

NEW YORK STATE BAR ASSOCIATION
Resolution Adopted by House of Delegates
November 7, 2015

WHEREAS, under current law workers who need to take a leave of absence from work to attend to a personal or family medical emergency or care for a newborn or adopted child are not entitled to paid leave; and

WHEREAS, federal legislation has been proposed to establish an independent trust fund to provide paid leave benefits; and

WHEREAS, the New York State Bar Association's Committee on Women in the Law has issued a report supporting the enactment of the Family and Medical Insurance Leave Act;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association supports legislation to provide paid leave benefits; and it is

FURTHER RESOLVED, that the New York State Bar Association approves the report and recommendations of the Committee on Women in the Law; and it is

FURTHER RESOLVED, that the officers of the Association are hereby authorized to take such other and further action as may be necessary to implement this resolution.

MEMORANDUM IN SUPPORT

NYSBA's Committee on Women in the Law Supports the Passage of the Family and Medical Insurance Leave Act: S786 of 2015 by Senator Gillibrand¹

This report was approved by the NYSBA House of Delegates on November 7, 2015.

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Overview

The New York State Bar Association's (NYSBA) Committee on Women in the Law (CWIL) strongly recommends that the NYSBA's Executive Committee and House of Delegates support the proposed Family and Medical Insurance Leave Act, Bill S. 786 (S. 786), that would provide workers with family and medical leave insurance benefit payments when a family or medical need arises.²

Traditionally, women have been the primary caregivers in our country. However, with more than half of all women in the U.S. workforce today, the rapidly aging U.S. population, and generational workforce shifts the need for our country to revisit and address family and medical leave is essential. The Family and Medical Insurance Leave Act is a timely, pragmatic and useful strategic solution in the development of a national uniform strategy and business planning approach that supports businesses and the U.S. workforce of today and tomorrow.

Legislative Summary

The Family and Medical Insurance Leave Act (the "Family Act") would:

- 1) Provide workers with up to **12 weeks of partial income when they take time** for their own serious health condition, including pregnancy and childbirth recovery; the serious health condition of a child, parent, spouse or domestic partner; the birth or adoption of a child; and/or for particular military caregiving and leave purposes.
- 2) Enable workers to earn **66 percent** of their monthly wages, up to a capped amount.
- 3) **Cover workers in all companies, no matter their size.** Younger, part-time, lower-wage and contingent workers would be eligible for benefits.

¹ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015).

² *Id.* at 2, 3.

- 4) Be funded by **small employee and employer payroll contributions** of two-tenths of one percent each (two cents per \$10 in wages, or about \$1.50 per week for a typical worker).
- 5) Be administered through a **new Office of Paid Family and Medical Leave** within the Social Security Administration. Payroll contributions would cover both insurance benefits and administrative costs.³

The purpose of the Family and Medical Insurance Leave Act is as follows:

SEC. 2. FINDINGS AND PURPOSE.⁴

....

(b) PURPOSE—It is the PURPOSE of this ACT—

(1) to help working families, including single working parents and dual-earner families, afford to take time away from work to provide care for a family member and be good workers;

(2) to provide workers with a reasonable level of wage replacement during time away from work for a serious health condition, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of an injured service member, or for qualifying exigencies arising from the deployment of a service member;

(3) to address sex discrimination, promote the goal of equal employment opportunity for women and men, and to provide relief when employers violate the law; and

(4) to accomplish the purposes described in paragraphs (1), (2), and (3) in a manner that accommodates the legitimate interests of employers.⁵

³ National Partnership for Women & Families, Fact Sheet, *The Family And Medical Insurance Leave Act (The FAMILY Act)*, www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf (emphasis in the original) (last visited August 17, 2015).

⁴ S.786 at at SEC. 2. (b)(1)(1)-(4), p. 8, Ins. 3-22, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015).

⁵ *Id.* at SEC. 2. (b)(1)(1)-(4), p. 8, Ins. 3-22.

Introduction

We all have families and most of us will face the responsibility, at some point in our lives, of taking care of our loved ones, whether for the birth or adoption of a child, sudden illness of a family member, or addressing the needs of our aging parents. When the need for caretaking arises, American workers face a heart-wrenching dilemma: wanting to be there for a family member but, at the same time, worrying that doing so will jeopardize their own or their family's economic and job security. The United States is alone among developed countries in failing to guarantee at least some form of paid family leave.⁶ The time is ripe for the United States to join other nations and champion our hard-working workforce when a brief leave is needed to help our loved ones.

Planning for Our Futures

A Strategy That Makes Sense for Employers and Employees

While we do not always know when illness will strike, with the Family Act employees and employers will be able to responsibly plan for an event's occurrence. The Family Act would create an independent trust funded by payroll contributions made by both employees and employers that would be housed within the Social Security Administration. Private sector workers and self-employed people who have a basic level of work and earnings history would be eligible to apply for benefits under the Act.

Currently, under the Family and Medical Leave Act of 1993, American workers – employees and the self-employed – must leave work *without* any income to attend to a medical emergency or to care for a newborn or adopted child.⁷ Through the Family Act's independent trust, individuals with the requisite work history would be eligible to receive partial wage replacement of up to 66% of an individual's monthly wages for 60 workdays or 12 weeks and not have to worry about jeopardizing their families' economic security in these circumstances. "When workers care for themselves and their loved ones, employers experience positive impacts,"⁸ including improved morale and less employee attrition.⁹

⁶ Janet Walsh, *U.S. May Join the Rest of the World in Offering Paid Family Leave*, Human Rights Watch, March 19, 2015, www.hrw.org/news/2015/03/19/dispatches-us-may-join-rest-world-offering-paid-family-leave (last visited August 17, 2015).

⁷ Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 (last visited June 3, 2015), www.law.cornell.edu/uscode/text/29/2601.

⁸ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf, at Sec. 2. (a)(18), p. 7, lns. 20-22 (last visited Jun. 2, 2015). *See also* Section 2. (a) (18) of the Family and Medical Insurance Leave Act:

More than four times as many worksites covered by FMLA reported positive effects on employee productivity, absenteeism, turnover, career advancement and morale, as well as the business' profitability as reported negative effects in the Department of Labor's 2012 survey on the FMLA.

Current Legislation and State of Affairs

Over twenty years have passed since the current Family and Medical Leave Act of 1993 (“FMLA of 1993”) was enacted. FMLA of 1993 provides 12 weeks of unpaid job protected leave for the employee’s own serious health-related event, for the birth or adoption of a child, or to care for a spouse, a parent or a child who has fallen ill.¹⁰ Studies indicate that between 50 and 60% of the workforce is covered by the FMLA of 1993.¹¹ However, an estimated one-half of eligible workers cannot afford to take leave because it is unpaid.¹²

FMLA of 1993 has other shortcomings. It does not provide any financial support,¹³ making it impossible for many families to take advantage of its provisions because they cannot afford to forgo their weekly or biweekly paycheck. Further, the reach of FMLA of 1993 is too limited to provide families with the critical support they need to care for their own health issue, a new baby, or a sick parent.

The Senate sponsors of Bill S. 786¹⁴ revealed some troubling findings concerning the effectiveness of the FMLA of 1993:¹⁵

“According to the Department of Labor, nearly half the workers who qualified for leave under the Family and Medical Leave Act of 1993 (FMLA) in 2011 were unable to take the leave because they could not afford to take time off without pay.”¹⁶ Thus, the FMLA of 1993 is not an effective policy for the *entire* workforce, in that only an estimated half of eligible workers have the financial ability to benefit from the policy.

Id. at 7, Ins. -25; *Id.* at 8, Ins. 1-2.

⁹ Susan Wojcicki, *Paid Maternity Leave Is Good for Business*, The Wall Street Journal, Dec. 16, 2014, www.wsj.com/articles/susan-wojcicki-paid-maternity-leave-is-good-for-business-1418773756 (last visited August 17, 2015).

¹⁰ *Id.* at 5

¹¹ Office of Senator Kirsten Gillibrand, *The American Opportunity Agenda: Expand Paid Family Medical Leave*, Kisten Gillibrand, United States Senator for New York, www.gillibrand.senate.gov/=/issues/paid-family-medical-leave (last visited June 2, 2015). The Council of Economic Advisers, *The Economics of Paid and Unpaid Leave*, June 2014, www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf (last visited August 19, 2015).

¹² *Id.*

¹³ 29 U.S. Code § 2612 - Leave requirement, Legal Information Institute, www.law.cornell.edu/uscode/text/29/2612. (last visited August 17, 2015).

¹⁴ Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2612 (c), Leave Requirement (last visited June 3, 2015), www.law.cornell.edu/uscode/text/29/2612.

¹⁵ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015), at SEC. 2. (a) (3), pgs. 2-3 (Ins. 18-23) (last visited Jun. 2, 2015).

¹⁶ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015), at SEC. 2. (a) (3), pgs. 2-3 (Ins. 18-23)(last visited Jun. 2, 2015).

“Six in ten workers who took partially paid or unpaid leave reported difficulty making ends meet; half of these workers were forced to cut their leaves short due to financial constraints.”¹⁷

“Only 13 percent of all workers had access to paid family leave in 2013 and it was available to only 4 percent of individuals working in the lowest paying jobs. Workers who lack paid family leave face lost wages or even job loss when they miss work because of their own illness or to care for an ill child or parent.”¹⁸

“The average worker age 50 and older who leaves the workforce to care for an elderly parent loses more than \$300,000 in earnings and retirement income.”¹⁹

These findings reveal that the FMLA of 1993 has not been an effective policy for the majority of the workforce, even in the case where individual workers qualify for unpaid leave. The paid leave policy needs to be updated to meet the covered family and medical leave needs of all workers, not just a handful. If enacted, the Family Act would address many of the economic and job security issues related to family and medical leave that impact workers and their families at times of great need. While the FMLA of 1993 was an initial step in the right direction, the United States needs to modernize its two-decade old policy to address the aging population and changed workforce of today. It is time for the United States to revisit its approach and modernize its laws to provide American workers with a measure of financial support during a covered family or medical leave.

The Aging Population and Changing Workforce

In 1993 (when the FMLA of 1993 was enacted), the U.S. population 65 years and older was approximately 32.8 million.²⁰ As of 2013, this population numbered 44.7 million.²¹

By 2030, only 15 years from now, our country’s elderly population is expected to double.²² By 2030, the population of persons age 65 and older will number “about 72.1

¹⁷ *Id.* at SEC. 2. (a) (3), pg. 2, Ins. 23-24. *Id.* at SEC. 2. (a)(3), pg. 3, Ins. 1-2 (last visited Jun. 2, 2015).

¹⁸ *Id.* at SEC. 2. (a) (4), pg. 3, Ins. 3-9 (last visited Jun 2, 2015).

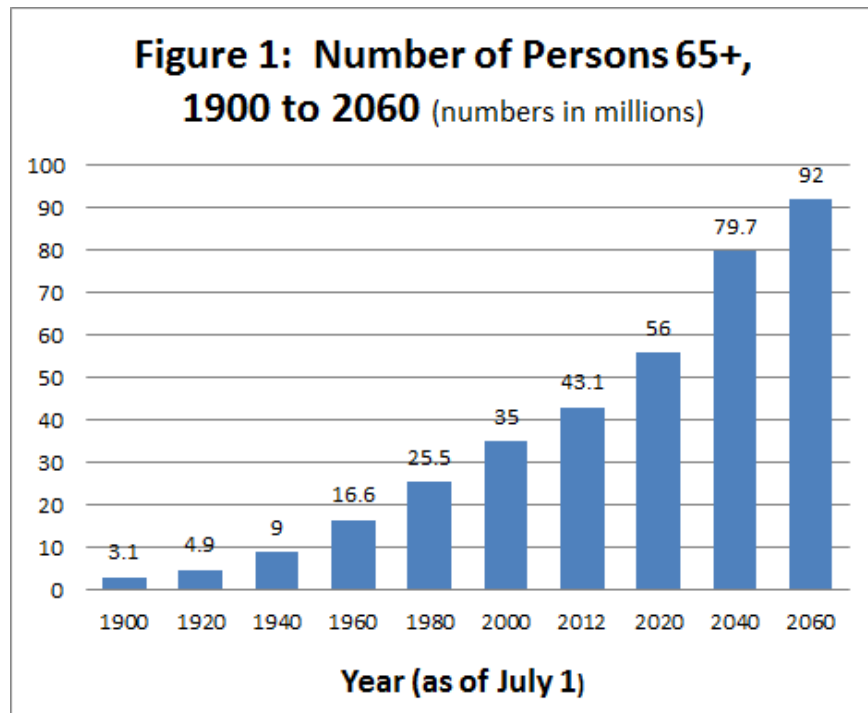
¹⁹ *Id.* at SEC. 2. (a) (4), pg. 3, Ins. 21-23 (last visited June 2, 2015).

²⁰ U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, *Administration on Aging (AoA), A Profile of Older of Americans: 2004*, www.aoa.acl.gov/Aging_Statistics/Profile/2004/3.aspx (last visited Jun. 2, 2015) (“The older population—persons 65 years or older—numbered 35.9 million in 2003. They represented 12.9% of the U.S. population, about one in every eight Americans. The number of older Americans increased by 3.1 million or 9.5% since 1993.”).

²¹ U.S. Department of Health and Human Services, Administration for Community Living, *Administration on Aging (AoA), Highlights*, www.aoa.acl.gov/Aging_Statistics/Profile/2014/2.aspx (last visited Jun. 2, 2015).

²² U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, *Administration on Aging (AoA), Aging Statistics*, www.aoa.acl.gov/Aging_Statistics/index.aspx (visited on Jun. 2, 2015).

million”²³ and is projected to increase by approximately another 20 million through 2060, as indicated in the historic graph below from the U.S. Department of Health and Human Service’s Administration on Aging.²⁴



Note: Increments in years are uneven.

Source: U.S. Census Bureau, Population Estimates and Projections.

Sources: U.S. Census Bureau, *Population Estimates, Vintage 1980-2012, National Estimates by Age, Sex, Race: 1900-1979 (PE-11)*; *2012 National Population Projections Summary Tables, Table 2. Projections of the Population by Selected Age Groups and Sex for the United States: 2015 to 2060, Middle Series. (NP2012-T2), Released December 2012*; and *Table 1. Projected Population by Single Year of Age, Sex, Race, and Hispanic Origin for the United States: 2012 to 2060, Released December 2012*.

With this drastic population shift, “the number of people with chronic medical conditions is expected to reach 157 million by 2020,” or in five years.²⁵ Further, persons reaching age 65 have an average life expectancy of an additional 19.3 years (20.5 years for

²³ *Id.* (emphasis added).

²⁴ U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, *Administration on Aging, Future Growth*, www.aoa.acl.gov/Aging_Statistics/Profile/2013/4.aspx (last visited on Jun. 2, 2015).

²⁵ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015) at SEC. 2. (6), pg. 3, ln. 25, pg. 4, lns. 1-2.

females and 17.9 years for males).²⁶ As the Family Act states, “many of these individuals at some point will require family care...and time off at some point to address serious health conditions.”²⁷

The Millennial Generation: A Workforce with Unique Challenges

Unlike Baby Boomers and some of the Generation X population, who grew up in a time of low-cost housing, affordable colleges, and who were able to prosper in traditional single-family income households, today’s multigenerational workforce is not that fortunate. In fact, according to Goldman Sachs, the Millennial Generation, the largest generation in the workforce, born between 1980 and 2000, has less money to spend than did previous generations and is “encumbered with debt.”²⁸ “Student loan payments are taking up a growing chunk of postgraduate millennial income.”²⁹ As a result of this heavy debt burden and residual effects of the recession, many younger workers are living longer with their parents, forgoing buying houses and cars, and even delaying having children.³⁰

Many parents of Millennials are Baby Boomers who are or will become older Americans very shortly. When the FMLA of 1993 was passed, college graduates were not burdened with the same financial debt obligation as the Millennial Generation workforce is today, and back then many women could still afford to be primary caregivers. However, the realities of the increased cost of living and economics of today do not readily permit this. Women now make up half the workforce, and their incomes are vital to ensure their family’s financial security. Younger men and women in the workforce must meet their financial/contractual debt obligations, too, including student loans and mortgages. Simply put, many workers today do not have the luxury to take time off to care for a loved one without the support of some income replacement. Accordingly, family caregivers may not be readily available.

Further, many Millennial generation men want to be hands-on fathers as well as breadwinners. As reported in the *New York Times* in July 2015, “the majority of young men and women say they would ideally like to equally share earning and caregiving with their spouse”; however, workplace policies have not caught up with changing expectations at home.³¹

²⁶ U.S. Department of Health and Human Services, Administration for Community Living, *Administration on Aging (AoA), Highlights*, Administration on Aging, Aging Statistics, U.S. Department of Health and Human Services, www.aoa.acl.gov/Aging_Statistics/Profile/2014/2.aspx (visited on June 3, 2015).

²⁷ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf, at pages 3-4 at (6) (last visited Jun. 2, 2015). *Id.* SEC. 2. (a)(6) at pg.4, Ins. 2-6 (last visited June. 2, 2015).

²⁸ Goldman Sachs, *Millennials Coming of Age*, www.goldmansachs.com/our-thinking/pages/millennials/ (last visited August 14, 2015).

²⁹ *Id.*

³⁰ *Id.* Hilary Stout, *Oh, to Be Young, Millennial, and So Wanted By Marketers*, *The New York Times*, June 29, 2015.

³¹ Claire Cain Miller, *Millennial Men Aren’t the Dads They Thought They’d Be*, *The New York Times*, July 30, 2015, www.nytimes.com/2015/07/31/upshot/millennial-men-find-work-and-family-hard-to-balance.html?abt=0002&abg=0 (last visited August 17, 2015).

A national policy, like the proposed Family Act,³² that can provide workers with some income replacement if a medical leave need arises needs to be put in place to address the changed realities and personal expectations of the workforce since the FMLA of 1993 was enacted.

Women Are Half of Our Labor Force and Are the Primary Caregivers *Paid Family Leave Addresses Gender Inequality, Too*

Since the FMLA was enacted in 1993, not only do we have multi-generations in the work force, the Greatest Generation, Baby Boomers, Generation X, Generation Y/Millennial, but there are more women in the workplace than ever before. According to the U.S. Department of Labor, approximately 57% of all women participate in the labor force today.³³

An estimated 66% of caregivers are female.³⁴ However, only 11% of the private sector workers and 17% of public sector workers reported having access to paid leave through their employer.³⁵

Complicating this further, the outdated notion of the “traditional family” comprising a stay-at-home mom and breadwinner dad is no longer the norm. The U.S. Department of Labor reports that 70% of all women with children under 18 years old are in the labor force.³⁶ In 2013, approximately 67.4% of married women with children under the age of 18 were in the labor force.³⁷ During the same time period, 25.3% of families with children under the age of 18 were headed by a mother without a spouse and 7% of families were headed by a father without a spouse.³⁸

Minority and low-income caregivers may be additionally challenged. “One study concluded that the caregiving time burden falls most heavily on lower-income women:

³² S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015).

³³ United States Department of Labor, *Data & Statistics, Women in the Labor Force, Latest Annual Data, Updated*, www.dol.gov/wb/stats/stats_data.htm (last visited Jun. 2, 2015).

³⁴ Family Caregiver Alliance, National Center on Aging, *Women and Caregiving: Facts and Figures, Who Are the Caregivers?*, Family Caregiver Alliance, National Center on Aging, caregiver.org/women-and-caregiving-facts-and-figures (last visited on May 22, 2015).

³⁵ Cali Williams Yost, *3 Reasons Why Card-Carrying Capitalists Should Support Paid Family Leave*, Forbes, May 23, 2012, www.forbes.com/sites/work-in-progress/2012/05/23/3-reasons-why-card-carrying-capitalists-should-support-paid-family-leave/ (last visited August 17, 2015).

³⁶ United States Department of Labor, *Data & Statistics, Women in the Labor Force, Latest Annual Data, Updated*, www.dol.gov/wb/stats/stats_data.htm (last visited Jun. 2, 2015).

³⁷ United States Department of Labor, Women’s Bureau, *Type of families with children under 18, 2013 annual averages*, www.dol.gov/wb/stats/type_families_w_children_und_18_2013_txt.htm (last visited Jun. 2, 2015).

³⁸ *Id.*

52% of women caregivers with incomes at or below the national median of \$35,000 spend 20+ hours each week providing care.”³⁹

Despite women’s greater participation in the workforce, women still earn less than men—approximately 77 to 80 cents for every dollar a man earns—impacting both their current earnings and retirement.⁴⁰ Income and retirement are further eroded when women take unpaid leave to perform caregiving duties, which can push some of them into poverty or public assistance. Moreover, “[t]he negative impact on a caregiver’s retirement fund is approximately \$40,000 more for women than it is for men.”⁴¹ The Family Caregiver Alliance estimates that, “in total, the cost impact of caregiving on the individual female caregiver in terms of lost wages and Social Security benefits equals \$324,044.”⁴² Consider how those thousands of dollars could help a woman and her family meet day-to-day living expenses or in investing for retirement. Instead, as the primary caregiver, her financial security is compromised. It is time the United States joins the rest of the world in guaranteeing some form of paid family and medical leave to workers.

Implementing the Family Act is critical at a time when the population is aging and most American women and men are expected to pull their own economic weight in the household. Earning \$.77 to every \$1.00 a man earns, women are already income- and retirement-disadvantaged. Yet women continue to serve as the primary caregivers to families and still need to work to make ends meet. Families depend on women’s income for economic security.⁴³ The Family Act, if enacted, will address some of these inequalities that women face, without jeopardizing their economic security or impacting loved ones.

U.S. Women Lack Paid Maternity Leave – U.S. Men Lack Paid Paternity Leave, Too

According to Human Rights Watch, “The US is alone among developed countries in failing to guarantee at least some form of paid family leave.”⁴⁴ Most countries worldwide

³⁹ Family Caregiver Alliance, National Center on Caregiving, *Women and Caregiving: Facts and Figures, Who Are the Caregivers?*, (Wednesday, December 21, 2003, Section Updated February 2015), Family Caregiver Alliance, National Center on Caregiving, caregiver.org/women-and-caregiving-facts-and-figures (last visited Jun. 2, 2015).

⁴⁰ U.S. Department of Labor, Women’s Bureau, *Women in the Labor Force*, www.dol.gov/wb/stats/stats_data.htm (visited May 22, 2015).

⁴¹ Family Caregiver Alliance, National Center on Caregiving, *Women and Caregiving: Facts and Figures, Who Are the Caregivers?*, (Wednesday, December 21, 2003, Section Updated February 2015), Family Caregiver Alliance, National Center on Caregiving, caregiver.org/women-and-caregiving-facts-and-figures (Updated February 2015) (last visited August 14, 2015).

⁴² *Id.*.

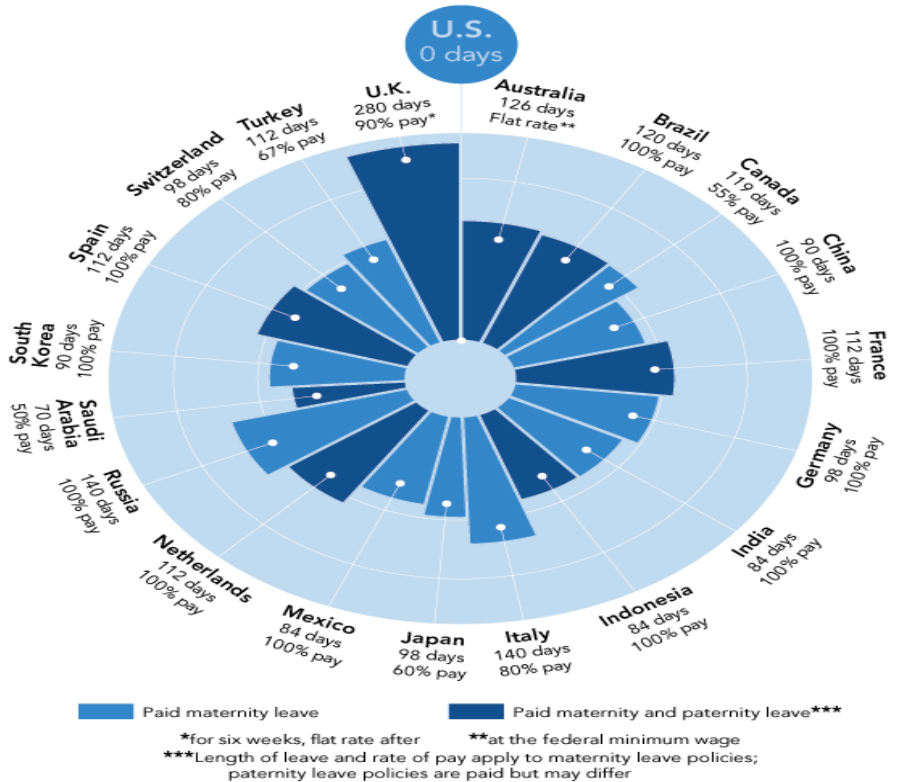
⁴³ National Public Radio (NPR), *The Politics of Equal Pay: It is More Than a Women’s Issue*, www.npr.org/sections/itsallpolitics/2014/04/08/300275950/the-politics-of-equal-pay-its-more-than-a-womens-issue (visited May 22, 2015).

⁴⁴ Janet Walsh, *U.S. May Join the Rest of the World in Offering Paid Family Leave*, Human Rights Watch, March 19, 2015, www.hrw.org/news/2015/03/19/dispatches-us-may-join-rest-world-offering-paid-family-leave (last visited August 17, 2015).

provide some form of maternity leave. As the following graph exhibits, many countries give new fathers paid time off as well, or allow parents to share paid leave.⁴⁵

Paid Parental Leave: U.S. vs. The World

The U.S. joins Lesotho, Swaziland and Papua New Guinea as the only countries that do not mandate paid maternity leave. Most countries ensure at least three months of paid leave for new mothers, and many give fathers benefits too.



Source: International Labour Organization

THE HUFFINGTON POST

Why is the United States woefully behind the rest of the world when it comes to paid maternity leave?

A study done in 1998 by the International Labour Organization (ILO) looked at 120 countries and determined there were only six countries that did not provide paid leave.⁴⁶ On the list were the United States, Lesotho, Swaziland, Australia, New Zealand and Papua New Guinea.⁴⁷ However, “[w]hen Australia passed a parental leave law in 2010, it left the U.S. as the only industrialized nation not to mandate paid leave for mothers of

⁴⁵ Katy Hall and Chris Spurlock, *Paid Parental Leave: U.S. vs. The World (INFOGRAPHIC)*, Huffington Post, www.huffingtonpost.com/2013/02/04/maternity-leave-paid-parental-leave-_n_2617284.html (Posted 02/04/2013, updated 02/21/2013).

⁴⁶ *More Than 120 Nations Provide Paid Maternity Leave*, International Labour Organization, Feb. 16, 1998), www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS_008009/lang--en/index.htm (last visited August 17, 2015)

⁴⁷ *Id.*

newborns.”⁴⁸ Today, “[o]ut of the 185 countries and territories with information available, all but three provide cash benefits to women during maternity leave.”⁴⁹ The United States, along with Oman and Papua New Guinea, do not provide paid maternity leave. There are now at least 70 countries that guarantee paid paternity leave.⁵⁰ It is time that the United States adopt a paid family leave policy.

After women give birth, their careers are often interrupted. However, many women are forced to return to work quickly as they cannot afford to stay home. Returning to work too early after giving birth can sometimes jeopardize their health and job performance. Paid family leave policies, including maternity leave, have been shown to have a positive impact on infant mortality and maternal mental health.⁵¹

Moreover, the sponsors of the Family Act report, “[p]aid family and medical leave promotes families’ financial security and independence, increases worker retention, and promotes savings for taxpayers.”⁵² Many top business leaders agree with this statement. Susan Wojcicki, CEO of YouTube for Google and the mother of five children, recently wrote of the positive impact that paid leave has had on individuals and Google, commenting, “[w]hen we increased paid leave at Google to 18 weeks, the rate at which new mothers left fell by 50%.”⁵³ Supporting this trend, in August 2015, Netflix, Microsoft and Adobe announced more generous parental paid leave policies for their workforce. Netflix has instituted a one-year paid parental leave policy as part of the company’s effort to “keeping the most talented individuals in their field”; however this benefit applies only to Netflix’s higher-paid “salaried streaming employees,” and does not extend to the company’s lowest wage earners in their DVD division or call center. While these new generous leave policies in Silicon Valley are steps in the right direction, as commentators have stated, without a national leave policy in place, lower wage workers are often left out.⁵⁴

⁴⁸ Hall, *id.*

⁴⁹ International Labour Organization, *Maternity and paternity at work, Law and practice across the world*, 2014, fortunedom.files.wordpress.com/2014/05/wcms_242615.pdf at p. 16 (last visited Jun. 3, 2015). See also Adam Peck and Bryce Covert, *U.S. Paid Family Leave Versus the Rest of the World*, In *2 Disturbing Charts*, Thinkprogress, July 30, 2014, thinkprogress.org/economy/2014/07/30/3465922/paid-family-leave (“Out of 185 countries, the United States is just one of three that doesn’t guarantee paid maternity leave, the others being Oman and Papua New Guinea.”) *Id.*

⁵⁰ Human Rights Watch, *Failing Its Families: Lack of Paid Leave and Work-Family Supports in the US*, Summary of Report (Updated January 2015), <https://www.hrw.org/report/2011/02/23/failing-its-families/lack-paid-leave-and-work-family-supports-us>.

⁵¹ Deanna S. Gombie & Dow-Jane Pei, *Newborn Family Leave: Effects on Children, Parents, and Business* (2009), a Publication of The David and Lucile Packard Foundation, California Work & Family Coalition, page 4, workfamilyca.org/resources/NFLA_fullreport_final.pdf (last visited Jun. 3, 2015).

⁵² S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf, at Sec. 2.(a)(12), page 5, lns. 21-24 (last visited Jun. 2, 2015).

⁵³ Susan Wojcicki, *Paid Maternity Leave Is Good for Business*, The Wall Street Journal, December 16, 2014, www.wsj.com/articles/susan-wojcicki-paid-maternity-leave-is-good-for-business-1418773756 (last visited August 17, 2015).

⁵⁴ Sam Sanders, *Netflix Still Facing Facing Questions Over Its New Parental Leave Policy*, NPR.org, August 10, 2015, www.npr.org/sections/thetwo-way/2015/08/10/431273033/netflix-still-facing-questions-

Sponsors of the Family Act also point out that “Women who take paid leave after a child’s birth are more likely to be in the labor force in the 9 to 12 months after a child’s birth and to earn higher wages the year following their child’s birth. Both men and women who take paid leave after a child’s birth are less likely to receive food stamps and public assistance in the year following a child’s birth.”⁵⁵

What About Dad?

More men want to play a greater role in caregiving. However, there is little financial incentive for new dads. With respect to “private paid leave offered directly to employees by employers, 58% of mothers who gave birth and were offered leave by their employers received some form of disability pay, but only 14% of men on paternity leave received any replacement income (2012 National Study of Employers). That means 42% of mothers and 86% of fathers with employer supported leave received no income at all.”⁵⁶ Moreover, many employer-paid paternity policies provide, on average, only three weeks to new fathers.⁵⁷

Fathers who want to share equally in parental caregiving and whose companies have paid parental leave policy on the books sometimes face challenges when seeking to take it.⁵⁸

The proposed Family Act embraces the realities of the workforce of today by providing a pragmatic solution for women and men when they need to take a family or personal medical leave, aligning the United States with the policies of the vast majority of industrialized countries.

over-its-new-parental-leave-policy (last visited August 13, 2015.); Emily Steel, *Netflix Offers Expanded Maternity and Paternity Leave*, The New York Times, August 4, 2015.

www.nytimes.com/2015/08/05/business/netflix-offers-expanded-maternity-and-paternity-leave.html
www.nytimes.com/aponline/2015/08/10/technology/ap-us-tec-adobe-parental-leave.html (last visited August 13, 2015); The Associated Press, *After Netflix, Adobe Extends Parental Leave Policy*, August 10, 2015, The New York Times., www.nytimes.com/aponline/2015/08/10/technology/ap-us-tec-adobe-parental-leave.html (last visited August 13, 2015).

⁵⁵ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf, at Sec. 2.(a)(12), page 5 (last visited Jun. 2, 2015). FN 1 at pgs. 5, lns. 24-28, pg. 6, lns. 1-3.

⁵⁶ Cali Williams Yost, *3 Reasons Why Card-Carrying Capitalists Should Support Paid Family Leave*, Forbes, May 23, 2012, www.forbes.com/sites/work-in-progress/2012/05/23/3-reasons-why-card-carrying-capitalists-should-support-paid-family-leave (last visited August 17, 2015).

⁵⁷ Tara Siegel Bernard, *In Paid Family Leave, U.S. Trails Most of the Globe*, New York Times, February 22, 2013, www.nytimes.com/2013/02/23/your-money/us-trails-much-of-the-world-in-providing-paid-family-leave.html?_r=0 (last visited June 1, 2015), (“Even among the [company] standouts, the average time off in 2012 was seven weeks of fully paid maternity leave, while new fathers received an average of three paid weeks, up from two weeks in 2008. Parents adopting children received an average of six weeks.”).

⁵⁸ Claire Cain Miller, *Millennial Men Aren’t the Dads They Thought They’d Be*, The New York Times, July 30, 2015, <http://www.nytimes.com/2015/07/31/upshot/millennial-men-find-work-and-family-hard-to-balance.html?abt=0002&abg=0> (last visited August 17, 2015).

How Does the Family and Medical Insurance Leave Act Work?

A Summary of the Family and Medical Insurance Leave Act

“The Family and Medical Insurance Leave Act would create an independent trust fund within the Social Security Administration to collect fees and to provide benefits. This trust would be self-funded through employer and employee funded contributions of 0.2 percent wages each, **creating a self-sufficient program that would not add to the federal budget.**”⁵⁹ It would require the creation of a new agency, Office of Paid Family and Medical Leave, housed within the Social Security Administration⁶⁰ to implement and administer the trust and the Family Act’s purposes.⁶¹ “A one-time appropriation from the general revenues would be required to cover initial benefits and administrative costs that would be required to be paid back in 10 years under the law.”⁶² The independent trust would provide insurance for families with serious medical issues.⁶³ It would also provide insurance to those in need, similar to unemployment insurance or an earned worker benefit.⁶⁴ While the FMLA of 1993 is limited to only about half of the workforce, the Family Act would apply to all workers, women and men.⁶⁵

To be eligible for a family and medical leave insurance benefit, the individual must qualify under Section 5(a) of the Family Act as follows:

(a) IN GENERAL.—Every individual who—

(1) is insured for disability insurance benefits (as determined under section 223(c) of the Social Security Act (42 U.S.C. 423(c))) at the time such individual’s application is filed;

(2) has earned income from employment during the 12 months prior to the month in which the application is filed;

(3) has filed an application for a family and medical leave insurance benefit in accordance with subsection (d); and

⁵⁹ Office of Senator Kirsten Gillibrand, *The American Opportunity Agenda: Expand Paid Family and Medical Leave*, Kirsten Gillibrand, United States Senator for New York, www.gillibrand.senate.gov/issues/paid-family-medical-leave (last visited Jun. 3, 2015) (emphasis in original, which is referring to S. 786 at Sec 7, pages 35-40).

⁶⁰ *Id.*

⁶¹ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, at Sec 4 page 11-13, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015).

⁶² National Partnership for Women & Families, *The Family and Medical Insurance Leave (FAMILY) Act: Frequently Asked Questions* at FAQ 11 and 17, www.nationalpartnership.org/research-library/work-family/coalition/family-act-faq.pdf (last visited August 11, 2015).

⁶³ See *id.* at Section 2(b)(2) at pages 31-35.

⁶⁴ See *id.* at Section 5(a), page 13, line 15.

⁶⁵ See *id.* at Section 2(a) page 8.

(4) was engaged in qualified caregiving or anticipates being so engaged, during the period that begins 90 days before the date on which such application is filed or within 30 days after such date, shall be entitled to such a benefit for each month in the benefit period specified in subsection (c), not to exceed 60 caregiving days per benefit period.⁶⁶

The benefit amount is calculated under section 5(b) of the Family Act⁶⁷ and “would amount to 66% of an individual’s monthly wages (based on the highest earnings from the prior three years, up to a capped monthly amount). If the person takes the maximum number of days, which is 60 work days, the “benefits would range from a minimum benefit of \$580 to a maximum benefit of \$4000 per month in the program’s first year.”⁶⁸

Paid Family and Medical Leave Operates Like Insurance

Through a modest monthly paycheck deduction, employees would contribute to fund the insurance trust that would pay out benefits to an individual who needs to take medical or family medical leave.⁶⁹ Employees and employers already make joint paycheck contributions to Social Security Insurance. It is estimated that if the Family Act is adopted:

the average woman worker earning the median weekly wage would only need to contribute \$1.38 per week (for a total of \$72.04 per year) into the program and even the highest wage earners would have a maximum contribution of \$4.36 per week, or \$227.40 per year. This means that for less than ONE Tall brewed Starbucks coffee (\$1.85) or about the cost of ONE Venti latte per week (over \$4), we could create a program that will be so beneficial for our families.⁷⁰

This investment of dollars by workers and employers make sense. Workers and employers may not “opt out” since the program is “designed to be a national program that

⁶⁶ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, at <http://www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf> at SEC. 5 (a)(1)-(4), pg. 13, lns. 17-24, pg. 14, lns. 1-10 (last visited Jun. 2, 2015).

⁶⁷ See *id.* at SEC. 5. (b)(1)(A)-(B), pg. 14, lns. 11-24, pg. 15, lns. 1-3 (last visited Jun. 3, 2015).

⁶⁸ National Partnership for Women & Families, *The Family and Medical Insurance Leave (FAMILY) Act: Frequently Asked Questions*, March 2015, www.nationalpartnership.org/research-library/work-family/coalition/family-act-faq.pdf (last visited August 17, 2015).

⁶⁹ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, at SEC 7, pages 35 (c)(2), lns. 21-24 www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf.

⁷⁰ Office of Senator Kirsten Gillibrand, *American Opportunity Agenda: Paid Family Medical Leave*, Kirsten Gillibrand, United States Senator for New York, www.gillibrand.senate.gov/issues/paid-family-medical-leave (last visited June 3, 2015).

is supported by every worker and employer.”⁷¹ It is also designed to work in tandem with state paid leave programs and temporary disability insurance programs and would not supersede or preempt state laws that provide family and medical leave insurance.

Opposition

Change always brings resistance. The introduction of FMLA of 1993 in the early 1990s was met with business and political opposition. Sponsor former U.S. Representative Patricia Schroeder introduced proposed legislation after she found herself out of a job, when her employer, in the late 1960s and early 1970s, did not provide maternity leave.⁷² “Her original bill proposed six months for mothers and time off for fathers as well as a pilot for paid leave.”⁷³ The legislation stalled under President Ronald Regan and was reintroduced with a proposed four-month leave.⁷⁴

The Chamber of Commerce and other business lobbies opposed the legislation, and some politicians claimed it would destroy American companies. By the time the bill passed nine years later – and two vetoes by President George H.W. Bush – the bill applied to companies with 50 employees or more and Congress had reduced the number to 12 unpaid weeks....Schroeder viewed the bill’s passage as a first step; she expected it to eventually include longer, paid leave and apply to smaller companies. When Congress invited her to celebrate the bill’s 20th anniversary in 2013, she refused to attend. “What’s to celebrate?” she said. “You haven’t expanded it at all.”⁷⁵

Opponents, including the Business Council of New York State and the National Federation of Independent Businesses, have focused on how the bill would mandate paid leave, taking the issue of whether and how to cover an employee’s medical leave out of the hands of individual private employers.⁷⁶ In a recent press release, the Council stated it “believes it is important to allow employers to fashion their overall leave policies based on their own circumstances and capabilities within the context of company-specific compensation plans.”⁷⁷

⁷¹ *The Family and Medical Insurance Leave (FAMILY) Act: Frequently Asked Questions*, at FAQ 11 and 17, National Partnership for Women & Families (March 2015).

⁷² Rebecca Ruiz, *No Family Left Behind*, January 25, 2015, mashable.com/2015/01/25/maternity-leave-policy-united-states/.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ The Business Council, *Business Council opposes paid family leave proposals in testimony to Senate Labor and Social Services Committees*, March 25, 2015, www.bcnys.org/whatsnew/2015/032515-council-opposes-paid-family-leave-proposals.html (last visited August 17, 2015).

⁷⁷ *Id.*

Moreover, the Council added that “[m]andatory leave legislation imposes one-size-fits all requirements on employers, regardless of company specific capacity for employee compensation and workforce flexibility.”⁷⁸

While some employees have access to employer-fashioned paid leave, the majority of Americans do not. As mentioned earlier in the section “Women are Half of Our Labor Force and Are the Primary Caregivers,” data indicates that currently only 11% of private sector workers and 17% of public sector workers report having access to paid leave through their employer.⁷⁹

Most important, while higher-level executive earners may have the ability to negotiate such benefits as part of their compensation packages, lower-level and mid-tiered private sector and public sector workers are often not in the bargaining position to negotiate paid leave benefits. Further, the Business Council’s position overlooks the support the Act would provide for self-employed individuals.

The National Federation of Independent Businesses has also focused its opposition on the Act’s creation of a mandate, saying “[p]aid leave should be an option to small business owners if they can afford it.”⁸⁰

However, “surveys by the Small Business Majority, which favors paid leave,” show “six in 10 New York businesses supporting the system embodied in Gillibrand’s bill.”⁸¹

Further, the American business community is not united in opposition to the Family Act. The national Better Business Bureau has issued a statement on its website in support of the Act. It says, in part:

Business leaders from across the country support the Family and Medical Insurance Leave Act (FAMILY Act), federal legislation that would create a national paid family and medical leave insurance program. Three states – California, New Jersey, and Rhode Island – already have family leave insurance programs. Business owners from those states can attest to the ease of implementing such programs, and the many benefits. And businesses in other states are eager for their employees to have access to a national program.⁸²

⁷⁸ *Id.*

⁷⁹ Cali Williams Yost, *3 Reasons Why Card-Carrying Capitalists Should Support Paid Family Leave*, Forbes, May 23, 2012, www.forbes.com/sites/work-in-progress/2012/05/23/3-reasons-why-card-carrying-capitalists-should-support-paid-family-leave/ (last visited August 17, 2015).

⁸⁰ Dan Freedman, *Gillibrand Leave Bill Could Change Workaday Life*, Times Union, April 12, 2015, m.timesunion.com/news/article/Gillibrand-leave-bill-could-change-workaday-life-6195409.php. (last visited August 17, 2015).

⁸¹ *Id.*

⁸² Better Business Bureau, *Businesses Support the Family and Medical Leave Insurance Act* (visited June 5, 2015), betterwbb.org/business-support-for-paid-family-medical-leave-family-act/ (last visited August 17, 2015).

The Better Business Bureau website lists quotes from male and female business owners and leaders who support the Family Act, including these comments from New York State:

“A large number of studies show that childcare, flexible work hours, and paid family leave all have a very high return on investment (ROI). Moreover, there is compelling evidence that points to the fact that companies can measurably improve their bottom line by transforming a company’s corporate culture into one of a truly caring organization—which basically means, putting the interests of their employees first! The FAMILY Act will enable employers of all sizes to more easily offer paid family and medical leave. It will help businesses to do what’s good for employees and good for the bottom line.”– Cynthia DiBartolo, CEO, Tigress Financial Partners LLC and Chairperson, Greater New York Chamber of Commerce (New York).

“Paid family and medical leave is personally important to me. As a father of two in a family where both parents work outside the home, I know how difficult it is to be both a good parent and a good worker. While at the State Department, I watched my staff, who had no paid family leave, struggle to cobble together paid sick leave and annual vacation time in order to take time with new babies. And as a businessman, I’ve seen that demonstrating loyalty and respect for our people reinforces the same in return. A federal law that guarantees all workers paid family and medical leave is critical to supporting our people and economic stability. I support the FAMILY Act because it is not only good for families and businesses, it also makes economic sense.”– Tom Nides, Vice Chairman, Morgan Stanley and former Deputy Secretary of State (New York).

“As a working mom, I experienced firsthand what it is like to have to choose between doing my job and caring for my family. Now, as a business owner, I know how important it is to ensure that my employees have paid family and medical leave. The FAMILY Act will make it possible for me to offer paid family and medical leave without breaking the bank—and it will ensure that my workers don’t encounter the same struggles I was faced with while raising my children.”– Carolyn Barrett, Founder and CEO, Barrett International Technology, Inc. (New York).⁸³

More than 180 countries provide paid family and medical leave “without damage to their economies.”⁸⁴ In the U.S. “evidence from the states show that the concerns that

⁸³ *Id.*

⁸⁴ Mariya Strauss, *Crushing the Dream: The Business Lobby Groups Blocking Your Paid Leave*, February 6, 2015, Political Research Associates (emphasis in the original), www.politicalresearch.org/2015/02/06/crushing-the-dream-the-business-lobby-groups-blocking-your-paid-leave/# (last visited on August 17, 2015).

[opponents] raised are unfounded.”⁸⁵ In fact, “surveys in California and New Jersey [states that have adopted paid leave laws] show no negative economic effect on employers there, with most reporting positive impact on employee retention, productivity and morale.”⁸⁶

It is time for the United States to join all of the world’s other industrialized nations in embracing a paid family leave policy.

State Laws That Support Families

Several states have enacted paid leave and temporary disability insurance laws that supplement the support provided to families by the FMLA of 1993.⁸⁷ Officials in these states have found that these employee paid leave programs and jointly paid and/or employee paid temporary disability leave programs (TDI) are beneficial to both employees and employers.

California

California became the first state to guarantee paid family leave in 2002.⁸⁸ Similar to the proposed Family Act,⁸⁹ California created an insurance-based system to provide up to six weeks of paid leave to care for a newly born or adopted child or a seriously ill family member.⁹⁰ A study was undertaken to evaluate the financial benefits of the program.⁹¹ In addition to the obvious support to the employee in need of paid leave, the report documented numerous financial benefits to society as a whole, including financial savings for businesses from decreased employee turnover and reduced dependency on public assistance programs.⁹²

⁸⁵ Tierney Sneed, *Paid Family Leave is Primed in a National Debate*, U.S. News & World Report, March 23, 2015, www.usnews.com/news/articles/2015/03/23/paid-family-leave-is-primed-for-national-debate. (last visited June 2, 2015).

⁸⁶ Freedman, *id.*

⁸⁷ Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, www.law.cornell.edu/uscode/text/29/2601 (last visited June 3 2015).

⁸⁸ California Work & Family Coalition, *What is Paid Family Leave?*, Paid Family Leave California, paidfamilyleave.org/ask-us/what-is-paid-family-leave (last visited Jun. 3, 2015). See *The Need for Paid Family Leave*, www.abetterbalance.org/web/ourissues/familyleave (last visited June 3, 2015); Sarah Fass, *Paid Leave in the States*, National Center for Children in Poverty, March 2009, www.nccp.org/publications/pub_864.html (last visited June 2, 2015).

⁸⁹ S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf at SEC. 5 (a)(1)-(4), pg. 13, lns. 17-24, pg. 14, lns. 1-10 (last visited Jun. 2, 2015).

⁹⁰ See California Senate Bill 1166. Fact Sheet: State of California, Employment Development Department, Fact Sheet, *Paid Family Leave*, www.edd.ca.gov/pdf_pub_ctr/de8714cf.pdf (last visited Jun. 3, 2015).

⁹¹ Arindrajit “Arin” Dube and Ethan Kaplan, *Paid Family Leave In California: An Analysis of Costs and Benefits*, Paid Family Leave California, June 19, 2002, paidfamilyleave.org/pdf/dube.pdf (last visited May 26, 2015).

⁹² *Id.* at 4 – 5.

A key finding of the report is that a great deal of employee turnover is the result of an employee's inability to take paid leave in the event of serious medical needs of a new baby or family member.⁹³ The Family Act would thus provide businesses with potentially enormous savings from decreased employee turnover.

Another key finding of the report is that paid leave provides a reduced dependency on public assistance programs such as food stamps, which are commonly accessed by employees on unpaid leave, and unemployment insurance, which is used by employees who are laid off.⁹⁴ Further, paid leave may also attract more women to the workforce, by making it easier to work while caring for a family member, and resulting in greater tax collection for the benefit of all society.

A report released for the 10-year anniversary of California's Paid Leave Act highlights that between 2004 and 2014, Californians filed approximately 1.8 million claims to care for a family member or bond with a new child.⁹⁵ The overwhelming majority of California employers report that the program had a positive or neutral effect on their business.⁹⁶ California families have experienced positive economic and health effects, and the vast majority of California employers perceive a positive impact on employee productivity, profitability and performance, or no effect, which means that the fears that some employers articulated when the policy was being considered never materialized.⁹⁷ In 2013, legislation (Senate Bill 770) expanded eligibility to also include the following family members: parent-in-law, grandparent, grandchild, and sibling.⁹⁸

New Jersey

New Jersey (N.J. Admin. Code § 43:21-25 et seq.): "Enacted 2008, effective 2009 [and] covers 'Child, parent spouse, domestic partner, civil union partner.'"⁹⁹ New Jersey's temporary disability insurance program is financed jointly by employee and employer

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See State of California, Employment Development Department, *Paid Family Leave, Ten Years of Assisting Californians in Need*, www.edd.ca.gov/disability/pdf/Paid_Family_Leave_10_Year_Anniversary_Report.pdf (last visited Jun. 3, 2015), at page 3.

⁹⁶ *Id.*

⁹⁷ National Partnership for Women & Families, *Paid Leave Works in California, New Jersey, and Rhode Island*, March 2015, www.nationalpartnership.org/research-library/work-family/paid-leave/paid-leave-works-in-california-new-jersey-and-rhode-island.pdf (last visited May 31, 2015). *see also* Bartel et al. (June 2014). *California's Paid Family Leave Law: Lessons from the First Decade*. U.S. Department of Labor publication, June 23, 2014, www.dol.gov/asp/evaluation/reports/PaidLeaveDeliverable.pdf. *See also In Rhode Island, Residents Gush About Paid Family Leave*, ABC News, May 25, 2015, abcnews.go.com/US/wireStory/rhode-island-residents-gush-paid-family-leave-31289956 (last visited June 2, 2015).

⁹⁸ State of California, Employment Development Department, Fact Sheet, *Paid Family Leave*, www.edd.ca.gov/pdf_pub_ctr/de8714cf.pdf (last visited Jun. 2, 2015).

⁹⁹ National Partnership for Women and Families, *State Paid Family Leave Insurance Laws*, (February 2015), February 2015, www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf (last visited Jun. 3, 2015).

payroll contributions, and family care is funded by the employee.¹⁰⁰ In addition, it covers employees for “six weeks for family care” and “26 weeks for own disability.”¹⁰¹ In terms of eligibility: “Employee must have had at least 20 calendar weeks of covered New Jersey employment, each being a week of being paid \$165 or more, or having been paid \$8,300 or more in such employment during the base period.”¹⁰² New Jersey officials have reported that “the paid-sick-leave laws are working and that businesses are complying.”¹⁰³ Moreover, a graduate studies presentation at Rutgers’s University concluded that “overall, business experienced no effects on business profitability/performance and employee productivity regardless of employee size.”¹⁰⁴

Rhode Island

Rhode Island residents have long been entitled to income relief when they are unable to work due to injury or illness through the Temporary Disability Insurance Program funded by employees. The temporary caregiver insurance program was folded into that existing program to compensate workers who leave their jobs temporarily to care for a family member or to bond with a new baby.¹⁰⁵

Funding for family care is provided through employee payroll deduction and benefits are currently paid for four weeks, with no more than 30 weeks total when combining the benefits with disability and family care.¹⁰⁶ Employees taking advantage of this option are paid approximately 60% of their salary with a maximum benefit of \$752/week.¹⁰⁷ The program covers all private sector employers and some public employers.

Washington

Washington (Wash. Rev. Code § 49.86.010 (8)): In 2007, Washington was the second state to pass a paid family leave law, which guarantees employees up to five weeks of paid leave “to care for a newborn or newly adopted child.”¹⁰⁸ According to the law:

¹⁰⁰ *Id.*

¹⁰¹ *Id.* (citing, N.J. Stat. Ann. § 43:21- 38).

¹⁰² *Id.* (citing http://lwd.state.nj.us/labor/fli/content/fli_faq.html#22).

¹⁰³ Josh Dawsey, *N.J. Cities Pass Paid-Sick-Leave Laws Despite Opposition From Christie*, The Wall Street Journal, April 15, 2015, www.wsj.com/articles/n-j-cities-pass-paid-sick-leave-laws-despite-opposition-from-christie-1429134120 (last visited August 17, 2015).

¹⁰⁴ Miriam Ramirez, Rutgers University, NJBIA, *New Jersey Business and Industry Association, The Impact of Paid Family Leave on New Jersey Businesses* (Fall 2012), MPP AFE Presentation, <http://bloustein.rutgers.edu/wp-content/uploads/2012/03/Ramirez.pdf> (last visited on Jun, 3, 2015).

¹⁰⁵ Bryce Covert, *Workers in a Third State Can Now Take Paid Family Leave*, Think Progress, January 2, 2014, thinkprogress.org/economy/2014/01/02/3110281/rhode-island-paid-family-leave-effect/ (last visited August 17, 2015).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Lisa Guerin, J.D., *Paid Family Leave in California, New Jersey, Rhode Island, Washington, and the District of Columbia*, Nolo, Law For All, www.nolo.com/legal-encyclopedia/paid-family-leave-states-29854.html (last visited May 28, 2015) (Per the article, such paid leave is “partial pay.”).

Washington’s law applies only to parental leave. Eligible employees may receive partial pay when they take time off to care for a newborn or newly adopted child. Employees are eligible if they’ve worked at least 680 hours during the prior year or the year that ended three months before their leave starts.¹⁰⁹

For employees who work at least 35 hours a week, the benefit amount is \$250 per week. Employees who work fewer hours will receive a prorated amount.”¹¹⁰

New York

New York does not currently have a formal family paid leave law. Bills S3004 (Senate) and A3870 (Assembly) were introduced this year to provide employees with 12 weeks of paid leave “to care for a new child or seriously ill family member.”¹¹¹ In 2014 the New York Assembly passed the Paid Family Leave Act (A.1793-B), but the Senate bill did not pass.¹¹²

A Strategic Business Planning Tool for Companies

The lack of paid family medical leave is an issue affecting all workers, not just those who are parents. Many Americans have aging parents or have had a family member with a sudden disability or illness requiring their help and want to do what is right by their family and their employer. Paid family leave promotes good business and family values.

It has been found that, “[n]early every other developed country provides these forms of paid leave without damage to their economies; in states and cities that already have paid sick days or paid family leave, the effect on businesses has been **either positive or neutral**”¹¹³ as was indicated earlier in California, New Jersey and Rhode Island.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ A Better Balance, *The Need for Paid Family Leave*, www.abetterbalance.org/web/ourissues/familyleave (last visited May 28, 2015).

See also Bill S3004-2015, New York State Senate, open.nysenate.gov/legislation/bill/S3004-2015, (2015); Bill A3870, New York State Assembly, assembly.state.ny.us/leg/?default_fld=&bn=A03870&term=2015&Summary=Y&Memo=Y&Text=Y (2015).

¹¹² Assembly Speaker Carl E. Heastie, News Release, *New York State Assembly Passes Paid Family Leave Act*, assembly.state.ny.us/Press/20150317/ (March 17, 2015). See also “Summary,” “Actions,” “Votes,” “Memo,” and “Text” of Bill A01793B, New York State Assembly (January 9, 2013), assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=A01793&term=2013&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y (last visited Jun. 3, 2015).

¹¹³ Mariya Strauss, *Crushing the Dream: The Business Lobby Groups Blocking Your Paid Leave*, February 6, 2015, Political Research Associates (emphasis in the original),

Moreover, it is pointed out that “[w]orkers earn their own sick days in states and cities that have passed paid sick days laws, and research has established that it doesn’t hurt the business’ bottom lines.”¹¹⁴ Likewise, with the Family Act workers, including the self-employed, must work to earn paid leave and contribute through a payroll deduction.¹¹⁵

Having a uniform strategic approach, one that “[minimizes] business disruption,”¹¹⁶ attrition, and “[kept] employees engaged and productive over the long term” saves businesses money.¹¹⁷ Disruption is minimized because everyone knows the rules and businesses can plan in advance how the work will get done.¹¹⁸ Furthermore, for the small investment by employers and employees, the dividends are great. As pointed out by some business leaders, when paid leave programs are implemented, employee morale is increased and businesses will save thousands of dollars through lower attrition, avoiding loss of thousands of man-hours and dollars expensed on rehiring and training workers.¹¹⁹

Conclusion

There is strong and compelling evidence that a national paid leave policy would result in a win-win for businesses, workers, and families. The time is now for the United States to join the over 180 nations worldwide with paid leave policies by modernizing our outdated laws on family leave, thereby addressing the realities of the modern day workforce and our country’s aging population that is expected to double within several years. The Family Act creates a measure of economic security during periods of family medical need for all workers – salaried, wage, and the self-employed – and paid leave policies have been found to improve bottom-line outcomes for businesses and health outcomes for children, adults and seniors. Moreover, the Family Act would help family caregivers remain in the workforce, as well as address inequalities and imbalances that many workers face.¹²⁰

In financial planning, there is an old adage “that people do not plan to fail, but fail to plan.” The Family and Medical Insurance Leave Act presents an enormous opportunity for our country to implement a plan that will help and support all American workers and their families, when they need it most. For the foregoing reasons, the Committee on

www.politicalresearch.org/2015/02/06/crushing-the-dream-the-business-lobby-groups-blocking-your-paid-leave/# (last visited on August 17, 2015).

¹¹⁴ *Id.*

¹¹⁵ S. 786, 114th Cong. (March 18, 2015), Sec 7, pages 35-40, U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf (last visited Jun. 2, 2015).

¹¹⁶ Cali Williams Yost, *3 Reasons Why Card-Carrying Capitalists Should Support Paid Family Leave*, *Forbes*, (May 23, 2012), www.forbes.com/sites/work-in-progress/2012/05/23/3-reasons-why-card-carrying-capitalists-should-support-paid-family-leave/ (last visited August 17, 2015).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *See id.*

¹²⁰ National Partnership for Women & Families, Fact Sheet, *The Family And Medical Insurance Leave Act (The FAMILY Act)*, www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf (emphasis in the original) (last visited August 17, 2015).

Women and the Law recommends that the New York State Bar Association support the Family and Medical Insurance Leave Act, Bill S. 786, including as an Association legislative priority, to ensure some income replacement when a worker needs to take family or medical leave. Our families are counting on us.

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