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Leave Benefits in the United States

Abstract
[Excerpt] In addition to their jobs, workers have obligations — civic, familial, and personal — to fulfill that sometimes require them to be absent from the workplace (e.g., to serve on a jury, retrieve a sick child from day care, or attend a funeral). The U.S. government generally has allowed individual employers to decide whether to accommodate the non-work activities of employees by granting them leave, with or without pay, rather than firing them. In other countries, national governments or the international organizations to which they belong more often have developed social policies that entitle individuals to time off from the workplace (oftentimes paid) for a variety of reasons (e.g., maternity and vacations).

Public policies specifically intended to reconcile the work and family lives of individuals have garnered increased attention among countries in the Organization for Economic Cooperation and Development (OECD). In the United States, which is an OECD member, congressional interest recently has coalesced around family-friendly paid leave proposals (e.g., H.R. 1542/S. 910, S. 80 and H.R. 5781, S. 1681 and H.R. 5873). They would entitle workers to time off with pay to accomplish parental and caregiving obligations to help women in particular balance work and family responsibilities because they are the typical family caregiver and a majority of women in the U.S. population are in the labor force.

Currently, there are few federal statutes that pertain directly or indirectly to employer provision of leave benefits for any purpose. This report begins by reviewing those policies, including the Pregnancy Discrimination Act and the Family and Medical Leave Act. Temporary Disability Insurance (TDI) programs, which five states have established to compensate for lost wages while workers are recovering from nonoccupational illnesses and injuries, are discussed as well. So too are the California and New Jersey family leave insurance programs, which essentially extend the TDI programs of the two states to employees caring for family members.

The report then examines the incidence of different types of paid leave that U.S. employers voluntarily provide as part of an employee's total compensation (wages and benefits). For example, vacations and holidays are the most commonly offered leave benefits: more than three-fourths of employees in the private sector receive paid time off for these reasons. Access to leave by various employee and employer characteristics also is analyzed, with particular attention focused on paid sick leave, which is offered to 57% of private sector employees.

The report closes with results from a federal government survey of the average direct cost to businesses of different types of leave. Indirect employer costs that might arise in connection with some types of leave more than others, such as the greater likelihood of hiring and training temporary replacements for employees absent because of maternity versus bereavement reasons, are not included. Neither are estimates of potential gains to employers (e.g., a more stable and experienced workforce, increased productivity due to greater worker morale) and society (e.g., improved public health, lower formal caregiving costs, and broader participation in civic affairs).

Keywords
employee benefits, paid leave, United States, sick leave, bereavement, jury duty

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CRS Report for Congress

Leave Benefits in the United States

Updated May 7, 2008

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Prepared for Members and
Committees of Congress

Congressional
Research
Service

Leave Benefits in the United States

Summary

In addition to their jobs, workers have obligations — civic, familial, and personal — to fulfill that sometimes require them to be absent from the workplace (e.g., to serve on a jury, retrieve a sick child from day care, or attend a funeral). The U.S. government generally has allowed individual employers to decide whether to accommodate the nonwork activities of employees by granting them leave, with or without pay, rather than firing them. In other countries, national governments or the international organizations to which they belong more often have developed social policies that entitle individuals to time off from the workplace (oftentimes paid) for a variety of reasons (e.g., maternity and vacations).

Public policies specifically intended to reconcile the work and family lives of individuals have garnered increased attention among countries in the Organization for Economic Cooperation and Development (OECD). In the United States, which is an OECD member, congressional interest recently has coalesced around family-friendly paid leave proposals (e.g., H.R. 1542/S. 910, S. 80 and H.R. 5781, S. 1681 and H.R. 5873). They would entitle workers to time off with pay to accomplish parental and caregiving obligations to help women in particular balance work and family responsibilities because they are the typical family caregiver and a majority of women in the U.S. population are in the labor force.

Currently, there are few federal statutes that pertain directly or indirectly to employer provision of leave benefits for any purpose. This report begins by reviewing those policies, including the Pregnancy Discrimination Act and the Family and Medical Leave Act. Temporary Disability Insurance (TDI) programs, which five states have established to compensate for lost wages while workers are recovering from nonoccupational illnesses and injuries, are discussed as well. So too are the California and New Jersey family leave insurance programs, which essentially extend the TDI programs of the two states to employees caring for family members.

The report then examines the incidence of different types of paid leave that U.S. employers voluntarily provide as part of an employee's total compensation (wages and benefits). For example, vacations and holidays are the most commonly offered leave benefits: more than three-fourths of employees in the private sector receive paid time off for these reasons. Access to leave by various employee and employer characteristics also is analyzed, with particular attention focused on paid sick leave, which is offered to 57% of private sector employees.

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Leave Benefits in the United States

In addition to their jobs, workers have obligations — civic, familial, and personal — to fulfill that sometimes require them to be absent from the workplace (e.g., to serve on a jury, retrieve a sick child from day care, or attend a funeral). The U.S. government generally has allowed individual businesses to decide whether to accommodate the nonwork activities of employees by granting them leave (with or without pay) rather than firing them. In other countries, national governments or the international organizations to which they belong more often have developed social policies that entitle individuals to take time off from the workplace for a variety of reasons.[1] For example, workers in countries that are part of the European Union have a minimum vacation benefit with pay of some 20 days per year; in Spain, employees can take paid time off to perform jury service among other civic duties;[2] and 169 countries guarantee women leave with income in connection with childbirth.[3]

Policies specifically intended to reconcile the work and family lives of individuals — which include leave benefits, child-care subsidies, and flexible work arrangements — have garnered increased attention in the 30-member Organization for Economic Cooperation and Development (OECD).[4] In the United States, which is an OECD member, congressional interest recently has coalesced around family-friendly paid leave proposals. They would entitle individuals to time off with pay to accomplish parental and caregiving obligations (e.g., bonding with a newborn or newly placed adopted child or assisting a seriously ill spouse). Women are regarded as the chief beneficiaries of these proposals because

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[1] These entitlements may be part of a country's social security or labor laws. The statutes may be supplemented by provisions in collective bargaining agreements. See, for example Antoine Math and Christele Meilland, *Family-Related Leave and Industrial Relations*, European Industrial Relations Observatory On-Line, 2004, available at [http://www.eurofound.europa.eu/eiro/2004/03/study/tn0403101s.html].

[2] Rebecca Ray and John Schmitt, *No-Vacation Nation*, Washington, DC: Center for Economic and Policy Research, May 2007.

[3] Jody Heymann, Alison Earle and Jeffrey Hayes, *The Work, Family, and Equity Index: How Does the United States Measure Up?*, Montreal, QC: Project on Global Working Families, 2007, available at [http://www.mcgill.ca/files/ihsp/WFEI2007FEB.pdf].

[4] OECD, *Boosting Jobs and Incomes: Policy Lessons from Reassessing the OECD Jobs Strategy*, Paris, FR: OECD Publishing, 2006. OECD member countries are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

- women are the typical informal (unpaid) caregivers to family and friends,[5] and
- a majority of women in the U.S. population are in the workforce, with both husbands and wives employed in about one-half of married-couple families.[6]

Two approaches have been proposed in Congress to guarantee workers the right to take paid leave to attend to family and medical needs: an employer mandate (e.g., H.R. 1542/S. 910, S. 80 and H.R. 5781) and a temporary disability insurance program (e.g., S. 1681 and H.R. 5873).[7]

While "[d]uring the past two decades, the generosity of paid parental leave has increased in all OECD countries, with the exceptions of Ireland, the United Kingdom and several countries with no legislation mandating paid leave [such as the United States],"[8] the organization remains focused on leave and other policies thought to ameliorate work-family conflict. Its continuing interest in encouraging more women to participate in the labor force is partly motivated by concern about the impact of population aging on the future labor supply in member nations. The economic rationale underlying paid family leave is that it will increase the amount of labor supplied by women with child care (and increasingly elder care) obligations and thereby mitigate the slowdown in labor force growth overall. In the United States, the end of years of escalating labor force participation by married mothers, especially mothers of infants,[9] is overlaid on the fear of an impending labor shortfall because of its aging population.[10]

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[5] Women represent 60% of informal caregivers to family and friends age 18 and older, according to *Caregiving in the United States, 2004*, by the National Alliance for Caregiving and AARP. For information on women who care for children and parents, see Charles R. Pierret, "The 'Sandwich Generation:' Women Caring for Parents and Children," *Monthly Labor Review*, September 2006.

[6] U.S. Bureau of Labor Statistics data available at [http://stats.bls.gov/cps/cpsaat2.pdf] and [http://stats.bls.gov/news.release/pdf/famee.pdf].

[7] More specifically, the Healthy Families Act (H.R. 1542/S. 910) would require covered employers to give eligible employees seven days of leave with pay to care for their own health or the health of family members. Two different bills called the Family Leave Insurance Act would establish a Family Leave Insurance Fund through a payroll tax on employees and employers to partially replace the wages of workers on job-protected leave for reasons allowed under the Family and Medical Leave Act (FMLA) in the case of S. 1681, and for reasons allowed under the FMLA as well as to address emergencies caused by military deployment in the case of H.R. 5873. S. 80 and H.R. 5781 would add parental leave, variously defined, to the paid time off benefits currently available to employees of the federal government.

[8] OECD, *OECD Employment Outlook 2006: Boosting Jobs and Incomes*, Paris, FR: OECD Publishing, 2006, p. 130.

[9] Sharon R. Cohany and Emy Sok, "Trends in Labor Force Participation of Married Mothers of Infants," *Monthly Labor Review*, February 2007.

[10] For additional information on a demographically-induced labor shortage in the United States see CRS Report RL33661, *Retiring Baby-Boomers = A Labor Shortage?*, by Linda

(continued...)

This report begins by reviewing U.S. government regulation of time off from work for any purpose. It then examines the incidence of paid leave benefits voluntarily provided by U.S. firms. Access to paid leave by various employee and employer characteristics also is analyzed. Estimates from a government survey of the direct cost to U.S. businesses of the different types of leave offered are presented as well. Indirect employer costs that might arise in connection with some types of leave more than others, such as the greater likelihood of hiring and training temporary replacements for employees absent because of maternity versus bereavement reasons, are not included. Neither are estimates of potential gains to companies (e.g., a more stable and experienced workforce and increased productivity due to greater worker morale) and society (e.g., improved public health, lower formal caregiving costs, and broader participation in civic affairs).

Federal Laws Pertaining to Leave

By-and-large, the U.S. government does not require employers to offer employees nonwage compensation, that is, benefits (e.g., health insurance, retirement plans, and leave). The few employment-based benefits that Congress has mandated are social security, unemployment compensation, workers' compensation, and most recently, unpaid family-medical leave. An overview follows of past and present federal laws and regulations that relate to time off from work.

State statutes may require the provision of leave beyond that in federal law. Employers and unions may negotiate paid time off as a supplement to wages in collective bargaining agreements. Complete coverage of leave benefits that originate from these non-federal sources is beyond the scope of this report.

The Fair Labor Standards Act

The primary law setting standards for wages paid to and hours worked by most employed persons in the United States is the Fair Labor Standards Act (FLSA). Although people often think that the act regulates time *not* worked, the FLSA largely is silent on the subject.[11] It does not require that firms provide employees time off for breaks (e.g., to use a bathroom),[12] meals,[13] illness, holidays, and the like.

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[10] (...continued)
Levine.

[11] Under the FLSA, workers must be paid for short rest breaks but not for meal breaks that employers voluntarily provide.

[12] The Occupational Safety and Health Administration in a 1998 memorandum interpreted the sanitation standard for general industry (29 CRF 1910.141(c)(1)(i): Toilet Facilities) to mean that companies must make toilet facilities available to employees and allow individuals timely access to them.

[13] Some states have laws that require businesses to give time off for meals or other breaks during the workday. Some municipalities also have laws, regulations or guidelines that address meals or other breaks.

Although the FLSA applies to both the private and public sectors, federal employees are entitled to "legal holidays" with pay as prescribed by the Office of Personnel Management under Title 5 of the U.S. Code. Holidays also may be designated in state and municipal laws or regulations. Private sector employers may choose to follow the public sector's holiday practices and pay their employees for the time not worked. If businesses voluntarily close on holidays, firms can pay an employee they require to work the employee's usual hourly wage rate because the FLSA does not distinguish holidays from any other workday.

The FLSA does require employees to be paid more than their regular hourly wage rate in another instance, namely, "overtime work." It is in connection with overtime that the act has become part of the debate over worktime flexibility to accommodate the family responsibilities of employees. The FLSA was enacted in 1938 during a period of extraordinarily high unemployment. Payment at one-and-one-half times an employee's standard hourly rate for working more than 40 hours in a week thus was required of companies as a penalty for extending the workweek of current employees rather than hiring unemployed persons. About 50 years later, Congress allowed employers in one industry — federal, state and local government — to offer employees time off in lieu of the overtime pay they had earned.[14] That is to say, a government can offer its workers the option of taking leave in the future rather than immediately compensating them for overtime worked. Those who want to extend "comp-time" to the private sector began in the 1990s to put the worktime arrangement in a family friendly context by arguing that it would afford workers the opportunity to accumulate hours they could later take off for caregiving or any other reason "if the use of the compensatory time does not unduly disrupt the operations of the employer."[15]

Federal Contractor Legislation

In the Davis-Bacon Act of 1931 and Service Contract Act of 1965, Congress required that certain contractors pay at least prevailing wages and benefits to their workers employed on federal and federally assisted construction and service projects. The Wage and Hour Division in the U.S. Department of Labor (DOL) develops "wage determinations." They list the wage rates and fringe benefit rates DOL determines are prevailing in a given area for particular jobs. Paid sick, vacation, and holiday leave are among the benefits that can be included in a wage determination.[16]

Temporary Disability Insurance

No nationwide program exists that compensates individuals for wages lost while they are absent from the workplace due to short-term health conditions (e.g., childbirth, the flu) or injuries unrelated to employment.

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[14] 1985 amendments to the FLSA, P.L. 99-150.

[15] H.R. 1119, Family Time Flexibility Act, Report No. 108-127, 108th Cong., 1st Sess., March 6, 2003. For additional information see CRS Report RL31875, *Compensation Time vs. Cash Wages: Amending the Fair Labor Standards Act?*, by William G. Whittaker.

[16] See [http://www.dol.gov/esa/programs/dbra/faqs/fringes.htm].

> It was during the severe depression of the thirties that the United States began its national social insurance programs of unemployment insurance and old-age insurance. Consequently, providing protection against costs of sickness that are more or less recurring regardless of economic conditions did not seem to have the same urgency as providing protection against cyclical unemployment and old-age dependency.[17]

In 1946, however, the Federal Unemployment Tax Act was amended to allow states in which employees contribute to their unemployment insurance programs to use those contributions toward cash payments for persons unable to work as a result of temporary nonoccupational illnesses or injuries.[18] California, New Jersey, New York, and Rhode Island passed Temporary Disability Insurance (TDI) laws during the 1940s. Two additional jurisdictions — Hawaii and Puerto Rico — enacted TDI legislation in the late 1960s.

Today, employees and employers contribute to four of the jurisdictions' social insurance programs. Rhode Island and California continue to rely on only employee payroll deductions. The governments usually do not make contributions.[19]

Both employed and unemployed workers may receive TDI benefits. How this is accomplished varies among the jurisdictions depending in part on whether employers are allowed to substitute a private insurance plan for a state-operated plan. Most employees in the private sector are covered because the laws generally apply to businesses with one or more workers. Jurisdictions may cover their own government employees and the self-employed as well. The value of payments and their duration also differ by jurisdiction. In addition, the way in which TDI benefits are coordinated with employer-provided paid sick leave and other accrued leave benefits varies.[20]

The TDI laws do not require employers to retain individuals on their payrolls while receiving benefits.[21] However, employers must comply with other laws that regulate treatment of employees experiencing short-term nonwork disabilities.

Anti-Discrimination Legislation. The Pregnancy Discrimination Act of 1978 (PDA, P.L. 95-555), which amended Title VII of the Civil Rights Act of 1964, makes it illegal for employers with 15 or more employees to fire, refuse to hire, or

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[17] Chapter on Temporary Disability Insurance from the Social Security Administration's 1997 publication, *Social Security Programs in the United States*, available at [http://www.ssa.gov/policy/docs/progdesc/sspus/tempdib.pdf].

[18] The Railroad Unemployment Insurance Act of 1938 also was amended in 1946 to establish a short-term disability program. It is operated by the federal government.

[19] Social Security Administration, *Annual Statistical Supplement, 2006*, available at [http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2006/tempdisability.pdf].

[20] Ibid. See also [http://www.workforcesecurity.doleta.gov/unemploy/pdf/temporary.pdf].

[21] Additional information on individual state's TDI plans can be found at [http://www.edd.ca.gov/diind.htm], [http://www.hawaii.gov/labor/dcd], [http://www.state.nj.us/labor/tdi/tdiindex.html], [http://www.wcb.state.ny.us/content/main/offthejob/IntroToLaw_DB.jsp], and [http://www.dlt.ri.gov/tdi/].

withhold a promotion because an individual is pregnant. The act further prohibits these employers from treating women who are limited in their ability to work because of pregnancy, childbirth, or related health conditions differently from other employees experiencing disabling medical conditions unrelated to work. If a firm has a policy permitting temporarily disabled employees to take sick leave, then it must allow a woman unable to perform her job due to pregnancy or childbirth to take leave on the same terms.[22] Thus, a firm "must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave."[23]

Title VII and the Americans with Disabilities Act of 1990 do not require employers to provide leave to employees to attend to their own short-term illnesses. They also do not require employers to offer employees time off to care for sick family members. But, as in the case of a company with sick or disability leave benefits, a firm that has instituted a family leave policy is prohibited from administering it in a discriminatory manner.[24] For example, men and women must be afforded the same opportunity to take the same amount of time off to care for their children under an employer's family leave plan.

Taking action against "family responsibilities discrimination" may be difficult, however, because "Congress has never prohibited discrimination based on caregiver status so such claims must be "indirect" applications of existing prohibitions against sex bias, disability discrimination, and unequal pay."[25] As recently as May 2007, the Equal Employment Opportunity Commission released clarifying guidance that addresses unlawful disparate treatment founded on sex-based stereotyping of pregnant workers and of employees who are family caregivers, disparate treatment of employees caring for family members with disabilities, and harassment that creates a hostile work environment for employees providing family care.[26]

Relatedly, differences across states in leave benefit laws may make multistate companies susceptible to discrimination complaints for interfering with the rights of employees. For example, California's Family Sick Leave (Kin Care) law requires all employers in the state that offer paid sick leave to allow employees to use some of their time off to care for sick children, parents, spouses or domestic partners.[27] But, in Minnesota, employers with at least 21 employees must permit them to use their

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[22] Chapter XIV — Equal Employment Opportunity Commission, 29 CFR Part 1604.10.

[23] See [http://www.eeoc.gov/types/pregnancy.html].

[24] See [http://www.eeoc.gov/policy/docs/fmlaada.html].

[25] Kevin P. McGowan, EEOC Hears Discussion of Bias Claims Based on Employees' Family Obligations," *Daily Labor Report*, April 18, 2007. As reported in the *Daily Labor Report* ("Teleconference Speakers Share Insights for Stemming Tide of Family Rights Claims," April 16, 2007), only Alaska and the District of Columbia have laws that explicitly prohibit discrimination based on an employee's family responsibilities.

[26] See [http://www.eeoc.gov/policy/docs/qanda_caregiving.html].

[27] See [http://www.fehc.ca.gov/act/law.asp].

personal sick leave to care for sick children.[28] Such variability in leave policies also means that families have quite different options depending on the state in which they live.

TDI and Family Leave: California, Washington and New Jersey. In 2002, California became the first state to mandate a paid family leave benefit by establishing Family Temporary Disability Insurance, commonly known as Paid Family Leave (PFL) insurance. Beginning in mid-2004, both male and female workers could take up to six weeks of paid time off to bond with their new biological, adopted, or foster children. In addition, they became entitled to wage replacement while absent from work to care for seriously ill children, parents, spouses, or domestic partners. Employers may require workers to use a maximum of two weeks of accrued vacation time before drawing payments from the insurance fund. Like the state's TDI program, employers must make deductions from the wages of employees to pay for PFL. The deductions are deposited in the state's disability fund.

PFL must be taken concurrently with the maximum of 12 weeks of unpaid family-medical leave available to eligible employees of covered employers under the California Family Rights Act (CFRA). The act was passed in 1991 and amended in 1993 to conform to federal legislation discussed immediately below. The most noteworthy differences between CFRA and PFL/TDI are that the former provides workers at firms with at least 50 employees unpaid time off with the right to continued health benefit coverage and guaranteed reinstatement to the same or a comparable job; the latter provides almost all employees cash benefits during their short-term absence but not job protection.

Two other states have since enacted paid family leave legislation.

- Washington state passed a family leave insurance program in 2007. It will partially compensate eligible workers at firms with at least 25 employees who take up to five weeks of job-protected leave in connection with the birth or adoption of a child. The paid time-off must be taken concurrently with unpaid leave taken under the federal Family and Medical Leave Act (FMLA). Benefit payments will become available on October 1, 2009, pending submission to the legislature of a task force's recommended financing plan and passage of implementing legislation by January 1, 2008.[29] The task force recommended that the program be administered by the Employment Security Department and that start-up costs should come from the state's general fund; its members could not agree on a long-term financing mechanism. In the state's supplemental budget, signed by the governor in April 2008, $6.2 million is provided as start-up funding for the program. It is hoped that during

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[28] CRS Report RL33710, *State Family and Medical Leave Laws*, by Jon O. Shimabukuro, Cassandra L. Foley, and Tara Alexandra Rainson. (Hereafter cited as CRS Report RL33710, *State Family and Medical Leave Laws*.)

[29] The bill as introduced had included a payroll tax on employees.

the 2009 session of the legislature a long-term solution to the funding issue will be enacted that permits employees to begin taking leave under the program on October 1, 2009, as stated in the law.

- In 2008, New Jersey also enacted family leave legislation but, unlike Washington's law, it included a financing mechanism. The statute will enable almost all workers to take up to six weeks of paid time-off starting July 1, 2009, to bond with a newborn or newly adopted child, and to care for a child, spouse, domestic partner, civil union partner, or parent. Employers may require workers to use a maximum of two weeks of any paid sick leave, vacation time, or other leave before being eligible to draw payments from the insurance fund. As in California, which also is a TDI state, the New Jersey family leave program will be funded by employees through payroll deduction and the cash benefits must run concurrently with unpaid job-protected leave taken under the federal Family and Medical Leave Act.

Many more states have mandated the unpaid job-protected approach to family-medical leave found in the California Family Rights Act than have adopted the insurance approach. Some 35 states and the District of Columbia either proposed or passed unpaid job-protected time-off legislation shortly after the first family-medical leave bill was introduced in Congress in 1985.[30]

The Family and Medical Leave Act

Congress passed and President Clinton signed the Family and Medical Leave Act (FMLA, P.L. 103-3) in 1993. The federal law entitles eligible employees at covered employers to leave without pay for the following reasons:

- the birth of a child of the employee and to care for the newborn child,
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child,
- to care for an immediate family member (i.e., spouse, child under age 18 or any age if incapable of self-care due to an activity-limiting disability, or parent) with a serious health condition that necessitates the employee's presence,[31] or

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[30] Janine A. Parry, "Family Leave Policies: Examining Choice and Contingency in Industrialized Nations," *NWSA Journal*, vol. 13, no. 3, Fall 2001.

[31] The term "serious health condition" is defined at 29 C.F.R. Part 825 as an illness, injury, or mental or physical condition that involves any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential mental facility; a period of incapacity requiring absence of more than three consecutive days from work, school, or other regular daily activities that also involves continuing treatment by or under the supervision of a health care provider; any period of incapacity due to pregnancy or prenatal care; a period of incapacity that is permanent or long-term due to a chronic condition for

(continued...)

- to care for the employee's own serious health condition (including maternity-related disability) that makes the employee unable to perform the functions of his/her position.

The latest Labor Department survey shows that the predominant reason for leave-taking under the FMLA in 1999-2000, at 49%, was to attend to the employee's own health (including maternity-related disability). Caregiving for newborn, newly adopted, or newly placed foster children followed at almost half the rate. About the same fraction of FMLA leave-takers used their time off to care for ill family members.[32]

Employees who take leave under the act are generally guaranteed the right to reemployment in the same or comparable positions. Employers cannot retaliate against workers for taking FMLA leave by, for example, firing them. But, employers are allowed to terminate leave-takers for legitimate business reasons (e.g., the duties of the unit in which the employee works are outsourced).

Private sector firms that had 50 or more employees on their payrolls for at least 20 workweeks in the current or preceding calendar year must allow employees to take leave under the act if the employees worked for them at least 12 months, a minimum of 1,250 hours, and at a facility where at least 50 employees are employed by the firm within 75 miles. Regardless of their size, public sector employers (e.g., federal and local governments, Congress and its agencies) also must provide FMLA leave.[33]

The act's 12 workweeks of leave in a 12-month period, firm-size threshold, and reasons for leave are minimum standards. Employees who work for employers that offer or are covered by collective bargaining agreements that include more expansive family-medical leave, or who work in jurisdictions that have enacted more comprehensive statutes are entitled to the more generous benefits.[34]

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[31] (...continued)
which treatment may not be effective; or any absences to receive multiple treatments (or recovery therefrom) by a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated.

[32] CRS Report RL30893, *Explanation of and Experience Under the Family and Medical Leave Act*, by Linda Levine.

[33] Bills have proposed changes to the firm-size threshold among other provisions of the act. For additional information see CRS Report RL31760, *The Family and Medical Leave Act: Recent Legislative and Regulatory Activity*, by Linda Levine.

[34] For example, the Oregon Family Leave Act requires employers with at least 25 employees to provide job-protected leave to employees after the birth or adoption of a child; to care for an ill or injured child who requires home care; to care for a spouse, parent, child, parent-in-law, or domestic partner with a serious health condition; and for pregnancy-related disability. As recently as June 2007, the Oregon legislature amended the statute to require that employers allow employees to use their paid sick leave for leave taken under the act; previously, use of sick for family leave was a matter of employer policy. See also CRS Report RL33710, *State Family and Medical Leave Laws*, and [http://www.dol.gov/esa/programs/whd/state/fmla/index_PF.htm].

The 12 workweeks of leave need not be taken consecutively. Employees caring for their own serious health condition or that of an eligible family member can take time off intermittently or work a reduced schedule (e.g., a shortened workday). Employees must obtain their employer's agreement if they want to take leave intermittently or work a reduced schedule in the case of the two other FMLA-qualifying reasons.

Employees may elect, or employers may require them, to use accrued paid vacation time or personal leave for the act's unpaid leave. The substitution of paid family or sick leave is subject to the employer's policy concerning the use of these benefits.

The FMLA differs from TDI by being national in scope, providing more reasons for leave,[35] continuing health benefit coverage for absent workers, and guaranteeing job security. The TDI programs, for their part, provide cash benefits and do not have firm-size exclusions. Employees drawing TDI benefits cannot be terminated, however, if they have not exhausted their entitlement to leave under the FMLA or comparable state laws. Analogously, employees receiving cash payments under California's PFL program while caring for newborn, newly adopted, or newly placed children and while caring for children, spouses, or parents cannot be terminated while still entitled to leave under the FMLA or CFRA.

The Birth and Adoption Unemployment Compensation Plan

President Clinton directed the Department of Labor (DOL) to propose regulations enabling states to utilize tax dollars accumulated in the federal-state Unemployment Compensation (UC) program to partially replace the wages of parents who opt to take time off to bond with their newborn or newly adopted children. The purpose of the Birth and Adoption Unemployment Compensation (BAA-UC) experiment, popularly known as Baby UI, was to allow DOL to determine if the availability of cash benefits to working parents within 52 weeks of the birth or placement for adoption of a child encourages long-term attachment to the labor force.[36]

Unlike the FMLA, BAA-UC leave was not guaranteed nationwide and employers did not have to retain employees receiving BAA-UC unless they were also FMLA-eligible. The reasons for leave under BAA-UC were much narrower than under the FMLA as well. Alternatively, the firm-size requirements of the FMLA did not apply to BAA-UC, which was guided by the much broader employer coverage of the UC program.

DOL included model state legislation in an appendix to the BAA-UC regulations, which went into effect in mid-2000. The model Baby UI bill envisioned the availability of BAA-UC for a maximum of 12 weeks, and the time not worked would be counted toward the maximum duration of unemployment benefits. It also

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[35] Only California's TDI program in combination with its PFL program provides reasons for leave comparable to those under the FMLA.

[36] 65 FR 114 (June 13, 2000), p. 37210.

assumed that states would base the amount of BAA-UC benefits on the same criteria (earnings and employment histories) as their individual UC programs and would deduct other income (e.g., employer-provided paid sick or family leave and the value of employer contribution to disability insurance) from BAA-UC payments.

In commentary attached to the regulation, DOL noted that it was not imposing solvency requirements on states before their enactment of BAA-UC. The department stated its expectation that states would not initiate BAA-UC without first examining the impact on the solvency of their UC trust funds.

In late 2003, the Bush Administration rescinded BAA-UC as part of a review of all DOL regulations. The review was undertaken in the context of a recession having led to much reduced balances in state UC funds and a challenge in federal district court to the consistency of BAA-UC with federal UC law.[37] The Bush Administration declared BAA-UC to be "a misapplication of federal UC law relating to the A&A requirements," which state that a person must be *able and available* for suitable work to be eligible for unemployment benefits.[38] It disagreed with the Clinton Administration's explanation of the BAA-UC rule as "part of an evolving interpretation of the A&A requirements that recognizes practical and economic realities" (e.g., not terminating or denying UC benefits to individuals while they are awaiting recall to the firms that temporarily laid them off).[39] The Bush Administration declared that

> the intended recipients of BAA-UC generally do not meet this test as they have initiated their separation from the workforce and it is their personal situation, rather than the lack of available work, that has removed them from the labor market. Because the BAA-UC experiment is based on an assumption of increased *future* labor force attachment, the payment of BAA-UC will likely be made for periods where parents have completely suspended their labor force attachment. Indeed, in cases where the parent is on approved leave from a job, BAA-UC more closely resembles a paid-leave program than a UC program.[40]

It further stated that "Congress intended the UC system to be subordinate to the main task of getting people back to work.... BAA-UC is not consistent with this goal since it encourages parents to refuse available work."[41]

Some 24 Baby-UI bills were introduced in 20 states in 2001, the year after the BAA-UC regulation became effective.[42] But, no state had passed legislation before the regulation was removed in November 2003.

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[37] See LPA, Inc. v. Chao, 211 F.Supp. 2d 160 (D.D.C. 2002) (dismissed on procedural grounds).

[38] 67 FR 233 (December 4, 2002), p. 72122.

[39] 65 FR 114 (June 13, 2000), p. 37213.

[40] 67 FR 233 (December 4, 2002), p. 72122.

[41] 68 FR 196 (October 9, 2003), p. 58542.

[42] Lauren Couillard, "Current State Family Leave Bills Contemplate Several Payment Systems," *Daily Labor Report*, September 17, 2001.

In light of the inaction of states while the BAA-UC regulation was in effect and the handful of states with TDI laws, they appear reluctant to require family-medical leave benefits by taking either an approach based on unemployment or disability insurance. The belief that higher taxes paid by companies located in states that adopt either approach — arguably putting them at a competitive disadvantage with firms in non-adopting states — might contribute to this reluctance on the part of individual states. The UC program is largely financed through state and federal payroll taxes of employers. And, three of the five states with TDI programs partly finance them through a payroll tax on employers.

The Incidence and Cost of Leave Benefits

Unlike the abundant data on wages and salaries, less information is available on the benefits paid to workers. At present, benefits account for 30% of the total compensation (wages and benefits) of employees in the civilian economy.[43] Leave benefits — which represent 7% of total compensation — receive short shrift compared to the information on some other supplements to wages voluntarily provided by employers. For example, the government's primary survey of the labor force — the Current Population Survey (CPS) — does not ask households about time off from work, while it does ask about health and retirement benefits. (These benefits respectively account for almost 8% and over 4% of total compensation). As a result, there is limited data on gender, age, and other demographic characteristics of workers by employer provision of paid leave.

The U.S. Bureau of Labor Statistics (BLS) more often looks to employers for information on benefits because they "typically furnish more reliable information than households do on the details of employer-provided benefit plans and the employers' costs for providing those benefits."[44] The National Compensation Survey (NCS) collects information from companies on benefit incidence as well as compensation cost levels and trends. Firm size, as measured by the number of employees, is one of the company characteristics for which the NCS obtains data. Again, employer rather than household surveys are a better source of size information. Although the NCS lacks demographic information on employees receiving benefits, it does afford data by job characteristics (e.g., occupation, industry, and earnings).

Some private firms conduct compensation surveys, but the results may be proprietary, very expensive to access, or not representative of typical business practices (e.g., if the survey covers primarily large corporations). For these reasons, the analysis below is derived from the NCS, and to provide demographic information, from the National Survey of America's Families and the Medical

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[43] BLS, *Employer Costs for Employee Compensation — September 2007*, December 11, 2007. Private households, farms, and the federal government are not surveyed.

[44] Diane E. Herz, Joseph R. Meisenheimer II, and Harriet G. Weinstein, "Health and Retirement Benefits: Data from Two BLS Surveys," *Monthly Labor Review*, March 2000, p. 4.

Expenditures Panel Survey. The latter two are nationally representative surveys of noninstitutionalized households in the civilian population, similar to the CPS.

Incidence by Employee and Employer Characteristics

In the Private Sector. More than three-fourths of employees at firms in the private sector are provided paid vacations and holidays, making these the most widely available leave benefits. (See **Table 1**.) About seven of every ten workers have access to paid funeral leave and time off for jury duty. Considerably fewer employees in the private sector — 57% — have sick leave as part of their compensation package. Companies continue to pay almost one-half of employees who are absent from work to fulfill military obligations. About two in five workers can take paid leave for personal reasons. Employers in the private sector offer paid family leave to a very small percentage of their workers (8%).

As shown in **Table 1** — regardless of the type of paid leave — it usually is true that

- relatively more private sector employees in white-collar occupations (i.e., management, professional, and related; sales and office) than blue-collar occupations (i.e., natural resources, construction, and maintenance; production, transportation, and material moving) or service occupations (e.g., food, cleaning, personal, health, and protective service workers) have access to leave with pay;
- relatively more full-time than part-time workers receive paid leave;
- relatively more union than nonunion employees have the opportunity to take leave with pay; and
- relatively more higher than lower paid employees are provided leave as part of their compensation package.

In terms of company rather than worker characteristics, it generally is the case that — regardless of the type of paid leave —

- relatively more employees of larger than smaller establishments receive leave with pay;
- relatively more workers in firms located in metropolitan than nonmetropolitan areas have access to paid leave benefits; and
- relatively more employees at firms in the New England and Middle Atlantic regions, compared to other regions, are provided paid leave.

The picture is more mixed for incidence of paid time off by sector of employment. Substantially larger percentages of businesses that produce goods than produce services offer employees leave for vacations and holidays. The opposite is true for sick leave. If government is added to the private service-producing sector shown in **Table 1**, the gap in sick leave provision between the two sectors is even wider. When the BLS last surveyed benefit incidence in state and local governments

in 1998, 96% of their employees had sick leave.[45] Federal employees similarly have near universal access to paid sick leave as well as many of the other benefits for which data are collected in the NCS. They also are permitted to use their annual leave not only for vacations but also for personal reasons.[46] In addition, they can use sick leave for family caregiving and bereavement. Some state governments also permit their employees to use sick leave for other reasons (e.g., family caregiving).[47]

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[45] BLS, *Employee Benefits in State and Local Governments, 1998*, December 2000. Percentage applies to persons employed full-time.

[46] Information on paid leave for federal employees is available at [http://www.opm.gov/oca/leave/HTML/factindx.asp].

[47] For more information see CRS Report RL33710, *State Family and Medical Leave Laws*.

Table 1. Percent of Workers with Paid Leave Benefits by Employee and Employer Characteristics, March 2007

(private nonfarm industries)

Characteristic	Sick	Family	Personal	Vacation	Holiday	Funeral	Jury Duty	Military
All Workers	**57**	**8**	**38**	**77**	**77**	**69**	**71**	**49**
Worker Characteristics								
Management, professional, and related occupations	80	14	57	87	89	86	88	67
Sales and office occupations	63	9	40	80	81	73	75	50
Natural resources, construction, and maintenance occupations	44	6	27	75	75	55	56	38
Production, transportation, and material moving occupations	47	4	33	83	84	70	72	47
Service occupations	39	5	26	59	51	49	54	34
Full-time[a]	68	9	44	90	88	77	78	54
Part-time[a]	23	5	21	38	39	42	47	30
Union	61	7	48	84	84	81	82	55
Nonunion	57	8	37	77	76	67	70	48
Average wage under $15 per hour	44	5	30	69	67	58	61	39
Average wage $15 or more per hour	72	11	48	88	88	82	82	59
Establishment Characteristics								
Nonfarm goods-producing industries[b]	47	6	33	85	85	69	69	50
Private service-producing industries[b]	60	9	40	76	74	68	68	48
1-99 workers	48	6	27	71	69	57	57	36
100 or more workers	67	10	51	85	85	81	81	62

Characteristic	Sick	Family	Personal	Vacation	Holiday	Funeral	Jury Duty	Military
Geographic Areas								
Metropolitan area	58	9	40	78	77	70	70	50
Nonmetropolitan area	50	5	32	76	74	63	63	42
— Region[c]								
New England	65	9	43	75	78	73	73	52
Middle Atlantic	64	8	48	80	80	76	76	53
East North Central	53	8	42	76	76	72	72	50
West North Central	54	6	31	75	73	68	68	47
South Atlantic	54	9	34	79	76	67	67	50
East South Central	54	6	38	80	81	64	64	43
West South Central	56	8	36	79	79	64	67	47
Mountain	56	6	37	75	74	64	68	46
Pacific	59	10	35	76	74	64	63	44

Source: U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in Private Industry in the United States*, March 2007.

a. The definition of full-time and part-time is that used by individual employers.

b. The definition of private nonfarm industries are all of the following except agriculture and public administration: nonfarm goods-producing industries (natural resources and mining; construction; and manufacturing) and service-producing industries (wholesale and retail trade; transportation and utilities; information; financial activities; professional and business services; education and health services; leisure and hospitality; other services; and miscellaneous service industries).

c. Regions are composed of the following states: New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), Middle Atlantic (New Jersey, New York, and Pennsylvania), East North Central (Illinois, Indiana, Michigan, Ohio, and Wisconsin), West North Central (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), South Atlantic (Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia), East South Central (Alabama, Kentucky, Mississippi, and Tennessee), West South Central (Arkansas, Louisiana, Oklahoma, and Texas), Mountain (Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming), and Pacific (Alaska, California, Hawaii, Oregon, and Washington).

Among Working Parents. Utilizing data from the latest round (2002) of the National Survey of America's Families (NSAF), the Urban Institute published information on the characteristics of working parents 18-54 years old with any type of paid leave. Significantly more fathers (83.5%) than mothers (76.2%) report having any time off with pay. Married parents (81.5%) are significantly more likely than single parents (73.8%) to have access to paid leave. Receipt of paid leave increases with age of parents and age of youngest child; as a result, it appears that "workers with a great need for leave — parents with very young children — are the least likely to have access to leave."[48] Access to paid leave benefits increases in step with family income measured as a percentage of the federal poverty level.

Two other studies similarly estimated a direct relationship between family income and receipt of paid time off from work. On the basis of data from the National Longitudinal Study of Youth, 76% of families in the bottom quartile of the income distribution lacked paid sick leave and 58% lacked paid vacations at some point while employed between 1990 and 1996. In contrast, 40% of families in the top quartile of the income distribution lacked paid sick leave, and 41% lacked paid vacations.[49] Similarly, results from the Kaiser Foundation's 2001 Women's Health Survey show that 64% of employed women with family income below 200% of the federal poverty level are not paid when they miss work to care for a sick child compared to 37% of working women in higher income families.[50]

Welfare receipt at any time significantly reduces a parent's likelihood of having paid leave, according to the analysis of NSAF data. But, leave availability is greater among those no longer receiving welfare than among current recipients — with almost three in five working parents currently on welfare lacking any type of paid time off. The study's author describes the low rate of access to paid leave among parents currently receiving welfare as "troubling" because

> These parents may be trying to move off public assistance. Without ample work supports, including job-protected leave, they may be unable to keep their ties to the labor market in the event of a family crisis, or even just a sick child.[51]

The data from the NSAF (household) survey accord with that from the NCS (employer) survey in terms of the relationship of benefit access to hours worked and firm size. Employees who work fewer hours are less likely to be offered time off with pay, and the incidence of paid leave is lower at smaller than larger employers.

The availability of paid leave among working parents generally increases with job tenure. For poor working parents, however, access to any kind of paid leave is

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[48] Katherine Ross Phillips, *Getting Time Off: Access to Leave among Working Parents*, Washington, DC: The Urban Institute, Series B, No. B-57, April 2004, p. 2-3. (Hereafter cited as Phillips, *Getting Time Off*.)

[49] Jody Heymann, *The Widening Gap*, New York, NY: Basic Books, 2000.

[50] The Henry J. Kaiser Family Foundation, *Women, Work, and Family Health: A Balancing Act*, April 2003.

[51] Phillips, *Getting Time Off*, p. 3.

as likely for those with less than one year on the job as for those with two or more years of tenure. This might be the case if poor parents tend to work part-time, in service occupations (e.g., food preparers, building cleaners), or for small businesses — each associated with low provision of paid leave benefits (see **Table 1**).

A Detailed Look at Paid Sick Leave. The Medical Expenditures Panel Survey (MEPS), co-sponsored by the Agency for Healthcare Research and Quality and the National Center for Health Statistics, asks a nationally representative sample of households in the civilian noninstitutional population about demographic characteristics, job characteristics, and access to paid sick leave. In the following analysis of the household component of MEPS data for 2004 undertaken by the Congressional Research Service, individuals are considered employed if they had a job when they were interviewed or had a job to return to on the date of the interview. Sick leave coverage is for the main job held on the interview date. Self-employed persons and individuals who did not respond to the sick leave question are excluded.

A little more than three in five workers (61.7%) reported that their employers provide paid sick leave.[52] The MEPS also asked households about access to paid vacations, which are available to almost seven in ten employees (69.6%). Although the magnitudes not surprisingly vary given the different employee populations and time periods they cover, the MEPS and NCS data agree that relatively more workers have access to paid time off to take vacations than to care for illnesses or injuries.

As shown in **Table 2**, relatively more employed women (63.2%) than men (60.3%) have sick leave in their compensation package — a small but statistically significant difference. Married persons (69.2%) also are significantly more likely than never-married individuals (47.3%), who could include single parents, to have access to the leave benefit.

Although more than 60% of employees age 25 and older receive paid sick leave, this is true for fewer than half as many younger workers. The high rate of part-time employment among young workers and the low incidence of sick leave among part-timers may partly account for this finding. In 2006, 45% of 16- to 24-year-olds at work in nonfarm industries usually were employed fewer than 35 hours a week; part-time employment among those aged 25 and older was much lower (20%).[53] As shown in **Table 1**, 22% of part-time workers versus 68% of full-time workers had paid sick leave coverage in that year.[54]

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[52] The total employment on which the percentages were calculated is individuals who responded to both the paid sick leave as well as demographic, income, and other questions.

[53] BLS, *Employment and Earnings*, January 2007, Table 22.

[54] The MEPS data also show that the rate of paid sick leave receipt is lower among persons employed part-time (23.8%) than among persons employed full-time (71.8%).

Table 2. Percent of Workers with Paid Sick Leave by Selected Demographic Characteristics, 2004

Characteristic	Total Employed	Employed Persons With Paid Sick Leave
All Workers	**100.0%**	**61.7**
Gender		
Males	100.0%	60.3
Females	100.0%	63.2
Marital Status		
Married	100.0%	69.2
Widowed, divorced or separated	100.0%	62.2
Never-married	100.0%	47.3
Age		
16-24 years old	100.0%	27.9
25-34 years old	100.0%	64.4
35-44 years old	100.0%	68.8
44-54 years old	100.0%	72.9
55 years and older	100.0%	63.7
Ethnicity and Race		
Hispanic	100.0%	45.3
Black, not Hispanic	100.0%	65.6
Asian, not Hispanic	100.0%	65.2
White, not Hispanic	100.0%	63.8

Source: Prepared by U.S. Congressional Research Service from the 2004 Medical Expenditures Panel Survey (MEPS) household component.

Similarly, Hispanics are significantly less likely to receive paid sick leave than the non-Hispanic groups shown in **Table 2**. The industry employment pattern among Hispanics may contribute to this outcome, because they work at well above-average rates in a few industry groups where access to paid sick leave is limited. In 2006, when Hispanics accounted for 13.6% of all employed persons, they represented 19.4% of workers in agriculture and related industries (e.g, crop production) and the same share of workers in leisure and hospitality industries (e.g., traveler accommodations, restaurants and other food services); 25.1% of workers in the construction industry were of Hispanic origin as well.[55] As shown in **Table 3**, the fraction of workers with sick leave in these industry groups was well below the average of 61.7%: in 2004, 32.2% of workers in construction, 22.5% in leisure and hospitality, and 30.3% in natural resources had paid sick leave. (Leisure and hospitality is an exception to the above-average incidence of paid sick leave in the service-producing sector noted in **Table 1**, as is the "other services" industry group that includes automotive repair and maintenance shops, beauty salons, and religious organizations).

[55] BLS, *Employment and Earnings*, January 2007, Table 18.

Table 3. Percent of Workers with Paid Sick Leave by Industry, 2004

Industry	Total Employed	Employed Persons With Sick Leave
All industries	100.0%	61.7
Natural resources	100.0%	30.3
Mining	100.0%	55.2
Construction	100.0%	32.2
Manufacturing	100.0%	63.2
Wholesale and retail trade	100.0%	53.8
Transportation and utilities	100.0%	70.7
Information	100.0%	77.9
Financial activities	100.0%	76.9
Professional and business services	100.0%	66.3
Education, health, and social services	100.0%	75.1
Leisure and hospitality	100.0%	22.5
Other services	100.0%	46.2
Public administration	100.0%	90.3

Source: Prepared by U.S. Congressional Research Service from the 2004 Medical Expenditures Panel Survey (MEPS) household component.

MEPS data suggest a positive relationship between educational attainment and the incidence of paid sick leave. (See **Table 4**.) Just 28.0% of employees with less than 12 years of schooling have paid sick leave compared to 80.8% of those who completed 4 years of college. Occupational employment patterns may help explain this pattern because (as shown in **Table 1**) employers generally require higher schooling levels for white-collar (e.g., professional) positions than for blue-collar (e.g., construction) jobs or service (e.g., hairdresser) jobs.

Table 4. Percent of Workers with Paid Sick Leave by Education, 2004

Years of Schooling	Total Employed	Employed Persons With Sick Leave
Total	100.0%	61.7
Fewer than 12 years	100.0%	28.0
12 years	100.0%	56.3
1-3 years of college	100.0%	64.1
4 years of college	100.0%	80.8
5 or more years of college	100.0%	85.0

Source: Prepared by U.S. Congressional Research Service from the 2004 Medical Expenditures Panel Survey (MEPS) household component.

The MEPS data in **Table 5** provide more detailed information on receipt of sick leave benefits by occupation than the NCS data shown in **Table 1**. Persons in all but one white-collar occupational group report above-average access to paid sick leave.[56] Persons in blue-collar occupations (e.g., automotive service technicians and mechanics, carpenters) and service occupations (e.g., nursing, psychiatric, and home health aides; child care workers) report well below average receipt of sick leave.[57]

Table 5. Percent of Workers with Paid Sick Leave by Occupation, 2004

Occupation	Total Employed	Employed Persons With Sick Leave
All occupations	100.0%	61.7
Management, business, and financial operations occupations	100.0%	86.9
Professional and related occupations	100.0%	79.5
Service occupations	100.0%	40.3
Sales and related occupations	100.0%	49.3
Office and administrative support jobs	100.0%	68.5
Farming, forestry, and fishing jobs	100.0%	21.8
Construction, extraction, and maintenance occupations	100.0%	42.8
Production, transportation, and material moving occupations	100.0%	50.0

Source: Prepared by U.S. Congressional Research Service from the 2004 Medical Expenditures Panel Survey (MEPS) household component.

A positive relationship between employee earnings and the prevalence of paid sick leave appears in the MEPS data, which echoes the pattern found in the NCS shown in **Table 1**.[58] Just 16.9% of persons who earned $7.25 an hour or less in 2004 received sick leave according to the data in **Table 6**. The share almost quadruples

[56] White-collar occupations are composed of the following major groups: management, business, and financial operations; professional and related; sales and related; and office and administrative support.

[57] Blue-collar occupations are composed of the following major groups: construction, extraction, and maintenance; production, transportation, and material moving.

[58] Additionally, a study of 2006 NCS microdata by the Institute for Women's Policy Research (IWPR) estimated that 21% of workers in the bottom quartile of the wage distribution had paid sick leave in 2006 while 72% of workers in the top quartile received the benefit. Testimony of IWPR President Heidi Hartmann before the U.S. Senate Committee on Health, Education, Labor, and Pensions, Hearing on the Healthy Families Act, February 13, 2007.

among those who earned between $7.26 and $20.00 per hour.[59] The percentage of employees who had access to the benefit was still higher, over 80%, for those paid more than $20.00 an hour. Part of the reason low-wage workers are less frequently offered paid sick or other leave benefits may be that employers consider them more easily replaceable than higher skilled workers in whom they tend to make greater investments (e.g., training).

Table 6. Earnings of Workers with Paid Sick Leave by Earnings, 2004

Hourly Wage	Total Employed	Employed Persons With Sick Leave
Total	100.0%	61.7
$7.25 or less	100.0%	16.9
$7.26-$20.00	100.0%	60.1
$20.01-$30.00	100.0%	82.9
$30.01-$40.00	100.0%	86.4
$40.01-$50.00	100.0%	90.8
Over $50.00	100.0%	83.5

Source: Prepared by U.S. Congressional Research Service from the 2004 Medical Expenditures Panel Survey (MEPS) household component.

Cost to Employers

Paid time off from work composes a considerable part of the employee benefit package. The cost to employers of offering leave with pay — $1.95 per hour worked on average in nonfarm private industries and state and local government — nonetheless comes in well behind insurance and legally required benefits. (See **Table 7**.) If Congress were to pass either of two proposed paths to paid family-medical leave — a mandate, or a TDI program funded in part through a payroll tax on employers — one would expect the compensation costs of employers to increase. Because employees generally are no more valuable (i.e., productive) to businesses after imposition of a benefit, however, they have no economically sound reason to raise their workforce's total compensation as a result of either congressional action. Economists therefore theorize that firms will try to finance the added benefit cost by reducing or slowing the growth of other components of compensation.

BLS computes benefit costs across all surveyed employers, whether or not they provide the benefit. Therefore, the cost per hour worked will be affected by the incidence of benefit provision. Not surprisingly then in light of the above-described frequency of provision by type of leave, the employer's average cost per hour worked

[59] An hourly rate of $7.25 was chosen because that is the wage to which the federal minimum was raised in P.L. 110-28. The next interval ($7.26-$20.00) was chosen because the average hourly earnings of all wage and salary workers in 2004 was $20.34, as estimated by CRS from the March Supplement to the CPS.

is highest for vacations followed by holidays. The lower incidence of sick leave benefits is reflected in its average cost being about one-third that for vacations and one-half that for holidays.

A good deal of variation exists between private firms and state and local government in labor costs for time not worked. The widest disparity between the two types of employers occurs in connection with paid sick leave: the time off allowed employees to care for illness or injury costs private firms 22 cents per hour worked on average; state and local government, 76 cents. Once again, this difference reflects the generally greater prevalence of sick leave among government workers.

Table 7. Employer Costs Per Hour Worked for Employee Compensation, September 2007

Compensation Component	Civilian Workers in the Private Nonfarm Sector and in the Public Sector Excluding Federal Employees					
	Total		Private Nonfarm Industry		State and Local Government	
	Cost	Percent	Cost	Percent	Cost	Percent
Total	**28.03**	**100.0**	**26.09**	**100.0**	**39.50**	**100.0**
Wages and salaries	19.56	69.8	18.42	70.6	26.26	66.5
Benefits	8.47	30.2	7.66	29.4	13.24	33.5
Paid leave	1.95	7.0	1.76	6.8	3.07	7.8
— Vacation	0.93	3.3	0.90	3.5	1.08	2.7
— Holiday	0.64	2.3	0.58	2.2	0.99	2.5
— Sick	0.30	1.1	0.22	0.8	0.76	1.9
— Other	0.09	0.3	0.06	0.2	0.24	0.6
Supplemental pay[a]	0.72	2.6	0.78	3.0	0.35	0.9
Insurance	2.35	8.4	1.99	7.6	4.50	11.4
— Health	2.21	7.9	1.85	7.1	4.35	11.0
Retirement and savings	1.22	4.4	0.92	3.5	3.04	7.7
Legally required[b]	2.22	7.9	2.21	8.5	2.29	5.8

Source: U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation — September 2007*, December 11, 2007.

Note: Benefit costs are computed across all surveyed employers, whether or not they provide the benefit. Percentages may not add to 100% due to rounding and omission of miscellaneous benefits.

a. Supplemental pay is premium pay for working overtime, weekends, or holidays; shift differentials; and nonproduction bonuses.
b. Legally required benefits are social security, unemployment compensation, and workers' compensation.

Within the private sector, the cost of leave benefits per hour worked usually is less on average at smaller than larger companies because relatively few small businesses offer paid leave. (See **Table 8**.) For example, the provision of paid sick leave at workplaces with fewer than 99 employees averages 14 cents per hour worked; at workplaces with 100 or more employees, 30 cents per hour worked. There is little variability in the average cost of sick leave provision between firms

with 1 to 49 employees versus 50 to 99 employees, as also is the case according to NCS data.[60] However, the average cost of offering employees sick leave doubles between firms with 100 to 499 employees and 500 or more employees.

Table 8. Employer Costs Per Hour Worked for Leave Benefits by Type of Leave and Firm Size, September 2007

Size of Firm	Paid Leave			
	Vacation	Holiday	Sick	Other
All private industry workers	0.90	0.58	0.22	0.06
1 to 99 employees	0.58	0.41	0.14	0.03
— 1 to 49 employees	0.56	0.40	0.13	0.03
— 50 to 99 employees	0.65	0.44	0.16	0.04
100 or more employees	1.24	0.77	0.30	0.10
— 100 to 499 employees	0.91	0.60	0.21	0.06
— 500 or more employees	1.65	0.97	0.41	0.14

Source: U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation — September 2007*, December 11, 2007.

Concluding Remarks

Access to the paid time off from work that employers voluntarily provide is not evenly distributed across employees. This unevenness appears to exacerbate wage inequality, with leave benefits more often available to higher than lower paid workers, to more rather than less educated workers, to white-collar compared to blue-collar or service workers, to persons working full- rather than part-time, and to employees of larger in contrast to smaller firms.

The U.S. government has a comparatively limited role in mandating or regulating leave benefits. The sole leave entitlement Congress passed — unpaid time off under the FMLA — has a long hotly debated history. State governments have been more active in this policy area than the federal government. Nonetheless, very few states appear interested in enacting individually a family-medical leave statute that provides both cash benefits and job security. Businesses for their part have been loosening the link between employment and benefit provision in the last several years (e.g., the shift from traditional pensions to 401k retirement plans and ceasing to extend employee health insurance to retirees).

[60] According to unpublished NCS data for March 2006 (when 57% of employees in nonfarm private industries had access to paid sick leave), 48% of employees at firms with 1-14 employees, 49% of employees at firms with 15-49 employees, 47% of employees at firms with 50-99 employees, and 69% of firms with 100 or more employees had access to paid sick leave.