



Family and Medical Leave Insurance

A Basic Standard for Today's Workforce

By Heather Boushey and Alexandra Mitukiewicz

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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.¹ 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.² 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.³ 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.⁴

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.⁵ 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.⁶ 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.⁷ These states added the program to a long-standing statewide temporary disability insurance program.⁸ 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.⁹

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.¹⁰ 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.¹¹

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.¹² 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.

A changing workforce

Since the Fair Labor Standards Act passed into law in 1938, there has been a shift in how U.S. workers care for their families. Fewer workers are living in families with one breadwinner and one stay-at-home parent who can provide care when necessary. The majority of today's U.S. workers hold down a paying job and also have at least some caregiving responsibilities.¹³ Managers can no longer look at their staff and assume that most of its members have someone at home who has the capacity to deal with all of life's big and little emergencies.

The transformation of who provides care at home stems in large part from the rise of women, especially mothers, in the workplace. Between 1970 and 2000, the share of women in the labor force steadily increased, from 43.3 percent to 59.9 percent, about where it remains today.¹⁴ Over the same time period, the share of married mothers in the labor force rose from 39.7 percent to 70.6 percent.¹⁵ Today, most women work full time—that is, 35 hours or more per week. Before the Great Recession in 2007, the share of women who worked 35 hours or more per week was 75.3 percent.¹⁶

With the majority of women now working outside the home, most families do not have a stay-at-home parent to provide care for children, the sick, or the elderly. Seventy-one percent of children live in a family with either two working parents or a single parent.¹⁷ At the same time, there has been an increase in working single-parent households, in which a worker may not have the ability to share family care with a partner. The share of single mothers in the labor force grew from 52 percent in 1980 to 73.9 percent in 2000, about where it remains today.¹⁸ The share of families with children that were headed by a single parent was 26.1 percent in 2010.¹⁹ As the only breadwinners and caregivers in their households, single parents can have a harder time maintaining employment in the absence of policies to help them balance work and care.

Increasingly, workers are also caring for aging parents, often requiring a leave from work. The share of the population ages 65 and older was 12.4 percent in 2000; this share is expected to grow to 19 percent by 2030.²⁰ The percentage of adult children providing care for a parent has tripled over the past 15 years.²¹ In 2008, almost half the workforce—42 percent—reported that they had provided elder care over the past five years.²² Among workers who were employed at some time while caregiving, one in five, or 20 percent, reported that they took a leave of absence from work in order to address caregiving responsibilities.²³

Because of the reality that women and mothers work outside the home, family and medical leave is not only a women's issue but a family issue as well. Men no longer exclusively bear the full burden of earning the majority of the family's finances, and they are now more likely to have—and want—to take time off of work to attend to their families. Men and women are now left to negotiate the challenges of work-family conflict, including who will go to work late in order to take an elderly family member to the doctor and who will stay home with a sick child. Given this, it comes as no surprise that the majority of men in dual-earner couples today report experiencing work-family conflict.²⁴ New polling from the Pew Research Center, for example, finds that half of all working parents—both men and women—report that it is difficult to balance career and family responsibilities. The polling finds “no significant gap in attitudes between mothers and fathers.”²⁵

The movement of women into the labor force has not only transformed how women spend their days, but it also has had a direct effect on family incomes. Upon entering the labor force, mothers are increasingly the family breadwinners—those bringing home all of the family's earnings or at least as much as their partners—or co-breadwinners—those bringing home at least one-quarter of their families' earnings.²⁶ The share of mothers who were breadwinners or co-breadwinners rose from under one-third—27.7 percent—to two-thirds—63.9 percent—between 1967 and 2010.²⁷

Surveys show that people want policymakers to address the growing divide between workplace rules and family realities. In a survey of registered voters, for example, the Work Family Strategy Council found that supermajorities of voters support a national paid leave program funded through payroll contributions.²⁸ In a January 2013 poll, 80 percent of female voters and 70 percent of male voters favored a paid leave program.²⁹ Furthermore, there is strong bipartisan support for family and medical leave insurance. In the same poll, 85 percent of Democrats and 67 percent of Republicans favored a paid leave program.³⁰

A basic labor standard: The Fair Labor Standards Act

It is not as if we have no policies that create a boundary between work and life. The Fair Labor Standards Act, passed on June 25, 1938, established the minimum-wage, overtime, record-keeping, and child labor standards.³¹ It provides basic labor protections to address low pay and overwork, two issues as important today as they were in the 1930s. Under the FLSA, currently covered workers are entitled to a minimum wage, which is now \$7.25 per hour.³² In addition, covered workers are paid 150 percent of their usual hourly wage for any hours worked above a regular 40-hour workweek. In order to monitor these provisions, employers keep records on employee wages, hours, and other items.³³

More than 130 million workers—about 93 percent of employed workers—were covered by the FLSA’s minimum-wage, child labor, and record-keeping provisions in 2009.³⁴ When the legislation was passed in 1938, these provisions covered a smaller share of the workforce, and the act was expanded in later years to cover most workers.³⁵ The Obama administration extended minimum-wage coverage and overtime provisions to home health and personal care workers in September 2013. Effective January 1, 2015, this rule will extend FLSA protections to about 2 million direct care workers.³⁶ Most recently, President Obama signed a presidential memorandum instructing an update of FLSA overtime protection regulations to ensure more workers are paid for overtime work.³⁷

But some workers covered by the FLSA are exempt from the act’s overtime and/or minimum-wage protections. Exempt workers include executive, administrative, professional, outside sales, and certain computer employees. To qualify for exemption, workers must be paid on a salary basis at \$455 or more per week, as well as meet certain tests regarding their job duties.³⁸ Furthermore, certain employees making more than \$100,000 per year are also exempt from FLSA protections.³⁹ Today, only 12 percent of salaried workers fall below the threshold that ensures overtime and minimum-wage protections.⁴⁰ Workers who are exempt from overtime and minimum-wage provisions often work unpredictable or long hours.

Meeting the needs of early 20th-century workers

The Fair Labor Standards Act was put in place to address the needs of workers in the 1930s. At the time, some of the most pressing issues facing workers were extremely long hours, children forced to toil in factories, and the lack of a wage floor. By 1913, the majority of states had established 14 as the minimum age for factory work, and Massachusetts had passed the first state minimum-wage law for women.⁴¹ In addition, there was a growing demand for shorter working hours in the late 19th century and early 20th century. In the 1840s, most skilled trade workers won 10-hour workdays.⁴²

The crafters of the FLSA drew on this experience when writing the legislation, as well as on the laws that states had been putting in place to curtail workers'—specifically women's and children's—long hours.⁴³ By the early decades of the 20th century, almost all states had passed laws prohibiting child labor, a number of states had mandated 10-hour days for all workers, and 16 states had enacted minimum-wage laws for women.⁴⁴ Furthermore, prior to the passage of the FLSA, the eight-hour day and 40-cent minimum wage had become accepted practices, set in motion by the decisions of the 1917–1918 National War Labor Board—which had been set up to mitigate labor disputes in war supply industries—and labor movement initiatives to establish an eight-hour day.⁴⁵

A standard in need of an upgrade

The FLSA, along with other basic labor protections such as the Equal Pay Act and the Social Security Act, were our nation's first work-family policies. The FLSA set standards that make it possible for a worker to head home after eight hours, giving them the opportunity to do things such as care for their families. The law does not, however, provide sufficient protections to manage the dual demands of the workplace and home. The legislation was put in place at a time when work-family conflict looked much different than it does today. Seventy-five years ago, policymakers could assume that women were primarily caregivers and men were primarily breadwinners. Even if that was not the case in every family, it was an aspirational goal for many and a cultural norm.

Although the workforce changed by the 1980s, the FLSA has not yet been amended to address these changes. Most amendments to the act merely have increased the minimum wage.⁴⁶ (see Table 1) While the share of workers covered under the FLSA expanded from the 1940s to the 1980s, the share of workers exempt from overtime protections increased in 2004, when the Bush administration expanded the definition of “executive, administrative, and professional” workers who are exempt under the FLSA’s overtime protection.⁴⁷ Researchers Ross Eisenbrey and Jared Bernstein estimated that this redefinition would make 8 million more workers ineligible for overtime pay.⁴⁸ Since 2004, the FLSA’s overtime and minimum-wage protections have been extended to 2 million direct care workers; this rule is effective January 1, 2015.⁴⁹ In addition, President Obama signed a presidential memorandum in March instructing the secretary of labor to update FLSA overtime protection regulations.⁵⁰ Updating these regulations will ensure more workers are paid overtime for a hard day’s work.

Table 1: Legislative evolution of the FLSA

Date	Action	Substance
October 1938	FLSA becomes effective	
1947	Portal-to-Portal Act	<p>Created a practical definition of hours worked</p> <p>Allowed parties to settle a worker’s minimum-wage or overtime claim</p> <p>Established a two-year statute of limitations in which a worker could file a claim</p>
1949	FLSA amendments	<p>Continued the requirement that employment in excess of 40 hours in a workweek be compensated at a rate not less than 1.5 times the regular rate, except for employees who are specifically exempted</p> <p>Defined “regular rate” as including specific forms of payment accepted</p> <p>Redefined “produced”</p> <p>Raised the minimum wage from 40 cents to 75 cents per hour</p> <p>Expanded the definition of oppressive child labor</p> <p>Created new exemptions for special worker classes</p>
1955	FLSA amendments	<p>Increased the minimum wage from 75 cents to \$1 per hour</p>
1961	FLSA amendments	<p>Added enterprise coverage, which covers employees of businesses and organizations that have an annual dollar volume of sales of at least \$500,000 or are hospitals, businesses providing medical or nursing care, schools, or government agencies</p> <p>Increased the minimum wage from \$1 to \$1.25 in stages</p> <p>Defined “wage”</p> <p>Granted authority in Section 17 for employees to sue for back wages</p>
1966	FLSA amendments	<p>Expanded coverage to include workers employed in any enterprise with annual sales of at least \$250,000 and employees of all businesses engaged in construction, repair, and laundering and cleaning services, as well as employees of hospitals, elementary and secondary schools, and institutions of higher education</p> <p>Extended the minimum wage to some farmworkers</p> <p>Increased the minimum wage to \$1.60 in stages</p> <p>State and local government employees covered for the first time</p> <p>Inserted provisions on how to determine the wage of tipped employees</p>
1972	Amendments to Higher Education Act of 1965	<p>Extended FLSA coverage to preschools</p>
1974	FLSA amendments	<p>Expanded coverage to include other state and local employees</p> <p>Expanded coverage to domestic workers</p> <p>Increased the minimum wage to \$2.30 in stages</p>
1976	National League of Cities v. Usery	<p>Minimum-wage and overtime provisions of the FLSA are no longer applicable to traditional activities of state and local governments</p>

1977	FLSA amendments	<p>Increased the minimum wage in yearly increments to \$3.35</p> <p>Made changes to the tip credit system</p> <p>Increased the average daily volume of sales for retail trade and service enterprises from \$250,000 to \$362,500</p> <p>Permitted special waiver applications for 10- and 11-year-old agricultural hand harvesters of short-season crops</p> <p>Expanded the law to include employee rights to sue for being retaliated against in the case that they have filed a complaint or cooperated in an investigation</p> <p>Eliminated the overtime exemption for employees in hotels, motels, and restaurants</p>
1985	FLSA amendments	<p>Granted compensatory time off in lieu of overtime pay to state and local government employees</p>
1986	FLSA amendments	<p>Section 14(c) was amended to remove the separation of workshops and work activities centers and eliminate any statutory minimum wage for persons with disabilities in certificated employment</p> <p>Allowed clients to ask for a review of wage rates by an administrative law judge that is subject to review by the Department of Labor</p>
1989	FLSA amendments	<p>Increased the minimum wage to \$4.25 in stages</p> <p>Increased average dollar value of enterprise sales to at least \$500,000</p> <p>Eliminated the distinction between retail and nonretail</p> <p>Determined that construction and laundry and dry cleaning are no longer named enterprises</p> <p>Made further changes to the tip credit system</p> <p>Created a youth minimum wage, or a “training wage,” which was equal to 85 percent of the minimum wage and expired in 1993</p> <p>Established an overtime exception for time spent by employees in remedial education</p> <p>Created civil money penalties for willful or repeated violations of the minimum-wage or overtime-pay requirements of the law</p>
1996	FLSA amendments	<p>Allowed employers to pay a youth minimum wage of not less than \$4.25 per hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment</p> <p>Increased the minimum wage to \$5.15 in stages</p> <p>Froze the tipped-employee minimum wage at \$2.13, as long as the addition of tip means the employee makes more than the minimum wage</p> <p>Determined that all government employees are covered by minimum-wage protections</p>
2004	FLSA amendments	<p>Required that employees who are paid less than \$455 per year be paid overtime for all hours worked over 40 per week</p> <p>Required that certain employees who are paid more than \$100,000 per year are exempt from overtime requirements</p>
2007	Fair Minimum Wage and Tax Relief Act	<p>Increased the minimum wage to \$7.25 in stages</p>

Sources: U.S. Department of Labor, “Wage and Hour Division History,” available at <http://www.dol.gov/whd/about/history/whdhist.htm> (last accessed July 2013); Gerald Mayer, Benjamin Collins, and David H. Bradley, “The Fair Labor Standards Act (FLSA): An Overview” (Washington: Congressional Research Service, 2013), available at <http://www.fas.org/sgp/crs/misc/R42713.pdf>; Fair Labor Standards Act, ch. 8 (1949) (current version at 29 U.S.C. § 201–219, available at <http://www.gpo.gov/fdsys/granule/USCODE-2011-title29/USCODE-2011-title29-chap8/content-detail.html>); Wage and Hour Division, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)* (U.S. Department of Labor, 2009), available at <http://www.dol.gov/whd/regs/compliance/whdfs14.htm>; U.S. Department of Labor, “History of Changes to the Minimum Wage Law,” available at <http://www.dol.gov/whd/minwage/coverage.htm> (last accessed December 2013); Wage and Hour Division, *Fact Sheet #77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)* (U.S. Department of Labor, 2011), available at <http://www.dol.gov/whd/regs/compliance/whdfs77a.htm>; William G. Whittaker, “Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act” (Washington: Congressional Research Service, 2005), available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1211&context=key_workplace; Wage and Hour Division, *Fact Sheet #32: Youth Minimum Wage - Fair Labor Standards Act* (U.S. Department of Labor, 2008), available at <http://www.dol.gov/whd/regs/compliance/whdfs32.htm>; U.S. Department of Labor, “29 CFR Part 541: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Final Rule,” *Federal Register* 69 (79) (2004), available at <http://www.dol.gov/whd/regs/compliance/fairpay/preamble.pdf>.

Basic labor standards 2.0: The Family and Medical Leave Act

Even before the ink was dry on the Fair Labor Standards Act, policymakers knew that workers needed a basic labor standard to protect them when they were ill or their family members needed care, either due to illness or a new child coming into the family. Secretary of Labor Perkins started plans around 1943 to implement a social insurance scheme to cover workers when they had an illness, experienced nonindustrial accidents, or needed maternity care or hospitalization.⁵¹ Yet it would take half a century to make progress at the federal level to help workers with these issues.

The first step was the Pregnancy Discrimination Act of 1978, which protects some new mothers from being fired and may provide them with access to some benefits, depending on their employers' policies. It amends Title VII of the Civil Rights Act to make it clear that sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. But the Pregnancy Discrimination Act excludes employers with fewer than 15 employees, meaning that 15 percent of the workforce is automatically excluded.⁵²

While this was a step forward, it did not establish a right to job-protected leave or other benefits specifically for pregnant workers. Even workers covered by the Pregnancy Discrimination Act may lack the protection they need to take time away to give birth and recover from it. A number of federal courts have interpreted the Pregnancy Discrimination Act to mean that employers that do not allow workers any leave or extremely limited leave to recover from an illness or a disability are under no obligation to provide leave to pregnant workers⁵³ or accommodate pregnancy-related health issues. Instead, the employer can legally fire the pregnant worker.⁵⁴ This means that many workers suffering from temporary, pregnancy-related disabilities are without any protection in the workforce.

The Family and Medical Leave Act was the first national legislation to provide workers with the right to take job-protected unpaid leave.⁵⁵ Passed and implemented in 1993, the FMLA allows eligible workers to take up to 12 weeks of unpaid, job-protected leave to recover from a serious illness; care for an ill family member; care for a newborn, newly adopted, or foster child; or for military purposes.⁵⁶ The FMLA was an accomplishment because it was the first federal legislation to give workers access to time off to provide care.

The FMLA was signed into law eight years after its first introduction in Congress. President George H.W. Bush vetoed it twice, and President Bill Clinton made it law in February 1993.⁵⁷ Similar to the FLSA, the FMLA built on policies that developed in the states and followed in the footsteps of the 34 states that had already implemented some type of family and medical leave legislation.⁵⁸ Twenty-three of these states had laws that covered both private- and public-sector workers, and 11 had laws that only covered state employees.⁵⁹ Twelve states, as well as the District of Columbia, had laws in place prior to the FMLA that required firms to offer job-protected maternity leave.⁶⁰

Also similar to the FLSA, the FMLA has been amended over time to help certain groups of workers better manage family responsibilities. (see Table 2) The FMLA was amended in 2008 to provide two special military leave entitlements: 26 weeks of military caregiver leave and 12 weeks of qualifying exigency leave that arose from a military member's active duty.⁶¹ These military leave provisions were further clarified and expanded in 2010.⁶² The FMLA was also amended in 2009 to establish special FMLA eligibility requirements for flight crews, given the unique scheduling of the airline industry.⁶³ Most recently, as a result of the Defense of Marriage Act being declared unconstitutional in July 2013, same-sex couples married in 17 states and the District of Columbia are now entitled to more than 1,000 previously denied benefits and protections, including the FMLA.⁶⁴

Table 2: Legislative evolution of the FMLA

Date	Action	Substance
February 1993	FMLA signed into law	
2008	FMLA amendments	<p>The National Defense Authorization Act for Fiscal Year 2008 created two types of military family leave: qualifying exigency leave and military caregiver leave.</p> <p>Qualifying exigency leave “may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status.” The Department of Labor permits eligible employees who are family members of a covered military member to take FMLA leave for a broad list of activities that are considered qualifying exigencies, including attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative child care.</p> <p>Military caregiver leave may be taken by an eligible employee to care for a covered service member with a serious injury or illness.</p>
2009	FMLA amendments	The Airline Flight Crew Technical Corrections Act changed the way FMLA hours of work are calculated for airline flight crews, based on the unique scheduling requirements of the airline industry.
2010	FMLA amendments	<p>The National Defense Authorization Act for Fiscal Year 2010 modified and expanded the FMLA’s military caregiver leave and qualifying exigency leave provisions.</p> <p>The act “extended military caregiver leave to eligible employees whose family members are recent veterans with serious injuries or illnesses, and expanded the definition of a serious injury or illness to include serious injuries or illnesses that result from preexisting conditions.”</p> <p>The act also “expanded qualifying exigency leave to eligible employees with family members serving in the Regular Armed Forces, and added a requirement that for all qualifying exigency leave the military member must be deployed to a foreign country.”</p>

Sources: Gerald Mayer, “The Family and Medical Leave Act (FMLA): An Overview” (Washington: Congressional Research Service, 2012), available at <http://www.fas.org/sgp/crs/misc/R42758.pdf>; U.S. Department of Labor, “Military Family Leave Provisions of the FMLA (Family and Medical Leave Act): Frequently Asked Questions and Answers” (2008), available at <http://www.dol.gov/whd/fmla/fin-airrule/MilitaryFAQs.pdf>; U.S. Department of Labor, “Notice of Proposed Rulemaking to Implement Statutory Amendments to the Family and Medical Leave Act,” available at <http://www.dol.gov/whd/fmla/NPRM/index.htm> (last accessed December 2013).

Meeting the needs of modern families

Since its passage, U.S. workers have used the FMLA more than 100 million times to help balance the demands of the workplace and home.⁶⁵ In addition to helping address the dual demands of the workplace and family care, the FMLA also recognizes that workers need time off from work to recover from unexpected medical emergencies.⁶⁶

Since its introduction, advocates have viewed the FMLA as a standard that addresses workers’ needs. There is not, however, a record of discussion in congressional hearings about whether it should be an amendment to the FLSA.⁶⁷ During the aforementioned congressional hearings, however, policy experts repeatedly testified that the FMLA addressed a major gap in legislation and was consistent

with other standards already in place, including the FLSA, the Social Security Act, and the Occupational Safety and Health Act.⁶⁸ During a 1987 Senate hearing on the FMLA, Cheryle Mitvalsky, a member of the Association of Junior Leagues board of directors said:

*The history of fair labor standards is clear. Pressing social problems can be alleviated by a Federal standard. ... Like the Social Security Act and the child labor laws, parental and medical leave legislation would be consistent with a long and established history of labor relations.*⁶⁹

The FMLA passed with bipartisan support, as both Democrats and Republicans agreed that family and medical leave is important for families. Just before the bill passed in 1993, Sen. Christopher Dodd (D-CT) and Sen. Edward Kennedy (D-MA) stated during a hearing that the FMLA “established a basic standard of decency.”⁷⁰ Sen. Christopher Bond (R-MO) said that “as a society, we need to make family obligations something we encourage rather than discourage.”⁷¹ Secretary of Labor Robert Reich agreed with the senators’ statements, saying:

*From the standpoint of minimal decency, minimal fairness, and from the standpoint of good business sense, pushing and prodding and encouraging our companies and our work force, pushing them into the 21st century, this bill is critical. ... The FMLA will signal a turning point in the history of American work force policy under the Clinton administration.*⁷²

A good protection, but more to do

Although the FMLA helps workers balance work and care, not all eligible workers can afford to take unpaid time off. According to a 2012 survey conducted by the U.S. Department of Labor and Abt Associates, 46 percent of workers who needed leave but did not take it said that they could not afford to take it without pay.⁷³ Furthermore, about one-third of workers who took partial paid or unpaid leave cut their leave short due to lack of pay.⁷⁴ Today, the majority of families receive most of their income from employment, meaning that any disruption in employment could have significant impacts on finances.⁷⁵ In 2001, 25 percent of dual-income families and 13 percent of single-parent families who filed for bankruptcy did so after missing two or more weeks of work due to their own illness or the illness of a family member.⁷⁶

The fact that the FMLA is unpaid makes it that much harder for men to take time away from work, as they continue to bring home a significant portion of family earnings. Researchers have found that when family and medical leave is paid, men are more likely to take it in order to care for a new child or sick family member. In *Time Off with Baby: The Case for Paid Care Leave*—a 2012 book by Edward Zigler, Susan Muenchow, and Christopher J. Ruhm—the authors show that the share of men taking paid leave in California has steadily increased since the start of the program in 2004.⁷⁷ However, men in California are still more likely than women to take shorter lengths of leave.⁷⁸

Furthermore, while the FMLA provides a needed protection for workers, eligibility requirements follow a traditional model of employment, which leaves out a large percentage of the workforce. Eligibility for the FMLA is tied to a worker's current employer. Employees must have worked for their current employer for at least 12 months, though not necessarily consecutively; provided at least 1,250 hours of service for their current employer in the year preceding the leave; and work for a covered employer, a private employer with 50 or more employees in a 75-mile radius, a state or local government, or a public or local education agency.⁷⁹ These rules left 4 in 10 workers—41 percent—ineligible for leave in 2012.⁸⁰

The exclusion of small firms leaves more than one-third of workers categorically ineligible to take job-protected leave.⁸¹ But even workers with larger employers often do not qualify due to the FMLA's minimum job-tenure and hour requirements, which are tied to working with a single employer. This leaves out many workers who need access to leave. Among African American workers ages 18 to 25 with a child under age 2 at home—exactly the kind of worker who needs access to job-protected leave—48 percent had been at their jobs for less than a full year in 2006, making them categorically ineligible for leave on the job-tenure criteria alone.⁸² Part-time workers, many of whom work part time for caregiving or child care reasons, take longer to meet the hours-of-service requirement, even if they have more than one job.

Tying eligibility to a single employer is incompatible with the composition of today's workforce and puts younger parents and caregivers at a disadvantage.⁸³ Today, workers are much more likely to switch jobs throughout their career rather than work for one employer and make their way up the ladder in the company. According to the Bureau of Labor Statistics, workers ages 18 to 48 held 11.3 jobs on average between 1978 and 2010, changing jobs about once every two years.⁸⁴ Furthermore, younger workers at the start of their careers are more likely to switch jobs. Requiring employees to work for their current employers for at least 12 months may result in workers staying in unsuitable jobs to keep their FMLA eligibility.

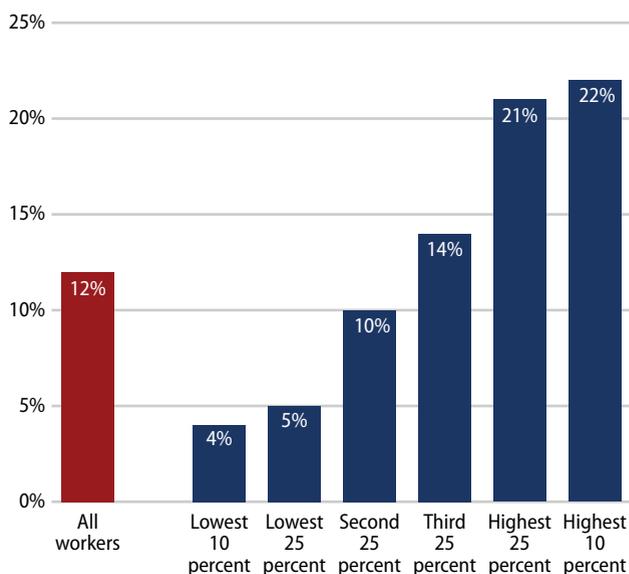
Basic labor standards 3.0: Family and medical leave insurance

The lack of paid family and medical leave insurance creates challenges for families and is the new policy frontier. Too many workers lack the protections of the Family and Medical Leave Act, and too many cannot make use of unpaid leave because they cannot afford it. The reality is that workers need to take time off from work for caregiving regardless of whether they are covered by the FMLA or can afford it. Family and medical leave insurance, also known as paid family and medical leave, would provide a critical protection to America's workforce by providing wage replacement to workers who take leave. It would help families be less financially vulnerable as they balance work, illness, and family care.

Most workers not only hold down a full-time job but, at some point in their career, they also take care of either young children or ailing family members. But even though the majority of U.S. workers will need to take leave some time during their careers, employers have not stepped in to provide this benefit or other work-family benefits.⁸⁵ (see Figures 1–5) The National Compensation Survey, which is a survey the Bureau of Labor Statistics conducts of employers nationwide, reports that only 12 percent of workers received paid family and medical leave in 2013.⁸⁶ (see Figure 1) One in four private-sector workers have access to employer-provided temporary disability insurance, which can be used to recover from a serious illness or pregnancy but cannot be used to care for a sick family member or bond with a new child.⁸⁷ (see Figure 2)

Employers often view paid family and medical leave as a perk for higher-paid workers, and too often, low- and middle-wage workers, young

FIGURE 1
Share of workers with paid family leave through their employer, by average wage



Notes: Includes all private industry workers. The categories above are based on the average wage for each occupation surveyed. In 2013, the states of California and New Jersey required paid family leave coverage. Source: Bureau of Labor Statistics, Table 32. *Leave benefits: Access, private industry workers, National Compensation Survey, March 2013* (U.S. Department of Labor, 2013), available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table21a.pdf>.

workers, less-educated workers, and workers of color do not have access to paid family and medical leave. Workers whose wages are in the lowest 25 percent of average wages are approximately four times less likely to have access to paid family and medical leave than those in the highest 25 percent.⁸⁸ (see Figure 1)

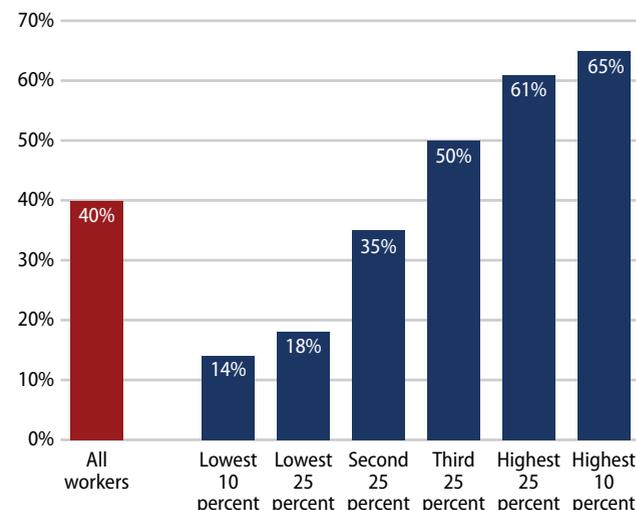
The United States can look to state programs and the experiences of other countries

There are a variety of models that policymakers can turn to in order to establish an effective national family and medical leave insurance program. There are three active state-level family leave insurance programs and five statewide disability insurance programs.⁸⁹ Also, all other developed nations provide some type of paid parental leave.⁹⁰

Over the past decade, four states have passed legislation to provide workers with family leave insurance.⁹¹ Three of these states have implemented family leave programs—California in 2004, New Jersey in 2009, and Rhode Island in 2014.⁹² The fourth state, Washington, passed a parental leave law in 2007 but has since delayed it due to lack of funding mechanisms.⁹³

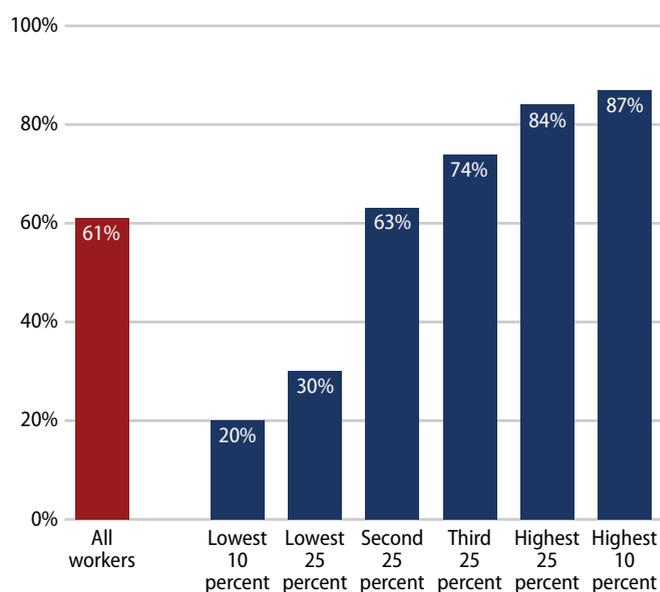
Family leave insurance programs in California, New Jersey, and Rhode Island are extended provisions of the states’ temporary disability insurance programs. California’s and New Jersey’s programs offer eligible workers up to six weeks in a 12-month period to bond with a newborn or care for an ill family member.⁹⁴ California’s family leave program currently offers eligible workers wage replacement at 55 percent of their usual weekly earnings, up to a cap of \$1,075 per

FIGURE 2
Share of workers with short-term disability insurance through their employer, by average wage



Notes: Includes all private industry workers. The categories above are based on the average wage for each occupation surveyed. The states of California, Rhode Island, Hawaii, New Jersey, and New York require temporary disability insurance, or TDI, coverage.
Source: Bureau of Labor Statistics, Table 16. *Insurance benefits: Access, participation, and take-up rates, private industry workers, National Compensation Survey, March 2013* (U.S. Department of Labor, 2013), available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table12a.pdf>.

FIGURE 3
Share of workers with paid sick days through their employer, by average wage



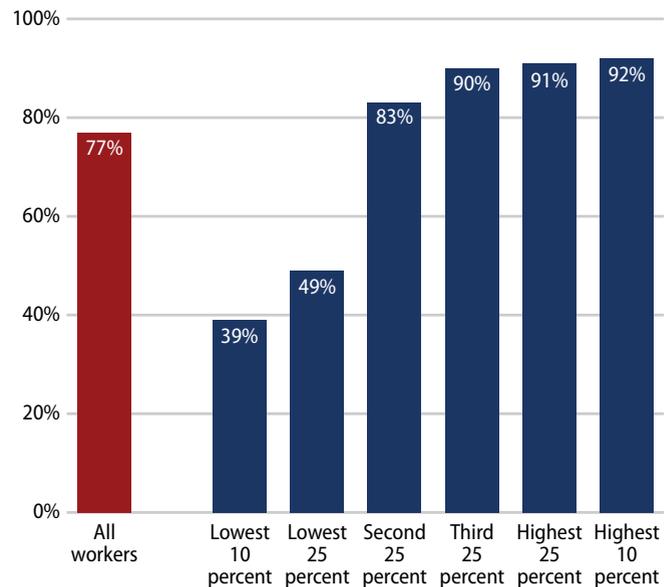
Notes: Includes all private industry workers. The categories above are based on the average wage for each occupation surveyed. The state of Connecticut, the District of Columbia, San Francisco, and Seattle require paid sick days coverage.
Source: Bureau of Labor Statistics, Table 32. *Leave benefits: Access, private industry workers, National Compensation Survey, March 2013* (U.S. Department of Labor, 2013), available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table21a.pdf>.

week;⁹⁵ the program is funded by an employee-paid payroll tax.⁹⁶ And New Jersey’s family leave insurance program offers eligible workers wage replacement at two-thirds of their average weekly wage, with a maximum of \$595 per week.⁹⁷ The program is fully funded by employees,⁹⁸ and its temporary disability insurance program is funded by both employee and employer contributions, as are Hawaii’s and New York’s.⁹⁹ As of this year, Rhode Island provides workers with four weeks of temporary caregiving leave. The program is employee funded with benefits capped at \$752 per week.¹⁰⁰

We can also look abroad to see how other countries have implemented paid family and medical leave. The United States is the only developed country that does not include paid leave as part of a package of basic labor protections.¹⁰¹ All EU member states provide some form of paid parental leave, though the specific leave lengths and wage replacement amounts vary by country.¹⁰² At a minimum, member countries must provide four months of unpaid parental leave for each parent for the birth or adoption of a child under Directive 2010/18/EU.¹⁰³ This directive provides a uniform unpaid job-protected leave standard for all member-state workers.¹⁰⁴

Other English-speaking countries have all implemented some form of paid family and medical leave. In Canada, for example, paid maternity and parental leave is offered through the country’s employment insurance program. Eligible workers outside the province of Quebec receive 15 weeks of paid maternity leave and 35 weeks of paid parental leave to share between parents.¹⁰⁵ As of 2006, Quebec’s Parental Insurance Policy is responsible for providing maternity, paternity, parental, and adoption leave benefits to Quebec workers.¹⁰⁶ Working Quebecois mothers are entitled to 15 to 18 weeks of paid maternity leave, while working fathers are entitled to 3 to 5 weeks of paid paternity leave. In addition, working parents are able to share 25 to 32 weeks of paid parental leave.¹⁰⁷ Regardless of province, Canadian workers are eligible for up to six weeks of paid caregiving leave, known as compassionate care benefits. Workers can use compassionate care benefits, which are also offered through employment insurance, when providing care to seriously ill family members who have a significant risk of death in the next six months.¹⁰⁸

FIGURE 4
Share of workers with paid vacation through their employer, by average wage

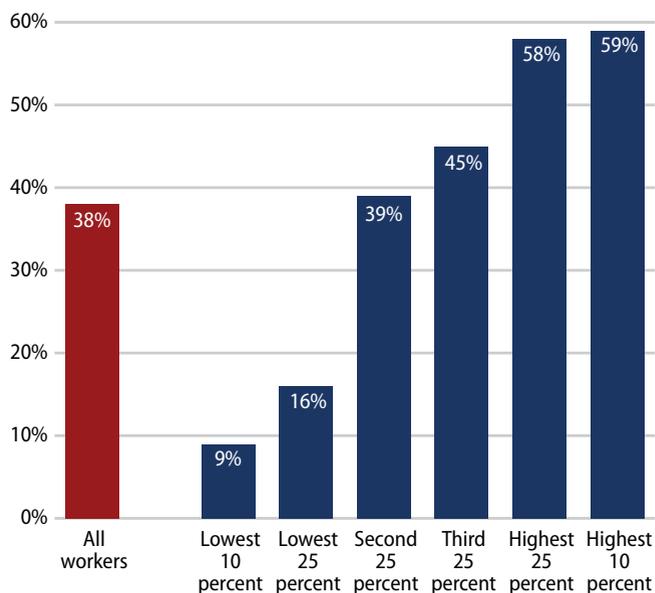


Notes: Includes all private industry workers. The categories above are based on the average wage for each occupation surveyed.
Source: Bureau of Labor Statistics, *Table 32. Leave benefits: Access, private industry workers, National Compensation Survey, March 2013* (U.S. Department of Labor, 2013), available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table21a.pdf>.

In Australia, the National Employment Standards established unpaid parental leave and paid personal and caregiver leave, the latter of which allows time to recover from an illness or care for an immediate family member.¹⁰⁹ As of 2011, Australian parents are eligible for up to 18 weeks of paid parental leave at the national minimum-wage level—currently a little less than \$15.00 per hour in U.S. dollars—to care for a newborn or newly adopted child.¹¹⁰

The United Kingdom provides maternity, paternity, and parental leave to its workers to help them manage caregiving responsibilities. Working mothers can receive statutory maternity pay for 39 weeks and take maternity leave for up to 52 weeks.¹¹¹ Working fathers are eligible for one to two weeks of paid ordinary paternity leave and up to 26 weeks of paid additional paternity leave.¹¹² Parents can also take up to 18 weeks of unpaid parental leave.¹¹³ Starting in April 2015, parents will be able to share up to 50 weeks of existing maternity leave and return to their jobs afterward.¹¹⁴

FIGURE 5
Share of workers with paid personal leave through their employer, by average wage



Notes: Includes all private industry workers. The categories above are based on the average wage for each occupation surveyed.

Source: Bureau of Labor Statistics, *Table 32. Leave benefits: Access, private industry workers, National Compensation Survey, March 2013* (U.S. Department of Labor, 2013), available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table21a.pdf>.

A proposal for federal family and medical leave insurance

Too often, people who need family or medical leave face financial hardship or the impossibility of taking unpaid leave. A new family and medical leave insurance program would make leave affordable and build on the FMLA's best practices, tying leave to the worker—rather than tying it to the child or family, as many European countries do. Based on what we have learned from experiences at the state level and in other countries—as well as what we already know about how to craft an effective program—the following sections outline the key components of a federal family and medical leave insurance program.

A realistic definition of need and a fair definition of family

A family and medical leave insurance program should build on the Family and Medical Leave Act's definitions of the circumstances for family and medical leave. It should provide eligible employees with at least 12 weeks, or 60 workdays, of paid family and medical leave within a one-year period.¹¹⁵ If a program were to build on the FMLA's qualifying leave criteria, employees would be able to take leave for their own serious illness, including pregnancy or childbirth; to care for an ill family member, including a child, parent, or spouse; to care for a newborn, newly adopted, or foster child; to care for an injured family member who is in the military; or to deal with exigencies that arise from a service member's deployment.¹¹⁶

Given the realities of how families live today, however, any new family and medical leave insurance program should broaden the definition of family to include domestic partners, siblings, nieces and nephews, aunts and uncles, and grandchildren and grandparents. Ten states and the District of Columbia have already done this to some extent.¹¹⁷ The need for time off to provide care for extended kin may be even more important to workers in low-wage jobs, who are currently the least likely to get this kind of benefit and more likely to rely on extended kin to help with care.¹¹⁸ Furthermore, as of this writing, 17 states and the District of Columbia recognize same-sex marriage. Therefore, excluding domestic partners is inconsistent with emerging views on what constitutes a family.¹¹⁹

Family and medical leave insurance also should not discriminate against men. Tying leave to the worker allows and encourages men to take up leave.¹²⁰ While the United States is the only developed-nation member of the Organisation for Economic Co-operation and Development, or OECD, that does not provide paid maternity leave, it does offer the same amount of leave to both parents, provided they both work and are eligible for the FMLA. In other OECD nations, a portion of paid leave is provided as blocks of leave that can be taken by either parent in whatever combination they see fit.¹²¹

Inclusivity

All workers should have access to family and medical leave insurance. From a fairness standpoint, eligibility should not be based on a workers' current employer but rather on their overall work history. If workers have paid into the system, both in terms of payroll tax contributions and time, they should be able to take leave as needed.

To make sure this is the case, policymakers can draw on what we have learned from states that have family leave insurance and from other federal benefit programs. As described above, the FMLA eligibility criteria disproportionately limit the FMLA eligibility of low-wage workers, women workers, workers of color, and younger workers. But states and other federal programs have done a better job of crafting more-inclusive programs.

One option is to tie eligibility to lifetime work history rather than current employer and job tenure, as is done in the programs administered by the Social Security Administration. For example, the eligibility criteria for Social Security Disability Insurance is more comprehensive and equitable than the FMLA since the amount of time employed in the workforce, rather than tenure with a specific employer, determines Social Security Disability Insurance eligibility. The amount of money an individual has paid into the fund in all working years, not just over the past 12 to 18 months, determines the level of wage replacement.¹²² The number of credits necessary—and the time period in which they must have been earned—in order to be fully insured by Social Security Disability Insurance depends on a worker's age.¹²³

Include workers in firms of all sizes

Workers pay into family and medical leave over time, and benefit payments are possible through the pooling of risk and resources. A nonuniversal social insurance program would lead to unfair outcomes for too many workers. Exempting small businesses from a national paid family and medical leave program would mean that workers could pay into the system for decades, only to take a job with a noncovered employer and no longer be eligible for the benefits for which they have already paid. This is why the five states with temporary disability insurance programs, as well as the state paid family and medical leave programs, extend eligibility to all employees as long as they have a sufficient wage and earnings history, regardless of employer size. Arguments can be made as to why smaller employers should not have to offer job-protected leave, but they do not make sense for a system that workers are paying into over the course of their working lives.

The self-employed should also be included in any family and medical leave insurance program, particularly because our economy has large numbers of self-employed workers, independent contractors, and contingent workers.¹²⁴ These workers would be given access to this benefit when they are unable to work, regardless of their current employers. In California and New Jersey, self-employed workers are eligible for family leave and can opt in to coverage.¹²⁵

Benefits generous enough to have a meaningful effect

The amount of wage replacement for paid leave should be at a level that supports low-wage workers and promotes gender equity in providing care. In terms of benefit levels, federal policymakers could follow the lead of New Jersey, which provides a benefit that is equal to two-thirds of a worker's average weekly wages.¹²⁶ This level of wage replacement can help support low-wage workers who need to take leave. In order to keep costs under control and make sure that funds are well targeted, federal policymakers may decide to cap the benefit level. Here, we can learn from California, where benefits are currently capped at \$1,075 per week.¹²⁷

In addition, providing wage replacement for leave would likely create incentives for men and women to share care responsibilities. Despite the changing structure of working families in recent decades, men's earnings are still critical to families' financial security, which makes it difficult for them to take unpaid leave from work. Family leave insurance increases the likelihood that men will take leave—and take it for longer durations.¹²⁸

Consideration of an already-existing infrastructure

There are a number of ways to administer family and medical leave insurance, and the choice of how to do it will affect the program's design and implementation.

Key criteria are:

- The agency must have access to all workers' employment and earnings records.
- The agency must be able to determine medical eligibility.
- The agency must be able to deliver payment in a timely manner.

State unemployment insurance agencies and the Social Security Administration, or SSA, already do similar tasks, and there are advantages and disadvantages to implementing a national family and medical leave insurance program through either of them. Both have offices in every state, so either could administer a federal program, and both could make eligibility determinations based on employment or earnings, as both track that data. But if we base our choice on the measures outlined above, it is evident that the SSA would be the better fit in terms of policy.

The SSA already has in place many of the elements that a family and medical leave insurance system would need. It already administers benefits to retirees, disabled workers, and family survivors. In addition, its system already tracks every U.S. worker's employment and earnings history and has a credit system to determine an individual's benefit eligibility.¹²⁹ The SSA has a system compatible with the proposed family and medical leave insurance program, making it relatively easy to create a new office and new trust fund within the agency. The federal leave program would be within an agency that has a culture of providing people much-needed benefits and experience with making medical determinations.

Administering family and medical leave insurance through the SSA would also face hurdles, not least of which would be the political shock of believing that we can add a new federal social insurance program to the basket of those we already have, something we have not done in more than 40 years. Once we push through this issue, however, the other hurdles will be easier to overcome. The leave program could look to other Social Security programs to learn how to make medical determinations, process claims, and distribute benefits quickly and efficiently.¹³⁰

Adding family and medical leave insurance to the unemployment insurance, or UI, system would face a series of legislative hurdles. There are also serious policy concerns. First, the UI system is implemented at the state level, meaning that there is not just one UI system; there are 50. Administering paid leave under the UI system would require expanding the current federal-state partnership in which the U.S. Department of Labor oversees the administration of state UI agencies. All 50 states would need to grant their respective agencies the authority to administer the UI program and partner with the federal government.¹³¹ This would be a heavy political lift, especially given our nation's recent experience with such a partnership in the form of Medicaid expansion under the Affordable Care Act.¹³² States that refuse to grant authority would forfeit the federal funds for program operations and benefits, and state residents would not have access to a critical program even though they contributed to it.¹³³ If we administer family and medical leave insurance through SSA, the primary legislative hurdle is at the federal level.

Second, the state UI systems are not equipped to handle medical claims, including some qualifying events for paid leave.¹³⁴ Handling medical claims would require a ramp-up in the capacity of local unemployment insurance offices. SSA has experience with medical determinations for disability and would be well-positioned to learn from that process to set up the new process required for family and medical leave insurance.

Third, if we followed the UI model, state UI agencies would be responsible for determining eligibility and paying out benefits. This would, in all likelihood, result in disparities in access to paid leave. Currently, state UI eligibility requirements result in a disparity in the share of UI recipients by state that ranges from less than 20 percent to almost 70 percent.¹³⁵ Part-time, low-wage, and seasonal workers are disproportionately ineligible for unemployment insurance.¹³⁶ This kind of inequality poses a serious problem for a paid family and medical leave program, as the workers currently most likely to have access to paid leave are those at the very top of the wage distribution, and those low-wage, part-time, and seasonal workers who struggle with care issues and their own health are least likely to receive it. These workers are also among those likely to lose a job due to health or family care issues; this only exacerbates their inability to climb up the wage ladder and increases the likelihood that they will have to rely on aid programs such as welfare.¹³⁷ If the program is established within the SSA, policymakers can work toward ensuring adequate benefits for all workers.

Fourth, the structure of UI financing is completely wrong for family and medical leave insurance. Currently, state UI systems are funded by state unemployment trust funds, which are financed by taxes levied on employers and are typically “experience rated.”¹³⁸ UI is insurance for job loss due to an employer decision; the system, therefore, is set up to discourage employers from laying off workers and, thus, discourage them from abusing UI. As part of this, when an employee makes a UI claim, their former employer’s tax rate rises—that is, the tax rate is based on the UI system’s experience with that employer. This is not an effective incentive within a family and medical leave insurance program. Employers’ paid leave contributions should not be experience rated. If employers’ tax rates rise when their employees take leave, it could potentially lead employers to discourage them from using paid family and medical leave. Clearly, the rules can be changed, but that would require every state to debate and pass them. Adding a new way to collect UI taxes and encouraging a new culture of benefit access may pose significant challenges.

Nevertheless, there has been experimentation with the UI route. In 2000, the Clinton administration implemented Birth and Adoption Unemployment Compensation, which allowed states the flexibility to implement paid parental leave within their UI systems.¹³⁹ The Bush administration, however, rescinded the rule in 2003 before any state took advantage of it.¹⁴⁰ Legal challenges stated that the new rule was inconsistent with federal Unemployment Compensation law and conflicted with interpretation of the Federal Unemployment Tax Act.¹⁴¹ There were also concerns about lower state UI fund balances due to the recession in the early 2000s. According to the U.S. Department of Labor, the only effect of the regulation’s removal was that states could no longer use their UI funds to pay for paid parental leave.¹⁴²

Regardless of where a new program is housed, it will need a new standalone office. It also makes sense to set up a trust fund specifically for family and medical leave, as policymakers did in California, New Jersey, and Rhode Island. We estimate that fully funding a program based on the parameters above would require a new payroll tax of about 0.4 percent per worker; this could be split between employers and employees.

The Family and Medical Insurance Leave Act

The Family and Medical Insurance Leave Act of 2013—also known as the FAMILY Act—proposes a family and medical leave insurance program that could provide paid leave for nearly every U.S. worker.¹⁴³ Introduced by Rep. Rosa DeLauro (D-CT) and Sen. Kirsten Gillibrand (D-NY), the FAMILY Act incorporates the key components of a national paid leave program outlined in the previous section.

The FAMILY Act would relieve the financial burden of taking unpaid time off for many families. The proposed leave program would provide benefits equal to 66 percent of an individual's typical monthly wages—such as New Jersey's program does—up to a capped amount.¹⁴⁴ These benefits would likely incentivize men and women to share care responsibilities. Despite women's growing role as family breadwinners, men continue to contribute a significant amount to families' earnings, making it difficult for them to take unpaid leave from work. Evidence from California suggests that when family leave is paid, men are more likely to take leave.¹⁴⁵

The legislation ties family and medical leave to the worker, rather than to the child or family. Each eligible worker is entitled to 12 weeks—or 60 days—of paid leave.¹⁴⁶ Just as they can under the FMLA, workers have the ability to take leave for their own serious illness, including pregnancy or childbirth; to care for an ill family member; to care for a newborn, newly adopted, or foster child; to care for an injured family member who is in the military; or to deal with exigencies arising from a service member's deployment. The FAMILY Act would expand the definition of family to include domestic partners.¹⁴⁷

The proposed national family and medical leave program would cover all workers who qualify for Social Security benefits. Unlike under the FMLA, workers in all companies, regardless of size, would be eligible for family and medical leave insurance under the FAMILY Act. Expanding eligibility would especially benefit young, part-time, low-wage workers, who are often ineligible for unpaid leave under the FMLA.¹⁴⁸

The FAMILY Act proposes administering the paid leave program through a new Office of Paid Family and Medical Leave within the SSA. The program would tap into existing infrastructure and build on the universality of Social Security. Almost every worker pays into the system and, therefore, is eligible for benefits. Family and medical leave insurance benefits would be paid through a newly created separate insurance fund, which would be funded by employee and employer payroll contributions—each two-tenths of 1 percent of a worker's wages or 2 cents for every \$10 in wages.¹⁴⁹

Likely effects of family and medical leave insurance

Based on the experience of California and New Jersey, as well as other countries, we know a good deal about the potential effects of paid family and medical leave on workers, their families, employers, communities, and the economy.¹⁵⁰

Expand the labor force and help grow the economy

Research indicates that family and medical leave insurance programs provide workers with flexible options to remain in the labor force while taking care of a loved one or recovering from an illness or pregnancy. “Female Labor Supply: Why is the US Falling Behind?”, a 2013 study by Cornell University economists Francine D. Blau and Lawrence M. Kahn, finds that one reason why the United States fell from having the sixth-highest female labor-force participation rate among 22 OECD countries in 1990 to having the 17th-highest rate in 2010 was because it failed to keep up with other nations and adopt family-friendly policies such as parental leave.¹⁵¹ Along these lines, Christopher J. Ruhm and Jackqueline L. Teague found that paid parental leave policies are associated with higher employment-to-population ratios and decreased unemployment for all workers.¹⁵² Likewise, the authors found that moderate leaves—10 weeks to 25 weeks—are associated with higher labor-force participation rates for women.¹⁵³

Although workers may take leave from work in the short term, family and medical leave insurance helps workers stay in the labor force, increasing labor-force participation and growing the economy in the long term. In his study of paid parental leave in European countries, Ruhm finds that leave legislation increases the female employment-to-population ratio by 3 percent to 4 percent—and even more for women of childbearing age.¹⁵⁴ Similarly, a study of paid maternity leave in OECD countries notes that an added week of paid maternity leave raises labor-force participation rates of young women ages 20 to 34 an average of 0.6 percentage points to 0.75 percentage points.¹⁵⁵ The positive effect of paid leave on labor-force participation seems to be greater with shorter to moderate leaves. A recent study, for example, found that the expansion of paid leave in Norway from a moderate leave of 18 weeks to a longer leave of 35 weeks had no effect on labor-force participation.¹⁵⁶

Help reduce employee turnover and limit employment disruptions for workers

Results from Eileen Appelbaum and Ruth Milkman’s 2009 and 2010 surveys of California employees and employers provide evidence of this: Workers with low-quality jobs who used family leave insurance while on leave were more likely to return to their pre-leave employer—82.7 percent—than those with low-quality jobs who did not—73 percent.¹⁵⁷

Family leave insurance in California has reduced employee turnover and employer turnover costs. In 2009 and 2010, 93 percent of employers surveyed by Appelbaum and Milkman reported that family leave insurance had “a positive effect” or “no noticeable effect” on employee turnover.¹⁵⁸ Furthermore, economists Arindrajit Dube and Ethan Kaplan estimated that California’s family leave insurance program would save employers \$89 million per year in turnover reduction.¹⁵⁹

Employers benefit when workers return to their pre-leave jobs. Zigler, Muenchow, and Ruhm note in their 2012 book that continuity of employment among workers taking leave could help protect specific human capital.¹⁶⁰ If workers quit their jobs in order to take leave, employers need to hire and train new employees, which is costly. The median cost to employers of worker turnover is approximately 21 percent of an employee’s annual salary.¹⁶¹ In addition to added costs to the employers, workers need to spend time looking for a new job and might have difficulty finding a position that is a good match.

Limited or positive effects on business operations

A study of companies listed in *Working Mother* magazine’s “100 Best Companies for Working Mothers” finds that the availability and usage of work-family programs and policies has a positive impact on company profits.¹⁶² The authors explain that employers providing work-family programs can attract higher-quality workers, reduce absenteeism and tardiness among employees, and reduce employee turnover. As a result, these programs increase employee productivity, which in turn increases employer profitability.¹⁶³

Another study finds that work-family policies positively affect firms’ value. Using data collected from Fortune 500 companies, Professors Michelle M. Arthur and Alison Cook found that announcements in *The Wall Street Journal* of a company

instituting work-family policies increased the share price of the firm the same day.¹⁶⁴ The authors explain that investors believe that the benefits of the work-family policies will outweigh the costs of the program, thereby increasing the expected profitability of the company.¹⁶⁵

Furthermore, family and medical leave insurance can generate cost savings for employers since it can be coordinated with employer-provided benefits and reduce employee-turnover costs.¹⁶⁶ California employers report that the state's family leave insurance program has had no effect or a positive effect on business operations: 87 percent of employers surveyed by Appelbaum and Milkman in 2009 and 2010 noted that family leave did not result in any cost increases, and 60 percent of employers reported that they coordinated their benefits with the family leave program.¹⁶⁷ Herb Greenberg—founder and CEO of Caliper, a human resources consulting firm in New Jersey—has observed similar reductions in turnover costs:

*Family Leave Insurance ... has been a huge positive for Caliper. When you think about the cost of individuals leaving, the cost of seeking new employees, the cost of maybe hiring the wrong person [and] training them, etc., and you compare that to the pennies that Family Leave costs you—there is just no comparison in terms of the pure balance sheet.*¹⁶⁸

With potential increases in employee productivity and reduced turnover costs, family and medical leave insurance can benefit rather than disrupt business operations. Ninety-one percent of employers in California, for example, reported “a positive effect” or “no noticeable effect” on business profitability and performance upon instituting family leave.¹⁶⁹

Gives workers a way to stay in the labor force while taking leave, thereby increasing their lifetime earnings and retirement savings

A recent study on U.S. caregiving costs calculated that women lose a total of \$274,044 and men lose a total of \$233,716 in lifetime wages and Social Security benefits by leaving the labor force early due to caregiving responsibilities.¹⁷⁰

Family and medical leave increases the likelihood that workers—especially women—will return to their pre-leave jobs and therefore continue to earn their pre-leave wages. The U.S. Census Bureau reports that of the 80.4 percent of working mothers who returned to their pre-first-birth employer, 69 percent had the same hours, pay, and skill level as before they had children. Conversely, only 25.3 percent

of working mothers who returned to a different employer had the same hours, pay, and skill level as before they had their first child.¹⁷¹ Some of these declines in wages could be due to mothers choosing to reduce their work hours in order to spend time with their newborns. These declines in wages could also be due to women having to find new employment after taking leave. As Joyce P. Jacobsen and Laurence M. Levin find, women who exit the labor force to take leave often return to wages that are lower than those of women who remain in the labor force.¹⁷²

Research by Columbia University Professor Jane Waldfogel suggests that family and medical leave insurance could help close the wage gap between workers who provide care and those who do not. In her study of maternity leave policies in the United States pre-FMLA and Britain, Waldfogel finds that the so-called family gap—the wage gap between mothers and other working women—is mostly eliminated for mothers who have access to unpaid or paid, job-protected maternity leave.¹⁷³ Women who had access to such leave were more likely to return to their original employer and experienced a positive wage effect that offset the family wage gap.¹⁷⁴ Similarly, a study by Rutgers University’s Center for Women and Work found that working mothers who take family leave for 30 or more days for the birth of their children are 54 percent more likely to report wage increases in the year following their children’s birth, relative to mothers who did not take family leave.¹⁷⁵ In addition, the Center for Women and Work found that women who took family leave after their children’s birth were 39 percent less likely to receive public assistance in the following year, compared to mothers who returned to work but did not take any leave.¹⁷⁶

Incentivize men and women to share care responsibilities

Although women make up almost half the labor force and a majority of families now rely on their incomes for financial stability, women, rather than men, often take on the role of caregiver. When family and medical leave insurance is offered, however, the take-up rate among men is much higher. The percentage of family leave taken by men in California has increased since the institution of its program: Men’s share of parent-bonding family leave—as a percentage of all parent-bonding family leave claims—increased from 17 percent from 2004 to 2005 to 29.2 percent from 2011 to 2012.¹⁷⁷ In addition, men in California are taking longer leaves than they did before family leave insurance was available.¹⁷⁸ Studies of international family leave programs find similar results. Child-bonding or caregiving family leave—specifically set aside for fathers—significantly increases the length and take-up of leave among men.¹⁷⁹

Family and medical leave insurance could help counteract the cultural norm that caregiving is within the woman's realm. Although women today are playing a larger role as breadwinners in the majority of American families, women are more likely than men to pick up the second shift of caregiving and housework.¹⁸⁰ Family and medical leave insurance would provide the opportunity to balance care between men and women, resulting in fewer disruptions in employment and earnings for women.

Conclusion

Updating our nation's labor standards is an important, ongoing goal. Today's labor force needs a comprehensive set of inclusive basic labor protections that help workers limit their hours and promote workplace flexibility. These labor protections should not work against working families but rather work with them, helping them balance work and home. The next step toward updating our protections is establishing a national family and medical leave insurance program. The program proposed in the FAMILY Act would address the new realities of our workforce, providing workers with the flexibility to address their caregiving responsibilities while they remain in the labor force.

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