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New York Paid Family Leave

LESSONS FROM A UNIQUE PROGRAM

Summary

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PAID FAMILY LEAVE

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- New York, unlike other states with paid family leave programs, uses a private insurance model to administer benefits.
- Small businesses are largely adapting to the program, and a survey found that over half express support of it.
- While this program design has administrative advantages in New York, it may not work as well in other states or as a national program.
- We need more data. The state of New York has not made available sufficient data to truly evaluate the program model. More data are needed to ensure the program's success and inform state and federal policymakers.
- The cost of the paid leave program, paid by New York's workers, has increased sharply, creating uncertainty about long-term financial viability.

Introduction

In 2016, New York enacted a paid family leave law providing qualified employees access to partial wage replacement while taking time off work to bond with a child, care for a family member, or assist loved ones when a family member is called to active military service.

Since then, six other states, including the District of Columbia, have enacted their own programs, bringing the total number of states with paid family leave to 10.^a All 10 programs are distinct, but the structure of New York’s program is unique in its reliance on private insurers to administer benefits. As other states and federal policymakers consider enacting paid family leave programs, it is important to evaluate the success and impact of existing programs.

This issue brief looks at the New York model, which has now been in effect for four years. We provide an overview of New York’s paid family leave program, describe how its structure differs from all other state programs, and outline some preliminary takeaways for federal and state lawmakers to consider.

Analysis on the effects and the efficacy of New York’s model remains limited. Our analysis was constrained by a lack of data that we recommend New York—as well as all other states with paid family leave programs—immediately address.^b

^a Two of these states—Oregon and Colorado—have passed paid family leave legislation but not yet begun providing benefits. For more details, see BPC’s explainer on State Paid Family Leave Laws Across the U.S., available at <https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/>.

^b After engaging several stakeholders, BPC submitted a Freedom of Information Law Request to New York’s Department of Financial Services (DFS) and the New York State Insurance Fund (NYSIF) for data on total claims and benefits paid by employer size, wage levels, and other demographic characteristics, such as race and gender. We also asked for information on the performance of the private insurance market. While NYSIF never responded to our request, DFS provided an official response after roughly four months. In that response, DFS provided high-level financial statements of private insurers, with little specific information on their experience providing paid family leave benefits. It also notified us that it does not collect information on program takeup and benefits paid by gender, race, wage level, or employer size.

New York's Paid Family Leave Program

While most state paid leave programs provide benefits and collect payroll taxes through a government-run social insurance model, New York uniquely uses a private insurance system. In New York, individual insurance companies—including the state-run New York State Insurance Fund (NYSIF)—compete in a marketplace to provide paid leave coverage.^c The insurance companies provide paid leave benefits and collect premium payments, both of which are set by the state. The state requires all employers to either self-insure or carry a paid family leave insurance policy.¹

New York built its paid leave system on top of its existing disability insurance system. New York's long-standing Disability Benefits Law established a private insurance market and, since 1949, has required nearly all private employers in the state to carry disability insurance that provides benefits to employees who cannot work due to an illness, pregnancy-related disability, or nonoccupational injury. Since 2016, insurers have been providing paid family leave benefits alongside disability benefits.

The New York Department of Financial Services (DFS) sets the paid family leave premium each year by establishing a payroll deduction rate and maximum contribution. Employers must deduct this premium from employee paychecks (or cover all or part of the premium themselves) and remit the exact amount to their insurer. In 2022, New York set the premium rate at 0.511% of all wages, up to a maximum annual contribution of \$423.71.^d

DFS also determines the benefits that insurers must pay to claimants. Workers can take up to 12 weeks of leave in any 52-week period, and those earning up to the statewide average weekly wage (SAWW) receive 67% of their typical wages.^e While an insurance company can provide a more generous benefit (either by extending the maximum duration of leave or increasing the wage replacement), no insurer can charge a higher premium for those larger benefits.

^c New Hampshire's paid family leave program, which will begin providing benefits in 2023, will use a similar model; however, New Hampshire's program will rely on a single private insurer to administer benefits statewide and will be voluntary for all private employers and employees.

^d The premium rate is set each year, and the maximum contribution is that percentage of the annualized statewide average weekly wage (SAWW).

^e In 2022, the SAWW is \$1,594.57 (\$82,917.64 annualized), meaning the maximum weekly benefit is \$1,068.36. Any eligible worker earning more than the SAWW receives the maximum benefit during leave.

Lastly, DFS targets a loss ratio around 75%.² The loss ratio is the dollar amount of claims an insurer paid out as a proportion of the premiums it took in. At the 75% loss ratio, DFS intends for each insurer to use around three-quarters of its total premiums collected to cover claims and have the remaining quarter to cover administrative costs and realize a profit. Each year, DFS also equalizes loss ratios across insurers. Insurers with lower loss ratios (or excess revenue) pay into a risk adjustment pool and insurers with higher loss ratios receive distributions from the risk adjustment pool.

Advantages, Obstacles, and Other Takeaways from New York

ADMINISTRATIVE ADVANTAGES

New York used a phase-in approach to launch the leave program. The state began collecting premiums and administering benefits just under two years after lawmakers passed paid family leave legislation.

It then spent four years ramping up the wage replacement rate and leave duration. Some states, such as Oregon, have taken a different approach, launching full benefits all at once—but only after multiple years of preparation and many months of collecting payroll taxes. Phasing in the program eased implementation. As state and federal policymakers consider new paid leave programs, they should actively engage with administrators in states like New York to learn the advantages and drawbacks of different phase-in strategies.

New York's private insurance model also has inherent administrative advantages for delivering paid family leave benefits. With the state government primarily in a regulatory oversight role, private insurance companies and individual employers are largely responsible for collecting premiums and providing benefits. Diffusing the administrative responsibilities—such as educating workers about benefits and premiums, notifying businesses about their responsibilities, and delivering benefits to workers—across multiple actors enhances New York's ability to administer the program and effectively reach employers and workers.

The New York model may not be easy to replicate elsewhere, however. New York’s existing temporary disability insurance system, on which the paid family leave program was built, enabled the state to use this unique model. However, neither the federal government nor most states have a temporary disability insurance system—let alone one that specifically relies on private insurers. Without that existing framework and proven regulatory capacity, it will be hard to successfully reproduce the New York model.

UNEXPECTED PREMIUM INCREASES

Soon after the rollout of New York’s paid family leave benefit, the program experienced two years of unexpectedly sharp premium increases—a sign that program costs outpaced what DFS anticipated. Like many other states, New York phased in its paid family leave program over multiple years, gradually increasing the wage replacement rate from 50% to 67% and the maximum duration of leave from eight weeks to 12 weeks. One might expect the premiums paid by workers to increase over the course of the phase-in as benefits become more generous. However, the payroll deduction rate grew three times faster than the benefit maximum.^f

Table 1. New York Paid Family Leave Benefits and Premium Rates, 2018-2022

	Phase-In Period				
	2018	2019	2020	2021	2022
Payroll Deduction Rate	0.126%	0.153%	0.270%	0.511%	0.511%
Wage Replacement Rate	55%	55%	60%	67%	67%
Benefit Duration	8 weeks	10 weeks	10 weeks	12 weeks	12 weeks

The significant premium increases in 2020 and 2021 are difficult to interpret, as different factors played a role each year. In 2020, the increase likely resulted from higher-than-expected benefit takeup in 2019 that caused the overall cost of the program to spike. For instance, one study found that New York workers at small companies were more than 53% more likely to take leave in 2019 (when

^f Comparing the payroll deduction rate to the product of the wage replacement rate and the benefit duration.

the 2020 payroll deduction rate was determined) than they were before the program came into effect.³ The near doubling of the payroll deduction rate for the subsequent year suggests that DFS was unprepared for a takeup rate increase of this magnitude. The following year, however, although benefit use fell significantly during the COVID-19 pandemic, the payroll deduction rate nearly doubled again.⁴ Without more data, drawing firm conclusions about the causes of these rate hikes is difficult, but the volatility suggests uncertainty regarding the program's financial sustainability.

PRIVATE INSURANCE MARKET PERFORMANCE SEEMS STEADY, BUT UNDERLYING QUESTIONS ABOUT LONG-TERM VIABILITY REMAIN

Given the paid family leave program's reliance on private insurers, it is vital that New York's private insurance market remain sustainable for paid family leave to succeed, and the state should continue to build on the apparent strength of the past four years. Twenty-four insurers, including NYSIF, are currently providing paid family leave in 2022. However, the number of participating insurers in the New York market has declined in each of the past three years, from a peak of 29 insurers in 2019.⁵

With little ability to compete on price or benefits, insurers' decision to participate is not straightforward. Indeed, the very first notice of premiums DFS published acknowledged this point by "strongly encourage[ing]" disability insurance providers to remain in the market.⁶ DFS stated it "may take into account the special and unique value to the public of the combined policy for disability and Family Leave Benefits" and decrease the minimum loss ratio for disability insurance (which is different than the minimum loss ratio for paid family leave insurance). That it has not done so suggests many insurers so far are willing to provide coverage under the terms DFS has set.

Most insurers likely provide paid family leave benefits because DFS requires them to do so if they already provide disability insurance. Moreover, DFS allows for more pricing power and lower mandatory loss ratios in the disability insurance market. Many insurers, then, likely opt to provide paid family leave so that they can continue to participate in the more competition-friendly disability insurance market.

EVIDENCE ON SMALL BUSINESS EXPERIENCES

While there has been limited analysis of New York's paid family leave program, researchers conducted a survey comparing the experiences of small companies (between 10 and 99 employees) in New York to those in New Jersey and Pennsylvania each year from 2016 to 2019.

A National Bureau of Economic Research working paper analyzing the results highlighted that that New York's paid family leave program dramatically increased the use of family leave among small business employees. Along with the increase in leave-taking was a modest improvement in small employers' ability to handle employee absences longer than four weeks in the first year of the program. Notably, employers did not observe any effect (positive or negative) on their workers' performance, such as productivity, commitment, and teamwork. Moreover, workers were not more likely to quit or be absent from work without providing notice in advance.⁷

The survey also found that small businesses were much more likely to support than oppose the program. In particular, over 50% of small businesses were very or somewhat supportive of the program each year from 2016 to 2019; around 20% were neutral; and the remaining 15-20% were very or somewhat opposed to the program.⁸ A follow-up survey suggested that small business support for the program strengthened in 2020.⁹

A Dearth of Data

To date, New York has only published basic information on participating insurers and premium rates. It has not published any detailed analysis of who is claiming benefits (by race, gender, or income level), the number of weeks of leave workers claim, employer characteristics, or benefit outlays. The state has also not published any information on the performance of their private insurance market.

To inform our analysis, BPC requested documents from DFS and NYSIF under New York's Freedom of Information Law. Our request centered on information about private insurers and total claims and paid leave benefits, broken down by employer size, wage level, and other demographics such as race and gender. BPC never received a response from NYSIF. While DFS provided BPC the insurance companies' annual financial statements, it informed us that it does not collect the data on paid leave program usage that BPC requested. Yet, DFS' own an-

nual notice regarding premiums states that DFS uses average claim frequency factors, average weekly benefit factors, and other related information to predict paid family leave benefit costs.¹⁰

Analyzing the effects and the efficacy of government programs requires accessible and high quality data. Without detailed information about New York's paid family leave program, independent analysts, stakeholders, and policymakers will find it difficult to determine who is benefiting from the paid family leave program, how it impacts employers, and countless other factors needed to fully evaluate the program's impact.

More to Learn From New York's Program

We recommend that New York begin collecting, analyzing, and publicly publishing data on the outcomes of its program. Connecticut launched its paid family leave program on January 1, with Oregon and Colorado to follow in the next two years, and the number of state programs will likely continue to grow. We recommend that all state programs collect and make public a robust data set from day one. This comprehensive information, broken down by occupation, employer size, industry, wage, gender, age, race, and ethnicity, should include:

- Total claims
- Claims by type of leave
- Claim approval rates and reasons for denials
- Lifetime claims per person
- Total benefits paid
- Average benefits paid
- Processing times
- Leave duration

As policymakers deliberate about how to expand access to paid family leave in the United States, New York offers a unique model that lawmakers, stakeholders, and analysts should study in the years to come. New York's private insurance model for paid family leave has likely helped the state implement the program more effectively, though its construction on top of a longstanding disability insurance program limits its applicability to other states. While small businesses appear to be adapting to the law, volatile premium rates, if they continue, could become problematic for the workers who fund the paid leave benefit.

Further independent analysis of New York's paid family leave program is necessary to reconcile these contradictory effects and develop solutions that ensure long-term durability. To inform policymakers and the public, New York and other states with paid family leave programs should collect, publish, and analyze the data necessary to understand the impact of their policies on workers, businesses, insurers, and families.



Endnotes

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