

Best Practices for State NICU Leave Policies

In the United States, nearly 10% of babies are admitted to the neonatal intensive care unit (NICU) for specialized care.¹ A NICU stay is often an unplanned and unforeseeable situation that can leave families reeling. **During such an emotionally trying time, working NICU parents have a unique need for leave that allows them to be present in the NICU with their baby without risking their income or job security.**

Research shows that parental presence in the NICU and more skin-to-skin care from NICU parents is associated with better developmental outcomes for NICU babies. Far too often, however, NICU parents burn through their parental or other paid leave—if they receive any at all—while their child is in the NICU and then have no time to bond or attend important follow up appointments with their baby once they are discharged. Many other NICU parents may forego taking workplace leave available to them while a baby is in the NICU in order to preserve their time off for when a NICU baby comes home. **Standalone NICU leave—separate and additional to other time off—gives parents of NICU babies the opportunity to care for and spend essential time with them without truncating their critical bonding time once the baby comes home.**²

Fortunately, states are leading the way to provide NICU leave. A Better Balance worked with state partners to secure a paid NICU leave expansion that added 12 additional weeks of NICU leave to Colorado's Paid Family and Medical leave program, which went into effect in January 2026. Illinois also passed an unpaid NICU leave law, ensuring that NICU parents would not lose their jobs while their baby is in the NICU, which went into effect in June 2026. With these two state examples, and the hope for other states to follow suit, this document highlights several key provisions and best practices that state policymakers and advocates should include in a NICU leave bill.

Advocates can pursue multiple types of policies for NICU leave, depending on the opportunities available. Some of these include:

- Paid NICU leave for all workers;
- Paid NICU leave for state government employees and/or educators; and/or
- Unpaid job-protected NICU leave for all workers

Whatever approach is taken, state policymakers should consider these best practices, in order to make NICU leave as accessible and effective as possible for the families who need it the most.

Wage Replacement

Providing NICU parents with *paid* time off to care for their NICU infant is ideal, if possible. A paid NICU leave law should provide as close as possible to full wage replacement.

- Paid NICU leave allows parents to be present for their baby in the NICU and manage essential caregiving responsibilities without losing their income. Furthermore, paid NICU leave will support birthing parents who are recovering from childbirth at the same time.

- Wage replacement under a paid NICU leave bill should be as close as possible to an individual's full salary or wages. Otherwise, many low-wage workers won't be able to afford to take the time off.
 - In addition to medical bills, parents with a child in the NICU also face many other expenses.³ For example, parents with a baby in the NICU may incur additional and unexpected costs including transportation, lodging, and childcare costs for other children. Transportation costs can also be a major burden for NICU parents, especially for those who must travel long distances to be present with their baby—a reality for many NICU parents who live in rural parts of the country or who live in regions where NICUs are limited.
 - Due to these costs associated with a NICU stay, NICU parents may quickly spend any money that was initially set aside for the regular costs that arise after a child's birth.
- **State Example:** For all purposes, including NICU leave, Colorado's Paid Family and Medical Leave Program provides wage replacement benefits on a sliding scale up to 90% of the employee's average weekly wage.

Job-Protected Leave and Health Insurance Continuation

Any NICU leave law must ensure both job protection and the continuation of health care benefits for workers, so that parents can take the time needed to care for their baby without fear of losing their jobs or access to critical medical coverage.

- Job protection is a critical component of any NICU leave law, whether it is a paid or unpaid policy. Job-protected time off allows parents to spend time with their NICU infant, rest, recover, and adjust to their new normal without the worry that they must choose between job security and being there for a medically fragile new baby.
- In an unpaid NICU leave law, workers should have the option to elect to substitute any paid leave they are already entitled to, during their otherwise unpaid NICU leave period. However, employers should not be able to require workers to use existing paid leave; it should be up to the worker whether to substitute existing paid leave, since many new parents of a NICU baby may want to save other paid time off—like sick leave—to help care for ongoing or regular health needs.
- Employers should be required to maintain health benefits during the NICU leave period. It is critical for workers to keep their health insurance benefits to address health needs related to childbirth, postpartum recovery, and having a NICU baby.
- As in other workplace leave laws, employees should not be required to find a substitute worker in order to take NICU leave under the law. This responsibility is more appropriate for an employer, rather than workers who unexpectedly find themselves in the NICU with a new child.
- **State Examples:** Both Colorado's paid NICU leave law and Illinois' unpaid NICU leave law protects eligible parents' jobs while they are taking NICU leave. While the Illinois law is unpaid and, therefore, less accessible for workers living paycheck to paycheck, it is still a critical step in supporting NICU parents. Both laws also: 1) require continuation of health insurance during the NICU leave; and 2) state that employers cannot *require* workers to use or substitute other paid time off, sick leave, or vacation before or while the worker is taking NICU leave.

Duration of Leave and Coverage Regardless of Business Size

A NICU leave law should ensure that working parents have adequate time to be with their baby in the NICU, regardless of their employer's size.

- A strong NICU leave law would provide at least 12 weeks of leave for an eligible worker with a baby in the NICU, regardless of business size. The availability of up to 12 weeks of leave would provide support to the minority of parents whose children are faced with longer-term NICU stays. Meanwhile, a parent whose child is in the NICU for a shorter period of time would receive NICU leave only for the period that their child is in the NICU and not need to use the full 12 weeks.
- Since research shows that most NICU stays are less than 12 weeks, many NICU parents will not need to use the full amount of time available to them. However, providing at least 12 weeks will provide essential support to NICU parents whose babies have longer stays and more complex health needs.
- Although the length of stay can vary depending on gestational age and the necessary level of care, research shows that, on average, babies stay in the NICU for about 14 days, although it can vary from as little as three days (10th percentile) to 34 days (90th percentile), or more.⁴
- A baby's stay in a NICU is a challenging and stressful time, but the ability for a parent to be present through this time can also be rewarding. Parents watch their babies grow and start to build the parent-child relationship in the NICU.⁵ Parental presence has also been shown to have positive developmental impacts on preterm infants.⁶ For babies with difficult health journeys, every minute of a family being together in the NICU is invaluable.
- If the duration of leave is too short, parents may be forced to exhaust all other leave available to them (even sick leave that may be needed for a NICU baby's ongoing health needs following discharge from the NICU), return to work before their baby has been discharged from the NICU, or leave the workforce altogether. When NICU parents are given adequate time off to care for a new child, they are more likely to return to their job, a positive outcome for both workers and employers.
- **State Examples:** The laws in Colorado and Illinois reflect a range of approaches, with Colorado serving as the best practice. Colorado law provides up to 12 weeks of paid leave for the period a baby is in the NICU, in addition to 12 weeks of paid family and medical leave to bond with new babies when they return home. Illinois' NICU leave law provides up to 10 unpaid days for those working in certain small businesses (i.e., 2 weeks for a worker who works a 5-day workweek) or 20 unpaid days for larger businesses (i.e., 4 weeks for a worker who works a 5-day workweek).

Ensure Flexibility in the Scheduling of NICU Leave

A NICU leave law must provide working parents with the flexibility to determine how to schedule their NICU leave.

- The decision to take NICU leave continuously, intermittently (separate blocks of time), or on a reduced schedule (working continuously, but at a part-time or “reduced” schedule) should be in the hands of the parents.
- NICU leave should not be treated differently than other types of leave such as medical, bonding, or family care, which are typically available in flexible increments based on an individual’s needs.
- While discussions with NICU parents and advocates suggest that most leaves are likely to be continuous, it may make more sense for a worker to take intermittent or reduced schedule leave, depending on the individual and unique needs of the family. For example, a two-parent family may have a NICU baby who is admitted to the closest NICU facility three hours away. They may choose to have one parent stay in a hotel near the NICU, while the other parent may split their time between home—where they may need to care for other children or relatives as well—and seek intermittent leave to be at the NICU several days a week as opposed to every day. If a NICU leave law is unpaid, it may be even more likely in this scenario that a parent may choose to work intermittently in order to preserve some wages during this period.
- **State Examples:** Colorado gives workers the choice to take NICU leave continuously, intermittently, or on a reduced schedule. Illinois gives workers the choice to take NICU leave continually or intermittently.

Gender-Neutral Language

Gender-neutral language gives all parents the opportunity to be present for their NICU infant during such a stressful time.

- A strong NICU leave law will contain gender-neutral language, reflecting and protecting the diversity of modern families and reality of caregiving today. It should allow both a birthing and non-birthing parent to take NICU leave when they have a child in the NICU.
- Any definition of “child” should be inclusive of biological, adopted, foster, step, or *in loco parentis* relationships.
- In two-parent families, the birthing parent may be recovering from childbirth or dealing with complications, making it even more important for the other parent to have access to leave to support their family’s health needs and provide care to the NICU baby. Fathers should have equal access to NICU leave as mothers.
- **State and Federal Examples:** Both Colorado and Illinois use gender-neutral language in their NICU leave laws. Also, all 15 state paid family and medical leave programs for bonding with a new child are gender neutral, like the federal Family and Medical Leave Act (FMLA). Nearly all state paid leave laws, as well as the federal FMLA, define child inclusively to include biological, adopted, foster, step, and *in loco parentis* relationships.

Accessible Documentation and Realistic Notice Requirements

Documentation and notice requirements for workers taking NICU leave should be reasonable and not overly burdensome.

- It is a best practice to avoid onerous documentation requirements for NICU parents. Although certification of a NICU stay is important, the requirements of certification should not add a greater burden to parents during such a stressful and demanding time.

- Provide a reasonable time frame for submitting documentation, which takes into account the urgent and stressful nature of a NICU stay. Providing *at least* 30-60 days to submit necessary documentation from a NICU facility is a best practice, if possible; the policy should also allow a waiver of this deadline for good cause.
- Straightforward documentation that the worker's child is in the NICU and documentation that the child has been discharged from the NICU should be considered sufficient certification for the start and end of a NICU leave.
- If building upon an existing paid parental leave or family leave program, a NICU leave expansion should make the transition from NICU leave to other types of leave (parental bonding, medical and/or postpartum recovery) as seamless as possible. After the baby is discharged from the NICU, parents should be able to transition to bonding leave without cumbersome documentation requirements or filing an entirely new claim.
 - For example, medical documentation of a child's discharge from the NICU could be sufficient to both end the NICU leave and start separate parental leave to bond with the baby.
- Notice requirements for taking NICU leave should be flexible, allowing workers to provide notice to their employer as soon as practicable. Advance notice of a preterm delivery and NICU admission likely will not be possible. Moreover, it may not be practicable for workers to provide immediate notice, given the instant demands of childbirth and/or caring for a baby in the NICU.

Strong Enforcement

Any NICU leave bill must include strong protections against retaliation and discrimination, as well as accessible means to enforce a worker's rights (through both administrative action and the ability to file a complaint in court).

- If a violation is found, clear financial penalty for violations, equitable and injunctive relief, and attorney's fees should be available.
- Workers should have access to a private right of action in order to hold employers who violate the NICU leave law accountable in court.
 - Workers often prefer going to a state administrative agency when a law is violated. However, the ability to instead go to court can provide an important safeguard, especially if an agency is overwhelmed, facing significant delays, or choosing for any reason not to robustly enforce the NICU leave law.
- **State Examples:** The NICU leave laws in Colorado and Illinois provide both private rights of action to go to court and administrative enforcement.

Avoid Unjust Penalties for NICU Parents if a Baby Passes

NICU parents shouldn't be expected to immediately notify the state or an employer of a baby's passing during such a devastating and tragic moment. Policies should provide a grace period for notification, and at least two weeks of continued benefits and/or leave, if possible. Providing at least two weeks of additional leave can help NICU parents make funeral arrangements, start to process their grief and trauma, as well as take time to continue recovering from childbirth (if applicable).

- Advocates should also consider opportunities for broader bereavement leave for the loss of a child or other loved one.
- During this additional two-week period, the law should continue job-protection, health insurance benefits, and paid benefits if applicable.
- **State Examples:** In both Delaware and Maryland’s paid family and medical leave programs, workers caring for a seriously ill family member who passes away receive up to seven additional days of benefits following the loved one’s death.

¹ Martin JA & Osterman MJK, *Increases in neonatal intensive care admissions in the United States, 2016–2023*. National Center for Health Statistics Data Brief No. 525 (March 2025), <https://www.cdc.gov/nchs/products/databriefs/db525.htm>.

² A Better Balance, *Issue Spotlight: NICU Leave is a Common-Sense Policy that Supports Working Families and Improves the Health of NICU Parents and Babies* (January 2026), <https://www.abetterbalance.org/resources/issue-spotlight-nicu-leave-is-a-common-sense-policy-that-supports-working-families-and-improves-the-health-of-nicu-parents-and-babies/>.

³ *Id.*

⁴ Zehra Valencia et al., *NICU Admissions and Spending Increased Slightly from 2017-2021*, Health Care Cost Institute (July 2023), <https://healthcostinstitute.org/all-hcci-reports/nicu-use-and-spending-1/>.

⁵ Roberta Pineda et al., *Parent Participation in the Neonatal Intensive Care Unit: Predictors and Relationships to Neurobehavior and Developmental Outcomes*, *EARLY HUMAN DEVELOPMENT* 117, 32–38 (2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5856604/>.

⁶ *Id.*