

CONGRESSIONAL TESTIMONY

Balancing Work, Health, and Family: What Do Americans Want, and Can a Government Program Provide It Without Undue Costs and Consequences?

Testimony before the
Workforce Protections Subcommittee
of the **Education and Labor Committee**

U.S. House of Representatives

February 11, 2020

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My name is Rachel Greszler. I am a Research Fellow in Economics, Budgets, and Entitlements at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

In my testimony today, I would like to start with what families themselves say would best help them balance work and family needs. I would then like to consider the implications of the 1993 Family and Medical Leave Act (FMLA), and the potential creation of a federal paid family leave program, such as the Family and Medical Insurance Leave (FAMILY) Act. Then I would like to suggest some ways in which policymakers can help workers balance their work, health, and families without imposing unwelcome burdens on workers and employers.

Unfortunately, government mandates and regulations can cause employers to replace compassionate and commonsense policies with rigid one-size-fits-all rules or programs that impose unnecessary costs and have unintended consequences.

What Do Families Want and Need?

Families are the foundation of society and it is important that family members be able to care for one another. Policymakers can and should strive to foster an environment that helps to equip families to cope with major life events and to thrive in their everyday lives. Families do best when they are free to make the choices that suit them, when ample opportunities exist for them to meet their needs and achieve their goals, and when they are not constrained by undue tax burdens or excessive regulations.

Priorities for Balancing Work and Family.

Virtually all Americans think that paid family leave is a good thing, but it is far from their biggest priority. A 2018 Cato Institute poll asked current workers to select which of six options “would be the best way to help you balance work and family.”¹ The results, in order of preference were:²

1. More flexible work schedules (34 percent),
2. Ability to work remotely (25 percent),
3. More affordable day care (11 percent),
4. Ability to work part-time hours (8 percent),
5. More paid parental leave (6 percent), and
6. Extended afterhours child care (4 percent).

These results indicate that more than five times as many workers would prefer more flexible work schedules than more paid parental leave. Combining the three workplace-flexibility and work-hours- flexibility responses (1, 2, and 4) covers 65 percent of workers’ highest preferences. As a working mother of six young children, this is something that I completely understand. Without the flexibility that my employer voluntarily provides me, I would not work at all. But flexibility is not something that lawmakers can impose on employers, as certain occupations and organizations are conducive to flexibility while others are not. I also believe that flexibility should be an earned privilege, not a universal right.

¹Emily Ekins, “Cato Institute 2018 Paid Leave Survey,” The Cato Institute, Released December 11, 2018, <https://www.cato.org/sites/cato.org/files/survey-reports/pdf/cato2018paidleavesurvey-updated.pdf> (accessed February 7, 2020).

²The Cato survey results also included 9 percent of respondents who chose “Other” with the option to specify something else that would best help them, and 2 percent of respondents either did not answer or responded “Don’t know.”

³H.R. 2474, Protecting the Right to Organize Act of 2019, <https://www.congress.gov/bill/116th-congress/house-bill/2474> (accessed February 8, 2020).

⁴H.R. 7, Paycheck Fairness Act, <https://www.congress.gov/bill/116th-congress/house-bill/7?q=%7B%22search%22%3A%5B%22Paycheck+>

It is important, and unfortunate, to note that two bills passed by House Democrats recently—the Protecting the Right to Organize (PRO) Act³ and the Paycheck Fairness Act⁴—would hurt, instead of help families by making it harder or impossible for many workers to have flexible schedules, to work remotely, or to work part time.

By upending a huge portion of the labor market (including contracting, the gig-economy, franchise businesses, and virtually all independent workers), the PRO Act would take away jobs and income opportunities, with some of the biggest burdens falling on women, individuals with medical conditions or disabilities, and single parents.⁵ Moreover, the Paycheck Fairness Act would impose rigid pay scales and inflexible jobs, making it harder for families to achieve the workplace and family balance they desire.⁶

More regulations lead to less flexibility, not more. The FMLA can limit workers’ ability to create a healthy balance by prohibiting employers from asking employees to perform any work while they are on leave. In today’s economy, many kinds of work can be done remotely, and certain family and medical leave instances are conducive to performing some work while on leave. These balances of partial work and partial leave can benefit workers and

[Fairness+Act%22%5D%7D&s=1&r=1](#) (accessed February 8, 2020).

⁵Rachel Greszler, “6 Ways a Union-Backed Bill Will Upend the Job Market,” The Daily Signal, February 5, 2020, <https://www.dailysignal.com/2020/02/05/6-ways-a-union-backed-bill-will-upend-the-jobs-market/> (accessed February 7, 2020).

⁶Rachel Greszler, “Democrats Want to Close the ‘Gender Pay Gap.’ Here Are 4 Ways Their Proposal Would Backfire,” The Daily Signal, January 31, 2019, <https://www.dailysignal.com/2019/01/31/democrats-want-to-close-the-gender-pay-gap-here-are-4-ways-their-proposal-would-backfire/> (accessed February 7, 2020).

employers alike by minimizing workplace disruptions and increasing employees' pay while on leave.

I personally know mothers who have had their access to all work systems cut off while they are on maternity leave, because even making simple phone calls or exchanging e-mails with a colleague who is on leave could be grounds for a lawsuit. Such rigid rules (which can be necessary with one-size-fits-all policies) end up hurting employers, workers, and customers—and the very families they purport to help. Individuals who take formal leave suffer the most, as significant periods away from work lead to fewer chances for promotions, and lower earnings.

How Do Americans Feel About a Federal Paid Family and Medical Leave Program?

Americans overwhelmingly support paid family and medical leave, but their support varies in terms of who should provide leave, and how much they are willing to pay or sacrifice in exchange for paid family leave.

According to a 2017 Pew Social Trends survey, 69 percent of Americans support paid leave to care for family members with serious health conditions; 69 percent support paid paternity leave; 82 percent support paid maternity leave; and 85 percent support paid leave to address a worker's own serious health condition.⁷ The majority of Americans—62 percent—believe that employers should pay for maternity leave; 13 percent think state governments should pay;

⁷Juliana Menasce Horowitz et al., "Americans Widely Support Paid Family and Medical Leave, But Differ Over Specific Policies," Pew Research Center, March 23, 2017, <https://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/> (accessed February 8, 2020).

⁸Ibid.

⁹Ekins, "Cato Institute 2018 Paid Leave Survey."

¹⁰The \$450 cost is based on a critique by the AEI-Brookings Working Group on Paid Family Leave

and 11 percent think the federal government should pay (this leaves an assumed 14 percent who think workers should finance their own family and medical leaves).⁸

The Cato survey found that most Americans—74 percent—support a federal paid family and medical leave program; but that support dropped precipitously when asked about the costs, or tradeoffs, of such a program.⁹

At a price tag of \$450 more in taxes each year—the likely minimum cost, for a program like the FAMILY Act¹⁰—fewer than half of Americans (48 percent) supported a national paid leave program.¹¹ In reality, however, a national paid leave program would cost much more—as much as \$11,000 in new taxes, according to the American Action Forum.¹²

Americans are not willing to exchange more debt for a federal paid family leave program as only 40 percent of Americans support paid family leave if it means higher deficits.¹³

Americans appear even less willing to give up their own personal compensation or to forgo promotions for women: Only 38 percent of Americans support a federal paid leave policy if it means lower pay raises for them, and even fewer—29 percent—are willing to exchange such a program for fewer benefits for them or for a reduced likelihood of promotions for women.¹⁴ That has unfortunately been the case with national paid family leave policies,

report, arguing that the FAMILY Act's costs are likely underestimated. The CATO survey uses a 16 percent take-up rate and an average leave duration of 7 weeks.

¹¹Ekins, "Cato Institute 2018 Paid Leave Survey."

¹²Ben Gitis, "The Cost of Paid Family Leave Law," American Action Forum, October 2015, <https://www.americanactionforum.org/research/the-cost-of-paid-family-leave-law/> (accessed February 8, 2020).

¹³Ekins, "Cato Institute 2018 Paid Leave Survey."

¹⁴Ibid.

including both unpaid mandates¹⁵ and generous national programs.¹⁶

Americans were least willing to support a federal paid family leave program if it meant giving up other valued government services. Only 21 percent of Americans said they would trade lower funding for education, Social Security, and Medicare in order to implement a national paid family leave program.¹⁷

Another survey, commissioned by the Independent Women’s Forum, asked Americans about their concerns over a federal paid family leave policy. Americans’ biggest concern was that “people will find a way to abuse this type of policy.”¹⁸ About half of all Americans were concerned about abuse, including 56 percent of conservatives, 52 percent of moderates, and 38 percent of liberals. Americans’ other top concerns were that a federal paid family leave policy “only benefits workers who plan to have children, which is unfair to those who do not” (38 percent); “workers will have to pay more taxes and will have less money for themselves and their families” (37 percent); and it “discourages businesses from providing their own parental leave benefit” (34 percent).¹⁹

The Family and Medical Leave Act

Under the Family and Medical Leave Act of 1993, workers who are employed by

companies that have 50 or more employees, as well as those employed by public agencies and public or private elementary and secondary schools, can take up to 12 weeks per year of job-protected, unpaid leave.²⁰ The law requires that the employers maintain employees’ health insurance coverage during that time. To qualify, employees must have worked for the employer for at least 12 months and must have worked at least 1,250 hours over the previous year.

Current FMLA policy allows workers to take leave for: their own serious health condition that renders them unable to perform their job; the serious health condition of an immediate family member (child, spouse, or parent); the birth, adoption, or foster placement of a son or daughter; or for any “qualifying exigency” arising from the active duty status of an immediate family member.²¹

Low-Income Workers Harder to Reach with Family and Medical Leave. According to a 2007 Urban Institute study, low-wage workers were two times as likely to be employed by firms with fewer than 10 workers (42 percent of all low-wage workers vs. 20 percent of all workers).²² Most notably, one out of every three low-wage, low-income workers with children was employed by a firm with fewer than 10 employees. As that study pointed out, “Because of their small size, these firms may

¹⁵Malika Thomas, “The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection,” March 6, 2019, <https://irs.princeton.edu/sites/irs/files/event/uploads/Draft030619.pdf> (accessed February 8, 2020).

¹⁶Christopher J. Ruhm, “The Economic Consequences of Parental Leave Mandates: Lessons from Europe,” National Bureau of Economic Research *Working Paper* No. 5688, July 1996, <http://www.nber.org/papers/w5688.pdf> (accessed February 8, 2020).

¹⁷Ekins, “Cato Institute 2018 Paid Leave Survey.”

¹⁸Heart Mind Strategies, “Paid Leave Messaging Research. Public Report,” prepared for the Independent

Women’s Forum, April 29, 2019, <https://pdf.iwf.org/Paid-Leave-Poll-Hearts-and-Mind%202019.pdf> (accessed February 8, 2020).

¹⁹Ibid.

²⁰U.S. Department of Labor, “Family and Medical Leave (FMLA),” <https://www.dol.gov/general/topic/benefits-leave/fmla> (accessed February 7, 2020).

²¹Ibid.

²²Gregory Achs and Austin Nichols, “Low-Income Workers and Their Employers. Characteristics and Challenges,” The Urban Institute, 2007, https://www.urban.org/sites/default/files/publication/4665FMLA_6/411532-Low-Income-Workers-and-Their-Employers.PDF (accessed February 8, 2020).

not have the resources to pay higher wages or offer comprehensive benefits, and they likely cannot offer much flexibility to their workers.”²³ Imposing mandates or additional regulations on small employers could lead to fewer jobs and lower incomes for workers in small businesses. Moreover, low-income workers are less likely to take FMLA even if they have access to it because they often cannot afford to take unpaid leave.

FMLA Not Infrequently Misused and Abused. While most employers want to be accommodating to employees’ needs, the rules and regulations surrounding the FMLA are so inflexible and difficult to interpret that employees are able to abuse the provision. According to a 2007 survey by the Society for Human Resources Management, 39 percent of human resources (HR) representatives said that they have granted FMLA requests that they perceived as illegitimate because of the Department of Labor’s regulations and interpretation surrounding the FMLA. The percentage is likely higher among smaller employers who do not have large HR departments or the resources to police the integrity of FMLA claims.

The fact that FMLA claims spike the Monday after the Super Bowl, the first day of hunting season, on days surrounding weekends and holidays, and on good-weather days indicates that some workers use intermittent FMLA leave as a way to take unplanned and unapproved time off from work without consequence.²⁴

Moreover, because the FMLA requires employers to allow incremental FMLA use based on the shortest time increment recognized by a company’s payroll system (often only a few minutes), employers report

that workers will regularly use FMLA claims to excuse their tardiness, often calling in on their way to work to say they will be 15 minutes late because of their FMLA-approved condition.²⁵ When they claim FMLA leave, they are essentially immune from recourse, even if their tardiness has nothing to do with a legitimate family or medical leave claim.

An interesting study on the gender wage gap by researchers at Harvard University also reveals some interesting data on FMLA use and apparent misuse. The study concluded that an 11 cent wage gap between men and women working for the Massachusetts Bay Transportation Authority (a unionized workplace with otherwise rigid pay scales) was due entirely to differences in hours worked.

A big part of the difference in hours worked was due to women claiming more FMLA hours of unpaid leave. Fully 45 percent of workers had active FMLA certifications that they could use for continuous or intermittent leave as desired. On average, women used 35 hours of FMLA leave per quarter (about 4.5 days) while men used 20 hours (2.5 days).

Trends in these workers’ use of FMLA suggest that many workers are misusing the policy: On average, FMLA claims increased 34 percent for women (0.85 hours) and 28 percent (0.4 hours) for men during weeks when they were prescribed a weekend shift; and by about 80 percent for women (two hours) and 70 percent for men (one hour) during weeks that included a holiday shift.

When the employer, the Massachusetts Bay Transportation Authority, hired a third-party administrator to improve the integrity of FMLA use by ensuring proper FMLA certification and use, the percentage of workers

²³Ibid.

²⁴James Sherk, “Use and Abuse of the Family and Medical Leave Act: What Workers and Employers Say,” Heritage Foundation Special Report No. 16,

August 28, 2007, <https://www.heritage.org/jobs-and-labor/report/use-and-abuse-the-family-and-medical-leave-act-what-workers-and-employers-say>.

²⁵Ibid.

with FMLA certifications fell from 45 percent to 27 percent and quarterly FMLA use declined 28 percent for women (from 35 to 25 hours) and 25 percent for men (from 20 to 15 hours).

In addition to revealing misuse of the FMLA, this study also verifies gender differences in FMLA use. Such differences can impact women's earnings, their likelihood of promotions, and their possibility of facing discrimination in the hiring process.

FMLA Has Costs for Workers, Employers, and Customers. Even if employers do not provide paid FMLA leave for workers, employees' absences still have costs and consequences. To suggest that companies can easily accommodate such absences is to imply that workers provide little value to their employers, which is simply not the case. In fact, the value that workers provide is what motivates employers to accommodate workers' requests for leave, often providing paid leave, because it helps them retain their workers.

Monetarily, employers are required to continue health insurance coverage during FMLA leave (and most employers continue other benefit provisions voluntarily). Based on average premiums and worker contributions, employers would pay about \$1,370 for 12 weeks of individual health insurance coverage and \$3,360 for family coverage.²⁶ Moreover, a significant number of employers hire temporary replacements for workers who are on FMLA leave, and obtaining those workers

²⁶Author's calculations based on 2019 health insurance premium data, including employee contribution levels, from the Kaiser Family Foundation: Premiums and Worker Contributions Among Workers Covered by Employer-Sponsored Coverage, 1999–2019, <https://www.kff.org/interactive/premiums-and-worker-contributions-among-workers-covered-by-employer-sponsored-coverage-1999-2019/#/> (accessed February 7, 2020).

²⁷According to the 2007 SHRM survey, 23 percent of employers reported hiring an outside temporary

(often through agencies that charge fees) can be more costly.²⁷

The biggest costs of FMLA leave appear to be borne by the co-workers of absent employees. According to a 2007 Society for Human Resource Management (SHRM) survey, 88 percent of employers said that they re-assigned absent employees' work to other workers.²⁸ Typically, if employees believe that a co-worker's FMLA leave is for a legitimate reason, they are willing to work additional hours and take on added responsibilities; but when FMLA leave is perceived as illegitimate, it can engender resentment and hurt employee morale.

Employers Views of FMLA. Despite some claims that FMLA and other government paid family leave programs have few or no negative effects on employers, more comprehensive surveys show that employers, in fact, experience significant negative consequences. According to the SHRM's 2007 survey, "FMLA and Its Impact on Organizations," the following percentages of employers reported FMLA leave having negative effects on:²⁹

- employee absences (63 percent),
- employee productivity (55 percent),
- business productivity (54 percent), and
- employee morale (35 percent).

Somewhat surprisingly, these negative effects were greater for very large businesses. Among companies with 500 or more employees, 79 percent reported negative effects on employee absences; 74 percent, on employee

replacement for workers on FMLA leave. Society for Human Resource Management, "FMLA and Its Impact on Organizations," 2007, <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/documents/fmla%20and%20its%20impact%20on%20organizations%20survey%20report.pdf> (accessed February 7, 2020).

²⁸Ibid.

²⁹Society for Human Resource Management, "FMLA and Its Impact on Organizations."

productivity; 68 percent, on business productivity; and 52 percent, on employee morale.

I suspect (without any evidence) that more negative effects reported by very large companies is the result of more FMLA claims made by workers in those firms, perhaps because they believe that in a larger company, their absence would be less burdensome on their fellow co-workers and employer. Larger, more profitable companies also provide greater incentives for lawyers and plaintiffs to bring lawsuits.

Having talked with multiple employers and HR representatives about the issue of FMLA leave and paid family leave, the resounding consensus was that employers feel strongly that it should be up to them to determine the types of relationships and medical and family needs for which they will allow their employees to take leave, and in which instances they will pay them while on leave.

One Size Does Not Fit All. Employers' ability to respond to employees' needs varies significantly across industries and employer sizes. Large employers in the retail industry may have enough employees to shift duties to other workers with relatively little consequence and cost. But smaller employers and more specialized industries have a harder time adapting. The burden of employees' absences can have a large negative impact on companies operations, which spills over to consequences for customers.

Many industries and positions require skilled or licensed professionals who are extremely difficult, if not impossible, to replace within a short time period. I think of my own children's daycare, with about 20 children and eight

employees. If one or more teachers were to go on FMLA leave, they would not have enough staff to fulfill the required child-to-teacher ratios, and because of the background checks, and lengthy education and licensing required, temporary fill-ins are not really an option. In fact, my children's daycare center once had to shut down for an entire week when two employees were absent. This meant that about 15 families had only three days of notice to find substitute child care for an entire week.

In the medical field, absences can be particularly harmful—even life-threatening. An economic study found extreme consequences from Denmark's implementation of a one-year paid parental leave program within the nursing industry: The program led to a rapid and persistent 12 percent decline in nursing employment, a 17 percent increase in inpatient re-admissions, an 89 percent increase in newborn re-admissions, a delay in technology adoption, and a 13 percent increase in nursing home mortality over the three-year period following enactment.³⁰ This is not to say that leave should not be allowed, but government micromanagement of leave decisions prohibits employers and employees from flexibly balancing their needs and desires in ways that minimize costs and consequences for workers, employers, and customers.

Carrie Lukas, who directs the Independent Women's Forum and its 24 employees, expressed her concern that well-intentioned policies like this create unnecessary burdens for employers:

There are always going to be bosses who don't treat their employees well—and the best way to deal with those situations is to make sure that people have other job opportunities so

³⁰Maya Rossin-Slater, Christopher J. Ruhm, and Jane Waldfogel, "The Effects of California's Paid Family Leave Program on Mothers' Leave-taking and "Subsequent Labor Market Outcomes," National

Bureau of Economic Research *Working Paper* No. 17715, December 2011, <http://www.nber.org/papers/w17715> (accessed June 13, 2017).

they can leave those situations. Expanding government rules about how employees have to be treated, the time they can take off, and in what circumstances just makes bosses feel like they can depend on employees less, pushes them to use fewer employees if possible, and causes employers to take away flexibility and discretion.

The minority of employers who really want to prevent or punish workers for taking leave will probably still be able to do so under proposed FMLA expansions—they will just have to be more careful and calculated about it.

.FMLA: Fewer Promotions for Women.

Well-intentioned and ostensibly family friendly policies can backfire on, and have unintended consequences for, the very people whom policymakers are trying to help. That has been the case, in varying degrees, with government paid family leave regulations and programs.

An economic analysis on the impact of the 1993 FMLA by Cornell University professor Mallika Thomas found that women who were hired after enactment were 3 percentage points more likely to remain employed, but 8 percentage points less likely to be promoted than similar women who were hired before the FMLA.³¹

³¹Mallika Thomas, “The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection,” Cornell University ILR School, September 6, 2016, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1015&context=ics> (accessed February 8, 2020).

³²Tirthatanmoy Das and Solomom W. Polachek, “Unanticipated Effects of California’s Paid Family Leave Program,” Institute of Labor Economics Discussion Paper No. 8023, March 2014, <http://ftp.iza.org/dp8023.pdf> (accessed May 7, 2019).

³³Joshua Reed and Donald Vandegrift, “The Effect of New Jersey’s Paid Parental Leave Policy on Employment,” Munich Personal RePEc Archive Paper

Government Paid Family and Medical Leave: Additional Consequences for Women. Beyond unpaid, job-protected leave allowances, government programs have had unintended consequences for women. Both California’s and New Jersey’s state-based paid family leave programs had the unintended consequence of increasing the unemployment rate and the duration of unemployment for young women.³² Even with low awareness and take-up rates, researchers estimated that New Jersey’s paid family leave program reduced young women’s employment rates by an estimated 8 percent to 9 percent.³³ And a recent analysis of California’s program using administrative data from the IRS found that new mothers who used California’s paid family and medical leave program had 7 percent lower employment and 8 percent lower annual earnings six years to 10 years after giving birth than new mothers who did not use the program.³⁴ (That study also has the surprising finding that California’s paid family leave program reduces women’s fertility rates).

Super-sized government programs in Europe have produced more widespread adverse impacts for women. A study of Great Britain’s paid leave and job-protected leave concluded that the policies reduced highly educated women’s prospects of being promoted or holding management positions,³⁵ and a study

No. 74794, October 28, 2016, https://mpra.ub.uni-muenchen.de/74794/1/MPRA_paper_74794.pdf (accessed March 5, 2018).

³⁴Martha J. Bailey, Tanya S. Byker, Elena Patel, and Shanthi Ramnath, “The Long-Term Effects of California’s 2004 Paid Family Leave Act on Women’s Careers: Evidence from U.S. Tax Data,” NBER Working Paper No. 26426, October 2019.

³⁵Jenna Stearns, “The Long-Run Effects of Wage Replacement and Job Protection: Evidence from Two Maternity Leave Reforms in Great Britain,” University of California, Davis, January 14, 2017, <http://economics.ucdavis.edu/events/papers/28Stearns.pdf> (accessed March 5, 2018).

of parental leave mandates in Europe found that they reduced women's relative wages.³⁶

Expansive Definitions Could Turn Into Any Leave, for Any Reason, Any Time. Although not the intent, expanding the FMLA eligibility to include anyone with whom an employee has the “equivalent of a family relationship” is incredibly broad. Many family members live together while other do not even speak to one another. Such vague expansions are more likely to increase the number of illegitimate claims than legitimate ones. That is because employers tend to know their employees better, and to be more understanding of their unique circumstances, than a government bureaucrat or judge tasked with interpreting ambiguous definitions of relationships and qualifying events. Employers should have the discretion to determine which types of leave they will allow and potentially pay their employees to take.

The FAMILY Act or Another National, One-Size-Fits-All Government Program

It is extremely difficult to design a single program that can meet the needs of all the workers who require it without being so expansive as to invite misuse, abuse, and excessive costs and consequences. A federal paid family leave program would require: one eligibility criteria, one leave allowance, one tax or funding source to pay for it, and one federal agency to administer the program across 28 million unique businesses and 159 million diverse workers.

³⁶Ruhm, “The Economic Consequences of Parental Leave Mandates: Lessons from Europe.”

³⁷Achs and Nichols, “Low-Income Workers and Their Employers. Characteristics and Challenges.”

³⁸Leonor Ehling, “California’s Paid Family Leave Program, Ten Years After the Program’s Implementation, Who Has Benefited and What Has Been Learned?” California Senate Office of Research, July 1, 2014, <https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Ca>

Government Programs Are Regressive.

Despite their intent, most government programs are actually highly regressive, taxing everyone, but primarily benefitting middle-income and upper-income earners. The most obvious reason for this is that partial benefits are not adequate for low-income workers. The proposed FAMILY Act’s 66 percent benefit levels would mean that workers who earn \$15 per hour would receive only \$396 per week while on leave instead of their usual \$600 per week. Such partial benefits would not be enough for most low-income families to cover their expenses. Moreover, low-income families are significantly less likely to be eligible for benefits based on fewer hours of work and shorter employment durations.³⁷

A few examples of the regressive nature of government-provided paid family leave programs are:

California. Workers in the highest income bracket (above \$84,000) were five times more likely to file paid family leave claims with the state as those in the lowest income bracket (below \$12,000).³⁸ Even in San Francisco, which has its own paid family leave law that provides 100 percent benefits to new mothers, low-income mothers (below \$32,000) were only half as likely as higher income ones (above \$97,000) to receive paid family leave benefits from the government.³⁹

New Jersey. New Jersey’s program was characterized as “simply unaffordable, even for middle-class families, many of whom still live

[lifornias%20Paid%20Family%20Leave%20Program.pdf](#) (accessed December 7, 2019).

³⁹Julia M. Goodman, William H. Dow, and Holly Elser, “Evaluating the San Francisco Paid Parental Leave Ordinance: Employer Perspectives,” University of California at Berkeley, February 2019, <https://www.populationsciences.berkeley.edu/sites/default/files/PPLO%20Issue%20Brief%202%20FINAL.pdf> accessed December 7, 2019).

paycheck to paycheck in high-cost New Jersey.”⁴⁰ Moreover, “The state’s paid family leave policy puts many workers below the poverty level for the duration of their leaves, and pushes people who are already struggling deeper into poverty.”⁴¹ And, recent expansions of the program that are intended to increase awareness and use are estimated to quadruple workers’ maximum payroll tax.⁴²

Canada. Government paid family leave programs have exacerbated class inequality: “Despite proportionate and obligatory contributions of all employers and employees to these programs, the distribution of benefits is unbalanced and aids the social reproduction of higher-income families, especially outside of Québec.”⁴³ While Quebec, which operates its own program, has taken action to increase government benefits, they “are still not equally used by mothers with lower socio-economic status.”⁴⁴

Norway. In Norway, which expanded paid leave to 100 percent replacement rates for nearly

⁴⁰Amy Dunford, “Boosting Families, Boosting the Economy: How to Improve New Jersey’s Paid Family Leave Program,” New Jersey Policy Perspective, April 27, 2017, <https://www.njpp.org/reports/boosting-families-boosting-the-economy-how-to-improve-new-jerseys-paid-family-leave-program> (accessed December 7, 2019).

⁴¹Ibid.

⁴²Samantha Marcus, “Here’s How Much Murphy’s Expansion of Paid Family Leave and Temporary Disability Will Cost You in Higher Taxes,” NJ.com, updated April 7, 2019, <https://www.nj.com/politics/2019/04/heres-how-much-murphys-expansion-of-paid-family-leave-and-temporary-disability-will-cost-you-in-higher-taxes.html> (accessed February 8, 2019).

⁴³Lindsey McKay, Sophie Mathieu, and Andrea Doucet, “Parental-Leave Rich and Parental-Leave poor: Inequality in Canadian Labour Market Based Leave Policies,” *Journal of Industrial Relations* (2016), pp. 1–20, http://www.andreadoucet.com/wp-content/uploads/2016/11/Doc-10_McKay-Mathieu-Doucet-2016-JIR-FINAL.pdf (accessed December 7, 2019).

⁴⁴Ibid.

all mothers, researchers found that “paid maternity leave has negative redistribution properties,” and that “the extra leave benefits amounted to a pure leisure transfer, primarily to middle and upper income families.”⁴⁵ The researchers concluded that “the generous extensions to paid leave were costly, had no measurable effect on outcomes and poor redistribution properties.”⁴⁶

In the U.S., where substantial employer-provided paid family leave exists, a government program could be even more regressive because it would provide windfall benefits to larger companies and higher-income employees who already *have* paid family leave policies.⁴⁷

Government Programs Crowd Out Employer-Provided Benefits. A government program would also crowd out existing programs and prevent new ones from starting because employers would be unwise to pay costs that could otherwise be borne by taxpayers.⁴⁸ This is already happening with

⁴⁵Gordon B. Dahl et al. , “What Is the Case for Paid Maternity Leave?” University of Southern California San Diego, April 20, 2015, <https://econweb.ucsd.edu/~gdahl/papers/paid-maternity-leave.pdf> (accessed December 7, 2019).

⁴⁶Ibid.

⁴⁷I estimate that employers provide between \$125 billion and \$275 billion worth of paid family and medical leave to workers each year. This estimate is based on a workforce of 150 million, between 12.6 percent and 18.5 percent of workers taking leave each year with an average leave length of 6.95 weeks, benefits equal to between 66 percent and 100 percent of pay, and workers annual earnings in the range of \$50,000 to \$75,000. Even if a federal program only covered 40 percent of existing costs, this implies that each worker would face between \$300 and \$700 in new taxes to cover paid leaves that employers already provide.

⁴⁸Based on a recent economic analysis that showed a 60 percent crowd-out rate of privately provided health insurance due to government provision, policymakers can expect significantly higher crowd-out from a federal paid family leave program; such benefits would be less valuable, as they would lack the special tax benefit for employer-provided health insurance. Jonathan Gruber and Kosali Simon, “Crowd-Out Ten

state-based programs. At a July 11, 2018, Senate Finance Subcommittee hearing, Carolyn O’Boyle, representing Deloitte, explained what Deloitte does (and what one can expect other employers to do) for employees who live in states with their own state-based paid family leave programs. She said that Deloitte instructs its workers first to use the state-provided paid leave benefits, and then Deloitte tops those benefits off to meet Deloitte’s maximum benefits. That is a straight transfer of costs from private-sector businesses and workers to state taxpayers, and the same thing would happen at the national level for federal taxpayers.

Government Programs Are Costly and Ever-Expansive. Paid family leave provides significant benefits, but not without substantial costs, and costs are almost always higher when benefits come through a government program instead of an employer-provided program.

Taxes often start out low, but inevitably rise over time as programs expand eligibility, benefit levels, and the length of leave in an effort to accommodate more workers’ and families’ needs. State-based programs have

Years Later: Have Recent Public Insurance Expansions Crowded Out Private Health Insurance?” National Bureau of Economic Research *Working Paper* No. 12858, January 2007, <http://www.nber.org/papers/w12858.pdf> (accessed March 9, 2018).

⁴⁹For example: New Jersey recently expanded its paid leave program, including doubling the maximum length of leave to 12 weeks; increasing the maximum payment level from 66 percent to 85 percent of earnings; broadening the group of employers to whom New Jersey’s FMLA law applies to include those with 30 or more employees; and expanding eligibility criteria to include anyone with whom the employee has “the equivalent of a family relationship.” According to an article by Samantha Marcus, “Here’s How Much Murphy’s Expansion of Paid Family Leave and Temporary Disability Will Cost You in Higher Taxes,” these changes will more than quadruple the maximum payroll tax contribution for workers.

⁵⁰Ben Gitis, “The Fiscal Implications of the FAMILY Act: How New Paid Leave Benefits Increase Leave-

already expanded their programs and taxes, even as they remain underutilized and lacking public awareness.⁴⁹

The American Action Forum estimated that the FAMILY Act would cost \$31 billion per year (about \$200 for a worker making \$50,000) if take-up rates were as small as they have been in state-based programs; \$68 billion per year (\$430 per worker) if take-up rates resemble workers’ use of the FMLA (including unpaid leave); and \$225 billion per year (\$1,425 per worker) if workers responded as indicated by their paid family leave needs in a recent Cato Institute poll.⁵⁰

I estimate that the cost of a federal program providing Social Security–level benefits would cost the average worker \$569 per year in taxes, while providing 100 percent benefits would require an additional \$1,286 per worker.⁵¹

European programs have had more time to expand than U.S. state programs. Between 1980 and 2011, the median amount of paid leave for mothers among Organization for Economic Cooperation and Development (OECD) countries increased from 14 weeks to

Taking and Drive Up Estimated Program Costs,” American Action Forum, March 21, 2019, https://www.americanactionforum.org/research/the-fiscal-implications-of-the-family-act-how-new-paid-leave-benefits-increase-leave-taking-and-drive-up-estimated-program-costs/#_ftn27 (accessed May 4, 2019), and Ekins, “Cato Institute 2018 Paid Leave Survey.”?

⁵¹Author’s estimates based on Social Security’s benefit calculation formula and a national average wage of \$52,651. These estimates assume that about 18.5 percent of workers would access the benefit and that they would take an average of 6.95 weeks of leave. The 18.5 percent take-up rate comes from a study conducted for the Department of Labor (<https://www.dol.gov/asp/evaluation/completed-studies/IMPAQ-Family-Leave-Insurance.pdf>). The average length of leave comes from another study conducted for the Department of Labor (<https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>).

42 weeks.⁵² In Canada, expansions—including increasing 17 weeks of paid maternity leave to 35 weeks of paid parental leave—caused the program’s costs to quadruple (from 0.07 percent to 0.28 percent of gross domestic product).⁵³

The United States does not have a national paid family leave program, but it has multiple other entitlement programs that have exploded in size, scope, and costs over time. That out-of-control spending growth is the driving source behind America’s unsustainable and increasingly threatening debt. A new federal paid family leave entitlement would only exacerbate this crisis and increase the likelihood of future austerity.

How to Help Americans Balance Work and Family without Costly and Rigid Government Programs and Regulations

In addition to continuing pro-growth economic policies that have contributed to huge financial gains and opportunities for families—including substantial expansion in the number of companies providing voluntary paid family leave to their workers, large wage gains across the board with the biggest gains for low-income workers, and significantly greater job opportunities drawing marginalized and discouraged workers back into the labor force—policymakers can take additional steps to help to increase access to paid family leave for workers who currently lack it. Such policies include:

⁵²Dahl et al., “What Is the Case for Paid Maternity Leave?”

⁵³Organization for Economic Cooperation and Development, “PF 2.5 Annex: Detail of Change in Parental Leave by Country,” OECD Family Database, Social Policy Division, last updated October 26, 2017, https://www.oecd.org/els/family/PF2_5_Trends_in_leave_entitlements_around_childbirth_annex.pdf (accessed February 12, 2018).

⁵⁴Rachel Greszler, “Mike Lee’s Bill Would Boost Paid Family Leave Without Growing the Government,” The

The Working Families Flexibility Act. The Working Families Flexibility Act (H.R. 5656), which was introduced by Martha Roby (R-AL) and passed the House in 2017 (and was also introduced in the Senate in 2019 by Mike Lee), would allow private employers to give their workers the same option that state and local workers receive—to choose between receiving time-and-a-half pay or time-and-a-half worth of paid leave benefits in exchange for overtime hours.⁵⁴ For example, an employee who worked five hours of overtime every week for one year could accumulate 10 weeks of paid leave. Even working just two hours of overtime each week for a year could result in four weeks of paid leave.

This proposal would be particularly helpful to the low-wage workers who lack access to paid family leave because it would apply to hourly employees who currently earn below about \$35,600 per year.

Payroll Tax Credit for Qualified Disability Insurance Policies. Private disability insurance provides workers with medical leave benefits for themselves as well as pregnancy and maternity-related leave. Although 47 percent of full-time private-sector workers have temporary disability insurance, some policymakers, employers, and workers undercount private disability insurance as a source of personal medical and maternity leave.⁵⁵ Policymakers should consider providing a payroll tax credit to employers who provide their workers with qualified disability

Daily Signal, April 11, 2019,

<https://www.dailysignal.com/2019/04/11/mike-lees-bill-would-boost-paid-family-leave-without-growing-government/>.

⁵⁵U.S. Bureau of Labor Statistics, National Compensation Survey, Table 16, “Insurance Benefits: Access, Participation, and Take-Up rates, Private Industry Workers,” March 2017, <https://www.bls.gov/ncs/ebs/benefits/2017/ownership/private/table16a.pdf> (accessed February 12, 2018).

insurance policies. I have advocated for such a proposal to improve the federal disability insurance program, and this policy would have the added benefit of increasing paid medical and maternity leave benefits.⁵⁶

Congress could also increase workers' enrollment in employer-sponsored temporary disability insurance policies by clarifying in legislation that employers have the same legal authority to automatically enroll employees (providing they are allowed to opt out) into their temporary disability insurance policies as they have to automatically enroll them in their retirement plans.

Universal Savings Accounts (USAs). By double-taxing savings (once when the money is first earned, and a second time after it generates investment gains), and by limiting tax-preferred savings accounts to purposes such as education and retirement savings, the U.S. discourages individuals from saving for other purposes. By allowing workers to save money for any purpose, USAs would encourage workers to save more and would help them prepare for a wider variety of life events and circumstances.

Expand on Penalty-Free Withdrawals from Retirement Accounts. The Setting Every Community Up for Retirement Enhancement (SECURE) Act, which became law at the end of 2019, allows workers to make penalty-free withdrawals from their retirement plans for the birth or adoption of a child. This is a helpful step that policymakers should build upon by removing more restrictions so that workers and families can spend their savings—without penalty—on what is best for them.

⁵⁶Rachel Greszler, "Private Disability Insurance Option Could Help Save SSDI and Improve Individual Well-being," Heritage Foundation *Background* No. 3037, July 20, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/BG3037.pdf.

Lower Taxes. Lower taxes on individuals and businesses would free up income and resources to apply toward paid family leave or whatever else workers and families need or decide is best for them. Moreover, recent reports on new and expanded paid family leave policies from large companies, such as Lowe's and Chipotle, after the Tax Cuts and Jobs Act of 2017 show that lower taxes have contributed to more paid family leave benefits.⁵⁷

Reducing Regulations. Another component of employers' ability to add and expand paid family leave policies has been the Administration's success in reducing unnecessary and costly regulations. Further regulatory relief could free up even more resources to go toward paid family leave.

Conclusion

There are many things that can help Americans balance their work, family, and health needs—and flexible work situations are what Americans overwhelmingly express a desire to achieve. A number of Democrat-backed bills, such as the PRO Act and Paycheck Fairness Act, would drastically reduce, not increase, workers' flexibility.

Paid family leave is something that Americans want and something policymakers want to help them receive. I also support workers having access to paid family leave, but on flexible and accommodating terms that work best for workers and their employers. Similarly, surveys show that Americans do not want just any policy at any cost; they want a program that meets their needs with as little cost, burden, and disruption as possible. A one-size-fits-all federal government program simply cannot

⁵⁷Patrice Lee Onwuka, "5 Companies Expanding Parental Leave Thanks to Tax Cuts," Independent Women's Forum, February 15, 2018, <http://www.iwf.org/blog/2805845/5-Companies-Expanding-Parental-Leave-Thanks-to-Tax-Cuts> (accessed March 5, 2018).

achieve this. Not only would it crowd out existing programs and leave many workers with inferior and burdensome policies, it would—like all existing government-funded family leave programs—redistribute resources from low-income workers to middle-income and higher-income workers, and would fail to provide the flexibility that workers and employers increasingly want and need in the evolving labor market.

The current expansion of employer-provided (as well as state-based) paid family leave programs, along with the strong labor market, suggests that policymakers should let such growth continue instead of halting it with a federal paid family leave program. Policymakers should focus on expanding options for workers who currently lack access to paid family leave. In addition to continued pro-growth economic policies, this includes enacting policies like the Working Families Flexibility Act and allowing workers to use their tax-preferred savings to pay for their leave. In the long run, workers, employers, taxpayers, and the American economy will all be far better off with individually tailored paid family leave programs through employers instead of another costly and unsustainable federal entitlement program.

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