

Documenting the Need for a National Paid Family and Medical Leave Program: Evidence from the 2012 FMLA Survey

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Introduction

The United States is the only high-income country that does not mandate paid family and medical leave.¹ Instead American workers rely on a patchwork of employer-provided benefits, private insurance, state programs, public assistance, and savings to make ends meet during a leave event. About 30 percent of private-sector employees taking unpaid leave incur debt as result of their leave.² More than 2.5 million employees cannot afford to take leave to care for self, a family member with a serious health condition, during pregnancy, to bond with a new child, or to care for an injured military service member every year.³

Our analysis of the Department of Labor's 2012 Family and Medical Leave Act (FMLA) Survey found that 12.6 percent of private-sector employees took family and medical leave in 2012, while 4.5 percent had unmet leave needs.⁴ This means that one-in-four employees needing leave had their leave needs unmet in the past 12 months. Not being able to afford unpaid leave (49.4 percent) and the risk of loss of job (18.3 percent) were the two most common reasons given for not taking needed leave. Employees with children living at home and female employees had the greatest need for leave, but also had the highest rates of unmet leave.

While the majority (60.6 percent) of college graduates have access to employer-provided paid family leave, less than one-third of employees with no college experience did. Employees with lower educational attainment typically have lower family incomes, and thus have fewer financial resources to draw upon during an unpaid leave event. This, combined with a higher rate of unmet leave, suggests that unequal access to family and medical leave is further exacerbating by economic status.

To increase access to affordable family leave to all employees, three states (California, New Jersey and Rhode Island) have implemented paid family leave programs over the last decade. Federal legislation, the Family and Medical Insurance Leave (FAMILY) Act, was introduced in the U.S. Congress in 2013 to establish a federal paid leave program. Our analysis projects that a federal paid leave program could provide access to affordable family and medical leave to between 1.9 million to 2.5 million private-sector employees needing leave.

1 Heymann, Rho, Schmitt and Earle, 2009: Table 2; Heymann and McNeill, 2012: p. 4; and Ray, Gornick, and Schmitt, 2009: Figure 1.

2 Authors' analysis of the FMLA Employee Survey, 2012.

3 Authors' analysis of the FMLA Employee Survey, 2012. Projected number of employees is based on the 2012 private-sector employment level, Bureau of Labor Statistics establishment survey.

4 Authors' analysis of the FMLA Employee Survey, 2012.

Unmet Need for Leave

The Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave for their own serious health condition, to care for an immediate family member, for childbirth and to bond with a new child, to care for an injured military service member, and for deployment-related reasons of a family member.⁵ The FMLA applies only to firms with 50 or more employees, and an employee must have been with the same employer for a year or more and worked at least 1,250 hours in the past year (on average 24 hours per week) in order to be eligible for FMLA leave.⁶ Only 55.9 percent of private-sector employees were eligible for FMLA leave.⁷ The FMLA does not mandate that leave is to be paid.

TABLE 1

Percent of employees who took leave and had unmet need for leave for FMLA-qualifying reasons in the past 12 months, private sector, 2012

	Leave rate	Unmet leave rate	Unmet-leave-to-total-leave-needs ratio
All, private sector	12.6%	4.5%	0.264
Eligible	14.5%	4.5%	0.237
Ineligible	10.1%	4.5%	0.308
Female	14.3%	5.9%	0.291
Male	11.0%	3.3%	0.229
Age 18-29	12.1%	4.3%	0.264
Age 30-44	12.6%	5.8%	0.316
Age 45 and older	12.8%	3.6%	0.218
Living with children	15.5%	6.2%	0.284
Not living with children	9.9%	3.0%	0.235
Female employees with children	19.1%	8.6%	0.309
Less than a 4-year college degree	13.5%	5.2%	0.277
College degree and graduate school	10.3%	3.0%	0.223

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates. Total sample size is 1,914.

Notes: Demographic and eligibility data were for currently employed workers in the private sector at the time of the survey. The leave rate is defined as the number of private-sector employees who had one or more leave events as share of total private-sector employees. A leave event is defined as FMLA-qualifying leaves in the past 12 months from the time of the survey, and includes the longest leave and the most recent leave. Unmet leave is defined as leave not taken, but needed for FMLA-qualifying reasons in the past 12 months. Some employees took both leave and had an unmet leave need during the period, and were included in both the leave rate as well as the unmet leave rate. The category 'living with children' included only respondents with children under the age of 18 years living in the same household. Non-respondents were assumed not to have taken leave for FMLA-qualifying reasons.

5 The FMLA was passed in February 1993 and took effect in August 1993. Job-protected leave means the employer must hold the job of an eligible employee on family or medical leave until his/her return, or offer the employee a similar job when he/she returns to work.

6 The eligibility rule is that firms employ 50 of more employees at the workplace or within 75 miles radius of the workplace.

7 Jorgensen and Appelbaum, 2014a.

In 2012, 12.6 percent of private-sector employees took family and medical leave during the past 12 months for FMLA-qualifying reasons (**Table 1**). FMLA-eligible private-sector employees had a higher leave rate than ineligible employees – 14.5 percent compared to 10.1 percent.⁸ An additional 4.5 percent of employees had a need for family and medical leave but did not take leave because they were not eligible for job-protected leave under the FMLA, could not afford to take leave, and/or for some other reason chose not to take leave.⁹

The leave needs varied across demographic groups, with female employees and employees with children under the age of 18 years living at home having the highest rates of both leave taken as well as leave unmet.¹⁰ Looking at unmet leave needs as a share of total leave needed (leave taken + unmet leave), we find that employees starting a family and raising children were less likely to have their leave needs met, e.g. they have higher unmet leave ratios. For instance, three in every ten female employees with children needing family and medical leave had their leave needs unmet.

Not being able to afford leave was the most common reason given for having an unmet need for leave. An estimated 49.4 percent of private-sector employees reported they could not afford to take unpaid leave as the main reason for not taking family and medical leave (**Table 2**).¹¹ An additional 18.3 percent did not take leave because of concerns that they would not be able to return to their job. Surprisingly, fully 21.0 percent of FMLA-eligible employees reported that they thought they might lose their job as the main reason for not taking leave, even though the FMLA gives eligible employees the right to job-protected leave. This is a slightly higher share than the share of ineligible employees listing job loss being the reason for unmet leave.¹² This suggests that some eligible employees are not knowledgeable about the protections provided under the FMLA, and/or some covered employers do not comply with the law.

8 The difference in the rates was statistically significantly different from zero.

9 Some employees were both leave takers and leave needers in the past 12 months.

10 The differences in leave rates for gender and for children/no children were statistically significantly different from zero; and the differences in unmet leave rates for gender, children/no children and age were statistically significant.

11 Some employees who received partial pay may also have unmet leave due to economic reasons. The FMLA survey only had a category for “couldn’t afford” for employees taking *unpaid* leave, and did not have a category for “couldn’t afford” for employees who received partial pay. These respondents would likely have listed “other reasons” for unmet leave. Thus the actual percentage of all employees who didn’t take leave (unpaid and partially paid) is likely higher than the estimated 49.4 percent for unpaid-leave employees.

12 An estimated 15.0 percent of ineligible employees listed loss of job as the main reason for not taking FMLA-qualifying leave. However, the difference between eligible and ineligible employees is not statistically significantly different from zero.

TABLE 2

Reasons for unmet leave, private-sector employees who had unmet leave for FMLA-qualifying reasons in the past 12 months, 2012.

Unmet leave reason	Percentage of employees with unmet leave
Thought might lose job	18.3%
Thought would lose seniority	0.6%
Was ineligible	0.5%
Employer denied request	3.2%
Couldn't afford to take unpaid leave	49.4%
Wanted to save leave time	4.3%
Work is too important	1.9%
Thought would be treated differently because of the reason needing to take leave	0.9%
Unable to meet employer's notice requirements	1.1%
Other reason	19.8%

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates.

Notes: Subsample included only respondents who were currently employed in the private sector and stated they had unmet leave for FMLA-qualifying reasons. The estimates are for the main reason which the respondent needed to take leave for work for the most recent leave event. Non-respondents were not included.

Employees with at most a high school degree, who typically have lower earnings, were much more likely to have unmet leave because they could not afford to take leave than employees with higher educational attainment. Fully 59.8 percent of employees with a high school degree or less had unmet leave for economic reasons, compared to 38.7 percent of employees with a four-year college degree or more.¹³ Moreover, employees with lower educational attainment were also less likely to receive pay during leave as part of employer-provided benefits, have lower family incomes, and thus have fewer financial resources to draw upon during an unpaid leave event. This suggests an unequal access to family and medical leave that is further exasperated by economic status.

Making Ends Meet During Leave

The FMLA gives employees the right to job-protected leave, but it does not provide for pay during a leave event. Our analysis found that 59.5 percent of employees were eligible for some employer-provided paid sick leave and 45.9 percent were eligible for some paid family leave (**Table 3**). Employees with an unmet need for leave in the past 12 months were less likely to be eligible for paid sick and family leave than employees who did take leave and employees with no leave needs. This supports the finding that economic reasons were the most common cause of employees not taking needed family and medical leave.

¹³ Authors' analysis of the FMLA Employee Survey, 2012, weighted estimates.

TABLE 3**Percent of employees who are eligible for employer-provided paid sick leave and paid family leave, private sector, 2012**

	Paid sick leave	Paid family leave
All	59.5%	45.9%
Leave takers	60.3%	43.3%
Employees with an unmet need for leave	50.6%	33.4%
Employees with no need for leave	59.7%	47.4%
Female	59.4%	46.3%
Male	59.6%	45.6%
Living with children	62.5%	45.6%
Not living with children	57.5%	46.4%
Less than high school	27.6%	18.2%
High school degree	47.3%	35.3%
Some college	60.9%	47.6%
College degree (4-year)	77.5%	60.4%
Graduate school	76.1%	61.0%

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates.

Notes: Subsample included respondents who were currently employed in the private sector. Non-respondents were assumed to not to be eligible for paid leave.

But even employees who are eligible for paid leave may find leave unaffordable, because wage replacement is less than full pay and/or the number of paid leave days is less than the duration of leave needed. Of employees who took leave in the past 12 months for FMLA-qualifying reasons, 40.5 percent received the same amount as regular pay while on leave. An additional 15.9 percent received half or more than half of regular pay, while 5.2 percent received some pay but less than half of regular pay.¹⁴ Fully 37.9 percent of employees on leave did not receive any pay replacement.¹⁵ Employees who were not eligible for full paid leave through their employers relied on a patchwork of public programs. The states of California, New Jersey and Rhode Island have paid family leave programs that provide for partial wage replacement. Nationally, 7.4 percent of employees taking leave in the past 12 months received payment from a state paid leave program in place (the states with paid leave programs had a much higher share of workers receiving pay from the state's paid leave fund) (**Table 4**). Moreover, 8.1 percent of leave takers received pay from a state paid disability program and 26.5 percent from temporary disability insurance.

14 Authors' analysis of the FMLA Employee Survey, 2012, weighted estimates. Pay during leave could be paid by the employer as part of paid time off, sick leave, vacation leave, personal leave, maternity leave, paternity leave, or some other employer benefit program; or could be from temporary disability insurance, state paid family leave or state disability program. About 0.5 percent of respondents did receive some pay, but did not specify the degree of pay replacement.

15 The estimate assumed that non-respondents to the question about pay while on leave did not receive any pay replacement.

TABLE 4**Sources of pay while on family and medical leave, private-sector employees, 2012**

	% of leave takers who received pay during their leave event
Temporary disability insurance	26.5%
State paid family leave	7.4%
State paid disability leave	8.1%

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates.

Notes: Subsample included only respondents who were currently employed in the private sector, and had an FMLA-qualifying leave event in the past 12 months for which they received some pay during leave from the employer and/or a state program. Non-respondents were assumed to not have received pay from any of the listed sources. Only employees in the states of California and New Jersey had access to state paid family leave at the time of the survey. Rhode Island has subsequently implemented a state paid family leave program.

Employees adopted various strategies to cover lost wages while on leave. The vast majority (85.4 percent) of leave takers who received less than full wage replacement limited their spending, and 65.8 percent used savings (**Table 5**). About one-in-three employees reported that they cut their leave short due to loss in earnings. Employees who did not receive any pay during their leave were more likely to rely on public assistance while on leave than employees who received some pay either from the employer or a state leave program. Fully 14.2 percent of employees on unpaid leave went on public assistance, compared to 5.0 percent who received some pay during leave. Overall, employees on unpaid leave combined more approaches to make ends meet during leave than employees who received partial paid leave.

TABLE 5**Strategies adopted to cover lost wages during family and medical leave events, private-sector employees, 2012**

	Leave takers who received no OR partial wage replacement	Leave takers who received no wage replacement	Leave takers who received partial wage replacement
Used savings	65.8%	67.8%	65.6%
Borrowed money	27.6%	29.4%	25.7%
Public assistance	10.8%	14.2%	5.0%
Limited spending	85.4%	84.3%	86.9%
Put off paying bills	33.0%	35.3%	30.5%
Cut leave time short	34.5%	36.2%	33.3%
Other	7.8%	9.5%	5.5%

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates.

Notes: Subsample included only respondents who were currently employed in the private sector, and had an FMLA-qualifying leave event in the past 12 months during which they received less than full wage replacement. Non-respondents were assumed to not have adopted any of the listed strategies. Employees receiving full pay during leave events were not asked the question, as they did not have a loss in wages. Respondents could choose more than one answer, thus totals add to more than 100 percent.

National Paid Leave

Three states have implemented paid family and medical leave programs. The programs in California, New Jersey and Rhode Island provide for partial wage replacement during a family or medical leave event. The programs are structured as an insurance benefit fund and funded by an employee payroll tax, rather than the paid leave being paid directly by employers. In California, the wage replacement is 55 percent of usual weekly earnings, up to a maximum benefit of \$1,075 per week in 2014.¹⁶ The paid family leave programs of New Jersey and Rhode Island have higher wage replacement rates but lower upper limits.

Making paid family and medical leave universal through federal legislation would give access to leave to more employees who currently cannot afford to take leave. Our analysis projects that under current FMLA rules, between 1.9 million and 2.5 million additional employees a year would be able to take family and medical leave if they had access to paid leave (**Table 6**).¹⁷ The projection does not include employees in the states that already provide paid family leave. If federal legislation provided for a greater wage replacement than the state programs, additional employees with unmet leave due to economic reasons in those states would take leave, and thus the projected numbers would be slightly higher.

TABLE 6

Projected number of employees who would take leave, if leave were paid, private sector, projections for 2012 employment level

	Take up rate	Current utilization rate	Projected utilization rate if paid leave	Increase in the number of an employees taking leave
Upper bound	100%	12.6%	14.8%	2,544,000
Intermediate	90%	12.6%	14.6%	2,290,000
Lower bound	75%	12.6%	14.2%	1,908,000

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates.

Notes: The projections were based on the 2012 leave rate, unmet leave rate, and the rate of unmet leave due to economic reasons. The base for the increase in the number of employees was 2012 private-sector employment (BLS Establishment Data), and excluded residents in the states of California, New Jersey and Rhode Island, which have implemented paid leave programs. The take up rate is defined as the percentage of employees with unmet leave, due to not being able to afford to take *unpaid* leave, who would take leave with partial wage replacement. The utilization rate is defined as the percentage of employees who takes leave.

In the upper bound scenario, all employees with unmet leave 'because they couldn't afford to take *unpaid* leave' would take leave if leave were paid. The lower bound assumed that 25 percent of employees with unmet leave due to economic reasons would not take leave even if leave were paid. This could be due to the level of wage replacement being insufficient and/or concerns about loss of job, especially if an individual is not eligible for job-protected leave under the FMLA.

¹⁶ Employment Development Department, State of California, 2014.

¹⁷ The projected numbers are based on the 2012 private-sector employment level, Bureau of Labor Statistics' Establishment Survey.

The FAMILY Act

The FMLA provides job-protected leave for eligible employees; however, leave is unpaid. To make leave more affordable for employees, the Family and Medical Insurance Leave (FAMILY) Act was introduced in Congress in December 2013. The FAMILY Act would establish a national paid family and medical leave program modeled after the California, New Jersey and Rhode Island paid leave programs. Like the California and New Jersey paid family leave programs, and unlike the Rhode Island program, the FAMILY Act does not provide job protection – a guarantee that the worker can return to the same or a similar job after leave. Only workers eligible for leave under the FMLA would have access to job-protected leave.

The federal paid leave program would be funded by a combined employer-employee contribution into a federal insurance trust fund, and would apply to nearly all employees regardless of firm size, including the self-employed. It would provide up to 12 weeks of partially paid leave.¹⁸ Employees taking leave would receive about 66 percent of their monthly wage earnings or self-employment income up to \$4,000 per month.¹⁹

The FAMILY Act would benefit employees with children, who not only have a greater need for paid leave for pregnancy-related reasons, to bond with a new child (newborn, adopted and foster) and to care for a sick child, but also have higher rates of unmet leave. Our analysis found that 15.5 percent of employees with children under the age of 18 years living at home took family and medical leave in the past 12 months, compared to 9.9 percent of employees with no children (in 2012). Women disproportionately take on the responsibility of caring for family members and thus have higher rates of leave events and unmet leave needs than men. Fully 8.6 percent of female employees with children living at home wanted to take leave but were not able to in past 12 months. This is nearly triple the rate of unmet leave among employees without children.

Our analysis further found that the most commonly cited reason for unmet leave was lack of affordability. Half (49.4 percent) of private-sector employees with unmet leave needs in the past 12 months could not afford to take unpaid leave. Unmet leave rates were significantly higher for employees with less than a four-year college degree than employees with a college degree (5.2 percent versus 3.0 percent), and their unmet leave needs were more likely to be due to economic reasons. Employees with lower educational attainment typically earn lower wages and therefore will have fewer savings and other economic resources to draw upon during an unpaid leave event. Moreover, these employees are also less likely to be offered employer-provided paid leave, thus

18 U.S. Congress, S.1810, December 2013; and Farrell and Glynn, 2013.

19 The monthly benefit is determined as 1/18 of annual wage earnings or self-employment income for the calendar year with the highest earnings/income in the most recent three years.

further magnifying the inequality in access to leave. Finally, our prior analysis (see Jorgensen and Appelbaum, February 2014a) of the access to job-protected FMLA leave found that employees with lower educational attainment were less likely to be eligible for leave under the FMLA.²⁰

The FAMILY Act, by providing partial wage replacement during leave events, would make family and medical leave more affordable and equitable. As indicated above, our analysis projects that between 1.9 million and 2.5 million additional private-sector employees would take leave in a year if such federal legislation on paid leave were passed. The FAMILY Act would lessen the financial burden for leave takers who often draw upon savings, incur debt and put off paying bills.

Business groups have expressed concerns that making family and medical leave more accessible and affordable to employees would place an undue burden on employers. However, our prior analysis of the FMLA Worksite Survey (see Jorgensen and Appelbaum, April 2014b) found that the vast majority of employers who provided FMLA leave reported a positive effect or no effect on employee productivity, turnover, morale and profitability, regardless of firm size.²¹ Only 8 percent of worksites covered by the FMLA reported any negative effect of FMLA leave. A federal paid leave program could have additional positive effects. In a survey of Californian businesses (see Milkman and Appelbaum, 2013), some employers reported that the state's Paid Family Leave program actually generated cost savings by reducing employee turnover and reducing their own benefit costs when employees used the state program instead of employer-provided paid leave benefits.²² These findings indicate that a federal paid leave program could be beneficial to both employees and employers.

20 Jorgensen and Appelbaum, 2014a: Table 4.

21 Jorgensen and Appelbaum, 2014b: Table 6.

22 Milkman and Appelbaum, 2013: The same survey found that 86.9 percent of employers reported that the Paid Family Leave Program did not result in any cost increases to employers. (The California PFL program is funded by an employee-payroll tax).

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Methodological Appendix

The Department of Labor (DOL) contracted with Abt Associates to conduct a pair of surveys on the provision of FMLA leave, utilization of leave, unmet need for leave, and public awareness about the program. The surveys were conducted between February and June of 2012. The Employee Survey interviewed 2,852 individuals, ages 18 or older, who had worked at some point during the past year (prior to the time of the survey). The response rate was 15.1 percent.

The Employee Survey divided respondents into three groups: 1) ‘Leave takers’ who took family or medical leave in the prior 18 months; 2) ‘leave needers’ who wanted leave but did not take leave in the prior 18 months, and 3) ‘employed only’ in the prior 18 months. Some respondents were both leave takers and leave needers. The respondents were asked a set of questions about their personal and employment characteristics, and depending on their leave status group, they were asked a set of questions pertaining to their leave experience and/or their unmet need for leave. The survey over-sampled individuals who took family and medical leave (leave takers) and individuals with unmet leave (leave needers). To account for over-sampling and non-responses, the sampling weights were benchmarked to the March 2011 Current Population Survey, Annual Social and Economic Supplement. The assigned sampling weights ranged from 3,211 to 334,493, resulting in some respondents’ outcomes having a relatively large impact on estimates, in particular in the analysis of outcomes by demographic subgroups.

TABLE A1
Sample sizes by subgroups

	Leave takers	Leave needers	Leave takers and needers	Neither leave taker or leave needer
Sample size	1,133	219	199	1,301

Source: Abt Associates, Technical Report, 2012: p. 4-5

We adopted the methodology developed by Abt Associates to estimate leave rates and unmet leave need rates. A leave event is defined as FMLA-qualifying leave from work that was started in the prior 12 months to the survey. The analysis included both “most recent” and “longest” leave events. An unmet leave event was defined as leave needed for FMLA-qualifying reasons, but not taken either by the choice of the employee or because it were denied by the employer. For individuals with multiple unmet leave events, the reasons for unmet leave were for the “most recent” event by survey design. Following the methodology of Abt Associates, non-respondents were assumed not to have had a leave event or unmet leave need for FMLA-qualifying reasons.

The estimates for the reasons for unmet leave were determined based on the “main reason” given for the “most recent” leave event. Including all reasons given changed the estimates only slightly,

except for the “other category.” The survey gave respondents 15 pre-determined categories to choose from. The category on affordability was phrased as “couldn’t afford to take an unpaid leave” and specifically refers to unpaid leave. However, it is possible that some respondents with less than full wage replacement would also not be able to afford leave and were included in the “other” category. Therefore, the estimates of the percentage of employees with unmet leave because they could not afford it likely underestimate the actual percentage of employees.

The analysis looked specifically at private sector employees. Only employees employed at the time of the survey were included. Since some employees who are not eligible for job-protected leave under the FMLA may exit the workforce as an alternative to taking leave from their job, the leave rates for current employees may underestimate the actual leave rate for all employees in a given year.

The projected utilization rates of leave if a federal paid family and medical leave program were implemented were based on 2012 leave rates, plus the share of employees who had unmet leave because they could not afford it. The take-up rate accounted for individuals who could not afford to take leave even under a paid leave program because wage replacement would be less than 100 percent, or their leave request may be denied by the employer, or they think they may lose their job if they take leave. The total numbers were based on national private-sector employment in 2012 (BLS establishment survey, annual employment data) and excluded employees in California, New Jersey and Rhode Island who already have access to paid leave through state paid family leave programs.