COLORADO PAID FAMILY AND MEDICAL LEAVE:

PROGRAM DESIGN AND IMPLEMENTATION

September 2019

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RESEARCH TEAM

The Center on Women, Gender and Public Policy, University of Minnesota Humphrey School of Public Affairs

CWGPP illuminates gender-based disparities through research, teaching, and public engagement. In partnership with students, faculty, policymakers and community leaders, the Center advances effective public policies that create a more equitable world. The Center on Women, Gender and Public Policy: (1) Engages students, faculty, the public and decision-makers of all genders in dialogue, policymaking and action for the common good (core research and policy architect on the Paid Family and Medical Leave issue, as well as the Women's Economic Security Act, a broad-based approach to addressing the gender pay gap); and (2) Conducts community-engaged research that helps solve the most pressing disparities and challenges at the intersection of sex, gender, and other aspects of identity (e.g. race, place, class, ethnicity, etc.) (including the Status of Women and Girls in Minnesota project which uses a race/place/gender lens to raise awareness about disparities and advance policy change).

Debra Fitzpatrick, M.A., Co-Director, Center on Women, Gender and Public Policy

Debra Fitzpatrick has demonstrated success analyzing the health, economic, and social benefits of access to paid leave; the cost and economic impact of paid leave; and the drafting and implementation of paid family and medical leave programs at the state level; as well as consideration of the current comparative state-level policy landscape. Under contract with the Minnesota Department of Employment and Economic Development, Debra served as research lead and author for the most comprehensive policy design and implementation report on state-level paid family and medical leave insurance, arguably one of the most complex areas of public policy being considered across the country today. Recommendations and analysis included in the report were the basis of extensive testimony, fiscal notes and legislation passed in the Minnesota Senate in 2015 and the Minnesota House in 2019.

With support from the Ford Foundation, Debra built on the DEED Options for Designing and Implementing a Minnesota Program report to conduct an engaged policy analysis and design process in rural Minnesota communities. The process involved stakeholder interviews, a literature review, secondary data analysis, and a community review and input meeting; all culminating in a Research Brief shared with legislators and others working on paid family and medical leave legislation in Minnesota and nationally. The brief and the policy design recommendations included were largely incorporated in Minnesota's 2019 paid family and medical leave legislation, ultimately passed by the Minnesota House on April 25, 2019, as part of an omnibus spending bill.

- **Paid Family and Medical Leave Insurance: Options for Designing and Implementing a Minnesota Program**
  https://mn.gov/deed/assets/paid-family-medical_tcm1045-300604.pdf

- **Providing Economic Stability for Rural Minnesota Families, Employers and Communities during Family and Medical Leaves**
  http://www.debrafitzpatrick.com/wp-content/uploads/2019/05/WGPP-Rural-Brief-1.19-Pages-1.pdf

The Institute for Women's Policy Research

IWPR conducts rigorous research and disseminates its findings to address the needs of women, promote public dialogue, and strengthen families, communities, and societies. IWPR works with policymakers, scholars, and public interest groups to design, execute, and disseminate research that illuminates economic and social policy issues affecting women and their families, and to build a network of individuals and organizations that conduct and use women-oriented policy research. The Institute's work is supported by foundation grants, government grants and contracts, donations from individuals, and contributions from organizations and corporations. IWPR is a 501(c)(3) tax-exempt organization that also works in affiliation with the Program on Gender Analysis in Economics at American University. In its founding year (1987), IWPR analyzed the costs to American workers of not having unpaid leave for childbirth, personal health needs, or family care giving in its inaugural publication, *Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave*. IWPR's research showed that, by not recognizing the need for work-life balance, established policies not only failed to support workers and their families, but were costly to taxpayers. Now more than twenty years old, the Family and Medical Leave Act (FMLA) of 1993 has become a cornerstone of U.S. employment law and human resource policy. IWPR's most recent scholarship on paid leave is summarized in the following reports:

- **Estimating Usage and Costs of Alternative Policies to Provide Paid Family and Medical Leave in the United States**
  https://iwpr.org/wp-content/uploads/2017/02/IMPAQ-Family-Leave-Insurance-1.pdf
- **"The administration and financing of paid sick leave,"** Anka Schliwen, Alison Earle, Jeff Hayes and S. Jody Heyman, International Labour Review, Vol. 150 (2011), No. 1–2
- **Paid Parental Leave in the United States: What the Data Tell Us about Access, Usage, and Economic and Health Benefits**
  https://iwpr.org/publications/paid-parental-leave-in-the-united-states-what-the-data-tell-us-about-access-usage-and-economic-and-health-benefits/
- *Additional related IWPR research:* https://iwpr.org/issue/work-family/family-and-medical-leave/

Jeffery Hayes, Ph.D., Program Director, Job Quality & Income Security
Dr. Jeffrey Hayes is at the Institute for Women's Policy Research (IWPR) in Washington, DC. He has more than 15 years of experience studying paid leave program design, funding, and economic impacts both internationally and within the U.S. He has studied national, state, and county proposals for paid family and medical leave in more than twelves states and the District of Columbia. Since 2002 IWPR has worked with Randy Albelda (University of Massachusetts-Boston) and Alan Clayton-Matthews (Northeastern University) to design, build, and update a sophisticated simulation model, IWPR-ACM Family and Medical Leave (FML) model, for estimating the cost and usage of paid family and medical leave that allows flexible specification of policy designs at the national, state, or local levels. FML applies parameters for behavioral equations based on the 2012 FMLA employee survey, conducted by Abt Associates under contract to the US Department of Labor to the state (Colorado) labor force data are obtained from the American Community Survey for 2012-2016, a household survey collected by the US Census Bureau. The simulation model is updated frequently. It is now able to mimic state programs that have progressive replacement rates for benefits, allows workers to extend the durations of their leaves when they receive benefits, and allows limited options for employers to supplement state program benefits with their own more generous benefits. The results for each state program are routinely compared with administrative data from the states to ensure that the simulation model is accurately replicating results for the number of claims, amount of benefits, and duration of benefit receipt.

INTRODUCTION AND BACKGROUND

In 2019, the Colorado legislature passed SB19-188, requiring the Colorado Department of Labor and Employment (CDLE) to contract with at least three experts in the field to complete a report on the establishment of a paid family and medical leave program for employees in the state of Colorado. Per the requirements of SB19-188, this report submitted by the University of Minnesota in partnership with the Institute for Women's Policy Research makes evidence and policy analysis based recommendations on the parameters that ensure a Colorado program:

- *is affordable for the lowest wage workers;*
- *is equitable across workers of all incomes and classifications;*
- *is accessible particularly to workers least likely to have access to paid leave today;*
- *is adequate; and,*
- *includes a minimum duration of leave that meets evidence-based standards and wage replacement that is sufficient to allow the lowest wage workers to participate.*

The design of a paid family and medical leave program requires many interlocking decisions. The following report provides recommendations on each of 17 program dimensions (see page 9). However, it is important to understand how the elements work together to create a program that accomplishes the stated goals. In some cases, the goals may be at odds with each other and must be balanced across the entire program design.

Paid family and medical leave has become a top tier policy debate in the United States. Many of the recommendations included in this report build on a robust body of research and policy analysis conducted by academics, government, and think-tanks across the ideological spectrum. The US Department of Labor and major national foundations have supported important foundational work conducted in recent years. This work includes reports by the National Academy of Social Insurance, the American Enterprise Institute in collaboration with Brookings, the Pew Research Center, the Georgetown Center on Poverty and Inequality, the WORLD Policy Analysis Center, the National Partnership for Women and Families, the Institute for Women's Policy Research among other organizations. The body of work has also been advanced by many individual academic researchers that have dedicated a career to paid leave scholarship. Much of this work has focused on learnings from decades of experience in three US states and 34 OECD countries (developed democracies with market economies). This body of scholarly and applied policy analysis work has documented the significant health and economic benefits of paid leave for workers and more recently employers (see box for a summary).

This report does not revisit or diminish the many benefits of paid leave but focuses on recommendations for crafting a Colorado program that meets the goals outlined

in SB19-188 and ensures the many benefits of paid leave can be accessed by all workers (but especially low wage workers) at a reasonable cost. Recent efforts by the US Department of Labor, funders, state employment agencies, think-tanks, and advocacy groups have turned to the nuts and bolts of cost modeling, designing and implementing federal and state paid leave programs that accomplish a variety of goals. This report focuses on and applies the best of that work to policy design and implementation recommendations for the state of Colorado. The report then uses a sophisticated simulation modeling software program supported by the US Department of Labor and developed by IWPR and partners to map leave-taking behavior on to the Colorado population, both in the absence and the presence of a Colorado program based on the 17 recommended program elements. Based on these behaviors, the simulation model estimates usage and related costs for the recommended program.

Benefits of Paid Leave

A growing body of research documents the many benefits of paid leave.

Improved mental and physical health for new parents [1]

Reductions in mortality for infants and young children and low birth weight/pre-term births [2] [3]

Increases in breastfeeding rates and duration, especially among low-income mothers [4] [5]

Increased rate of on-time vaccinations [6] [7]

Improved infant emotional health and cognitive development [8]

Reductions in physical abuse of children [9]

Improved mental and physical health for children [10]

Increased preventative health screenings [11]

Improved health outcomes for care recipients [12]

Decreased nursing home placements [13]

Greater workforce attachment and higher wages (people with disabilities, women) [14] [15] [16]

More predictability in leave related costs for workers and employers

Decreased use of public assistance [17]

Greater involvement of fathers [18]

Reduced presenteeism (when workers go to work ill or injured)[19]

Improved parent-child bonding and co-parenting skills [20] [21]

Unfortunately, these benefits are not currently shared equally across the Colorado population leading to economic and health disparities for low wage and part-time workers, women, immigrants, unpaid informal caregivers, people with disabilities, LGBTQ people, people of color and indigenous people.

Recommended Program Design to Achieve Stated Goals

- **Leave purposes:** *Cover FMLA events (serious illness, caring for a loved one with a serious illness, bonding with a new child and needs arising from military deployment) plus domestic violence, stalking, and sexual assault.*
- **Self-employed access:** *Allow self-employed workers to elect coverage but also include a mechanism that automatically covers some contractors.*
- **Eligibility:** *Include workers employed by all types of employers that are covered under Colorado UI law and use the low familiar Colorado Unemployment Insurance (UI) earnings threshold to determine adequate labor force attachment for program eligibility.*
- **Family definition:** *Recognize the significant value to the state of "family" caregiving by using a broad definition of family, including affinity whose close association is the equivalent of a family relationship.*
- **Job protection and other employment protections:** *Ensure workers that are using the state paid leave program and have been with their current employer for at least 90 days can return to their job, are not subjected to retaliation and can maintain health insurance coverage.*
- **Leave duration:** *Maximize health benefits, flexibility, and access for all workers by providing up to 12 weeks for medical leave and up to 12 weeks for family leave with certification by qualified health professionals.*
- **Wage replacement:** *Follow the lead of most state programs and ensure low wage worker access by providing a higher 90% wage replacement on wages for all workers up to 50% of the statewide average weekly wage and 50% on wages above. Ensure the average worker and primary breadwinners can use the program by providing wage replacement up to a maximum of 100% of the statewide average weekly wage.*
- **Voluntary or private plans:** *Allow employers to provide comparable benefits if workers agree, funding is earmarked for adequate enforcement, and workers can appeal denials to the state program.*
- **Funding structure:** *Use a social insurance model, the predominant approach in the US and across the globe, with shared employer and worker contributions, to spread risk and benefits across the widest pool of workers and employers, minimize discrimination against workers and keep costs low for all.*
- **Implementation:** *Improve the odds of effective implementation of a major new state program with a reasonable start-up period, earmarked funding for significant outreach and communication with employers and workers, an advisory committee that formalizes and sustains input and use of existing state infrastructure to the extent possible.*
- **Third-party vendors:** *Third-party vendors, potentially important partners, should be used to help design and implement program elements and may be especially helpful in the area of information technology. However, no state has outsourced an entire paid family and medical leave program to a third-party vendor and Colorado should follow their lead, allowing the state to build on the experiences and expertise of other states.*

- **Solvency and sustainability:** *Achieve solvency and sustainability by adopting a social insurance model funded by shared contributions that are adjusted annually to cover full costs of benefits and administrative costs.*
- **Portability:** *Eligibility standards and wage replacement formulas based on earnings from all employers during a backward-looking four-quarter base period ensure workers that contributed to the trust fund but change jobs, are recently unemployed or have multiple employers can receive the wage replacement benefits they have earned.*
- **Interaction with other benefits:** *Workers that are receiving worker's compensation for a work-related injury should not be eligible. For unemployed workers or workers receiving safety net support (SNAP, TANF) that qualify for the paid leave program, wage replacement benefits should be handled as regular wages would be under those programs. Employers should not be allowed to require workers to use accumulated paid time off before accessing the state benefit and should be encouraged to support and allow workers to combine paid time off and state wage replacement.*

Leave-taking and Program Claims under the Recommended Program

As detailed in the sections that follow, the recommended Colorado paid family and medical leave program addresses the limitations of currently operating programs to create an adequate program that is affordable, ensures access across the income spectrum but especially for low wage workers, and includes sufficient benefit length and wage replacement. Using the IWPR-ACM modeling software, we demonstrate throughout the report how changes in leave-taking behavior and program usage accomplish the goals for a Colorado paid family and medical leave program as stated in SB-188.

Increased income during leaves:
All workers on average see an increase in income (see page 32, Figure 16) during leaves with a program in place, but workers from the lowest wage households (less than 200% of the poverty line) see the largest increase in both wage replacement rates and income available during family and medical leaves.

Increased length and number of leaves:
Estimated leave-taking increases overall (in number and duration) with the recommended program in place, but not dramatically, with workers from low wage households seeing the largest increase (see Figures 1 and 2 on page 11 and detailed tables in Appendix C). We estimate that under the ideal program a little under 7% of Colorado workers would access program benefits during eligible leaves annually. Recommended program design decisions (including but not limited to job protection, progressive wage replacement and eligibility criteria) result in a program that better serves the state's lowest wage workers and in a higher utilization rate than currently operating state paid family and medical leave programs.

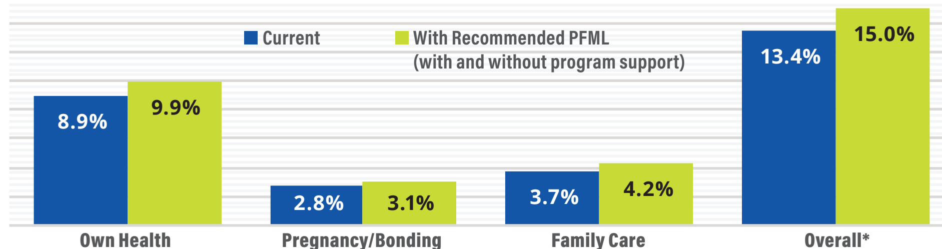
Affordable program costs:
The recommended program accomplishes the stated goals at an affordable .7% contribution on wages up to the Social Security cap split between workers and employers (around $1.50 per week for a full-time minimum wage worker).

LEAVE PURPOSES

The scope of life events covered under a paid leave program is a first-level decision. A majority of employers and workers are familiar with the conditions covered under the federal Family and Medical Leave Act (FMLA), providing job-protected, but unpaid leave, to many workers. So, FMLA is a logical starting point for a state-level paid family and medical leave program. Decades of case law and research have established the benefits and limitations of the covered conditions included in the act and how these relate to the five goals of a Colorado paid family and medical leave program. Affordability and a broad set of qualifying conditions should be balanced. Under an adequate universal program, if all workers are contributing, arguably all should have the potential to benefit. A broad set of qualifying conditions create an adequate program with a higher likelihood that at some point in a lifetime, every worker that has contributed and earned the right to take leave could benefit from the program.

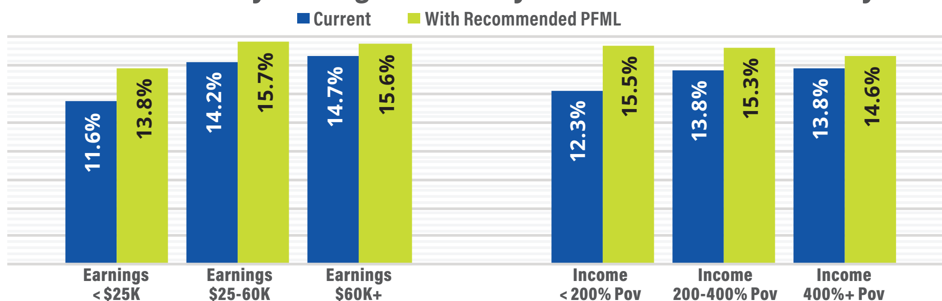
Based on IWPR-ACM modeling, with the recommended paid family and medical leave program in place the number of people taking leaves increases from 13.4% (or 342,720) of Colorado workers to 15% (or 382,737). Overall leave-taking increases the most for workers with family income less than 200% of the poverty line, rising from 12.3% to 15.5%. Not all workers taking a leave will seek wage replacement benefits from the state program and a small percentage of workers take multiple leaves in a year. Under the recommended ideal program, an estimated 7% of Colorado workers would make 187,559 total benefit claims annually (as summarized on page 10 and detailed in Appendix C). We consider each type of leave in the sections that follow.

Figure 1: Share of Colorado Workers Taking Family and Medical Leaves in a Calendar Year



* Workers can take leave for more than one reason. Not all workers taking a leave will use the PFML program (See APPENDIX C for more details on program usage)

Figure 2: Share of Colorado Workers Taking Family and Medical Leaves in a Calendar Year by Earnings and Family Income Relative to Poverty Line



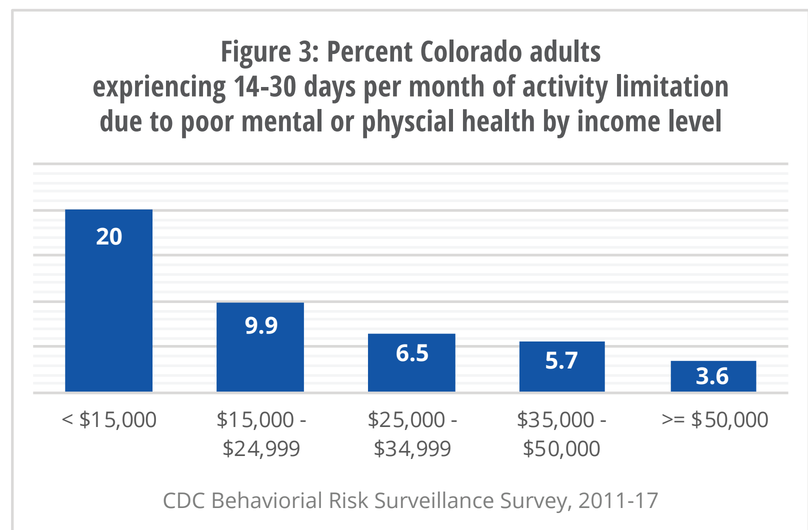
Own serious illness

Recommendation: A Colorado paid family and medical leave program should include wage replacement during leave to manage a worker's serious illness.

- *Workers are more likely to take leave for a serious health condition than any other reason, 8.9% or 228,332 Colorado workers take a medical leave related to a condition other than pregnancy annually; this would increase to 9.9% or 252,898 Colorado workers under the recommended program.*[22]
- *Under the recommended Colorado program, an estimated $399 million in wage replacement would reach workers annually during a time when other medical-related expenses may be adding to financial insecurity. Medical debt is the number one reason for bankruptcy in the US and major illness a significant contributor to home foreclosures, with lost wages a major part of the equation.*[23] [24]
- *Due to social determinants of health, Colorado's low-income workers and workers of color are more likely to experience serious illnesses (see Figure 3).*[25] [26] *At the same time, a majority of low wage workers do not currently have access to compensation while on medical leaves – either in the form of employer-provided paid sick days or temporary disability insurance.*[27]
- *Without access to wage replacement, workers with serious health conditions put off treatment or return to work sooner than recommended, jeopardizing recovery and long term health.*[28]

Policy Analysis and Evidence-based Rationale

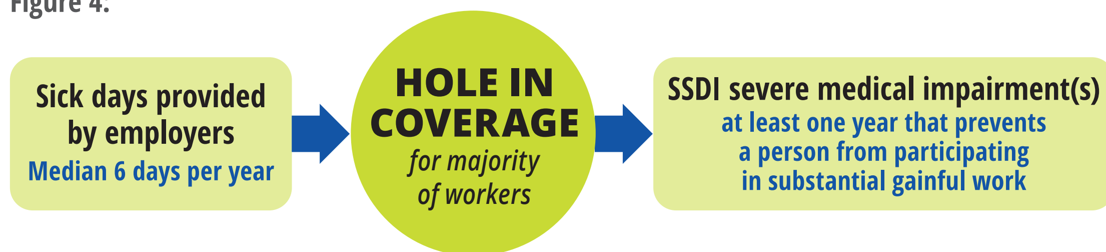
Leave for a serious illness is the most common use of the federal FMLA and each of the current operating state combined Temporary Disability and Paid Family Leave programs,[29] as well as the recommended Colorado program (representing 59% of claims).[30] The definition of a serious illness under the FMLA and most state temporary disability or paid medical leave programs includes illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Under FMLA and all state-level programs, a qualified healthcare provider certifies both the health condition and related length of leave needed. [31]



A wide range of researchers and analysts, from the American Enterprise Institute to the Center for American Progress, acknowledge that a gap currently exists for a majority of workers between short term sick leave and wage replacement for those with longer-term

or permanently disabling medical conditions (see Figure 4).[32] Less than 40% of workers have access to employer-provided Temporary Disability Insurance, the most common approach for filling this gap and supporting workers with a more serious but temporary illness.[33] That coverage falls to 19% for workers in the lowest quartile of earnings and is lower overall (at 30%) for all workers located in the Mountain West region that includes Colorado.[34] Moreover, these levels may be declining. The Society for Human Resource Management annual survey of U.S. employers to gather information on the types of benefits employers offer their employees found a statistically significant decrease in the percentage offering temporary disability benefits over the past five years (2014-2018).[35]

Figure 4:



There are several limitations related to the use of private-sector temporary disability insurance to support workers during any form of medical leave, but especially during pregnancy. Since the 1978 Pregnancy Discrimination Act pregnancy has been a covered condition under most temporary disability policies and pregnancy-related complications are the most common medical leave claim under state temporary disability programs. With pregnancy-related complications being the most expensive Medicaid cases, reductions in infant mortality, low-birth weight, and pre-term births that come with paid leave could also have multi-level benefits for mothers, babies, and state budgets. In New Jersey, around a quarter (27.8%) of TDI claims relate to pregnancy, followed by bones and organs of movement (18.3%), accidents poisoning and violence (12.4%) and cancer (neoplasms) (7.6%).[36] Workers must purchase private coverage before becoming sick, hurt, or pregnant and new policies often exclude pre-existing health conditions for 12 months. In the case of pregnancy, coverage must begin before conception not after and pregnancy is a pre-existing condition excluded for 12 months.[37] Lack of coverage for pre-existing conditions and other private insurance market underwriting practices that limit coverage or increase costs for high needs workers or high-cost conditions may also be a problem for the growing number of older workers.[38] [39]

Without access to Temporary Disability Insurance, most workers manage even serious illnesses with accumulated paid time off. Around three-quarters of workers have access to paid sick days nationally, although an IWPR study found that percentage to be lower (57%) among Colorado's private-sector workers.[40] [41] Nationally, a similar percentage of workers (74%) have access to paid vacation days. Only 46% of workers in the lowest-earning quartile earn any paid sick leave at all.

Moreover, among those that do earn paid leave nationally the median number of days available for both types of leave combined is 16 or a little over three weeks. Also, about 80% of workers (88% of those in the lowest earnings quartile) have limits on or no ability to carry over sick days from one year to the next.[42] **These limitations suggest that for the majority of Colorado workers current voluntary employer-provided paid time off is not an adequate solution in the face of a serious illness, especially for low wage workers.**

16 is the median number of combined paid sick and vacation days available to workers that have access to any employer provided paid time off annually

(National Compensation Survey 2018)

In the absence of an employer-provided temporary disability benefit, adequate paid time off or significant savings, some workers may turn to state and federal programs like Unemployment Insurance, Social Security Disability or Colorado Works. The state and federal government bear the costs of these programs, and they sometimes involve a worker disconnecting from employment. The advantage of a state paid family and medical leave social insurance program (like the one recommended in this report) that covers medical leaves is two-fold, trust fund contributions cover costs rather than other state funding sources and workers can remain attached to their employer while receiving support.[43]

32% of workers earning below the median received full pay for most recent two-week or longer FMLA leave

(US DOL Family and Medical Leave in 2012)

Caring for a loved one with a serious illness

Recommendation: A Colorado paid family and medical leave program should include wage replacement during leave to care for a seriously ill loved one.

- *Most workers currently rely on limited employer-provided paid time off to manage care for an ill loved one, but there is no law requiring Colorado employers to allow workers to use their PTO for family care.*
- *Only 4% of workers in the lowest quartile of earnings have access to a specific paid family leave benefit and less than half currently have access to the paid sick days used by many workers to cover family care needs in the absence of that specific benefit.* [44]
- *At the same time, due to social determinants of health, low-income workers, rural workers, and workers from communities of color and are more likely to be caring for a family member with a serious illness or disability.* [45][46]

Policy Analysis and Evidence-based Rationale

Researchers and analysts across the ideological spectrum acknowledge the impact of changing family demographics and family caregiving on workers and employers.[47] An aging population and increased workforce participation of women is resulting in an increased number of care recipients and a simultaneous decrease in the number of people available to provide that care. Research on California has found that their paid family program reduced nursing home utilization rates by 11 percent among the elderly.[48] Family caregivers are one of the most important factors allowing seniors to age in place – 68% expect to rely on their families to make that possible. However, by 2050 the ratio of caregivers to those needing care is expected to fall to 3 to 1.[49] While family caregiving is currently the least frequently used category of leave covered under the FMLA annually at around 18%, over an entire career most workers are likely to have such a need at some point.[50][51] These leaves may not meet the eligibility threshold for state paid leave programs, one reason that they currently make up a small percentage (3-4%) of all paid family and medical leave claims. Under the recommended Colorado program, around 4.2% or 108,054 Colorado workers would take a leave for family care annually, with 10% of claims related to this type of leave.[52] Some worry that family care leaves might be requested and used every year, however research from California has shown that the vast majority of women (92%) and men (93%) taking family care under their Paid Family Leave program between July 2004 and December 2014 had only one claim over the entire time span.[53]

Family care leaves are shorter in duration on average (around 3.5 weeks under the recommended Colorado program) and are hence more likely to be covered using currently accumulated employer-provided paid time off (sick, vacation).[54] For the majority of Colorado low wage workers without access to paid sick leave, this is not a solution. Without a "kin care" law on the books, Colorado workers that do earn paid sick days must rely on employer permission to use accumulated paid time off to manage care for seriously ill family members.[55] Eleven other states (California, Connecticut, Georgia, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Oregon, Washington and Wisconsin) currently have a "kin care" law requiring employers to allow workers to use accumulated paid time off for care of an ill family member. The section of this report on Family Definition includes more detail on care recipients under FMLA and state paid family leave programs.

94,517 Colorado workers take a leave to care for a seriously ill family member each year

(IWPR-ACM simulation model)

Colorado informal caregivers forego an estimated $2.9 million in wages each year

(Putting a Price on Informal Caregiving in Colorado)

Informal caregiving costs Colorado employers $564 million per year in turnover, presenteeism and absenteeism

(Putting a Price on Informal Caregiving in Colorado)

Care for Colorado Children

- *1 in 30 children or over 41,000 Colorado children are hospitalized at least once in a given year* [56]
- *15% of elementary school students miss more than one week of school due to illness* [57]
- *Children with cancer miss up to 31 days of school for treatment* [58]
- *15% or 187,000 Colorado of children have special healthcare needs that include ongoing care and infrequent high-intensity care during severe episodes* [59]

Currently, informal and unpaid caregiving has a high opportunity cost for the mostly 50 something women that provide it. Sixty-nine percent (69%) of working caregivers caring for a family member or friend report having to rearrange their work schedule, decrease their hours, or take unpaid leave to meet their caregiving responsibilities. Six out of 10 (61%) caregivers experience at least one change in their employment due to caregiving. These employment changes include: cutting back work hours, taking a leave of absence, receiving a warning about performance/ attendance, among others. Forty-nine percent (49%) arrive at their place of work late/leave early/take time off, 15% take a leave of absence, 14% reduce their hours/take a demotion, 7% receive a warning about performance/attendance, 5% turn down a promotion, 4% choose early retirement, 3% lose job benefits, and 6% give up working entirely.[60] One study found that women over 50 who left the workforce to care for an elder lost wages averaging $142,693 and Social security benefits averaging $131,351.[61] These costs are projected to increase by 54–72 percent per US resident in the next 30 years.[62]

"Just as the availability of paid family care leave can affect an individual caregiver's financial situation, so too can it affect the government's financial situation." Research shows that unpaid family caregiving provides important economic benefits to society by reducing public and private spending on long-term services and supports.

(Work-Related Opportunity Costs Of Providing Unpaid Family Care In 2013 And 2050)

Family caregivers for people with disabilities experience similar impacts on work and economic stability. One third to one-quarter of parents of children with an intellectual disability or developmental disability report that due to their child's health they had not taken a job, changed work hours, worked fewer hours, quit working, or turned down a better job. Overall nearly 70% report that in some way caregiving interfered with their work, with 20% saying someone in the family quit a job to provide care.[63]

Bonding with a new child

Recommendation: A Colorado paid family and medical leave program should provide wage replacement in a gender-neutral way during leaves to bond with a new child (broadly defined).

- *Two-thirds of new mothers were in the paid labor force the year they gave birth.[64] However, only 17% of all workers (4% in the lowest quartile of earnings) have access to a specific paid family leave benefit and 30% of workers in the Mountain West have access to Temporary Disability Insurance (19% in the lowest quartile of earnings nationally) to provide financial support during leaves related to a new child.[65]*
- *At median accrual levels, a worker would need to save all PTO for almost four years to cover a 12-week parental leave, and a majority of workers would not have the option to carry forward that amount of accumulated PTO.[66]*
- *As the majority of part-time workers, women, low income women, rural women, women from communities of color are less likely than other workers to have access to any paid time off during a birth-related leave and the significant benefits associated with doing so with pay, despite need to recover physically and emotionally in addition to bonding.*
- *Under the recommended program, combined pregnancy and bonding related claims increase by 10% in number and 28.3% in length, with $265 million in benefits flowing annually to families during this critical time in family formation.[67]*

63% of Colorado women that gave birth in the past year are in the paid labor force

(American Community Survey 2013-17)

Policy Analysis and Evidence-based Rationale

Birth of a child or bonding with a newly placed child is the most common form of family leave under the FMLA and state paid family leave programs. Under the recommended Colorado program, 30% of claims would be for bonding and pregnancy.[68] Bonding leaves, alternatively referred to as "parental leaves" or "maternity/paternity leave" are limited to the first year after a child is born or placed and are the only type of leave under FMLA or state programs where applicants decide duration (subject to maximum limits).[69]

70% of Colorado married couple households with children under 18 have both parents in the paid labor force

(American Community Survey 2013-17)

While a majority of those taking bonding leaves and making state claims are women, a growing number of men are taking leave and making a benefits claim to bond with a new child under state programs. Men's share of parental leave claims in California and Rhode Island rose to more than one-third by 2016.[70] A significant percentage of birth parents combine a medical leave associated with physical recovery from pregnancy and a bonding/parental leave and in some cases where paid family leave is not available birth parents are using temporary disability insurance for a period of weeks following birth as defacto bonding leave. Due to the growing and blurred distinction between these two ways of providing wage replacement for birth parents, the IWPR-ACM simulation model results for these two categories of leaves

have been combined in this report. The FMLA, all state paid family leave programs, and the recommended Colorado program are gender-neutral, offering the same number of bonding weeks with wage replacement to all new parents.[71]

Research on California paid maternity leave when TDI was required to cover leaves for pregnancy found significant reductions in the share of low birth weight births by 3.2 percent, and decreases the likelihood of early term birth by 6.6 percent.[72] Nationally, the average cost of caring for a preterm or underweight birth is estimated to be $55,393 in 2014. In that year, there were 5,517 premature births in Colorado. Reducing that number by 3.2 percent or 177 births could save $8.9 million in excess health care costs associated with premature births.[73]

With the extremely high cost of childcare ($14,960 per year or $1,246 per month for center-based infant care in Colorado), providing bonding time to two parents can improve family and child well-being and benefit family and state (CCAP) pocket-books.[74] Inequities in access to high-quality early childhood care impact a child's lifetime trajectory, resulting in health and economic inequities later in life.[75] In the absence of any other form of financial support after the birth of a child, some birth parents turn to Temporary Assistance to Needy Families as a form of "maternity leave." [76] [77] California's paid family leave programs has been shown to decrease the number of birth parents that must take this route, keeping more new parents attached to their employer, increasing wages over the long term and decreasing state TANF outlays.[78]

Given the significant health-related benefits for both birth parents and babies, a 10% increase in the number of pregnancy/bonding leaves under the recommended program and a 57% increase in wage replacement rate for workers with family income less than 200% of the poverty line could have an important impact on health-related disparities in the state of Colorado. Overall, the recommended program would add an estimated $265 million annually to family budgets during the critically important period of family formation.[79]

Defining Child

The broad definition of "son or daughter" is intended to reflect the reality that many children in the United States live with a parent other than their biological father and mother. The FMLA defines a "son or daughter" as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis. Under the FMLA, an employee who actually has day-to-day responsibility for caring for a child may be entitled to leave even if the employee does not have a biological or legal relationship to the child.[80] Most state-level programs duplicate this definition, although the gender-neutral "child" is more common than "son or daughter."

Needs arising from military deployment

Recommendation: A Colorado paid family and medical leave program should include wage replacement during leave associated with a military deployment under family leave entitlements.

Policy Analysis and Evidence-based Rationale

50,362 Coloradans are active duty and reserve members of the military

(US DOD June 2019)

In 2008, Congress added leave to manage a military deployment to the FMLA. Since then four state paid family leave programs offer wage replacement during FMLA-defined qualifying exigencies related to deployment to a foreign country. While this provision has not been used extensively under the FMLA unpaid leave provisions (around 2% of leaves)[81] and only 150 New Yorkers took advantage of that state's new paid exigencies leave provision in 2018, pay while on leaves to deal with a foreign deployment can be one more tool for assisting families during this important and stressful time. These leaves would be covered under family leave entitlements under the recommended program and would have a negligible effect on the number of claims within that category, increasing costs slightly but offering an invaluable benefit to military families during a challenging time.

What is exigency leave?

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for a "qualifying exigency" arising out of the foreign deployment of the employee's spouse, son, daughter, or parent. Four state-level paid leave programs provide partial wage replacement during these leaves up to maximum durations established in their paid family leave laws. Exigency includes anything related to a short-notice deployment, military events and related activities, childcare, care of the military member's parent, financial and legal arrangements, counseling or post-deployment, temporary Rest and Recuperation leave and certain post-deployment activities.[82]

Domestic violence, stalking, and sexual assault

Recommendation: A Colorado paid family and medical leave program should include wage replacement during leave associated with intimate partner violence.

- *One of the key benefits of a paid family and medical leave program is greater labor force attachment. Providing financial support only if IPV impacts result in a job loss (via Colorado's Unemployment Insurance program) undercuts this goal.*
- *Without access to sick leave or vacation, a majority of low-income Colorado workers lose critical income while managing the impacts of IPV.*
- *In the absence of a Colorado law requiring employers to allow workers to use accumulated PTO for "safety" leave, even those workers with employer-provided PTO may be at risk of losing income during IPV.*

Policy Analysis and Evidence-based Rationale

Intimate partner violence (IPV) is common according to the CDC with 7.2% of Colorado women (above the national average of 6.6%) experiencing sexual violence, physical violence or stalking in the past year and 38.6 (or more than 1 in 3) during their lifetime. Lifetime prevalence increases to 42% for Hispanic women in Colorado. [83]

Three quarters (73%) of Colorado female survivors of intimate partner violence experienced at least one of several IPV impacts including injury (41%); missed work (29%) and medical treatment (21%).

(CDC National Intimate Partner and Sexual Violence Survey)

According to one national study, victims of IPV who were stalked lost an average of 10.1 days of paid work per year, those who were raped lost an average of 8.1 days per year, and those who experienced physical violence lost 7.2 days per year.[84] While IPV occurs at all income levels, low-income women are slightly more likely to experience sexual violence, physical violence or stalking, and they have less access to the resources needed to manage IPV.[85]

For those that are eligible, the federal FMLA and state-level paid medical leave programs may provide leave or wage replacement due to IPV physical and mental health-related care that rises to the level of a serious health condition. However, these laws would not necessarily provide support during legal proceedings or other economic disruptions (including loss of housing) for a worker or a family member's involvement in care or other support. A patchwork of other provisions at the state and local level address IPV related impacts for the worker or a family member of the worker. Eight state and several local sick leave laws explicitly allow workers to use accumulated PTO to manage impacts of IPV for themselves or a family member.[86] Several states, including Colorado,[87] allow workers that must quit their job due to IPV to access unemployment insurance benefits. New Jersey's paid family and medical leave program was amended in 2019 to explicitly allow eligible workers to access wage replacement for domestic or sexual violence-related leave provided under the NJ SAFE Act[88] and Oregon's new paid family and medical leave program allows wage replacement for "safe leave" workers are entitled to under 659A.272.[89]

A significant portion of IPV related wage replacement is already likely occurring through PTO and temporary disability policies for those that have access. The third most frequent temporary disability claim under New Jersey's program is for a serious medical condition related to violence.[90] Given the average duration of lost work, some Colorado workers could use PTO to cover missed days. However, the inclusion of this provision in the Colorado program would provide a critical new benefit for workers in the state that do not currently have access to PTO and could do so at a relatively modest additional cost given the short duration and low wages of those most likely to use this type of benefit.

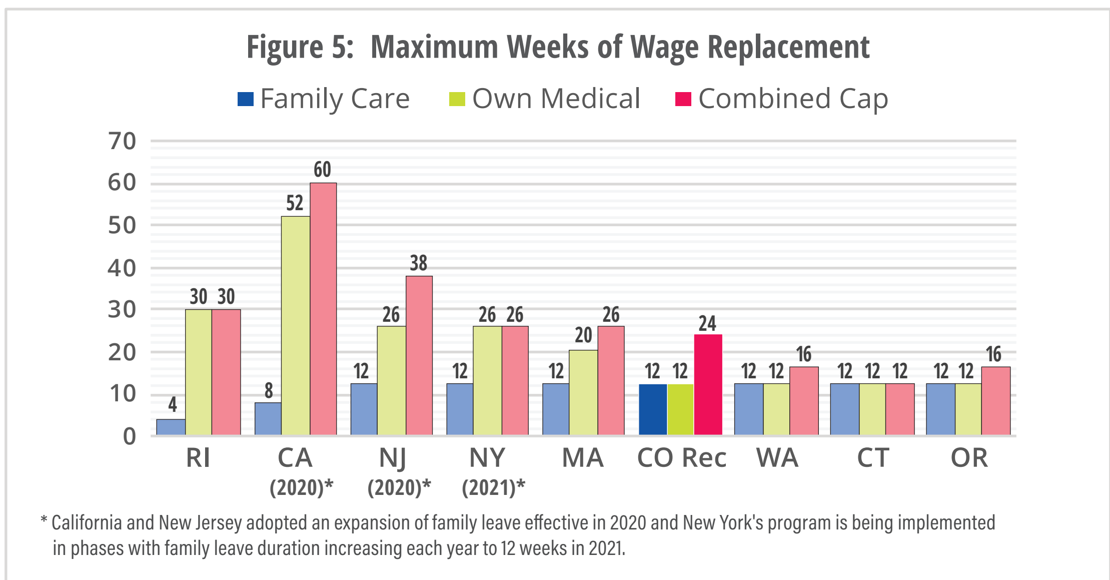
LEAVE DURATION

Recommendation: A Colorado paid family and medical leave program should provide up to 12 weeks of wage replacement for family care including bonding and up to 12 weeks of wage replacement for a worker's medical care including recovery from pregnancy with a qualified healthcare certification.

- *A 12 week maximum for both types of leave falls in the middle of maximum combined durations among states and developed countries and covers the average claim duration in most state programs.*
- *While the maximum benefit would be technically 24 weeks, in practice the vast majority of workers do not have a qualifying condition in any given year and make just one claim to state systems over a several-year period.*
- *Qualified healthcare provider certification of needed leave duration limits the number of benefit-eligible weeks for 75% of claims (those related to family care and medical care).*
- *At the same time, allowing up to 12 weeks for both types of life events provides the maximum worker flexibility and ensures its availability during times of need.*
- *Birth parents are the vast majority of those making a claim within current state programs for both their medical care and family care in a given benefit year. Allowing a birth parent to combine both types of leave helps ensure the full range of health benefits for babies and birth parents at all income levels that come with a six month paid leave.*

Policy Analysis and Evidence-based Rationale

The maximum possible weeks a worker can receive wage replacement benefits varies across states and leave types (see Figures 5), with generally longer periods of potential eligibility for medical leaves and shorter periods related to family care. Three of the four most recent states to adopt a paid family and medical leave



* California and New Jersey adopted an expansion of family leave effective in 2020 and New York's program is being implemented in phases with family leave duration increasing each year to 12 weeks in 2021.

program allow workers to access up to 12 weeks of wage replacement for their medical care and up to 12 weeks for family care subject to a combined cap.[91]

43% of FMLA leaves are two weeks or less

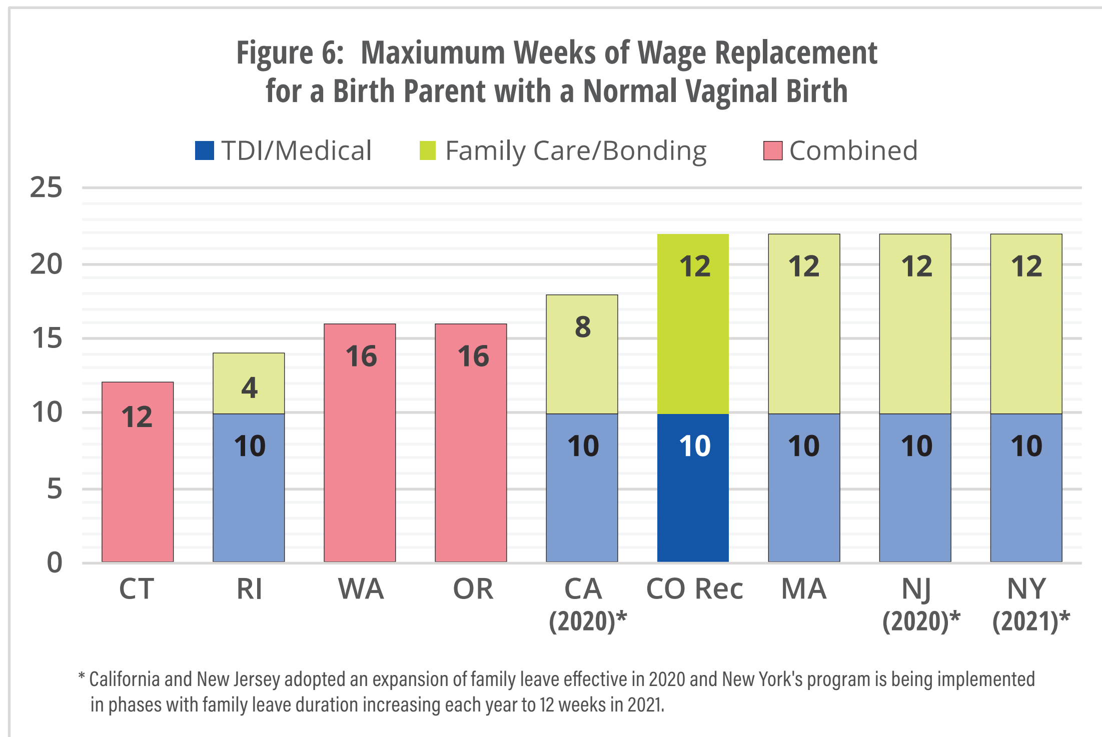
(USDOL Family and Medical Leave in 2012

The longest-running state programs have low maximums for family leave benefits—ranging from four weeks in Rhode Island to six in California and New Jersey (although New Jersey is increasing their maximum to 12 weeks and California to 8 weeks in 2020; and New York is phasing in extended durations to 12 weeks by 2021).[92] [93] In most of the developed world, (75% of OECD countries), the parent giving birth receives six or more months of paid leave, while fathers receive an average of eight weeks in these countries. [94]

77% of FMLA leave-takers take just one leave in a year

(USDOL Family and Medical Leave in 2012)

A birth parent in all state programs is allowed to combine weeks of wage replacement under a medical leave or temporary disability program for pregnancy-related recovery and weeks of wage replacement under a family care program for bonding, typically up to a cap (see Figure 6). Three of the four most recently adopted programs with a combined cap provide an additional two weeks for complicated pregnancies (Oregon, Connecticut, and Washington). California, New York, Rhode Island, and New Jersey provide weeks of Temporary Disability benefits as necessary per medical certification up to the TDI program or a combined cap. Standard of care within private sector Temporary Disability programs (and public ones) is leave of 4 weeks before birth and six weeks after for recovery related to normal vaginal birth and eight weeks after for a Cesarean Section birth. [95]



Program data show that many claims for parental/bonding leave approach the low maximums allowed in all three longstanding program states. The estimated average duration of bonding and pregnancy-related leaves under the recommended Colorado program is the longest of all types of leave at 9.5 weeks, with an associated claim average of 8.1 weeks.[96] It is important to recognize that these averages include both men and women, as well as pregnancy-related weeks. Bonding claims for men

tend to be significantly shorter (averaging around four weeks under the FMLA) compared to 8.4 weeks for women.[97] In New Jersey, temporary disability claims associated with pregnancy average 8.9 weeks.[98]

73% of Rhode Island TDI claims are 12 weeks or less

(Meeting the Promise of Paid Leave)

While FMLA and all state programs establish maximums (see Figure 5), in practice benefit durations for a worker's own serious health condition or a family member's serious health condition are dependent upon certification of need by a qualified healthcare provider. Parental leave or bonding claims are the only category where workers control the number of weeks with benefits. Usage data from the longest-running TDI programs shows that most leaves do not approach the maximums allowed (see Figure 7).

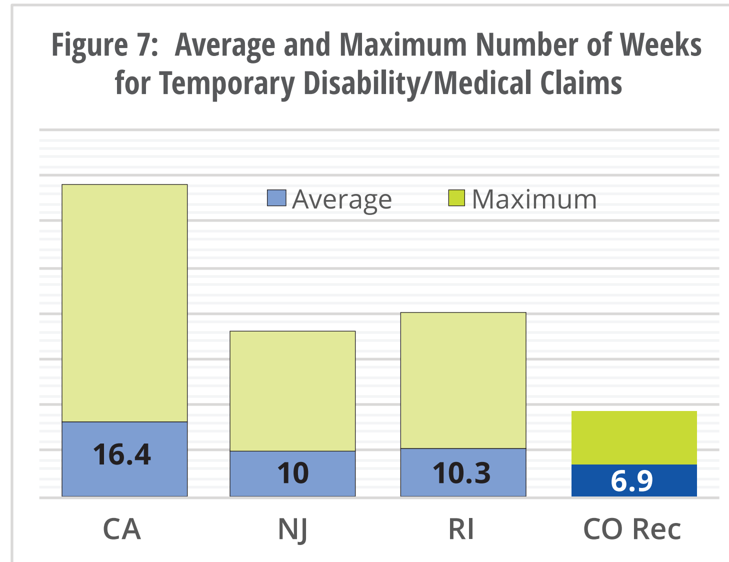
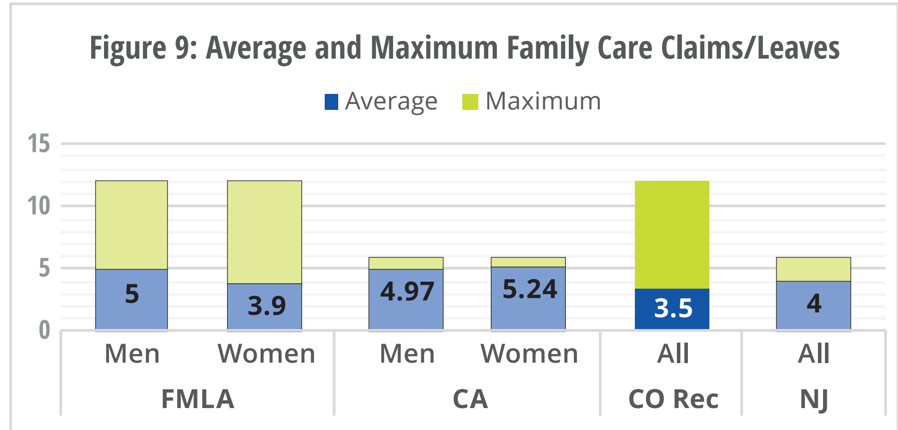


Figure 8: Birth of a new child timeline

6 weeks	12	14	16	18	22	26
Organs Return to non-reproductive state Most childcare centers begin accepting infants	**Minimum leave endorsed by American Academy of Pediatrics** Maximum leave/ benefit under FMLA, CT for all parents When most US birth parents return to work	RI birth parent benefit maximum	EU parental leave entitlement WA and OR birth parent benefit maximum	ILO recommended paid birth parent leave Surgeon General "reasonable leave goal" for breastfeeding success CA 2020 birth parent benefit maximum	MA, NJ, NY birth parent benefit maximum **CO recommended birth parent maximum benefit**	95% of US birth parents have returned to work American Academy of Pediatrics exclusive breastfeeding rec Birthparent paid leave meets or exceeds for 3/4th of OECD countries

FMLA leaves and state paid leave claims to care for a seriously ill family member tend to be shorter than parental leave claims on average (see Figure 9). The estimated duration of family leaves under the recommended Colorado program is 3.5 weeks, far lower than the 12-week maximum.[99] Certified length of time care is needed, intermittent nature of many caregiving leaves and the potential for multiple caregivers, among other reasons, result in shorter durations for these claims.



BENEFITS ELIGIBILITY

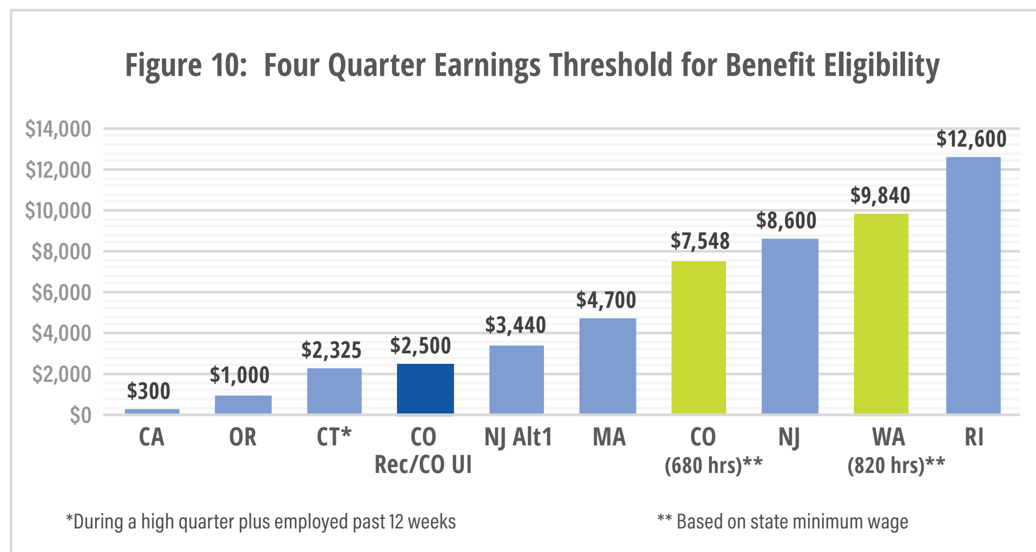
Recommendation: A Colorado Paid Family and Medical Leave program should build on the familiar definitions established under the Unemployment Insurance program for eligibility, including an expansive covered employer definition and a low earnings threshold across all covered employers during a four-quarter base period.

- *Using the Colorado Unemployment Insurance definitions of covered employment (taxpaying and reimbursing) and earnings threshold ($2,500 in four quarters) that demonstrates sufficient attachment to the workforce has multiple benefits. This approach creates an accessible program for the vast majority of workers (with around 90% of workers meeting this threshold) and allows the state to build on UI data collection infrastructures, creating efficiencies for workers, program administrators, and employers.*
- *Eligibility criteria that include all covered employers during a four-quarter base period support the full inclusion of low income and part-time workers (34% of workers in the state)[100] that may have a more variable work history during a year including multiple employers either simultaneously or in succession.*
- *Since they have the same needs as other workers, state and local government workers should be automatically covered under the program.*

Policy Analysis and Evidence-based Rationale

The FMLA and all state paid leave programs are structured as an “earned” benefit. Beyond the need for a qualifying event (birth, serious health condition), eligibility hinges on employer coverage and worker attachment to the labor force or a specific employer, measured by hours/weeks worked or dollars earned during a specified base period. Due to the combination of these two factors, FMLA does not cover about 41% of workers. They either have not worked with the employer for a long enough period (1250 hours over 12 consecutive months with an employer), or the employer does not meet the minimum number of employees necessary to be covered (50 or more employees within 75 miles) or both. All state paid leave programs include employers of all sizes and most have created a portable wage replacement benefit that requires minimum levels of workforce attachment across all employers during a base period (usually four quarters).[101]

Four states base eligibility on earnings exclusively, two use both an earnings threshold and a minimum time in covered employment. Washington State and New York use a minimum time in covered employment measure (820 hours and 26 consecutive weeks or 175 days part-time, respectively). In Figure 10, we calculate the minimum earnings for Washington State based on the number of hours times the state’s minimum wage. Using this calculation, the alternative measure of workforce attachment of 680 hours proposed in Colorado translates into a minimum of $7,548. While an hours worked measure of labor force attachment creates equity between low wage and higher-wage workers on the “time to qualify” dimension, it may require significant additional data collection and reporting for the majority of states (including Colorado) that do not currently collect hours worked under the wage detail already reported under state Unemployment Insurance programs. Alternatively, using a low minimum earnings threshold that a minimum wage earner could reasonably meet can help overcome equity issues.



Since low wage worker benefit levels are based on their earnings, use of either a low number of hours or a low earnings threshold for eligibility can significantly increase

support for low wage workers during leaves without creating a significant cost burden on the fund. Dropping the threshold from a proposed 680 hours (under 2019's SB-188) to the Colorado UI earnings threshold of $2,500 increases overall benefit costs by an estimated 4.8%.[102]

All state paid leave programs base eligibility on the location of a worker's job rather than where they live. This approach is consistent (and often tied to the use of) Unemployment Insurance or Worker's Compensation definitions of covered employment. This approach reduces additional data and contribution collection, avoiding the need to locate and collect contributions and wage information from out of state employers that hire state residents.[103]

Some state paid leave programs exclude or otherwise distinguish certain types of workers. These exclusions can occur as a function of using Unemployment Insurance definitions for covered employment, or they can occur within the state paid leave statutes directly. Most state paid leave statutes directly address two groups of workers— public sector workers and workers covered under Collective Bargaining Agreements. In some cases, these two groups overlap since public sector workers are more likely than others to be unionized. Nationally the union membership rate of public-sector workers (33.9 percent) is more than five times higher than that of private-sector workers (6.4 percent).[104]

State and local government employ around 300,000 Colorado that have the same needs for paid leaves

(ACS 2012-17)

Unions represent 12% of Colorado workers

(Bureau of Labor Statistics)

Public Sector Workers:

State paid family and medical leave programs address public sector workers in two ways: either through collective bargaining or a municipal vote; or automatic inclusion in the regular state program. Two longstanding programs (California and New Jersey) handle temporary disability eligibility differently than family leave. The IWPR-ACM model estimates that state and local government workers would make over 21,000 eligible claims annually under the recommended Colorado program. [105] No state program can or does include federal workers.

Table 1: PFML Program eligibility for public sector workers

	State	Local
CT	Subject to CBA negotiation	Subject to CBA negotiation
OR	Yes	Yes
MA	Yes	Opt-in by vote
WA	Yes	Yes
CA	FLI Yes//TDI elect through CBA	FLI Yes//TDI elect
NJ	TDI Yes, but must use all accumulated sick leave first//FLI Yes	Opt-in but must use all accumulated sick leave first//FLI Yes
RI	Subject to CBA negotiation	Elect coverage

Private Sector Collective Bargaining Agreements (CBAs)

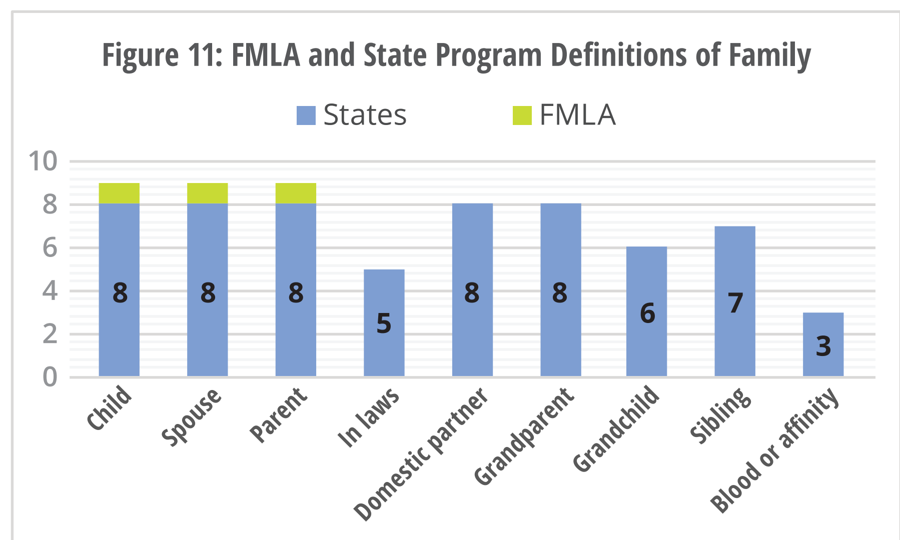
In addition to the provisions cited in the previous section related to public sector CBA's, some state paid leave statutes clarify the relationship between state benefits and collectively bargained benefits. Washington and Oregon include language clarifying that the paid leave law does not apply to workers and employers covered by collective bargaining agreements in effect before the law passed until the agreements expire, are reopened, or are renegotiated. Alternatively, Connecticut and Massachusetts seek to set the state paid leave program as a benefits floor and ensure that greater benefits or rights bargained for before the law are not diminished. For newer state programs, these provisions attempt to manage the transitional period. In longstanding paid leave states (California, New Jersey or Rhode Island), the state benefit was a factor in the negotiation of most current CBAs.[106]

FAMILY DEFINITION

Recommendation: A Colorado Paid Family and Medical Leave program should include a broad definition of family to include an individual related to the employee by blood or affinity whose close association is the equivalent of a family relationship.

- *A broad definition of family will help ensure adequate coverage for all workers —78% of whom do not live in a nuclear family household—but will particularly support low-income workers who are more likely to rely on extended and chosen family for support.*[107]
- *A broad definition of family will help the state, communities, employers, and individual families manage a significant increase in caregiving need.*
- *A broad definition of family is unlikely to jeopardize the sustainability of the program since caregiving claims are shorter in duration, dependent on a qualifying event and multiple family members can potentially provide care.*

Policy Analysis and Evidence-based Rationale



The FMLA and state paid family leave programs cover a variety of family members under family care provisions. All state programs use a more expansive family definition than the FMLA, including three states that now include a catch-all category defined as "an individual related to the employee by blood or affinity whose close association is

the equivalent of a family relationship." Eleven OECD countries also include cohabitant, individuals residing in the same household and "loved ones."[108] Seventy-eight percent (78%) of Colorado households do not fit into the traditional nuclear family model defined as a married couple with minor children.[109] Over 73,000 grandchildren in Colorado live with a grandparent.[110] LGBTQ, immigrant, rural, disabled workers and workers from communities of color often rely on extended family or chosen family for care and economic support.[111] [112] [113] Expanded family definitions reflect a growing recognition of the diverse forms families take and the benefits to family well-being and state coffersof facilitating broader caregiving networks.

192,518 people in the state of Colorado identify as LGBT

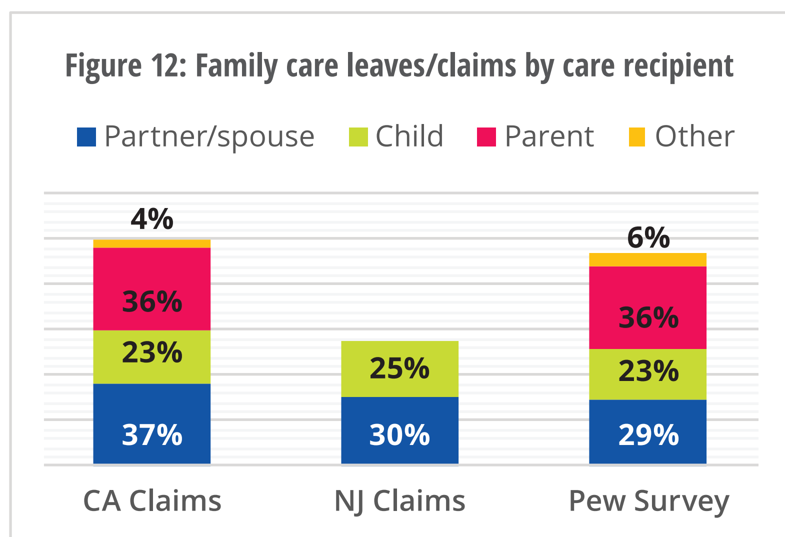
(Movement Project)

15.9% of rural caregivers care for a non-relative and three-quarters of Colorado counties are rural

("Colorado's Geographic and Racial Diversity" Colorado Center on Law and Policy and "Rural-Urban Difference in Workplace Supports and Impacts for Employed Caregivers"

Historically, most workers have used the FMLA and state paid family leave programs to care for a spouse, child, or parent. However, a significant number have cared for a sibling, grandparent, grandchild or another family member (4-6% total). Over a worker's lifetime, care recipients change, with older (50-64-year-old) workers more likely to care for a parent and younger workers (less than 50) caring for a minor child.

As discussed under the section on leave purposes, the importance of family caregiving is growing due to demographic and economic trends. The IWPR-ACM model estimates that a larger percentage of Colorado workers (3.7% growing to 4.1% with the recommended Colorado program) take family care leaves annually than leaves associated with a new child (3.1%).[114] Communities experiencing economic inequities are also those with greater healthcare and caregiving needs and rely on more expansive kinship networks.[115] Not only is care provided by a family or kin in a home often more effective or perceived that way, it is also less expensive than institutional care.[116] Broader conceptions of family help workers, families, communities but also state government meet the growing need for care in Colorado. California's paid family leave program has demonstrated the ability to decrease nursing home placements. Given the alternative of institutional care, an expansive family definition in conjunction with other aspects of recommended Colorado program design could be a more fiscally sustainable and efficient approach to providing care for both the state and families.[117]



WAGE REPLACEMENT

Recommendation: A Colorado paid family and medical leave program should replace wages using a progressive formula with a maximum weekly benefit equal to the statewide average weekly wage: 90% of wages up to 50% of the statewide average weekly wage and 50% of wages above that up to the maximum.

- *A progressive wage replacement formula is the norm among state programs and will help to ensure low wage workers can use the program, resulting in a 128% increase in wage replacement during leaves for the lowest income families under the proposed Colorado program (see Figure 16).* [118]
- *A maximum weekly benefit set to the statewide average weekly wage means the average Colorado worker receives adequate benefits.*
- *The suggested formula places Colorado in the middle among state programs for middle income and low-income workers (see Figure 15).*
- *With the recommended Colorado program in place, workers from higher-income families would receive 76% of the worker's usual income during leaves, meeting the threshold suggested for male or primary breadwinner participation (see Figure 16).* [119] [120]

Policy Analysis and Evidence-based Rationale

While the federal FMLA has been helpful for many workers, it has been most successful in expanding access to leave among higher-income women who can afford to take unpaid leave or have access to employer-provided pay while on leave. As summarized earlier, most low-income workers currently do not have access to any pay while on leave. However, hardship is also experienced by those that receive partial pay (see box).

While state-level efforts to partially replace wages during family and medical leaves have helped thousands of families achieve greater financial security during important life events, how wage replacement rates are determined can play an important role in how successfully a program distributes benefits. Many interrelated decisions affect how much wage replacement eligible workers across the income distribution will receive, two of the most important are: (1) percentage of wages replaced; and (2) maximum wage replacement benefit amount.

The cost of partial or no pay leaves

"About six in 10 parental leave takers with household incomes under $30,000 who did not receive full pay when they took time off say they took on debt, half (48%) went on public assistance or (46%) put off paying their bills."[121]

"66% say that they would face serious financial hardship if they had to take up to a few months of unpaid leave."[122]

"Among workers receiving partial or no pay, two-thirds report difficulty making ends meet. 20% of all employees that took leave with partial or no pay went on public assistance, 41 % put off paying bills, 32% borrowed money."[123]

The majority of state paid leave programs use a progressive wage replacement formula with the first part of wages replaced at a higher percentage than the second portion of wages (see Table 2). In most states, a formula based on the statewide average weekly wage (AWW) allows the amount to move upwards with wages and inflation. [124]

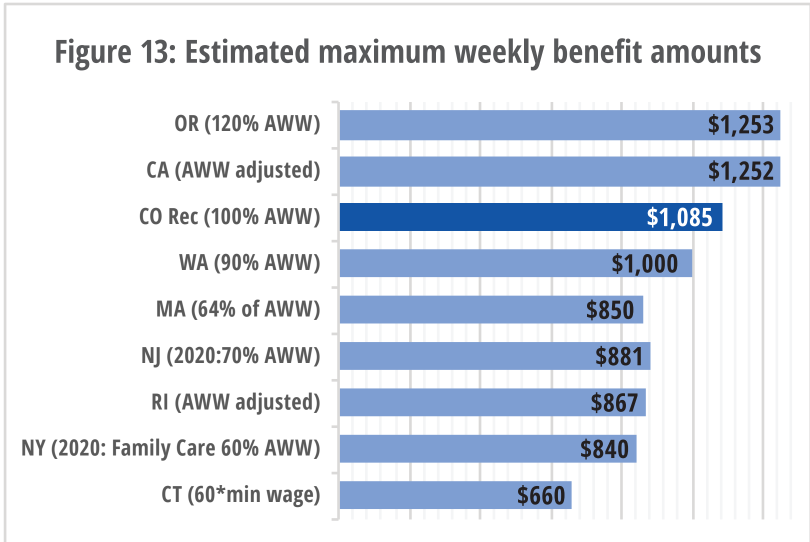
Table 2: Wage Replacement Formulas for State Paid Leave Programs

CO Rec	RI	CA	NJ (2020)	WA	MA	CT	OR
90% up to 50% of AWW	4.62% of high quarter	70% up to $5328 per qtr	85% of AWW	90% up to 50% of AAW	80% up to 50% of AAW	95% up to 40* min wage	100% up to 65% AWW
50% over 50% of AWW		60% over $5329 per qtr		50% over 50% of AWW	50% over 50% of AWW	60% up to $660	50% up to 120% of AWW

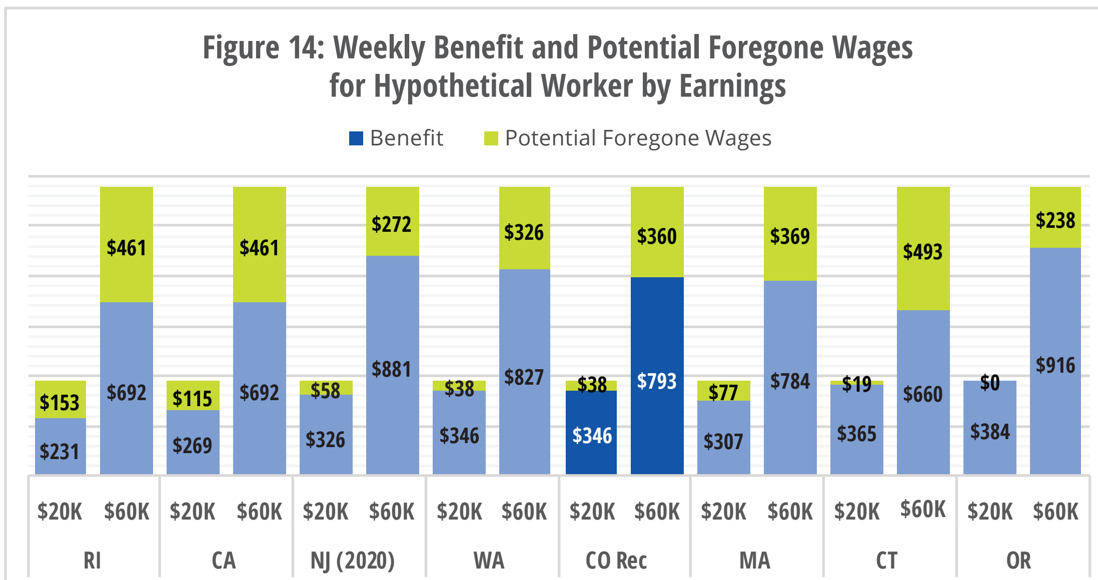
A majority of states have adopted progressive wage replacement approaches to make programs more helpful for the lowest wage workers. Experiences in early paid family leave states suggest that low wage replacement rates were one reason for lower uptake rates among low wage workers.[125] Some employers allow workers to make up the difference between wage replacement provided by a state program and their usual pay with accumulated paid time off. For lower-wage workers without access to this option or other resources such as savings, a low wage replacement rate can make it difficult for a worker to use the program even though they have paid into it. Using a different approach, New Jersey recently increased its wage replacement rate to 85% overall and paired that with a relatively low maximum benefit. [126]

All state programs establish a maximum weekly benefit amount that is adjusted annually based on the statewide average weekly wage or in one case, the minimum wage. Maximums range from the mid $600's to over $1,200 per week.

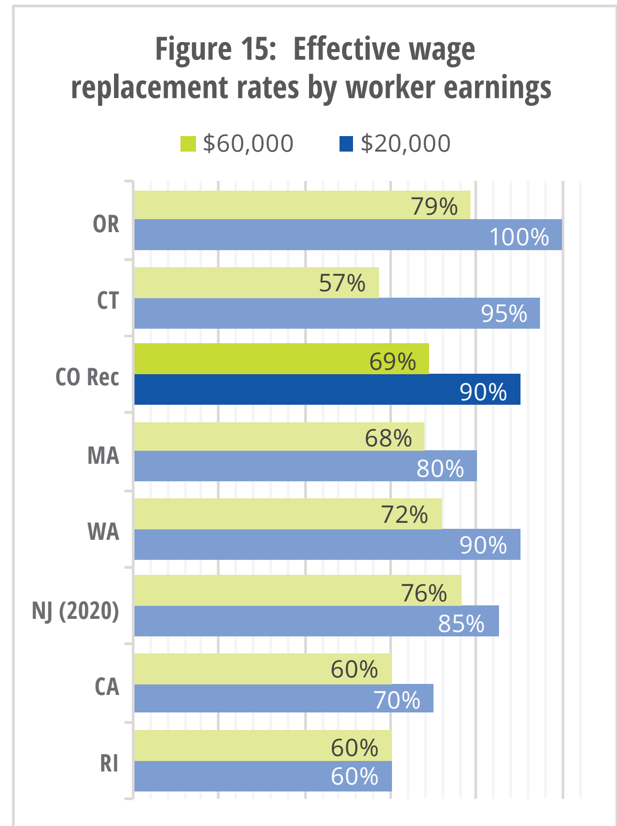
Some research suggests that a higher maximum cap creates more opportunity for men, still the primary breadwinner or highest earner in a majority of families, to participate in the program. High maximum benefit levels help ensure that the effective wage replacement rate for workers with higher incomes are adequate to allow participation (see effective wage replacement rates for a hypothetical worker earning $60,000 in Figures 14 and 15). OECD research suggests a 67% wage replacement rate is the minimum necessary to achieve even modest paternity leave-taking and international and local research finds that higher benefit levels are critical for gender equity in leave-taking.[127 128 129]



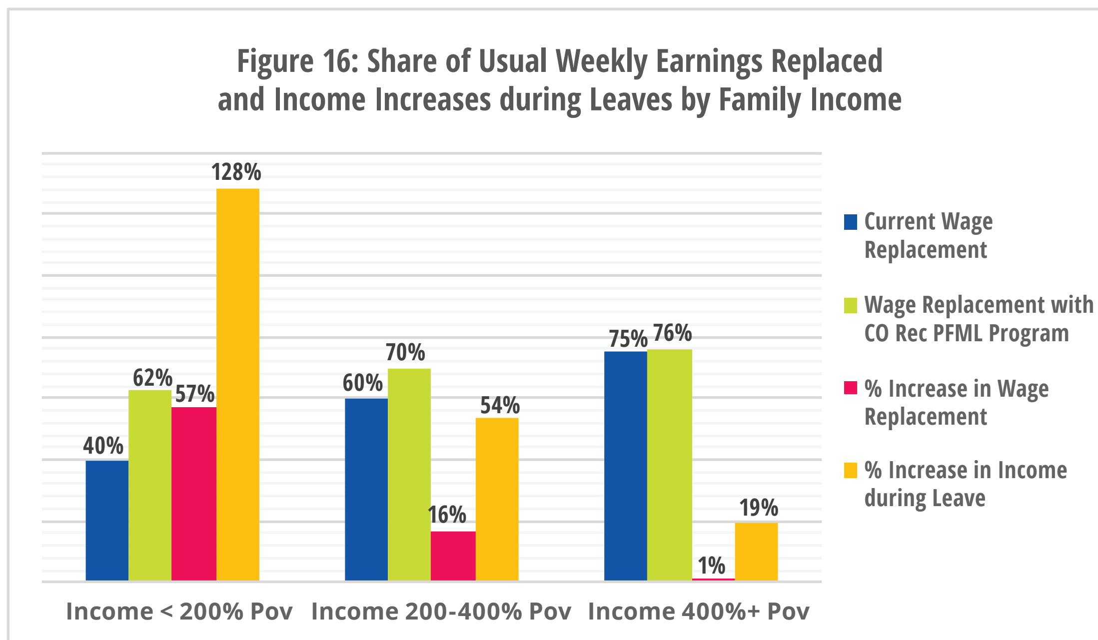
Maximum benefit amounts and wage replacement formulas intersect to create different effective wage replacement levels depending on regular earnings of a worker. Figure 14 demonstrates how these two factors result in estimated benefit levels and potential foregone wages for two hypothetical workers—one earning $20,000 during a four-quarter base period and one earning $60,000. Figure 15 shows the effective wage replacement rate for the two hypothetical workers after taking into account the progressive wage replacement structure and maximum weekly benefit for each state and assuming the worker is only receiving benefits from the state program. In actuality, potential foregone wages are just that and might be replaced with PTO or other forms of employer-provided benefits for workers with access. As Figure 14 shows, both state benefits and foregone wages



are higher for the earner making $60,000 per year. Arguably higher-wage workers have greater access to employer-provided and personal resources to fill in the gap.



Of course, in practice, some workers continue to take leaves without any wage replacement due to a variety of factors. Some portion of these workers may not qualify for public programs (even with low barriers to entry), others will choose not to use a public program, and some percentage of workers will not know about the program (even with a robust outreach and communication program). The IWPR-ACM simulation software models how workers at various income levels combine unpaid leave, employer-provided benefits, and state benefits. Figure 16 considers the combination of all three forms of support across all leave-takers by income level to estimate current wage replacement rates and effective wage replacement under the suggested Colorado program. Notably, the wage replacement rate across a worker's leave goes up considerably for low-income workers, modestly for middle-income workers and very slightly for the workers from higher-income families (whose average wage replacement is already high). Income during leave increases for all income levels, but particularly for those with the lowest family incomes.



JOB AND EMPLOYMENT PROTECTIONS

Recommendation: A Colorado Paid Family and Medical Leave Program should ensure that workers employed by their current employer for at least 90 days can return to their job after an eligible leave, are protected from other forms of retaliation and can continue health insurance under the same terms as if they had remained employed.

- *Despite paying into the program, the most economically and socially vulnerable workers, including low-income workers, will be less likely to use the program if their job is in jeopardy.*
- *Workers covered under the FMLA are already entitled to keep their health insurance while out on leave, extending this protection to all workers eligible for a paid leave program is essential since a majority of qualifying events are related to a serious health condition.*
- *A 90-day threshold for employment protections under the program, separate from the program earnings minimum for wage replacement, removes most seasonal workers from job protections but not benefits and recognizes the challenges of holding a job open for an employee that has not established a significant connection with an employer.*

Policy Analysis and Evidence-based Rationale

Employment protections related to leaves for family and medical reasons fall into three categories: (1) the right to return to the same or similar job after the leave; (2) protection from discrimination or retaliation for requesting or using unpaid or paid leave (harassment, unwarranted disciplinary action, demotion, cut in hours or pay, pressuring the employee to not take leave or termination) and (3) the right to continue health insurance benefits under the same terms as if the worker is not on leave. Four state paid leave programs (Washington, Massachusetts, Oregon and Rhode Island for family leave) include job protection and anti-retaliation provisions within their program statutes. Three rely on FMLA protections or state-level unpaid FMLA laws to provide these to eligible workers. In most cases, the federal and state FMLA laws apply to fewer workers than would be eligible for wage replacement benefits within state paid leave programs. Small employers are often exempt from these laws and most require half to full-time employment with the current employer for a year. However, Connecticut's state unpaid FMLA law is the exception. Lawmakers significantly expanded this law in conjunction with a new paid leave law to cover the kinds of workers that would be benefit eligible but have also been with an employer for 90 days.

There is significant confusion among workers and employers about the relationship between state and federal unpaid leave laws and employment protections under paid leave programs.[130] Ideally these would be in alignment as much as possible while ensuring low barriers to entry for wage replacement and portability for all workers (see Portability and Outreach sections). Most state paid leave programs

25% of women report a negative impact on their job after taking time off for the birth of a child

(Pew Research)

1 in 7 low wage workers report losing a job due to falling ill or caring for a sick family member

Low-income women are more likely to lose jobs during and after pregnancy

("Wages Lost, Jobs at Risk: The Serious Consequences of Lack of Paid Leave")

operate as social insurance models, removing the responsibility for wage replacement while on leave from employers and creating a portable benefit that is provided by the state. However, eligibility standards for job protection might reasonably include some minimum amount of time with the specific employer that is required to hold a job and provide health insurance. Alternatively, the eligibility criteria for a state-level portable wage replacement benefit should be (and usually is within state paid leave programs) based on *all* employers and associated earnings within a base period.[131]

45% of Rhode Island leave-takers that would not have taken leave if it had not been job-protected

(Meeting the Promise of Paid Leave)

Job protection is especially important for low-income and other vulnerable workers. Some evidence-based on program data from longstanding programs suggests that program accessibility for low-income workers may depend as much on job protection as it does on the level of wages replacement.[132] This is especially true of workers from some communities of color that have been more likely to experience workplace and employment discrimination.[133] [134] Even in the absence of discrimination, long periods of employer attachment before receiving job-protected leave will result in less program access for many low wage workers that experience the high turnover and frequent job changes characterizing many low wage work sectors. The 12-month employer attachment requirement under FMLA is a significant reason 40% of workers do not qualify.

62% of workers from low income (<$30,000) households say their supervisor wasn't "very supportive" when they took time off

(Pew Research)

It is unclear how aggressively states are currently enforcing unpaid or paid leave entitlements. However, there is significant evidence that workers are penalized or fear negative employment consequences for using benefits or taking leaves.[135] [136] [137] Employer culture change is important if workers are to feel confident and comfortable using state paid leave benefits and employers are to reap the full benefits of improved retention, morale and productivity that can come with benefits provision. The need for culture change is one stated reason that Washington State has prioritized relationship building with employers as they roll out their new program.[138] Overlapping policies and jurisdictions can create confusion within state government and the public about where to go for information about rights, responsibilities, and recourse for employees, workers and health care providers. Ideas presented in the Implementation section of this report for robust outreach and improved coordination across state agencies and programs could help ensure adequate enforcement and compliance with employment protections related to leaves.[139]

Strong statutory protections for workers may not be enough if enforcement is inadequate

(Meeting the Promise of Paid Leave)

What about Joe?

Joe just started working full-time at Bob's Repair Shop two weeks ago, making $20 per hour. Before that, he worked at All-Star Repairs for two years where he worked 30 hours per week for $18 per hour. He was diagnosed with cancer yesterday and will need to take leave for six weeks to manage treatment. Joe has been paying into a state paid leave benefit program for two years; he should be eligible for wage replacement based on his earnings history and time with both employers. However, it may not make sense to require Bob's Repair Shop to hold his job for that long since he just started work there.

FUNDING STRUCTURE

Recommendation: A Colorado Paid Family and Medical Leave Program should be funded by shared employer and employee contributions (50/50) based on earnings up to the social security cap paid into a state trust fund.

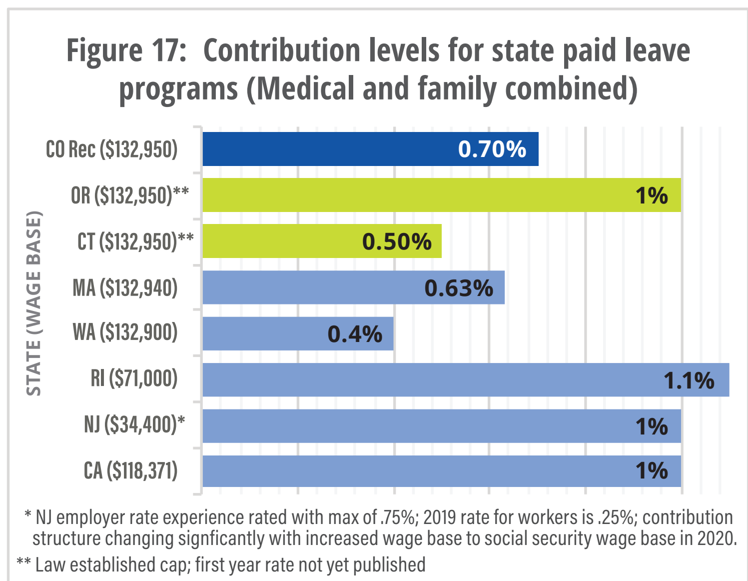
- *A social insurance funding model with contributions from all workers and employers spreads risk equally, keeping the cost low for all. A contribution rate of .7% (or about $3 per week for a full-time minimum age worker) would fund the program recommended in this report.*
- *An adequate program is unlikely to be funded using existing revenue or would be at the expense of other programs important to Colorado's working families; citizens are more invested in and supportive of additional contributions when they are tied to an earned benefit.*
- *A social insurance funding model is the least likely to create additional incentives to discriminate against workers that are more likely to need paid leave; alternatively, an employer mandate would increase the incentives.*[140]
- *A shared contribution and risk model is especially helpful for small businesses that currently have challenges providing paid leave benefits by themselves.* [141]

Policy Analysis and Evidence-based Rationale

Almost all US state-level paid leave programs and paid leave programs around the globe are structured as social insurance programs. Workers and employers make payroll contributions to a government-held trust fund based on earnings and workers apply to the trust fund for wage replacement benefits when they experience a qualifying condition.[142] Social insurance trust funds create the broadest possible risk pool and keep costs low for all workers. Based on an estimated contribution rate of .7% for the recommended Colorado program, a full-time minimum wage worker would contribute around $1.50 per week to the fund matched by their employer.[143] The three states with the longest-running programs have fairly stable contribution rates of around 1%. It is important to note that these states have significantly longer maximum and average weeks of wage replacement and in two cases lower-wage bases.

In four out of the seven states using a social insurance fund model, employers and workers both contribute to the fund. In three states, employees make 100% of contributions. In the four states

Figure 17: Contribution levels for state paid leave programs (Medical and family combined)



* NJ employer rate experience rated with max of .75%; 2019 rate for workers is .25%; contribution structure changing signficantly with increased wage base to social security wage base in 2020.
** Law established cap; first year rate not yet published

with a shared contribution, the percentage of contributions made by workers and employers varies. In three of the four states, workers pay 100% of the costs for family leave benefits and employers cover the majority of costs for medical leave benefits (Table 3). Since medical leave claims are a majority of claims and are generally more expensive, the combined contribution across family and medical leave is more equitable than the percentages might indicate (see Table 3). [144]

Table 3: Social insurance fund contributions by employers and workers by program type

	Medical/Temporary Disability		Family Care		Effective Combined	
	Worker	Employer	Worker	Employer	Worker	Employer
CA	100%	0%	100%	0%	100%	0%
NJ*	41%	59%	100%	0%	48%	52%
RI	100%	0%	100%	0%	100%	0%
WA	45%	55%	100%	0%	63%	37%
MA**	40%	60%	100%	0%	50%	50%
CT	100%	0%	100%	0%	100%	0%
OR	60%	40%	60%	40%	60%	40%
DC	0%	100%	0%	100%	0%	100%
CO Rec	**50%**	**50%**	**50%**	**50%**	**50%**	**50%**

* New Jersey 2017 total benefits; changed wage base and funding structure will result in a higher proportion of total costs being borne by employees.

** Effective combined based on a calculator for employers over 25 employees available at https://calculator.digital.mass.gov/pfml/contribution/

Contribution levels vary across states depending on the benefits structure and the wage base used. In all states, the contribution rate is the same across all income levels up to an earnings cap and is adjusted annually to cover anticipated benefits and administrative costs (see more in the Solvency section of this report). Four state programs apply the same contribution rate to worker earnings up to the social security maximum, and a fifth (New Jersey) is moving to the same.[145] A higher wage base spreads fixed administrative and benefits costs across more earnings, lowering the contribution rate necessary and creating a less regressive funding system. After New Jersey implements 2020 changes to its law, Rhode Island will have the lowest wage base capping contributions at $71,000. [146]

As discussed under the private plans section of this report, most state social insurance financed programs allow employers with a comparable or better leave program (and their workers) to be exempt from the usual contributions to the state fund. In practice, a samll minority of employers in the three operating states with this option choose to meet their responsibilities through a private plan (see Private Plan section for more information). California and New Jersey include a mechanism

within their state law to fund ongoing regulation of private plans. California requires private plan employers to pay a small fraction (.18%) of the usual employee contribution, and New Jersey allows the administering agency to determine the cost of regulation and pass it on to private plan employers.[147]

Three social insurance funded states provide extra support to small businesses in their funding approach. These supports include an exemption from employer required contributions for small employers (Washington, Massachusetts, Oregon) and grants to help cover leave related costs (Washington and Oregon). "Small" is defined in multiple ways. In Washington, exemption from employer contributions applies to employers with 50 or fewer employees; in Massachusetts and Oregon the standard is 25 or fewer employees. By these standards, a significant portion of employers in Colorado would not be contributing to the state trust fund (95 to 87%). All workers and larger employers in these three states effectively contribute more to the state fund to generate sufficient funding to cover benefit and administrative costs.

Washington and Oregon provide grants to small employers of $3,000 for temporary workers and $1,000 for other leave related expenses (overtime, etc.). Each defines small differently. In Washington, employers with 150 to 50 employees are eligible, but 50 and under employers are only eligible if they choose to contribute to the program. Oregon uses the same standard of 25 and under for grant eligibility and contribution exemption.[148]

25% of Colorado workers are employed at an employer with less than 20 employees, representing 87% of all employer establishments in the state

43% of Colorado workers are employed at an employer with less than 50 employees, representing 95% of all employer establishments in the state

(County Business Patterns, 2016, US Census Bureau)

Alternatives to Payroll Contribution Social Insurance

Alternative models for funding a broad-based paid leave benefit include a general revenue or other new revenue (i.e. sales tax on a service) state-funded program or an employer mandate that requires employers to provide a specified level of paid leave (comparable to worker's compensation). No US state-level paid leave program is funded using general or other specific revenue, but some OECD countries either fully or partially fund paid leave with general revenue. Among those that fully fund their program using general revenue, most provide a flat benefit.[149]

Employer Mandate

While eight states and several municipalities use an employer mandate approach for shorter duration sick leave,[150] only New York uses an employer mandate, similar to and built on its worker's compensation infrastructure, to provide paid family and medical leave to workers.[151] Much like worker's compensation, New York's program limits the amount private insurers can charge for a paid leave benefit that meets state standards and also includes a public option for insurance coverage. Taking this approach without a public option would be a riskier choice for states and require significant new infrastructure for states like Colorado that do not currently use a public option within worker's compensation to help ensure coverage for all workers.[152] [153] Research from the handful of countries (typically emerging

economies) that use an employer mandate model suggests that such an approach can lead to an increase in discrimination against workers perceived as more likely to use paid leave.[154] An employer mandate approach can impose a disproportionate financial burden on employers with workers likely to use leave and creates less predictability for leave related costs for those that self-insure.[155] [156] Because employers bear the full cost of covering the leaves, they may be more reluctant to hire workers they think will use leave. Also, a program that is entirely administered by employers may require workers to reveal sensitive information about their lives and health status that can inadvertently lead to disparate treatment. The perceived potential alone for discrimination or the necessity of revealing private information may prevent workers from using employer-provided benefits.[157] An employer mandate funding approach also provides no support to self-employed workers by definition.

Tax Benefits

State and federal lawmakers and think tanks have proposed a variety of incentive-based approaches that would not provide "universal coverage" and rather rely on individual worker or employer choice. Tax credits for workers, employers or both and tax-deferred savings accounts are the primary mechanisms. Tax credits without a dedicated funding source are in effect funded by general revenues and have been shown in other contexts to be ineffective at changing employer behaviors and are costly to the state.[158] Employer tax credits are unlikely to result in significant new paid leave coverage, rewarding employers that are already able to fund paid leave for their workers (typically larger employers) and potentially exacerbating the benefits gap between large and small employers and the workers at each.[159] On the worker side, many workers have little to no savings and are unable to wait until the end of a tax year to receive the needed wage replacement. Notably women, who are more likely to need leaves, have even lower savings rates due to a variety of factors including the gender pay gap and higher student loan debt. While inadequate for either, one study found that 62% of women have less than $1,000 in savings compared to 53 percent of men.[160] Low savings rates also suggest an alternative approach of creating tax-favored savings accounts for workers will also be ineffective, especially for lower-wage workers, potentially exacerbating disparities in access to financial support during leaves.[161]

VOLUNTARY or PRIVATE PLANS

Recommendation: A Colorado Paid Family and Medical Leave program should allow employers to meet their paid leave obligations through a private plan if certain conditions are met. Those include coverage of all workers eligible for the state program, a mechanism for worker consent, the ability to appeal benefit denial to the state appeal process, maintenance of coverage when workers move between private plan and public plan employers, periodic reporting and adequate resources earmarked for robust enforcement.

- *While they are a significant minority, some workers already receive employer-provided paid leave benefits that meet or exceed state benefits that they would like to continue.*
- *Worker involvement in the decision-making process and appeals of claim denials to the state system help ensure a better balance between the rights of workers and employers.*
- *Regular reporting, appeals to the state and robust enforcement will help to ensure workers are receiving comparable benefits.*
- *Providing coverage when a worker moves between the two types of employers is essential to creating a portable benefit.*

Policy Analysis and Evidence-based Rationale

All state paid leave programs (except Rhode Island) operating under a social insurance model allow employers to provide a comparable private paid leave benefit in place of participating in the state program. With an approved private (or Voluntary) plan, employers are generally exempt from contributions to the state trust fund. However, employers usually pay an upfront fee that partially covers approval costs, sometimes spelled out in a dollar amount in statute ($250 in Washington and Oregon) and in other states the amount is left to the discretion of the administering agency. In all but California, states allow private plan substitutions for family leave, medical leave (TDI) or both. In three states (California, New Jersey and Massachusetts) with a social insurance model, employers must receive consent from employees to provide benefits under a private plan (under recent amendments New Jersey dropped this requirement, except for those in a collective bargaining unit[162]).

Allowing employers to meet program requirements through a private plan introduces complexity to the system and requires strong regulations and robust adequately funded enforcement to ensure employers are complying and workers are receiving benefits.[163] California and New Jersey, the longest-standing programs with this option, have a separate office that handles approvals and other administrative aspects of ensuring workers have access to benefits and employers are complying with their plans. California's Voluntary Plan office has 13 staff overseeing 2,500 employers. California employers with an approved private plan continue to pay a much smaller contribution (.14% of the usual contribution

rate) to cover these ongoing oversight costs. A required ongoing contribution like California's could also help fund state costs of ensuring coverage between state plan and private plan employers. In states with no ongoing contribution, oversight costs are covered within general administrative budgets, potentially limiting the level of enforcement that can be conducted. California workers that are covered under a private plan can opt-in to the state plan if they choose; in all other states the decision to leave the state plan is at the employer level (with an employee vote in two states) and in some cases subject to negotiation between a bargaining unit and employer. [164]

One important form of accountability that helps ensure employee access is the right to appeal a denial of benefits under a private plan to the state appeals process. Five states provide this option for employees.

Employers usually meet the requirements of a private plan by self-insuring or purchasing coverage in the private market. Many states further regulate these two approaches. Self-insured employers are required to post a bond in at least four (Connecticut, Massachusetts, California, New Jersey) states and are required in two states (Washington, Oregon) to hold allowed employee contributions in a separate fund not considered employer assets. In two states (Connecticut, Massachusetts) private insurers must be approved by the state. Two states (New Jersey and California) require annual or semi-annual reports from employers with an approved private plan.

The private plan option has been available in two long-standing programs (New Jersey and California) and one program currently being implemented (Washington). Private plan data from these states is incomplete but does provide some insights on potential fiscal impacts of allowing employers to meet paid leave requirements through a private plan. The experiences of New Jersey and Washington State are more relevant in the context of a state proposed program with shared employer and worker costs, and under which employers can meet family care, medical or both types of benefit responsibilities using a private plan. In New Jersey, less than 1% of workers (.38%) are covered by a family leave private plan. That compares to 22% of workers for temporary disability (TDI) coverage.[165] Notably, employees cover 100% of family leave benefit costs and employers cover more than half of TDI benefit expenses under the state program. In both California and New Jersey use of the private plan option has declined over time.[166]

An analysis of the impact of private plan coverage on the size of the New Jersey wage base contributing to the state program or how workers covered under the state program might differ from those covered through private plans is not possible with currently available data. Under law changes, however, New Jersey will be issuing a report that provides more detail on wage base impacts and income levels of private plan workers in December 2019. While California's private plans cover employees with significantly higher than average incomes, representing 3.4% of workers and 12% of the state's wage base, several policy elements are inconsistent with most state programs at the intersection of private plan and funding policies. New Jersey's private plan requirements represent lower barriers to exit and higher incentives to use the option than California's and are similar to those in Washington state.[167] While Washington state has just begun collecting contributions,

preliminary results suggest that private plan employment will come in significantly lower than the 13% wage base estimate used for calculating contribution rates.[168] If employers representing 20% of the Colorado social security capped wage base chose to meet their obligations through a private plan and those workers only represented 15% of projected benefits (were healthier than average, were from demographic groups less likely to use the program) the projected contribution rate would rise to .73% from .70%.[169]

Portability with a Private Plan Option

Two states (Washington and Oregon) explicitly address the potential gap for workers moving between a private plan and the state plan employer.

"An employee who had coverage under the state plan retains coverage under the state plan until such time as the employee is qualified for coverage under the new employer's voluntary plan."

"An employee who has ceased to be covered by an approved voluntary plan is, if otherwise eligible, immediately entitled to benefits from the state program to the same extent as though there had been no exemption." —Washington State Statute

In rule or in statute, a method for handling pro-rated benefits when a workers has two employers – one with a private plan and another in the state plan – should be addressed to ensure access to full support during an eligible leave.

SELF EMPLOYED ACCESS

Recommendations: A Colorado Paid Family and Medical Leave program should provide a coverage option for self-employed workers, include a mechanism to automatically cover employers with a significant percentage of contract workers.

Policy Analysis and Evidence-based Rationale

Self-employment is a growing sector of the economy, often without benefits like paid leave. These workers also start with less financial stability and predictability, meaning a life event that results in the inability to work could be particularly devastating for them and their families.

Self-employed individuals *are* required to maintain coverage under federal social insurance programs like Social Security and Medicare by paying both the employer and the employee share of payroll taxes. In many OECD countries, these workers are automatically included in paid leave programs as well. Massachusetts requires employers with 1099 workers (contractors) comprising at least 50% of their workforce to include and treat them as employees for paid family and medical leave program purposes. Except for

11.3% of Colorado workers are classified as self-employed (either as the owner of an incorporated or unincorporated business)

277,119 or 13.3% of Colorado households rely on self-employment income

(American Community Survey 2013-2017)

Rhode Island and New Jersey, all state-level paid family and medical leave programs allow self-employed workers (including business owners) to elect coverage in the state program. The terms of election and the way income is measured vary as shown in Table 4.[170]

Table 4: Elective Coverage Policies in State Paid Family and Medical Leave Programs

	Commitment (Years)	Claim eligible	Contribution
CA	2	After 1 qtr of contributions/$4,700 in profits	5.13 percent of the amount reported as net profit up to $118.371
WA	3	After 820 hours (calculated using earnings and the minimum wage)	Employee portion based on quarterly reported wages
MA	3	After two quarters	Employer and employee portions, wage determination defined by the department
OR	3	Determined by dept	Determined by dept, not to exceed 1% of taxable income
CT	3	Not specified	Employee contribution on self-employment income as determined by federal law

All state programs that allow elective coverage for self-employed workers and business owners require an election of coverage to last multiple years (usually 3) to avoid solvency concerns associated with adverse selection (individuals joining the program when they need benefits and then leaving the program immediately after collecting wage replacement). While California's program is the outlier at two years, the contribution rate is relatively high at 5.13% on profit (compared to 1% on wages for employees) which helps to ensure fund solvency for that sector of program users. In this case solvency may come at a price, however, with few self-employed workers willing or able to pay the higher premium. California is the only program that has had self-employment elective coverage in place for several years. According to program staff, less than 10,000 individuals elect coverage, and they are most commonly "Individual Professional Corporations" (doctors, lawyers). In an attempt to create parity for self-employed individuals and other workers and encourage more to join the program, Washington State requires self-employed individuals to pay only the employee portion of the required contributions.

Massachusetts 1099 worker coverage:

In order for a 1099-MISC contractor to be considered part of your MA workforce count, they must:

Perform services as an individual entity

Live in Massachusetts

Perform services in Massachusetts

If a contractor meets these criteria, you should count them as a member of your MA workforce.

It's important to note that MA 1099-MISC contractors count toward your total number of covered individuals *only if* they make up more than 50% of your total MA workforce (MA W-2 employees and MA 1099-MISC contractors combined).

PORTABILITY OF BENEFITS

Recommendation: A Colorado Paid Family and Medical Leave program should adopt a social insurance model that ties eligibility for wage replacement to an earnings history among all covered employment over a four-quarter base period with no employer attachment requirement.

- *The low wage work sector is characterized by rapid employee turnover, part-time hours and multiple simultaneous or successive employers over the course of a year; providing wage replacement based on all employment helps to ensure low wage workers receive credit for contributions made through all their jobs and receive adequate wage replacement while on medical and family leaves.*
- *An estimated 1 in 4 workers switch jobs each year; [171] under a social insurance model these workers would contribute to the state fund and should not have gaps in wage replacement coverage associated with an employer change.*
- *Unemployed workers also need paid family and medical leave and are not technically eligible for UI benefits during leaves that make them unable to work or seek work; a portable benefit based on a past earnings history would entitle them to wage replacement even though they are not currently attached to a specific employer.*

Policy Analysis and Evidence-based Rationale

Most benefits in the US are connected to a specific employer. This mechanism for providing benefits results in access disparities, especially for low wage workers that are less likely to secure the long term, full-time jobs that come with benefits. Social insurance models represent a different and portable way to conceive of benefits. Under this approach wage replacement benefits during leaves comes from the state to workers who have contributed to the state fund through all of their covered employment relationships, potentially including self-employment income. As discussed in the previous section on eligibility, most state paid leave programs do not include an attachment to a specific, current employer to receive wage replacement benefits and use wage detail submitted by all covered employers during a specified period to calculate wage replacement amounts. This approach also helps workers at all income levels that change jobs during a given year. Under many traditional employer-provided benefit policies, a worker must meet a certain length of tenure with the employer to qualify for benefits, resulting in a gap of coverage for workers switching jobs and potential "job lock"[172] within the economy (leaving workers in jobs where they are not satisfied or their skills are not fully utilized). Since most states base eligibility on a prior earnings history with all employers, no such gap exists under most state paid leave programs.

6.3 % (above the national average of 4.9%) of Colorado workers hold more than one job

(Bureau of Labor Statistics, 2014)

Portability is a significant advantage of a social insurance funding and benefits model. As discussed in the Finance section, some alternative methods of funding a program remain tied to a specific employer. Depending on the specific policy, an employer mandate or tax credits would likely result in less access for the growing number of workers that do not have a traditional work history (long-term, full-time with one employer or those who change jobs).

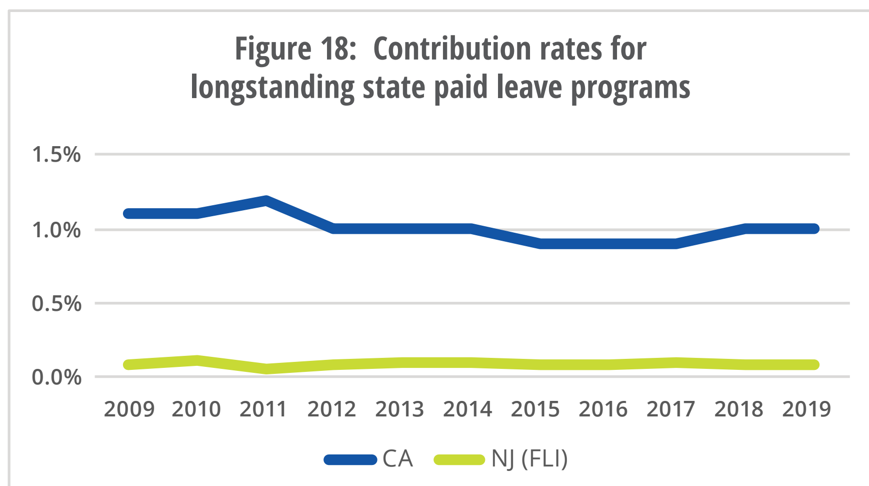
SOLVENCY AND SUSTAINABILITY

Recommendation: A Colorado Paid Family and Medical Leave program should ensure sustainability and solvency through a social insurance model with annual contribution adjustments sufficient to maintain a healthy trust fund balance and fund no less than 1.4 times expected benefit and administrative costs in the following year.

Policy Analysis and Evidence-based Rationale

According to the National Academy of Social Insurance, using a dedicated payroll contribution approach to funding makes it highly sustainable from a fiscal standpoint.[173] Among the seven state paid leave programs employing a social insurance model, contribution rates are set to cover all anticipated costs associated with the program (benefits and administration). The three longest-running state-level paid family and medical (temporary disability) leave programs have been solvent for multiple years, with fairly stable contribution rates from one year to the next.

While allowing employers to provide the paid leave benefit through a private plan does introduce some additional risk and potential fiscal instability due to adverse selection (employers with less need opting out and those with more need staying in), experience from California and New Jersey suggest such a hybrid approach can be stable over time (see Figure 18).[174 175] As discussed in the Funding section, a conservative estimate based on state experiences suggests adverse selection might result in a contribution rate increase from .7 to .73%. Originally, California law[176] and more recently Connecticut law allows the administering agency to deny a private plan application if it



results in “a substantial selection of risks adverse to the Family and Medical Leave Insurance Trust or otherwise significantly endangers the solvency of the fund.” [177]

Most recently passed state paid family and medical leave programs set an initial contribution rate in law and provide a statutorily defined fund balance formula used to make the annual contribution adjustments necessary to ensure fund solvency (see Table 5). Connecticut is an exception. Rather than including a formula in the statute, the newly created quasi-public board that runs the program will determine the necessary fund balance to “ensure the fund’s ongoing ability to pay program benefits and limit the need for contribution increases or benefit reductions due to changing economic conditions.”

Table 5: State PFML fund balance and contribution rate formulas

State	Formula
NJ	120% of current year benefits and 100% of administration
CA	1.45 times the amount disbursed the previous year (accounting for fund balances); 1.5% cap
CT	Formula developed by program authority, .5% cap
MA	140% of previous year benefits and administration costs, no cap
OR	6 month balance at end of contribution year (effectively 150% of prior year expenses); 1% cap
WA	Statutory formula based on the fund balance as of September 30 as a ratio of the covered wage base, .6% cap plus solvency surcharge if necessary
CO Rec	**140% of prior year benefits and administration, no cap**

States approach the issue of solvency primarily through a forward-looking adjusted contribution rate. However, some state statutes include additional tools. Connecticut is the only state that provides for a reduction in benefits: “If employee contributions are at the maximum allowed [.5%] and the authority determines that the employee contributions are not sufficient to ensure solvency, the authority must reduce benefits by the minimum amount necessary to ensure solvency.” Oregon law includes a clause clarifying that “benefits are payable only to the extent that moneys are available in the Paid Family and Medical Leave Insurance Fund for that purpose,” but does not specify how the state would respond under those circumstances. Washington State law includes a solvency surcharge mechanism if the fund balance falls below .5% of taxable wages when annually calculated and includes a formula which essentially caps contributions at .6%.[178]

IMPLEMENTATION

Recommendation: A Colorado Paid Family and Medical Leave program should have an advisory committee to provide implementation and ongoing feedback; earmarked funding within the administrative budget for ongoing outreach and communication conducted by the administering agency *and* community-based organizations serving employers and workers; and build on existing public infrastructures and data collection to minimize the burden and confusion among workers and employers.

Policy Analysis and Evidence-based Rationale

Advisory Boards

An advisory board can provide an important conduit for information critical to successful program implementation. Feedback from long standing programs suggests that informal occasional outreach is not sufficient and an advisory board or other structure is helpful to ensure ongoing accountability to program users.[179] Two recent states laws (Washington and Oregon) adopted advisory boards. One state, Connecticut, has taken this approach one step further. Rather than serving in an advisory capacity, Connecticut's program is run by a quasi-public board that includes representation from employers, workers, and others.[180]

Table 6: Structures for providing ongoing feedback within state paid family and medical leave programs

	Make-up	Charge
WA[181]	10 member advisory committee (4 employers/4 employees)	The committee shall provide comment on department rulemaking, policies, implementation of this chapter, utilization of benefits, and other initiatives, and study issues the committee determines to require its consideration.
OR[182]	9 member representative advisory board	The advisory committee shall advise and make recommendations to the director regarding issues related to the program, including but not limited to:(a) Implementation;(b) Administration; and (c) Rulemaking.

Outreach and Communication

Long-standing paid leave programs universally stress the importance of outreach to and feedback from employers and workers during all stages of program development and eventual ongoing operation, including implementation.
Several studies in Rhode Island, California and New Jersey have documented low

levels of program awareness among low wage workers and the relationship to disproportionately low program uptake rates among these workers.[183] [184] These findings have led all three states to invest more heavily in outreach efforts. Recent amendments to New Jersey's paid family and temporary disability laws, for example, require the administrative agency to allocate no less than $1.2 million annually to educational outreach, with not less than $600,000 set aside for grants with community-based organizations.[185] In July 2014, the California legislature approved a three year $6.5 million plan to increase awareness about the state's paid family leave program. While more recent paid leave program laws in Massachusetts, Connecticut and Washington include language directing the administering agency to conduct public outreach, *ongoing dedicated* funding is not identified or specified. In states with a cap on administrative costs such as Massachusetts, where no more than 5% of revenue can be spent on administration, this could be especially problematic. In addition to significant outreach and an advisory board, Washington State has an Ombuds Office (see box for details). Midway through its implementation process, Washington State's program had six full-time FTEs dedicated exclusively to communication and outreach.[186]

Community-based organizations can be critically important partners, and the New Jersey approach of providing grants to community-based groups could help ensure workers and employers receive information on an as-needed basis. Workers may be in crisis when leave is needed and may not recall information shared months or years ago. Healthcare-related organizations and individuals may be particularly important messengers and will also play a critical role in verifying eligibility based on serious health conditions. Organizations that support and connect with human resources staff, as well as small or new employers, can also play a vital role.[187]

Washington State Ombuds Office

The ombuds shall: (a) Offer and provide information on family and medical leave to employers and employees; (b) Act as an advocate for employers and employees in their dealings with the department; (c) Identify, investigate, and facilitate resolution of disputes and complaints under this chapter; and (d) Refer complaints to the department when appropriate.

Existing State Infrastructure

While obtaining federal permission and compensation may be necessary,[188] building on a state's unemployment insurance policy, infrastructure, and business processes can minimize confusion and workload for the state and employers. New Jersey provides an example. Before recent amendments, employers were required to provide applicant earnings data for weeks leading up to a claim. A claim is no longer based on the weekly earnings immediately before leave, but on the earnings employers report for the previous calendar quarters through the UI wage reporting process. This simple change decreases workload and processing time considerably

and reflects the way other state programs are structured. Much can be learned and replicated from UI and worker's compensation systems, even if actual data and revenue collection, medical condition certification, or other aspects of the systems cannot be directly used for a variety of reasons.[189] [190] Research on claims processes and barriers to UI for certain classes of workers can also help. While many state programs are justifiably moving in the direction of online application processes, research from the UI context suggests that a move to online-only application systems has decreased program usage among low wage workers and created new barriers.[191] Ten percent of adults don't use the internet at all and access to computers in some community-based organizations serving low-income workers may be limited.[192] Finally, reforms to make the UI system more accessible for workers during the Obama administration created many potential overlaps between UI and a potential paid family and medical leave program: these include loss of employment and income due to caregiving, domestic violence and illness, for example.

No state paid leave law explicitly includes language mandating the cooperation among the multiple state agencies (Human Services, Education, Healthcare Policy and Finance, Division of Civil Rights, Public Health and Environment) and programs (UI, SNAP, WIC, Medicaid, TANF, child and maternal health) that workers come into contact with, particularly during the times they might need paid family and medical leave. However, some do explicitly allow data sharing. Colorado should consider doing both. Some states use the same EBT card (Electronic Benefits Transfer) system for multiple state benefits. A "No Wrong Door" model that coordinates programs and uses a "warm hand-off" across state agencies and programs or a unified online portal are also worth considering.[193] The Colorado Secretary of State can also be an important conduit to businesses as they register with the state. Under a contributory social insurance funding model, providing a mechanism for state agencies beyond the administering agency to receive funding from the trust fund for suggested outreach and coordination may increase cooperation and the quality and likelihood of information sharing with workers in need and employers.

Timeline

According to program staff in all three long-standing programs, adequate implementation time is essential to a well-functioning program.[194] Administering agencies need to hire and train new staff, including staff for a call center or other forms of applicant, health provider and employer assistance, as well as design and test the IT infrastructure necessary to process wage data, review and approve claims and pay benefits in a timely, secure manner. Start-up timelines vary in newer state programs but are at least 2.5 years from passage to benefit availability. Three recent states (Washington, Massachusetts and Connecticut) call for a 2.5 year start-up period. This time frame is consistent with the recommended Colorado program. Only one state, Oregon, has a longer 3.5-year start-up.

ROLE OF THIRD-PARTY VENDORS

Recommendations: Third-party vendors can be used to help design and implement easily defined and measured program elements like information technology, but Colorado should follow the lead of all other state programs and house program administration within a state government agency with revenue collection and claims processing infrastructure and expertise.

Policy Analysis and Evidence-based Rationale

A Colorado paid leave program should be administered through a public agency rather than private industry in order to better build on the experiences of other states and countries and fully leverage existing state infrastructure and expertise.[195] [196] Outsourcing an entire paid family and medical leave program to a third-party vendor has not been tried in any state-level paid leave program and would incur significant risk, including potential data breaches, conflicting incentives, and significant oversight challenges.[197] According to Susan Duerksen, director of communications for In the Public Interest, a project that examines privatization and contracting, “There’s evidence that it often is a very bad deal with hidden costs and consequences when you turn over public service to a for-profit company.” Private companies have the potential to be more efficient and effective -- but governments must have adequate knowledge and resources to select the right contractor and oversee implementation of the contract. As Duerksen points out, a company’s motivation “is not the common good; it’s profit.” The privatization of public services can also erode accountability and transparency.[198]

The only example of a third-party vendor approach is the proposed Twin States Voluntary Leave Plan advanced by the Governors of New Hampshire and Vermont or a mandatory version that would be run by a private insurer that advanced in the Vermont legislature.[199] The Twin States Voluntary Leave Plan would create an insurance program anchored by the state employee workforce of both states - a combined 18,500 employees. Under the proposal, the new insurance coverage would provide public and voluntarily enrolled private sector employees 60 percent wage replacement for six weeks for FMLA qualifying events. The two states would select an insurance carrier, or carriers, through a coordinated Request for Proposal (RFP) process to assume the risk and manage the benefit and claims under the plan. This carrier, or these carriers, would then develop a “State Rate” or the per-employee cost that each state would pay to provide a Family Medical Leave Insurance (FMLI) plan to its employees. Under the joint-proposal, each state would cover the full costs of providing an FMLI benefit to its employees, and employees will not have to incur any additional cost for the product. Also, the winning carrier(s) would be required to allow all private-sector employers in the state to opt-in to the FMLI plan with specified rates.

Seven insurers responded to the states' request for information[200] and indicated their interest in providing the coverage, according to officials from both states.[201] Analysts suggest that contributions paid by employees in the private sector under the Twin-State Voluntary Leave plan would be unaffordable, and details in submitted bids include many traditional insurance underwriting suggestions such as limiting eligibility, exempting pre-existing conditions and varying rates by the age of employees or size of employers to minimize risk among the "voluntary" pool. Hartford provided the most detailed cost estimates, suggesting a .8 to 1.2% payroll contribution for a 12 week, 60% wage replacement benefit. The Twin States bids demonstrate some of the incentives inherent in private provision of services that compete with maximizing participation and access among workers.

While no state has moved ahead with a third party vendor program model, some have used third-party vendors to support development of various program elements. Washington State, for example, is using a third-party vendor to develop its data and revenue collection as well as claims processing IT capabilities and has contracted with a private PR firm to assist with marketing the new program.[202] These contracts are not without challenges and risks as well, some of them similar to outsourcing the entire program, but as more states (four currently) implement new paid leave programs, Colorado will be in the position to learn from the experiences of these four states and build on contracts and expertise developed and executed throughout their implementation.

INTERSECTION WITH PUBLIC AND PRIVATE PROGRAMS

Recommendation: Within the public sector, workers that are receiving workers compensation for a work-related injury should not be eligible. For unemployed workers or workers receiving safety net support (SNAP, TANF, etc.) that qualify for the paid leave program, wage replacement benefits should be handled as regular wages would be under those programs. Within the private sector, employers should not be allowed to require workers to use accumulated paid time off before accessing the state benefit and should be encouraged to support and allow workers to use accumulated paid time off to make up the difference between state wage replacement and full pay.

Policy Analysis and Evidence-based Rationale

Public Benefits

Most state laws prohibit workers from accessing Worker's Compensation or Unemployment Insurance (UI) benefits for the same period. Colorado should follow suit. As mentioned in earlier sections, Unemployment Insurance is an important support for workers in Colorado that lose their job due to caregiving,

intimate partner violence, and serious illness (reasons that overlap with the recommended Colorado paid family and medical leave program). However, workers only qualify for UI if they can look for and accept work. For many workers that leave employment for these reasons, work may not be possible for some time. A Colorado paid family and medical leave program, designed as the recommended portable benefit with eligibility based on a work history across past employers, would support workers during the period that they are unavailable for work.

When it comes to other kinds of state benefits, most state paid leave laws are silent. Colorado's paid family and medical leave program should pay special attention to those workers and families whose economic stability are most at risk and whose needs for leave are the greatest. The women and children who currently rely on or are eligible for Colorado Works are among the most economically and medically vulnerable, among those with the least access to paid leave of any kind and among those most likely to need leave to care for themselves and their family members, especially during pregnancy and the critical early weeks of an infant's life.

To maximize economic stability, Colorado should encourage eligible workers that are part of Colorado Works to simultaneously access paid family and medical leave benefits. Colorado Works should count wage replacement during new child and family care as earned income or treat it as unearned income that is not counted against the cash grant or other supports like food assistance or childcare assistance. The wage replacement under the recommended Colorado paid family and medical leave program is earned and replaces wages while on leave. In this way, it is fundamentally different than unemployment or workers' compensation. Under these circumstances, it may make the most sense for wage replacement to be exempt from the dollar for dollar cut in benefits applied to workers' compensation or unemployment benefits. For those already receiving Colorado Works benefits, Colorado's program can build on Colorado Works and make sustained employment possible for low wage workers experiencing serious health events in their own or a family member's life. Ensuring that workers can access wrap-around supports, particularly childcare and food subsidies, while on paid family and medical leaves and without leaving employment is critical to making Colorado's paid family and medical leave program a workable solution for low-income families.

Research shows that women in states with paid family or temporary disability programs are less likely to rely on public assistance following the birth of a child than women in states without these programs, especially if they use the paid leave program.[203] The high and progressive wage replacement rate recommended in this report for low wage workers helps to ensure that the paid family and medical leave program will be competitive with Colorado Works benefits. An adequate and accessible Colorado PFML program provides a reasonable alternative to Colorado Works for low wage workers with a major medical or caregiving event.

Beyond Colorado Works, the Department of Human Services is an important conduit to workers who need paid leave access to manage their own or a family

member's serious medical condition, especially those receiving services. As discussed in the Outreach section, a variety of state programs can be useful partners in information sharing and coordination of public supports.

Employer Benefits

Evidence suggests that employers view benefits as a tool to attract and keep good workers and have not responded to new state paid leave programs by reducing current benefits.[204] State programs serve as a floor and allow plenty of opportunities and room for employers to offer additional benefits (additional weeks, topping off state wage replacement rates, additional leave purposes) to attract and retain workers. The IWPR-ACM simulation software models the significant ways workers will continue to combine employer-provided benefits (PTO in particular) and state benefits under the recommended Colorado program. The simulation model assumes workers will maximize their benefits across all available sources of support and recognizes that support from employers is currently and will remain significantly greater for high wage workers. However, it is important to recognize that wage replacement from employers or the state is not the only factor determining the duration of leave. The first limiting factor is the length of recovery certified by a qualified health care provider, either for a worker's own health or that of a loved one. But beyond this significant limitation and even in the absence of it for parental leaves, research shows that workers often leave fully paid time off on the table and that they remain concerned about the impact of their leave on their employer, their coworkers, and their career.[205]

As shown in Table 7, the IWPR-ACM model predicts that higher-wage workers will continue to access income from employers at higher levels than lower-wage workers and that workers on average at all income levels will see a slight decline in employer-provided income during leaves. The recommended program accomplishes the outlined goal of ensuring workers at all income levels have adequate income during leaves, particularly lower-wage workers who will see the largest percentage increases in income during leaves. Higher wage workers will receive larger absolute public benefits due to the introduction of the recommended program, but the increase in their overall income during leave will be lower than among lower and middle-income workers. Notably, the recommended program puts significant new income, currently not being provided by employers, into all families but especially the lowest-income families. Table 7 also demonstrates the current inequities in employer-provided income during leaves between the highest wage workers and those in the middle or bottom of the income scale and shows how a state program will help to address them.

Table 7: Average Total Amounts of Income Received during Leaves (including Those with Zero Income) With and Without the Recommended Colorado Program

	Current	With Recommended Colorado PFML Program			
	Employer-Paid Wages	Employer-Paid Wages	Program Benefits	Total	Increase in Income During Leave
Overall	$3,620	$3,351	$1,336	$4,687	29%
Earnings < $25K	$721	$633	$755	$1,388	92%
Earnings $25-60K	$2,442	$2,165	$1,436	$3,602	48%
Earnings $60K+	$8,549	$8,088	$1,839	$9,927	16%
Income < 200% Pov	$680	$595	$956	$1,551	128%
Income 200-400% Pov	$1,974	$1,747	$1,289	$3,036	54%
Income 400%+ Pov	$5,952	$5,576	$1,532	$7,108	19%

Most state programs are clear about an employer's ability to require employees to exhaust existing accumulated PTO before turning to state benefits: this is not allowed. New Jersey was the only state to allow employers to require workers to use PTO, up to two weeks under its law, but under recent amendments rescinded this provision. It is unclear that such a provision is necessary in the first place since many employees will voluntarily choose to use fully paid time off first. State laws are consistent, however, that this decision should reside with employees. Some state programs that allow private provision of a paid leave program are also clear that these benefits are in addition to currently provided PTO. One exception does apply, in New Jersey state employees are covered under the Paid Family Leave program but are required to exhaust accumulated PTO before using program benefits.

Currently and under a new paid leave program, significant coordination is required between workers and their employers. However, the level of interaction between employers and the state program can and should be minimized by relying on existing data collection mechanisms and providing notice to employers when a worker becomes eligible for state benefits. Employers are often the first point of contact when a worker becomes eligible for leave and are a critically important conveyor of public program information. Supportive employers can help workers manage the interaction of employer and state-provided support, and the state can create tools to assist.[206] The state can also work closely with employers throughout the implementation phase, as Washington State has, to build a system that is workable and that employers of all sizes can understand.[207]

APPENDIX A: Methods and Data

Leave-taking, benefit utilization and income replacement estimations were performed using the IWPR-ACM simulation model, initially developed in the mid-1990s by researchers at IWPR and in Massachusetts. Its behavioral equations use parameters based on the 2012 FMLA employee survey, conducted by Abt Associates under contract to the US Department of Labor. The labor force data are obtained from the American Community Survey (ACS) for 2012-2016, a household survey collected by the US Census Bureau. The simulation model is updated frequently. It is now able to mimic state programs that have progressive replacement rates for benefits, allow workers to extend the durations of their leaves when they receive benefits, and allow limited options for employers to supplement state program benefits with their own more generous benefits. The results for each state program are routinely compared with administrative data from the states to ensure that the simulation model is accurately replicating results for number of claims, amount of benefits, and duration of benefit receipt. The most recent comparison done was for 2016.[208]

Specific behaviors are used in developing and applying the simulation model to estimate the leave programs. The most basic assumption is that a worker will choose the best benefits available to her or him, whether provided by the program or the employer or both together. Other predictions are based on data from the FMLA surveys providing information about the likelihood of a worker needing any type of leave, how often they take leave for any of those reasons, how long the leaves are, whether they would take more leave or longer leaves if leaves were paid (available in the 2000 survey), and how much uncompensated time away from work they would take in connection with a qualifying event. The model predicts leave taking and other data onto the 2012-2016 labor force. There are decision loops for each of six leave types: own illness, maternity, new child, care of ill child, care of ill spouse, and care of ill or frail parents. (The decision loop for having a new child is shown in Figure 1.) The model assigns value to the leave time taken, by using the worker's wages and dividing the leave time into time with employer-provided wages, time with program benefits, or uncompensated time. The model estimates the value of family and medical leave time used under a proposal; program costs can be paid by workers, employers, or another revenue source.[1]

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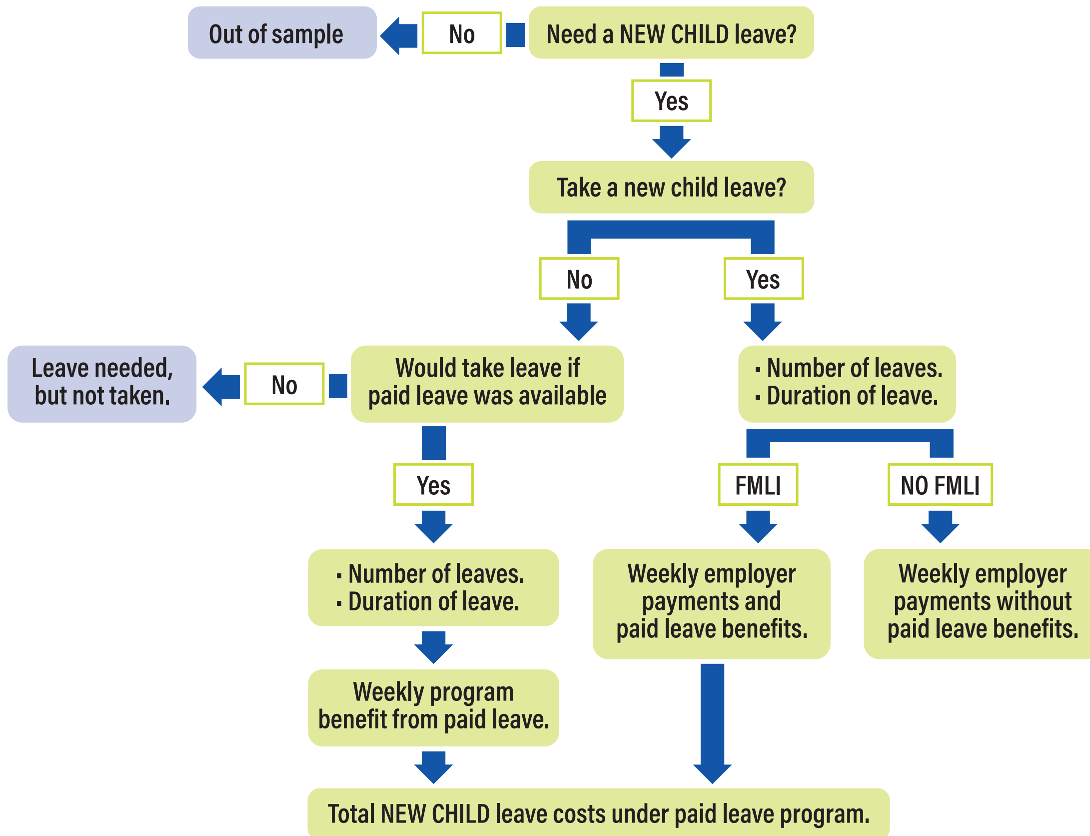
[1] While most early programs, providing family leave as an extension of existing disability insurance, are primarily paid for by the employees themselves, the more recent states have passed laws with higher levels of employer participation in generating program revenue. Most economists anticipate that the direct program costs paid by employers will be borne by workers over time through slightly reduced wage growth or reduced employment (Summers 1989, Gruber 1994). The model focuses on the microsimulation of changes in workers' behaviors under a new program over a 12 month period without macroeconomic feedback loops that might occur overtime. Research on business impacts of paid family leave from states expanding their disability insurance to cover leaves parental and family caregiving, report no or modest impacts on their costs or business operations and that the administrative burden is minimal (Milkman and Appelbaum 2013, Lerner and Appelbaum 2014, Bartel et al. 2016, Bartel et al. 2017).

Figure 1: Simplified Flowchart for Simulation of New Child Bonding Leaves



It is worth noting that family care leave and family care insurance do not refer to exactly the same phenomena. Leave refers to leaving work, and, in discussions about paid and unpaid leave in the United States, to having a job to go back to. Family care insurance provides benefits in the form of wage replacement during the times the qualified worker has eligible family care needs. The worker accessing family care insurance benefits may or may not have a job to go back to, thus may receive benefits but not have leave. Other workers may have a need that would qualify them for leave or benefits but choose not to exercise those options. Men, for example, often have sufficient work records to be eligible to receive leave and benefits but may prefer not to take leave, especially for family care needs, if another family member is available to provide care. Women may not apply for benefits even after childbirth if they do not have the right to return to their jobs, either because their employers are not covered by the FMLA or because their work records are insufficient to be eligible. In Rhode Island, a worker can apply for and receive benefits even if they are still working, since they are paying for the insurance and may want to use the benefits to pay for medical bills, child care, or eldercare. Despite this distinction between having leave (the right to return to a job) and receiving benefits, we tend to use these concepts interchangeably in this paper. From other research (Hayes and Hartmann, 2017), we know that workers use leave less if they are working at firms below the size of the cutoff for job protection in the

FMLA, 50 employees. Therefore, expanding the size range of covered employers under the FMLA is of critical importance if paid medical and family leave is to provide income security during periods when work is difficult or impossible to maintain due to the state of one's own health or the medical and caregiving needs of one's child or other eligible family member.

Comparison with other estimates

Greenfield, et al. (2019) draw on much of the same data and logic that has gone into the development of the simulation model used in this report. That is, using the ACS for estimating the size and characteristics of the Colorado work force, reviewing the usage rates in existing state programs, and extrapolating from costs analyses in other states without existing TDI systems to which paid family leave could be added that used the simulation model results in an independent, but similar, cost estimate for a PFML program in Colorado. The simulation model estimate is also very close to the Colorado Legislative Council Staff fiscal note for the 2022-23 full year cost estimate of SB 19-188 (March 12, 2019) after applying a three percent annual inflation rate factor to the estimate based to the simulation model estimate where both program costs and revenues are based on the 2012-2016 ACS and in 2016 dollars. The REMI Partnership report on SB-188 (April 9, 2019) questions the utilization estimates in the fiscal note and suggests that rates (and costs) could be much higher. Their main allegation of higher utilization is taken from Rhode Island administrative reports where they estimate a 13.7 percent utilization rate. However, it is not clear that the REMI team is accounting for multiple claims reported for a worker. That is, they are double-counting some claims. For example, TCI claims for bonding with a new child account for about 80 percent of all TCI claims. An eligible working birth mother in RI is likely to also take some time for pregnancy and recovery from delivery under the TDI program resulting in two claims for one child birth.

APPENDIX B: RESOURCES

National Partnership for Women and Families – State Paid Family Leave Laws:

http://www.nationalpartnership.org/our-work/resources/workplace/paid-leave/state-paid-family-leave-laws.pdf

State laws and administering agency websites

California

Law: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=UIC§ionNum=2601.
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=UIC&division=1.&title=&part=2.&chapter=7.&article=
Agency: https://www.edd.ca.gov/disability/

Connecticut

Public Act No. 19-25: https://www.cga.ct.gov/2019/act/Pa/pdf/2019PA-00025-R00SB-00001-PA.PDF

Massachusetts

Law: https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121
Agency: https://www.mass.gov/orgs/department-of-family-and-medical-leave

New Jersey

2019 Amendments to Law: [Third Reprint] ASSEMBLY, No. 3975: https://www.njleg.state.nj.us/2018/Bills/A4000/3975_R3.PDF
Agency: https://myleavebenefits.nj.gov/worker/fli/

New York

Family Leave Law: https://www.nysenate.gov/legislation/laws/WKC/A9
Agency Family Leave: https://paidfamilyleave.ny.gov/
Agency Temporary Disability: http://www.wcb.ny.gov/content/main/offthejob/db-overview.jsp

Oregon

Law: https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/B-Engrossed

Rhode Island

Law: § 28-39 through 41: http://webserver.rilin.state.ri.us/Statutes/TITLE28/28-41/INDEX.HTM
Agency: http://www.dlt.ri.gov/tdi/

Washington

Law: https://app.leg.wa.gov/RCW/default.aspx?cite=50A.04
Agency: https://esd.wa.gov/paid-family-medical-leave

Federal Family and Medical Leave Act:

https://www.dol.gov/whd/fmla/

APPENDIX C: DETAILED SIMULATION TABLES

ESTIMATED BENEFIT CLAIMS AND PROGRAM COST UNDER RECOMMENDED PAID FAMILY LEAVE PROGRAM DESIGN

	Private	State/Local	Self-Employed	Total
Percent Workforce Eligible ($2,500 in past 4Q earnings)				
	89%	91%	87%	**89%**
Number of Leaves Receiving FMLI Benefits				
Own Serious Health Condition	84,478	12,971	13,895	111,344
Maternity/Parental	44,297	6,783	5,299	56,379
Family Care	15,359	2,221	2,257	19,836
Total	144,134	21,975	21,450	187,559
Weeks Receiving Program Benefits				
Own Serious Health Condition	6.2	6.3	6.3	6.2
Maternity/Parental	8.1	8.6	7.8	8.1
Family Care	3.6	3.6	3.4	3.6
Overall	6.5	6.7	6.4	6.5
Average Weekly Benefit	$580	$620	$564	$583
Benefit Cost ($millions, 2016)				
Own Serious Health Condition	$301.5	$49.9	$48.2	$399.6
Maternity/Parental	$206.2	$36.0	$23.5	$265.7
Family Care	$28.0	$4.5	$3.8	$36.3
Total Benefit Cost ($millions)	$535.7	$90.4	$75.5	$701.6
Administrative (5 percent, $millions)	$26.8	$4.5	$3.8	$35.1
Total Cost ($millions, 2016)	$562.5	$95.0	$79.3	$736.7
ACS OASDI Taxable Earnings ($millions, 2016)	$81,548.7	$12,155.2	$12,087.1	$105,791.0
Cost as a Percent of OASDI Taxable Earnings	0.69%	0.78%	0.66%	0.70%
ACS Total Earnings ($millions, 2016)	$96,438.5	$12,863.0	$17,211.3	$126,512.7
Cost as a Percent of Total Earnings	0.58%	0.74%	0.46%	0.58%

Source: Estimates based on IWPR-ACM Family Medical Leave Simulation Model based on 2012-2016 American Community Survey (ACS) and 2012 FMLA Employee survey (10 replications run 30 August 2019). OASDI Taxable Maximum in 2016 is $118,500.

NUMBER AND SHARE OF COLORADO WORKERS TAKING FAMILY AND MEDICAL LEAVE (UNPAID OR PAID) IN A CALENDAR YEAR BEFORE AND AFTER RECOMMENDED PFML PROGRAM BY PURPOSE, EARNING LEVEL AND FAMILY INCOME RELATIVE TO POVERTY THRESHOLD

	Current (no State PFML)		With recommended PFML program in place (Not necessarily claiming benefits)	
	%	Number	%	Number
Own Health	8.9%	228,333	9.9%	252,898
Pregnancy/Bonding	2.8%	71,217	3.1%	78,429
Family Care	3.7%	94,518	4.2%	108,054
Overall*	13.4%	342,720	15.0%	382,737
Earnings < $25K	11.6%	101,641	13.8%	120,981
Earnings $25-60K	14.2%	140,305	15.7%	154,928
Earnings $60K+	14.7%	100,774	15.6%	106,828
Income < 200% Pov	12.3%	62,402	15.5%	78,704
Income 200-400% Pov	13.8%	107,384	15.3%	119,751
Income 400%+ Pov	13.8%	172,336	14.6%	183,249

* Workers can take leave for more than one reason.

Source: Estimates based on IWPR-ACM Family Medical Leave Simulation Model based on 2012-2016 American Community Survey (ACS) and 2012 FMLA Employee survey (10 replications run 29 August 2019).

AVERAGE NUMBER OF WEEKS TAKEN FOR FAMILY AND MEDICAL LEAVE (INCLUDING UNPAID AND PAID BY EMPLOYER OR PFML BENEFITS) BY PURPOSE, EARNING LEVEL AND FAMILY INCOME RELATIVE TO POVERTY THRESHOLD

	Without PFML	With PFML	Increase
Own Health	6.1	6.9	13%
Maternity/Bonding	7.4	9.5	30%
Family Care	3.4	3.5	2%
Overall	5.6	6.4	14%
Earnings < $25K	5.9	6.6	12%
Earnings $25-60K	5.6	6.5	15%
Earnings $60K+	5.3	6.2	16%
Income < 200% Pov	5.8	6.4	11%
Income 200-400% Pov	5.7	6.5	14%
Income 400%+ Pov	5.5	6.4	16%

Source: Estimates based on IWPR-ACM Family Medical Leave Simulation Model based on 2012-2016 American Community Survey (ACS) and 2012 FMLA

AVERAGE SHARE OF USUAL WEEKLY EARNINGS REPLACED FOR LEAVES TAKEN BY EARNINGS LEVEL AND FAMILY INCOME RELATIVE TO POVERTY THRESHOLD

	Without PFML	With PFML	Increase
Overall	63.9%	71.3%	11%
Earnings < $25K	48.0%	65.3%	36%
Earnings $25-60K	64.5%	72.3%	12%
Earnings $60K+ *	79.2%	76.6%	-3%
Income < 200% Pov	39.8%	62.5%	57%
Income 200-400% Pov	59.9%	69.7%	16%
Income 400%+ Pov	75.4%	76.1%	1%

* A decrease in overall wage replacement can occur if workers take more time and use program with partial wage replacement for some weeks; as the following table shows actual income during leave increases for these workers

Source: Estimates based on IWPR-ACM Family Medical Leave Simulation Model based on 2012-2016 American Community Survey (ACS) and 2012 FMLA

AVERAGE AMOUNT OF INCOME RECEIVED FROM DIFFERENT SOURCES DURING LEAVES TAKEN (MEAN INCLUDING THOSE WITH ZERO FROM EMPLOYERS OR PROGRAM BENEFITS)

	Current Without PFML	With PFML			
	Employer-Paid Wages	Employer-Paid Wages	Program Benefits	Total	Increase in Income During Leave
Overall	$3,620	$3,351	$1,336	$4,687	29%
Earnings < $25K	$721	$633	$755	$1,388	92%
Earnings $25-60K	$2,442	$2,165	$1,436	$3,602	48%
Earnings $60K+	$8,549	$8,088	$1,839	$9,927	16%
Income < 200% Pov	$680	$595	$956	$1,551	128%
Income 200-400% Pov	$1,974	$1,747	$1,289	$3,036	54%
Income 400%+ Pov	$5,952	$5,576	$1,532	$7,108	19%

Source: Estimates based on IWPR-ACM Family Medical Leave Simulation Model based on 2012-2016 American Community Survey (ACS) and 2012 FMLA

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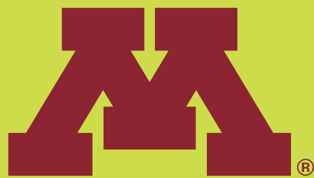

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