

# Paid Family and Medical Leave Policy Metrics

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Only 59 percent of the workforce is eligible for unpaid job-protected leave under the federal Family and Medical Leave Act (FMLA), and an even smaller share can afford to take it.<sup>1</sup> This dismal situation punishes working families – particularly those with low incomes, for whom an unpaid leave can cause economic devastation. For many families of color – who have less access to wealth than white families – these destabilizations can be especially damaging. Nationwide, only 28 percent of Latinx working adults and 38 percent of Black working adults are both eligible for unpaid leave under the federal FMLA and can afford to go without pay; the same is true for 40 percent of white, non-Latinx working adults.<sup>2</sup>

Paid family and medical leave laws give workers access to the paid time they need to recover from a serious illness or care for a sick family member or a new child. Currently, six states and the District of Columbia have adopted paid family and medical leave laws. Four are in effect now and three will go into effect and begin to cover workers in 2020 and 2021. Paid family and medical leave programs guarantee millions of workers the ability to keep their jobs and maintain their financial security while caring for themselves and their family. The state laws function as insurance programs, whereby employers and/or employees contribute small amounts of each paycheck towards a state-run fund out of which benefits are paid.

These laws can and have done a lot to help workers, but without careful attention to the impacts of policy design and policy compromises, vulnerable workers can be left out of these protections – exacerbating their economic insecurity and putting their well-being and that of their family at risk. In designing paid family and medical leave laws, policymakers should be aware of the decision points that particularly impact low-income workers and structure programs in a way that alleviates rather than exacerbates existing inequalities.

These metrics present the aspects of paid family and medical leave policies that will have the most impact on whether low-income workers are covered by and can utilize the programs. We selected these aspects based on: our experience providing policy and technical assistance to advocates and policy makers developing paid leave policies and with implementation of paid leave programs; research on paid leave and low wage workers; and consultations with organizations that work directly on behalf of low-wage workers.

## 1. Setting the Benefit Amount and Duration

**A high wage replacement rate and meaningful duration of leave is critical to allow low-income families to have adequate family and medical leave and be able to utilize it.**

Low-wage workers face two barriers to leave when programs aren't adequately tailored to reflect their needs. First, paid family leave programs that replace an inadequate share of a worker's wages may keep leave out of reach; if the amount of income a worker receives when they're out of work isn't enough to meet basic expenses, they won't be able to access the time off a program provides. Research from existing programs indicates that low-income workers are less likely to take leave through the programs because the wage replacement is not enough, and men are particularly dis-incentivized.<sup>3</sup> A market research study of California's paid family leave program found that program's modest wage replacement (at the time 55 percent) was a factor in people's decision to apply or not to apply – particularly for low-income workers – and key informants and stakeholders reported that the wage replacement levels were a barrier to participation for low-income households.<sup>4</sup>

Additional studies have also found the wage replacement level to be a barrier for take up in California.<sup>5</sup> In response to these consistent findings, California's wage replacement rate was increased in 2018.<sup>6</sup> New fathers who had low-incomes in New Jersey also voiced inability to take leave under the state's program due to the partial wage replacement (as well as lack of job protection for some).<sup>7</sup> Paid leave policies should include either a progressive wage replacement rate structure, such that lower-paid workers receive a high percentage of their wages, or a high wage replacement rate for all workers. This can take the form of a bracketed wage replacement rate in which wages below a certain level are replaced at a relatively high rate, and any wages above that amount are replaced at a lower rate.

Second, assuming adequate wage replacement exists, the duration of leave a program makes available is especially important for lower-wage workers because they are unlikely to have any additional leave provided to them by their employer. Finding affordable, quality child care or elder care for the transition back to work can also be more difficult for lower-income families who have fewer choices, so affordable leave for a meaningful duration is especially important. Workers with low incomes are the least likely to have paid leave of any type – including paid sick days, vacation and holidays – and cannot afford to take unpaid FMLA leave.<sup>8</sup> Nearly two-thirds of low-income households reported receiving no pay when they took time away from work for family or medical reasons compared to 26 percent of households with incomes of \$75,000 or higher.<sup>9</sup> Disparities in leave-taking are also present across income. Mothers in households with incomes less than \$30,000 reported only taking a median length of six weeks of maternity leave, compared to 12 weeks for mothers in households with incomes of \$75,000 or higher.<sup>10</sup>

## 2. Eligibility Requirement to Access Paid Leave

**The eligibility requirement – the amount of money a worker has to have earned or the hours a person has to have worked to be eligible to access paid leave – should be low enough so that workers with low-incomes can use paid leave.**

Paid leave programs require that people have worked prior to accessing paid leave. Existing state paid leave laws often import eligibility requirements from state unemployment insurance (UI) law, requiring people to have earned a certain amount of wages during a certain number of preceding quarters. If UI criteria is used, the law should allow eligibility to be based on an “alternative base period,” which allows more prior calendar quarters to be taken into consideration and therefore accounts for workers whose employment schedules fluctuate. Laws should also not require that a person be currently employed to access benefits.

High hours or earnings threshold requirements disproportionately exclude low-income workers from eligibility due to the nature of low-wage work and employment. Low-income workers undoubtedly have a harder time meeting earnings requirements – because quite simply they are paid lower wages. As of 2015, there were 8.6 million people in the “working poor” – those who are in the labor force at least 27 weeks a year but whose income is below the federal poverty level – and women, Black and Latinx workers were especially likely to be in the working poor.<sup>11</sup> Nearly 41.7 million workers were paid less than \$12 an hour and 58.3 million workers less than \$15 an hour as of 2014. A change in hours or employment could easily put these workers below an earnings requirement that was set too high.<sup>12</sup> More than half of workers in jobs that pay less than \$15 an hour are women, even though women comprise slightly less than half of the labor force. And more than half of Black workers and nearly 60 percent of Latinx workers are paid less than \$15 an hour, as well as 36 percent of white workers.<sup>13</sup>

The nature of low-wage work also makes it more difficult for people in low-wage jobs to meet high hours thresholds because it is harder to remain continuously employed at the same place and for consistent hours for even a year or longer. People in low-wage jobs are also more likely to have gaps between jobs, rendering hours and employer attachment requirements insurmountable. Low-wage work is associated with higher turnover, seasonal or cyclical hours – i.e., more volatile hours, month-to-month or unpredictable scheduling – less income security and fewer workplace protections.<sup>14</sup> Low-wage jobs in some of the fastest-growing sectors often only offer part-time work and frequently have unstable scheduling, leading to unpredictable hours and earnings.<sup>15</sup>

## 3. Definition of “Employee” and “Employer”

**All employers, regardless of size or industry, and all workers, should be covered by paid leave laws.**

Paid leave insurance laws should cover workers regardless of their employer. Limiting a paid leave law to cover only individuals who work for employers of a certain size – often referred to as an “employer size threshold” – disproportionately excludes low-wage workers.

Forty-two percent of low-wage workers and 35 percent of low-wage workers in low-income families with children are employed by businesses with fewer than 10 workers, compared to 20 percent of workers overall.<sup>16</sup> Carving out certain industries is also likely to disproportionately harm low-wage workers because the industries that seem most at risk of being excluded, like those not covered by the federal Fair Labor Standards Act, tend to have high rates of poverty. For example, one in four farmworkers has a family income below the federal poverty line.<sup>17</sup>

In addition, overly narrow definitions of “employee” that exclude nontraditional workers, such as part-time, seasonal, contingent or “gig” workers, disproportionately harm individuals who are paid low wages. Part-time workers, for example, are six times more likely than full-time workers to be paid minimum wage,<sup>18</sup> and the median weekly earnings of contingent workers working full time are only 77 percent of the median weekly earnings of noncontingent full-time workers.<sup>19</sup>

## 4. Definition of “Family Member”

**The definition of “family member” for whom one can use leave to provide care should be broader than parents, spouses and children to account for the diverse forms of family caregiving that exist in the United States today, and should include “chosen family” and multigenerational families to maximize equity and reach.**

Narrow family definitions can disproportionately hurt low-income workers who may be likely to provide care to “chosen family.” LGBTQ people and people with disabilities are more likely to be low-income.<sup>20</sup> These are also communities that are particularly likely to rely on or to be “chosen family” caregivers.<sup>21</sup> Nearly one-third (32 percent) of working people in the U.S. report having taken time away from work to care for a friend or chosen family member, including 42 percent of LGBTQ individuals and 42 percent of people with disabilities.<sup>22</sup> Nearly half (48 percent) of LGBTQ working people report feeling an increased responsibility to care for loved ones whose families of origin have rejected them.<sup>23</sup>

Narrow family definitions can also disproportionately hurt the record number of workers living in multigenerational households.<sup>24</sup> Multigenerational living may be an economic lifeline for many families – unemployed individuals are much more likely than employed individuals to live in multigenerational households – and can help reduce poverty for members of economically vulnerable groups.<sup>25</sup>

## 5. Waiting Period Before Accessing Paid Leave

**Requiring workers to serve an unpaid, or partially paid, waiting period before they can access wage replacement may prevent a low-wage worker from taking leave at all or may result in disastrous financial consequences for them and their families.**

Low-wage workers suffer disproportionate hardships from waiting periods in paid family and medical leave laws. A few days of unpaid work can jeopardize a low-wage family’s ability to buy food for an entire month.

People with a high school degree or less – with education as a proxy for income – are much less likely to be able to pay their monthly expenses or absorb an unexpected \$400 expense than those with more education. More than half (54 percent) report being unable to absorb an unexpected \$400 expense, the equivalent of one week of earnings for a full-time, low-wage worker (\$10 an hour).<sup>26</sup> Additionally, low-wage workers are less likely than others to have access to paid sick days or any paid time off<sup>27</sup> that they could otherwise use to bridge the gap during an unpaid leave. Sixty-nine percent of low-wage workers do not have access to paid sick days, 59 percent do not have paid vacation and 60 percent do not have paid holidays.<sup>28</sup>

If a waiting period is used, the law should not require that the waiting period be served in consecutive days and should provide that employees will be paid retroactive benefits if their leave lasts longer than the waiting period.

## **6. Job and Benefits Protection While Receiving Family and Medical Leave Insurance Benefits**

**Job and benefits protection is vital for low-income workers, who already face job insecurity and economic instability even before the need for leave arises.**

Without the reassurance that job and benefits protection provides, low-income workers may forgo leave rather than risk termination and loss of income or health insurance during an already stressful and expensive time in their lives if a paid leave policy does not include these features. Low-wage workers are less likely to have job protection under the federal FMLA and similar state laws. More than half of families with income less than \$40,000 are not eligible for job protection under the FMLA.<sup>29</sup> The combination of job protection and meaningful wage replacement is key to a low-income worker's ability to take leave, according to numerous studies.<sup>30</sup>

If a policy imposes eligibility restrictions for job protection based on how many hours or months they have worked, these limitations should be low enough that most workers in low-wage, part-time jobs can qualify.

## **7. Public Education and Outreach**

**A paid leave law should include dedicated funding for public education and outreach; require materials to be available in different languages; and require that the relevant agency work with community-based organizations to disseminate information to specific segments of the worker population.**

Lack of awareness of paid leave programs is a major barrier to low-income workers utilizing paid leave. Dedicated funding would help to improve awareness. According to multiple studies, the vast majority of low-income workers report no awareness of the paid leave program in their respective state and are much less likely to have awareness than higher-income workers.<sup>31</sup>

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