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Paid Family and Medical Leave: What Works Best for Workers and Employers

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

Americans want paid family leave. Lawmakers here today and across Congress want workers to have access to paid family leave. Businesses want to be able to provide their workers with paid family leave.

And I want workers to have access to paid family leave—but not just any paid family leave. I want workers to have access to the same type of flexible, individually tailored paid family leave that I've been fortunate enough to receive. I want workers to be able to respond to immediate personal or family needs. I want workers to be able to remain connected to their jobs in ways that make transitions into and out of both short- and longer-term leaves as easy as possible, and I want workers not to have to risk career opportunities and advancements as a result of having taken leave.

That is why I am here today to try to help think through the implications of a federal paid family leave program and to consider ways that policymakers can help increase access to the types of paid family leave policies that work best for both workers and employers.

There is a lot to comprehend when thinking about paid family leave policies, and I have six considerations I would like to discuss:

First is to review the lay of the land on paid family leave in the U.S., including Americans' opinions about paid family leave.

Second is how a federal paid family leave policy would shift the current and future trajectory of paid family leave in our country, particularly in light of recent growth in employer-provided and state-based paid family leave programs.

The third factor is costs, and not just monetary costs, but also trade-offs and operational impacts. What can we expect the costs to be of a federal paid family leave program, and how do those costs compare to employer-provided programs?

Fourth is the implications of a one-size-fits-all federal policy. This is where I want to urge policymakers to think from a rubber-meets-the-road perspective about workers' unique family and medical leave needs as well as employers' highly diverse sizes, structures, and industries. What will work best for workers and employers?

Fifth, I would like to briefly discuss an idea that has been proposed by a handful of Republican lawmakers to let workers trade future Social Security benefits for paid family leave.

Finally, I would like to propose a variety of ways that lawmakers can increase workers' access to paid family leave without enacting a new federal entitlement, without imposing employer mandates, and without raising taxes on all workers.

1. The State of Play for Paid Family Leave in the U.S.

Who Takes Leave and Why? In 2012, 12.6 percent of all workers and 15.6 percent of workers with access to FMLA[1] took family or medical leave.[2] The most common reason for taking family or medical leave was for a personal medical reason (56 percent), followed by caring for a family member (25 percent) and then caring for a new child (19 percent).

Two out of every three workers who took leave (66.2 percent) and almost four out of every five who were eligible for FMLA and took leave (77.9 percent) were paid by their employers during their leave.[3] The majority of those who were paid did not receive a specific paid family and medical leave benefit, but rather used a general paid time off (PTO) benefit, personal days, or a temporary disability insurance benefit.[4]

Other surveys have found even higher rates of leave-taking. A 2018 Cato Institute poll found that 24 percent of workers took leave within the past year,[5] while a Pew Research Center poll found that 27 percent of workers took leave within the past two years.[6] According to the Pew poll, 62 percent of Americans either have taken or expect to take family or medical leave at some point in their working careers.

Expansive Access. In terms of access, the official Bureau of Labor Statistics figure shows that only about 15 percent of workers have access to paid family leave. That figure, which includes only workers who were offered a distinct paid family leave benefit specifically to care for a new child or a seriously ill family

[1] FMLA refers to the Family and Medical Leave Act of 1993, which provides workers with up to 12 weeks of job-protected, unpaid parental, family, and medical leave provided the employee has worked for the employer for at least one continuous year and at least 1,250 hours and that the individual works for an employer who has 50 or more employees within a 75-mile radius. About 60 percent of workers qualify for FMLA leave.

[2] Ben Gitis, "Paid Family and Medical Leave in the United States: Using Data to Guide Public Policy," American Action Forum, February 22, 2018, https://www.americanactionforum.org/research/paid-family-medical-leave-united-states-using-data-guide-public-policy/ (accessed May 3, 2019).

[3] Ibid.

[4] Ibid.

[5] Emily Ekins, "Poll: 74% of Americans Support Federal Paid Leave Program When Costs Not Mentioned—60% Oppose If They Got Smaller Pay Raises in the Future: Results from the Cato 2018 Paid Leave Survey," Cato Institute, December 11, 2018, https://www.cato.org/survey-reports/cato-institute-2018-paid-leave-survey (accessed December 17, 2018).

[6] Juliana Menasce Horowitz, Kim Parker, Nikki Graf, and Gretchen Livingston, "Americans Widely Support Paid Family and Medical Leave, But Differ Over Specific Polices," Pew Research Center, March 23, 2017, http://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/ (accessed December 17, 2018).

member, significantly understates the true percentage of workers who have and utilize paid family leave.

State-based paid family leave programs alone cover 20 percent[7] of workers; 34 percent[8] of workers report having access to employer-provided paid family leave; and 50 percent[9] of workers have access to temporary disability insurance, which typically covers maternity and personal medical leave.

Moreover, access to paid family leave appears to be expanding rapidly as employers respond to workers' desires for paid family leave by starting new programs and expanding existing ones. A recent survey from the Society for Human Resource Management found that the percent of companies offering paid maternity leave nearly tripled over the past four years, from 12 percent in 2014 to 35 percent in 2018.[10] Over that same period, more than 100 large, name-brand companies announced new or expanded paid leave policies, and the 20 largest employers in the U.S. now provide paid family leave.[11]

Presumably because of increased availability, it appears that more workers are also taking paid family leave. In comparison to the above-cited Abt Associate statistics from 2012 showing that 12.6 percent of workers and 15.7 percent of those with access to FMLA took family or medical leave, a 2018 survey from the Cato Institute found a significantly higher percentage of workers taking family and medical leave. According to the Cato survey, 24.8 percent of workers said they wanted or needed to take leave within the past year, and 23.7 percent of workers took leave (including both paid and unpaid).[12] Of those who took leave, 75 percent received either full or partial pay.

The strong economy, tight labor market, and additional resources freed up by the Tax Cuts and Jobs Act have helped to make this increase in access to paid family leave and leave-taking possible.

Americans' Opinions on Paid Family Leave. According to a Pew Research Center poll, upwards of 80 percent of Americans support paid family leave for workers' own medical issues and for maternity leave. Among those who support paid family leave, a majority (62 percent) believe employers should pay for it, while 13 percent thought state governments should pay for it, and 11 percent thought the federal government should fund it (the

[7] Employment in California, New York, Rhode Island, and New Jersey totaled 31.622 million in October 2018 out of total U.S. employment of 149.941 million. U.S. Department of Labor, Bureau of Labor Statistics, "Economic News Release," Table 3, "Employees on nonfarm payrolls by state and select industry indicator, seasonally adjusted, October 2018," last modified April 19, 2019, https://www.bls.gov/news.release/laus.t03.htm (accessed December 17, 2018).

[8] Nisha Kurani et al., "Paid Family Leave and Sick Days in the U.S.: Findings from the 2016 Kaiser/HRET Employer Health Benefits Survey," Henry J. Kaiser Family Foundation, May 31, 2017, http://www.kff.org/womens-health-policy/issue-brief/paid-family-leave-and-sick-days-in-the-u-s-findings-from-the-2016-kaiser-hret-employer-health-benefits-survey/ (accessed May 3, 2019).

[9] Statistics for temporary disability insurance are for full-time, private sector workers in 2017. U.S. Department of Labor, Bureau of Labor Statistics, "National Compensation Survey: Employee Benefits in the United States," March 2017, Table 16, "Insurance benefits: Access, participation, and take-up rates, private industry workers," https://www.bls.gov/ncs/ebs/benefits/2017/ownership/private/table16a.pdf (accessed May 6, 2019).

[10] Society for Human Resource Management, *2018 Employee Benefits: The Evolution of Benefits*, https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2018%20Employee%20Benefits%20Report.pdf (accessed May 3, 2019).

[11] National Partnership for Women & Families, "Leading on Leave: Companies with New or Expanded Paid Leave Policies (2015–2018)," April 2018, http://www.nationalpartnership.org/research-library/work-family/paid-leave/new-and-expanded-employer-paid-family-leave-policies.pdf (accessed May 6, 2019).

[12] Ekins, "Poll: 74% of Americans Support Federal Paid Leave Program When Costs Not Mentioned."

remaining 18 percent presumably believed workers should save on their own for leave).[13] According to the Cato poll, Americans overwhelmingly support a federal paid family leave program (with 74 percent in favor), but support plummeted when it came to the various ways to pay for it. At a price tag of $450 more in taxes each year—the minimum cost for a modest program—fewer than half of Americans (48 percent) supported a national paid leave program. Forty percent of Americans supported paid family leave if it meant higher deficits. Only 38 percent supported federal paid family leave if it meant lower pay raises for them, and even fewer—29 percent—were willing to accept fewer benefits for themselves or a reduced likelihood of promotions for women. At the bottom of the support meter was a mere 21 percent of Americans who were willing to trade lower funding for education, Social Security, and Medicare in order to implement a national paid family leave program.[14]

2. How a Federal Paid Family Leave Program Would Change America's Trajectory for Paid Family Leave.

The current rise in access to employer-provided, as well as state-based, paid family leave programs is an important consideration for policymakers because a national paid family leave program will most certainly alter the status quo as well as the future trajectory.

The reason that a federal program cannot coexist alongside current and expanding employer-provided and state-based programs is a matter of basic economics. Consider if the government decided that it was wrong for people not to have access to their own car, so they decided to implement a program that provided everyone with access to a new car every seven years—not a Cadillac, but something basic. It goes without saying that anyone who did not own a car and wanted one would immediately claim their "free" car. And so would a lot of people who already have their own cars. Next time they needed a new car (or perhaps even before they actually needed one), most people would turn to the government car program instead of going out and purchasing their own. Sure, some people would want more than the government program offered, so they would still pay for their more expensive program, but nothing would stop them from also taking the free government car. Not taking advantage of the program would be like throwing away free money.

This is called crowding out, and we know that government programs crowd out private ones. A recent economic analysis of expansions in government-provided health care between 1996 and 2002 estimated a 60 percent crowd-out rate, meaning that for every 100 people who gained government-provided health insurance, 60 lost privately provided health insurance. Policymakers can expect significantly larger crowding-out effects from a federal paid family leave program because employer-provided paid family leave is less valuable to workers than employer-provided health insurance (this is due, significantly, to the tax preference gained through employer-provided health insurance), so it is less consequential for employers to eliminate, scale back, or never implement a paid family leave policy.[15]

At a July 11, 2018, Senate Finance Subcommittee hearing, Carolyn O'Boyle, representing Deloitte, explained what Deloitte does (and what we can expect other employers

[13] Horowitz et al., "Americans Widely Support Paid Family and Medical Leave, But Differ Over Specific Policies."

[14] Ekins, "Poll: 74% of Americans Support Federal Paid Leave Program When Costs Not Mentioned."

[15] Jonathan Gruber and Kosali Simon, "Crowd-Out Ten Years Later: Have Recent Public Insurance Expansions Crowded Out Private Health Insurance?" National Bureau of Economic Research *Working Paper* No. 12858, January 2007, http://www.nber.org/papers/w12858.pdf (accessed March 9, 2018).

to do) for employees who live in states with their own state-based paid family leave programs. She said that Deloitte instructs its workers first to utilize the state-provided paid leave benefits, and then Deloitte tops those benefits off to total Deloitte's maximum benefits. That is a straight transfer of costs from private-sector businesses and workers to state taxpayers, and the same thing would happen at the national level for federal taxpayers.

This shift in costs could disproportionately harm lower- and middle-income workers who currently lack access to paid family leave, because they would pay not only for the costs of their own access to paid family leave, but also for a portion of the costs of existing paid family leave programs. These workers would be hard-pressed to give up hundreds or thousands of dollars more per year in taxes in exchange for a federal paid family leave program that they might or might not use.

Considering the recent expansion in employer-provided and state-based paid family leave programs, coupled with workers' demands for and employers' incentives to establish and expand paid family leave programs, now is not the time to stifle this growth by enacting a federal paid leave program. By prompting employers and states to give up or significantly reduce their existing policies and by discouraging those who otherwise would add new paid family leave policies from doing so, a federal paid family leave program would shift the costs currently borne within private companies and state governments to federal taxpayers. Taking the various measures of paid family leave that Americans take today, I estimate that employers provide between $125 billion and $275 billion worth of paid family and medical leave to workers each year.[16]

As I elaborate below, workers are arguably better off with employer-provided paid family leave programs that more aptly limit the costs and consequences of paid leave.

3. What Would a Federal Program Cost?

Paid family leave includes multiple costs. In addition to the direct funding required to administer the program and pay benefits, there are costs for employers and workers.

The primary cost of providing benefits would likely come from a payroll tax. Current state-based paid leave payroll taxes range from 0.15 percent in New York[17] to 1.32 percent in Rhode Island. Jersey,[18] $770 in Rhode Island, and $936 in California.[19] On a per-worker

[16] This estimate is based on a workforce of 150 million, between 12.6 percent and 18.5 percent of workers taking leave each year with an average leave length of 6.95 weeks, benefits equal to between 66 percent and 100 percent of pay, and workers' annual earnings in the range of $50,000 to $75,000.

[17] New York's rate changes annually to reflect costs. In its second year of inception in 2019, with the program not fully phased in until 2021, the rate increased by 21.4 percent, from 0.126 percent to 0.153 percent. The program is estimated to cost workers just $73 per year once fully phased in, but it will almost certainly cost significantly more considering that it provides about 33 percent higher benefits for two to three times as many weeks compared to existing state programs. ShelterPoint, "Difference Between PFL Premium Payments and Payroll Deductions," October 30, 2018, https://pfl.shelterpoint.com/blog/paid-family-leave-premium-vs-payroll-deductions (accessed May 4, 2019), and Betsy McCaughey, "How You End Up Paying for 'Paid Family Leave,'" *New York Post*, April 12, 2016, http://nypost.com/2016/04/12/how-you-end-up-paying-for-paid-family-leave/ (accessed June 12, 2017).

[18] New Jersey recently passed an expansion in benefit levels and the maximum length of leave. The state labor department estimated the maximum combined payroll deduction for the state's temporary disability and family leave insurance programs will rise from $86 this year to $354 when the program is fully implemented next year. Samantha Marcus, "Here's How Much Murphy's Expansion of Paid Family Leave and Temporary Disability Will Cost You in Higher Taxes," NJ Advance Media for NJ.com, April 7, 2019, https://www.nj.com/politics/2019/04/heres-how-much-murphys-expansion-of-paid-family-leave-and-temporary-disability-will-cost-you-in-higher-taxes.html (accessed May 4, 2019).

[19] Montana Budget and Policy Center, "Paid Leave in Four States: Lessons for Montana Policymakers and Advocates," December 2015,

basis, the maximum paid family leave payroll taxes for 2019 are $108 in New York,[20] $354 in New Jersey,[21] $770 in Rhode Island, and $936 in California.[22]

State-based program costs are relatively low due to a lack of public awareness and significant underutilization. Californa and New Jersey have the longest-running programs. Yet, in California, fewer than half of workers who were eligible for paid family leave benefits even knew the program exists, and awareness was lowest among low-wage, Latino, and immigrant workers. In New Jersey, only 1 percent of eligible families used the program, only 40 percent of all New Jersey residents even knew it exists, and some managers and human resource professionals say that are confused about the policy. [23]

A federal policy would almost certainly have greater awareness and utilization, and thus higher costs.

The American Action Forum estimated that the FAMILY Act would cost $31 billion per year if takeup rates were as small as they have been in state-based programs; $68 billion per year if takeup rates resemble workers' use of FMLA (including unpaid leave); and $225 billion per year if workers responded as indicated by their paid family leave needs in a recent Cato Institute poll.[24] A $225 billion per year paid family leave program would require a 2.9 percent payroll tax—more than seven times the FAMILY Act's proposed tax.[25]

In my own analysis, I estimated that the cost of a federal program that provided Social Security–level benefits (roughly 50 percent of wages) would be $85.5 billion, or an additional $569 per year in taxes for the average worker. The same program with 100 percent benefit levels would cost an estimated $193 billion per year, or $1,286 per worker.[26] These estimates assume that about 18.5 percent[27] of workers would access the benefit and that they would take an average of 6.95 weeks of leave.[28]

https://www.dol.gov/wb/media/Paid%20Family%20Medical%20Leave%20in%20Four%20States%20FINAL.pdf (accessed June 12, 2017).

20 ShelterPoint, "Difference Between PFL Premium Payments and Payroll Deductions."

21 New Jersey recently passed an expansion in benefit levels and the maximum length of leave. The state labor department estimated the maximum combined payroll deduction for the state's temporary disability and family leave insurance programs will rise from $86 this year to $354 when the program is fully implemented next year. Samantha Marcus, "Here's How Much Murphy's Expansion of Paid Family Leave and Temporary Disability Will Cost You in Higher Taxes," NJ Advance Media for NJ.com, April 7, 2019, https://www.nj.com/politics/2019/04/heres-how-much-murphys-expansion-of-paid-family-leave-and-temporary-disability-will-cost-you-in-higher-taxes.html (accessed May 4, 2019).

22 Montana Budget and Policy Center, "Paid Leave in Four States: Lessons for Montana Policymakers and Advocates," December 2015, https://www.dol.gov/wb/media/Paid%20Family%20Medical%20Leave%20in%20Four%20States%20FINAL.pdf (accessed June 12, 2017).

23 Sharon Lerner and Eileen Appelbaum, "Business as Usual: New Jersey Employers' Experiences with Family Leave Insurance," Center for Economic and Policy Research, June 2014, http://cepr.net/documents/nj-fli-2014-06.pdf (accessed June 13, 2017).

24 Ben Gitis, "The Fiscal Implications of the FAMILY Act: How New Paid Leave Benefits Increase Leave-Taking and Drive Up Estimated Program Costs," March 21, 2019, https://www.americanactionforum.org/research/the-fiscal-implications-of-the-family-act-how-new-paid-leave-benefits-increase-leave-taking-and-drive-up-estimated-program-costs/#_ftn27 (accessed May 4, 2019).

25 Ibid.

26 Author's estimates based on Social Security's benefit calculation formula and a national average wage of $52,651.

27 The 18.5 percent take-up rate comes from a reported 27.5 million total "leaves" out of 148.834 million workers. This includes some workers who take multiple leaves, meaning the actual percentage of workers who take leave is lower than 18.5 percent. Impaq International, LLC, and Institute for Women's Policy Research, "Estimating Usage and Costs of Alternative Policies to Provide Paid Family and Medical Leave in the United States," January 17, 2017, https://www.dol.gov/asp/evaluation/completed-studies/IMPAQ-Family-Leave-Insurance.pdf (accessed January 2, 2019).

28 The average leave length of 6.95 weeks comes from Abt Associates, Inc., "Family and Medical Leave in 2012: Technical Report," Exhibit 4.4.5 Nature of illness and duration of most recent leave taken in the past 12 months,

For a more generous national paid family leave program that provided 16 weeks of paid leave, the American Action Forum estimated annual costs ranging from $307 billion to $1.9 trillion per year, depending on how many people would use the program and for how long they would take leave.[29] Although this estimate models a paid family leave plan that is more expansive than existing state-based ones, it is not unrealistic to project that a federal paid family leave program in the U.S. could expand to this size.

Already, state-based programs have expanded by raising benefit levels, increasing the number of weeks of leave available, and loosening the eligibility criteria. Presumably in response to relatively low awareness and uptake, New Jersey significantly expanded its paid leave program, including doubling the maximum length of leave to 12 weeks; increasing the maximum payment level from 66 percent to 85 percent of earnings; broadening the group of employers to whom New Jersey's FMLA law applies to include those with 30 or more employees; and expanding eligibility criteria to include anyone with whom the employee has "the equivalent of a family relationship."[30] It is estimated that these changes will more than quadruple employees' maximum payroll tax contribution.[31]

European programs have had more time to expand than U.S. state programs. Between 1980 and 2011, the median amount of paid leave for mothers among Organization for Economic Cooperation and Development (OECD) countries increased from 14 weeks to 42 weeks.[32] Similarly, between 1980 and 2013, Canada's paid leave program expanded from providing 17 weeks of paid maternity leave to providing 35 weeks of paid parental leave (52 weeks including home care payments), while the program's costs roughly quadrupled from 0.07 percent to 0.28 percent of gross domestic product (GDP).[33]

Across the OECD, countries spend an average of $12,300 in public expenditures for every child born, and some countries spend upwards of $35,000 per child born. (These figures exclude the costs of employer-mandated benefits.)[34] If the U.S. were to spend between $12,300 and $35,000 per child born, this would result in $50 billion to $140 billion in new taxpayer costs. That would only be for new births, which account for only one of every five family and medical leaves that workers take. Covering the other 80 percent of family and medical leaves would cost substantially more.

The United States has experience with other entitlement programs, all of which have

prepared for the Department of Labor, revised April 18, 2014, https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf (accessed January 2, 2019).

29 Ben Gitis, "The Cost of Paid Family Leave Law," American Action Forum, October 2015, https://www.americanactionforum.org/research/the-cost-of-paid-family-leave-law/ (accessed May 6, 2019).

30 Evandro Gigante, Arielle E. Kobetz and Vanessa P. Avello," New Jersey's New Paid Family Leave Law Provides Greater Benefits for Employees," February 19, 2019, https://www.lawandtheworkplace.com/2019/02/new-jerseys-new-paid-family-leave-law-provides-greater-benefits-for-employees/ (accessed May 6, 2019).

31 Samantha Marcus, "Here's How Much Murphy's Expansion of Paid Family Leave and Temporary Disability Will Cost You in Higher Taxes."

32 Gordon B. Dahl et al., "What Is the Case for Paid Maternity Leave?" National Bureau of Economic Research, October 2013, http://www.nber.org/papers/w19595.pdf (accessed March 5, 2018).

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

34 Organization for Economic Co-operation and Development, "Data for Chart PF 2.1.D: Public Expenditure on Maternity and Parental Leave, 2013," OECD Family Database, Social Policy Division, last updated October 26, 2017, http://www.oecd.org/els/family/database.htm (accessed March 6, 2018). Data reported at current 2013 prices and in current purchasing power parity, in U.S. dollars.

exploded in size, scope, and costs over time, and we should expect the same from a federal paid family leave entitlement.

Employer Costs. Although existing and proposed paid family leave programs do not directly tax employers, most employers still bear a direct cost of continuing to pay the employer portion of employees' health care benefits while they are on leave. Over a 12-week period, employers would have to pay an average of $4,500 to continue family health insurance coverage for a worker on leave.[35]

Employers, as well as other workers and customers of a business, also bear indirect costs of family and medical leave. Employee absences can cause operational disruptions, especially for smaller employers. Employers have to find someone else to cover their job functions, either by hiring temporary workers or by shifting additional work to existing employees. Replacement workers often do not perform the absent worker's job with the same quality or reliability.

An economic study examined the impact of Denmark's implementation of a one-year paid parental leave program on the nursing industry and found that the generous paid leave policy led to a rapid and persistent 12 percent decline in nursing employment, a 17 percent increase in inpatient readmissions, an 89 percent increase in newborn readmissions, a delay in technology adoption, and a 13 percent increase in nursing home mortality over the three-year period following enactment.

This is not to say that leave should not be allowed, but it should be limited to cases in which it is truly needed and in ways that can minimize costs and consequences for workers and employers.[36]

Worker Costs. Workers would directly bear the burden of paying any dedicated tax associated with a federal paid family leave program. This could be particularly burdensome for lower- and middle-income workers. The Family Act's estimated range of costs—between 0.4 percent and 2.9 percent of payroll—would amount to an additional $120 to $870 more in taxes for someone making $30,000 per year and an extra $200 to $1,450 for someone making $50,000 per year.

Moreover, even if employers did not bear the direct costs of a paid family leave program, the costs of workers' absences could cause employers to discriminate against workers who are more likely to take leave. As professor and scholar Harry Holzer of the AEI–Brookings Project on Paid Family Leave has noted, "A mandatory paid leave policy might well lead employers to begin discriminating in hiring against less-educated women in the child-bearing ages, especially minority women."[37]

Both California's and New Jersey's state-based paid family leave programs had the unintended consequence of increasing the unemployment rate and the duration of unemployment for young women.[38] Even with low awareness and takeup rates, researchers estimated that New

[35]Kaiser Family Foundation, "Premiums for Employer-Sponsored Family Health Coverage Rise 5% to Average $19,616; Single Premiums Rise 3% to $6,896," October 3, 2018, https://www.kff.org/health-costs/press-release/employer-sponsored-family-coverage-premiums-rise-5-percent-in-2018/ (accessed December 17, 2018.

[36] Maya Rossin-Slater, Christopher J. Ruhm, and Jane Waldfogel, "The Effects of California's Paid Family Leave Program on Mothers' Leave-taking and Subsequent Labor Market Outcomes," National Bureau of Economic Research *Working Paper* No. 17715, December 2011, http://www.nber.org/papers/w17715 (accessed June 13, 2017).

[37] Harry J. Holzer, "Paid Family Leave: Balancing Benefits and Costs," AEI-Brookings Project on Paid Family Leave, January 30, 2017, https://www.brookings.edu/blog/social-mobility-memos/2017/01/30/paid-family-leave-balancing-benefits-and-costs/ (accessed June 12, 2017).

[38] Tirthatanmoy Das and Solomom W. Polachek, "Unanticipated Effects of California's Paid Family Leave Program," Institute of Labor Economics Discussion Paper No. 8023, March 2014, http://ftp.iza.org/dp8023.pdf

Jersey's paid family leave program reduced young women's employment rates by an estimated 8 percent to 9 percent.[39]

Super-sized government programs in Europe have more widespread adverse impacts for women. A study of Great Britain's paid leave and job-protected leave concluded that the policies reduced highly educated women's prospects of being promoted or holding management positions,[40] and a study of parental leave mandates in Europe found that they reduced women's relative wages.[41]

4. The Implications of a One-Size-Fits-All Federal Paid Family Leave Program.

Current proposals for a federal paid family leave policy propose a singular program: one benefit formula, one set of eligibility criteria, one maximum leave allotment, one tax or funding source to pay for it, and one federal agency to administer the program across 28 million unique businesses and 157 million diverse workers.

To understand why this will not work to workers' and employers' advantage, take the above example of the federal government establishing a car program to make sure all workers have access to reliable transportation. If the program offered everyone a used 2010 Honda Civic, that would not meet certain workers' needs (those with large families, for example), and for many, it would be a downgrade from their current car. But if the government offered everyone a Cadillac Escalade, all workers would take it, and the program's costs would be sky-high.

A one-size-fits-all federal program simply cannot meet workers' and employers' needs as efficiently as employer-provided policies can. Either its benefits will be too small and its criteria so limited that it will reach too few workers, or it will be so generous and inclusive as to encourage unwarranted claims and excessive costs.

Workers Need Flexible, Rapid-Response Policies. One of the greatest benefits of employer-provided programs is their ability to respond flexibly and quickly to workers' needs. If a worker gets a call that her child was in a car accident and hospitalized, she needs to leave work immediately. She does not have 30 days to provide her employer with advance notice, and she does not have a doctor's certification of her child's condition. What she needs is to e-mail her direct boss and have her say that she can take off and they will work things out as needed.

Moreover, if her child's condition requires her to be gone for weeks or months, she (and many low- and middle-income workers) may not be able to go for weeks without a paycheck while waiting to hear whether her claim has been approved.

Flexible policies also benefit workers and employers alike. When workers need family or medical leave, they don't necessarily need to take six or 12 continuous weeks off from work. A new mom may prefer to stretch out three months of leave over four or five months by working part-time from home over her leave. Or a worker undergoing cancer treatment may not need to take time off entirely, but may want a flexible arrangement that allows him to work

[39] Joshua Reed and Donald Vandegrift, "The Effect of New Jersey's Paid Parental Leave Policy on Employment," Munich Personal RePEc Archive, October 28, 2016, https://mpra.ub.uni-muenchen.de/74794/1/MPRA_paper_74794.pdf (accessed March 5, 2018).

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

[41] Christopher J. Ruhm, "The Economic Consequences of Parental Leave Mandates: Lessons from Europe," National Bureau of Economic Research, July 1996, http://www.nber.org/papers/w5688.pdf (accessed March 5, 2018).

from home when he has doctor appointments or when he's not feeling well.

It is hard to conceive of how a singular program administered by a bureaucratic federal agency could meet these workers' needs, and evidence of existing eligibility-based social insurance programs is not encouraging. At a recent March 7, 2019, Ways and Means Committee hearing on challenges and opportunities for working families, Ms. Tameka Henry explained how it took six years for her husband to be diagnosed and to receive his disability insurance benefits. If a federal paid family leave insurance program comes with even a fraction of the burden and delays contained in the federal disability insurance program, it will not meet workers' needs in a timely or efficient way.

Difficulty of Detecting and Minimizing Fraud and Abuse. Similar to other eligibility-based benefit programs like disability insurance and Medicaid, a federal paid family leave program would require considerable monitoring to prevent misuse and abuse. While most claims would represent legitimate reasons for taking leave, a federal program could create strong incentives for misuse and abuse.

Consider some of the following:

- One of the 15 million self-employed workers in the U.S. faces a rough patch in sales, and her income has dropped off.[42] She decides to file a claim for paid family leave, citing chronic headaches that she has had for years. She receives 12 weeks of paid family leave. It provides her an opportunity to do some groundwork to improve future sales. She begins to use the federal paid family leave program regularly to supplement her income during business slumps.

It is crucial to consider how a federal paid family leave program would address individuals who work for themselves, because the self-employed already represent about 10 percent of the U.S. workforce, and it has been forecasted that the number of self-employed (including gig-economy workers) could triple over the coming years.[43]

- An employer with highly seasonal sales sees the federal paid family leave policy as an opportunity to take a break in his payroll and encourages his employees to file family and medical leave claims if they or any of their family members have situations that would make them eligible for federal benefits. The employees feel pressure to appease their employer and file claims, even though they do not need to take the leave and the loss of full pay will hurt them financially.

Although intended to help workers, a federal paid leave program would create a de facto benefit for employers (setting aside the burdens discussed above). Thus, the paid leave agency would have to make sure that both workers and employers were in compliance with and not abusing the program.

- A worker has a father with long-term health needs who retired to Florida. For four consecutive years in a row, he takes 12 weeks' worth of paid family leave to go down to Florida and care for his father. Some co-workers are resentful because they see him regularly posting pictures on social media of him out surfing and hanging out at the beach. His employer is troubled by the disruptiveness of his leave and would

[42] Jay Shambaugh, Ryan Nunn, and Lauren Bauer, "Independent Workers and The Modern Labor Market," June 7, 2018, https://www.brookings.edu/blog/up-front/2018/06/07/independent-workers-and-the-modern-labor-market/ (accessed May 5, 2019).

[43] Austin O'Connor, "Be Your Own Boss, Be Happy,"AARP, February 27, 2018, https://www.aarp.org/work/small-business/info-2018/self-employed-numbers-fd.html (accessed May 5, 2019).

> like to talk to him about ways to minimize his leave, but he fears the employee would bring a lawsuit.

The legitimacy of paid family leave claims would not be black and white, but a federal program would have to distinguish between valid and illegitimate claims. This would be particularly hard for a single federal agency to accomplish from its remote vantage point. Fraud and abuse within the federal government's disability insurance program demonstrate this problem.

A federal paid leave program could call on employers to help prevent fraud and abuse. The employer page of New York's paid family leave program states, "As an employer, you play a key role in preventing insurance fraud."[44] As evident by the length of the instructions for employers in New York's program, complying with a government program could impose a significant burden on employers.

Minimizing Costs. As discussed above, paid family leave involves both direct and indirect costs. To imply that it can occur without cost or consequence is to assume that workers contribute nothing to their jobs and that their absences will go unnoticed. That does not mean, however, that providing paid family leave does not benefit companies, because it helps them attract and retain workers. But when employers decide to offer paid family leave, they make a conscious decision that the benefits of providing that leave exceed the costs.

Employers have personal relationships with their employees that allow them to know their workers' needs, and they alone have intimate knowledge of their business to know what level of benefits they can provide and how best to spread the costs of those benefits across the company. When employers make this choice, as opposed to having a family leave program that is outside their control forced upon them, they are less likely to impose costs on the individual workers who are most likely to use paid family leave benefits.

Most workers who take family leave (whether paid or unpaid) do so for legitimate purposes, and they realize the difficulty that their absence can cause for their co-workers and employer. By taking away the perceived hardship on employers (because they would not have to provide workers' pay) and by establishing a right for all Americans to claim up to 12 weeks per year in paid family and medical leave, a federal program could significantly shift the way workers view paid family leave and cause them to take significantly more leave than they otherwise would. In addition to extra burdens on co-workers and employers, excessive paid leave could harm the quality of products and services across the economy.

A Government Program Cannot Match the Efficiency and Responsiveness of Employer-Provided Programs. If we were to poll all workers who have access to some form of paid family leave through their employers and ask them whether they would prefer their existing program or a federal government program, I believe an overwhelming majority would say they would rather keep their current program than have to apply through a federal one.

Of course, workers who do not yet have access to paid family leave benefits at work would prefer any form of government program over not having leave at all. The problem with instituting a new federal program is that it risks significantly thwarting existing programs and replacing them with a less efficient and either substandard or excessively costly government program. Polling shows that Americans want a federal program, but not if they had to pay for it through things like higher taxes, reduced

44 New York State Paid Family Leave Website, "Employers: Handling Requests," https://paidfamilyleave.ny.gov/handling-requests (accessed May 4, 2019).

opportunities, or lower spending on other government programs.[45]

5. Is Social Security a Viable Option for Paid Parental Leave?

A number of lawmakers have introduced proposals that would use Social Security for paid parental leave by allowing workers to exchange future claims on benefits for paid parental leave benefits today. At first glance, the proposal may seem promising, particularly to conservatives who do not want to enact a new federal program covering all types of family leave and who do not want to crowd out private-sector programs.

In reality, however, using Social Security for paid parental leave would violate its purpose and trigger a cascade of unintended consequences.[46]

For starters, Social Security is an old-age social insurance program. It is not a piggy bank for common life events such as having a child, paying off student loans, or buying a home. Moreover, workers have no legal claim to their Social Security benefits, and because of its insolvency, workers' future benefits are only as good as future lawmakers' willingness to extract additional taxes from younger generations. The reason current and future retirees' Social Security benefits will have to be cut or worker's payroll taxes increased is that lawmakers keep increasing its mission, its benefits, and hence its costs.

The Social Security paid leave proposals aims to limit costs and crowing out by having workers "pay" for their benefits through future reductions and by restricting benefits to parental leave only. But those constraints would never hold.

Social Security started out as a relatively small program, providing modest benefits to a tiny fraction of the population while taking just 2 percent from workers' paychecks. Today, it provides benefits equaling about 45 percent of workers pre-retirement incomes to one in every five Americans while taking 12.4 percent from workers' paychecks (and taxes would have to rise to 15.1 percent to keep the program solvent).[47]

If enacted, pressure would immediately mount to expand the type of leave workers could take to include the roughly 80 percent of non-parental family leaves that workers take. Then would come a push to increase the size of benefits because a Social Security–level benefit would be too little for some people to afford taking leave. Then, realizing that the trade-off for delayed retirement or reduced benefits would predominantly hurt lower- and middle-income women, policymakers would likely waive the requirement that workers repay their previous leave.

At the end of the day, a well-intended proposal to help workers stay at home with their new children could turn into a massive new federal entitlement that would cost workers between $1,300 and $2,000 more in taxes each year and make Social Security less secure for future generations.[48]

45 Ekins, "Poll: 74% of Americans Support Federal Paid Leave Program When Costs Not Mentioned."

46 Rachel Greszler, "How a Proposed Federal Paid Family Leave Policy Would Become a Federal Entitlement and Weaken Social Security," The Heritage Foundation *Backgrounder* No. 3318, May 29, 2018, https://www.heritage.org/sites/default/files/2018-06/BG3318_0.pdf

47 Social Security Administration, *The 2019 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, https://www.ssa.gov/OACT/TR/2019/ (accessed May 5, 2019).

48 Rachel Greszler, "Americans Want a National Paid Family Leave Program—But Not If They Have to Pay For It: New Survey," The Heritage Foundation *Backgrounder* No. 3376, January 24, 2019, https://www.heritage.org/budget-and-spending/report/americans-want-national-paid-family-leave-program-not-if-they-have-pay

6. What Can Policymakers Do to Help Workers Achieve Truly Accessible Paid Family Leave?

Considering the significant increase in the number of employers and states that provide paid family leave to their workers, now is not the time to thwart this growth through a new federal entitlement program. But just because a federal program could not be as efficient or as beneficial to workers as employer-provided programs does not mean policymakers cannot help workers immediately.

A number of policies and proposals would directly benefit workers who currently lack access to paid family leave:

The Working Families Flexibility Act. The Working Families Flexibility Act, which was most recently introduced by Senator Mike Lee (R–UT), would allow private employers to give their workers the same option that state and local workers receive—to choose between time-and-a-half pay or time-and-a-half paid leave in exchange for overtime hours.[49] For example, an employee who worked five hours of overtime every week for one year could accumulate 10 weeks of paid leave. Even working just two hours of overtime each week for a year could result in four weeks of paid leave.

This proposal would be particularly helpful to the low-wage workers that lack access to paid family leave because it would apply to hourly employees who currently earn below about $24,000 per year.

Payroll Tax Credit for Qualified Disability Insurance Policies. Private disability insurance provides individual medical leave benefits as well as pregnancy and maternity-related ones. Although about 50 percent of full-time private-sector workers had access to temporary disability insurance in 2017, some policymakers, employers, and workers undercount private disability insurance as a source of personal medical and maternity leave.[50] Policymakers should consider providing a payroll tax credit to employers who provide their workers with qualified disability insurance policies. I have advocated for such a proposal to improve the federal disability insurance program, and this policy would have the added benefit of increasing access to medical and maternity leave benefits.[51]

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

Universal Savings Accounts. By double-taxing savings (once when it is first earned and a second time after it generates investment gains) and by limiting tax-preferred savings accounts to purposes such as education and retirement savings, the U.S. discourages individuals from saving for other purposes. Universal Savings Accounts would allow workers to save money for any purpose while

[49] Rachel Greszler, "Mike Lee's Bill Would Boost Paid Family Leave Without Growing the Government," The Daily Signal, April 11, 2019, https://www.dailysignal.com/2019/04/11/mike-lees-bill-would-boost-paid-family-leave-without-growing-government/ (accessed May 5, 2019).

[50] Bureau of Labor Statistics, "Employee Benefits in the U.S.," "Table 16. Insurance benefits: Access, participation, and take-up rates, private industry workers," March 2017, https://www.bls.gov/ncs/ebs/benefits/2017/ownership/private/table16a.pdf (accessed February 12, 2018).

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

paying taxes only once. This would make it easier for workers to accumulate higher savings that could be used for a variety of life's circumstances, including family and medical leave.

Penalty-Free Withdrawals from Retirement Accounts. Although not as beneficial as USAs, policymakers could help increase workers' access to affordable paid family leave by allowing workers to make penalty-free withdrawals from their IRAs or 401(k)s to take paid family leave. The SECURE Act, which this committee recently advanced, would allow workers to make penalty-free withdrawals from their retirement plans for the birth or adoption of a child.

Allowing States to Use Unemployment Insurance (UI) Systems for Parental Leave. Without mandating that states implement paid maternity leave policies within their existing UI systems, the Administration could grant states the flexibility to use their UI systems as a source of paid parental leave if they so choose. [52] Since UI systems are almost exclusively funded at the state level, this would not constitute a new national entitlement. It would be important, however, that states not apply experience rating to the parental leave component of their programs, because if companies' UI tax rates were to increase based on the number of workers who took parental leave, it could lead to hiring discrimination against women of child-bearing age.

Lower Taxes. Lower taxes on individuals and businesses would free up income and resources to apply toward paid family leave—whether through higher personal savings or through new employer-provided paid family leave. Recent reports on new and expanded paid family leave policies from large companies such as Lowe's and Chipotle following the Tax Cuts and Jobs Act of 2017 show that lower taxes have contributed to greater paid family leave benefits[53]

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

Conclusion

Americans want paid family leave, but they do not want just any policy at any cost. They want a program that meets their varying needs with as little cost, burden, and disruption as possible. A federal program could not meet workers' needs the way employer-provided programs can; it would crowd out existing employer-provided programs, and it would drive up costs for workers and taxpayers.

Support for and expanding access to employer-provided paid family leave programs suggests that policymakers should not rush to enact a federal paid family leave program, but instead

[52] On May 24, 1999, President Clinton issued a memorandum directing "the Secretary of Labor to propose regulations that enable States to develop innovative ways of using the Unemployment Insurance (UI) system to support parents on leave following the birth or adoption of a child." The Secretary of Labor promulgated a new rule in August 2000 in response to the presidential memorandum. The new rule allowed states to use the federal unemployment compensation system to provide benefits to parents who took unpaid leave under the FMLA. However, the rule would have still required states to enact their own changes to the UI program requirements, and no states enacted such requirements before the rule was rescinded by the Bush Administration in 2002.

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

should allow employer-provided paid family leave programs to continue to expand.

In the meantime, policymakers can help to fill the gaps in paid family leave through policies such as the Working Families Flexibility Act and allowing workers to use their tax-preferred savings to pay for paid leave. In the long run, workers, employers, taxpayers, and the American economy will all be far better off with individually tailored paid family leave programs through their employers instead of another costly and unsustainable federal entitlement program.

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