



the work and family legal center

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FACTSHEET:

Supporting LGBT Families: The Need for Paid Family Leave in New York

When a loved one has a medical emergency, or when a child is born or adopted, many LGBT workers are unable to take time off from work. The Paid Family Leave Insurance Act would establish a critical health and economic safety net for working families in New York, by providing paid leave to care for new children or seriously ill family members. Due to the federal government's failure to recognize LGBT couples, the Paid Family Leave Insurance Act would also lead to greater health and workplace equality for LGBT New Yorkers.

What is Paid Family Leave Insurance, and Why is it Necessary for LGBT New Yorkers?

- **What is the Paid Family Leave Insurance Act?:** By expanding New York's current Temporary Disability Insurance (TDI) program, the Paid Family Leave Insurance Act would provide workers with up to 12 weeks of benefits to bond with a new child or to care for a seriously ill family member. The bill is LGBT-inclusive and explicitly allows an employee to take leave to care for a spouse, domestic partner, parent, parent of a spouse or domestic partner, grandparent, grandchild, biological child, adopted child, stepchild, foster child, legal ward, and a child who has a child-parent relationship with the employee.
- **Paid Family Leave Provides Protections That Are Especially Important for LGBT Couples:** Without a paid family leave program, no worker in New York is guaranteed paid leave when they need to care for a new baby or a seriously ill loved one. Currently, the only law offering *unpaid* benefits in those situations is the federal Family and Medical Leave Act (FMLA). Because federal law discriminates against LGBT families, as discussed below, unpaid FMLA leave available to different-sex spouses is not available to same-sex partners or spouses. The New York State Paid Family Leave Insurance Act would treat all families alike and provide crucial support for LGBT New Yorkers; the bill would provide workers with paid leave to care for seriously ill family members, including same-sex spouses or domestic partners. LGBT workers in New York have a heightened need for LGBT-inclusive employment benefits, since 77% of New Yorkers in same-sex couples are employed, as compared to only 63% of married, non-LGBT New Yorkers.¹
- **With Paid Family Leave, LGBT Parents Can Better Care for Their Children:** There is a clear need among LGBT workers in New York to have paid family leave to bond with a newborn or newly adopted child or to care for a child with a serious illness. The census shows that 20% of same-sex couples in New York State are raising children under the age of eighteen.² Many of these families are struggling financially; LGBT parents in New York have average household incomes that are 29% lower than those of married, non-LGBT parents.³ As a result, LGBT families are less likely to be able to afford taking unpaid time off from work to care for a newborn, newly adopted, or seriously ill child. The Paid Family Leave Insurance Act would strengthen LGBT families by allowing workers to take paid leave to care for their children in times of need.
- **Paid Family Leave is a Crucial Safeguard to New Yorkers Living with HIV/AIDS and their Families:** More than 125,000 New Yorkers are living with HIV/AIDS.⁴ In fact, New York has more reported AIDS cases than any other state, and the state's per capita AIDS rate is double the country's average.⁵ For New Yorkers living with HIV/AIDS and their loved ones, paid family leave insurance would provide significant health and economic benefits. With paid family leave, workers would not have to sacrifice their economic security in order to care for family members with HIV/AIDS-related health complications. Moreover, demographic changes in the HIV/AIDS community are increasing the need for paid family leave; among New Yorkers living with HIV/AIDS, approximately 75% are 40 years of age or older.⁶ As the population of New Yorkers living with HIV/AIDS continues to age, their working family members will face increasing eldercare demands. Paid family leave insurance would allow more workers to support the health needs of loved ones living with HIV/AIDS. The benefits are clear: family caregivers can help ill people living with HIV/AIDS to recover more quickly and to spend less time in hospitals.⁷



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- **Paid Family Leave Insurance Is Good For Business.** Paid family leave would not increase employers' payroll costs. Rather, the weekly benefit would be covered through insurance and paid for by employees through small paycheck contributions. California and New Jersey have adopted similar family leave insurance laws, and a recent study showed that an overwhelming majority of California employers believe paid family leave has had a positive or neutral effect on their business operations.⁸ Research has shown that paid family leave leads to business savings, by increasing employee retention, lowering turnover costs, improving productivity, and enhancing worker morale.⁹

What is the Federal Family and Medical Leave Act, and Why is it Inadequate for LGBT New Yorkers?¹⁰

Due to the inadequacy of the federal Family and Medical Leave Act, LGBT New Yorkers have a heightened need for a statewide paid family leave insurance bill.

- **What is the Family and Medical Leave Act of 1993?:** The Family and Medical Leave Act (FMLA) is a federal law designed to help working parents and other caregivers balance work and family. The FMLA guarantees workers at large employers (those with 50 or more workers) unpaid job-protected leave to care for a new child or a seriously ill family member, or to recover from one's own serious health condition.
- **The FMLA Fails to Recognize LGBT Families:** The FMLA has a narrow list of family members for whom leave can be taken and has never provided coverage for domestic partners. Additionally, federal law does not recognize same-sex marriages, due to the Defense of Marriage Act of 1996 (DOMA). Therefore, even though New York recognizes same-sex marriages and the FMLA includes spouses as family members for whom care can be provided, LGBT New Yorkers cannot take FMLA leave to care for a same-sex partner or spouse. Although LGBT parents can take FMLA leave to care for their children, the law's failure to recognize same-sex couples leaves many LGBT families vulnerable during times of serious illness. By providing paid leave to care for same-sex spouses and domestic partners, the New York Paid Family Leave Insurance Act would increase health and workplace equality for LGBT employees and their families.
- **The FMLA Has Significant Shortcomings:** Even when FMLA coverage is available, many eligible workers cannot afford to take time off, since the leave guaranteed by the FMLA is unpaid. There are also significant eligibility restrictions under the FMLA that lessen the law's effectiveness. For example, the FMLA does not cover workers in businesses with fewer than 50 employees or any workers who have not worked for 1,250 hours in the past year at the same job. Due to these restrictions, approximately half of all workers and less than 20% of new mothers in the United States are not covered by the FMLA.¹¹ Paid family leave insurance will help *all* New Yorkers care for their families in times of need without sacrificing their economic security.

Please contact us at 212-430-5982 or jmake@abetterbalance.org for more information or to get involved.

¹ Romero, Adam, Rosky, Clifford, Badgett M.V. Lee & Gates, Gary J., *Census Snapshot: New York*, The Williams Institute (April 2008), p. 1.

² *Ibid.*, p. 2. Due to the limited nature of data on LGBT families, this figure is likely even higher.

³ *Ibid.*, p. 3.

⁴ New York State Department of Health, Bureau of HIV/AIDS Epidemiology and AIDS Institute (NYSDOH), *New York State HIV/AIDS Surveillance Annual Report: For Cases Diagnosed Through December 2008* (June 2010), p. 5.

⁵ Centers for Disease Control and Prevention, *AIDS Diagnoses by Top 10 States/Dependent Areas*, available at <http://www.cdc.gov/hiv/topics/surveillance/basic.htm#area> (last visited April 22, 2011); NYSDOH, *Ryan White HIV/AIDS Treatment Modernization Act: 2009 Statewide Coordinated Statement of Need and Comprehensive Plan* (Sept. 2009), p. 5.

⁶ NYSDOH, *New York State HIV/AIDS Surveillance Annual Report*, p. 5.

⁷ For more on the benefits of family caregiving, see, e.g., Ari Houser and Mary Jo Gibson, "Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update," AARP Public Policy Institute, Nov. 2008, pp. 1-2, 6; Ari Houser and Mary Jo Gibson, "Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving," AARP Public Policy Institute, June 2007, p. 6.

⁸ Appelbaum, Eileen and Milkman, Ruth, *Leaves that Pay: Employer and Worker Experiences with Paid Family Leave in California*, Center for Economic and Policy Research (Jan. 2011), p. 4.

⁹ See, e.g., *Ibid.*, pp. 5, 8; Elizabeth Rudd, *Family Leave: A Policy Concept Made in America*, Sloan Work and Family Research Network (2004).

¹⁰ To learn more about how the Family and Medical Leave Act applies to LGBT families, see A Better Balance, *The Family and Medical Leave Act: What Should LGBT Families Know?* (Dec. 2010), available at <http://abetterbalance.org/web/home/forfam/know-your-rights>.

¹¹ Appelbaum and Milkman, *Leaves that Pay*, p. 1.