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State Paid Leave Administration

By Sarah Jane Glynn September 2015

Introduction and summary

The United States is the only advanced economy—in fact, one of only a few countries in the world—that does not guarantee mothers the right to paid maternity leave.[1] The United States is one of only a handful of wealthy countries that also does not extend the right to paid leave to fathers, workers with other family caregiving responsibilities, or workers who experience a short-term disability.[2] In short, the United States is an extreme outlier among all comparable economies because its national policies do not guarantee the right to any form of paid leave from work for any reason.

The unfortunate reality in the United States today is that certain types of workers—primarily, those in high-paying professional jobs—are much more likely to have access to paid leave compared with other workers. Nationally, only 12 percent of the private sector has access to paid family leave, and only 40 percent has temporary disability insurance offered through jobs.[3] But most workers will find themselves needing time off at some point during their working lives, either to address their own health needs, to care for a seriously ill family member, or to care for a new baby. It is both surprising and disappointing that the United States has not yet found a way to address workers' needs for paid leave, particularly given the fact that every other advanced economy in the world has been able to do so.

The only national legislation to help workers address their own or family caregiving needs is the Family and Medical Leave Act of 1993, or FMLA.[4] The FMLA ensures that qualifying workers have job protection when they cannot work due to the birth of a child, their own serious health condition, or the need to care for a seriously ill family member. Workers are eligible provided they work for an employer with at least 50 employees, have been at their current job for at least one year, and have worked a minimum of 1,250 hours over the previous 12 months. The act was the result both of bipartisan efforts at the national level[5] and of concerted efforts in individual states. At the time then-President Bill Clinton signed the FMLA into law, 34 states had already passed their own FMLA laws to ensure that their workers would have job protection when they needed time off to care for a new baby, a seriously ill family member, or themselves.[6]

The FMLA was a groundbreaking piece of legislation and remains the only workplace protection that many workers have when they need time off for caregiving. While the job protection it provides is invaluable to the workers who are covered, 40 percent of workers are excluded because they work for small businesses, work part time, or have been with their employer for less than a year.[7] And while the FMLA ensures that those who are covered can retain their jobs, it does not ensure that they will receive any pay during their leave.

Given that so few private-sector employers provide paid family leave, most workers will not have access to income if they need to take leave. Furthermore, the workers who are least able to afford time off without pay also are far more likely not to have access to paid leave: High-income workers are more than five times as likely to have access to paid family leave compared with low-income workers.[8] This disparity means that too many families have to put their economic security at risk when they face family caregiving responsibilities. Moreover, because women are often expected to handle caregiving for their families, they are disproportionately forced to make difficult choices about how to ensure they or their families get the care they need.

While our national policies may lag behind the rest of the developed world, individual states have been active in challenging the status quo and extending the right to paid leave to their workers. Currently, five states have temporary disability insurance, or TDI, programs that provide wage replacement to workers when they cannot work due to a serious illness or injury incurred outside the workplace.[9] California, New York, New Jersey, and Rhode Island implemented state TDI programs in the 1940s, while Hawaii's law was passed in 1969.[10] The five state TDI programs were the only form of wage replacement available to workers who were temporarily unable to work throughout the rest of 20th century, until California passed a paid family leave policy in 2002.* Implemented in 2004, California's policy extended its TDI program beyond wage replacement for illness or injury and offered benefits to workers who needed time off to care for a new child or to provide care to a seriously ill or injured family member. New Jersey and Rhode Island followed suit, adding family care to their already existing TDI programs.[11]

The expansion of temporary disability insurance to include paid family leave was an important step in California, New Jersey, and Rhode Island to help bring workers' rights closer in line to the International Labour Organization's global standards.[12] The programs in these states—and their positive effects on the states' workers,[13]

***Correction, March 30, 2016:** This report incorrectly stated the year that California passed its paid family leave policy. The correct year is 2002.*

employers,[14] and economies[15]—highlight the viability and importance of paid family leave and temporary disability insurance. But what about the remaining 45 states and the District of Columbia, which do not have long-standing TDI programs on which to build paid family and medical leave, or PFML, programs? How can they efficiently and cost-effectively implement both paid family leave and temporary disability leave in one fell swoop?

There are a number of ways that a PFML program can be structured, and the final form that the program takes will depend on how states choose to answer a variety of questions. Which conditions will be covered? How long will workers be able to take leave? What level of wage replacement will be available to leave-takers? How does an individual qualify for the program? How will the program be funded? What is the ultimate role of the state government, employers, and workers? While the answers to each of these questions may differ from state to state, thus altering the ultimate type of program enacted, there are a number of commonalities and issues that must be addressed for any PFML program.

This report focuses on the aspects of a state-level PFML program that are universal, regardless of the specifics of program eligibility, benefits, and funding mechanism. Any type of program must have the ability to:

- Determine if a worker is experiencing a leave-qualifying condition
- Determine if a worker is eligible for program participation
- Calculate the amount of benefit that a worker is eligible for
- Process the leave benefit and disperse funds to the worker

Unlike in states with TDI programs, there is no perfect fit for a PFML program within already existing state programs. As a result, the creation of a new PFML program is not as simple as expanding another program to also cover family and medical leave. However, this does not mean that there are not lessons to be learned from and resources that can be shared with already established state-level benefit programs. While each state has its own unique set of circumstances, this report will lay out options for how to most efficiently and cost effectively establish paid family and medical leave. States may not be able to simply expand another program to house a PFML program, but there are opportunities to share data, infrastructure, and resources within State Workforce Agencies, state taxing authorities, and workers' compensation programs.

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