CSW 70 Justice for Women Brief

Paid Family Leave and Benefits in the U.S.

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Legal protection and financial security are essential to maternal well-being and lifelong gender equity. Without paid leave or accommodations, many women return to work before adequate recovery, risking their health, increasing stress, and compromising infant health and breastfeeding. This brief examines U.S. legal protections for maternal leave, their role in advancing economic justice, and offers recommendations for policy reform.

The Family and Medical Leave Act (FMLA), passed by Congress in 1993, provides up to 12 weeks of **unpaid,** job-protected leave for childbirth, serious illness, or caregiving. The provisions apply to employers with 50 or more employees who become eligible after 12 months or 1,250 hours on the payroll.[1]

While the FMLA is a significant advance, **it excludes nearly 44% of workers**, forcing many to skip critical bonding time or work while caregiving.[2] The lack of financial support during caregiving reinforces gender wage gaps. Research shows that the FMLA slowed wage equality progress by 76%, as employers statistically discriminate against women who take leave.[3] An economic justice approach must ensure that expecting and new mothers are not financially penalized or professionally disadvantaged for exercising their rights.

Fast Facts

- In 2023, **27% in private industry** and **28% in government received paid family leave; 90% had unpaid leave**.[4]
- Among professional and management workers, **39%** had access to paid leave and **93%** had unpaid leave, compared to only **16%** access to paid leave and **83%** unpaid leave among service sector workers.[5]
- Overall, just **6% to 27%** of the workforce had access to paid family and medical leave at all.[6]

U.S. Federal Legislative Context for Maternal Leave Since 1993

- Family and Medical Leave Act 1993: Offers up to 12 weeks of unpaid leave for birth or other family leave.
- Tax Cuts and Jobs Act 2017: Created an employer tax credit for those offering paid leave.
- Federal Employee Paid Leave Act 2019: Permits federal employees up to 12 weeks of paid leave.[7]
- PUMP - Nursing Mothers Act 2022: Requires employers to grant breaktime and space.[8]
- Pregnant Workers Fairness Act 2023: Mandates accommodations for pregnant workers.[9]
- Current Proposal: Expand Section 45S tax credit to cover eligible short-term disability insurance.[10]

State-by-State Mandatory Paid Family Leave[11]

13 US states and the District of Columbia mandate paid family leave, including medical, caregiving, and parental leave.[12] States with the most robust programs combine 12 weeks of family leave with high wage replacement of 90% and up for lower-income workers. Other programs maintain similar or shorter durations but lower replacement rates.

Top-tier (most generous)

- Oregon – 12 weeks; up to 100% wage replacement for low-income workers.
- Connecticut – 12 weeks; up to 95% wage replacement.
- Washington (State) – 12–16 weeks; up to 90% wage replacement.
- Colorado – 12 weeks; up to 90% wage replacement for lower earners.
- District of Columbia – 12 weeks; up to 90% replacement for lower-income workers.

Other programs

- New Jersey – 12 weeks; about 85% wage replacement.
- Massachusetts – 12 weeks; about 80% replacement for low-income workers.
- New York – 12 weeks; 67% wage replacement.
- California - 8 weeks; up to 90% wage replacement for lower-income workers.
- Rhode Island – 7 weeks, rising to 8 weeks in 2026; about 60% wage replacement.

Forthcoming programs

- Maryland, Minnesota, Delaware, and Maine – up to 12 weeks of paid family leave scheduled to take effect in 2025 and 2026, with up to 80-90% wage replacement depending on income.

Global Context

The U.S. remains one of only six nations globally, and the only industrialized country, that does not offer national paid parental leave.[13] Of 186 countries, 96% offer paid leave for mothers, and 44% offer paid leave for fathers.[14]

- Sweden provides 480 days per child, with 90 days reserved for each parent.[15]
- Norway ensures 17 weeks per parent.[16]
- Iceland grants six months each per parent, with six weeks transferable between them.[17]
- 62% of countries provide women at least 14 weeks of paid leave, the minimum ILO standard.[18]

Who Is Left Out and Why

- **Employees of Small Businesses:** FMLA applies to companies with over 50 employees, yet small businesses employ 46% of the U.S. private workforce.[19]
- **Part-Time and New Employees**: FMLA requires 1,250 hours/year with the same employer—a standard many of the 25% of women employees who work part-time don't meet.[20] Just 14% of part-time workers had access to paid family leave in 2023, compared to 31% of full-time workers.[21]
- **Gig & Contract Workers**: About 36% of U.S. workers are gig or freelance, with no employer-based benefits.[22]
- **Low-Income and Women of Color**: Only 6% of the bottom 10% of workers had access to paid family leave in 2021, compared to 43% of the top 10% of workers.[23] Only 58% of Hispanic adults and 67% of Black adults report having access to some form of paid leave at work, compared to 72% of white workers.[24]
- **Immigrant Women**: Often working in informal sectors (e.g., caregiving, agriculture), many are excluded from the Pregnant Workers Fairness Act and lack access to basic workplace protections, such as paid leave, reasonable accommodations, and health insurance.[25]

Recommendations

1. Establish **federal paid parental leave** of 12 weeks with progressive wage replacement, such as the proposed FAMILY Act.[26]
2. Enable **opt-in provisions** for small businesses, contractors, and self-employed individuals, not included in state-paid leave programs, to join them voluntarily.
3. Promote **portable benefits** models that permit workers to accumulate leave and other benefits across multiple jobs or contracts.[27]
4. Expand **tax Incentives** for paid leave, such as improving and simplifying Section 45S, to support small employers offering paid leave.[28]
5. **Expand FMLA eligibility** to include smaller employers with financial subsidies.
6. Target interventions to **redress gaps for low-income** groups and marginalized communities.

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