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HARVARD LAW SCHOOL

MISSISSIPPI DELTA PROJECT

PAID LEAVE POLICY

RECOMMENDATIONS FOR MISSISSIPPI

OVERVIEW AND RECOMMENDATIONS

Paid leave refers to a public or private program to compensate individuals when they miss time because of illness (paid sick leave), to tend to a newborn child (paid maternity and paternity leave), or to care for family members (paid family leave).

As the law currently stands, the federal government provides unpaid leave in certain circumstances under the Family Medical Leave Act. Four states—New York, New Jersey, California, and Rhode Island—offer more comprehensive programs within their states.

Mississippi not only offers no paid leave, but has a statewide policy limiting cities and towns from testing out their own paid leave policy with their voters' approval. Such a procedural hurdle has stifled paid leave efforts in many states.

Regardless of the difficult political climate, paid leave has been shown to be a benefit. It helps individuals, who are able to improve their health and advance in their careers. It helps businesses, which benefit from increased productivity and heightened morale, often at little cost. And it helps the population at large, which spends less on medical care and increases economic development.

This report offers recommendations to advance paid leave in Mississippi:

Coverage. A successful paid leave policy would not have to cater to unions, but it would be advantageous to provide some relief to small businesses, given their economic and political importance. It might be more important to focus on covering public employees.

Benefits. It would likely be worthwhile to try to allow employees to take leave in times of other family members' illness. An important selling point for paid leave in Mississippi would be the importance of family; it could therefore help to argue that the legislation is important to allow workers the flexibility to care for their children, spouses, and parents.

Funding. The funding structure largely depends on the coverage and benefits. All four states with paid family leave programs pay for their programs using a small tax on employees.

Alternatives. In lieu of passing brand-new paid leave legislation, paid leave advocates could focus on either (a) repealing Mississippi's paid leave preemption statute or (b) attempting to achieve coverage for certain workers not included in the state statute.

PAID LEAVE POLICY RECOMMENDATIONS FOR MISSISSIPPI

Harvard Law School Mississippi Delta Project

This report is intended to educate potential proponents of a statewide paid leave policy in Mississippi. It focuses on both the legal components of implementing paid leave legislation, as well as the research that supports such a law.

First, this paper examines the existing law in Mississippi, which largely hinders the state's workforce. Second, it examines the benefits of paid leave, drawing on recent academic studies of paid leave efforts in other states, and across the world. Third, it lays out three options for legislation moving forward, representing potential avenues for paid leave advocates in Mississippi to explore.

I. Existing Law

Few workers in Mississippi have access to the benefits of an ample paid leave policy. The Family Medical Leave Act of 1993 (FMLA),¹ a federal law requiring covered employees to provide leave in certain situations, applies to some Mississippi workers, but falls far short of a comprehensive policy guaranteeing paid time off. The Mississippi Legislature has done little to protect the state's workers. Far from the passage of paid leave legislation, state lawmakers have instead banned Mississippi cities from passing their own local paid leave legislation.²

Federal law provides limited protection for Mississippi workers. Under the FMLA, certain workers can leave work for up to twelve weeks—for medical reasons or to care for a family member—without the fear of losing their jobs.³ But the FMLA has two major shortcomings which limit the protections it provides for Mississippi employees. First, the FMLA does not require employers to pay their employees for the time they are allowed to take off.⁴ Therefore, workers are forced to choose between taking work off for their health or the health of a family member, and losing income that may be needed to pay for personal or family health care. Most workers covered by the FMLA do not take leave when needed because of the financial pressure of reduced income.⁵ Second, the FMLA does not apply to employees of the federal government or companies with fewer than fifty employees.⁶ Up to 300,000 Mississippi employees work in businesses that may not be covered by the FMLA—perhaps more than a third of all workers in the state.⁷

Mississippi state law adds to the difficulties surrounding the implementation of paid leave. A law passed in 2013, prohibits localities from passing laws regulating “mandatory minimum living wage rate, minimum number of vacation or

sick days, whether paid or unpaid, that would regulate how a private employer pays its employees.”⁸ This statute *preempts* local government action. Under the legal doctrine of preemption, state laws automatically overrule any contradictory local laws.⁹ So after the passage of the 2013 state law, cities and towns couldn’t expand their paid leave protections past those offered by the FMLA, or enact their own paid leave policies.¹⁰ Other states have used the same tactic to thwart local action and experimentation on paid leave.¹¹ Cities are generally left without recourse when states set the rules for paid leave.¹²

II. Benefits of Paid Leave

Paid leave will help both the Mississippi economy and Mississippi families.¹³ Giving sick workers the opportunity to stay home benefits businesses, their workers, and their customers. Jobs that offer paid leave will also help businesses attract talented employees who will contribute to the long-term success of the Mississippi economy.

Paid leave is an umbrella term that describes the ability to take off time from work, and still receive compensation.¹⁴ Holidays, sick leave, vacation, and family leave all fall under the heading of paid leave.¹⁵ This paper focuses on two subsets.

Paid sick leave provides earnings when an employee is unable to work because

of a non-work-related illness or injury.¹⁶ Paid family leave, the least common form of paid leave, includes paid maternity and paternity leave, and may also include caring for a child or a sick family member.¹⁷

A. Paid Leave Benefits Workers

Granting Mississippi workers paid leave will improve both health and economic well-being. The flexibility provided by paid leave ensures that all workers have the opportunity to stay in the workforce. In places where mothers are entitled to maternal leave, they are more likely to return to work, spend more time at work, and earn more income for their families, when compared against places where mothers are not entitled to paid leave.¹⁸ Paid leave also helps ease the burden and costs of childcare by allowing parents to stay home with their children for extended periods. Improving child care and family income will contribute to improvements for Mississippi’s next generation.¹⁹

Paid leave programs also benefit employee children, with lasting effects. Employees are more likely to care for sick children or transport children to receive care, if they are able to stay home without losing income.²⁰ Consequently, paid leave programs are a cost-effective tool in improving children’s health.²¹ For instance, expansions in paid leave programs have been linked with a substantial decrease infant mortality.²² This

benefit is particularly pertinent for Mississippi, which currently has the second-highest infant mortality rate in the nation.²³ Allowing parents to care for children early in life also leads to long-term benefits for the child, including higher educational attainment, lower teen pregnancy rates, higher IQ scores, and higher earnings.²⁴ Finally, workers with healthy families are more productive, as family health is a stressor linked to inferior productivity.²⁵

B. Paid Leave Benefits Businesses

Paid leave will not cut into the profits of Mississippi business, whether large or small. A study of businesses in California, which first passed paid leave legislation in 2004, found that a vast majority of firms incurred no cost from paid leave.²⁶ The same study indicated that vast majority of business found that paid leave had a positive or no effect on productivity (89%), profitability (91%), turnover (96%), and employee morale (99%).²⁷ Moreover, small business were the least likely to notice any negative change in productivity or morale.²⁸

Ensuring that sick workers will not lose pay if they stay home will improve the economic vitality of Mississippi businesses. Paid leave ensures that sick workers do not cause productivity losses.²⁹ Workers who are not paid for sick days continue to show up at their jobs, even when sick;³⁰ workplaces staffed with sick workers sacrifice productivity

and have an increased potential of passing sickness to both customers and co-workers.³¹ Sick workers are not only less productive, but more likely to suffer workplace injuries.³² Moreover, having paid leave helps ensure that illnesses will not pose a longer-term threat to a company's production. Because sick workers stay home, infections in businesses that offer paid leave continue at a lower rate than in businesses that don't offer paid leave.³³

In addition, paid leave policies help businesses recruit qualified employees. Employers in Mississippi have reported difficulties in filling open jobs.³⁴ Allowing for some flexibility in schedules makes an important difference to workers assessing the job market. Paid leave has been proven to lead to increased employee retention, saving businesses the significant cost of finding and training new employees.³⁵ Finally, companies with paid leave see higher employee retention overall.³⁶ Such paid leave policies help prevent against the loss of human capital when workers leave the workforce after having a child.³⁷

C. Paid Leave Benefits Taxpayers

Mississippi businesses and Mississippi residents pay for the consequences of having no paid leave program. Instead of missing work to see a doctor, workers without access to paid leave are more likely to rely solely on the emergency room for primary care.³⁸ Delaying the

provision of health care until a late stage imposes a substantial cost on taxpayers.³⁹

Mississippi will spend less overall on medical costs, reducing the burden on taxpayers. Concerns about spreading sickness are heightened in many of Mississippi's major industries. For instance, almost 104,000 Mississippians work in jobs related to food preparation and service.⁴⁰ Ensuring that these workers stay home when they are sick will prevent the spread of food-related illness, in turn reducing future medical costs that customers may face.⁴¹ Granting paid leave to the 110,000 Mississippians working in health care and the 76,000 Mississippians working in education will similarly limit the cost of contagion.⁴²

III. Three Main Legislative Options

After reviewing existing Mississippi law and paid leave policies in cities and states across the U.S., there emerged three main options for the Women's Foundation to pursue. These three options are listed below, from most to least ambitious. The first, most comprehensive option would be to pass statewide paid leave legislation, which would institute a statewide requirement. As listed below, states and localities have differed greatly on legislative details, giving Mississippi ways to narrow or broaden the scope. Alternatively, Mississippi could

pass legislation to repeal the existing state statute that prevents localities from passing their own, municipal-wide paid leave legislation. Last, Mississippi localities could attempt to work around the preemption statute by instituting paid leave policy through vacation and sick days.

A. Statewide Paid Leave Legislation

The Women's Foundation's first legislative option is to draft and attempt to pass statewide paid leave legislation that requires employers across Mississippi to provide paid family leave. This option would be ideal as it provides the most comprehensive support for paid leave.⁴³ However, not all paid leave legislation is equal—there are a number of key factors that contribute to its strength and scope. In particular, the Women's Foundation should consider the following questions when drafting legislation: Who is covered? What are the provided benefits? And what are the funding mechanisms?

1. Who is covered?

The first issue is who is covered under paid leave legislation. There are, generally, three main elements to this question: the type of employee, the type of employer, and the length of employment.

States and localities differ greatly on which employees are covered under paid leave legislation. Chiefly, there is

significant variation in regards to *government employees*—some jurisdictions cover only government employees,⁴⁴ while other states and localities explicitly exclude government employees.⁴⁵ This is a crucial issue in Mississippi, which has about 20 percent of its workforce employed in state and local government, the fourth-highest percentage in the U.S.⁴⁶ Perhaps less important to Mississippi is the issue of *unionized workers*,⁴⁷ who make up 6.8 percent of the state’s workforce.⁴⁸ Our survey revealed that there are differences across jurisdictions in terms of *independent contractors* and/or *temporary employees*,⁴⁹ while the vast majority of paid leave legislation does not include *self-employed workers*.⁵⁰

Some jurisdictions with paid leave legislation provide exemptions for certain employers, or classes of employers, further limiting who is covered by paid leave. Connecticut, for example, exempts all manufacturing employers from the paid leave requirement.⁵¹ Some jurisdictions carve out exceptions for employers based on size—Tennessee’s bill only applies to employers with 100 or more full-time employees.⁵² Some jurisdictions also provide different requirements for employers, based on size; for example, Jersey City, NJ’s pending paid leave legislation requires half as many paid leave hours for smaller employ-⁵³

Length-of-employment requirements also determine who is covered by paid leave legislation. While some laws allow accrual of benefits upon commencement of employment,⁵⁴ others require workers to be employed for a certain period of time before receiving benefits. While Minnesota’s paid family leave bill mandates that employees work 17 weeks to qualify for coverage,⁵⁵ Tennessee’s maternity leave law grants benefits to employees only after one consecutive year of employment.⁵⁶ Other laws require employees to work a minimum number of hours to receive benefits—Montgomery County, MD offers benefits only to those who work more than eight hours per week,⁵⁷ while Newark, NJ requires 80 hours per year.⁵⁸

2. What are the benefits?

While paid leave laws provide compensation to employees for hours when they are not working in order to attend to family or recover from illness, this benefit is not absolute. Paid leave laws generally place restrictions on how much leave time employees can take, how much employees can make when on leave, and when employees can take leave.

Paid leave laws generally address the rate at which employees receive paid leave hours (i.e. X hours of leave per Y hours work) and set an upper limit on annual paid leave hours. Most states and localities generally allow employees

to accrue one hour of sick leave for every 30-40 hours worked.⁵⁹ For example, an employee working 40 hours/week and taking two weeks of vacation would accrue 50-66 hours annually. However, many laws put a cap on the total number of hours an employee may accrue annually. Some places, like Emeryville, CA, allow employees to accrue no more than 70 hours annually,⁶⁰ while others have lower caps around 40 hours a year.⁶¹ Again, some laws will differentiate benefits based on the size of the employer; San Francisco allows smaller employers to institute a lower cap than larger employers.⁶² Laws also vary on whether employees can roll over hours from year to year; several states and localities, including Georgia, specify that employees can carry over unused sick days into the next year.⁶³

Paid leave policies need not necessarily guarantee an employee her normal level of compensation. This is, of course, an important consideration for employees, who are likelier to take leave if they are compensated for lost wages at higher rates.⁶⁴ Jurisdictions such as Minneapolis award employees their full average hourly wages for time off,⁶⁵ while California's family leave program (distinct from its sick leave program) guarantees only 55% of an employee's compensation.⁶⁶ Jurisdictions also differ in whether or not they cap weekly benefits and whether smaller employers should be allowed to offer lower pay rates than larger employers.⁶⁷

The final issue is when employees can take leave. A sizeable minority of laws allows employees to take leave to care for children, parents, spouses, parents' spouses, or others.⁶⁸ A smaller number of states and cities also have proposed or currently provide paid leave for circumstances that go beyond conventional definitions of illness, such as victims of sexual and domestic assault.⁶⁹

3. How is it paid for?

Payment mechanisms vary depending on the type of paid leave. For paid sick leave, all surveyed states and localities had an "employers pay" funding mechanism—employers paid employees directly for time off. For paid family leave, there are four main funding mechanisms: an employer payroll tax, an employee payroll tax, a split employee-employer tax, and the general revenue fund. The employer payroll tax imposes a small tax on employers, which makes it vulnerable to opposition from business groups. However, Washington, D.C. recently passed paid family leave financed by a .62 percent employer payroll tax despite opposition from business.⁷⁰ Alternatively, states can tax employees, which is the model of all existing statewide family leave programs.⁷¹ A third option is an employer-employee split tax, in which employers and employees evenly split the tax burden.⁷² Minnesota's proposed legislation this year adopted this split tax model. The general revenue model, the fourth op-

tion, allows states to fund paid family leave using general revenue funds without creating a designated revenue source.

Recently, two national paid leave organizations—A Better Balance and the National Partnership for Women & Families—have endorsed the split tax model.⁷³ However, the split tax model has yet to be implemented in any state or locality. A recent survey of California’s law found that nearly 87 percent of employers said paid leave did not increase their costs and 8.8 percent said the paid leave program saved them money.⁷⁴

B. Repeal of Preemption

A second option would be to repeal the Mississippi statute that preempts localities from passing paid leave legislation.⁷⁵ Repealing preemption would allow specific areas that may be more favorable to paid leave to pass their own laws, potentially setting the stage for an eventual statewide law.⁷⁶ Any repeal effort could be premised on a bipartisan notion of “local control.”⁷⁷

Progressive Mississippi lawmakers have unsuccessfully attempted to change the preemption statute. Mississippi Senator Deborah Dawkins, a member of the Democratic Party representing southern Harrison County, has twice introduced legislation attempting to amend the preemption statute.⁷⁸ Senator Dawkins’s proposed legislation would allow munic-

ipalities to establish a minimum living wage rate no lower than the rate provided by the state government in order to “protect[] the health and well-being of workers.”⁷⁹ However, the legislation has not advanced in the State Senate.

In 2017, Representative Sonya Williams-Barnes, a member of the Democratic Party representing Gulfport, included a similar repeal in her Women’s Economic Security Act.⁸⁰

C. Work Around the Existing Law

A third option would be to attempt to pass legislation expanding paid leave policies without attempting a repeal of the state preemption statute.⁸¹ The Mississippi law does not define “vacation or sick days” beyond what is in the text of the law.⁸² That would seemingly leave an opening for paid family leave at the local level, since leave for family purposes is neither “vacation or sick” leave. Domestic violence leave, which exists in several states, is also seemingly available at the local level, too.

Additionally, Mississippi Code § 19-3-63 allows each county to “establish a policy of sick leave and vacation time for employees of the county not inconsistent with the state laws regarding office hours and holidays.” This statute leaves counties the discretion to institute paid leave for county employees. Similarly, certain school district employees (“licensed employee[s] and teacher assis-

tant[s]”) are guaranteed a minimum amount of paid leave (seven days of sick leave, and two days of personal leave).⁸³ By defining these as a “minimum,” the statute seemingly leaves open the opportunity for school districts to expand the quantity of leave provided to the current recipients, or to make paid leave available to other school district employees.

NOTES

1. Family Medical Leave Act (FMLA) of 1993, 29 U.S.C. § 2601 (2012).
2. MISS. CODE. ANN. § 17-1-51 (2016); *see* discussion *infra* Section III.B.
3. 29 U.S.C. § 2612.
4. *Id.* at § 2612(c).
5. U.S. DEP'T OF LABOR, FMLA SURVEY § 2.2.4 (2000), <http://www.dol.gov/whd/fmla/chapter2.htm>.
6. 29 U.S.C. § 2611(2)(B).
7. U.S. SMALL BUS. ADMIN., MISSISSIPPI SMALL BUSINESS PROFILE 101 (2016), <https://www.sba.gov/sites/default/files/advocacy/Mississippi.pdf>. The U.S. Small Business Administration only lists the amount of businesses with between 1 and 19 employees (163,000), and between 20 and 99 employees (146,000). *Id.*
8. MISS. CODE. ANN. § 17-1-51 (2016).
9. *See, e.g.*, *Delphi Oil, Inc. v. Forrest Cty. Bd. of Supervisors*, 114 So. 3d 719 (Miss. 2013).
10. *See* HARVARD LAW SCH. MISS. DELTA PROJECT, PAID LEAVE IN MISSISSIPPI: ANALYSIS AND RECOMMENDATIONS 20 (2014), http://orgs.law.harvard.edu/deltaproject/files/2014/02/PaidLeaveWhitePaper_Feb2014_FINAL.pdf [hereinafter PAID LEAVE IN MISSISSIPPI].
11. *Id.*; *see also, e.g.*, MO. REV. STAT. 285.055.2 (2016) (prohibiting political subdivisions in Missouri from establishing minimum wage or employment benefits exceeding the requirements of federal and state law).
12. *See, e.g.*, ATLANTA LIVING WAGE ORDINANCE-INDEP. REVIEW COMM'N, REPORT OF THE LIVING WAGE ORDINANCE-INDEPENDENT REVIEW COMMISSION 9 (2004) (proposing local legislation for a minimum wage and leave policies). After the Atlanta Living Wage Ordinance-Independent Review Commission published its report, the state passed a law blocking localities from setting their own leave or wage policies. *See* GA. CODE ANN. § 34-4-3.1 (2016).
13. *See generally* PAID LEAVE IN MISSISSIPPI, *supra* note 10, at 4–7.
14. U.S. DEP'T OF LABOR, NATIONAL COMPENSATION SURVEY: GLOSSARY OF EMPLOYEE BENEFIT TERMS (2010), <https://www.bls.gov/ncs/ebs/glossary20092010.htm>.
15. *Id.*
16. *Id.*
17. *Id.*
18. Maya Rossin-Slater et al., *The Effects of California's Paid Family Leave Program on Mothers' Leave-Taking and Subsequent Labor Market Outcomes* 17 (Nat'l Bureau of Econ. Research, Working Paper No. 17715, 2011).
19. *See* Stella Fair & Anne M. Stanberry, *Mississippi's Human Capital: Today's Children—Tomorrow's Workforce*, in FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 18, 23 (Anne M. Stanberry & Cathy Grace, eds., 2003), https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_msfis01report.pdf.

20. NAT'L P'SHIP FOR WOMEN & FAMILIES, EVERYONE GETS SICK, NOT EVERYONE HAS TIME TO GET BETTER 5 (2011), http://go.nationalpartnership.org/site/DocServer/PSD_Briefing_Book.pdf [hereinafter EVERYONE GETS SICK].
21. See COUNCIL OF ECON. ADVISORS, THE ECONOMICS OF PAID AND UNPAID LEAVE 8 (2014), https://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf [hereinafter CEA REPORT]; see generally Christopher J. Ruhm, *Parental Leave and Child Health*, 19 J. OF HEALTH ECON. 931 (2000).
22. Maya Rossin-Slater, *The Effects of Maternity Leave on Children's Birth and Infant Health Outcomes in the United States* 31 (Columbia Population Research Ctr., Working Paper No. 10–10, 2010), <https://academiccommons.columbia.edu/catalog/ac:129682>.
23. Center for Disease Control and Prevention, U.S. Dep't of Health & Human Servs., National Vital Statistics Reports, June 30, 2016, at 101 tbl. 22, https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf.
24. See Pedro Carneiro et al., *A Flying Start? Maternity Leave Benefits and Long-Run Outcomes of Children*, 123 J. OF POL. ECON. 365, 412 (2015).
25. Abay Asfaw et al., *Paid Sick Leave and Nonfatal Occupational Injuries*, 102 AM. J. PUB. HEALTH 59, 59 (2012).
26. EILEEN APPELBAUM & RUTH MILKMAN, LEAVES THAT PAY: EMPLOYER AND WORKER EXPERIENCES WITH PAID LEAVE IN CALIFORNIA 29 (2011), <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.
27. *Id.*
28. *Id.*
29. CEA REPORT, *supra* note 21, at 17.
30. See NAT'L P'SHIP FOR WOMEN & FAMILIES, PAID SICK DAYS LEAD TO COST SAVINGS FOR ALL 2 (2013), <http://www.nationalpartnership.org/researchlibrary/work-family/psd/paid-sick-days-lead-to-costsavings-savings-for-all.pdf>.
31. EVERYONE GETS SICK, *supra* note 20, at 4.
32. Asfaw et al., *supra* note 25, at 62 (finding that “odds of a nonfatal occupational injury were 28% lower among workers with paid sick leave”).
33. Robert Drago & Kevin Miller, *Sick at Work: Infected Employees in the Workplace During the H1N1 Pandemic 2* (Inst. for Women's Pol'y Res., Briefing Paper No. B264, 2010), <http://www.iwpr.org/publications/pubs/sick-at-work-infected-employees-in-the-workplace-during-the-h1n1-pandemic> (finding that workplaces without paid sick leave faced increased absenteeism after H1N1 pandemic).
34. See MISS. DEV. AUTH., 2013 MISSISSIPPI MANUFACTURING WAGE SURVEY: DELTA WIA REGIONAL PROFILE 14 (2013) (detailing statewide difficulties of Mississippi employers filling key positions), <http://economic.panolocounty.com/wp-content/uploads/2014/05/2013-ms-manufacturing-wage-survey.pdf>.

35. HEATHER BOUSHEY & SARAH JANE GLYNN, THERE ARE SIGNIFICANT BUSINESS COSTS TO REPLACING EMPLOYEES 5 (2012), <https://cdn.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>.
36. Jane Waldfogel et al., *Family Leave Policies and Women's Retention After Childbirth: Evidence from the United States, Britain, and Japan*, 12 J. OF POPULATION ECON. 523, 541(1999).
37. *Id.*
38. PAID LEAVE IN MISSISSIPPI, *supra* note 10, at 6.
39. TOM W. SMITH & JIBUM KIM, PAID SICK DAYS: ATTITUDES AND EXPERIENCES 6 (2010), <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.
40. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, MAY 2015 STATE OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES: MISSISSIPPI (2015), https://www.bls.gov/oes/current/oes_ms.htm.
41. *See* HUMAN IMPACT PARTNERS, A HEALTH IMPACT ASSESSMENT OF THE HEALTHY FAMILIES ACT OF 2009, at 37 (2009), http://go.nationalpartnership.org/site/DocServer/WF_PSD_HFA_HealthImpactAssessment_HIA_090611.pdf?docID=5101 [hereinafter HEALTH IMPACT ASSESSMENT].
42. *Id.* at 37–39; *see also* U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, *supra* note 40.
43. *See* discussion *infra* Part III.B and III.C.
44. *See, e.g.*, H.B. 188, 61st Gen. Sess. (Utah 2016), <http://le.utah.gov/~2016/bills/static/HB0188.html>; Boston Ordinance Establishing Paid Parental Leave for City of Boston Employees, BOS. CITY COUNCIL, § 5-5.20 (2015), <http://michelleforboston.com/wp-content/uploads/2015/03/Wu-McCarthy-Parental-Leave-Ordinance.pdf>.
45. *See, e.g.*, Bloomfield Paid Sick Leave Ordinance, § 160-2 (2015), <http://www.bloomfieldtwpnj.com/documents/file/2015clerk/Ord%2015-10%20-%203-2-15%20-%20Paid%20Sick%20Leave.pdf>; S.B. 84, 2015 Reg. Sess. (La. 2015), <https://www.legis.la.gov/legis/ViewDocument.aspx?d=934055>.
46. Thomas C. Frohlich & Alexander Kent, *States With the Most Government Workers*, USA TODAY (May 17, 2015) <http://www.usatoday.com/story/money/business/2015/05/17/24-7-wall-st-government-work-states/27207857>.
47. At least ten cities in New Jersey, for example, exempt some or all unionized workers from paid leave legislation—particularly those workers who work in the construction industry. *See, e.g.*, City of Newark Ordinance, 6PSFA(S) (2013) http://www.ci.newark.nj.us/wp-content/uploads/2014/09/bus_Ordinance_Sick_Leave.pdf.
48. Dennis Seid, *Labor Union Membership Remains Low Priority*, NORTHEAST MS. DAILY J. (Sept. 5, 2016) <http://djournal.com/news/labor-union-membership-remains-low-priority>.
49. *See, e.g.*, City of Philadelphia Ordinance §9-4103(3) (2015), <http://www.phila.gov/MDO/Documents/PaidSickLeave%20Ordinance.pdf>.
50. *See, e.g.*, Oregon Family Leave Act, § 659A.150 (2002), http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_009.html.
51. H.B. 5269, Feb. Sess. 2014 (Conn. 2014), <https://www.cga.ct.gov/2014/TOB/H/2014HB-05269-R00-HB.htm>.

52. H.B. 1323, 2005 Sess., 104th Gen. Assemb. (Tenn. 2005), <http://tennessee.gov/sos/acts/104/pub/pc0224.pdf>.
53. City of Jersey City Earned Sick Leave Ordinance, § 3-51(A)(2) (2013) http://www.cityofjerseycity.com/uploadedFiles/For_Residents/Earned%20Sick%20Leave%20Ordinance.pdf.
54. *See, e.g.*, Bloomfield Township Council, §160-4 (2015) <http://www.bloomfieldtwpnj.com/documents/file/2015clerk/Ord%2015-10%20-%203-2-15%20-%20Paid%20Sick%20Leave.pdf>.
55. S.F. 481, 89th Session (Minn. 2015) https://www.revisor.mn.gov/bills/text.php?number=SF481&version=0&session=ls89&session_year=2015&session_number=0&format=pdf.
56. TENN. H.B. 1323, *supra* note 7.
57. MONTGOMERY CTY., *Fact Sheet: The Montgomery County Earned Sick and Safe Leave Law* (Oct. 1, 2016) https://www.montgomerycountymd.gov/humanrights/Resources/Files/MC_Earned%20Sick_Factsheet.pdf.
58. City of Newark Ordinance, *supra* note 39.
59. Jersey City, for instance, allows employees to accrue one hour of sick leave for every 30 hours worked, *see* City of Jersey City, *supra* note 8; while Connecticut allows one hour for every 40 hours worked, *see* CONN. GEN. ASSEMBL., *supra* note 6.
60. Emeryville, CA, for instance, sets its cap at 72 hours per year for employees of sufficiently large employers. *See* § 5-37.03b <http://www.ci.emeryville.ca.us/DocumentCenter/Home/View/8034>.
61. *See* CONN. GEN. ASSEMBL., *supra* note 6.
62. For instance, San Francisco allows employers with fewer than 10 employees to cap accrual at 40 hours, while larger employers may cap accrual at 72 hours. *See* Official Notice on San Francisco Paid Sick Leave: http://sfgov.org/olse/sites/default/files/FileCenter/Documents/7401-69_PaidSickLeaveOrdinanceBlack1210v4.pdf.
63. Georgia Paid Leave Act, H.B. 824 (2016) <http://www.legis.ga.gov/Legislation/20152016/155311.pdf>.
64. The Department of Labor found that in 2000, 78% of workers who wanted but did not take leave were concerned about whether they could afford to take leave: *2000 Survey Report: Chapter 2, Wage and Hour Division*, U.S. DEP'T OF LABOR 2.2.4, <http://www.dol.gov/whd/fmla/chapter2.htm>.
65. City of Minneapolis Ordinance §40.220(6) (2016) <http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcmstp-180841.pdf>.
66. *See* California's *Paid Family Leave* Brochure: http://www.edd.ca.gov/pdf_pub_ctr/de2511.pdf.
67. California's family leave program, for instance, caps weekly benefits at \$1,129. *See Calculating Paid Family Leave Benefit Payment Amounts*, http://www.edd.ca.gov/disability/Calculating_PFL_Benefit_Payment_Amounts.htm.
68. *See, e.g.*, Wisconsin Family or Medical Leave §103.10 (3)(b) (2016) <http://docs.legis.wisconsin.gov/statutes/statutes/103/10>. Washington D.C. even allows leave for spouses of siblings. D.C. CODE § 32-131.01(4).
69. *See, e.g.*, COLO. S.B. 16-114 (2015) <http://www.legispeak.com/bill/2016/sb16-114>.

70. Peter Jamison, *D.C. Council Votes for Expansive Paid Family and Medical Leave for Private-Sector Workers*, WASH. POST (Dec. 20, 5:09 PM) https://www.washingtonpost.com/local/dc-politics/council-votes-down-radical-restructuring-of-paid-leave/2016/12/20/8a508618-c6cd-11e6-bf4b-2c064d32a4bf_story.html?utm_term=.518713e65577. The bill—as well as the specific addition of the payroll tax—faced significant opposition from major D.C. employers and the D.C. Chamber of Commerce. *See id.*
71. Shira Schoenberg, *Massachusetts Senate to Consider Paid Family Leave Bill*, MASSLIVE (July 21, 2016 11:05 AM) http://www.masslive.com/politics/index.ssf/2016/07/massachusetts_senate_to_consider_2.html.
72. Minnesota’s proposed 2016 legislation, for example, adopted the split tax model. Maya Rao, *DFL Takes Battle Over Paid Family Leave to Minnesota Capitol*, STAR TRIBUNE (Mar. 26, 2016 8:18 PM) <http://www.startribune.com/paid-leave-fight-comes-to-minnesota-capitol/373636051/>.
73. A BETTER BALANCE & NAT’L PARTNERSHIP FOR WOMEN & FAMILIES, *Model State Paid Family and Medical Leave Statute 7* <http://www.nationalpartnership.org/research-library/work-family/paid-leave/model-state-paid-family-and-medical-leave-statute.pdf>.
74. APPELBAUM & MILKMAN, *supra* note 26 at 8.
75. *See* MISS. CODE ANN. § 19-3-63 (2016). (preempting localities from passing legislation altering the minimum wage or minimum hours worked).
76. *See, e.g.*, Anna Wolfe, *Setting the Scene for the 2017 Mayoral Election*, Jackson Clarion-Ledger (June 25, 2016, 7:15 PM) <http://www.clarionledger.com/story/news/local/2016/06/25/setting-scene-2017-jackson-mayoral-election/84995840/> (noting Democratic Party control of Jackson, Mississippi).
77. *See* PAID LEAVE IN MISSISSIPPI, *supra* note 10, at 21 (“Since this bill passed with very little public discussion, a concentrated effort to coordinate workers’ rights and public health groups might be sufficient to force the legislature to reconsider.”)
78. S.B. 2318 (Miss. 2016); S.B. 2594 (Miss. 2016).
79. *Id.* (amending § 17-1-51 ban localities only from “a mandatory, minimum living wage rate lower than the rate provided in Section 3 of this act”).
80. H.B. 1067, 132rd Leg. Sess. (Miss. 2017)
81. *See* MISS. CODE ANN. § 19-3-63 (2016).
82. *Id.*
83. MISS. CODE ANN. § 37-7-307 (2016).