



## **Work and Family Working Together:** *Policy Options for Advocates and Legislators* *Spring 2010*

Workers should not have to choose between a paycheck, their job, and their own health or the health of their families. Yet, because of the lack of policies that help workers meet their family responsibilities, many workers face this choice every day. Nearly half the private-sector workforce has no paid sick days for short-term illnesses and routine needs, more than half do not qualify for unpaid leave under the Family Medical Leave Act (FMLA), and the vast majority of workers have no wage replacement if they need to take extended leave for their own serious illness, the serious illness of a family member, or to care for a new baby.

The federal government, states, localities, labor unions and non-profit organizations are working to change policies so that workers have the time they need to care for themselves and their families.

This document gives a brief overview of existing policies that help workers who need time away from work and provides information on the most promising policies.

### **Existing Work and Family Policies**

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#### **Paid Sick Days**

Paid sick days address the need for paid time off for short-term illnesses and routine medical appointments. State and federal Family and Medical Leave (FMLA) laws do not cover absences for brief illnesses or regular medical visits. Workers can use paid sick days to care for their own illnesses or to care for a family member who is sick. Additionally, some paid sick days laws and proposals allow the paid time away from work to be used to seek services related to domestic violence, stalking, and sexual assault.

#### **FMLA and FMLA Expansion**

The federal FMLA provides 12 weeks of unpaid leave to eligible employees when the employee or a close family member has a serious medical condition or to care for a newborn or newly-adopted child. Workers who use FMLA leave are entitled to be reinstated to their prior employment, and the employer must maintain any health care benefits already being provided to the workers. In 2008 and 2009, the FMLA was expanded to allow military families to use the 12 weeks of leave to address qualifying exigencies arising out of a family member's deployment and to allow for 26 weeks of unpaid leave so that a worker may care for a servicemember or veteran who has a serious injury or illness if

the worker is the servicemember's next of kin. In 2009, the FMLA was also expanded to include flight crews, whose method of calculating working hours had previously excluded their eligibility for FMLA leave.

State laws have increased the coverage of the FMLA in various ways:

- **Dropping the employer threshold**  
The federal FMLA only applies to employers with 50 or more employees. Some states have enacted their own FMLAs that have a lower threshold for employer coverage.
- **Expanding the Definition of Family**  
The federal FMLA covers only a narrow definition of family: parent, spouse, and child. This definition does not reflect the structure of many of today's families and makes it impossible for some caregivers to take the leave they need. The 2008 amendments to the FMLA for military family members extend the FMLA's protection to next of kin and to adult children, and some states have expanded the definition of family in their own FMLAs.
- **Increasing the Uses for FMLA Leave**  
FMLA leave can be used for a worker's serious health condition, the serious health condition of a family member, or upon the arrival of a new child, and by military family members to address qualifying exigencies or to care for a servicemember with a serious injury or illness. State FMLA laws and the new military family provisions of the FMLA have broadened these categories.

## **Paid Leave Policies**

- **Temporary Disability Leave (TDI)**  
For decades, five states (CA, HI, NJ, NY, RI) and Puerto Rico have provided partial income replacement for workers who are temporarily disabled and unable to work for non-work-related reasons, including pregnancy and childbirth. These programs are funded by mandatory contributions from employers and employees or by employees only.
- **Paid Family Leave**  
California (2002) and New Jersey (2008) expanded their TDI programs to cover leave for employees to care for family members with serious health conditions or to bond with a new child. Both of these programs are exclusively employee-funded and allow for six weeks of paid leave.

In 2007, Washington State became the first state without an existing TDI program to offer statewide paid parental leave. The Washington State program gives new parents five weeks of paid leave, with an across the board benefit level of \$250.00 per week. Washington is still working on the permanent funding mechanism for this law; it has not yet gone into effect.

## Promising Policies

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### Paid Sick Days

At least four in ten private-sector workers—and nearly 80% of low-wage workers—do not have paid sick days to care for their own health. And nearly 100 million workers don't have paid sick days to care for a sick child. Without paid sick days, workers are forced to choose between going to work sick—or leaving a sick child—and a paycheck. Workers also face being disciplined or losing their jobs for staying home to care for their own illnesses or the illness of a family member.

Paid sick days provide workers the chance to recover from routine illnesses such as colds or fevers, and allow workers to take care of family members when those family members are sick. Workers also can use paid sick days to attend routine medical visits and check-ups. Paid sick days bills provide that workers cannot be disciplined, fired, or retaliated against for using the paid sick days provided in the legislation.

Paid sick days help employers by reducing turnover, increasing productivity, and increasing loyalty to the employer. Paid sick days positively impact public health by reducing the spread of infection among coworkers and sick children who are forced to go to child care or school because their parent cannot stay home with them. A recent poll of workers in Ohio by the Kaiser Foundation found that half of the respondents had gone to work sick in the past year because they could not afford to lose pay.<sup>1</sup> Paid sick days also allow workers to access medical care for routine check ups, which can decrease overall health costs and increase the chances that less serious conditions will not be aggravated.

In 2006, San Francisco passed the nation's first ordinance providing all workers in the city paid sick days.<sup>2</sup> In 2008, the District of Columbia became the second municipality to ensure that all workers have paid sick days.<sup>3</sup> D.C.'s statute also provides paid time off for employees to address situations arising from domestic violence, stalking, or sexual assault for themselves or a family member.<sup>4</sup> In November 2008, paid sick days were put to a vote on the Milwaukee ballot, and voters passed the measure with an overwhelming 69% of the vote, enacting a law that provides paid sick and safe days for all the city's workers.<sup>5</sup>

There are active paid sick days campaigns and/or bills that have been introduced in 24 states and municipalities. (For a list of these jurisdictions and campaign updates see [www.paid sick days.org](http://www.paid sick days.org).) At the federal level, the Healthy Families Act (HR 2460/ S 1152), a bill originally introduced by Sen. Ted Kennedy (MA), and now sponsored by Sen. Chris Dodd (CT) and Rep. Rosa DeLauro (CT), would allow workers to earn up to seven paid sick days a year (1 hour earned for every 30 hours worked).

## Expanding the FMLA

- **Dropping the Employer Threshold**

The federal FMLA only applies to private employers with 50 or more employees. Because of this threshold requirement, 40% of private workers are not covered by the FMLA. Several states that have their own FMLAs have lowered their threshold to cover more workers.

State	Threshold
Maine	15 or more (private employers) <sup>6</sup> 25 or more (city or town employers) <sup>7</sup>
Minnesota	21 or more (provides parental leave only) <sup>8</sup>
Oregon	25 or more <sup>9</sup>
Rhode Island	50 or more (private employers) <sup>10</sup> 30 or more (public employers) <sup>11</sup>
Vermont	10 or more (parental leave) <sup>12</sup> 15 or more (family and medical leave) <sup>13</sup>
Washington	50 or more (FMLA reasons besides insured parental leave) <sup>14</sup> All employers (insured parental leave) <sup>15</sup>
District of Columbia	20 or more <sup>16</sup>

- **Expanding the Definition of Family**

The federal FMLA allows a worker to take leave to care for a new child or to care for a parent, a spouse, or a child under the age of 18 (unless the child qualifies as a person with a disability) with a serious health condition. In 2008, the FMLA was amended to allow for 26 weeks of leave for military family members caring for wounded servicemembers. For this military family expansion, the definition of “family” has been increased to include next of kin.<sup>17</sup> State FMLA laws also have expanded the definition of family to include a wider range of family members.

State	Definition of Family (Beyond Child, Spouse and Parent)
California	Domestic partner and domestic partner’s child <sup>18</sup>
Connecticut	Civil union partner <sup>19</sup> , parent-in-law <sup>20</sup>
Hawaii	Grandparent, parent-in-law, grandparent-in-law <sup>21</sup> or an employee’s reciprocal beneficiary <sup>22</sup>
Maine	Domestic partner and domestic partner’s child <sup>23</sup> , siblings <sup>24</sup>
New Jersey	Civil union partner and child of civil union partner <sup>25</sup> , parent-in-law, step parent <sup>26</sup>
Oregon	Domestic partner <sup>27</sup> , grandparent, grandchild or parent-in-law <sup>28</sup>
Rhode Island	Domestic partners of state employees, parent-in-law <sup>29</sup>
Vermont	Civil union partner <sup>30</sup> , parent-in-law <sup>31</sup>
Wisconsin	Parent-in-law <sup>32</sup> , registered and unregistered domestic partners (can

	be same or opposite sex) <sup>33</sup>
District of Columbia	Related to the worker by blood, legal custody, or marriage; person with whom the employee lives and has a committed relationship; child who lives with employee and for whom employee permanently assumes and discharges parental responsibility <sup>34</sup>

▪ **Increasing Uses for FMLA Leave**

The federal FMLA provides for leave if the worker has a serious health condition, to care for a family member with a serious health condition, to care for a new child, to care for a servicemember family member who has a serious injury or illness incurred in the line of duty, and to address qualifying exigencies arising out of a family member’s deployment. States with their own FMLAs have expanded how workers can use FMLA leave.

State	Uses of FMLA Leave
Connecticut	Organ or bone marrow donor <sup>35</sup>
Maine	Organ donor <sup>36</sup> ; death of employee’s family member if that family member is a servicemember killed while on active duty <sup>37</sup>
Oregon	Care of for the non-serious injury or illness of a child that requires home care <sup>38</sup>

In addition, several states have passed FMLA-type statutes to give parents unpaid leave to attend their child’s school or educational activities (examples include California<sup>39</sup>, the District of Columbia<sup>40</sup>, Massachusetts<sup>41</sup>, Minnesota<sup>42</sup>, Rhode Island<sup>43</sup>, Vermont<sup>44</sup>). States have passed FMLA-type statutes to give workers unpaid leave to take family members to routine medical visits (examples include Massachusetts<sup>45</sup> and Vermont<sup>46</sup>). States have also passed FMLA-type statutes to give workers unpaid leave to address the effects of domestic violence, stalking, or sexual assault (examples include Colorado<sup>47</sup>, Florida<sup>48</sup>, Hawaii<sup>49</sup>, and Illinois<sup>50</sup>).

**Paid Leave Policies**

No federal law requires employers to give their employees paid time off for their own medical needs, to care for a family member’s medical needs, or to be with a new child, and the United States has no federal family leave insurance system. The United States is the only industrialized nation that does not provide paid maternity leave. The fact that the FMLA offers only unpaid leave makes it impossible for many workers, even those who qualify for its protections, to take leave. Studies on FMLA-eligible workers show that the single largest reason workers do not take FMLA leave is that they cannot afford to take unpaid leave.

- **Temporary Disability Insurance**

Five states (NY, NJ, RI, CA, and HI) and Puerto Rico have for decades provided partial wage replacement for workers who are unable to work due to non-work related injuries or illnesses, including pregnancy. Typically, women who give birth receive approximately six weeks of paid leave under these laws; women who have complications, and thus are unable to work for longer, can receive more weeks of payment. Because the wage replacement is linked to the status of being “disabled” or unable to work, fathers and adoptive parents do not qualify for paid leave under these laws.

The states finance these programs using either worker contributions or a combination of employer and employee contributions. Workers are entitled to a percentage of their pre-disability salary up to specific caps. Workers are entitled to access the wage replacement if they meet certain requirements regarding how much money they have paid into the system or how many quarters they have worked prior to needing the paid leave. Nearly all the workers in these states, regardless of how small their employer, are covered by these paid medical leave programs.

State	Funding	Benefit Level
California	Employee only	Maximum \$987/week; typical benefit is 55% of weekly salary
Hawaii	Employee and Employer	Maximum is \$523/week; typical benefit is 58% of the employee's average weekly wages
New Jersey	Employer and Employee	Maximum \$561/week; typical benefit is 2/3 of average of last 8 weeks pay
New York	Employee only	Maximum \$170/week <sup>51</sup>
Rhode Island	Employee only	Maximum is \$694/week; typical benefit is equal to 4.62% of highest quarterly wages during the past year

- **Paid Family Leave**

California (in 2002) and New Jersey (in 2008) expanded their temporary disability insurance programs to allow workers to be paid for up to six weeks while caring for a family member with a serious health condition or to bond with a new child. Both states financed these changes by slightly increasing the employee’s contribution to the TDI fund, and the benefit level is the same as that of individuals on TDI. Studies examining leave takers in California show that most of the workers utilizing the program are parents taking leave to bond with a new child.<sup>52</sup> Adding family leave to the TDI program has not affected the solvency of California’s TDI funding or program.

In 2007, Washington became the first state without an existing TDI program to pass a paid parental leave program.<sup>53</sup> Workers who qualify will be eligible for up to \$250 per week for five weeks to allow them to bond with a new child. Implementation of Washington's program awaits legislative action on the law's funding mechanism.

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<sup>1</sup> NPR/Kaiser Family Foundation/Harvard School of Public Health, *Health Care and the Economy in Two Swing States: A Look at Ohio and Florida*, at 4 (July 2008). (<http://www.kff.org/kaiserpolls/upload/7753.pdf>).

<sup>2</sup> San Francisco Municipal Code § 12W.

<sup>3</sup> D.C. Code § 32-131.01-.16.

<sup>4</sup> D.C. Code § 32-131.02 (b)(4).

<sup>5</sup> A legal challenge to Milwaukee's paid sick days law is currently pending in the Wisconsin Supreme Court; implementation awaits resolution of the challenge.

<sup>6</sup> 26 ME. REV. STAT. ANN. § 843 (3)(A).

<sup>7</sup> 26 ME. REV. STAT. ANN. § 843 (3)(C).

<sup>8</sup> MINN. STAT. § 181.940 (Subd. 3).

<sup>9</sup> OR. REV. STAT. § 659A.153 (1).

<sup>10</sup> R.I. Pub. Laws § 24-48-1(3)(i).

<sup>11</sup> R.I. Pub. Laws § 24-48-1(3)(iii).

<sup>12</sup> 23 VSA § 471(4).

<sup>13</sup> 23 VSA § 471(3).

<sup>14</sup> RCW § 49.78.020(5).

<sup>15</sup> RCW § 49.86.010 (6)(a); RCW § 50.50.080(1).

<sup>16</sup> D.C. Code § 32-516(2).

<sup>17</sup> 29 U.S.C. § 2612 (a)(3).

<sup>18</sup> CAL. FAM. CODE § 297.5.

<sup>19</sup> CONN. GEN. STAT. § 46b-38nn.

<sup>20</sup> CONN. GEN. STAT. § 31-51kk (7).

<sup>21</sup> HAW. REV. STAT. § 398.1.

<sup>22</sup> HAW. REV. STAT. § 398.3.

<sup>23</sup> 26 ME. REV. STAT. ANN. § 843 (4)(D).

<sup>24</sup> LD 2130 (takes effect June 2008).

<sup>25</sup> N.J. STAT. ANN. § 37:1-31.

<sup>26</sup> N.J. STAT ANN. § 34-11B(3)(h).

<sup>27</sup> HB 2007.

<sup>28</sup> OR. REV. STAT. § 659A.150 (4).

<sup>29</sup> R.I. Pub. Laws § 24-48-1(5).

<sup>30</sup> 23 VSA § 1204(a).

<sup>31</sup> 23 VSA § 471(3)(B).

<sup>32</sup> WIS. STAT. § 103.10(1)(f).

<sup>33</sup> 2009 Wis. Act 28 (state budget bill) (effective June 30, 2009).

<sup>34</sup> D.C. Code 32-501(A), (B), (C).

<sup>35</sup> CONN. GEN. STAT. § 31-51// (2)(E).

<sup>36</sup> 26 ME. REV. STAT. ANN. § 843 (4)(E).

<sup>37</sup> 26 ME. REV. STAT. ANN. § 843 (4)(F).

<sup>38</sup> OR. REV. STAT. § 659A.159 (d).

<sup>39</sup> CAL. LAB. CODE § 230.8.

<sup>40</sup> D.C. Code 32-1202.

<sup>41</sup> MASS. GEN. LAWS. Ch. 149 § 52(D)(b)(1).

<sup>42</sup> MINN. STAT. § 181.9412.

<sup>43</sup> R.I. Pub. Laws § 24-48-12.

<sup>44</sup> 23 VSA § 472a (a)(1).

<sup>45</sup> MASS. GEN. LAWS. Ch. 149 § 52(D)(b)(2)&(3).

<sup>46</sup> 23 VSA § 472a (a)(2).

<sup>47</sup> COLO. REV. STAT. § 24-34-402.7.

<sup>48</sup> FLA. STAT. § 741.313.

<sup>49</sup> HAW. REV. STAT. § 378-72.

<sup>50</sup> 820 ILL. COMP. STAT. 180/1-180/45

<sup>51</sup> Pending legislation will increase this amount.

<sup>52</sup> Rona Levine Sheriff, *Balancing Work and Family*, California Senate Office of Research, at 5 (2007) (<http://www.paidfamilyleave.org/pdf/paidfamily07.pdf>).

<sup>53</sup> RCW § 49.86.