

Fact Sheet

NJFLA Coverage Gaps: Who has job protection under NJFLA (and who is left behind)?

April 2022



The purpose of this fact sheet is to outline what constitutes job protection in the Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act and to provide an analysis of who falls into the job protection gap when taking family leave in New Jersey. This information can help inform policymakers looking to make access to paid leave more equitable and strengthen implementation of New Jersey’s Family Leave Insurance program (NJFLI).

According to a survey conducted by the Heldrich Center for Workforce Development at the Bloustein School of Planning and Public Policy at Rutgers University, half of New Jersey workers surveyed report that they are concerned about taking leave for these major or minor reasons: fear of losing their job, losing their seniority, or losing their access to job advancement. This is more likely for workers making less than \$100,000 than those making more—67% versus 40% for fear of losing job and 65% versus 40% for fear of losing seniority or advancement.¹ It is also more likely for non-White workers compared to White, non-Hispanic workers—69% versus 58% for fear of losing job and 64% versus 42% for fear of losing seniority or advancement. Some of these workers indeed may lose their jobs, seniority, or advancement if they take leave because while they may qualify for the wage replacement benefit and contribute to the state insurance pool through a payroll tax, their job may not be protected. In New Jersey, *wage replacement* for family leave is covered under the New Jersey Family Leave Insurance (NJFLI) program while *job protection* is covered by the New Jersey Family Leave Act (NJFLA).² Not all workers who are eligible for wage replacement under NJFLI are covered by the job protections outlined in the NJFLA. Thus, there are coverage gaps between workers eligible for wage replacement and those who are eligible for job protection. Workers who lack job protection may not choose to use NJFLI benefits to which they are entitled because they fear losing their job or at least losing seniority or access to job advancement.

The current analysis is focused on those who are eligible for wage replacement through NJFLI and job protection through NJFLA. This analysis does not address those who may be using TDI for wage replacement as a result of giving birth because job protection for one’s own condition does not fall under NJFLA, but instead only under the federal Family and Medical Leave Act

¹ Fall 2020 Eagleton Omnibus Survey Family Leave Insurance and Earned Sick Leave Results

² Birthing parents qualify for Temporary Disability Insurance (TDI) for the first part of their leave, but job protection for TDI payments is covered under the federal Family and Medical Leave Act. For this reason, we do not include the TDI portion of leave in this brief.

(FMLA). This analysis focuses on those who are eligible for wage replacement for bonding or other care claim but may not be eligible for job protection.

Job protection for eligible employees of covered employers under FMLA includes the following:

- Continuation of group health insurance benefits
- Restoration of the same or equivalent job. An equivalent job is one that matches the original job in terms of pay, benefits, and work conditions like shift and location.³

Job protection for eligible employees of covered employers under NJFLA includes the following:

- Continuation of group health insurance benefits.⁴
- Restoration of the same position or to an equivalent position. An equivalent position is one that is equivalent in seniority, status, benefits, pay, or other conditions.⁵

While most employees in New Jersey qualify for wage replacement through New Jersey Family Leave Insurance if they have worked 20 weeks and have earned at least \$240 weekly or \$12,000 in the previous 18 months, qualification for job protection is different.⁶ Under the New Jersey Family Leave Act (NJFLA), if you work for any size state or local government agency, or a company or organization with 30 or more employees worldwide, and you have been employed by the company for at least 1 year (and have worked at least 1,000 hours in the past 12 months), you generally can take up to 12 weeks of job-protected leave during any 24-month period to:

- Care for or bond with a child, as long as the leave begins within 1 year of the child's birth or placement for adoption or foster care;
- Care for a family member, or someone who is the equivalent of family, with a serious health condition (including a diagnosis of COVID-19)⁷; or
- Provide required care or treatment for a child during a state of emergency if their school or place of care is closed by order of a public official due to an epidemic of a communicable disease (including COVID-19) or other public health emergency.⁸

New Jersey NJFLA does *not* provide protections for those who are working at a firm with less than 30 employees, employed at a firm for less than a year, or who worked less 1,000 hours at that same firm.

³ <https://www.dol.gov/agencies/whd/fact-sheets/28a-fmla-employee-protections>

⁴ In practice, this may not be applicable for nongovernmental employers covered by ERISA (federal law). However, some of those employees may be eligible to continue their benefits under FMLA.

⁵ <https://www.nj.gov/oag/dcr/downloads/Family-Leave-Act.pdf>

⁶ <https://www.myleavebenefits.nj.gov/labor/myleavebenefits/worker/fli/>

⁷ During a state of emergency, this also includes someone who may need to isolate or quarantine if exposed to a communicable disease.

⁸ <https://www.nj.gov/oag/dcr/downloads/fact-FLA.pdf>

In an attempt to better understand the identities of those who are not covered by NJFLA, we utilize the Annual Social and Economic Supplement (ASEC) Data from the Current Population Surveys (CPS). The CPS is a monthly survey conducted jointly by the US Census Bureau and the US Bureau of Labor Statistics. It covers a random sample of around 60,000 households in the United States each month with a response rate of nearly 90%. The Annual Social and Economic Supplement (ASEC) is a yearly addition to the CPS that provides additional information on employment and participation in a number of social welfare and insurance programs.

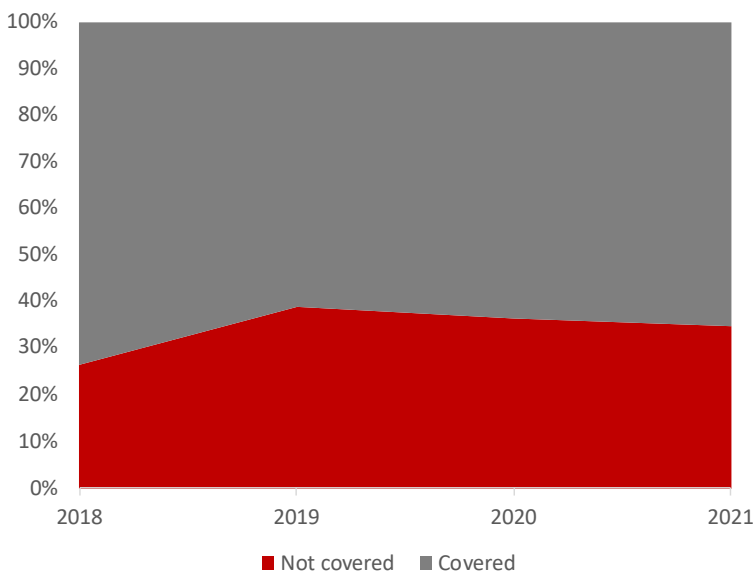
Using CSP-ASEC data, we are able to capture individuals who either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.⁹ We identify this group as individuals who are not covered by NJFLA.

In 2021, 35% of New Jersey’s workers fell into this group and therefore did not qualify for job protection through NJFLA.¹⁰ This is on par with previous years: In 2018 this figure was 26%, rose to 39% in 2019, and was 37% in 2020.

Share of New Jersey Workers Covered by NJFLA

Note: Weighted data over respondents from 2018 to 2021. Sample limited to New Jersey workers in the labor force. We designate individuals as ‘not covered’ if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government

Source: Rutgers University’s Center for Women & Work analysis of CPS-ASEC data



⁹ From 2019 onward, the measure for firm size in ASEC data is in segments: from under 10 employees, 10 to 24 employees, 25 to 99 employees, 100 to 499 employees, 500 to 999 employees, and 1000+ employees. In 2018, measurement segments were: under 10 employees, 10 to 49 employees, 50 to 99 employees, 100 to 499 employees, 500 to 999 employees, and 1000+ employees. Annual work hours are calculated as the product of the number of weeks worked in the previous year and the hours usually worked per week at the respondent’s main job.

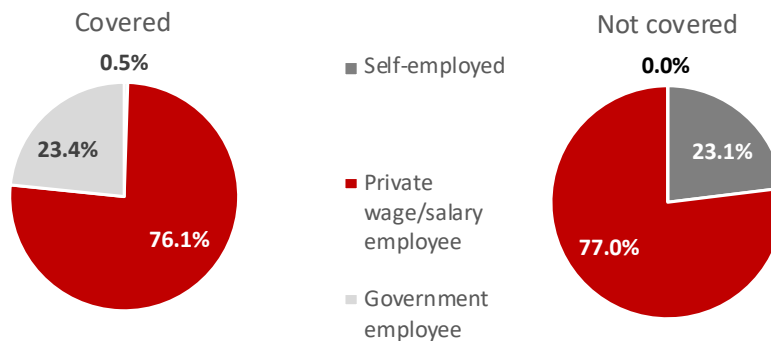
¹⁰ Note that this is likely an underestimate, in that we do not capture whether workers were working in the same job for the last 12 months, a requirement to qualify for job protection under NJFLA. Additionally, we are unable to capture firms with between 25 and 29 employees.

The US Bureau of Labor Statistics estimated there were 4.43 million workers in New Jersey’s labor force in July 2021.¹¹ If indeed 35% of those workers are not covered under NJFLA, this means approximately 1.55 million New Jersey workers do not have job protection under NJFLA.

Many of the workers who are not covered by NJFLA are self-employed (23%), but the majority (77%) are private wage/salary employees.

Type of employees who are covered and not covered by NJFLA

Note: Weighted data over respondents from 2021. Sample limited to New Jersey workers in the labor force. We designate individuals as ‘not covered’ if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government



Source: Rutgers University’s Center for Women & Work analysis of CPS-ASEC data

Because self-employed workers confront different circumstances when considering family leave and self-employed workers are not currently eligible for wage replacement through NJFLI¹², we focus our remaining analyses on those who work as private wage/salary employees or as government employees.

Among employees who do not qualify for NJFLA and are not self-employed, the majority (72%) are not covered because they work at small firms. An additional 19% are not covered because they worked less than 1000 hours. The final 9% fall into both categories. These calculations do not capture whether workers were working in the same job for the last 12 months, a requirement to qualify for job protection under NJFLA.

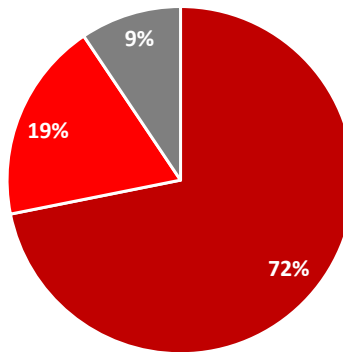
¹¹ <https://www.bls.gov/eag/eag.nj.htm>

¹² Of the 9 states and DC with paid family leave, only Rhode Island and New Jersey do not allow self-employed workers to opt in to the program. In Massachusetts, some self-employed workers are covered automatically. <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>

Why are workers not covered by NJFLA?

Note: Weighted data over respondents from 2021. Sample limited to New Jersey workers in the labor force who are not self-employed and not covered by NJFLA. We designate individuals as 'not covered' if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University's Center for Women & Work analysis of CPS-ASEC data



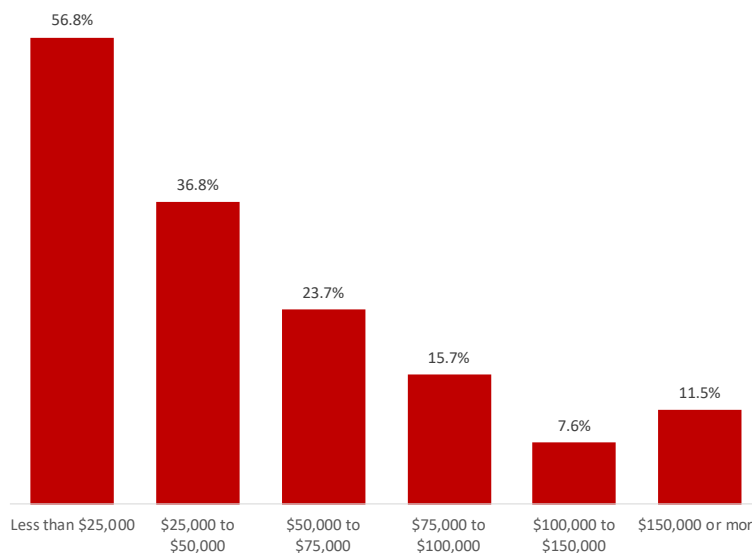
- Work at a firm with less than 25 employees
- Worked less than 1000 hours in last 12 months
- Both

The likelihood that a NJ worker is covered by NJFLA generally tends to increase with income. As shown in the figure below, 56.8% of workers who earn less than \$25,000 annually are not covered by NJFLA.

Share of workers not covered by NJFLA, by wage/salary income

Note: Weighted data over respondents from 2021. Sample limited to New Jersey workers in the labor force who are not self-employed. We designate individuals as 'not covered' if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University's Center for Women & Work analysis of CPS-ASEC data

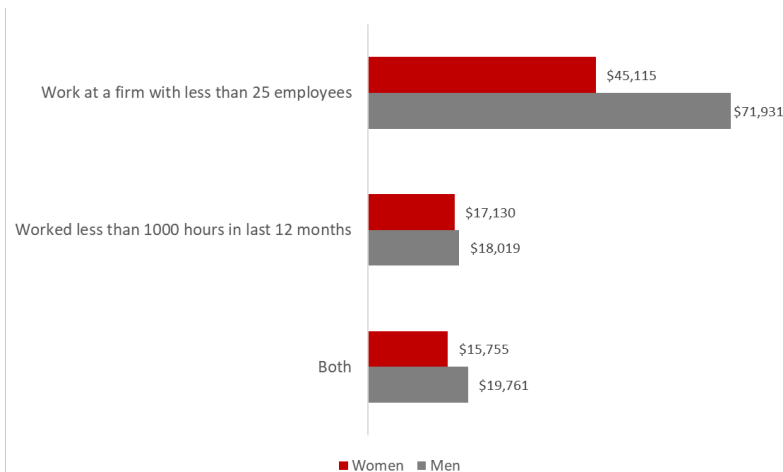


Among those who are not covered by NJFLA, those who work less than 1000 hours tend to earn less than those working at small firms.

Wages of those who are not covered by NJFLA, by gender and work type

Note: Weighted data over respondents from 2018 to 2021. Sample limited to New Jersey workers in the labor force. We designate individuals as ‘not covered’ if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University’s Center for Women & Work analysis of CPS-ASEC data

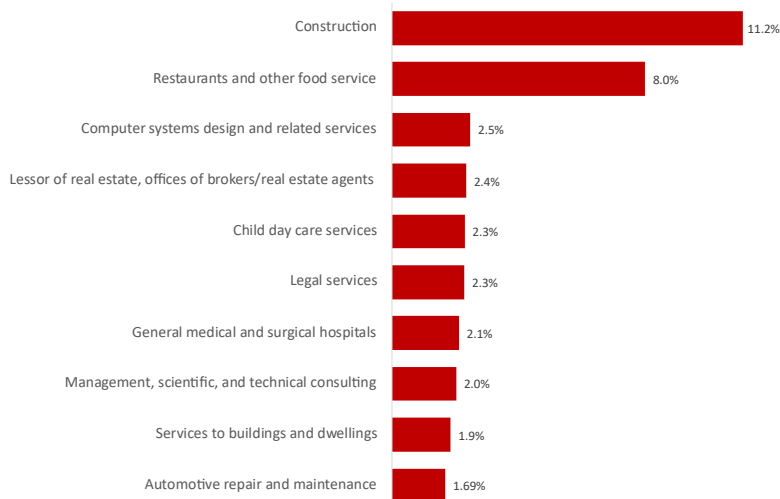


Which industries do workers not covered by NJFLA work in? Among the group of workers who are not covered by NJFLA and are not self-employed, many (11.5%) work in construction. An additional 8% work in restaurants or other food service. Others commonly work in computer systems design, real estate, childcare, legal services, hospitals, management and consulting, and building services.

Top 10 industries among the group of workers not covered by NJFLA

Note: Weighted data over respondents from 2020 and 2021. Sample limited to New Jersey workers in the labor force who are not self-employed. We designate individuals as ‘not covered’ if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government. Industry codes according to 2017 Census Classification Scheme.

Source: Rutgers University’s Center for Women & Work analysis of CPS-ASEC data

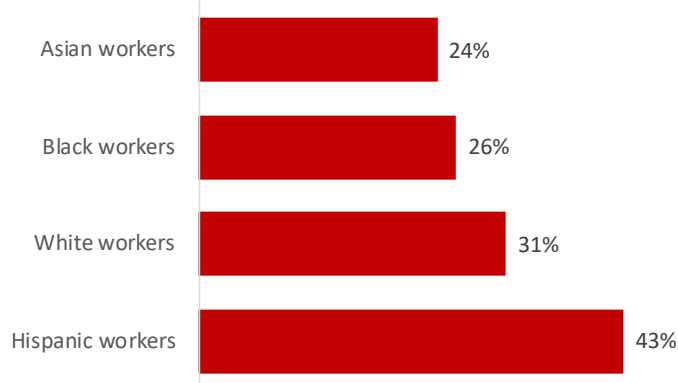


Job protection coverage also varies by racial and ethnic groups. Hispanic workers were least likely to be covered: among Hispanic workers who are not self-employed, 43% were not covered by NJFLA in 2021. Asian workers were most likely to be covered: among Asian workers who were not self-employed, 24% were not covered in 2021.

Share of workers not covered by NJFLA, by race and ethnicity

Note: Weighted data over respondents from 2021. Sample limited to New Jersey workers in the labor force who are not self-employed. We designate individuals as ‘not covered’ if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University’s Center for Women & Work analysis of CPS-ASEC data

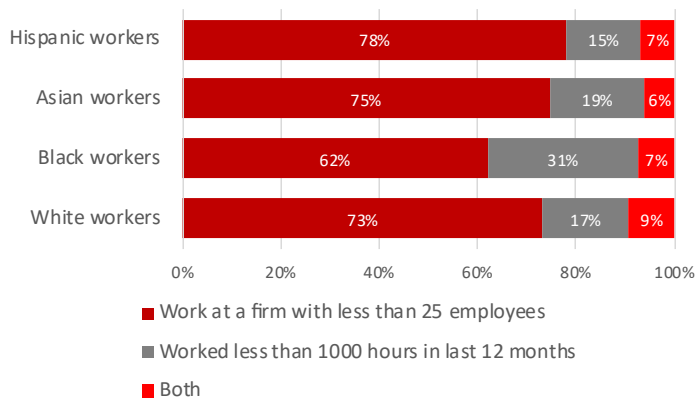


Reasons for job protection gaps vary slightly by race and ethnicity. For instance, 75% of Asian workers are not covered because they work for a firm with less than 25 employees. Nearly 31% of Black workers who are not covered by NJFLA are not covered because they worked less than 1000 hours at their main job in the last 12 months. Black workers, particularly Black women, have among the highest rates of labor force participation. However, at the same time, they are often crowded into occupations and industries with the most precarity (namely, low-wage, part-time work, often for multiple employers).¹³

Why are workers not covered by NJFLA? By race and ethnicity

Note: Weighted data over respondents from 2018 to 2021. Sample limited to New Jersey workers in the labor force who are not self-employed and not covered by NJFLA. We designate individuals as ‘not covered’ if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University’s Center for Women & Work analysis of CPS-ASEC data



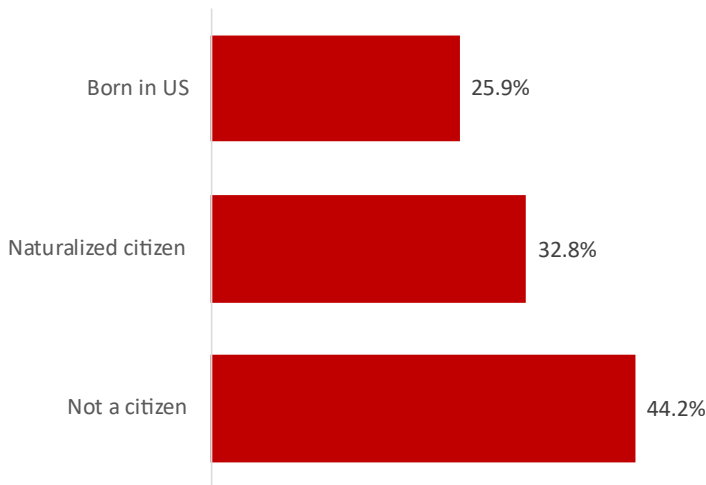
Immigrants (naturalized citizens and non-citizen workers) were more likely to be without job protection under NJFLA than workers who were born in the US. Just 26% of New Jersey workers born in the US (who are not self-employed) are not covered under NJFLA. This is relatively low compared to 33% of naturalized citizen workers and 44% of non-citizen workers (who are not self-employed) who lack job protection

¹³ Holder, M., Jones, J., & Masterson, T. (2021). The early impact of COVID-19 on job losses among black women in the United States. *Feminist Economics*, 27(1-2), 103-116.

Share of workers not covered by NJFLA, by citizenship status

Note: Weighted data over respondents from 2021. Sample limited to New Jersey workers in the labor force who are not self-employed. We designate individuals as 'not covered' if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University's Center for Women & Work analysis of CPS-ASEC data

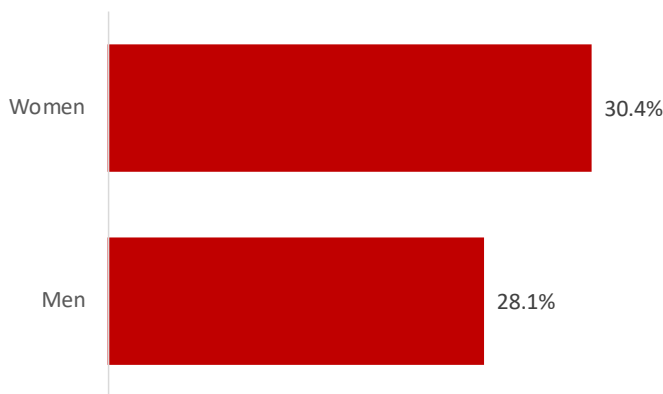


Coverage does not vary much by gender. Women workers were less likely to be covered than men: among women workers who are not self-employed, 30% were not covered by NJFLA in 2021. Among working men who are not self-employed 28% were not covered.

Share of workers not covered by NJFLA, by gender

Note: Weighted data over respondents from 2021. Sample limited to New Jersey workers in the labor force who are not self-employed. We designate individuals as 'not covered' if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University's Center for Women & Work analysis of CPS-ASEC data

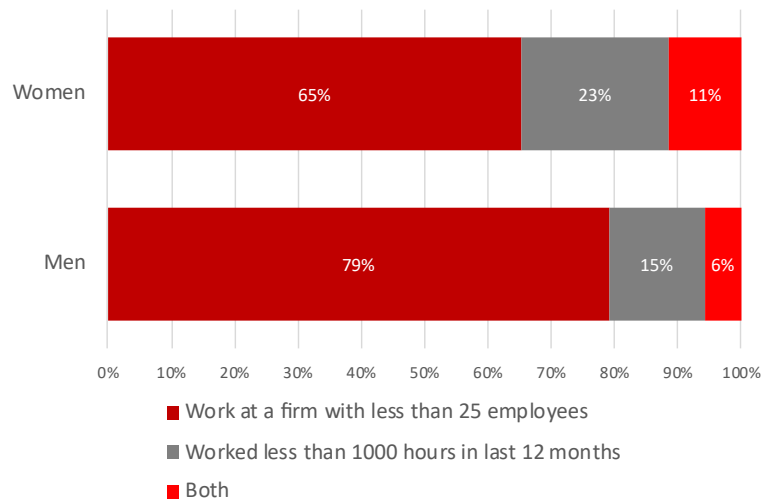


Reasons for noncoverage vary slightly by gender. For instance, 79% of men who aren't self-employed are not covered because they work for a firm with less than 25 employees. Women who are not self-employed were more likely to not be covered because of the number of hours they have worked.

Why are workers not covered by NJFLA? By gender

Note: Weighted data over respondents from 2018 to 2021. Sample limited to New Jersey workers in the labor force who are not self-employed and not covered by NJFLA. We designate individuals as ‘not covered’ if they either work at a firm with less than 25 employees or who worked less than 1000 hours per year on average and who do not work in local, state, or federal government.

Source: Rutgers University’s Center for Women & Work analysis of CPS-ASEC data



While New Jersey’s paid family leave program, NJFLI, allows most workers in the state to receive wage replacement for their leaves to bond with a new child or care for a loved one, we have shown that some of the most vulnerable workers—who are often already in precarious workplace and economic situations—do not have the job protection that would allow them to take a leave, even with wage replacement. These workers are characterized by lower incomes and work in small firms, work limited hours, or both. Those who work in small firms may also bear the additional burden of feeling that their leave may be too disruptive to their place of work and may fear the possibility of retaliation or job loss more acutely. In addition, Hispanic workers and women are among those who are less likely to be covered by NJFLA. This means that they may be among those who are unable to temporarily leave work when care crises arise, or they feel compelled to quit or drop out of the workforce entirely. Even without a crisis, these workers may be among those who feel that they are unable to take the time for regular, preventive care for their family members, like vaccination and regular doctor’s visits for managing a chronic illnesses. In sum, conversations about access to paid leave and NJFLI are incomplete without a fuller picture of the types of workers who may qualify for wage replacement but not for job protection. In this policy brief, we have outlined a descriptive picture of those who fall into that gap.

Suggested citation:

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The Center for Women and Work (CWW) engages in research, education and programming that promotes economic and social equity for women workers, their families, and communities. CWW's work focuses on addressing women's advancement in the workplace; providing technical assistance and designing programming for educators, industry, and government; and, engaging in issues that directly affect the living standards of working families in New Jersey and around the world.



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