

## **Paid Family Leave**

### **House Committee on Education and the Workforce**

#### **Background**

Paid family leave refers to a system in which employees are compensated with some portion of their salary while removed from work due to a family-related issues, most typically a new child. Internationally, 185 countries provide paid maternity leave, seventy-eight of which also offer paternity leave. Only Oman, Papua New Guinea, and the United States do not require any paid leave whatsoever. The extent of family leave programs in regards to length, amount of compensation, and source of compensation varies among different nations. Britain leads the developed world in parental leave length, offering 52 weeks of leave in total and 32 weeks at 90% of an employee's former salary. As of 2009, the International Labor Organization found that two-thirds of international maternity leave programs provide something between twelve and seventeen weeks of paid leave. Among developed economies and EU members, nearly half offer eighteen weeks or more. As for compensation, sixty percent of international programs are unpaid or offer less than 2/3rds of a worker's previous salary. On the other hand, one third of all nations and half of developed economies/EU members offer at least fourteen weeks of fully paid leave. Finally, most nations and the large majority of developed economies provide maternity leave via a government social security program, while the remainder either compel employers to pay or use some mix of private and public compensation.<sup>1</sup>

The primary piece of U.S. legislation that addresses family leave is the 1993 Federal Medical Leave Act, which provides up to twelve weeks of unpaid leave for workers to care for a newborn or newly adopted child, tend to an ill family member, or recover from a personal illness. Though the FMLA helps ensure job security for employees on leave, it is largely deemed insufficient because it provides little recourse for those without the financial capability to take time off work without pay. In addition, the legislation excludes part time workers and employees of companies with less than 50 employees. Though a viable foundation, the FMLA has been far from comprehensive in its coverage. Beyond the FMLA, three states- California, New Jersey, and Rhode Island- have implemented paid medical and family leave programs. California's program, enacted in 2002, is a government-run insurance system which offers up to six weeks of paid leave at 55% of a worker's typical salary, below a certain weekly cap. Both New Jersey and Washington have similar programs, with slight adjustments for compensation and leave length. Only thirteen states overall have passed legislation which expands upon the minimums set by the FMLA.

In the early 20th century, progressive reforms sought to benefit working mothers by removing them from the workforce. Several state laws barred employment of women directly before or after childbirth, though such legislation was ultimately overturned in the 1960s and '70s in the wake of Title IX, which prohibits employment discrimination on the basis of gender. Gender neutral employment laws, however, still failed to address the particular needs of working mothers. Several states attempted to provide for paid maternity leave by folding it into preexisting disability insurance programs, but the larger question of whether employers could treat female workers differently because of their childbearing capacity ultimately came to deliberation in the courts. In the 1970s, the

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<sup>1</sup> "Data Collection on Maternity Protection," International Labor Organization, [http://www.ilo.org/travail/areasofwork/maternity-protection/WCMS\\_145724/lang--en/index.htm](http://www.ilo.org/travail/areasofwork/maternity-protection/WCMS_145724/lang--en/index.htm).

Supreme court upheld several policies which allowed states or employers to exclude pregnant women from disability insurance. In response to these decisions in *Geduldig v. Aiello* (1974) and *General Electric v. Gilbert* (1976) and the subsequent backlash from women's rights activists, Congress passed the Pregnancy Discrimination Act of 1978, which stated that pregnant workers could not be treated differently in matters of employment. In 1993, newly elected President Bill Clinton made family leave a policy priority for his administration, and the measure passed quickly through Congress with bipartisan support.

Since the passage of the FMLA, the issue of paid family leave has continued to dominate mainstream political conversations, spurring many states, localities, and private businesses to take further action. Because the issue of family leave rests partially in the private sector, the actions of individual businesses are important to take into consideration. In recent years, several large companies have made a point of establishing generous family leave programs which go far beyond government-mandated minimums. Twitter, Google, Facebook, Goldman Sachs, and Microsoft all have highly-publicized policies which provide employees with between sixteen and twenty weeks of paid leave. President Barack Obama has made family leave a major priority of his administration, stating in his 2015 State of the Union address that "It's time we stop treating child care like a side issue, or a women's issue, and treat it like the national economic priority that it is for all of us."<sup>2</sup> Obama followed this statement up with an executive order providing six weeks of paid leave to all federal employees, and called on Congress to pass a bill supplying an additional six and allocating \$2.2 billion to fund state programs. The Healthy Families Act, which included many such measures, has since stagnated in committee. Senator Kirsten Gillibrand's proposed Family and Medical Insurance Leave Act met a similar fate, but has strong support from Senator Bernie Sanders, a candidate for the Democratic presidential nomination.

Following Obama's push for more extensive leave programs, several cities have implemented policies granting six weeks of paid leave for city employees. In December 2015, New York Mayor Bill de Blasio announced a six week paid parental leave program at 100% salary, following in the footsteps of localities such as Austin, Pittsburgh, and Kansas City, MO. The Washington DC City Council is currently considering one of the most extensive family leave programs in the country, which would offer new parents sixteen weeks off work at full pay through a payroll tax of less than one percent.

## **Democratic Point of View**

Democrats are largely in favor of some kind of federal paid family leave program, touting it as a common sense measure which strengthens families and protects against poverty. The Democratic defense of paid family leave mainly rests on three contentions: the health of the mother and child, empowerment of employees, and the absence of a considerable strain on employers. Firstly, Democrats point out that countries with more generous paid family leave programs report lower infant mortality rates. In the United States, the implementation of the FMLA had a substantial effect both on average birth rate and infant mortality. Reports show that family leave gives parents crucial bonding time with their children, allowing mothers to breastfeed longer and make a full

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<sup>2</sup> "Remarks by the President in State of the Union Address, January 20, 2015," White House Briefing Room, <https://www.whitehouse.gov/the-press-office/2015/01/20/remarks-president-state-union-address-january-20-2015>.

recovery after childbirth.<sup>3</sup> Secondly, Democrats see substantial socioeconomic benefits in extended paid family leave programs. Access to family leave programs often falls along racial and class lines, leaving minority workers with disproportionately low opportunities. Government-funded paid family leave programs mainly benefit those in low-paying jobs, who do not otherwise have access to such a program through their employers and are most vulnerable if they are forced to take an extended leave.<sup>4</sup> Democrats claim that family leave programs empower low-wage workers to remain in a steady job even if they must take time off to care for a family member or new child. One third of those who take unpaid leave are forced to dip into savings, borrow money, or put off paying their bills, and fifteen percent enroll in public benefits to stay afloat. Without the assurance of paid leave, employees are vulnerable to “poverty spells” or periods of two or more months in which they dip below the poverty line; in the United States, a quarter of these spells are prompted by the birth of a child.<sup>5</sup> On the other hand, women who are able to take paid leave are thirty-nine percent less likely to receive public assistance in the year after childbirth. Thirdly, the implementation of paid family leave programs, particularly those which are based around a government insurance program, has little effect on the economic prosperity of employers. In California, a study on the effects of their paid leave program found that over ninety percent of employers reported experiencing a positive or neutral impact on their finances.

In a Democratic primary heavily focused on progressive issues, the problem of paid family leave has become central to the policy platforms of candidates for the presidential nomination. Hillary Clinton currently sits in a difficult position, in that she advocates fiercely for paid family leave but also opposes any tax increase on middle-income workers. Continually throughout her campaign, Clinton has pushed the idea that she would fund major programs through tax increases on the wealthy, and this is reflected in her official family leave policy. Clinton’s proposed program would guarantee up to twelve weeks of leave at two-thirds of their standard salary, funded by “a combination of tax reforms impacting the most fortunate.”<sup>6</sup> Bernie Sanders, another leading candidate for the Democratic nomination, is a co-sponsor and strong supporter of the aforementioned FAMILY act. The FAMILY act would ensure twelve weeks of leave at two thirds pay through a 0.2% payroll tax, or about \$1.50 per week for a typical worker. Though, as noted, Clinton supports the twelve weeks of paid leave which the bill would supply, she does not endorse any form of tax increase on low-wage workers.

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<sup>3</sup> Heather Boushey and Alexandra Mitukiewicz, “Family and Medical Leave Insurance: A Basic Standard for Today’s Workforce,” Center for American Progress, 2014, <https://www.americanprogress.org/wp-content/uploads/2014/04/FMLA-reportv2.pdf>.

<sup>4</sup> “The Economics of Paid and Unpaid Leave,” Council of Economic Advisors, 2014, [https://www.whitehouse.gov/sites/default/files/docs/leave\\_report\\_final.pdf](https://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf).

<sup>5</sup> Jon Greenberg, “Is Having a Kid a Leading Trigger for Poverty?” PunditFact, 12 August 2014, <http://www.politifact.com/punditfact/statements/2014/aug/12/moms-rising/having-kid-leading-trigger-poverty/>

<sup>6</sup> “Paid Family and Medical Leave,” Hillary Clinton Website, 9 November 2015, <https://www.hillaryclinton.com/issues/paid-leave/>.

## Republican Point of View

In general, Republicans present few objections to paid family leave programs in principle, but rather simply believe such programs should not be implemented or enforced by the government. The Republican opposition to a government family leave program is based in a few libertarian and free-market arguments. First of all, libertarian principle asserts that employees and employers should be free to determine mutually beneficial agreements without being held to government regulations. The government should rely on the contract negotiation process to ensure successful leave agreements, without forcing excessive restrictions on employer policies. As an extension of this argument, Republicans advocate for trust in free market economic principles. In theory, companies with better parental leave policies will be more attractive to employees, and thus the labor market will incentivize employers to offer benefits. However, Democrats often counter this contention by pointing out that laissez-faire policies put the burden of cost on the employer, and thus would not actually ensure an increase in family leave programs. Employers with little wage flexibility might not be able to accommodate the added cost of ensuring paid leave and consequently would not prioritize it as an employment policy. Republicans, however, still object to aspects of a government-run family leave program funded by payroll taxes on employees. If lawmakers can agree to pass some form of paid family leave legislation, the major issue in play will ultimately be how to fund such a measure.

As in the Democratic primary, the issue of paid family leave has been discussed in the race for the Republican Nomination, with most candidates advocating for a hands-off approach. Candidate John Kasich has stated that the issue should be “up to employers” rather than the government, and suggests that businesses improve teleworking capabilities so that new parents can “care for their children without falling behind on their experience level.” Carly Fiorina, former CEO and another candidate for the presidential nomination, says that she “opposes the federal government mandating paid maternity leave to every company out there.” Similarly, candidate Jeb Bush believes the issue should be left to the states. Marco Rubio is the only candidate who has proposed a paid family leave; his policy would grant a 25% tax credit for businesses that adopt at least a four week paid leave program. Rather than a government insurance program or unfunded mandate, Rubio’s policy basically creates an incentive for employers to adopt a more family-friendly program and attempts to manipulate, rather than coerce, the free market system.<sup>7</sup>

## Conclusion

Paid family leave as a policy issue is one which involves issues from health to macroeconomics, and affects millions of Americans every year. Regardless of its nuances, it is also something rapidly growing as a question in mainstream political conversations. Being one of only three other countries in the world without some form of paid leave program, the United States will soon be forced to make a decision regarding our action or inaction on this issue. All things considered, few political actors believe that paid family leave should be inaccessible to American workers. The truly challenging aspects of this issue come in policy implementation; how extensive should these family leave programs be, who should they benefit, and (perhaps most importantly) who should bear their cost. Fortunately, in the consideration of these challenging questions there are plenty of potential models at the disposal of our lawmakers, from international programs already in

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<sup>7</sup> Pat Garofalo, “Not So Family Friendly,” US News, 23 October 2015, <http://www.usnews.com/news/the-report/articles/2015/10/23/the-politics-of-paid-family-leave-rubio-vs-the-democrats>.

place, to the small-scale experiences of individual states or localities, to the programs that have already been proposed and remain in dispute. The significance of this issue means that many of our foremost thinkers have already explored the United States' options for solving it, leaving the Congress responsible for deciding on the most beneficial policy.

### **Questions to Consider**

1. How does the issue of paid family leave affect other issues of poverty, gender equality, and public health?
2. All things considered, how pressing is this issue as a policy priority?
3. What can we discern from the experiences of foreign nations in deliberating on this issue?
4. What is the proper length for a standard term of family leave? Consider the range already established by pre-existing programs, as well as the economic, political, and logistical factors of this question.
5. What is the proper portion of pay that should be provided when employees take paid leave? Most countries, states, and proposed policies set this at less than 100%. Is this appropriate? How much is enough to sustain a family struggling with a new child or ill family member?
6. Can we rely on the free market and contract negotiation to solve this problem? What are the potential limits on such processes?
7. Should the government intervene to require employers to adopt paid family leave programs? What problems are associated with such action? What potential challenges does this present to employers who have to implement the new policy?
8. If a family leave compensation program is adopted, how should it be funded?
  - a. If the government establishes an insurance program, where should the funds come from? Are payroll taxes too much of a burden on working Americans? Should the money come from a general pool?
  - b. If private employers bear the burden of funding, what measures should be taken to ensure that the economic strain is minimized? Are tax cuts an appropriate help, or should employers receive supplementary government funds?
9. Who should be responsible for the administration of a family leave program, if such a thing is adopted?
  - a. Should the government create a subsidiary organization within the social security administration, or something entirely separate?
  - b. Should employers be responsible for the bureaucratic details in implementing such a policy?
10. How should the government go about managing the economic burden of a paid family leave program to ensure that it does not disproportionately affect one group of Americans (small business employers, low-wage workers, etc.)?

### **Sources for Additional Research**

1. For an extensive survey of international family leave laws, consult any one of these studies conducted by the International Labor Organization:  
[http://www.ilo.org/travail/areasofwork/maternity-protection/WCMS\\_145724/lang--en/index.htm](http://www.ilo.org/travail/areasofwork/maternity-protection/WCMS_145724/lang--en/index.htm)

2. This report by the White House Council of Economic Advisors details the economics of paid family leave, though from a Democratic perspective:  
[https://www.whitehouse.gov/sites/default/files/docs/leave\\_report\\_final.pdf](https://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf)
3. This report gives a detailed summary of the history of family leave legislation, and the evolving expansion of coverage:  
<https://www.americanprogress.org/wp-content/uploads/2014/04/FMLA-reportv2.pdf>
4. This resource, compiled by the National Conference of State Legislatures, lists the paid and unpaid family leave laws of each respective state and gives a helpful summary of the different models currently in place:  
<http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>
5. This article by the Atlantic reviews the GOP's most promising approach to paid leave and its potential pitfalls:  
<http://www.theatlantic.com/business/archive/2015/10/rubio-parental-leave/409285/>
6. For a solidly neutral discussion of this issue, consult this well-researched article in Forbes:  
<http://www.forbes.com/sites/carielukas/2015/02/10/the-paid-sick-leave-debate-lets-start-with-the-facts/#2715e4857a0b4152affb3668>
7. This resource, presented by the Bureau of Labor Statistics, gives an excellent summary of paid leave since the passage of the FMLA:  
<http://www.bls.gov/opub/btn/volume-2/paid-leave-in-private-industry-over-the-past-20-years.htm>
8. This detailed report summarizes the benefits of California's paid leave program over the course of ten years:  
[http://www.edd.ca.gov/disability/pdf/Paid\\_Family\\_Leave\\_10\\_Year\\_Anniversary\\_Report.pdf](http://www.edd.ca.gov/disability/pdf/Paid_Family_Leave_10_Year_Anniversary_Report.pdf)
9. This report, conducted by the Connecticut general assembly, provides a helpful overview of all sides of the implementation of a paid leave policy:  
<https://ctpcsw.files.wordpress.com/2013/09/fmli-taskforce-report-final.pdf>
10. For an extensive survey of state legislation on this issue, and another summarization of the Democratic point of view, consult this report by the National Partnership for Women and Families:  
<http://www.nationalpartnership.org/research-library/work-family/expecting-better-2014.pdf>
11. Consult this fact sheet for more information on the FAMILY Act currently in Congress:  
<http://www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf>
12. Finally, for a humorous take on the issue, consider this video by comedian and talk show host John Oliver: <https://www.youtube.com/watch?v=zIhKAQX5izw>

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