

The Importance of an Inclusive, Realistic Family Definition in Paid Family and Medical Leave and Paid Sick Time Policies

An inclusive family definition will provide essential protections to workers in non-nuclear families without any significant cost increase .

I. There is strong precedent for coverage of domestic partners, grandparents, grandchildren, siblings, and adult children in state paid family and medical leave laws. There is also a growing movement, backed by popular support and reflected in 5 state paid family and medical leave laws and 11 state and local paid sick time laws, to cover close loved ones who are not biologically or legally related to the worker.

- **Domestic partners:** All ten of the statewide paid family and medical leave laws—in California, Massachusetts, New Jersey, New York, Rhode Island, Washington State, Washington D.C., Connecticut, Oregon, and Colorado—cover domestic partners.¹ Of the 33 paid sick time laws in the United States, 26 cover domestic partners.²
- **Grandparents and adult children:** All ten of the statewide paid family and medical leave laws cover grandparents and adult children. Of the 33 paid sick time laws in the U.S., 32 cover adult children and 30 cover grandparents.³
- **Grandchildren and siblings:** California, New Jersey, Washington State, Massachusetts, Connecticut, Oregon, and Colorado’s paid family and medical leave laws covers grandchildren and siblings, while New York’s law covers grandchildren (not siblings) and Washington D.C.’s law covers siblings (and not grandchildren). Of the 33 paid sick time laws in the U.S., 31 cover grandchildren and 30 cover siblings.⁴
- **Close loved ones who are not biologically or legally related:** The statewide paid family and medical leave laws in New Jersey, Connecticut, Oregon, Colorado, and Washington State cover certain individuals—regardless of a biological or legal connection—who have a close association with the employee that is equivalent to a family relationship.⁵ Additionally, the paid family and medical leave laws in New York and Massachusetts both have flexible domestic partner definitions that do not require legal registration. Advocates in states ranging from California and Montana, to Maine and New Mexico, among many others, are working to include relationships that are equivalent to family members. As of August 2021, 11 paid sick time laws cover people whose relationships are equivalent to family members.⁶
- **Use of the well-established *In Loco Parentis* standard in the parent and child definition:** The federal Family and Medical Leave Act (FMLA), as well as nine of the ten family leave laws, define family to include *in loco parentis* relationships, or relationships where an individual has acted as a parent despite lacking a formal legal or biological parent-child relationship.⁷ Moreover, almost all of the 33 state and local paid sick time laws include this or similar language as well. *In loco parentis* is a well-established legal standard that is highly regarded and utilized due to its functional parenting test that reflects the lived reality and best interests of a child.

- **Ten states have expanded upon the FMLA’s family definition in statewide unpaid leave laws:** In addition to the 10 state paid family and medical leave laws, 10 states and Washington D.C. have passed laws that expand upon the federal FMLA by guaranteeing unpaid family leave to care for a broader list of family members.⁸
- **Early public opinion polls show strong support for expansive family definitions in state paid leave laws:** In a 2019 survey of Democrats and Independent voters in several states across the nation, 84% of respondents support passing paid sick and paid family leave policies, including those with expansive definitions of family.⁹

II. The federal government’s model family definition for the federal workforce comes with a track record of success.

- The federal government, the nation’s largest employer with more than two million civilian employees, has used—and repeatedly expanded—a chosen family standard for more than 50 years. The definition includes individuals whose close association with the federal employee is the equivalent of a family relationship (event absent a blood relationship) and has been used in the context of funeral leave since 1969 (allowing workers to take funeral leave for chosen family during the Vietnam War), for voluntary leave transfers since 1989, and for sick leave generally since 1994.¹⁰
- Federal workers are entitled to use up to 12 weeks of sick leave a year to care for a family member—including chosen family—with a serious health condition. There are also opportunities under federal regulations to accumulate leave and transfer it.¹¹
- The Office of Personnel Management reported to Congress favorably about usage rates of sick leave after paid sick time was expanded in 1994 to cover chosen family through this standard, noting that even after the federal government expanded the definition of family, employees used less than a third of the sick leave available.¹²
- In 2020 with bipartisan support, Congress enacted the Families First Coronavirus Response Act, which temporarily guaranteed COVID-19 emergency paid sick leave to covered workers; regulations explained that this federal leave could be used to care for “an Employee’s immediate family member, a person who regularly resides in the Employee’s home, or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined.”¹³

III. The existing paid sick time and paid family and medical leave laws show that an inclusive family definition provides important protection to a small subset of workers without leading to abuse or a significant increase in program costs.

- Workers don’t abuse paid sick time. After New York City implemented its paid sick time law, 98% of employers reported no cases of employee abuse of sick days.¹⁴
- Only a minority of paid family leave claims are to care for a seriously ill family member; the overwhelming majority of paid family leave claims in California, New Jersey, and Rhode Island are for bonding with a child. Only 14.3% of claims processed in California in 2020 and 19.6% of

claims in Rhode Island in 2019 were to care for a seriously ill relative.¹⁵ In 2019, only 16.5% of eligible claims in New Jersey were to care for a seriously ill relative.¹⁶

- When paid family leave is used for care of a seriously ill family member, a small percentage of these claims are used to care for family other than a child, parent, or spouse. Only a minority of claims are used for more extended family members; such usage statistics show that coverage of more extended relatives like grandparents, siblings, and domestic partners will create an important right for workers with non-nuclear family structures *without* leading to significant increases in usage.
 - In Rhode Island, 97.5% of claims to care for a seriously ill family member in 2019 were used for parents, children, or spouses, while only about 2.5% were used to care of a domestic partner, parent-in-law, or grandparent.¹⁷ An effort is now underway in Rhode Island to expand the family definition in the paid family and medical leave law.¹⁸
 - In 2014, California expanded the definition of family for its paid family leave law to cover grandparents, grandchildren, siblings, and parents-in-law. From July 2019 to July 2020, only 6.1% of all claims filed to care for a seriously ill family member were for relatives other than a spouse, parent, child, or registered domestic partner.¹⁹

IV. Coverage of grandparents and grandchildren are important given the prevalence of multigenerational households.

- 64 million Americans live in multi-generational family households, more than double the number who lived in such households in 1980. This figure is higher among communities of color. People of color are more likely than white people to live in multi-generational households—29% of Asians, 27% of Latinxs, and 26% Black people in the U.S. live in a multi-generational household.²⁰
- In 2014, 85 million people were living in extended families—up from 58 million in 2001.²¹ Extended families, defined as those departing from the “nuclear family” model of married parents and their minor children, are disproportionately people of color.²²
- Over one third (35%) of children in the U.S. have lived in an extended family household.²³ Compared to white children, Black children are more than two times as likely and Latinx children are more than 1.5 times as likely to have lived with extended family.²⁴

V. Coverage of domestic partners is critical to many workers in long-term, committed relationships with a partner, including many heterosexual seniors.

- As in all of the states with a paid family and medical leave law and the vast majority of states and localities with paid sick time laws, workers should be able to access paid family leave when a domestic partner is seriously ill—for example, with cancer or another life-threatening illness.
- A record number of Americans have never married, and moreover, more than 18.4 million Americans live with an unmarried significant other. Because of this fact, it is important to cover domestic partners with flexible definitions that don’t require legal registration, like the paid family and medical leave laws in New York and Massachusetts. It is important to cover significant others

who are likely to care for each other if one has a serious illness, even if their relationship hasn't been legally formalized.²⁵

- Many long-term couples have chosen—for various reasons—to live together as domestic partners and not marry; for example, many heterosexual seniors face unique, negative financial consequences under federal law if married.²⁶

VI. Many people have strong, enduring relationships with siblings or were raised by siblings.

- According to the U.S. Census Bureau, 78% of children in the country—nearly 60 million children—live with at least one sibling.²⁷ These relationships are often enduring, and a worker should be able to provide care to a seriously ill sibling who may depend upon him or her. In the United States, over 4 million children live in a household that is not headed by a mother or father.²⁸ In many of these families, children grow up receiving critical care and support from their siblings.
- As described earlier, experience from other states with paid family and medical leave laws show that usage to care for extended family members, like siblings, is minimal. Nevertheless, such coverage would provide an important right for those workers who are primary caregivers for a sibling.

VII. Many workers have family-like relationships with “chosen family” or loved ones with whom they lack a legal or biological relationship.

- Over 33.6 million households in the United States, or nearly 28% of all households, consist of an individual who lives alone.²⁹ In an emergency or during an illness, many of these individuals rely on care from chosen family—like close friends and loving neighbors—or extended family.
- More than 19.5 million people in the United States live with nonrelatives—such as roommates, friends, or significant others.³⁰ When an individual is sick or has a medical emergency, they often rely on individuals they live with—even absent a blood or legal relationship—for help and caregiving.
- In a 2017 national survey conducted by the Center for American Progress, 32% of people in the United States reported that they took time off work to provide care for a chosen family member.³¹ That rate is higher among LGBTQ individuals. In a 2020 national survey, 63% of LGBTQ workers (including 71% of transgender workers) reported having to take time off work to care for a close friend or chosen family member.³²

VIII. Many workers who provide care to aging adults are partners, neighbors, or friends, and these workers may provide care to several individuals with whom they do not share a home.

- Fifty-three percent of Americans who care for an older adult provide that unpaid care to a friend or loved one other than a spouse or parent.³³ Therefore, the U.S. Department of Labor stated in 2016 that “[t]o ensure [paid leave laws] meet the needs of caregivers of the elderly, state- and local-level programs should allow care for a variety of family members and other loved ones, defined broadly to encompass those who lack marital or blood relationship.”³⁴

- Among Americans who provide care to an adult age 65 or older, more than 23% care for a friend, neighbor or other unrelated person, while more than 24% care for a relative *other than* a spouse, unmarried partner, parent, or grandparent.³⁵
- Eighty-three percent of individuals who provide care to an adult age 65 or older do not live with the care recipient.³⁶

¹ See A Better Balance’s comparison chart of paid family and medical leave laws at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

² See A Better Balance’s comparison chart of paid sick time laws at <https://www.abetterbalance.org/paid-sick-time-laws/search/>.

³ *Id.*; While paid sick time in Colorado does not explicitly include siblings, grandparents, or grandchildren, the law covers a broad range of family relationships.

⁴ *Id.*

⁵ Exact family definition varies between jurisdictions. For more information, see A Better Balance’s comparison chart of paid family and medical leave laws at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

⁶ See A Better Balance’s comparison chart of paid sick time laws at <https://www.abetterbalance.org/paid-sick-time-laws/search/>.

⁷ The California paid family leave law defines children, regardless of age, to include “a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands *in loco parentis*”; the California law also defines “parent” to mean “a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood *in loco parentis* to the employee when the employee was a child” and defines “parent-in-law” to mean “the parent of a spouse or a domestic partner.” Cal. Unemp. Ins. Code § 3302(i)-(j). Under the Rhode Island paid family leave law, child “means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who stands *in loco parentis* to that child.” R.I. Gen Laws § 28-41-34(1). Furthermore, the federal FMLA recognizes biological, adopted, foster, and step relationships, as well as a legal ward and a child of a person standing *in loco parentis*. 29 U.S.C. § 2611(12).

⁸ California, Colorado, New Jersey, Washington D.C., Hawaii, Maine, Oregon, Washington State, Wisconsin, Vermont and Rhode Island have expanded upon the federal FMLA’s family definition through state law.

⁹ On file with the authors.

¹⁰ The relevant language covers “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” Absence and Leave: Funeral Leave, 34 Fed. Reg. 13,655 (Aug. 26, 1969) (codified at 5 C.F.R. pt. 630); Absence and Leave; Voluntary Leave Transfer Program, 54 Fed. Reg. 4749 (Jan. 31, 1989) (codified at 5 C.F.R. pt. 630); Absence and Leave; Sick Leave, 59 Fed. Reg. 62,266 (Dec. 2, 1994) (codified at 5 C.F.R. pt. 630).

¹¹ 5 C.F.R. § 630.401(c).

¹² Report to Congress on the “Federal Employees Family Friendly Leave Act” (Public Law 103-388), United States Office of Personnel Management (June 1997), <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/federal-employees-family-friendly-leave-act/>.

¹³ 29 C.F.R. § 826.20(a)(5); see Fact Sheet: *The Families First Coronavirus Response Act (FFCRA) & the Coronavirus Aid, Relief and Economic Security (CARES) Act*, A Better Balance (Jan. 8, 2021), <https://www.abetterbalance.org/resources/federal-coronavirus-proposal-the-families-first-coronavirus-response-act-h-r-6201/>.

¹⁴ Eileen Appelbaum & Ruth Milkman, No Big Deal: The Impact of New York City’s Paid Sick Days Law on Employers, Ctr. for Econ. & Pol’y Res. 17 (Sept. 2016), <https://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>.

¹⁵ California Employment Development Department Monthly Paid Family Leave Data, <https://data.edd.ca.gov/Disability-Insurance/Paid-Family-Leave-PFL-Monthly-Data/r95e-fvkm/data>; *TDI Annual Update: January-December 2019*, Rhode Island Department of Labor and Training (2019), p. 1, <https://dlt.ri.gov/documents/pdf/lmi/2019.pdf>. This percentage was calculated by totaling the 2019 PFL claims that were paid each month, along with totaling the “care claims” paid each month and then dividing the latter by the former.

¹⁶ *Family Leave Insurance Workload in 2019: Summary Report*, New Jersey Department of Labor and Workforce Development, Office of Research and Information 10 (August 2020), <https://www.myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/FLI%20Summary%20Report%20for%202019.pdf>.

¹⁷ *TDI Annual Update: January-December 2019*, Rhode Island Department of Labor and Training, p. 2, <https://dlt.ri.gov/documents/pdf/lmi/2019.pdf>.

¹⁸ Rhode Island S. 0436 (2021); Rhode Island H. 5789 (2021).

¹⁹ See State of California Employment Development Department Paid Family Leave Program Statistics available at https://www.edd.ca.gov/about_edd/pdf/qspl_PFL_Program_Statistics.pdf. Note that the figure reflects percentage of claims filed and not percentage of claims approved by the State.

²⁰ D’Vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, Pew Research Center (Apr. 5, 2018), <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.

²¹ Michela Zonata, “Housing the Extended Family,” Center for American Progress (October 2016), <http://www.americanprogress.org/issues/economy/reports/2016/10/19/146422/housing-the-extended-family/>.

²² *Id.*

²³ Christina H. Cross, *Extended Family Households Among Children in the United States: Differences by Race/Ethnicity and Socio-Economic Status*, 72 Population Studies 235, 242 (2018).

²⁴ Note that we use “Latinx” where the source uses “Hispanic.” *Id.* at 247.

²⁵ *Living Arrangements of Adults 18 and Over, 1967 to Present*, U.S. Census Bureau, Table AD-3, <https://www.census.gov/data/tables/time-series/demo/families/adults.html>.

²⁶ See, e.g., Lornet Turnbull, "Heterosexual Seniors Lost in the Furor Over Domestic Partnership," *Seattle Times* (September 6, 2009), <http://www.seattletimes.com/seattle-news/heterosexual-seniors-lost-in-the-furor-over-domestic-partnership/>.

²⁷ Brian Knop, *One in Six Children Live With a Half Sibling Under 18*, U.S. Census Bureau, Table 1 (Jan. 27, 2020), <https://www.census.gov/library/stories/2020/01/more-children-live-with-half-siblings-than-previously-thought.html>.

²⁸ *Children Living with Neither Parent*, KIDS COUNT (2019) (data source: Population Reference Bureau, analysis of data from the U.S. Census Bureau, Census 2000 Supplementary Survey, 2001 Supplementary Survey, 2002 through 2019 American Community Survey), last accessed March 2021, available at <https://datacenter.kidscount.org/data/tables/111-children-living-with-neither-parent#detailed/1/any/false/1729,37,871,870,573,869,36,868,867,133/any/439,440>.

²⁹ See *Selected Social Characteristics in the United States U.S. Census Bureau, 2019 American Community Survey 5-Year Estimates*, https://data.census.gov/cedsci/table?g=0100000US_0400000US06&tid=ACSDP5Y2019.DP02&hidePreview=true (last accessed March 2021).

³⁰ *Id.*

³¹ Katherine Gallagher Robbins et al., *People Need Paid Leave Policies That Cover Chosen Family*, Washington: Center for American Progress (2017), <https://www.americanprogress.org/issues/poverty/reports/2017/10/30/441392/people-need-paid-leave-policies-that-coverchosen-family/>.

³² Lindsay Mahowald & Diana Boesch, Making the Case for Chosen Family in Paid Family and Medical Leave Policies, Ctr. for Am. Progress (Feb. 16, 2021), <https://www.americanprogress.org/issues/lgbtq-rights/news/2021/02/16/495680/making-case-chosen-family-paid-family-medical-leave-policies/>.

³³ *Navigating the Demands of Work and Eldercare*, U.S. Department of Labor (2016), p. 25, <https://ecommons.cornell.edu/handle/1813/78429> (referring to unpaid, nonprofessional caregivers).

³⁴ *Id.*

³⁵ *Unpaid Eldercare in the United States (2017-2018): Data from the American Time Use Survey*, U.S. Department of Labor, Bureau of Labor Statistics (Nov. 22, 2019), <https://www.bls.gov/news.release/pdf/elcare.pdf>.

³⁶ *Id.*