

# The Family And Medical Insurance Leave (FAMILY) Act: Frequently Asked Questions

SEPTEMBER 2018

## Overview

**The Family And Medical Insurance Leave (FAMILY) Act (S. 337/H.R. 947), sponsored by Rep. Rosa DeLauro of Connecticut and Sen. Kirsten Gillibrand of New York, is legislation that would create a national family and medical leave insurance program.** The FAMILY Act epitomizes our nation's commitment to the fundamental well-being of its people, especially women, children and seniors. A national paid family and medical leave program has the support of more than eight in ten voters – across demographic and partisan lines<sup>1</sup> – because the public knows that a national paid leave program would strengthen the workforce, families, businesses and our economy.

## Frequently Asked Questions

### 1. What would the Family And Medical Insurance Leave Act (FAMILY Act) do?

The FAMILY Act would create an affordable and self-sustaining national family and medical leave insurance fund to provide workers with a portion of their wages for a limited period of time (up to 60 workdays, or 12 weeks in a year) to address their own serious health condition, including pregnancy or childbirth; to deal with the serious health condition of a parent, spouse, domestic partner or child; to care for a new child; and/or for specific military caregiving and leave purposes.

The FAMILY Act's wage replacement rate builds on lessons from state paid leave programs in California, New Jersey and Rhode Island to help ensure that caregiving time is affordable for lower-wage workers. FAMILY Act benefits would be portable. As long as a worker has paid into the system and is engaged in eligible caregiving or has a serious illness, then s/he could receive FAMILY Act benefits, even if s/he earned the benefits while working or living in another state or for another employer.

### 2. How would FAMILY Act benefits and administrative expenses be paid for?

Under the FAMILY Act, employees and employers would contribute a small amount from each paycheck to an insurance fund. A new Office of Paid Family and Medical Leave would be created to administer the fund and make benefit determinations and distributions. Contributions would cover both benefits and administrative costs.

### **3. What kinds of serious family and medical issues would be covered under the FAMILY Act?**

Paid leave benefits under the FAMILY Act would be available to workers who need time away from their jobs to:

- ▶ Bond with and care for a newborn or newly adopted child;
- ▶ Care for a parent, child, spouse or domestic partner with a serious health condition;
- ▶ Address their own serious health conditions; or
- ▶ Handle specific needs related to active duty deployment, such as arranging for alternative child care or updating financial and legal arrangements to address a military member's absence. Details can be found [here](#).<sup>2</sup>

These are the same reasons eligible workers at covered businesses are able to take unpaid, job-protected leave under the Family and Medical Leave Act (FMLA).

### **4. What is a “serious health condition” under the FAMILY Act?**

A serious health condition would be defined as it is by the [U.S. Department of Labor](#) for the purpose of taking leave under the Family and Medical Leave Act (FMLA) – an illness, injury, impairment, or physical or mental condition that involves:

- ▶ Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;
- ▶ A period of incapacity requiring absence of more than three calendar days from work, school or other daily activities that also involves continuing treatment by (or under the supervision of) a health care provider;
- ▶ Any period of incapacity due to pregnancy or for prenatal care;
- ▶ Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.);
- ▶ A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- ▶ Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

Treatment for substance abuse may be a serious health condition if the conditions for inpatient care and/or continuing treatment are met.<sup>3</sup>

### **5. How much paid time away from work would the FAMILY Act guarantee?**

The FAMILY Act would allow working people who qualify to receive insurance benefits for up to 60 workdays or “caregiving days” (the equivalent of 12 weeks) within a one-year period.

## 6. Could FAMILY Act leave be taken intermittently or would it all have to be taken at once?

There is nothing in the bill that requires that all 12 weeks be taken at once.

## 7. How much money would individuals receive during time away from their jobs?

Benefits would amount to 66 percent of an individual's monthly wages (based on highest annual earnings from the prior three years), up to a capped monthly amount, which would be indexed to the national average wage index. If a person takes the maximum number of days, the benefits would range from a minimum benefit of \$580 to a maximum benefit of \$4,000 per month in the program's first year.

- ▶ **Example:** If a person whose highest annual income in the last three years was \$34,400 takes five caregiving days in a month, his/her monthly benefit would be \$477. If s/he took all 20 days, the benefit would be \$1,911 per month.

## 8. Do any states already have paid family and medical leave laws?

Yes, the FAMILY Act builds on state family and medical leave insurance programs that have strong records of success. Personal medical leave through state temporary disability insurance programs has been in place for decades in California, Hawaii, New Jersey, New York, Rhode Island and Puerto Rico. Family leave insurance programs have existed in California since 2004 and New Jersey since 2009. Rhode Island passed a family leave insurance program in 2013 that was implemented in January 2014. New York passed a family leave insurance program in 2016 that was implemented in 2018. The District of Columbia passed a family and medical leave insurance program in 2017 that will be implemented in 2020. Washington state passed a family and medical leave insurance program in 2017 that will be implemented in 2019 and start paying benefits in 2020. Most recently, Massachusetts passed a family and medical leave insurance program that will be implemented in 2019 and begin paying benefits in 2021.<sup>4</sup>

Analyses of California's law show that both employers and employees benefit from the program.<sup>5</sup> In New Jersey, program costs are even lower than expected, public attitudes toward the program are favorable and the majority of large and small businesses say they have adjusted easily.<sup>6</sup> Preliminary studies of Rhode Island's first year also show favorable results for workers and businesses.<sup>7</sup> More state progress is on the horizon, but a national standard is necessary to support working people and families in all states and to be more efficient for most employers, including multistate employers.

## 9. Who would be eligible for FAMILY Act benefits?

Private sector workers and self-employed people who have a basic level of work and earnings history would be eligible to apply for benefits under the FAMILY Act. Public employees who pay into and are eligible for Social Security benefits would also pay into and be eligible for FAMILY Act benefits.

For all workers, eligibility for FAMILY Act benefits would be based on the work history or "work credit" requirements of Social Security Disability Insurance. Details can be found [here](#).<sup>8</sup> Eligibility rules would allow younger, part-time, lower-wage,

contingent and self-employed workers to contribute to the family and medical leave insurance fund and to receive insurance benefits from it, regardless of their employer's size or their length of time on the job.

#### **10. What if an individual works for a business with fewer than 50 employees or is self-employed?**

FAMILY Act benefits would be available to every individual who has the earnings and work history necessary to qualify for Social Security Disability Insurance; eligibility is not tied to Family and Medical Leave Act (FMLA) eligibility. This will allow young, part-time and lower-wage workers to access FAMILY Act benefits even if their employer's size or their attachment to their current employer makes them ineligible for the job protection offered through the FMLA. Self-employed people also contribute and receive benefits based on their self-employment income. All workers, regardless of their employer's size, would be protected against retaliation at their jobs.

#### **11. How much would the FAMILY Act cost a typical worker?**

For a person who is paid the nation's median wage or salary income of \$38,427 per year, the benefit would cost about \$1.48 per week, or \$76.85 per year. Full-time, year-round workers who are paid a higher median annual wage or salary income of \$48,860 per year would pay \$1.88 per week, or \$97.72 per year.<sup>9</sup>

#### **12. Can a worker or employer opt out of contributing to the fund?**

No. The FAMILY Act is designed to be a national program that is supported by every worker and every employer. Allowing people or employers to opt-out would change the cost structure of the program and make it much more expensive for those who participate. The FAMILY Act does recognize that some employers provide benefits on their own and that some states have their own paid leave insurance programs in place. Employers may coordinate their current benefits packages with FAMILY Act benefits or improve upon FAMILY Act benefits – as many do with state-level programs – for example, by topping off employees' weekly benefits or by offering extended leave time.

#### **13. How much would the FAMILY Act cost the government to create and maintain?**

The FAMILY Act insurance program would be self-funded through employee and employer payroll contributions. A one-time appropriation from general revenues would be necessary to cover initial benefits and administrative costs. Under the law, this would have to be paid back in 10 years.

#### **14. Would individuals have to tell their employers why they are taking leave?**

Yes, the FAMILY Act requires an application for benefits that includes a statement that a worker has notified his or her employer of intent to take leave, similar to the current certification requirements for leave under the Family and Medical Leave Act (FMLA). The same medical privacy protections in place under the FMLA would apply in the FAMILY Act context too.

### **15. Could an individual be fired for requesting leave under the FAMILY Act?**

No, the FAMILY Act would make it illegal to fire or discriminate against an individual who has applied, intends to apply for, or who uses family and medical leave insurance benefits. This means that employers would not be able to take an adverse employment action against an employee simply because the employee applied for or drew on FAMILY Act benefits. However, employers that are exempt from the Family and Medical Leave Act (those with fewer than 50 employees) would not be required to hold employees' jobs or reinstate employees, as long as their reasons for doing so were not discriminatory.

### **16. How does the FAMILY Act relate to the Family and Medical Leave Act (FMLA)?**

The insurance program created through the FAMILY Act would run parallel to but separate from the FMLA. An important **similarity** is that the reasons for which a person can take leave under the FAMILY Act and the FMLA are the same. In other words, the reasons that qualify a worker for FMLA leave are the same reasons that qualify a worker for FAMILY Act insurance benefits. Individuals who qualify for FMLA leave would also be able to apply for FAMILY Act benefits.

What makes the FAMILY Act and the FMLA significantly **different** is that the FAMILY Act provides *partial wage replacement* during a period of leave to eligible workers regardless of their current employer's size or their time at that job. Providing pay during a family or medical leave addresses the single most common reason workers give for not taking FMLA leave when they need it: the financial impossibility of taking unpaid leave.<sup>10</sup>

### **17. Are there measures to prevent fraud and abuse?**

Yes, the fraud and abuse prevention measures included in the FAMILY Act are similar to those for Social Security. If a person is caught lying to receive benefits, they will be banned from the program for one year. But, based on data from California – which has had a paid family leave program for more than a decade – fraud and abuse are not expected to be a common problem. Very few California employers suspected abuse, and even fewer were able to confirm a case of abuse.<sup>11</sup>

### **18. What would happen to existing state family leave or state temporary disability insurance programs if the FAMILY Act were enacted?**

The FAMILY Act would not preempt or supersede state laws that provide paid family and medical leave insurance benefits, so there is nothing in the bill to discourage continued state progress. Under the FAMILY Act, workers in states with existing temporary disability insurance or family leave insurance programs could choose to receive benefits simultaneously (with federal benefits offset by state benefits) or sequentially (with full federal and state benefits paid out). When state laws allow workers to take leave to care for family members not covered by federal law (e.g., siblings, grandparents, grandchildren and parents-in-law), the more generous state rights would be available to the worker just as they are now.

## 19. Which government agency would administer the FAMILY Act?

A new Office of Paid Family and Medical Leave would be established within the Social Security Administration (SSA) to administer the program. The new office would be responsible for determining eligibility, making payments, maintaining records, preventing fraud and abuse, providing employers with notices about the availability of benefits to share with employees, data collection, education and outreach. The new office would build on SSA's expertise in administering benefits, but the new infrastructure and administrative costs would be paid for by the new insurance fund and would not drain existing SSA resources.

## 20. How would the FAMILY Act impact Social Security?

The FAMILY Act would not negatively affect Social Security because the FAMILY Act's family and medical leave insurance fund would be completely separate from the Social Security Trust Fund, and the new payroll tax would generate the funding to administer the program and cover benefits. In fact, over time, the FAMILY Act would have a positive effect on Social Security because paid leave improves workforce attachment, which means more workers paying taxes and contributing to the Social Security system and to the tax base overall.

---

1 PerryUndem and Bellweather Research & Consulting survey of 1,004 registered voters using NORC's AmeriSpeak nationally representative panel at the University of Chicago, July 9-23, 2018. Retrieved 25 September 2018, from <http://www.nationalpartnership.org/research-library/work-family/paid-leave/voters-views-on-paid-family-medical-leave-survey-findings-august-2018.pdf>

2 U.S. Department of Labor, Wage and Hour Division. (2013, February). *Fact Sheet #28M(c): Qualifying Exigency Leave under the Family and Medical Leave Act*. Retrieved 25 September 2018, from <https://www.dol.gov/whd/regs/compliance/whdfs28mc.pdf>

3 U.S. Department of Labor. (n.d.) *Serious Health Condition - Leave for Treatment of Substance Abuse*. Retrieved 25 September 2018, from <https://webapps.dol.gov/elaws/whd/fmla/10c9.aspx>

4 National Partnership for Women & Families. (2018). *State Paid Family Leave Insurance Laws*. Retrieved 25 September 2018, from <http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf>.

5 Bartel, A., Baum, C., Rossin-Slater, M., Ruhm, C., & Waldfogel, J. (2014, June). *California's Paid Family Leave Law: Lessons from the First Decade*. U.S. Department of Labor Publication. Retrieved 25 September 2018, from <http://www.dol.gov/asp/evaluation/reports/PaidLeaveDeliverable.pdf>

6 Press of Atlantic City. (2010, November 15). *Paid Family Leave / Working well*. Retrieved 25 September 2018, from [http://www.pressofatlanticcity.com/opinion/editorials/article\\_0d6ba980-3a1d-56f7-9101-258999b5d9d0.html](http://www.pressofatlanticcity.com/opinion/editorials/article_0d6ba980-3a1d-56f7-9101-258999b5d9d0.html); Houser, L., & White, K. (2012, October). *Awareness of New Jersey's Family Leave Insurance Program is Low, Even as Public Support Remains High and Need Persists*. Rutgers University, The State University of New Jersey Center for Women and Work Publication. Retrieved 25 September 2018, from [http://njtimetocare.com/sites/default/files/03\\_New%20Jersey%20Family%20Leave%20Insurance-%20A%20CWW%20Issue%20Brief.pdf](http://njtimetocare.com/sites/default/files/03_New%20Jersey%20Family%20Leave%20Insurance-%20A%20CWW%20Issue%20Brief.pdf); Ramirez, M. (2012). *The Impact of Paid Family Leave on New Jersey Businesses*. New Jersey Business and Industry Association and Bloustein School of Planning and Public Policy at Rutgers, The State University of New Jersey Presentation. Retrieved 25 September 2018, from <http://bloustein.rutgers.edu/wp-content/uploads/2012/03/Ramirez.pdf>

7 National Partnership for Women & Families. (2015, February). *First Impressions: Comparing State Paid Family Leave Programs in Their First Years*. Retrieved 25 September 2018, from <http://www.nationalpartnership.org/research-library/work-family/paid-leave/first-impressions-comparing-state-paid-family-leave-programs-in-their-first-years.pdf>; Bartel, A., Rossin-Slater, M., Ruhm, C., & Waldfogel, J. (2016, January). *Assessing Rhode Island's Temporary Caregiver Insurance Act: Insights from a Survey of Employers*. U.S. Department of Labor Publication. Retrieved 25 September 2018, from [https://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct\\_InsightsFromSurveyOfEmployers.pdf](https://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct_InsightsFromSurveyOfEmployers.pdf)

8 Social Security Administration. (n.d.). *Disability Planner: How Much Work Do You Need?* Retrieved 25 September 2018, from <https://www.ssa.gov/planners/disability/dqualify2.html>

9 U.S. Census Bureau. (2018, 21 September). *Current Population Survey, Annual Social and Economic (ASEC) Supplement: PINC-10. Wage and Salary Workers--People 15 Years Old and Over by Total Wage and Salary Income, Work Experience, Race, Hispanic Origin, and Sex*. Retrieved 25 September 2018, from <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-10.html> (Unpublished calculations based on median wage and salary for all workers and for full-time, year-round workers in 2017.)

10 Klerman, J.A., Daley, K., & Pozniak, A. (2012, September 7). *Family and Medical Leave in 2012: Technical Report*. Abt Associates Publication. Retrieved 25 September 2018, from <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>

11 Appelbaum, E., & Milkman, R. (2013). *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy* (pp. 49). Ithaca, NY: Cornell University Press.

---

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 women and men meet the dual demands of work and family. More information is available at [NationalPartnership.org](http://NationalPartnership.org).

© 2018 National Partnership for Women & Families. All rights reserved.