

New Data Confirm U.S. Needs a Comprehensive Paid Leave Policy

In 1993, Congress passed the Family and Medical Leave Act (FMLA), which guarantees eligible employees up to 12 work weeks of unpaid, job-protected leave annually while maintaining health insurance benefits.¹ In order to gauge employees' and worksites' experiences under FMLA, Abt Associates and the Department of Labor have conducted dual surveys of eligible employees and worksites over the past 20 years.

Recently, Abt Associates released findings from the 2018 FMLA surveys.² The responses illustrate the attitudes surrounding FMLA for employees and employers and inform the needs of workers regarding work-family policies. Abt's data show a significant lack of understanding of FMLA policies among both employers and employees, as well as the limitations of unpaid leave, which is neither accessible to all who need it nor effectively meeting the needs of those who do have it. The findings suggest that many workers—in particular, Black, Latinx, Indigenous, Pacific Islander, single-parent and low-paid workers—are unable to benefit from FMLA as it stands. In order to thrive, workers need a paid leave program with comprehensive public education, outreach, and enforcement provisions.

FMLA Eligibility

Employees can only be covered by the FMLA if they:

- work for a covered firm with 50 or more employees within 75 miles of the employee's worksite;
- have 12 months of tenure with this firm; and
- have 1,250 hours of service in the past year (about 24 hours per week).

In the 2018 survey, approximately 56 percent of employees report meeting all three of these conditions to be eligible for FMLA protections, a decrease from 59 percent in 2012. For workers paid low wages (under \$15 an hour), only 38 percent of workers are eligible. Thus, over 60 percent of low-wage workers who may desperately need to take leave are not covered by FMLA.

Among workers of color, only 52 percent of Latinx workers and 53 percent of Asian workers are eligible for FMLA compared to 57 percent and 58 percent of Black and white workers, respectively. The racial inequities in eligibility create disparate barriers for people from certain demographics and their families, which can further threaten their economic security.

Reasons for Taking Leave

The Family and Medical Leave Act outlines several qualifying reasons for taking leave: a pregnancy, one's own medical condition, caring for a sick loved one, caring for or bonding with a new child, and certain conditions related to a family member's military service. In 2018, only 15 percent of workers surveyed took leave for an FMLA reason. More than half, 51 percent, of these workers who took leave did so for their own medical condition. Close to one in five workers took leave to care for a family member's serious health condition. And approximately 25 percent of workers also took leave to care for a new child. Only 5 percent of leave taken by workers was to care for family members not covered under FMLA.

The Challenges of Unpaid Leave

One of the biggest challenges workers face with FMLA is that the leave is generally unpaid. This disproportionately impacts the lives of workers paid low wages and their families who are the least likely to be able to afford taking leave without pay. While FMLA does not require employers to provide pay to workers taking leave, some employers choose to provide some level of pay, some states have paid leave programs, and some employees have access to short-term disability pay they can tap while on leave. According to the survey, however, workers paid low wages were least likely to receive pay while on FMLA leave, with about 61 percent receiving no pay at all. Approximately two-thirds of workers who did not receive full pay while on leave reportedly struggled "making ends meet." A lack of paid leave is a direct factor that can lead to people living in poverty. Over a quarter of employees reported putting off paying bills to afford taking leave, and almost three quarters reported they cut back on their spending. We know these sorts of financial binds are happening to those already economically disadvantaged when 4 out of 5 workers earning high wages receive pay while taking leave versus only 39 percent of workers earning low wages.

Overall, 42 percent of workers who took FMLA leave reported receiving full pay, 24 percent received some pay, and 34 percent did not receive any pay during the time of their leave. Of the workers who received pay while on leave, about 8 percent reported receiving pay from a state paid leave program. Nine states and the District of Columbia have such state programs to provide paid leave to workers.

Unmet Needs for Workers

Although the FMLA's provisions include a host of allowable reasons for taking leave, its parameters can be limiting for workers. Generally, 7 percent of workers report having a need to take leave but not having access to leave. This rate of unmet need is an increase from 5 percent in 2012. Black and Latinx workers report a much higher rate of unmet leave at 11 and 10 percent compared to 6 percent among white workers. Workers classified as "Other"—which includes Indigenous workers and Pacific Islander workers—reported an even higher rate of unmet need of 12 percent.

Women and single parents also report some of the highest rates of unmet need for leave at 9 percent and 16 percent, respectively.

Outreach, Education, and Enforcement

Among employees who have heard of FMLA, the most reported source for information about it is their employer. However, only 70 percent of covered worksites reported providing written policies for taking leave, and only 60 percent reported providing employees with guidance on how FMLA is coordinated with other leave and benefit policies.

Although a larger number of workers are aware of the existence of FMLA than was reported in the 2012 survey, this year's survey also suggests much confusion among workers about *how* the program works. A quarter of responders thought that their health condition did not qualify, and 18 percent were unaware of the availability of leave. Eighty-eight percent of employees reported that they believed they were eligible for benefits; only 61 percent are. These numbers are worse for Black and Latinx workers, as well as workers earning low wages and single-parent employees. For example, while 87 percent of white employees believed themselves to be eligible when only 62 percent actually were, 92 percent of African American employees reported that they were covered when the same amount (62 percent) were actually not eligible. This suggests that Black working communities face a higher level of systemic barriers to knowledge of their benefits and rights. Similarly, 91 percent of workers earning high wages reported that they are eligible for FMLA when only 66 percent are; for those earning low wages, 75 percent reported that they are covered when only 43 percent actually are. These numbers suggest that employees from marginalized backgrounds are given less transparency and education around their benefits and are less likely to even have access to those benefits in the first place. This gap in education and outreach about social insurance programs is a matter of racial equity and must be addressed directly when building a leave program.

Coupled with the lack of outreach and education, 45 percent of employees who faced unmet needs reported being worried they would lose their job if they took leave. Over a third (35 percent) of employees reported being worried about being treated differently or losing advancement opportunities. These data points suggest that workers are unaware of the job protections FMLA affords and that employers themselves may be unaware of the law's anti-retaliation practices they must comply with or follow. Workers deserve extensive education, enforcement, and outreach to ensure they are made aware of the law's provisions to feel safe in exercising their rights without fear of retaliation.

What a Comprehensive, Paid Family and Medical Leave Policy Would Mean for Workers

Without a comprehensive paid leave policy, millions of workers will continue to struggle as they try to care for themselves and their families while remaining economically secure. The FMLA's restrictions exclude many workers earning low wages including those working part time, many of whom may be doing so involuntarily as a result of the changing nature of low-wage work.³ Also, Latinx, Black, and American Indian/Alaska Native workers are far less likely to be eligible for and able to afford unpaid leave using the FMLA due to structural and historic racial inequities in our economic systems.⁴

Workers need comprehensive paid leave with robust funding for outreach, education, and enforcement. A program will be equitable only if workers clearly know what their benefits are and how to access them and are protected in doing so.

Given the narrow eligibility requirements and leave-taking restrictions of FMLA, advocates' calls for comprehensive paid leave are even more salient and urgent—and policymakers are responding. In the absence of federal action, nine states and the District of Columbia so far have passed paid leave laws. Congress passed paid parental leave for most federal workers in 2019, and in response to COVID 19 pandemic last year, passed temporary emergency paid sick and family leave in the Families First Coronavirus Response Act (FFCRA). But these measures don't go far enough.

Workers need ongoing, comprehensive paid leave policies like the Family and Medical Insurance Leave (FAMILY) Act to ensure they get the leave and pay they need to support their families.⁵ Without restrictions or exemptions, a comprehensive paid leave policy would guarantee paid leave for all, reduce unmet needs among workers, and ensure that fewer workers have to choose between caregiving needs and their paycheck or jobs.

Endnotes

¹ 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>.

² Office of the Assistant Secretary for Policy at U.S. DOL, *2018 Family and Medical Leave Act (FMLA) Surveys*, U.S. Department of Labor, 2020, <https://www.dol.gov/agencies/oasp/evaluation/fmla2018>.

³ Lonnie Golden and Jaeseung Kim, *The Involuntary Part-time Work and Underemployment Problem in the U.S.*, Center for Law and Social Policy, 2020, <https://www.clasp.org/publications/report/brief/involuntary-part-time-work-and-underemployment-problem-us>.

⁴ Pamela Joshi, Maura Baldiga, and Rebecca Huber, *Unequal Access to FMLA Leave Persists*, diversitydatakids.org, Heller School for Social Policy and Management, Brandeis University, 2020, <http://www.diversitydatakids.org/research-library/data-visualization/unequal-access-fmla-leave-persists>.

⁵ Tanya L. Goldman and Pronita Gupta, *FAMILY Act Supports Low Wage Workers and Their Families*, Center for Law and Social Policy, revised 2021, <https://www.clasp.org/publications/fact-sheet/family-act-supports-low-wage-workers-and-their-families>.