



the work and family legal center

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## Washington's LGBT and HIV/AIDS Communities Need Family and Medical Leave Insurance!

**When a medical emergency strikes, or when a child is born or adopted, many workers are unable to take time off from work. To address this need, advocates and policymakers in Washington State are proposing a family and medical leave insurance bill that would provide paid leave to workers to bond with new children, recover from a serious health condition, or care for a seriously ill loved one. Although family and medical leave insurance is crucial for all workers, passage of this bill would have specific benefits for the LGBT and HIV/AIDS communities.**

- **Few American workers receive paid family leave. Therefore, many LGBT workers in Washington are vulnerable in times of family need.** As of March 2012, only 11% of private sector workers in the U.S. had paid family leave to care for a new child or seriously ill family member.<sup>1</sup> As a result, many LGBT workers are forced to go to work during times of family need because they cannot afford to lose pay or risk job loss.
- **Access to paid family and medical leave is an economic justice issue for workers in Washington, including those in the LGBT and HIV/AIDS communities.** Low-wage workers in Washington are significantly less likely to have paid leave benefits than other members of the workforce. According to recent government data, workers whose wages are in the bottom 25% of their industry are about four times less likely to receive paid family leave than the top 25% of wage earners.<sup>2</sup>
- **LGBT workers in Washington need family leave insurance to care for their children.** A growing number of same-sex couples in Washington are raising children under the age of 18, and many of these families are struggling financially.<sup>3</sup> LGBT parents in Washington have median household incomes that are 25% lower than those of married, opposite-sex parents.<sup>4</sup> As a result, it is less likely that LGBT workers can afford unpaid time off from work to care for a newborn, newly adopted, or seriously ill child. A family and medical leave insurance program would strengthen LGBT families in Washington by allowing workers to take paid leave to care for their children in times of need.
- **LGBT health disparities make family and medical leave insurance a critical need for the LGBT community.** LGBT Americans generally have a higher risk of cancer than the population at large, and LGBT older adults are more likely to be disabled.<sup>5</sup> Research has shown that lesbians and bisexual women have a higher risk than heterosexual women of developing some cancers, including breast, ovarian, and endometrial cancers.<sup>6</sup> In addition, the Centers for Disease Control reports that transgender Americans are among the groups at highest risk for HIV infection, with numerous studies showing especially high rates of HIV/AIDS among transgender women of color.<sup>7</sup> Due to these health disparities, many LGBT workers need paid leave to care for ill loved ones or require time off work to receive medical care and recover from serious illness.
- **Family and medical leave insurance is especially important for LGBT families of color in Washington.** LGBT people of color are more likely to be raising children than white LGBT individuals.<sup>8</sup> Research has also shown that people of color, especially those who are young adults, are less likely to have access to job-protected family and medical leave.<sup>9</sup> As a result, many LGBT people of color are professionally and economically vulnerable when they need to provide care for a newborn, newly adopted, or seriously ill child. In addition, black and Latino/a LGBT individuals are more likely to be in poor health than heterosexual and white Americans and have higher rates of cancer, diabetes, and HIV/AIDS.<sup>10</sup> A comprehensive family and medical leave insurance program in Washington would provide an important health and economic safety net to LGBT families of color, workers living with HIV/AIDS, and their loved ones.
- **Family and medical leave insurance would support the health and caregiving needs of people living with HIV/AIDS and their families.** More than 11,000 people in Washington are living with HIV/AIDS, and government statistics show that the State's black and Latino/a communities have been disproportionately affected by the epidemic.<sup>11</sup> If workers living with HIV/AIDS are unable to take paid time off to recover from illness, their health and economic security are jeopardized. Family and medical leave insurance would also allow more workers to take time off work to support the health needs of loved ones aging with HIV/AIDS.



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Demographic changes in the HIV/AIDS community are increasing the need for family and medical leave insurance; among people in Washington living with HIV/AIDS, approximately 72% are 40 years of age or older.<sup>12</sup> Research has shown that older adults living with HIV/AIDS often experience early-onset of numerous age-related health complications.<sup>13</sup> As the HIV/AIDS population continues to age, their loved ones will face increasing eldercare demands. The benefits of family caregiving are clear: family caregivers can help people living with HIV/AIDS recover from illness more quickly and spend less time in hospitals, which in turn decreases health care costs and the burden on Washington's hospitals and long-term care facilities.<sup>14</sup>

- **LGBT workers and their loved ones in Washington would receive significant protection from a family and medical leave insurance program that broadly defines “family”:** LGBT older adults are more likely to be single and less likely to rely on parents or children for caregiving needs.<sup>15</sup> As a result, many LGBT workers in Washington turn to extended relatives and informal care networks in times of medical need. State legislation—like the proposed family and medical leave insurance bill in Washington—provides an important opportunity for establishing broad definitions of “family” in the law. In addition to protecting LGBT workers and their loved ones, inclusive family definitions at the state level can serve as a model for federal action.
- **Paid family leave is good for business.** California and New Jersey have adopted family leave insurance laws, and a recent survey revealed that an overwhelming majority of California employers believe family leave insurance has had a positive or neutral effect on their business operations.<sup>16</sup> Furthermore, research has shown that paid family leave leads to business savings, by increasing employee retention, lowering turnover costs, improving productivity, and enhancing worker morale and loyalty.<sup>17</sup>

### Why are Current Federal and State Family and Medical Leave Laws Inadequate?

- **What are the federal Family and Medical Leave Act (FMLA) and Washington Family and Medical Leave Act (WA-FMLA)?** No federal laws guarantee extended *paid* leave to recover from a serious health condition or to care for a new baby or seriously ill loved one. However, some workers are eligible for *unpaid* family and medical leave under federal and Washington law. The FMLA is a federal law that guarantees workers at large employers (those with 50 or more workers) *unpaid* job-protected leave to care for a new child or seriously ill family member, or to recover from one's own serious illness. In 2010, the government clarified that LGBT parents can take FMLA leave to care for their children even without a biological or legal relationship.<sup>18</sup> Nevertheless, a worker cannot take FMLA leave to care for a same-sex spouse or partner. The WA-FMLA, however, expands on the federal FMLA by allowing workers to care for a registered domestic partner.
- **The FMLA and WA-FMLA have significant shortcomings:** Even when FMLA or WA-FMLA coverage is available, many eligible individuals—especially low-wage workers—cannot afford to take time off, since the leave guaranteed by these laws is unpaid. Significant eligibility restrictions also lessen the effectiveness of these laws. For example, the FMLA and WA-FMLA do not cover workers in businesses with fewer than 50 employees or workers who have not worked for 1,250 hours in the past year at the same job. Due to these statutory gaps, approximately 50% of all workers and less than 20% of new mothers in the U.S. are not covered by the FMLA.<sup>19</sup> An expanded family and medical leave insurance program would help *all* workers in Washington to care for themselves and loved ones in times of need without sacrificing their economic security.
- **What is the status of Family and Medical Leave Insurance in Washington?** In 2007, the State Legislature passed a family leave insurance law that would provide up to 5 weeks of paid leave to care for a new child. Due to the economy and state budget deficits, implementation of the program has been postponed. However, advocates in Washington are proposing a bill that would expand and fund the current program; in addition to providing leave to care for a new child, an expanded program would provide leave for a worker's own serious health condition or to care for a seriously ill loved one. Passage of a comprehensive family and medical leave insurance program is particularly important to Washington's LGBT and HIV/AIDS communities, as it will allow workers to care for their own health needs or the needs of a loved one.



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- <sup>1</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Table 33: Leave Benefits: Access, Private Industry Workers*, National Compensation Survey (March 2011), available at <http://www.bls.gov/ncs/ebs/benefits/2011/ownership/private/table21a.pdf> (regarding specific paid family leave benefits, instead of all types of paid leave that could be used for time off to care for family, such as sick or vacation time).
- <sup>2</sup> Farrell, Jane and Venator, Joanna, *Fact Sheet: Paid Family and Medical Leave*, Center for American Progress (Aug. 2012), p. 2.
- <sup>3</sup> Romero, A.P., Rosky, C.J., Badgett, M.V. Lee & Gates, G.J., *Census Snapshot: Washington*, The Williams Institute (Apr. 2008), pp. 2-3. Due to the limited nature of data on LGBT families, this figure is likely even higher. See also Cooke, Abigail and Gates, Gary J., *Census Snapshot 2010: Washington*, The Williams Institute (Aug. 2011), p. 3.
- <sup>4</sup> Romero, et. al., *Census Snapshot* (April 2008), p. 3.
- <sup>5</sup> Fredriksen-Goldsen, Karen I., *Resilience and Disparities among Lesbian, Gay, Bisexual, and Transgender Older Adults*, in Public Policy and Aging Report: Integrating LGBT Older Adults into Aging Policy and Practice, SAGE & National Academy on an Aging Society, Robert B. Hudson, ed. (Summer 2011), Vol. 21, No. 3, p. 5.; National LGBT Cancer Network, *Cancer and the LGBT Community*, available at [http://www.cancer-network.org/cancer\\_information/cancer\\_and\\_the\\_lgbt\\_community/](http://www.cancer-network.org/cancer_information/cancer_and_the_lgbt_community/).
- <sup>6</sup> See, e.g., Dibble, S.L., Roberts, S.A. & Nussey, B. *Comparing Breast Cancer Risk Between Lesbians and their Heterosexual Sisters*, Women's Health Issues. (March-April 2004), 14(2), pp. 60-68; Miller, M., Andre, A., Ebin, J. & Bessonova, L, *Bisexual Health: An Introduction and Model Practices for HIV/STI Prevention Programming*, National Gay and Lesbian Task Force, Fenway Community Health & BiNet USA (2007), pp. 4, 41, 108; National LGBT Cancer Network, *Lesbians and Cancer*, available at [http://www.cancer-network.org/cancer\\_information/lesbians\\_and\\_cancer/](http://www.cancer-network.org/cancer_information/lesbians_and_cancer/); National LGBT Cancer Network, *Bisexuals and Cancer*, available at [http://www.cancer-network.org/cancer\\_information/bisexuals\\_and\\_cancer/](http://www.cancer-network.org/cancer_information/bisexuals_and_cancer/).
- <sup>7</sup> *HIV Infection among Transgender People*, United States Department of Health and Human Services: Centers for Disease Control and Prevention (Aug. 2011), available at <http://www.cdc.gov/hiv/transgender/pdf/transgender.pdf>.
- <sup>8</sup> Movement Advancement Project, Family Equality Council & Center for American Progress, *LGBT Families of Color: Facts at a Glance* (Jan. 2012), p. 2.
- <sup>9</sup> Farrell & Venator, *Paid Family and Medical Leave*, p. 2; Boushey, Heather and Glynn, Sarah Jane, *The Effects of Paid Family and Medical Leave on Employment Stability and Economic Security*, Center for American Progress, (Apr. 2012), p. 2.
- <sup>10</sup> *LGBT Families of Color: Facts at a Glance*, p. 2.
- <sup>11</sup> See, e.g., Kent, Jim, Buskin, Susan & Jaenicke, Tom, eds., *HIV/AIDS Epidemiology Report: 2<sup>nd</sup> Half 2011*, Washington State Department of Health and Public Health – Seattle & King County (2012), p. 4; Washington State Department of Health, *Fact Sheet: HIV among African Americans* (Jan. 2012); Washington State Department of Health, *Fact Sheet: HIV among Hispanics* (Jan. 2012).
- <sup>12</sup> Kent, et. al., *HIV/AIDS Epidemiology Report: 2<sup>nd</sup> Half 2011*, p. 6.
- <sup>13</sup> See, e.g., Jane Gross, *AIDS Patients Face Downside of Living Longer*, New York Times (Jan. 6, 2008), p. A1; Karpiak, Stephen E. and Shippy, R. Andrew, *Research on Older Adults with HIV*, AIDS Community Research Initiative of America (2006), available at <http://www.acria.org/research/roah-study>.
- <sup>14</sup> For more on the benefits of family caregiving, see, e.g., Houser, Ari and Gibson, Mary Jo, *Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update*, AARP Public Policy Institute, Nov. 2008, pp. 1-2, 6; Houser, Ari and Gibson, Mary Jo, *Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving*, AARP Public Policy Institute, June 2007, p. 6.
- <sup>15</sup> MetLife Mature Market Institute and American Society of Aging, *Still Out, Still Aging: The MetLife Study of Lesbian, Gay, Bisexual, and Transgender Baby Boomers* (March 2010), pp. 16-17; SAGE and Movement Advancement Project, *Improving the Lives of LGBT Older Adults* (March 2010), p. 6-7 and 33-34.
- <sup>16</sup> 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.
- <sup>17</sup> See, e.g., Ibid, pp. 5, 8; Rudd, Elizabeth, *Family Leave: A Policy Concept Made in America*, Sloan Work and Family Research Network (2004).
- <sup>18</sup> 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://www.abetterbalance.org/web/images/stories/Documents/ForFamilies/ABB\\_Fact\\_Sheet\\_-\\_LGBT\\_Families\\_and\\_the\\_FMLA.pdf](http://www.abetterbalance.org/web/images/stories/Documents/ForFamilies/ABB_Fact_Sheet_-_LGBT_Families_and_the_FMLA.pdf).
- <sup>19</sup> Appelbaum and Milkman, *Leaves that Pay*, p. 1.