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Comment from A Better Balance for the Senate Committee on Finance Roundtable on Paid Leave Proposals in the COVID Era, June 18, 2020, by Sherry Leiwant, Co-President and Co-Founder, and Molly Weston Williamson, Director of Paid Leave and Future of Work

We submit this comment on behalf of A Better Balance, a legal advocacy organization whose mission is to fight for policies protecting American workers from having to choose between caring for themselves and their families and maintaining their economic security. We have been working on paid family and medical leave throughout the country for over a decade and are delighted that this round table is considering the need for a federal law to protect our working families.

The current crisis has highlighted the critical need for comprehensive, responsive paid leave protections for all workers. The passage of the Families First Coronavirus Response Act (FFCRA) was a necessary first step, providing for the first time a federal right to paid leave for covered workers. This law has provided much needed emergency protections to workers across the country, at a time when they could not be more pressing. Yet more remains to be done. The FFCRA does not cover all workers, leaving out those who work at employers with more than 500 employees and, as it has been interpreted by the Department of Labor, many health care workers, emergency responders, and employees of small employers on the front lines. And the FFCRA's protections are both temporary, expiring this at the end of this year, and limited to the current crisis.

America's working families need permanent, comprehensive paid family and medical leave. From the experience of the states, we know that there are certain key policy elements that must be included for a strong paid family and medical leave program. The federal program should learn from the experience of the states and craft a federal law along the same lines as successful state programs.¹ The following are key policy points that should be included in a comprehensive bill.

Paid leave must be comprehensive, covering health, caregiving, bonding, and military family needs.

A strong paid family and medical leave bill would ensure the ability of workers to take paid leave to address their own serious health needs, care for a loved one dealing with a serious health need, bond with a new child, or address the impact of military deployment. All four purposes are already embodied in the Family and Medical Leave Act (FMLA) and address the most important needs for leave across workers' lifespans. All state paid family and medical leave programs cover or will cover leaves for workers' own health, for family caregiving, and for bonding with a new child (including foster or adoptive children, for parents of any gender), while most also cover the needs of military family members dealing with the impact of deployment.

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The current crisis has only emphasized the importance of paid, job-protected leave to ensure that workers can take the time they need to recover from their own serious illness or to care for seriously ill loved ones. Nationwide, about 3 in 5 private sector workers lack access to short-term disability insurance through their employers, leaving them vulnerable when they need time off from work to address their serious health needs.² Among low-income workers, these numbers are even more stark. Over 80% of those in the bottom quarter of earners and nearly 90% of those in the bottom tenth of earners lack access to short-term disability insurance through their employers.³ When workers do not have the leave they need, they may defer or forego necessary medical treatment.⁴ For example, paid medical leave helps cancer patients and survivors determine a course of treatment, follow through with and avoid that treatment, and manage side effects.⁵

Medical problems are a leading cause of personal bankruptcy in this country⁶ and a frequent contributor to home foreclosures.⁷ Without paid leave, those dealing with a disabling illness are often pushed onto public benefits.⁸ Nearly 1 in 3 seriously ill workers either lose their jobs or have to change jobs as a result of their illness.⁹ Paid medical leave can help workers balance their health needs with work and keep their jobs. Paid medical leave also helps keep workers safe on the job, increasing productivity and decreasing employer costs. Workers with paid medical leave are significantly less likely to suffer dangerous injuries on the job¹⁰ or deaths on the job.¹¹ When workers must return to work before a chronic condition is stabilized or before they have healed from an injury, they are more likely to relapse or re-injure themselves while working.¹² Paid leave allows workers to recover and return to full productivity more quickly than they would by continuing to work.

Today, nearly one in three U.S. households provide care for an adult loved one with a serious illness or disability.¹³ With an aging population, these numbers will only increase in the future. Family caregivers can help these individuals recover more quickly and spend less time in hospitals.¹⁴ Policies that support family caregiving create savings that benefit all taxpayers. Unpaid family caregivers not only help to ease the burden on our crowded hospitals and long-term care facilities but also create enormous financial savings. For example, recipients of family caregiving are less likely to have nursing home care or home health care paid for by Medicare.¹⁵ Because most caregivers providing care for adults are employed,¹⁶ the demands of providing care are in constant tension with earning a much-needed income. In addition, seriously ill children benefit when their parents can afford time off to care for them. Research shows that ill children have better vital signs, faster recoveries, and reduced hospital stays when cared for by parents.¹⁷

Military families lack the protections they need when their loved ones are called to active duty service of our country. In one recent national survey, the amount of time service members spend away from family was ranked as the top issue of concern for service members and military

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spouses.¹⁸ Families that make these sacrifices deserve the paid time off they need to address the effects of deployment on their families and their lives. Moreover, due to the impacts of the military lifestyle, a shocking 30% of military spouses are unemployed, despite actively seeking employment, and many more are underemployed.¹⁹ 52% of military spouses reported that unemployment and underemployment are the main obstacles to financial security.²⁰ Ensuring that these patriots can take the time away they need and then return ready to work can help them maintain employment and better support their loved ones serving abroad and those who remain at home.

Shockingly, the United States remains one of only two countries in the world, along with Papua New Guinea, with no national paid parental leave benefit of any kind.²¹ Only 16% of private sector workers receive paid family leave through their employers to bond with a new child or care for a seriously ill or injured family member; among low-income workers, the number is even lower.²²

Workers need a decent wage replacement in order to be able to take time off, especially workers at the bottom of the economic spectrum.

A strong bill would provide a progressive wage replacement rate that workers, especially low-income workers can afford to use. Under progressive wage replacement systems, lower-income workers, who need to use all of their income to meet their basic needs, receive a higher proportion of their income while they are on leave. Progressive wage replacement systems strike a reasonable balance between meeting the needs of low-wage workers and offering a reasonable maximum benefit to help protect the solvency of the fund.

The wage replacement rate (the percentage of their own income workers receive while on leave) is an extremely important element of a paid family and medical leave law: if the rate is too low, workers will not be able to afford to take the leave they need. This problem can be especially acute for low-income workers living paycheck to paycheck, who need every dollar of their income to pay their bills. Moreover, for programs like the proposed FAMILY Act that are partially worker-funded, it is particularly essential to ensure that workers will not be required to pay for a program they cannot afford to use.

Though low-income workers are the most vulnerable, workers of any income level can find themselves unable to afford to take leave if the wage replacement rate is too low. In a major California study, workers across income levels reported that the 55% wage replacement level made it difficult to afford to use the program, potentially contributing to low rates of use.²³ For this reason, California amended their statute to raise the wage replacement rate, especially for low-wage workers. Congress can learn from the experience of existing programs and create a benefit level that works for workers.

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Most state paid family and medical leave laws provide a progressive wage replacement rate.²⁴ Typically, this means that the program replaces a higher percentage of income up to a threshold amount (often called the “bend point”), then replaces a lower percentage of income above that amount. In effect, this creates a sliding scale of income replacement. For example, the paid family and medical leave program in Washington State provides 90% of workers’ wages up to a bend point of 50% of the state average weekly wage and provide 50% of workers’ wages above that amount.²⁵ Washington State’s program currently caps benefits at \$1,000 per week, but benefits will be adjusted to 90% of the state average weekly wage in subsequent years.²⁶ Washington, D.C.; Massachusetts; Connecticut; and Oregon all use or will use progressive wage replacement systems following this model, though their exact bend points and rates of replacement vary.²⁷ California already provides progressive wage replacement benefits, though it uses a somewhat more complex system.²⁸

Job protection is critical to the ability of a worker to take this benefit for which the worker is paying.

A strong paid family and medical leave law protects the jobs of workers taking paid family and medical leave under the law by ensuring they have the right to return to work following leave. Job protection for all employees covered by the program is an essential element—without it, it’s not leave. This is especially important for low-income workers, who will often have less job security than other workers, and because they change jobs more often than other workers²⁹ and are more likely to be working part time³⁰ (including many part-time workers who would prefer to be working full time) may be less likely to be covered by leave laws like the Family and Medical Leave Act.³¹

States are leading the way in providing paid leave with job protection. Massachusetts will provide job protection to all employees covered by its paid family and medical leave law.³² Connecticut and Oregon will provide job protection to workers taking family or medical leave who have been employed by their current employer for approximately three months.³³ New York and Rhode Island provide job protection to all employees covered by their paid family leave laws.³⁴

The need for job protection for workers in a paid family and medical leave program cannot be overstated. The need for such leave occurs at some of the most stressful times in a person’s life: the arrival of a new child, a health crisis in the family, or a looming deployment. At these times, workers shouldn’t have to worry whether they will have a job to return to after their leave. Without a legal right to get their job back, many workers will be unwilling to risk their livelihood by taking the leave they need—the risk to their long-term economic security will be too great. Without job protection, workers will pay for a program they can only use by risking their long term economic survival. In one California study, fear of being fired was a commonly cited reason workers who were eligible for paid family leave under that state’s program did not take

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it.³⁵ In Rhode Island, 45% of workers who took leave under their state’s paid family leave law (which provides job protection) said that without the law they would not have taken leave for fear of losing their job.³⁶

Job protection keeps workers attached to the workforce. When workers are unable to take short-term leave and then return to their job, they are often pushed out of the workforce altogether. One study estimated that men who leave the labor force early due to caring for an aging parent lose almost \$90,000 in wages, while women who do so lose over \$140,000 in wages.³⁷ Women who take paid leave after having a baby are more likely to be working 9 to 12 months after the birth than women who take no leave.³⁸ And keeping workers on the job saves taxpayers money. Both men and women who return to work after taking paid leave are much less likely to be receiving public assistance or food stamps in the year following their child’s birth than those who return to work without taking family leave.³⁹

A strong paid family and medical leave law would also ensure that all workers are protected against retaliation for using their rights under the law. No one should be punished for taking the time they need and which they are guaranteed by law. This protection is especially important in light of the rise of punitive absence control policies, where workers assigned points for each absence and subject to punishment when they receive too many points.⁴⁰ States are also leading the way in prohibiting retaliation. For example, Massachusetts’s paid family and medical leave law offers particularly robust protections against retaliation. The law includes a rebuttable presumption that any adverse action taken within six months of the exercise of a protected right was retaliatory.⁴¹ Similarly, as part of a set of recent amendments to expand and improve their paid family and medical leave law, New Jersey added new strong anti-retaliation protections.⁴²

In addition, a strong paid family and medical leave would ensure that workers won’t lose their health insurance coverage while they are on leave. The times that workers need leave—in the face of major illness or when welcoming a new child—are often when workers and their families need health coverage the most. Yet without specific legal protections, workers may be cut off or face insurmountable increases in cost due to the loss of employer contributions. Many states already provide this needed protection. Massachusetts guarantees continuation of coverage for workers taking paid family or medical leave under its law; Oregon guarantees continuation of coverage for workers taking paid family or medical leave under its law, so long as they have been employed by their employer for at least 90 days prior to taking leave.⁴³ New York and Rhode Island guarantee continuation of coverage to all workers taking paid family leave under their laws.⁴⁴

A strong paid family and medical leave bill reflects and protects the diversity of today’s American families.

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Families today take many forms: they are multi-generational, blended,⁴⁵ LGBTQ,⁴⁶ and increasingly include close loved ones who aren't biologically or legally related.⁴⁷ To work for all American families, a strong paid leave law would include a broad family definition that specifically covers spouses, domestic partners, children (regardless of age), parents, parents of a spouse or domestic partner, grandchildren, grandparents, siblings, nieces and nephews, aunts and uncles, and any other individual related by blood or affinity whose close association with the worker is the equivalent of a family relationship. Nationwide trends regarding family structures show that broad family coverage is imperative for strong paid leave laws.

Today, adults ages 18 to 44 are more likely to have lived with an unmarried significant other than to have ever been married,⁴⁸ and as of 2016, the rising number of cohabiting adults in the U.S. reached about 18 million.⁴⁹ Thus, coverage of domestic partners and significant others is critical to many workers in long-term, committed relationships.

In addition to caring for spouses, children, and parents, workers often provide care to—or rely on care from—other biological, legal, and extended relatives with whom they share a close relationship. Since 1980, for example, the number of Americans living in multi-generational households has doubled to 57 million.⁵⁰ Given the prevalence of multi-generational households across the country, it is extremely important that any paid family and medical leave program cover grandparents and grandchildren. Furthermore, children of all ages should be covered because adult children with a serious illness are no less in need of care from their parents than any other adult to whom the worker is related; and older children, especially those who have not formed a family, will still rely on their parents for care in the face of a serious illness. Nationwide, 82% of children under the age of 18 live with at least one sibling, and as a long-lasting family relationship, many siblings look to their sisters or brothers as the first person to whom they would turn for care in the event of a serious illness.⁵¹ This is often true for people with disabilities; as more people with disabilities outlive their parents, an increasing number of individuals are receiving primary care from siblings and extended family.⁵²

Lastly, 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. While relationships with such close loved ones are important to many workers, a 2016 national survey showed that they are even more significant for LGBTQ people and people with disabilities, who reported taking time off to care for their “chosen family” in higher percentages than the population as a whole.⁵³ An inclusive family definition is also important to current and former members of the armed forces because many of those injured or ill as a result of their military service rely on friends or neighbors for care. This is particularly true for those who were ill or injured as a result of their service after September 11, 2001, as those service members are nearly twice as likely as their civilian counterparts to rely on care from friends and neighbors.⁵⁴

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States with paid family and medical leave laws understand the demographics of working families and have led the way with inclusive family definitions. All paid family leave jurisdictions cover at least workers’ parents, spouses, children, grandparents, and parents-in-law.⁵⁵ Additionally, in all jurisdictions the definition of “child” includes adult children,⁵⁶ and in eight of nine states with paid family and medical leave, domestic partners are explicitly covered.⁵⁷ California, Massachusetts, New Jersey, Washington, D.C., Washington State, Connecticut, and Oregon also cover workers’ siblings.⁵⁸ California, Massachusetts, New Jersey, New York, Washington State, Connecticut, and Oregon also cover workers’ grandchildren.⁵⁹ In New Jersey, Connecticut, and Oregon workers can also take leave to care for other loved ones—whether biologically or legally related or not—to whom the worker has a close association that is the equivalent of a family relationship, though their exact definitions slightly differ; this definition includes close relationships with biological or legally related family members (such as aunts, uncles, nieces, and nephews), as well as close loved ones with whom the worker lacks a biological or legal relationship (such as a significant other or a best friend who is like a sibling).⁶⁰

The federal government also has a successful track record of providing essential protections for the varied forms of working families. For over 50 years, the federal government, our nation’s largest employer with over two million employees, has used an inclusive family definition. For example, an expansive family definition that covers workers’ spouses, domestic partners, adult and minor children, parents, grandparents, grandchildren, siblings, and those whose close association with the employee is the equivalent of a family relationship has been used in the context of funeral leave since 1969, voluntary leave since 1989, and sick and annual leave since 1994.⁶¹ Additionally, today, federal workers can accumulate and use up to 12 weeks of sick leave to care for family members with serious health conditions, including extended relatives and other loved ones who aren’t biologically or legally related.⁶²

Thank you for your consideration and your attention to this important issue. We welcome the opportunity to continue working with you to pass the strong, comprehensive paid family and medical leave law America’s working families need.

¹ For more detailed information on state paid family and medical leave laws, please see our comparative chart at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

² U.S. Bureau of Labor Statistics, *Employee Benefits Survey: Mar. 2018*, Table 16 (2018), <https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table16a.pdf>.

³ *Id.*

⁴ See Abt Associates Inc., *Family and Medical Leave in 2012: Technical Report* 131 (Sep. 2012), <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

⁵ Elizabeth Harrington & Bill McInturff, *Key Findings -- National Surveys of Cancer Patients, Survivors, and Caregivers*, American Cancer Society Cancer Action Network (2017), <https://www.acscan.org/sites/default/files/ACS%20CAN%20Paid%20Leave%20Surveys%20Key%20Findings%20>

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Press%20Memo%20FINAL.pdf. The results of this survey strongly suggest that other workers with chronic or serious illnesses will have better access to treatment and care when they are able to take paid time off from work.

⁶ See David U. Himmelstein, Deborah Thorne, Elizabeth Warren, Steffie Woolhandler, *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 AM. J. OF MED. 742 (2009).

⁷ Christopher Tarver Robertson, Michael Hoke, & Richard Egelhof, *Get Sick, Get Out: The Medical Causes of Home Mortgage Foreclosures*, 18 HEALTH MATRIX 65, 68 (2008).

⁸ See Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, LAW & CONTEMP. PROBS. 285, 311-12 (Winter 2010).

⁹ The Commonwealth Fund, The New York Times, & Harvard T.H. Chan School of Public Health, *Being Seriously Ill in America Today* 8 (Aug. 2018), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2018/10/CMWF-NYT-HSPH-Seriously-Ill-Poll-Report.pdf>.

¹⁰ Abay Asfaw *et al.*, *Paid Sick Leave and Nonfatal Occupational Injuries*, 102.9 AMERICAN JOURNAL OF PUBLIC HEALTH e59-e64 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3482022/>.

¹¹ Daniel Kim, *Paid Sick Leave and Risks of All-Cause and Cause-Specific Mortality Among Adult Workers in the USA*. 14.10 Int. J. of Env. Research and Pub. Health 1247 (2017),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664748/pdf/ijerph-14-01247.pdf>.

¹² T.G. Hollo, *Evaluating family and medical leave insurance for Washington state*, 11 Economic Opportunity Institute (May 2012), <http://www.opportunityinstitute.org/wp-content/uploads/family-leave-insurance/EvaluatingFamilyandMedicalLeave-Jan13.pdf>.

¹³ Catherine Albiston & Lindsey Trimble O'Connor, *Just Leave*, 39 HARV. J. L. & GENDER 1, 16 (2016).

¹⁴ See, e.g., A. Houser & M.J. Gibson, *Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update*, AARP Public Policy Institute (Nov. 2008), pp. 1-2, 6; *Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving*, AARP (June 2007), p. 6.

¹⁵ Houser & Gibson, *supra* note 15, at 6.

¹⁶ *Caregiving in the U.S.*, AARP & National Alliance for Caregiving (June 2015), p. 56, available at <http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf>.

¹⁷ See S. J. Heymann, A. Earle & B. Egleston, *Parental Availability for the Care of Sick Children*, Pediatrics, Vol. 98 No. 2 (Aug. 1996), p. 226-30; S.J. Heymann, THE WIDENING GAP: WHY AMERICA'S WORKING FAMILIES ARE IN JEOPARDY AND WHAT CAN BE DONE ABOUT IT (2000), p. 57.

¹⁸ *Military Family Lifestyle Survey: Comprehensive Report*, BLUE STAR FAMILIES, p. 20 (2018), available at <https://bluestarfam.org/wp-content/uploads/2019/03/2018MFLS-ComprehensiveReport-DIGITAL-FINAL.pdf>.

¹⁹ *Id.* at 10

²⁰ *Id.*

²¹ INTERNATIONAL LABOUR ORGANIZATION, MATERNITY AND PATERNITY AT WORK: LAW AND PRACTICE ACROSS THE WORLD 16 (2014), available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf.

²² *National Compensation Survey: Employee Benefits in the United States, Mar. 2018*, U.S. Bureau of Labor Statistics, Table 32 (2018), <https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table32a.htm>.

²³ Cal. Senate Office of Research, *California's Paid Family Leave Program: Ten Years After the Program's Implementation, Who Has Benefited and What Has Been Learned?* 6 (July 1, 2014), http://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Paid_Family_Leave_FINAL_A1b.pdf; Andrew Chang & Co., *Paid Family Leave Market Research*, Cal. Emp. Dev. Dep't 70 (July 13, 2015), https://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf.

²⁴ Cal. Unemp. Ins. Code §§ 3301(b), 2655(e) (West 2019); D.C. Code Ann. § 32-541.04(g)(1)-(2) (West 2020); Wash. Rev. Code Ann. § 50A.15.020(4) (West 2020); Mass. Gen. Laws Ann. ch. 175M, § 3(b) (West 2019); S.B. 1, 2019 Gen. Assemb., Reg. Sess. § 3(c)(2) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 7 (Or. 2019).

²⁵ Wash. Rev. Code Ann. § 50A.15.020(4) (West 2020).

²⁶ Wash. Rev. Code Ann. § 50A.15.020(5)(a) (West 2020).

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²⁷ D.C. Code Ann. § 32-541.04(g)(1)-(2) (West 2020) (provides 90% of a worker's average weekly wage up to an amount equal to 40 times 150% of the D.C. minimum wage and 50% of a worker's average weekly wage above an amount equal to 40 times 150% of the D.C. minimum wage); Mass. Gen. Laws Ann. ch. 175M, § 3(b) (West 2019) (provides 80% of a worker's average weekly wage up to an amount equal to 50% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 50% of the statewide average weekly wage); S.B. 1, 2019 Gen. Assemb., Reg. Sess. § 3(c)(2) (Conn. 2019) (provides 95% of a worker's average weekly wage up to an amount equal to 40 times the state minimum wage and 60% of a worker's average weekly wage above an amount equal to 40 times the state minimum wage); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 7 (Or. 2019) (provides 100% of a worker's average weekly wage up to an amount equal to 65% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 65% of the statewide average weekly wage).

²⁸ California uses a system that creates three tiers of wage replacement. The first tier applies to workers who earn less than a fixed amount set in statute (approximately \$71.46 per week); workers in this tier receive \$50 per week. The second tier applies to workers who earn at least as much as a fixed amount set in statute (approximately \$71.46 per week) but less than approximately 33% of the state average weekly wage (for 2019, this works out to approximately \$414.26 per week); workers in this tier receive 70% of their *total* average weekly wage. The third tier applies to workers who earn at least approximately 33% of the state average weekly wage (for 2019, this works out to approximately \$414.26 per week); workers in this tier receive either approximately 60% of the worker's *total* average weekly wage or an amount equal to 23.3% of the state average weekly wage (for 2019, this works out to approximately \$289.57), whichever is greater. See Cal. Unemp. Ins. Code §§ 3301(b), 2655(e) (West 2019).

²⁹ Jacquelyn Anderson et al., *A New Approach to Low-Wage Workers and Employers*, MDRC 5 (Mar. 2006), https://www.mdrc.org/sites/default/files/full_9.pdf.

³⁰ Pamela Loprest et al., *Who Are Low-Wage Workers?*, U.S. Dep't Health & Hum. Servs. (Feb. 2009) <https://aspe.hhs.gov/system/files/pdf/180021/rb.pdf>.

³¹ Lonnie Golden, *Still Falling Short on Hours and Pay: Part-time Work Becoming New Normal*, Econ. Policy Inst. (Dec. 5, 2016), <http://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/>.

³² Mass. Gen. Laws Ann. ch. 175M, § 2(e) (West 2019).

³³ Oregon will provide job protection to all covered workers who have been employed with their current employer for at least 90 days. H.B. 2005, 80th Leg. Assemb., Reg. Sess. § 10(1), (7) (Or. 2019). Connecticut made substantial amendments to its existing state unpaid leave law as part of the same bill that created its paid leave program. The amended unpaid leave law provides job protection to nearly all private sector employees in the state who have been employed with their employer for at least three months. Workers receiving benefits for domestic violence-related purposes do not have job protection under that law, although they may have employment protection under Connecticut's family violence leave law. Conn. Gen. Stat. Ann. § 31-51nn(a) (West 2019).

³⁴ N.Y. Workers' Comp. Law § 203-b (McKinney 2019); 28 R.I. Gen. Laws Ann. § 28-41-35(f) (West 2019).

³⁵ Appelbaum & Milkman, *supra* note 33.

³⁶ Barb Silver, Helen Mederer, & Emilija Djurdjevic, *Rhode Island's Temporary Caregiver Insurance Program: Findings from the First Year* (2015).

³⁷ MetLife Mature Mkt. Inst., *The MetLife Study of Caregiving Costs to Working Caregivers* (2011), <https://www.caregiving.org/wp-content/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf>.

³⁸ Houser & Vartanian, *supra* note 8.

³⁹ Cal. Senate Office of Research, *California's Paid Family Leave Program: Ten Years After the Program's Implementation, Who Has Benefited and What Has Been Learned?* 6 (July 1, 2014), http://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Paid_Family_Leave_FINAL_A1b.pdf; Andrew Chang & Co., *Paid Family Leave Market Research*, Cal. Emp. Dev. Dep't 86 (July 13, 2015), https://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf.

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⁴⁰ See A Better Balance, *Pointing Out: How Walmart Unlawfully Punishes Workers for Medical Absences* (June 2017), <https://www.abetterbalance.org/wp-content/uploads/2017/05/Pointing-Out-Walmart-Report-FINAL.pdf> (explaining that Walmart, the world’s largest private employer, has used point-based absence control policies).

⁴¹ Mass. Gen. Laws Ann. ch. 175M, § 9(c) (West 2019).

⁴² N.J. Stat. Ann. § 43:21-55.2 (West 2019).

⁴³ Mass. Gen. Laws Ann. ch. 175M, § 2(f) (West 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 10(2), (7) (Or. 2019).

⁴⁴ N.Y. Workers’ Comp. Law § 203-c (McKinney 2019); 28 R.I. Gen. Laws Ann. § 28-41-35(g) (West 2019).

⁴⁵ According to the U.S. Census Bureau, 16% of children live in “blended families,” or households with a stepparent, stepsibling, or half-sibling. *Parenting in America: Outlook, Worries, Aspiration Are Strongly Linked to Financial Situation*, Pew Research Center 19 (2015), https://www.pewresearch.org/wp-content/uploads/sites/3/2015/12/2015-12-17_parenting-in-america_FINAL.pdf.

⁴⁶ It is estimated that 4.5% of Americans, or over 11 million people, self-identify as lesbian, gay, bisexual, or transgender. Frank Newport, *In U.S., Estimate of LGBT Population Rises to 4.5%*, Gallup (May 22, 2018), <https://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx>. Additionally, estimates show that between 2 million and 2.7 million minor children have an LGBTQ parent. Gary J. Gates, *Marriage and Family: LGBT Individuals and Same-Sex Couples*, *Future Child.*, Fall 2015, at 67, 72.

⁴⁷ Nearly 33 million households in the United States, or 28% of all households, consist of an individual who lives alone, and in an emergency or during an illness, many of these individuals rely on care from close loved ones. See *Selected Social Characteristics in the United States, 2013-2017 American Community Survey 5-Year Estimates*, U.S. Census Bureau,

[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 visited Jan. 30, 2020). Additionally, in a 2016 national survey, 32% of people in the U.S. reported that they took time off work to provide care for a chosen family member. Katherine Gallagher Robbins *et al.*, *People Need Paid Leave Policies That Cover Chosen Family*, Center for American Progress 2 (2017),

<https://cdn.americanprogress.org/content/uploads/2017/10/26135206/UnmetCaregivingNeed-brief.pdf>.

⁴⁸ “[T]he share of adults ages 18 to 44 who have ever lived with an unmarried partner (59%) has surpassed the share who has ever been married (50%)” Juliana Menasce Horowitz *et al.*, *Marriage and Cohabitation in the U.S.*, Pew Research Center (Nov. 6, 2019), <https://www.pewsocialtrends.org/2019/11/06/marriage-and-cohabitation-in-the-u-s/>.

⁴⁹ Renee Stepler, *Number of U.S. Adults Cohabiting with a Partner Continues to Rise, Especially Among Those 50 and Older*, Pew Research Center (Apr. 6, 2017), <https://www.pewresearch.org/fact-tank/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older/>.

⁵⁰ Richard Fry & Jeffrey S. Passel, *In Post-Recession Era, Young Adults Drive Continuing Rise in Multi-generational Living*, Pew Research Center (July 17, 2014), <https://www.pewsocialtrends.org/2014/07/17/in-post-recession-era-young-adults-drive-continuing-rise-in-multi-generational-living/#fn-19695-1>. Multi-generational households are particularly prevalent in communities of color; approximately 25% of Latinx and Black Americans, and 27% of Asian Americans live in a multi-generational household. *Id.*

⁵¹ Rachel Dunifon *et al.*, *Siblings and Children’s Time Use in the United States*, 37 *Demographic Res.* 1611, 1612 (2017).

⁵² As more people with disabilities outlive their parents, an increasing number of adult siblings have taken on primary caregiving responsibilities. Rajan A. Sonik *et al.*, *Sibling Caregivers of People With Intellectual and Developmental Disabilities: Sociodemographic Characteristics and Material Hardship Prevalence*, 54 *Intell. & Developmental Disabilities* 332 (2016). Over 50% of sibling caregivers report having an annual income of less than \$25,000, making paid leave crucial. John Reagan *et al.*, *Research Brief: Sibling Caregivers Experience Less Choice*

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and Control, Family Support Research and Training Center at the University of Illinois at Chicago (2016), https://fsrtc.ahslabs.uic.edu/wp-content/uploads/sites/9/2016/11/FSRTC-Data-Brief_1_2016-3-3.pdf.

⁵³ 42% of LGBT individuals and people with disabilities reported “taking time off to care for chosen family,” compared with 31% of non-LGBT people and 30% of people without disabilities. Gallagher Robbins *et al.*, *supra* note 3, at 3. Family networks are particularly important to older LGBTQ adults who are especially likely to rely on those loved ones. MetLife Mature Mkt. Inst. & Am. Soc’y of Aging, *Still Out, Still Aging: The MetLife Study of Lesbian, Gay, Bisexual, and Transgender Baby Boomers* 15-17 (Mar. 2010), <https://www.asaging.org/sites/default/files/files/mmi-still-out-still-aging.pdf>.

⁵⁴ Rajeev Ramchand *et al.*, *Hidden Heroes: America’s Military Caregivers*, RAND Corp. 34 (2014), https://www.rand.org/pubs/research_reports/RR499.html (explaining that nearly a quarter of caregivers for post-9/11 military care recipients are friends or neighbors, while nearly 13% of caregivers for civilian care recipients are friends or neighbors).

⁵⁵ Nine states have passed paid family and medical leave laws with inclusive family definitions that can be found at: Rhode Island (28 R.I. Gen. Laws Ann. § 28-41-34 (West 2019)); California (Cal. Unemp. Ins. Code § 3302(f) (West 2019)); New Jersey (N.J. Stat. Ann. § 43:21-27(n) (West 2019)); New York (N.Y. Workers’ Comp. Law § 201(20) (McKinney 2019)); Washington, D.C. (D.C. Code Ann. § 32-541.01(7) (West 2020)); Washington State (Wash. Rev. Code Ann. § 50A.05.010(10) (West 2020)); Massachusetts (Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019)); Connecticut (S.B. 1, 2019 Gen. Assemb. (Conn. 2019). The law is only partially codified. The full text of the law can be found at <https://www.cga.ct.gov/2019/lcoamd/pdf/2019LCO09302-R00-AMD.pdf>); Oregon (H.B. 2005, 80th Legis. Assemb., Reg. Sess. (Or. 2019). The full text of the law can be found at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>).

⁵⁶ 28 R.I. Gen. Laws Ann. § 28-41-34(1) (West 2019); Cal. Unemp. Ins. Code § 3302(c); N.J. Stat. Ann. § 43:21-27(k) (West 2019); N.Y. Workers’ Comp. Law § 201(16) (McKinney 2019); D.C. Code Ann. § 32-541.01(7)(A) (West 2020); Wash. Rev. Code Ann. § 50A.05.010(1) (West 2020); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); 458 Mass. Code Regs. 2.02 (2019); S.B. 1, 2019 Gen. Assemb. § 17(6), (15) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(b), (6) (Or. 2019).

⁵⁷ While Rhode Island, California, New Jersey, Washington, D.C., Washington State, and Oregon require that domestic partners be registered, New York and Massachusetts both have flexible domestic partner definitions that do not require legal registration. 28 R.I. Gen. Laws Ann. § 28-41-34(6) (West 2019); Cal. Unemp. Ins. Code § 3302(d) (West 2019); N.J. Stat. Ann. § 43:21-27(l) (West 2019); D.C. Code Ann. § 32-541.01(7)(C) (West 2020); Wash. Rev. Code Ann. § 50A.05.010(22) (West 2020); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(g), (9) (Or. 2019); N.Y. Workers’ Comp. Law § 201(17) (McKinney 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); 458 Mass. Code Regs. 2.02 (2019).

⁵⁸ Cal. Unemp. Ins. Code § 3302(f) (West 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); N.J. Stat. Ann. § 43:21-27(n) (West 2019); D.C. Code Ann. § 32-541.01(7)(E) (West 2020); Wash. Rev. Code Ann. § 50A.05.010(10) (West 2020); S.B. 1, 2019 Gen. Assemb. § 17(6) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(d) (Or. 2019).

⁵⁹ Cal. Unemp. Ins. Code § 3302(f) (West 2019); Mass. Gen. Laws Ann. ch. 175M, § 1 (West 2019); N.J. Stat. Ann. § 43:21-27(n) (West 2019); N.Y. Workers’ Comp. Law § 201(20) (McKinney 2019); Wash. Rev. Code Ann. § 50A.05.010(10) (West 2020); S.B. 1, 2019 Gen. Assemb. § 17(6) (Conn. 2019); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(f) (Or. 2019).

⁶⁰ N.J. Stat. Ann. § 43:21-27(n) (West 2019) (“Family member” means . . . any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship.”); S.B. 1, 2019 Gen. Assemb. § 17(6) (Conn. 2019) (“Family member” means . . . an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships.”); H.B. 2005, 80th Legis. Assemb., Reg. Sess. § 2(18)(h) (Or. 2019) (“Family member” means . . . [a]ny individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship”).



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⁶¹ 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) (first implemented during the Vietnam War, allowing federal workers to take funeral leave for the combat-related deaths of loved ones); 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).

⁶² 5 C.F.R. § 630.401(c) (2020); *see also* 5 C.F.R. § 630.902.