

PART 3 OF 4

PAID FAMILY LEAVE

STATES LEAD THE WAY: PAID FAMILY LEAVE IN CALIFORNIA

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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.¹ 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.²

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?*

American voters, both Democrat and Republican, overwhelmingly support paid leave benefits, including paid parental leave^a, paid sick days, and more generally, expanding the FMLA to provide paid family and medical leave.³ Perhaps in response to voter preferences, states have started to address the limitations of the FMLA protections with their own legislation. A number of states have built upon the FMLA by creating broader coverage, and a few have formed their own paid family and disability leave insurance programs.

States Broaden an Insufficient FMLA

In an attempt to make the FMLA more inclusive, several states have extended FMLA coverage by lowering the minimum number of employees in FMLA-covered businesses or expanding definitions of covered family members. For example, in Maine, only companies with 14 or fewer employees are exempted from complying with FMLA protections.

Table 1. States broaden FMLA protections by increasing number of covered employers	
State	Provision
Maine	15 or more employees (private employers) ⁴ and 25 or more (city or town employers) ⁵
Minnesota	21 or more employees (parental leave only) ⁶
Oregon	25 or more employees ⁷
Rhode Island	50 or more employees (private employers) ⁸ and 30 or more employees (public employers) ⁹
Vermont	10 or more employees (parental leave only) ¹⁰ and 15 or more employees (family and medical leave) ¹¹
Washington	50 or more employees (FMLA reasons besides insured parental leave) ¹² ; all employers are required to provide insured parental leave ¹³
District of Columbia	20 or more employees ¹⁴

States have also extended the coverage of FMLA protections by expanding the definition of family members for whom workers provide care under FMLA-protected leave. Grandparents, in-laws, same-sex partners, and grandchildren are now able to receive care from their FMLA-eligible relatives in a handful of states, as shown in Table 2.

Table 2. States broaden FMLA protections by expanding the definition of family	
State	Provision
California	Domestic partner and domestic partner's child. ¹⁵
Connecticut	Civil union partner, ¹⁶ parent-in-law. ¹⁷

^a 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.

Hawaii	Grandparent, parent-in-law, grandparent-in-law ⁸ or an employee's reciprocal beneficiary. ¹⁹
Maine	Domestic partner and domestic partner's child, siblings. ²⁰
New Jersey	Civil union partner and child of civil union partner, ²¹ parent-in-law, step parent. ²²
Oregon	Domestic partner, ²³ grandparent, grandchild or parent-in-law. ²⁴
Rhode Island	Domestic partner of state employees, parent-in-law. ²⁵
Vermont	Civil union partner, parent-in-law. ²⁶
Wisconsin	Parent-in-law. ²⁷
District of Columbia	Related to the worker by blood, legal custody, or marriage; person with whom the employee lives and has a committed relationship; child who lives with employee and for whom employee permanently assumes and discharges parental responsibility. ²⁸

States Provide Paid Family Leave

A handful of states have established paid temporary disability leave insurance systems that cover pregnancy complications, thus providing some paid maternity leave, including California (1946), Hawaii (1969), New Jersey (1948), New York (1949), and Rhode Island (1942).²⁹

Three states have built upon their existing disability insurance systems to provide paid family leave insurance to residents. California (2002) and New Jersey (2009) have enacted laws for paid family leave via state-wide insurance programs, and Washington passed a paid family leave law in 2007, although Washington's law has not yet come into effect because it lacks a funding mechanism. The New Jersey paid family leave insurance system is modeled closely upon the California program. As it is the best-studied American example of paid family leave insurance, we examine the experience of California below.

California's Paid Family Leave Program

In September of 2002, California became the first state to create a paid family leave insurance program, and as such, it has been the most thoroughly evaluated in terms of usage and impacts on both individuals and businesses.

Since serious illness and disability, as well as disability due to pregnancy or childbirth are already covered by California's Disability Insurance program to provide up to 52 weeks of wage replacement, the PFL program provides up to six weeks of additional paid leave during any twelve-month period for the following:

- Bonding with the employee's new biological or adopted child or the new child of the employee's spouse or registered domestic partner.
- Caring for a seriously ill child, spouse, parent, or registered domestic partner.

The California Paid Family Leave (PFL) program is administered through the pre-existing State Disability Insurance Program, and is entirely funded by worker contributions through payroll deductions. Workers became eligible for benefits in July 2004. About 13 million Californians paid the mandatory PFL contribution of 1.2 percent of their wages (on wages up to \$93,316), with a maximum withholding of \$1,119.79 in 2011.³⁰ Benefits are taxable, meaning that workers on paid family leave still accrue Social Security benefits. This is important for reducing the ‘mommy penalty’ women with children pay when they leave the workforce to bond with a new child.

To be eligible, employees must have earned at least \$300 from which SDI deductions were withheld in any quarter of the five to seventeen months prior to their PFL claim. All employers are covered, and the self-employed can elect to opt in or not. The benefits pay up to 55 percent of employee earnings, and range from \$50 per week to the maximum weekly benefit of \$987.³¹ Workers cannot claim Disability Insurance and Paid Family Leave payments at the same time.

Three years into the PFL program:³²

- Nearly 90 percent of all claims were made to bond with a new child, and the other 10 percent of claims were for family caregiving.
- Women file 80 percent of all paid family leave claims.
- Low-wage workers, especially female low-wage workers and low-wage workers caring for ill family members, filed claims at much lower rates than any other workers.
- Employees of large (1,000+ employee) firms represented 14 percent of the California workforce yet accounted for almost half of all claims, indicating that fewer employees in smaller firms are taking advantage of paid family leave.

Six years into the PFL program:³³

- Employer concerns about the costs of the program were unfounded; about 90 percent of employers reported that the PFL program had either “positive” or “no noticeable” effects upon business operations, including turnover, morale, profitability and performance.
- Employer concerns about abuse of the program through false caregiving claims were unfounded; most (91 percent) of employers reported that they were not aware of any employee abuse of the PFL program.
- Smaller businesses (under 100 employees) reported even fewer negative effects than larger businesses, challenging the argument that small businesses cannot afford to participate in paid leave programs.
- About 60 percent of employers coordinate their own benefits with the PFL program, which allowed them to save money as employees use PFL instead of the employer-provided paid leave.
- The PFL program increased retention of employees (reducing costly turnover for employers), increased employee satisfaction with leave time, and doubled the duration of breastfeeding for new mothers (breastfeeding can improve both baby and maternal health and bonding, have positive effects on child development, and decrease instances of postpartum depression).³⁴
- More than half of workers who had a recent life experience that qualified for PFL did not know the program existed. Latinos, low-wage workers, and immigrants were the least likely to be aware of the program.
- Employees who did not take advantage of the PFL program either: 1) did not know about the program, 2) were worried that their employer would react negatively or fire them, or 3) thought that the level of wage replacement was too low.

Lessons for a federal family leave program

The California experience with paid family leave shows that employer arguments that the costs of PFL would be prohibitive, and that the program would lead to abuse and reduced productivity are largely unfounded. Both large and small employers found the PFL program to have little to no negative impacts on business, while employees and their families received priceless benefits from caring for their new child or a seriously ill loved one.

However, the California PFL program highlights the need for a few design improvements in creating a federal paid family leave insurance program. First, replacement rates must be high enough for low-wage workers to be able to afford to take advantage of a program to which they automatically contribute. For example, California's PFL wage replacement rate is 55 percent of earnings. However, 55 percent of the minimum wage in any part of the U.S. does not constitute a living wage, making the paid leave just as unaffordable as unpaid leave and therefore inaccessible for low wage earners.

Second, evaluations of the California PFL insurance program found that employees in small and medium businesses and those working in low-wage industries were much less likely to be aware of or take paid family leave. Outreach and dissemination efforts must therefore be especially targeted at small and medium businesses and, more broadly, at low-wage industries.

Third, almost 40 percent of workers who were aware of the PFL program but did not take PFL when they needed it did so because they were afraid of being punished or fired at work. In the U.S. labor system, where workers have little power compared to their employers, programs like paid family leave insurance must be proactively enforced by the government to protect vulnerable workers' rights to care for a new child or ill family member. Oversight and enforcement should especially target low-wage industries with vulnerable workers.

In the fourth and final installment of this series, we build upon these lessons from state experiences to outline a federal paid family leave insurance system that could provide equal opportunities for all working Americans to bond with a new child or care for an ill loved one.

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