

POLICY
PLAYBOOK
PAID FAMILY &
MEDICAL LEAVE

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INTRODUCTION

The Family and Medical Leave Act of 1993 (FMLA) was a momentous piece of federal legislation that secured the right of working Americans to take up to 12 unpaid weeks off of work for the birth of their child, to care for their newborn, to care for a loved one with a serious illness, or to respond to their own serious illness. Its passage represented a consensus that hardworking individuals should not lose their jobs if they become seriously ill and new mothers should be given time to recover from pregnancy and bond with their new child. However, over 20 years later, our country has fallen behind the rest of the world in paid leave protections. Workers are still not guaranteed any wage replacement while on medical leave and more than 40% of Americans do not qualify for leave under the FMLA at all. The United States remains the only advanced nation in the world that does not guarantee paid maternity leave for new mothers.

For working families that are living paycheck to paycheck, lack of access to paid family leave policies can have dramatic affects. Under the FMLA, those without paid medical leave are 39% more likely to end up on public assistance than those with paid leave. Ultimately, nearly all workers need to take time away at some point to deal with a serious personal or family illness or to care for a new child. Laws providing paid family and medical leave allow workers to meet these needs without jeopardizing their economic security, which strengthens working families and thereby grows the economy.



POLICY OPTIONS

The four states with paid family and medical leave on the books all started by implementing paid medical leave (through temporary disability insurance or TDI) first and then added in a family leave component.

California was the first state to pass paid family leave in 2002. The California legislature has since passed other legislation to improve upon the law, including a bill in 2013 to expand the definition of family members and in 2016 to increase the percentage of wage replacement overall. New Jersey followed suit in 2008, as did Rhode Island in 2013. New York passed a paid family leave law through their 2016 budget process. Each state was able to build its paid family leave program into TDI programs that existed from the 1940s, which provide paid medical leave for a worker's own serious illness.

Expanding an existing TDI set up through a social insurance program is arguably the easiest method for creating a sustainable program. However, only a handful of states have TDI programs, so in most states a new insurance system has to be created to administer paid family and medical leave. Such a system can be funded through employee contributions, employer contributions, or shared employee/employer contributions. Paid family and medical leave could instead be paid for through general revenues or could be structured as an employer requirement, but no existing state program is structured this way, and only a few of these types of proposals have been introduced. [The Model State Paid Family & Medical Leave Statute](#) drafted by the [National Partnership for Women & Families](#) (NPWF) and [A Better Balance](#) (ABB) is a model bill template for creating a paid family and medical leave insurance system in states without TDI.

Below is a selection of the major policy options, with select legislative language from the four state laws currently in existence and exemplary introduced legislation where appropriate. Within this section, we include relevant legislative language in order to provide an extra level of detail, and we hope that this serves to improve understanding of both the policy options and how these policies translate into statutory language. As always, SiX Action strongly recommends working with state advocacy organizations before crafting or introducing a bill, as well as with national and state policy experts to draft specific bill language, and SiX Action can assist with these efforts. For referrals to national and state-based advocates and coalitions, contact SiX Action at info@sixaction.org.

DETERMINING ELIGIBILITY

Eligibility for paid leave has three main components: eligible purposes for paid family and medical leave, eligible workers who can apply for this leave, and eligible family members who can be cared for by the eligible worker when the family member has a serious medical condition.



Purpose for Family & Medical Leave

All four states with paid family and medical leave allow for leave to be used for one's own serious medical condition or to care for a newborn or newly adopted child, as well as to care for certain family members with serious health conditions.

Temporary disability insurance was originally set up to protect an individual worker who becomes sick or is injured but does not qualify for workers' compensation, such as from an injury not associated with one's work.

New Jersey State Section 43:21-29. Compensable disability.

<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-29/>

(a) In the case of the disability of a covered individual, disability shall be compensable subject to the limitations of P.L.1948, c.110 (C.43:21-25 et al.) if the disability is the result of the covered individual suffering an accident or sickness not arising out of and in the course of the individual's employment or if so arising not compensable under the workers' compensation law, R.S.34:15-1 et seq., and resulting in the individual's total inability to perform the duties of employment.

Building on their existing TDI systems, these states have added language to the purposes of the fund to include family leave. For example, Rhode Island's paid family leave is described in the statutes as:

Rhode Island Statute Section 28-41-35. Benefits.

<http://webserver.rilin.state.ri.us/Statutes/title28/28-41/28-41-35.HTM>

(a) Subject to the conditions set forth in this chapter, an employee shall be eligible for temporary caregiver benefits for any week in which he or she is unable to perform his or her regular and customary work because he or she is:

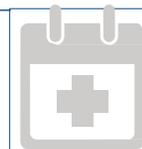
- (1) Bonding with a newborn child or a child newly placed for adoption or foster care with the employee or domestic partner in accordance with the provisions of subdivision 28-41-36(c)(1); or*
- (2) Caring for a child, a parent, parent-in-law, grandparent, spouse, or domestic partner, who has a serious health condition . . .*

California has similar language in:

California Unemployment Insurance Code Section 3303.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=uic&group=03001-04000&file=3300-3306>

On and after July 1, 2014, an individual shall be deemed eligible for family temporary disability insurance benefits equal to one-seventh of his or her weekly benefit amount on any day in which he or she is unable to perform his or her regular or customary work because he or she is bonding with a minor child during the first year after the birth or



placement of the child in connection with foster care or adoption or caring for a seriously ill child, parent, grandparent, grandchild, sibling, spouse, or domestic partner . . .

And New York's new law defines family leave in the following way, which specifically mentions the use of family leave due to the deployment of an active member of the armed forces:

2016 New York Chapter 54, Part SS, Section 2

<https://www.nysenate.gov/legislation/bills/2015/s6406/amendment/c>

“Family leave” shall mean any leave taken by an employee from work: (a) to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member; or (b) to bond with the employee’s child during the first twelve months after the child’s birth, or the first twelve months after the placement of the child for adoption or foster care with the employee; or (c) because of any qualifying exigency as interpreted under the family and medical leave act . . . arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States.

Definition of “Serious Health Condition”

One area in which the states with current laws do not significantly differ is the definition of “serious health condition”:

California Unemployment Insurance Code Section 3302.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=uic&group=03001-04000&file=3300-3306>

(k) “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code.

New Jersey Statute Section 43:21-27. Definitions.

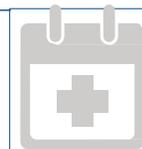
<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-27/>

(s) “Serious health condition” means an illness, injury, impairment or physical or mental condition which requires: inpatient care in a hospital, hospice, or residential medical care facility; or continuing medical treatment or continuing supervision by a health care provider.

Rhode Island Statute Section 28-41-34. Temporary caregiver insurance.

<http://webserver.rilin.state.ri.us/Statutes/title28/28-41/28-41-34.HTM>

(11) “Serious health condition” means any illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, residential health



care facility, or continued treatment or continuing supervision by a licensed health care provider.

New York’s definition of “serious health condition” is similar to the other states, except that it goes on to define “continuing supervision” as including certain situations where an incapacitated patient is not actively being treated.

2016 New York Chapter 54, Part SS, Section 2

<https://www.nysenate.gov/legislation/bills/2015/s6406/amendment/c>

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, continuing treatment or continuing supervision by a health care provider.

Continuing supervision by a health care provider includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective where the family member is under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

Certification of Serious Health Condition

Some states also require a certification to verify the medical legitimacy of the paid leave. While the medical certification for one’s own illness is relatively straightforward, the medical certification requirements for being able to take care of a family member are more detailed. For example, in California:

California Unemployment Insurance Code Section 2708.

http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB727

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician’s or practitioner’s knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

- (1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.*
- (2) The date, if known, on which the condition commenced.*
- (3) The probable duration of the condition.*
- (4) An estimate of the amount of time that the physician or practitioner believes the employee needs to care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.*



(5) (A) *A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.*

(B) *“Warrants the participation of the employee” includes, but is not limited to, providing psychological comfort, and arranging “third party” care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.*

New Jersey’s statutory requirements for a medical certification for family leave are as follows:

New Jersey Statute Section 43:21-39.2. Duration of family temporary disability leave; continuous or intermittent; certification.

<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-39.2/>

b. Any period of family temporary disability leave for the serious health condition of a family member of the covered individual shall be supported by certification provided by a health care provider. The certification shall be sufficient if it states:

- (1) The date, if known, on which the serious health condition commenced;*
- (2) The probable duration of the condition;*
- (3) The medical facts within the knowledge of the provider of the certification regarding the condition;*
- (4) A statement that the serious health condition warrants the participation of the covered individual in providing health care . . . ;*
- (5) An estimate of the amount of time that the covered individual is needed for participation in the care of the family member;*
- (6) If the leave is intermittent, a statement of the medical necessity for the intermittent leave and the expected duration of the intermittent leave; and*
- (7) If the leave is intermittent and for planned medical treatment, the dates of the treatment.*

Eligible Family Members

States also vary in terms of how they define the “family members” for whom an individual can take leave to provide care. Most of these definitions are similar in that they all cover children, spouses or domestic partners, and parents, but California provides the most expansive definition. New Jersey has the least expansive definition of family members.

New Jersey Statute Section 43:21-27. Definitions.

<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-27/>

(n) “Family member” means a child, spouse, domestic partner, civil union partner or parent of a covered individual.



Rhode Island expands its list to include grandparents and parents-in-law.

Rhode Island Statute Section 28-41-34. Temporary caregiver insurance.

<http://webserver.rilin.state.ri.us/Statutes/title28/28-41/28-41-34.HTM>

The purpose of this chapter is to establish, within the state temporary disability insurance program, a temporary caregiver insurance program to provide wage replacement benefits in accordance with the provisions of this chapter, to workers who take time off work to care for a seriously ill child, spouse, domestic partner, parent, parent-in-law, grandparent, or to bond with a new child.

New York goes a step further than Rhode Island by also including grandchildren in the list of eligible family members.

2016 New York Chapter 54, Part SS, Section 2

<https://www.nysenate.gov/legislation/bills/2015/s6406/amendment/c>

“Family member” means a child, parent, grandparent, grandchild, spouse, or domestic partner as defined in this section.

“Parent” means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

California has the most inclusive definition of family member, which goes beyond New York’s recently passed law by also including siblings. As noted above, this definition was incorporated by amendment after a decade of experience with the law.

California Unemployment Insurance Code Section 3302.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=uic&group=03001-04000&file=3300-3306>

(f) “Family member” means child, parent, grandparent, grandchild, sibling, spouse, or domestic partner as defined in this section.

(i) “Parent” means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

DURATION OF FAMILY LEAVE/BENEFITS

The length of the total family leave allowed also varies by state. Both California and New Jersey allow workers to take up to six weeks of paid family leave, Rhode Island allows for up to four weeks, and the newly enacted New York legislation will eventually allow for up to 12 weeks of leave. In these states, workers are able to take much more time to care for their own serious health conditions (medical leave): 26 weeks in New Jersey, 30 weeks in Rhode Island, and 52 weeks in California. Coalitions in non-TDI states are looking at no fewer than 12 weeks for family and medical leave.



California Unemployment Insurance Code Section 3301.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=uic&group=03001-04000&file=3300-3306>

(d) No more than six weeks of family temporary disability insurance benefits shall be paid within any 12-month period.

New Jersey Statute Section 43:21-39. Limitation of benefits.

<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-39/> *Notwithstanding any other provision of the “Temporary Disability Benefits Law,” P.L.1948, c.110 (C.43:21-25 et al.), no benefits shall be payable under the State plan to any individual:*

(3) for more than six weeks of family temporary disability leave during any 12-month period, or more than 42 days of family temporary disability leave taken during any 12-month period, on an intermittent basis to provide care for a family member of the individual with a serious health condition, including family temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while unemployed;

Rhode Island Statute Section 28-41-35. Benefits.

<http://webservice.rilin.state.ri.us/Statutes/title28/28-41/28-41-35.HTM>

(d)(1) Beginning January 1, 2014 temporary caregiver benefits shall be limited to a maximum of four (4) weeks in a benefit year;

While the statutory limit for taking family leave benefits is 12 weeks, there is a phased-in duration of the benefits from 8 weeks in 2018 to the 12-week limit in 2021 (see NY language under “Benefit Rate” for more).

2016 New York Chapter 54, Part SS, Section 6

<https://www.nysenate.gov/legislation/bills/2015/s6406/amendment/c>

No employee shall be entitled to family leave benefits under this article: (a) for more than twelve weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this article, during a period of fifty-two consecutive calendar weeks, or for any period in which the family leave combined with the disability benefits previously paid exceeds twenty-six weeks during the same fifty-two consecutive calendar weeks . . .

BENEFIT RATE

The ABB/NPWF model paid family and medical leave law lays out three options for how an employee’s weekly benefits are determined: (1) weekly benefits as a flat percentage of wages earned during a prior base period, (2) weekly benefits as a progressive percentage of wages, and (3) weekly benefits as a fixed dollar amount. Structuring benefits as a percentage of wages is typically preferred and is what is used in



the four states with paid family and medical leave. Some recent bills, such as in Colorado, tie benefit levels to a progressive percentage based on an individual's weekly earnings.

Rhode Island has a weekly benefit rate based on a flat rate of 4.62% of the wages paid in the highest quarter of the base period, up to a total benefit of 30 times the weekly benefit rate. In 2015, the highest weekly benefit was set at \$795.

Rhode Island Statute Section 28-41-5. Weekly benefit rate – Dependents' allowances

<http://webservice.rilin.state.ri.us/Statutes/title28/28-41/28-41-5.HTM>

(a)(1) Benefit rate. The benefit rate payable under this chapter to any eligible individual with respect to any week of his or her unemployment due to sickness, when that week occurs within a benefit year, shall be, for benefit years beginning on or after October 7, 1990, four and sixty-two hundredths percent (4.62%) of the wages paid to the individual in that calendar quarter of the base period in which the individual's wages were highest; provided, however, that the benefit rate shall not exceed eighty-five percent (85%) of the average weekly wage paid to individuals covered by chapters 42 – 44 of this title for the preceding calendar year ending December 31.

California has a bracket system to calculate weekly benefits based on a range of quarterly wages. Except for the first quarterly income bracket that goes from \$75 to \$1,374.99, the weekly benefit amount in California is about 55% of average weekly wages in the highest quarter during the employee's 12-month base period. The highest weekly benefit rate in 2015 was \$1,104, but wage replacement will soon be either 60% or 70% of average weekly wages based on newly enacted legislation. With the passage of 2016 Assembly Bill 908/Chapter 5, California increased its benefit rate, starting in 2018, to up to 70% of average weekly wages for lower-income workers and 60% for all other eligible workers.

2016 California Chapter 5, Section 1

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB908

(e) For periods of disability commencing on and after January 1, 2018, but before January 1, 2022, an individual's "weekly benefit amount" shall be as follows:

(2) When the amount of wages paid to the individual for employment by employers during the quarter of the individual's disability base period in which these wages were highest is nine hundred twenty-nine dollars (\$929) or more, and is less than one-third of the amount of the state average quarterly wage, then 70 percent of the amount of wages paid to the individual for employment by employers during the quarter of the individual's disability base period in which these wages were highest, divided by 13.

(3) . . . when the amount of wages paid to the individual for employment by employers during the quarter of the individual's disability base period in which these wages were highest is one-third of the amount of the state average quarterly wage, or more, then either (A) 23.3 percent of the state average weekly wage or (B) 60 percent of the amount of wages paid to the



individual for employment by employers during the quarter of the individual's disability base period in which these wages were highest divided by 13, whichever amount is greater.

New Jersey sets an eligible employee's benefit rate at 2/3 of her or his average weekly wages and allows for total benefits to be no more than the lesser of six times the individual's weekly benefit amount or 1/3 of total wages in the base year. In 2015, the maximum amount payable was \$604 per week.

New Jersey Statute Section 43:21-40. Weekly and daily benefit amounts.

<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-40/>

With respect to periods of disability commencing on or after July 1, 1961, an individual's weekly benefit amount shall be determined and computed by the division on the same basis as the weekly benefit rate is determined and computed pursuant to subsection (c) of R.S. 43:21-3, except that for periods of disability commencing on or after October 1, 1984, an individual's weekly benefit rate shall be two-thirds of his average weekly wage, subject to a maximum of 53% of the Statewide average weekly remuneration paid to workers by employers, as determined under subsection (c) of R.S. 43:21-3

New Jersey Statute Section 43:21-38. Duration of benefits.

<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-38/>

. . . The maximum total benefits payable to any eligible individual for any period of family temporary disability leave commencing on or after July 1, 2009, shall be six times the individual's weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser . . .

New York's new law includes a phased-in benefit rate with benefits of up to 50% of an employee's weekly wages starting in 2018, which gradually rises up to 67% by 2021.

2016 New York Chapter 54, Part SS, Section 5

<https://www.nysenate.gov/legislation/bills/2015/s6406/amendment/c>

(a) the weekly benefit for family leave that occurs (i) on or after January first, two thousand eighteen shall not exceed eight weeks during any fifty-two week calendar period and shall be fifty percent of the employee's average weekly wage but shall not exceed fifty percent of the state average weekly wage, (ii) on or after January first, two thousand nineteen shall not exceed ten weeks during any fifty-two week calendar period and shall be fifty-five percent of the employee's average weekly wage but shall not exceed fifty-five percent of the state average weekly wage, (iii) on or after January first, two thousand twenty shall not exceed ten weeks during any fifty-two week calendar period and shall be sixty percent of the employee's average weekly wage but shall not exceed sixty percent of the state average weekly wage, and (iv) on or after January first of each succeeding year, shall not exceed twelve weeks during any fifty-two week calendar period and shall be sixty-



seven percent of the employee's average weekly wage but shall not exceed sixty-seven percent of the New York state average weekly wage in effect.

In Colorado, legislators have been pushing for a family and medical leave bill that provides benefits as a graduated percentage of income (up to \$1,000 per week).

2015 Colorado House Bill 1258

http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont3/63AD9D4A5FC6A3CA87257DB-10065C86D?Open&file=1258_eng.pdf

(1)(a)(i) for an eligible individual whose yearly earnings are not more than twenty percent of the annual mean wage, the division shall pay weekly benefits in an amount equal to ninety-five percent of the eligible individual's weekly wage;
(ii) for an eligible individual whose yearly earnings are more than twenty percent but not more than thirty percent of the annual mean wage, the division shall pay weekly benefits in an amount equal to ninety percent of the eligible individual's weekly wage;
(iii) for an eligible individual whose yearly earnings are more than thirty percent but not more than fifty percent of the annual mean wage, the division shall pay weekly benefits in an amount equal to eighty-five percent of the eligible individual's weekly wage;
(iv) for an eligible individual whose yearly earnings are more than fifty percent of the annual mean wage, the division shall pay weekly benefits in an amount equal to sixty-six percent of the eligible individual's weekly wage.

EMPLOYEE CONTRIBUTION RATE

All four states with paid family and medical leave laws have temporary disability insurance funds that are run through relevant state agencies. These funds are primarily sustained through contributions made either solely by employees or including an employer contribution. This section looks at one component of a TDI program: employee contribution. The rate of next year's contribution is generally tied to the amount of benefits disbursed from the fund during the prior year (plus taking into account the fund balance). There are two major considerations with setting the rate: how much a state wants to raise (usually with a buffer to account for fluctuations year to year) and the TDI taxable wage limit (the higher this is, the more progressive the calculation is, as it spreads it out to higher-wage individuals).

California pegs the withholding rate at an amount sufficient to reach 1.45 times the amount disbursed from the prior year, after taking into account the current fund balance. For 2015, that rate is 0.9% on the first \$104,378 of an employee's wages (taxable wage limit or base).

California Unemployment Insurance Code Section 984.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=uic&group=00001-01000&file=976-995>



(a)(2)(A) Except as provided in paragraph (3), the rate of worker contributions for calendar year 1987 and for each subsequent calendar year shall be 1.45 times the amount disbursed from the Disability Fund during the 12-month period ending September 30 and immediately preceding the calendar year for which the rate is to be effective, less the amount in the Disability Fund on that September 30, with the resulting figure divided by total wages paid pursuant to Sections 926, 927, and 985 during the same 12-month period, and then rounded to the nearest one-tenth of 1 percent.

(3) The rate of worker contributions shall not exceed 1.5 percent or be less than 0.1 percent. The rate of worker contributions shall not decrease from the rate in the previous year by more than two-tenths of 1 percent.

Compared to California, Rhode Island has a lower taxable wage limit (less progressive) and a higher rate. Rhode Island ties its taxable wage rate to the maximum weekly benefit rate. In 2015, the withholding rate was 1.2% on the first \$64,200 of earnings.

Rhode Island Statute Section 28-40-1. Amount of employee contributions – Wages on which based.
<http://webserver.rilin.state.ri.us/Statutes/title28/28-40/28-40-1.HTM>

(a) The taxable wage base under this chapter for each calendar year shall be equal to the greater of thirty-eight thousand dollars (\$38,000) or the annual earnings needed by an individual to qualify for the maximum weekly benefit amount and the maximum duration under chapters 39 – 41 of this title.

(1) The total amount of disbursements made from the fund for the twelve (12) month period ending on the immediately preceding September 30 shall be divided by the total taxable wages paid by employers during the twelve (12) month period ending on the immediately preceding June 30. The ratio thus obtained shall be multiplied by one hundred (100) and the resultant product if not an exact multiple of one-tenth of one percent (0.1%) shall be rounded down to the next lowest multiple of one-tenth of one percent (0.1%);

(2) If the fund balance as of the preceding September 30 is less than the total disbursements from the fund for the six (6) month period ending on that September 30, that difference shall be added to the total disbursements for the twelve (12) month period ending September 30 for the purpose of computing the fund cost rate, and if the resulting fund cost rate is not an exact multiple of one-tenth of one percent (0.1%) it shall be rounded to the nearest multiple of one-tenth of one percent (0.1%).

New Jersey targets a withholding rate that will result in 125% of benefits paid plus administrative costs. In 2015, this rate was 0.25% of taxable wages, up to the first \$32,000 in wages (the least progressive of the four states with paid leave programs). New Jersey's lower withholding rate, coupled with the lowest



taxable wage limit, deserves further investigation, but it may be in part due to New Jersey having the strictest employee eligibility requirements, the least expansive definition of family, and the lowest weekly benefit rate.

New Jersey Statute Section 43:21-7. Contributions.

<http://law.justia.com/codes/new-jersey/2014/title-43/section-43-21-7/>

(d)(1)(G)(ii) . . . For calendar year 2011 and each subsequent calendar year, the annual rate of contribution to be paid by workers pursuant to this subparagraph (ii) shall be the rate necessary to obtain a total amount of contributions equal to 125% of the benefits paid for periods of family temporary disability leave during the immediately preceding calendar year plus an amount equal to 100% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the account as of December 31 of the immediately preceding year.

New York's new law sets the employee weekly contribution limit at 0.5% of weekly wages.

2016 New York Chapter 54, Part SS, Section 10

<https://www.nysenate.gov/legislation/bills/2015/s6406/amendment/c>

In collecting employee contributions through payroll deductions, the employer shall act as the agent of his or her employees and shall use the contributions only to provide disability and family leave benefits as required by this article. In no event may the employee's annual contribution for family leave exceed his or her per capita share of the actual annual premium charged for the same year and must be determined consistent with the principle that employees should pay the total costs of family leave premium. In no event may the employee's weekly contribution for disability premium exceed one-half of one per centum of the employee's wages paid to him or her, but not in excess of sixty cents per week.

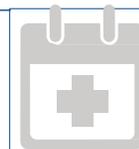
NON-RETALIATION/JOB PROTECTION

Any paid leave program should be coupled with laws to protect workers who take advantage of these programs. Among the current paid family and medical leave laws, Rhode Island's law was the first to include job protection for all workers taking family leave. New York's program does the same.

Rhode Island § 28-41-35. Benefits.

<http://webserver.rilin.state.ri.us/Statutes/title28/28-41/28-41-35.HTM>

(f) Any employee who exercises his or her right to leave covered by temporary caregiver insurance under this chapter shall, upon the expiration of that leave, be entitled to be restored by the employer to the position held by the employee when the leave commenced, or to a position with equivalent seniority, status,



employment benefits, pay, and other terms and conditions of employment including fringe benefits and service credits that the employee had been entitled to at the commencement of leave.

2016 New York Chapter 54, Part SS, Section 4

<https://www.nysenate.gov/legislation/bills/2015/s6406/amendment/c>

a. Retaliatory action prohibited for family leave. 1. The provisions of section one hundred twenty of this chapter and section two hundred forty-one of this article shall be applicable to family leave. 2. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract.

b. Reinstatement following family leave. Any eligible employee of a covered employer who takes leave under this article shall be entitled, on return from such leave, to be restored by the employer to the position of employment held by the employee when the leave commenced, or to be restored to a comparable position with comparable employment benefits, pay and other terms and conditions of employment. The taking of family leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in this section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave, or any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

INSURANCE FUND/POOL

A state will need to provide a mechanism for receiving employee and/or employer contributions into a shared insurance pool. Here are some examples from recent state bills:

2015 Massachusetts House Bill 1718/Senate Bill 1008

<https://malegislature.gov/Bills/189/House/H1718>

Section 5. (a) There is established in the treasury of the state, separate and apart from all public monies or funds of the state, a family and employment security trust fund which shall be administered by the treasurer exclusively for the purposes of this chapter. All payments pursuant to this part shall be paid into the trust fund and all disability benefits payable under this chapter shall be paid from the trust fund.

The trust fund shall consist of:

- (1) All contributions collected pursuant to this section, together with any interest thereon;*
- (2) Interest earned on any monies in the trust fund;*
- (3) Any property or securities acquired through the use of monies belonging to the trust fund;*
- (4) All earnings of such property and securities;*



- (5) *All monies transferred into the trust fund from the family and employment security administrative account; and*
- (6) *All other monies received for the trust fund from any source.*
- (c) *The state treasurer shall be the treasurer and custodian of the family and employment security trust fund and the family and employment security administrative account and shall administer the trust fund and administrative account. All monies in the trust fund and administrative account shall be held in trust for the purposes of this part only and shall not be expended, released, appropriated, or otherwise disposed of for any other purpose. . . The trust fund shall maintain an annualized amount of at least 140 percent of the previous year's expenditure.*

2015 Colorado House Bill 1258

http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont3/63AD9D4A5FC6A3CA87257DB-10065C86D?Open&file=1258_eng.pdf

- (1) (a) *There is hereby created in the state treasury the family and medical leave insurance fund, referred to in this section as the "fund". Moneys in the fund may be used only to pay benefits under and to administer the family and medical leave insurance program pursuant to this part 3, including the outreach program developed under section 8-13.3-304(5). Interest earned on the investment of moneys in the fund and any moneys remaining in the fund at the end of a fiscal year remain in the fund and do not revert to the general fund or any other fund.*
- (b) *Each employer shall collect the premium amount from each employee as a payroll deduction from the employee's wages each payroll period and shall remit the premium amount to the division, which shall transmit the premiums to the state treasurer for deposit in the fund.*



COMMUNICATIONS & MESSAGING

Background:

When talking about paid family and medical leave, here are a few important things to keep in mind:

- You'll find that in this document, we use "paid leave" and "paid family and medical leave" interchangeably. Feel free to do so as well, but make sure to introduce the concept as "paid family and medical leave" first so your audience is clear as to what you are referencing. After that, "paid leave" can be good shorthand, but it should be clearly differentiated from paid sick days (which is typically not an insurance program but an employer-provided benefit).
- Be sure to outline the problem first. Then, when discussing the solution, focus on outcomes rather than process.
- Emphasize the values reflected in paid family and medical leave – being with your loved ones in times of need, the opportunity to succeed, fairness, and respect for working families.

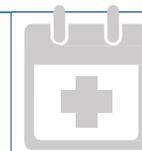
Topline Message:

Nearly all workers need to take time away at some point to deal with a serious personal or family illness or to care for a new child. Laws creating family and medical leave insurance funds allow workers to meet these needs without jeopardizing their economic security.

Talking Points:

The Problem

- The Family and Medical Leave Act of 1993 has kept many from losing their jobs for taking time off to have a child or care for a loved one, but only 60% of the workforce is covered under the law.
- For those not protected under FMLA, taking leave can mean risking job loss.
- Of those who are covered under the federal family and medical leave law, millions cannot afford to take time off without pay.
- Out of 185 nations surveyed by the International Labor Organization, the United States is one of only two countries (the other is Papua New Guinea) that doesn't guarantee paid maternity leave for its workers.
- In the U.S., only 13% of workers have access to paid family leave through their employers, and fewer than 40% have access to personal medical leave through employer-provided, short-term disability insurance. These individuals already tend to be among the highest paid in the workforce. So, those working families that are most vulnerable to lost income are the ones least likely to have access to paid family and medical leave.
- Young people and people of color are particularly likely to lack access to paid family and medical leave.
- Many working families are just a paycheck or two away from financial ruin, and if their only



leave option is unpaid, it can force them to sacrifice caring for themselves or a family member.

Talking Points:

The Solution

- It's time to level the playing field so that all workers – not just the wealthy few – can spend time with newborns, care for loved ones when they are seriously ill, and address their own serious medical conditions.
- Paid family and medical leave creates greater economic security for working families, strengthens the middle class, and thereby helps grow the economy by increasing consumer spending.
- Many business owners support paid leave because it adds to financial security and consumer spending. A recently leaked LuntzGlobal survey of 1,000 C-suite executives who are current or prospective Chamber of Commerce members found that over 80% support “time off for workers who need to care for sick children or relatives” and paid paternity leave.
- Paid family and medical leave supports growing families by making it easier for new moms – and dads – to take the time they need to care for their new child while still providing for their families. And moms who take paid leave are more likely to return to work and earn higher wages over time.
- When leave is paid, men are much more likely to take it, which can improve the sharing of child-rearing responsibilities between parents.
- Paid leave makes it possible for people to keep their jobs when serious family medical needs arise.
- Paid leave also lets sons, daughters, spouses, and parents honor their family members by caring for them – without having to sacrifice their livelihood to do it.
- Workers experiencing a temporary disability, injury, or serious illness also benefit from the option of paid recovery time.
- Paid leave saves businesses money in the long term by increasing employee retention – reducing the high cost of turnover.

Supporting Facts:

It's always good to have supporting evidence to strengthen your message. Here are a few helpful statistics to get you started.

- The Family and Medical Leave Act of 1993 provides workers unpaid, job-protected leave, but only 60% of workers in the United States are covered by FMLA.
- To qualify for FMLA, a worker must have been employed for at least a year and worked at least 1,250 hours at their place of employment, which must also have more than 50 employees in a 75-mile radius. This restriction excludes approximately 40% of the workforce.
- Workers whose average wages are in the lowest 25% for their industry are about four



- times less likely to have access to paid family and medical leave than those in the highest 25%.
- Only half of all pregnant workers receive any pay during leave – and most of that is through accrued vacation or sick days.
 - Among new mothers who worked while pregnant and were able to take paid leave, nearly 9 in 10 (87.4 percent) returned to work within a year after giving birth. In contrast, among new mothers who had to quit their jobs, just fewer than half (48.2 percent) returned to work within a year – and among new mothers who were let go, roughly half (55.7 percent) returned to work within a year.
 - Nearly three-quarters of people say that dealing with a new child or with a personal or family illness would cause them financial problems.
 - California has had a state paid leave program for over a decade. Of the workers in “lower quality” jobs who used that program, 83% returned to their previous employer. That’s a 10-point improvement compared to workers who did not use the program.
 - A majority of businesses in California (87%) had no increased costs as a result of the state’s paid leave program, and 9% indicated that the program had generated cost savings for their business by reducing employee turnover or reducing their own benefit costs.

Opposition Messaging and Responses:

Argument: It’s Too Expensive and Burdensome for Employers

“It’s one of the most frightening things businesses have looked at this entire session... It would drive small businesses out of business. They can’t afford it.” --Jon Hurst, president of the Retailers Association of Massachusetts, MassLive, 7/21/2016

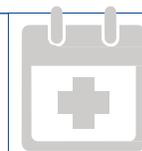
http://www.masslive.com/politics/index.ssf/2016/07/massachusetts_senate_to_consider_2.html

“If you require companies to do it, what will happen is some of them can’t afford it, literally can’t afford it...and then [employees] won’t have a job to take leave from.” --Marco Rubio, ThinkProgress, 11/30/2015

<http://thinkprogress.org/economy/2015/11/30/3726422/rubio-gender-wage-gap/>

Response: Providing paid family and medical leave to workers actually saves businesses money in the long term by significantly increasing employee retention. In California, which has had a state paid leave program for over a decade, a vast majority of businesses – 87% – have reported no increased costs as a result of the program. Meanwhile, 9% reported that the program had already begun to generate savings for their businesses by reducing employee turnover or cutting their own benefit costs.

That’s why many business owners support paid leave: a recently leaked LuntzGlobal survey of 1,000 C-suite executives who are current or prospective Chamber of Commerce members found that over 80% support “time off for workers who need to care for sick children or relatives” and paid paternity leave.



Argument: It's Harmful to Workers

"We often talk about these leave policies as if there's no cost associated with them. They cost workers in salary and wages. For women, they make employers view you as more risky [sic] and... more costly to employ at a time when the economy is sort of just chugging along." --Sabrina Schaeffer, executive director of the conservative Independent Women's Forum, POLITICO, 10/21/2015

(<http://www.politico.com/story/2015/10/paul-ryan-family-leave-speaker-house-215034>)

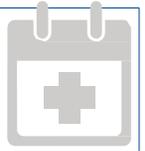
"If businesses are required to provide paid leave, something else has to give – fewer benefits, less flexibility, and more regimented hours." --Scott DeFife, executive vice president of policy and government affairs for the National Restaurant Association, Bloomberg BNA, 3/10/2014

(<http://www.bna.com/debate-mandated-paid-n17179882701/>)

Response: Far from being harmful, paid family and medical leave supports working families by making it easier for employees to take care of a new child or care for loved ones when they are sick – without forcing them to risk their job or sacrifice their livelihood to do it. Additionally, mothers who take paid leave are more likely to return to work and earn higher wages over time. The need for these policies is clear: nearly three-quarters of people say that dealing with a new child or with a personal or family illness would cause them financial problems, and millions cannot afford to take time off without pay.

Polling:

- According to a [2016 Lake Research Partners poll](#), nearly 8 in 10 likely voters (79%) say it is important for elected officials to update the law to guarantee access to paid family and medical leave. The numbers were even higher among African American and Latino voters – 97% and 84%, respectively.
- In that same poll, [76% of voters favor a law that would create a national fund](#) to allow workers to take up to 12 weeks of paid family and medical leave.
- Voters [prefer a candidate](#) who supports policies to ensure equal pay, affordable child care, and paid leave. And in one poll, [64% of likely voters](#) were either somewhat or much more likely to vote for an elected official who supports paid family and medical leave.
- According to a [recent poll by the Roosevelt Institute](#), 83% of respondents, and 67% of Republicans, said that paid family and sick leave would be effective in creating a better economy.
- In 2015, [80% supported paid family leave](#), according to a New York Times/CBS News poll.
- [A recently leaked LuntzGlobal survey](#) of 1,000 C-suite executives who are current or prospective Chamber of Commerce members found that over 80% support “time off for workers who need to care for sick children or relatives” and paid paternity leave.
- According to a [2013 poll released by Small Business Majority](#), a majority of small businesses support publicly administered family medical leave insurance pools funded by employees. A plurality also support the program if jointly funded by contributions from employees and employers.



- According to a [2016 Public Policy Polling survey](#), nearly 6 in 10 voters say they would be likely to face significant economic hardship if they had to take time from their jobs to care for a new child or deal with a serious personal or family illness.

Sample Social Media Content:

Here are some sample tweets you can adapt for your own use. The language can also be easily modified for posting on Facebook:

The U.S. = one of only a handful of countries without #PaidLeave provided to workers. #FMLA

40% of U.S. workers aren't covered by the #FMLA; this 40% can't care for a newborn child or a sick loved one without risking their jobs.

The #FMLA was a great first step in making the economy work for families. It's time we take the next step. It's time for #PaidLeave.

No one should have to choose between caring for a sick family member and paying for groceries. It's time for #PaidLeave.

#PaidLeave has been proven to have a positive or neutral effect on business costs - reduces turnover & increases productivity.

Millions of Americans can't afford to take unpaid leave to care for a loved one. Need to level the playing field. It's time for #PaidLeave.

Young people & people of color are more likely to lack access to #PaidLeave - we all deserve the opportunity to take care of our families.

2016 polling shows majority of voters in 15 key states say a nat'l #PaidLeave fund would make the U.S. better off: bit.ly/29YdSZY

#PaidLeave: It's about strengthening families.

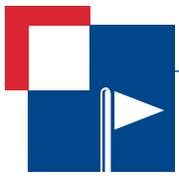
#PaidLeave: It's about honoring loved ones.

#PaidLeave: It's about keeping workers healthy.

#PaidLeave: It's about supporting new parents.

#PaidLeave: It's about creating healthier workplaces.

#PaidLeave: It's about honoring our parents and keeping seniors independent.



ADDITIONAL RESOURCES

Supporting Organizations

[9to5, National Association of Working Women](#)

[A Better Balance](#)

[Center for American Progress](#)

[Center for Law and Social Policy](#)

[Family Values @ Work](#)

[Institute for Women’s Policy Research](#)

[MomsRising](#)

[National Partnership for Women & Families](#)

[Pew Research Center](#)

Business Community

[Better Workplaces, Better Businesses](#)

[Main Street Alliance](#)

[American Sustainable Business Council](#)

[Social Venture Network](#)

[Small Business Majority](#)

State & Model Legislation

[Model State Paid Family and Medical Leave Statute](#), ABB, NPWF, 2015

[State Paid Family Leave Insurance Laws](#), NPWF, April 2016

[Paid Family Leave](#), NCSL, 2016

[Existing Temporary Disability Insurance Programs](#), NPWF, February 2015

California Law

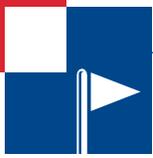
- [Unemployment Insurance Code Section 3300 to 3306](#)
- [Senate Bill 1661](#) (Chapter 901, Statutes of 2002)
- [Senate Bill 727](#) (Chapter 797, Statutes of 2003)
- [Senate Bill 770](#) (Chapter 350, Statutes of 2013)
- [Assembly Bill 908](#) (Chapter 5, Statutes of 2016)

New Jersey Law

- [Statute Sections 43:21-25 to 43:21-56](#)
- [New Jersey Assembly Bill 873](#) (P.L.2008, c.17)

Rhode Island Law

- [Statute Chapters 28-39 to 28-41](#)
- [Rhode Island P.L. 2013, Ch. 187, § 1](#)



- [Rhode Island P.L. 2013, Ch. 213, § 1](#)

New York

- [New York Senate Bill S6406C, Part SS](#)

Federal Landscape

[History of the FMLA](#), NPWF

[Family and Medical Insurance Leave Act \(FAMILY Act\)](#), NPWF

Fact Sheets, Messaging & Communications Materials

[Paid Leave Fact Sheets](#), NPWF

[Talking Points on Paid Family and Medical Leave](#), Main Street Alliance, May 2016

[Findings from National Survey Shows Strong Support for PFML](#), Lake Research Partners, NPWF, February 2016

[New and Expanded Employer Paid Family Leave Policies \(2015-2016\)](#), CLASP, NPWF

[The FAMILY Act Coalition Toolkit](#), NPWF, 2015

[Paid Family and Medical Leave: An Overview](#), NPWF, March 2015

[Family and Medical Leave Insurance Fact Sheet](#), FV@W, August 2015

[Paid Leave Works in California, New Jersey, and Rhode Island](#), NPWF, June 2016

[Paid Family and Medical Leave: Good for Business](#), NPWF, March 2015

[Paid Family and Medical Leave: Busting 10 Common Myths with Facts and Evidence](#), NPWF, December 2014

[Older Adults and Family Caregivers Need Paid Family and Medical Leave](#), NPWF, November 2015

[Children Benefit When Parents Have Access to Paid Leave](#), NPWF, March 2015

Policy Briefs & Reports

[Paid Leave Research](#), NPWF

[First Impressions: Comparing State Paid Family Leave Programs in their First Years: Rhode Island's First Year of Paid Leave in Perspective](#), NPWF, February 2015

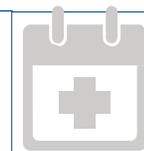
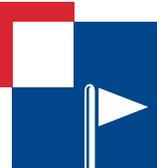
[Family Leave Insurance: Supporting Working Families When They Need It Most](#), ABB, February 2016

[Rhetoric vs. Reality: Paid Family and Medical Leave, Proposed Business Tax Credits and Pregnancy 401\(k\)s Fall Short for Working Families](#), CAP, August 2016

[Broader Paid Leave Would Provide Opportunity and Security for Millennial Caregivers](#), CAP, Generation Progress, December 2015

[Workplace Leave in a Movement Building Context: How to Win the Strong Policies that Create Equity for Everyone](#), ABB

[Investing in Our Families: The Case for Paid Family Leave in New York and the Nation](#), ABB, May



2015

[The Cost of Doing Nothing: The Price We All Pay Without Paid Leave Policies to Support America's 21st Century Working Families](#), U.S. Department of Labor, September 2015

[Tech Companies are Leading the Way on Paid Family Leave, and the Rest of the Country Should Catch Up](#), The Century Foundation, November 2015

[Key Features of a Paid Family and Medical Leave Program that Meets the Needs of Working Families](#), NPWF, CAP, December 2014

[The Economics of Paid and Unpaid Leave](#), The Council of Economic Advisors, White House, June 2014

[Paid Parental Leave in the United States: What the Data Tell Us about Access, Usage, and Economic and Health Benefits](#), IWPR, January 2014

Other Resources to Support Women's Economic Security

[Analysis of 2015 Census Poverty Data](#), NWLC, September 2016

[Status of Women in the States](#), IWPR, 2016

[A Double Bind: When States Deny Abortion Coverage and Fail to Support Expecting and New Parents](#), NPWF, September 2016

[Breadwinner Mothers by Race/Ethnicity and State](#), IWPR, September 2016

[Babygate: Pregnant or Parenting While Working? Learn about Laws in Your State That Can Help](#), ABB, 2015

[Moving Women & Families Forward: A Roadmap to Economic Justice](#), NWLC, March 2016

[Advancing a Family Friendly America: How Family Friendly Is Your State?](#) NPWF

[Expecting Better: A State-by-State Analysis of Laws That Help Expecting and New Parents](#), NPWF, 2016

[Not Enough Family Friendly Policies: High Stakes for Women and Families](#), NPWF, June 2016

[State-by-State Conversation Guide for Talking About Economic Security for Women and Families](#), American Women, 2016

[Work & Family Policy Database](#), NPWF

[Time to Care: A Work Family Policy Toolkit](#), Work Family Strategy Council

[Working Families Report Cards](#), U.S. House Committee on Education & the Workforce Democrats, October 2015

[American Community Survey](#), American FactFinder, U.S. Census Bureau