CONSIDERATIONS FOR PAID FAMILY AND MEDICAL LEAVE POLICIES

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September 27, 2017

Everyone needs time to care

- What is paid family and medical leave?
  - *Paid time off to address caregiving needs for self and others*
    - Temporary disability leave
    - Parental leave
    - Family caregiving leave
- United States is the only advanced economy without *any* national policy to guarantee access to paid leave
- Currently, among civilian workers in the U.S.:
  - *Only 14 percent have access to paid family leave through their employers*
  - *Only 38 percent have access to temporary disability insurance*

Overview of currently operational policies

Location	Covers	Program type	Total length	Wage replacement	Eligibility	Funding
U.S. (FMLA)	TDI/PFL	n/a	12 weeks	0%	Based on: Job tenure, Work hours, AND Employer size	n/a
California	TDI/PFL	Social insurance & limited private options	52 weeks TDI/6 weeks PFL	55%, weekly max of $1,173; 2018 PFL benefit increases to 70% for those earning < 1/3 AWW, & 60% for others	Based on: Prior earnings	Employee payroll tax
New Jersey	TDI/PFL	Social insurance & limited private options	26 weeks TDI/6 weeks PFL	66%, weekly max of $633	Based on: Prior earnings	Employer & employee payroll taxes
Rhode Island	TDI/PFL	Social insurance	30 weeks TDI/4weeks PFL	60%, weekly max of $817 plus dependent benefits	Based on: Prior earnings	Employee payroll taxes
New York	TDI	State fund, with highly-regulated private options	26 weeks TDI	TDI: 50%, weekly max of $170	Based on: Job tenure, OR Work hours (domestic or personal employees)	Employee payroll taxes & employer covers balance
Hawaii	TDI	Employer mandate	26 weeks TDI	58%, weekly max of $594	Based on: Job tenure, Work hours, AND Prior earnings	Employee payroll taxes & employer covers balance

Overview of pending policies

Location	Covers	Program type	Total length	Wage replacement	Eligibility	Funding
New York	PFL	State fund, with highly-regulated private options	12* weeks PFL	PFL: 67% up to a cap of 67% of state AWW*	Based on: Job tenure	Employee payroll tax
D.C.	TDI/PFL	Social insurance	2 weeks TDI/8 weeks PFL	90% of earnings up to 150% of D.C. min wage, plus 50% of earnings above this threshold, weekly max of $1,000	Based on: Employment history	Employer payroll tax
Washington	TDI/PFL	Social insurance & limited employer private options	12-14 weeks TDI/12 weeks PFL (total of 16-18 weeks)	90% AWW up to 50% of state wide AWW, plus 50% of employee's AWW for all earnings above 50% of statewide AWW, with weekly max of $1,000	Based on: Job tenure, AND Work hours	Employer & employee payroll taxes

Key policy decision making points: Program administration

Program Design	Pros	Cons
Social insurance	• States have experience running social insurance programs (UI, WC) • Allows for universal coverage at low cost by maximizing risk and resource pooling • Still allows high road employers to “top off” benefits	• Potential for business opposition (although this is true for any program design)
Social insurance with employer private options	• May benefit high road employers who already provide private options (likely to be an extreme minority in any state)	• Adds administrative complexity • Potential problems if employees have to disclose medical information • May increase program costs (while increasing program administrative overhead) if many employers choose to provide private options • May lead to job lock
State fund, with highly-regulated private options	• None in states without strong existing regulatory agencies to oversee private insurance carriers with ability to set community rating and audit compliance	• Requires strong oversight and regulations, which states are not likely to have in place • Adds administrative complexity
Employer mandate	• Reduces (but does not eliminate) the role of government, albeit with significant negative impacts	• Difficult to regulate • Likely to lead to employment discrimination • Increases likelihood that employees will face difficulties accessing leave • Increases costs to employers/employees • Disproportionately burdens businesses with lots of women/caregivers as employees • Likely to require employees to disclose sensitive medical information to their employers

Key policy decision making points: Covered conditions

- With the exception of Hawaii, all of the states with existing paid leave laws cover temporary disability insurance, parental leave, and family caregiving leave.
- Data from the 2012 FMLA survey conducted by the U.S. Department of Labor shows that that majority of leaves (55%) are taken to address a worker's own illness, with smaller proportions taken for parental leave (21%) and family caregiving (18%).
  - *This can be viewed two ways: TDI is the most "expensive" aspect of a PFML program, but is also the most needed type of leave.*
- More research and data is needed on TDI and family caregiving, but the experiences of the existing state programs show that it is possible to address all three categories of leave in an efficient and cost-effective manner.

Key policy decision making points: Length of leave

- The FMLA provides up to 12 weeks of job protection to covered workers taking TDI/PFL, although some states have longer job protection, and some state paid leave programs include job protection even for those not covered under the FMLA or state laws.
- Existing state programs offer longer leaves for TDI (52 to 26 weeks total) than for PFL (4 to 6 weeks total) although these leaves can be stacked.
- The pending paid leave program in D.C. would offer less TDI (2 weeks) than parental leave (6 weeks) or family caregiving leave (8 weeks). Leaves could be stacked but total no more than 8 weeks.
- The pending paid leave program in Washington state would offer more TDI in the case of serious pregnancy-related complications resulting in incapacity (14 weeks) than for other forms of TDI (12 weeks.) PFL would be capped at 12 weeks, and total leave available is longer for pregnancy-related complications (18 weeks) compared to other leave-takers (16 weeks total).

Key policy decision making points: Wage replacement rate

- Wage replacement rates under existing state paid leave programs range from 50% (NY) to 66% (NJ).
- Pending programs in D.C. and Washington state offer both higher levels of wage replacement and a tiered system of wage replacement that will provide a higher percentage to low-wage workers (although higher earners will receive lower total percentages of their earnings, they will still receive larger total benefits).

Key policy decision making points: Funding

- Social insurance programs are funded through payroll taxes on:
  - *Employees (CA, RI, NJ PFL)*
  - *Employers (DC)*
  - *Employers and Employees (WA, NJ TDI)*
- Employer mandates and NY's highly regulated insurance market are funded through contributions from employees based on earnings, with employers making up the difference. In both states employee contributions are capped.
  - *HI: employees contribute up to 0.5% of weekly wages, maximum of $5.12*
  - *NY TDI: employees contribute 0.5% of wages paid, maximum of $0.60 per week*
  - *NY PFL: employees fund entire cost, cannot be more than 0.126% of an employee's weekly wage up to the state average weekly wage*

Conclusions

- Policy decisions regarding PFML programs should always have the combined goals of:
  - *Providing universal access*
  - *Reflecting the paid leave needs of **all** workers*
  - *Creating the most efficient, and cost-effective program possible*