

The Importance of a Broad Family Definition in a Paid Family Leave Program

A broad 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 leave bills. There is also a growing movement, backed by popular support and reflected in 3 state paid family leave laws, to cover people equivalent to family members who are not biologically or legally related to the worker.

- **Domestic partners:** All nine of the statewide paid family leave laws—in California, Massachusetts, New Jersey, New York, Rhode Island, Washington State, Washington D.C., Connecticut, and Oregon—cover domestic partners.¹ Of the 34 paid sick time laws in effect in the United States, 28 cover domestic partners.²
- **Grandparents and adult children:** The paid family leave laws in California, New York, New Jersey, Massachusetts, Rhode Island, Washington, Washington D.C., Connecticut, and Oregon cover grandparents and adult children. Of the 34 paid sick time laws in the U.S., 33 cover adult children and grandparents.³
- **Grandchildren and siblings:** California, Washington State, Massachusetts, Connecticut, and Oregon’s paid family 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 34 paid sick time laws in the U.S., 32 cover grandchildren and 31 cover siblings.⁴
- **Family member equivalents:** In 2019, New Jersey recently amended its paid family leave law to include coverage of anyone related by blood to the employee as well as “any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship.”⁵ In the months following New Jersey’s expansion, Connecticut and Oregon also passed paid family and medical leave laws covering individuals—regardless of a biological or legal connection—who have a close association with the employee that is equivalent to a family relationship. Additionally, New York and Massachusetts both have flexible domestic partner definitions in their paid family leave laws that do not require legal registration. Advocates in states ranging from Colorado and Montana, to Maine and New Mexico, among many others, are working to include relationships that are equivalent to family members. As of August 2019, 12 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 all nine 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 nearly 34 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 nine state paid family 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 recent 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.

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 employees, has used—and repeatedly expanded—a chosen family standard for more than 45 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 1994.⁹
- 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.¹⁰
- 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.¹¹

III. The existing state paid family leave laws show that a broad family definition provides important protection to a small subset of workers without leading to a significant increase in program costs.

- 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. In 2017, only 11.3% of claims processed in California and 20.2% of claims in Rhode Island were to care for a seriously ill relative.¹² In 2016, only 16.4% of eligible claims in New Jersey were to care for a seriously ill relative.¹³
- 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, nearly 97% of claims to care for a seriously ill family member in 2017 were used for parents, children, or spouses, while only about 3% were used to care of a

- domestic partner, parent-in-law, or grandparent.¹⁴ An effort is now underway in Rhode Island to expand the family definition.¹⁵
- 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 2017 to July 2018, approximately 13% of all claims filed were for relatives other than a spouse, parent, child, or registered domestic partner.¹⁶

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

- 57 million Americans live in multi-generational family households, double the number who lived in such households in 1980. This figure is higher among communities of color. About 25% of Latinos and African Americans live in a multi-generational household, and 27% of Asian Americans do.¹⁷
- In 2014, 85 million people were living in extended families—up from 58 million in 2001.¹⁸ Extended families, defined as those departing from the “nuclear family” model of married parents and their minor children, are disproportionately people of color.¹⁹
- One in five American households with children include nonrelatives or relatives other than the child’s parents or siblings. Among these households, nearly 20% are below the poverty level and more than 70% receive public assistance.²⁰

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 leave law, 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, 1 in 4 unmarried American adults between the ages of 25 and 34 are living with a significant other. Because of this fact, it is important to cover domestic partners with flexible definitions that don’t require legal registration, like paid family 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 formalized²¹
- 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.²²

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.²³ 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, nearly 3.7 million children live in a household that is not headed by a mother or

father.²⁴ 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 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.

- Nearly 33 million households in the United States, or 28% of all households, consist of an individual who lives alone.²⁵ 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 million people in the United States live with nonrelatives—such as roommates, friends, or significant others.²⁶ 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 2016 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. Higher rates were reported by LGBTQ participants (42%, compared with 31% of non-LGBTQ participants) and participants with disabilities (42%, compared with 30% of participants without disabilities).²⁷

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.²⁸ 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.”²⁹
- 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 22% care for a relative *other than* a spouse, unmarried partner, parent, or grandparent.³⁰
- Nearly 85% of individuals who provide care to an adult age 65 or older do not live with the care recipient.³¹

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 legislation in Dallas, TX; San Antonio, TX; and Austin, TX do not explicitly include siblings, grandparents, or grandchildren, the laws for those cities cover “anyone related by blood or whose close association with the employee is the equivalent of a family relationship,” thereby impliedly offering coverage of these family relationships (and many others).

⁴ Id.

⁵ See N.J. Stat. Ann. § 43:21-27(n).

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 The relevant language covers “an individual related by blood or affinity to the employee whose close association with the employee is the equivalent of a family relationship....” Funeral Leave, Fed. Reg., Vol. 34, No. 163 (August 26, 1969) (codified at 5 C.F.R. pt. 630); Absence and Leave; Voluntary Leave Transfer Program, 54 Fed. Reg. 4749-01 (January 31, 1989) (codified at 5 C.F.R. pt. 630); Absence and Leave; Sick Leave, 59 Fed. Reg. 62266-01 (December 2, 1994) (codified at 5 C.F.R. pt. 630).

¹⁰ 5 C.F.R. § 630.401(c).

¹¹ *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/>.

¹² 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 2017*, Rhode Island Department of Labor and Training (2017), p. 1, <http://www.dlt.ri.gov/lmi/pdf/tdi/2017.pdf>.

This percentage was calculated by totaling the 2017 PFL claims that were paid each month, along with totaling the “care claims” paid each month and then dividing the latter by the former.

¹³ *Family Leave Insurance Workload in 2016: Summary Report*, New Jersey Department of Labor and Workforce Development, Office of Research and Information (August 2017), <https://myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/FLI%20Summary%20Report%20for%202016.pdf>.

¹⁴ *TDI Annual Update: January-December 2017*, Rhode Island Department of Labor and Training, p. 2, <http://www.dlt.ri.gov/lmi/pdf/tdi/2017.pdf>.

¹⁵ Rhode Island S. 2723 (March 2016).

¹⁶ See State of California Employment Development Department Paid Family Leave Program Statistics available at https://www.edd.ca.gov/about_edd/pdf/qspfl_PFL_Program_Statistics.pdf. Note that the figure reflects percentage of claims filed and not percentage of claims approved by the State.

¹⁷ Richard Fry and Jeffrey S. Passel, *In Post-Recession Era, Young Adults Drive Continuing Rise in Multi-Generational Living*, Pew Research Center (July 17, 2014), <http://www.pewsocialtrends.org/2014/07/17/in-post-recession-era-young-adults-drive-continuing-rise-in-multi-generational-living>.

¹⁸ 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/>.

¹⁹ Id.

²⁰ Rose M. Kreider and Renee Ellis, *Living Arrangements of Children: 2009*, U.S. Census Bureau (June 2011), p. 23, <https://www.census.gov/prod/2011pubs/p70-126.pdf>.

²¹ Wendy Wang and Kim Parker, *Record Share of Americans Have Never Married*, Pew Research Center (September 24, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/>.

²² 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/>.

²³ Rose M. Kreider and Renee Ellis, *Living Arrangements of Children: 2009*, U.S. Census Bureau (June 2011), pp. 13-14, <http://www.census.gov/prod/2011pubs/p70-126.pdf>.

²⁴ *Children Living with Neither Parent*, National KIDS COUNT (2016) (data source: Population Reference Bureau, analysis of data from the U.S. Census Bureau, Census 2000 Supplementary Survey, 2001 Supplementary Survey, 2002 through 2013 American Community Survey), last accessed December 2018, available at: <http://datacenter.kidscount.org/data/tables/1111-children-living-with-neither-parent?loc=4&loct=2#detailed/2/2-52/true/36,868,867,133,38/any/439,440>.

²⁵ See *Selected Social Characteristics in the United States U.S. Census Bureau, 2017 American Community Survey 5-Year Estimates* ([https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP02&prodType=table%20c%20\(last%20accessed%20September%202018](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP02&prodType=table%20c%20(last%20accessed%20September%202018) (last accessed December 2018).

²⁶ Id.

²⁷ Katherine Gallagher Robbins *et al*, *People Need Paid Leave Policies That Cover Chosen Family*, Washington: Center for American Progress (2017), available at <https://www.americanprogress.org/issues/poverty/reports/2017/10/30/441392/people-need-paid-leave-policies-that-coverchosen-family/>.

²⁸ *Navigating the Demands of Work and Eldercare*, U.S. Department of Labor (2016), p. 25, <https://www.dol.gov/sites/default/files/NavigatingTheDemandsOfWorkAndEldercare.pdf> (referring to unpaid, nonprofessional caregivers).

²⁹ Id.

³⁰ *Unpaid Eldercare in the United States (2013-2014): Data from the American Time Use Survey*, U.S. Department of Labor, Bureau of Labor Statistics (Sept. 23, 2015), <https://www.bls.gov/news.release/pdf/elcare.pdf>.

³¹ Id.