



12 IDEAS TO JUMPSTART PROGRESS ON PAID LEAVE



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by Curran McSwigan and Anthony Colavito

Takeaways

Thirty years after passage of the Family and Medical Leave Act, America is stuck. Just half of all workers have an unpaid leave benefit and paid leave is a privilege that accrues mostly to college-educated workers in office jobs. Comprehensive leave legislation in Washington is also stuck. In the last Congress, paid leave was ultimately dropped from the Inflation Reduction Act to help get the landmark legislation to President Biden's desk. In the current divided government, no Republicans have signed on to comprehensive reform.

Meanwhile, America is afflicted with low birth rates, stagnant labor force participation, a growing elderly population in need of family support, and a widening gulf between the economic fortunes of college- and non-college-educated Americans. The pandemic reminded all of America of the obvious—people become ill and have to miss work, which can mean missing a paycheck and losing one's livelihood.

In this report, we explore a new approach to unstick this important debate. We recommend 12 policies that make separate and concurrent progress on three types of leave—parental, medical, and caregiving. Each begins to lay the foundation for a more comprehensive and robust national paid leave system like the one proposed in the FAMILY Act. If a comprehensive paid leave system isn't politically possible now, this approach will allow us to make critical progress and begin laying the foundation for one in the future.

A new mom in New York is guaranteed 12 weeks of paid time off to raise her child. A new mom in Rhode Island has at least 6 weeks. And a mom in Florida gets zero paid time off unless she works for an employer who provides it.¹ The United States has a patchwork of employer-based, state, and local policies around paid leave. The result? Millions of workers don't have the time or resources to care for themselves or their families.

A comprehensive paid leave system, such as [The FAMILY Act](#), which guarantees workers 12 weeks of paid time for medical, parental, and caregiving purposes, would do wonders to support working families. But with that bill stalled, what steps can policymakers take now to lay a foundation for a robust paid leave system in the future?

In other countries, progress on paid leave didn't happen in a day. In Australia, a long fight for paid leave in the 1970s ended with the government granting unpaid maternity leave to many workers. Five years later, maternity leave was expanded to include adopted mothers, then unpaid leave was expanded to all parents. Finally, a full paid parental leave program was established in 2011.² And it is not just Australia—incremental victories on leave policy were the key to unlocking significant progress further down the line in many countries.³ In the United States, achieving progress on paid leave now could pave the path for the FAMILY Act in the future.

Even small steps are hard. Thirty years ago, family leave was blasted as a government mandate on business. Opponents claimed it would be too costly and undermine the country's economic position. And the furor over encouraging women to work outside the home is hard to fathom today.⁴ But, over the course of a decade, legislators and advocates worked together to get the essential Family and Medical Leave Act (FMLA) done—and now 95% of businesses have a positive or neutral view of the policy.⁵

In this paper, we offer a menu of federal policy options to make progress on paid leave that serves as building blocks for the implementation of a comprehensive and robust paid leave program in the future. Paid leave can have many iterations and components, and we believe progress could be made by dividing parental, medical, and caregiving leave into different yet concurrent tracks. Here's how we can make progress:

Parental Leave Progress

1. Expand unpaid parental leave to cover all workers.
2. Create a national parental-only paid leave program.
3. Build in more short-term and long-term flexibility to help parents return and stay in the workforce.

Medical Leave Progress

4. Invest in better medical leave data.
5. Ensure more workers have basic unpaid medical leave protections and businesses can better accommodate leave.
6. Make sure all workers have at least 7 days of paid sick leave.
7. Leverage markets for short-term disability insurance.

Caregiving Leave Progress

8. Invest in better caregiving data.
9. Ensure more workers have basic unpaid caregiving leave protections and broaden the definition of caregiving.

10. Make a refundable tax credit for lost wages from caregiving.
11. Enact a flexible caregiving leave benefit.
12. Create a standardized form for employees to request flexible work arrangements.

Parental Leave Progress

More than 3.5 million women gave birth in 2021.⁶ 60,000 of those mothers experienced complications from pregnancy and delivery. 400,000 babies were born pre-term.⁷ And yet, a staggering one out of every four new moms returns to work within just two weeks of giving birth.⁸ Meanwhile, the average American father takes just one week off after the birth or adoption of their child.⁹ And less than half of LGBTQ parents say their employer has inclusive paid leave policies.¹⁰ As a result, too many American parents end up returning to work before they are physically or mentally prepared to do so.¹¹

1. Expand unpaid parental leave to cover all workers.

Current FMLA protections cover a little over half of workers.¹² Roughly 15% of workers in the United States are ineligible for FMLA job protections because their workplace is too small.¹³ In addition, younger women are disproportionately impacted by the law's work history requirements—over half of women aged 20 to 24, and almost a third of women aged 25 to 34, have worked for their employer for less than a year.¹⁴

We recommend reducing the law's hours requirement to 520 hours in the past year (10 hours a week), dropping the tenure requirement to 6 months, and eliminating the worksite requirement completely.

A reduction to the hours worked per year and tenure requirements will better capture workers who need job-protected leave, including those who work part-time or have been at their place of employment less than a year. Eliminating the worksite requirement entirely ensures employees of smaller businesses are protected while they take time off for a new child. And with the rise in remote work, it means at employers with employees spread out beyond FMLA's 75-mile radius requirement workers still receive coverage under the law.¹⁵

FMLA taken for parental leave purposes is typically the easiest for businesses to administer because the timing and length of leave can usually be given with notice. To help small businesses grant unpaid leave, policymakers should also consider employer tax credits to cover the costs associated with hiring temporary staff. More on assistance to small businesses can be found in the medical leave section of this report.

Improvements to FMLA

The Family and Medical Leave Act (FMLA) is the cornerstone of federal leave policy in the United States. It became law 30 years ago after numerous name changes, debate across five different Congresses, and two presidential vetoes. The compromises necessary for passage have resulted in a still imperfect system for equitable access to leave protections. FMLA currently provides unpaid job-protected leave for parental, medical, and caregiving reasons.

Just over half of workers are eligible for FMLA leave, and many can't afford to take unpaid time off even when they qualify. Rural workers are less likely to qualify, more women than men can't take leave, and only 38% of low-wage workers are covered.¹⁶

Three key FMLA provisions cause the coverage gaps:

- FMLA employers must have at least 50 workers within a 75-mile radius
- Workers need to have worked 1,250 hours in the 12 months prior to the start of leave.
- Workers must have been with their employer for 12 months.

Reforms to these provisions are addressed in the paper. [The Bipartisan Policy Center](#) provides estimates of how reforms can close existing coverage gaps. They estimate expanding FMLA access to businesses with at least 20 employees would cover 6.3 million more workers, while decreasing the tenure requirement to 6 months would expand access to 6.5 million workers. Even moderate reforms to FMLA could greatly impact the number of workers with job-protected leave.¹⁷

2. Create a national parental-only paid leave program.

Many new parents have access to paid leave through their employer or state, but most do not.¹⁸ Creating a paid parental leave benefit ensures parents are not faced with the choice between caring for their new child and earning a living. Establishing a federal parental-only paid leave benefit could also lay a critical foundation for passing a broader and more comprehensive paid leave program in the future.

Below we outline what a worker making \$40,000 a year could roughly see under a variety of parental leave program structures. The wage replacement rate could be structured so that lower-income workers see a larger percent of their wages covered than higher-income workers. There are many ways to configure the duration, wage replacement, and maximum benefit given in a paid leave program as we have previously [outlined](#). Below are some possible options:

| Number of Weeks | Wage Replacement | Weekly benefit received for worker making \$40,000 a year | Total value of benefit to worker making \$40,000 a year | Potential Maximum Weekly Benefit |
|-----------------|------------------|---|---|----------------------------------|
| 12 | 66% | \$510 | \$6,090 | \$920 |
| 10 | 70% | \$540 | \$5,380 | \$970 |
| 8 | 75% | \$580 | \$4,620 | \$1,040 |
| 6 | 80% | \$620 | \$3,700 | \$1,110 |
| 4 | 85% | \$650 | \$2,650 | \$1,180 |

Source: Authors' Calculations.

Numbers in the table may not add due to rounding. The calculated maximum weekly benefits are based on a \$72,000 annualized income, which attempts to align with the FAMILY Act's \$4,000 a month maximum benefits at 66% wage replacement. We then assume and suggest that if fewer weeks are to be offered for a parental leave program that the replacement rate should rise, and a corresponding maximum benefit should increase such that the FAMILY Act standard of \$72,000 in annualized income is the upper threshold benefit. Without this shift in maximum benefit levels at an 85% wage replacement rate, a \$4,000 a month maximum would translate to a \$56,500 maximum credited income level. Policymakers may still prefer to cap the maximum benefit as a specific dollar amount despite making tradeoffs in weeks of benefits or wage replacement rate to lower the fiscal cost of the program.



We also suggest that policymakers allow for maximum flexibility in how parents use their leave time. If a federal benefit is six weeks, lawmakers could allow workers to take four weeks right at the time of birth or adoption and then use the remaining two weeks anytime over the course of the next three to six months. Or if that flexibility isn't mandated, legislators should offer incentives to companies who allow for the flexible use of parental leave in the months following birth or adoption. Regardless of the benefits that policymakers stipulate, many states and employers should still be able to offer more generous programs above this minimum standard.

3. Build in more short-term and long-term flexibility to help parents return and stay in the workforce.

Without support, too many parents, especially women, find themselves disconnected from the labor force in the months and years after having a child.¹⁹ Paid leave policies are shown to be a key solution to keeping parents in the labor force long-term—but it is also essential that parents have the support and flexibility needed to ensure they can balance the responsibilities of family and work right after the birth or adoption of a child and in the years that follow.²⁰

Lawmakers should therefore focus on supporting parents in the short-term transition into and out of parental leave, while also pursuing policies that create long-term flexibility for workers. They can do this by:

- Providing a tax credit to businesses who offer part-time work in the weeks before and after parental leave is taken. This tax credit could also be larger for those employers who pay full wages during this period.
- Piloting a phased parental leave program for federal workers, where workers can choose to return to their roles at half-time for the full year following the birth or adoption of a child.

- Appropriating funding for state and local “returnship” programs, which focus on helping workers, especially women, get back into their fields after longer absences.²¹
- Creating a federal assistance program that can help smaller businesses with the support and equipment necessary to implement telework policies. Increasing telecommute options more broadly will help increase flexibility for workers, including parents.²²
- Investments in making child care more affordable and accessible.²³

Medical Leave Progress

Each year, 2 million Americans are diagnosed with cancer.²⁴ Separately, 1 in 5 will experience mental illness.²⁵ 4 million receive treatment for a substance use disorder, with 17 million more needing treatment.²⁶ Long COVID is keeping as many as 4 million out of the workforce.²⁷ And yet a quarter of workers don’t have access to even a single paid sick day, let alone leave that would let them care for illness more serious than a cold. Without access to paid leave, too many workers are not able to properly care for their physical and mental health.

4. Invest in better medical leave data.

More data and better data collection changes will help policymakers advance informed and convincing evidence-based medical leave policies in the future.

Existing surveys and administrative data provide important, but insufficient, information on medical leave. There are still large gaps in the data. For example, in some surveys there is a lack of differentiation between short-term sick leave and medical leave, which requires longer periods off from work to recover from a serious health condition. This information would clarify the use of and need for paid medical leave, as well as its effects on the health and employment outcomes of those who use it.

Congress should appropriate funds to improve existing federal surveys that produce data on paid leave, such as the Department of Labor’s FMLA Worksite and Employee Surveys. They can do so by ensuring the surveys are conducted annually and that they shed greater light on the benefit (e.g., by including questions that differentiate duration of leave by type of leave taken).

Congress should also remove barriers to accessing administrative data, such as earnings data from the Quarterly Census on Employment and Wages (QCEW), so researchers can more easily pair it with data from states’ existing paid medical leave and temporary disability insurance programs. One way Congress could do this is by clarifying federal privacy rules to ensure researchers can gain access to valuable microdata.

5. Ensure more workers have basic unpaid medical leave protection and businesses can better accommodate leave.

Over half of workers who take leave under the FMLA do so because of their own serious health condition.²⁸ Policymakers should expand eligibility of FMLA job

protections to capture more workers, while also making changes that can help employers better navigate the administration process. [The Bipartisan Policy Center](#) found that modifications to the FMLA can expand access to job-protected leave to millions more workers.

Eligibility for FMLA job protected leave taken for a personal health condition at minimum should be expanded in the following ways:

- Include workers at businesses with at least 20 employees,
- Reduce the minimum requirement for hours worked to 520 hours a year (10 hours per week), and
- Reduce the one-year tenure requirement to 6 months.

This will ensure more workers enjoy the benefits of job protection, expand coverage to workers at medium-sized businesses, and refrain from placing burdensome new requirements on small businesses.

If FMLA eligibility is expanded, it is likely that smaller businesses will have to navigate the law's administration for the first time. While parental leave employees usually can provide greater notice around when and how long they plan to be out, those details are often much less clear for workers who take medical leave. There are some reforms that policymakers can make to better help employers, both big and small, through this process.

First, increase the minimum amount of leave workers take at a time to 2-hour or 4-hour blocks.²⁹ Around a third of workers that take FMLA leave do so on an intermittent basis—instead of taking leave all at once, they take it over a separate number of instances, usually to attend doctor's appointments or deal with a chronic illness.³⁰ Intermittent leave may be taken in as little as one-hour time blocks and in some cases even smaller intervals, which can be difficult for employers who need to schedule around the leave.³¹ Setting a minimum time for leave taken can help alleviate some of these difficulties for businesses, but employers should strive to maximize flexibility for workers needing intermittent leave.

Second, update FMLA with a clearer definition of what constitutes a serious health condition (SHC).³² This would provide clarity for workers on which conditions qualify while also reducing instances of workers taking time off for things such as a common cold. Workers may use FMLA for less serious illnesses due to a lack of access to sick time, so reforming FMLA's definition of a SHC should be done alongside efforts to get workers paid sick leave.

6. Make sure all workers have at least 7 days of paid sick leave.

Nearly one out of every four private-sector workers in the United States doesn't have paid sick time.³³ Paid sick leave is shown to be positive not only from a public health perspective, but an economic one as well.³⁴ Paid sick leave helps reduce the spread of contagious diseases, increases the pursuit of preventative care, and strengthens workforce stability—all while having little impact on the bottom line of businesses.³⁵ In fact, pre-Covid data showed the average use of sick time from those that took any was only 2 days a year.³⁶ Mandating paid sick leave can help workers manage short-

term bouts of illness, while also bridging the gap for those needing to get approved for longer-term medical leave.

Policymakers should mandate all businesses with at least 15 employees provide a minimum of seven days paid sick time. One proposal that does this is the [Healthy Families Act](#), which has been championed for years by Senator Patty Murray (D-WA) and Congresswoman Rosa DeLauro (D-CT).³⁷ In addition, for businesses with less than 15 employees, we recommend the federal government offer tax credits to cover or offset the costs of providing sick leave to employees. This type of incentive would reduce the outsized burden a mandate might place on the country's smallest businesses, while still making strides towards ensuring all workers have access to paid leave.

7. Leverage markets for short-term disability insurance.

Short-term disability insurance (STDI), or paid medical leave, is a popular benefit employers use to attract and retain employees. Today, just over 40% of workers have access to STDI through their jobs.³⁸ But many workers, especially low-income and part-time workers, lack the benefit.³⁹

To address these disparities, Congress should leverage existing short-term disability insurance markets to ensure all workers can take paid leave to recover from a serious health condition or illness. Specifically, Congress should enact legislation to require employers to purchase STDI plans for their workers, regulate the standards of such plans to ensure no worker is wrongfully denied coverage, and provide tax credits to offset the cost of STDI coverage. Harnessing the infrastructure of existing STDI insurance markets eliminates the need to stand up new bureaucratic systems to administer leave, helping deliver paid medical leave to workers faster. And by regulating STDI standards and offering tax credits to offset their cost, universal coverage can be achieved without encumbering businesses.

Caregiving Leave Progress

In 2020, 55 million Americans were over the age of 65.⁴⁰ By 2040, that number will grow to 78 million.⁴¹ But over the same period, the number of prime working age Americans is projected to increase by just 10 million.⁴² As America ages, more and more people will require care, and many will need to rely on their families. With only one in four workers having access to paid leave to care for a family member, including their children or an aging parent or relative, many Americans will find it increasingly hard to ensure their loved ones receive the care they deserve.⁴³

8. Invest in better caregiving data.

Several public surveys, including the Survey of Income and Program Participation and the American Time Use Survey shed some light on caregiving leave. However, they tend to overlook particular populations, such as non-elderly people who require care, and provide inadequate levels of detail, such as what illness or ailment caused the need for care.

To fill these knowledge gaps, Congress should appropriate funds to establish new surveys that advance understandings of caregiving leave. At a minimum, the U.S.

Census Bureau and the U.S. Bureau of Labor Statistics should include a greater number of caregiving questions in their surveys to capture more information relevant to policymaking, such as how intermittent the use of caregiving leave is. With more publicly available data on caregiving and caregiving leave, leave policies can be better tailored to the needs of caregivers and care needers.

9. Ensure more workers have basic unpaid caregiving leave protections and broaden the definition of caregiving.

FMLA caregiving job protections are only available to a limited number of workers who provide care to a narrow set of family members. For example, the law only allows caregiving leave to be taken by those caring for a spouse, child, or parent by employees working for large employers.⁴⁴ To ensure more workers can care for a loved one and still return to their job, FMLA job protections should be expanded to include leave taken to care for siblings, grandparents, and other extended family members with serious health conditions. The Family Medical Leave Modernization Act, most recently introduced in the 117th Congress by former Representative Carolyn Maloney (D-NY), would expand the definition of caregiving in a similar fashion.⁴⁵

Tenure requirements and minimum worksite size rules should also be lowered to ensure more workers at a larger number of businesses are eligible for job protection. We recommend:

- Lowering the FMLA tenure requirement to 6 months,
- Reducing the annual work hours requirement to 520 hours per year (10 hours per week), and
- Dropping the worksite requirement to 10 employees.

As noted in the medical leave section above, we believe these requirement levels will ensure more workers enjoy the benefits of protection and expand coverage to workers at medium-sized businesses without placing burdensome new requirements on small businesses.

10. Create a refundable tax credit for lost wages from caregiving.

When a worker's loved one becomes seriously ill, that worker may have to take time off from work—and give up wages—to care for them. Without some form of income replacement, or cash to cover care-related expenses, these workers face a difficult choice: keep working to earn a paycheck or sacrifice their work hours to provide care.

By providing workers who need to take time off with a refundable tax credit to cover lost wages and expenses, workers would no longer have to confront this choice. This credit, formatted similarly to the one proposed by Senators Ernst (R-IA), Capito (R-WV), Bennet (D-CO), and Warren (D-MA), in the bipartisan Credit for Caring Act, would equal 66% of wages lost during caregiving spells in a given year, up to a maximum of \$4,000.⁴⁶ This credit will help workers care for their families in the comfort of knowing they will remain financially stable.⁴⁷

11. Enact a flexible caregiving leave benefit.

Only 25% of workers have access to paid family leave, which includes leave taken to care for a child or a sick adult relative.⁴⁸ Low-income workers in particular lack access to paid family leave—just 13% of those in the bottom quarter of occupations by pay have paid family leave through their employer.⁴⁹

| Work/Caregiving Split | Weekly Benefit | Duration |
|-----------------------|----------------|----------|
| 0/100 | \$510 | 4 weeks |
| 25/75 | \$380 | 6 weeks |
| 50/50 | \$250 | 8 weeks |
| 75/25 | \$130 | 16 weeks |

Source: Authors' Calculations.



This will give workers the flexibility needed to address their loved ones' health needs, ensure leave takers remain connected to the workforce, and provide workers with the financial security needed to take time off from work.

12. Create a standardized form for employees to request flexible work arrangements.

Many workers struggle to find the flexibility they need in their jobs to care for their loved ones. Other countries have started to address this need for flexibility—the European Union requires employers to allow parents of young children and other caregivers the right to request flexible working arrangements, while several countries, including the United Kingdom, have expanded this type of policy to all workers.⁵⁰

Policymakers in the US should similarly make progress on flexible work by creating a simple form that outlines how an employee can request flexible working arrangements from their employer. While such a form may not be needed in all workplaces, especially those that already have strong workplace flexibility arrangements, it would create a path for workers to navigate requesting flexible work. Just as the HUD-1 form helps ensure all mortgage borrowers are presented financial information in the same manner, it would make requesting flexible work a more uniform process across the board.

Employers should not be under an obligation to make the requested accommodations, but a standardized form could help employees achieve a more flexible environment in workplaces where it is feasible. While these types of requests are likely to be easier to grant in jobs that can be done from home, there are still ways it could be used to help achieve accommodations for workers at in-person jobs. Providing a simple form by which employees are able to seek flexible work arrangements helps both workers and employers navigate these conversations most effectively.

Conclusion

In a divided Congress, there are always hurdles to large-scale legislation. But when it comes to paid leave, there are a lot of options available for legislators to make progress today. In pursuing smaller policy pieces, legislators can lay the foundation for getting a larger and more comprehensive program done in the future.

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