

Family Matters: Guide to Defining Family Inclusively in Workplace Leave Laws and Policies

Research studies clearly show that family structures are changing in a dramatic fashion, busting the myth that two-parent, nuclear families are the norm. Instead, families today take many forms, including multi-generational families, multi-national families, blended step-families, LGBTQ families, and close loved ones who aren't biologically or legally related to each other. As families evolve, so too must our laws and policies—especially workplace leave laws, which recognize that we each need to be able to care for our loved ones without jeopardizing our livelihoods.

In recognition of the changing landscape of family structures across the United States, A Better Balance and Family Values @ Work teamed up with a coalition of organizations to assemble a comprehensive “family definitions guide” for workplace leave campaigns. This mini-guide reflects the highlights of that guide and our collective efforts to expand family recognition in workplace leave campaigns.

Note that model language provided below is intended for general guidance and does not constitute legal advice. Any specific bill language may need to be tailored depending on existing family definitions under state or local law. *For specific drafting assistance or more information/research on family diversity, please contact A Better Balance at cgomez@abetterbalance.org.*

I. “Gold Standard” or Ideal Language to Include in Workplace Leave Family Definitions

Workplace leave laws and policies should specifically list as many family relationships as possible, including: spouses, domestic partners (whether or not formally recognized by a state or city), children, parents, parents of a spouse/domestic partner, grandchildren, grandparents, and siblings. We recommend the following specific definitions:

- **Spouse** should be defined to include “a person to whom the employee is legally married or who is recognized as a spouse, domestic partner, or other similar union under the laws of any state or jurisdiction.”
- Many state and local governments have registries for **domestic partners**. These relationships should be included in a family definition and given the same workplace leave rights as spouses wherever possible. In addition to registered domestic partners, we urge coverage of couples—whether same-sex or different-sex—who are not married or in a registered partnership. For language recommendations on covering unmarried, un-registered couples, please contact us.
- **Child** should be defined to include biological, adopted, and foster children, stepchildren, legal wards, children of a domestic partner, children-in-law, and a child of a person who stands *in loco parentis*—as defined by the federal Family and Medical Leave Act (FMLA)—**regardless of age**. A person who stands *in loco parentis* to a child is someone who acts in the place of a parent or assumes the role of parent to a child, with the intent to act as a parent; a biological or legal connection to the child is not required. **Children-in-law** should include the spouse or domestic partner of the worker’s child. These same relationships should be recognized in a definition of **parent**.
- In addition to listing the aforementioned family members, the following language should be included in the family definition to recognize extended relatives or loved ones who are like family, but not biologically or legally related to the worker:

“Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.”

This language, covering loved ones who may lack a legal or biological relationship to each other, was adapted from federal law, and more than a dozen state and local governments have used this language—or similar language—in workplace leave laws. For more information on this language or similar models, please contact us.

II. More Limited Fallback Models to Cover Close Relationships Beyond Immediate Family

In instances where it's not possible to cover close loved ones who lack a biological or legal relationship with the worker (using the model definition in the previous section), there are more limited alternatives that still acknowledge that families come in all forms and sizes. These alternatives could be combined with each other to cover more relationships. However, each alternative model presents its own pros and cons, and should be thoroughly considered before being used. Please contact us for more information—including bill language and pros/cons—on these and other potential models to consider. Examples of alternative models include:

- **Caregiving Relationships:** Covers any person for whom the employee is responsible for arranging or providing unpaid, health-related care or assistance.
- **A Close Relationship Based on a Non-Exclusive List of Factors:** Defines a close relationship or association according to various factors or a list of examples that can satisfy the test, as opposed to specific requirements. If this approach is used, it is important to note that any list of factors provided is non-exclusive.
- **Individuals Living with the Worker:** Covers people who share a residence with the worker. Any such requirements should specify that joint legal ownership or leases are not required.
- **“Designated Person(s)”:** Allows workers to designate an additional person or multiple persons for whom they can use their workplace leave (beyond specific categories of family relationships mentioned in the law). This alternative allows workers to pick anyone they'd like to be covered for workplace leave purposes, such as a friend or neighbor, and update their designation on a regular basis.
- **Covering Certain Relationships Involving Financial Interdependence:** This approach is not a preferred model given proof concerns. If necessary, a definition involving financial inter-dependence should focus on the existence of a shared responsibility for each other's financial obligations. Any language requiring financial *dependence* on the worker should be avoided.

III. Post-Passage: Inclusive Family Definition Regulations

A common step following the successful passage of inclusive family definitions in a workplace leave law or policy is the drafting of regulations or rules later used by administrative agencies in enforcement. Please contact us for model regulatory language or examples of FAQs that the state or local government can provide to educate people about inclusive family definitions.

- Strong regulations and rules can be useful to bolstering statutory family definitions and helping government agencies, workers, and employers understand who is covered and any required documentation. However, the exact regulatory language will vary depending on the approach taken. In particular, if the family definition used requires the worker to prove a familial relationship, we recommend using regulatory language that allows the worker to submit various types of documentation, including a simple statement acknowledging the relationship.

If you have questions about these recommendations or would like assistance developing bill language, please contact A Better Balance at cgomez@abetterbalance.org.