

Legislative Proposals for Updating the Family and Medical Leave Act

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The Family and Medical Leave Act (FMLA) is the first and only national law that enables workers to care for themselves and their loved ones without jeopardizing their jobs. Since 1993, it has been used nearly 280 million times by people who were able to take time away from their jobs to address serious health conditions, welcome a new child, or care for a seriously ill loved one – without fear of losing their jobs or health insurance coverage.¹ This historic law has had a tremendously positive impact on America's families, and it serves as a reminder of what can be accomplished when lawmakers work together to address the nation's needs. Now, more than 25 years later, it is time to advance the FMLA's promise of a family friendly America.

What the FMLA Does

The FMLA is available to all workers who are employed by businesses with 50 or more employees (within a 75-mile radius) – or by public agencies, including schools, and state, local and federal employers – who have worked for that employer for at least one year and for 1,250 hours within the last 12 months.

The FMLA provides eligible workers with up to 12 weeks of unpaid job-protected leave to:

- Care for a newborn or newly adopted child (including foster children);
- Care for a seriously ill family member (defined as a spouse, child or parent);
- Recover from their own serious illness (including pregnancy or childbirth);
- Care for a wounded military servicemember (up to 26 weeks); or
- Address particular circumstances arising from a family member's deployment.

Why the FMLA Needs Updating

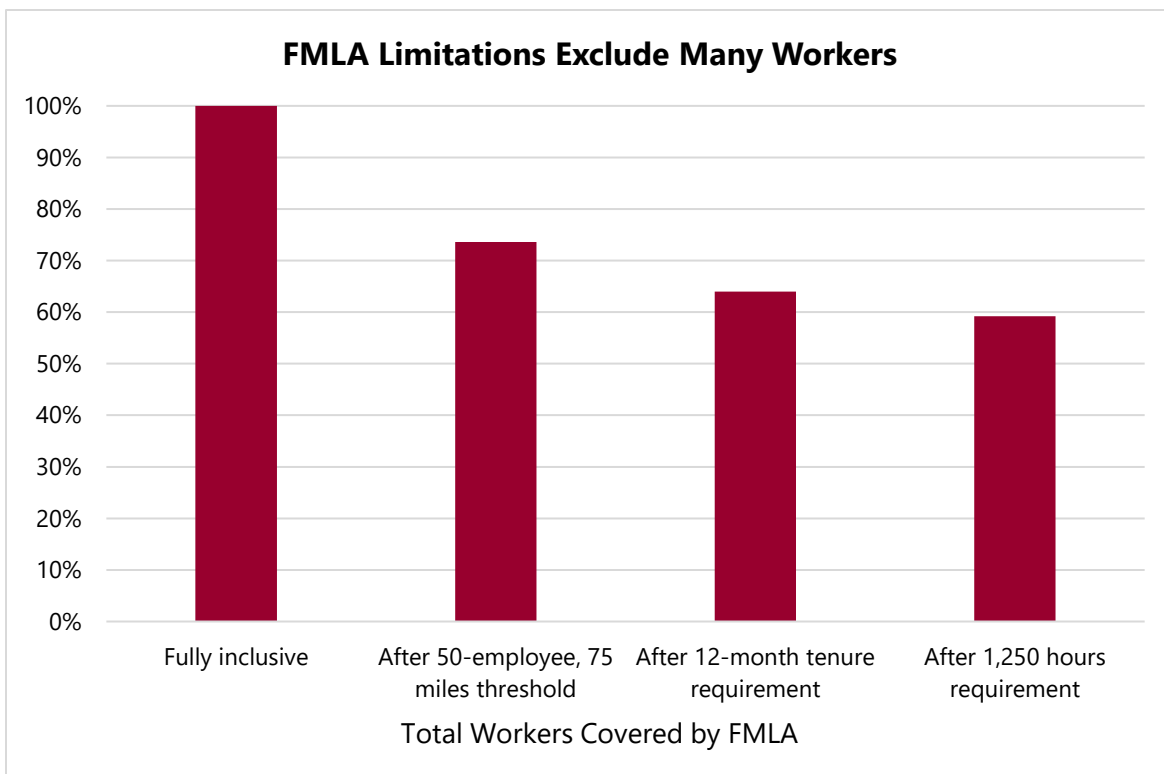
The FMLA was a first step toward ensuring that working people can care for their own health and their loved ones without risking their jobs or economic security. But limitations of the law – including coverage restrictions and a lack of wage replacement – mean that more than 6 in 10 workers are either not eligible for or cannot afford to take

FMLA leave without financial risk.² These gaps are felt hardest by women, who continue to do the majority of unpaid family care work even while they make up fully half of the workforce.³ And the costs of the FMLA’s limitations are borne unequally due to occupational segregation, gender and racial discrimination and other aspects of sexism and racism in the economy: Latinx, Native American/Alaska Native and Black workers are disproportionately likely to be unable to access FMLA leave.⁴

The FMLA leaves out 40 percent of the workforce and falls short for many more:

- Workers in businesses with fewer than 50 employees in a 75-mile radius;
- Many part-time and seasonal workers;
- People who have recently changed jobs, are new to the workforce, recently completed job training or a degree, or whose work has been impacted by caregiving;
- Workers who need time to care for adult children, domestic partners, siblings, grandparents, grandchildren, aunts, uncles, nieces, nephews, and other individuals related by blood or affinity who are like family to them;
- Workers who need time to attend a child’s school meetings or other important activities for their children, or for elder care needs such as nursing home visits;
- Equal time for married couples who work for the same employer.

National laws have not kept up with several states that have expanded access to leave through state FMLA laws.⁵



Modernizing the FMLA for All Workers

Expanding the number of employees covered by the FMLA

Approximately 40 percent of workers in the United States are currently excluded from the FMLA's protections because they work for smaller employers, work part time or have not been on the job long enough to qualify.⁶

- The FMLA's employer-size and location threshold should be reduced or eliminated to extend protections to tens of millions more people.⁷ More than one-quarter of workers (about 34 million people) are employed at worksites with fewer than 50 employees,⁸ and about 2 percent of workers work for employers with at least 50 employees, but not within 75 miles of a single worksite.⁹
- The FMLA's hours-worked requirement should be reduced to extend protections to part-time and seasonal workers. About 1 in 5 workers is not full-time, and millions of workers are employed in multiple part-time positions or are involuntarily working part-time.¹⁰ These limits disproportionately affect women, who are more likely than men to work part-time and to hold multiple jobs.¹¹ More than a quarter of all women, disproportionately women of color, are employed in fast-growing occupations with low wages, in which part-time work is common and abusive scheduling practices make it difficult to meet work-hour requirements.¹²
- The FMLA's tenure requirement should be reduced or eliminated to extend protections to recently-hired workers. 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.¹³

Updating the definition of "family" to include more family caregiving relationships

Families are not one-size-fits-all. More than one-fourth of family caregivers provide care for an adult family member who falls outside of the FMLA's definition, including parents-in-law (7 percent), grandparents (7 percent), aunts or uncles (4 percent), siblings (3 percent) and other relatives (3 percent).¹⁴

- The FMLA should be updated to reflect a broader range of caregiver relationships, ensuring that workers can use leave to care for an adult child, domestic partner, grandparent, grandchild, parent-in-law, sibling, aunt, uncle, niece, nephew, or any other individuals related by blood or affinity who are like family to them.

Married couples

Currently, the FMLA limits the amount of leave available to married couples who both work for the same employer. If two spouses are eligible for leave from the same employer, they are limited to a combined total of just 12 weeks of leave to care for a new child or for a parent with a serious health condition, and 26 weeks of leave for

military caregiver leave. This provision in effect penalizes couples for their marital status and, among opposite-sex couples, likely contributes to gender inequity in leave-taking and parental involvement.

- The FMLA's marriage penalty provision should be repealed.

Providing unpaid time off to attend school events or medical meetings

Currently, the FMLA cannot be used by parents to attend a child's school meetings or events, or by adult children for elder care needs, such as accompanying a parent to medical appointments (often called "small necessities leave" and allowed by several states).¹⁵

- The FMLA should be updated to allow eligible workers a limited number of hours per year for these important family purposes.

Legislative Solutions

- The **Family Medical Leave Modernization Act (H.R.5456/S.2071)** would expand the FMLA to provide up to 24 hours of "small necessities" leave to parents and family caregivers and would update the FMLA's definition of family to include a domestic partner, parent-in-law, aunt, uncle, sibling, adult child, grandparent, grandchild, son- or daughter-in-law, and other significant relationships.
- The **Fair Access for Individuals to Receive (FAIR) Leave Act (H.R.5075/S.2845)** would allow married people employed by the same employer to receive full FMLA benefits by repealing certain limits on spouses in the FMLA.
- Congress should consider legislation that expands the FMLA's coverage of small employers, reducing or eliminating its employer size and location thresholds, and reduces or removes employee eligibility restrictions related to job tenure and hours worked.

¹ Calculation is based on the number of covered and eligible workers over a period of 18 months multiplied by the rates of leave-taking (the percentage of the people who were eligible for FMLA leave who actually took it) to determine total leave-takers for each period and then summed to determine total uses. The number of covered and eligible workers in an 18-month period is based on the average seasonally adjusted civilian noninstitutionalized, employed workforce calculated using 1994-2019 Current Population Survey monthly workforce statistics multiplied by a percentage of covered and eligible workers reported in the 1995 (pg. xvi), 2000 (Table A2-3.1), and 2012 (Exhibit 2.2.1) DOL surveys. For rates of leave-taking among eligible workers, see Klerman, J. A., Daley, K., & Pozniak, A. (2012, September). *Family and Medical Leave in 2012: Technical Report*, p.62. Abt Associates Publication, commissioned by the U.S. Department of Labor. Retrieved 10 February 2020, from <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/FMLA-2012-Technical-Report.pdf>

² Joshi, P., Baldiga, M., & Huber, R. (2020, January 16). *Unequal access to FMLA leave persists*. Institute for Child, Youth and Family Policy at the Heller School for Social Policy and Management at Brandeis University Publication. Retrieved 10 February 2020, from diversitydatakids.org website: <http://new.diversitydatakids.org/research-library/data-visualization/unequal-access-fmla-leave-persists>

³ Hess, C., Ahmed, T., & Hayes, J. (2020, January 20). *Providing Unpaid Household and Care Work in the United States: Uncovering Inequality*. Institute for Women's Policy Research Publication. Retrieved 10 February 2020, from <https://iwpr.org/publications/providing-unpaid-household-and-care-work-in-the-united-states-uncovering-inequality/> U.S. Bureau

of Labor Statistics. (2020, February 8). *The Employment Situation – January 2020*. Retrieved 10 February 2020, from <https://www.bls.gov/news.release/pdf/empisit.pdf>

⁴ See note 2.

⁵ National Partnership for Women & Families. (2018, September). *Raising Expectations: A State-by-State Analysis of Laws That Help Working Family Caregivers*. Retrieved 10 February 2020, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/raising-expectations-2018.pdf>

⁶ Klerman, J. A., Daley, K., & Pozniak, A. (2012, September). *Family and Medical Leave in 2012: Technical Report*. Abt Associates Publication, commissioned by the U.S. Department of Labor. Retrieved 10 February 2020, from <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/FMLA-2012-Technical-Report.pdf>

⁷ U.S. Census Bureau. (2018, December). *Number of Firms, Number of Establishments, Employment, and Annual Payroll by Small Enterprise Employment Sizes for the United States, NAICS Sectors: 2016*. Retrieved 16 December 2019, from <https://www.census.gov/data/tables/2016/econ/susb/2016-susb-annual.html>

⁸ U. S. Bureau of Labor Statistics. (2020). *National Business Employment Dynamics Data by Firm Size Class (Table F. Distribution of private sector employment by firm size class: 1993/Q1 through 2019/Q1, not seasonally adjusted)*. Retrieved 10 February 2020, from https://www.bls.gov/web/cewbd/table_f.txt

⁹ See note 6, Exhibit 2.1.2.

¹⁰ Overall about 16 percent of workers (23.7 million people) work fewer than 30 hours a week on average, likely falling below the hours-worked threshold for FMLA eligibility. About 2.8 percent of workers (4.3 million people) are employed part-time (defined as 35 hours a week or less) but want to work full time. About five percent of workers (8.1 million people) hold multiple jobs. U.S. Bureau of Labor Statistics. (2020, January 22). *Current Population Survey, Household Data, Annual Averages, 2019. (Table 19. Persons at work in agriculture and nonagricultural industries by hours of work; Table 22. Persons at work in nonagricultural industries by age, sex, race, Hispanic or Latino ethnicity, marital status, and usual full- or part-time status; Table A-39. Multiple jobholders by selected demographic and economic characteristics.)* Retrieved 10 February 2020, from <https://www.bls.gov/cps/tables.htm>

¹¹ 28.4 percent of women work part-time, compared to 16.5 percent of men; 3.1% of women work part-time involuntarily, compared to 2.7 percent of men; and 5.4 percent of women hold multiple jobs, compared to 4.8 percent of men. Ibid.

¹² Shaw, E., Hegeswich, A., Williams-Baron, E., & Gault, B. (2016, November 17). *Undervalued and Underpaid in America: Women in Low-Wage, Female-Dominated Jobs*. Retrieved 10 February 2020, from Institute for Women's Policy Research website: <https://iwpr.org/publications/undervalued-and-underpaid-in-america-women-in-low-wage-female-dominated-jobs/>

¹³ U.S. Bureau of Labor Statistics. (2018, September 20). *Employee tenure in 2018. (Table 3. Distribution of employed wage and salary workers by tenure with current employer, age, sex, race, and Hispanic or Latino ethnicity, January 2018)*. Retrieved 10 February 2020, from <https://www.bls.gov/news.release/tenure.htm>

¹⁴ National Alliance for Caregiving & AARP. (2015, June). *Caregiving in the U.S. 2015*. Retrieved 10 February 2020, from <http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf>

¹⁵ National Partnership for Women & Families. (2016, August). *Expecting Better: A State-by-State Analysis of Laws That Help Expecting and New Parents*. Retrieved 10 February 2020, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/expecting-better-2016.pdf>

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help all people meet the dual demands of work and family. More information is available at NationalPartnership.org.

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