

Investing in Our Families:

The Case for Family Leave Insurance in New York and the Nation



a better
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the work and family legal center

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About A Better Balance: The Work & Family Legal Center

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education and technical assistance to state and local campaigns, A Better Balance is committed to helping workers care for their families without risking their economic security.

Summary of Report

When a new child is born or adopted, or a loved one becomes seriously ill, far too many workers are unable to take off from work. Without a right to paid family leave, workers are being forced to make impossible choices between their families and their economic security. Family leave insurance—a type of employee-funded paid leave program—is a critical issue for American families, especially as more and more women are entering the workforce and there are fewer nonworking family members to provide care to children and elderly relatives. Family leave insurance (FLI) is also a cross-cutting societal issue that has specific benefits for different populations including women, children, LGBT families, the elderly, and businesses, as well as for society as a whole. This report will detail the arguments regarding why it is so important that FLI become law in New York and throughout the country.

What's a family to do?

The Need for Paid Family Leave

In New York and throughout the country, our workplace laws and policies have failed to keep up with the changing nature and demographics of working families. The labor force participation rate of women and mothers has increased significantly during the past 40 years, and the number of dual-income families and single working parents has skyrocketed. Despite these changes, we have failed to pass laws and policies that allow workers to care for loved ones without risking their economic security. To support workers in New York and throughout the country, it is critical that we pass laws to guarantee paid family leave to bond with new children and care for seriously ill loved ones.



The typical household in the United States is no longer one in which there is a male breadwinner and a female homemaker engaged in the unpaid tasks of caring for children and other loved ones. Women now make up nearly half of the American workforce, and more than 70% of mothers with children younger than 18 years of age are participating in the labor force, compared to 47% in 1975. (*U.S. Department of Labor Dec. 2011*) Furthermore, 57% of mothers with an infant child are participating in the labor force—a percentage that is roughly the same for married and unmarried

mothers. (*U.S. Department of Labor Apr. 2013*) Our labor laws and policies have not adjusted to the new realities of working families. Every day, workers in New York and across the country are struggling to meet the demands of both work and family responsibilities, often finding it stressful to balance the needs of the workplace with caring for children and ill or elderly relatives.

Even though most workers will experience the need to provide care to a loved one at some point in their lives, no federal law provides American workers with paid leave when a loved one is seriously ill or when a new child is born or adopted. Instead, most American workers depend on their employers' personnel policies for support during these critical life moments. But unfortunately, most employers do not provide paid family leave to their workers. Only 11% of private sector workers in the United States have access to paid family leave. Low-wage workers, who are most likely to depend on every paycheck when a new child arrives or a loved one is ill, are even less likely to have access to paid family leave; a mere 5% of workers in the bottom quarter of private sector wage earners receive paid family leave. Full-time workers are also more than twice as likely to receive paid family leave than part-time workers, the majority of whom are women. (*U.S. Department of Labor Mar. 2011*) Furthermore, there are clear racial disparities in access to paid family leave in the United States. For example, black and Latino/a workers are less likely to receive paid leave when a new child is born or adopted than white workers, and white workers are nearly twice as likely to have access to paid parental leave than Latino/a workers. (*Center for American Progress 2012*)

Lack of paid family leave is a serious financial burden on many families experiencing a family illness or a new child, especially among low-income families and single parents, who often face greater challenges when juggling the responsibilities of work and family. The need to sacrifice pay or a job in order to care for a loved one can have long-lasting economic consequences on working families. The birth of a new child can lead to severe financial strains that may result in poverty or bankruptcy, with one quarter of poverty spells resulting from a child's birth. (Waldfoegel 2001) Families also can find themselves in debt or bankruptcy when they face increased expenses related to the health and caregiving needs of a seriously ill child or elderly relative.

Although the federal Family and Medical Leave Act (FMLA) (29 U.S.C. § 2601 et seq.) guarantees covered workers time off from work to bond with a new child or care for a seriously ill family member, the law has major shortcomings; the FMLA only provides unpaid leave, and it only covers roughly 60% of all workers in the United States. (U.S. Department of Labor Feb. 2013) To ensure that workers can care for their families without jeopardizing their financial security, it is crucial that elected officials

at the state and federal level introduce and pass paid family leave legislation. Three states—California, New Jersey, and Rhode Island—have passed family leave insurance laws that can serve as powerful examples for other states and the federal government. Family leave insurance (FLI) is a type of paid leave law that enables employees to receive a portion of their wages while they are on leave to bond with a

new child or care for a seriously ill family member. These payments are financed through small employee payroll deductions, therefore minimizing the cost to businesses while providing critical support to families.

At A Better Balance, we have heard from countless workers in New York State who are disillusioned with the lack of supportive workplace laws and policies during these key life moments. Many have contacted our organization's legal clinic for low-wage workers, and hundreds have shared their stories with us through our advocacy efforts; many of these stories are featured in this report and compiled in a separate storybook, *Family Leave Insurance: Supporting Working Families When They Need it Most*. Whether it

is a pregnant woman who just learned that the U.S. does not guarantee new mothers paid maternity leave, a father who wants to stay home for a period of time to care for his new child, or a worker struggling to provide care for a seriously ill parent or child, we have heard from countless individuals who are forced to make impossible choices between their work responsibilities and family caregiving needs—often with devastating health and financial consequences. These workers see FLI as a necessary policy to keep

their families stable and secure in today's economy. We have also talked to numerous workers whose families have been lucky enough to have paid family leave through their employers, as well as employers who provide paid leave because they feel it's the right thing to do for their workers and their company's bottom line.

“[FLI] is only right. The financial loss borne by women who bear children is staggering, not to mention the sacrifice made to their careers and the chance of completely losing their jobs. It’s right for children who desperately need their mothers home with them to nurse them and put them on the right footing. The savings in long-term health care would be incalculable. Employers save the cost of re-training workers to replace those who leave for childcare purposes. If we care about a society that is healthy and supports families in the long run, this is THE policy to pursue and support.”

— Jeanne, Glen Cove, NY

The enthusiasm and support we have encountered in New York State for FLI is reflected in broader polling on the issue. A 2009 statewide poll of New York voters showed widespread support for FLI legislation; 76% favored or strongly favored extending New York's temporary disability insurance program to provide up to 12 weeks a year of paid family leave. This support was especially significant among women; 82% of New York State women favored or strongly favored FLI. (*Marist Poll 2009*) Paid family leave and other family-friendly workplace laws are also very popular throughout the United States, with a new national survey revealing that 72% of voters favor expanding paid family leave and sick leave policies. (*Democracy Corps 2013*) The significant support for stronger work-family laws transcends the political spectrum, with another poll showing that 73% of Republicans, 87% of Independents, and 96% of Democrats think it is important that Congress and the President consider family-friendly workplace laws, including paid sick time and family leave insurance. (*National Partnership for Women & Families 2012*)

“People desperately want to have successful families, to be good parents, to have a job and succeed at it. If you take one away to get the other, the country pays a grievous price and every life is diminished.”

— Bill Clinton, February 5, 2013

FLI is so popular in New York and throughout the country because the policy would provide valuable benefits to diverse groups across society. FLI holds positive effects for women, children, LGBT families, the elderly, and business—in the form of increased workforce attachment for mothers, better rates of breastfeeding, savings for businesses through retention of employees, and reduced stress for family caregivers, among numerous other benefits. FLI also helps society as a whole, as families who have access to paid family leave are healthier, more economically secure, and less likely to require taxpayer-funded public assistance resources.

Given the overwhelming popularity of FLI among voters of all political backgrounds, and the hardships that paid family leave can help alleviate, the time is ripe to enact FLI at both the state and federal levels.



The Particular Challenges Faced by Women

“It is horrible that the US is significantly behind the rest of the WORLD with maternity leave.

I am a single mom and had complications before and after pregnancy. I used my entire life savings & had to go into my 401(k) to survive. Let’s make it right.”

— Maria, Pomona, NY

Although all workers can benefit from FLI, access to paid family leave can have profound implications for the economic security, health, and well-being of women. Although women comprise nearly half of the workforce, they continue to have a disproportionate share of family caregiving responsibilities. (*Boushey 2011*) In addition to research that shows women are still overwhelmingly the primary caregiver for the needs of their minor children, women are also significantly more likely to provide care to other relatives. Among those Americans who are providing unpaid care for an adult family member or child with special needs, approximately 73% have been employed while providing such unpaid care, and 66% are women. (*National Alliance for Caregiving, AARP 2009*)

FLI is an essential policy for the large percentage of women who are juggling work and family caregiving responsibilities. Far too many women are forced to reduce work hours or leave jobs altogether due to the lack of paid family leave, resulting in devastating and long-lasting financial consequences. Indeed,

motherhood is the biggest risk factor for poverty among women in the U.S., and the financial strains of balancing work and family can even discourage many women from having children. (*Crittenden 2001*)

FLI can ensure that expecting and new mothers have adequate time and support to address pregnancy-related health conditions, recover from childbirth, and bond with a newborn or newly adopted child. FLI also promotes longer periods of breastfeeding and allows mothers to care for children with special needs and chronic illnesses. Without access to paid leave programs, many women have no choice but to return to work days after childbirth, give up breastfeeding earlier than desired, and put newborn children and infants in costly childcare arrangements.

As the number of women who are co-breadwinners, primary breadwinners, or single parents continues to grow, FLI is increasingly essential to the financial security of their families. When women need to take time off of work for caregiving responsibilities, that time is often unpaid and may even jeopardize their jobs. (*National Women’s Law Center 2013; Bakst, Leiwant, et al. 2013*) Researchers have shown that access to paid leave helps women stay attached to the workforce, since women who take paid leave after the birth of a child are more likely than women who do not take leave to return to work 9 to 12 months later. (*Houser & Vartanian 2012*) Such changes in workplace attachment can have significant, negative effects on women’s salaries, career advancement, and long-term retirement savings through the Social Security program.

Many families rely on every paycheck to stay afloat, and the need for women to take unpaid leave to care for a child or seriously ill loved one can be financially devastating. Of the nearly seven million jobs that were lost during the recession between 2007-2009, more than three-quarters belonged to men; as a result, women's earnings have become even more essential to many working families. *(Bakst, Leiwant, et al. 2013)* The financial strain of unpaid leave, which may be compounded by the cost of medical care for a newborn or seriously ill loved one, can result in high credit card debt, unpaid bills, the use of high interest loans, bankruptcy, and other serious financial consequences. *(Human Rights Watch 2011)* Furthermore, workers who cannot afford to take unpaid leave to bond with a new child often struggle with the astronomical expense of childcare. In New York, for example, the average cost of center-based infant care is \$14,009 a year, the highest of all states. For many families, the high cost of infant care is prohibitive, forcing one parent—often a new mother—to leave the workforce rather than pay for child care, with devastating effect on her lifetime earnings. Additionally, even if families can afford the cost of infant care, access is often a problem, as there can be a shortage of available center-based care. *(Bakst, Leiwant, et al. 2013)*

In addition to providing significant economic security to working women and their families, there are numerous health benefits connected to FLI. Women need time to physically recover from childbirth before returning to a normal work schedule. *(American Academy of Pediatrics & The American College of Obstetricians and Gynecologists 2007)* Furthermore, when a biological mother has a partner who is also able to take FLI leave, the partner's support and assistance can lead to a quicker physical recovery for the new mother, especially if there were complications with the birth of the child. FLI programs also help increase the likelihood and average duration of breast-

feeding, which in addition to providing health benefits for children, is associated with lowering a mother's risk for type 2 diabetes, breast cancer, and ovarian cancer. *(A Better Balance, The Public Health Case)*



Pregnant women without paid family leave often forgo use of any available paid sick time or other paid time off before the birth of a child—even if they need it—in order to save that time for when the child arrives; delaying use of necessary sick time or medical care while pregnant can jeopardize the health of the expectant mother and her unborn child. For women who receive no paid time off and simply cannot sacrifice their income during a time of family need, the physical and mental stress of having to care for a new child or family member who is seriously ill can be devastating. Lack of adequate paid leave has been associated with postpartum depression in some women, while longer maternity leaves have been connected to better mental health outcomes for new mothers. *(Human Rights Watch 2011)*

“Unpaid leave is a huge reason that we have put a hold on having a second child. Given the economy, it is difficult to save up the money that I would miss from my salary for those 12 weeks [of unpaid FMLA leave].” — Larissa, Syracuse, NY

Dimitajo's Story

I am a mother caring for a 15 year old daughter and her three younger siblings. The three younger children are 2 boys, ages 4, 2 and my baby girl who recently passed Her name was Domonae

Domonae was born with Down Syndrome (DS) and a heart defect that was repaired on December 28, 2011 accompanied by two additional surgical procedures due to complications. Domonae was diagnosed at birth with DS Domonae's medical condition made it even more heart wrenching for me to return to work sooner than I wanted to. However, our household would suffer financially if I didn't do so. I went out on FMLA leave on December 22, in order to prepare for my daughters surgery. By the middle of January I had stopped receiving pay checks. My husband was out of work due to being injured in a car accident so my income was pretty much paying the bills.



I really can't explain to you how frustrating it was for us. During my daughters hospitalization . . . along with being at the hospital with her, we had to find means of paying our bills to keep us from being evicted, having food and taking care of our family. We applied for Public Assistance which didn't kick in until April after being denied cash assistance. Our private insurance through my job was cancelled before my medicaid services kicked in. I had no choice but to stay home and take care of my baby girl and I don't regret doing so because I was able to be there with her. I wasn't sure of when she would get better or if she would get better. She spent two months at home with us . . . and was hospitalized again which led to her passing

No mother should have to be worried about losing wages after giving birth to their babies or having to take leave to care for a loved one. . . . Newborn babies as well as sick children or family members are vulnerable and need to be cared for with minimum financial worries. I am grateful for the time I was able to spend loving my daughter. But I must say, If my leave was paid, it would not have changed my daughters circumstance but it would have relieved my family of serious anxieties as to how we would meet our basic needs.

— Brooklyn, NY

The Benefits of FLI to Men

Although women are more likely to be primary family caregivers, many men are actively engaged in providing unpaid care to children and loved ones. Among Americans who provide unpaid care to an adult family member or child with special needs, more than one-third are male. (*National Alliance for Caregiving, AARP 2009*) FLI would provide significant support to working men with family caregiving responsibilities. According to a survey of professional working fathers, the overwhelming majority reported that balancing work and family leads to stress, pressure, and conflicts, with nearly 85% reporting that they felt under pressure to be both a breadwinner and an engaged parent. (*A Better Balance, Beyond the*

Breadwinner) Paid family leave laws can encourage more men to participate in caregiving, and challenge outdated workplace norms and expectations that caring for a child constitutes women's work. Research has shown that California's FLI program, which is equally available to women and men, led to an increase in the number of men taking parental leave, as well as the duration of leaves taken by male caregivers. (*Appelbaum & Milkman 2011*) By encouraging greater numbers of men to take family leave to bond with a new child or care for an ill loved one, FLI can promote greater gender equality both in the home and workplace.



“It was a challenge to get the time off that I wanted when my daughter was born. When I first asked for the time off, the CFO [Chief Financial Officer] said, ‘If we can do without someone for a whole month, I wonder if we need the position at all’ But eventually they gave me as much as is offered for maternity leave, which isn’t very much. I also had to negotiate to take my own sick days for a month of paternity leave by my own design. This wasn’t well received, and I’m basically working from home while taking care of my daughter.”

— *Concerned Father*

The Stories of Male Caregivers in New York

“I have a 25-week-old premature daughter in the NICU at Westchester Medical Center and cannot afford to take time off of work as I am sure most New Yorkers also could not afford to do. [FLI] would give me a chance to be with my daughter in the NICU until she comes home, and not have to worry about paying my bills and mortgage.”

— Steven, Stony Point, NY

“My mom died from cancer in 2010 and I could not keep up with my bills. I took the last month of her life off so I could be with her and I nearly went bankrupt. While I was dealing with grieving her death, I was struggling financially; the stress was horrible.” — Richard, Siena, NY



“While one normally thinks of this sort of thing as a benefit for women, there are all too many employers who refuse to allow men to take time off with pay, contending that it is their wives’ responsibility to care for family members. Such employers need to be ‘enlightened’ by the State.”

— Stonewall, Brooklyn, NY

“I am a professor of anesthesiology and took family leave. I am a better doctor, father and researcher because of it.”

— Michael, New York, NY

The Benefits of FLI to Children

Children also see incredible benefits when their parents have access to paid family leave. One of the primary ways in which paid family leave improves the health of children is by increasing the likelihood and duration of breastfeeding. Research has shown that the median duration of breastfeeding doubled for all new mothers who used California's FLI program. (*Human Rights Watch 2011*)

Studies have suggested that breastfeeding decreases the incidence and severity of bacterial meningitis, diarrhea, and urinary and respiratory infections among children; breastfeeding is also associated with lower rates of sudden infant death syndrome, asthma, obesity, lymphoma, and leukemia. One study found that if 90% of American mothers breastfed through 6 months, the deaths of 900 babies could be prevented and \$13 billion dollars could be saved each year. (*A Better Balance, The Public Health Case*)



Beyond breastfeeding, FLI can also improve general health outcomes for children. Paid leave has been associated with a drop in infant

"[My son] has spent the first 3 weeks of life in the NICU mostly in a coma before being able to come home. Two days after coming home he was back at the hospital for another week. He has a very life-threatening disorder and has been in and out of the hospital due to this disorder. We have essentially exhausted almost all of our leave to date. Twelve weeks may not seem like much to some but to us being able to have the opportunity to be there for our son and not have to worry about the financial aspect during that time would be great." — Nicole, Brooklyn, NY

and child deaths, as well as a greater likelihood of attending well-baby visits and receiving immunizations. (*Human Rights Watch 2011*) As children get older, their parents' access to FLI can also improve their health, especially if they suffer from chronic or serious illnesses. Studies have shown that ill children have faster recovery times, better vital signs, and shorter hospital stays when they are cared for by their parents. (*A Better Balance, The Public Health Case*) In addition to benefiting child health, FLI can help parents better meet the needs of a new child. A study of workers in California found that new parents who used California's FLI program responded more positively about their ability to care for their children and arrange childcare than new parents who did not use the FLI program. (*Appelbaum & Milkman 2011*) Furthermore, when adoptive parents are able to take advantage of FLI benefits following the adoption of a new child, this bonding time can often help with the transition and emotional needs of the child. (*Human Rights Watch 2011*)

"This is so important for working families. I just adopted a child and had to take an unpaid leave to help her adapt to her new home and connect to me. After all the adoption expenses, a paid family leave would have helped our family stay on our feet."

— Stacey, Bronx, NY

The Benefits of FLI to the Community

Not only does use of FLI include all of the above-discussed benefits to families when a new child arrives or a loved one is seriously ill, but it also contributes to society as a whole. According to the AARP Public Policy Institute, unpaid family caregivers in the United States provided services valued at approximately \$450 billion in 2009. (*Feinberg, et al. 2011*) For example, when workers care for their aging family members, they often help to delay or prevent the use of nursing home care or home health care paid for by Medicare, which leads to taxpayer savings and relieves overcrowding in long-term care facilities and hospitals. (*Gibson & Houser 2007*)



FLI also saves taxpayers money by reducing families' use of public assistance resources. For example, one study from California found that the state's FLI program decreases reliance on public assistance and creates significant taxpayer savings, estimating annual savings of over \$23 million in usage of food stamps and the Temporary Assistance for Needy Families (TANF) program. (*Dube & Kaplan 2002*)

Finally, the ability of parents to take FLI leave after a child's birth can help to ease shortages in the availability of center-based infant care.

"As a hospital social worker I see so many families in terrible situations because workers risk their finances to stay home with a sick family member." — *Julie, Rochester, NY*

FLI as an Issue of Care for the Elderly

The population of seniors is rapidly growing in the U.S. In 2010, 40.4 million Americans—roughly one in every eight—were 65 years of age and older, an increase of 15.3% since 2000. By 2020, the population of older Americans is expected to increase another 36%. (*U.S. Department of Health and Human Services 2011*) Due to the rapid aging of the population, the demand for elder care will rise and FLI will become increasingly

important for many American families. In fact, the number of potential caregivers for each person who is age 80 or older is expected to decrease from

7 in 2010 to 4 in 2030. (*Redfoot, et al. 2013*) As more workers assume the responsibilities of caring for older relatives, FLI can provide critical support for both elderly care recipients and their family caregivers.

FLI helps older adults in a variety of ways. Many workers would like to provide care for their aging and ill family members but cannot afford to take unpaid time off of work. The availability of FLI can allow workers to provide invaluable assistance with their elderly relatives' medical visits and health needs, especially during periods of serious illness. With the support of their loved ones, older adults can recover at a faster rate and have shorter stays in hospitals and other long-term care facilities. (*A Better Balance, The Public Health Case*)

For caregivers, the benefits of paid family leave are also clear. A survey by AARP found that close to two-thirds of workers between the ages of 45 and 74 provide care to an aging or other adult loved one, and approximately 20% of these working caregivers expect they will need time off from work in the next 5 years due to their caregiving responsibilities.

(*Feinberg 2013*) As the American population continues

to age, these caregiving rates will undoubtedly increase. Yet the widespread lack of paid family leave can discourage family caregiving or cause significant hardship

for workers who assume elder care responsibilities. Research shows that Americans who provide unpaid family care to an adult can see negative consequences to their finances, careers, emotional health, and physical well-being because of their caregiving responsibilities. For example, workers providing care to a loved one over the age of 50 report spending more than \$5,500 out of pocket—or 10% of their median annual income—on caregiving in 2007. To finance these increased caregiving costs, 38% reported that they reduced or stopped saving for their own future, 34% reported using their savings, and 23% reported cutting back on their own preventive health or dental care. (*Feinberg, et al. 2011*) FLI would allow family caregivers to provide care and assistance to elderly and ill loved ones without jeopardizing their own savings or health needs.

“It’s crucial that caregivers of adult parents be able to take paid leave from their jobs to accompany a parent to important doctor appointments, etc. Being able to help mom or dad in an emergency relieves caregiver stress. Caregivers benefit. Employers benefit, too, as stress is the number one reason for work absences.”

— *Kathy, New York, NY*

Workers without paid family leave often have no choice but to leave the workforce or reluctantly reduce their hours in order to care for an elderly relative. For those caregivers who must leave the workforce due to their caregiving responsibilities, the negative impact on their finances and retirement savings can be devastating; one estimate of the income-related losses for workers age 50 and over who are taking care of a parent is \$115,900 in wages, \$137,980 in Social Security benefits, and \$50,000 in pension benefits. *(Feinberg, et al. 2011)* Workers should not be forced to sacrifice their economic security and retirement savings in order to provide care to an aging or seriously ill loved one.

“This issue really strikes home as I find myself as primary care provider for my Mom who has Dementia. It is impossible for me to work full time and care for her. Income is vital to the support of my own household.”

— Paulette, Copiague, NY

Finally, FLI can reduce stress for caregivers who often find balancing work and caregiving needs very difficult. More than two-thirds of workers caring for a loved one over the age of 50 report that their caregiving responsibilities have increased their stress or anxiety. *(EverCare & National Alliance for Caregiving 2007)*

FLI is a key strategy for helping caregivers to manage stress and maintain their physical and mental well-being.



Ariel's Story

My personal support for family leave insurance was born out of my own life experience, which made me tremendously grateful for my employer's policies and painfully aware of the impact on millions of workers who lack these basic rights. In 2007, working for IBM as in-house counsel, I was eagerly awaiting the birth of my first child. IBM supported my request for a 6 month maternity leave (3 months paid, 3 months unpaid) — certainly not the norm in corporate America. When I was 7 months pregnant, my beloved mother was diagnosed out of the blue with Stage 4 terminal cancer.



Overnight, my parents moved to New York for my Mom's treatment at Sloan Kettering. Over the next year and a half, I managed all of my Mom's medical care, and I never missed a single one of her doctor's appointments or tests, nor did I miss my daughter's pediatrician visits or early milestones. All of this was possible only because of IBM's policies on paid family leave, as well as their policies on paid sick time and flexible work.

Juggling between care-giving and full-time work only intensified as my Mom's condition declined. My husband and I moved a hospital bed into our bedroom and cared for my Mom in our apartment for the last 6 months of her life. Somehow, I was able to continue working full time while raising a small child and caring

for my dying mother. I would not and could not have stayed employed through the most agonizing time in my life if it were not for IBM's paid leave and flexible work policies. I am more committed than ever to my job and IBM because of their commitment to support family needs.

Today, as a mother of two girls who strives to balance engaged parenting with a demanding career, I am well aware that my experience stands in stark and startling contrast to the plight of most working families in New York—and throughout the country—who have no paid family leave when welcoming a new child or caring for a seriously ill loved one. All workers should have the support that I was fortunate to receive.

— New York, NY

FLI as an Issue for the LGBT Community

Due to LGBT-specific gaps in the law and the demographics of the LGBT community, FLI is a critically important issue for LGBT workers and families.

The number of same-sex couples raising children is increasing, and it's estimated that in the U.S. more than 2 million children are living with LGBT parents. (*Movement Advancement Project, et al. 2011*) As a result, LGBT workers—whose families may be excluded from employer personnel policies and employment laws—have a growing need for LGBT-inclusive paid leave laws that cover bonding with a newborn or newly adopted child. LGBT workers are also less likely to be able to afford unpaid time off from work to care for a new child or seriously ill child, since same-sex couples raising children are more likely to be living in poverty than the population as a whole.

Many LGBT workers also provide care to adult loved ones, with a nationwide survey showing that LGBT individuals are more likely than the population as a whole to be providing care to an adult loved one and



“I have a premature baby in a NICU in Buffalo. Both my partner and I have lost income, and for the time being our family is torn apart while I stay here with the baby and my partner is forced to choose work over parenting, lest we lose our home. Working families should not be punished with lost income for doing the responsible thing and caring for a sick child.”

— *New Yorker in Support of Family Leave Insurance*

provide more hours of care each week. Given documented health disparities in the LGBT community, including a higher risk for certain cancers, HIV/AIDS, diabetes, arthritis, and other chronic conditions, the ability of LGBT workers to take paid leave to care for loved ones' health needs is especially important. (*A Better Balance, Time for A Change*)

Despite advances in LGBT rights at the Supreme Court and in numerous states, many same-sex couples do not have legal recognition or protection under the law. For example, LGBT workers who live in states that do not recognize same-sex marriages cannot take unpaid leave under the FMLA to care for a seriously ill partner or spouse. LGBT-inclusive FLI laws can fill this legal gap and provide significant economic security to LGBT workers with caregiving responsibilities. (*A Better Balance, The FMLA: What Should LGBT Families Know?*)

The Business Case for FLI

FLI is a powerful tool for business that can both improve a company's bottom line and provide critical support to its employees. Research has shown that paid family leave leads to business savings by enhancing employee morale, increasing loyalty, and lowering turnover. Numerous studies have shown that family-friendly workplace policies like paid family leave can attract top talent, since many workers weigh paid leave and family-friendly workplace policies when choosing among different job prospects. (*A Better Balance, The Business Case*) In addition to these substantial savings and benefits, state FLI programs do not impose new costs on businesses, as the weekly benefit is financed through small employee payroll deductions.

Without an FLI law, small businesses often cannot afford to provide the same paid leave benefits to their workers as larger companies, and thus lose valuable workers as a result. Therefore, FLI helps to make small businesses more competitive by ensuring that all workers can receive paid family leave regardless of the size of the company for which they work. Implementation of an FLI program can also save money for employers that already provide paid family leave, since coordinating their current policies with an employee-funded insurance program can offset existing costs.

Many companies provide paid leave to their workers simply because it is the best thing to do for workers and the company. For example, Deloitte, LLP offers 14 weeks of paid leave for birth mothers, and 8 weeks for fathers or adoptive parents. Bank of America offers 12 weeks of parental leave for mothers, fathers, and adoptive parents. (*IWPR 2013*) Google has even more generous policies, offering up to 22 weeks of paid parental leave. (*Liebelson 2013*) Once the company increased its leave to 5 months, it saw a 50% drop in the number of moms who quit. (*Kaysen 2013*)

"A large number of studies show that childcare, flexible work hours, and paid family leave all have a very high return on investment (ROI). Moreover, there is compelling evidence that points to the fact that companies can measurably improve their bottom line by transforming a company's corporate culture into one of a truly caring organization—which basically means, putting the interests of their employees first!"

— Cynthia D. DiBartolo, Esq., CEO, Tigress Financial Partners LLC and Chairperson, Greater New York Chamber of Commerce

Recent research confirms that FLI helps businesses of all sizes. An overwhelming majority of California employers report that the state's FLI law has not resulted in any cost increases and has had either a positive or neutral effect on their business. Small businesses were even more likely than large businesses to report that FLI has had a neutral or positive effect. In addition, nearly 90% of employers reported that FLI in California had a positive or no noticeable effect on productivity, with 99% reporting the same for employee morale. (*Appelbaum & Milkman 2011*)

“I want my employees to be able [to] take care of who they need to at home without worrying about being able to cover their bills. An employee who is distracted on the job is no good to me, and after a period of paid leave, they come back to work and stick with me for years. Hiring and training replacement workers is expensive, so keeping turnover low is a huge cost saver for any business. As a business owner, I’m proud that our state legislators stood up for local businesses and Rhode Island’s working families by voting for [the state’s Family Leave Insurance bill] . . . Jobs should be what enable us to support our families, not what prevent us from caring for them.”

— Ann-Marie Harrington, President of Embolden, a digital media firm in RI (via *The Huffington Post*)

The data on California’s FLI program also shows that the average employee who takes FLI uses less than the full amount allowed under the law, suggesting that employees only take as much time as they need under the law. (*State of California 2012*) Although some business owners have raised concerns about how to handle a worker’s absence while on leave, existing FLI programs show that such leaves are manageable. While a worker is on leave, many businesses shift work responsibilities to remaining workers or use the resulting payroll savings to hire temporary employees or pay overtime to cover the work. (*Appelbaum & Milkman 2006*)

Businesses also see savings from FLI, due to improved retention of workers. Nearly 93% of businesses in California reported that FLI has a positive or no noticeable effect on employee turnover. (*Appelbaum & Milkman 2011*) The savings from reduced turnover are significant, since the costs of recruitment, replacement, and training can be high; it costs businesses approximately 150% of a salaried worker’s yearly salary to replace him or her, while turnover costs for hourly workers range from approximately 50% to 70% of the worker’s annual pay. (*A Better Balance, The Business*

Case) In California, 83% of employees in lower paying jobs who have used FLI returned to their employer, while only 74% of employees not using the program did so. (*Appelbaum & Milkman 2011*) As described earlier in this report, FLI can especially improve retention of female employees; women who take paid leave after a child’s birth are more likely to be employed 9-12 months after the child’s birth than women who take no leave. (*Houser & Vartanian 2012*) Of mothers who worked during their first pregnancy and returned to work within one year of the baby’s birth, 80% went back to the same employer. (*Laughlin 2011*)



The National Landscape: What's Available Now?

There is no national law in the United States that provides paid family leave to employees, an absence that places the U.S. outside of the mainstream.

Across the world, 178 countries give some paid leave to women in connection with childbirth, and 74 countries provide some sort of paid leave to fathers. (*Bakst, Taubman & Gedmark 2013*) By contrast, in the United States, only 11% of employees had access to paid family leave in 2012. (*Giezen 2013*) The widespread lack of paid family leave results in extreme hardship for many families trying to balance work and family responsibilities.

The U.S. is the only industrialized nation in the world that does not guarantee new mothers paid maternity leave. (*Bakst, Taubman & Gedmark 2013*) Furthermore, the lack of paid family leave in the U.S. is at odds with central concepts of human rights law expressed in several international treaties (not ratified by the U.S.) that support the need for paid leave: The Convention on the Elimination of All Forms of Discrimination Against Women; the International Covenant on Economic, Social, and Cultural Rights; and the International Labour Organization Convention No. 138. (*International Labour Organization; Human Rights Watch 2011*)

The only federal law that provides time off for U.S. employees to care for family needs is the FMLA, and while this law does allow workers to take some time away from work, it is unpaid, making it impossible for many employees to take advantage of the law. When the FMLA was passed 20 years ago, it marked a great step forward for working families, and in the time since has been used millions of times to help families when they need it most, such as at the birth of a child. But, more than 40% of employees are not covered by the FMLA, showing the need for some important updates and additions to this key work-family law. (*U.S. Department of Labor, Feb. 2013*)

The FMLA (*29 U.S.C. § 2601 et seq.*) provides up to 12 weeks of unpaid leave to recover from one's own serious health condition (including pregnancy); to bond with a new child within one year of birth, adoption, or foster placement; to care for a parent, child, or spouse with a serious illness; or to deal with certain obligations—including childcare—arising from a family member being on or called to active duty. In addition, the FMLA also provides up to 26 weeks of unpaid leave a year for workers whose spouse, child, parent, or next of kin is a member of the armed services with a serious illness or injury. All private employers with 50 or more employees within a 75-mile radius of each other, and all government employers regardless of size, must comply with the law. However, only employees who have worked for a covered employer for at least 12 months and have worked at least 1,250 hours in the 12 months before taking leave are eligible to take the unpaid leave provided by the FMLA. Covered employers are also required to continue group health insurance coverage for workers on FMLA leave under the same terms and conditions as if they had not taken leave. Furthermore, workers are guaranteed their job back, or an equivalent one, upon return to work, although there may be an exception for those who are among the top 10% of the company, measured by salary. (*A Better Balance, FMLA Fact Sheet*)

“Near the end of my administration, I argued that we needed to find ‘new ways to provide paid leave to those workers who need to take off but cannot afford to do so.’ Most advanced nations provide some form of paid family leave, and it’s helped, not hurt, their economies. A growing chorus is now working on how to make that dream a reality here, and they deserve our support.”

— *Bill Clinton, February 5, 2013*

Expanding on the Protections of the FMLA

Given the FMLA's limitations, there have been numerous federal and state efforts to add to the protections the FMLA already provides to employees:

Problem: The FMLA only provides unpaid leave.

Solution: This fall, members of the Senate and House of Representatives will introduce a paid family leave bill, the FAMILY Act, which would provide paid family leave to individuals who need it through the Social Security Administration.

Problem: The FMLA requires that employees have worked 1,250 hours for their employer in the past year, excluding many part-time and relatively new workers.

Solution: The Family Fairness Act was introduced in the House of Representatives in January 2009 to remove the requirement under the FMLA that employees who take leave must have worked 1,250 hours for their employer in the past year, and providing benefits to many part-time workers.

Problem: The FMLA only provides leave to bond with a new child or care for seriously ill children, parents, or spouses; other family members are not covered.

Solution: In 2013, the Family and Medical Leave Inclusion Act was introduced in the House of Representatives and Senate to expand FMLA coverage to care for seriously ill domestic partners, parents-in-law, adult children, siblings, grandchildren, and grandparents. Another bill was introduced in February 2013 in the House of Representatives and Senate to allow workers to take FMLA leave after the death of a child.

Problem: The federal government has not led by example with its own workforce.

Solution: The government can and should be a model employer and pass the Federal Employees Paid Parental Leave Act, which has previously passed the House of Representatives, and would allow up to four weeks of paid family leave for federal workers with a newborn or newly adopted child.

Problem: Many states have not passed laws to support workers who need to take family leave.

Solution: States can pass FLI programs and laws to fill the FMLA's gaps. Numerous states have also expanded on the FMLA's unpaid leave benefits in many ways whether by increasing the reasons for taking leave, expanding the definition of family, or applying the law to smaller businesses.

States Leading the Way on Family Leave Insurance

Given the limitations of the FMLA, some states have enacted their own FLI programs or other additions to the FMLA's protections. California (*Cal. Unemp. Ins. Code §§ 3300-3306*) and New Jersey (*N.J. Stat. § 43:21-25 et seq.*) have FLI programs in effect that provide partial pay for employees to bond with a new child or care for a seriously ill family member for up to six weeks. These programs were built into existing temporary disability insurance (TDI) structures and are financed through small employee payroll deductions. As of January 1, 2013, the New Jersey program pays workers two-thirds of their average weekly wage up to \$584 per week, and California provides 55% of a worker's weekly wage up to a maximum of \$1,067 per week. One drawback to these two programs is that they don't provide job protection to workers who take leave under them. Although the FMLA or another state law may provide job protection to some workers who take advantage of FLI in these states, not all workers' jobs will be protected when they take such leave.



In addition to providing concrete health and economic benefits to working families, implementation of state FLI programs can also make a difference in how women and parents are perceived in the workplace. One recent study provides evidence that having a family-friendly law like the FMLA on the books can have a positive impact on judgments of, and consequences for, mothers and fathers who take leave. (*Correll 2013*)

The momentum for FLI is continuing to build. Rhode Island recently became the third state to pass an FLI program, which takes effect on January 1, 2014, (*to be codified at R.I. Gen. Laws §28-41-34 et seq.*) and will provide up to four weeks of benefits for workers to bond with a new child or care for a seriously ill family member. The program also provides job protection, the first state FLI program to do so. Such job protection is a vital component to FLI programs so that workers do not have to worry about losing their jobs if they take advantage of the leave provided.

To help and encourage states to follow in the footsteps of California, New Jersey, and Rhode Island, in July 2013 the U.S. Senate's Labor, Health and Human Services, and Education, and Related Agencies Appropriations Subcommittee approved a bill that includes \$5 million for a State Paid Leave Fund for planning and implementation grants for states that want to establish paid family leave programs.



“Because my job does not give me ANY pay for maternity or paternity leave, we had to really think about taking FMLA for twelve weeks when our baby arrives. Because of the NJ Family Leave Insurance (NJFLI), we can both take at least 6 weeks off to bond with our newborn baby and know that . . . we will both get paid enough to cover the basics. It is so important for both of us to be able to bond with our new baby and the . . . NJFLI makes this possible.”

— Dave, Expecting Father from New Jersey

“My son and [daughter-in-law and 2 granddaughters] live in San Diego.

My son was able to take time off from work with pay . . . when both children were born. He was able to be there to help, bond and care for his wife and child. New Yorkers should have the same opportunity.”

— Karen, Howard Beach, NY

“I have worked in NJ and have had the luck of having paid family leave from the state.

It was a relief to have that extra time to bond with my child without the concerns of finances. New York needs to follow NJ!”

— Danalyn, Bronx, NY

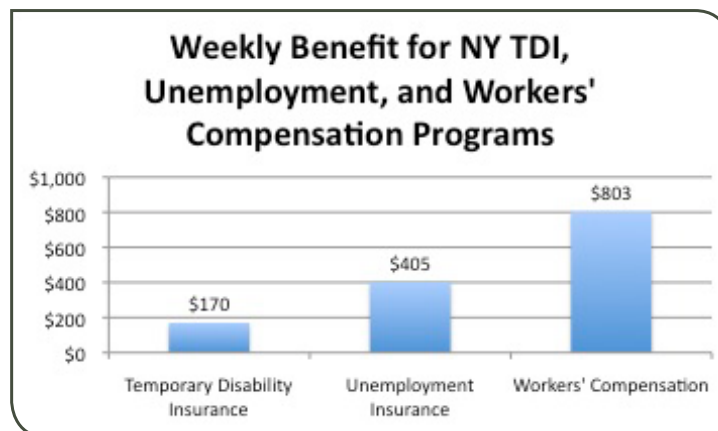
Passing FLI: Let's Make it the Law in New York!

Workers in New York can rely on the state's Temporary Disability Insurance (TDI) program to provide some wage replacement during an off-the-job illness or injury. (N.Y. Workers' Compensation Law § 200 et seq.) TDI is available to workers without restriction on business size, and is especially critical to the women of New York, providing pay to workers during pregnancy and following the birth of a child. However, only biological mothers are eligible for TDI with respect to the birth of a new child since it is related to the pregnancy condition. New York law does not provide any guarantee of paid family leave to new fathers, non-biological mothers,

or adoptive parents. Nor does New York law guarantee paid leave for workers who need to care for a seriously ill loved one.

Only five states and Puerto Rico have TDI programs, and three of these states—California, New Jersey, and Rhode Island—have passed FLI programs by incorporating family leave into the existing administrative structure of their TDI system. New York seems like the next logical place to make FLI protections law, as it is one of the only remaining states with a TDI system that does not yet guarantee FLI.

TDI is a critically important program but the benefit level has not been raised since the 1980s, severely reducing its effectiveness as a wage replacement program. The TDI benefit is one half of a worker's weekly wage up to a cap of only \$170 per week. New York's TDI benefit level is far below all five states that provide TDI and is lower than the maximum benefit levels available from New York's Unemployment Insurance (\$405/week in 2013) and Workers' Compensation (\$803.21/week through June 30, 2014) programs.



“My father currently has lung cancer and this act would go a long way towards helping my family. It has been tough for us, especially without insurance. Thank you to . . . everyone who supports this act.”

— Steven, North Lindenhurst, NY

As mentioned at the beginning of this report, FLI has strong support among New York’s voters. Furthermore, a vibrant statewide coalition—comprised of community organizations, unions, businesses, early childhood advocates, women’s, senior and LGBT groups—is committed to passage of a state FLI program. An FLI bill has already passed the New York State Assembly in both 2005 and 2007, and in the most recent legislative session the Family Leave Insurance Act was introduced in both the New York Senate and Assembly. The Family Leave Insurance Act would use the existing TDI program, modernizing and expanding it to provide employees with up to 12 weeks of benefits to bond with a newborn or newly adopted child or to care for a seriously ill family member. Since FLI will be integrated into the existing TDI system, implementation of the program will create no administrative changes for businesses, and the weekly employee benefit would be financed through small employee payroll deductions—by some estimates, as little as 42 to 67 cents a week. (*A Better Balance, Family Leave Insurance*) The bills that passed the Assembly also provided for an increase in the TDI benefit level.

“I work for a NY based company and although NJ offers [FLI] . . . I cannot get it since my employer is in NY where this is not a benefit. How fair is this?”

— Joyce, Nutley, NJ

The Family Leave Insurance Act would create a profound health and economic safety net for working families in New York. As described throughout this report, FLI would make it easier for new parents in New York—both mothers and fathers—to care for their children without undue financial hardship. In addition to supporting parents and leading to better health outcomes for the state’s children, FLI would provide critical support to the elderly and their family caregivers. As of 2010, more than 3.7 million New Yorkers are age 60 and over, and the population of this age group is projected to rise to more than 5.1 million by 2025. (*New York State Office for the Aging 2011*) FLI is an important strategy for providing necessary support to the state’s booming population of older adults, while also saving taxpayer dollars and easing the burden on overcrowded nursing homes and hospitals. New York has a clear opportunity to lead by providing critical help to families in a time of stress and economic need. It’s time we pass FLI for the advantage of all New Yorkers.

“As a parent, a son, a teacher and the husband of a spouse with health issues, I support this Act and hope you will, too.”

— Gary, Staten Island, NY

“Family leave is long overdue. . . . We owe it to our elderly. We owe it to the mothers and fathers, to help them get their families off to a good start and to help them deal with the exhaustion that new parents face, deleterious to their health; to help them support the elderly in a loving environment. If we truly have ‘family values’ this is where we should show it!”

— Lora, Potsdam, NY

Nicole's Story

I am about to give birth any day now to our first child! Really not sure how we are going to afford the time off. I am 30 years old, my husband 29. He is a teacher . . . and I am a graphic designer

I have to use my paid time off that I have accumulated so far this year, after that I signed up for short-term disability but it is only 40% of my pay. We can't afford to pay for our house with that payment. I am hoping with my personal time and the short-term we can work it out for 4 weeks. After that I have no other option but to work from home for awhile before I must go back to the office. Luckily I can do work from home or we would not be able to pay our bills if I needed to take the full 6 weeks off. I would love to take 12 weeks and i know it is going to be very hard to go back to work so quickly but we have no other option. It is very frustrating and gets me upset just thinking about it. We both work so hard. I know I deserve this



time off and so do many other women. Not requiring jobs to pay any of your leave just shows us that our companies, our state, does not care for families or what us women must go through to have a family.

— Poughkeepsie, NY (photo above of Nicole's child, one year later)

Denise's Story

When I had our daughter (delivered C-section) two years ago, it was an incredible hardship to be without my salary. It is unconscionable that, in this day and age, a mother feels forced to return to work before she is healed and ready, simply because her family can not afford leave without pay. . . . It is an issue that angered me enough that I have considered looking for a faculty position elsewhere with more family-friendly maternity policies. In this day and age, it can no longer be assumed that a husband's salary will allow a woman to take unpaid leave without hardship. Many families depend on both salaries, and many—like mine—actually depend exclusively on the woman's salary. My husband is now a stay-at-home dad, and we are hesitant to have another child due to the financial hardship unpaid leave would bring again.

— Buffalo, NY

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A Better Balance is a legal advocacy organization dedicated to promoting fairness in the workplace and helping workers care for their families without risking their economic security.

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