



# Comprehensive Paid Family and Medical Leave for Today's Families and Workplaces

Crafting a System that Builds on the Experience of Existing Federal and State Programs

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Heather Boushey and Sarah Jane Glynn August 2012



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**ON THE COVER:** Deborah Surine, a Cornell University employee, picks flowers with her two-year-old daughter Olivia, who was adopted from Guatemala, at their home in Freeville, N.Y. Since 2005, about 30 employees at Cornell University have taken advantage of the school's adoption benefits, which include \$5,000 in aid per adoption and up to 16 weeks of partially paid leave.

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# Introduction and summary

*“Our idea of what constitutes social good has advanced with the procession of the ages, from those desperate times when just to keep body and soul together was an achievement, to the great present when “good” includes an agreeable, stable civilization accessible to all, the opportunity of each to develop his particular genius and the privilege of mutual usefulness.”*

— Frances Perkins, *People at Work*, 1934.

Frances Perkins, the first woman cabinet secretary in U.S. history and the prime mover of the New Deal as secretary of labor under President Franklin D. Roosevelt, understood how the American society and economy were changing during the Great Depression and how the federal government needed to respond. The Social Security Act of 1935 aimed to provide income support to families when a breadwinner could not work. The new law established benefit programs for older workers, the unemployed, and the poor children of widows. As originally passed, the law’s provisions were grounded in a series of assumptions about how families were structured and whose work “counted”: Men were breadwinners, women were caretakers, disability was not a covered condition, and African Americans were largely excluded.

But in the spirit of Perkins’s observation that “‘good’ includes an agreeable, stable civilization accessible to all,” the Social Security system has changed over time, in many ways updated to reflect the new realities of American family life and work over the ensuing decades. Yet glaring omissions remain. In the 1930s it might have been reasonable to assume that workers were not also their family’s caregivers, although many workers—especially women, women of color, and immigrants—often played both roles. In 2012 this is no longer a reasonable assumption.

Most workers today are also caregivers at some point. In nearly two-thirds of families with children, a mother brings home at least a quarter of the family’s earnings and, with an aging baby boomer population, more and more workers are caring for

an elderly parent or an aging relative.<sup>1</sup> Further, medical advancements and equal employment opportunity laws have allowed seriously ill and disabled workers to stay in the workforce, and while some are provided unpaid, job-protected time off to deal with their medical conditions, there is no national short-term disability policy.

More than three decades ago, our nation began to recognize that employees need time away from work to provide care for a child or ailing loved one. The Pregnancy Discrimination Act of 1978 was a first step that protected some new mothers from being fired and provided them with access to some benefits, depending on the policies of their employer. The Family and Medical Leave Act of 1993 expanded on this by providing both men and women job-protected, unpaid leave to recover from an illness, care for an ill family member, or bond with a new child.<sup>2</sup> The Family and Medical Leave Act was an enormous accomplishment because it was the first federal legislation giving workers access to time off to provide care, following the footsteps of the 34 states that had already implemented some type of family leave legislation.<sup>3</sup>

Yet the Family and Medical Leave Act today only covers about half of the U.S. workforce due to requirements regarding job tenure and employer size. And it is unpaid, making it inaccessible to millions of workers who simply cannot afford to take time off due to their financial situations.<sup>4</sup> Recognizing the need for paid family leave that is available to all workers, two states, California and New Jersey, have put in place such programs over the past decade, which were built on longstanding, state temporary disability insurance programs.

In this paper and in three companion papers, the Center for American Progress proposes to build on the tradition of modernizing Social Security as socioeconomic conditions change through a program we call “Social Security Cares,” which will follow the footsteps of the Family and Medical Leave Act and these leading states by implementing paid family and medical leave insurance.<sup>5</sup> The proposed program builds on the kind of qualifying conditions recognized by the 1993 Family and Medical Leave Act to help workers who need time out of the labor force to provide care for a seriously ill family member, to recover from a personal illness, or to bond and care for a new child. Our proposal builds on the dynamic history of Social Security reform to meet the American workforce’s changing needs as well as the recent state efforts to make sure that the program includes all workers who need access to such benefits.

Based on the analysis in this report, we propose that the Social Security Cares program use the same work history eligibility criteria as the Social Security Disability Insurance program. These work-history eligibility requirements look back over

The Family and Medical Leave Act today only covers about half of the U.S. workforce due to requirements regarding job tenure and employer size.

an individual's entire work history, while taking their current age into account. In this way, workers who have a lengthy work history but changed jobs in the last year because they were laid off or conversely did so to raise their income do not automatically lose their eligibility. This is especially important for paid family and medical leave insurance because the program needs to cover young workers and those with disabilities. Further, these rules do not unnecessarily exclude employees in small businesses.

This modernization of Social Security would tap into a traditional American value: If you work hard and pay into the system, you will be able to receive something when you need it. This core value of the American work ethic is part of the reason why Social Security has one of the highest levels of public support of any government program. More than 60 percent of adults have consistently rated Social Security as one of the most important government programs for the last quarter century, and more than 80 percent of adults believe that everyone who pays into Social Security should be able to receive benefits, reflecting basic American values of fairness and that hard work should be rewarded.<sup>6</sup>

Indeed, adding paid family and medical leave to Social Security would help workers with care responsibilities keep their jobs by modernizing Social Security to reflect the realities of today's workers. The program is structured to support and encourage continued labor force participation as outlined in one of our companion reports, "The Effects of Paid Family and Medical Leave on Employment Stability and Economic Security."<sup>7</sup> But to help support those who are full-time, stay-at-home caregivers, we also encourage the adoption of what we call "caregiver credits," which allow Social Security to deem time taken off from work to provide care as paid for the purposes of receiving credit toward Social Security benefits.<sup>8</sup> This proposal is outlined in another companion report "Protecting Workers and Their Families with Paid Family Leave and Caregiving Credits: Why Social Security Should Guard Against 21st Century Economic Insecurities."<sup>9</sup>

This paper first explores the purpose of the Social Security Act and how it has been modernized to meet the needs of America's changing families over the past three-quarters of a century. Next, we examine how the rules can be crafted to make sure that paid family and medical leave reaches the workers who need it most. And we estimate the levels of coverage that would result from different sets of eligibility rules. The details are presented in the main pages of this report, but briefly we call for paid federal family and medical leave to use an inclusive work history criteria, such as the kind of rules laid out in the existing Social Security

Disability Insurance program, rather than the job tenure and firm size eligibility criteria embedded in the rules governing unpaid leave under the federal Family and Medical Leave Act.

This will ensure that workers who need the benefits—particularly groups of workers who are the least likely to have access to employer-provided family and medical leave as well as those who are least likely to be able to afford to outsource caregiving to paid professionals—are included in the program. Crafting a program such as this to support employment of all workers with care responsibilities is the next step for modernizing our nation’s most important social insurance program, fulfilling the promise of Social Security’s mission. Enacting this reform would be true to the spirit of Frances Perkins’s ambition seven decades ago amid another trying economic era: “The opportunity of each to develop his particular genius and the privilege of mutual usefulness.”

# Adapting to changes in workplaces and families

Our proposal to provide paid family and medical leave to U.S. workers fits squarely within the federal government's three-quarter-century-long tradition of providing income support to workers who are unable to participate in the labor force. The United States has a history of publicly funded social benefits for retired workers, the unemployed, and poor women and their children that reflects a longstanding commitment to providing for individuals and their dependents in instances where they are unable to work and support themselves or not expected to do so based on the contemporary social norms.

These programs began in response to heightened economic insecurity as families moved off the farm and into industrial employment. Social Security Cares would modernize and update Social Security to reflect the composition and realities of 21st century families. Here's a brief synopsis of the most important of these laws.

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## The Social Security Act of 1935

The Social Security Act, developed by Secretary of Labor Frances Perkins and signed into law by President Franklin Delano Roosevelt in 1935, built on state programs and the Civil War Pensions. It was designed to ameliorate the new insecurities that workers and their families experienced as they became reliant on a wage earner, typically a male breadwinner. The new law established two national social insurance programs, retirement benefits for workers after they reached the age of 65, and unemployment compensation administered by the states for those who had lost their job through no fault of their own. The Social Security Act also created federal grants to states for means-tested programs for the aged, the blind, maternal and child health and welfare services, and public health services and services of vocational rehabilitation. (See Appendix B on page 39 for a list of current Social Security programs and coverage.)

The Social Security Act was a product of its time. Deeply influenced by prevailing assumptions about who worked and who provided care, it was based on the premise that the only worker whose earnings needed to be replaced was typically a male breadwinner and that only his old age, death, or involuntary unemployment were reasons his family would need income support. In 1935 most families—or at least most white families—had a male breadwinner, and a stay-at-home wife to provide unpaid care to children, the sick, and the elderly. It also strove not to discourage labor force participation but to help only those who could not work.

The Social Security Act reflected the economic and social changes that had occurred since the 1800s. The Industrial Revolution transformed U.S. workers from self-employed agrarians into wage-earning employees. By 1920 more than half of the population lived in urban areas rather than on farms. The mass exodus to the city changed the composition of families. Rather than having multiple generations under one roof, families were more likely to consist of parents and their minor children. And in the midst of these other changes, life expectancy increased dramatically due to public health programs, better access to health care, and better sanitation. These shifts together profoundly changed the nature of work and family in the United States in the early 20th century.

The federal pension program—known as Title II in the original Social Security Act and what we now refer to as simply “Social Security”—was paid out of current workers’ contributions (a “pay-as-you-go” system), designed to supplement private pensions. Eligibility for the pension depends on a history of employment and payment into the system by the recipient or the spouse. The contribution end of the system is regressive because the tax only applies to earned income up to a fixed maximum, but the distribution end is progressive, repaying more to low earners relative to their contributions.<sup>10</sup>

The Social Security Act also built on the policies developed in the United States at both the federal and state level in the preceding decades. Harvard historian Theda Skocpol argues that the Civil War Pension program, which began in 1862 shortly after the start of the war, laid the groundwork for Social Security’s retirement program.<sup>11</sup> While the original legislation only allowed benefits for Union soldiers who became disabled in the line of duty, later changes expanded the program to cover both Union and Confederate veterans who became disabled later in life and eventually veterans in old age. Widows and orphans could also qualify for benefits equal to what would have been available to their veteran husbands and fathers.

While we tend to now think of Social Security's retirement benefits as fairly inclusive, when the Act was signed into law in 1935, about half of all workers were excluded from retirement benefits, benefits were not provided for a worker's dependent spouses or minor children, and there were no benefits for family members if a worker was deceased.<sup>12</sup> The original text limited the old age insurance and unemployment compensation to workers in commerce and industry, which had the effect of excluding federal and state level employees, agricultural workers, and domestic workers.<sup>13</sup> As a result, about two-thirds of working African Americans, about one-third of whites, and more than half of women were not covered.<sup>14</sup>

The Social Security Act established two programs that provided benefits to healthy, working-age adults, an unemployment compensation program, which is administered by the states according to federal guidelines, and Aid to Dependent Children, which was modeled on the state mothers' pension programs.

Unemployment insurance provides income support to workers who have lost their job through no fault of their own. With workers and their families dependent on earnings from employment to make ends meet, involuntary unemployment can have a devastating effect on family well-being. Like Social Security's pension program, unemployment insurance is insurance-like, since workers' income risks are pooled and payments into the system (insurance premiums) are made based on expected benefit. If workers meet certain eligibility requirements (such as a minimum duration of employment, sufficient earnings, and a qualifying job separation), they are eligible to receive benefits from these programs regardless of wealth or nonwage income. The structure of these programs links eligibility to work effort and is reserved for those workers with regular employment. The funds for these programs come from specific taxes on employment, which economists agree are typically paid by workers ultimately, rather than general revenues paid by the whole population.<sup>15</sup>

Unemployment insurance, as originally conceived under the Social Security Act of 1935, excluded a wide variety of workers, from those in agricultural and domestic work to professionals, nonprofit employees, and workers in federal, state, and local governments.<sup>16</sup> Even today, while the unemployment insurance system imposes payroll taxes for nearly every employee, only about 40 percent of the unemployed actually receive benefits due to varying restrictions due to work histories and hours.<sup>17</sup>

Aid to Dependent Children later became Aid to Families with Dependent Children, and more recently Temporary Assistance to Needy Families. Originally

When the Social Security Act was first signed into law in 1935, two-thirds of working African Americans, about one-third of whites, and more than half of women were not covered.

designed to provide support to the children of widows, Aid to Dependent Children only provided assistance to dependent children up until the age of 15 and not to their parents, though they needed to live with a parent or guardian to be eligible.<sup>18</sup> This program was based on the mothers' pensions, which excluded unmarried mothers on the assumption that widows had lost their income when their spouse had died and married women were not expected to work.<sup>19</sup> This program was paid out of general revenues and not based on an insurance model.

Like the retirement benefits, the Social Security Act's provisions for poor mothers and the unemployed built on prior policy developments. In the decades leading up to the Social Security Act, states had begun to experiment with programs providing unemployment benefits, workers' compensation, and assistance to widows and children. By 1930, 44 states had mothers' pensions, and in 1932 Wisconsin created the first unemployment compensation system, which was quickly followed by six other states and became the model for the federal program.<sup>20</sup>

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## Modernizing Social Security and moving toward more inclusive coverage

Over time the qualifying conditions for benefits for various programs have been changed to conform better to the way that modern families live and work. These reforms have often expanded coverage to more people or covered more kinds of conditions. The law, for example, has been expanded until nearly all workers were eligible for retirement benefits and as a result, in 2006 93 percent of persons aged 65 and older received Social Security.<sup>21</sup> But in other cases the law has been curtailed to change eligibility as social norms changed. Case in point: In 1996 the welfare benefits for unmarried mothers were revamped and Congress established work requirements for nearly all welfare recipients, overturning the longstanding traditional view that the first job of mothers was caring for children rather than paid employment outside the home.

The history of adjustments and expansions of Social Security illustrates its ability to adapt and modify programs, benefits, and eligibility criteria in order to meet the changing needs of U.S. workers and their families. The common family structure of the 1930s is increasingly rare as more and more women enter the labor force. The assumptions that families rely on only a male breadwinner and that most workers are not responsible for at least some caregiving no longer holds true in a society where only one-in-five families with children has a male breadwinner and a stay-at-home mother and where more and more men are actively involved in child and elder care.<sup>22</sup>

Further, rising life expectancy, combined with an aging population, is resulting in ever-higher numbers of workers who must provide eldercare to family members. At the same time, advances in health care means that many conditions, like cancer, for example, are no longer necessarily a death sentence and many can recover and go back to work. There is also greater sensitivity to the needs of disabled workers because of the Americans with Disabilities Act of 1990.

A brief timeline of major expansions shows how this kind of incremental change has been common in the nearly century-long history of the Social Security Act:

- In 1939 the Social Security Act was amended to include benefits for the spouses and minor children of retired workers, and the surviving spouses and minor children of workers who died prematurely. This marked a significant shift as now, instead of only insuring individual workers, Social Security provided economic security to entire families in which at least one adult was employed.
- In 1954 the Social Security Act was amended to extend retirement and survivors insurance to agricultural, domestic workers, and public employees although state and local governments could continue to provide their own programs in lieu of including their workers in Social Security if their program met certain minimum requirements. This amendment also extended unemployment insurance to federal employees.
- In 1956 the Social Security Act was amended to include the provision of benefits to nonelderly people with disabilities through the creation of Social Security Disability Insurance. Initially the benefits were only available to disabled workers between the ages of 50 and 64 and adult children with disabilities.
- In 1958 the Ex-Servicemen's Unemployment Compensation Act created a permanent unemployment insurance program for those leaving the Armed Forces, replacing the temporary Veterans' Readjustment Assistance Act of 1952, which had provided benefits for veterans of the Korean War.
- In 1960 Social Security Disability Insurance was expanded to cover workers who became disabled regardless of age, provided they met labor force requirements that were age-appropriate, and to provide benefits to their spouses and minor children.

- In 1972, in the last major modernization of the components of the Act, Congress established Supplementary Security Income, which brought together what were previously state-run benefit programs for the elderly and people with disabilities who were not eligible (or only eligible for a limited amount) for contributory benefits. The hodgepodge of state benefits, which often had different eligibility requirements and benefit levels, was replaced with a federal system providing basic income support to the elderly and people with severe, permanent disabilities. Social Security insurance benefits are available regardless of work history but are subject to a strict means test and limited to those who are unable, as a result of their disability, to engage in substantial, gainful activity.
- In 2009 the Unemployment Insurance Modernization Act recognized that workers often live in dual-earner families and encouraged states to provide, among other things, unemployment compensation to certain individuals seeking only part-time work and to no longer disqualify individuals who separated from employment due to certain compelling family reasons.

Today we are once again experiencing the types of socioeconomic changes that led to the development and subsequent amendment of the Social Security Act. As a result, it is once again time for Social Security to adapt to changing conditions and to address these new realities.

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## The new breadwinners create a need for another round of modernization

There is a glaring gap in the Social Security Act's coverage as women, especially mothers, have entered the labor force in large numbers and continue to be employed later in life. Unlike in 1935 when the Social Security Act was signed into law, today most workers will at some point need time off to provide unpaid care to a family member.

Women now make up half of all U.S. employees and mothers are breadwinners in more than two-thirds of families with children.<sup>23</sup> While many women had historically stayed out of the labor force and been able to provide care for family members when they needed it, this is no longer the reality for most families.<sup>24</sup> Further, our country's population is aging rapidly. With the first wave of baby boomers turning 65 last year, more American workers will be called upon to provide elder care to their parents over the next decade.<sup>25</sup>

There are two state-level programs that now provide paid family and medical leave to workers who reside there. But the United States remains the only developed nation that does not provide paid maternity leave to employees nationwide.<sup>26</sup>

There is a short list of existing federal laws that addresses the new reality most workers face of having to cope with the dual responsibilities of being both a worker and a caregiver. Two address issues of unequal treatment: Title VII of the Civil Rights Act of 1964 makes it unlawful for employers to provide unequal treatment to employees on the basis of race, religion, color, national origin, or sex. In 1978 Title VII was amended by the Pregnancy Discrimination Act to make clear that sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions.

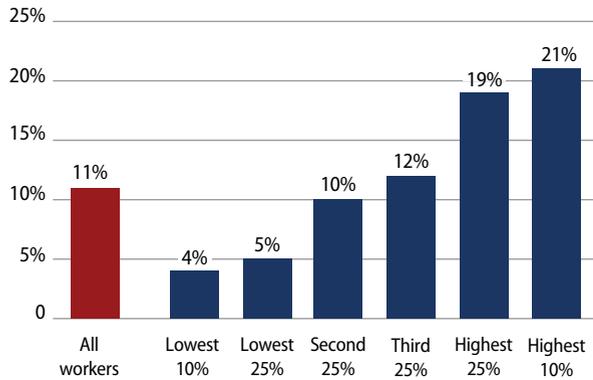
The Family and Medical Leave Act of 1993 is the only federal law that addresses the need for time away from work to provide care. It provides job-protected, unpaid leave to recover from an illness, care for an ill family member, or bond with a new child.<sup>27</sup> But restrictions on eligibility mean that about half of private-sector workers are ineligible for job-protected leave,<sup>28</sup> and nearly 80 percent of those who needed leave but did not take it cited financial reasons.<sup>29</sup> Even among workers who do take unpaid leave, they may take less time than is needed due to financial constraints. For example, among workers taking unpaid leave to care for a new child, more than half (55.1 percent) only took two weeks or less off from work.<sup>30</sup>

Very few U.S. workers have access to paid time off that is specifically for family or medical leave—and those who do tend to be wealthier than the average American breadwinners. Employers often view paid family leave as a “perk” for higher-paid workers and too often low- and middle-wage workers, young workers, less-educated workers, and workers of color do not have access to paid family leave. Overall only about 10 percent of all workers have access to paid leave that specifically includes time off for family caregiving. But workers whose average wages are in the lowest 25 percent for their industry are approximately four times less likely to have access to paid family leave than those in the highest 25 percent.<sup>31</sup> (see Figure 1 on next page)

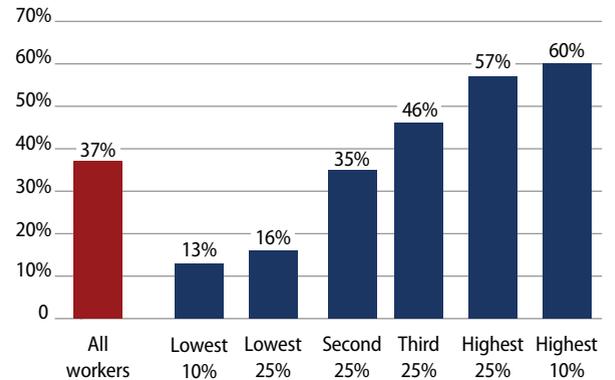
The Family and Medical Leave Act of 1993 is the only federal law that addresses the need for time away from work to provide care.

**FIGURE 1**  
**Paid family and sick leave in America today**

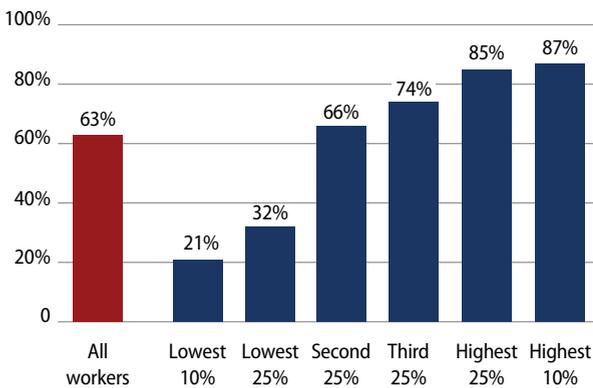
Percentage of workers with paid family leave through their employer, by average wage



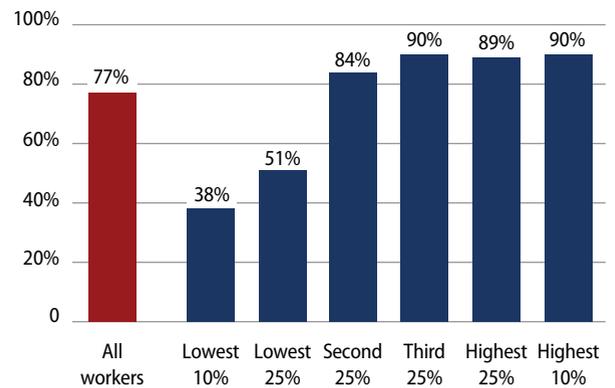
Percentage of workers with short-term disability insurance through their employer, by average wage



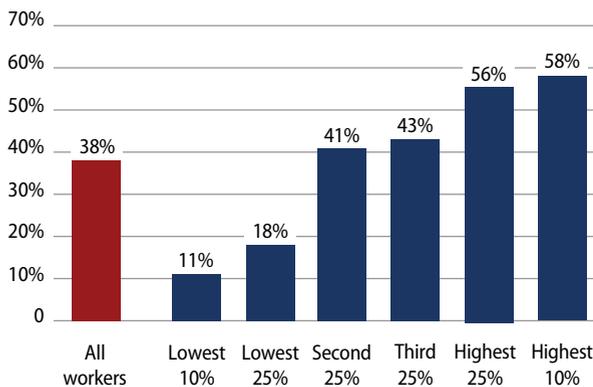
Percentage of workers with paid sick days through their employer, by average wage



Percentage of workers with paid vacation through their employer, by average wage



Percentage of workers with paid personal leave through their employer, by average wage



Sources: Bureau of Labor Statistics, "Table 33. Leave benefits: Access, private industry workers and Table 37. Insurance benefits: Access, participation, and take-up rates, private industry workers, National Compensation Survey, March 2011," U.S. Department of Labor, 2011, available at <http://www.bls.gov/ncs/ebs/benefits/2011/ownership/private/table21a.pdf>.

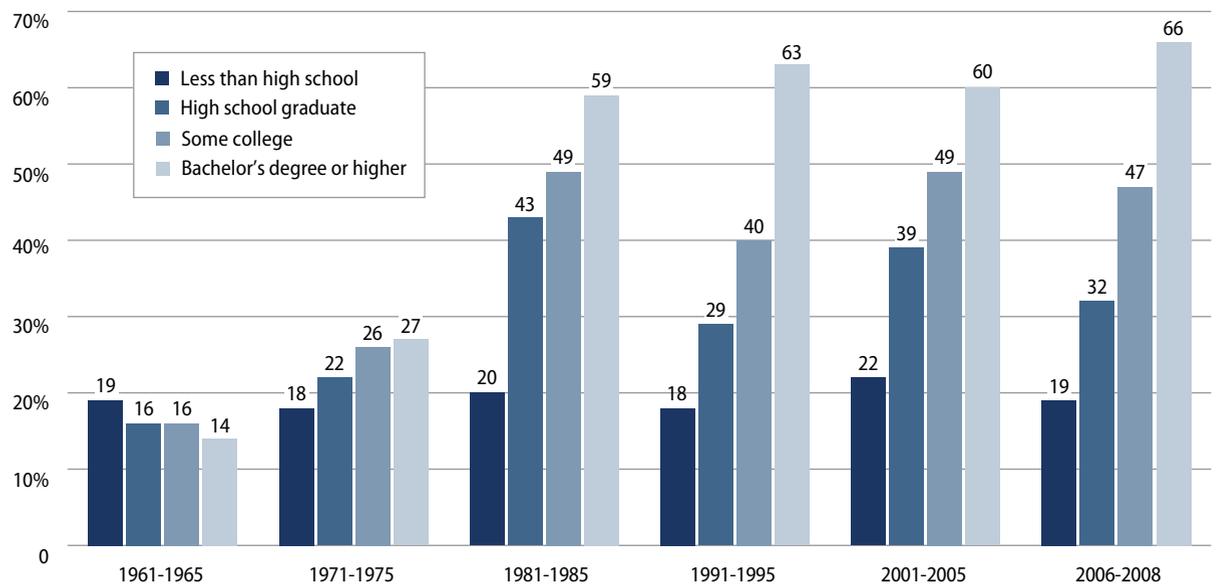
For many workers the only option is to cobble other kinds of leave together when they need time off to care for a family member. For new mothers the most common way that they access time off is through short-term disability programs. The Pregnancy Discrimination Act of 1978 requires that if an employer provides a short-term disability plan to employees, it must cover a woman's medical conditions of pregnancy and childbirth, typically for six to eight weeks, but it does not provide paid leave to bond with a new child. In 2011 37 percent of private-sector workers had short-term disability insurance although the coverage is lower for part-time and lower-wage workers as coverage ranges from 16 percent for those in the bottom 25 percent of the wage distribution to 57 percent for those in the top 25 percent.<sup>32</sup>

The higher the wage a worker earns, the more likely the worker is to have any form of paid leave, whether paid holidays, paid sick leave, paid vacations, or paid personal leave, which means that higher paid workers have more options to cobble together various leaves to cover time off for caregiving. Women of color are less likely to have access to paid maternity leave, and the odds decrease for all women the younger they are or the less education they have.<sup>33</sup> Recent analysis by the Census Bureau shows that while about half of all first-time mothers take some form of paid leave after giving birth, women with at least a bachelor's degree are more than twice as likely to take paid leave than women with only a high school diploma and three times as likely as those with less than a high school education.<sup>34</sup> (see Figure 2 on next page)

FIGURE 2

## Working mothers and paid family leave

Percentage of new mother using some form of paid leave after birth (includes maternity, sick, vacation, and/or other paid leave)



Source: U.S. Bureau of the Census, "Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2008," (Washington, DC: Department of Commerce, 2011).

Even among Fortune 100 companies, paid family leave is not universal, especially for new fathers. While 9 out of 10 Fortune 100 companies responding to a Congressional Joint Economic Committee survey offered some form of paid leave that could be taken after the arrival of a new baby, only about three-quarters provided specific maternity leave or disability leave for mothers.<sup>35</sup> And only a third offered paid paternity leave to men. Full-time workers were also more likely to have access to paid leave than part-time workers. And even these relatively low rates of coverage are higher than for companies more generally.<sup>36</sup>

## Medical modernization changes the face of serious illness

While paid family leave is needed when workers cannot be at work in order to provide care for a child, parent, or spouse, many workers need paid time away from work in order to recover from their own serious but temporary health conditions. Social Security Disability Insurance provides income replacement for those who experience conditions that will prevent them from working for at least a year or are

expected to be fatal, but there is currently no national program that provides income for workers whose work-limiting health problems are of shorter duration.<sup>37</sup>

Compared to 1935 when the Social Security Act was passed into law, many workers today have serious illnesses that may prevent them from working for a short period of time, but from which they will recover. Modern medicine has progressed to the point where many cancers, for example, are no longer a death sentence but can be managed.<sup>38</sup> Returning to work more quickly than is medically advisable increases the likelihood of suffering from a relapse, while access to paid leave is associated with workers recovering more quickly and more completely.<sup>39</sup> Further, since most workers get their health insurance coverage from their employer, maintaining labor force attachment may be the only way to continue to health coverage in the face of a serious illness.<sup>40</sup>

Yet most U.S. workers do not have access to paid time off specifically for short-term serious illnesses and those that do are those higher up the income distribution. Presently, there are only five states that provide temporary disability insurance for qualifying workers: California, New Jersey, Rhode Island, Hawaii, and New York. As noted above, about a third (37 percent) of all private industry workers are covered by employer's short-term disability insurance plan, but these are typically higher-wage workers.<sup>41</sup> The lowest-wage workers who are covered by short-term disability insurance through their employer are also more than four times more likely to be required to contribute toward the cost of the insurance than the highest-paid workers.<sup>42</sup>

Workers with serious health problems too often cannot afford to take time away from work without paid leave. About half of all U.S. workers have access to unpaid leave for their own serious health conditions through the Family and Medical Leave Act. More than half (52.4 percent) of workers who have taken leave under this act have done so due to their own health.<sup>43</sup> Similarly, among those who needed leave but were unable to take it, nearly half (48.1 percent) cited their own health as the reason they needed time away from work.<sup>44</sup> Workers who are unable to take the leave they need are more likely to be separated, divorced, or widowed, are more likely to have children living at home and are more likely to be paid an hourly wage (rather than salaried) than other workers.<sup>45</sup>

The fact that most workers only have access to unpaid leave should they experience a short-term but serious health condition can have a severe economic impact on families when a worker falls ill or has an accident. The combination of lost

income with ever-increasing health care costs results in a significant number of families being forced into bankruptcy. In 2001 25 percent of dual-income couples and 13 percent of single-parent families who filed for bankruptcy did so after having to miss two or more weeks from work due to the worker's illness or the illness of a family member.<sup>46</sup> More universal access to a paid medical leave program, like that proposed through Social Security Cares, would help to avoid at least a portion of these bankruptcies, in addition to increasing the economic security of other families who are struggling to remain solvent.

# The basic building blocks of paid family and medical leave

Modernizing the Social Security Act to address the reality of how families live and work today means thinking through both what has changed for workers and their families, as well as how to model a new program to meet those needs. As was the case in the past, there are a variety of models for ideas about both what such a new program should cover as well as how to structure the eligibility criteria. In this section we look at what we can learn from the models provided by the Family and Medical Leave Act, Social Security Disability Insurance, and state-level programs for temporary disability and family leave insurance.

As we consider how to expand the qualifying conditions for the kinds of benefits provided by the Social Security Act, two key issues to keep in mind are: First, paid family and medical leave is a benefit for workers, that is, people who intend to maintain a connection to the labor market. Second, the program should provide the kind of inclusive coverage that is consistent with Social Security's evolution over the decades.

We will discuss the details of these programs below, but in brief:

The Family and Medical Leave Act provides job protection, meaning that the federal government requires that a covered employer with an employee who has a qualifying condition must hold open that employee's job while they take family or medical leave. Since the leave is unpaid, it is completely inapplicable to the self-employed. The employee's work history and employment criteria therefore focus on what Congress believed was reasonable to ask of employers in terms of keeping an employee's job open while they take leave. They include:

- An employer size threshold of 50 or more employees within a 75-mile radius
- A tenure requirement of 12 months with the worker's current employer
- A minimum annual hours threshold of 1,250 hours within the past 12 months with the worker's current employer

Five states (California, Hawaii, New Jersey, New York, and Rhode Island) and Puerto Rico have mandatory temporary disability insurance programs that were all established more than 40 years ago. These programs tend to mirror their state's unemployment benefits eligibility criteria. Temporary disability insurance provides partial wage replacement to workers when they cannot work due to illness or disability or in order to recover from pregnancy. There is currently no federal temporary disability insurance program and eligibility requirements for these state-based programs vary widely and they do not cover caregiving or bonding leave although they do cover childbirth and recovery.

In the past decade California and New Jersey expanded their temporary disability insurance programs to include family leave insurance (caring for a new child or ill family member), and Washington has passed legislation to set up a standalone program for paid parental leave but has yet to implement it. Each of these state programs builds on some features of either their longstanding temporary disability program or their state's unemployment insurance model.

The Family and Medical Leave Act and state family leave and temporary disability insurance programs have some similarities in terms of the kinds of conditions covered. There are significant differences across programs, however, in terms of the required work history for eligibility to take leave, which has a significant effect on who is covered and who is left out. The need for paid family and medical leave is based on the reality that most workers today also have care responsibilities, as well as need for time off for their own serious illness. Therefore, the program eligibility rules have to struggle with the question not only how to define what are qualifying conditions for taking leave, but also how to define a worker and to support labor force attachment.

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### Commonalities among the Family and Medical Leave Act, the Social Security Act, and state-based paid family and disability insurance programs

The Family and Medical Leave Act and the state programs use similar concepts for qualifying conditions and provide equal benefits to men and women. The federal law and the state programs in California and New Jersey each provide a comprehensive approach to the kinds of situations that can prevent a caregiver from being at work, including providing care to a new child (biological or adopted or fostered) or caring for an older child, spouse, or parent, as well as for a worker's own illness, which in California and New Jersey is part of longstanding temporary

disability insurance programs. Washington's program is more limited, only for parental leave, and does not provide coverage for a worker's own illness.

The similarities across the three state-level family leave insurance programs and the federal unpaid family and medical leave are based on a number of things. First, these programs have developed in recent decades specifically in response to the important ways that family and work have changed in recent decades. Covering caregiving for both children and elders is an explicit recognition of these socioeconomic changes and that the need for time off to care is not only one for new mothers. Research finds that there are a variety of positive outcomes that are associated with paid leave intended for the purposes outlined in the federal law, including increased birthrates,<sup>47</sup> higher levels and longer duration of breastfeeding,<sup>48</sup> greater involvement of fathers in caregiving,<sup>49</sup> increased gender equity,<sup>50</sup> and improved quality of life for elders.<sup>51</sup>

A key distinction between programs in terms of qualifying conditions is that the Family and Medical Leave Act does not recognize domestic partners and same-sex marriages and limits the definition of a family member to a son, daughter, spouse, or parent, while California and New Jersey's paid family leave programs both provide leave for workers who need to care for domestic partners, in addition to children, spouses, and parents. In Washington paid leave would be provided to parents of a newly born or adopted child, regardless of the parent's gender or sexual orientation. Given the realities of many families, the definition of family should include domestic partners, siblings, nieces, nephews, aunts, uncles, grandchildren, and grandparents, as nine states and the District of Columbia have already done in some combination.<sup>52</sup> The need for time off to provide care for extended kin may be even more important to workers in low-wage jobs who currently are least likely to get this kind of benefit.<sup>53</sup>

A second important commonality across the programs is that the leave is tied to the worker not to the person needing care, and men and women qualify for the same amount of leave. Tying leave to the worker, regardless of gender, encourages more take up of leaves by men.<sup>54</sup> While the United States is the only developed member nation of the Organisation for Economic Co-operation and Development, or OECD, that does not provide paid maternity leave, it is the only one that offers the same amount of leave to both parents (provided they are both workers eligible for the Family and Medical Leave Act). In 23 other OECD nations, a portion of paid leave is provided as blocks of leave that can be taken by either parent in whatever combination seen fit.<sup>55</sup>

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The third commonality is that caregiver leaves are of relatively short duration. The caregiver leaves in California and New Jersey are a maximum of six weeks, half the length of the Family and Medical Leave Act, while Washington's parental leave is five weeks. In all cases, this is a relatively short duration for new child leave by international standards. These lengths encourage a quick return to work but may be insufficient to provide care for an ill family member or a new child. The American Academy of Pediatrics recommends exclusive breastfeeding for the first six months of an infant's life,<sup>56</sup> and paid leave has been shown to increase the rate and duration of breastfeeding for working mothers.<sup>57</sup>

On the other hand, lengthy paid family leave programs (with high wage replacement) can have the effect of reducing labor force participation, particularly among women. Three cases in point: the Slovak Republic, Czech Republic, and Hungary all provide parental leave lasting up to three years and not surprisingly also have the lowest rates of employment in any OECD country for mothers with a child under age 3.<sup>58</sup> When workers have access to a reasonable amount of paid leave, it makes them more likely to return to work, and to return to work more quickly, than workers who do not have paid leave or who have too long a period of paid leave.<sup>59</sup>

There is significant difference between the federal and state programs in terms of time allowed for a worker's own serious illness. The state temporary disability insurance programs provide up to 52 weeks of leave in California, 30 weeks in Rhode Island, and 26 weeks in Hawaii, New Jersey, and New York, while the Family and Medical Leave Act only provides 12 weeks of such leave. (see Table 1 on next page)

TABLE 1

Own illness and family leave programs at state and federal level

	Family and Medical Leave Act	California Paid Family Leave and New Jersey Family Leave Insurance	State temporary disability insurance*	Washington Paid Parental Leave
Covers own illness	X		X	
Covers pregnancy/childbirth	X	X	X	X
Covers care for new child	X	X		X
Covers caregiving for other family members	X	X		
Covers extended kin and domestic partners		X		
Leave tied to worker, not family	X	X	X	X
Short leave duration (12 weeks or less)	X	X	(varies by state)	X
Small business exclusion	X			
Job tenure requirement	X			

\* Note: Five states, California, Hawaii, New Jersey, New York, and Rhode Island, along with Puerto Rico, have statewide temporary disability insurance programs that provide workers with income support in the case of a serious illness.

Differences among the Family and Medical Leave Act, the Social Security Act, and state-based paid family and disability insurance programs: Work-history eligibility criteria

While many elements of the Family and Medical Leave Act and the state paid family leave and temporary disability insurance programs are similar, the federal law and the states that have addressed paid family leave or temporary disability insurance have very different criteria for what constitutes an appropriate work history for eligibility to take leave. In general, the state programs have looked to their longstanding unemployment insurance and temporary disability insurance programs as they developed their concepts of labor force attachment. Further, the federal law and state programs differ as well from the work-history criteria embedded in Social Security Disability Insurance, which we feel is the federal program most akin to paid family and medical leave in concept. (see Appendix B) These differences in eligibility rules have significant effects on who is covered by the program. Let’s look briefly at each of these rules and their effects.

## Family and Medical Leave Act

The Family and Medical Leave Act excludes workers employed in small businesses. The logic of excluding small businesses was that it would be a hardship for them to have to cope with an absence as they have less capacity than larger employers, and thus the federal government should not require them to hold open a position for a worker while on leave. Yet there is evidence that this threshold may be too high since seven states have enacted lower thresholds for firm size, without apparent ill effect.<sup>60</sup>

The small-business exemption means that workers in small businesses typically do not have access to unpaid leave unless their employer chooses to offer it voluntarily. But workers in organizations with fewer than 50 employees are the least likely to have access to paid holidays, paid vacation, paid sick days or paid personal leave. In 2011 only 7 percent of workers in these smaller organizations had access to paid family leave.<sup>61</sup>

Arguments can be made as to why excluding smaller employers makes sense when offering job-protected leave, but they do not make sense for a social insurance system. Workers pay into social insurance over time, and benefit payments are possible through the pooling of risk and resources. A nonuniversal social insurance program would lead to unfair outcomes for too many workers. Exempting small businesses from a national paid family and medical leave program would mean that a worker could pay into the system for decades, but then take a job with a noncovered employer and no longer be eligible for the benefits he had already paid for. This is the reasoning behind why the five state temporary disability insurance programs and the two state paid family leave programs require all employers to participate.

The Family and Medical Leave Act also requires a year of tenure with the worker's current employer. The logic behind this rule is that it is unreasonable to require an employer to hold open an employee's position if that employee is very new. The employee may not have even completed their training or probationary period and therefore asking an employer to hold open a position may be injudicious.

Yet the 12-month tenure requirement penalizes new labor market entrants, those returning to the labor force, and those who have recently switched employers. Job changes are often an important way for workers, especially younger workers, to see real salary increases.<sup>62</sup> Young workers are more likely to switch employers than older workers, and they are also more likely to need access to parental leave since the typical mother in the United States has her first child by the age of 25.<sup>63</sup> In

2010 workers between the ages of 25 to 34 typically had held their job for 3.1 years, compared to 10 years for workers between the ages of 55 to 64.<sup>64</sup> While the median tenure for younger workers is longer than the Family and Medical Leave Act requirement, it also indicates more frequent job changes which result in larger numbers of young workers having less than one year of job tenure at any given time.

The exclusion by job tenure is a particularly salient point given the current labor market. Many workers have changed jobs not because they want to but due to layoffs. The job tenure requirement also encourages workers to remain in jobs where they are less productive or less well suited, simply because taking a better position could mean losing the benefits they had paid for over the years.

Finally, the Family and Medical Leave Act requires the employee to have worked 1,250 hours within the past 12 months with the worker's current employer. This criterion necessitates that an employee have put in at least 24 hours a week every week over the past year, limiting eligibility among part-time workers.

Part-time workers are not only among those least likely to have access to paid or unpaid family leave from their employer, many of those working part time are working reduced hours because they have care responsibilities. Among working mothers, for example, 31.1 percent work fewer than 35 hours per week, and 17.7 percent put in less than the federal threshold of 24 hours per week on average.<sup>65</sup>

Workers cannot be asked to pay into a system when they may not be able to receive anything in return when they need to. If the small-business exclusion, 12-month job tenure, and 1,250 hours requirements were included in a paid family and medical insurance program, this would create perverse incentives for people to avoid smaller firms or to stay in jobs in which they are less productive.<sup>66</sup> Further, each of these exclusions leads to a disproportionate share of low-wage workers being left out. Low-wage workers—particularly low-wage working women—are already less likely to have access to paid leave through their employers, and the policy solutions such as the Family and Medical Leave Act have not yet gone far enough to rectify the situation.<sup>67</sup>

Low-wage workers—particularly low-wage working women—are already less likely to have access to paid leave through their employers.

### State family leave and temporary disability insurance programs

There are three basic models at the state level that provide insurance benefits to workers when they are out of work but still attached to the labor force: temporary disability insurance, family leave insurance, and unemployment insurance.<sup>68</sup> In all three cases:

- The programs look back over a relatively short time horizon of the worker's employment history (typically some timeframe within the past 18 months).
- The total earnings or hours with all employers are used to determine eligibility and benefits.
- There are no exclusions based on firm size.

A key difference between temporary disability insurance, family leave insurance, and unemployment insurance programs lies in how they are financed. In the two states that have both disability and family leave insurance, they are financed through a tax only on employees, not employers. Unemployment insurance is in most states paid for by a tax only on employers—only Alaska, New Jersey, and Pennsylvania deduct payroll taxes directly from employees to fund unemployment insurance. In the end, however, economists generally agree that payroll taxes ultimately come out of workers' wages even if paid by employers.<sup>69</sup>

Let's now look at each individual state program.

### *California*

California has a longstanding temporary disability insurance program that provides benefits to workers who experience a work-limiting injury or illness, and the state implemented family leave insurance alongside this program in 2004. Workers in California can qualify for up to 52 weeks of paid disability leave for their own illness and six weeks of paid family leave at 55 percent of pay. Family leave can be taken to provide care to a new child (biological, adopted, or fostered), an older child, or to a spouse, parent, or registered domestic partner.

In order to be eligible for either temporary disability or family leave, a worker must have earned at least \$300 or more in the regular base period—defined as the four calendar quarters prior to the quarter during which they are applying for leave.<sup>70</sup> So if individuals were to apply for leave in February 2012, they would need to have earned at least \$300 between October 2010 and September 2011. Individuals in California who are currently unemployed can use the base period they used to qualify for unemployment insurance to apply for paid family leave—though the two benefits may not be collected simultaneously.<sup>71</sup>

### *New Jersey*

In 2008 New Jersey, like California, added family leave insurance to an already existing temporary disability insurance program. Workers in New Jersey can qualify for up to 26 weeks of temporary disability leave and six weeks of paid

family leave at 66 percent of pay. Family leave can be taken to provide care for a new child (biological, adopted, or fostered), or to a spouse, domestic partner, civil union partner, parent, or older child.

In New Jersey, to be eligible for paid family and medical leave workers must either be employed and have already exhausted all of their sick days or have been unemployed for less than two weeks.<sup>72</sup> They must have earned at least \$7,300 in the previous 12 months (a minimum of \$140.38 per week) or a minimum of \$145 per week for 20 weeks (a total of \$2,900).<sup>73</sup> Individuals who have been unemployed for more than two weeks at the time they need paid family leave can still qualify as long as they meet all of the requirements for unemployment insurance with the exception of proving their ability to work—though as in California they may not simultaneously collect both benefits.<sup>74</sup>

### Washington

Washington's program has not yet been implemented but according to current law, beginning in 2015, it will provide five weeks of leave at \$250 per week for workers who were working at least 35 hours per week before taking leave to provide care for a new biological, adopted, or foster child. Workers who were working less than 35 hours per week before taking leave will be paid \$6.25 for each hour of family leave taken per week.

Eligibility in Washington is calculated using hours worked, rather than salary earned. In order to be eligible, an individual must have worked at least 680 hours during the first four of the previous five calendar quarters that occurred before the quarter in which the worker is applying for leave.<sup>75</sup> There is also an alternative base period of the last four completed quarters prior to taking leave that can be used to calculate eligibility.<sup>76</sup>

### The Social Security Act: Disability Insurance

Social Security's retirement benefits and disability insurance use an individual worker's lifetime history of employment to determine eligibility. The eligibility criteria for Social Security Disability Insurance is more comprehensive than the Family and Medical Leave Act or the state disability and family leave insurance criteria: The amount of time employed in the workforce rather than tenure with a specific employer determines eligibility and how much an individual had paid into the fund in all working years, not just over the past 12 to 18 months, determines the level of wage replacement.

Eligibility for Social Security Disability Insurance is based on whether workers have earned a sufficient number of “credits” over their lifetime and in recent years.<sup>77</sup> In 2012 individuals received one credit for each \$1,130 of earnings—up to a maximum of four credits per year. This means that any worker who earned at least \$4,520 in 2012 earned the maximum of four credits.<sup>78</sup> This is a relatively low threshold for eligibility. A worker employed for 20 hours per week at the current minimum wage of \$7.75 would only have to work 31 weeks out of the year in order to receive the maximum of four credits for that year.

The number of credits necessary and the time period in which they must have been earned in order to be fully insured for Social Security Disability Insurance depends on the age of the worker.<sup>79</sup> (see Table 3) Individuals over the age of 42 must have earned 20 credits in the 10 years immediately before their leave plus an additional two credits for each year over the age of 42.<sup>80</sup> Workers between the ages of 31 and 42 must have earned 20 credits in the previous 10 years.<sup>81</sup> Those between ages 24 and 31 must have earned credits for working half the time between age 21 and the point at which they need leave. For instance, a 29-year-old worker would need to have earned 16 credits (the equivalent of four years of work) in the past eight years.<sup>82</sup> Individuals under the age of 24 typically need six credits—one and a half years of work in the three years prior to their leave.<sup>83</sup> (see Tables 2 and 3 on following pages)

**TABLE 2**  
**Eligibility rules for family leave**

Basic eligibility rules for five kinds of own health or family care leave

	Family and Medical Leave Act	California Paid Family Leave, or PFL	New Jersey Family Leave Insurance, or FLI	State temporary disability insurance	Washington Paid Parental Leave
Work history requirement	At least 1,250 hours worked in the past 12 month	Earned a minimum of \$300 in the year prior to applying for leave (regular or alternate base period)	Earned a minimum of \$7,300 (\$140.38 a week) in the year prior to applying for leave, or a minimum of \$145 per week for 20 consecutive weeks in the year prior to applying for leave	Varies by state, the same in California and New Jersey as PFL and FLI, respectively	Worked a minimum of 680 hours in the year prior to applying for leave (regular or alternate base period)
Job tenure requirement	Been with current employer for at least one year	None	None	None	None
Small business exclusion	Only applies to businesses with at least 50 employees within a 75 mile radius	None	None	None	None
Wage replacement rate	None	55 percent of an individual's weekly wages during the highest earning quarter, up to a maximum of \$987 per week in 2011 (indexed annually to 150% of the state average weekly wage).	66 percent of average weekly compensation in the 8 weeks prior to applying for leave up to maximum of \$572 per week.	Varies by state; the same in California and New Jersey as PFL and FLI, respectively	Weekly benefit of \$250 per week, prorated for people working less than 35 hours per week.

Source: Family and Medical Leave Act of 1993, H.R. 1, 103rd Congress, available at <http://www.govtrack.us/congress/bills/103/hr1>; Paid Family Leave California, "Basics of California's Pfl Program," available at: <http://www.paidfamilyleave.org/learn/basics.html> (last accessed September, 2011); State of California Employment Development Department, "Overview - State Disability Insurance," available at: <http://www.edd.ca.gov/disability/> (last accessed February, 2012); State of California Employment Development Department, "Paid Family Leave Benefits," available at: [http://www.edd.ca.gov/Disability/PFL\\_Benefit\\_Amounts.htm](http://www.edd.ca.gov/Disability/PFL_Benefit_Amounts.htm) (last accessed); State of New Jersey Department of Labor and Workforce Development, "State Disability Benefits," available at: [http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp\\_clt\\_menu.html](http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_clt_menu.html) (last accessed February, 2012); State of New Jersey Department of Labor and Workforce Development, "Family Leave Insurance Benefits - General Information," available at: [http://lwd.dol.state.nj.us/labor/fli/content/program\\_info\\_menu.html](http://lwd.dol.state.nj.us/labor/fli/content/program_info_menu.html) (last accessed February, 2011). Family Leave Insurance, 49.86, Washington State Legislature, available at <http://apps.leg.wa.gov/rcw/default.aspx?cite=49.86>.

**TABLE 3**  
**Qualifying for disability insurance**

Work credits necessary to qualify for social security disability benefits

Age of worker	Number of credits	Equivalent years of work assuming worker earns four credits per year
Up to age 24	6	1.5
26	10	2.5
28	14	3.5
30	18	4.5
31-42	20	5.0
44	22	5.5
46	24	6.0
48	26	6.5
50	28	7.0
52	30	7.5
54	32	8.0
56	34	8.5
58	36	9.0
60	38	9.5
62 or older	40	10.0

Source: Social Security Administration, "Work Credits Needed for Disability Benefits," available at: <http://www.ssa.gov/retire2/credits3.htm> (last accessed April 7, 2011).

### Effects of different eligibility concepts on coverage

The different eligibility rules have significant effects on who is and is not included in the program. Table 4 shows the percentage of all Americans who would be eligible for coverage under each of the five programs—Social Security Disability Insurance, Family and Medical Leave, the state family leave insurance programs in California and New Jersey, and the proposed parental leave program in Washington. (Due to data issues, in Table 2 we include both a more- and less-conservative estimate of eligibility under Social Security Disability Insurance and the Family and Medical Leave Act, but in the remainder of the tables we only show the more-conservative estimates; see Appendix A for more information). Our estimates show that the Social Security Disability Insurance program provides the most inclusive coverage even when using a more-conservative estimate that likely understates eligibility. California comes closest to the eligibility criteria for federal disability insurance, but even here the difference between the two is statistically significant. (see Table 4 on next page)

TABLE 4

## Mapping how the rules matter for a new national paid family and medical leave program

Share of adults eligible under various family or medical leave program criteria, 2005

	Social Security Disability Insurance		State-level programs			Family and Medical Leave Act	
	More conservative estimate	Less conservative estimate	California Paid Family Leave	New Jersey Family Leave Insurance	Washington Paid Parental Leave	More conservative estimate	Less conservative estimate
Share of adults eligible for the program in 2005	78.7	90.8	74.8	68.9	66.7	63.7	63.8

Notes: Sample includes only those in the survey for at least 24 months. All differences between Social Security Disability Insurance and other programs are statistically significant at the .01 percent level. See Appendix A for more details on our method.

Source: Center for American Progress analysis of the Center for Economic and Policy Research Survey of Income and Program Participation 2004 panel and program rules.

Table 5 on page 31 shows who is estimated to be eligible to take leave under the different programs for various demographic groups. The only two demographic groups for which Social Security Disability Insurance does not provide the most coverage are workers aged 25 to 34 and workers with a post-college degree. In those two cases the California program provides the most coverage. But it is important to recall that these differences were calculated underestimating the number of people eligible for federal disability insurance by only including those who reported full-time work and overestimating the number of people eligible in California—including people who are unemployed but would not actually qualify.

Across all five programs, we estimate that men are more likely to be eligible than women with 84.5 percent of men eligible compared to 73.1 percent of women eligible using the Social Security Disability Insurance criteria. Part of this is to be expected since men as a whole are more likely to be employed than women. The Social Security Disability Insurance eligibility criteria, however, provides more women with eligibility than under the California, New Jersey, Washington, or Family and Medical Leave Act program rules.

The estimates show that workers with young children are less likely than other groups to be covered, but the federal disability insurance rules do the best job of including these workers. For workers with a child under age 3, 79 percent are eligible, and for workers with young children under the age of six, 78.9 percent are eligible.

Young workers are most likely to be covered by either the federal or California programs—which cover about 80 percent of adults between the ages of 18 to 24, and nearly 8-in-10 (78.3 percent) of those aged 25 to 35. Young workers are

least likely to be covered by the federal Family and Medical Leave Act. This is an important consideration for a family leave program because the average age of first birth for women in the United States is 25.<sup>84</sup> This means that young workers need to be eligible for any paid family leave program if it is to truly serve the families that need it most.

We find that Hispanics have the lowest estimated eligibility among racial and ethnic groups across all five programs, with three-quarters (74.4 percent) eligible using Social Security Disability Insurance criteria. This may be because Hispanic workers are more likely than other demographic groups to be more recent immigrants and have a shorter lifetime employment history here in the United States.

While we estimate that all five programs do a good job of covering workers with at least a college degree, this is less the case for workers with lower levels of education. Even under the federal disability insurance eligibility criteria, only two-thirds (66.9 percent) of those with less than a high school diploma are eligible. This is undoubtedly because of the very low labor force participation of that group. (see Table 5 on next page)

TABLE 5

## Mapping how the rules matter for different demographic groups for a new national paid family and medical leave program

Share of adults eligible under various family or medical leave program criteria by demographic group, 2005

	Social Security Disability Insurance (more conservative estimate)	California Paid Family Leave	New Jersey Family Leave Insurance	Washington Paid Parental Leave	Family and Medical Leave Act (more conservative estimate)
<b>Male</b>	84.5	78.5	73.4	71.8	70.4
<b>Female</b>	73.1	71.1	64.6	61.8	57.4
<b>18 to 24</b>	80.0	74.3	60.1	54.3	37.1
<b>25 to 35</b>	78.3	82.3	76.6	75.2	66.2
<b>35 to 44</b>	79.5	78.2	74.0	71.8	71.7
<b>45 to 54</b>	81.2	75.4	71.6	70.2	72.8
<b>55 to 64</b>	73.2	59.7	55.0	53.4	57.3
<b>White</b>	80.2	75.3	69.9	67.5	67.0
<b>Black</b>	77.7	74.4	67.6	65.2	56.2
<b>Hispanic</b>	74.4	73.8	67.1	65.7	57.0
<b>Other</b>	73.5	71.2	64.6	62.6	58.3
<b>Less than high school</b>	66.9	58.0	50.0	49.2	41.8
<b>High school</b>	77.0	71.4	64.8	62.8	57.6
<b>Some college</b>	81.7	77.1	71.1	68.0	64.6
<b>College</b>	80.9	80.2	75.9	74.2	74.2
<b>Postcollege</b>	78.0	80.6	77.6	75.5	80.2
<b>Parents of a child under three</b>	79.0	75.3	68.7	66.3	60.6
<b>Parents of a child under six</b>	78.9	75.1	69.1	66.7	61.9

Notes: See Table 1. All differences between Social Security Disability Insurance and the state programs and the Family and Medical Leave Act are statistically significant at the 1 percent level, with three exceptions. The difference between eligibility for Social Security Disability Insurance and California's program is statistically insignificant for Hispanics and individuals with a college degree, as is the difference between Social Security Disability Insurance and the New Jersey program for individuals with a post-college degree.

Source: Center for American Progress analysis of the Center for Economic and Policy Research Survey of Income and Program Participation 2004 panel and program rules.

The estimates show that a majority of those eligible for Social Security Disability Insurance are currently employed. Our data are likely to provide more accurate estimates of eligibility for this program for those ages 18 to 42 who are eligible for federal disability insurance and likely to overestimate the eligibility for federal disability insurance of adults age 43 and older due to the limitations of the data on lifetime employment history. We find that among those ages—18 to 42—86.6 percent are currently employed. Because eligibility for the program is modeled on the eligibility criteria for this federal program, it is one’s work history, rather than current employment situation, which is taken into account. Therefore we estimate that 6.5 percent of those eligible for Social Security Disability Insurance had been unemployed for 12 months or more.

Although California’s employment history eligibility requirement is very low, for example, this rule still excludes workers who may not have put in many hours in the prior year. These workers may have had a lifetime of employment history but, due to some circumstances, may not have been working as much during the most recent year. These individuals are picked up by the federal disability insurance program because of its eligibility criteria. (see Table 6)

**TABLE 6**  
**Most of those eligible for Social Security Disability Insurance are currently employed**

Conservatively estimated share eligible for Social Security Disability Insurance by number of months not working

	All ages	18-23	24-30	31-42	All under age 43	43-54	55-64
0 months	83.3	83.7	88.8	86.8	86.6	85.1	68.2
1-5 months	2.9	5.5	3.3	2.4	3.3	2.1	3.0
6-11 months	3.1	6.6	3.2	2.4	3.5	2.0	3.5
12+ months	10.8	4.3	4.7	8.5	6.5	10.9	25.4

Notes: See Table 1.

Source: Center for American Progress analysis of the Center for Economic and Policy Research Survey of Income and Program Participation 2004 panel and program rules.

# Conclusion

In the decades since 1935, the Social Security Act has adapted to changing socio-economic conditions. Adding paid family and medical leave is the next step in this evolution. Currently, outside of California and New Jersey, access to paid family and medical leave is left to the discretion of employers who must finance it themselves, and unpaid leave under the federal Family and Medical Leave Act is dependent upon the size of the employer and tenure on the job. This results in too many vulnerable workers excluded from this important benefit. In order for a worker-financed system to be fair and gain public support, it is important to make sure that the eligibility rules cover most, if not all, workers who are paying into the system.

When access to paid family and medical leave is left to the discretion of employers, coverage is often used as a recruiting tool for high-paid workers. If employers are required to finance federally mandated paid leave on their own, it will likely lead them to eschew workers who are the most likely to need leave—including, importantly, workers in low-wage jobs. Women of childbearing age, caregivers,<sup>85</sup> people with disabilities,<sup>86</sup> and mothers<sup>87</sup> already face workplace discrimination in hiring and pay, and it is important to ensure that new policies do not exacerbate this problem.

Our proposed Social Security Cares plan builds on the standard set by the Family and Medical Leave Act and the family leave insurance programs in California and New Jersey. Like Social Security's original components and subsequent expansions, we have strong state models to follow in thinking through how to implement a federal program.

Among the most important issues is ensuring that the workers who need the benefits most are included in the coverage. Therefore we recommend that the work history criteria follow the standard laid out in the Social Security Disability Insurance program rather than the rules embedded in the Family and Medical Leave Act. This will ensure that workers who need the benefits—particularly groups of workers who are the least likely to have access to employer provided leave—and those who are least likely to be able to afford to outsource caregiving to paid professionals are included in the program.

A federal policy with near-universal coverage would ensure that younger workers, people of color, and workers with less education would be more likely to be covered. This is an important consideration since the need to provide care to family members is felt universally across all groups.

# Appendix A

In order to analyze the different coverage rules, we map the eligibility criteria onto data from the Center for Economic and Policy Research extracts of the 2004 panel of the Survey of Income and Program Participation, or SIPP.

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## Data and method

Panel data is necessary for this analysis and we use the SIPP—a nationally representative panel survey conducted by the U.S. Census Bureau. In the 2004 panel, people were interviewed over a 48-month period beginning in 2004. This data allows us to have the information necessary to estimate whether an individual meets the employment history criteria for all five programs.

In the first set of SIPP interviews, individuals are asked about their employment history. In particular, they are asked about the year in which they first worked more than six months, both for full-time employment or at all, and how many months they continued to work at least six months per year, in either full- or part-time employment. We use this information to construct an individual's lifetime employment history.

We constrain our sample in three ways:

1. We only report findings for 2005. The analysis is similar for later years, but we only show findings for 2005 here because, in later years as people drop out of the panel, there is a likely bias towards respondents who are better-educated, higher earners, and employed.
2. We only include individuals who were in the survey for at least 24 months. This may bias our estimate upwards if low-wage workers are more likely to drop out of the panel study, but we need at least six calendar quarters of employment history.

3. We only include individuals who were between the ages of 18 and 64 for the full 24 months.

We include anyone who is in the panel who meets criteria two and three regardless of their employment status.

### Family and Medical Leave Act employment history rules

To be eligible for unpaid leave through the Family and Medical Leave Act, a worker must have put in at least 1,250 hours with their current employer over the course of the previous year, must have been employed for at least 12 months at their current job, and must work for an establishment with at least 50 employees within a 75-mile radius.

We create two estimates of eligibility, as the data on employer size did not perfectly map onto the requirements for the Family and Medical Leave Act. For both estimates we assume that a worker qualifies for unpaid leave if they have been employed at their current job for the previous 12 months and have worked a minimum of 1,250 hours during that time period. Because the SIPP data on employer size categorizes between firms with less than 25 employees, those with 25 to 99 employees, and those with 100 employees or more, we provide a less conservative estimate including workers employed in an organization with more than 25 employees and a more conservative estimate including workers employed in an organization with more than 100 employees. While only 6.2 percent of workers in the SIPP were employed in firms with between 25 to 99 employees, we have no way of knowing how that sample is distributed. Therefore, we use the more conservative estimate in our conclusions in an attempt not to include those who would not be covered under the current law.

### California and New Jersey employment history rules

To be eligible for California's Paid Family Leave an individual must earn at least \$300 during the regular base period. While California allows unemployed workers to qualify using the same base period used to calculate unemployment benefits, we do not have access to this data. Therefore, to meet the unemployment criteria for California, we require that individuals who are currently unemployed are either currently collecting unemployment insurance or report leaving their last job for reasons other than retirement or to take another job.

We have to adapt the rule to meet the employment history eligibility for New Jersey, as we only have monthly rather than weekly data on employment and earnings. Therefore, we require that individuals earn at least \$2,900 in the past 12 months, which is equal to \$145 times 20 weeks of work. We use the same unemployment criteria for New Jersey as for California.

Our calculations, while providing more conservative estimates for Social Security Disability Insurance, provide slightly less conservative estimates for California and New Jersey due to the nature of the unemployment information available. As a result, the differences in eligibility between Social Security Cares and the California and New Jersey programs are likely to be even greater than reported here.

### Washington employment history rules

The Washington case is the most straightforward and requires that individuals have worked at least 680 hours over the base period or alternative base period.

### Social Security Disability Insurance employment history rules

To estimate eligibility under the Social Security Disability Insurance rules, we map the work credits from Table 1 onto our SIPP sample. Our sample may overestimate eligibility for individuals who have been out of the workforce for extended periods of time because the work-history criteria requires workers over the age of 30 to have earned at least 20 credits in the 40 quarters immediately prior to the onset of the disability—or about five years of work within the previous 10 years—and our data do not allow us to determine whether the years of employment were within that timeframe. Similarly, workers who are under age 31 must have earned credit for half of the quarters between age 21 and the onset of the disability. Because the percentage of eligible adults who are currently employed is the highest for workers under the age of 43, these estimates are likely more accurate than those for workers who are closer to retirement. We attempt to address this shortcoming in the data, however, by using the most conservative estimates for other eligibility criteria.

We create two estimates of eligibility: one using a more conservative and one using a less conservative criterion for determining how many Social Security credits an individual earned in a year. For the less conservative estimate, we

assume that if an individual reported that they worked at least six months in a given year, they met the eligibility requirements to receive the maximum of four Social Security credits for that year. This is a reasonable assumption given that a minimum-wage worker employed at 25 hours per week for six months in a year would earn the maximum of four credits. For the more conservative estimate, we assume that they only met the criteria if they reported full-time employment in a given year. Table 2 on page 27 shows that there is a 10-percentage-point difference in the estimated eligibility for Social Security Disability Insurance using these two different rules. In order to not bias our estimates upward and to compensate for the lack of data on when the credits were earned, we use the more conservative estimates in our conclusions.

# Appendix B

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## Social Security benefits: The basics

Social Security provides insurance to workers in the United States to partially replace work income with cash benefits when a worker dies, becomes permanently disabled, or retires. This social insurance is paid for through a payroll tax on employers and employees. Unlike private life insurance, private disability insurance, and private pensions, without paying any additional contribution, workers qualify for insurance for themselves and for their children and spouses (and ex-spouses, in some cases).

**How workers qualify for Social Security benefits:** Individuals must earn a specified number of work credits. In 2012, \$1,130 earns one credit—for a minimum-wage worker, it would take just less than four weeks working 40 hours per week to earn this credit. Workers can earn up to a maximum of four credits per year.

The following table outlines the different types of benefits currently offered through the Social Security Administration, their eligibility criteria, the benefit amounts, and the duration of the benefit. (see Table 7 on next page)

TABLE 7

## Income replacement programs administered through the Social Security Administration for workers and their families

	Eligibility Criteria	Benefit Amount	Duration of Benefit
Retirement	Individuals born after 1929 need 40 work credits to qualify for Social Security retirement benefits (equivalent to 10 years of earning full credits). Workers can retire with full benefits once they have reached the full retirement age, which ranges from 65 to 67 depending on the year you were born. Workers can take reduced benefits, if they elect to do so, starting at age 62.	Retirement benefits are calculated based on the worker's highest 35 years of earnings. While no one receives retirement benefits that are equal to their earnings from work, low-wage workers' receive a higher percentage of wage-replacement.	From the age of retirement until death.
Social Security Disability Insurance	Qualifying for Social Security Disability Insurance depends on the age in which you become disabled. Before age 24, six credits are required (equivalent to 1 ½ years of work); between the ages of 24 and 31, individuals must have credit for working half the time between age 21 and the year they became disabled; for workers age 31 or older, the number of credits required increases with age. Of the credits required, 20 must have been earned in the previous 10 years (ending in the year in which the individual became disabled).	Disability benefits are calculated similarly to retirement benefits, though the age of the worker and their years in the labor force are taken into account. As with retirement benefits, low-wage workers receive a higher percentage of their previous wages than do high-income workers.	From the age at the onset of the disability until full retirement age when benefits are automatically converted to retired worker benefits, or until the worker is once again able to engage in substantial gainful activity.
Spousal benefits for the spouses of retired or disabled workers	Spouses, who are either the mother or father of the worker's child or have been married to the worker for a year when the application is filed for benefits, and ex-spouses who were married to the worker for 10 years qualify for spousal benefits. Spousal benefits, on the basis of a worker's retirement or disability, cannot be claimed until the spouse reaches the age of 62 years.	Spousal benefits are equal to half the worker's primary insurance amount while the worker is still alive and 100 percent of the benefit after the worker's death. A spouse with his or her own work history receives the higher of his or her own benefit or the spousal benefit.	From the age at the onset of the worker's retirement or disability until death (in the case of current spouses) or until remarriage (in the case of ex-spouses, unless the ex-spouse is over the age of 60 when they remarry).
Children's benefits for the children of retired or disabled workers	Children—who are the natural, adopted and dependent step-children of a worker and are either under 18 or disabled—qualify for children's benefits.	Children's benefits are equal to half the worker's primary insurance amount while the worker is still alive and 75 percent of the benefit after the worker's death	From the time that the child's parent retires or becomes disabled until age 18.
Mother's and father's benefits for the spouses of retired or disabled workers	A spouse or ex-spouse, as defined above, who has in his or her care a child entitled to children's benefits can qualify for benefits based on his or her status as the mother or father of the child and on the basis of his or her relationship to the worker as the spouse or ex-spouse	50 percent of the worker's benefit	From the time that the spouse or ex-spouse retires or becomes disabled until the child reaches age 18.
Social Security survivors insurance for children and spouses	Spouses or ex-spouses, as defined above, who have reached age 60 when the worker dies or is between 50 and 60 and is disabled, and children as defined above.	This insurance is equal to 100 percent of the worker's benefit. Children's insurance for surviving children is equal to 75 percent of the worker's benefit.	For spouses and ex-spouses, from the time that the worker dies, until the benefit recipient's death. For children, from the time that the worker dies until age 18.

	Eligibility Criteria	Benefit Amount	Duration of Benefit
Survivor's insurance for mothers and fathers	Surviving spouses and surviving divorced spouses (regardless of how long the marriage lasted as long as the divorced spouse is the mother or adopted mother of the worker's child) qualify for "mother's and father's insurance" when a worker dies if the parent has in his or her care a child who qualifies for children's insurance	This benefit is equal to 75 percent of the worker's benefit amount.	From the time of the worker's death until child reaches the age of 18.
Survivor's insurance for dependent parents	A parent of a deceased worker, who has attained age 62, may qualify for survivors insurance if the parent was dependent on at least half of his or her support from the now-deceased child and the parent is not entitled to old-age insurance. If the dependent parent is entitled to old-age insurance, he or she may still claim this parental benefit if it is greater than his or her own old-age insurance.	The benefit amount is 82.5 percent if one parent is claiming the benefit and 75 percent each if more than one parent qualifies for the benefit.	From the time of the worker's death until the benefit recipient's death.
<b>PROPOSED:</b> Social Security Cares	Workers who qualify for SSDI Social Security Disability Insurance and who have a new child through birth or adoption, experience a work-limiting medical condition, or need to provide care to a spouse, domestic partner, child, or parent who is experiencing a serious medical condition may qualify if they meet the employment history criteria conditions as laid out in the Social Security Disability Insurance Program..	One half of two-thirds of the worker's highest earnings over the past three calendar years. Beneficiaries are paid a minimum of \$580 per month, and a maximum of \$4,000 per month.	No more than 12 weeks within a 12 month period.

Source: Social Security Administration, "What You Need to Know When You Get Social Security Disability Benefits," (Baltimore, MD: Social Security Administration, 2011), available at <http://ssa.gov/pubs/10153.pdf>; Social Security Administration, "What You Need to Know When You Get Supplemental Security Income (Ssi)," (Baltimore, MD: Social Security Administration, 2011), available at <http://ssa.gov/pubs/11011.pdf>; Social Security Administration, "Retirement Planner: Benefits for Your Spouse," Social Security Administration, available at: <http://ssa.gov/retire2/yourspace.htm> (last accessed April, 2012); Social Security Administration, "Social Security Retirement Benefits," (Baltimore, MD: Social Security Administration, 2012), available at <http://ssa.gov/pubs/10035.pdf>; Social Security Administration, "What You Need to Know When You Get Retirement or Survivors Benefits," (Baltimore, MD: Social Security Administration, 2012), available at <http://ssa.gov/pubs/10077.pdf>.

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