



Billing Code 4510-HD

DEPARTMENT OF LABOR

RIN 1290-ZA03

Request for Information; Paid Leave

AGENCY: Women's Bureau, U.S. Department of Labor.

ACTION: Request for Information.

SUMMARY: The Department of Labor (Department) seeks information from the public regarding paid leave. For purposes of this Request, paid leave refers to paid family and medical leave to care for a family members, or for one's own health.

The Department is publishing this Request for Information (RFI) to gather information concerning the effectiveness of current state- and employer-provided paid leave programs, and how access or lack of access to paid leave programs impacts America's workers and their families. The information provided will help the Department identify promising practices related to eligibility requirements, related costs, and administrative models of existing paid leave programs.

DATES: Submit written comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: To facilitate the receipt and processing of written comments on this RFI, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1290-ZA03, by either of the following methods:

Electronic Comments: Follow the instructions for submitting comments on the Federal eRulemaking Portal <http://www.regulations.gov>.

Mail: Address written submissions to Joan Harrigan-Farrelly, Deputy Director, Room S-3002, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This RFI is available through the Federal Register and the <http://www.regulations.gov> website. You may also access this document via the Women's Bureau (WB) website at <http://www.dol.gov/wb/>. All comment submissions must include the agency name and Regulatory Information Number (RIN 1290-ZA03) for this RFI. Response to this RFI is voluntary and respondents need not reply to all questions listed below. The Department requests that no business proprietary information, copyrighted information, individual medical information, or personally identifiable information be submitted in response to this RFI. Submit only one copy of your comment by only one method (e.g., persons submitting comments electronically are encouraged not to submit paper copies). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to <http://www.regulations.gov>, including any personal or medical information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this RFI; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via <http://www.regulations.gov> enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Joan Harrigan-Farrelly, Deputy Director, Room S-3002, 200 Constitution Avenue NW, Washington, DC 20210; email:

RFIpaidleave@dol.gov; telephone: (202) 693-6710 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889-5627 to obtain information.

SUPPLEMENTARY INFORMATION:

I. *Background*

The Department is committed to fostering, promoting, and developing the welfare of wage earners, job seekers, and retirees of the United States; improving working conditions; advancing opportunities for profitable employment; and assuring work-related benefits and rights. Within the Department, the Women’s Bureau’s mission is to formulate standards and policies that promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment. As part of its commitment to promote the welfare and equality of working women, the Department seeks public input regarding paid leave policy.

In 2019, a Bureau of Labor Statistics report found that 18 percent of U.S. private sector workers had access to paid family leave through their employers.¹ A number of studies have linked paid family leave of differing types to increases in a mother’s likelihood of being employed after childbirth, female labor force participation, and women’s wage earnings and work hours. For example, a 2011 Census Bureau report found that women using paid parental leave were twice as likely to return to work within three months, and most returned with similar

¹ Bureau of Labor Statistics. 2019. National Compensation Survey: Employee Benefits in the United States, March 2019. Table 31, <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/private/table31a.pdf>.

hours and pay.² Whether studies finding benefits from paid family leave merely identify correlation or can develop a causal connection remains the subject of debate.

Some employers believe that paid leave is a valuable tool to recruit and retain talented workers, but the availability of paid leave is mainly concentrated among high-skilled and highly-compensated industries. A 2017 study by the Boston Consulting Group found that employer-provided paid family leave has grown most in private sector jobs that recruit highly skilled workers. Employees in the top income quartile were three and a half times more likely to have access to paid leave than employees in the bottom income quartile.³ According to a report commissioned by the Department, in 2012 more than half of low-income workers did not receive paid leave from their employers. About 18 percent of individuals in higher-income families received no pay during leave compared with 53 percent of low-income workers who received no pay during leave.⁴ A 2017 Pew report identified that many workers with household incomes under \$30,000 who took leave without full pay for the birth or adoption of a child faced financial challenges as a result.⁵

² Lynda Laughlin. 2011. “Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2008.” U.S. Census Bureau Current Population Report P70-128, <https://www.census.gov/prod/2011pubs/p70-128.pdf>.

³ Trish Stroman et al. 2017. *Why Paid Family Leave Is Good Business*. Boston Consulting Group, <http://media-publications.bcg.com/BCG-Why-Paid-Family-Leave-Is-Good-Business-Feb-2017.pdf>.

⁴ Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, 2014. *Family and Medical Leave in 2012: Technical Report*, Abt Associates Inc., <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

⁵ Juliana Menasce Horowitz et al. 2017. *Americans Widely Support Paid Family and Medical Leave, but Differ over Specific Policies*. Pew Research Center, <http://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>.

According to the 2012 Department-commissioned report, 59 percent of all workers had access to unpaid leave through the Family and Medical Leave Act (FMLA),⁶ which requires covered employers to provide eligible employees up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons, including the employee's own serious health condition; to care for a spouse, son, daughter, or parent who has a serious health condition; the birth of a child; the placement of a child for adoption or foster care; and to care for a newborn or newly-placed child.⁷ (The FMLA also provides certain military family leave entitlements, *i.e.*, an employee may take FMLA leave for specified reasons related to certain military deployments, and up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.) Requirements for employee eligibility for unpaid FMLA leave include firm size (50 employees within 75 miles of the employee's worksite), employee tenure (12 months with the firm), and employee hours of service (1,250 in the past year).⁸ According to a survey, nearly half of all workers eligible for FMLA leave who chose not to take it cited lack of pay as the reason.⁹

Some states and localities, including California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington, have enacted paid family and medical leave laws that provide covered workers with the right to partial wage replacement through a state-run

⁶ Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak. 2014. *Family and Medical Leave in 2012: Technical Report*. Abt Associates Inc., <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

⁷ <https://www.dol.gov/agencies/whd/fmla>.

⁸ <https://www.dol.gov/agencies/whd/fmla>. Due to non-traditional work schedules, airline flight attendants and flight crew members are subject to a special hours of service eligibility requirement.

⁹ Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak. 2014. *Family and Medical Leave in 2012: Technical Report*. Abt Associates Inc., <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

insurance program when they are not working due to their own or a family member's serious health needs or bonding with a new child.

Federal employees are now eligible for paid parental leave as well. On December 20, 2019, President Trump signed into law a new paid parental leave policy for eligible federal workers as part of the 2020 National Defense Authorization Act.¹⁰ Under the new law, eligible federal workers are entitled to 12 weeks of paid parental leave for the birth, adoption, or fostering of a child that occurs on or after October 1, 2020.¹¹ The rate of pay during the leave period will be at 100 percent of the employee's salary. To be eligible, employees must have completed 12 prior months of federal service, and must return to duty for a minimum of 12 weeks after taking the leave.¹² In addition, the President's 2021 Budget includes "a proposal to provide at least six weeks of paid family leave to new mothers and fathers, including adoptive parents, so all families can afford to take time to recover from childbirth and bond with a new child."¹³

The Families First Coronavirus Response Act (FFCRA) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.¹⁴ The Department of Labor's Wage and Hour Division

¹⁰ Federal Employee Paid Leave Act, *in* National Defense Authorization Act for Fiscal Year 2020 (2020 NDAA), Pub. L. No. 116-92 §§ 7601–7606, 133 Stat. 1198, 2304–08.

¹¹ Eligible federal workers are employees covered by Title 5 of the United States Code. Legislation has been introduced to include those covered by Title 38 as well. *See* S. 3104, 116th Cong. (Dec. 18, 2019), <https://www.congress.gov/116/bills/s3104/BILLS-116s3104is.pdf>.

¹² *See* 2020 NDAA, §§ 7602(a)(3)(E), (F); *see also* U.S. Office of Personnel Management. *Memorandum for Heads of Executive Departments and Agencies*. Paid Parental Leave for Federal Employees. December 27, 2019. <https://www.chcoc.gov/content/paid-parental-leave-federal-employees>.

¹³ Fiscal Year 2021 Department of Labor Budget in Brief. <https://www.dol.gov/sites/dolgov/files/general/budget/2021/FY2021BIB.pdf>

¹⁴ Pub. L. No. 116-127, 134 Stat 178 (Mar. 18, 2020); 29 CFR part 826.

administers and enforces the new law's paid leave requirements. These provisions will apply from April 1, 2020 through December 31, 2020.¹⁵

II. *Request for Public Comment*

The Department seeks information about the need for, benefits of, and specific strategies to implement paid leave. Information from members of the general public, employers, employees, and the research community on paid leave policy and practice can inform the Women's Bureau in documenting, developing, and reporting on promising paid leave practices and provide valuable input for state and federal implementation of paid leave policies, including the benefits and costs associated with different approaches to paid leave.

As such, the Department seeks input from stakeholders, employers, and employees on the benefits of paid leave for workers and their families within the following general framework, as well as responses to the specific questions listed below.

In broad terms, the Department is seeking to understand the following:

- The benefits of paid leave, the costs of paid leave, and the measurement of costs and benefits.
- The beneficiaries of paid leave and the bearer of the costs.
- The unique needs of workers and employers in regard to paid time off for care obligations.

¹⁵ U.S. Dep't of Labor, Wage & Hour Div., *Temporary Rule: Paid Leave under the Families First Coronavirus Response Act*, <https://www.dol.gov/agencies/whd/ffcrahttps://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.

- The features of the existing public (e.g., state-administered) and private (employer-provided) programs that work well, reasons those features work well, and features and provisions that make a paid leave program successful for all stakeholders.
- The features of the existing public and private programs that do not work well or are burdensome, the reasons why, and any features and provisions that present challenges for stakeholders.
- Answers to the following questions: Are there barriers to implementing or improving paid leave? Are there regulatory barriers to providing paid leave? What could be done to improve existing programs, which include state and employer-sponsored paid options? What are the impediments, costs and otherwise, faced in implementing those improvements?
- The challenges of balancing costs and benefits with paid leave and the differences in costs and benefits among types and sizes of employers, including small businesses.

The Department invites interested parties who have knowledge of and/or experience with workplaces and states with and without paid leave to submit comments, information, and data. The Department has provided the questions above as suggestions to frame the responses, but they are not the Department's sole interest. Comments on other paid leave issues are also welcome.

The Women's Bureau is looking for an assessment of paid leave in the U.S. from the general public and from a diverse array of stakeholders. Stakeholders include state and local officials, employers, unions, workers, individuals who are not currently employed, faith-based and other community organizations, universities and other institutions of higher education, foundations, chambers of commerce, and other interested parties with experience or expertise in

paid leave. DOL recognizes that some questions may be more relevant to particular respondents, but seeks as much information as respondents can provide on all questions in the request.

Commenters should identify the question to which they are responding where possible.

Although the term “paid leave” may be used to refer to different types of policies, for the purposes of this information collection, paid leave means absence from work, during which an employee receives compensation, to care for a spouse, parent, child, or his or her own health.

Specifically, paid leave is limited to circumstances such as the following:

- The birth of a child and to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- Caring for the employee’s spouse, child, or parent who has a serious health condition; or
- A serious health condition that makes the employee unable to perform the essential functions of his or her job.

We request commenters to identify barriers or policies and to indicate, with a citation if possible, the source/level (*e.g.*, federal, state, local) of the barrier or policy, as well as the types of leave (*e.g.*, parental leave for the birth or adoption of a child, care for a seriously ill family member, the employee’s own serious illness, and/or other leave) that is impacted. If you are a business or organization, please include the number of employees at each worksite and in the organization/business as a whole when answering the questions below.

The Department suggests the following questions to frame the responses:

1. Who benefits from paid leave and who bears the costs?
2. What are the needs of workers and employers when it comes to paid time off for care obligations? What elements of the existing public (*e.g.*, state-administered) and

- private (employer-provided) options work well? Why do they work well? Are there any features and provisions that make a paid leave program successful for all stakeholders?
3. What does not work well and why; and what are the existing gaps? What could be done to improve the existing patchwork of programs, which include state and employer-sponsored paid options? What are the impediments, costs and otherwise, faced in implementing those improvements?
 4. How do costs and benefits balance with paid leave? Are there differences in costs and benefits among types and sizes of employers? What are the primary drivers of both costs and benefits? For example, are costs correlated with the duration of leave? Do the benefits of paid leave decrease after a certain duration of leave?
 5. Are individual businesses, localities, states, or the government best equipped to provide standards for paid leave? Are employer-based or state-based programs more effective in the administration of paid leave programs?
 6. Do employer-provided paid leave programs offer more generous benefits than state paid leave programs?
 7. Do employers who already offer paid leave programs continue to do so when state mandates or programs are instituted, or does the state mandate standardize the paid leave program offered by employers in the state, leading some employers to drop more generous programs?
 8. What are the features of an ideal paid leave program, from the perspective of a worker or employer? For example:
 - i. What would be the ideal duration?

- ii. How much pay should be replaced? Should the rate of replacement vary depending on how long leave has lasted?
 - iii. Should it be permissible to take leave intermittently? Should there be a time period within which intermittent leave must be taken?
 - iv. Are there other program elements not listed here that are important to consider?
9. What are the benefits and/or burdens of having access to paid leave for yourself and your family?
10. If you do not have access to paid leave, have you experienced individual or family circumstances for which you would have taken paid leave if it had been available? How might paid leave have effected those particular situations or outcomes?
11. Do workers who take paid leave have difficulty reintegrating into the workplace?
12. What components currently make up or would make up a successful paid leave program at your business? (For example: job protection, wage replacement level, duration of leave, minimum employment tenure allowed prior to accessing paid leave.)
13. What is your company's current paid leave policy? Include specific components such as job protection, wage replacement level, duration of leave, and minimum employment tenure allowed prior to accessing paid leave.
14. What are the benefits and costs of paid leave to your company and how are those benefits measured? Can they be quantified?
15. Are there impediments to making adjustments to your company's paid leave policy?

16. Does your company have established strategies for backfilling extended absences by employees out on paid leave, owing to circumstances like medical illness and treatment, the birth or adoption of a child, accident recovery, etc.? Please describe.
17. What are the benefits and/or burdens of operating a business in a jurisdiction that has paid leave laws?
18. What are the barriers to your company establishing a paid leave program?
19. Different types and sizes of businesses may face unique challenges to providing paid leave. Please describe unique challenges to your businesses, industry, or locale in offering paid leave.
20. What questions could be added to existing surveys, such as the American Time Use Survey or FMLA survey, that might inform paid leave policy?
21. What additional cost-benefit research for different sizes of employers, different localities, for state-mandated compared to employer-provided plans, or for employers and workers would be helpful to inform policy?
22. How will requirements for paid leave economically impact small businesses, small non-profits, or small governmental jurisdictions with a population of under 50,000? What are the costs, benefits, and are there alternatives that would minimize these impacts?
23. Are there key insights to be taken from FFCRA?

III. *Conclusion*

The Department invites interested parties to submit comments, information, and data based on the questions provided in this RFI. The Department is requesting information on a number of paid leave topics, including the effectiveness of current state- and employer-provided

paid leave programs, how access or lack of access to paid leave programs has impacted women and their families, and challenges faced by employers. The information provided by workers, employers, researchers and other stakeholders will help the Department identify promising practices for models of existing paid leave programs.

Laurie Todd-Smith,

Director, Women's Bureau.

[FR Doc. 2020-14874 Filed: 7/15/2020 8:45 am; Publication Date: 7/16/2020]