

United States¹

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For comparisons with other countries in this review on leave provision and early childhood education and care services please see the [cross-country tables](#) at the front of the review (also available individually on the Leave Network website). To contact authors of country notes, see the [members page](#) on the Leave Network website.

Note on United States leave policy: United States is a federal state. There is no statutory right to any of the types of leave or other statutory measures covered in the other country notes in this review. The federal Family and Medical Leave Act (FMLA) of 1993 provides leave for a variety of reasons including: childbirth or the care of a new-born child up to the age of 12 months; for the placement and care of an adopted or foster child; for the care of a seriously ill child, spouse, or parent; or for a serious health condition of the employee that makes them unable to work their regular schedule. The federal Department of Labor is responsible for the FMLA. In addition, six states and one territory offer all or some employees the statutory right to partly compensated leaves for family reasons. These areas cover 26 per cent of the US population.

1. Current leave and other employment-related policies to support parents

Length of leave (before and after birth)

- The FMLA provides up to 12 weeks in a 12-month period. Leave is an individual entitlement (for those who are eligible, see below).

Payment and funding

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- Leave under the FMLA is unpaid and job-protected, meaning that employees are guaranteed a return to the same or similar position with the same employer.

Flexibility in use

- FMLA leave may be taken in one continuous period or divided into several blocks of time.

Regional or local variations in leave policy

Seven states, the District of Columbia, and Puerto Rico have adopted paid leave insurance for pregnancy and/or family caregiving. All leave rights and benefits are granted as individual entitlements. For cross-national comparative purposes, we note that there are no nationality/citizenship-based eligibility requirements. Any eligibility requirements concern employment (i.e., number of weeks or hours worked, employer size, etc.). We also note that since the Supreme Court struck down state-level same-sex marriage bans in June 2015, leave to care for one's spouse includes married, same-sex couples, and leave to care for children, including children of same-sex couples where there is legal guardianship. Some states cover leave to care for children for employees standing in *loco parentis* – or acting as parents regardless of legal guardianship. This is noted in the descriptions of state provisions below.

- California was the first state to implement a comprehensive paid family leave (PFL) law in 2004, covering all private sector employees. Some public sector employees are covered and self-employed persons can opt in. PFL insurance allows covered employees, regardless of gender, to receive wage replacement benefits for up to six weeks. Leave is partially paid at 60 to 70 per cent of earnings, depending on income, up to a maximum of US\$1,252 [€1,101.03]² per week in 2019. Leave is paid for childbirth, adoption, or care of a seriously ill child, grandchild, parent, parent-in-law, grandparent, spouse, or domestic partner. The definition of 'parent' under the law includes individuals serving as a parent to a child without reference to legal guardianship. PFL was created by extending the State Disability Insurance (SDI) programme to cover family caregiving needs. The SDI provides 52 weeks of wage replacement benefits for leave related to employees' own temporary disability, serious illness, or non-work-related injury. PFL and SDI benefits are funded by employee contributions, and benefit levels are adjusted annually as wages increase. The average weekly benefit for family

² Conversion of currency undertaken for 24 June 2019, using <https://www1.oanda.com/currency/converter/>

care in December 2018 was US\$670³ [€589.21]. As an insurance programme, the PFL and SDI programmes do not provide rights to job protection. Job protection is provided under other laws, such as the FMLA or the California Family Rights Act. Under a separate law, pregnant employees have the right to an additional four months of job-protected leave for disability due to pregnancy, childbirth, or related health condition (if they work for an employer with five or more employees). They can receive wage replacement under SDI, typically for four weeks prior to and six weeks after childbirth (and this is in addition to six weeks of benefit payments under the PFL for bonding). Additional weeks can be granted with proper physician certification in cases of difficult pregnancies.

- Hawaii provides up to 26 weeks of partial wage replacement under its Temporary Disability Insurance (TDI) programme for leave to address health issues related to pregnancy and childbirth (certified by a health professional). Benefits are 58 per cent of average weekly wages, paid up to a limit which is set annually. In 2018, that ceiling was US\$620⁴ [€545.24]. To be eligible for TDI benefits, employees must be employed and have worked for at least 14 weeks, for at least 20 hours per week for those 14 weeks, and have earned at least US\$400 [€351.77] in the year preceding leave. Hawaii is the only state with a TDI programme that has not extended its TDI programme to cover leave for family caregiving.
- Massachusetts adopted paid family medical leave in 2018. The programme provides: up to 12 weeks to care for a new-born, newly adopted, or newly placed foster child; up to 20 weeks to address one's own serious medical condition, including pregnancy- and childbirth-related health issues; up to 12 weeks to care for a family member (i.e., parent, spouse, child, domestic partner, grandparent, grandchild, sibling, parent-in-law, and domestic partner's parent); up to 26 weeks to address issues related to the military deployment of a family member or a family member's serious illness or injury incurred in active military duty; and up to 26 weeks of combined medical and family caregiving leave. Employees standing in *loco parentis* to a child can take leave to care for the child. The wage replacement rate is 80 per cent of average weekly wages, up to 50 per cent of the state-wide average weekly wage (AWW), plus 50 per cent of wages beyond that amount up to a cap of US\$850 [€747.51] per week. Eligible employees begin making payroll contributions to the fund in July 2019 and can start receiving benefits in January 2021 (but for family caregiving purposes, benefits start in July 2021). To be eligible, employees must work at least 15 weeks and earn at least US\$4700 [€4,133.26] in the 12-month period prior to taking

³ https://www.edd.ca.gov/about_edd/pdf/qspfl_Avg_WBA.pdf

⁴ <http://labor.hawaii.gov/dcd/frequently-asked-questions/tdi/>

leave. The programme covers all private sector and most public sector employees.⁵ Self-employed individuals can opt in.

- New Jersey implemented paid family leave insurance in 2009. The legislation extends the state's existing TDI system (which previously provided paid leave to address medical issues related to pregnancy and childbirth) to provide workers with up to six weeks of benefits, paid at 67 per cent of prior wages, up to US\$650 [€571.62] per week in 2019. Benefits cover leave to care for a parent, spouse, child, domestic or civil union partner, or partner's child, including care for a child for an employee with a parent-child relationship regardless of legal guardianship. The measure is financed by employee payroll deductions. Average weekly benefit for family care in 2017 was US\$538⁶ [€473.13]. It covers all private sector employers, and some public employees.^{7,8} Benefits payments for paid family leave do not run concurrent with TDI benefit payments for leave related to pregnancy and childbirth. Under TDI, pregnant employees can receive wage replacement for four weeks prior to the anticipated delivery date and six weeks after delivery. TDI benefits pay 67 per cent of the employee's AWW with a cap of US\$650 [€571.62] per week in 2019.^{9,10}
- New York implemented its paid family leave programme in January 2018. The programme provides job-protected, paid leave to care for a new child, a seriously ill parent, spouse, domestic partner, child, grandparent, or grandchild, or to relieve family pressures when a spouse, domestic partner, child, or parent is called to active military service abroad. Employees standing in *loco parentis* to a child can take leave to care for the child. In 2019, the programme provided job protection and wage replacement for ten weeks. In 2021, the duration should increase to 12 weeks, at which point the programme will be fully phased-in. Benefits pay 55 per cent of an employee's AWW, capped at 55 per cent of the state-wide AWW, which in 2019 came to a maximum of US\$746.41¹¹ [€656.41]. When fully implemented in 2021, the programme will provide 67 per cent of the employee's

⁵ <https://www.mass.gov/info-details/paid-family-medical-leave-for-employees-faq>

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<https://myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/FLI%20Summary%20Report%20for%202017.pdf>

⁷ <https://myleavebenefits.nj.gov/worker/fli/>

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http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202015.pdf

⁹ <https://www.nj.gov/labor/ea/rates/ea2019.html>

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<https://myleavebenefits.nj.gov/labor/myleavebenefits/worker/tdi/index.shtml>

¹¹ <https://paidfamilyleave.ny.gov/2019>

AWW, capped at 67 per cent of the state-wide AWW. The paid family leave programme is funded entirely through employee payroll deductions. Employees are eligible to participate after having worked for their employer for 26 weeks full-time or 175 days part-time. In addition to the paid family leave programme, the TDI programme provides up to 26 weeks for pregnancy and childbirth, paid at 50 per cent of average weekly wages up to a cap of US\$170 [€149.50] per week. Benefit payments cover leave for medical issues related to pregnancy and/or childbirth, and requires the submission of medical reports. This leave is managed through the TDI programme, which is jointly funded by employees and employers.¹² Self-employed individuals can opt in to the insurance programmes.

- Rhode Island's paid family leave programme (referred to as Temporary Caregiver Insurance) was implemented in 2014. The legislation provides job protection and extends the state's existing TDI programme to provide four weeks of paid leave to care for a new child or a parent, spouse, child, domestic partner, grandparent, or parent-in-law with a serious health condition. The programme is financed by employee payroll deductions and provides 60 per cent of previous weekly earnings, with a minimum of US\$98 [€86.18] per week and a maximum of US\$852 [€749.26] per week in 2019.¹³ It covers all private sector employees and some public sector employees. In 2018, the average weekly benefit was US\$551 [€484.56] for caregiving.¹⁴ Pregnant employees qualify separately for job-protected paid leave through the TDI programme. TDI covers leave to address medical issues related to pregnancy and childbirth (child bonding is covered by the temporary caregiver insurance). The benefit rate is 4.62 per cent of previous earnings in the highest-earning quarter of the employee's base period (i.e., first four of previous five quarters of employment). In 2019, the minimum benefit rate was US\$98 [€86.18], and the maximum rate was US\$852 [€749.26].
- Washington adopted paid family leave insurance in 2017. Employees began contributing to the insurance fund in 2019, and, starting in 2020, the programme will provide wage replacement during leave to: care for a new-born, newly adopted, or newly placed foster child; or a parent, spouse, domestic partner, child, grandchild, grandparent, or sibling with a serious health condition; or to address issues related to a family member's active military duty. Employees standing in *loco parentis* to a child

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<http://www.wcb.ny.gov/content/main/DisabilityBenefits/Employer/introToLaw.jsp>

¹³ http://www.dlt.ri.gov/News_Releases/NR062818.htm

¹⁴ <http://www.dlt.ri.gov/lmi/pdf/tdi/2018.pdf>

can take leave to care for the child. Leave can also be used to address an employee's own health issues, including those related to pregnancy or childbirth. Benefits pay 90 per cent of the employee's average weekly wages for employees who earn 50 per cent or less of the state-wide AWW. Employees who earn more receive 90 per cent of their AWW, up to 50 per cent of the state-wide AWW, then 50 per cent of their AWW that exceeds 50 per cent of the state-wide AWW. Benefits are paid for up to 16 weeks for combined self-care and family caregiving, or for up to 18 weeks to address a serious pregnancy-related health condition combined with family caregiving needs. To be eligible, employees must have worked at least 820 hours in four out of five previous quarters. Rights to job protection cover only employees in establishments of 50 or more employees, plus require 12 months and 1,250 hours of employment. Self-employed individuals can opt in.

- The District of Columbia passed the Universal Paid Leave Amendment Act in December 2016, which provides eight weeks of paid Parental leave for a new-born, newly adopted, or newly placed foster child; six weeks of family leave to care for a parent, spouse, child, domestic partner, grandparent, or sibling; two weeks of medical leave to address one's own serious health condition; and up to eight weeks in total of combined medical and family caregiving leave. Employees standing in *loco parentis* for a child can take leave to care for the child. The Act covers all private sector employers covered by the D.C. Unemployment Compensation Act. Self-employed individuals can opt in. In July 2019, employees will contribute to the fund through payroll deductions and, beginning in July 2020, employees can receive benefits. Leave is job-protected, and benefit payments are 90 per cent of the employee's AWW, up to a cap of US\$1,000 [€879.42] per week.¹⁵ For employees with average weekly wages above US\$1000 [€879.42], the wage replacement rate is 80 per cent.¹⁶ Beginning in 2021, the maximum benefit will be increased annually to account for inflation.¹⁷
- Puerto Rico's Working Mothers Act (1942) provides an eight-week Maternity leave at 100 per cent of earnings that must begin one to four weeks prior to the expected delivery date. A female

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https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/PFL%20Employee%20FAQ_0.pdf

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https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/PFL%20Sample%20Benefit%20Amount%20Chart.pdf

¹⁷ <http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf>

employee who adopts a child under the age of six is entitled to the same leave benefits as a mother who gives birth.^{18,19}

Eligibility (e.g. related to employment or family circumstances)

- The federal FMLA covers all employees (including foreign workers who have a valid work visa²⁰) who: work for a covered employer (see 'additional note' below); and who have worked for that employer for at least one year (even if not for a continuous period); and at least 1,250 hours over the preceding 12 months.
- FMLA defines a child as a biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*.²¹ As such, a same-sex parent may take leave under FMLA to care for their child, even if they are not an adoptive parent.
- Because of the qualifying conditions, only about 58 per cent of workers in private firms are eligible for federal FMLA, with lower coverage for low-wage workers, workers with young children, and working welfare recipients.²²

Variation in leave due to child or family reasons (e.g. multiple or premature births; poor health or disability of child or mother; lone parent); or delegation of leave to person other than the mother

- None.

Additional note (e.g. if leave payments are often supplemented by collective agreements; employer exclusions or rights to postpone)

- The majority of US workers lack access to paid family leave from any source. The 2011 *American Time Use Survey* provided detailed information on employees' access to paid family leave, through statutory provision in the states that provide paid leave, collective bargaining agreements, or individual workplace policies. Twenty-eight per cent of employees indicated they had access to paid leave for childcare, while 43 per cent had access to leave to care for an ill family member.²³ Only 17 per cent of workers in the United States have access to paid family leave through their employers; 16 per cent of private sector employees have access to paid family

¹⁸ <http://www.oslpr.org/download/en/2000/0120.pdf>

¹⁹ <http://www.oslpr.org/download/en/2000/0425.pdf>

²⁰ <https://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62I.pdf>

²¹ <https://www.dol.gov/whd/fmla/adultchildfaqs.htm>

²² Council of Economic Advisors (2014). *The Economics of Paid and Unpaid Leave*. Washington, DC: Office of the President.

²³ An update of this survey was conducted in 2017, but data was not released until after this report was completed (Summer 2018).

leave through their employers; and 25 per cent of state and local government workers do.²⁴

- Federal FMLA exempts private employers and non-profit organisations with fewer than 50 employees within a 75-mile radius (all public sector employees are covered).

Flexible working

- None.

Specific provision for (breast)feeding

- The Fair Labour Standards Act, amended by the Affordable Care Act in 2012, requires that an employer with 50 or more employees must provide its hourly workers with: a reasonable break for an employee to express breast milk for her nursing child up to one year after the child's birth; and a place, other than a bathroom, that is private and free from intrusion to be used by an employee to express breast milk.
- The Fifth Circuit of the federal Court of Appeals recently decided that discriminating against a female employee because she is lactating or seeking to express breast milk may constitute sex discrimination under the Pregnancy Discrimination Act and Title VII of the Civil Rights Act.

2. Relationship between leave policy and early childhood education and care policy

There is no statutory entitlement to leave or ECEC. Levels of attendance at formal ECEC services for children under three years of age are above average both for the countries participating in this review and for OECD countries, but below average for children over three years of age. For actual attendance levels, see 'relationship between leave and ECEC entitlements' on [cross-country comparisons](#) page.

3. Changes in policy since April 2018 (including proposals currently under discussion)

The 5 February 2018 marked the 25th anniversary of the Family and Medical Leave Act (FMLA). There have been no notable federal policy changes since 1993. President Trump has proposed including funding for six weeks of paid family leave in the 2019 budget. However, the programme would be left to each state to establish a programme suitable for their particular workforce and economy, and does not

²⁴ U.S. Department of Labor (2018). *National Compensation Survey: Employee Benefits in the United States – March 2018*. Bulletin 2789.

include provisions for paid leave to care for family members. In addition, two bills have been introduced that offer paid family leave provisions. The Cradle Act would enable new parents to take up to four to 12 weeks of leave (earning 55 per cent to 80 per cent of their income) after the birth or adoption of a child. Funding for this leave would be drawn from social security and would require deferral of social security (retirement) benefits for twice the amount of time that leave was taken (e.g., one month of leave would result in a two month deferral of social security). The Family and Medical Insurance Leave Act (FAMILY Act) was also reintroduced to Congress in 2019. This legislation would provide 12 weeks of paid leave for the care of a newborn or adopted child, care for an ill family member, or for a serious health condition. Funding would come from employer and employee contributions to a national insurance fund. Employees would receive up to 66 per cent of their monthly earnings, with maximum monthly benefits being capped at \$4000 [€3,517.67] initially. This legislation has been introduced in the past but has not been enacted.

Some states and local governments have passed laws to establish new paid family leave insurance programmes. As mentioned above, New York became the fourth state to offer paid family leave when its programme went into effect in January 2018, and Washington and Massachusetts²⁵ have passed paid family leave policies within the last year that will go into effect in 2020 and 2021, respectively. Several U.S. cities passed paid family leave legislation in 2017-2018, such as Jacksonville, Indianapolis, and Albuquerque. Currently 22 of the largest 40 U.S. cities offer paid family leave to municipal employees.

Some states with paid family leave insurance programmes have expanded their programmes since April 2018. In February 2019, the New Jersey governor signed a bill that increased the wage replacement rate to 85 per cent of previous weekly wages, with a cap of US\$860 [€756.30] per week. The bill also increased benefit duration from six weeks to 12 weeks. These changes go into effect on 1 July 2020. In California, a bill was introduced in January 2019 (AB 196 Gomez) to increase wage replacement levels for family leave to 100 per cent of previous earnings for employees with US\$100,000 [€87,941.80] or less in annual earnings.

Additionally, 20 states have introduced legislation on paid family leave in recent years, and 11 states have legislation on paid family leave that is still under consideration by state legislatures. An additional five states have passed legislation that provides paid family leave to state employees.

²⁵ <https://www.mass.gov/info-details/paid-family-medical-leave-for-employees-faq>

4. Uptake of leave

A 2012 survey found that only 16 per cent of US workers eligible for the federal FMLA took leave for any covered reason. Of these, about half took leave for their own illness; 21 per cent took leave for reasons related to a new child; and the remainder took leave to care for an ill family member (which could be a spouse or child).²⁶ Though the law provides *de facto* Parental leave entitlements, studies have found it has had generally small effects on mothers' likelihood of taking time off from work at childbirth,^{27 28} and little or no effects on time off taken by new fathers.^{9 10} This suggests there are limits to the extent to which families are willing and able to use unpaid leave. In contrast, evidence suggests that workers are much more likely to use paid leave. A recent report shows that among workers who have access to paid family or Parental leave, 87 per cent of women and 59 per cent of men use at least half of the paid Parental/family leave that they have access to (66 per cent of women and 36 per cent of men use all available paid leave).²⁹ Also, implementation of California's PFL law increased the leave-taking of new fathers by 46 per cent and new mothers by 13 per cent.³⁰

²⁶ Klerman, J. A., Daley, K., and Pozniak, A. (2013). *Family and Medical Leave in 2012: Technical report*. Washington, D.C.: Abt Associates.

²⁷ Han, W.J. and Waldfogel, J. (2003) Parental leave: The impact of recent legislation on parents' leave-taking. *Demography*, vol.40 (1): 191-200.

²⁸ Han, W.J., Ruhm, C., and Waldfogel, J. (2009) Parental leave policies and parents' employment and leave-taking. *Journal of Policy Analysis and Management*, vol.26 (1): 29-54.

²⁹ <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2017%20Employee%20Benefits%20Report.pdf>

³⁰ Bartel, A. P., Rossin-Slater, M., Ruhm, C. J., Stearns, J., and Waldfogel, J. (2018). Paid family leave, fathers' leave-taking, and leave-sharing in dual earner households. *Journal of Policy Analysis and Management*, 37, 10-37.