

## PART 4 OF 4

# PAID FAMILY LEAVE

## WHAT COULD A FEDERAL PAID LEAVE INSURANCE PROGRAM LOOK LIKE?

LAUREN DAMME, NEXT SOCIAL CONTRACT INITIATIVE

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*The U.S. is one of the only countries in the world without a system of paid leave to support new families. Paid family leave in all other developed nations prove that policies that allow parents to spend adequate time with their newborn children do not undermine the economic growth and competitiveness of business. Paid parental leave policies are associated with lower infant mortality rates, better cognitive test scores and fewer behavioral problems for children, as well as fewer negative labor market consequences for mothers.<sup>1</sup> Workers without family leave send their sick children to school or daycare and go to work when ill themselves, leading to the costly spread of illness among the public.<sup>2</sup>*

*The Family and Medical Leave Act of 1993 (FMLA) has moved labor protections in the right direction, but leave is unpaid, and almost half of the American workforce is not protected. Low-income workers are especially unlikely to be covered. The FMLA's unpaid job protections punish parents, who must use their FMLA leave for parental leave at the risk of having to take unprotected sick leave or caregiving leave later in the same 12-month period. Unlike their counterparts in other democracies, American parents are forced to make difficult trade-offs between caring for a new child, recovering from their own serious illness, and giving care to seriously ill family members.*

*This series examines these issues in four parts:*

- 1) Paid Family Leave: Why the Family and Medical Leave Act fails to meet the needs of America's working families*
- 2) Paid Parental Leave: Among Developed Societies, the U.S. is an Outlier*
- 3) States lead the way: Paid family leave in California*
- 4) What could a federal paid parental leave insurance program look like?*

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## Paid Leave Legislation

At the federal level, there have been a number of proposals for a paid family leave program.<sup>a</sup> Proposals from both the House and Senate have recommended building upon the Family and Medical Leave Act (FMLA) to broaden coverage and provide paid leave, parental or otherwise. Appendix A summarizes relevant legislation from the 110<sup>th</sup> and 111<sup>th</sup> Congresses.<sup>3</sup>

## Three Models of Paid Leave

Paid family leave proposals, like those in the Healthy Families Act of 2009 or the Balancing Act of 2009, fall into three types of models, each with its own advantages and disadvantages.

**Unfunded mandates** upon businesses in which the employer is required to pay wages during qualified leave for a specified period of time, thus directly increasing the cost of labor. For example, The Healthy Families Act of 2009 (H.R. 2460/S.1152) proposed that employers with 15 or more employees allow their workers to accrue at least one hour of paid sick leave for every 30 hours worked, up to 56 hours per year. Combined with our system of insufficient enforcement, unfunded mandates upon businesses can often lead to discrimination in hiring and firing employees who get ill, not to mention those with chronic illnesses (this can be related to age discrimination) or those who may be responsible for a dependent family member. At the national level, this discrimination can lead to higher unemployment rates – and exclusion from employment-related benefits – among those who may most need a safety net. Costs of these mandates may also be pushed upon workers in the form of lower wages and cuts in other employer-sponsored benefits as companies strive to cut costs.

**Hybrid federal-state programs**, in which both federal and state governments contribute to the cost of leave. For example, the 2009 Family Income to Respond to Significant Transitions Act (H.R. 2339) proposed that the Secretary of Labor award grants to states to help pay for state programs providing wage replacement to individuals who take leave for reasons identified by the FMLA. This avoids placing greater demands upon businesses, but hybrid programs have their own problems. Federal-state programs are vulnerable to significant cuts during the economic downturns for the same reason that any partially- or fully state-funded program faces cutbacks when tax revenues dry up: all states (except Vermont) must adhere to balanced budget requirements and cannot borrow during downturns.<sup>4</sup> Any hybrid federal-state paid leave program will therefore fluctuate in its ability to support the workforce.

**Federal social insurance programs**, such as Social Security and Medicare, have been more successful and less controversial than jointly-funded state-federal programs such as Medicaid. At the same time they minimize demands upon businesses because the full costs of benefits are not borne solely by individual employers. The California Paid Family Leave insurance program operates in the same way but at the state level. There have been two recent proposals to establish social insurance programs to support paid leave: the Balancing Act of 2009 (H.R. 3047) and the less extensive Family Leave Insurance Act of 2009 (H.R. 1723), both of which proposed the establishment of a federal Family and Medical Insurance Program. In addition to legislative proposals, the Georgetown Law Workplace Flexibility 2010 and Berkeley Law Center on

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<sup>a</sup> The term ‘family leave’ tends to include leave for caregiving for both new children and seriously ill family members, as well as a worker’s need for leave to recuperate from their own serious illness, while ‘parental leave’ specifically refers to caregiving leave for parents with new children. Parental leave allows new parents to bond with their child without using leave they may need for the unforeseen serious illness of themselves or a loved one.

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Health, Economic & Family Security programs released a detailed proposal for “Family Security Insurance,” which includes a paid parental leave insurance program proposal, in December 2010.<sup>5</sup>

Funding paid parental leave through social insurance and employee contributions and administrative handling by the very-efficient Social Security Administration minimizes costs to employers, besides the cost of temporarily replacing some employees. Even these costs may be low, though – 96.6 percent of businesses in the California PFL evaluation temporarily shifted the work of employees on leave to other workers instead of hiring temporary replacements. Indeed, costs associated with paid leave may be somewhat offset by the savings gained from increased employee productivity in a healthy workplace, retention of valuable skills, and avoiding the cost of hiring and retraining new employees.

Opponents of paid leave argue that it will raise the cost of labor for businesses, discouraging job creation and encouraging outsourcing.<sup>6</sup> However, evaluations of the California Paid Family Leave program show a very different picture. First, 86.9 percent of employers, including small businesses, found that the PFL program resulted in no cost increases, and a further 8.8 percent stated that the program had generated cost savings through reducing employee turnover and reducing employer-sponsored benefit payments when paid leave was taken through the PFL program. Overall, after six years of experience with a paid leave system funded by payroll contributions and delivered through an existing insurance system, the vast majority – over 90 percent – of both small and large employers found that the insurance program had either no or positive impacts upon their business.<sup>7</sup>

Social insurance programs are more stable than state-based and hybrid federal-state programs. At their best, they offer portable, individual benefits independent of specific employers, which may also help to balance power between workers and employers and improve flexibility in the labor market, as workers become less likely to hold on to poorly-matched jobs simply to keep benefits.

## Conclusion

Policymakers have failed to address the needs of hardworking American families, and the lack of access to paid parental leave hurts children, frays family bonds, and can lead to poorer outcomes for our society as a whole. The average American employee has no access to paid parental leave; what is a ‘benefit’ for the lucky few in the U.S. is considered a basic workers’ right in most of the world. Although the FMLA was a step in the right direction, we must do more to enable workers to be good parents to their children without risking their jobs. The California Paid Family Leave program shows that not only is it possible to support working families, but that it is possible to do so with virtually no negative short-term economic impacts on individual businesses. A federal paid parental leave insurance program would guarantee that all contribute to and benefit from what is truly a public good: ensuring the growth of our nation by supporting healthy families and the next generation of Americans.

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- <sup>1</sup> C. Ruhm. Parental leave and child health. *Journal of Health Economics* (2000): 19(6): 931–960.
- S. Tanaka. Parental leave and child health across OECD countries. *Economic Journal* (2005): 115 (February): F7-F28.
- S. Desai; L. Chase-Lansdale ; R. Michael. Mother or market?: Effects of maternal employment on cognitive development of four year old children. *Demography* (1989) (26): 545–561.
- N. Baydar; J. Brooks-Gunn. Effects of maternal employment and child care arrangements in infancy on preschoolers’ cognitive and behavioral outcomes: Evidence from the children of the NLSY. *Developmental Psychology* (1991)(27): 918–931.
- W.J. Han; J. Waldfogel; J. Brooks-Gunn. The effects of early maternal employment on later cognitive and behavioral outcomes. *The Journal of Marriage and the Family* (2001)(63): 336–354.
- C. Ruhm. Parental employment and child cognitive development. *Journal of Human Resources* (2004)(39)(1): 155–192.
- C. Ruhm. The economic consequences of parental leave mandates: Lessons from Europe. *Quarterly Journal of Economics* (1998) (113)(1): 285–318.
- F. Jaumotte. OECD Economic Studies No. 37. Labour force participation of women: empirical evidence on the role of policy and other determinants in OECD countries. 2004.
- <sup>2</sup> Institute for Women’s Policy Research. Sick at Work: Infected employees in the workplace during the H1N1 Pandemic. February 2010.
- <sup>3</sup> Library of Congress Thomas and Levine, Linda, The Family and Medical Leave Act: Current Legislative Activity, CRS Report for Congress, Congressional Research Service, 7-5700, RL31760, 3 August 2010.
- <sup>4</sup> For more on the problems of a state-based social safety net, see:
- Lauren Damme. New America Foundation. Problems with a State-based Social Welfare System: The Great Recession Strains the Social Contract. Policy Paper Series. 2010.
- <sup>5</sup> Family Security Insurance: A new foundation for economic security. Georgetown Law Workplace Flexibility 2010 and Berkeley Law, university of California Center on Health, Economic & Family Security. December 2010. Available Online. <http://www.familysecurityinsurance.org/>
- <sup>6</sup> C. Lukas. IWF Policy Brief: Expanding the Family and Medical Leave Act and other government leave benefits: a preview of the 111<sup>th</sup> Congress. Brief 14. January 22, 2009.
- <sup>7</sup> E. Appelbaum and R Milkman. Leaves that Pay: Employer and worker experiences with paid family leave in California. Center for Economic Policy and Research, Center for Women and Work, Rutgers University, Institute for Research on Labor and Employment, UCLA, the Murphy Institute for Worker Education and Labor Studies, CUNY. January 2011.



## Appendix A

<b>Legislative Activity Related to the Family Medical Leave Act of 1993, 110th and 111th Congress</b>		
<b>Date</b>	<b>Name of Bill</b>	<b>Summary</b>
January '08- Signed	National Defense Authorization Act of FY2008, P.L. 110-181,	12 workweeks of unpaid leave for private sector employees in companies with 50 + workers and public agencies (FMLA Title I workers) dealing with issues arising from family members in the Guard or Reserves being called to active duty and 26 workweeks of unpaid leave to care for seriously injured or ill servicemembers.
October '09-Signed	National Defense Authorization Act of FY2010, P.L. 111-84	Extends NDAA FY2008 (above) to civil service (FMLA Title II) employees, allowing them to take leave due to foreign deployment of regular and reserve members of the Armed Forces, and allows military family caregiving leave to care for recent Armed Forces veterans.
December '09- Signed	Airline Flight Crew Technical Corrections Act, P.L. 111-119	Airline flight crewmembers who have worked or been paid for not less than 60% of their total monthly guarantee for the prior 12 months and who have worked or been paid for not less than 504 hours in the prior 12 months will be considered to have fulfilled the FMLA's hours-of-work requirement.
1/9/2009	H.R. 389 - Family Fairness Act of 2009	Eliminate the hours-of-service requirement, thereby entitling both part-time and full-time employees who worked for a covered employer for at least 12 months to 12 workweeks of FMLA leave.
1/22/2009, 1/29/2009	H.R. 626/S. 354 - Federal Employees Paid Parental Leave Act of 2009	Would (1) allow federal employees to substitute paid leave for unpaid leave available for the birth or adoption of a child, and (2) amend the Congressional Accountability Act and the FMLA to allow the same substitution for covered congressional employees and employees of the GAO and the Library of Congress.
2/3/2009	H.R. 824 - Family and Medical Leave Enhancement Act of 2009	Would amend FMLA to cover employees at worksites employing 25+ employees and allow employees to (1) take "parental involvement leave" and (2) take "family wellness leave" for routine family medical care needs, including eldercare, not to exceed four hours in any 30-day period, or 24 hours in any 12-month period.
3/25/2009	HR 1723 - Family Leave Insurance Act of	Creates national insurance program for paid family and medical leave, allows for equivalent state or private programs.
4/28/2009, 7/30/2010	H.R. 2132/S. 3680 - Family and Medical Leave Inclusion Act	Extends FMLA leave to care for a same-sex spouse, domestic partner, parent-in-law, adult child, sibling, or grandparent with a serious health condition.
4/29/2009	H.R. 2161 - Family and Medical Leave Restoration Act	Repeals DOL regulations effective in January 2009, including paid leave substitution, employee notice requirements for leave, and clarification of medical certification, reinstating the provisions promulgated in 1995. Employers permitted to require one medical recertification after the expiration of the period indicated in the original certification. Deletes requirements for a specific number of visits to a health care provider when the employee has a serious health condition or a chronic condition.
5/7/2009	HR 2339- Family Income to Respond to Significant Transitions Act	Directs the Secretary of Labor to award grants to states to pay for the federal share of the cost of programs that provide wage replacement for eligible individuals to take leave to respond to caregiving needs resulting from the birth or adoption of a child, and other FMLA-covered purposes.
5/18/2009, 5/21/2009	H.R.2460/S. 1152- Healthy Families Act	Requires employers with 15 or more employees to permit each employee to earn at least one hour of paid sick time for every 30 hours worked (max 56 hours per year). Leave can be used for employee illness, to address domestic violence, and for caregiving duties for family members.
5/20/2009	H.R. 2515- Domestic Violence Leave Act	Permits FMLA leave to address domestic violence, sexual assault, or stalking and their effects. Includes domestic partners and same-sex spouses.
6/9/2009	H.R. 2776- Living Organ Donor Job	Would amend the FMLA to permit employees to take leave to make organ donations.
6/25/2009	H.R. 3047 - Balancing Act of 2009	Amendments to the FMLA include: covering all employers with 15 or more workers, reducing the hours-of-work requirement to 1,050 in a 12-month period, extending the eligible groups for whom leave could be taken to care for serious health conditions (see H.R. 2132), and authorizing parental involvement and family wellness leave (see H.R. 824) as well as domestic violence leave (see H.R. 2515).



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MAIN OFFICE  
1899 L Street, NW  
Suite 400  
Washington, DC 20036  
Phone 202 986 2700  
Fax 202 986 3696

CALIFORNIA OFFICE  
921 11<sup>th</sup> Street  
Suite 901  
Sacramento, CA 95814  
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