

## PART 1 OF 4

# PAID FAMILY LEAVE

## Why the Family and Medical Leave Act fails to meet the needs of America's working families

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MARCH 2011

*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) *International comparisons on paid family leave programs*
- 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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Healthy families are essential to economic growth and the strength of our country, but policies to support working families are inadequate and out of date.<sup>a</sup> The American safety net was designed for a family with two parents, including a homemaker mother and one breadwinner (the husband) who had a career-long position with one firm. In 1975, only 40 percent of families had two working parents; in 2008, that percentage had risen to 66% of families.<sup>3</sup> Today, there are over nine million single parents in the American workforce<sup>4</sup> and less than a third of workers over 25 have been with their employer for over 10 years, but our safety net has not changed to support working single parents or workers who no longer have one lifelong employer.<sup>5</sup>

Even before these demographic changes occurred, support for working families was insufficient. Until the 1990s, Americans had no protection from losing their jobs if they had to take time off to care for a newborn or adopted child, a sick parent, spouse or sibling, or if they became ill themselves.

The Family and Medical Leave Act (FMLA) of 1993, passed by the Clinton Administration, changed that situation for millions of American workers. The FMLA allows covered employees to take up to 12 weeks of unpaid, job-protected leave per year for: pregnancy complications, caring for a new biological or adopted child, caring for a seriously ill immediate family member (including spouses, children, or parents), and as medical leave for themselves.<sup>6</sup>

While the FMLA was a welcome addition to American labor regulations, it fell far short of addressing the needs of contemporary American families.

One problem is that a number of exclusions limit the coverage of American workers. Workers must have been with their employers for 12 months and have worked at least 1,250 hours in order to be covered by the FMLA. In addition, employers with fewer than 50 employees within a 75 mile radius are not mandated to provide FMLA-protected leave. Employers with more than 50 employees can therefore avoid FMLA coverage by hiring short-term contractors and temporary workers who are not only ineligible for FMLA-protected leave, but are often unprotected by basic labor standards as well, such as overtime pay, minimum wage, and health and safety protections addressed in the Fair Labor Standards Act.

As a result of these shortcomings in coverage, almost half of the American workforce lacks job protection for FMLA-covered leave. According to the most recent estimate from the Department of Labor, in 2005, only 76.1 million workers in the then-141.7 million strong American workforce were eligible for FMLA protections.<sup>7</sup> Low-income workers are especially unlikely to be protected by the FMLA. According to the last comprehensive evaluation of the FMLA conducted in 2000, known as the Westat survey, only 38.6 percent of workers with an annual family income of less than \$20,000 were covered and eligible for FMLA leave, while 64 to 74 percent of families earning \$20,000 or more were covered and eligible.<sup>8</sup>

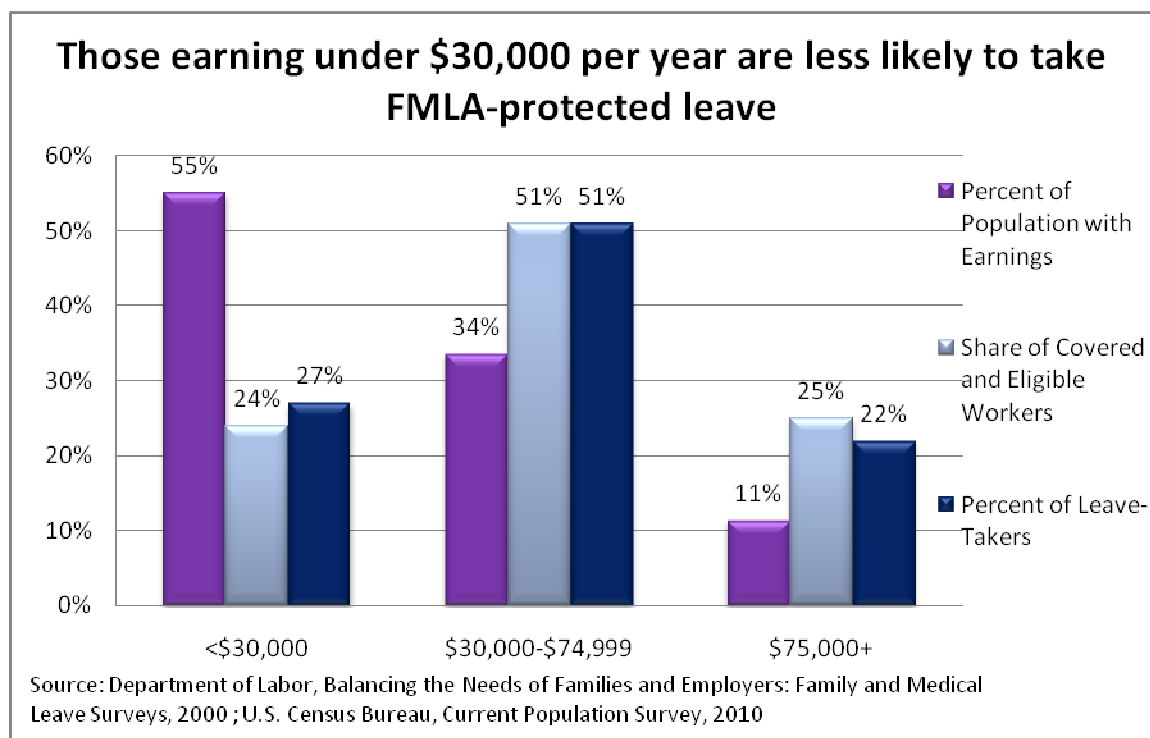
Even among those who are covered, the number of workers who take FMLA-protected leave is low. The Wage and Hour Division believes that between 3.2 and 17.1 percent of covered and eligible workers take FMLA leave, although the percentage of workers using leave varies by gender as well as the industry and size of the firm in which employees work.<sup>9</sup> The low percentage

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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.

of leave-takers is not surprising in light of the significant evidence that employees are regularly discriminated against for taking time off to bear children – especially those with multiple children – or to care for frail family members.<sup>10</sup> The Department of Labor’s Wage and Hour Division enforces these protections, but as enforcement is based upon complaints rather than random evaluations, the odds of protection against unscrupulous employers are stacked against workers. One study found that between 18 to 21 percent of covered employers are not in compliance with the FMLA.<sup>11</sup>

Aside from issues of coverage and enforcement, the fact that FMLA leave is unpaid is its biggest weakness. This problem often makes coverage issues irrelevant for the many workers who, even if eligible, cannot afford to take unpaid leave.<sup>12</sup> Among those covered employees who need FMLA leave and don’t take it, 78 percent don’t take it because they can’t afford it.<sup>13</sup> Those low-income workers who *are* covered by the FMLA are the covered group least likely to be able to afford to take unpaid time off.<sup>14</sup> For example, although those earning under \$30,000 per year represented 55 percent of the total U.S. earning population in 2000, this group represented only 27 percent of leave takers.<sup>15</sup> According to one survey, nine percent of leave-takers who receive less than their full pay during long leave were actually forced onto public assistance to make ends meet: a terrible situation for workers fulfilling duties to their newborn children or seriously ill family members.



Many single, low-income mothers fall into the group of those unable to afford unpaid leave. Leave-taking by all women with infants rose an estimated 23 percent after the FMLA came into effect,<sup>16</sup> and the FMLA has had large, positive effects on leave-taking among married women and women with a college education.<sup>17</sup> However, the FMLA has had no significant impact on leave-taking among single mothers or mothers without any college education.<sup>18</sup> This is not because single mothers and lower-income mothers need less time to care for their children and families; it is because they cannot afford to take unpaid leave which may also endanger their jobs.

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Because the FMLA leave covers parental leave, sick leave, and caregiving leave, new parents who take FMLA leave as parental leave forfeit their ability to take leave for their own serious illness or to caregive should they need time to care for a sick parent, sibling, or spouse. Of the 153.2 million Americans in the civilian workforce,<sup>19</sup> 26.02 million (about 17 percent) had children under age 18 in 2009,<sup>20</sup> and about 37.45 million Americans over 18 years of age – about a quarter of the workforce – were estimated to be full or part time caregivers in addition to full or part time workers 2009.<sup>21</sup>

The need for caregiving, including caregiving by family members, will increase monumentally as the number of over-60 Americans grows from the current 18.4 percent of the population to 25.5 percent of the population by 2050.<sup>22</sup> As the demand for caregiving increases, more and more working parents will be torn between their jobs, being a good parent to their children, and caring for their own aging parents.

Although the Family and Medical Leave Act provided welcome protections for workers who need to provide care for their families or themselves, it is unpaid, poorly-enforced, and leaves far too many Americans – especially lower-income workers – uncovered or unable to take advantage of the job-protected leave it provides.

*In the second part of this series, we will outline worldwide standards in paid parental leave, examining how the U.S. measures up.*

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