

January 31, 2024

**To: Senators Kristen Gillibrand, Bill Cassidy, Robert Casey, Maggie Hassan, Cynthia Lummis, Kyrsten Sinema, Thom Tillis, and Todd Young; and Representatives Chrissy Houlahan, Stephanie Bice, Colin Allred, Julia Letlow, Mariannette Miller-Meeks, and Haley Stevens**

**Re: Request for information on paid leave**

Dear members of the bipartisan, bicameral Congressional working group on paid leave,

It is my pleasure to submit the following response to your recent inquiries on the subject of paid leave. As a fellow at the Ethics and Public Policy Center, my work focuses on promoting strong families as the cornerstone of a healthy and flourishing society. Paid leave can – and should – advance that goal.

But the devil is in the details; different approaches to paid leave can inappropriately influence parents' trade-offs or leave some families out of benefits, and policymakers must prioritize the approaches that will have the most impact, particularly in an era of limited resources. As such, you'll see these answers focus on the case for paid parental leave, advanced in a manner that respects the unique demands placed on women who have just given birth and reduces barriers to participation for those whose job histories don't necessarily fit into a career-oriented, 40-hour-a-week model.

I hope the answers to these questions can provide some additional perspective as you and your staff continue to weigh the different approaches and trade-offs and am always happy to discuss these issues further. Please do not hesitate to contact me at [pbrown@eppc.org](mailto:pbrown@eppc.org) if I can be of any additional assistance.

Sincerely,

Patrick T. Brown  
Fellow  
Ethics and Public Policy Center

**1. What should the federal role be, if any, in providing, promoting, and/or incentivizing paid leave? And how should this interact with the role of state government programs, and/or employer programs?**

In theory, the Constitution specifically delegates enumerated powers to the federal government, while reserving general police power, which traditionally include a focus on health and well-being, to the states. In practice, of course, the federal government enjoys the ability to deficit-spend in ways that nearly all states don't; and there is a wide variation in states' fiscal and administrative capacity in building out systems that could provide benefits to families. Because of the need to ensure that parents in Plano aren't left behind while parents in Pawtucket receive generous social support, some federal role is appropriate; but federal approach should have a preference for state innovation and treading lightly so as not to crowd out new approaches.

According to the most recent Bureau of Labor Statistics report on employee benefits, 27 percent of all civilian workers had access to paid family leave, including 44 percent in the top quarter of the income distribution, but only 13 percent of workers making less than \$17 an hour, in the lowest income quartile.<sup>1</sup> A dozen states have introduced paid leave plans already, but many have no plans to introduce their own paid leave approaches. Exclusively relying on states (or employers) would mean many workers, and in particular parents, would remain unable to access paid leave benefits.

Thus, a federal paid leave program would ideally leave plenty of room for variation while providing a secure baseline for other entities to build on top of. A federal paid leave policy should set a specific goal with well-defined objectives – and then pursue them while prioritizing ease of use for the end-user and keeping an eye on the need to be prudent stewards of public spending. All of this suggests an approach that prizes discrete and straightforward benefits over large-scale social transformations; seeking a goal of providing a modest floor below which families cannot fall and allowing other entities to innovate atop of.

**2. What types of leave should a potential federal program cover, at what length, and why? How should different types of leave be prioritized? Should different types of leave be treated differently or does doing so create adverse effects?**

We can imagine no shortage of situations in which a guarantee of paid time away from work could be useful to families – sickness, bereavement, caretaking, even school closures. Yet policymakers are faced with making tough decisions with limited resources and should prioritize the time of life where policy can make the most impact in a discrete way.

While other cases where federal support for paid leave may well be laudable and worth pursuing, the need to support new parents stands as a uniquely compelling interest. Politically, paid parental leave polls much stronger than paid leave for personal sick time or to care for another, including across party lines. But on more substantive grounds, these other periods when paid leave may be helpful lacks the time-limited duration, and the clear-cut determination of eligibility, that a broad-based paid parental leave program would offer. Fraud in a program that only provided benefits to new parents upon the birth of a new child would be virtually non-existent, as opposed to more expansive

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<sup>1</sup> "Employee Benefits in the United States, March 2023," Bureau of Labor Statistics, <https://www.bls.gov/ebs/publications/employee-benefits-in-the-united-states-march-2023.htm>

benefits that rely on self-certification of medical conditions.<sup>2</sup> Thus many concerns about a new paid leave program would be ameliorated if it focused on parents.

If states or other institutions – or even a future Congress – wanted to revisit the question of more expansive paid leave approaches, they would of course be free to do so. But broader approaches to paid leave would require a commensurately larger levels of investment from the federal government at a time of rising federal deficits and high interest rates – a difficult political lift. And these broader benefits would be less precisely targeted.

For example, “comprehensive” leave plans, such as 2019’s FAMILY Act would have devoted the bulk of their benefits to personal sick leave, with less than one-third of total benefits going towards new parents.<sup>3</sup> These situations may garner sympathy, but require a much larger investment and/or a more comprehensive reworking of the relationship between employee and employer than many on the right side of the aisle have appetite for. In contrast, a paid leave focused on parenthood unites politicians, pundits, and policy analysts from across the aisle, and can be achieved for a relatively modest budget outlay.

### **3. Please describe your recommended framework/s, focusing on what you believe could be a bipartisan and passable solution/s to expanding paid leave nationally?**

A society can be fairly judged on how family-friendly it is, including how easy we make it to have a child. With more women than ever before in the labor force, making it easier for new parents to take time off work is a valuable goal that both parties can find value in. A focused proposal, geared at giving new parents some insulation from the demands of the market economy at a time when baby is hardly sleeping through the night, mom is still physically recovering, dad may be caring for them both, and the family’s income has become more variable, can attract support across the aisle.

Focusing on new parents can help give a paid leave program a specific rationale, a built-in constituency, and a well-defined scope. Ideally, it would recognize the specific burdens borne by pregnant mothers and those who have just given birth. As we can all agree, pregnant moms are asked to bear unique physical, psychological, and emotional burdens during pregnancy that their partners do not; their postpartum recovery is similarly more demanding.

Policies that support the act of welcoming new life into the world should not mean downplaying the work of fathers and adoptive parents. They should, however, should recognize the fundamental asymmetry at work in reproduction. The military recognizes this distinction, offering Maternity Convalescent Leave that is available in addition the more general parental leave available to all service members. A federal paid parental leave policy should offer the same approach.

In a 2022 report I authored in collaboration with the Institute for Family Studies, I laid out some back-of-the-envelope math that showed a universal, lump-sum approach to paid parental leave could be accomplished for a modest fiscal outlay. The median weekly wage for a female worker in 2021

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<sup>2</sup> For instance, requiring paid parental leave recipients to provide a birth certificate or certificate of still birth produced by a state’s department of vital records will make a parental leave program virtually impossible to defraud. Expanding the definition of allowable leave could lead to higher enforcement costs in the program

<sup>3</sup> Letter to the Honorable Kevin Brady, re: Budgetary Effects of H.R. 1185, the Family Act," (Feb. 13, 2020), Congressional Budget Office, [https://www.cbo.gov/system/files/2020-02/hr1185\\_2.pdf](https://www.cbo.gov/system/files/2020-02/hr1185_2.pdf)

was \$930. Targeting the equivalent of a wage replacement of 50% for six weeks would provide a maternal benefit of \$2,790, which could either be paid out as a lump sum upon the issuance of a social security number for the child, or as a payroll top-off spread across the pay periods the employee was away from work. Providing such a benefit to all new moms, who just gave birth, with a benefit of half that size provided to dads and adoptive parents, suggests a one-year cost of roughly \$15 billion.<sup>4</sup> Coupling that with a modest expansion of FMLA protections for new parents would guarantee every parent in America some space from the demands of the economy when welcoming a new child – a goal we should all share.

#### **4. Please describe alternative ways any proposed framework can be financed, including possible payfors. What financial mechanisms should be considered to expand paid leave?**

Paying for a large-scale paid leave program would require a large increase of revenue, and all potential sources carry with them related pitfalls. Relying on increases in the payroll tax discourages work and places a burden on employers, particularly small business owners. Raising income taxes is straightforward but poses political challenges. Increasing the corporate tax to pay for paid leave may make some sense – companies, after all, indirectly benefit through a public provision of paid leave – but could cause some to worry about America’s competitiveness. Paying for a large-scale paid leave program through deficit spending would put additional pressure on the ability of monetary and fiscal policy to keep inflation under control, and – some would argue – pass the cost down to future generations who would have less fiscal capacity with which to operate.

All these militate towards a smaller, more targeted program. A \$15 billion annual expenditure ensuring all new parents receive some support would be, for example, just over half of the amount in tax revenue (\$24.7 billion in FY23<sup>5</sup>) forgone by allowing for the deduction of mortgage interest on owner-occupied residences, a tax policy that predominantly benefits high-income households.<sup>6</sup>

#### **5. How can proposed paid leave frameworks avoid creating unintended distortions, such as marriage penalties, reductions of private sector paid leave coverage, etc.?**

From the standpoint of economic theory, while paid leave could reduce some discrimination against women by making it easier for them to remain employed over the long-term, there is also the potential for the inverse outcome: “insofar as part of the costs of these arrangements directly or indirectly trickles down on employers, the demands for female labor (and especially for women of child-bearing age) would be negatively affected.”<sup>7</sup> Mandating employers provide a benefit can lead to increased discrimination and lower wage growth; policymakers should tread with caution.

Providing a modest state-funded benefit, on the other hand, removes the direct cost from employers – especially important to small businesses or non-profit organizations. Indirect costs, like finding

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<sup>4</sup> Patrick T. Brown, “Exploring Parents’ Perspectives on Paid Leave,” Institute for Family Studies and the Ethics and Public Policy Center, March 2023, <https://ifstudies.org/ifs-admin/resources/ifs-paidleavereport-final.pdf>

<sup>5</sup> “Estimates of Federal Tax Expenditures for Fiscal Years 2023-2027,” Joint Committee on Taxation, JCX-59-23 (Dec. 7, 2023), <https://www.jct.gov/publications/2023/jcx-59-23/>

<sup>6</sup> “The Mortgage Interest Deduction: Revenue and Distributional Effect,” Austin J. Drukker, Ted Gayer, and Harvey S. Rosen, Tax Policy Center, August 24, 2018, [https://www.taxpolicycenter.org/sites/default/files/publication/155669/the\\_mortgage\\_interest\\_deduction\\_revenue\\_and\\_distributional\\_effects\\_0.pdf](https://www.taxpolicycenter.org/sites/default/files/publication/155669/the_mortgage_interest_deduction_revenue_and_distributional_effects_0.pdf)

<sup>7</sup> “The Economic Consequences of Family Policies: Lessons from a Century of Legislation in High-Income Countries,” Claudia Olivetti and Barbara Petrongolo, *Journal of Economic Perspectives*, Vol. 31, No. 1, Winter 2017 (pp. 205-30)

and training a replacement, would still be present, and policymakers could look for creative ways to smooth some of those pain points. But a paid leave program that provided straightforward public benefits and a guarantee of short-term job protection would improve options for workers while minimizing the impact on the firm's bottom line. Similarly, ensuring the benefit is modest will avoid crowding out other leave options, allowing firms, unions, and employees to negotiate more generous benefits as they do now.

Policymakers should also be aware that gender-neutral approaches to paid leave have the potential of leaving women worse off, in relation to men. Research into the field of academia finds “the adoption of gender-neutral tenure clock stopping policies substantially reduced female tenure rates while substantially increasing male tenure rates.”<sup>8</sup> The intuition is fairly simple: with paid time away, men can advance faster towards tenure and promotions, while women – who are still physically recovering from giving birth – fall relatively behind. As such, a paid leave design that recognizes the unique burdens on women who give birth would help avoid some of this inadvertent imbalance.<sup>9</sup>

Addressing marriage penalties is similarly straightforward in theory, though can be difficult in practice. Running a paid leave system through a universal, public apparatus allows married and unmarried workers to both benefit; conversely, relying on income thresholds to determine eligibility can lead to scenarios in which beneficiaries would receive more benefits if they were unmarried than if they were married. At the very least, any design must ensure the eligibility thresholds for participants are twice that of those who are single, and do not interact with other features of the tax code or safety net programs to incentivize single parenthood over married.

## **6. Should government support for paid leave be focused only on the most vulnerable individuals in our society, or on all Americans regardless of means or need?**

Paid leave, at one level, is meant to strengthen the tie between employee and employer – in exchange for some relief from the demands of the workplace, the firm (or the state) will provide a little bit of cushion. This assistance, while welcome, can have an unwelcome coercive effect if it alters individuals' decision-making over the long-term. Many pregnant workers stay in unpleasant working situations or are hesitant to change jobs because they fear they will be unable to access benefits in the first months with a new employer. Even FMLA protections, which only guarantee unpaid leave, are not guaranteed until a worker has been with a firm for a year.

As such, paid leave provided outside the employer-employee relationship can expand workers' options. That approach also means that a wider array of parents and would-be parents could be eligible. Under schemes that require individual workers to have hit an earnings requirement or demonstrated a given work history to be eligible for benefits, many parents are left out of the system's benefits – by design.

This means that many parents are ineligible through no fault of their own, or simply because their life circumstances don't fit into a bureaucratic matrix. Those who took time out of the labor force to care for a child; those who were recently students; those who work for unpredictable hours for low

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<sup>8</sup> “Equal but Inequitable: Who Benefits from Gender-Neutral Tenure Clock Stopping Policies?” Heather Antecol, Kelly Bedard, and Jenna Stearns, *American Economic Review*, Vol. 108, No. 9, Sept. 2018, (pp. 2420-41).

<sup>9</sup> A legal precedent for this was established in footnote 4 of the Supreme Court's decision in *Nevada Dept. of Human Resources v. Hibbs* (01-1368) 538 U.S. 721 (2003), which noted that offering 4-8 weeks of maternity leave was the established medical recovery period for normal childbirth and that the Family and Medical Leave Act was not required to be administered in a gender-neutral manner.

pay; those who were recently laid off; or any number of other trajectories that don't fit a typical 40-hour-per-week schedule can be forgotten about in paid leave design. This is not a theoretical concern; one estimate finds that more than half of all potential new moms in Rhode Island would be ineligible for the state's paid leave program.<sup>10</sup>

This is another reason that militates towards a universalist approach to paid parental leave, allowing all parents, regardless of work history or earnings, to claim a modest financial benefit and enjoy a wider degree of job protections. Concerns with other welfare programs, refundable tax credits, or more generous leave approaches are limited in this case; because such a program would be focused on roughly two months around the birth of a new child, it would not create nearly the same risk of dependency or fraud.

A modest federal floor would give states and employers the ability to creatively experiment, while ensuring employees of non-profits and small businesses, many of whom are not even FMLA-eligible, receive some degree of meaningful support without shoehorning them into a model of full-time work many parents say is not their ideal.<sup>11</sup>

## **7. What supports do small and mid-sized businesses need from the federal government to provide paid leave to workers?**

[Response omitted; discussed earlier in Q. 4, 5, and 6.]

## **8. What does research say about the impact of providing paid leave on worker health, job satisfaction, economic mobility, child development, breastfeeding rates and related health outcomes, fertility rate, infant mortality, elderly health, public assistance levels, family income, and recruitment and retention efforts?**

While this question is multi-faceted, I will focus on one specific angle that is relevant, especially given the increasing concern around our nation's record low birth rates. The theoretical relationship between paid leave and fertility rates is far from unambiguous; a model of paid leave that is constructed in a way that assumes full-time work could set up an expectation that parents should be working more intensively than they would otherwise prefer.

If paid leave is contingent on having worked 40 hours a week for a certain length of time, for example, would-be parents may defer having children until they have gained eligibility and establish patterns that place an emphasis on career over family. Of course, by softening the tradeoff between career and having children, paid leave could also lead to more would-be parents feeling freer to take time away from the office knowing they will have more financial and professional support to become a parent.

The research literature has findings in both directions. The research literature on international examples suggests a mixed history for paid parental leave programs on fertility, with many – though

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<sup>10</sup> “Minnesota Parental Leave Plan Excludes Large Minority of Potential Mothers,” Matt Bruenig, People's Policy Project (May 19, 2023), <https://www.peoplespolicyproject.org/2023/05/19/minnesota-parental-leave-plan-excludes-large-minority-of-potential-mothers>

<sup>11</sup> For more on parents' preferences regarding full- and part-time work, see Patrick T. Brown, Five Pro-Family Priorities for the 118th Congress and Beyond: Policies and Public Opinion on Putting Families First, Institute for Family Studies and the Ethics and Public Policy Center, February 2023.

certainly not all – papers suggesting a modest positive impact, particularly for high-income or high-educated couples who are more likely to be facing a trade-off between career success and parenthood.<sup>12</sup>

A more recent working paper, however, showed that the introduction of paid personal time off led to a *decrease* in fertility. The authors speculate that women who had access to paid leave were more able to take the time for visits to doctors and ensure a more effective use of contraception.<sup>13</sup> The authors also note that personal sick leave could reduce the number of births by facilitating access to abortion.

Providing paid personal leave could, of course, have other benefits and the paper is far from the definitive word on the research question. But it does underscore how greater access to paid leave should not, all else being equal, be expected to do much to dramatically increase the U.S.’ record-low fertility rate.

## **9. What lessons should the federal government learn from successful or failed attempts at expanding paid leave in U.S. states or other countries?**

One system that has some interesting lessons for the concerns raised in Q.5 is that of Norway. It offers tremendous flexibility to parents while avoiding some of the pitfalls of an employer-centric design or one that is explicitly gender-neutral. In Norway, maternity leave is reserved for the biological mother who has just given birth, available for the first six weeks after the baby is born. The rest is a combination of maternity, paternity, and joint leave that the couple is largely free to allocate as they see fit. Building in a recognition of the physical demands on new moms is an essential part of a success paid parental leave system.

On the domestic front, research shows that too stringent a work or earnings requirement can prevent many moms, even those who are currently working, from accessing paid leave benefits. More than one-quarter of women aged 18-45 in states such as California, Massachusetts, and Maine would be ineligible for paid family leave.<sup>14</sup> This is a design flaw that future efforts should seek to avoid.

## **10. What other information would you like us to consider as we attempt to chart a bipartisan path forward?**

One final note that hasn’t been foregrounded elsewhere – one common pain point for parents that can sometimes evade focus is the logistical and bureaucratic hassle of having to navigate paid leave through an employer HR system or public benefit with reams of bureaucracy. As I explored in a joint report with EPPC and the Institute for Family Studies, the administrative burden on parents at

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<sup>12</sup> For a recent meta-review, “Can Policies Stall the Fertility Fall? A Systematic Review of the (Quasi-) Experimental Literature,” Janna Bergsvik, Agnes Fauske, Rannveig Kaldager Hart, *Population and Development Review*, Vol. 47, Iss. 4, Dec. 2021, (pp. 913-964). Also see: Rafael Lalive and Josef Zweimüller, “How Does Parental Leave Affect Fertility and Return to Work? Evidence from Two Natural Experiments,” *Quarterly Journal of Economics* 124 (2009): 1363–1402; Anna Raute, “Can Financial Incentives Reduce the Baby Gap? Evidence from a Reform in Maternity Leave Benefits,” *Journal of Public Economics* 169 (2019): 203–22; and Gordon B. Dahl et al., “What is the Case for Paid Maternity Leave?,” *Review of Economics and Statistics* 98 (2016), 655–70

<sup>13</sup> “Does Paid Sick Leave Facilitate Reproductive Choice?” Johanna Catherine Maclean, Ioana Popovici, and Christopher J. Ruhm, NBER Working Paper No. 31801, Oct. 2023, [https://www.nber.org/system/files/working\\_papers/w31801/w31801.pdf](https://www.nber.org/system/files/working_papers/w31801/w31801.pdf)

<sup>14</sup> “Left out: A framework for non-contributory paid parental leave,” Joshua McCabe and David Trimmer, Niskanen Center, Jan. 17, 2024, <https://www.niskanencenter.org/left-out-a-framework-for-non-contributory-paid-parental-leave/>

a time when they can least afford it – preparing for and welcoming the gift of a new child – can cause headaches, missed checks, and more.<sup>15</sup> Any new paid leave program should be intentionally designed to be streamlined, user-friendly, and with a minimum of hurdles to access.

All these considerations suggest the type of targeted, modest intervention outlined throughout this response. But however Congress tackles the important issue of paid leave, I look forward to engaging with the process and hope these brief responses have provided some food for thought.

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<sup>15</sup> “Exploring Parents’ Perspectives on Paid Leave,” Patrick T. Brown, Institute for Family Studies and the Ethics and Public Policy Center, (March 2023), <https://ifstudies.org/ifs-admin/resources/ifs-paidleavereport-final.pdf>