Family Leave Benefits

Millions of American workers who qualify for family or medical leave don't take it because they cannot go without pay. States are enacting innovative programs to provide family leave benefits.

★ 2004 POLICY SUMMARY ★

Family Leave Benefits

Summary

- **Millions of American workers who qualify for family or medical leave don't take it because they cannot go without pay.**
- **Nearly one in ten workers who take family leave are forced onto public assistance.**
- **Family leave benefits support the needs of working families in today's economy.**
- **Family leave benefits strengthen businesses.**
- **Some states currently provide limited forms of family leave benefits.**
- **States have recently enacted innovative programs to provide family leave benefits through flexible sick leave.**
- **Americans strongly support paid family leave.**

Millions of American workers who qualify for family or medical leave don't take it because they cannot go without pay.

Although the federal Family and Medical Leave Act of 1993 (FMLA) guarantees *unpaid* leave for childbirth or family illness, many Americans simply can't afford it. Of American workers who qualify for leave under the FMLA, 78 percent say they do not take it because they cannot afford to go without pay. For those who take leave, the financial hardship can be great. Nearly one in ten workers who take unpaid family leave are actually forced onto public assistance to make ends meet.[1] The right to take leave is meaningless if a worker can't afford it.

Family leave benefits support the needs of working families in today's economy.

Family and work patterns have shifted dramatically in recent decades, yet workplace policies have not kept pace with these changes. The proportion of mothers with children ages 6-17 in the workforce between 1955 and 2001 increased from 38 to 78 percent, and for mothers with children under six, from 18 to 64 percent.[2] About 25 percent of Americans have elderly relatives to care for, and many of them reduce their work hours or take a brief leave from work to care for them. Americans shouldn't have to choose between paying the bills and caring for family.

WHY WORKERS HAVE TAKEN FAMILY AND MEDICAL LEAVE:[3]

- 52% to care for their own serious illness
- 26% to care for a new child or for a maternity-related disability
- 13% to care for a seriously ill parent
- 12% to care for a seriously ill child
- 6% to care for a seriously ill spouse

(Sum is greater than 100% because some take more than one leave.)

Family leave benefits strengthen businesses.

The vast majority of employers—84 percent—found that the benefits of providing leave under the FMLA offset or outweighed the costs, according to the bipartisan Commission on Family Leave. Nearly 42 percent reported a positive return on their leave programs, and another 42 percent said the costs had a neutral effect. Furthermore, 98 percent of employees who took family leave returned to work for the same employer, and 77 percent of employers reported cost savings because of decreased turnover.[4]

Some states currently provide limited forms of family leave benefits.

California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico have Temporary Disability Insurance (TDI) systems that provide partial wage replacement for employees who are temporarily disabled for medical reasons, including pregnancy and childbirth. Minnesota pioneered a public program that provides low-income working parents with subsidies for caring for infants under age one. Montana adopted a similar program in 2003. And in 2002, Oklahoma became the 25th state to require state and /or local governments to allow employees to use paid sick leave to care for certain ill family members.

In 2002, California enacted the first comprehensive family leave benefits statute.

Building on its existing TDI program, California's law allows workers to collect partial wages for up to six weeks while they take time off to care for a new infant or a seriously ill family member. The law is entirely employee-funded and is estimated to cost employees an average of $27 a year. Workers will be eligible for benefits of up to 55 percent of their wages, receiving no more than $728 a week.

Three states enacted flexible sick leave programs in 2002-03.

Connecticut, Hawaii and Washington gave employees—public and private—the right to use their sick leave as necessary to care for a newborn or a family member in need of personal care. Although these new laws do not provide additional leave to workers, they make legal what many employees have had to do covertly in order to balance their work and family responsibilities.

Americans strongly support paid family leave.

Eighty-two percent of women and 75 percent of men surveyed in 1998 favored the idea of developing a new insurance program that would provide families with partial wage replacement when a worker takes family or medical leave.[5] In 2002, 79 percent of working women surveyed said that access to paid family and medical leave is more important to them than increased pay, promotions and job flexibility.[6]

This policy brief relies in large part on information from the National Partnership for Women and Families.

Endnotes

[1] Department of Labor, "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys," 2000.

[2] U.S. Department of Labor, Bureau of Labor Statistics, 2001.

[3] "Balancing the Needs of Families and Employers."

[4] Ibid.

[5] Lake Snell Perry and Associates, "Family Matters: A National Survey of Women and Men," conducted for the National Partnership for Women and Families, February 1998.

[6] Lake Snell Perry and Associates, "Ask a Working Woman Survey," conducted for AFL-CIO, March 2002.

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For more information...

Center for Policy Alternatives
1875 Connecticut Avenue NW, Suite 710
Washington, DC 20009
202-387-6030
www.stateaction.org

AFL-CIO
815 16th Street NW
Washington, DC 20006
202-637-5064
www.aflcio.org/women

Economic Opportunity Institute
1900 North Northlake Way, Suite 237
Seattle, WA 98103
206-633-6580
www.eoionline.org

National Employment Law Project
55 John Street, 7th Floor
New York, NY 10038
212-285-3025
www.nelp.org

National Parenting Association
1841 Broadway, Room 808
New York, NY 10023
212-315-2333
www.parentsunite.org

National Partnership for Women and Families
1875 Connecticut Avenue NW, Suite 650
Washington, DC 20009
202-986-2600
www.nationalpartnership.org

Flexible Sick Leave Act

Summary: The Flexible Sick Leave Act allows employees to use employer-granted leave to care for family members with serious medical conditions.

SECTION 1. SHORT TITLE

This Act shall be called the "Flexible Sick Leave Act."

SECTION 2. FLEXIBLE SICK LEAVE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is:

   a. Under eighteen years of age; or
   b. Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

2. "Grandparent" means a parent of a parent.

3. "Parent" means a biological parent or an individual who stood in loco parentis when a person was a child.

4. "Parent-in-law" means a parent of the spouse.

5. "Sick leave or other paid time off" means time allowed under the terms of a collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, or personal holiday.

6. "Spouse" means a husband, wife or domestic partner.

(B) USE OF SICK LEAVE

1. If, under the terms of an employment contract, a collective bargaining agreement or employer policy, an employee is entitled to sick leave or other paid time off, then the employer shall allow the employee to use any or all of the employee's choice of sick leave or other paid time off to care for:

   a. A child of the employee with a health condition that requires treatment or supervision; or
   b. A spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition.

2. An employee may not exercise a right under this section to take leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms which contradict this section.

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(C) ENFORCEMENT

1. This section shall be enforced by [appropriate state agency], which shall promulgate such regulations as are necessary to implement and administer compliance. Regulations shall include procedures to receive, investigate and attempt to resolve complaints; and bring actions in any court of competent jurisdiction to recover appropriate relief for aggrieved employees.

2. An employer shall not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee exercised, or attempted to exercise, any right under this section, or filed a complaint, testified, or assisted in any proceeding to enforce this section.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2004.

Family Leave Benefits Insurance Act

Summary: The Family Leave Benefits Insurance Act establishes a fund to provide a safety net for men and women who are temporarily unable to work due to their own serious illness, or their need to provide care to a newborn, newly adopted or newly placed foster child, or to a seriously ill child, spouse or parent.

SECTION 1. SHORT TITLE

This Act shall be called the "Family Leave Benefits Insurance Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds:

1. Although family leave laws have assisted employees to balance the demands of the workplace with their family responsibilities, more needs to be done to achieve the goals of workforce stability and economic security.
2. Many employees do not have access to family leave, and those who do may not be in a financial position to take leave that is unpaid.
3. Employer-paid benefits meet only a small part of this need.
4. The establishment of paid family leave benefits will reduce the impact on state income-support programs by increasing the ability of workers to recover from illness or provide caregiving services for family members while maintaining employment.

(B) PURPOSE—This law is enacted to establish a Family Leave Benefits Insurance Program to provide limited income support for a reasonable period while an employee is away from work on family leave, a policy which protects the health and safety of [STATE] residents and strengthens the [STATE] economy.

SECTION 3. FAMILY LEAVE BENEFITS INSURANCE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Application year" means the 12-month period beginning on the first day of the calendar week in which an employee files an application for family leave benefits and, thereafter, the 12-month period beginning with the first day of the calendar week in which the employee files a subsequent application for family leave benefits after the expiration of the employee's last preceding application year.
2. "Child" means a person who is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and who is:
    a. Under 18 years of age; or
    b. Eighteen years of age or older and incapable of self-care because of a mental or physical disability.
3. "Department" means the [Department of Labor].
4. "Employer" means the same as the definition in [cite workers compensation law] and the state and its political subdivisions.
5. "Employment" means the same as the definition in [cite workers compensation law].
6. "Family leave" means leave taken by an employee who is temporarily disabled and unavailable to work because she or he has to care for a newborn, newly-adopted or foster child (and leave is completed within 12 months after the birth or the placement of the child for foster care or adoption), to care for a family member who has a serious health condition, or because of the employee's own serious health condition, making them unable to perform the functions of the employee's position.

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7. "Family member" means a child, spouse, domestic partner or the parent of the employee or employee's spouse or domestic partner.
8. "Healthcare provider" means a person licensed as a physician under [cite applicable code section].
9. "Parent" means a biological or adoptive parent, a stepparent, or a person who stood in loco parentis to an employee or an employee's spouse or domestic partner.
10."Premium" means the money payments required by this chapter to be made to the Department for the Family Leave Benefits Insurance Account.
11. "Qualifying year" means the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the employee's application year.
12. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a healthcare provider.

(B) APPLYING FOR FAMILY LEAVE BENEFITS

1. The Department shall establish and administer a Family Leave Benefits Insurance Account, and establish procedures and forms for filing benefit claims. The Department shall notify the employer within two business days of a claim being filed.
2. The Department may require that a claim for benefits under this chapter be supported by a certification issued by a healthcare provider who is providing care to the employee or the employee's family member, as applicable.
3. Information contained in the files and records pertaining to an employee under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the employee or an authorized representative of an employee may review the records or receive specific information from the records on the presentation of the signed authorization of the employee. An employer or the employer's duly authorized representative may review the records of an employee in connection with a pending claim. At the Department's discretion, other persons may review records when such persons are rendering assistance to the Department at any stage of the proceedings on any matter pertaining to the administration of this chapter.

(C) QUALIFYING FOR FAMILY LEAVE BENEFITS—Family leave benefits are payable to an employee during a period in which the employee is on unpaid family leave if the employee:

1. Files a claim for benefits as required by rules adopted by the Department.
2. Has been employed for at least 520 hours during the employee's qualifying year.
3. Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year.
4. Documents that he or she has provided the employer from whom family leave is to be taken with written notice of his or her intention to take family leave as follows:
   a. If the necessity for family leave was foreseeable based on an expected birth, placement or treatment, notice was given at least 30 days before the family leave was to begin, stating the anticipated starting date and ending date of the family leave.
   b. If the date of birth, placement or treatment requiring family leave will begin in less than 30 days, as much notice as practicable was given.
   c. In the case of medical treatment, the employee made reasonable efforts to schedule the treatment so as not to unduly disrupt the operations of the employer, subject to the approval of the healthcare provider of the employee or his or her ill family member.
5. Discloses whether or not she or he owes child support obligations.

(D) DISQUALIFICATION FROM BENEFITS

1. An employee is disqualified from family leave insurance benefits beginning with the first day of the calendar week, and continuing for the next 52 consecutive weeks, if the employee:
   a. Willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter; or
   b. Seeks benefits based on a willful and intentional self-inflicted serious health condition or a serious health condition resulting from the employee's perpetration of a felony.
2. Benefits are not payable for any weeks in which compensation is payable to the employee under Title XXX or another federal or state workers compensation program.
3. An employee is not disqualified for benefits for any week when there is a strike or lockout at the factory, establishment, or other premises at which the employee is or was last employed.

(E) DURATION AND AMOUNT OF BENEFITS

1. In an application year, family leave benefits are payable for a maximum of 12 weeks.
2. The first payment of benefits shall be made to an employee within two weeks after the claim is filed or the family leave began, whichever is later. Subsequent payments must be made twice a month thereafter.
3. Family leave benefits shall be paid as follows:
   a. For family leave beginning before July 1, 2004, benefits shall be $250 per week for an employee who at the time family leave began was regularly working 40 hours or more per week, or a prorated amount based on the weekly hours regularly worked for an employee regularly working less than 40 hours per week.
   b. By June 30, 2005, and by each subsequent June 30, the Department shall calculate to the nearest dollar an adjusted maximum benefit to account for inflation using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index. The adjusted maximum benefit takes effect for family leave beginning after the relevant June 30.
   c. If an employee was regularly working 40 hours a week or more per week at the beginning of family leave, and during family leave is working less than 40 hours but at least eight hours a week, the employee's weekly payment shall be .025 times the maximum benefit times the number of hours of family leave taken in the week. Benefits are not payable for less than eight hours of family leave taken in a week.
   d. If an employee discloses that he or she owes child support obligations and the Department determines that the employee is eligible for benefits, the Department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits pursuant to [insert appropriate citation].
   e. If an employee elects to have federal income tax deducted and withheld from benefits, the Department shall deduct and withhold the amount specified in the federal Internal Revenue Code.
4. If family leave benefits are paid erroneously or as a result of fraud, or if a claim for benefits is rejected after benefits are paid, the Department shall seek repayment of benefits from the recipient.
5. If an employee dies before receiving payment of benefits, the payment shall be made by the Department to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the payment shall be made and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of [insert appropriate citation].

(F) EXISTING BENEFITS NOT DIMINISHED

1. Nothing in this chapter shall be construed to limit an employee's right to leave from employment under other laws or employer policy.

2. If an employer provides paid family leave or an employee is covered by disability insurance, the employee may elect whether first to use the paid family leave or to receive temporary disability benefits. An employee may not be required to use his or her paid family leave to which she or he is entitled before receiving benefits under this chapter.
3. An employer may require that family leave for which an employee is receiving or received benefits under this chapter be taken concurrently with leave under the federal Family and Medical Leave Act or other applicable federal, state or local law, except that:
   a. Family leave taken for sickness or temporary disability because of pregnancy or childbirth is in addition to leave under the federal Family and Medical Leave Act or other applicable federal, state or local law.
   b. Family leave during which the employee is receiving or received benefits under this chapter is in addition to leave from employment during which benefits are paid or are payable under XXX or a similar federal or state workers compensation law and that is designated as leave under the federal Family and Medical Leave Act.
   c. If an employer requires that family leave for which an employee is receiving or received benefits under this chapter be taken concurrently with leave under the federal Family and Medical Leave Act, or other applicable federal, state or local law, the employer must give all employees written notice of the requirement.
4. This entitlement is supplementary to a federal, state or local law establishing a similar entitlement, and if a federal, state or local law applying to the employee establishes a more favorable right to return to his or her position than is established under this section, the application of that federal, state or local law is not affected by this section.
5. An employee who has received benefits under this chapter shall not lose any employment benefit, including seniority or pension rights accrued before the date that family leave commenced. However, this chapter does not entitle an employee to accrue employment benefits during a period of family leave or to a right, benefit or position of employment other than a right, benefit or position to which the employee would have been entitled had the employee not taken family leave.
6. This chapter is not to be construed to diminish an employer's obligation to comply with a collective bargaining agreement or an employment benefit program or plan that provides greater benefits to employees than family leave insurance benefits provided under this chapter.
7. An agreement by an employee to waive his or her rights under this chapter is void as against public policy. The benefits provided to employees under this chapter may not be diminished by a collective bargaining agreement or an employment benefit program or plan entered into or renewed after the effective date of this section.

(G) ELECTION OF COVERAGE

1. An employer of employees not covered by this chapter or a self-employed person may elect coverage under the Family Leave Benefits Insurance Program for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The employer or self-employed person must file a notice of election in writing with the Department. The election becomes effective on the date of filing the notice.
2. An employer or self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the Department may prescribe by rule, by filing written notice with the Department. Such withdrawal shall take effect not sooner than 30 days after the filing of the notice.
3. The Department may cancel elective coverage if the employer or self-employed person fails to provide required payments or reports. The Department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation shall be effective no later than 30 days from the date of the notice in writing advising the employer or self-employed person of the cancellation.

(H) RECORDS AND REPORTS

1. The Department shall specify the forms and times for employers to provide reports, furnish information and remit premiums. If the employer is a temporary services agency that provides employees on a temporary basis to its customers, the temporary services agency is considered the employer for purposes of this section. However, if the temporary services agency fails to remit the required premiums, the customer to whom the employees were provided is liable for paying the premiums.
2. An employer must keep at its place of business a record of employment from which the information needed by the Department for purposes of this chapter may be obtained. This record shall at all times be open to the inspection of the Department pursuant to rules promulgated by the Department.
3. Information obtained from employer records under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an interested party shall be supplied with information from employer records to the extent necessary for the proper presentation of the case in question. An employer may authorize inspection of its records by written consent.

(I) DISPOSAL OF BUSINESS

1. When an employer quits business, or sells out, exchanges, or otherwise disposes of the business or stock of goods, any premium payable under this chapter is immediately due and payable, and the employer must, within 10 days thereafter, make a return and pay the premium due. Any person who becomes a successor to the business is liable for the full amount of the premium and must withhold from the purchase price a sum sufficient to pay any premium due from the employer until the employer produces a receipt from the Department showing payment in full of any premium due or a certificate that no premium is due and, if the premium is not paid by the employer within 10 days from the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of premium. The successor's payment thereof is, to the extent thereof, a payment upon the purchase price, and if the payment is greater in amount than the purchase price, the amount of the difference is a debt due the successor from the employer.
2. A successor is not liable for any premium due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the Department of the acquisition and no assessment is issued by the Department within 180 days of receipt of the notice against the former operator of the business and a copy is mailed to the successor.

(J) FAMILY LEAVE BENEFITS INSURANCE ACCOUNT

1. The Family Leave Benefits Insurance Account is created in the custody of the [state treasurer]. All receipts from the premium or penalties imposed under this chapter must be deposited in the account. Expenditures from the account may be used only for the purposes of the Family Leave Benefits Insurance Program.
2. Each employer shall retain from the earnings of each employee a premium of one cent per hour worked, up to a maximum of 40 hours per week. The employer shall match the amount retained by an equal amount, and the money retained shall be paid to the Department in the manner and at such intervals as the Department directs for deposit in the Family Leave Benefits Insurance Account.
3. The Department shall adjust the amount of the premium from time to time to ensure that the amount is the lowest rate necessary to pay family leave benefits and administrative costs, and maintain actuarial solvency in accordance with recognized insurance principles.
4. The Department may adopt rules to permit an employee with multiple employers and his or her employers to petition for refunds or credits of amounts paid to the Department for hours in excess of 40 hours per week worked by the employee.

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(K) TAXATION OF FAMILY LEAVE BENEFITS—The Department must advise an employee filing a new claim for family leave benefits, at the time of filing such claim, that:
1. Benefits are subject to federal income tax.
2. Requirements exist pertaining to estimated tax payments.
3. The employee may elect to have federal income tax deducted and withheld from the employee's payment of benefits at the amount specified in the Internal Revenue Code.
4. The employee is permitted to change a previously elected withholding status.

(L) NO DISCRIMINATION AGAINST CLAIMANTS—An employer, temporary services agency, employment agency, employee organization, or other person may not discharge, expel, or otherwise discriminate against a person because he or she has filed or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding under this chapter.

(M) NO ENTITLEMENT

1. Family leave benefits are payable under this chapter only to the extent that moneys are available in the Family Leave Benefits Insurance Account for this purpose. Neither the state nor the Department is liable for any amount in excess of these limits.
2. This chapter does not create a continuing entitlement or contractual right. There is no vested private right of any kind against amendment or repeal of this chapter.

(N) RULES AND REGULATIONS—The Department may adopt rules as necessary to implement this chapter. In adopting rules, the Department shall maintain consistency with the rules adopted to implement the federal Family and Medical Leave Act, to the extent such rules are not in conflict with this chapter.

SECTION 4. APPROPRIATION

The sum of $XXXXXX is appropriated for the purposes of administering the Family Leave Benefits Insurance Program. This sum shall be repaid from the Family Leave Benefits Insurance Account by June 30, 2005.

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on July 1, 2004.