



February 11, 2020

The Honorable Alma Adams
Chair
Committee on Education & Labor
Subcommittee on Workforce Protections
United States House of Representatives

The Honorable Bradley Byrne
Ranking Member
Committee on Education & Labor
Subcommittee on Workforce Protections
United States House of Representatives

Dear Chairwoman Adams and Ranking Member Byrne,

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy organization based in Washington, D.C. Our mission is to improve the lives of women and families by achieving equality for all women. We promote fairness in the workplace, reproductive health and rights, access to quality, affordable health care, and policies that help all people meet the dual demands of their jobs and families. We work toward creating a society that is free, fair and just, where nobody has to experience discrimination, all workplaces are family friendly, and every family has access to quality, affordable health care and real economic security.

The National Partnership has been working to solve the paid leave crisis for decades. Since our founding in 1971 as the Women's Legal Defense Fund, the National Partnership has fought for every major federal policy advance that has helped women and families, including our leadership in passing the nation's unpaid leave law, the Family and Medical Leave Act (FMLA) of 1993. Today, we convene the National Work and Family Coalition, which includes hundreds of organizations nationwide working to advance national paid leave and other policies to create a more family friendly and equitable economy and country. We are also a founding member of the Paid Leave For All Campaign, a coordinated effort by a diverse set of organizations fighting for a universal, comprehensive national paid family and medical leave program.

THE HISTORY OF THE FMLA

When the demands of a job are in conflict with the needs of a family, too often the result has been harm and inequity for women and families: women pushed out of the labor market and deprived of economic power; workers of color denied an equal ability to care for their health, their children and other loved ones; low-income families thrown into poverty after a health crisis and a lost job. Workers, activists, policy experts and political leaders in the women's, civil rights and labor movements recognized the conflict between family and work is unsustainable and fought for much of the 20th century for a national law to address this problem.

The National Partnership led a diverse coalition of organizations – representing the women’s movement and labor, older adults and children, faith groups, people with disabilities and more – to fight for and win the FMLA. Our goal was to win paid comprehensive family and medical leave. A unique opportunity was found in 1984 when a California state maternity leave law was struck down on the basis of sex discrimination. The need for a national leave law that would meet the needs of families, and the Constitution, was clear.

Because its history is rooted in efforts to end discrimination, from its earliest iterations, the United States’ national leave law marked an innovative departure from the maternity leave programs more common in Europe. The FMLA was designed as an inclusive, gender-neutral law that would not only pass legal muster, but also address gender bias. If women were not the only ones taking leave to care for children and other family members, employers could not use caregiving and leave-taking as an excuse for inequitable hiring or promotion practices. As the proposal developed, its comprehensive design, incorporating medical and family caregiving leave as well as parental leave, came to reflect the needs of the broad-based coalition that would push for its passage.¹

When the FMLA became law in 1993, it marked a key moment in the evolution of family, work, and health policy in the United States. At that time, paid leave was a bridge too far, but the compromise was important to give families time and job protection.² But 27 years later, that time has passed and its limitations are clear: a lack of pay makes FMLA leave unaffordable for many workers, stringent eligibility rules mean about 40 percent of the workforce is not covered, and an outdated definition of family leaves too many families unable to care for the loved ones who need it most. We always knew the FMLA was the first step, and 27 years later, the next step towards paid, universal, comprehensive leave is long overdue.

THE FMLA

The FMLA Has Helped Millions

In the 27 years since the it was signed into law, the FMLA has been used nearly 280 million times to help working people meet their health and family caregiving needs. For eligible workers, the FMLA provides up to 12 weeks of job-protected leave to address one’s own serious medical condition, bond with a newborn, newly adopted or foster child, care for a spouse, parent or child with a serious health condition, or address needs related to a family member’s deployment, and up to 26 weeks to care for a seriously ill or injured service member or veteran.

When a worker takes leave under the FMLA, their employer must continue paying the employer share of any health insurance provided, and the worker has the right to be reinstated to the same or a similar position upon their return to work. Importantly, the FMLA ensures workers who experience violations of their rights under the law can request help from the Department of Labor or seek remedies through the courts.

The FMLA covers employers with 50 or more employees within a 75-mile radius, and to be eligible, an employee must have been employed for at least one year and have worked at

least 1,250 hours in the past year. About 60 percent of the workforce is covered by and eligible for FMLA leave.

FMLA helps about 1 in 6 workers each year. Overall, just under 16 percent of workers who are covered and eligible for FMLA took some leave in the past year. A slightly higher share of women (just under 18 percent) than men (just over 14 percent) took leave, and just 15 percent of workers paid less than \$35,000 per year took leave, compared to 17 percent of workers at higher income levels.³ As discussed later, making sure that leave is adequately paid is critical to support gender equity and to guarantee that leave is accessible to the lowest-income workers.

Workers use leave for the range of FMLA purposes. The majority of FMLA leaves (55 percent) are taken for a worker's own health condition. Twenty-one percent are for parental leave, including adoption and foster care, 18 percent for family caregiving and about 2 percent for military exigencies.⁴ Among workers who take FMLA for personal medical needs, nearly half (46 percent) are addressing a one-time health matter such as acute illness; one-quarter (25 percent) an ongoing health condition, such as multiple sclerosis; and about one-sixth (13 percent) for routine scheduled care for an illness or injury, such as physical therapy.⁵ Similarly, family caregiving leave is most commonly for a one-time matter, followed by an ongoing condition and routine scheduled care.⁶ Just over one-third (35 percent) of family caregiving leaves are taken to care for a worker's parent and more than one-quarter for a child (28 percent) or spouse (26 percent).⁷

Leaves are typically modest in length. The duration of a person's leave generally depends on a health provider's recommendation and is based on the health condition being treated. The average length of an FMLA leave is just over five weeks; more than 40 percent are 10 days (two weeks) or less, and another 35 percent are between 11 and 40 days (eight weeks).⁸ Close to one-quarter of FMLA leave-takers (24 percent) – representing 3 percent of workers – have taken leave on an intermittent basis in the past year.⁹

Employers have adapted well. Most covered worksites (64 percent) use a computer system, designated human resources staff or both to administer FMLA, and most (83 percent) process FMLA leave claims internally, rather than outsourcing to another firm.¹⁰ The majority of worksites report that complying with FMLA is somewhat or very easy (66 percent) or had no noticeable effect (28 percent); just 6 percent reported it was somewhat difficult, and less than 1 percent very difficult.¹¹ Fewer than 3 percent of worksites reported even suspecting misuse of FMLA, and just 1.6 percent confirmed any misuse.¹²

THE FMLA MUST BE PAID

The Lack of Paid Leave Hurts America

No one should have to risk their job or face financial ruin when they need to welcome a new child, care for a seriously ill or injured family member or address their own major health condition. These are needs that nearly every working person will face at some point in their lives. Yet more than 110 million workers – 81 percent of the workforce – do not have paid family leave through an employer. More than 80 million do not have access to personal medical leave through an employer's short-term disability insurance program. Only 60

percent of the workforce has access to job-protected leave under the FMLA,¹³ and less than 40 percent are both eligible and can afford to take unpaid leave.¹⁴ The paid leave crisis has far-reaching impacts: families' health and economic security suffers, businesses lose valued employees, economic growth is reduced, and progress toward gender and racial equity stalls.

Solving the paid leave crisis should be at the top of the agenda for all members of Congress. Across the country, voters and lawmakers not only agree that the time has come for paid leave – they have been taking action. Nine states including the District of Columbia have enacted paid leave programs. Governors and state legislatures across the country – Virginia, Indiana, Tennessee, Missouri, Idaho – have enacted paid leave for state employees, and dozens of city and county governments have done the same. Last year, lawmakers on both sides of the aisle came together to pass paid parental leave for federal employees, putting families first.

It is past time for the United States to pass the FAMILY Act, an inclusive, comprehensive, common sense national paid family and medical leave program.

Families and Businesses Face High Costs and Impossible Choices

Without a comprehensive, inclusive national paid leave program, working families are faced with impossible choices between jobs and care. The consequences are expensive for families, businesses and the economy. Two-thirds of voters (66 percent) say they would face serious financial hardship if they had to take up to a few months of unpaid leave,¹⁵ and racial wage and wealth gaps mean families of color are even less able to weather the effects of an income shock.¹⁶ Families lose an estimated \$22.5 billion in wages each year due to inadequate or no paid leave.¹⁷ For women, who continue to do the majority of unpaid caregiving in most families, lack of paid leave often means being held back from fully participating in the workforce, costing the national economy an estimated \$500 billion dollars each year.¹⁸ Employers bear high costs of turnover, ranging between 16 percent and more than 200 percent of a worker's annual wages, when people leave their jobs¹⁹ – as more than one-quarter of those who take a leave without pay do.²⁰

But dollar amounts alone cannot fully capture the costs of America's paid leave crisis. An unmet and growing need for family caregivers for older adults increases stress on families and the health care system.²¹ Older adults in the workforce, who are more likely to develop serious or chronic health conditions,²² face heightened risks of being pushed out of the workforce without paid medical leave. When parents don't have paid leave, infants are less likely to attend well-child visits or receive on-time vaccinations.²³ Mothers return to work too quickly after giving birth,²⁴ harming their physical and mental health,²⁵ and parents of all genders lack time to form nurturing bonds with their children, which is critical for child development.²⁶

These costs are not felt equally. Access to paid leave varies dramatically by job type and wage level, which perpetuates disparities and means the working people least likely to be able to afford to take unpaid time away from their jobs are also least likely to have access to paid leave.²⁷ In one study, nearly 60 percent of low-income fathers reported taking no paid time away from work after the birth or adoption of a child.²⁸ Less than half (45 percent) of LGBTQ workers say their employer has inclusive leave policies, and often face

discrimination or other challenges related to gender identity, family status or health status.²⁹ People with disabilities are twice as likely as people without disabilities to hold part-time jobs, which typically lack paid leave and other benefits, and 4 in 5 lack any “rainy day fund” to help cover expenses during an unpaid leave.³⁰

Women of color, whose health and economic well-being are undermined by the combined effects of racism and sexism, are acutely harmed by the paid leave crisis. About 2 in 5 Latinas and Asian American Pacific Islander women and about 1 in 4 Native American and Black women say family caregiving has had a negative impact on their ability to keep a job or advance at work just in the past two years.³¹ Due in part to job segregation and wage discrimination, Latinas, Native American/Alaska Native women and Black women are disproportionately likely not to be covered by the Family and Medical Leave Act or to be unable to afford a period of unpaid leave without financial distress.³² The consequences for the health and well-being of women of color and their families, and for their ability to achieve financial stability and build wealth, are severe.³³

The FAMILY Act: A Common Sense Solution Based on Successful State Models

The Family and Medical Insurance Leave (FAMILY) Act (H.R. 1185) is a comprehensive, inclusive and common sense plan to update the FMLA by ensuring nearly all working people can take paid time away from their jobs to care for themselves or a loved one.

The FAMILY Act is modeled on successful state programs. Nine states including the District of Columbia have passed comprehensive paid family and medical leave programs, five of which have been fully implemented. These state programs have provided more than 13 million paid leaves since 2004, when California became the first state to implement paid family leave, building on its longstanding temporary disability insurance program.³⁴ All programs have remained financially sound and affordable, even for workers with the lowest wages. A large and growing body of evidence from these tried and tested models shows that paid leave programs help working people meet their caregiving needs, with clear benefits to families’ health and economic security, small and large businesses and state economies.

Based on these models, the FAMILY Act would establish a national paid family and medical leave fund, financed through small payroll contributions shared equally by employees and employers, that would replace a share of a worker’s usual income for up to 12 weeks when they needed to address their own serious health condition, care for a family member with a serious health condition, bond with a newborn, newly adopted or foster child, care for a seriously ill or injured servicemember or address needs related to active duty.

States’ Paid Leave Programs Improve Public Health, Strengthen Families and Benefit Small and Large Businesses

A large and growing body of research on state paid leave programs has documented how paid leave improves health outcomes and helps working people be economically secure. For young children, paid leave provides time to establish a strong bond with parents during the first months of life, with significant benefits to early childhood health and development.³⁵ Families of new children are less likely to need SNAP or other public programs after a child’s birth,³⁶ women’s wages increase,³⁷ and single mothers are less likely to be in

poverty.³⁸ For opposite-sex couples, when both parents can take paid leave for a new child, it improves fathers' involvement in care³⁹ and mothers' physical and mental health.⁴⁰ Paid leave has even been shown to improve the labor force participation of family caregivers⁴¹ and reduce nursing home utilization.⁴²

Small and large employers have adapted well to state programs, and many report improvements to productivity, morale and turnover. Analyses of California's law have documented that the average firm experienced reduced turnover and no increase in wage costs, and an even larger share of small employers report positive or neutral outcomes than large employers.⁴³ Regardless of size, New Jersey businesses say they have had little trouble adjusting to the state's law.⁴⁴ In Rhode Island, a majority of small- and medium-sized employers were in favor of the program one year after it took effect.⁴⁵ The majority of small business owners support the creation of a national paid family and medical leave insurance program.⁴⁶

All programs are financially sound and self-sustaining. State paid leave programs are serving working people across the income spectrum: our own analysis of state program claims in Rhode Island and New Jersey found that the majority of claims are made by individuals earning \$50,000 per year or below. Program use has also become more gender-equal over time, and early data suggests improvements to public outreach and program design, such as a higher wage replacement rate in California, have improved utilization.⁴⁷ Early adopter states – California, New Jersey, Rhode Island and New York – each have enacted or are exploring ways to make them even more accessible to people who need family leave, including higher and more progressive wage replacement rates, more inclusive definitions of “family” for family caregiving, improved provisions for job protection, and greater funding for public outreach and education, including for small employers.

Voters are ready for a change. Eight in 10 voters – including 94 percent of Democrats, 80 percent of Independents, and 71 percent of Republicans – feel that it is time to update the FMLA. With similarly strong support across party identification, voters want a comprehensive, national paid family and medical leave program that includes all workers. And voters value paid leave: More than 7 in 10 who are currently working would be willing to contribute at least 1 percent of their income to fund a national paid leave program.

THE FMLA MUST BE INCLUSIVE

The FMLA Leaves Out Too Many Workers

About 40 percent of the workforce is not protected by the FMLA,⁴⁸ based on three criteria: (1) you must work at a place of employment with at least 50 employees in a 75 mile radius; (2) you must have worked for the same employer for at least 12 months; and (3) you must have worked for at least 1,250 hours over the previous 12 months. More than one-quarter of workers (about 34 million people) work for employers with fewer than 50 employees,⁴⁹ and another two percent are excluded by the 75-mile radius rule.⁵⁰

The FMLA's job tenure and hours-worked requirements cannot contend with the reality of work in today's economy. Sixteen percent of workers overall work fewer than 30 hours a week on average, and 28 percent of women workers work part time,⁵¹ likely falling below

the annual hours-worked threshold. More than one-fifth of all workers, and one-quarter of Black and Latinx workers, have been with their employer for 12 months or less.⁵² About 5 percent of workers – more than 8 million people – hold at least two jobs,⁵³ making it difficult to qualify for FMLA leave at either one.

Stringent job tenure and work-hour requirements are particularly harmful for workers with low incomes and in industries such as food service and retail – which employ 17 percent of the workforce⁵⁴ – where just-in-time scheduling practices make it impossible for many workers to predict how many hours they will work from week to week, much less over the course of a year. One-third of food service and retail employees report working part-time involuntarily.⁵⁵ Four in 10 have a variable schedule, nearly 1 in 7 has had at least one shift cancelled in the past month and less than half even receive their schedule more than two weeks in advance.⁵⁶ Black and Latinx workers are especially likely to be subject to unpredictable scheduling, even within the same firm, most likely the result of discriminatory practices in addition to occupational segregation.⁵⁷

The FMLA should be amended to expand access to full job protection and ensure that workers do not lose access to health insurance during a period of leave.

The FMLA Doesn't Reflect the Diversity of Our Families

Nearly 1 in 5 leaves taken under the FMLA are to care for a family member.⁵⁸ But in the FMLA, family is only defined as a parent, dependent child, or spouse. Family should be defined inclusively to reflect the full range of caregiving relationships that working families have, recognizing that families come in all forms. More than 80 percent of households today do not fit the so-called nuclear family model (a married couple living together with minor children).⁵⁹ For example, 1 in 5 people (about 64 million nationwide) live in a multigenerational household, and people of color are especially likely to do so.⁶⁰ In part as a result of the opioid crisis, more than 2 million children are living with grandparents.⁶¹ And, whether due to small family size, living a great distance from relatives, or even divorce or estrangement from a birth family, many adults – in fact, nearly one-third of people in the United States – report having needed to care for a friend, neighbor or other person who does not have a legal tie.⁶² Coverage for these “chosen family” members, which is included in New Jersey's, Connecticut's and Oregon's paid leave programs, is particularly important for LGBTQ people, people with disabilities,⁶³ and servicemembers and veterans: around 15 percent of caregivers for pre-9/11 veterans and nearly one-quarter (23.4 percent) of post-9/11 servicemembers and veterans are friends or neighbors.⁶⁴

Updating the FMLA Will Help Create an Economy That Works for All Families

The nationwide paid family and medical leave program created under the FAMILY Act, along with expanded eligibility under the FMLA, will promote gender and racial equity, help working families achieve financial security, and strengthen small and large businesses and the economy. This transformational program will provide families financial security and peace of mind at some of the most challenging moments in life, making the largest impacts on the families currently struggling the most. It will enable more women to remain in the workforce, allow parents to invest more time and care in their children, and help older Americans to age with dignity and support from their loved ones. More than 100 million working people in this country cannot afford to wait.

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- 9 While some may have raised concerns about employers facing frequent, short absences, in fact intermittent leaves of less than one day are extremely rare (less than 2 percent of leaves), and nearly three-quarters of intermittent leaves last at least six days. See note 3., p. iii.
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