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Exploring Paid Leave: Policy, Practice, and Impact on the Workforce

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My name is Rachel Greszler. I am a senior research fellow 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.

As a mother of six young children—and having multiple family members and friends battle cancer in recent years—I understand the need and desire for workers to take leave and the necessity for paid family leave to be flexible and accommodating. And having family and friends who own small businesses, I also understand how difficult it can be to manage paid family leave while continuing to serve customers and patients. The good news is that the strong labor market and realities of the COVID-19 pandemic contributed to a surge in workers' access to paid family leave over the past six or so years.

Even as paid family leave has many benefits, it is not without cost or consequence for workers, employers, ordinary Americans, and the entire economy. Structuring leave programs in ways that minimize costs and maximize access and flexibility is crucial to ensuring that the maximum benefits reach the greatest number of workers with the least disruption to employers and the people they serve.

In my testimony today, I would like to cover three topics that can help inform policymakers as they consider what the federal government can and should do regarding paid family leave. First is to examine the current landscape of paid family leave and family-friendly work arrangements across the U.S. Second is to contrast employer-provided paid family leave with government-provided paid family leave. And third is to consider policies that could help expand workers' access to paid family leave and other work flexibilities.

The State of Paid Family Leave and What Families Want

Families are the foundation of society, and it is important that family members be able to care for one another. Paid family leave helps support families in their roles of caring for one another across generations, and it can benefit workers and employers alike.

Support Is Widespread and Access Is Growing. Nearly all Americans support paid family leave, and predominantly in response to workers' desires for it, employers have responded in recent years with new and expanded paid family leave policies. Over the past six years alone, the percentage of workers with access to paid family leave has increased by 80 percent, from 15 percent to 27 percent of workers.[1] Much of this recent increase has accrued to lower- and middle-wage workers as large companies like Lowe's, Starbucks, Walmart, and Chipotle have added paid family leave benefits.

While this measure from the Bureau of Labor Statistics only includes workers whose companies have formal, written paid family leave policies, many more workers—particularly those who work for small employers—can take paid family leave through informal policies. A 2018 Department of Labor survey found that 73 percent of employees report having access to paid leave for their own illness or medical care (which includes maternity leave).[2] Of workers who took leave, 66 percent received pay (42 percent received full pay, 24 percent received partial pay) and 34 percent received no pay. These pay percentages are almost certainly higher in 2023 as paid family leave programs have expanded significantly since 2018.

Moreover, while those surveys track employer-provided paid family leave benefits, 14 states have now enacted government paid family leave programs. Although not all workers who live in states that have paid family leave laws are eligible to receive benefits, 28 percent of the workforce currently live in states that have active paid family leave programs and another 6.5 percent live in states that have passed legislation to implement paid family leave programs in the next few years.[3]

Who Takes Leave and Why? According to the most recent 2018 survey from the Department of Labor, 15 percent of workers (about one out of every seven) take family or medical leave each year, and the average leave lasts 5.5 weeks (28 business days).[4]

Contrary to common perception, the most frequent reason for taking leave is not for the birth or adoption of a child, but for workers' own health conditions. Of all family and medical leaves reported, one of every four (25 percent) was for the arrival of a new child; two of every four was for a worker's

[1]Bureau of Labor Statistics, "National Compensation Survey," percent of civilian workers with access to paid family leave, https://data.bls.gov/pdq/SurveyOutputServlet (accessed October 18, 2023).
[2]Scott Brown, Jane Herr, Radha Roy, and Jacob Alex Klerman, "Employee and Worksite Perspectives of the Family and Medical Leave Act: Executive Summary for Results from the 2018 Surveys," submitted to the Department of Labor by Abt Associates, July 2020, https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_ExecutiveSummary_Aug2020.pdf (accessed October 18, 2023).
[3]Author's analysis of state-level labor force statistics from the Bureau of Labor Statistics. States that have active paid family leave programs include: California, Connecticut, the District of Columbia, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington. States that have enacted programs that are not yet active include: Colorado, Delaware, Maine, Maryland, and Minnesota.
[4]Brown et. al., "Employee and Worksite Perspectives of the Family and Medical Leave Act: Executive Summary for Results from the 2018 Surveys."

own serious health condition; and about one of every four was for a family member's health condition or other reason (such as a family member's military deployment).[5]

Unmet Need for Leave Is Modest. Despite only 56 percent of workers qualifying for job-protected leave under the Family and Medical Leave Act (FMLA), 82 percent of private-sector employees report having access to leave for at least one qualifying FMLA reason.[6] Only 7 percent of all workers report having an unmet need for family or medical leave over the past year.[7] Low-wage workers (earning less than $15 per hour) were more likely to report an unmet need for leave (9 percent) compared to other workers (6 percent). The most commonly cited reason for not taking leave was an inability to afford unpaid leave (66 percent), followed by fear of losing a job (45 percent).

While lower-wage workers are less likely to work in jobs that provide paid family leave, they are also more likely to be ineligible for leave even while working for an employer or living in a state that provides paid family leave because virtually all paid leave programs have tenure-based requirements to qualify for leave and lower-wage workers tend to have shorter job tenures. Moreover, even when eligible for leave, lower-wage workers are less likely to be able to take leave if they receive less than full-wage replacement.

Paid Family Leave Is Only One Factor Affecting Working Families. While nearly all working parents say paid family leave is important to helping them balance work and family, it is far from their biggest priority. A 2018 Cato Institute poll asked current workers to select which of six options "would be the best way to help you balance work and family."[8] The results, in order of preference were:[9]

1) More flexible work schedules (34 percent);
2) Ability to work remotely (25 percent);
3) More affordable day care (11 percent);
4) Ability to work part time hours (8 percent);
5) More paid parental leave (6 percent); and
6) Extended afterhours childcare (4 percent).

These results indicate that more than ten times as many workers would prefer more workplace flexibility than more paid parental leave.[10] That makes sense considering that workplace flexibility affects families' every day lives while paid family leave is an irregular need.

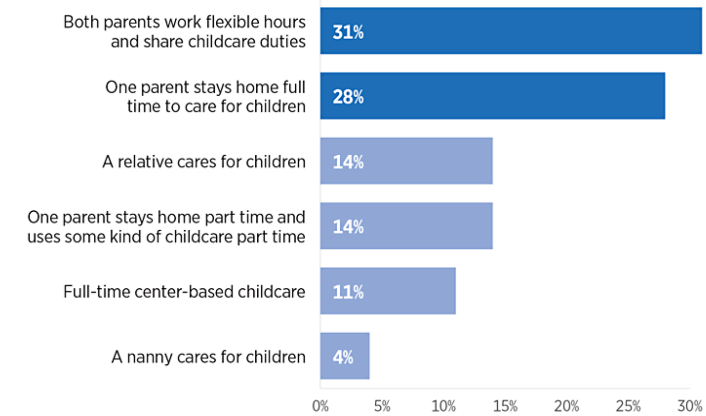
A post-COVID-19 2021 survey by the Institute for Family Studies looked at the childcare preferences of parents with children ages 4 and under and found the majority of parents prioritize workplace

[5]Ibid.
[6]Ibid.
[7]Ibid.
[8]Emily Ekins, "Cato Institute 2018 Paid Leave Survey," The Cato Institute, Released December 11, 2018, https://www.cato.org/sites/cato.org/files/survey-reports/pdf/cato2018paidleavesurvey-updated.pdf (accessed October 20, 2023).
[9]The Cato survey results also included 9 percent of respondents who chose "Other" with the option to specify something else that would best help them, and 2 percent of respondents either did not answer or responded "Don't know."
[10]Combining the three workplace-flexibility and work-hours-flexibility responses (1, 2, and 4) covers 67 percent of workers' highest preferences, compared to 6 percent saying more paid parental leave would help most.

CHART 1

Post-COVID-19 Childcare Preferences Shift Toward Home, Family, and Work Flexibility

PREFERENCES OF PARENTS WITH CHILDREN AGES 0 TO 4



NOTE: Percentages do not sum to 100 due to rounding.
SOURCE: Wendy Wang and Jenet Erickson, "Homeward Bound: The Work-Family Reset in Post-COVID America," Institute for Family Studies, August 2021, https://ifstudies.org/ifs-admin/resources/final-ifsparentsreport.pdf (accessed March 13, 2023).

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flexibility that allows for family care. As a working mother of six young children, these preferences resonate with me. Without the flexibility that my employer voluntarily provides me, I would not work at all, and thus paid family leave would be irrelevant to me. But flexibility is not something that lawmakers can impose on employers, as certain occupations and organizations are conducive to flexibility while others are not. I also believe that flexibility works best when it is mutual on the part of both employers and workers. That is not possible with one-sided government mandates.

Yet, the very work arrangements that many parents prioritize are under threat by recent regulations from the Department of Labor that will soon be implemented (such as the independent contractor and overtime rules discussed in the final section) and also by bills that passed the House in recent Congresses—the Protecting the Right to Organize (PRO) Act[11] and the Paycheck Fairness Act.[12] These policies would hurt, instead of help, families by making it harder or impossible for many workers to have flexible schedules, to work remotely, or to work part time.

By upending independent work and impeding remote work and flexible hours, these policies would take away jobs and income opportunities, and restrict workplace flexibility, with some of the biggest burdens falling on women, individuals with medical conditions or disabilities, and single parents.[13]

Employer-Provided vs. Government Paid Family Leave

All paid family leave policies have benefits and costs, but not all paid family leave policies are equal. A key to maximizing benefits and minimizing costs is balancing the need for accessible and accommodating benefits for workers with employers' needs to maintain operations (without hurting customers and employees who fill in for absent coworkers).

[11] H.R. 2474, Protecting the Right to Organize Act of 2019, https://www.congress.gov/bill/116th-congress/house-bill/2474 (accessed October 20, 2023).
[12] H.R. 7, Paycheck Fairness Act, https://www.congress.gov/bill/116th-congress/house-bill/7?q=%7B%22search%22%3A%5B%22Paycheck+Fairness+Act%22%5D%7D&s=1&r=1 (accessed October 20, 2023).
[13] Rachel Greszler, "6 Ways a Union-Backed Bill Will Upend the Job Market," The Daily Signal, February 5, 2020, https://www.dailysignal.com/2020/02/05/6-ways-a-union-backed-bill-will-upend-the-jobs-market/, and Rachel Greszler, "Democrats Want to Close the 'Gender Pay Gap.' Here Are 4 Ways Their Proposal Would Backfire," The Daily Signal, January 31, 2019, https://www.dailysignal.com/2019/01/31/democrats-want-to-close-the-gender-pay-gap-here-are-4-ways-their-proposal-would-backfire/.

Workers Need Accessible and Accommodating Paid Family Leave. Other than the birth or adoption of a child—which makes up only one of five leaves taken by workers—workers' needs are widespread, often unexpected, and can include unknown lengths.

The struggle with government programs is that since the bureaucrats who run them do not know anything about workers' personal needs or the nature of their jobs, they have to set one-size-fits-all rules. And without the daily interaction that occurs between workers and employers, government programs require a burdensome application and approval process as opposed to a worker's ability to simply talk with or e-mail his boss to notify her of his need for leave.

Those government application processes can be daunting. The District of Columbia's 54-page handbook on paid family leave benefits explains that workers must: wait to apply for benefits until after they have experienced a family or medical event that caused them to miss work; submit personal information and a leave plan; obtain and submit detailed forms to be completed by a certified health provider; wait for a decision from the government's program administrators; and then wait for a benefit check, which is a portion of workers' usual paychecks.[14]

Once an application is approved, workers must follow the prescribed leave plan to a T. Partial-leave days are not an option; if a worker needs 2 hours of leave for an appointment, she must claim the entire day as leave. If she did not know about the appointment when submitting her application, she must petition for a change in leave, which can only be done once per month. If she ends up working on a day she requested for leave, she will have to repay her benefits or forgo future benefits. All of that is not conducive to many workers' needs, nor to the modern workforce.

For example, the combination of remote work and flexible hours has allowed one of my co-workers to care for his mother who suffered a stroke—without missing a paycheck and without having to formally use paid family leave. That type of arrangement was not possible through the existing DC government program because he could not possibly know in advance what would be the daily needs of his mother. Moreover, what he needed was to be able to care for his mother in short increments throughout the day—every day—but the government program requires all-or-nothing care or work.

Just as the government program did not work for my co-worker, a government program would not work well for many people. In addition to many workers not being able to go weeks without a paycheck or months with a reduced one, many leaves are not planned events. The last thing that workers need while faced with medical emergencies, hospitalizations, or long-term health and family-care struggles is to have to collect paperwork and get approval from a government program, including for things as simple as switching a doctor's appointment from Monday to Wednesday.

Employers Need to Maintain Control Over Operations. Aside from the direct costs of providing paid family leave, a crucial component to enabling leave is the ability to manage a company's operations amidst workers' leaves. The Bill and Melinda Gates Foundation realized this when the foundation had to cut its 52-week paid family leave program in half because it was too disruptive to

[14]Department of Employment Services, "Employee Handbook: DC Paid Family Leave," Version 3, published March 2022, https://dcpaidfamilyleave.dc.gov/wp-content/uploads/2023/06/PFL_EmployeeHandbook-March-2022.pdf (accessed October 23, 2023).

the foundation's operations. Because the policy was the foundation's own, it was free to modify it based on needs.[15]

When Denmark implemented a similar 52-week *government* paid parental leave program in 1994, it led to significant unintended consequences. An economic analysis of this program on the nursing industry found that it "led to a sudden, unintended, and persistent 12 percent reduction in nurse employment." The consequences of that reduction included a 17 percent increase in inpatient re-admissions, an 89 percent increase in newborn re-admissions, a delay in technology adoption, and a 13 percent increase in nursing home mortality over the three-year period following enactment.[16]

Across the U.S. employers in states with government paid family leave programs have less ability to manage their operations without interruptions that burden other employees or limit customers access to goods and services. For example, while I know many people—myself included—who have utilized employer-provided paid family leave policies and have kept their foot in the door at work to help things move along in their absence, I also know new mothers who, when utilizing formal government paid family leave programs have had their access to e-mail and all computer systems shut off while they were on leave, out of their employer's fear of a lawsuit if they did any work. Such rigid prohibitions hurt companies and customers, as well as employees who can miss out on promotions or find it harder to come back to work after taking leave.

While acknowledging that paid family leave is beneficial for workers, it imposes costs on employers. Inserting a middleman—a bureaucratic government administration—between workers and employers prevents both parties from flexibly balancing their needs and desires in ways that minimize costs and consequences for workers, employers, and customers.

Government Programs Crowd Out Employer-Provided Paid Family Leave. A 2017 Pew Research Center poll found that over 70 percent of Americans believe that employers—as opposed to federal or state governments—should be responsible for providing paid family leave. [17]

[15]"Bill Gates' Foundation Says 52-Week Paid Leave Isn't Doable After All, But Will Give New Parents $20,000," CNBC, February 6, 2019, https://www.cnbc.com/2019/02/06/bill--melinda-gates-foundation-cancels-52-week-paid-parental-leave.html (accessed October 17, 2023).
[16]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 October 20, 2023).
[17]Juliana Menasce Horowitz et al., "Americans Widely Support Paid Family and Medical Leave, But Differ Over Specific Polices," Pew Research Center, March 23, 2017, https://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/ (accessed October 20, 2023).

TABLE 2

Americans Support Paid Family Leave and Want Employers to Provide It

PERCENT OF AMERICANS SUPPORTING

TYPE OF LEAVE	
Mothers following birth/adoption of child	82%
Fathers following birth/adoption of child	69%
Workers to deal with their own serious health condition	85%
Workers to care for family members with serious health conditions	69%

WHO SHOULD PAY?	
Employers	62%
Workers	18%
State governments	13%
Federal government	11%

NOTE: 82 percent of Americans support paid maternity leave. This implies that 18 percent believe workers who want to take leave from work should pay for it themselves through personal savings or using vacation and paid time off.
SOURCE: 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 March 12, 2018).

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Yet, a government program would crowd out employer-provided paid family leave programs by discouraging employers who do not yet offer their own paid family leave programs from starting them. And a government program would also shift part of the costs of existing employer-provided paid family leave onto taxpayers.[18]

Such crowding out is already happening with state-based programs. At a July 11, 2018, Senate Finance Subcommittee hearing, Carolyn O'Boyle, representing Deloitte, explained that while Deloitte has its own employer-provided paid family leave program, the company instructs in states that have government programs to first apply for and utilize the state-provided paid leave benefits. Deloitte then tops those benefits off to bring them up to what Deloitte's program provides. That is a transfer of costs from within Deloitte's operations to state taxpayers. Larger companies have more resources to help workers navigate state paid family leave programs and are thus more likely to take advantage of government programs, but even large companies complain about the complexity and rigidity of government programs.

In a conversation with HR representatives from large companies, managers expressed frustrations and reported significant compliance costs from state-based paid family leave programs. They noted that they were often unable to help employees understand which benefits they could receive, that some employees had to pay benefits back, and that complying with state-based paid family leave programs left them with fewer resources to devote to employee compensation. Moreover, when asked if a federal program would make things easier for them, employers unanimously said that it would make things more difficult for them.

Existing Government Programs Fall Short for Low-Income Workers. Despite their intent to particularly benefit lower-income workers who are less likely to have access to paid family leave, most government programs are highly regressive. While government programs tax all workers, they primarily benefit middle-income and upper-income earners. That skewed distribution is the result of lower eligibility among low-wage workers (government programs require a minimum job tenure or number of hours); lower awareness of government programs; less ability make ends meet with partial

[18]Based on a recent economic analysis that showed a 60 percent crowd-out rate of privately provided health insurance due to government provision, policymakers can expect significantly higher crowd out from a federal paid family leave program; such benefits would be less valuable, as they would lack the special tax benefit for employer-provided health insurance. 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 October 20, 2023).

wage replacement; greater concerns with the rules and confusion about the application process; and concerns about job protection.

A 2019 report from the Independent Women's Forum, "Expanding Paid Family Leave Without Disadvantaging Low-Income Families," highlighted the difficulties that government paid family leave programs across the globe have encountered in helping low-income families:[19]

- **California.** A 2013 analysis by the California Senate's Research Office found that fewer than 4 percent of workers in the lowest income bracket (below $12,000) filed paid family leave claims with the state, compared to nearly 21 percent of workers in the highest income bracket (above $84,000).[20]
- **Canada.** A 2016 study found that only about 45 percent of Canadian mothers with household incomes below C$30,000 receive paid family leave benefit from the government, compared to between 75 percent to 85 percent of Canadian mothers with household incomes above C$60,000.[21] The study's authors noted that "[d]espite proportionate and obligatory contributions of all employers and employees to these programs, the distribution of benefits is unbalanced and aids the social reproduction of higher-income families."[22]
- **Norway.** Norway tried to increase access to paid maternity leave for lower-income mothers by providing 100 percent replacement rates, but a study found that "the extra leave benefits amounted to a pure leisure transfer, primarily to middle and upper income families."[23] The authors of the study concluded that "the generous extensions to paid leave were costly, had no measurable effect on outcomes and poor redistribution properties."[24]

The Proposed Federal Program Would be Costly and Excessively Burdensome. The Family and Medical Insurance Leave Act (FAMILY Act) is democrats leading proposal to establish a new federal entitlement for paid family and medical leave.[25] The FAMILY Act would be funded with a 0.4 percentage point payroll tax split between workers and employers and would provide up to 12 weeks per year of paid family and medical leave.

The Congressional Budget Office (CBO) analyzed the 2019 version of the FAMILY Act[26] and found that the new entitlement would be quickly unfunded and cover fewer than half of the leaves that

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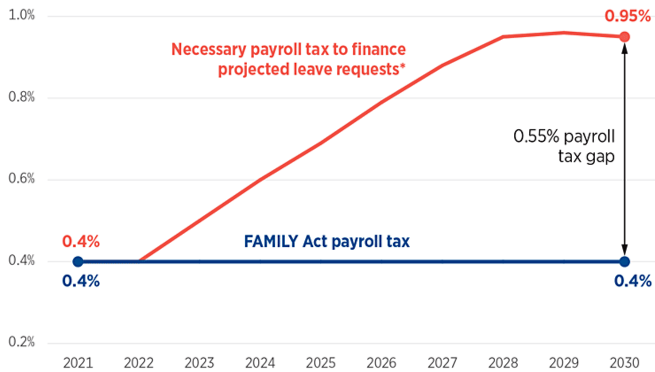
[19]Kristen Shapiro, "Expanding Paid Family Leave Without Disadvantaging Low-Income Families," Independent Women's Forum, July 2019, http://pdf.iwf.org/PFL_For_Low-Income_Families.pdf (accessed October 20, 2023).
[20]Leonor Ehling, "California's Paid Family Leave Program Ten Years After the Program's Implementation, Who Has Benefited and What Has Been Learned?" California Senate Office of Research, July 1, 2014, https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Californias%20Paid%20Family%20Leave%20Program.pdf (accessed October 20, 2023).
[21]Lindsey McKay, Sophie Mathieu, and Andrea Doucet, "Parental-Leave Rich and Parental-Leave Poor: Inequality in Canadian Labour Market Based Leave Policies," *Journal of Industrial Relations*, Vol. 0, No. 0 (2016), pp. 1–20, http://www.andreadoucet.com/wp-content/uploads/2016/11/Doc-10_McKay-Mathieu-Doucet-2016-JIR-FINAL.pdf (accessed October 20, 2023).
[22]Ibid.
[23]Gordon B. Dahl, Katrine V. Løken, Magne Mogstad, and Kari Vea Salvanes, "What Is the Case for Paid Maternity Leave?" April 20, 2015, https://econweb.ucsd.edu/~gdahl/papers/paid-maternity-leave.pdf (accessed October 20, 2023).
[24]Ibid.
[25]S.1714 and H.R. 3481, The FAMILY Act, 118th Congress (2023-2024), https://www.congress.gov/118/bills/s1714/BILLS-118s1714is.pdf (accessed October 19, 2023).
[26]H.R. 1185, The FAMILY Act, 116th Congress (2019-2020), https://www.congress.gov/bill/116th-congress/house-bill/1185/text (accessed October 19, 2023).

workers take.[27] According to the CBO analysis, the new 0.4 percentage point payroll tax to fund the program would fall short of its expenses just one year after benefits begin.

CHART 1

New Payroll Tax Hike for FAMILY Act Would Not Cover Costs



* Assuming no program expansion.
NOTE: Author's estimates include the CBO's estimated negative impact of higher payroll taxes on other federal revenues (an average reduction in other revenues equal to 11.7 percent of the new payroll tax), thus representing the tax rates necessary to make the program deficit neutral.
SOURCE: Author's calculations based on projections from Congressional Budget Office, Congressional Budget Office, "Budgetary Effects of H.R. 1185, the FAMILY Act," letter to the Honorable Kevin Brady, February 13, 2020, https://www.cbo.gov/system/files/2020-02/hr1185_2.pdf, February 13, 2020, https://www.cbo.gov/system/files/2020-02/hr1185_2.pdf (accessed February 23, 2020).

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TABLE 1

CBO Estimate: Fewer than Half of Workers Who Need Leave Will Benefit from FAMILY Act

Reason for Leave	Percent of All Leaves Taken	Covered by FAMILY Act	Not covered by FAMILY Act
New child*	21.1%	11.1%	10.0%
Own medical condition	54.6%	27.3%	27.3%
Care for family member's medical condition, or other FMLA-covered reason	20.0%	3.3%	16.7%
Non-FMLA reason or unspecified**	4.3%	0.0%	4.3%
Total	**100.0%**	**41.7%**	**58.3%**

* The CBO report says that 70 percent of new parents would be elibigle to take leave, and within that group, "most" new mothers and "about half" of new fathers would take leave. This data assumes that 100 percent of eligible mothers and 50 percent of eligible fathers would take leave.
** The FAMILY Act would not cover non-FMLA reasons and the author assumes it would not cover the 1.0 percent of unspecified reasons for leave.
SOURCES:
• Share of workers who need to take leave who use FAMILY Act benefits: Congressional Budget Office, Congressional Budget Office, "Budgetary Effects of H.R. 1185, the FAMILY Act," letter to the Honorable Kevin Brady, February 13, 2020, https://www.cbo.gov/system/files/2020-02/hr1185_2.pdf (accessed February 23, 2020), February 13, 2020, https://www.cbo.gov/system/files/2020-02/hr1185_2.pdf (accessed February 23, 2020).
• Distribution of all leaves: Abt Associates, "Family and Medical Leave in 2012: Technical Report," prepared for Jonathan Simonetta, U.S. Department of Labor, Exhibit 4.4.2 Medical reasons for taking leave, Revised April 18, 2014, https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/FMLA-2012-Technical-Report.pdf (accessed February 25, 2020).

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After six years, the program's costs would equal 240 percent of its revenues, meaning policymakers would either have to ration benefits or more than double taxes. Most importantly, the CBO estimated that the program would provide benefits to only four out of every 10 workers who need to take family or medical leave.

The most recent, 2023 version of the FAMILY Act would significantly expand benefit eligibility, impose tremendous burdens on employers—especially small businesses, invite substantial misuse and abuse, and be significantly more costly and underfunded than prior versions of the FAMILY Act.[28]

For starters, the FAMILY Act extends the FMLA's job protections to all workers who have been employed with a company for 90 days or more.[29] Currently about 70 million workers do not have access to FMLA job protection either because they work for a smaller employer or because they have not been employed for the FMLA's requirement of 12 months or more. Thus, the FAMILY Act would extend FMLA job protections to tens of millions of workers. While job protection is seemingly a good thing (no one wants a woman to lose her job because she had a child and had to take leave from work), providing job protection for all FMLA purposes can be particularly burdensome for small employers, which is why congress excluded them from the FMLA. For example, a Heritage Foundation report by

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[27]Congressional Budget Office, "Budgetary Effects of H.R. 1185, the FAMILY Act," letter to the Honorable Kevin Brady, February 13, 2020, https://www.cbo.gov/system/files/2020-02/hr1185_2.pdf (accessed October 19, 2023).
[28]S.1714 and H.R. 3481, The FAMILY Act, 118th Congress (2023-2024).
[29]U.S. Department of Labor, "Family and Medical Leave (FMLA)," https://www.dol.gov/general/topic/benefits-leave/fmla (accessed February 7, 2020).

James Sherk provided an example of a 911 call center where five of the seven day-shift employees had FMLA certifications.[30] Since that work is so specialized, when employees take unannounced leave, their co-workers have to work overtime, leaving exhausted workers handling emergency situations.

Moreover, FMLA has been extensively misused and abused in certain workplaces in which obtaining an FMLA certification is a means for workers to take time off whenever they want with immunity. Reports from HR managers, significant variance in the use of FMLA across otherwise similar worksites, and trends in FMLA use around holidays and weekends (it is often referred to as the Friday and Monday Leave Act) suggests significant misuse and abuse of FMLA. Turning currently unpaid leave into paid leave will only exacerbate FMLA misuse and abuse.

The current FAMILY Act also extends paid family leave to individuals who have little attachment to the labor force. To qualify for benefits, an individual can have as little as one penny of earnings in the prior quarter and must have only $2,000 in earnings over the prior two years. For someone making $10 per hour, that amounts to an average of fewer than two hours of work per week. The current FAMILY Act also extends leave to workers to care for non-kin individuals with whom the individual has a family-like relationship.

The current FAMILY Act's significant expansions will vastly increase the cost of the federal paid leave entitlement without adequately financing those expansions. The current FAMILY Act's proposal to apply the 0.4 percentage point tax to earnings above the Social Security payroll tax cap will only increase revenues by about 17 percent.[31] Even if the current FAMILY Act did not increase benefit eligibility from the 2019 version, CBO's analysis indicates that the proposed tax increase would only keep the program solvent one year longer, with revenues falling short in the second year of benefit payments instead of the first year. By the tenth year, revenues would still be less than half of CBO's estimate of the cost of a less expansive FAMILY Act (the 116th Congress version would have covered only 42 percent of leaves workers take).

Considering the massive expansion in eligibility and benefits in the 2023 FAMILY Act, it is likely that the payroll tax will need to be at least three times as high as specified. For the median household with an income of about $70,000, that would amount to an extra $840 in federal taxes. As the experience of other countries, states, and current federal entitlement programs demonstrates, those costs would likely rise significantly over time.

In addition to increased taxes for workers, the current FAMILY Act imposes tremendous burdens on employers who are already struggling with labor shortages. Enabling virtually all workers to access paid family leave benefits and providing those who have been on the job at least 90 days with additional workplace protections will make it even more difficult for employers to run their businesses

[30] James Sherk, "Use and Abuse of the Family and Medical Leave Act: What Workers and Employers Say," Heritage Foundation Special Report No. 16, August 28, 2007, https://www.heritage.org/jobs-and-labor/report/use-and-abuse-the-family-and-medical-leave-act-what-workers-and-employers-say.

[31] Over the past 10 years (2012-2021), an average 17 percent of earnings have been above Social Security's taxable maximum. Social Security Administration, *Annual Statistical Supplement*, 2022, Table 4.B1—Number of workers with Social Security (OASDI) taxable earnings, amount of earnings, and Social Security numbers issued, selected years 1937–2021, https://www.ssa.gov/policy/docs/statcomps/supplement/2022/supplement22.pdf (accessed October 21, 2023).

and to meet customers' demands and patients' needs. In particular, the current FAMILY Act specifies that employers cannot interfere with employees' rights under the law ("interfere" could be broadly interpreted to include asking a simple question related to an employee's leave). It also creates effective immunity from disciplinary, dismissal, or adverse action for an entire year after the worker takes leave. This is done by establishing a "rebuttal presumption of retaliation," whereby any adverse action an employer takes against an employee is presumed to be in retaliation for the worker having taken leave. Since the Act allows workers to take up to 12 weeks of leave every year, workers who take leave every year could become nearly impossible to discipline or dismiss.

Government Programs and Mandates Have Unintended Consequences for Women. While laws regarding paid family leave almost always aim to particularly help women, they can have the opposite effect in practice.

Generous government paid family leave programs in other countries have reduced women's prospects of promotion, contributed to lower relative wages, and created disjointed workforces with women dominating part-time jobs and men dominating full-time jobs.[32] Thus, it is no coincidence that America is the only industrialized nation without a federal paid family leave policy and where women's earnings are among the highest in the world compared to men's and where the highest proportion of women hold top-level and management positions.

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.[33] Even with low awareness and up-take rates, researchers estimated that New Jersey's paid family leave program reduced young women's employment rates by an estimated 8 percent to 9 percent.[34]And a recent analysis of California's program using administrative data from the IRS found that new mothers who used California's paid family and medical leave program had 7 percent lower employment and 8 percent lower annual earnings six years to 10 years after giving birth than new mothers who did not use the program. (That study also has the surprising finding that California's paid family leave program reduces women's fertility rates).[35] Even though the United States' Family and Medical Leave Act (FMLA) only enables *unpaid* family and medical leave, and only applies to

[32]See 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 October 20, 2023); Christopher J. Ruhm, "The Economic Consequences of Parental Leave Mandates: Lessons from Europe," National Bureau of Economic Research *Working Paper* No. 5688, July 1996, http://www.nber.org/papers/w5688.pdf (accessed October 20, 2023); and Sven R. Larson, "A Fork in the Road of the American Welfare State," SSRN Research Paper 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3467127 (subscription required).

[33]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 (accessed October 20, 2023).

[34]Joshua Reed and Donald Vandegrift, "The Effect of New Jersey's Paid Parental Leave Policy on Employment," Munich Personal RePEc Archive *Paper* No. 74794, October 28, 2016, https://mpra.ub.uni-muenchen.de/74794/1/MPRA_paper_74794.pdf (accessed October 20, 2023).

[35]Martha J. Bailey, Tanya S. Byker, Elena Patel, and Shanthi Ramnath, "The Long-Term Effects of California's 2004 Paid Family Leave Act on Women's Careers: Evidence from U.S. Tax Data," NBER *Working Paper* No. 26426, October 2019.

companies with more than 50 employees, it has still reduced women's likelihood of being promoted[36] and thwarted women's wage gains relative to men.[37]

Even liberal economists such as professor and scholar Harry Holzer 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."[38] While government mandates cause employers to fear absences that are out of their control and lawsuits for even unknowingly failing to follow complicated rules, employer-provided policies have fewer consequences because they do not insert a middleman between workers and employers. Consequently, employers who voluntarily provide paid family leave benefits are unlikely to discriminate against workers who may take leave and are more likely to accommodate workers' leaves in an effort to keep them employed with the company.

Most Americans Are Unwilling to Accept the Costs and Trade-offs of a Federal Paid Family Leave Program. A 2018 survey by the Cato Institute found that most Americans—74 percent—support a federal paid family and medical leave program; but that support dropped precipitously when asked about the costs, or trade-offs, of such a program.[39] At a price tag of $450 more in taxes each year—the likely minimum cost for a program like the FAMILY Act[40]—fewer than half of Americans (48 percent) supported a national paid leave program.[41] In reality, however, a national paid leave program would cost much more—as much as thousands of dollars per year in new taxes, according to the American Action Forum.[42]

Americans are not willing to exchange more debt for a federal paid family leave program as only 40 percent of Americans support paid family leave if it means higher deficits.[43] Americans appear even less willing to give up their own personal compensation or to forgo promotions for women: Only 38 percent of Americans support a federal paid leave policy if it means lower pay raises for them, and even fewer—29 percent—are willing to exchange such a program for fewer benefits for them or for a

[36]This study found that women who were hired shortly after passage of the FMLA were 8 percentage points less likely to be promoted compared to those hired before it: Mallika Thomas, "The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection," Cornell University ILR School, September 6, 2016, https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1015&context=ics (accessed October 20, 2023).

[37]This study found that white women's wages had been converging at a rate of 0.70 percentage points per year in the decades prior to passage of the FMLA and have converged at a rate of 0.03 percentage points since. For black women, convergence rates fell from 0.30 percentage points prior to the FMLA to 0.05 percentage points afterwards. Peter Q. Blair and Benjamin Posmanick, "Why Did Gender Wage Convergence in the United States Stall?" National Bureau of Economic Research *Working Paper* No. 30821, January 2023, https://www.nber.org/system/files/working_papers/w30821/w30821.pdf (accessed October 19, 2023).

[38]Harry J. Holzer, "Paid Family Leave: Balancing Benefits and Costs," AEI-Brookings Project on Paid Family Leave *Social Mobility Memo*, January 30, 2017, https://www.brookings.edu/blog/social-mobility-memos/2017/01/30/paid-family-leave-balancing-benefits-and-costs/ (accessed October 20, 2023).

[39]Ekins, "Cato Institute 2018 Paid Leave Survey."

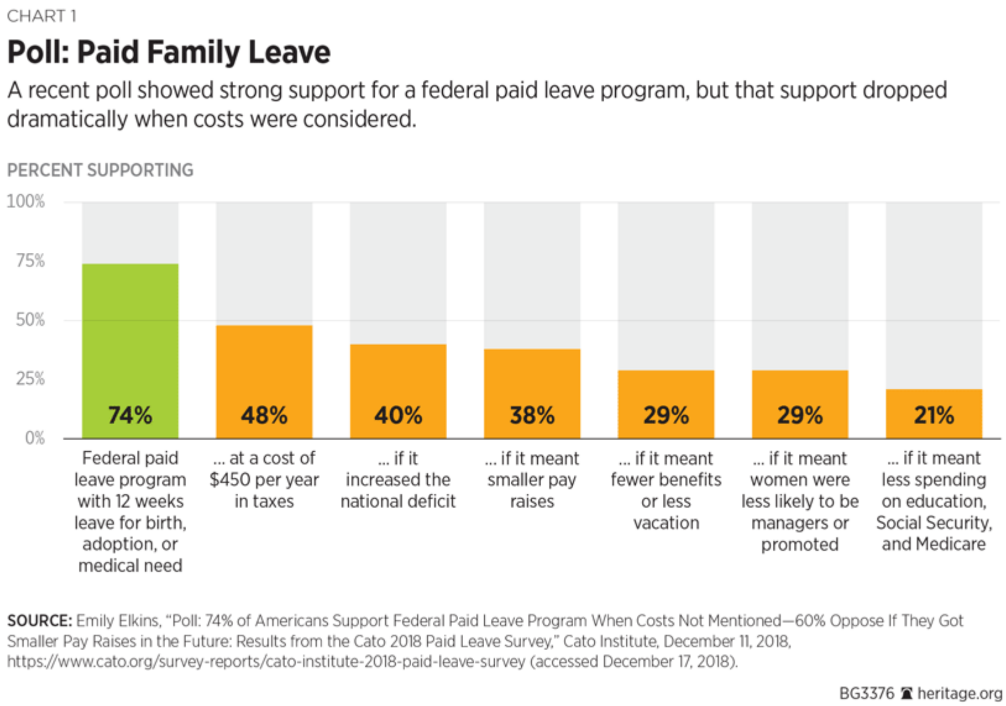
[40]The $450 cost is based on a critique by the AEI-Brookings Working Group on Paid Family Leave report, arguing that the FAMILY Act's costs are likely underestimated. The CATO survey uses a 16 percent take-up rate and an average leave duration of 7 weeks.

[41] Ekins, "Cato Institute 2018 Paid Leave Survey."

[42]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 October 20, 2023).

[43]Ekins, "Cato Institute 2018 Paid Leave Survey."

reduced likelihood of promotions for women.[44] That has, unfortunately, been the case with national paid family leave policies, including both unpaid mandates[45] and generous national programs.[46]



Americans were least willing to support a federal paid family leave program if it meant giving up other valued government services. Only 21 percent of Americans said they would trade lower funding for education, Social Security, and Medicare in order to implement a national paid family leave program.[47] This is an important reality because Social Security and Medicare are both massively underfunded and Social Security is projected to run out of money within a decade, resulting in automatic and across-the-board benefit cuts of 23 percent (about $5,000 for the average retiree). Adding another unfunded entitlement program would further jeopardize the ability of existing entitlement programs to provide scheduled benefits.

Another survey, commissioned by the Independent Women's Forum, asked Americans about their concerns over a federal paid family leave policy. Americans' biggest concern was that "people will find a way to abuse this type of policy."[48] About half of all Americans were concerned about abuse, including 56 percent of conservatives, 52 percent of moderates, and 38 percent of liberals. Americans' other top concerns were that a federal paid family leave policy "only benefits workers who plan to

[44]Ibid.
[45]Malika Thomas, "The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection," March 6, 2019, https://irs.princeton.edu/sites/irs/files/event/uploads/Draft030619.pdf (accessed October 20, 2023).
[46]Christopher J. Ruhm, "The Economic Consequences of Parental Leave Mandates: Lessons from Europe," National Bureau of Economic Research *Working Paper* No. 5688, July 1996, http://www.nber.org/papers/w5688.pdf (accessed October 20, 2023).
[47]Ekins, "Cato Institute 2018 Paid Leave Survey."
[48]Heart Mind Strategies, "Paid Leave Messaging Research: Public Report," prepared for the Independent Women's Forum, April 29, 2019, https://pdf.iwf.org/Paid-Leave-Poll-Hearts-and-Mind%202019.pdf (accessed October 20, 2023).

have children, which is unfair to those who do not" (38 percent); "workers will have to pay more taxes and will have less money for themselves and their families" (37 percent); and it "discourages businesses from providing their own parental leave benefit" (34 percent).[49]

Policies to Expand Workers' Access to Paid Family Leave and Work-Life Flexibility

It is important that family members be able to care for one another, and in a time when many households are headed by a single adult or both spouses are working, providing necessary care can require taking time off work. Employers who fail to recognize and provide for this need risk losing good workers and incurring high turnover costs. Fortunately, a competitive global economy, the 2018 pro-growth tax cuts, and the workplace adaptations related to the COVID-19 pandemic have spurred more and more employers to voluntarily provide paid family leave to their workers. Moreover, 14 states have enacted paid family leave programs that vary in program design and administration, and a handful of other states have optional paid family leave programs.

Tax Credits vs. Mandates. Tax credits for paid family leave policies will always have fewer unintended consequences than government mandates because credits are optional. The effectiveness of tax credits at increasing access to paid family leave depend on the structure of the credits. Temporary credits are less likely to induce employers to enact permanent new benefits, and credits that impose significant requirements on employers are less likely to be utilized. Meanwhile, credits that are available to employers who already provide the specified policy will raise taxpayers' costs without generating new benefits for workers.

The Tax Cuts and Jobs Act of 2018 (TCJA) included a temporary tax credit for employers who paid family leave to their workers. That credit was supposed to last only through 2019 but has since been extended through 2025. To qualify for the credit, employers must have a formal written policy that meets minimum requirements, including providing at least two weeks of paid family leave, being available to employees who have worked for the employer for at least 12 months, and providing at least 50 percent benefit replacement rates. The credit equals a quarter of the paid family leave wages paid (so, between 12.5 percent and 25 percent) to workers who have incomes below a specified threshold. In 2023, employers can claim credits for workers whose total wage compensation did not exceed $81,000 in 2022. To claim the credit, employers must file two IRS forms and must reduce their tax deduction for employee compensation by the amount of the credit. The credit was and is available to employers with existing paid family leave policies that meet the credit's requirements, as well as to employers who provide short-term disability insurance plans that meet the requirements.

The efficacy of the tax credit at expanding access to paid family leave is not yet known. In particular, it is not clear what portion of tax credits claimed went to employers who already provided paid family leave or short-term disability insurance policies versus how many were spurred to create new policies as a result of the credit. The Joint Committee on Taxation estimated that the credit

[49]Ibid.

would cost about $2.2 billion per year in tax revenues over the first three years (2018–2020) and about $0.8 billion per year over the next five years (2021–2025).

A back-of-the-envelope estimate suggests that $0.8 billion per year equates to about 1.1 million workers receiving the credit. (This estimate assumes workers have average wages of $50,000 per year, they each take the average of 5.5 weeks of leave, and they receive a 75 percent benefit replacement.) Considering that upwards of 40 million workers have access to paid family leave at work, and that roughly 23 million workers take family leave each year, the credit would appear to benefit relatively few workers.[50] Moreover, it is unclear how many of the workers for whom employers claim the credit would have had access to paid family leave even without the credit.

A provision of the paid family leave tax credit that may be preventing particularly smaller employers from claiming it, even if they decide to provide some paid family leave, is the "non-interference" language. That language specifies that an employer cannot interfere with any attempted use of the benefits of the policy. Employers may rightly fear that "interfere" could be interpreted to include an employer asking to work with an employee in scheduling his paid leave or asking that employee to do work—even answering an e-mail or a phone call from a co-worker filling in for that employee—while on leave. Additionally, because smaller companies tend to face greater liquidity constraints, the lag between when an employer provides paid family leave and when the company files taxes and eventually receives the credit may render it less effective.

COVID-19 Family Leave Credit Underutilized. Another temporary credit in the Families First Coronavirus Act covered 100 percent of employers' costs for wages and health care benefits for workers at companies with 500 employees or fewer who took family leave for reasons related to the COVID-19 pandemic. The original credit expired at the end of 2020. Subsequent legislation modified and extended the credit through September 30, 2021. The original credit was estimated by the Joint Committee on Taxation to cost $105 billion. According to IRS administrative records through July 15, 2021, the IRS had processed only $6.7 billion worth of employers' claims for the credit between the second quarter of 2020 and the first quarter of 2021.[51] This suggests that the credit was highly underutilized. Possible reasons for so few businesses claiming the 100 percent paid family leave credit could include fewer needed leaves than anticipated and administrative complexity and confusion, including the credit's interaction with other COVID-19 policies.

Conditional tax credits for paid family leave are arguably less effective than across-the-board tax reductions. To the extent that policymakers consider using the tax code to encourage the provision of paid family leave, a temporarily lower tax rate for companies that do not currently provide paid family leave and that enact new paid family leave policies would be better targeted than credits available to employers with existing policies. Moreover, businesses may be more inclined to implement new policies if they have fewer strings attached and do not include the administrative burden of tracking and submitting claims for each individual worker's leave.

If policymakers enact federal paid family leave legislation, it should be optional to prevent the unintended costs and consequences. The following proposals are all entirely optional ways to help

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[50] Bureau of Labor Statistics, "National Compensation Survey," and Brown et. al., "Employee and Worksite Perspectives of the Family and Medical Leave Act: Executive Summary for Results from the 2018 Surveys."

[51] Congressional Budget Office, "The Budgetary Effects of the Tax Credit for Employer-Paid Sick and Family Leave During the Coronavirus Pandemic," July 16, 2021, https://www.cbo.gov/publication/57362 (accessed October 19, 2023).

expand paid family leave to workers who lack the ability to take it and to businesses that cannot yet afford to provide it:

Enact the Working Families Flexibility Act. The Working Families Flexibility Act would allow lower-income, hourly workers to choose whether they want to accumulate paid leave overtime pay when they work more than 40 hours in a week. Paid leave, or so-called comp time, would accumulate at 1.5 times the rate of overtime, so 4 hours of overtime one week would equal six hours of paid leave. This proposal would particularly help lower-income workers who are least likely to have access to paid family leave.

Enact Universal Savings Accounts. Universal Savings Accounts would enable all Americans to save in a single, simple account for all their needs and to take money out for paid leave, for children's education, or any other life needs that arise without paying a penalty for early withdrawal. The ability to use tax-preferred savings for paid family leave would be particularly helpful for independent, part-time, and temporary workers.

Expand Private Disability Insurance. Private disability insurance covers workers own medical needs and maternity leave. Already, about 50 percent of full-time private-sector workers currently have private disability insurance at work.[52] Providing clarity that employers can automatically enroll workers in private disability insurance, just as they can automatically enroll workers in retirement savings (so long as they provide a clear option to opt out), could encourage more employers to provide private disability insurance.

Pursue Pro-Growth Tax Policies. Perhaps the single most impactful thing that policymakers can do to enable more employers to be able to provide paid family leave is to allow employers to return more of workers' output to them in compensation, like paid family leave, as opposed to sending it to the government through taxes.

The success of the Tax Cuts and Jobs Act reduced the top corporate tax rate from 35 percent to 21 percent and lowered the top effective tax rate on S corporations from 37 percent to 29.6 percent. Many businesses used these tax reductions to increase employees' compensation, including paid family leave. In the six years leading up to the tax cuts, the percent of workers with access to employer-provided paid family leave increased only 3 percentage points, from 12 percent to 15 percent. In the six years following passage of the TCJA, that percentage shot up 12 percentage points, from 15 percent to 27 percent.[53]

Do Not Regulate Away Paid Family Leave and Flexibility. Regulations are another drag on employee compensation, both because of the dollar costs and the burdens of rigid rules. A number of recently proposed regulations threaten to make it more difficult and less likely for employers to offer paid family leave. The Department of Labor's soon-to-be-finalized Independent Contractor rule would make it harder for employers to hire short-term contractors to cover the work of employees who are out on paid family leave. That rule would also take away flexible work options that enable workers to choose when they work. The Department of Labor's recently proposed overtime rule (effectively subjecting all employees who make less than about $55,000 per year to overtime

[52] Rachel Greszler, "Private Disability Insurance Option Could Help Save SSDI and Improve Individual Well-being," Heritage Foundation *Backgrounder* No. 3037, July 20, 2015, http://report.heritage.org/bg3037.
[53] Bureau of Labor Statistics, "National Compensation Survey."

standards) could backfire on currently salaried employees who could end up having to use up their paid time off just to maintain a full paycheck in weeks when they log fewer than 40 hours. And salaried workers who are converted to hourly employees as a result of the rule may lose access to workplace benefits that are only provided to salaried employees.

Instead of enacting new regulations that tie employers' and employees' hands and take away flexible work options, policymakers should look to eliminate costly and unnecessary regulations so that more of employers' resources can go to employees' compensation instead of to lawyers, accountants, and administrators. In addition to saving time and money, fewer regulations specifically geared at paid family leave policies would reduce employers' legal fears about offering it.

Unlike a one-size-fits-all federal entitlement program, these policies would help to meet workers' unique needs, in flexible and accommodating ways, at a cost they can afford.

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