



Trump's Parental Leave Plan

Pitting the Unemployed against Working Families

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The vast majority of Americans lack access to paid family and medical leave. In recent years, a few states—California, New Jersey, Rhode Island, and New York (whose program will begin in 2018)—have created their own paid family leave programs to complement existing medical leave (temporary disability) programs. The District of Columbia also recently enacted a paid family and medical leave program scheduled to begin in 2019. But in all other 46 states, there is no public program, and most American workers do not have access to paid family or medical leave through their employer.¹

In May 2017, the Trump Administration put forward a proposal in its budget request to provide six weeks of paid parental leave through the unemployment insurance system, starting in 2020.² This report analyzes the Trump proposal and its shortcomings. We find that the proposal:

- Omits many valuable types of caregiving and medical leave;
- Fails to provide dedicated federal funding, instead imposing an unfunded mandate on states to finance paid leave out of their unemployment insurance trust funds, which would likely harm unemployed workers in many states; and
- Would likely provide low benefit levels, posing particular challenges for lower-wage workers.

ANALYSIS

Trump proposal omits many valuable types of caregiving and medical leave

The most obvious flaw in the Trump proposal is the narrowness of the coverage. It makes paid leave available only to parents of newly born or adopted children—and only for six weeks.³ Unlike the Family and Medical Leave Act (FMLA), which is the federal law allowing some workers to take unpaid leave from their jobs for up to 12 weeks, the Trump proposal does not cover:

- Any other family caregiving (such as caring for a seriously ill spouse, child, or parent),
- Medical leave for workers who experience a serious health condition, or
- Caregiving demands arising from a family member's military deployment.⁴

The narrowness of this approach is inconsistent with the widespread public support for a more comprehensive policy and the private sector trend toward broader coverage. In failing to address other types of caregiving and medical leave, the proposal also ignores the needs of an aging U.S. population.

Public support is widespread for comprehensive paid family and medical leave. A bipartisan survey taken just before Election Day 2016 found that 78 percent of voters (and 66 percent of Republicans) support a national policy

of 12 weeks of paid family and medical leave.⁵ Other surveys have found similar results.⁶ Paid leave is also popular in states that have already enacted it.⁷

Employers support a comprehensive national paid family and medical leave policy as well. A 2017 Small Business Majority survey found that 70 percent of a representative sample of small business owners and operators support the Family and Medical Insurance Leave (FAMILY) Act, the leading congressional proposal to establish paid leave nationwide.⁸ And businesses in states with paid leave programs have reported positive experiences.⁹

The trend in the public and private sectors has been toward broader leave policies. All four states that have enacted paid leave policies make them available for many kinds of family leave, in addition to parental leave. All four states also address the need for medical leave through their temporary disability insurance (TDI) programs, as does Hawaii. The FAMILY Act would provide for comprehensive paid family and medical leave, as will the new paid leave program in the District of Columbia. Internationally, many countries now provide paid leave coverage to care for other family members, not just a new child.¹⁰

The trend in the private sector has also been toward broader coverage, including caregiving leave.¹¹ In the past three years alone, more than 70 prominent companies from a wide range of industries announced new or expanded paid leave policies, with a growing number covering not only parental leave, but also other kinds of family caregiving.¹² Most recently, in February 2017, Facebook announced an expansion of its paid leave policy beyond parental leave to include more extensive family leave, joining major companies like Deloitte, Cargill, and Nike in offering broader caregiving leave.¹³

Public programs, both enacted and proposed, often provide more than the six weeks of coverage in the Trump plan. The FAMILY Act provides for up to 12 weeks of leave. New York's program, when fully in effect, will provide up to 12 weeks.¹⁴ Although California and New Jersey offer six weeks of family leave and Rhode Island offers four weeks, women who bear a child in these states can rely on TDI while pregnant or recovering from childbirth before turning to family leave. As a result, many women in California and New Jersey can access 12 weeks of paid leave; those who cannot work at the end of their pregnancies typically have access to a total of 16 weeks.¹⁵ Working people who need medical leave in states with TDI programs can access even longer periods of leave, lasting up to six months to a year.¹⁶ Among Organisation for Economic Co-operation and Development (OECD) countries, the average paid leave, which has been trending upward, is now just over a year for mothers and 9 weeks for fathers, though some countries (including Korea and Japan) provide a full year for fathers as well.¹⁷

Infants may face substantial health risks if a parent cannot stay home with them beyond six weeks. Due to the risk of serious illness or infectious disease, the American Academy of Pediatrics recommends minimizing exposure to non-family members and counsels against placing a child in group care for the first three months of life.¹⁸ More generally, parents who take leave are better positioned to detect and address developmental delays, manage their own fatigue and stress (which can affect children), and contribute to their children's brain development in those critical early months.¹⁹

The caregiving responsibilities and medical needs ignored in the Trump proposal will become even more pressing for American workers and their families as our society ages. As our population continues to age, American families will be more likely to experience disability and poor health, making paid leave to care for aging family members as well as medical leave all the more critical. As noted above, state programs and many employer policies recognize these challenges and address these needs, unlike the Trump plan.

Providing broader access to paid family and medical leave would not only help the individual families facing these challenges; it also could help boost labor force participation, an important economic objective in aging countries like the United States. Research demonstrates that paid leave improves labor force participation and other economic outcomes for mothers.²⁰ Access to other types of leave could also have positive employment effects. A recent survey found that more than 60 percent of American workers who care for another adult are affected at work by

their caregiving responsibilities, including 15 percent who have reported a need to take a leave of absence and 6 percent who are forced to give up work altogether.²¹ A MetLife study estimated that women and men who leave the workforce early to care for aging parents lose approximately \$300,000 in lifetime earnings and retirement; the study recommended paid leave programs as part of the public policy response.²² Those who care for a seriously ill child or their own medical needs face similar challenges. Access to paid leave could help them stay in the labor force and prevent a substantial loss in earnings.

Access to paid medical leave could also improve American workers' health and reduce health care costs. One study found that among FMLA-eligible workers who needed leave but didn't take it (many because they could not afford unpaid leave), 52 percent reported foregoing medical treatment and 56 percent postponed it.²³ This inability to access medical care in a timely manner can lead to more serious and costly health problems down the road.

Proposal is financed by an unfunded mandate that could harm unemployed workers

The Trump budget proposes an unfunded mandate on states, with essentially no dedicated federal funding. Rather than covering the costs of paid leave, the budget requires states to maintain larger balances in their Unemployment Insurance (UI) trust funds, with the explicit expectation that states will accomplish that goal by raising taxes—and the backstop of a federal payroll tax increase if they fail to do so.²⁴ The paid leave proposal also includes two small UI-related measures, neither of which generates large savings: a package designed to improve UI program integrity; and increased reemployment services and eligibility assessments (RESEA) to help unemployed workers find jobs more quickly.

Relying on states to raise employer payroll taxes to finance paid leave and shore up their trust funds could lead to deep cuts in unemployment benefits. As a standalone measure, requiring states to improve the solvency of their UI trust funds makes sense. Coming out of the Great Recession, most trust funds are still financially weaker than they should be, and states should be taking responsible measures now to protect unemployed workers, before the next recession hits.²⁵ However, placing the double burden on states of shoring up their trust funds and financing paid leave will create enormous pressure in many states to comply not by raising taxes, but by cutting unemployment benefits.

Unemployment taxes are paid by employers, and the business lobby in each state tends to mobilize against efforts to raise those taxes, preferring benefit cuts instead to keep their taxes as low as possible.²⁶ Yet benefits are generally low to begin with, as discussed further below, and have already been reduced in many states.²⁷ The practical result of the Trump proposal in many states would likely be further benefit cuts for unemployed workers whose needs would be pitted against those of parents seeking paid leave. Under the Trump plan, parents might get a few weeks of paid leave when a child is born, but not be able to keep a roof over that child's head if they lose their job.

This proposal does not give states any funding options they do not already have. States already have the ability to shore up their unemployment trust funds. And they already have the power to assess additional taxes to finance paid leave benefits, as the states that have established leave programs have done.

As for the two dedicated offsets in the Trump parental leave package, they provide ***at best only a small fraction of the necessary funding***. While generally sound policies, the proposals do not tend to generate savings that are “scorable” – in other words, Congressional budget rules do not recognize these policy changes as generating real “savings” that are allowed to offset the costs of other programs.²⁸ The Trump budget estimates only \$67 million in scorable savings over 10 years from the program integrity package under the federal Pay-As-You-Go (PAYGO) rules that apply to bills affecting mandatory programs like UI,²⁹ which pales in comparison to the \$26.6 billion estimated cost of the paid leave program.³⁰ Moreover, the budget shows that the RESEA proposal would *cost* \$2.7 billion under PAYGO scoring.³¹ Even if one were to set the PAYGO rules aside and credit all the estimated savings

from these two proposals, they still amount to only \$6.3 billion over 10 years, or less than a quarter of the paid leave program cost.

The budget also calls for an additional \$709 million in mandatory federal funding starting in FY 2018 to help states with paid leave start-up and administrative costs,³² but the lack of a PAYGO-compliant offset jeopardizes this funding. Without dedicated administrative resources, states will have difficulty implementing the new benefit, and services to unemployed workers could deteriorate further. Like many public programs, state UI systems are underfunded, with outdated computer systems and limited staffing.³³ An analysis by the National Employment Law Project in 2013 found that “laid-off workers already struggling to find work have been forced to navigate a claims process plagued with extensive backlogs, jammed phone lines and major interruptions of online claims systems,” which rely on technology that is typically more than a quarter-century old and programmed with antiquated languages like COBOL.³⁴ These problems could get even worse under the Trump proposal.

Benefits would be low, posing particular challenges for lower-wage workers

Although the proposal outlined in the budget does not specify wage replacement rates, it is likely that paid leave benefits would be set at the same low level as unemployment benefits under the Trump proposal. That was certainly the stated intention when President Trump first advanced this proposal as a candidate.³⁵ In most states, the average worker sees less than 50 percent of his or her wages replaced in an unemployment check. In several states, the average replacement rate is below 40 percent, and in none is it above 55 percent.³⁶ Benefits would amount to a paltry \$116 per week for someone working full-time at the federal minimum wage in a state replacing only 40 percent of wages.

For many parents, this will be too little compensation for them to be able to afford to take leave. The rent or mortgage still needs to be paid, plus the family will be facing added expenses because of the new child, and it may not be possible to take such a large pay cut. Parents who can’t afford to take leave will remain at work, while their children are potentially in inadequate care and missing out on important time with a parent. This is a particular risk for lower-wage workers who are less likely to have savings to fall back on and therefore more likely to need every penny they make.³⁷ And these are the workers least likely to have paid leave provided by an employer.³⁸

Inadequate benefit levels also can be a barrier to gender equality. Low replacement rates can serve to keep women in the traditional caregiver role, since women tend to be paid less and losing most of their paycheck represents a smaller financial hit to the household.³⁹ In other words, even though the Trump plan would make leave available to men, unlike the original campaign proposal,⁴⁰ many families would simply not be able to afford for a father to take leave, given the low benefit levels.

Other federal proposals and state programs generally offer higher wage replacement rates.⁴¹ The FAMILY Act would replace two-thirds of a worker’s wages while on leave, up to a maximum monthly benefit of \$4,000.⁴² The New Jersey paid leave program likewise replaces two-thirds of weekly wages (up to a maximum weekly benefit of \$633),⁴³ as will New York’s when fully implemented (capped at the statewide average weekly wage),⁴⁴ while Rhode Island replaces up to 60 percent (up to a weekly maximum of \$817).⁴⁵ Two jurisdictions have created tiered replacement rates to boost benefits for lower-wage workers. California currently replaces up to 55 percent of wages, but will be raising that percentage to 70 percent for low-wage workers and 60 percent for others starting in 2018.⁴⁶ An earlier study in California found that nearly one-third of workers aware of the program who needed leave but did not take it cited insufficient wage replacement as a reason.⁴⁷ D.C.’s new program will replace 90 percent of wages for the very lowest-wage workers.

In addition, ***workers who currently have paid leave could experience a reduction in benefits under the Trump plan.*** The Trump campaign stated that “[t]he benefit would only apply when employers don’t offer paid ... leave” and appeared to foreclose the possibility of employers supplementing the low UI benefit.⁴⁸ The budget proposal is not clear on that point. However, if this remains the policy and some employers who currently provide more

adequate benefits switch their employees' coverage to the UI program, it could mean a net loss of benefits. These concerns would not be so great if the benefits under the plan were more adequate. The Trump proposal also does not explain what would happen in states that have already created their own paid leave programs outside of UI. These programs currently offer more comprehensive coverage than UI, as discussed above, and some extend it to self-employed workers,⁴⁹ who are ineligible for UI.

A final concern about Trump's UI-driven approach is that if paid leave is "experience-rated" like other unemployment benefits, it could end up giving employers a new reason to try to avoid hiring women of childbearing age and other prospective parents. The experience-rating feature of UI requires employers to pay higher unemployment taxes if more of their employees access benefits. The Trump proposal does not specify whether benefits would be experience-rated, but "gives States broad latitude to design and finance the program,"⁵⁰ suggesting this would remain a risk. While discrimination against women in hiring is illegal, in practice it can be very difficult to bring a legal challenge,⁵¹ and only a handful of jurisdictions have express safeguards against caregiving discrimination.⁵²

CONCLUSION

American workers and their families need access to paid leave to help them succeed and thrive. While the Trump proposal tries to take a step toward addressing that need, there are substantial flaws in both the design of the program and the proposed financing mechanism. In particular, the Trump plan could end up causing real harm to American workers who need unemployment benefits to support their families while they are between jobs.

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Endnotes

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² The proposal is described in several documents released as part of the President's Fiscal Year 2018 Budget, including: Office of Management and Budget, “Budget of the U.S. Government, Fiscal Year 2018: A New Foundation for American Greatness,” <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf>, p. 20; Office of Management and Budget, “Appendix: Budget of the U.S. Government, Fiscal Year 2018,” <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/appendix.pdf>, p. 738 (indicating the 2020 start date); Office of Management and Budget, “Budget of the U.S. Government, Fiscal Year 2018: Analytic Perspectives,” <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/spec.pdf>, pp. 101-03 (describing the program integrity and RESEA proposals) and pp. 117-18; U.S. Department of Labor, “FY 2018 Budget in Brief,” <https://www.dol.gov/sites/default/files/FY2018BIB.pdf>, p. 1; and U.S. Department of Labor, “FY 2018 Congressional Budget Justification: Employment and Training Administration, State Unemployment Insurance and Employment Service Operations,” <https://www.dol.gov/sites/default/files/CBJ-2018-V1-07.pdf>, pp. 13-16.

³ Budget Appendix, *supra* note 2, pp. 738-39 (“The benefit is provided to help families recover from childbirth and to bond with their new children.”).

⁴ For a fuller description of the types of leave covered under the Family and Medical Leave Act, see U.S. Department of Labor, Wage and Hour Division, “Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act,” July 2015, <https://www.dol.gov/whd/regs/compliance/whdfs28f.htm>.

⁵ Lake Research Partners, “2016 Election Eve Omnibus,” November 6-8, 2016, <http://www.nationalpartnership.org/research-library/work-family/lake-research-partners-2016-election-eve-omnibus-toplines-for-national-partnership-for-women-and-families.pdf>, p. 7 (asking voters if they would favor or oppose “a national PAID family and medical leave fund that would allow all workers in the U.S. to take up to 12 weeks of leave from their jobs with some pay when they need to care for a new baby or adopted child, have a serious illness, or need to care for a seriously ill family member”); the survey was conducted jointly with the Tarrance Group, a Republican research and polling firm).

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⁷ Linda Houser & Karen White, “Awareness of New Jersey's Family Leave Insurance Program Is Low, Even As Public Support Remains High and Need Persists,” Oct. 2012, Center for Women and Work Issue Brief, http://njtimetocare.com/sites/default/files/03_New_Jersey_Family_Leave_Insurance_-_A_CWW_Issue_Brief.pdf (finding that 76.4 percent New Jersey voters had a favorable opinion of the program); Ruth Millkman & Eileen Appelbaum, *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy*, 2013, Figure 2.1 (finding that 84.9 percent of California adults favored paid leave the year after it was enacted); Associated Press-NORC Center for Public Affairs, “Paid Family Leave in California: Awareness, Support, and Barriers to Use,” May 2016, http://www.longtermcarepoll.org/PDFs/LTC_2016/CA_2016_Paid_Family_Leave.pdf, (finding that 75 percent of Californians age 40 and older favor the program).

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⁹ National Partnership for Women & Families, “Expecting Better: A State-by-State Analysis of Laws That Help Expecting and New Parents,” Aug. 2016, <http://www.nationalpartnership.org/research-library/work-family/expecting-better-2016.pdf>, p.18 (summarizing the research on employer response to paid leave laws in CA, NJ, and RI).

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²⁴ A New Foundation, *supra* note 2, p. 20 (listing the offsets) and Table S-6, p. 39 (showing substantial revenue increases associated with the policies); Analytic Perspectives, *supra* note 2, p. 117 (“States are expected to adjust their UI tax structures to maintain sufficient balances in their Unemployment Trust Fund accounts”).

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²⁹ Analytic Perspectives, *supra* note 2, Table 10-2, p. 103.

³⁰ Total cost comes from A New Foundation, *supra* note 2, Table S-6, pp. 35 and 39 (footnote 2 on p. 39 shows that an additional \$8.095 billion in revenue is assumed to go to supporting paid leave benefits, on top of the \$18.502 billion shown on p. 35).

³¹ Analytic Perspectives, *supra* note 2, Table 10-2, p. 103.

³² Department of Labor Budget in Brief, *supra* note 2, All Purpose Table, p. 45; Congressional Justification: Employment and Training Administration, *supra* note 2, p. 14; A New Foundation, *supra* note 2, Table S-6, p. 35 (showing a second round of \$709 million in start-up funding in FY 2019, before the full program begins).

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⁴⁷ Eileen Appelbaum & Ruth Milkman, “Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California,” Center for Economic and Policy Research, 2011, <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>, Table 8.

⁴⁸ Fact Sheet, *supra* note 37, pp. 2-3.

⁴⁹ National Partnership for Women & Families, “State Paid Family Leave Insurance Laws”, February 2017, <http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf>, p. 5 (noting that California, New York, and D.C.’s paid family leave programs allow self-employed individuals to opt in).

⁵⁰ A New Foundation, *supra* note 2, p. 20.

⁵¹ e.g., Caroline Fredrickson, *Under the Bus: How Working Women Are Being Run Over*, 2015, pp. 45-67.

⁵² “Family Responsibilities Discrimination (FRD),” Center for WorkLife Law, available at <http://worklifelaw.org/frd/faqs/>.