



Testimony of Vicki Shabo
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U.S. Senate Committee on Health, Education, Labor and Pensions
Hearing on *Paid Leave for Working Families: Examining Access, Options, and Impacts*

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Chair Murray, Ranking Member Burr, and members of the committee. Thank you for holding today's hearing. It's a pleasure to be here with you in person to discuss how we must apply the lessons of the COVID-19 pandemic, assess the workers' and business needs and economic trends that pre-date the pandemic and anticipate the trends and needs that we are likely to face in the future to evaluate access to paid sick time, paid family and medical leave and the Family and Medical Leave Act to ensure that – going forward – all working people can take care of themselves and their loved ones.

My name is Vicki Shabo and I am a senior fellow for paid leave policy and strategy at the Better Life Lab at New America, a think and action tank here in Washington, D.C., though the views I express here are my own. Over more than a decade, I have helped to shape federal, state and local paid sick days and paid family and medical leave policies that now provide security, stability and certainty for tens of millions of people and their loved ones.

The challenges facing women and all family caregivers did not start with COVID-19, but the pandemic has made the need for federal investments more urgent and more clear. I hope today's hearing marks the beginning of a thoughtful but expeditious legislative process that leads to the enactment of a comprehensive national paid family and medical leave program, a national paid sick days standard and much-needed updates to the Family and Medical Leave Act of 1993 (FMLA), which currently excludes more than four in 10 workers.

Several of you hail from states that have adopted paid sick days policies or paid family and medical leave programs, or both. Others of you represent states where governors have adopted paid parental or family leave for state employees. Some of you represent districts where some of the country's top employers are leading the way on implementing leave policies that go beyond the benefits offered or required by state or local laws, whether the state itself has a paid leave program or not.

Unfortunately, however, most states and employers do not guarantee paid family and medical leave to workers, and many do not provide any paid sick time to frontline or low-wage workers, which means most workers, families and businesses face great precarity. Whether a worker is faced with an impossible choice between clocking in sick and keeping their job, a son

or daughter can afford to take time away from work to hold a parent's hand through chemotherapy treatments, a parent is home to see a baby's first smile, or a person can recover from a car accident before returning to work is largely dependent on the luck of geography and employer beneficence. This uneven access to paid leave translates into unequal life opportunities and perpetuates pervasive disparities in income and wealth. Workers' lack of access to paid leave also suppresses labor force participation and, as a result, creates a drag on our economy.

In Part I of my testimony, I explain the urgency for action that the COVID-19 pandemic has exacerbated. In Part II, I discuss elements of access, evidence and policy choices related to paid sick days, paid family and medical leave and the Family and Medical Leave Act of 1993 (FMLA). I conclude in Part III with some overarching thoughts about the path forward and the direct and indirect value that adopting bold policies will have.

I. The Urgency of Now: COVID Illuminated and Exacerbated Workers' and Families' Health and Caregiving Challenges

There can be little debate that when COVID-19 hit, the country as a whole was unprepared for the unprecedented work interruptions, job losses and caregiving needs that arose. As experts like the Center for American Progress' Jocelyn Frye warned early on in the pandemic, women and people of color – especially women of color – have been hit hardest, whether because they are working on the front lines as essential workers, working from home while managing caregiving for children and older or disabled adults, or quitting work in order to navigate the health and care issues that demand their attention.¹

A. A Dire Situation for Women, People of Color and the Economy Due to Caregiving

The National Women's Law Center estimates that 4.5 million women have lost jobs overall since the start of the pandemic, and nearly two million remain unemployed; in April, all of the job gains the country saw went to men.² Workforce participation rates for women have hit 30-year lows – and women will have lost tens of billions of dollars in wages – in part because of the tremendous caregiving needs and health concerns that the pandemic wrought. Unemployment remains a considerable challenge, especially for women of color, even as the country's job growth has improved.³ A lot of attention has rightly focused on child care and school closures, but the need and the burdens run much deeper.

New national survey data from the Bipartisan Policy Center (BPC) and Morning Consult sheds light on the role that caregiving and illness played in workforce dynamics and the role that paid leave could have played in helping.⁴ For example:

- Among people who stopped working during the pandemic, 15 percent – translating to about 10.6 million workers – cited caregiving for a child or an older or ill adult as the reason. Another 8 percent left due to a personal illness.

- 57 percent of those who said caregiving impacted their ability to work and did not have access to paid family leave said the benefit would have helped them continue to work.
- 38 percent of currently unemployed workers said they would be more likely to return to work sooner if their next employer provided paid family leave, particularly unemployed parents, nearly half of whom (47 percent) said it would help them return to work sooner.

Fears of illness and family caregiving needs were cited disproportionately by workers of color as the reason they left the workforce, according to the BPC/Morning Consult crosstab data.⁵ More than one-fifth of Black and Latinx workers (22 percent) cited a fear of contracting COVID-19 at work as the reason they left the workforce, compared to 16 percent of white workers. More than one-fifth of Black workers (22 percent) and more than one-in-ten Latinx workers (12 percent) cited caregiving for a family member or relative as the reason they left workforce, compared to just 7 percent of white workers.

In a different national survey from near the beginning of the pandemic, voters overwhelmingly said that a national paid leave program would have helped the country navigate the pandemic more easily.⁶ An analysis conducted by the Urban Institute of two state paid leave programs' claims data shows that they were able to accommodate an uptick in claims at the beginning of the pandemic,⁷ suggesting that Americans' intuitions about the value of national paid leave in a crisis are likely to be true. The BPC/Morning Consult data shows that 71 percent of workers, and 87 percent of those with caregiving responsibilities and who had paid family leave at their jobs said it helped them to continue working.⁸

During the pandemic, paid sick time and paid family and medical leave were the top relief policy that voters in key states and congressional districts said they wanted, commanding support from 80 percent to more than 90 percent of voters.⁹ National polling data has consistently shown paid leave as garnering intense and high levels of support, both during and before the pandemic.¹⁰ And, just last week, new survey data in each of ten states, several of which members of this committee represent paid family and medical leave is both an intensely supported priority and commands more overall support than any other element of the President's American Families plan.¹¹

And it isn't just individuals who lament the country's lack of preparation and wish for new policies going forward: as of last fall, after the first COVID surge and before the second, two-thirds of business owners with fewer than 50 employees said they supported a national paid leave program.¹² This is consistent with levels of small business support before the pandemic,¹³ and reflects the value that paid leave policies have for businesses as well as for workers.

Investing in families' ability to support themselves and their loved ones by making care easier to receive and provide is essential to rebuilding from the pandemic and creating a vibrant, gender-inclusive economy. In fact, analysts at McKinsey predict that GDP that could grow by an estimated \$2.4 trillion beyond current expectations if federal action on paid leave and related

policies comes soon.¹⁴ Moody's analysts likewise estimate favorable effects of investing in jobs and families, including higher GDP, more jobs and lower unemployment.¹⁵

B. It's Not Just About Numbers, It's About People

But this isn't just a matter of economics. It's also about values that unite us, like love, responsibility, care and dignity – and these values too often come into conflict with the need to support one's self and one's family when care needs arise.

Congress' work on these issues is about honoring the activism of people like April Kimbrough, a home care worker who lost her job and her home when she needed to care for her adult son as he battled both kidney cancer and COVID-19, and who was compelled by this experience to help fight for the successful passage of Colorado's newly enacted paid family and medical leave program;¹⁶ the hardships and loss of the widow of Felix Trinidad, a grocery store worker in New York who died of stomach cancer eight years ago and left behind two small children because he couldn't take time off work to uncover cancer as the cause of his stomach pain until he started vomiting blood and then had to work shifts at the grocery store through chemotherapy treatments;¹⁷ and the struggles and sacrifices of small business owners like Marcia St. Hilaire-Finn, who is testifying today, and others, like Sarah Piepenburg, the owner of a small oil and vinegar store in Minnesota who fell behind on her own commercial lease and home mortgage in order to provide paid leave to an employee who had broken both arms.¹⁸

These stories are just the tip of the spear. During the pandemic, the consequences of workers' lack of access to paid leave became crystal clear as people began to share their experiences about leaving work or losing jobs, falling ill, struggling to make ends meet, struggling to provide or receive care, fearing exposing their loved ones to COVID-19, or being unable to be there for dying or ill loved ones.¹⁹ Organizations representing workers, people with serious health issues, and small businesses have a treasure trove of these stories²⁰ – and those too represent merely a small portion of the stories that exist within virtually every household in America, including mine and very likely many of yours and your colleagues.

At least some of the harm, risk and grief that has befallen workers across the country could be mitigated by universal access to paid family and medical leave and paid sick time. It would be a national tragedy if the country were to come through the pandemic without enacting comprehensive national policies.

II. Disparate Access, Deep Needs and the Interventions that the U.S. Needs

The need for a national paid leave, paid sick days and improved FMLA policies existed well before COVID and will continue well beyond. There is no doubt the market has failed to deliver the paid and unpaid leave that workers need. It is past time for national policies that reflect the needs of the U.S. workforce and their families.

A. Paid Sick Days

1. *Access and Impacts of Disparate Access to Paid Sick Days*

As of March 2020, just as the pandemic hit, U.S. Labor Department data showed that one-quarter of all workers in private firms – including four-in-ten workers in administration, waste and support for professional firms, half of low-wage workers and food service workers, more than half of part-time workers and more than seven-in-ten of the lowest wage workers – did not have a single paid sick day at their jobs.²¹ This translates into more than 30 million workers who were without a single paid sick day.²²

Over the past decade, access to paid sick days has increased by about 12 percentage points (from 63-64 percent from 2010-2015 to 75 percent in 2020).²³ That growth – and the sharpest growth, which has been among lower-wage workers since 2016 – coincides with the enactment and implementation of state and local paid sick days laws.²⁴ Still, tens of millions of workers are left behind, many of them the very same essential workers in large companies who were on the front lines of the pandemic, as well as workers in smaller firms.

For a typical worker without paid sick days, just two to three days away from work jeopardizes their ability to buy groceries for a month, buy gas, or pay utilities, and seven-and-a-half days risks their ability to pay a month's rent or mortgage.²⁵

Workers and families without paid sick days are also disproportionately Black and Latinx workers, for whom multiple sources of structural racism and economic inequality are associated with health disparities that layer on top of lack of access to paid sick time. This creates yet another factor that contributes to health and even educational equity gaps, and the pandemic has only exacerbated these challenges and disparities as well.²⁶

2. *Evidence That Paid Sick Days Are Beneficial to All*

Workers' access to paid sick days improves individual and community health and the efficient use of health services. An enormous body of research shows that: access to paid sick days is associated with higher rates of seeking preventive health services, including flu vaccination,²⁷ cancer screenings,²⁸ parents' use of preventive health care for children,²⁹ and lower worker mortality rates.³⁰ State and local paid sick days laws have been estimated to reduce community flu transmission by 11 to 16 percent by making it more possible for workers to stay home.³¹ Paid sick days are also associated with fewer workplace injuries.³² And – at a time when policymakers are looking to use government health dollars well, paid sick days are associated with a 32 percent reduction in emergency department use;³³ nearly 10 years ago, the Institute for Women's Policy Research estimated that health care expenditures could be reduced by \$1.1 billion per year by eliminating 1.3 million unnecessary emergency department visits, with nearly half of the savings coming from Medicaid, Medicare and the Children's Health Insurance Program.³⁴

Notably, access to paid sick days is not associated with negative business consequences, job loss, wage decreases or price increases that might offset some of the myriad individual and community-level benefits.³⁵ And paid sick days laws are also not associated with the “crowd out” of other forms of paid time off, including paid vacation or holidays, or the provision of health, dental or disability insurance.³⁶

3. Federal Policy Opportunities to Guarantee Access to Paid Sick Days – The Healthy Families Act

Fortunately, when COVID hit, Congress enacted an emergency paid sick leave provision as part of the Families First Coronavirus Response Act (FFCRA). From April through December 2020, workers in businesses and non-profits with fewer than 500 employees and workers in state and local governments were able to access up to 80 hours of paid sick time to quarantine, self-isolate or seek a COVID-19 diagnosis or to care for another individual with the same needs, subject to certain exceptions their employers could invoke to deny leave.³⁷ FFCRA also included a provision that permitted private employers and nonprofits to seek tax credit reimbursement from the IRS for the paid sick leave they were required to provide.³⁸

This emergency paid sick leave requirement is estimated to have prevented more than 400 COVID-19 cases per day, per state that did not already have an existing paid sick days law – or more than 15,000 COVID cases per day nationwide.³⁹ At a time when tens of thousands and then hundreds of thousands of cases were being diagnosed each day,⁴⁰ paid sick days as a prevention tool was meaningful. The impacts could have been much greater had the law applied to workers in workplaces of all sizes and included more limited or no exemptions rather than excluding between 50 and 75 percent of the workforce.⁴¹ The U.S. Department of Labor could also have engaged in more robust outreach and education early on rather than ramping up these efforts only after a DOL inspector general’s report called for a greater emphasis on planning and evaluation of outreach activities and the agency’s handling of incoming requests for help.⁴²

At the beginning of 2021 – as daily COVID-19 cases were reaching about 200,000 confirmed cases per day – federal policy reverted to its prior no-mandate status with respect to requiring employers to provide paid sick days. At the end of the December 2020, the coronavirus relief package Congress passed continued the availability of paid sick leave tax credit reimbursements for employers that voluntarily continued to make FFCRA-type emergency paid sick leave available but failed to extend the mandate.

Likewise, the American Rescue Plan (ARP) – because of the reconciliation process used to pass the law – further extended federal spending via expanded tax credits and made them available through September 2021. My understanding is that the Biden-Harris administration is working with community partners to ensure employers know these credits are available in order to expand workers’ access to paid sick time for COVID-related purposes.

The ARP improved on the previous law by including the availability of tax credits for allowing workers to take leave for vaccinations and recovery from vaccination, as well as 12 weeks of leave for COVID-19 related serious health and family caregiving issues in addition to the time previously permitted to care for children whose school or child care arrangements were closed, virtual or unavailable. It also included a provision that requires employers to offer the same level of benefits to all employees, so that lower-wage and part-time workers are not left behind.

Although I appreciate employers like Ms. St. Hilaire-Finn, who have been able to make use of those tax credits to ensure her workers have access to COVID paid sick leave when they need it, Congress' failure to extend and expand the requirement that workers be able to access paid sick leave, especially last December, was contrary to individual and public health needs.

The need for COVID paid sick leave will be with us for a while longer, and all the reasons workers needed paid sick time prior to the pandemic remain. In light of all the evidence showing the value of paid sick time and the lack of any evidence of harm when paid sick leave mandates are enacted, there is literally no fact-based reason to delay the adoption of a paid sick days standard like Senator Murray's bill, the Healthy Families Act (S. 1195), which would allow workers to earn up to seven paid sick or "safe" days each year. This is a standard we can build on in the event a new pandemic or public health emergency strikes and, for more routine needs, will provide new paid sick days access to more than 30 million workers.

Congress should not delay action. Since the pandemic hit, three new states – New York, Colorado and New Mexico – have adopted permanent paid sick days laws and interest elsewhere continues to grow. These three new states join nearly a dozen other states and two dozen localities in creating baseline earned paid sick days standards that reflect the needs of workers and their families.⁴³ The rest of the country should not be left behind. It is time for a national standard that continues to allow states and localities to do better but that, at the very least, assures baseline protections for everyone.⁴⁴

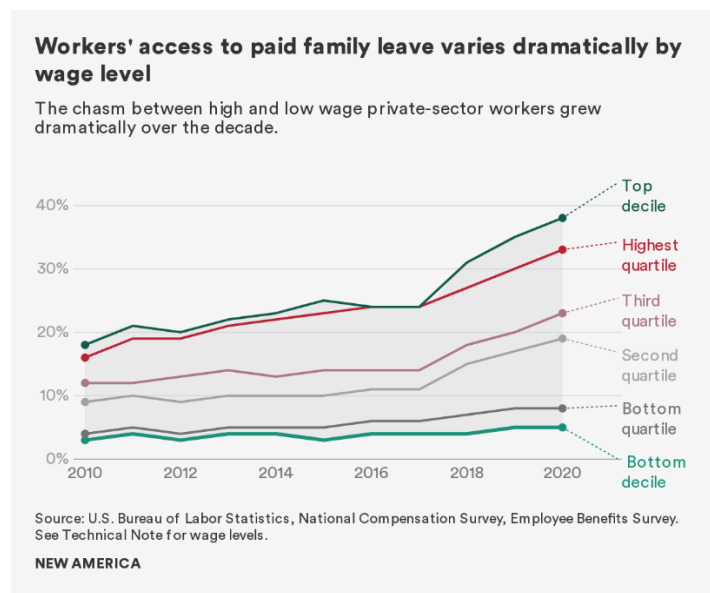
B. Paid Family and Medical Leave

The COVID-19 pandemic illuminated longstanding challenges workers face in caring for children, their own serious health issue or serious health issues of loved ones. And, as we move past the immediate COVID-19 pandemic, people across the country have pre-existing health and care needs and anticipated future needs. Declines in birth rates, the rapid aging of the population and patterns of job sector growth in industries and occupations that do not offer paid leave benefits that colleagues and I said made paid leave urgent three years ago create equal or greater urgency for action now as before.⁴⁵ In addition, a whole new set of workers and family caregivers will need to deal with long-lasting effects of COVID-19. This only intensifies the need for a national paid family and medical leave program so that workers and businesses have a predictable, certain means of accessing paid leave when personal and family caregiving needs arise.

1. Disparate Access to Paid Family and Medical Leave and Impacts of the Status Quo

In March of 2020, just as the pandemic hit, just one in five private sector workers (20 percent) had access to paid family leave to care for a new child or a seriously ill loved one through their employers.⁴⁶ Just two in five (42 percent) had access to employer-provided temporary disability insurance to provide income support during a personal medical leave lasting several weeks to a few months.⁴⁷

These overall numbers mask dramatic disparities in access to paid family leave. Workers in the highest decile of earners (those earning \$49.04 per hour or more) are 7.6 times more likely to have paid family leave than those in the lowest decile (those earning less than \$11 per hour) (38 percent vs. 5 percent). And while access to paid family leave has risen by 10 percentage points (from 10 percent to 20 percent of workers from 2010 to 2020), disparities are growing. Over the past 10 years, access for high wage workers climbed 20 percentage points, while for low wage workers, it inched up by 2 points.⁴⁸ Importantly, disparities also exist within firms, where some or most workers are provided access to benefits, but others are excluded.⁴⁹



Workers' access to employer-provided temporary disability insurance also differs dramatically by wage level (70 percent of the top decile of workers in 2020, compared to 8 percent of the workers in the lowest decile).⁵⁰ And the small amount of net growth in access over the past decade (3 percentage points) has been concentrated entirely among middle- and higher-wage workers, with those at the top seeing the biggest jumps (a 9-percentage point increase among the top-decile of wage earners).⁵¹ In fact, access to temporary disability insurance *dropped by a net of 1 percentage point* (from 18 percent to 17 percent) among workers in the lowest quartile of earners and by a *whopping 6 points* among workers in the lowest decile (declining from 14 percent with access to just 8 percent).⁵²

The inability to access paid family and medical leave poses yet another structural barrier for people who already face many others. As with paid sick days, the very people who are least likely to have access to paid leave are also least likely to have savings or other resources to rely on. Workers who do not have access to paid leave are disproportionately people who work in low wage jobs and who have little job security.⁵³ They are disproportionately people of color who, due to structural racism in housing, employment, and access to capital, tend to have lower levels of wealth, and experience greater challenges in the event of a job loss.⁵⁴ They are child care and elder care workers who cannot afford to take time away from their jobs to care for their own loved ones – and who also may not be able to afford to pay others to provide care. For women of color, the intersecting effects of the gender-based wage gap, the racial wealth gap, and employment discrimination all contribute to an increased risk of financial insecurity that is exacerbated by the intergenerational family caregiving responsibilities that disproportionately fall on them.⁵⁵

This is not just a low-wage worker issue. Many middle- and even higher-wage workers must cobble together vacation, sick and personal time because they are among the 80 percent of workers without designated paid family leave, or the nearly 60 percent without temporary disability insurance. Those with temporary disability insurance must navigate the requirements of applying for benefits to supplement an unpaid FMLA leave, perhaps dealing with delays or questions from insurers and disability management administrators that take months to answer. And many face the scorn of supervisors who balk at providing the paid time off that a company touts access to on paper. National policy changes would tangibly improve their lives and change our country's culture.

In addition, the need for family caregiving leave will become more acute. Already, as of 2020, 53 million people provided unpaid care to family members, and six-in-ten family caregivers also have paying jobs.⁵⁶ An estimated 36 million working age adults lived with a family member with a disability, as of 2017.⁵⁷ The majority of military family caregivers – and more than three-quarters of caregivers for post-9/11 wounded warriors – are also in the labor force.⁵⁸ Caregiving leave will become increasingly important with generational shifts as the large Baby Boomer population ages, because there are fewer younger people to care for them.⁵⁹

In particular, research released in November 2019 by the National Alliance for Caregiving and Caring Across Generations chronicles the challenges facing the country's 11 million "sandwich" generation caregivers, half of whom (49 percent) are millennials caring for a young child as well for an older child with special needs or an older loved one.⁶⁰ This study finds that, although most millennial caregivers work, they are unlikely to have workplace benefits like paid leave or flexible hours. Most report at least one work effect, such as needing to go in late or leave early, taking a leave of absence to care for a loved one, cutting back on hours, or turning down a promotion.⁶¹ The care needs that most sandwich generation caregivers describe are long-term conditions (55 percent); their care recipients are most often in their 60s and are likely to require care for many years.⁶²

Research on the difficulties caregivers may have with stress, burnout and inflexible workplaces in the absence of policy and culture changes could mean that long-term family caregivers will increasingly find it difficult to continue to work and be unable to seize opportunities for advancement, leading to substantially diminished financial security during their own retirement. For example, research from AARP and the Met Life Mature Market Institute published nearly a decade ago, shows that adults 50+ suffered an average loss in lifetime earnings and retirement security of more than \$303,000 when they left a job to care for an aging parent.⁶³ The retirement security and income effects must be even greater now. All of these trends create urgency in developing policies that support working family caregivers, and paid leave is among the most critical.

The country's failure to effectively address paid leave gaps has macro-economic consequences in terms of reduced GDP and lower labor force participation among women.⁶⁴ Prior to COVID-19, families lost an estimated \$22.5 billion in income each year due to inadequate or absent paid leave,⁶⁵ which means less money circulating in the economy.

Too often, critics ask how can we afford a national paid family and medical leave program, but the truth is that we're bearing enormous costs of the status quo, where more than 100 million workers – and the millions more who rely on them for financial and caregiving support – do not have paid family leave now.

2. Evidence that Paid Leave Works

State policymakers, advocates, businesses and workers recognize the harm caused by the status quo and the value of a comprehensive, sustainable baseline paid leave program. As a result, the state paid leave landscape is changing rapidly and is creating demand to address America's paid leave failures at the national level. There are now nine states and the District of Columbia that have implemented or will soon implement paid family and medical leave programs for the workers in their states,⁶⁶ which collectively house an estimated one-quarter of the U.S. population. These are:

- California (2002 enactment, 2004 implementation; multiple subsequent legislatively-adopted improvements)
- New Jersey (2008 enactment, 2009 implementation, with 2019 legislative improvements implemented in 2019 and 2020)
- Rhode Island (2013 enactment, 2014 implementation)
- New York (2016 enactment, 2018-2021 phased-in implementation to ramp up benefit levels and duration)
- Washington (2017 enactment, January 2020 implementation of benefit payments)
- District of Columbia (2017 enactment, July 2020 implementation of benefit payments)
- Massachusetts (2018 enactment, 2021 implementation of benefit payments in two phases)
- Connecticut (2019 enactment, 2022 implementation of benefit payments)

- Oregon (2019 enactment, 2023 implementation of benefit payments)
- Colorado (2020 enactment by ballot initiative, 2024 implementation of benefit payments)

Notably, paid leave innovation has continued throughout the pandemic. Washington’s program, which began delivering benefits in January 2020 just before Washington state became an early COVID-19 epicenter, had a successful first year.⁶⁷ The District of Columbia and Massachusetts each implemented their programs on time, in July 2020 and January 2021, respectively; Massachusetts’ implementation will be complete this July when family caregiving benefits become available, on schedule. Connecticut and Oregon are on track to implement their programs in 2022 and 2023, respectively. And, in November of last year, Colorado became the first state to pass a paid family and medical leave program by ballot measure, with 57 percent of Colorado voters approving a new statewide paid leave program that will begin to collect revenue in 2023 and pay benefits to eligible workers with qualifying needs in 2024.⁶⁸ Several other states, including Delaware and Virginia, are actively considering new paid leave programs.

An important element of passing several of these laws is the cooperation among unusual allies on both policy development and passage. Tireless years of advocacy by organizations representing women and children, advocates seeking racial and economic justice, health care access, caregiver support, and stronger labor protections, and the incredible testimonies of workers who had themselves been affected by lack of access to paid leave created ripe moments for change. Small business voices were critical in helping to show the value of paid leave as a workforce benefit and as a financial stabilizer. When progress began to look inevitable in Washington, Massachusetts and Oregon, traditionally-opposed business groups were instrumental in striking agreements with broad advocacy coalitions and lawmakers on both sides of the aisle to develop bills that passed with bipartisan support.⁶⁹ Federal policy could follow the same path.

(a) State Policy Design – and Implications for Federal Policy

State paid family and medical programs provide a basic construct or roadmap for federal policy – the creation of a comprehensive paid family and medical leave program that is administered by a public agency, funded with tax dollars, and offers adequate wage replacement for a meaningful period of time to workers with a serious family or personal health or caregiving need. State policy experience also reveals the importance of policy elements that improve the effectiveness of policies in meeting the needs of workers across the wage spectrum such as sliding scale wage replacement and job protection. They also dispel concerns about the impact of paid family and medical leave policies on businesses and show the value of public paid leave benefits, especially for smaller enterprises.

Existing state paid leave programs cover leave to address an employee’s own serious health issue, to care for a seriously ill, injured or disabled loved one, and to care for a newborn, adopted, or newly-placed foster child; some states cover leave for additional family and medical

needs, including military caregiving and qualifying exigency leaves or situations related to domestic violence, stalking and sexual assault. Each program provides wage replacement based on prior earnings up to a cap; the six newest laws do so on a sliding scale, so that lower-wage workers receive a higher share of their typical wages. Sliding scale replacement rates make these programs more accessible and affordable. Each state program also covers caregiving for family members beyond parents, spouses and children such as grandparents, while the newest laws also recognize that sometimes our closest loved ones are chosen family, siblings, and grandchildren.⁷⁰

Some programs also incorporate critically-important employment protections that reach some or all of the 44 percent of workers who are not covered by FMLA job protection and health insurance continuation provisions.⁷¹ These elements promote the flexibility and utility of paid leave benefits for workers across gender, race, job and income.

(b) Paid Leave Policy Outcomes

State paid leave programs, along with private sector practice, provide important insights on the policy outcomes paid leave can provide. With each new study on paid leave, we are learning more about how to most effectively design programs and outreach activities that maximize a policy's positive impacts while minimizing the possibility of unintended consequences. Equally important as program design is implementation, promotion and enforcement – and how partnerships among government, the private sector, community-based organizations and trusted intermediaries can help promote appropriate program use.⁷²

The positive outcomes we can expect to see from a well-designed, sustainably funded and appropriately implemented national paid family and medical leave program include, but are not limited to:

1. **Improved labor force attachment and increased earnings for women.** California's paid family leave program was enacted in 2002, started paying benefits in 2004, and has been expanded multiple times since. Numerous studies of California's program suggest that women's labor force attachment, hours worked, and earnings increase when paid family leave is available for the arrival of a child⁷³ and for family caregiving.⁷⁴ The effects on duration of leave-taking are most pronounced for lower-wage women and women of color,⁷⁵ contributing to the possibility of helping to close the wage gap and promote women's workplace advancement over time. Some longer-term labor force outcomes may be skewed toward higher-income women, but these can be smoothed over time with policy updates.⁷⁶

Findings on workforce attachment improvements and earnings from California are consistent with studies that find that women who took paid leave through state TDI programs or employer policies were more likely to be working and to have higher earnings in the year after their child's birth than women who did not.⁷⁷ Nationally, it is

estimated that policies like paid leave, which would improve women's labor force participation rates, could add \$500 billion to the United States economy.⁷⁸

2. **Better health and health care utilization for children.** A recent study found that the implementation of paid family leave in California resulted in a significant reduction in late vaccinations among children, particularly among children from low-income families.⁷⁹ This adds to a body of research about the effects of paid leave on health outcomes. Other studies have found a relationship between California's paid leave implementation and reduced risk of head trauma for infants (likely due to reduced parental stress)⁸⁰ as well as the role generally of paid leave in reducing the length of hospital stays for critically ill older children.⁸¹ Parents who take paid leave are also more attuned to their child's cues, which improves children's neurological development and behavior over time.⁸² But in order to make the most of the bonding time that a paid leave law makes available, or to make the use of paid leave for family care more accessible for working parents, programs must offer wage replacement that allows workers to meet their basic expenses and job protections so that the use of benefits from a public paid leave fund does not come at the expense of losing a job.
3. **More engagement from men in the lives of their children and families.** California's paid family leave program, now in its 17th year, shows how policy and culture change can reinforce one another. When California's program was first implemented, men comprised less than one-sixth of parental leave claimants. By 2016, they comprised 37.5 percent of paid leave users in the state. In Rhode Island, too, men are just over one-third of paid parental leave users (36.7 percent).⁸³ It will be interesting to see how the pandemic affects the gendered patterns of leave taking going forward.

Policy changes help drive cultural changes, according to experts. As state laws have created paid leave benefits for people of all genders, some employers' practices in other jurisdictions have followed suit. A national standard would continue this trend, with benefits for men and their children, a more gender-equal division of household duties, diminished workplace stereotypes, and improvements in women's earnings and opportunities.⁸⁴ Public opinion studies shows that men want and expect to need to be able to care for their children and older loved ones to the same extent as women do, but that financial constraints, fears about work-related backlash and societal perceptions often hold them back.⁸⁵ A well-designed national paid family and medical leave law could help to remove those barriers.

4. **Better outcomes and reduced health care costs for ill, injured or disabled loved ones and more economic security for their caregivers.** California's paid family leave program has been shown to reduce nursing home utilization by 11 percent, in part because family caregivers are more available to provide care.⁸⁶ Access to paid leave in California also shows labor force participation benefits for caregivers.⁸⁷ For workers themselves, access to paid medical leave may hasten a return to work, depending on the

individual's condition, especially when paid leave benefits are supplemented by assistance in return to work strategies.⁸⁸

5. **Savings to other programs funded through general revenues.** Too often, critics of new spending focus on what paid family and medical leave will cost, rather than on the costs already borne by workers and society as a result of the status quo. Among the potential for direct savings to other programs, paid leave can reduce nursing home costs as noted above, which are often paid for by Medicaid. Research also shows a relationship between access to paid family and medical leave and reduced use of SNAP and other forms of public assistance.⁸⁹ Promoting financial independence for workers and families, using government resources efficiently and reducing direct and indirect costs to taxpayers are all essential reasons to invest in paid leave.
6. **Benefits for businesses, especially small businesses.** In California, New Jersey, and Rhode Island, the three states with the longest-standing paid family leave programs, researchers have consistently found that the concerns business representatives expressed prior to the laws' passage were unfounded. When the U.S. Department of Labor issued a Request for Information (RFI) on paid family and medical leave in 2020, the submissions from businesses and business interests were overwhelmingly positive.⁹⁰

Research shows that employers have not been unduly challenged or harmed by the policies adopted in states. In fact, small businesses are generally supportive of those states' laws. In California, researchers found that the vast majority of employers have seen a positive effect or no effect on employee productivity, profitability and performance – and smaller businesses see even more positive or neutral effects of the law than larger businesses.⁹¹ Many businesses reported cost-savings, likely by coordinating their benefits with the state plan.⁹²

Even the Society for Human Resource Management (SHRM), a chief opponent of paid family leave before it was passed in California, issued a report finding that employers' concerns about the program had "not been realized" and that the law created "relatively few" new burdens for employers.⁹³ A report prepared on behalf of the New Jersey Business and Industry Association also found that the majority of both small and large New Jersey businesses adjusted easily to the state's law and experienced no effects on business profitability, performance or employee productivity.⁹⁴ This is consistent with additional qualitative research conducted among a cross-section of New Jersey employers.⁹⁵

In Rhode Island, where business supporters were important allies in passing the paid leave law, research shows that businesses in key industries have adjusted easily. A study of small- and medium-sized food service and manufacturing employers in Rhode Island by researchers at Columbia Business School found no negative effects on employee

workflow, productivity or attendance, and that 61 percent of employers surveyed supported the law.⁹⁶

In New York, a new study on businesses with fewer than 100 employees shows that the state's paid leave program boosted leave-taking among both women and men, enabled businesses to better able to handle longer employee absences, is supported by a majority of employers, and did not have any negative effects on employee quits, unscheduled absences, productivity, cooperation, commitment or teamwork.⁹⁷

7. **Importance of clear communications, outreach and engagement.** Newer research is demonstrating not just the importance of policy design, but also the importance of how government communicates with workers and employers about the programs that exist. Washington State's program was implemented over a swift 18-month period from scratch. The state first prioritized communications with employers about their obligations under the program and the benefits it might provide to them, and then shifted its attention to workers. The program began paying benefits less than two months before Washington state became the first epicenter of the coronavirus pandemic. The Washington State Employment Security Department's report to the state legislature on the program's first year identified key insights regarding outreach and communications to both businesses and workers; the report concluded that "it is clear from the immediate and high demand for the program that our goals to raise awareness about the program statewide and provide an accessible benefit had a significant impact," as the program served workers across the state across gender, age, occupation, wage level and region.⁹⁸ States with older programs are also looking closely at how well their programs serve populations most in need. A study of New Jersey's paid family leave program conducted by my colleagues at New America revealed important lessons about needed improvements in benefits delivery, program application processes, consumer and business outreach and customer service, as well as aspects of program design like wage replacement and job protection.⁹⁹

3. *Federal Policy Opportunity – Enacting a National Program to Make Paid Leave Accessible for All*

Congressional action now to create a national paid leave program would ensure that the country never again faces a major national emergency like a pandemic without a paid leave standard in place, and that families do not face routine emergencies and serious personal and family care needs without paid family and medical leave. Hundreds of businesses,¹⁰⁰ business experts,¹⁰¹ and organizations¹⁰² are calling on Congress to act swiftly.

Congress has taken greater steps toward paid leave over the last few years than ever before. As of 2020, federal workers have 12 weeks of paid parental leave to use when a child is born or adopted. This was a central bipartisan victory in the 2019 National Defense Authorization Act.

In addition, the 2017 tax reform law sought to incentivize companies to provide paid leave to their middle- and lower-wage workers. Unfortunately, as the trends in paid family leave access show, that attempt appears to have been ineffective. While access did increase for workers across all wage levels between 2018 and 2020, increases in access for workers in each wage quartile is linear, with the greatest increases in access at the top of the wage ladder. There was a 7 percentage point jump in access for workers in the top decile of earners, whose employers could not have received a tax credit for providing paid leave. Conversely, there was only a 1 percentage point increase for the lowest wage workers. Congress should take the funds allocated to the paid leave tax credit, which was recently reauthorized through 2025, and dedicate them to a much bigger and bolder program that will guarantee paid family and medical leave for all.

The comprehensive paid family and medical leave proposal in the President's American Families Plan and other legislative proposals like the FAMILY Act and House Chairman Richard Neal's new proposal all present a path forward that builds on models and lessons from 10 states, including D.C. The country must make a permanent commitment to invest in paid family and medical leave for all working people, no matter where they live or work, their job, or their serious personal or family care need.

A well-designed paid family and medical leave program can help to build a workforce characterized by greater gender, economic, and racial justice; a country where children are healthier and have greater opportunities for success; a culture where workplaces honor workers' commitments to their families without adverse effects on labor force participation, wages or opportunities for advancement; communities where older and ill people and people with disabilities receive the care they need; and a business environment where businesses of all sizes can thrive. A well-designed paid leave program can also help catalyze a more vibrant and competitive national economy in which traditional work, entrepreneurship, gig work, and unpaid care work are equally valued. To meet the promise of the policy and deliver security to working people, a national paid leave program must include:

- **Eligibility that rewards work, but also recognizes that workers may endure hardships that lead to work interruptions.** Eligibility for paid leave should depend on one's work history and attachment to the workforce, while providing flexibility for workers who may have recently lost a job just as a caregiving need became acute or imminent as well as for younger workers whose work history may be short. A tenure or hours-worked requirement with a particular employer should not be an eligibility condition to ensure that workers affected by recessions, hours cuts or part-time work are eligible.
- **Comprehensive 12-week paid family and medical leave.** Congress should replicate state models by creating a universal national program that guarantees paid leave for at least 12 weeks to all working people and covers at least the full range of reasons included in the Family and Medical Leave Act (FMLA), so that serious personal and family health and care needs as well as leave to care for new children and wounded

servicemembers are included. The president has proposed an approach to phase in benefits over a 10-year period, and his proposal includes two other uses for paid leave as well (“safe leave” and a few days of bereavement leave). Other proposals, such as the FAMILY Act (S. 248) and a draft proposal from House Ways & Means committee chairman, Richard Neal, would get to 12 weeks for all reasons in the first year of a program. Duration hinges on the level of public investment Congress deems it appropriate to make and acting swiftly to get to 12 weeks would be helpful in creating certainty for workers and businesses alike – but not at the cost of eliminating or paring back other program features.

- **Meaningful wage replacement.** The wage replacement provided to low- and middle-wage workers receive should be as close to their usual earnings as possible. This is a central lesson of state programs, a finding from forthcoming research among service sector workers in Washington state, and a key finding of new research based on national modeling with an eye toward racial equity.¹⁰³ It is also an anecdotal finding from the country’s experiment with the FFCRA emergency paid sick and family leave, which provided two-thirds of a worker’s typical wages for COVID-related family care during quarantine or isolation and for child care leave. With respect to FFCRA leave, Dreama James, a fast food worker from Georgia, recently said she was grateful for the FFCRA child care leave, but that it was hard to get by on two-thirds of pay.¹⁰⁴ A mother interviewed for a recent feature story noted that, with only two-thirds of her husband’s pay coming in when both she and her husband took leave to care for their two special-needs children as they navigated virtual school, the family had to budget “even harder” and needed food stamps and food assistance to get through the winter.¹⁰⁵ Both the President’s plan and the Neal plan would provide 80 and 85 percent of a low-wage worker’s typical wages, up to a cap of \$4,000 per month and this should be incorporated into any federal proposal.
- **Inclusive range of family members.** The range of family members for whom one can provide care should be broader than FMLA’s designation of parents, spouses and children to include extended and chosen family. This reflects state practice as well, disproportionately, as the needs of communities of color, people with disabilities, older people and LGBTQ communities. Congress could also consider whether to allow a second adult to provide care for a newly born or adopted child in circumstances where a second parent is unavailable to provide care.
- **Employment protections.** Employment protections must accompany wage replacement to help ensure that workers who are excluded from the FMLA are not dissuaded from using paid leave for fear of losing their jobs or facing retaliation. I discuss the FMLA’s needed updates in the next section of this testimony.
- **Worker and employer outreach and education, and the efficient delivery of benefits.** A paid leave benefit will only be useful if workers know about the program and

employers encourage workers to use it. In addition, the program will be most useful, especially to low-wage workers, if application processes are clear and claims and benefits are processed in a timely way. A program must be resourced well enough to ensure these elements of the program are achieved.

C. Updating and Expanding the Family and Medical Leave Act (FMLA) – and Never Implementing a Paid Leave Benefit that Parallels the FMLA’s Current Parameters

As noted above, the right to return to one’s job and continue to receive health benefits is an important corollary to paid leave. Job protection provides workers the security to use the paid leave benefits they need.

1. Access to FMLA and Exclusions

The Family and Medical Leave Act was the country’s first law to recognize the intersection of worker’s professional and personal lives. Since its implementation in 1993, it has been used an estimated 300 million times by workers across the country to confer job security and the continuation of health benefits during a family or medical leave.¹⁰⁶ The FMLA established the idea that workers need leave from work for a variety of serious reasons and, in fact, most people who use the FMLA do so for their own serious health issue (51 percent), followed by those caring for a new child (25 percent) and caring for a loved one, including a military-service caregiving need (19 percent).¹⁰⁷

Unfortunately, the promise of the FMLA does not extend to all working people. With respect to private companies and non-profit organizations, the FMLA only applies to establishments with 50 or more employees within a 75-mile radius, and this coverage rule means that about one-third of the workforce is not covered by the FMLA; in addition, eligibility requires a worker to have at least one year of job tenure with their employer and to have worked 1,250 hours within the past year. The range of family members for whom one can care is limited to only parents, spouses, minor children and adult children incapable of self-care.¹⁰⁸

As of 2018, the Family and Medical Leave Act’s job protection and health insurance continuation protections covered just 56 percent of the workforce (down from 59 percent in 2012 and 62 percent in 2000), according to survey data commissioned by the U.S. Department of Labor.¹⁰⁹ Black and Latinx workers, lower-wage workers and single parents are disproportionately excluded because they are concentrated in smaller establishments, did not meet the employee tenure or hours requirement, or both.¹¹⁰ Some estimates of FMLA eligibility, based on the 2012 surveys, find that an even smaller share of the workforce is eligible for unpaid FMLA leave (as low as 46 percent, compared to the 59 percent identified in a DOL-commissioned 2012 survey).¹¹¹ In light of the unprecedented work interruptions the pandemic has wrought, coverage now and for some time to come will be even more limited for these same constituencies and women.

2. Evidence Shows the Need to Expand FMLA and Make It Consistent with Paid Leave Benefits

State experience shows that the gap between access to pay and access to employment protections has reduced paid leave take-up among lower-wage workers. Based on this finding, states like Rhode Island, New York and Massachusetts have job protection built into their paid family leave programs as will Connecticut, Oregon and Colorado, when their programs begin to provide benefits; other states have expanded their state version of the FMLA to be more inclusive.¹¹² There is no evidence of harm to small businesses from these expansions, including in Rhode Island and New York, which have now been in operation for several years and, in fact as noted in above, small businesses in these states have generally favorable impressions of the state paid leave programs.¹¹³

In addition, the limited definition of family in the FMLA means some workers are unable to provide care to a loved one. Fourteen percent of workers who needed but did not take a leave in 2018 said their intended care recipient was not covered; similarly 14 percent of employers at FMLA-covered worksites said they denied a claim for the same reason.¹¹⁴ In some states, paid leave programs have been expanded to cover more family members but separate and parallel job protection laws have not, leaving workers vulnerable to job loss if they decide to use paid leave benefits.¹¹⁵

3. Federal Policy Recommendations – Expand Coverage and Do Not Replicate Inequities

Because of the inequitable application of the FMLA and because of the link between utility of paid leave benefits and the job protections offered by FMLA, Congress must expand job protection to match paid leave benefits so that workers can use the paid leave that will be made available. It can do so either within a paid leave program itself or, alternatively, by updating the FMLA to parallel the eligibility, coverage and uses of the paid leave program.

Moreover, some business interests are urging Congress to use FMLA eligibility and coverage criteria to craft a paid leave benefit. To do so would perpetuate inequities in access and coverage and would leave behind tens of millions of workers who need both paid and unpaid, job protected leave.

In addition, Congress should dedicate more resources to FMLA outreach and enforcement. Even workers who are covered by the FMLA fear negative employment consequences and either forgo leave or take a leave that is shorter than they need. This is especially true for low-wage workers surveyed for the DOL survey, as well as by service workers who were included in a large national survey for a forthcoming report by researchers from Harvard and the University of California.¹¹⁶

National data on employer leave practices have also shown consistently that employers often do not offer all the leave the FMLA requires; up to 25 percent of covered employers may be

non-compliant.¹¹⁷ DOL should do more employer engagement and more enforcement, and Congress should be wary of leave benefits that are tied directly to employers without federal oversight.

III. Concluding Thoughts

As Congress evaluates priorities to build a more robust, inclusive and vibrant economy, it must act to expand access to paid sick time and to make job-protected paid family and medical leave accessible to all working people, no matter where they live, work, their job or their serious care or health need.

We saw three things over the past year:

One, workers and families across the country in every community, no matter their circumstances are struggling in one or more ways with work, family and care. The consequences of these challenges have exacerbated existing disparities by gender, race, job type and wage level.

Two, the care and health needs people face have implications that reach far beyond the four walls of one's home, to include community- and country-wide effects on health and the economy. The individual solutions we have patched together for too long are insufficient.

And three, Congress – like policymakers in early-adopter paid leave states – has the capacity to make public investments in policies and systems that support the financial security of workers and businesses, and to do so in ways that make a tangible, meaningful difference in people's lives.

I urge you to carry these lessons forward, to be bold and responsive, and to examine the costs of the status quo and the benefits of taking action on the paid leave policies that working families have needed for decades.

I urge you not to enact half-measures or to constrain policy interventions in ways that exacerbate inequality and diminish public trust. Strong and comprehensive policies that are implemented effectively will show your constituents, especially those who are among the 100 million workers without paid family leave now and the loved ones who rely on them, that federal policies can touch and improve their lives in very direct and personal ways.

I look forward to providing any technical expertise or assistance you or your staff need during this critical period of recovery and rebuilding.

Thank you.

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