or four full-time weeks. Not only is four weeks of paid leave insufficient for many PFML needs, including parental leave, but workers would also have to log more than 100 hours of overtime before they could accumulate that much comp time. The proposal also permits employers to pay out any unused hours in excess of 80 hours after giving the employee 30 days' notice. Thus, even if the employee is relying on having four weeks of paid leave available, the employer can unilaterally decide to limit how much the employee can accrue to only two weeks. Moreover, because employers have the right to refuse their workers' requests to use the comp time they have acquired, the program fails to be accessible in any meaningful way.

Part of the rationale for establishing overtime pay was to create a financial incentive for employers to hire more workers when demand is high rather than scheduling their existing workforce to longer and longer shifts. Because comp time reduces the expense of overtime for employers, it incentivizes requiring existing workers to put in longer work hours, resulting in fewer new job openings and less time for workers to spend with their families.

While these proposals may theoretically acknowledge the need for paid leave to address workers' family and caregiving responsibilities, they fail to meet the criteria necessary for a credible national paid family and medical leave program.

# Conclusion

In the absence of meaningful federal action, U.S. workplace policies will continue to be outdated, and the majority of workers will continue to lack the workplace supports they need and deserve. Families should not have to worry about losing their income when they welcome a new baby or need to care for a loved one or themselves. Implementing a national paid family and medical leave program is not just the right thing or a nice thing to do for working families. The economy does better when families have the economic security that comes from being able to comfortably afford the basics of life, such as food, doctor visits, and getting things repaired.

Currently, the U.S. economy is paying the price for not having such a program through reduced labor force participation and the ensuing reduction in economic activity, through the gender wage gap, and through the declined potential of workers who are pushed out of the labor force. With women's labor force participation dropping relative to other countries, it is important for the United States to update its labor standards to meet the global benchmarks of other advanced economies by creating a national paid family and medical leave program.

There are a number of viable options for how such a program could be structured and administered while ensuring that it is universal, accessible, comprehensive, affordable, and inclusive. Building upon the best-proven elements of existing leave programs at home and abroad would allow for the development of a paid family and medical leave program that reduces inequality, supports and maintains family economic security, and promotes greater gender equity.

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## About the author

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