Bipartisan Policy Center

Modernizing FMLA: Reform Options to Expand Employee Coverage and Reduce Employer Burdens

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As state and federal policymakers consider expanding access to paid family and medical leave, their focus is to provide benefit payments to workers who take that leave. Although a paid benefit is crucial to helping families balance work and caregiving, a policy that focuses solely on providing benefit payments ignores an equally important aspect of a leave program: job protection.

The Family and Medical Leave Act (FMLA) provides many workers with 12 weeks of unpaid, job-protected family and medical leave annually. However, current law leaves over 40% of workers ineligible for job protection and poses unnecessary compliance challenges to employers. Nearly three decades after becoming law, FMLA is overdue for modernization, and policymakers should pursue reforms that expand coverage for workers while easing burdens on employers. This report provides an overview of FMLA, examines coverage data, explores challenges facing workers and businesses, and considers reform options to modernize the law.[a]

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Part I: Background on FMLA

ELIGIBILITY REQUIREMENTS AND COVERAGE

Enacted in 1993, FMLA guarantees certain workers up to 12 weeks of unpaid, job-projected leave to care for a newborn child, newly adopted child, or newly placed foster child; to care for certain family members with a serious health condition; to recover from one's own serious health condition; and for qualifying needs related to a family member's military service.[b] FMLA's job-protection provision entitles leave-takers to return to their same job (or an equivalent one) and to earn the same compensation.

To qualify for FMLA, a worker must:

- Have worked for their employer for at least one year;
- Have worked at least 1,250 hours for their employer in the past year; and
- Work for an employer that has at least 50 employees within a 75-mile radius.[1]

As a result of these requirements, FMLA provides limited coverage. A 2018 survey commissioned by the U.S. Department of Labor showed that FMLA covered only 56% of employees. Coverage rates vary considerably by demographics, such as gender and education. For instance, although women go on leave more frequently than men, they are less likely to be eligible for job protection (54% versus 58%). Likewise, FMLA covers only 42% of those who did not complete high school, compared with 59% of those with at least a bachelor's degree. Perhaps most alarmingly, single parents—many of whom would benefit from job protection because they are often the sole workers in their household—are less likely to be eligible for FMLA than parents with a spouse (43% versus 63%).[2]

IMPORTANCE OF JOB PROTECTION

A major goal of providing paid family and medical leave is to keep workers connected to the labor force while they take needed time away from their jobs. This not only supports the nation's economic strength but also enables leave-takers to remain financially stable. While paying leave takers is vital to maximize access to family and medical leave and minimize its impact

b A separate provision of FMLA, added to the law in 2008, allows eligible employees to take up to 26 weeks of unpaid, job-protected leave to care for a covered service member with a serious injury or illness. This military caregiver leave is beyond the scope of this report.

on household finances, protecting leave takers' jobs is just as important to ensuring paid leave effectively supports its intended aims.

The 2018 DOL-commissioned survey showed that among workers with unmet need for leave (those who needed leave in the past year but could not take it), 45% said they were afraid of losing their job—the second most common reason behind not being able to afford unpaid leave. Thirty-five percent of workers who had not taken needed leave said they worried that they would be treated differently upon return, and 30% said they thought they would lose seniority or the potential for job advancement. These concerns are much greater for low-wage workers: Nearly 60% of those earning under $15 an hour and reporting unmet need for leave said they did not take leave due to the belief that they might lose their job.[3]

As the push for paid family and medical leave policies in the United States has gained momentum in recent years, discussions have largely focused on wage replacement without addressing job protection. Both payment and protection, however, are vital components.

LEGISLATIVE HISTORY AND ATTEMPTS AT MODERNIZATION

President Bill Clinton signed FMLA into law in 1993 after it received broad bipartisan support in Congress. Yet the bill did not always enjoy bipartisan support—President George H.W. Bush vetoed earlier versions in 1990 and 1992.[4] FMLA's current form reflects substantial negotiation and compromise, facilitated largely by then-Sens. Chris Dodd (D-CT) and Kit Bond (R-MO). Recognizing the challenges that smaller companies face in guaranteeing job protection, lawmakers reduced the number of weeks of leave guaranteed by FMLA and increased the size of company worksites that must comply with the law. The first iteration of FMLA (the Parental and Disability Act of 1985) would have required businesses to provide 18 weeks of parental and 26 weeks of personal medical leave to their employees at worksites with five or more employees.[5]

Since FMLA's enactment, several states have enacted job protection laws of their own. For instance, Massachusetts extended the duration of unpaid, job-protected leave to 24 weeks. Maine requires smaller employers (those with at least 15 workers located at a worksite) to provide job protection. New Jersey both lowered the worksite-size threshold to 30 employees and reduced the hours threshold from FMLA's 1,250 hours to 1,000 hours.[6] For a complete summary of state-level job protection laws, please see Appendix 1.

While federal lawmakers have proposed a variety of options to expand FMLA, few have garnered bipartisan support. Previous federal proposals include adding eligible uses of FMLA leave, such as leave related to domestic violence, and reducing the worksite size threshold from 50 to 15 employees.[7] Most recently, the

Job Protection Act—proposed by Rep. Lauren Underwood (D-IL) and Sen. Tina Smith (D-MN)—would dramatically expand FMLA by reducing the worksite size threshold from 50 workers to one employee, eliminating the 1,250 hours requirement, and reducing the tenure requirement from one year to 90 days.[8]

CHALLENGES FACED BY EMPLOYERS

Small businesses face unique challenges in providing job-protected paid family and medical leave—obstacles that any effective and sustainable policy must address. At the smallest companies, a single worker can constitute a significant proportion of the workforce: One person is only 2% of a 50-person company but 20% of a five-person company. Thus, for small businesses, keeping a job open for workers who take leave can entail a significant loss of productivity and revenue.

In a recent national survey of nearly 1,500 small business owners, 47% of respondents named paid family and medical leave as one of the benefits that would most help them hire and retain employees. Yet only 17% of workers at companies with fewer than 100 employees have access to employer-sponsored paid leave.[9] In focus groups and discussions about this gap, small business owners point to the significant disruption extended leave-taking causes; in the 2018 DOL-commissioned survey, 29% of worksites reported that even planned long-term leave is "very difficult."[10]

Employers use a variety of strategies to manage employee leave-taking, with 58% temporarily reassigning work to other employees to cover leaves of a week or more. An additional 13% put work on hold until the employee returns, while 6% hire a temporary replacement.[11] Any of these strategies can significantly depress productivity, especially at small companies.

Even for companies that do effectively manage an employee's absence, the employee's return also poses a challenge. FMLA mandates that employers must restore employees who take leave to a "virtually identical" position with "the same or substantially similar duties and responsibilities" as the one they left.[12] But this requirement poses challenges to employers, particularly smaller employers, who may have hired a replacement to maintain productivity in the employee's absence.

Intermittent Leave Is a Problem for Employers

Extended leave is not the only use of FMLA that can cause difficulties. Under current law, workers may take leave intermittently (i.e., take leave on multiple occasions for the same qualifying reasons). This leave does not have to be scheduled in advance, and employees can take it in increments of time as short as 10 minutes. As a result, employers perennially cite unplanned intermittent leave as challenging to their operations.[13]

Notably, intermittent leave has become a prominent feature of FMLA coverage. Among all employees who took FMLA leave in a recent 12-month period, 31% of employees' most recent leaves were taken on an intermittent basis.[14]

Unplanned intermittent leave can pose a variety of problems for employers. Members of the Society for Human Resource Management (SHRM) have reported tracking intermittent leave as the greatest challenge among employers, with the complexity of such tracking requiring seemingly disproportionate resources dedicated to the task.[15] In addition, unplanned intermittent leave can cause workplaces to be understaffed on short notice. Because of this, 25% of worksites report it very difficult to deal with unplanned intermittent leave, and 13% find it very difficult to deal with even planned intermittent leave.[16] Many employers also believe that intermittent leave is the most likely type of leave to be abused by employees and that employees use short increments of intermittent leave to shield tardiness or other attendance issues.[17]

Although most employers seem to manage effectively (reporting no impact of intermittent leaves on employee morale, employee productivity, or the firm's profitability, and only around 10% reporting any negative effects), addressing the disruptions posed by unplanned intermittent leave should be a core element of any FMLA modernization effort.[18]

Part II: Modernizing FMLA for Workers

As the 30th anniversary of FMLA's passage approaches, it is time to modernize the law to both expand job protection to more workers and make leave easier for employers to provide.

To expand job protection, policymakers should consider increasing both the number of worksites covered by FMLA and the number of employees within covered firms eligible for job-protected leave. This section explores these policy options in detail and analyzes the net impact of three different combinations of reforms.[c]

EXPANDING WORKSITE COVERAGE

Under current law, all worksites with at least 50 employees within a 75-mile radius must comply with FMLA. Any worksite that does not meet those standards is exempt. Adjusting the definition of covered employers by lowering the worksite size threshold or increasing the geographic radius would expand FMLA's reach.

Lowering the Minimum Worksite Size

Overall, roughly 15% of employees in the United States are ineligible for job protection solely because their worksite is too small.[19] Lowering the business size threshold from the current level of 50 employees would extend FMLA's reach to more worksites—and therefore to more workers. Table 1 shows the effect of decreasing the worksite size threshold in 10-worker increments (while holding all other aspects of FMLA constant at current standards).

c This section contains estimates of current FMLA coverage and coverage that would occur under a variety of reform scenarios. The results are based on an analysis of data from the 2018 Family and Medical Leave Act (FMLA) Employee Survey administered by Abt Associates for the U.S. Department of Labor. For a full description of the methodology, please see Appendix 2.

Table 1. Impact of Reducing Worksite Size Requirement on Eligibility

Employer Size	Percent of Workers Covered	Change in Covered Workers (thousands, 2022)
50 (current)	55.7%	0
40	56.3%	949
30	57.8%	3,230
20	59.9%	6,318
10	64.0%	12,562
1	69.9%	21,549

Lowering the worksite size threshold alone can meaningfully expand access to FMLA. For instance, lowering the size threshold by only 10, from 50 employees to 40, would result in over 900,000 workers gaining access. A larger reduction would expand access by even more. For instance, lowering the size threshold to 20 employees would increase coverage from 55.7% of workers to nearly 60%, extending job protection to 6.3 million people. Meanwhile, eliminating the worksite size threshold altogether (or reducing it to one worker) would extend coverage to nearly 70% of employees, giving 21.5 million additional workers job protection.

Expanding or Eliminating the 75-Mile Rule

FMLA coverage could also be expanded by adjusting or eliminating the geographic requirement that at least 50 employees work within a 75-mile radius. This provision was intended to address companies with several small worksites, particularly if those sites each run on thin profit margins. For instance, a company made up of five 20-person worksites that serve geographically dispersed locations could struggle to comply with FMLA, even though it employs 100 workers. A loss of even one worker at a small worksite could be difficult for that company to manage.

However, this standard may also unnecessarily exclude employees of large companies that have geographically dispersed worksites. Several large companies have corporate-owned stores across the country. Although these companies are large, they may not have to comply with FMLA at some or all of their worksites because of the small staff size. Moreover, tying firm size to a particular geographic location is out of touch with an economic environment where employees are increasingly working remotely and companies may have a workforce scattered across the country.[20]

Existing data do not illuminate how many workers would gain coverage by increasing or eliminating the radius requirement.

ADJUSTING EMPLOYEE ELIGIBILITY REQUIREMENTS

Today, workers are only eligible for FMLA if they have worked for their current employer for at least a year and worked at least 1,250 hours for their employer within the past year (equivalent to 24 hours per week). These eligibility requirements connect job protection to strong workforce participation and can give employers more confidence that workers who go on leave are likely to return. However, the requirements also exclude 21% of employees from FMLA eligibility.[21]

Reducing the Tenure Requirement

Lowering the tenure requirement would substantially expand eligibility within covered firms. The one-year tenure requirement is outmoded for the current labor market where workers often do not stay with one employer for an extended period. Nearly 30% of women ages 25 to 34 (when they are most likely to have young children) report working for their employer for less than one year.[22] Table 2 contains the percentage of workers who would be eligible for job protection under various tenure requirements (while holding all other aspects of FMLA constant).

Table 2. Impact of Reducing the Tenure Requirement

Worker Tenure	Percent of Workers Covered	Change in Covered Workers (thousands, 2022)
12 months (current)	55.7%	0
6 months	60.0%	6,478
Any (less than 6 months)	67.2%	17,485

Adjusting the tenure requirement alone would substantially affect FMLA eligibility. Reducing it to six months would increase FMLA's coverage from 55.7% to 60% of workers—or an additional 6.5 million workers. Eliminating the tenure requirement altogether would increase coverage by 11.5 percentage points to 67.2%, giving 17.5 million additional adults the right to job-protected leave.

Reducing the Hours Requirement

Lowering the number of hours that an employee must work to be eligible for FMLA would also expand job protection, but to a lesser degree than reducing the worker tenure requirement or decreasing the worksite size requirement. Table 3 shows the percentage of workers who would be eligible for FMLA after reducing the required work hours (while holding all other aspects of FMLA constant).

Table 3. Impact of Reducing the Hours Requirement

Worker Hours (avg/week)	Percent of Workers Covered	Change in Covered Workers (thousands, 2022)
24 or more (current)	55.7%	0
20 or more	57.0%	1,893
15 or more	58.0%	3,432
10 or more	58.7%	4,578
1 or more	59.6%	5,931

While reducing the hours requirement would expand coverage, its impact would be far more modest than the other levers available. For instance, reducing this work requirement from 24 hours per week (1,250 per year) to 15 hours per week (780 per year) would increase FMLA's reach by 2.3 percentage points from 55.7% to 58%, providing an additional 3.4 million workers with job protection. Additionally, requiring that an employee only work at least one hour per week (effectively removing the hours requirement) would increase FMLA's coverage to 59.6% and provide job protection to an additional 5.9 million workers. For comparison, removing the tenure requirement would extend job protection to an additional 17.5 million workers, and eliminating the worksite size requirement would provide job protection to an additional 21.5 million workers.

Reducing the hours requirement would also expand FMLA coverage for those who have more than one employer. A 2019 study by Intuit found that 22% of self-employed workers and 11% of those working for an employer report having multiple jobs.[23] Workers with more than one job may struggle to fulfill the FMLA's current work hours requirement because their hours are spread between different employers. For instance, individuals working 20 hours a week for two separate employers do not qualify for FMLA, even though they work a total of 40 hours each week. Lowering the work hours requirement would enable more workers with multiple part-time jobs to receive job protection. However, lawmakers should be mindful to ensure that workers with multiple employers do not receive more than 12 weeks of job protection.

NET CHANGES FROM COMBINING REFORMS

While examining the levers for reforming FMLA in isolation is useful for understanding the impact of each, in practice modernizing the law should include a combination of these reforms to effectively expand access to job protection. Indeed, 7% of employees are currently ineligible for FMLA due to a combination of worksite size and work history requirements.[24]

Below we outline net changes in FMLA coverage that would result under three different modernization packages.[d]

- **Current law**: Firms must employ at least 50 workers within a 75-mile radius, employees must be with their employer for at least 12 months, and employees must work at least 1,250 hours for their employer in the past year (24 hours per week).
- **Light reform**: Firms must employ at least 40 workers within a 75-mile radius, employees must be with their employer for at least six months, and employees must work at least 1,040 hours for their employer in the past year (20 hours per week).
- **Moderate reform**: Firms must employ at least 20 workers within a 75-mile radius, employees must be with their employer for at least six months, and employees must work at least 520 hours for their employer in the past year (10 hours per week).
- **Major reform**: Eliminate all three eligibility criteria (any worksite size, any tenure, and any hours worked are eligible).

Table 4 summarizes coverage levels that would result from each of these reform packages, compared with current law.

Table 4. Coverage Resulting from Reform Packages

Reform Package	Percent of Workers Covered	Change in Covered Workers (thousands, 2022)
Current Law	55.7%	0
Light Reform	63.8%	12,334
Moderate Reform	71.2%	23,473
Major Reform	97.6%	63,586

The light reform, which includes small changes in worksite size, tenure, and work hours, would increase FMLA's coverage by 8.1 percentage points, providing job-protected leave to an additional **12.3 million** workers. The moderate reform package, meanwhile, would expand FMLA's coverage to 71.2% of workers and give an additional **23.5 million** workers job protection. Last, eliminating FMLA's business size and work history eligibility requirements would make FMLA's coverage universal.[e]

Lawmakers must weigh the benefits of expanded job protection that would accrue to workers who take leave against the challenges businesses would

d Due to data limitations, we are unable to provide an estimate of the impact of adjusting or eliminating the 75-mile radius rule.

e The major expansion does not yield 100% coverage in Table 4 due to work status of respondents in FMLA survey. A small percentage of individuals in the survey indicated that they were employed at the start of the reference period but were not holding a job at the time they were surveyed.

face—as well as unintended costs that could subsequently result for workers. As discussed earlier in this report, guaranteeing job protection can be a large burden for small firms, which face the prospect of lost productivity and revenue as well as extra costs. When firms struggle under these conditions, their workers ultimately bear a portion of the costs in the form of slower hiring or wage growth.

ALTERNATIVE: FOCUS REFORM ON PARENTAL LEAVE

An alternative approach is to expand FMLA coverage just for parental leave. Although the majority of FMLA leave takers (51%) use FMLA to recover from their own serious illness, 25% take leave for reasons associated with a new child. Table 5 summarizes the impact of the three reform packages if they were applied only to those who take parental leave.

Table 5. Expanding FMLA Only for Parental Leave

Reform Package	Percent of Parental Leave-Takers Covered	Change in Covered Workers (thousands, 2022)
Current Law	52.4%	0
Light Reform	62.8%	595
Moderate Reform	67.8%	878
Major Reform	100.0%	2,712

BPC's analysis of data from the DOL-commissioned FMLA survey suggests that only 52.4% of workers who took parental leave in 2018 were eligible for job protection. Adopting the moderate reform package specifically for parental leave-takers would expand FMLA eligibility from 52.4% to 67.8% of those who took parental leave in 2018, providing job projection to nearly 900,000 additional workers. Eliminating FMLA's eligibility requirements for parental leave would effectively double the number of workers able to take job-protected leave following the birth or adoption of a child, extending job protection to an additional 2.7 million workers.

Many states have already expanded job protection specifically for parental leave rather than all types of leave covered by FMLA.[25] Massachusetts, for example, has extended job protection to workers at companies with as few as six employees—but only for workers taking parental leave.[26]

Part III: Modernizing FMLA for Employers

Addressing FMLA's challenges for employers, particularly small ones, will be vital to ensuring the program has broad buy-in and supports businesses and workers alike. Updating FMLA's intermittent leave provisions, in particular, could significantly improve employers' experience complying with the law. Lawmakers should additionally consider ways they can help employers offset the cost of providing job protection. The following are five options to ease burdens on employers:

Increase the shortest increment of time employees are required to take for unplanned intermittent leave. DOL could require employees to take a minimum block of intermittent leave, such as two hours or a half-day, when the leave is unplanned or the employee does not provide sufficient notice. DOL could also set guidelines under which employers themselves could impose such requirements.[27] This would ease recordkeeping, eliminating the need for employers to track periods of leave to the minute, and provide a disincentive for employees to use intermittent leave to shield tardiness or other attendance issues.

Allow employee transfers in instances of unplanned intermittent leave. While employers can temporarily transfer employees taking planned intermittent leave to an alternative position, current law does not allow such a transfer when the leave is unplanned.[28] Providing this option for both planned and unplanned intermittent leave could provide small employers with greater flexibility and enhance the business community's support for FMLA.

Adjust the definition of Serious Health Condition (SHC). Under the current definition of SHC, many workers receive FMLA protections for health conditions that are not serious in nature. This increases the number of instances where workers can take unplanned intermittent leave for temporary illnesses such as the common cold. Ensuring that FMLA is reserved for workers with serious conditions would reduce instances of unplanned intermittent leave and target job protection to workers who need it most.

Require employees to provide notice prior to foreseeable leaves. Employees should not be expected to provide notice of leave during personal or family emergencies, but SHRM reports that many employees fail to provide proper notice of FMLA leave that is planned or foreseeable.[29] Requiring workers to provide advance notice of foreseeable leave would help businesses plan for a worker's absence.

Expand the 45S employer credit for paid family and medical leave. Guaranteeing employees the right to job-protected family and medical leave imposes real financial costs on employers who must often hire temporary workers to fill in—or suffer reduced capacity while an employee is on leave. Expanding the employer tax credit for paid family and medical leave could help. Currently, the tax credit is designed to cover up to 25% of the cost to employers of providing paid family and medical leave.[30] Expanding it to allow employers to claim the credit for wages paid to temporary workers they hire to cover employees taking leave under FMLA would further offset the financial and opportunity costs of job-protected leave.

Conclusion

For workers, being able to take leave knowing that their job will be there when they return is critical to helping families balance work and life. For 30 years, FMLA has provided this job protection to many American workers. However, the law leaves many workers ineligible and imposes significant burdens on employers. As the labor market evolves, the law needs to modernize with it. As businesses search for workers, job-protected leave is a benefit that can help employers attract and retain employees and help workers stay attached to the workplace. Congress should modernize FMLA to make the policy easier for businesses to administer and workers to access.

Appendix 1: State Job Protection Laws

FMLA allows eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period to bond with a newborn, newly adopted, or newly fostered child; to care for a family member who has a serious health condition; to recover from one's own serious health condition; and for any qualifying exigency arising out of the fact that a family member is a military member on covered active duty or is called to covered active-duty status.

Family members under FMLA include children under age 18, spouses, and parents. To qualify for FMLA, workers must meet three eligibility requirements:

1. Their worksite must have at least 50 workers within a 75-mile radius;
2. They need to have had worked for their employer for at least one year; and
3. They must have worked at least 1,250 hours in the past year.

This appendix outlines state laws related to job-protected family and medical leave where those laws differ from FMLA. (Many states offer enhanced job-protected leave for public employees only; this appendix does not include those provisions.)

California Family Rights Act: Provides 12 weeks of job-protected leave for FMLA reasons. Expands the definition of family member to include domestic partners, children of domestic partners, grandparents, grandchildren, and siblings. Extends coverage to all employees of employers with at least five employees, regardless of how close together employees' worksites are located.[31]

Colorado Family Care Act: Mirrors FMLA but expands the definition of family member to include children over 18, domestic partners, grandparents, grandchildren, and siblings.[32] Will be superseded by the Colorado Family and Medical Leave Insurance Program in January 2024.

Connecticut Family and Medical Leave Act: Provides 12 weeks of job-protected leave for FMLA reasons and to donate an organ or bone marrow. Adds up to 12 days of leave for victims of family violence. Expands the definition of family member to include parents-in-law, grandparents, siblings, and individuals related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships. Extends coverage to all employees who have worked for their current employer for at least three months, regardless of employer size.[33]

District of Columbia Family and Medical Leave Act: Provides 16 weeks of job-protected leave in any 24-month period to care for a newborn child, adopted child, or child placed for foster care or other permanent parental role; and to care for a family member who has a serious health condition. Provides 16 additional weeks of job-protected leave in any 24-month period to any employee who becomes unable to work because of a serious health condition. Expands the definition of family member to include all persons to whom the employee is related by blood, legal custody, or marriage; any children who live with the employee and for whom the employee permanently provides care; and cohabitants with whom the employee has a committed relationship. Extends coverage to all employees, regardless of employer size, who have worked for the same employer for at least 12 months (consecutive or nonconsecutive) in the past seven years and who worked for at least 1,000 hours during that 12-month period.[34]

Hawaii Family Leave Law: Provides four weeks of job-protected leave for FMLA reasons to employees who have worked for an employer with at least 100 employees for at least six consecutive months.[35]

Maine Family Medical Leave: Provides 10 weeks of job-protected leave in any 24-month period to bond with a newborn, newly adopted, or newly placed foster child; to care for a family member who has a serious health condition; to recover from one's own serious health condition; to donate an organ; and following the death or serious injury in military service of a family member. Expands the definition of family member to include domestic partners, domestic partners' children, and siblings. Extends coverage to employees of employers with at least 15 employees in one location.[36]

Massachusetts Paid Family and Medical Leave: Provides 26 weeks of job-protected leave to bond with a newborn, newly adopted, or newly placed foster child (up to 12 weeks); care for a family member with a serious health condition (up to 12 weeks); recover from a serious health condition (up to 20 weeks); care for a family member who was injured serving in the armed forces (up to 26 weeks); and manage affairs while a family member is on active duty (up to 12 weeks). Expands the definition of family member to include parents-in-law, grandparents, grandchildren, siblings, and domestic partners and their family members. Extends coverage to all employees, regardless of employer size, who have earned at least $5,700 (and at least 30 times the paid leave benefit amount) in the past four calendar quarters. Massachusetts enacted these job-protection provisions as part of its paid family leave program.[37]

Minnesota Pregnancy and Parental Leave Act: Provides 12 weeks of job-protected leave to bond with a newborn or newly adopted child. Eligible employees must work for an employer with at least 21 employees at one site and must have worked at least half time for at least 12 months (not necessarily consecutive).[38]

New Jersey Family Leave Act: Provides 12 weeks of job-protected leave in any 24-month period to care for a newborn, newly adopted, or newly placed foster child or to care for a family member who has a serious health condition. Expands the definition of family member to include domestic and civil union partners, parents-in-law, grandparents, siblings, any other blood relative, and any person with whom the employee has a close association equivalent to a family relationship. Extends coverage to employees who have worked for an employer with at least 30 employees for at least 12 months and have worked at least 1,000 hours for the employer during the past 12 months.[39]

New York Paid Family Leave: Provides 12 weeks of job-protected leave for FMLA reasons. Expands the definition of family member to include domestic partners, parents-in-law, grandparents, grandchildren, and (starting in 2023) siblings. Extends coverage to employees who have worked for either 26 consecutive full-time (at least 20-hour) weeks or 175 part-time working days, which do not need to be consecutive. New York enacted these job-protection provisions as part of its paid family leave program.[40]

Oregon Family Leave Act: Provides 12 weeks of job-protected leave to care for a newborn, newly adopted, or newly placed foster child; to recover from a serious health condition or care for a family member with a serious health condition; to recover from a pregnancy-related disability; and to care for a sick (but not seriously ill) child. An employee who uses all 12 weeks on parental leave is eligible for an additional 12 weeks for sick child leave. An employee who uses pregnancy disability leave is eligible for the full 12 weeks of leave for any other reason. Provides an additional 14 days for employees whose spouse or same-sex domestic partner has been called to or is on leave from active military duty. Provides an additional 10 days after the death of a family member. Expands the definition of family member to include same-sex domestic partners and their children, parents-in-law, grandparents, and grandchildren. Extends coverage to employees who have worked for an employer with at least 25 employees for an average of at least 25 hours per week for 180 days. (To take parental leave, an employee is exempt from the hours-per-week requirement and must only have worked for their employer for 180 days.) Will be superseded by Paid Leave Oregon in September 2023.[41]

Rhode Island Parental and Family Medical Leave Act: Provides 13 *consecutive* weeks of job-protected leave in any two calendar years to care for a newborn or newly adopted child, to recover from a serious illness, or to care for a family member with a serious illness. Expands the definition of family member to include parents-in-law. Omits employee proximity requirement. Extends coverage to employees who have worked an average of at least 30 hours per week for the past 12 months.[42]

Rhode Island Temporary Caregiver Insurance: Provides five weeks of job-protected leave to care for a newborn, newly adopted, or newly placed foster child or to care for a seriously ill child, spouse, domestic partner, parent, parent-in-law, or grandparent. Employees working for employers of any size are covered if they meet monetary eligibility requirements: $14,700 in base period wages (where the base period is the first four of the past five calendar quarters); or $2,450 in one of the base period quarters, total base period wages of at least 1.5 times the highest quarter earnings, and total base period earnings of at least $4,900. Rhode Island enacted these job-protection provisions as part of its paid family leave program.[43]

Vermont Parental Leave and Family Leave: Provides 12 weeks of job-protected leave for pregnancy, to care for a newborn or newly adopted child, to recover from a serious illness, or to care for a family member with a serious illness. Expands the definition of family member to include parents-in-law and parties to a civil union. Requires eligible workers to have worked an average of at least 30 hours per week over the past 12 months. Extends pregnancy and parental leave coverage to employees of employers with at least 10 workers. Extends family and medical coverage to employees of employers with at least 15 workers.[44]

Washington Paid Family and Medical Leave: Provides 12 weeks of job-protected leave for FMLA reasons. Expands the definition of family member to include domestic partners, spouse's parents, siblings, grandchildren, grandparents, spouse's grandparents, and children-in-law. Omits employee proximity requirement.[45]

Wisconsin Family and Medical Leave Act: Provides job protection for two weeks of leave in a calendar year to recover from one's own serious health condition; two weeks of leave in a calendar year to care for a family member with a serious health condition; and six weeks in a calendar year to care for a newborn or newly adopted child. Extends coverage to employees who have worked for an employer with at least 50 permanent employees during at least six of the past 12 months and have worked at least 1,000 hours in the past 12 months.[46]

Appendix 2: Methodology for FMLA Coverage Analysis

The results presented are based on secondary data analysis of the public release file from the 2018 FMLA Employee Survey collected by Abt Associates, under contract to the U.S. Department of Labor's Chief Evaluation Office. The results presented estimate FMLA coverage and eligibility in the main job held during the reference period (12 months preceding interview). Respondents holding multiple jobs during the reference period were instructed to report the job in which they worked the most hours as their main job; if they worked the same number of hours in two or more jobs, the main job was defined as the one they held the longest.

The target population includes U.S. adults who had been employed for pay in the private or public sector any time during the previous 12 months before the interview. Self-employed adults are excluded from the target population as they are not covered by FMLA. The 2018 survey included oversamples of low-wage workers and households in states with paid family and medical leave programs providing benefits in 2018 (California, New Jersey, New York, and Rhode Island) during the data collection period, March 6, 2018, through February 24, 2019.

The public use data file includes 4,470 completed interviews, including 189 from a landline sample, 550 from a cell phone sample, and 3,731 from a web panel. The methodological documentation provides response rates calculated using current standards set by the American Association for Public Opinion Research and concludes that the overall response rates were in line with other similar surveys.[47]

Data analyses were conducted using Stata 17. Results have been weighted using the weights provided on the public use file that are integrated across data collection modes and adjusting for sample design; these include 200 bootstrap replicate weights for correct variance estimation that incorporate sampling error.

2018 was the last time Abt Associates conducted this survey. This report assumes that FMLA coverage remains the same in 2022.

The percentages resulting from the analysis are also translated into the population of workers who would gain FMLA coverage under differing reform scenarios. Those population levels are derived by multiplying the percentages by the most recent employment level reported by the Current Employment Statistics (June 2022).

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