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— EST. 1818 —

PAID *family* LEAVE

Why Public funding Should Not Hinder Implementation

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Paid Family Leave: Why Public Funding Should Not Hinder Implementation

On the eve of the deadline for President Biden's landmark Build Back Better Bill, Senator Joe Manchin (D-WV), a centrist holdout, announced he could not support the 4 weeks of paid family leave in the legislation, already a reduction from the original 12 weeks. Stating that he was unsure of how it would be paid for, Senator Manchin suggested he would have to research how other countries paid for this leave. A statement which, in and of itself, should indicate how far behind the United States is on this policy.

Paid leave is crucial to public health. Much has been reported of the benefits that workers, families, businesses, and the public gain when workers have access to paid leave, specifically to care for a new child. Benefits like lowering the likelihood of premature birth, increasing the duration of breastfeeding, which has countless health benefits for mother and child, and a higher likelihood of making well baby visits that include critical care such as vaccines and early intervention for issues like post-partum (Houser and Vartanian, 2012).

In the midst of the fight on Capital Hill, Representative Rosa L. DeLauro (D-Conn.), who had personal experience with paid leave when she was recovering from cancer in the early 1980s as a White House staffer, was quoted as saying, "Why is it good enough for us and not good enough for everyone else in the country? We're the only industrialized nation that does not offer paid family and medical leave" (Room, 2021).

As is often repeated, the United States is the only industrialized nation that does not have a paid family leave policy (Coombs, 2021). If we tout ourselves as one of the wealthiest nations in the world, why can't we afford to pay to support families of our country at this most critical

time in their lives? This is the question that I will explore by looking at how other countries and states in our own country have successfully implemented their programs.

To understand the United States roadblocks on paid family and medical leave implementation, we should first take a look at what was most recently proposed. As originally proposed, President Joe Biden's Build Back Better Plan creates a National Comprehensive Paid Family and Medical Leave Program. The program "will ensure workers receive partial wage replacement to take time to bond with a new child; care for a seriously ill loved one; deal with a loved one's military deployment; find safety from sexual assault, stalking, or domestic violence; heal from their own serious illness; or take time to deal with the death of a loved one. This program guarantees twelve weeks of annual paid paternal, family, and personal illness/safe leave, and also ensures workers get three days of bereavement leave per year. The program will provide workers up to \$4,000 a month, with a minimum of two-thirds of average wages replaced, rising to 80 percent for the lowest wage workers" (The White House, 2021).

This program is part of the massive economic and infrastructure plan in the Build Back Better Plan which is reportedly already being paid for. According to the White House, combined with savings from repealing the Trump Administration's rebate rule, the plan is fully paid for by asking more from the largest corporations and wealthiest Americans. Specifically, "no one making under \$400,000 will pay a penny more in taxes" (The White House, 2021).

An issue brief published by the National Partnership found that universal paid family and medical leave is not only critical to American families' health and well-being, but also to their financial security, especially for low-income women and workers of color (Kortrey, 2021). The program presented in President Biden's Build Back Better Act offers access to a range of caregiving needs across a lifespan, starting with paid family and medical leave. As the brief

found, for a median income earner who takes four weeks of paid leave for a family or medical reason, such as the birth of a child, “the program would replace almost \$2,200 of income, enough to cover two months of rent, nearly three months of child care payments, or more than three and half months of food.” The Build Back Better Act would provide paid leave to 77 percent of workers who do not already have access to the benefit. And due to a progressive wage replacement in the plan, the lower income workers will see a larger share of their usual income that is replaced during their leave (Novello, 2021).

This new program is a far cry from what the United States currently has in place for working parents and families. The Family and Medical Leave Act of 1993 (FMLA; P.L. 103-3) provides eligible workers with a federal entitlement to unpaid leave for specific family caregiving and medical needs. There is no federal law that requires public-sector employers to provide paid leave of any kind. Access to the unpaid leave is even restricted to the size of company and time of employment, so many workers are left without protection of any kind (Donovan, 2020).

The Family & Medical Leave Act was passed during the first term of President Bill Clinton. It was the first, and is currently the only, piece of national legislation that addresses the issues of time off from one’s job following the birth of a child, in addition to caring for oneself or family members that are seriously ill. In doing so, Congress recognized a few important things, according to the legislation itself:

- The lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting.
- Due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking falls on women, and such responsibility

affects the working lives of women more than it affects the working lives of men.

- Employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

The goals of the legislation were plentiful and lofty, but the authors designate an effort to “balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity” (*Family & Medical Leave Act*, 1993).

It is important to note that FMLA provides job protection, but the leave is unpaid and is only eligible to employees of covered employer. The program is run through the U.S. Department of Labor Wage and Hour Division. According to the division, a covered employer is a private sector employer who has 50 or more employees. Employees must have been at the company for 12 months or more and have worked more than 1,250 hours in that time to be eligible for job protection under FMLA (Wage and Hour Division, 2012).

As you can imagine this leaves many US workers without adequate protection. A study by the Center for Economic and Policy Research found that coverage and eligibility restrictions resulted in 49.3 million employees, or roughly 44.1 percent, of the private sector workforce was ineligible for leave in 2012 (Jorgensen & Appelbaum, 2014).

Legislators have indicated that FMLA was enacted to support family growth and enhance gender equity, as Congress’ vision was that employers would offer caretaking leave to men and women on equal terms, men and women would take leave and share the burden of caring for

children and that employers would perceive their employees equally (Grossman, 2004). This is according to an interpretation by the United States Supreme Court in *Nevada Department of Human Resources v. Hibbs* where they endorsed an interpretation that “FMLA as an Act was conceived and implemented in order to promote equality for women” (Grossman, 2004).

As it stands currently, FMLA is still the only federal legislation that addresses any time off for paternal leave. According to a recent report by the US Chamber the number of state and local paid family leave programs are on the rise. As of 2019, there are 10 paid family leave jurisdictions in the country; California, New Jersey, Rhode Island, New York, Washington State, Massachusetts, Connecticut, Oregon, Washington, D.C. and San Francisco, California (US Chamber of Commerce, 2019).

Successful Programs in Organization for Economic Co-Operation and Development (OECD) Countries

According to the International Labor Organization, maternity protection is a fundamental labor right enshrined in key universal human rights treaties. For instance, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966, includes special protection for mothers during a “reasonable period before and after childbirth, including paid leave or leave with adequate social security benefits” (Addati et al, 2017). A recent calculation states that 125 countries across the globe provide paid parental leave of some kind (Canty & Sherwood, 2007). Among the OECD countries in 2011, the median number of weeks of paid leave given to mothers was 42. In fact, all western European nations have programs that give mothers the right to at least three months paid maternity leave, with as much as a year or more in some countries, which often includes time for either parent to take (Lester, 2005).

Research from the National Partnership for Women and Families found that lack of a paid family leave policy and other support caregiving policies has had a significant impact on our economy. In fact, over the last 20 years the United States has seen a decline in women's labor force participation. Specifically, "if labor force participation for American women aged 25 to 54 was at rates similar to those in Canada, Germany, and the United Kingdom, it's estimated that there would be up to 4.85 million more women in the workforce, amounting to \$237 billion in wages per year for women and families" (National Partnership for Women & Families, 2021).

Of course, the programs vary across the globe but the International Labor Organization has a standard they promote of 14 weeks of paid maternity leave. Here we will take look at some of the industrialized nations in the world that have successful programs.

Sweden

The Nordic countries of Finland, Iceland, Norway and Sweden are leaders in many aspects of gender equality, particularly women's participation rate in the labor force. Sweden has one of the highest maternal employment rates in the OECD with eighty-three percent. Because of this, Sweden's parental leave puts an emphasis on the shared parent experience.

Known as a gold standard, in 1974 Sweden became the first country in the world to adopt a paid parental leave policy that granted mothers and fathers an opportunity to stay home with their children. While the policy originally started as 180 days, it has been expanded to 480 days. Swedish parents are compensated for the first 390 days up to nearly eighty percent of their salary, pursuant to a per-day maximum. The remaining days are paid at a flat rate. Unlike many other countries, paid leave is not only available for parents that are currently working. In Sweden, unemployed parents are also entitled to paid parental leave (Somerset, 2018).

According to the Swedish Ministry of Health, the paid leave program in Sweden aims to reduce the differences in economic conditions between households with and without children and improve the conditions for equality between men and women (Government of Sweden, 2021).

Because of the focus on shared parenting, Sweden reserves 90 of the full 480 days of leave to be taken by the father. This attention to the father has been particularly successful in increasing the amount of time that Swedish fathers spend at home with their new babies. When the statute was first introduced, Swedish fathers took only .5% of all paid parental leave. In 2014, Swedish fathers took twenty-five percent of the total parental leave (Somerset, 2018).

In 2015, the Swedish government introduced a third month of paid parental leave that was to encourage the use of paid leave by fathers. The increased leave was reported as 180 million SEK (USD \$21.4 million) with a total expenditure of 82.9 billion SEK (USD \$9.9 billion) (Government Offices of Sweden, 2021). According to recent reports, almost all mothers make use of the parental leave benefit and take about three quarters of all leave days (76.3%) with an increase in a father's usage of the leave since the introduction of the month reserved for fathers (Duvander and Johansson, 2012).

New Zealand

New Zealand is often noted for its socially progressive legislation and western ideals, the country is drastically smaller than socially comparable nations with an estimated population of 4.5 million (Cumming, 2015), a population nearly half the size of New York City.

The idea of maternity leave was first introduced in New Zealand in 1980 with the Maternity Leave and Employment Protection Act 1980 which is similar in nature to the Family Medical Leave Act in the United States. The Act provides employment protection for women

only with certain eligibility requirements and provided up to 26 weeks of unpaid leave. This was later expanded to 12 months of job protection that could be shared by both parents in 1987 (Ravenswood & Kennedy, 2012).

Then in 2002, New Zealand found itself, along with Australia and the United States, as one of the few OECD nations that did not provide paid leave for mothers following the birth of a child, due in part to region's historically male dominated workforce. It was then that they instituted the last major change with the Parental Leave and Employment Protection (Paid Parental Leave) Act in 2002. The act entitled mothers or primary caregivers to receive 12 weeks of paid parental leave with two weeks unpaid partner leave. The program's primary purpose was to provide an employment right, and to provide parental leave payments to parents during the 12 weeks following the birth of a child. The payments are set at \$325 per week or 100% of their average earnings prior, whichever is lesser. The program is funded by the state and also includes same-sex parents (Ravenswood & Kennedy, 2012). According to figures provided by New Zealand's Ministry of Business, Innovation and Employment, the full leave will have a net fiscal cost of approximately NZ\$325 million (roughly \$219 million USD) for the approximate 26,3000 parents that utilized the leave (Buchanan, 2017).

United Kingdom

The United Kingdom is one of the high-income OECD countries yet it was the last European Union member to introduce legislation for parental leave (Ravenswood & Kennedy, 2012).

The first effort for maternity leave was in 1999 with amendments of the Employments Rights Act 1996 that introduced no less than 18 weeks of maternity leave. It wasn't until 2002 that the United Kingdom introduced a paid paternity leave component, granting an employee the option of either one week leave or two consecutive weeks leave to be taken within fifty-six days

of the child's birth or adoption. At present, the government shares the cost of parental leave policies by allowing employers to reclaim a percentage of maternity, paternity, adoption, and shared parental pay benefits paid to employees. If a woman in the UK is entitled to maternity pay during her maternity leave, the period is thirty-nine consecutive weeks with the first six weeks paid at ninety percent of the average weekly earnings before tax. The remaining thirty-three weeks paid at a percentage of her wage or a maximum payment, whatever is lesser (Somerset, 2015). There was significant push back from the business community for the paid paternity leave expansion. It was estimated at the time, the expansion would cost businesses 130 million pounds (Jones, 2001).

Canada

Canada's parental leave policy has evolved over the years. Since the early 21st century, Canadian employees have a right to a year paid parental leave. This program is a component of the Employment Insurance Programme, formally Unemployment Insurance. The entire program is an employer-employee financed program which started as unemployment insurance (Tremblay, 2009). The Employment Insurance program is part of the "Employer Mandatory Costs" worked into a Canadian employee's payroll. The Employment Insurance is a deduction from the employee's income of 1.66% in 2018. The employer's contribution is generally 1.4x the amount of the employee's contribution (Languages at Work, 2019).

In 1971, the maternity leave was introduced as part of this program. In 1990, the Canadian Benefits Program implemented ten weeks of parental leave benefits for the care of a child. The length was increased again by adding 25 weeks of shared entitlement. While both mothers and fathers can take the time off, it is used mostly by women. In 2004, about three-

quarters of mothers were entitled to parental benefits, and about 66% of these mothers received benefits (Puckingham, 2004).

This program applied to Canada nationally until 2006 when Quebec instituted its own program, for which it had to receive federal permission to opt out of the Canadian plan. Funding of this program is also entirely based on additional contributions that employers and employees pay into the plan. The Quebec plan is said to provide more generous and flexible leave, such as shorter leave with higher income replacement or longer leave with lower income replacement, and 3 to 5 weeks that are reserved only for fathers to place greater emphasis on the father's relationship in the family unit (Tremblay, 2009).

Australia

Australia is a federal state, dividing the power between the federal and state governments, with a relatively low number of mothers in the workforce. There is a high level of part-time employment among women with just over a third of mothers who worked in the 12 months prior to birth using some paid maternity leave (Kameran & Moss, 2010).

Before 2010, Australia was the only other OECD country besides the United States that did not have a paid maternity leave. It was in that year that the Australian Government introduced a paid parental leave (PPL) program for new parents who are the primary caregivers of a child born or adopted on or after January 1, 2011. The eligible caregiver would receive taxable payments of the national minimum wage each week for a maximum of 18 weeks. The program does require women to be in the work force prior to the birth or adoption of a new child and aims to increase female participation in the workforce (Bass, 2020).

Similar to the United States, prior to the implementation of the paid parental leave program in 2011, employed women in Australia were entitled to unpaid, job-protected leave. Of course, Australia's leave is 12 months versus the United States' 12 weeks. Another former program that cannot be discounted is the Baby Bonus. Women who gave birth to a child in Australia from July 1, 2004 until December 31, 2014 and had a family adjusted taxable income of \$75,000 (AUD) or less in the 6 months after childbirth automatically received a non-taxable cash payment ranging between \$3,000 and \$5,000.

In the election of 2007, the Australian Labor Party (ALP) made significant pushes towards legislation that would provide a more uniform policy of paid maternity leave. They made specific promises for a "paid maternity leave scheme for all mothers with no cost burden to small business" (Kammerman & Moss, 2010). Following the election, the party followed through on the platform, assigning the Productivity Commission in the Australian Government to draft the costs and benefits of a program. With that came the 18 weeks' paid leave that is funded by the government and signed into law by the Prime Minister. While the program is relatively successful at its main goals of increasing female participation in the workforce, the financial support and funding mechanism remains fairly contentious (Bass, 2020) (Kammerman & Moss, 2010).

According to the Australian Bureau of Statistics, since the introduction of paid parental leave, of mothers who had babies in 2011-12, around 44% received the Parental Leave Pay and 55% received the Baby Bonus. Mothers who took the paid parental leave were more likely to be in permanent or ongoing employment than those who received the Baby Bonus. Mothers who took the Baby Bonus were more likely to be self-employed (Australian Bureau of Statistics).

In 2014-2015, the Australian Parliament estimated that Parental Leave Pay would cost \$1.9 billion (2015).

Successful State-run Programs in the United States

In a country known as one of the wealthiest nations in the world, only fourteen percent of U.S. civilian workers have access to paid family leave. Yet, according to a Pew Research study, “eighty-two percent of Americans say mothers should receive paid maternity leave, and sixty-nine percent of Americans say fathers should receive paid maternity leave” (Bleistein, 2019).

In fact, studies have shown that paid access to paid leave can help strengthen the economy by increasing the likelihood that workers will return to their jobs instead of dropping out of the labor force or spending time out of work to search for a new job following the birth or adoption of a child (Appelbaum and Milkman, 2011).

Research also suggests that paid leave programs helps close the gender gap in the workforce. Women with access to paid leave are significantly more likely to return to the employer they worked for before their leave and maintain their pre-leave wages. In fact, they are able to build more tenure and experience in their jobs, raising their earnings faster in the long term (Waldfogel, 1998).

With the issue clearly top of mind for many Americans, states have started to successfully take up the legislation. California became the first state in the nation to implement a paid family leave program in 2004. It was followed by New Jersey, Rhode Island, New York, Washington D.C. the state of Washington and most recently Massachusetts (Bleistein, 2019).

With the American labor force changing remarkably over the last 50 years, almost half of the workers are now women. Paid family leave is even more critical to enact a fair and equitable workforce (Baum & Ruhm, 2016).

California

California's long standing paid family leave program has been regarded as the most progressive paid leave policy in the United States. The success of the program has laid the foundation for many other programs to follow suite. The program, enacted in 2002 and becoming effective on July 1, 2004, provides pay to employees who need to take time off to either be with their child or care for an ill family member (Bleistein, 2019).

The program allows for six weeks of paid leave with fifty percent of wages replaced with a maximum of \$1,104 per week in 2015. The funding for the program comes from a tax levied on employees, not the employer. The six weeks can be taken at any point during the 12 months after the birth and the leave does not need to be taken consecutively (Baum & Ruhm, 2016).

Research on California's program by Charles Baum and Christopher Rubin indicates that the availability of paid leave appears to increase leave-taking during the period surrounding a new birth and also increases the chances that mothers will return to work nine to 12 months after the birth, and almost certainly because they wish to remain in their pre-childbirth jobs (2016).

New York

While California may be the most progressive and long-standing program, the New York State Paid Family Leave Law, passed in 2018, is known as the most inclusive paid family leave in the United States. Paid leave is provided to employees who need time to bond with their newborn,

adopted, or fostered child or to help and assist a family member with a serious health condition. Unlike other laws, the program also extends benefits to part-time employees that work less than twenty hours a week and have been working for more than 175 days. When the law went into effect at the start of 2021, New York state employees will receive twelve weeks of leave and sixty-seven percent of their average weekly with a cap of \$848 a week (Bleistein, 2019).

While the program went into effect in 2018, the roll out was gradual started with a lower number of covered weeks and less percentage of pay before getting to its current status. The Paid Family Leave Insurance program is funded through deductions from employee's payroll (Bleistein, 2019).

New Jersey

Another state that was an early adopter of a state-wide paid leave program is New Jersey. The program is designed to complement and expand on the federal Family and Medical Leave Act. The New Jersey Family Leave Act, which was passed in 2008 only provides unpaid leave, but the state also enacted the Family Insurance Program. Through the program, New Jersey caregivers of newborn children or adopted children are allowed to take twelve weeks of paid leave within two years. Unfortunately, research indicates that many residents do not take advantage of the program because of a lack of awareness and inability to live off the weekly cap, set in 2018 of \$524 a week (Bleistein, 2019).

Massachusetts

Massachusetts is one of the most recent states to enact a paid family leave program. In fact, while the state provided unpaid maternity leave in 1970, long before the federal law was enacted,

paid leave was a long-fought process that was consistently introduced but never passed (Bernstein, 1997).

The current law, finally passed in 2018, provides for up to 20 weeks of medical leave in a benefit year and 12 weeks of paid leave in a benefit year. Anyone who is taking leave in order to provide care for a covered military family member with a serious illness or injury may use up to 26 weeks of family leave. The benefit is state-offered and is funded through a Massachusetts tax and runs congruent to the federally mandated benefits offered by the Family Medical Leave Act (Donovan, 2020).

Present Legislative Options in the United States

Over the past few years, leaders in the United States have put forth a variety of proposals that would provide paid leave beyond what was originally included in the Build Back Better bill. One proposal, in the 116th Congress was the Family and Medical Insurance Leave Act, or FAMILY Act. The proposal would create a new social insurance program to provide up to 60 days per year of paid family or medical leave. Payments from the program would equal about two-thirds of an income, up to \$4,000 a month. It would be financed with a 0.2% payroll tax on workers and employers (Sherlock, Huston and Donovan, 2020).

A couple of other presented proposals would modify existing redistribution programs. The New Parents Act of 2019 would allow new parents to temporarily access Social Security retirement benefits before the current-law eligibility age. The Advancing Support of Working Families Act would effectively allow taxpayers to reduce their tax liability upon the arrival of a child with the funds being repaid through an increase in income. And the Supporting Working Families Act would allow taxpayers the option to receive a refundable parental leave tax credit.

The Working Parents Flexibility Act of 2019 would create a tax-advantaged parental leave savings account. The Freedom for Families Act would allow taxpayers to use health savings accounts (HSAs) to self-finance periods of family or medical leave (Sherlock, Huston and Donovan, 2020).

Conclusion

A review of the successful paid leave programs across the globe and across the country have shown us a few things. First, many successful programs place importance on providing gender equity in the workforce in order to enhance labor productivity. Additionally, they are either funded through a payroll tax or through the government's budget.

Unfortunately, the many of the recent proposals, while creative in their approach, do not follow the known successful programs. Of the most problematic is the New Parents Act which allows new parents to access Social Security benefits. With a program that is rife with problematic inequalities between amount contributed versus withdrawal, further withdrawal would further this divide.

As more and more women leave the workforce following the COVID-19 pandemic, our federal leaders must realize the importance of fostering a supportive and gender equitable work environment before it is too late.

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