

PENNSYLVANIA
Center for Women and Politics
AT CHATHAM UNIVERSITY

FMLA in PA: A Report on Family and Medical Leave in The State



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FMLA in PA

Since its enactment more than 20 years ago, the Family Medical Leave Act (FMLA) has allowed millions of Americans to maintain job security while they tend to the important needs of their families. However, there are limits to the breadth of the federal law and many states have either subsequently passed their own leave protections that expand coverage in many ways or had pre-existing laws that went farther than the federal law. This report details the impact of the federal FMLA as well as the complex web of additional protections many states have. Critically, not all Americans enjoy the same rights to family and medical leave because 40 percent of them do not live in states that have written additional protections into state law. As such, this report also offers a case study of the policy impact on citizens—particularly women—in Pennsylvania, one of 21 states where lawmakers have not expanded their coverage beyond that of federal law.

Family Medical Leave Laws

Signed into law in 1993, the federal Family Medical Leave Act (FMLA) guarantees eligible employees up to 12 weeks of unpaid leave per year for health conditions, a new child, or military service. Employees that work in a business with more than 50 workers are eligible if they have worked for the company for at least a year, they have worked at least 1,250 hours during the previous year, and if they work at a location with at least 50 employees within a 75-mile radius. This generally means that part-time and self-employed individuals are not likely to be eligible. While these protections are for both men and women, the law was celebrated as being the first national effort to acknowledge maternity leave (albeit unpaid) for women.

Prior to passage, 34 states had some version of law that governed family and/or medical leave, though 11 of them applied only to state employees (Commission on Family and Medical Leave, 1996). Only 12 states

and the District of Columbia had laws that required employers to offer maternity leave (Irwin & Silberman, 1993; Waldfogel, 1994; Women's Legal Defense Fund, 1993). However, it should be noted that both large and/or unionized workplaces often times had maternity and medical leave policies that were, in some cases, more generous than state law required. This continues to be the case (Waldfogel, 1999).

Impact of FMLA

Following the passage of the FMLA, a series of government and academic studies aimed to determine whether the objectives of the law had been achieved. Three major conclusions were drawn about the effectiveness of the law in allowing workers greater access to job-protected leave.

The first conclusion pertained to the number of Amer-

icans who became eligible for leave protections under the new law. The Commission on Family and Medical Leave reported that as many as two-thirds of employees were employed by FMLA-covered employers (1996), but this statistic is misleading. Of this number, some employees did not work the required one-year total of 1,250 hours and still others had not been employed for the required one-year. Ultimately, perhaps only as few as one-half of workers were eligible (Ruhm, 1997).

Mothers fared even worse, as far fewer were eligible for maternity leave under the FMLA. It was estimated that 31 percent of working women of childbearing age had been with their employer the one year required for eligibility and a mere 19 percent of new mothers met eligibility requirements (Klerman and Leibowitz, 1994). Considering the spattering of state laws and private employer policies that granted leave for one reason or another, in some form prior to implementation of the FMLA, it is unlikely that a significant percentage of the workforce suddenly experienced a dramatic new access to protected leave. In fact, only 7 percent of workers that took a FMLA-covered leave in 1994-1995 reported that they were able to do so under the FMLA (Ruhm, 1997).

These statistics suggest the additional major findings that were discussed following adoption of the law. The second conclusion was that as employers adjusted their benefit packages to bring them in line with the new law, which two-thirds report having done (Waldfogel, 2001), they faced little hardship in having done so. The Commission on Family and Medical Leave stated that 90 percent of covered employers reported that the changes "had no noticeable effect on business performance or growth" (1996, in Ruhm, 1997, pg. 181). These positive reviews were also reflected in a survey

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After Federal Law

- 31% eligibility among working women of childbearing age
- 2/3 companies adjusted policies for compliance
- leave frequency increased

of employers done in 2000 as well (Waldfogel, 2001). Waldfogel (1999) estimated that it cost an employer only about \$250 per year for each employee that takes leave.

Third, the law did increase the frequency of leave taking. The increase was found particularly at medium-sized firms that would have been less likely to have had pre-existing policies, and particularly for new mothers (Waldfogel, 1999). An important consequence of the law is that it also institutionalized rights to parental leave, not just maternal leave; under the law men now have the same rights to paternity leave as women do to maternity leave. Another positive externality is the effect on women's employment. There has been a steady increase of the number of women who return to the workplace after they have a child. Fifty-five percent of new mothers are back in the workforce within a year of their child's birth (U.S. Bureau of the Census, 2010).

In summation, while the FMLA offered a modest expansion of rights for workers, it did provide both more coverage and more usage for working women while imposing negligible costs to employers. Much of the reflection on the law's early impact argues that this does not amount to a tremendous impact. However, it should be noted that most scholars observe (see Ruhm 1997; Waldfogel, 1997; 1999), as did the legislation's supporters in the 1990s, that the law was not ever designed to be far-reaching. The limited scope and strength of the law is a major contributor to the limited



impact it had. Where the law had holes or inadequacies in coverage to meet the needs of the contemporary workforces, it was left up to states to compensate in the form of more expansive state laws.

More Comprehensive State Laws

Today, many of the original state laws that governed workers' family and medical leave needs before passage of the FMLA are superseded by the more comprehensive federal law. Other states have passed laws that add to or expand the protections in the federal law. In addition to the federal FMLA, 29 states have taken steps to expand the coverage for their own workers by adding additional benefits and/or expanding which employees are eligible for protections in their states. Table 1 (below) identifies the additional benefits states have enacted and in which states these more expansive laws apply.

While each state that has enacted more comprehensive legislation has a different formula for what is covered and for whom, there are some general categories in which state laws have become more comprehensive than federal law. These categories are discussed below:

Definition of Family

In some states, what constitutes a family is redefined by including domestic partnerships, children of domestic partnerships, grandparents, or in-laws. In Washington, D.C., which has the most inclusive definition, "family members include parents, spouses, children, domestic partners, parents-in-law, grandchildren, children's spouses, siblings, siblings' spouses, children with whom the employee lives and whom the employee has responsibility for, and a person with whom the employee shares a residence and committed relationship"

(District of Columbia, 1990). In New Jersey, which also passed a FMLA in 1993 (NJFLA), the definition of eligible immediate family coincides with the federal definition, but extends it slightly to include a spouse's parents (State of New Jersey, n.d.). These states also have more flexible options when it comes to company size and leave availability.

Additional Military Benefits

Leave in the case of having a loved one on active duty is only available in 12 states, the most inclusive being Minnesota where if the employee's grandparent, parent, legal guardian, sibling, child, grandchild, spouse, or fiancé is being deployed or coming back from deployment, or if they have been injured while deployed, they are entitled to limited leave. Other states, such as Maine, entitle domestic partners to leave. Some set limits on how many days of leave are permitted depending on the length of the deployment (it usually has to be over 90 days).

Pregnancy as Specific Disability

Legislation regarding disability due to pregnancy is generally vague. States such as Connecticut, Hawaii or Montana give "reasonable" leave due to pregnancy, while other states put a time limit, standardly over three weeks. Recognizing pregnancy in itself as a disability has been a contentious issue since 1976 when the Supreme Court ruled in *General Electric Co. v. Gilbert* that discrimination on the basis of pregnancy alone did not equate to discrimination based on sex and was, therefore, not necessarily illegal. Congress responded in 1978 with The Pregnancy Discrimination Act (PDA), but the law has limitations when it comes to accommodations pregnant workers may need to continue working. NPR recently reported that The Equal Employment Opportunity Commission has received 46 percent more pregnancy-related complaints over the last 14 years (Chapell, 2014). The Philadelphia EEOC district office (which includes coverage of the entire state of Pennsylvania) registered more than 300 complaints in that time period—second only to the Miami district office (EEOC, 2014). As a result of the increased claims, the commission issued a detailed clarification of how the PDA should be applied in

cases of disability and other issues of leave in July 2014 (EEOC, 2014).

Small Necessities

Some states offer their employees with children a few hours per year of unpaid leave for parent/teacher conferences or even for involvement in their children's schools.

Domestic Violence Coverage

Employees of certain states are allowed some unpaid leave to get social, family, and medical services, such as medical or legal assistance, or enhance the security of their homes after a violent assault. Maine and Washington employers are required to grant leave to employees who have a family member that has been attacked.

Temporary Disability

California, New Jersey, New York and Rhode Island that have a Temporary Disability Insurance and Paid Family Leave that entitles employees for a percentage of their wages back, previously withheld from their paychecks.

Paid Sick Leave

Connecticut and the District of Columbia offer paid sick leave dependent on how many employees a company has and how many hours the employee has worked. In D.C., this leave also includes domestic violence or family leave.

Leave for Adoptive Parents

While recent interpretations of federal law recognize adoptive (and other caretaking scenarios) parenting relationships as covered by FMLA (U.S. Department of Labor, 2010), these protections are not extended to employers who are not required to offer protections or private companies that offer their own set of benefits that go above and beyond. However, some states award adoptive parents the same rights to leave as birth parents in all cases, as long as the company offers parental

Table 1. Additional Leave Protections in Current State Law, By Type and State

Type of Expansion	Expansion States
Application to smaller employers	DC, ME, OR, VT (family leave) CA, IL, ME, NE, NY, OR, RI (military leave) CA, CT, IA, LA, NH, WA (maternity leave) CA, MN, NC, VT (small necessities leave)
Broader, more-inclusive definition of "family"	CA, CT, DC, HI, ME, NJ, OR, RI, TN, VT, WA, WI
Additional military protections	CA, CT, IL, IN, ME, MN, NE, NY, OH, OR, RI, WA
Pregnancy as specific disability	CA, CT, HI, IA, LA, MT, NH, WA
"Small necessities" allowances	CA, CO, DC, IL, LA, MA, MN, NV, NC, RI, VT
Domestic violence coverage	CA, CO, FL, HI, IL, ME, NM, NC, OR, WA
Temporary disabilities	CA, NJ, NY, RI
Paid sick leave	CT, DC
Adoptive parents	CO, KY, MD, MA, MN, NE, NY, VT, WI

leave to biological parents. Some states, namely New York and Nebraska make provisions regarding the child's age. No state extends these additional benefits to step or foster parents.

Family Medical Leave in Pennsylvania

Twenty-one states offer no additional family-leave protections. Pennsylvania is one of the more populous of these states. Because there are currently no additional rights other than those afforded by the federal law, many of the state's working women and their families have fewer protections than their peers in many other states.

Paid Leave

The largest disadvantage Pennsylvanians have is that state law does not mandate that private employers provide paid leave for its employees. While many private employers and municipalities do offer paid sick, family, and/or parental¹ leave, they are not required to do so by federal or state law. So, while workers may be eligible for leave under FMLA, exercising it may be limited by financial considerations. Indeed, research shows that leave is much less-exercised by women with lower-levels of education or are single parents (Han, Ruhm, & Woldfogel, 2009).

Take into consideration the 24 percent of Pennsylvania families with household income that is below 200 percent of the Federal Poverty Level (FPL)²(Pathways PA, 2009). Many of these families (21 percent) have at least

¹ Frequently only maternity leave, but employers are increasingly offering new parents—regardless of gender—some form of paid leave.

² \$40,000 for a family of four (Pathways PA, 2009)

one parent with low levels of education, making it difficult for them to secure jobs with wages high enough to make ends meet. Lower-income jobs such as health care aids, are disproportionately held by women. In fact, Corporation for Enterprise Development recently reported that 21 percent of Pennsylvanians face “asset poverty”, meaning they would not have the resources to survive for up to three months of sustained loss of income. Single women are 40 percent more likely than single men to be asset poor in Pennsylvania—which is a greater disparity than most states (Corporation for Enterprise Development, 2014). For these individuals and families who are living paycheck-to-paycheck, any reduction in household income caused by an unpaid leave can seriously affect already precarious household budgets. Taking an unpaid leave simply is not a viable financial option.

The City of Philadelphia passed a law in 2011 that required some city contractors to allow their workers to accrue paid sick leave. A strong effort last year to expand this requirement to all private city employers with more than five employees fell just short of passage when Mayor Michael Nutter vetoed the legislation which had passed the city's council by a vote of 11-6 (National Partnership for Women and Families, 2014). Nonetheless, the efforts prompted 17 members of the Pennsylvania State Assembly to introduce House Bill 1807, *The Leave Policy Act*, which would prohibit “political subunits” in the state from enacting legislation requiring private employers to offer paid leave of any kind (Pennsylvania State Assembly, 2013). The bill is currently in committee.

Adult Caregivers.

For many working women, it is not only their own health or the birth of a child that requires they con-

sider their options for being off work. Increasingly, adult children are faced with providing care for aging parents. According to the Pennsylvania Department of Aging, there are 1.3 million “informal caregivers” in the state who invest 1.4 billion hours of unpaid time in caring for the elderly in the state (2013). Historically, this burden has fallen on the adult daughters (and presumably daughters-in-law) of the aging individual who needs care (Smith, 2004), many of whom are still in the process of caring for their own children's needs. According to Dr. Lynn Martire and her colleagues of the University of Pittsburgh's department of psychiatry, this burden is not just financial, but psychological as well. This dual demand on working women exacerbates stress-related depression, especially as it complicates her other roles as an employee, wife, and mother (2000).

The State offers some help with the financial burden with a means-tested program—The Pennsylvania Caregiver Program—that reimburses qualified applicants for some of the expenses associated with care-taking. Governor Corbett's 2014-2015 budget proposal requests over \$40 million in additional funds for programs for the state's elderly (Pennsylvania Department of Aging, 2014), but it is not clear how much, if any, of those funds will be directed into The Caregiver Program. Presently, the program is only aiding around 7,000 caretakers, and not all of them are eligible for financial support. A decision, then, to take unpaid time off under the FMLA to care for an aging parent, can mean financial hardship in precisely the same way faced by new parents or those with personal or immediate family medical needs.

Small Necessities

Not all the demands on working mothers are long-term or overly-significant. Several states recognize that working parents have smaller needs that require their attention during work hours, like parent teacher conferences and regular trips to the pediatrician. A “small necessities” bill that would have protected a worker's right to a handful of hours leave time to attend to these things was recently introduced in Pennsylvania. HB 1673, *The Parental Involvement Leave Act* was intro-

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duced in 2013 to “[provide] Statewide uniformity regarding vacation and other forms of leave mandated by political subdivisions, for parental involvement leave and for civil remedies.” The legislation was referred the House Labor and Industry Committee, but has not come up for any votes. The legislation's original prime sponsor, Dan Miller (D-Allegheny) has since withdrawn his original sponsorship, but in August, 2013 wrote his colleagues to encourage them to support the legislation's goal of enhancing parental involvement in their children's school by requiring Pennsylvania employers guarantee parents paid leave time to attend parent-teacher conferences and other related functions (Pennsylvania General Assembly, 2014).

This type of legislation generally only provides a few hours per year for worker's to access to protected leave, and it is exclusively unpaid. It does allow parents to participate in important events in their children's lives.

Definition of Family

Many Pennsylvanians are also limited in their access to FMLA protections by the law's narrow definition of “family”. The Obama Administration has expanded the interpretation of the law to include coverage for same-sex parents of children that lack a biological relationship with the child (U.S. Department of Labor, 2010). This extension of the law should serve to directly impact the potential for job-protected parental leave for parents in Pennsylvania's estimated 24,481 same-sex households (U.S. Department of Commerce, 2012). The Supreme Court struck down the Defense of Marriage Act (1996) in their 2013 ruling on *United States v. Windsor*, which had—in part—prevented the extension of federal benefits to individuals in same-sex marriages. For now, this means that FMLA protections are now extended to couples with marriages that are legally-recognized in the state in which they work (Department of Labor, 2013), though there is an expectation that the ruling will ultimately extend federal



protections to all legally-married couples regardless of their state of residence or work. It is also presumed that many of these protections will be extended to Pennsylvanians in same-sex unions since the May 2014 legal decision that made same-sex marriage legal in the state.

What is less clear is how the limited definition of family will apply to same-sex couples as the interpretation of the law expands since there is no state law prohibiting workplace discrimination. Void of a more inclusive state law, committed couples or couples with marriages performed in other states will fail to have protections that extend to family members other than a spouse or children (e.g. in-laws, grandchildren, siblings).

Military

While some states' laws recognize a family member's military deployment as a "condition" sufficient for granting leave, known as a "qualifying exigency". A member of the Armed Forces' (to include the National Guard and Reserves) spouse, parents, or children (of any age) would be entitled to this leave under certain conditions requiring their absence from work (e.g. child or parent care, post-deployment activities) (U.S. Department of Labor, 2013). Pennsylvania's more than 56,000 military personnel (Department of Defense, 2014) were only given this recognition by a federal expansion of FMLA that took effect in early 2013 (Department of Labor, n.d.). The state's thousands of Iraq and Afghan War veterans would not have been covered under this expansion. Also, despite the Obama Administration's 2010 repeal of the Don't Ask, Don't Tell (DADT) policy, same-sex spouses or partners as well as extended family of deploying military personnel continue to have no guaranteed right to leave, particularly in states that do not recognize these unions.

Some Pennsylvania military families who fall through this particular crack might be helped by a state program run through the state's Department of Military and Veterans Affairs. Using both public funds and private donations, The Military Family Relief Assistance Program (MFRAP) offers grants of up to \$3500 to qualifying service members or family members to help

The Small Things Matter

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with costs associated with hardships due to deployment³—including child care and other loss of employment income (Pennsylvania Department of Military and Veterans Affairs, 2014). However, MFRAP is a small program and awarded only \$104,000 to 33 approved applications in 2012⁴, very few of which described circumstances that would have been governed by an expanded FMLA (Pennsylvania Department of

³ The grants are also awarded for several other circumstances other than deployment, which would not be covered by family leave laws.

⁴ The most recent year for which data is available.

Each year, Pennsylvanians spent 1.4 billion hours of unpaid time caring for elderly loved ones.

Military and Veterans Affairs, 2103). Veteran support groups in the non-profit sector also offer services that presumably could help families struggling with leave-related issues.

Domestic Violence and Sexual Assault

According to the National Network to End Domestic Violence, an average of more than 2400 adults and children receive services for domestic violence (e.g. shelter, counseling) in Pennsylvania each day and there are, on average, 33 calls to hotlines *every hour* (National Network to End Domestic Violence, 2013). These statistics are only a portion of individuals coping with domestic violence as they do not reflect victims that do not seek outside help. In 2013, an additional 30,000 Pennsylvanians sought help as victims of sexual violence (Pennsylvania Coalition Against Rape, 2013). Again, many of these crimes go unreported and/or victims do not actively seek support in their recovery. In their lifetimes, one in four women will experience domestic violence (Pennsylvania Coalition Against Domestic Violence, n.d.), and one in three will be exposed to sexual abuse of some kind (WOAR, n.d.).

These victims of both domestic violence and sexual assault face discrimination and problems obtaining needed time off in their jobs (Swanberg, Ojha, & Macke, 2012; Brownmiller, 2013). Pennsylvania's employers are required to provide potentially critical workplace safety under the Occupational Safety and Health Act of 1970 (OSHA) and employees would qualify for leave under FMLA if their absence would be to seek medical treatment for or to recuperate from injuries due to an incidence of domestic violence or sexual assault. State statutes also provide work leave for a related subpoena or court appearance (Swanberg, Ojha, & Macke, 2012).

However, victims of both domestic and sexual violence face far more than physical wounds they may have received in these attacks. Scholars who study the aftermath for victims of these crimes describe a long list of psychological concerns, as well—including post-traumatic stress disorder (PTSD), anxiety, insomnia, anger, self-harm, and high rates of depression (Armour et al., 2013; Humphreys & Thiara, 2003). There are also more practical considerations, like victims needing to find a new place to live and, in some cases, establishing credit in their own names. These scenarios and others demonstrate how crucial the need to maintain employment can be to future empowerment of the victim. According to the Pennsylvania Coalition Against Domestic Violence (2014), while the state legislature is considering several pieces of legislation that support victims in other ways (e.g. laws to strength protection for children in environments of abuse), there is currently no legislation being considered in the state that would offer greater or more expansive employment protection for victims of either domestic or sexual violence.

As a result, the vast majority of Pennsylvanians have no leave protections under these dire circumstances. However, employees within the city of Philadelphia do have additional protections that were passed by the City Council and took effect in 2009. The ordinance provides up to eight weeks⁵ of unpaid leave to workers of any Philadelphia employer⁶ who are victims of not only domestic or sexual violence, but also stalking. The ordinance allows an employee to take time off to tend to physical or psychological injuries, seek help from a domestic or sexual violence organization, receive counseling, relocate, or seek legal assistance for themselves or a member of their immediate family (City of Philadelphia, 2009). However, there is some concern that this ordinance will be overturned by legislation passed by the state House of Representatives in March (H.B. 1796) that would prohibit municipalities from requiring certain benefit mandates from private employers (Pennsylvania General Assembly, 2014) similar

⁵ Employers with more than 50 employees must provide up to eight weeks of leave, while those with fewer than 50 are required to provide up to four weeks.

⁶ Regardless of whether the employer is subject to FMLA.

to *The Leave Policy Act* mentioned above. When the General Assembly recessed in July, H.B. 1796 was still under consideration in the senate, but no action had been taken.

Temporary Disability and Pregnancy

The Social Security Administration provides income replacement to workers who become disabled or ill and are not able to work for 12 months or more (Social Security Administration, n.d.). Shorter-term leave needs would be (for those covered) governed by FMLA, but would be unpaid unless the employer offers additional benefits or the absence is covered under a state or municipal statute that offers paid time off for short-term needs. Many employers do offer short-term disability insurance programs that serve this function. The important distinction is, however, that while these insurance programs will provide compensation, they do not offer job protection. While most states

Since 2009, Philadelphia has required city employers to provide up to eight weeks job-protected leave to victims of domestic or sexual violence, or stalking.

have statutes that extend the FMLA job protection to short-term disabilities, Pennsylvania does not (J. A. Gallagher, personal communication, May 5, 2014⁷). Theoretically an employee in Pennsylvania could be approved for short-term disability payments through the insurance program they participate in, but lose their jobs while on leave.

A few states (e.g. California, New York) have incorporated a paid leave component into their state leave laws that require employee contributions to a short-term disability program, effectively removing any additional burden from employers because the funds come from employees not employers. Examples from the handful of states that have implemented these programs indicate that employees take the leave they need more often and for longer duration because they are receiving compensation when they do. In California, for example, single mothers are among the biggest beneficiaries of this program (Koss, 2003).

Short-term disability issues are particularly complex in the context of a pregnancy and the issue remains unresolved in states, like Pennsylvania, that have not made clear statutes defining pregnancy as a disability. According to legal scholar Jeanette Cox, recent expansions of the Americans with Disabilities Act (ADA) have allowed for more conditions that may be concomitant with pregnancy—like shortness of breath or back pain—to be protected under the law (and thus recognized by FMLA, as well). However, courts continue to bar extension of FMLA protection to pregnant workers suffering from ADA-recognized disabilities because pregnancy is not recognized as being a condition from which disabilities can stem. As Cox states, “the prima-

ry remaining justification for concluding that pregnant workers may not obtain ADA accommodations is that pregnancy is a physically healthy condition rather than a physiological defect (2012).”

Pennsylvania has been named one of the ten worst states in the country for pregnancy discrimination (National Partnership for Women and Families, 2008). Without specific state law that defines pregnancy as a disability, expectant mothers in Pennsylvania who are in some way limited from performing their job responsibilities by side effects of normal pregnancies cannot receive reasonable accommodation under the ADA or exercise FMLA rights. Without either of these protections, these women face potential repercussions by their employers when their job performances are affected. As a result, The National Women’s Law Center reports that many women are either forced to take a reduction in hours without pay, quit, or are fired from their jobs when employers refuse to make even small accommodations that are extended to disabled workers. Even when non-disability conditions associated with pregnancy are recognized, employers may insist employees take FMLA leave intermittently. Considering the law allows for only 12 weeks of protected leave, leaves during pregnancy can erode the amount of time available to a new mother once her baby is born (NWLC, 2013).

Earlier this year, the Philadelphia City Council voted to amend the Philadelphia Fair Practices Ordinance of 2013 to include protections for pregnant workers in the city that require city employers to make reasonable accommodations (Council of the City of Philadelphia, 2014). Testimony in support of the amendment drew attention to the fact that 53 percent of Philadelphia children being raised by single working mothers, wom-

en who could not afford to suffer job and income loss because of pregnancy (Council of the City of Philadelphia, 2013).

Rep. Mark Painter (D-Montgomery) introduced H.B. 1892, The Pennsylvania Pregnant Workers Fairness Act, in February. The legislation is designed to eliminate discrimination and ensure reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy. The bill was referred to the Labor and Industry Committee, but no further action has been taken (Pennsylvania General Assembly, 2014).

Conclusion and Recommendations

In conclusion, it is obvious that Pennsylvania’s leave laws and supporting statutes provide some of the nation’s most meager protections for workers. In the 20 years since the passage of the federal FMLA, a majority of states and municipalities around the country have expanded the law’s scope with statutes of their own. Regrettably, in nearly every way other states have chosen to expand FMLA to offer additional rights and protections for their citizens, Pennsylvania has not.

In fact, one need only look to neighboring New Jersey to identify a much more worker-sensitive environment. Two large cities in the state—Newark and Jersey City—passed municipal laws that would mandate employers to allow employees to accrue paid days off. East Orange is considering a similar measure, and five municipalities have citizen-initiated ballot measures this fall that would require employers facilitate paid time off in their communities. The Associated Press reports that, as a result, New Jersey lawmakers are seriously considering legislation that would make the require-

Worst in The Nation ?

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⁷ John Gallagher is a Pennsylvania disability attorney.



Progress to The East?

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more hospitable place to work: Action by Municipalities, Leadership from the Private Sector, Support from the Non-Profit Community, and Expansion of State Laws.

Recommendation 1: Municipal Opportunity

One way expansions of leave laws have taken place in Pennsylvania, despite inaction by the state legislature, is the enactment of policy at the local level. Philadelphia, the state's most populous city, namely, has recently instituted numerous policies that give workers who are employed within the city more access to and more expansive leave rights. While there are political forces at work against continuing to allow municipalities to enact these types of locally-applied ordinances, it remains an option for other communities that want to improve leave options in their jurisdiction. Municipalities where significant political support for progressive protections for workers exist, an effort to address these types of issues on their governing councils could certainly be tackled.



Specifically, it is likely that there would be some support for instituting local leave laws of some kind in Pittsburgh—the state's second largest city—given the progressive approach lawmakers have taken in other policy areas. Even smaller municipalities may see prudence in protecting the quality of their local government work forces by improving benefits that local government employees and/or contractors receive—a move that would be entirely within a local governing body's authority. Of course a community-by-community expansion of leave offers no comprehensive solution for workers who continue to fall through the cracks in the federal law, but developments in population-dense areas could greatly expand the number of Pennsylvanians who could enjoy the same protections as those who live in states with more comprehensive laws.

Recommendation Two: Role for Private Sector

A frequent argument made by the state's conservatives

regarding state regulation of employment policies is that telling private businesses how to run their businesses can limit economic growth and is not an appropriate role for state legislators. Where state laws fall short, then, private companies are left to make decisions on what type of leave policies they will offer their employees. Responsible employers should and often do



recognize that offering their employees access to the leave they need has the potential to decrease employee turnover and resources needed for training new employees, as well as a happy, healthy, and loyal workforce (Grover & Krooker, 1995; Batt & Valcour, 2003). As Grover and Krooker (1995) found, "(E)mployees who had access to family-responsive policies showed significantly greater organizational commitment and expressed significantly lower intention to quit their jobs (271)."

Studies following the implementation of the federal FMLA also indicated that the cost of implementing

(and employees exercising) leave policies is small. Employers, from small to large and regardless of industry, should feel compelled to revisit their existing leave policies and consider expanding their benefits in perhaps small but significant ways that could improve the lives of their employees and create a culture of greater work-life balance in their industry. Even a slightly expanded leave policy could mean a great deal to a worker faced with a personal need that prompts a tough choice about how to juggle their employment and the health and safety of themselves and their loved ones.

Recommendation Three: Need for Non-Profit Advocacy and Support

In reality, political will and corporate motivation to expand workers' access to leave may require significant social pressure and targeted advocacy. A coordinated effort among organizations with missions that recognize the needs of workers, women, parents,



ment apply to the entire state and there appears to be enough support to accomplish it (Mulvihill, 2014).

Meanwhile, Pennsylvania has taken no action. This inaction has created a work environment in the state that is less protective of workers than those in many other states. Most significantly, this report finds that these gaps in protection and rights is most obvious and under-coverage has the biggest impact for the state's most vulnerable citizens. For example, this report identifies how low-income families, single parents, and individuals living on meager budgets cannot afford to take unpaid leave. Employees straining under the burden of caring for elderly loved ones (and perhaps children concurrently) have far too many limitations in their leave options. Victims of domestic or sexual violence, face further hardships in trying to manage serious needs that arise out of their victimization when it puts their jobs in jeopardy. Pregnant women can still be discriminated against when their pregnancy affects their job performance. Pennsylvania can and should do better.

As a result of these findings, we offer four recommendations for action that could make Pennsylvania a

Table 2 Implications for Under-Covered Groups Under Pennsylvania Law

Under-covered Groups	Under Pennsylvania Law
Low-income families	Leave requires financial hardship
Parents	No leave for non-medical needs, narrow options for adult caregiving leave
The Disabled	Private insurance programs do not protect jobs
Military Families	Families of recently-deployed veterans had few leave options
LGBT Families	State law has limited recognition of non-traditional families in application of existing laws
Pregnant Women	Employers can force leave or terminate instead of making reasonable accommodations
Victims of Domestic/Sexual Violence	Justifications for leave may not meet needs of victims
All Pennsylvanians	Scope, availability, justifications for, and ease of taking leave more limited than other states

families, children, the working poor, victims of domestic and sexual violence and others could draw hereto unseen attention to the implications of the minimal protections Pennsylvanian workers have compared to workers in other states. A campaign that united these diverse, but influential advocacy sectors that was united behind an effort to expand state or local leave laws could be effective in a way that individual organizations who have merely touched on some of these needs in their reform priorities have not been. A larger, more expansive effort could draw attention to the vast opportunities lawmakers and employers have to improve working conditions in the state.

In the absence of expanded laws, many of these non-profit organizations may also need to examine how they might develop programs that meet the needs of workers who have legal, personal, or financial hardships in the face of tough decisions about how to manage their leave needs. The non-profit community is uniquely skilled at developing education and service programs that address many of the problems created by inadequate leave laws, as well as partnering with private corporations to meet many of these needs. There are many considerations the non-profit community could begin to make if there was an effort to more specifically address issues of leave in the state.

Recommendation Four: Action by State Legislature

Finally and most significantly, without changes in state law and even with ad hoc policy changes at other levels, many Pennsylvanians will continue to face inadequate protection under federal laws. As has been outlined in this report, this disproportionately disadvantages many of the state's most vulnerable populations (see Table 2). Lawmakers should examine prudent means of comprehensively extending



...without changes in state law and even with ad hoc policy changes at other levels, many Pennsylvanians will continue to face inadequate protection under federal laws.

additional protections to the state's workers—with a specific examination of viable legislative options in the state. The newly-created, bi-cameral, and bi-partisan Women's Health Caucus in the General Assembly seems a likely starting point for this endeavor.

The Caucus revealed *The Pennsylvania Agenda for Women's Health* in December 2013 and has since introduced bipartisan legislation that addresses women's health, safety, and financial security in the state. One of the group's initiatives is H.B. 1892, The Pennsylvania Pregnant Workers Fairness Act, which addresses issues of pregnancy discrimination and accommodation discussed in this report. None of the other agenda items directly deal with issues of family or medical leave, but these issues are distinctly in the spirit of the caucus's mission.

In particular, the legislature and the governor should consider options for extending paid leave to millions of Pennsylvanians that have none whatsoever through their employers. The move would give working women and their families, as well as working men greater flexibility to manage their health, the health of their families, as well as unforeseen emergencies that can happen to any Pennsylvanian. In doing so, quality of life and work environment could be improved for all workers in the state, regardless of their economic or family status, or gender. It seems reasonable to expect that with the right political attention, some moderate expansion of leave laws in Pennsylvania could be possible. #

References

Armour, C., Elklit, A., Lauterbach, D., & Elhai, J. D. (2014). The DSM-5 dissociative-PTSD subtype: Can levels of depression, anxiety, hostility, and sleeping difficulties differentiate between dissociative-PTSD and PTSD in rape victims?. *Journal of Anxiety Disorders*.

Batt, R., & Valcour, P. M. (2003). Human Resources Practices as Predictors of Work-Family Outcomes and Employee Turnover. *Industrial Relations: A Journal of Economy and Society*, 42(2), 189-220.

Brownmiller, S. (2013). *Against our will: Men, women and rape*. Open Road Media.

Chapell, B. (2014, July 16). EEOC Announces Tougher Rules Protecting Pregnant Workers. *National Public Radio*. Retrieved August 6, 2014, from <http://www.npr.org/blogs/thetwo-way/2014/07/16/331945772/eec-announces-tougher-rules-protecting-pregnant-workers>

City of Philadelphia. (2009). Your Rights to Unpaid Leave Due to Domestic or Sexual Violence. Retrieved May 2, 2014, from http://www.phila.gov/HumanRelations/PDF/DomesticSexualViolenceLeavePoster_English.pdf

Commission on Family and Medical Leave. (1996). A workable balance: Report to Congress on family and medical leave policies. Washington, DC: U.S. Department of Labor, Women's Bureau.

Corporation for Enterprise Development. (2014). State Profile: Pennsylvania. In *Assets and Opportunity Scorecard*. Retrieved February 26, 2014, from <http://scorecard.assetsandopportunity.org/2014/report/state-profile>

Council of the City of Philadelphia. (2013, November 22). BILLS 130002, 130687, and 130701 RESOLUTION 130023 and 130715. Retrieved May 30, 2014, from <http://legislation.phila.gov/transcripts/Public%20Hearings/lawngov/2013/lg112213.pdf>

Cox, J. (2012). PREGNANCY AS "DISABILITY" AND THE AMENDED AMERICANS WITH DISABILITIES ACT. *Boston College Law Review*, 53(2).

District of Columbia. (1990). In Family and Medical Leave Act. *Amendments to Title 4, Chapter 16*. Retrieved February 16, 2014, from <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=4-1609>

Grover, S. L., & Crooker, K. J. (1995). Who appreciates family-responsive human resource policies: The impact of family-friendly policies on the organizational attachment of parents and non-parents. *Personnel psychology*, 48(2), 271-288.

Han, W. J., Ruhm, C., & Waldfogel, J. (2009). Parental leave policies and parents' employment and leave-taking. *Journal of Policy Analysis and Management*, 28(1), 29-54.

Humphreys, C., & Thiara, R. (2003). Mental health and domestic violence: 'I call it symptoms of abuse'. *British Journal of Social Work*, 33(2), 209-226.

Irwin, H. & Silberman, R. (1993). Family and medical leaves: The new federal statute and state laws. New York: Warren, Gorham, Lamont.

Klerman, J.A., & Leibowitz, A. (1994). The work-employment decision among new mothers. In *Journal of Human Resources*. 29, 277-303.

Klerman, J. A., & Leibowitz, A. (1995, April). Labor supply effects of state maternity leave legislation. [Unpublished] 1995. Presented at the Annual Meeting of the Population Association of America San Francisco California April 6-8 1995.

Koss, N. (2002). California Family Temporary Disability Insurance Program, The. *Am. UJ Gender Soc. Pol'y & L.*, 11, 1079.

- Martire, L. M., Stephens, M. A. P., & Townsend, A. L. (2000). Centrality of women's multiple roles: beneficial and detrimental consequences for psychological well-being. *Psychology and aging*, 15(1), 148.
- Mulvehill, G. (2014, August 6). New Jersey Assembly Speaker backs paid sick leave. *Associated Press*. Retrieved August 6, 2014, from http://www.philly.com/philly/business/labor_and_unions/20140806_ap_609ede2b31894505a74d1211c80b6b49.html
- National Network to End Domestic Violence. (2013, September 17). Pennsylvania Summary. In *Domestic Violence Counts*. Retrieved May 2, 2014, from <http://nnev.org/downloads/Census/DVCounts2013/All-StateSummariesMerged.pdf>
- National Partnership for Women and Families. (2008, October). The Pregnancy Discrimination Act Where We Stand 30 Years Later . Retrieved May 30, 2014, from http://go.nationalpartnership.org/site/DocServer/Pregnancy_Discrimination_Act_-_Where_We_Stand_30_Years_L.pdf
- National Partnership for Women and Families. (2014, February). State and Local Action on Paid Sick Days. In *Research Library*. Retrieved February 24, 2014, from <http://www.nationalpartnership.org/research-library/campaigns/psd/state-and-local-action-paid-sick-days.pdf>
- National Women's Law Center. (2013, June 18). It Shouldn't Be a Heavy Lift: Fair Treatment for Pregnant Workers. Retrieved May 30, 2014, from http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf
- Pathways PA. (2009, April 27). Executive Summary. In *Pennsylvania at a Glance: A Follow-up to Investing in Pennsylvania's Families (2007)*. Retrieved February 25, 2014
- Pennsylvania General Assembly. (2013, October 23). House Bill No. 1807, Session of 2013. Retrieved February 24, 2014, from <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2013&sessInd=0&billBody=H&billTyp=B&billNbr=1807&pnr=2594>
- Pennsylvania Coalition Against Domestic Violence. (2014). Pending Legislation. In *Public Policy*. Retrieved May 1, 2014, from <http://www.pcadv.org/Public-Policy/Pending-Legislation/>
- Pennsylvania Coalition Against Rape. (2013, November). Horizon. In *Newsletters*. Retrieved May 2, 2014, from <http://www.pcar.org/sites/default/files/docs/Horizon%20Fall%202013%20for%20web%20FINAL.pdf>
- Pennsylvania Department of Aging. (2013, November 5). Department of Aging Marks November as Caregiver Support Month. In *News and Media*. Retrieved April 10, 2014, from http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_785_18160_0_43/http%3B/pubcontent.state.pa.us/publishedcontent/publish/cop_hhs/aging/dsf_mig/aging_news_and_media_portlet/articles/de
- Pennsylvania Department of Aging. (2014, February 4). Governor Corbett's 2014-15 Executive Budget Drives Strategic Investment for Stronger Pennsylvania . In *News and Media*. Retrieved April 10, 2014, from http://www.portal.state.pa.us/portal/server.pt?open=512&objID=18160&PageID=618857&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/cop_hhs/aging/dsf_mig/aging_news_and_media_po
- Pennsylvania Department of Military and Veterans Affairs. (2013, July). Military Family Relief Program Annual Report 2012-2013. Retrieved April 25, 2014, from http://www.milvet.state.pa.us/DMVA/Docs_All-Mil/MFRAP/mfrap_2013.pdf
- Pennsylvania Department of Military and Veterans Affairs. (2014). Information. In *Military Family Relief Assistance Program*. Retrieved April 25, 2014, from http://www.dmva.state.pa.us/portal/server.pt/community/military_family_relief_assistance_program_%28m-frap%29/18855
- Pennsylvania General Assembly. (2014, January 30). Regular Session 2013-2014, HB 1673. In *Bill Information*. Retrieved March 5, 2014, from <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sy-year=2013&sind=0&body=H&type=B&bn=1673>
- Pennsylvania General Assembly. (2014, February 19). Regular Session 2013-2014 House Bill 1892. In *Bill Information*. Retrieved May 30, 2014, from <http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sY-year=2013&sInd=0&body=H&type=B&bn=1892>
- Pennsylvania General Assembly. (2014). House Bill 1796, Regular Session 2013-2104. In *Bill Information*. Retrieved May 2, 2014, from <http://www.legis.state.pa.us/cfdocs/billinfo/BillInfo.cfm?sy-year=2013&sind=0&body=H&type=B&bn=1796>
- Ruhm, C. J. (1997). Policy watch: the family and medical leave act. *Journal of Economic Perspectives*, 11, 175-186.
- Social Security Administration. (2012, June). Disability Benefits. In *Disability Benefits*. Retrieved May 5, 2014, from <http://www.ssa.gov/pubs/EN-05-10029.pdf>
- Smith, P. R. (2004). Elder care, gender, and work: The work-family issue of the 21st century. *Berkeley J. Emp. & Lab. L.*, 25, 351.
- State of New Jersey Department of the Treasury. (n.d.). NJ Family Leave Act and Family and Medical Leave Act of 1993: Frequently Asked Questions and Answers. In *Employers' Pensions and Benefits Administration Manual (EPBAM)*. Retrieved August 6, 2014, from <http://www.state.nj.us/treasury/pensions/epbam/additional/fmla-qa.htm>
- Swanberg, J. E., Ojha, M. U., & Macke, C. (2012). State employment protection statutes for victims of domestic violence public policy's response to domestic violence as an employment matter. *Journal of interpersonal violence*, 27(3), 587-619.
- U.S. Bureau of the Census, Current Population Reports. (2013). Fertility of American women: 2010. Washington, DC: U.S. Government Printing Office.
- U.S. Department of Commerce: U.S. Census Bureau. (2012). Characteristics of Same-Sex Couple Households 2012. In *American Community Survey Data on Same Sex Couples*. Retrieved February 24, 2014, from <http://www.census.gov/hhes/samesex/data/acs.html>
- U.S. Department of Labor. (2010, June 22). Administrator's Interpretation No. 2010-3. In *Wage and Hour Division*. Retrieved February 24, 2014, from http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm
- United States Department of Labor. (n.d.). FACT SHEET: FINAL RULE TO IMPLEMENT STATUTORY AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT MILITARY FAMILY LEAVE PROVISIONS . In *Wage and Hour Division*. Retrieved April 15, 2014, from <http://www.dol.gov/whd/fmla/2013rule/fs-military.htm>
- U.S. Department of Labor. (2013, August). Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act. In *Wage and Hour Division*. Retrieved February 24, 2014, from <http://www.dol.gov/whd/regs/compliance/whdfs28f.htm>
- U.S. Equal Employment Opportunity Commission. (2014, July 14). In *EEOC Issues Updated Enforcement Guidance On Pregnancy Discrimination And Related Issues*. Retrieved August 6, 2014, from <http://www.eeoc.gov/eeoc/newsroom/release/7-14-14.cfm>
- Waldfoegel, J. (1994). Women working for less: Family status and women's pay in the US and UK. (Ph.D. dissertation, Harvard University, 1994). Dissertation Abstracts International, 55-08A.
- Waldfoegel, J. (1999). The impact of the family and medical leave act. *Journal of Policy Analysis and Management*, 18(2), 281-302.
- WOAR. (n.d.). Sexual Violence Statistics. In *Resources and Information*. Retrieved May 2, 2014, from <http://www.woar.org>
- Women's Legal Defense Fund. (1993). State laws and regulations guaranteeing employees their jobs after family and medical leaves. August.

