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Paid Family and Medical Leave. The United States has no federal law that guarantees paid family or medical leave.

WHAT'S THE ISSUE?

Most people at some point in their lives need to take time away from work to deal with a serious personal or family illness or to care for a new child. In contrast to almost every other developed nation in the world, the United States has no federal law that guarantees paid family or medical leave, whether that leave is to care for a new child or a seriously ill family member, or to address one's own serious health condition. Indeed, the United States is one of only two wealthy, industrialized countries (along with South Korea) that does not guarantee paid medical leave for serious illness.

The United States does have a law—the Family and Medical Leave Act (FMLA) of 1993—that requires some businesses to offer unpaid leave to some workers for serious medical and family care needs.

Proponents of mandatory paid family and medical leave argue that it's long past time that the United States got in step with other wealthy nations. They point to the hidden costs of the status quo and a growing body of evidence that shows that paid leave improves family financial stability and public health, and that it's a plus for businesses as well as workers. Opponents assert that mandatory paid family and medical leave places a significant burden on businesses and should be a benefit they choose to offer, or not. They point to the many large and midsize employers that offer paid leave to full-time employees as examples of this alternative system. In addition, they argue, it's a policy issue best left to states.

Four states have enacted paid medical and family leave laws—California, New Jersey, New York, and Rhode Island. And paid family leave laws were proposed in twenty states plus the District of Columbia in 2016.

This debate has been under way for many years but has become reenergized during the past year by a recently proposed national law—the Family and Medical Insurance Leave (FAMILY) Act—as well as state policy victories, substantial public activism, and the presidential campaign. Even some conservative groups, once reluctant to endorse policy solutions that involve public investments, have proposed access to paid leave.

The politics of guaranteed paid leave remain uncertain, however. President-elect Donald Trump during the campaign surprised many in the Republican Party by proposing a modest paid maternity leave policy. Republicans in Congress might oppose guaranteed paid leave in any form or promote their own reform. For example, some lawmakers have proposed voluntary programs aimed at incentivizing businesses to offer paid leave and workers to save for their own medical and family absences.

WHAT'S THE BACKGROUND?

Laws governing employee benefits have a tortured history in the United States. In Europe

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14%

Only 14 percent of the nation's workforce has access to paid family leave through their employer.

and other industrialized nations, lawmakers have a long tradition of passing laws that require paid sick and vacation days, pension requirements, health benefits, and other worker protections—including paid family and medical leave.

There are historical reasons for this, including strong labor unions. With respect to paid maternity leave laws, advances began in the early 1900s and continued through much of the twentieth century due, in part, to low birth rates and countries whose male populations were ravaged by world wars—which meant that women were needed both to repopulate but also as key drivers of the workforce. Today, virtually every country in the European Union (EU) bloc of nations, for example, offers ten weeks or more of paid maternity leave. Germany guarantees forty-two weeks, France twenty-nine, Denmark twenty, and Italy twenty-five, just to cite a few from an analysis by the Center for Economic and Policy Research.

In contrast, US lawmakers have declined to impose benefit mandates on businesses or to construct social insurance programs—funded by taxes on workers and businesses—that address workers' family and medical needs. And while the breadth and depth of industry regulation, including employee benefit mandates, has been among the core ideological battlegrounds between conservatives and liberals (and companies and unions) for decades, even many liberal lawmakers in the United States have balked at the kind of national worker benefit mandates common in the EU.

Indeed, a bipartisan 1974 law—the Employee Retirement Income Security Act—bars states from regulating employer-sponsored and self-funded health insurance plans and imposes, instead, minimal federal standards on such plans.

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Following this precedent, business groups have long lobbied aggressively against national laws that would require them to expand employee benefits. However, many employers did so voluntarily. By about 2000, approximately 70 percent of large and midsize businesses had some form of health and disability coverage, paid vacation days, and paid sick days—although part-time employees and those paid low wages were largely excluded from these benefits.

In 1993 a new president, Bill Clinton, took advantage of a strong economy and political mandate to sign into law the FMLA, which assures many employees up to twelve weeks of unpaid, job-protected leave in a twelve-month period for serious personal or family health needs, bonding with a new child, or circumstances arising from the deployment of a member of the armed services. Proponents, led by the National Partnership for Women and Families (then the Women's Legal Defense Fund), had waged a nine-year campaign to enact the law. Business groups opposed it. (The specifics—and limitations—of the FMLA are discussed in the next section, as are those of the proposed FAMILY Act.)

The FMLA further prompted employers to expand sick pay and unpaid family and medical leave benefits. Prior to the law's enactment, only 37 percent of medium and large businesses and 17 percent of small businesses offered unpaid maternity leave; today, more than 90 percent do, including most small businesses that are not subject to the law. As a result, about 65 percent of all employees in the United States have paid sick leave (typically five to ten days per year), 74 percent have paid vacation days, and about half have access to short- and long-term paid leave for one's own illness (typically through temporary disability insurance).

Only 14 percent of the nation's workforce, however, has access to paid family leave through their employer.

In the history of the struggle to achieve guaranteed paid medical and family leave in the United States, the FMLA clearly marked a turning point. It was the first law to recognize the dual demands of work and family. However, large business trade associations such as the US Chamber of Commerce and the National Federation of Independent Business also saw that turning point and dug in deeper in opposition to paid leave laws. They sought to bolster their case in recent years by citing the struggling economies of some European nations—flagging even before the 2007–09 recession—due, in part, these business groups argued, to overly generous government and corporate benefits.

WHAT'S THE LAW?

The FMLA applies to businesses that employ fifty or more people, but there are important requirements and limitations: The employer has to have had fifty employees on the payroll for twenty weeks in the past year; all fifty workers must be on site or work within a seventy-five-mile radius of the main worksite

20 states

Twenty states and the District of Columbia proposed paid leave laws in 2015 and 2016, without success—yet.

or at other worksites the company operates within a seventy-five-mile radius; to qualify for benefits, an employee must have worked at the company for at least twelve months and for at least 1,250 hours during the previous year—equivalent to twenty-five or more hours for fifty weeks; an employee desiring to take medical or new-parent leave must provide documentation of the triggering event. Also, the law established definitions of "serious illness" and "serious health condition," and it meshes with an existing statute—the Pregnancy Discrimination Act of 1978. That law requires any employer that gives male employees leave for serious health conditions must also grant female employees twelve weeks of leave for pregnancy- or childbirth-related health conditions.

The FMLA's limitations mean that between 55 percent and 60 percent of all workers in the United States are covered by the law. Since 1993, the law has been used some 200 million times to secure unpaid leave, according to the National Partnership for Women and Families.

In particular, the FMLA, voluntary employer benefit enhancements, and shifting cultural norms have changed maternity leave patterns over the past thirty-five years. More women now work and work later into their pregnancies. In addition, leave arrangements have shifted. In the period 1981–84, 34 percent of working women having their first baby took unpaid leave; 37 percent took paid leave, including vacation time; and 36 percent quit their job. By comparison, in the period 2006–08, 42 percent of working women having their first child took unpaid leave, 51 percent took paid leave, and 22 percent quit their job, according to a 2011 Census Bureau analysis. (These percentages do not add to 100 percent because women could take more than one type of leave during the period.)

State Laws

States and municipalities have become active in this area, too. Roughly a dozen states have passed laws that improve upon the FMLA. Five states and the District of Columbia, for example, have lowered the threshold for the number of employees a business must have for those employees to be covered by the FMLA—generally to between fifteen and twenty-five employees. Eleven states have expanded on the definition of "family" from the federal law, for example, to include domestic partners (California, New Jersey, Oregon, and Rhode Island) and grandparents and in-laws (Hawaii). And three states permit organ donors to take up to twelve weeks of unpaid leave.

A batch of states have also passed FMLA-type laws to guarantee the right of certain workers to take unpaid leave for purposes related to health issues or children's welfare. For instance, six states allow parents to take unpaid leave to attend a child's school activities. And four states guarantee unpaid leave to address the effects of domestic violence or sexual assault.

Most notably, four states have enacted paid medical and family leave laws—California, New Jersey, New York, and Rhode Island. These states have become the testing ground for paid leave, and their laws provide impetus to pass the FAMILY Act. Exhibit 1 presents the provisions in the four states. New York's law is on track to be implemented in 2018. Early evidence from these states is discussed below. (Washington State enacted a paid parental leave law in 2007, but that law is now not expected to be implemented anytime soon, if ever.)

Legislatures in other states are also debating the issue, even as the push for a national law continues. Proponents in twenty states and the District of Columbia proposed paid leave laws in 2015 and 2016, without success—yet. All of the proposed laws were similar to those enacted in California, New Jersey, New York, and Rhode Island.

The FAMILY Act

Building on the laws and experiences in those four states, the FAMILY Act would establish a national insurance fund to pay for family and medical leave for virtually all working people in the United States—for certain purposes and for a limited number of weeks per year. Employers and their workers would be required to contribute a small amount from each paycheck. Contributions would cover both benefits and administrative costs. All workers, regardless of the size of their employer, would be eligible for up to sixty individual days or twelve weeks per year of partial income.

WHAT'S THE DEBATE?

Proponents of paid family and medical leave assert that it's a win-win-win—for families, businesses, and the economy and nation as a whole. They point to studies, for example, showing that paid leave reduces employee turnover, increases employee loyalty, makes

EXHIBIT 1

State paid family and medical leave insurance laws

	California	New Jersey	New York	Rhode Island
Year law went or goes into effect	2004	2009	2018[a]	2014
Maximum length of paid leave	6 weeks for family care;[b] 52 weeks for own disability	6 weeks for family care; 26 weeks for own disability	8 weeks for family care in 2018, increasing to 12 weeks in 2021; 26 weeks for own disability	4 weeks for family care; 30 weeks for own disability
Minimum length of leave	Leave can be taken in 1-day increments; allows for part-time work	Leave can be intermittent	Leave can be taken in 1-day increments	Family leave must last 7 days
Employers subject to law	All private-sector employers; self-employed individuals can opt in	All private- and public-sector employers	All private-sector employers; self-employed individuals and public employees can opt in	All private-sector employers; some public-sector employers
Employee eligibility	Employee must have been paid $300 in wages	Employee must have worked at least 20 calendar weeks and earned $168 or more per week, or $8,400	For family care, full-time employees must have worked 26 or more consecutive weeks, 175 days for part-time workers; for own disability, full-time employee must have worked 4 or more weeks in a row, 25 days for part-time workers	Employee must have earned $11,520 in a defined "base period" or at least $1,920 in a quarter of the base period
Benefit amount	55 percent of a worker's weekly wage, up to a maximum of $1,129 in 2016; beginning in 2018 it will increase to 60–70 percent of weekly wages for some low-income workers	66 percent of a worker's average weekly wage, up to a maximum of $615; average was $505 per week in 2014	50 percent of a worker's average weekly wages not to exceed 50 percent of the state average weekly wages; increases to 55 percent of wages in 2019, 60 percent in 2020, and 67 percent in 2021	4.6 percent of wages paid during the highest quarter of worker's base period, up to $795 per week; in 2015 the average weekly benefit was $519
Waiting period	One week; beginning in 2018 no waiting period	7 days, but if disability lasts three weeks, the worker gets paid for those 7 days; must be consecutive	For family care, none; for own disability, 7 days	None
Funding mechanism	For own disability and family care, 0.9 percent of employee's annual wages	For own disability, employee pays 0.2 percent of taxable wages up to $65.20 per year, employer pays 0.10–0.75 percent of payroll on the first $32,600 of wages; for family care, employee pays 0.08 percent of taxable wages up to $26.08 per year	For own disability, employee pays 0.5 percent of wages, up to 60 cents per week, employer pays balance of the plan costs not covered by the employee; family care is funded by the employee only	For own disability and family care, employee pays 1.2 percent of first $66,300 in wages

SOURCE National Partnership for Women and Families, as of April 2016. **NOTES** [a]Enacted in 2016. [b]Family care includes new or adopted child and care of seriously ill family member for all states listed.

“High-wage new mothers are far more likely to take longer periods of time off—either paid or unpaid.”

workers more likely to return to work after an illness or the birth of a child, and promotes family bonding, healthier children, and an egalitarian workplace.

They argue as well that a national paid family and medical leave program, provided through the same type of social insurance mechanisms that have worked successfully in California, New Jersey, and Rhode Island, would level the playing field for all Americans and for businesses that want to provide paid leave but currently can’t afford to do so.

Indeed, research in the three states that have created paid family leave programs shows positive trends. A 2011 study of paid family leave in California found that it had a neutral or positive effect on both large and small businesses, even as more workers took leave for longer periods (by about three weeks per year). That study also found that California workers in low-wage, high-turnover industries were more likely to return to their jobs after taking guaranteed paid leave.

A Department of Labor 2014 analysis of the first decade of California’s law found that 90 percent of employers reported positive or neutral effects on productivity, profitably, retention, and morale.

Similarly, a 2012 study of New Jersey’s paid family leave law, commissioned by one of the business organizations that had opposed the law, found no ill effects on business profitability or employee productivity, regardless of employer size. And a 2016 study of Rhode Island’s law found that one year after implementation, the program reduced absenteeism and improved productivity and worker morale in two key industries, food service and manufacturing.

While research to date has focused on the economic impacts of the laws, some studies of paid family leave policies in California, other countries, and the private sector have found public health benefits, too. New mothers who take paid leave are more likely to take the amount of time recommended by doctors, for example, and their children are more likely to be breastfed, receive medical check-ups, and get immunizations. Another study, in Europe, found that ten weeks of paid leave for new parents reduced post-neonatal mortality by up to 4.5 percent. Paid leave has also been shown to help older family members with health problems recover from illness, fulfill treatment plans, and avoid complications and hospital readmissions.

Unpaid leave might confer public health benefits as well. A 2011 study of the impact of the FMLA found that the law was associated with a 10 percent reduction in infant mortality, but only among highly educated and married women.

Opponents of required paid family and medical leave don’t dispute these benefits or deny the positive impact of taking time off to attend to a family illness or care for a new baby. Instead, they argue that paid leave is best left as a voluntary decision by businesses, which can then tailor a paid leave benefit to the needs of their workforce instead of having a standard, national one-size-fits-all program imposed.

Opponents support the voluntary approach by pointing to the fact that many large and midsize businesses already offer paid leave to their full-time employees. In a development that suggests public policy solutions are under more serious consideration, however, some conservative groups and lawmakers have recently concluded that government action is warranted. In particular, support appears to be growing in conservative circles for incentives to businesses to offer paid leave and to employees to save for family leave, especially among lower-income households.

As the benefits of paid leave accrue, more companies appear to be getting on board. No recent data exist on trends, but anecdotal and newspaper accounts indicate that the issue of paid family leave is particularly salient in the high-tech industry, with young workers demanding and getting longer periods of paid parental leave for both mothers and fathers.

Large companies are more likely than small and midsize firms to offer paid leave. But a 2013 survey of firms with fewer than 100 workers by the group Small Business Majority found that 45 percent supported a paid leave social insurance program funded through employer and employee payroll contributions.

Proponents also cite a range of social equity issues as further rationale for paid leave. For example, lower-wage workers and minority groups are substantially less likely to have access to paid leave than higher-income workers, yet they are often most in need of financial help when a medical crisis arises. This “benefits gap” adds to inequality in total compensa-

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tion, as well as short- and long-term financial instability and family stress.

In addition, even with increasingly generous maternal leave policies at large businesses, only half of new mothers take even a few paid days away from their jobs to care for a new child. And high-wage new mothers are far more likely to take longer periods of time off—either paid or unpaid. New mothers in well-off families are more likely than low-income mothers to quit their jobs as well.

Finally, supporters argue that guaranteed paid leave will strengthen Social Security. Currently, 48 percent of family caregivers who take time off to meet caregiving responsibilities lose income when they do so. On average, a worker who is age fifty or older who leaves the workforce to take care of a parent will lose more than $300,000 in wages and retirement income.

WHAT'S NEXT?

Proponents of paid leave are expected to significantly ramp up their efforts in 2017 in both the states and the District of Columbia. In then-candidate Donald Trump's proposed paid maternity leave plan, some proponents might find reason to be hopeful about the potential for future bipartisan collaboration on the issue. But with Republicans controlling both houses of Congress, movement on legislation as progressive as the FAMILY Act is unlikely in 2017. The difficulty inherent in creating a new entitlement program for US workers cannot be overstated. Much depends—as with other issues—on whether a moderation in the hyperpartisan and combative political environment takes place.

Other social and political issues could also give impetus to paid leave. In particular, public debate over wage stagnation, pay inequality between men and women, and the widening gap in income and assets (including retirement savings) between low-wage and middle-income families and upper-middle-class and wealthy families are likely to include prominent mention of the paid leave gap between rich and poor. These debates could create pressure to pass laws that help lower- and middle-income families beyond policies such as raising the minimum wage. ■

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