



BUILDING A PAID LEAVE PROGRAM FOR LOUISIANA

By: Taly Bialostocki

WEBSITE

labudget.org

ADDRESS

619 Jefferson Hwy. Ste 1-D
Baton Rouge, LA 70806



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Summary of Key Recommendations

The United States is the only major industrialized nation in the world that fails to provide paid family leave benefits to its workers. Groundbreaking at its time, the Family and Medical Leave Act (FMLA), passed in 1993, does not go far enough in meeting the needs of hard working families. In the absence of a national paid leave policy, Louisiana has an opportunity to join the growing number of states that have enacted paid leave programs to help make sure that health setbacks don't become financial catastrophes for workers living paycheck to paycheck.

The vast majority of workers in Louisiana do not have access to paid family leave, and those who do are far more likely to be among the highest wage earners. Louisiana has an opportunity to draw on lessons learned from around the world and create a paid leave program that provides a meaningful benefit for workers across the income spectrum.

This brief lays out the policy options available at each step in building a paid leave program, from determining eligibility and benefit levels to possible structures for funding and administration. In order to ensure workers and families benefit the most, policy makers should:

- *ensure the program is available to all workers regardless of firm size, sector and full-or part-time status;*
- *provide job protection for those taking leave and strong prohibitions against retaliation;*
- *employ a progressive wage replacement model that provides meaningful benefits to low-wage workers;*
- *allow for both caregiving and personal disability among qualifying events;*
- *employ a broad definition of family member in line with modern family structures; and*
- *use a social insurance model funded by employer and employee contributions administered by the state.*

These recommendations, when taken together, would help families build and preserve economic security through difficult times of serious illness and joyful times when caring for a new baby. An investment in paid leave is an investment in the future of Louisiana.

Part I: The Need for Paid Leave

Every worker in Louisiana can face life events that must take priority over work. The most diligent, organized, and health-conscious worker can be blindsided by illness. Caregivers who depend on each paycheck to make ends meet can be pulled away from work as a result of family illness. And Louisianans from all walks of life who aspire to raise healthy families must find time to care for new babies and children. When these life events happen, paid leave can help Louisianans weather the economic hardship of missing work, achieve better health outcomes, and avoid the downward spiral of economic insecurity that too often accompanies unpaid time away from work.

A paid leave program with job-protection and non-retaliation benefits is especially important for workers who cannot secure job-protected leave under the federal Family and Medical Leave Act (FMLA) or other statutes. An estimated 40 percent of American workers are not eligible for FMLA benefits,¹ including those who spread full-time work schedules across multiple employers but fail to meet the hours-of-service requirement with a single employer.² Additionally, an estimated 65 percent of Louisiana workers are either ineligible for FMLA or

¹ Pronita Gupta, Tanya Goldman, Eduardo Hernandez, and Michelle Rose, "Paid Family and Medical Leave is Critical for Low-wage Workers and Their Families" (CLASP December 2018), p. 2, https://www.clasp.org/sites/default/files/publications/2018/12/2018_pfmliscriticalfor_0.pdf.

² U.S. Department of Labor, Wage and Hour Division, "Fact Sheet 28: The Family and Medical Leave Act," <https://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.

simply cannot afford to take unpaid time off work.³ Paid leave can help ensure that Louisianans do not fall between the cracks of FMLA and state pregnancy leave statutes, and make sure that fewer Louisiana workers suffer setbacks while they treat an illness or care for their families.

Louisiana Working Families by the Numbers

71% Households with children in which all parents work (733,383 households)

35% Working adults estimated to be eligible for and able to afford unpaid leave under FMLA

Mothers serving as key family breadwinners: **82%** Black **50%** Latina **46%** White

660,000 Louisianans who serve as family caregivers

676,281 Workers in Louisiana who cannot earn a single paid sick day

I.A. Costs of inadequate leave to employees and families

For Louisiana workers, the costs of inadequate leave range from inconvenient to devastating. Poor or no access to paid leave force workers into impossible choices between their health and family care obligations on the one hand and their responsibilities as earners on the other. For low-wage workers in particular, who are the least likely to have access to paid leave, choosing health or family responsibility often leads to unpaid absences from work and economic hardship, including job loss, missed bill payments, food insecurity and other suffering, while prioritizing work can cause them to miss medical appointments and delayed treatments, with potentially cascading health consequences for themselves and their families.⁴ Employees faced with missing work or missing important personal and caregiving responsibilities have no good options. And this problem is widespread: a national survey conducted by Oxfam in 2007 found that 1 in 7 American workers reported losing a job because of “getting sick or caring for a child or parent.”⁵ While other states have since enacted paid leave policies, Louisiana has not.

The effect of inadequate leave policies on Louisiana workers cannot be taken lightly. Recent polling shows 62 percent of Louisianans have experienced financial hardship due to unpaid leave.⁶ It is no wonder an overwhelming majority of Louisianans -- 82 percent -- support enacting a national paid leave policy.⁷ But because Congress has failed to act on a national policy, the onus is on states to make sure workers are protected from life’s surprises.

³ Institute for Child, Youth and Family Policy at The Heller School for Social Policy and Management, Working Adults Who Are Eligible For and Can Afford FMLA Unpaid Leave (2015): <http://www.diversitydatakids.org/data/ranking/529/working-adults-who-are-eligible-for-and-can-afford-fmla-unpaid-leave-share/#loct=2&cat=44,25&tf=17%3B>

⁴ “Paid Family and Medical Leave is Critical for Low-wage Workers and Their Families,” see note 1, above; see also Liz Ben-Isai, “Wages Lost, Jobs at Risk: The Serious Consequences of Lack of Paid Leave” (February 13, 2015), <https://www.clasp.org/sites/default/files/publications/2017/04/2015-02-03-FMLA-Anniversary-Brief-3.pdf>.

⁵ Oxfam America, “Hard Work, Hard Lives,” 2013, p. 4, <http://www.oxfamamerica.org/static/media/files/low-wage-worker-report-oxfam-america.pdf>.

⁶ PL+US (Paid Leave for the U.S.), “Polling Shows Broad, Bipartisan Support for Paid Leave in Louisiana: 82% of Louisiana Voters Support National Paid Family and Medical Leave,” Press Release (Nov. 1, 2018). Figure 3 https://drive.google.com/file/d/1fyioV0GpyAT-lcGREkWOI_nscvd88c2z/view

⁷ “Polling Shows Broad, Bipartisan Support for Paid Leave in Louisiana,” see note 6, above.

Ample academic literature details the medical and public health benefits of family leave policies, especially for parents and babies. Paid time off for new parents leads to lower infant and child mortality, higher birth weight, more well-baby visits, more complete immunizations, better parent-infant bonding and other benefits to parents and children.⁸ So, it is hard to avoid asking: Has an inadequate system of leave contributed to Louisiana’s poor maternal and child health outcomes? Louisiana is a regrettable leader in low birthweight and preterm births,⁹ a situation state leaders have recognized and have begun to address.¹⁰ Women in Louisiana have access to paid parental leave at levels well below the national average: Sixty-five percent of new mothers in Louisiana reported not having access to paid parental leave, compared with 55 percent without access nationally.¹¹ More robust parental leave policies must be part of the conversation about ensuring the health of Louisiana babies and improving the state’s infant health rankings, especially for Black Louisianans who disproportionately bear the brunt of poor infant health outcomes.¹²

Paid leave has the potential to benefit a diverse group of workers and families—spanning income levels, ages, genders, racial, ethnic, and religious backgrounds. While medical or family needs that force workers to miss work and lose pay hit the working poor and those already in poverty the hardest, they are far from alone in needing paid leave benefits. Policymakers must keep in mind the potential of paid leave *to prevent* poverty and economic insecurity for those who are precariously holding onto their place in the middle class.¹³ Research shows that new mothers in states without paid leave programs report participating public assistance programs at more than twice the rate of new mothers in states with paid leave programs.¹⁴ Additionally, medical reasons are a significant factor in many personal bankruptcies affecting middle-class Americans,¹⁵ underscoring the importance of holding onto a stream of income during times of personal and family illness.

I.B. Costs of inadequate leave to employers and the state economy

Louisiana’s employers, too, bear the costs of an inadequate system of paid leave. The U.S. Department of Labor estimates that the U.S. economy misses out on \$500 billion per year due to the effects of inadequate paid leave

⁸ Curtis Skinner and Susan Ochshorn, “Paid Family Leave: Strengthening Our Families and Our Future,” (National Center for Children in Poverty, April 2012) p. 5, http://www.nccp.org/publications/pdf/text_1059.pdf.

⁹ “State Summaries Louisiana, 2018 Health of Women and Children Report,” America’s Health Rankings <https://www.americashealthrankings.org/learn/reports/2018-health-of-women-and-children-report/state-summaries-louisiana>.

¹⁰ E.g., Pub. L. No. 497 (2018) (establishing Healthy Moms, Healthy Babies Advisory Council), <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1102017>, signed May 30, 2018, <http://gov.louisiana.gov/news/notice-bills-signed-by-gov-edwards-May-30-2018>.

¹¹ Phyllis Hutton Raabe and Katherine P. Theall, “An Analysis of Paid Family and Sick Leave Advocacy in Louisiana: Lessons Learned,” *Women’s Health Issues: Official Publication of the Jacobs Institute of Women’s Health* 26, no. 5 (October 2016), pp. 488-95, p. 489-90.

¹² Henry J. Kaiser Family Foundation, “Louisiana: Health Status, State Health Facts,” <https://www.kff.org/state-category/health-status/?state=LA>,

¹³ “Paid Family and Medical Leave is Critical for Low-wage Workers and Their Families,” p.1, see note 1, above.

¹⁴ Linda Houser and Thomas P. Vartanian, “Policy Matters: Public Policy, Paid Leave for New Parents, and Economic Security for U.S. Workers,” Center for Women and Work at Rutgers, The State University of New Jersey (April 2012), http://go.nationalpartnership.org/site/DocServer/RutgersCWW_Policy_Matters_April2012.pdf

¹⁵ Himmelstein, Thorne, Warren, and Woolhandler, “Medical Bankruptcy in the United States,” *The American Journal of Medicine*, 2007, <http://cohealthinitiative.org/sites/cohealthinitiative.org/files/attachments/warren.pdf>.

policies on women’s labor force participation.¹⁶ In addition, the economic security families can build when they have the “safety net” of paid leave may generate other benefits for the state, such as lower costs for other public benefit programs that would otherwise be needed to support people who lose work because of illness or conflicting family responsibilities.¹⁷ Whether it is through absences, high turnover, or worker dissatisfaction, the current system of inadequate benefits neither serves the best interests of employees, nor of employers.

\$500 billion

The amount the U.S. economy misses out on each year due to the effects of inadequate paid leave policies on women’s labor force participation.

Louisiana can do better.

Part II: Policy Options

“Paid leave” is a broad term that could encompass various policy options. As the name suggests, paid leave is a policy of wage replacement that takes effect when workers miss work and do not receive their usual compensation. “Paid family leave,” “paid sick days,” “temporary disability programs,” and “parental leave” are all forms of paid leave.

At times, the names applied to different policies can obscure their key features. For example, policies labeled “paid family leave” and those labeled “paid sick days” both commonly cover personal sickness *and* family caregiving among the qualifying events.¹⁸ Though not obvious from their labels, “paid family leave” and “paid sick days” typically differ in how long the leave lasts and who administers the benefits: longer, state-administered benefits generally fall under the label “paid family leave” and shorter, employer-administered benefits generally fall under the label “paid sick days.” This report addresses the general category of paid leave, with a focus on the longer-term, state-administered paid leave programs that have gained traction in state legislatures in recent years.

In states that have implemented paid leave policies, the leading models are not mandates for employers to provide paid time off on their own, but state-administered programs that use contributions from workers, employers or both to fund full or partial salary-replacement for qualified time away from work. Based on available reporting, these programs enjoy employer support, especially among small businesses.¹⁹ Several states rely on employee- and employer-contributions to establish dedicated funds that can be used to pay benefits without dipping into general government revenues. This is often referred to as a “social insurance” model because the employee- and employer-contributions serve as “premiums” that are pooled to fund the coverage

¹⁶ U.S. Department of Labor, “The Cost of Doing Nothing: The Price We All Pay Without Paid Leave Policies to Support America’s 21st Century Working Families,” (September 2015), p. 29 <https://www.dol.gov/wb/resources/cost-of-doing-nothing.pdf>.

¹⁷ Sarah Jane Glynn, “Administering Paid Family and Medical Leave,” (November 2015) p. 3. <https://www.americanprogress.org/issues/economy/reports/2015/11/19/125769/administering-paid-family-and-medical-leave/>

¹⁸ National Partnership for Women and Families, “Paid Sick Days – State and District Statutes” (Updated October 2018), <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-statutes.pdf>. The policies that allow “sick days” to be used for family caregiving and other purposes are sometimes called “flexible use of sick time.” National Partnership for Women and Families, “Raising Expectations: A State-by-State Analysis of Laws That Helps Working Family Caregivers (September 2018), p. 4, <http://www.nationalpartnership.org/our-work/resources/workplace/raising-expectations-2018.pdf>.

¹⁹ Ann Bartel et al, “California’s Paid Leave Law: Lessons from the First Decade” (U.S. Department of Labor, June 23, 2014), p. 7; *see also* Hearings before the Subcommittee on Labor, Health and Human Services, and Education, and Related Agencies, of the Committee on Appropriations, Senate, 114th Cong. (March 26, 2015) (Testimony of the Hon. Thomas Perez, Secretary, Department of Labor), <https://www.govinfo.gov/content/pkg/CHRG-114shrg59104624/html/CHRG-114shrg59104624.htm> .

benefits that only a portion of the workforce takes in any given year. One reason that this model may be particularly common and well-received is because it represents a middle ground that meets critical state needs without falling prey to some of the criticisms that come with new employer mandates and new entitlement programs.²⁰

Paid Leave vs. “Maternity Leave”

Another common misconception is confusing paid leave for “maternity leave.” Though the benefits of paid leave to newborns and their mothers have been well documented, they are not the only workers and family members with personal and caregiving needs that benefit from time off. Fathers, domestic partners, adoptive parents and guardians need time off to play a role in caring for newborns and their families. Caregiving needs extend to many other family members – including biological, foster and adoptive toddlers and older children, spouses and domestic partners, parents, stepparents, parents-in-law, siblings and their spouses or partners, as well as the individual worker’s self-care. The high rate of medical bankruptcies – approximately 62% of homeowners’ personal bankruptcies in 2007 – is just reminder that breadwinners themselves can get sick, with devastating effects. Other circumstances that demand time off and should not be overlooked include personal care needs in wake of domestic violence, displaced caregiving responsibilities that arise from military orders, and other exigencies. While pregnancy and parental leave may be among the most well-known examples of paid leave use, there are a wide array of other circumstances that give rise to important personal and caregiving responsibilities.

There are good reasons that the social insurance model is the most popular structure for paid leave policies, but other models may have benefits that should not be overlooked. Paid leave can take many forms—from minimum leave requirements administered by employers to government-administered benefit programs, along with various mixed models. As consensus builds around the state around the need for some form of paid leave policy, Louisiana lawmakers will need to consider four main questions:

- Which workers are eligible for paid leave benefits?
- What duration and percentage of wage replacement are workers eligible for?
- Who will pay for the paid leave program?
- Who will administer the paid leave program?

This report addresses the key questions outlined above as well as various related policy and drafting considerations.

II.A. ELIGIBILITY: Which workers are eligible for paid leave benefits?

Eligibility for paid leave benefits typically depends on two factors—whether the worker qualifies based on his or her employment status (e.g. working for a sufficient number of hours in the prior year) and whether the worker has experienced a qualifying event that triggers coverage (e.g. personal or family member health need). Subsections II.A.i and II.A.ii, below, discuss these factors and argue for broadly covering Louisianans who would be adversely affected by missing a paycheck.

II.A.i. Qualifying events

A broad range of qualifying events could trigger the need for paid leave, including personal health and medical treatment,

family care needs (including birth and adoption of new babies), military orders, domestic violence, and public

²⁰ The social insurance model is the most common way leave is structured internationally. “Administering Paid Family and Medical Leave,” p. 12, see note 17, above. Notably, leading conservative and liberal thinkers in the United States have come together in support of paid parental leave and acknowledge the importance of discussing other forms of medical and caretaking leave. AEI-Brookings Working Group on Paid Family and Medical Leave, “Charting a Path Forward” (September 2018), p. v <http://www.aei.org/publication/the-aei-brookings-working-group-report-on-paid-family-and-medical-leave/>.

health emergencies. Maintaining a broad definition of “qualifying event” and a broad definition of “family member”²¹ helps ensure those who need leave are able to take it .

II.A.ii. Covered workers

Because every worker in Louisiana could face personal or caregiving needs that conflict with work, paid leave benefits should be available to all Louisiana workers with limited exceptions, and should be available regardless of workers’ background, age, gender, and job duties.

By structuring a paid leave policy as a state-administered benefit (as discussed in Section II.D.i, below), policymakers can provide paid leave coverage to employees without regard to the size or identity of their employer. A state-administered benefit would also ensure that workers can take the leave they need even when they transition from one employer to another. Under a state-administered program, any employee who can document the required workforce participation in the prior year, whether it is through one job or multiple jobs, can secure benefits.²²

It is more common for paid sick day policies than state-administered paid leave policies to exclude workers from eligibility based on the size or identity of the employer.²³ Some limitations and exclusions from eligibility may be a political or practical necessity for enacting policies that benefit a large and diverse population of workers, and could represent a starting point that the state could build upon in the future. Nevertheless, policymakers should think carefully before advancing policies that leave some Louisianans without the benefits the paid leave policy aims to advance.

Self-employed workers who are both “employee” and “employer” also face special circumstances that lawmakers should consider when crafting paid leave programs. Effective paid leave policies are ones that allow self-employed workers to opt into (or out of) state paid leave programs, with some limitations on the frequency of opting in (and out) to avoid adverse selection in the insurance pool.

II.B. BENEFIT LEVELS: What percentage and duration of wage replacement can workers expect?

Policies implemented in other states give Louisiana lawmakers useful models to draw upon in developing a paid leave policy. Several states have developed robust paid leave programs that provide multiple weeks of wage replacement benefits. They offer Louisiana lawmakers examples of different rules and formulas for determining the payments each worker is eligible to receive. Subsection II.B.i looks at ways to structure the duration of benefits—including the total amount of paid time off available to workers in an application year, the time available for specific qualifying events, and concurrent and sequential benefits coverage from other sources. Subsection II.B.ii examines ways to structure the wage replacement level—including examples of average weekly wage rates from other states, wage caps, progressive wage replacement scales, and methods for calculating average weekly wages (including base period determination).²⁴

Some states without robust paid leave programs require employers to provide a certain number of paid sick days to employees (often accrued at a rate of one hour for every 40 hours of work).²⁵ These policies provide

²¹ A bill proposed in 2015 would have extended caregiving benefits to “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” Louisiana Senate Bill 84 (2015), p.3/20. <https://www.legis.la.gov/legis/ViewDocument.aspx?d=934055>

²² “State Paid Family and Medical Leave Insurance Laws,” National Partnership for Women and Families, February 2019, <http://www.nationalpartnership.org/our-work/resources/workplace/paid-leave/state-paid-family-leave-laws.pdf>.

²³ “Paid Sick Days -- State and District Statutes,” see note 18, above.

²⁴ “State Paid Family and Medical Leave Insurance Laws,” see note 22, above.

²⁵ “Paid Sick Days – State and District Statutes,” see note 18, above.

limited, but needed, wage-replacement protection to workers facing personal or family illness. While sick days benefits are typically shorter in duration than the programs discussed in II.B.i and II.B.ii., a disadvantage in the cases of childbirth or extended illness, they also offer some advantages to workers. Under a sick days policy, each day's wages are paid in full (not a percentage) and payments, which are folded into the pay periods of a worker's time off, are not subject to delays. For many Louisiana workers who currently have no paid sick days, disproportionately people of color,²⁶ passing a paid sick days policy would provide a meaningful benefit.²⁷

For both robust and more limited paid leave policies, job-protection and non-retaliation requirements are essential. These provisions help ensure that employers cannot evade a policy's requirements by terminating employees who qualify for paid leave. Because not all workers are eligible for job-protection under the FMLA or Louisiana's Pregnancy Disability Law, paid leave legislation should address this topic explicitly.²⁸

II.B.i. Duration

State paid leave policies vary in the number of weeks they allow employees to receive wage-replacement benefits over the course of a year. Washington state and Massachusetts, two of the most recent states to establish paid leave programs, typically cap benefits at 12 weeks but allow as many as 18 to 26 weeks of leave in certain circumstances.²⁹ The 12-week structure aligns with the 12 weeks of job-protected leave available to some workers under the federal Family and Medical Leave Act.³⁰

II.B.i.a. Duration per qualifying event

State programs may also identify different amounts of leave that are allowed for different qualifying events. For example, California allows 52 weeks of paid leave for the employee's own disability and only six weeks for family care. Similarly, Rhode Island allows 30 weeks for the employee's own disability and only four weeks for family care. Another relatively recent program, enacted in Washington D.C., only allows two weeks for an employee's own health condition, six weeks for family care, and eight weeks for parental leave.

The examples above identify the maximum benefit available to workers, but many workers are expected to take less than the maximum allowed leave, depending upon their individual circumstances. The maximum leave available should be rooted in generally available evidence regarding recovery time for medical conditions and other qualifying events, and should be long enough to allow individuals to take sufficient time away from work, given their particular needs.³¹ Lawmakers may want to avoid setting up a complex patchwork of different leave durations to cover different qualifying events, as such a system could prove more difficult to administer and harder for workers to navigate.

II.B.i.b. Relationship of state-established paid leave to other benefits

A state-established paid leave policy should not prevent employers from offering more generous benefits to their employees (for example, additional weeks of paid leave or fuller wage-replacement levels). But instituting a

²⁶ Institute for Women's Policy Research, "Access to Paid Sick Days in Louisiana," Briefing Paper IWPR #B346 (March 2015), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B346%20Louisiana%20Access%20Rates.pdf>.

²⁷ See also "An Analysis of Paid Family and Sick Leave Advocacy in Louisiana: Lessons Learned," at note 11, above.

²⁸ See text accompanying note 1, above, and "Paid Family and Medical Leave is Critical for Low-wage Workers and Their Families," at note 1, above. See also La. Rev. Stat. Ann. Sec. 23:341-342, <http://legis.la.gov/legis/Law.aspx?d=83884>.

²⁹ RCW 50A.04.020(3)(c), <https://app.leg.wa.gov/RCW/default.aspx?cite=50A.04.020>; Chapter 175M, Section 2(c)(1), <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>.

³⁰ See Fact Sheet 28: The Family and Medical Leave Act, at note 2, above.

³¹ Details regarding submissions of documentation may be addressed further in administrative rulemaking.

state paid-leave policy raises a number of questions about the relationship between the new benefits structure and other existing benefits or employer-sponsored benefits that may be developed in the future.³² In particular, lawmakers should consider whether paid leave benefits may – or must – be taken at the same time as other benefits. Questions that legislation would need to resolve include:

- May employers require employees to draw on other benefits – such as paid sick days – before taking state-established paid leave?
- May employees draw on state-established paid leave at the same time they draw on other sources of income from employer benefits?
- May employers count the time that employees draw on state-established paid leave benefits toward the job-protected leave mandated under the FMLA (if available), or would the state program extend the possible duration of leave beyond the FMLA’s 12 weeks for workers who are eligible for both?
- May employees work a reduced schedule while drawing benefits?

II.B.i.c. Minimum leave duration

Some states have established a minimum number of hours that employees must claim as leave – such as 8 consecutive working hours³³ – for leave benefits to be available. An hours minimum may have the administrative benefit of reducing the number of small benefit payments that need to be processed. But this benefit must be weighed against the worker’s need for wage replacement, even in relatively short increments, for example, to replace wages lost for taking part of a day off work to go to the doctor.

Lawmakers should also consider how minimum leave requirements relate to intermittent leave. Intermittent leave is a series of related absences that may not be full, consecutive days (for example leaving early on certain days of the week to attend a multi-week course of medical treatments). Paid leave policies should be as flexible as possible without creating a level of complexity that administrators cannot manage, so that workers whose health or caregiving responsibilities require limited, ongoing work absences don’t suffer an additional disadvantage.

II.B.i.d. Waiting periods and grace periods before payment

Some states have established waiting periods before a worker may draw upon paid leave benefits. The justification for such periods is questionable: If workers cannot afford to take a day without pay, they also can’t afford to wait for their benefits claim to be processed. Nevertheless, a grace period for the state to process a claim and disburse payment may be an administrative necessity in some circumstances. State paid leave policies need to provide for reasonable administrative timing and anticipate the possibility of delays. But requiring employees to wait for payment as a matter of policy, jeopardizes the effectiveness of a paid leave program meant to replace the wages of workers who are adversely affected by missing a paycheck. Policy solution for this problem exist: New Jersey recently eliminated its one-week waiting period, making that state’s leave policy more accessible and more effective for workers living paycheck-to-paycheck.³⁴

II.B.ii. Wage replacement level

³² See notes 46-47, below, and accompanying text.

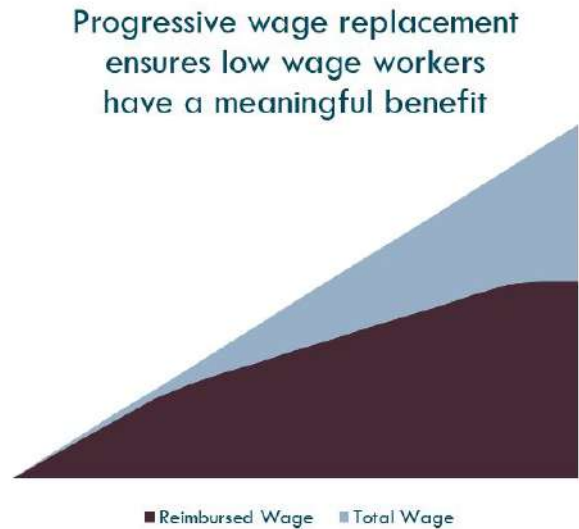
³³ “State Paid Family and Medical Leave Insurance Laws,” see note 22, above.

³⁴ Pub. L. 2019, c. 37, https://www.njleg.state.nj.us/2018/Bills/A4000/3975_S2.PDF, approved Feb. 19, 2019, <https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A3975>.

In general, state paid leave programs don't replace the full wages of an employee who must take time away from work. Instead, state programs typically reimburse a percentage of the worker's average weekly wage, subject to a cap that ensures benefits paid to the highest earning workers do not drain program funds.

II.B.ii.a. Fixed percentage and progressive replacement levels

In the states that have enacted robust paid leave programs, benefits correspond to workers' wages, but do not reimburse lost wages in full. States can establish a fixed percentage with a wage cap, for example, 66% of average weekly wages, so that each worker is paid the fixed percentage of his or her wages until that percentage exceeds the state cap, at which point the worker is paid at the cap level. Alternatively, some states have adopted graduated (progressive) reimbursement scales that provide lower-wage workers with a higher percentage of their average weekly wage.³⁵ Like a cap, progressive reimbursement scales help ensure program funds are not drained by replacing the wages of the highest wage workers. By increasing the available reimbursement percentage for lower wage workers, progressive reimbursement scales also have the potential to help ensure those most in need of wage replacement can afford to take leave. Policymakers must keep in mind that if the wage replacement level is too low, workers — particularly those employed in low-wage jobs — may not be able to afford to access it.³⁶



States have developed different methods for determining and indexing the appropriate cap. In general, they look to state wage data to understand how much a typical worker is paid. Though these methods may not identify exactly what workers *need* to make ends meet, they can help ensure there is some relationship between contributions that fund the paid leave program and the amounts it pays out. Establishing some method of indexing, or increasing the maximum benefit from year to year, is important to ensure benefit levels keep up with inflation. Lawmakers may benefit from detailed modeling and actuarial analysis in structuring a wage replacement model.

II.B.ii.a. Base period for calculating average wage

In order to determine the appropriate benefits payment amount, program administrators need some method to determine a worker's average wage. Some states rely on the prior year's earnings to determine the average wage. States may use other methods to define a relevant period of time during which the worker was employed and receiving wages (often called, the "base period").³⁷ One interesting example comes from Rhode Island, which looks to four of the five most recent calendar quarters preceding the application for benefits to determine the rate it pays in temporary disability benefits.³⁸ Averaging wages over several months helps ensure that recent fluctuations do not have disproportionate effects on a worker's wage replacement rate. States can adapt Rhode

³⁵ "State Paid Family and Medical Leave Insurance Laws," see note 22, above.

³⁶ "Administering Paid Family and Medical Leave," p.6, see note 17, above.

³⁷ Base period can also be used to determine eligibility and figure out when the clock resets on annual leave maximum.

³⁸ Rhode Island Department of Labor and Training, "Temporary Disability Insurance/Temporary Caregiver Insurance, Frequently Asked Questions" (Question 4) <http://www.dlt.ri.gov/tdifaqs.htm>.

Island’s method to select the highest paid quarter of the prior year and help ensure that workers with irregular work schedules are able to draw benefits that correspond to their period of fullest employment.

II.C. FUNDING SOURCES: Who pays to fund the program?

Paid leave programs could be funded in various ways, including employer contributions, employee withholding, general government revenues or a mix of funding sources. There is widespread support in Louisiana for paid leave, and a plurality of poll respondents support a mixed employee-/employer-funded program, a model that has seen success in other states.³⁹

II.C.i. Employee- and employer- contribution options

The leading paid leave programs in other states rely upon employee-payroll deductions, employer contributions, or both. If Louisiana chooses to enact a mixed employee-/employer-funded paid leave program, policymakers will need to decide the following issues:

- the percent of average weekly wages deducted
- the employee’s and employer’s relative shares of that deduction
- whether to include wage caps to limit contributions of higher paid workers, corresponding to benefit caps, and
- whether to exclude certain employers from the contribution requirement.

In other states, employee payroll deductions typically hover around 1% of average weekly wages.⁴⁰ For higher income earners, the deduction may apply to only a portion of income earned (e.g., the first \$114,967 in wages in California). Though the amount of a benefit cap may not precisely correspond to the amount of income subject to deductions, this limitation on deductions helps protect higher income workers from paying into the program based on wages that the program would not replace.

States with joint employee-/employer-funding can excuse small employers from contributing, though their employees contribute and are eligible to receive benefits.⁴¹ Even if small employers are not required to participate in the program, policymakers should consider allowing small employers to opt in to the program by paying premiums and should consider what technical assistance or other incentives might encourage small businesses to do so.

One challenge to establishing a new paid leave program funded through employee- and employer-contributions in Louisiana may be the charge that such a program would amount to a new tax and therefore would need supermajority approval for passage. This could be avoided by drawing upon state general fund revenues, as addressed in subsection II.C.ii, instead of creating a new dedicated stream of employee- and employer-contributions.

But lawmakers may also wish to consider whether establishing a dedicated fund to support paid leave benefits through employee- and employer- premiums necessarily constitutes a tax. We would argue that employer and employee contributions to a dedicated paid leave fund should not be considered a tax if the government does not *require premiums be collected* and does not take those funds into state coffers. Policymakers may want to consider whether a paid leave program could be established without any new taxes, by requiring employers to

³⁹ “Polling Shows Broad, Bipartisan Support for Paid Leave in Louisiana,” see note 6, above.

⁴⁰ “State Paid Family and Medical Leave Insurance Laws,” see note 22, above.

⁴¹ E.g. Employment Security Department of Washington State, Small Business Information, <https://esd.wa.gov/paid-family-medical-leave/smallbusiness>.

provide certain benefits (and perhaps authorizing employers to withhold a certain amount from consenting employees under certain circumstances).⁴² This approach differs fundamentally from the “social insurance” model described above. There is no doubt this path would require some careful and thoughtful structuring and drafting to address concerns related to leaving financial and administrative responsibility with employers⁴³ and concerns related to triggering a tax designation.

II.C.ii. State revenue sources

A less common but still plausible model for funding leave benefits relies on general government revenues to fund leave benefits. Lawmakers may need to look to international examples to see how these models operate. One interesting model is Australia’s system of paid leave. Though Australian wage replacement benefits are publicly funded, the payments are administered by employers who draw on the efficiencies of their existing payroll processing systems and are later reimbursed by the national treasury.⁴⁴ Such a model offers substantial benefits in the timeliness of benefit payments to employees.

By relying on general government revenues, lawmakers may trade the complexities of passing new revenue bills for challenges of balancing the state budget. In addition, considering this program as part of the state budget may provide a broader context that enables lawmakers to step back and consider the state’s overall revenue needs, drawing⁴⁵ upon the tax and budget recommendations of the Task Force on Structural Changes in Budget and Tax Policy.

II.D. ADMINISTRATION: Who is responsible for administering the program?

II.D.i. State administration

States with robust paid leave programs have empowered state agencies to administer the benefits system, including managing a dedicated pool of funds, processing applications from eligible employees, and paying out benefits. Early discussions of paid leave policy in Louisiana considered charging the Louisiana Workforce Commission with this responsibility.

Some state paid leave programs have been built on the underlying infrastructure of state-administered temporary disability insurance programs. As Louisiana does not have an existing temporary disability insurance program, lawmakers may consider whether some parts of the state’s unemployment insurance policy provide a helpful foundation for a new paid leave program. In addition, Washington state, which enacted a paid leave policy that is in its early implementation phases, may⁴⁶ provide a useful model for Louisiana. Washington’s program did not rely heavily on prior benefit structures⁴⁶ and as such it presents the relationship between the new paid leave benefits and prior unemployment, workers’ compensation and other benefit programs in detail.

⁴² In other words, consenting employees could help fund the purchase of a group insurance plan, similar to the way many employers deduct premium contributions for employee health plans, provided they are not required to make contributions without consent. Note, however, employer participation would not necessarily be voluntary, as a voluntary structure could defeat the safety-net goals of the program.

⁴³ “Administering Paid Family and Medical Leave,” p. 9 (describing concerns arising from international example), *see note 17, above*.

⁴⁴ “Administering Paid Family and Medical Leave,” p. 11, *see note 17, above*.

⁴⁵ Task Force on Structural Changes in Budget and Tax Policy, Louisiana’s Opportunity: Comprehensive Solutions for a Sustainable Tax and Spending Structure (Final Report January 27, 2017), <http://revenue.louisiana.gov/Miscellaneous/FINAL%20REPORT%20-%20Task%20Force%20on%20Structural%20Changes%20in%20Budget%20and%20Tax%20Policy%20FINAL%20WEB%20VERSION.pdf>.

⁴⁶ *See* RCW 50A.04.225, <https://app.leg.wa.gov/RCW/default.aspx?cite=50A.04>.

⁴⁷ In drawing on other state models, Louisiana policymakers will need to take care to accommodate specific nuances of Louisiana law and determine how to best serve the people of this state.

II.D.ii. Private administration

State administration is not the only option for administering paid leave benefits. Another option relies on employers' existing or enhanced pay and benefits processing infrastructure. One instructive model is Hawaii's temporary disability insurance program (not often recognized among paid family leave programs). Hawaii employers rely on private insurance and benefits providers to support and administer this system.⁴⁸ If Louisiana were to implement this model, employers would process benefit payments in a manner similar to their usual wage payment processing, subject to the requirements of state policy.

II.E Other Considerations

Lawmakers developing a paid leave program will need to consider various other issues, including outreach, enforcement, tax treatment of the benefits, and the timing of premium collection and implementation. By addressing these topics at the outset of developing a new paid leave program, lawmakers can build a policy that employees and employers understand and whose benefits they are ready to utilize.

PART III: Conclusion

Louisiana can do better for employees, employers, and families, who bear the costs of the today's inadequate system of paid leave. Lawmakers will need to consider various policy questions related to eligibility, benefit levels, funding, administration, and implementation. With input from diverse stakeholders, Louisiana's lawmakers can establish a robust paid leave program to address the economic hardship and personal health consequences of missing a paycheck or losing work to attend to personal and family needs. Even without a robust paid leave program, Louisiana can provide a meaningful benefit to workers by requiring employers to provide a limited number of paid sick days each year.

About the Author

Taly Bialostocki is a consultant assisting non-profits that advance progressive policies and programming. She has challenged barriers to success in a range of state policy debates: from foster care and juvenile justice to family economic security. Taly is a member of the Washington bar, experienced technology lawyer, and resident of New Orleans, Louisiana.

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⁴⁷ RCW 50A.04.240-260, <https://app.leg.wa.gov/RCW/default.aspx?cite=50A.04>.

⁴⁸ Specific products would need to be developed for the Louisiana insurance market. "Administering Paid Family and Medical Leave," p.11, *see note 17, above*. *See also*: State of Hawaii, Disability Compensation Division, Frequently Asked Questions - TDI, <http://labor.hawaii.gov/dcd/frequently-asked-questions/tdi/>.