

United States¹

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N.B. United States is a federal state

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.

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

Note on United States leave policy: 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) provides leave for a variety of reasons including: childbirth or the care of a new-born child up to 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 him/her unable to work their regular schedule. The federal Department of Labour is responsible for FMLA. In addition, five states and one territory offer all or some employees the statutory right to partly compensated leaves for family reasons. These areas cover 23 per cent of the US population.

Length of leave (before and after birth)

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

Payment and funding

- Federal FMLA: unpaid.

Flexibility in use

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

¹ Please cite as: Kaufman, G. and Gatenio Gabel, S. (2018) 'United States country note', in Blum, S., Koslowski, A., Macht, A. and Moss, P. (eds.) *International Review of Leave Policies and Research 2018*. Available at: http://www.leavenetwork.org/lp_and_r_reports/

Regional or local variations in leave policy

- 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 allows covered employees regardless of gender to take up to six weeks of a partially paid leave (55 per cent of earnings up to a maximum of US\$1,216 [€1,073.62]² a week in 2018) following childbirth, adoption or care of a seriously ill child, grandchild, parent, parent-in-law, grandparent, spouse or domestic partner. This is in addition to the State Disability Insurance (SDI) programme that provides up to six weeks of a partially paid leave at 55 per cent of earnings and may be taken by mothers during or after pregnancy. Additional weeks can be granted with proper physician certification in cases of difficult pregnancies. These benefits are funded by employee contributions, and benefit levels are adjusted annually as wages increase. The average weekly benefit for family care in December 2017 was US\$601 [€512.11]. Starting 1 January 2018, wage replacement increased to 60 or 70 per cent of wages, depending on income level. The seven-day waiting period was also removed.
- New Jersey implemented paid family leave in 2009. The legislation extends the state's existing TDI system (which previously provided paid Maternity leave) to provide workers with up to 12 weeks of benefits at 66 per cent of prior wages up to US\$637 [€542.79] a week in 2018 to cover leave to care for a new-born, adopted or foster child, or seriously ill family member. The measure is financed by employee payroll deductions. Average weekly benefit for family care in 2016 was US\$524 [€446.50]. It covers all private sector employers, and some public employees^{3 4}.
- Rhode Island's paid family leave law went into effect in 2014. The legislation extended the state's existing TDI programme to provide four weeks paid leave to care for a new-born child or a family member with a serious health condition. The programme is financed by employee payroll deductions and provides about 60 per cent of weekly pay, with a minimum of US\$94 [€80.10] per week and a maximum of US\$637 [€708.10] per week in 2018. It covers all private sector employers, and some public employees. In December 2017, the average weekly benefit was US\$524 [€461.84] for caregiving⁵.
- Beginning 1 January 2018, New York State's paid Family leave provides New Yorkers with job-protected, paid leave to care for a new child, care for a family member with a serious health condition or to help relieve family pressures when someone is called to active military service abroad. When fully phased-in, employees will be eligible for 12 weeks of paid family leave. Benefits began in 2018 at 50 per cent of an employee's average weekly wage, capped to 50 per cent of the state-wide average weekly wage or a maximum of US\$652.96 [€556.39] and when fully implemented in 2021 will provide 67 per cent of the state-wide average weekly wage. This program is funded entirely through a nominal payroll deduction costing 38 cents a week in year one and growing to 88 cents in year four. Employees are eligible to participate after having worked for their employer for six months. The state paid family leave program is in addition to the existing Temporary Disability Insurance (TDI) program that

² Conversion of currency undertaken on 13 June 2018, using: <http://finance.yahoo.com/currency-converter>

³ http://lwd.dol.state.nj.us/labor/fli/worker/state/FL_SP_calculating_benefits.html

⁴ http://lwd.dol.state.nj.us/labor/forms_pdfs/tidi/FLI%20Summary%20Report%20for%202015.pdf

⁵ <http://www.dlt.ri.gov/lmi/pdf/tidi/1216.pdf>

provides up to six weeks for all women employees for childbirth, paid at 50 per cent of wages to a cap of US\$175 [€149.12] a week. This is managed through the TDI program, funded by employees and employers.

- Washington, which never implemented a paid family leave policy originally passed in 2007, passed new family leave legislation in summer 2017. Starting in 2020, the state will offer up to 12 weeks of paid leave for the birth or adoption of a child.
- Massachusetts passed a law in summer 2018 that will provide up to 12 weeks of job-protected leave to bond with a new child starting in 2021.
- District of Columbia passed the Universal Paid-Leave Amendment Act in December 2016, which provides eight weeks for Parental leave, six weeks for family care, and two weeks for own serious health condition. The Act covers all private sector employers covered by the D.C. Unemployment Compensation Act. Self-employed individuals can opt in. From 1 March 2019, covered employers will be required to contribute 0.62 per cent of the annual salary for each of its covered employees to the Universal Paid Leave Fund. Beginning in 2020, the paid leave program would pay out US\$242 [€206.21] million in benefits per year. The benefit is up to US\$1,000 [€851.40] per week. Beginning in 2021, the maximum of benefit will be increased annually to account for inflation^{6 7}.
- Hawaii provides up to four weeks of leave per year for childbirth, adoption or care of an employee's child or care of a seriously ill child or family member to either parent employed at least six months in companies with 100 or more employees. Compensation is available through the TDI program, funded by employees and employers, equivalent to 58 per cent of average weekly wages, up to a cap of US\$594 [€506.51] in 2017⁸.
- Puerto Rico's Working Mothers Act, enacted in 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 employee who adopts a minor five years old or less is entitled to the same leave benefits as a mother who gives birth.
- A new policy was instituted in Missouri in March 2017 based on an executive order from the governor, which allowed employees in the governor's office to receive Parental leave paid at 100 per cent of their wages following the birth or adoption of a child for whom the employee is a primary or secondary caregiver. Primary caregivers may take up to six weeks of leave with full pay and secondary caregivers are entitled to three weeks. Leave may not be transferred to another caregiver and must begin within 12 weeks following the birth or adoption of a child. Parental leave shall run concurrently with FMLA leave, if the employee is eligible. Over the year, other state offices have adopted this policy, so that most state employees are covered.
- Arkansas passed a law in 2017 to provide four weeks of paid Maternity leave to state agency workers. The new law guarantees full pay for state agency workers taking leave.

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

- Federal FMLA: all employees working for a covered employer (see 'additional note' below) and who have worked for that employer for at least one year (even

⁶ <http://www.helioshr.com/2017/02/the-dc-universal-paid-leave-amendment-act-review/>

⁷ <http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf>

⁸ <https://labor.hawaii.gov/dcd/files/2013/01/17Wbase.pdf>

if not for a continuous period) and for at least 1,250 hours over the preceding 12 months.

- 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 recipients⁹.

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. Only 13 per cent of workers in the United States have access to paid family leave through their employers¹⁰. Only 12 per cent of private sector employees do¹¹.
- Federal FMLA exempts private employers and non-profit organisations with less than 50 employees (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: a reasonable break time 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.

⁹ Council of Economic Advisors (2014) *The Economics of Paid and Unpaid Leave*. Washington, DC: Office of the President.

¹⁰ Council of Economic Advisors (2014) *The Economics of Paid and Unpaid Leave*. Washington, DC: Office of the President.

¹¹ U.S. Department of Labor (2015, June) DOL Fact Sheet – Family and Medical Leave

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 are above average for the countries participating in this review and for OECD countries, but below average for children over three years. For actual attendance levels, see 'relationship between leave and ECEC entitlements' on [cross-country comparisons](#) page.

3. Changes in policy since April 2017 (including proposals currently under discussion)

5 February 2018 marked the 25th year 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 paid family leave in the 2018 budget. However, it would be left to each state to establish a programme suitable for their particular workforce and economy. In President Trump's State of the Union speech in January 2018, he proposed that Parental leave could be budget-neutral if parents were allowed to draw funds from social security to pay for their Parental leave in return for postponing their collection of social security upon retirement.

As mentioned above, New York became the fourth state with paid family leave when it went into effect in January 2018, and Washington and Massachusetts passed paid family leave policies this past year that will go into effect in 2020 and 2021, respectively. Several U.S. cities have passed leave legislation, including San Francisco, Salt Lake City, Tampa, and Seattle.

4. Take-up 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 it for their own illness; 21 per cent took it for reasons related to a new child; and the remainder took it to care for an ill family member (which could be a spouse or child)¹². 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^{13 14} and little or no effects on time off by new fathers^{9 10}. This suggests there are limits to the extent to which families are willing and able to use unpaid leave.

5. Research and publications on leave and other employment-related policies since 2017

Please be aware that this is not intended to be a comprehensive list of all publications or research in this area for this country. If you are aware of a publication or research that could be listed in this section, please contact the country note author(s) so that they can include it for the following year.

¹² Klerman, J. A., Daley, K., & Pozniak, A. (2013). *Family and Medical Leave in 2012: Technical report*. Washington, D.C.: Abt Associates.

¹³ Han, W.J. and Waldfogel, J. (2003) Parental leave: The impact of recent legislation on parents' leave-taking. *Demography*, vol.40 (1): 191-200.

¹⁴ Han, W.J., Ruhm, C., Waldfogel, J. (2009) Parental leave policies and parents' employment and leave-taking. *Journal of Policy Analysis and Management*, vol.26 (1): 29-54.

a. General overview

Since US government leave policy has historically been under-developed, there has been relatively little research conducted. As more states create their own programs, however, more research is likely to appear. The effects of Parental leave on parental and child health, employment and life choices by gender are being studied in the United States across several disciplines including health and medicine, business, economics and other social sciences.

b. Selected recent publications

Clark, C. and Gallagher, S. K. (2017) 'The influence of state maternity leave policies on US mothers' employment', *Community, Work & Family*, Vol.20, No.4: 459-478. Based on the Survey of Income and Program Participation, the authors find that mothers living in states with expanded family leave (beyond the 12 weeks provided by FMLA) are less likely to quit their jobs in the first three months after childbirth and spend more time in the labour force after childbirth than mothers in states without expanded family leave.

Lichtman-Sadot, S. and Bell, N. P. (2017) 'Child health in elementary school following California's paid family leave program', *Journal of Policy Analysis and Management*, Vol.36, No.4: 790-827.

Based on the Early Childhood Longitudinal Studies (ECLS), the authors assess the impact of California's paid family leave (PFL) program on the health outcomes of elementary school children. Findings suggest that children's health outcomes improved after the introduction of PFL. Specifically, they report lower incidence of ADHD, hearing problems, ear infections, and weight problems.

Petts, R. J. (2017) 'Parental leave use among disadvantaged fathers', *Journal of Family Issues*, Vol.38, No.8: 1157-1185.

Based on the Fragile Families and Child Wellbeing Study, the authors find that 59 per cent of disadvantaged mothers take short leaves of three months or less while only 12 per cent take more than six months following childbirth. Mothers who take only a short leave of one month or less are more likely to experience depression and parenting stress. On the other hand, mothers who take longer leaves are more likely to engage in developmental activities such as reading with their child.

Pragg, B., Knoester, C. (2017) 'Parental leave use among disadvantaged fathers', *Journal of Family Issues*, Vol.38, No.8: 1157-1185.

Based on the Fragile Families and Child Wellbeing Study, the authors find that most fathers take one week of leave or less. Factors associated with more leave taking are positive attitudes toward fatherhood and residence with the birth mother. More parental leave is related to higher paternal engagement when the child is one and five.

Zagorsky J. (2017) 'Divergent Trends in US Maternity and Paternity Leave, 1994-2015', *American Journal of Public Health*, Vol.107, No.3: 460-465.

A publicly available ecological long-term series was created for measuring parental leave from 1994 to 2015 by using the Current Population Survey. Maternity leave rates per 10,000 births showed no trend over 22 years. Paternity figures increased by a factor of three but started from a small base. No national impact on Maternity or Paternity leave after implementation of state laws that provided paid leave was observed.

Bartel, A. P., Rossin-Slater, M., Ruhm, C. J., Stearns and Waldfogel, J. (2018) 'Paid family leave, fathers' leave-taking, and leave-sharing in dual-earner households', *Journal of Policy Analysis and Management*, Vol.37, No.1: 10-37.

Using data from the American Community Survey between 2000 and 2013, the authors compare fathers' leave-taking before and after the passage of paid family leave (PFL) in California. The introduction of PFL increases the odds that new fathers take leave by 46 per cent. Under the program, fathers are more likely to take leave while the mother is working as well as jointly with their partner.

Goodman, J. M. (2018) 'Labouring until labour: The prevalence and correlates of antenatal Maternity leave in the United States', *Maternal and Child Health Journal*, Vol.22, No.2: 184-194.

Based on a national survey of women who gave birth in hospitals, the author finds that 37 per cent of employed mothers took no antenatal leave, working up to the week of their baby's due date. Mothers who live in states that provide paid family leave are 23 per cent more likely to take antenatal leave and stop working almost two weeks before women in states without paid family leave.

Itum, D. S., Oltmann, S. C., Choti, M. A. and Piper, H. G. (2018). 'Access to paid parental leave for academic surgeons', *Journal of Surgical Research*. Available at: <https://doi.org/10.1016/j.jss.2018.01.001>.

Based on analysis of institutional websites or information provided by human resource departments at top academic medical centres, the authors find that about half of top-ranked medical schools provide paid parental leave. Availability of paid parental leave is much more likely at private medical schools than public medical schools and more likely at the higher ranked schools.

c. Ongoing research

None reported.