

THE WORKING POOR FAMILIES PROJECT

POLICY BRIEF ■ SPRING 2009

ECONOMICS AND POLITICS OF WORK-FAMILY POLICY: THE CASE FOR A STATE FAMILY LEAVE INSURANCE PROGRAM

Karen White and Eileen Appelbaum¹

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Strengthening State Policies for
America's Working Poor

Millions of American breadwinners work hard to support their families. But, despite their determination and effort, many are mired in low-wage jobs that provide inadequate benefits and offer few opportunities for advancement. In fact, more than one out of four American working families now earn wages so low that they have difficulty surviving financially.²

Launched in 2002 and currently supported by the Annie E. Casey, Ford, Joyce, and Mott foundations, the Working Poor Families Project is a national initiative that works to improve these economic conditions. The project partners with state nonprofit organizations and supports their policy efforts to better prepare America's working families for a more secure economic future.

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In today's precarious economic climate, most parents need to work to sustain a family household budget. The growth in women's labor market participation, along with the increase of single parent households, creates a void in working families' ability to meet their caregiving responsibilities as the traditional supply of caring labor—women at home—is no longer readily available.

Many states have begun to recognize this and are working to enact laws to help families navigate the tensions between the demands of work and family by providing all workers with paid time off to care for themselves and family members without fear of losing pay or even their jobs. To address this issue, public policies such as family and medical leave, paid sick days, family leave insurance, and temporary disability insurance programs are being considered at the state and national levels (more on these policies below). While all of these policies are important for the well-being of working families, this policy brief focuses on the opportunities and challenges for state advocates in moving a family leave insurance initiative forward. We conclude with a number of recommendations for advocates who are working on or considering an initiative to enact a family leave insurance program in their state.

THE WORKING POOR FAMILIES PROJECT (WFPF) supports efforts of state nonprofit organizations to strengthen state policies that can help low-income workers achieve economic security and become productive participants in the economy. The WFPF encourages state advocates to focus efforts on issues related to conditions of employment, including paid leave policies. While all working families will benefit from the adoption of paid leave policies, low-income working families in particular will benefit from policies such as these – most have little or no employer-provided leave benefits and are less able to take unpaid time off to bond with a new child or care for a seriously ill family

member or to pay others for safe, quality child care, adult day care, or other family care needs.

A few states, including several with WFPF partners, are in the forefront of enacting paid leave laws such as family leave insurance. This policy brief describes these efforts and presents specific recommendations for improvement.

ROLE OF STATE IN ESTABLISHING FAMILY-FRIENDLY WORKPLACE PRACTICES

History has shown that federal and state governments play a valid and necessary role in establishing minimum employment standards such as the minimum wage and health and safety standards to protect workers. Government programs provide insurance payments to people who lose their jobs and low-cost loans to people who lose their homes. They provide nutrition assistance for the poor, insurance to offset medical costs for the elderly, and healthcare for low-income children. Most of these programs emerged during times when the economy was at its worst, and have proved essential to support working families.

States have historically played a role as effective policy innovators, testing policies that have later been adopted at the federal level. States also bring an understanding of the unique circumstances within their boundaries and a familiarity with their stakeholders. States drive federal action, sometimes insisting that policies be strengthened even after the federal government has acted. As such, an analysis of state innovation can provide real opportunities to identify and improve policies to support working families.

WHAT DO WE GET NOW?

The United States trails behind most countries in creating family friendly workplace practices. A recent study by researchers at Harvard and McGill Universities found that of over 170 countries surveyed, only four did not require paid leave for new mothers: Liberia, Papua New Guinea, Swaziland, and the United States.³ The study also

found that 145 countries provided paid sick days. The US has no such requirement. According to the latest data (National Compensation Survey, March 2008),⁴ 61 percent of private sector workers – 71 percent of full-time and 27 percent of part-time workers – had access to paid sick days. This means that two fifths of all private sector workers and nearly three-quarters of part-time employees – had no paid sick days at all.⁵

The United States requires only unpaid family and medical leave, and not all workers are covered. Efforts are underway on the federal level and in many states to enact paid sick days laws, but currently no state has enacted legislation. However, three municipalities – San Francisco, Washington, DC, and Milwaukee⁶ – have enacted paid sick days laws.

On the federal level, the Family and Medical Leave Act (FMLA) was signed into law in 1993, providing up to twelve weeks of job-protected but unpaid leave to care for their own illness, a sick family member, or to bond with a new child. Other limitations of FMLA include that it only covers workers who work for organizations with 50 or more employees in a 75 mile radius of the worksite and who worked 1,250 or more hours in the year preceding. While the policy is gender-neutral, applying equally to males and females, it only covers about half of all workers, and less than a fifth of new mothers.

On the state level, enacted leave laws represent a mixed bag of family leave benefits and who gets them, and they fall far short of what is needed to address the challenges all working families face in juggling competing work and family responsibilities.

Five states (California, New York, New Jersey, Rhode Island, and Hawaii) have a state Temporary Disability Insurance System which provides partial wage replacement for workers when they need time to care for their own illness or disability. Pregnancy is included as a disability, and thus provides some paid maternity leave coverage.

In 2002, California became the first state in the U.S. to enact family leave legislation. By expanding

its Temporary Disability Insurance program to include family leave insurance, all workers who need to take time to care for a seriously ill family member or to bond with a newborn or newly adopted child, are provided partial wage replacement when they take time. The new program was implemented in 2004, and California residents began collecting benefits in July of that year.

And in 2008, following the model adopted by California, New Jersey enacted legislation expanding its Temporary Disability Insurance program to include family leave insurance. Benefits under this program will become available in July 2009. Like California, under this program, workers who need to take time to care for a seriously ill family member or to bond with a newborn or newly adopted child, will receive partial wage replacement when they take caregiving time.

In addition, three states – Minnesota, Montana, and New Mexico – provide paid parental leave for lower-income families. And at least eight states have laws requiring private-sector employers to allow employees to use their paid sick days to care for certain sick family members (California, Connecticut, Hawaii, Maine, Maryland, Minnesota, Washington, and Wisconsin).⁷

WHAT IS FAMILY LEAVE INSURANCE?

Family leave insurance (FLI) is an employee-paid insurance program that provides partial wage replacement to workers when they need to take time to care for a seriously ill family member or to bond with a newborn or newly adopted child. Employees pay a modest amount into a state insurance fund and in return are able to draw on the fund for partial wage replacement when they need to take time to care for their family.

WHY DO WE NEED FAMILY LEAVE INSURANCE?

As the economic crisis deepens, more and more families face ever greater challenges to keep their jobs and their homes, it is even more vital to have workplace practices that allow them to be both responsible family members and productive workers. Unfortunately, today's workplace practices are badly out of sync with the needs of working families.

Seventy percent of U.S. families are headed by dual earner couples or by a single parent, and only 30 percent fit the mid-20th Century notion of a father with a full time job and a stay-at-home spouse.⁸ In today's turbulent economic environment, most working families must rely on the earnings of every available adult to make ends meet. At the same time, the demand for caregiving is growing. Parents need time to bond with their newborn or newly adopted child. A seriously ill family member needs care. And as the baby-boomer generation ages, the need for eldercare will increase and is expected to exceed available resources (home-health and nursing care) by 50 percent within the next decade.

Without access to family leave insurance, working families are forced to make a difficult decision between staying home to care for a sick family member and going without a paycheck, or risk the well-being of their family in order to keep their job. Workers whose employers are not covered or who do not qualify for job protection under the national Family and Medical Leave Act face the very real possibility that they will lose their jobs if their absence from work is triggered by an event covered by the Act. However, with a family leave insurance system, these workers would at least be able to draw partial wage replacement while providing care.

The need for family leave insurance is particularly pressing for low-income workers, most of whom have little or no employer-provided leave benefits to use in a crisis or to bond with a new child. These workers have the most difficulty in managing the challenges and responsibilities of work and family.

Women are disproportionately affected, since they hold the majority of low-wage jobs.⁹ In fact, a study by the Urban Institute reports that only four out of every ten low-income working families receive paid parental leave. Of those with paid leave, 31.8 percent receive one work-week of paid leave or less.¹⁰ Low-income workers are also less able to pay others for safe, quality child care, adult day care, or other family care needs. These workers, their children, and other family members are also more likely to be in poor health, which only compounds the challenges faced.

According to a follow-up study of the FMLA, 78 percent of employees who needed family or medical leave but didn't take it said they didn't take it because they could not afford to.¹¹ And of those who took leave but without pay, 9 percent were forced to go on public assistance while they were on leave.¹²

With the economy struggling to gain traction, policies such as family leave insurance are more important than ever. Family leave insurance is an effective job retention strategy that helps workers behave responsibly as employees and as family members. Family leave insurance enables workers to take time off from work when they need it to care for their families and offers substantial savings to employers by reducing turnover and minimizing absenteeism.

OPTIONS FOR STATE FLI POLICIES DESIGN

There are many opportunities and options available to states to adopt family leave insurance programs for their working families. There is a patchwork of state laws that provide some paid family leave benefit which can be used as models for other states. For instance, California and New Jersey, which have long-standing state temporary disability insurance funds, added family leave insurance to temporary disability insurance programs. In 2007, Washington State adopted a family leave insurance program but did not include a dedicated funding source. Since that time, implementation of the program has been delayed due to the state's budget problems.

Some of the other approaches currently under consideration:¹³

- ♦ Arizona is considering legislation to provide 5 weeks of benefits at \$250 per week to full-time workers when they need it to care for a newborn or newly adopted child, to care for a seriously ill family member, or to recover from their own serious illness.
- ♦ Massachusetts is considering legislation to provide 12 weeks of benefits at 80 percent of salary capped at \$750 per week to workers who have worked for an employer with six or more employees for at least a year, and for at least 1,250 hours.
- ♦ Minnesota is considering legislation to provide 6-26 weeks of paid parental leave for all Minnesota workers who need time off to care for a newborn or newly adopted child. Under the proposed bill, the state would reimburse employers for providing paid leave. To receive reimbursement, employers must pay at least \$200 per week to the worker, unless the pre-leave salary was \$300 or less, in which case the employer has to pay at least \$100 weekly. To receive reimbursement, leave would have to last a minimum of six weeks but up to 26 weeks. Employers would be reimbursed for half their weekly payment to their employees, up to \$250 per week.
- ♦ New York State is considering legislation that would expand New York's existing Temporary Disability Insurance (TDI) program to include paid family leave. The bill would provide up to 12 weeks of paid leave to care for a new baby or a newly adopted child, or for a seriously ill family member. The paid leave benefits would be the same as New York's current TDI benefits, equal to half of weekly wages up to a maximum of \$170 a week. The proposal calls for the extension of benefits to be paid for by an increase in employee contributions.
- ♦ Pennsylvania introduced legislation that would establish a Temporary Care Fund and

allow employees to take up to 12 weeks of paid leave per year to care for a newborn or newly-adopted child, or a seriously ill family member. Workers would receive the same weekly benefit as is available under the state's unemployment compensation program.

Additionally, some states have considered expanding their state Unemployment Insurance program (UI) laws to provide partial wage replacement for workers who need to take time to care for a newborn or newly adopted child ("Baby UI"). These efforts, however, have not gained much traction as employer groups oppose FLI and unions oppose diversion of UI funds, making this approach especially difficult (although states might want to combine administration of the two programs to save on administrative costs).

Other factors states should consider when crafting a family leave policy are the economic and political issues – how much it will cost, how it is funded, who is covered, and what constitutes "family." In considering these factors, states need to evaluate what type of program will work best for them, given the differing state dynamics and possibilities for implementation.

- ♦ **SCOPE OF COVERAGE:** Factors such as who to cover and the level of coverage are important issues when crafting model legislation. For instance, in considering who to cover, some states have opted to focus on parental leave while others have opted for both parental leave and leave to care for a sick family member. Also key to determining who to cover is whether a small business carve-out is called for and if so the scope of the carve-out, whether it be establishments of 5 or 50 employees, or some other size. These factors will affect funding mechanisms and cost estimates. Additionally, issues pertaining to the level of coverage such as number of weeks of benefit, amount of benefit, provisions for job protection, intermittent leave, and benefit limitations to counter abuse are all

MAKING IT HAPPEN IN NEW JERSEY

Legislation for paid family leave for New Jersey's working families was first pro-posed in 1996 and over the years, several different legislative proposals were put forward but none gained any traction. Then, in 2002, California passed legislation expanding its TDI to provide family leave insurance coverage, creating renewed interest and energy in moving a similar initiative forward in New Jersey.

As a first step toward policy change on the state level, state advocacy organizations came forward to form the New Jersey Time to Care Coalition, a group of over 80 diverse organizations working to win family leave insurance for all New Jersey workers. Over the course of the campaign coalition partners persistently worked to keep family leave on the forefront of New Jersey's legislative agenda and to move it forward through committee hearings and floor vote.

Coalition partners conducted research, produced fact sheets, comparison charts, and other informational material. They also conducted outreach and education through seminars, presentations, and meetings throughout the state on the need for family leave insurance. Through this work and other outreach and education activities, they were able to identify supportive small business owners and other individuals with personal stories to provide testimony at legislative meetings and to respond to the media on the benefits of and need for family leave. The coalition also commissioned a state-wide poll to demonstrate the widespread support for family leave insurance in New Jersey. Central to coalition efforts was the ability to consistently garner supportive press in all major New Jersey media outlets throughout the campaign.

On May 2, 2008, New Jersey Governor Jon Corzine signed family leave insurance into law, making New Jersey the third state in the nation to enact a family leave insurance program. Benefits will be available beginning July 1, 2009.

important to consider when creating family leave policy.

- ◆ **DEFINITION OF FAMILY:** The definition of family is a key component in a family leave proposal that includes provision to care for a sick family member. Under FMLA, family is defined as child, spouse, or parent. Many states have expanded this definition to include domestic partner, grandparent, aunt, uncle, and/or sibling.
- ◆ **COST ESTIMATES AND FUNDING MECHANISMS:** Cost estimates of a Family Leave insurance program are determined by four components – anticipated leave use, length of leave, weekly benefit amounts, and administrative costs. States will need to invest in research and analysis of these factors to determine financial viability of any proposal. States must also make decisions regarding how to fund the program – through employer contributions, employee payroll deductions, or a combination of the two.

BUILDING A WINNING CAMPAIGN

Central to any state effort is the ability to mobilize political will at the grassroots level and to build public support. By building a broad and diverse coalition, engaging in strategic messaging, conducting research, outreach, education, and polling, state advocacy organizations have proven successful in mobilizing political will and building public support for family leave policies and programs. A broad-based and diverse coalition is particularly important to a campaign for family leave in order to counter the gender bias associated with this type of program and to move the debate from a women's rights issue to a worker's rights issue.

To gain broad-based public support for a family leave insurance initiative on the state level, it is important to build a diverse coalition of state stakeholders from community, faith-based, advocacy, union, academic, and other organizations that represent or advocate for workers, their

families, the poor, children, seniors, and others and have the ability to mobilize political will on the grassroots level and to move legislation at the state level.

Perhaps the biggest challenge to advocacy groups in moving a family leave initiative forward is in countering the misinformation put forward by the business opposition. The business lobby has shown itself to be a powerful force in challenging state efforts, and advocates must be vigilant in countering these efforts through strategic messaging, sound research, and public polling. Central to efforts to counter business opposition is the need for small and large business owners in the state to publicly support the need for family leave policies as well as meet with legislators to gain their support of the legislation.

Additionally, it is important to recruit individuals with personal stories who understand the issues surrounding a family leave insurance campaign, and are willing to speak publicly in support of legislation, meet with legislators to gain their support, and provide testimony at legislative hearings.

RECOMMENDATIONS

Advocates for family leave insurance must decide what works best in their state given the differing state dynamics and issues of implementation. The following recommendations should serve only as a guide to state advocates as they move family leave insurance policies forward in their state.

GO BIG WHEN CRAFTING A POLICY PROPOSAL. The business lobbyists will most likely oppose any proposal put forward, so it is important to craft a policy proposal that fully meets the needs of workers in your state. There will be plenty of times during the legislative process when you'll be asked to make compromises in the different elements of the legislation. Also, don't negotiate with yourself – just knowing that the business lobbyists and others plan to impose limitations on the scope of the benefit should not move you to make those changes

unless absolutely necessary to actually pass family leave insurance legislation.

CONDUCT RESEARCH TO SUPPORT YOUR POLICY PROPOSAL. Research on the need for and benefits of family leave insurance in your state will add to the credibility and worthiness of your legislative campaign. Research is also a powerful tool when talking with legislators.

For instance, research was conducted in both California and New Jersey on the potential impact on small businesses of family leave insurance compared to employee turnover. In both states, the research showed that employee turnover was a bigger problem for small business owners and although it created some difficulties, for the most part, small business owners were already providing employees with family leave – they only regretted that they did not have deep enough pockets to provide wages to employees when they took the leave. Additional research was conducted in New Jersey on the need for family leave for parents of children with chronic conditions which documented the difficult decisions and financial hardships families face when having to care for a chronically ill child and work at a full-time job. Research on the number of workers with and without paid benefits is also helpful in making the argument for a family leave benefit.

COMMISSION A STATE-WIDE POLL TO SHOW SUPPORT OF YOUR POLICY PROPOSAL. This is very important in winning legislative support as well as editorial support from newspapers. Even though there have been several national polls, having a state-based poll will show legislators in your state that this is a popular initiative and that their constituents are supportive.

CREATE FACT SHEETS, POWERPOINT PRESENTATIONS, BROCHURES, AND OTHER MATERIAL. Distribute widely. Separate fact sheets should be created that are geared to different population groups that can benefit from family leave insurance.

CREATE A COMMUNICATIONS STRATEGY TO LEGISLATORS TO KEEP THEM INFORMED AND AWARE OF NEED FOR FAMILY LEAVE INSURANCE. Be creative in the kinds of communications – copies of state-

wide polls, news articles, letters from constituents, personal stories, and supportive business owners.

MEET WITH BUSINESS GROUPS TO HEAR AND ADDRESS THEIR CONCERNS. Even if this doesn't win them over, it demonstrates to the public your willingness to make this policy initiative a win-win for all.

WORKING POOR FAMILIES PROJECT RECOMMENDATIONS

- 1) Go big when crafting a policy proposal
- 2) Conduct research to support your policy proposal
- 3) Commission a state-wide poll to show support of your policy proposal
- 4) Create fact sheets, PowerPoint presentations, brochures, and other material
- 5) Create a communications strategy to legislators to keep them informed and aware of need for family leave insurance
- 6) Meet with business groups to hear and address their concerns

For questions about this policy brief or the Working Poor Families Project contact:

Brandon Roberts
robert3@starpower.net
(301) 657-1480

ENDNOTES

¹ Karen White directs the Working Families Program at the Center for Women and Work, Rutgers, The State University of New Jersey. Eileen Appelbaum is Professor II, School of Management and Labor Relations, and Director, Center for Women and Work, Rutgers, The State University of New Jersey. Thanks to Terri Boyer, Mary Gatta, Heather McKay, Deborah Povich, and Brandon Roberts for their comments on this policy brief.

² Brandon Roberts and Deborah Povich. *Still Working Hard, Still Falling Short: New Findings on the Challenges Confronting America's Working Families*, Working Poor Families Project, October 2008, p.i.

³ Heymann, Jody, Allison Earle & Jeffrey Hayes, "The Work, Family, and Equity Index: How Does the United States Measure Up?" McGill University Institute for Health and Social Policy, 2007, available online at <http://www.mcgill.ca/files/ihsp/WFEIFinal2007.pdf>.

⁴ U.S. Bureau of Labor Statistics, 2008. "National Compensation Survey: Employee Benefits in the United States", Bulletin 2715, and Natalie Kramer and Alan Zilberman, "New Definitions of Employee Access to Paid Sick Leave and Retirement Benefits in the National Compensation Survey," *Compensation and Working Conditions*, Dec. 23, 2008. www.bls.gov/opub/cwcc/cm20081219ar01p1.htm. A new definition of paid sick days access was introduced in the March 2008 survey. It now includes previously excluded plans for which no worker had made use of the benefit. As a result, the latest numbers for access to paid sick days are higher than, and not strictly comparable to, earlier numbers from this source that have been widely used in previous publications.

⁵ Ibid.

⁶ Implementation of Milwaukee's paid sick days ordinance is currently being held up by a court injunction.

⁷ National Partnership for Women & Families, 2006. "Where Families Matter: State Progress Toward Valuing America's Families." Available online at http://www.nationalpartnership.org/site/DocServer/Final_2006_Round_Up.pdf?docID=2161. Since this report was published, Maryland passed legislation allowing workers to use paid sick days to care for sick family members.

⁸ MultiState Working Families Consortium, 2007. "Family Values at Work: It's About Time! Why We Need Minimum Standards to Ensure A Family-Friendly Workplace." Available online at <http://valuefamiliesatwork.org/documents/FV@workSummary.pdf>

⁹ Jared Bernstein and Heidi Hartmann, 2000. "Defining and Characterizing the Low-Wage Labor Market," in

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¹⁰ Phillips, K.R., 2004. *Getting time off: Access to leave among working parents*. Washington, DC: The Urban Institute. Available online at: <http://www.urban.org/publications/310977.html>.

¹¹ U.S. Department of Labor. "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys." Available online at <http://www.dol.gov/esa/whd/fmla/fmla/toc.htm>.

¹² Ibid.

¹³ Compiled by the Multi-State Working Families Consortium and the National Partnership for Women & Families, May 2008. Available online at <http://www.paidfamilyleave.org/otherstates.html>