

# Economic Recovery Must Include Job-Protected Paid Family and Medical Leave

By Nat Baldino

## Introduction

Policymakers have an opportunity in the next economic recovery package to pass inclusive and comprehensive paid leave – like the recently re-introduced **Family and Medical Insurance Leave (FAMILY) Act** – and ensure workers get the most critical components of an equitable and accessible paid leave program. As policymakers recognize the importance of paid leave, they must understand that worker protections like job protection, funded education and outreach, inclusive family definitions, and progressive wage replacement, are not merely “add-ons” that boost the policy. *They are the core of the program itself.* Without these protections, paid leave policies are not accessible to the workers who need them most.

## All workers need paid family and medical leave

Access to paid family and medical leave is essential for a robust and equitable economic recovery. Even as states and communities reopen, families are still struggling with school and child care closures and hybrid schedules—and individuals continue to face infection and sickness from the virus. This burden is acutely felt by women, **single parents, women of color, families of color**—particularly **Black, Latinx, and American Indian and Alaska Native** families—**families** with low incomes, and workers with unpredictable schedules.<sup>1</sup> Paid leave can keep workers employed even as they face caregiving needs.

A strong paid leave program could have helped prevent the spread of contagion and stem the economic fallout of women—predominantly women of color—leaving the labor force due to caregiving needs.<sup>2</sup> COVID-19 did not create our country’s caregiving crisis, but it clearly exacerbated it. The vast majority (93 percent) of workers earning low wages have no access to paid family leave.<sup>3</sup> And Black and Latinx workers are less likely to have access to paid leave than their white counterparts. Even before the pandemic, when a caregiving need arose, these workers faced impossible choices between caring for themselves or loved ones and putting food on the table or making rent. The coronavirus pandemic has shown us that a national, comprehensive paid leave program is essential to ensure families’ health and economic security to face the next crisis. As the country seeks a full economic recovery, paid family and medical leave keeps workers employed and reduces economic instability that can otherwise result from experiencing an illness or caregiving need.<sup>4</sup>

## Strong worker protections are core to an equitable paid leave program

Paid leave policies themselves are not sufficient – we need policies that workers are aware of and can access. And when workers do access them, they should not face penalties or retaliation, which could cause them to fall deeper into poverty. Paid leave policy must include robust worker protections. Protecting workers means ensuring that *all* workers—regardless of income, industry, employer, family make-up, immigration status, and more—can easily and safely take the leave they need. To date, 10 states and the District of Columbia, have passed state paid family and medical leave programs, which provide some examples of the importance of worker protections.

### Worker Protections include:

**Job Protection.** Workers should be able to use paid leave to meet their basic needs. However, a 2012 U.S. Department of Labor survey found that among employees needing leave but not taking it, the fear of job loss was the second most commonly cited reason (17 percent), behind unaffordability.<sup>5</sup> Without job protection, workers fear for their jobs when they take leave or simply don't take the leave they're offered.

Workers who are paid low wages are most likely to fall in the gap of those not covered by the FMLA's job protections. A Congressional Research Service report found that only about 39 percent of employees making less than \$35,000 may have been eligible for FMLA. This contrasts with nearly 78 percent of employees paid more than \$75,000 who could have taken the leave. In addition, women, African-American, Asian-American and Pacific Islander, and Native American workers "are almost twice as likely to have an unmet need for leave than white workers."<sup>6</sup>

#### *Job Protection in the states:*

In a series of focus groups conducted in **New Jersey**, researchers found that men of color who were paid low wages were less likely to use their paid leave benefits for fear of losing their job.<sup>7</sup> In recognition of the need for expanded access, New Jersey strengthened its program in 2018, adding increased job protection, which went into effect in 2020.<sup>8</sup> **Rhode Island** built job protection into its original paid leave policy, offering workers the right to reinstatement of their jobs as well as protection from workplace retaliation.<sup>9</sup> Data show that two-thirds of claims are made by workers with incomes of less than \$50,000, demonstrating that job protection increases uptake among workers earning low wages.<sup>10</sup> Additionally, **Colorado** workers are specifically protected against retaliation, and **Connecticut** amended its state Family and Medical Leave Act, which provides job protection, to cover essentially all employees.<sup>11</sup>

**Built-in Funding for Outreach and Education.** Employers must be educated on their responsibilities, and employees must be made aware of what their benefits actually are. Lack of policy awareness is one of the most significant barriers to accessing leave. Workers can't take leave if they don't even know it exists. Built-in funding and direct implementation directives for businesses and local administrators can help ensure that outreach efforts reach all communities, including language minority communities.

### ***Outreach and Education in the states:***

Education and outreach must take place on two levels: employers and employees. Both must be made aware of their rights and responsibilities, and state administrators must robustly enforce the requirement to conduct education and outreach. In **Washington**, lawmakers included legislative text that mandated and funded outreach. This included employer-targeted outreach like mailings, templates, more than 260 in-person presentations, and webinars with 9,000 participants to ensure that employers were prepared for data and premium collection.<sup>12</sup> Conversely, a 2011 poll in **California**, conducted 7 years after the implementation of its state-run paid family and medical leave program, found that 42.7 percent of all respondents were not aware of the program. And, because employers are the main avenue by which employees find out about their benefits, a lack of employer outreach only worsens the lack of information.<sup>13</sup> A multi-state study by the Center for Economic and Policy Research found that state administrators needed to develop education and outreach early, and with “scalability” and long-term institutionalization in mind—along with consistent, multi-year funding.<sup>14</sup>

**An Inclusive Family Definition.** Paid leave programs must reflect the diversity of families in the United States. Eight out of 10 families no longer fit the model of the nuclear family. Some 85 million people, predominantly people of color, live in multigenerational or non-traditional households. National paid leave policies must work for families *as they exist today*.<sup>15</sup>

### ***Inclusive Family Definitions in the states:***

In **Oregon**, a family member includes “a worker’s spouse or registered domestic partner, sibling, child, child’s spouse or domestic partner, grandparent, grandchild, parent, parent-in-law, or parent of the worker’s registered domestic partner, *or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.*”<sup>16</sup> **New Jersey** recently expanded its definition of family to be more inclusive and accessible to working families. In a report by the National Partnership for Women and Families, subjects often reported needing to care for loved ones who fell outside of the original legislative definition of family.<sup>17</sup> Systemic racism, homophobia, transphobia, and criminalizing public policies have necessitated extended kinship networks for care. By making space for these alternative family structures in paid leave policy through expansive family definitions, state paid leave policies can be more accessible to communities that have been historically marginalized.

**Progressive Wage Replacement.** Unaffordability is the number one reason workers don’t take leave. Two out of three workers who didn’t receive full pay while on leave reported struggling to make ends meet.<sup>18</sup> Workers in the lowest paid jobs are the least likely to be able to afford to take leave if it requires taking a pay cut. Progressive wage replacement, or a sliding scale, ensures that workers in jobs paying low wages receive the highest rates of wage replacement. A paid leave program must be one that workers can actually afford.

### ***Progressive Wage Replacement in the states:***

Six states have progressive wage replacement: Washington, Massachusetts, Oregon, Connecticut, Colorado, and Washington, D.C. This sliding-scale approach to benefit payments offers higher wage replacement to workers earning lower wages and scales down the more you make. This helps to make leave more affordable and accessible to those who need it most. **Washington’s** program was the first to use progressive wage replacement. The state’s program replaces 90 percent of wages for workers earning low wages, and the amount of wage replacement lowers as income rises. **Washington, D.C.’s**

operates similarly. **Massachusetts’ program**, which launched at the beginning of 2021, replaces 80 percent of wages and offers a blended rate for others. The most progressive program is **Oregon**, which will provide workers earning low wages with **full** wage replacement; **Connecticut** will provide 95 percent; and **Colorado** will provide 90 percent. These increased, progressive wage replacement programs are critical to ensuring that workers earning low wages can afford to take leave. States with less progressive wage replacement, like **New Jersey**, found that potential users of the program were disincentivized due to wage replacement being too low.<sup>19</sup>

## Conclusion

As Congress considers policies to aid our economic recovery, lawmakers must pass inclusive and comprehensive permanent paid leave and ensure the most critical components of an equitable and accessible paid leave program. The FAMILY Act, which was introduced in the House and Senate earlier this year, would establish a federal program providing many workers in the country up to 12 weeks of paid leave to treat their own serious illness, care for a seriously ill family member, or bond with a new child. Passage of this legislation would provide a long-overdue critical support to workers. However, to benefit the lowest paid workers and workers of color, Congress can strengthen the FAMILY Act by drawing on lessons learned in the states.

To create an equitable and accessible paid leave program for working families, Congress should first ensure that the FAMILY Act, or any national paid leave program, guarantees job protection for all eligible workers so they won’t have to worry about retaliation when utilizing benefits. Second, lawmakers should expand beyond the dated FMLA definition of family and adopt a more inclusive family definition that reflects the true nature of the modern family. And finally, Congress should look toward state programs and adopt more robust wage replacement policies. The 66 percent wage replacement rate in the FAMILY Act is simply not enough coverage for most low-paid workers to take leave.

Because states recognize the necessity of job protection, an inclusive family definition, and progressive wage replacement for comprehensive paid family and medical leave, they have built it into their programs. But all U.S. workers need comprehensive paid leave, and paid leave programs must include funded education and outreach so that workers know what benefits they can access. Ensuring strong worker protections at the federal level is critical to helping workers— particularly those being paid low wages, who are disproportionately women, people of color, and people with disabilities—retain their jobs and income at a critical moment in their lives when economic stability is especially important. Including these critical protections in the FAMILY Act would be a big step for our country in more accurately acknowledging the value of paid time off for healing or providing care.

## Endnotes

<sup>1</sup> *FFCRA and Paid Leave to Care for a Child*, CLASP.

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<sup>2</sup> Armagan Gezici and Ozge Ozay, “An Intersectional Analysis of COVID-19 Unemployment.” *Journal of Economics, Race, and Policy*, December 15, 2020, <https://rdcu.be/cg0om>.

<sup>3</sup> Pronita Gupta, et al., *Paid Family and Medical Leave is Critical for Low-Wage Workers and Their Families*, CLASP, [https://www.clasp.org/sites/default/files/publications/2018/12/2018\\_pfmliscriticalfor\\_0.pdf](https://www.clasp.org/sites/default/files/publications/2018/12/2018_pfmliscriticalfor_0.pdf).

<sup>4</sup> [https://www.jec.senate.gov/public/\\_cache/files/646d2340-dcd4-4614-ada9-be5b1c3f445c/jec-fact-sheet---](https://www.jec.senate.gov/public/_cache/files/646d2340-dcd4-4614-ada9-be5b1c3f445c/jec-fact-sheet---)

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<sup>5</sup> Wage and Hour Division at U.S. DOL, Family and Medical Leave Act, U.S. Department of Labor, <https://www.dol.gov/general/topic/workhours/fmla>.

<sup>6</sup> Tanya Goldman, *The Importance of Job Protection for Paid Leave*, CLASP, <https://www.clasp.org/sites/default/files/publications/2019/05/2019.05.06%20Job%20Protection%20Hill%20Brief%20FINAL%20updated%201.2.2020.pdf>.

<sup>7</sup> Setty, S., Skinner, C., & Wilson-Simmons, R. (2016, March), *Protecting Workers, Nurturing Families: Building an Inclusive Family Leave Insurance Program, Findings and Recommendations from the New Jersey Parenting Project*, National Center for Children in Poverty Publication, Retrieved 25 July 2018, from [http://nccp.org/projects/paid\\_leave\\_publications.html](http://nccp.org/projects/paid_leave_publications.html).

<sup>8</sup> N.J. Stat. Ann. § 43:21-38; A. 3975, 218th Leg., Reg. Sess. (N.J. 2019).

<sup>9</sup> National Partnership, *Paid Leave Works: Evidence from State Programs*, September 2019, <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-works-evidence-from-state-programs.pdf>.

<sup>10</sup> Mason, J. (2019, August), *Meeting the Promise of Paid Leave: Best Practices in State Paid Leave Implementation*, Retrieved 26 September 2019, from <http://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/meeting-the-promise-of-paid-leave.pdf>.

<sup>11</sup> *Comparative Chart of Paid Family and Medical Leave Laws in the United States*, A Better Balance, updated February 10, 2021, <http://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

<sup>12</sup> Marilyn Watkins, "Preliminary Lessons from Implementing Paid Family & Medical Leave in Washington," Family Values @ Work and Economic Opportunity Institute, August 20, 2020.

<sup>13</sup> Netsy Firestein, Ann O'leary, and Zoe Savitsky, *A Guide to Implementing Paid Family Leave: Lessons from California*, Labor Project for Working Families & Berkeley Center for Health, Economic & Family Security, 2011.

<sup>14</sup> Eileen Appelbaum and Mary Gatta, *Passing Paid Leave Laws is Just the Beginning: Lessons from the Field on Raising Awareness*, Center for Economic and Policy Research, February 2019.

<sup>15</sup> Moira Bowman et al, *Making Paid Leave Work for Every Family*, Center for American Progress, Family Values @ Work, Forward Together, and A Better Balance, 2016.

<sup>16</sup> Oregon H.B. 2005 § 2: 18a-e, 80<sup>th</sup> Leg., Reg Sess (O.R. 2019).

<sup>17</sup> Dr. Jessica Mason, et al. *Meeting the Promise of Paid Leave*, National Partnership, Main Street Alliance, and National Center for Children in Poverty, <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/meeting-the-promise-of-paid-leave.pdf>.

<sup>18</sup> Adewale Maye and Nat Baldino, *New Data Confirm U.S. Needs a Comprehensive Paid Leave Policy*, Center for Law and Social Policy, 2021.

<sup>19</sup> Setty, et.al, *Protecting Workers, Nurturing Families*.