

# Paid Family and Medical Leave and Employer Private Plans

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## Introduction

Thanks to new state laws expanding paid family and medical leave (PFML), and modest advances in employer-provided benefits, access to paid and unpaid family and medical leave is growing nationwide.

This paper looks at the use of private plan options in the context of state-administered paid family and medical leave programs. The paper describes how states approve and monitor private paid family and medical leave plans and how state approaches interact with workers' equitable access to benefits and employer take-up of private plan options.

The relationship between public and private coverage can inform future state and national policy efforts. Our findings suggest that public PFML programs are not likely to impede growth of the private insurance market. However, private plans may lead to inequities in benefit access and be costly for states to oversee. For both public and private programs, strong public oversight is vital to ensure equitable access to benefits.

## Paid leave coverage and the private insurance market

Most workers do not have access to *paid* family and medical leave (PFML). The small share that do, gain access to paid leave through voluntary employer-provided benefit plans or through a state-administered paid leave program. Data show that workers face inequitable access to private paid leave benefits with lowest wage workers being the least likely to have paid leave benefits. Access also varies by employer size: workers at smaller businesses have much less access to paid family and medical leave as those at larger corporations.

Nine states and the District of Columbia have enacted PFML programs. Among the 10 programs, seven currently provide benefits to workers: California, the District of Columbia, Massachusetts, New Jersey, New York, Rhode Island, and Washington. Colorado, Connecticut, and Oregon will join them over the next three years.

The benefits provided by state paid family and medical leave programs include three primary types of leave: parental leave to care for a child after birth, adoption, or foster care placement; family caregiving leave to care for a family member with a serious medical condition; and medical leave (or temporary disability insurance) to address one's own serious medical condition. Among these, paid medical leave is the most frequently used. It is also the most widely available type of leave, with many workers gaining

access to medical leave in the form of short-term disability insurance (SDI). It is also the only type of leave for which a large commercial insurance market already exists for both employer-provided group coverage and individual coverage. At present, virtually no commercial market exists for paid parental and family caregiving leave.

In addition to the availability of commercial SDI, some employers also choose to self-insure for short-term disability and paid family leave benefits. Employers in states with publicly financed paid leave programs who choose to self-insure are often large, operate in multiple states or countries, and have sophisticated systems for benefit and leave administration.

## **State Paid Leave Programs and Private Insurance Options**

Of the 10 publicly funded PFML programs, seven (California; Colorado; Connecticut; Massachusetts; New Jersey; Oregon; and Washington) allow employers to self-administer paid leave benefits to workers through an approved “private plan” alternative. New York’s program relies on an employer mandate that requires employers to provide paid family and medical leave insurance that meets a minimum set of state standards. The number of approved private plans and covered workers varies widely in states. For example, in Massachusetts 33 percent of eligible workers are covered by a private plan compared to 3 percent in California.

Several factors shape an employer’s decision to use private plan alternatives, including cost; interest in offering better or consistent benefits to workers in different states; and support administering benefits and compliance services.

## **Ensuring equity and protecting worker access**

The provision of a public benefit through a private plan raises questions, including whether all covered workers are receiving the same level of benefits and access to leave. This is especially important for workers earning low wages, people of color, and women, all of whom experience greater barriers to accessing leave and discrimination in the workplace.

There is little research and data specifically focused on the experience of workers who receive state PFML benefits through an approved private plan. Workers can be disadvantaged by a poorly structured or regulated program and government oversight is important. While private plans may provide benefits to employees, such as easier access to intermittent leave, lower-wage workers who do not already have access to paid leave benefits may be less likely to experience the potential benefits.

States that allow employers to provide benefits through a private option have strong safeguards in place to ensure that workers subject to private coverage are offered the same, or better, benefits as those available directly from the public program. No state permits employers to “opt out” of offering benefits, or to provide less than what the state program requires.

For new or existing programs that allow private plans, policymakers can advance equity by implementing or strengthening antidiscrimination and oversight tools, such as periodic audits, reporting requirements, and using community rating to price benefits.

## **Establishing Robust Protections for Workers in Private Plans**

States that permit the use of private plans to provide state PFML benefits can build protections and safeguards for workers into their program in two key areas: 1) initial plan approval and 2) ongoing oversight and enforcement.

1. **Plan approval.** Employer private plans must be approved by the state. States require plans to address some or all of the following: benefit levels, purposes, duration, and eligibility; cost to employee; timeliness of benefits; equal rights and protections; appeals processes; notice requirements; employee approval to seek a private plan; and eligibility standards used to approve or deny claims. All states require benefits to be at least equivalent to the state-administered program and they cannot cost the employee more than participation in the state's program. All states allow private plans to provide better benefits than the state fund.

Each state provides guidelines to ensure that workers are guaranteed rights and protections under the private plan equal to those provided under the state plan. They also provide the right to appeal to the state administrative agency. Some states require employees to vote on the adoption of a private plan.

2. **Oversight and enforcement.** Existing state paid leave laws also impose rules governing the oversight and enforcement of employer private plans for PFML benefits. The core elements of most state oversight regimes include requirements related to periodic audits; reporting requirements; penalties for non-compliance; financial disclosures and assurances; restrictions on use of excess funds; and fees to reimburse state administrative costs. These elements are largely focused on ensuring that employers continue to meet the initial requirements for establishing a new plan and on upholding the fiduciary responsibilities involved in providing benefits and managing premiums collected from workers. Establishing reporting requirements and the use of collected data matter greatly for purposes of assessing the impact of private plans on worker access to benefits relative to the state program.

## Conclusions and Findings

While there is much still unknown about the interaction between publicly provided benefits and private plans for paid family and medical leave, including whether and how access to benefits may be affected and the impact of public programs on the private disability insurance market, we know that the growth of state paid leave programs has not prevented the overall private market for short-term disability insurance from continuing to grow. There has not been a rigorous evaluation of the best approaches to managing the interaction of public and private paid leave programs. Yet, some insights can be found from looking at the other benefit programs, such as workers' compensation and Social Security Disability Insurance. More specifically our research leads us to the following conclusions:

1. The short-term disability insurance industry has continued to grow, even as state paid family and medical leave programs expanded. Employers provide state benefits through private plans at modest rates.
2. Employers who seek to self-administer public benefits are more likely to have a higher-wage workforce; workers paid lower wages may not enjoy similar benefits. The consequences of this disparity include increased state costs and uneven access to benefits.

3. Strong regulation of employer private plans is needed and does not deter highly motivated employers from offering private plans. Employers offering plans in paid leave states have demonstrated an ability to establish plans that comply with strong state regulations aimed at protecting workers.
4. To inform policymaking, more data transparency and research is needed on how private plans serve workers, especially those in low-wage jobs.

Policymakers should use caution in developing private plan alternatives. Where policies permit private plan alternatives, policymakers can more effectively use public resources and support equity for workers by building on examples of robust oversight and monitoring currently used in several state programs.