



The
Time
is
Now

**Building the Paid Family and
Medical Leave New Yorkers Need**

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the work and family legal center



A Better Balance is a national legal nonprofit advocacy organization that uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without sacrificing their economic security. Through legislative advocacy, direct legal services and strategic litigation, and public education, A Better Balance's expert legal team combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. When we value the work of providing care, which has long been marginalized due to sexism and racism, our communities and our nation are healthier and stronger. Learn more at www.abetterbalance.org.

The Time is Now

Building the Paid Family and Medical Leave New Yorkers Need

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Executive Summary

In 2016, New York passed its paid family leave law, building on the decades-old temporary disability leave program. Together, the paid family leave and temporary disability insurance law constitutes New York's paid family and medical leave program. But while the passage of paid family leave was groundbreaking, New York's paid medical leave remains woefully inadequate and, in the seven years since passage of the paid family leave law, many other states have surpassed New York by passing stronger paid family and medical leave laws. New Yorkers deserve a modern, comprehensive paid family and medical leave program. The groundwork for such a program exists. New York must build on that existing groundwork to create a program that meets New Yorkers' needs.

Key Updates Needed to New York's Paid Family and Medical Leave Program

With a few key updates, New York's paid family and medical leave program can better meet the needs of New Yorkers and can once again stand amongst the strongest programs in the country. Specifically, New York's existing program must be updated by:

- » **Raising benefit rates to a level that works for all workers, including eliminating the cap on benefits for one's own health, which has been stuck at \$170 per week since 1989**

- » Protecting workers' jobs during medical leave so they can take time off to care for themselves without risking their economic stability
- » Creating portable paid leave benefits and covering the unemployed and non-standard workers to account for the changing nature of work
- » Ensuring that all workers can care for their loved ones, including chosen family

Who These Updates Will Help

Strengthening and updating New York's paid family and medical leave program will benefit all New Yorkers. Eventually, everyone has their own health needs or a caregiving need—whether it be recovery from surgery, supporting a sick parent, or caring for a new child. Ensuring that New York has a strong program that supports all workers when they need time off to care for themselves or a loved one, and enables them to do so without sacrificing their economic security, gives everyone the support and security they need. These key improvements will also be especially helpful to certain communities who are disproportionately impacted by the current deficiencies in the program, including:

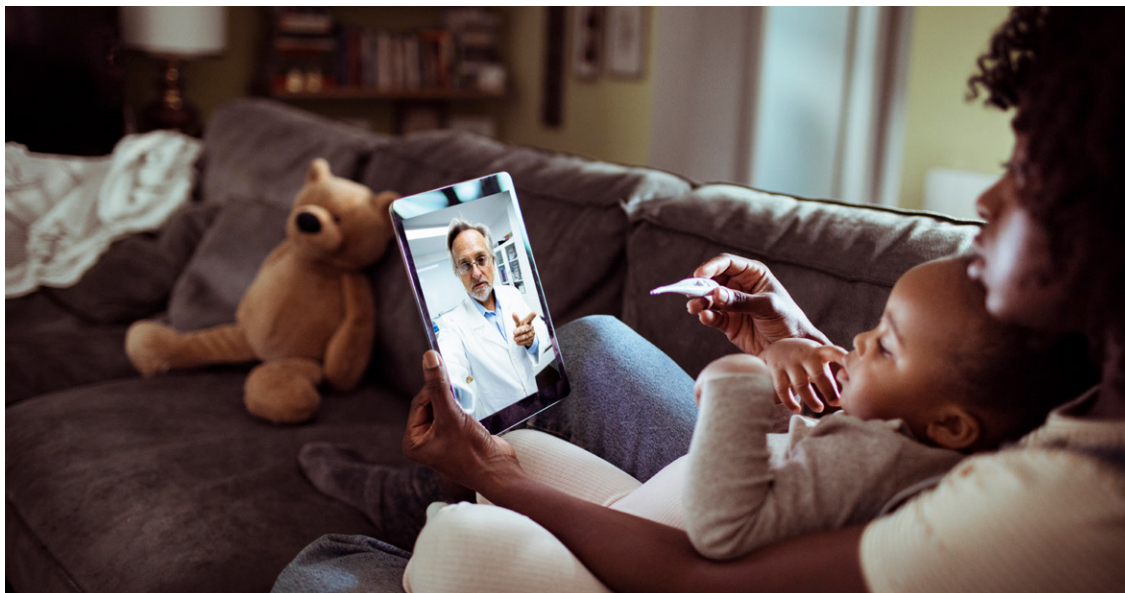
- » **Women in New York.** Nearly 30% of claims for benefits for one's own serious health condition in New York are based on pregnancy-related needs, including recovery from childbirth. Yet those benefits—for a population that also takes on the majority of caregiving labor—are woefully inadequate and lack basic job protection.
 - In particular, these key updates are a crucial means of addressing the Black maternal health crisis. Workplace supports are one critical facet to the myriad systemic solutions needed. For instance, Black workers are more likely to be terminated after taking leave, leaving them particularly vulnerable in the absence of job protection. New York must strengthen its program to ensure that it can truly support Black New Yorkers in taking time off from work to keep themselves and their pregnancies safe and healthy.
- » **New Yorkers with disabilities.** Nearly 1 in 5 New Yorkers have a disability and many more care for a loved one with a disability. Without a modern paid family and medical leave program, millions of New Yorkers with a disability and caring for a loved one with a disability face systemic disadvantages that lead them to be disproportionately represented in lower-wage work and unable to take poorly-paid time off work to manage their disability-related needs or care for their loved ones.

- » **New Yorkers affected by COVID-19.** In New York City alone, more than 1 in every 200 children have lost a parent or caregiver to COVID-19—Black, Latinx, and Asian children in particular are three times more likely to have suffered from these tragic losses than their white peers. At the same time, many New Yorkers have experienced long-term health consequences from COVID-19. New Yorkers need a modern paid family and medical leave program as they deal with the fallout of the pandemic and with long COVID.
- » **New Yorkers dealing with substance abuse.** An average of 1,106,000 New Yorkers need, but do not receive, treatment for substance use each year. Key treatment options, including in-patient and outpatient care, often require time off from work that many do not have access to. Those who are struggling with substance abuse need to be able to take time off from work for treatment and to manage their recovery.
- » **LGBTQ New Yorkers.** LGBTQ households are more likely to live in poverty than their non-LGBTQ counterparts, and LGBTQ individuals—especially LGBTQ people of color—are more likely to report difficulty paying their usual household expenses. At the same time, older LGBTQ adults less than half as likely as the general population to say they would rely on an adult child caregiver and are less likely to expect a spouse or partner to care for them; instead, they often rely on chosen family. LGBTQ New Yorkers need a program that makes paid leave truly affordable and accessible for them.
- » **Veterans and military families.** Veterans are often managing service-related disabilities. Post-9/11 veterans in particular have a 43% chance of having a service-connected mental or physical disability. At the same time, military spouses are especially likely to move between jobs due to relocation and to experience periods of unemployment due to relocation as a result of their loved one's service, making it hard to meet the current onerous qualification requirements for paid family leave. Veterans and military families need a program that supports them in their service to our country.

This report explains these key changes and their impacts. New Yorkers have waited long enough for a paid family and medical leave program that truly works for them. The time to strengthen and update New York's paid family and medical leave to create a program that meets New Yorkers' needs is now.

Introduction

New York is one of ten pioneering states that provides employees with monetary benefits when they need time off to care for their own serious health needs, to bond with a new child, or to care for a seriously ill loved one. In 2016, A Better Balance was proud to help New York pass a groundbreaking job-protected paid family leave law. This was a landmark achievement that made a significant difference in the lives of New Yorkers by making sure that they can care for a new child or seriously ill family member without sacrificing their economic security. The paid family leave law built on a decades-old program that guaranteed workers benefits when they



experienced their own serious health needs. The addition of the paid family leave program to New York's temporary disability benefits law paved the way for other states to pass their own paid family and medical leave laws.¹ In passing the paid family leave addition to the disability benefits law, however, the state did not update the existing disability benefits law and the result is that workers get greater benefits and better protections to care for their families than when they need time off for their own health. Updates to the disability benefits law are thus sorely needed. At the same time, adjustments to the provisions related to family care are necessary to ensure that all workers, particularly low-wage workers, have access to the benefit and a benefit rate to ensure that they can afford to take the time off the law provides. Now, six years after the passage

of New York's game-changing paid family leave law, New York is lagging behind other states and workers are suffering the consequences—all during an ongoing pandemic, which has both revealed and exacerbated the crisis of care in New York and has made the need for updates to New York's temporary disability and paid family leave benefits program all the more urgent.

In 2023, due to gaps in New York's paid leave insurance program, too many New York workers are still unable to take the leave they need for their own health or to care for their loved ones. For instance, an Ithaca-based mother who works a minimum wage job and needs leave during her pregnancy because her doctor prescribed bedrest would have to choose between two terrible options: she could follow her doctor's advice and claim the meager benefits available for her own health, which would mean seeing her income slashed by more than two-thirds—or she could continue working against medical advice and risk her own health and the health of her pregnancy. When following medical advice can make it difficult or impossible to afford paying her bills or feeding her family, she may have little choice at all.



Similarly, a man in the Hudson Valley who has worked in the stockroom of the same small grocery store for a decade and who needs a few weeks of leave to recover from surgery would not be able to rely on his job still being there when he was able to return. He may be forced to rush back to work before he has fully healed in order to keep his job.

And a woman in Albany who lost her long-term job at a restaurant when it closed due to the pandemic and has recently reentered the workforce as restaurants began to open back up would be unable to access her paid family leave benefits if she needs a brief period of leave to care for her elderly mother who was recovering from serious injuries after a fall. This despite having paid into the program, which is fully funded by workers' own contributions, all because she started her new job too recently.

The key changes outlined in this report will benefit these workers and will particularly benefit those most impacted by the law's current gaps, including pregnant women and those recovering from childbirth—who make up nearly 30% of claims for benefits for one's own serious health condition—as well as workers with disabilities or who care for someone with a disability, those with substance use-related needs, veterans and military families, and those impacted by the COVID-19 pandemic. These changes are also a crucial racial equity measure, necessary as a means of addressing New York's Black maternal health crisis specifically and more generally as a way of ensuring that people of color, who are disproportionately likely to be lower-income due to the impacts of systemic racism, are able to care for themselves and their loved ones without sacrificing their economic security.

New York's program is strong and, with a few key updates, New York has the opportunity to build on a proud tradition and once again lead the way with a best-in-the-nation paid family and medical leave program.



The Women's Case

Women in New York depend on state benefits for their own health needs when they have a difficult pregnancy, need to recover from childbirth or pregnancy loss, or face serious illness; they need a program that will meet their needs.

New York's program currently provides critically-needed but woefully inadequate income support to New Yorkers for pregnancy-related disabilities—nearly 30% of claims for benefits for one's own serious health condition are based on pregnancy-related needs, including recovery from childbirth.² Ensuring a meaningful monetary benefit and employment protections will mean that pregnant people in New York can take the time they need to protect their own health and the health of their pregnancy—for instance, to attend prenatal appointments or for pregnancy complications.³ This is absolutely crucial to protect the health of pregnant and postpartum New Yorkers. Recent CDC data indicates that more than 4 out of 5 pregnancy-related deaths are preventable, a shocking statistic that makes clear more needs to be done to ensure that pregnant and postpartum New Yorkers are able to meaningfully care for their health.⁴



These needed changes will also ensure that pregnant people can take the time they need to mentally and physically recover from the full range of pregnancy outcomes, including a healthy childbirth, a miscarriage, or a stillbirth. Without these updates, if a woman experiences a miscarriage, her partner can take job-protected time off with a substantial monetary benefit to care for her. The woman herself, however, can receive only \$170 per week while she mentally and physically recovers from her loss and has no right to return to her job when she is recovered. Making these much-needed improvements will fix this absurd disparity and better protect and support New Yorkers experiencing all pregnancy outcomes.

At the same time, the impacts on women are not limited to pregnancy. Providing benefits and protections that meet workers' needs are also crucial means of addressing the broad range of health needs affecting women, from recovering from breast cancer to healing after an accident to addressing the physical health consequences of domestic violence. Strong benefits and



protections are crucial to support women's health while accounting for their economic needs. For instance, mothers are heads of households or earn 40% or more of household income in more than half of New York households with children under 18.⁵ Meaningful benefits and protections for their own health enable these mothers to care for themselves without sacrificing their household's economic security, especially considering recent survey data suggesting that 40% of women have less than \$100 in their savings account.⁶

Women in New York also depend on paid family leave to allow them to take the time they need to care for loved ones. The burden of caregiving still falls disproportionately on women due to the impact of long-standing gender norms—a reality that long predates the pandemic, though the pandemic has brought it into sharp relief. The pandemic led to a dramatic increase in family caregiving needs as schools and care centers closed, paid caregivers became unavailable due to public

health measures and their own family caregiving needs, and large numbers of people became sick. At the same time, parents and other family caregivers, especially those unable to access paid leave, were left with little in the way of support to enable them to balance these increased demands and their own short- and long-term economic security in ways that fell especially severely on women. This precipitated what has been called the “she-cession”—women, especially women of color, have left the workforce in droves due to caregiving responsibilities.⁷ Moving to a progressive wage replacement rate and improved benefit level for paid family leave will have an especially significant impact on women, especially low-income women. Women have also experienced more job changes during the pandemic, with a 54% increase in the number of job

transitions for women in 2021 compared to 2020, often because they are seeking out jobs that will better enable them to support themselves and their loved ones and balance the competing demands of work and care.⁸ Improving paid family leave portability to make the benefit more accessible to workers as they move between jobs or experience periods of unemployment will have an especially significant impact on women, both as the pandemic and its economic effects continue and after.



Improving Paid Leave Will Help Address the Black Maternal Health Crisis

There is an ongoing Black maternal health crisis in New York—Black birthing women in New York State are nearly *three times* more likely to die than white women, a statistic made all the more concerning by recent CDC data demonstrating that the vast majority of pregnancy-related deaths are preventable.⁹ The improvements to paid leave benefits outlined here are a crucial part of the response to this crisis. New York has a responsibility to ensure that, in a world in which more than 4 out of 5 pregnancy-related deaths are preventable, those deaths *are* prevented. With these changes, New York can ensure that pregnant workers can take the time they need to care for their health and the health of their pregnancies without risking their job or sacrificing their economic security, which will have a have an especially significant impact on Black pregnant workers and help to address the ongoing Black maternal health crisis.

Black women are significantly overrepresented among low-wage workers,¹⁰ and as a result, are particularly likely to be in an economically-precarious position during pregnancy and in the post-natal period—an already economically-vulnerable time for many. Without livable paid family and medical leave benefits, Black pregnant workers may have no choice but to compromise their health by staying at work longer than is healthy, returning to work sooner than they are ready, or putting off needed leave.

At the same time, Black workers are also more likely to be terminated after taking leave, leaving them particularly vulnerable in the absence of job protection for leaves taken for their own health needs. In a focus group of New York workers prior to the 2016 passage of New York's paid family leave law, job protection emerged as a key barrier to leave-taking for Black and Latinx workers.¹¹ While some workers have important protections, including job protection, through other laws like the federal Family and Medical Leave Act (FMLA) and the New York State Pregnant Workers

Fairness Act,¹² these laws do not cover everyone—more than 40% of workers in the private sector nationwide are not FMLA covered—and the lack of protections attached to benefits for workers' own serious health needs means that too many workers continue to slip through the cracks. Without job-protected leave, Black pregnant workers may be forced to risk their health during pregnancy rather than risk their and their family's economic security.

Additionally, due to systemic racism, workers of color are more likely to experience longer periods of unemployment than white workers. Among unemployed workers in 2021, Black and Asian workers were all more likely to be unemployed for more than 15 weeks than white unemployed workers.¹³ Improving the portability of benefits is crucial to ensuring that women of color, and Black women in particular, can access the benefits they have earned when they need them.

Creating a Progressive Benefit for Workers' Own Health Needs and Caregiving Needs

New York established its temporary disability insurance program in 1949, when New York became one of just a handful of states to give workers a legal right to partial wage replacement (money to make up part of your paycheck while you are not working) for serious off-the-job illnesses or injuries—evidence that New York has a long, proud history of ensuring that workers have the benefits they need. Since the 1970s, the law has also provided benefits for pregnancy-related needs and recovery from childbirth, which make up nearly 30% of claims for benefits for one's own serious health condition.¹⁴ The law has been amended many times over the subsequent decades, but its main structure has remained the same. In 2016, New York passed a job-protected paid family leave law that ensures benefits are provided to bond with a new child, care for a seriously ill loved one, or address the impact of military deployment. However, the passage of paid family leave left the existing benefits for one's own serious health needs exactly as they were—at a level that is woefully inadequate to enable workers to pay their bills while taking the time they need to recover from a serious illness or injury. At the same time, since 2016, eight additional states (including Washington, D.C.) have passed their own paid family and medical leave programs, most utilizing progressive wage replacement measures that result in

higher benefits—especially for low-income workers—and leaving New York’s paid family leave benefit lagging behind.

The inadequacy of the paid benefit for one’s own serious health needs has two parts. First, the cap (the maximum amount of money a worker is entitled to receive per week) has not been raised in decades—it has been stuck at \$170 since 1989.¹⁵ That means that, in inflation-adjusted dollars, the benefit amount has significantly *decreased* in the last three decades—\$170 in 2022 dollars would only have been worth approximately \$73 in 1989, less than half the benefits cap the legislature agreed on then.¹⁶ This leaves many workers who need time off from work due to a serious health need in an exceedingly difficult economic position, far from able to meet their financial obligations while they care for their health. Indeed, someone who makes New York State’s 2023 average weekly wage of \$1,688.19 would, due to the cap, receive only approximately 10% of their weekly wages through temporary disability insurance benefits.¹⁷

This shockingly low cap leaves New York out of step with other states with more modern paid medical leave programs, all of which adjust their caps annually.¹⁸ For instance, the state with the next-lowest benefits cap for paid medical leave is Connecticut, which currently caps benefits at \$840 per week—nearly *five times* higher than New York’s long-outdated cap.

Cap on weekly benefits for workers’ own health (January 2023)

NY	CT	DE*	MD*	RI	NJ
\$170	\$840	\$900	\$1,000	\$1,007	\$1,025
D.C.	MA	CO*	WA	OR*	CA
\$1,049	\$1,129.82	\$1,100	\$1,427	\$1,590.29	\$1,620

*The paid family and medical leave insurance programs in Oregon, Colorado, Maryland, and Delaware will begin paying benefits in September 2023, January 2024, January 2025, and January 2026, respectively.

Not only is New York’s benefits cap for workers’ own serious health needs far below the caps on comparable benefits in other states, it is also far below the benefits available in New York for paid family leave. New York’s paid family leave benefits cap is set to 67% of the statewide average weekly wage, meaning that it automatically adjusts each year as wages change throughout the state. At 2023 rates, the maximum paid family leave benefit is set at \$1,131.08 per week—almost \$1,000 more per week than the maximum benefit for workers’ own serious health needs.¹⁹

The profoundly outdated benefit cap for workers’ own serious health needs has also obscured the impact of an equally significant limitation on worker benefits. New York’s wage replacement rate (the percentage of their own income workers receive) for benefits for workers’ own health needs is also dangerously low. The wage replacement rate is 50% of the worker’s average weekly wages, a relic of the 1949 enactment of the program.²⁰ Today, because of the low cap on benefits, under current law, virtually all workers in the state receive less than 50% of their income—often much less—when they cannot work for their own health needs. But even if the cap were raised to an appropriate level, without changes in the wage replacement rate, workers would still only be entitled to receive half of their regular income in benefits—not enough for many workers to pay their bills.

	Benefit for one’s own serious health condition	Benefit for paid family leave
Wage replacement rate	50% of the worker’s average weekly wage	67% of the worker’s average weekly wage
Cap on benefits	\$170/week	67% of the statewide average weekly wage \$1,131.08/week starting in 2023

This low wage replacement rate makes actual use of this crucial benefit untenable for many workers, especially low-wage workers who are disproportionately workers of color. Indeed, even if the \$170 cap was lifted, with the 50% wage replacement rate a full-time minimum wage worker in upstate New York (making \$14.20 per hour or \$568 for a 40-hour work week in 2023) who is unable to work due to a serious health condition would only receive \$284, while a full-time minimum wage worker in New York City, Long Island, and Westchester (making \$15 per hour or \$600 for a 40-hour work week) would receive only \$300 per week.²¹ For low-income workers who often have little available in savings —42% of low-income workers in New York City have less than \$500 in emergency savings²²—this is entirely unworkable. Experience from other states demonstrates this fact: California’s paid leave program used to have a wage-replacement rate of 55% and low-income workers identified the low rate as a key barrier to use of leave;²³ as a result, California passed legislation to raise their rates and provide workers with a greater percentage of their income and continues to improve the program, just recently passing legislation to further increase wage replacement rates.²⁴ As the experience of states like California has shown, when the wage replacement is too low, workers across the economic spectrum cannot afford to use

the benefit they have earned and paid for—a burden that falls especially heavily on low-income workers. Simply put, even if the cap is raised, 50% of their wages is not enough for many New Yorkers. With the current cap and rate, low-income workers, who are disproportionately workers of color, are often unable to afford to take the leave they need to care for their own health needs.

Currently, as with the cap, New York’s wage replacement rate for workers’ own health needs is entirely inconsistent with the rate for paid family leave benefits. Paid family leave’s wage replacement rate is 67% of a worker’s average weekly wage—in other words, two-thirds rather than half of workers’ income, a much larger proportion that is much more likely to meet workers’ needs. Among states with paid leave programs, New York stands alone in providing different wage replacement benefits—much less such starkly different amounts—based on whether a worker’s need for leave is for their own health or to care for a loved one. The gap between the two types of paid leave benefits results in notable absurdities.



For instance, a worker would receive substantially lower benefits when they take time off to manage their own broken leg than if they were caring for a loved one with a broken leg. Similarly, a pregnant worker might not be able to afford to take leave from work if her doctor recommends bed rest for the sake of her own health and the health of her pregnancy, even though her partner would be able to afford to take time off work to care for her.

But even New York’s paid family leave wage replacement rate is inadequate for many workers. With a flat 67% wage replacement rate for all workers (up to a cap), low-income workers will often struggle to make ends meet while taking leave to care for a loved one. At 2023 minimum wage rates, for instance, a full-time employee making minimum wage in New York City, Long Island, or

Westchester would receive \$402 in weekly benefits, and a full-time employee making minimum wage elsewhere in the state of New York would receive \$380.56 in weekly benefits. This is an untenable situation given that, in every county of New York State, the local minimum wage fails to meet the livable wage standards²⁵ and most low-income workers have little in savings to supplement their paid leave benefits.²⁶ New York's flat 67% wage replacement rate for paid family leave benefits also puts it out of step with many newer state programs. Nearly all of the paid family and medical leave laws passed in the wake of New York's pathbreaking 2016 law use a progressive wage replacement rate—meaning that **all** workers receive a higher percentage of their wages up to a point, and a lower percentage of their wages above that point, up to the total benefits cap. For instance, in Washington State, workers receive 90% of a worker's average weekly wage up to an amount equal to 50% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 50% of the statewide average weekly wage, up to the overall cap of 90% of the statewide average weekly wage. In Massachusetts, workers receive 80% of a worker's average weekly wage up to an amount equal to 50% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 50% of the statewide average weekly wage, up to the overall cap of 64% of the statewide average weekly wage. In effect, progressive wage replacement increases benefits for all workers while ensuring that lower-income workers receive a higher overall percentage of their wages than do higher-income workers.



New York should update its paid family leave and temporary disability insurance wage replacement rates such that all workers taking family leave or leave to care for their own health receive 90% of their average weekly wage up to an amount equal to 50% of the statewide average weekly wage, and 67% of their average weekly wage above an amount equal to 50% of the statewide average weekly wage (up to an overall cap of 67% of the statewide average weekly wage, the same as the current overall cap for paid family leave benefits). This would transform New York's program into one on par with more modern state paid family and medical

leave programs and would make a real difference to New York workers. With this change, a New York worker whose average weekly wage is 50% of the statewide average weekly wage or less—approximately \$844.10 in 2023—will get 90% of their average weekly wages when they take paid family leave or leave to care for their own health. So, for example, at 2023 rates, a minimum wage worker in New York City, Westchester, or Long Island would receive \$540 in weekly benefits—\$138 more than the current paid family leave rate and \$370 more than the current temporary disability insurance rate; a worker earning minimum wage elsewhere in the state would receive \$511.20 in weekly benefits—\$130.64 more than the current paid family leave rate and \$341.20 more than the current temporary disability insurance rate. A worker whose average weekly wage is *more than* 50% of the statewide average weekly wage will get 90% of their average weekly wage up to 50% of the statewide average weekly wage—currently approximately \$844.10—then will get 67% of what they make above that, up to an overall maximum of 67% of the statewide average weekly wage. So, for example, a worker whose average weekly wage is \$1,000/week would receive approximately \$864.14 in weekly benefits. This ensures that all workers receive 90% of their average weekly wages up to the same cutoff point, with higher-income workers also able to receive additional benefits above that point, creating a benefit that works for all workers.

	Upstate Minimum Wage Worker	New York City, Long Island, or Westchester Minimum Wage Worker	Statewide Average Weekly Wage Earner	High Income Earner
	\$568 per week in 2023	\$600 per week	\$1,688.19 per week in 2023	\$4,808 per week
Current Weekly Benefit for One’s Own Health	\$170	\$170	\$170	\$170
Current Weekly Benefit for Paid Family Leave	\$380.56	\$402	\$1,131.08	\$1,131.08
Proposed New Benefit for One’s Own Health	\$511.20	\$540	\$1,131.08	\$1,131.08
Proposed New Benefit for Paid Family Leave	\$511.20	\$540	\$1,131.08	\$1,131.08

New York workers need and deserve a meaningful benefit that enables them to take the time they need to care for their own health and the health of their loved ones without sacrificing their economic security. Workers’ own health deserves to be treated with the same seriousness as the

health of their loved ones, and both workers' own health needs and their family caregiving needs deserve a modern paid family and medical leave program with a progressive wage replacement rate and realistic benefits cap.

A note on funding for leave for workers' own health needs:

New York can improve temporary disability insurance benefits through the program's existing funding structure, in which program costs are shared between workers and employers. This is how New York has paid for benefits for workers' own serious health needs for over seventy years and is also the structure of most other state paid medical leave programs.²⁷

This shared cost is appropriate, since paid benefits for workers' own health needs benefit employers as well as workers themselves.²⁸ Paid leave keeps workers safe on the job, increasing productivity and decreasing employer costs. Workers with paid medical leave are significantly less likely to suffer dangerous injuries on the job²⁹ or deaths on the job.³⁰ When workers must return to work before a chronic condition is stabilized or before they have healed from an injury, they are more likely to relapse or re-injure themselves while working.³¹ Paid leave allows workers to recover and return to full productivity more quickly than they would by continuing to work. At the same time, paid leave helps employers retain valuable employees. Nearly one in three seriously ill workers either lose their jobs or have to change jobs as a result of their illness.³²



Paid medical leave can help workers balance their health needs with work and keep their jobs. Keeping quality workers on the job also saves employers money. Employers pay a high cost for employee turnover, with replacing a worker costing about one fifth of that employee's annual salary.³³ In other words, providing the robust, high-quality medical leave benefits workers need will benefit employers in ways that will concretely affect their bottom lines, potentially offsetting any increase in insurance premiums. As with the benefit available for paid family leave, the Department of Financial Services should set the insurance premium rates and should ensure community-rating to ensure fair and equitable costs.

There is also substantial room to improve the program without imposing excessive costs on employers or workers. For example, the New York State Insurance Fund (NYSIF) is among those providing disability insurance policies to employers who operate in New York. Currently, they charge a gender-neutral standard rate of \$0.14 per \$100 of payroll, capped



at \$0.48 per person per week for coverage that meets the minimum statutory requirements.³⁴ With the cap on employee contributions capped at \$0.60 per person by statute—higher than the low premiums—employees of many employers may already be covering most or all of the cost, even though the statute is intended to require employers and employees to share costs. In other words, while New York's system was intended to share costs between employer and employees, in practice the low premiums resulting from the lagging benefit amounts mean that workers may have been paying more than their fair share for years. Improving the benefit (which will cause a corresponding increase in premiums) while preserving the existing cost-sharing structure will restore the balance that was always intended by the statute by ensuring that employers begin paying part of the costs. As New York has long recognized, both workers and employers benefit from workers being able to recover from serious illness or injury and then returning focused and ready, and both should share in paying for that program. Improving the benefit amounts will ensure that is finally a reality.

At the same time, many employers are already stepping up to provide better coverage to their workers—meaning that raising the floor of legally required coverage would not significantly increase costs for these employers, who are already doing more than the law requires. With premiums as low as \$0.48 per person per week, and employee contributions capped at \$0.60 per person per week by statute, some employers do not bother with the deduction, since the benefit is so low-cost as it is. In addition, many employers also choose more costly plans in exchange for enriched benefits. Taken together, this further confirms that an increased cost of the baseline program would be more than manageable for employers. In fact, legally guaranteeing a better benefit may lower costs for employers already providing a greater benefit if all employers are sharing the costs of providing an expanded benefit.

The Disability Case

Approximately 1 in 5 New Yorkers has a disability,³⁵ and many more New Yorkers—including many with disabilities themselves—care for someone with a disability. People with disabilities and those who care for them often need leave from work to manage disability-related health needs. People with disabilities and those who care for people with disabilities need and deserve a paid family and medical leave program that works for them, allowing workers with disabilities to maintain employment and ensuring that people with disabilities and their families can maintain their economic security. Without a meaningful benefit and key employment protections for one's own serious health needs, and without portable paid family leave benefits, New York's program falls short.

Due to persistent structural inequality, people with disabilities are disproportionately lower-income, and families with members with a disability are disproportionately likely to experience financial difficulties.³⁶ Nearly half of families with a member with a disability live in or near poverty.³⁷ This makes a livable paid leave benefit for one's own serious health condition especially crucial for workers with disabilities, and a modernized paid family leave benefit especially crucial to the family members of workers with disabilities (who often have disabilities themselves) as they can scarcely afford unpaid or poorly paid leave. At the same time, the lack of employment protections for leave due to one's own serious health needs is a major barrier to employment for people with disabilities. People with disabilities are disproportionately likely to be unemployed, and

people of color with disabilities are significantly more likely to be unemployed than their white counterparts.³⁸ This is despite the fact that people with disabilities generally want to and are able to work—many workers with disabilities express deep commitment to their jobs, but need support to be able to stay attached to the workforce.³⁹ To ensure that people with disabilities can stay attached to the workforce, maintaining their economic security while caring for their own health needs, it is crucial that New York raise the benefit level for one’s own serious health conditions and ensure that workers who take that leave have the employment protections they need.



Moreover, it is crucial that those who care for loved ones with disabilities—which includes a large number of people who have disabilities themselves⁴⁰—are able to use the paid family leave benefits they have paid for. Many family caregivers for people with disabilities have to make changes to their employment situation, including quitting their jobs for periods of time, due to their caregiving responsibilities.⁴¹ As they move between jobs or experience periods of unemployment, family caregivers need to be able to access their paid family leave benefits, especially considering that families that include members with disabilities are likely to be less financially secure than families without members with disabilities.⁴² Furthermore, people with disabilities are more likely than people without disabilities to take time off of work to care for a family member to whom they are not legally or biologically related.⁴³ Ensuring that New Yorkers with disabilities can take paid family leave to care for all of their closest loved ones, regardless of legal or biological relationship, is crucial to building a more equitable paid family leave program.



The COVID-19 Case

An improved benefit for workers' own serious health needs will ensure that those who struggle with long COVID can afford to care for their long-term health needs and an improved paid family leave benefit will help ensure that workers can afford to take time to care for their loved ones with increased care needs due to long COVID. The pandemic is likely to be a mass-disabling event, with potentially 1.2 million people becoming disabled in 2021 likely due to COVID-19 and many of those who survive COVID-19 developing long-term physical and psychological health symptoms.⁴⁴ Workers in the pandemic era need and deserve a progressive wage replacement system for paid family and medical leave, enabling them to care for themselves and their loved ones while maintaining their economic security.

By helping businesses retain valuable employees, job-protected medical leave can significantly cut down on turnover costs. Businesses spend, on average, around one-fifth of an employee's salary to replace that employee if the employee quits.⁴⁵ This is especially crucial at a time when—due to the economic fallout of the pandemic—many businesses are desperately seeking qualified employees and trying to retain strong employees they already have.

At the same time, restrictive eligibility standards for paid family leave benefits mean that far too many workers who lost their jobs or were forced to leave them by pandemic-related health or caregiving needs have lost access to the benefits they paid for. Fixing these standards is a

crucial response to the massive workforce disruption precipitated by the pandemic. In particular, it is a critical step towards recovery from the “she-cession”—as a result of the pandemic and lack of social support, women have left the workforce in droves due to caregiving responsibilities.⁴⁶ These women need to be able to access their paid family leave benefits as they re-enter the workforce and simultaneously continue to balance family caregiving responsibilities. Without improved portability, they may have difficulty accessing the benefits they need during periods of continued unemployment or as they begin new jobs.

Additionally, while many New Yorkers have long relied on loved ones to whom they are not legally or biologically related for care, as we continue to rebuild from the effects of the COVID-19 pandemic, New York families will increasingly diverge from a one-size-fits all model, necessitating a paid family leave law that uses a more inclusive family definition. For example, in New York City alone, more than 1 in every 200 children have lost a parent or caregiver to COVID-19—Black, Latinx, and Asian children in particular are three times more likely to have suffered from these unfortunate losses than their white peers.⁴⁷ As these families grieve and recover, they will need to be able to rely on all of their closest loved ones for care; our paid family leave law should afford all workers the ability to care for any family member that they hold dear.

Protecting Workers’ Jobs During Medical Leave

Since 1950, New York has provided needed income support to those unable to work due to a serious health need—and, with the improvements described above, New York can once again provide truly meaningful economic support to those workers. However, improvements to benefits alone are not enough—in its current form, New York’s law fails to give those who take leave for their own health the employment protections they need. As a result, unless they are covered by another law that prohibits retaliation or job loss while on leave, workers can legally be fired while they are away from work and receiving benefits due to their own serious health condition. At A Better Balance, we frequently hear from callers to our free legal helpline who are shocked to find that, contrary to many people’s reasonable assumption when collecting benefits that the state



of New York guarantees, if those benefits are received due to their own serious health condition, their job is not necessarily protected. In 2016, New York led the nation by providing full job protection to all workers taking paid family leave benefits under our law. It is time for us to do the same for those who need time away from work for their own health needs.

Without employment protections, workers may forgo needed leave—even when benefits are available—for fear of losing their job and sacrificing their long-term economic security. Fear of being fired is a key driver in workers’ decisions about whether to take leave. In a major 2020 U.S. Department of Labor study, fear of job loss was the second most commonly cited reason for not taking a needed leave, after inability to afford unpaid leave.⁴⁸ Data from other state programs bears this out. For instance, in California—a state that provides paid family leave benefits but no right to return to work following leave—almost one in four workers who did not use California’s paid family leave benefits cited fear of being fired as a reason for not using their benefits.⁴⁹ In Rhode Island—a state that provides both paid leave benefits and a right to return to work—45% of leave-takers reported that they would not have taken leave if it had not been job-protected.⁵⁰ When workers are faced with a need for treatment for a serious illness or injury but do not have job-protected leave available, many delay or forego treatment, risking their health for the sake of their economic security⁵¹—a tradeoff no one should have to make.

In addition to serious health consequences, lack of employment protections through state law creates a deeply inequitable program, where the workers who might benefit the most from robust state protections will not be able to take the leave they need for their own serious health

needs. For example, an April 2021 study found that one third of surveyed low-wage workers like those in service-sector industries such as grocery, pharmacy, and delivery cited fear of losing their job as the reason they did not take any or enough leave. Latinx workers and Black workers reported higher rates of not taking any leave or taking shorter leave due to fear of losing their job than white workers,⁵² and Black and Latinx mothers are more likely than white mothers to



be terminated for taking leave.⁵³ Indeed, a focus group of low-income, predominantly Black and Latina New York women identified job protection as their top priority in a paid leave program;⁵⁴ without it, even a generous benefit is asking them to risk their long-term economic security and the long-term economic security of their families—and in such a circumstance, many are forced to sacrifice their own health.

New York law already guarantees workers the right to return to work following paid family leave. Similarly, workers taking paid family leave are protected against retaliation and have the right to continuation of their health insurance.⁵⁵ Yet New York's paid leave program does not guarantee these same rights to workers who need time off for their own serious health needs,⁵⁶ even where workers are entitled to income replacement benefits for those same needs under state law. This results in an absurdly mismatched

system in which, for instance, a worker who takes time off to care for a parent who is recovering from surgery has a right to return to their job after leave but a worker who takes time off because *they* are recovering from surgery does not have an equivalent right.

Similarly, under current law, those receiving paid family leave benefits have a right to continuation of their health insurance if they receive health insurance through their employers; those taking leave for their own serious health needs do not have the same right under the state's paid leave program.⁵⁷ As a result, a parent who takes time off from work to bond with a new baby has the

right to keep their health insurance under New York law while many workers who, for instance, need leave to receive cancer treatment or recover from a serious accident have no equivalent right to keep their health insurance while they are on leave from work. Without a clear right to continuation of health insurance while workers receive state-guaranteed benefits for their own serious health needs, many workers are forced to risk their health insurance coverage just when they need it most.

While some New York workers may be able to receive employment protections through the federal Family and Medical Leave Act (FMLA) while receiving state benefits for their own health, the FMLA alone does not sufficiently meet New York workers' needs. The FMLA is a federal law that provides covered workers with unpaid leave that comes with robust employment protections, including the right to return to work, protection against discrimination and retaliation,



and continuation of health insurance. New York workers in need of leave for their own health who are covered by the FMLA can often combine the FMLA's employment protections with the state program's monetary benefit. But the FMLA has onerous requirements that a worker must meet in order to qualify for coverage, meaning that many workers are unable to benefit from those protections. Because of the FMLA's onerous coverage requirements, approximately 44% of workers in the private sector nationwide are not covered by the FMLA.⁵⁸ Those excluded include a disproportionate number of low-income workers and part-time workers.⁵⁹ Clearly, relying on the FMLA to fill the gap left by current New York law's lack of employment protections and continuation of health insurance for workers' own health needs does not work, and its failures fall disproportionately on those workers who are already in economically-precarious positions—who are, due to the impact of systemic racism, overwhelmingly workers of color—leaving unacceptable inequities and unacceptable risks for workers. To truly provide New Yorkers with a medical leave program that works for them, New York must create robust employment protections to accompany the benefit for one's own serious health needs.

The Substance Abuse Case

Improving medical leave benefits can help fight substance abuse, including the rising threat of opioid abuse, which causes incalculable suffering and costs our nation over \$740 billion each year.⁶⁰ In 2019, approximately 69% of those over the age of 18 who reported use of illicit drugs (including misuse of certain prescription medications) in their lifetime were employed.⁶¹ More than 70% of employers have felt some effect of prescription drug usage in the workplace.⁶² Key treatment options, including both in-patient and outpatient care,⁶³ generally require time off work, which is why treatment of substance use disorders is covered under existing leave laws.⁶⁴ In the absence of job-protected medical leave and an adequate paid benefit, many New Yorkers do not receive the treatment they need. The Substance Abuse and Mental Health Services Administration has calculated that an average of 1,106,000 New Yorkers need, but do not receive, treatment for substance use each year.⁶⁵ Making the upgrades New York's paid leave program needs will make many key treatment options significantly more accessible to workers. Recovery benefits workers, their families, and their employers. Workers in recovery from substance use disorders have the lowest rates of turnover and absenteeism—lower, even, than the general workforce.⁶⁶



Additionally, a recent report found that substance abuse was the leading cause of pregnancy-associated deaths in New York State.⁶⁷ Accordingly, addressing substance use is a key component of ensuring maternal health and addressing the maternal health crisis in New York. Ensuring that those with substance use disorders can seek the treatment they need is a crucial step in this process.

Addressing the substance use crisis also requires recognizing the role of family caregivers, as those with substance use disorders often rely on the assistance of loved ones. This means ensuring that benefits for paid family leave are increased to ensure that all family caregivers can afford to take the time they and their loved ones need. Moreover, the role of family caregiving in substance abuse treatment could impact labor force attachment for family caregivers, and may require periods of unemployment. New York must ensure that those caregivers can access the benefits they paid for even when they are changing jobs or between jobs.

Meeting the Needs of Today's Workforce by Creating Portable Paid Family Leave Benefits and Covering the Unemployed and Non-Standard Workers



The nature of work is changing, with more workers moving from job to job, combining multiple sources of income, or working outside traditional employer/employee arrangements. Workers can no longer rely on the security of a single long-term job to pay their bills. Instead, many workers, especially low-income workers, must move from job to job or piece together income from multiple sources, and many workers face periods of unemployment. These

shifts call for urgent updates to New York's paid family leave benefit to make it portable. Today, these benefits do not remain accessible to employees as they move from job to job or face periods of unemployment, and workers lose access to benefits when they leave a particular job. The law must be changed to meet the needs of today's—and tomorrow's—workforce and ensure workers can keep the benefits they have paid for.

These shifts in the nature of work were already taking place before the pandemic, with some opting for greater flexibility and control and some taking the work that was available to them. The pandemic has accelerated these changes; unemployment reached record highs and remains high in New York, with many finding themselves unemployed for months.⁶⁸ The pandemic resulted in significantly increased family caregiving needs as a result of the unavailability of schools and care providers as well as family members' acute and long-term illness. This, along with other pandemic-driven shocks to the economy, resulted in the so-called "she-cession," which has disproportionately impacted women of color. Black women in particular represent a disproportionately high percentage of those who dropped out of the workforce altogether (likely

due to caregiving needs) and continue to experience high rates of unemployment even as hiring increases on average.⁶⁹

Yet under current law, New York's paid family leave benefit—a benefit which is fully paid for via workers' own contributions—fails to meet workers' needs. This is because New York's paid family leave benefit is not portable. Currently, workers cannot qualify for paid family leave benefits until they have been employed by their current employer for nearly six months. If they start a new job, they must start this clock over from scratch. If they are laid off or their job ends, they lose their benefits altogether, even if they had been eligible for and paid for benefits for years. This is especially egregious because premiums for paid family leave are paid for exclusively by New York workers; employers do not contribute to these premiums.



At the same time, benefits remain difficult to access for those who are self-employed, including the many women who choose to work for themselves so that they can dictate their own work schedules while they manage family caregiving responsibilities. In the landmark 2016 New York paid family leave law, the state recognized the increasing importance of this sector of the workforce, and made the landmark addition to New York's law of the ability of self-employed workers to voluntarily opt in to coverage if they wanted to—making New York just the second state in the country to provide this option. In so doing, New York recognized the critical

importance of ensuring the ability of freelancers, independent contractors, and other self-employers to access this crucial benefit in a changing economy.⁷⁰ Since then, every new state to adopt a paid leave law has followed New York's lead by providing the option for self-employed workers to opt in to coverage.



This was a powerful move by the legislature, but regulatory choices have made it all but impossible for most self-employed workers to access the paid family leave coverage the law theoretically gave them access to. The Department of Financial Services imposed a restrictive timeline for self-employed workers who want to opt into coverage: they need to opt in to coverage by purchasing an insurance policy within 26 weeks of becoming self-employed or by January 1, 2018, whichever is later. Those who do

not meet that deadline may still theoretically opt in, but they must pay for coverage for a full two years before they are able to access any paid family leave benefits.⁷¹ Unsurprisingly, many self-employed workers are unwilling or unable to do so, meaning that they are in effect shut out of the opportunity to get the paid family leave coverage promised to them by the law. This includes many workers whose need—like welcoming a new child or caring for a seriously ill loved one—will come and go long before the two years is up, meaning that obeying the waiting period will leave them out of pocket for the cost but without access to the benefits they need when they need them. Compounding the problem, the state has done (and continues to do) very little to publicize the deadline for opting into coverage, meaning that workers are being punished for failing to comply with a requirement they did not know about and had no realistic opportunity to meet.

The Department of Financial Services appears to have imposed this requirement due to concerns about adverse selection.⁷² That is, they were presumably concerned about self-employed workers strategically only opting in to coverage when they had a specific anticipated need for leave (such as expecting a new child) and then opting out of coverage as soon as their own need passes—

theoretically meaning that the self-employed would receive, but rarely pay for, paid family leave, which could be a financial burden on the paid leave system. Yet other states with opportunities for self-employed workers to opt in to paid leave coverage have been able to address these concerns through other, less-restrictive means, such as only allowing opt in during designated open-enrollment periods or requiring that workers commit to remaining in the program for a certain minimum period of participation.⁷³

Since this requirement went into effect, we have heard over and over again through our helpline from self-employed workers who needed paid family leave coverage, but found out about the opportunity to opt in or the deadline for doing so too late. These workers—and the countless more like them across the state—deserve the meaningful opportunity to participate in New York’s paid family leave program if they wish to. The Department of Financial Services should immediately issue new regulations to remove this burdensome and unnecessary requirement; if they do not, the legislature should amend the statute to restore to self-employed workers the rights they were promised.

As a result of the current restrictive eligibility standards, workers—including those who are experiencing a period of unemployment, those who work for themselves, and those who have recently started a new job—are unfairly denied benefits they themselves have paid for or deprived of the opportunity to access the program’s benefits even when they need them most. Indeed, A Better Balance frequently hears from callers to our free legal helpline who are



distressed and surprised to discover that they are unable to access these benefits when they start a new job or face periods of unemployment. At the same time, triggering events for payment of benefits under paid family leave generally occur only a few times in any individual’s working life and are often unpredictable. Accordingly, workers may have paid premiums for years but if they have recently changed jobs or lost their jobs when a paid family leave event occurs, no benefits will be paid—shutting them out entirely of a benefit they have paid for.

New York's overly restrictive eligibility standards for the paid family leave benefit also renders New York's program a notable outlier. Nearly all other states with paid family and medical leave programs provide some portability through the ability to combine multiple jobs to meet eligibility requirements—only New York and the soon-to-be-implemented Delaware program require tenure with a particular employer to qualify for benefits. In addition, nearly all other state paid leave programs provide benefits to at least some workers during unemployment.⁷⁴ New York's paid family leave is a notable exception to this rule.



The changing nature of work and the rise in unemployment has had differential effects along race, class, and gender lines and, accordingly, so does New York's lack of portable paid family leave benefits. Under current law, workers must be currently employed in order to receive paid family leave benefits in New York. This requirement may disproportionately harm women, and Black women in particular. For instance, pregnant workers are often pushed out of work or need to take some time before the baby is born due to health considerations; without portability, those circumstances may leave these workers unable to access paid family leave benefits to bond with their new child after they give birth. The lack of portability also disproportionately penalizes Black workers, who face higher rates of unemployment during economic downturns, as well as farmworkers, retail workers, and low-income workers generally due to higher rates of seasonal work and job turnover.⁷⁵

New York must update the paid family leave benefit to make it more accessible to workers at all phases of their working lives, ensuring that workers in our changing economy can use the

benefits they have paid for. Our laws should reflect the reality of today's workforce and ensure that workers can access the benefits they have paid for when they need them. Specifically, the law should provide that workers can combine jobs to meet workforce attachment requirements—meaning that, for instance, if they have worked at one job for long enough to qualify for benefits, then leave and begin a new job, they should maintain their eligibility for benefits, rather than needing to start from scratch. In addition, the law should ensure that workers can access benefits while unemployed, since workers who are unable to work due to a need to care for a loved one or bond with a new child are likely to be ineligible for unemployment benefits.

Fortunately, existing New York law offers a well-established, time-tested approach that aligns with these needed changes from within the same program: the long-standing eligibility criteria for disability benefits



(benefits for workers' own serious health needs). To initially qualify for benefits for their own serious illness or injury, New York workers are required to be employed by their employer for four consecutive weeks (or, for some workers on a reduced schedule, for 25 days).

In contrast, qualifying for paid family leave benefits requires *twenty-six* consecutive weeks of employment for the same employer (or, for some workers on a reduced schedule, for 175 days), more than six times as long as for benefits for workers' own health through the same program. And, unlike eligibility for benefits for workers' own health, the clock restarts completely with each new job, even for workers who move directly from one covered employer to another. This means that, for instance, someone who needs leave two months into a new job because they have been injured off the job can receive benefits for their own disability, but someone who needs an equivalent amount of leave two months into a new job to care for a loved one who is injured can't receive paid family leave benefits. Similarly, someone who is injured while unemployed may not be eligible for unemployment benefits if their injury renders them unable to work, but they will

likely be able to receive disability benefits during that time. In contrast, someone who is caring for a seriously ill family member while unemployed may also be ineligible for unemployment if their caregiving responsibilities render them unable to work, but will not be able to access the paid family leave benefits they paid into while employed. In other words, under current New York law, benefits for worker's own health needs are portable—workers can take them with them when they move from job to job or are between jobs—while paid family leave benefits are not. This is a serious deficiency of the program, making benefits harder to access for workers who urgently need them.

Matching eligibility requirements for paid family leave benefits to the eligibility requirements for disability benefits—which have been in place and working for workers, employers, and the state as a whole for decades—just makes sense. Disability and family leave benefits are complementary parts of the same program, organized under the same law and structured, operated, and paid in the same way, typically through the same insurance policies. Just as every other state paid leave program in the country does, New York should adopt the same eligibility rules for paid leave benefits regardless of whether leave is needed for health or caregiving needs—and those rules should be designed to truly meet the need of workers.

New York workers deserve to keep the paid family leave benefits they have paid for, whether they change jobs or experience unemployment. Adapting the eligibility requirements to make benefits portable will better meet the needs of today's workforce and better prepare the program to meet the needs of future workers in a changing economy.



The Veterans and Military Families Case

Veterans often return home from their service with significant service-related health needs that will require ongoing care throughout their lives. These include both physical and mental health needs, including post-traumatic stress disorder (PTSD). Post-9/11 veterans in particular have a 43% chance of having a service-connected mental or physical disability.⁷⁶ Many veterans also suffer from substance use disorders—prescription opioid abuse in particular is on the rise among veterans—after their return from service, which is strongly related to PTSD.⁷⁷

These needs require ongoing care throughout their lives and often result in a need for leave for medical care. Veterans deserve the leave they need for ongoing health needs. Providing the rights and benefits workers need will ensure that veterans can take the time they need to address service-related health needs without sacrificing their economic security.

At the same time, revising eligibility standards and increasing benefits for paid family leave is crucial to ensuring that military families are able to take the leave they need. In 2016, New York broke new ground by being the first state in the country to guarantee paid family leave benefits for military spouses and other family members for needs arising out of their servicemember's deployment; since then, several other states have followed New York's lead. Recognizing the sacrifices that military family members must make to support their loved one's service, New York guarantees paid, job-protected time off for a range of deployment-related needs, from making financial or legal arrangements or adjusting childcare or eldercare to attending military ceremonies to spending time with someone home on rest and recuperation leave. And military family members can also use paid family leave to bond with a new child, including when a partner is deployed, making leave especially critical, or to care for a seriously ill or injured loved one, including for service-related needs. Yet despite New York's first-in-the-nation status on deployment-related leave, current benefit levels and eligibility rules shut out far too many military spouses from the protections they need. Military spouses are especially likely to move between jobs due to relocation and to experience periods of unemployment due to relocation as a result of their loved one's service,⁷⁸ making it harder for them to have spent the needed six months with a particular employer to qualify for paid family leave benefits when the time comes. New York can and must do better by those who love and support those serving in the military.

Ensuring that All Workers Can Care for Their Loved Ones

Currently, New Yorkers can use paid family leave to receive benefits and take job-protected leave when they are caring for a seriously ill spouse, domestic partner, child or stepchild, parent or stepparent, parent-in-law, grandparent, grandchild, or, beginning in 2023, sibling. Unfortunately, the range of relationships currently covered by the paid family leave law does not honor the needs of all New York families. Many people do



not have accessible relationships with biological relatives or a long-term romantic partner and may, instead, have close relationships with chosen family members—loved ones with whom the worker has no biological or legal relationship. The vast majority of American families do not fit the mythical “nuclear” family model of a married couple and their children—according to 2020 Census data, an overwhelming 81.6% of households do not adhere to the nuclear family structure⁷⁹—besides which, reciprocal responsibilities of care often extend to both biological and chosen family. Indeed, more than 34.2 million Americans live alone, and more than 11.7 million Americans live with people who are not their relatives, such as friends and roommates—many of these individuals depend on their chosen family for care in the event of a serious health need.⁸⁰ Notably, among Americans who provide care for older adults, nearly a quarter are caring for a friend, neighbor, or other non-relative.⁸¹ Taken together, this data makes clear that the vast majority of Americans care for or are cared for by loved ones to whom they may not have a legal or biological connection.

Accordingly, it is becoming increasingly important to ensure that New York’s paid family leave program accounts for the needs of today’s New York families. Chosen families form when two or more individuals form a close, family-like relationship—such as friends who have become like siblings or a neighbor who cares regularly for an elderly individual—these treasured, lifelong



relationships should be captured in the paid family leave law. To enable all New Yorkers to take the time they need to care for their closest loved ones, it is clear that the family definition used for paid family leave must be expanded to include chosen family.

This is especially crucial for LGBTQ individuals and older LGBTQ adults, who are much more likely to rely on chosen family members

for care. For a number of reasons—such as moving to a more LGBTQ-friendly area away from biological family, LGBTQ stigma within biological families, and family planning choices—LGBTQ individuals are disproportionately less likely to have accessible relationships with biological relatives. LGBTQ-identified older adults in the U.S. are nearly twice as likely as non-LGBTQ-identified older adults to live alone (33% versus 18%).⁸² LGBTQ older adults are less than half as likely as the general population to say they would rely on an adult child caregiver (16% versus 7%), and are less likely to expect a spouse or partner to care for them (47% versus 39%).⁸³ Therefore, LGBTQ older adults are less likely to have biological family or partner support when they need care and often rely on chosen family instead. LGBTQ New Yorkers deserve paid family and medical leave that allows them to care for and be cared for by all of their closest loved ones; adopting an inclusive family definition will make that a reality.

Already, New Jersey, Connecticut, Oregon, Colorado, and Washington State use family definitions in their statewide paid family and medical leave laws that cover certain individuals—without requiring a biological or legal connection—who have a close association with the worker that is

equivalent to a family relationship.⁸⁴ For New York to continue to provide a safe and welcoming environment for all families, it is crucial that the state's paid family leave program adopt a family definition that does the same.

Making this change would have an enormous positive impact on many New York families, and it would do so at a small cost to the program. Family care in general makes up a small proportion of paid family leave claims—in 2021, the first year in which New York's paid family leave program was fully phased-in, family care leave represented just over 27% of all paid leave claims⁸⁵—and data from states with more inclusive family definitions demonstrate that an extremely small percentage of family care claims are used to care for extended or chosen family members.⁸⁶ This makes updating the paid family leave program's family definition a low-cost but extremely important change.

The LGBTQ Case

As described above, expanding the family definition used in paid family leave to include chosen family is crucial to ensuring that LGBTQ New Yorkers are able to care for and be cared for by those they love.

At the same time, LGBTQ households are more likely to live in poverty than their non-LGBTQ counterparts, and LGBTQ individuals—especially LGBTQ people of color—are more likely to report difficulty paying their usual household expenses,⁸⁷ making increased benefit levels for paid family leave and for one's own serious health needs, as well as a higher benefits cap for one's own serious health needs, crucial to ensuring that LGBTQ New Yorkers can meaningfully afford to take the time off they need to care for themselves and their loved ones.

Additionally, while LGBTQ workers report working more than their non-LGBTQ counterparts, LGBTQ people, and particularly transgender people, are more likely to receive unemployment benefits, indicating unstable employment.⁸⁸ This makes portable paid family leave benefits particularly important to ensuring that LGBTQ workers can make use of the benefits they have paid for when they need them.

Conclusion

In 2016, New York broke new ground by enacting a landmark paid family leave law, building upon the disability benefits the state had provided for decades. In 2023, in the wake of the ongoing pandemic and care crisis, New York can once again lead the way. With the key improvements laid out above, New York can create a comprehensive paid family and medical leave program that truly works for workers and that responds to the needs of women, especially women of color. Providing the paid family and medical leave rights workers need is a crucial step towards racial, gender, and economic justice in New York. The time for these changes is now.



Endnotes

- 1 See A BETTER BALANCE, OVERVIEW OF PAID FAMILY & MEDICAL LEAVE LAWS IN THE UNITED STATES (last updated January 31, 2022), <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.
- 2 FISCAL POLICY INSTITUTE, REFORM OF NEW YORK'S TEMPORARY DISABILITY INSURANCE PROGRAM AND PROVISION OF FAMILY LEAVE INSURANCE: ESTIMATED COSTS OF PROPOSED LEGISLATION 27 (2014), <https://fiscalpolicy.org/wp-content/uploads/2014/06/Reform-of-NY-TDI-and-FLI.pdf>.
- 3 Some pregnant workers may be entitled to job-protected time off from work for prenatal appointments and pregnancy complications under other laws, including the New York State Pregnant Workers Fairness Act, the New York City Pregnant Workers Fairness Act, and the federal Family and Medical Leave Act. For more information on laws which may give New Yorkers job-protected time off, see A BETTER BALANCE, WORKPLACE RIGHTS HUB: NEW YORK, <https://www.abetterbalance.org/states/new-york/> (last visited Mar. 1, 2022).
- 4 SUSANNA TROST ET AL., CTR. FOR DISEASE CONTROL & PREVENTION, PREGNANCY-RELATED DEATHS: DATA FROM MATERNAL MORTALITY REVIEW COMMITTEES IN 36 US STATES, 2017-2019 (2022), <https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/data-mmrc.html>.
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