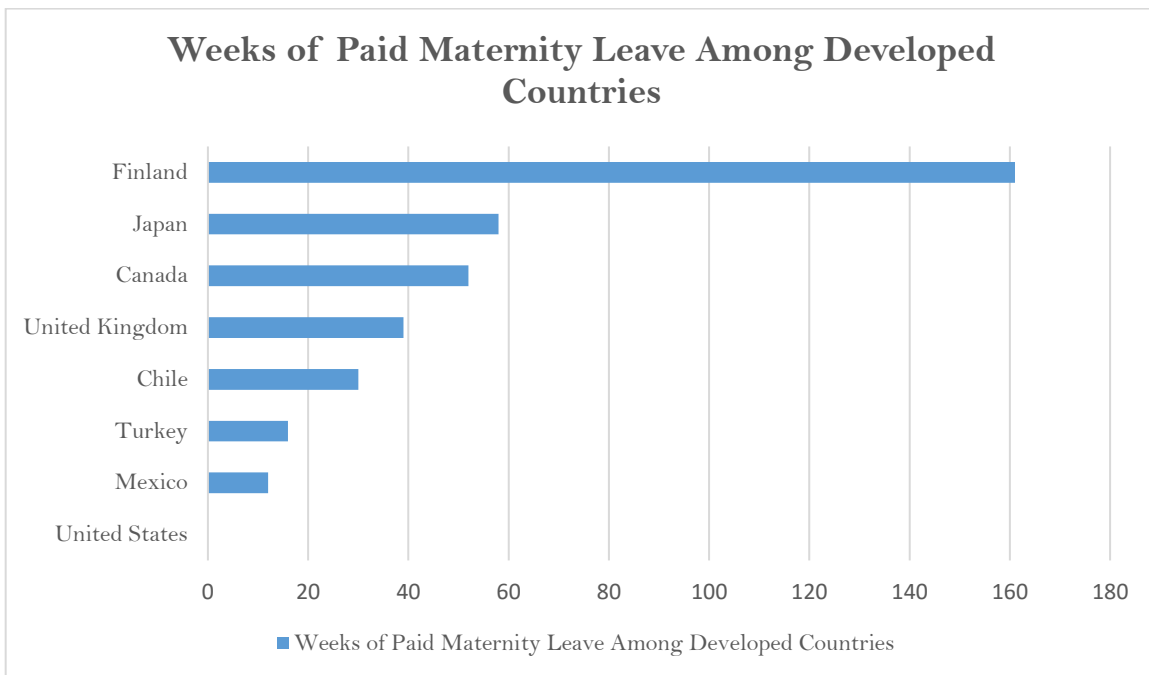


PAID FAMILY AND MEDICAL LEAVE – RACIAL JUSTICE IMPLICATIONS

Americans work hard to provide for their families and make ends meet. Unfortunately, for too many American families, particularly those of color, taking several weeks off work for a sudden illness or the birth or adoption of a child would cause a significant financial strain. Only 17% of workers have access to paid family leave through their employer, and workers of color are even less likely to have paid leave benefits.¹ Currently, unpaid leave of up to 12 weeks is available to certain employees under the Family and Medical Leave Act (“FMLA”),² but restrictions on which employees are covered mean that in practice, about 40% of the workforce is excluded from coverage under the FMLA.³ Many employees who are covered cannot afford to take time away from work without pay as the majority of Americans cannot replace one month of income through their savings.⁴ The racial wage and wealth gaps as well as discrimination in the labor market mean that workers of color are especially likely to be ineligible for or unable to afford FMLA leave.⁵

The United States is an outlier among developed nations when it comes to providing paid leave. We are one of only five countries—the others are Lesotho, Liberia, Papua New Guinea, and Swaziland—that do not provide paid maternity leave.⁶ The current family and medical leave system would be vastly improved by the Family and Medical Insurance Leave (FAMILY) Act (S. 463/H. 1185),⁷ which provides up to 12 weeks of paid family and medical leave. The FAMILY Act would greatly increase the number of workers eligible for the benefits under the law⁸ and lead to better wealth outcomes for people and communities of color.



Source: OECD Family Database, PF2.1: Key characteristics of parental leave systems.

If passed, the FAMILY Act would:

- Provide up to 12 weeks of paid leave with 66% of monthly wages, up to a capped amount of \$4000 per month, for the period covered for care of a newborn, a newly adopted child, a seriously ill family member or one's own serious health condition.¹⁰
- Grant pay as determined by income.¹¹
- Cover all workers in all companies, no matter the size, including part-time workers, as well as self-employed people and small business owners.¹²
- Be funded responsibly by both employers and employees through small payroll contributions of two-tenths of one percent each – less than \$2.00 per week for a typical worker.¹³
- Protect employees against retaliation or other adverse consequences for requesting or taking leave.¹⁴
- Create the Office of Paid Family and Medical Leave to ensure proper administration of the program.¹⁵

Racial Justice Implications

There is a significant wealth gap between White families and families of color, with a typical White family having \$140,500 in wealth, while a typical Latino family has \$6,300 and a typical Black family has \$3,400.¹⁶ Asian American and Native American families also face these challenges, but data are limited for these communities.¹⁷ Institutional racism and discrimination, including lower wages for people of color and discriminatory hiring and promotion decisions, have prevented families of color from building the generational wealth that White families have been able to build and pass on to their children. Furthermore, the gender and racial pay gaps mean that women working full-time, year-round are typically paid 80 cents for every dollar paid to their male counterparts. However, for every dollar paid to non-Hispanic White men, Black women are paid just 61 cents¹⁸ and Black men are paid 78 cents.¹⁹ Latinas fare even worse, making just 53 cents for every dollar paid to non-Hispanic White men.²⁰

Offering paid leave would provide financial security and contribute to improved wealth outcomes for families and communities of color by preventing the economic strain that often accompanies unexpected medical events and pregnancy when families do not have an economic safety net.

- Although many families suffer from lack of financial assets—40% of families cannot afford a \$400 emergency expense²¹—the issue is worse for families of color. Notably, 25% of Black households “would have less than \$5 if they liquidated all of their financial assets.”²²
- Black and Latino workers are less likely than White workers to be able to afford unpaid leave under the FMLA without falling into financial hardship.²³ Only 37.8% of Black workers and 27.5% of Latino workers are both covered by the FMLA and could take that unpaid leave without falling below 200% of the poverty line.²⁴
- The problem only grows more severe when looking specifically at women. In 2016, 29% of White single mothers, 37% of Black single mothers and 41% of Latina single mothers lived in poverty.²⁵ These poverty rates, coupled with the fact that Black and Hispanic mothers are more likely than White mothers to be the breadwinner of their household,²⁶ mean that these households cannot afford to take unpaid leave and lose their primary source of income for a serious illness or to care for a new child.

- About 23% of Latino workers and 26% of Black workers report having needed to take family or medical leave in the previous two years, but being unable to do so.²⁷

State Successes

Research from the handful of the states that have implemented paid leave programs are promising. Currently, workers in California, New Jersey, Rhode Island, New York, and Washington state have access to paid leave programs.²⁸ Paid leave programs in Massachusetts and Washington, D.C. are set to go into effect later this year and in 2020.²⁹ Research from these states indicate California's program,³⁰ which is funded through an individual's State Disability Insurance tax withholding,³¹ offers proof that legislating on paid leave encourages equity across races. California's Paid Family Leave program provides up to six weeks of partial wage replacement to bond with a new child or take care of a seriously ill family member, providing approximately 60 to 70 percent of a worker's salary during the leave.³² Research shows that before California's program, Black women would on average take just one week of maternity leave while White, non-Hispanic women took four weeks. After the paid leave program was implemented in California, Black and White mothers both took an average of seven weeks of leave.³³ In New Jersey, where workers are now eligible to receive twelve weeks of paid leave,³⁴ a study found that women who have paid leave available to them, such as through their employer, are 39% less likely to need public assistance in the year following their child's birth than women who do not have the opportunity to take paid leave.³⁵ This study also found that with paid leave, new mothers are more likely to stay in the workforce and even report wage increases after the birth of a child.³⁶ Paid leave allows new parents more time to bond with their child without risking their financial security.

The time for a comprehensive national paid family and medical leave program is long overdue, especially for workers of color. No one should have to choose between economic security and caring for a loved one.

¹ U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2018* (Tables 16 and 32), <https://www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf>; Center for American Progress, *Latinos Least Likely to Have Paid Leave or Workplace Flexibility* (Nov. 20, 2012), <https://www.americanprogress.org/wp-content/uploads/2012/11/GlynnLatinosPaidLeave1.pdf> at 2.

² 29 U.S.C. § 2601, et seq (1993).

³ ABT Associates, *Family and Medical Leave in 2012: Technical Report* (Sept. 7, 2012), <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>. Currently, the FMLA provides up to 12 weeks of unpaid leave each year. The FMLA only covers employees who have worked for their employer for at least one year and who have worked for 1250 hours during the last 12 months with that employer. Additionally, employers must have fifty or more employees for the FMLA to apply to employees.

⁴ The Pew Charitable Trusts, *The Precarious State of Family Balance Sheets* (Jan. 2015), https://www.pewtrusts.org/-/media/assets/2015/01/fsm_balance_sheet_report.pdf at 1.

⁵ Diversity Data Kids, *Challenges with Taking FMLA Leave*, <http://www.diversitydatakids.org/files/Policy/FMLA/Capacity/Challenges%20with%20taking%20family%20leave.pdf>.

⁶ Joya Misra, *The US is stingier with child care and maternity leave than the rest of the world*, THE CONVERSATION (Apr. 19, 2018), <https://theconversation.com/the-us-is-stingier-with-child-care-and-maternity-leave-than-the-rest-of-the-world-94770> (using data from Organisation for Economic Co-operation and Development Family Database).

⁷ FAMILY Act of 2019, S. 463, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/463/text>.

⁸ *Id.*

⁹ Organisation for Economic Co-operation and Development, "OECD Family database PF2.1: Key characteristics of parental leave systems," http://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf; Joya Misra, *The US is stingier with child care and maternity leave than the rest of the world*, THE CONVERSATION (Apr. 19, 2018), <https://theconversation.com/the-us-is-stingier-with-child-care-and-maternity-leave-than-the-rest-of-the-world-94770> (using data from Organisation for Economic Co-operation and Development Family Database).

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- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ Emanuel Nieves and Dedrick Asante-Muhammad, *Running in Place: Why the Racial Wealth Divide Keeps Black and Latino Families from Achieving Economic Security*, PROSPERITY NOW (Mar. 2018), https://prosperitynow.org/sites/default/files/resources/Running_in_Place_FINAL_3.2018.pdf at 10.
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