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Building the Paid Family and Medical Leave New Yorkers Need Will Help Vulnerable Communities

In 2016, New York built on New York’s longstanding temporary disability insurance program to create groundbreaking job-protected paid family leave benefits, but gaps in the program remain. Now, six years and a global pandemic after the passage of New York’s game-changing law, it is time to update New York’s temporary disability and paid family leave benefits to create a program that works for all workers. Temporary disability insurance benefits (the benefits for one’s own serious health needs) have been capped at the astonishingly-low rate of \$170 per week since 1989 and these benefits lack the robust employment protections that enable workers to take the time off they need. At the same time, paid family leave benefits lack the portability workers need in today’s workforce, as more workers move from job to job, face periods of unemployment between jobs, and find themselves self-employed.

Too many New Yorkers have been forced to make impossible choices between health and work because of gaps in New York’s temporary disability and paid family leave benefits program. [A9479/S8735](#) provides key updates to New York’s temporary disability and paid family leave benefits program, New York can once again lead the way and provide workers with a law that works for them.

Building the Paid Family and Medical Leave New Yorkers Need Will Support Women’s Health

- Women in New York depend on benefits for their own health needs when they have a difficult pregnancy, need to recover from childbirth or pregnancy loss, or face serious illness; they need a program that will meet their needs.
- Temporary disability insurance provides critically-needed but woefully inadequate income support to New York women for pregnancy-related disabilities—nearly 30% of claims for benefits for one’s own health are based on pregnancy and pregnancy-related complications¹—and recovery from childbirth.
- Improving benefits for one’s own health by ensuring that it provides a meaningful monetary benefit and employment protections will mean that pregnant people in New York can take the time they need to protect their own health and the health of their pregnancy—for instance, to attend prenatal appointments or for pregnancy complications.
- At the same time, improving benefits for one’s own health will ensure that pregnant people can take the time they need to mentally and physically recover from the full range of pregnancy outcomes—be that a healthy childbirth, a miscarriage, or a stillbirth. Without improvements to benefits for one’s own health, if a woman experiences a

miscarriage, her partner can take job-protected time off with a substantial monetary benefit to care for her via paid family leave. The woman herself, however, can receive only \$170 per week while she mentally and physically recovers from her loss and has no right to return to her job when she is recovered. Improving benefits for one's own health will fix this absurd disparity.

- Improving benefits for one's own health is also a crucial means of addressing the entire broad range of health needs affecting women, from recovering from breast cancer to healing after an accident.
- Women in New York also depend on paid family leave benefits to allow them to take the time they need to care for loved ones. Since the burden of caregiving still falls disproportionately on women due to long-standing gender norms, improving the portability of paid family leave benefits to make the benefit more accessible to workers as they move between jobs or experience periods of unemployment will disproportionately impact women.
- **In Particular, Building the Paid Family and Medical Leave New Yorkers Need Will Help Address the Black Maternal Health Crisis**
 - There is an ongoing Black maternal health crisis in New York—Black birthing women in New York State are nearly *three times* as likely to die than white women.² Building the paid family and medical leave New Yorkers need is a crucial part of the response to this crisis. By making key fixes to New York's temporary disability and paid family leave program, New York can ensure that Black pregnant workers can take the time they need to care for their health and the health of their pregnancies without risking their job or sacrificing their economic security.
 - Black women are significantly overrepresented among low-wage workers,³ and as a result, are particularly likely to be in an economically-precarious position during pregnancy—an already economically-vulnerable time for many. Without a livable benefit, Black pregnant workers may have no choice but to compromise their health by staying at work longer than is healthy, returning to work sooner than they are ready, or putting off needed leave.
 - Black workers are also more likely to be terminated after taking leave, leaving them particularly vulnerable in the absence of job protection. In a focus group of New York workers, job protection emerged as the key barrier to leave-taking for Black and Latinx workers.⁴ Without job-protected leave, Black pregnant workers may be forced to risk their health during pregnancy rather than risk their and their family's economic security.
 - Due to systemic racism, workers of color are more likely to experience longer periods of unemployment than white workers. Among unemployed workers in

2021, Black, Asian, and Latinx workers were all more likely to be unemployed for more than 15 weeks than white unemployed workers.⁵ Improving the portability of paid family leave benefits is crucial to ensuring that women of color, and Black women in particular, can access paid family leave benefits when they need them.

Building the Paid Family and Medical Leave New Yorkers Need Will Support Workers with Disabilities

- Approximately 1 in 5 New Yorkers has a disability,⁶ and many more New Yorkers—including many with disabilities themselves—care for someone with a disability. People with disabilities and those who care for them often need leave from work to manage disability-related health needs. People with disabilities and those who care for people with disabilities need and deserve a paid family and medical leave program that works for them, allowing workers with disabilities to maintain employment and ensuring that people with disabilities and their families can maintain their economic security.
- People with disabilities are disproportionately lower-income, and families with members with a disability are disproportionately likely to experience financial difficulties.⁷ Nearly half of families with a member with a disability live in or near poverty.⁸ This makes a livable paid leave benefit for one's own serious health condition especially crucial for workers with disabilities, as they can scarcely afford unpaid or poorly paid leave.
- At the same time, the lack of employment protections for leave due to one's own serious health needs is a major barrier to employment for people with disabilities. People with disabilities are disproportionately likely to be unemployed, and people of color with disabilities are significantly more likely to be unemployed than their white counterparts.⁹
- Moreover, it is crucial that those who care for loved ones with disabilities—which includes a large number of people who have disabilities themselves¹⁰—are able to use the paid family leave benefits they have paid for. Many family caregivers for people with disabilities have to make changes to their employment situation, including quitting their jobs for periods of time, due to their caregiving responsibilities.¹¹ As they move between jobs or experience periods of unemployment, family caregivers need to be able to access their paid family leave benefits, especially considering that families that include members with disabilities are likely to be less financially secure than families without members with disabilities.¹²

Building the Paid Family and Medical Leave New Yorkers Need Will Assist with Recovery from COVID-19

- The pandemic is likely to be a mass-disabling event, as 50% percent of those who survive COVID-19 develop long-term physical and psychological health symptoms.¹³ Improving

benefits for one's own health needs is crucial to New York's response to both the health and economic consequences of the pandemic as it continues now and in the years to come.

- An improved wage-replacement rate and benefits cap for benefits for one's own health needs will help those who struggle with long COVID care for their long-term health needs and employment protections for benefits for one's own health needs will ensure that they can do so without risking their jobs.
- Ensuring that benefits for one's own serious health needs come with real employment protections will help to ensure that those who are dealing with the long-term effects of COVID-19 can stay attached to the workforce while caring for their health. By helping businesses retain valuable employees, job-protected medical leave can significantly cut down on turnover costs. Businesses spend, on average, around 21% of an employee's salary to replace that employee if the employee quits.¹⁴ This is especially crucial at a time when—due to the economic fallout of the pandemic—many businesses are desperately seeking qualified employees.
- Improved portability for paid family leave benefits is a crucial response to the massive workforce disruption precipitated by the pandemic. In particular, it is a crucial step towards recovery from the “she-cession”—as a result of the pandemic and lack of social support, women have left the workforce in droves due to caregiving responsibilities.¹⁵ These women need to be able to access their paid family leave benefits as they re-enter the workforce and simultaneously continue to balance family caregiving responsibilities. Without improved portability, they may have difficulty accessing the benefits they need during periods of continued unemployment or as they begin new jobs.

Building the Paid Family and Medical Leave New Yorkers Need Will Help Address the Substance Use Crisis

- Improving benefits for one's own health can help fight substance abuse, including the rising threat of opioid abuse, which costs our nation over \$740 billion each year.¹⁶
 - In 2019, approximately 69% of those over the age of 18 who reported use of illicit drugs (including misuse of certain prescription medications) in their lifetime were employed.¹⁷ More than 70% of employers have felt some effect of prescription drug usage in the workplace.¹⁸
 - A recent report found that substance abuse was the leading cause of pregnancy-associated deaths in New York State.¹⁹ Accordingly, addressing substance use is a key component of ensuring maternal health and addressing the maternal health crisis. Improving TDI so that those with substance use disorders can seek the treatment they need is a crucial step in this process.

- Key treatment options, including both in-patient and outpatient care,²⁰ generally require time off work, which is why treatment of substance use disorders is covered under existing leave laws.²¹ Improving TDI will make many key treatment options significantly more accessible to workers.
- Recovery benefits workers, their families, and their employers. Workers in recovery from substance use disorders have the lowest rates of turnover and absenteeism—lower, even, than the general workforce.²²
- Those with substance use disorders often rely on the assistance of family caregivers. For family caregivers themselves, this could impact labor force attachment and require periods of unemployment. Improving paid family leave portability will ensure that those caregivers can access the benefits they paid for through payroll contributions during those times when they stop working to care for a loved one.

Building the Paid Family and Medical Leave New Yorkers Need Will Support Veterans and Military Families

- Veterans often return home from their service with significant service-related health needs that will require ongoing care throughout their lives.
 - These include both physical and mental health needs, including post-traumatic stress disorder (PTSD). Post-9/11 veterans in particular have a 43% chance of having a service-connected mental or physical disability.²³
 - Many veterans also suffer from substance use disorders—prescription opioid abuse in particular is on the rise among veterans—after their return from service, which is strongly related to PTSD.²⁴
- These needs require ongoing care throughout their lives and often result in a need for leave for medical care. Veterans deserve the leave they need for ongoing health needs. Updating benefits for one’s own health to provide a meaningful monetary benefit and to provide job protections will ensure that veterans can take the time they need to address service-related health needs without sacrificing their economic security.
- Improved paid family leave portability is crucial to ensuring that military families are able to take the leave they need for deployment-related needs—and the needs that face all families. Without portable paid family leave benefits, military spouses—who are especially likely to move between jobs due to relocation, and to experience periods of unemployment due to both relocation and the demands of caring for servicemembers²⁵—may not have benefits available to them when a deployment-related need for leave arises.

¹ FISCAL POLICY INSTITUTE, REFORM OF NEW YORK’S TEMPORARY DISABILITY INSURANCE PROGRAM AND PROVISION OF FAMILY LEAVE INSURANCE: ESTIMATED COSTS OF PROPOSED LEGISLATION 27 (2014), <https://fiscalpolicy.org/wp-content/uploads/2014/06/Reform-of-NY-TDI-and-FLI.pdf>.

² See NEW YORK STATE TASKFORCE ON MATERNAL MORTALITY AND DISPARATE RACIAL OUTCOMES, RECOMMENDATIONS TO THE GOVERNOR TO REDUCE MATERNAL MORTALITY AND RACIAL DISPARITIES 5 (2019), https://www.health.ny.gov/community/adults/women/task_force_maternal_mortality/docs/maternal_mortality_report.pdf.

³ See *5 Facts About Black Women in the Labor Force*, Dep't of Lab. (Aug. 3, 2021), <https://blog.dol.gov/2021/08/03/5-facts-about-black-women-in-the-labor-force>.

⁴ NANCY RANKIN & MARGARET MARK, COMMUNITY SERVICE SOCIETY, A NECESSITY NOT A BENEFIT: NYC'S LOW-INCOME MOMS DISCUSS THEIR STRUGGLES WITHOUT PAID LEAVE AND JOB SECURITY (2015), <https://www.cssny.org/publications/entry/a-necessity-not-a-benefit>.

⁵ U.S. Bureau of Lab. Stats., Labor Force Statistics from the Current Population Survey (July 2, 2021), https://www.bls.gov/web/empsit/cpsee_e18.htm.

⁶ New York State Dep't of Health, *Disability in New York State* (last visited March 14, 2022), <https://www.health.ny.gov/community/disability/prevalence.htm#:~:text=Based%20on%20responses%20to%20the,an%20impairment%20or%20health%20condition..>

⁷ See KALI GRANT ET AL., GEORGETOWN L. CTR. ON POVERTY & INEQUALITY AND THE ARC, SECURITY & STABILITY: PAID FAMILY AND MEDICAL LEAVE AND ITS IMPORTANCE TO PEOPLE WITH DISABILITIES AND THEIR FAMILIES 8-9 (2017), http://www.thearc.org/wp-content/uploads/forchapters/Georgetown_PFML-report_Dec17.pdf.

⁸ *Id.* at 10.

⁹ *Id.* at 7-8.

¹⁰ SUMA SETTY ET AL., *supra* note 37, at 3 (“Study participants often reported providing primary support for multiple people, and many caregivers in this study also identified having a disability, a serious health condition, or both.”)

¹¹ See KALI GRANT ET AL., *supra* note 34, at 9.

¹² *Id.* at 10.

¹³ See Linda Searing, *50 Percent of People Who Survive Covid-19 Face Lingering Symptoms*, WASH. POST (Nov. 15, 2021, 8:00 AM), https://www.washingtonpost.com/health/long-covid-50-percent-lingering-symptoms/2021/11/12/e6655236-4313-11ec-9ea7-3eb2406a2e24_story.html.

¹⁴ HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT COSTS TO REPLACING EMPLOYEES (2007), <https://cdn.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>.

¹⁵ See, e.g., Alisha Haridasani Gupta, *Covid Shuttered Schools Everywhere. So Why Was the ‘She-cession’ Worse in the U.S.?*, N.Y. TIMES (May 28, 2021), <https://www.nytimes.com/2021/05/28/us/shecession-america-europe-child-care.html>.

¹⁶ NAT'L INST. ON DRUG ABUSE, *Costs of Substance Abuse*, <https://www.drugabuse.gov/drug-topics/trends-statistics/costs-substance-abuse#supplemental-references-for-economic-costs> (last accessed July 22, 2021).

¹⁷ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, RESULTS FROM THE 2019 NATIONAL SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES, Table 1.22A (Aug. 2020), <https://www.samhsa.gov/data/report/2019-nsduh-detailed-tables>.

¹⁸ Deborah A. P. Hersman, *How the Prescription Drug Crisis is Impacting American Employers* (2017), <https://www.nsc.org/getmedia/91c89bfc-cc57-4de2-a327-b2c265d965e5/media-briefing-national-employer-drug-survey-results.pdf.aspx>.

¹⁹ See NEW YORK STATE TASKFORCE ON MATERNAL MORTALITY AND DISPARATE RACIAL OUTCOMES, *supra* note 2, at 4.

²⁰ NAT'L INST. ON DRUG ABUSE, PRINCIPLES OF DRUG ADDICTION TREATMENT: A RESEARCH-BASED GUIDE (THIRD EDITION) (2018), <https://www.drugabuse.gov/download/675/principles-drug-addiction-treatment-research-based-guide-third-edition.pdf?v=74dad603627bab89b93193918330c223>.

²¹ 29 C.F.R. § 825.119(b).



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²² Eric Goplerud et al., *A Substance Use Cost Calculator for U.S. Employers with an Emphasis on Prescription Pain Medication Misuse*, 59 J. OCCUPATIONAL ENVIRONMENTAL MED. 1063, Table 4 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5671784/>.

²³ JONATHAN E. VESPA, *THOSE WHO SERVED: AMERICA'S VETERANS FROM WORLD WAR II TO THE WAR ON TERROR 2* (2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acs-43.pdf>.

²⁴ See, e.g., Jenni B. Teeters et al., *Substance Use Disorders in Military Veterans: Prevalence and Treatment Challenges*, 8 SUBSTANCE ABUSE & REHABILITATION 69 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5587184/>.

²⁵ See *Military Spouses in the Labor Market*, The Council of Econ. Advisers 9 (May 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/05/Military-Spouses-in-the-Labor-Market.pdf>.