

Evidence and Models For Inclusive Family Definitions within New Jersey's Paid Sick and Safe Time and Paid Family Leave Policies

It is important that paid leave laws and policies in New Jersey apply to all families, including adult children, significant others, extended relatives, and chosen family members. This document provides background on the federal government's use of a model family definition for federal workers, evidence that supports inclusive family definitions, and the momentum for paid leave laws that cover chosen family and extended relatives.

The Federal Government's Model Family Definition for the Federal Workforce

The federal government's definition of family—which includes individuals whose close association with the employee is the equivalent of a family relationship (whether or not they have a blood relationship)—comes with a track record of success.

- The federal government, the nation's largest employer with more than two million employees, has used—and repeatedly expanded—a chosen family standard for more than 45 years. This language has been used in the context of funeral leave since 1969 (allowing workers to take funeral leave for chosen family during the Vietnam War), for voluntary leave transfers since 1989, and for sick leave generally since 1994.¹
- Federal workers are entitled to use up to 12 weeks (or 480 hours) of sick leave a year to care for a family member—including chosen family—with a serious health condition. There are also opportunities under federal regulations to accumulate leave and transfer it.²
- The Office of Personnel Management reported to Congress favorably about usage rates of sick leave after paid sick time was expanded in 1994 to cover chosen family through this standard, noting that even after the federal government expanded the definition of family, employees used less than a third of the sick leave available.³
- In 2016, the U.S. Department of Labor explained that the chosen family language “*could include . . . a friend of the family in whose home the employee lived while she was in high school and whom the employee therefore considers to be like a mother or aunt to her, or an elderly neighbor with whom the employee has regularly shared meals and to whom the employee has provided unpaid caregiving assistance for the past five years and whom the employee therefore considers to be like a grandfather . . .*”⁴

Growing Support and Use of Inclusive Family Definitions in Other Localities

An increasing number of states and localities are passing paid leave protections with inclusive family definitions, providing support for a wider range of families and identifying themselves as family-friendly places to work.

- New York's paid family leave law covers close relationships, depending on a “nexus of factors,” through a flexible and fact-specific domestic partner definition that does not require the relationship to be legally formalized.⁵ Paid family leave coalitions in Montana, New Mexico, Oregon, Pennsylvania, Washington D.C., and a number of other states are actively working to build support for paid family leave protections that define family to include extended relatives and chosen family.
- Since 2016, 5 localities, the state of Arizona, and the state of Rhode Island have passed paid sick and safe time laws that cover chosen and extended family. Under these 7 laws, more than 10 million workers gained the right to use paid sick time to care for chosen and extended family.⁶ In November 2016, Arizona voters approved, by a nearly three-to-two margin, a paid sick and safe time law that defines family to include chosen

family and extended relatives based on the federal workforce's standard. In June 2016, Los Angeles passed a paid sick time law that defines family to include this chosen and extended family language, as did Saint Paul (MN) in September 2016. Chicago and Cook County (IL) also passed paid sick and safe time laws in 2016 that defined family to include chosen and extended family. In 2017, Rhode Island passed a statewide paid sick and safe time law that covers chosen and extended family and New York City amended its existing paid sick time law to include these important relationships.⁷

- Many national organizations have recommended use of family definitions that cover chosen family in a “Guide to Broad and Inclusive Family Definitions in the Workplace Leave Context.” The groups who recommended this approach in the guide include A Better Balance, Family Values @ Work, 9to5, CLASP, Family Equality Council, Forward Together, Jobs with Justice, Labor Project for Working Families, Main Street Alliance, Make it Work, Movement Advancement Project (MAP), National Asian Pacific American Women's Forum (NAPAWF), National Center for Transgender Equality, National Center for Lesbian Rights, National LGBTQ Task Force, National Partnership for Women & Families, Pride at Work, Service Employees International Union (SEIU), and Services & Advocacy for GLBT Elders (SAGE).

Inclusive Family Definitions Do Not Lead to Significant Increases in Usage in Paid Family Leave Programs

The existing state paid family leave laws show that an inclusive family definition provides important protection to some workers without leading to a significant increase in usage or uptake.

- Only a minority of paid family leave claims—including those in New Jersey—are to care for a seriously ill family member; the overwhelming majority of paid family leave claims in California, New Jersey, and Rhode Island are for bonding with a new child. From July 2016 to June 2017, only 12.7% of filed claims in California were to care for a seriously ill relative.⁸ And in 2016, 16.4% of eligible claims in New Jersey and 20.4% of approved claims in Rhode Island were to care for a family member with a serious health condition.⁹
- When paid family leave is used for care of a family member, an incredibly small percentage of these claims are used to care for family other than a child, parent, or spouse—even when state definitions of family go beyond just the nuclear family. Only a minority of claims are used for more extended family members; such usage statistics show that coverage of chosen family and more extended relatives like grandparents, siblings, and domestic partners will create an important right for workers with non-nuclear family structures without leading to significant increases in usage.
 - In Rhode Island, more than 97% of claims to care for a seriously ill family member in 2016 were used for parents, children, or spouses, while less than 3% were used to care for a domestic partner, parent-in-law, or grandparent.¹⁰ Legislation has been introduced in Rhode Island to expand the family definition.¹¹
 - In 2014, California expanded the family definition in its paid family leave law beyond parents, children, spouses, and domestic partners to also cover grandparents, grandchildren, siblings, and parents-in-law. In 2016, nearly 87% of claims filed to care for a family member with a serious health condition were for parents, children, and spouses, while approximately 13% were for the other covered relationships.¹²

Paid Family Leave Programs Work Well, Are Not Abused, and Require Workers to Obtain Certification for a Family Member's Health Condition

Research shows that paid family leave programs work well and can help employers, rather than hurting the bottom line. Furthermore, there is no evidence of fraud or abuse in these programs. The paid family leave laws in effect all

require a worker to obtain documentation and submit certification regarding a family member's serious health condition, ensuring that workers will only use paid family leave when necessary.

- In California, approximately 93% of employers reported that paid family leave had a positive or neutral effect on employee turnover, saving employers the costly step of replacing an existing employee.¹³ A majority of California employers also reported positive or neutral effects on productivity (88.5%), profitability/performance (91.0%), and employee morale (98.6%).¹⁴
- New Jersey and the other states with paid family leave laws require workers to submit documentation from the family member's health care provider in order to take the leave. For example, the paid family leave law in New Jersey, as well as those in California and Rhode Island, require certification that includes, among other requirements, medical facts, probable duration of the condition, a statement that the serious health condition warrants the worker to help provide care, and an estimate of how long the worker's participation may be necessary.¹⁵
 - A study regarding employer experiences with paid family leave in New Jersey found no reports of abuse, with one human resources director noting "I don't know how anyone can abuse [the program]," given the documentation forms and required verification of medical conditions.¹⁶
- Both California employers as well as staff of the administering agency "report little to no evidence of fraud or abuse of the program."¹⁷ Even despite a lack of fraud, paid family leave laws and regulations typically include penalties or other negative consequences for any fraud or misuse of the program.
- In a 2016 nationwide survey of more than 1,570 small businesses, 80% of employers across 12 states and Washington, D.C., indicated their support for a paid family leave law (more extended time off than a paid sick and safe time law) with a broad and inclusive family definition. As a result, Main Street Alliance has called for paid leave laws that, *at a minimum*, cover care for "elders, siblings, same-sex families, domestic partners, grandparents, grandchildren, and adult children."¹⁸

¹ The relevant federal workforce language covers "an individual related by blood or affinity to the employee whose close association with the employee is the equivalent of a family relationship..." Funeral Leave, Fed. Reg., Vol. 34, No. 163 (August 26, 1969) (codified at 5 C.F.R. pt. 630); Absence and Leave; Voluntary Leave Transfer Program, 54 Fed. Reg. 4749-01 (January 31, 1989) (codified at 5 C.F.R. pt. 630); Absence and Leave; Sick Leave, 59 Fed. Reg. 62266-01 (December 2, 1994) (codified at 5 C.F.R. pt. 630).

² 5 C.F.R. § 630.401(c).

³ Report to Congress on the "Federal Employees Family Friendly Leave Act" (Public Law 103-388), United States Office of Personnel Management (June 1997), <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/federal-employees-family-friendly-leave-act/>.

⁴ Paid Sick Leave for Workers on Federal Contracts Executive Order 13706 - Frequently Asked Questions (FAQs) about the NPRM, U.S. Department of Labor (2016), last accessed February 1, 2017, <https://www.dol.gov/whd/flsa/eo13706/faq.htm>.

⁵ N.Y. Workers' Comp. Law §§ 4; 201(20). The law defines "domestic partner" broadly to include dependence or mutual interdependence with the employee, which may be evidenced by a range of factors including, but not limited to, common ownership or common property, a common residence, children in common, an intent to marry, shared budgets, and/or length of relationship.

⁶ A Better Balance, Center for American Progress, Family Values @ Work & Forward Together, *Making Paid Leave Work for Every Family* (December 2016), p. 1, <http://www.abetterbalance.org/wp-content/uploads/2016/12/LGBTpaidLeave-report.pdf> (see endnote 1 for an explanation of how the figure of 7 million workers was calculated for 5 of the 7 laws). For the remaining two laws: 1) Estimates for New York City's sick time law based on Shira Gans, "NYC's Paid Sick Leave Law: First Year Milestones" (New York City: Department of Consumer Affairs, 2015), <https://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeaveLaw-FirstYearMilestones.pdf> (adjusted for employment growth and the federal workforce); and 2) estimates for Rhode Island's sick time for non-government workers based on July 2017 data from Bureau of Labor Statistics, Rhode Island, https://www.bls.gov/regions/new-england/rhode_island.htm#eag_ri.f.3.

⁷ Los Angeles Code § 187.04(G); Saint Paul Code § 233.02; Chicago Code § 1-24-010; Cook County Code § 42-2; Arizona Revised Statutes § 23-371(H)(5); Rhode Island Statutes § 28-57-3(1), (9); New York City Administrative Code § 20-912 (as amended in 2017 by Int. No. 1313-A).

⁸ Paid Family Leave (PFL) Program Statistics, California Employment Development Department (2017), p. 2, http://www.edd.ca.gov/Disability/pdf/qspfl_PFL_Program_Statistics.pdf (last accessed December 19, 2017).

⁹ *Family Leave Insurance Workload in 2016: Summary Report*, New Jersey Department of Labor and Workforce Development, Office of Research and Information (August 2017), p. 3, http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202016.pdf; *Temporary Disability Insurance Program: January-December 2016*, Rhode Island Department of Labor and Training (2016), <http://www.dlt.ri.gov/lmi/pdf/tdi/2016.pdf>.

¹⁰ *Temporary Disability Insurance Program: January-December 2016*, Rhode Island Department of Labor and Training.

¹¹ Rhode Island S. 2723 (March 2016).

¹² *PFL Program Statistics*, California Employment Development Department (2017).

¹³ Replacing an employee costs 50-75% of an hourly employee's annual pay and up to 150% of a salaried employee's annual pay. See Jodie Levin-Epstein, *Getting Punched: The Job and Family Clock*, Center for Law and Social Policy (2006), p. 9, <http://www.clasp.org/resources-and-publications/files/0303.pdf>; Eileen Appelbaum and Ruth Milkman, *Leaves That Pay: Employer and Worker Experience with Paid Family Leave in California*, Center for Economic and Policy Research (2011), p. 8, <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.

¹⁴ Appelbaum and Milkman, *Leaves That Pay*, p. 8.

¹⁵ N.J. Stat. Ann. § 43:21-39.2; Cal. Unemp. Ins. Code § 2708(b); R.I. Gen. Laws § 28-41-36.

¹⁶ Sharon Lerner and Eileen Appelbaum, *Business As Usual: New Jersey Employers' Experiences with Family Leave Insurance*, Center for Economic and Policy Research (June 2014), www.cepr.net/documents/nj-fl-2014-06.pdf.

¹⁷ *Paid Family & Medical Leave Insurance: Options for Designing and Implementing a Minnesota Program*, University of Minnesota (February 2016), p. 100, https://mn.gov/deed/assets/paid-family-medical_tcm1045-186560.pdf (citing to Ruth Milkman and Eileen Appelbaum, *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy* (2011); and November 2015 interview with California EDD staff and follow-up documentation).

¹⁸ *National Paid Family and Medical Leave: A Proposal for Small Business Success*, Main Street Alliance (2017). p. 11, http://www.mainstreetalliance.org/small_business_owners_support_family_act.