PAID FAMILY & MEDICAL LEAVE INSURANCE:

OPTIONS FOR DESIGNING AND IMPLEMENTING A MINNESOTA PROGRAM

UNIVERSITY OF MINNESOTA

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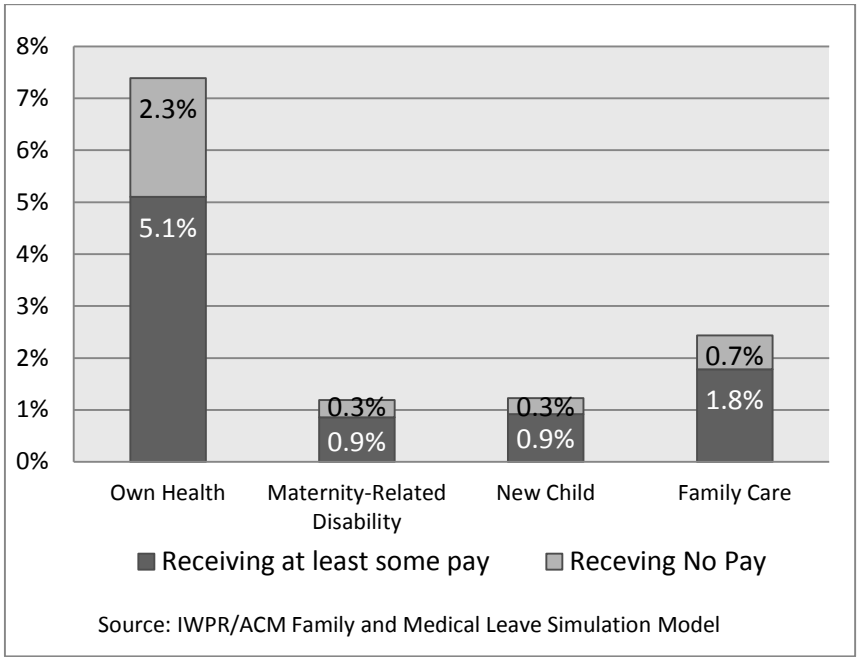
EXECUTIVE SUMMARY

> *"Over the past 40 years, powerful demographic and societal shifts have irrevocably changed the American workforce. Today, women make up nearly half of all U.S. workers. This change has had a dramatic impact on the way families manage their responsibilities at home and at work. Our population has aged significantly — many older Americans are working well past the traditional age of retirement. Transformative civil rights laws empower people with disabilities, allowing them to be productive workers. But the way our workplaces are set up to get work done has failed to keep pace with these changes. The result is a profound 'mismatch' between the needs of the modern workforce and the structure of the modern workplace."* [i] *-- Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security*

Public policy designed to address this 'mismatch' has changed little since the 1993 enactment of the federal Family and Medical Leave (FMLA) law. FMLA entitles eligible workers (who have worked 1250 hours and 12 months) with covered employers (50 or more workers within 75 miles) to take *unpaid*, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the worker had not taken leave. Eligible workers are entitled to twelve workweeks of *unpaid* leave in a [rolling] 12-month period for: (1) the birth, adoption or foster placement of a child within one year of birth or placement; (2) to care for the worker's spouse, child, or parent who has a serious health condition; or (3) a serious health condition that makes the worker unable to perform the essential functions of his or her job. While Minnesota's *unpaid* Pregnancy and Parenting leave law was expanded in 2014 to provide leave for pregnant women as well as new parents who meet workforce attachment requirements and work for employers with 21 or more workers (approximately 83% of employers in the state), neither law addresses wage replacement during leave nor do they apply to a significant portion of the workforce.

There are currently three states with some form of paid family and medical leave and an additional two that provide paid medical leave only. Workers in the other 45 states rely on a voluntary employer-based benefit system of paid family and medical leave whose quality varies from one employer to another, if it is offered at all. Employers may elect to provide workers with paid leave for family or medical reasons through benefits such as sick leave, vacation time, parental leave, or medical leave, or they may negotiate collective bargaining agreements with such plans. However, there is no legal requirement to do so. As a result, only 13% of workers nationally receive full pay while on FMLA qualifying leaves.[ii] While almost three-quarters of Minnesota workers receive *at least some pay* when they were out of work for family or medical reasons, access to pay during leave is unequally distributed.[iii] Currently more than a quarter of all family and medical leaves in Minnesota are without <u>any</u> compensation during leave. However, low-wage (46%); black (42%) or Hispanic (39%); younger (39%); part-time (38%) or less educated (38%) workers are much more likely to manage leaves without any pay (see Figure 3).[iv]

FIGURE 1: ESTIMATED PERCENT OF MINNESOTA WORKERS CURRENTLY TAKING FAMILY AND MEDICAL LEAVES ANNUALLY, LONGEST LEAVE BY EMPLOYER PAY



The current system is expensive for workers and employers, although in any given year only a small percentage of workers take leave (see Figure 1). Direct annual costs to workers and families include forgone wages (estimated to be $839 million annually for Minnesota workers), and costs to employers include hidden costs of turnover and lost productivity, as well as the cost of providing paid benefits.

HOW CAN MINNESOTA BUILD ON CURRENT PROGRAMS WITHIN AND OUTSIDE THE STATE TO MOST EFFECTIVELY PROVIDE COMPENSATION DURING LEAVE?

Most paid family and medical leave programs are public social insurance models funded by payments made into a state insurance fund, often through a small payroll premium.[v] Workers become eligible based on an earnings history and when an eligible life event occurs that requires the worker to take a leave from their job, they make a "claim" on the fund and receive a benefit from the government. California, New Jersey and Rhode Island are effectively delivering paid leave insurance programs for a small payroll tax of around 1%. Paid leave programs are built on existing Unemployment Insurance (UI) payroll tax and data collection infrastructure that minimizes the burden to workers and employers; most New Jersey and California employers report positive or neutral experiences after enactment of paid leave programs (especially smaller employers) and a new study of small restaurant and manufacturing employers in Rhode Island shows the same results. [vi] [vii] [viii]

In 2015, the Minnesota legislature tasked the Department of Employment and Economic Development (DEED) with

STATUTORY REFERENCE FOR REPORT

2015 MINNESOTA SESSION LAWS

Sec. 22. MECHANISMS AND COSTS; MINNESOTA PAID FAMILY AND MEDICAL LEAVE PROGRAM.

The Department of Employment and Economic Development, in collaboration with the Departments of Labor and Industry and Health and Human Services, shall report on the most efficient and effective mechanisms that would provide partial wage replacement for workers taking parental, family, or medical leave.

conducting an analysis of the most efficient and effective mechanisms to provide partial wage replacement for workers taking parental, family or medical leave.

A team of researchers from the University of Minnesota's public policy and business schools, the Institute for Women's Policy Research and leading national organizations working with multiple states to conduct similar studies was chosen to conduct this analysis (for more detail on the research team see the Acknowledgements section of the full report) based on an RFP issued by DEED in September of 2015. Based on an extensive review of the current legal landscape, public policy solutions adopted and implemented in U.S. states, Minnesota programs and infrastructure, the potential to build a Minnesota Paid Family and Medical Leave (PFML) program using existing state infrastructure was considered.

The following sections outline a series of suggestions for designing a Minnesota program that best accomplishes three interrelated goals:

1. To provide financial and economic stability for Minnesota workers by expanding Paid Family and Medical Leave (PFML) access to as many Minnesotans as possible.
2. To improve economic competitiveness of Minnesota businesses by increasing workforce attachment.
3. To create an efficient PFML system that maximizes benefits and reduces burdens to workers and employers.

For this report, the decision was made to focus the analysis on the public social insurance model for delivering a paid family and medical leave program in Minnesota. The research team carefully considered the merits of other models, including Minnesota's workers' compensation employer mandate or liability approach to delivering wage replacement benefits and Minnesota's UI social insurance approach as well as various other broad-based state and federal insurance programs. This decision was informed by the goals of a PFML program as identified above and potential negative unintended consequences of an employer mandate or liability approach. Some workers will have a greater need for paid leave and organizations that disproportionately employ women of childbearing age or older workers, who are more likely to need leave, would bear a larger burden than those without such workers. Such a scenario could create a disincentive to hire or retain workers that may need leave. "Internationally, mandated employer provided maternity leave has been linked to negative outcomes for women, such as employment discrimination, lowered labor force participation rates, and a large wage gap.[ix] Additionally, the involvement of for-profit insurance companies with rates based on use could incentivize the denial of claims for leave, replicating some of the problems seen in the private health insurance market."[x] In the case of paid family and medical leave, employers have no control over the events that necessitate program use. For all these reasons as well as the consensus among states offering both paid family and medical leave, this analysis considers the most effective and efficient social insurance program mechanisms for delivering paid family and medical leave in Minnesota.

WHO COULD BE ELIGIBLE FOR A MINNESOTA PFML PROGRAM?

One of the key questions policymakers must address when defining program parameters is who will be eligible to receive benefits under a paid family and medical leave program in Minnesota. Based on the way current state and federal policies define covered workers, employers and life events and the implementation of these policies, current Minnesota state government infrastructure and policy and the three program goals (maximizing program access and workforce attachment most efficiently), the following suggestions are offered related to eligibility for a Minnesota PFML program.

ELIGIBLE WORKERS:

The Minnesota UI monetary eligibility standard is one that Minnesota lawmakers have already settled on as a reasonable marker for the significant workforce attachment necessary to qualify for unemployment benefits. Minnesota policymakers could use this definition of eligible worker, one earning 5.3% of average statewide wages ($2,600 in 2015) in a four quarter base period, to define eligibility for the PFML program. This standard would fall somewhere in the middle of current state PFML worker eligibility standards.

COVERED EMPLOYERS:

Using Minnesota's UI definition of covered employer would reduce confusion and cover the vast majority of workers in the state. From an administrative standpoint, it is also the most efficient approach for both employers and the state. "Piggy-backing" on UI's system of data and payroll tax collection is the most cost effective approach and is significantly easier if the same definition of "covered employer" is used. Policymakers may also allow self-employed workers, just like the UI system does, to elective PFML coverage.

COVERED EVENTS:

Aligning Minnesota's PFML program with the federal FMLA in terms of qualifying events would minimize confusion and maximize access. Given a social insurance model that requires all workers to contribute, a Minnesota PFML program that covers the full range of FMLA events would help ensure that most workers and employers will benefit from the program.

DEFINING FAMILY MEMBER:

Using the definition of family member included in Minnesota's "kin care" law, a law recently enacted which requires that employers allow workers to use accumulated paid leave to care for a broad list of relatives, will maximize access and consistency and minimize confusion for the majority of workers with access to sick leave and their employers.

WHAT PFML BENEFITS SHOULD BE AVAILABLE AND HOW WILL THEY BE ACCESSED?

A second set of policy questions revolve around how a state defines a reasonable and sustainable benefit that will accomplish program goals within worker and employer budget constraints. The benefit structure will also be dependent on an administrative structure that disburses wage replacement in a streamlined and efficient manner. Based on current state policies that specify parameters for wage replacement (how much, how long) and administrative infrastructure to deliver and ensure access to benefits, current Minnesota state government infrastructure and policy and the three program goals (maximizing program access and workforce attachment most efficiently), the following suggestions are offered related to the benefits structure for a Minnesota PFML program.

WAGE REPLACEMENT RATE:

Federal and state legislation, including a bill introduced in Minnesota, include a progressive wage replacement system. These bills propose that lower income workers receive a higher wage replacement rate. Such a pay-out structure would help ensure that workers who are less likely to

have any paid leave, least able to manage loss of income, and less likely to be able to pay others to handle caregiving needs would be able to use the program. A progressive wage replacement structure coupled with a high maximum wage replacement will ensure that both middle income and low income families are able to access the program while minimizing overall program benefit costs.

BENEFIT DURATION:

Alignment with federal FMLA and Minnesota Pregnancy & Parenting Leave (both of which provide 12 weeks of leave) will help ensure that most workers using the wage replacement program have job protection and health insurance coverage during their leave. Twelve weeks of wage replacement is sufficient to cover the average number of weeks taken by workers for various types of leave both under and outside of current state programs. If fewer weeks of wage replacement are provided, Minnesota policymakers could follow the lead of current states in offering a separate allocation of leave for each type of leave.

MINIMUM LEAVE LENGTHS:

Allowing workers to take leave in one day increments will help workers to manage their own or family member's chronic illnesses while balancing the burden of claims processing. Requiring notice and planning if possible will also increase predictability and help employers manage absences better. Minnesota's program could also build on California and Rhode Island's approach and its own UI and workers' compensation models for a partial return to work option. This approach does add administrative complexity, but has been shown to be workable and helpful in other states and in other countries and can be beneficial for both a worker and the employer during a transitional period.

WAITING PERIOD:

Adopting Rhode Island's approach of requiring a one-week event to qualify and allowing employers to require use of one week of earned and available paid time off first before accessing state benefits would have the same functional benefit of a waiting period, but would make the program more accessible for workers who do not currently earn paid time off.

JOB PROTECTION:

Job protection can be accomplished in a variety of ways. Specific language modeled after Rhode Island § 28-41-35(f) can be added to the PFML governing statute. Alternatively, Minnesota's Pregnancy and Parenting Leave law could be expanded to be consistent with the PFML definitions of employer and worker. Either way protections against retaliation for program use, as well as the ability to return to the same or a similar job, would address the concerns of many workers who do not use the existing programs, citing concern about potential negative employment consequences.

TAXATION OF BENEFITS:

Minnesota policymakers will need to decide whether it is best to follow the lead of California and New Jersey in exempting wage replacement benefits from state taxation and collect worker

contributions or premiums post tax. Another alternative would be to exempt worker contributions from tax. If benefits are taxed at the state level, the revenue generated could be returned to the program and used to increase program benefit levels. While this would involve potential revenue transfers to the program trust fund, using the revenue to raise the gross replacement rate could result in a more progressive benefit, aimed at those with lower incomes.

ENSURING ACCESS AND PROGRAM AWARENESS:

A significant body of research in states with PFML programs underscores the critical importance of ongoing and robust information dissemination in order to achieve program goals of maximizing access and workforce attachment. Resources for all state departments that reach workers during times when leave may be necessary and grants for community-based groups supporting workers and employers, as well as an advisory group and annual program report, are strategies identified by current states for improving program awareness.

APPEALS PROCESS:

Minnesota has the benefit of two distinct departments with unique strengths and expertise that both serve workers and employers in the state – DEED and the Department of Labor and Industry (DLI). Minnesota's PFML program approach should build on DEED's expertise in revenue collection and claims processing and DLI's expertise in working with employers and workers to maintain relationships and resolve disputes. Minnesota's PFML program should build on DLI expertise and multi-stage process for resolving disputes and provide an "independent" dispute resolution process that is somewhat separate from claims processing. However, experience in states where UI programs are divided suggests that there may be significant downsides to this approach.

FRAUD DETERRENCE:

The process for making and verifying a claim should be as simple as possible to avoid unnecessary errors that could be inadvertently interpreted as fraud on the part of employers and workers, consuming time and creating animosity among all parties. In addition, well designed appeals processes for both workers and employers that provide mediation as well as other low cost paths to resolution can play an important role in uncovering and deterring fraud. The experience in other states suggest that Minnesota's PFML program is unlikely to experience high levels of fraud, and UI level penalties would be sufficient to deter serious abuse.

CLAIMS PROCESSING:

While there will be some important differences in the specifics, DEED has spent considerable time and money upgrading, modernizing and streamlining its online claim system for the UI program in recent years. To the extent that this significant investment can be capitalized on for delivering PFML wage replacement benefits, important efficiencies will be realized. Administrative cost estimates should include sufficient staff to process the vast majority of claims within 14 days and a formula can be included in statutes to ensure administrative support increases as necessary to cover program usage and claims growth.

HOW COULD A MINNESOTA PFML PROGRAM BE FUNDED?

Continuing with the assumption that Minnesota's PFML program will be delivered as a social insurance program funded with a payroll tax, the way current state and federal policies determine and collect premiums from workers and employers, as well as current Minnesota state government payroll tax infrastructure and program goals (maximizing program access and workforce attachment most efficiently), the following suggestions are offered related to the funding mechanism for a Minnesota PFML program.

DETERMINING AND COLLECTING PREMIUMS:

Collecting shared premiums using a system based in part on MN UI payroll tax processes would help reduce the need for inventing an entirely new and redundant system. By replicating components of the UI system, both employer and worker contributions could be collected at the same time, and in a similar manner to how they are paid currently under the UI system. This would reduce complexity for both the employer and the state.

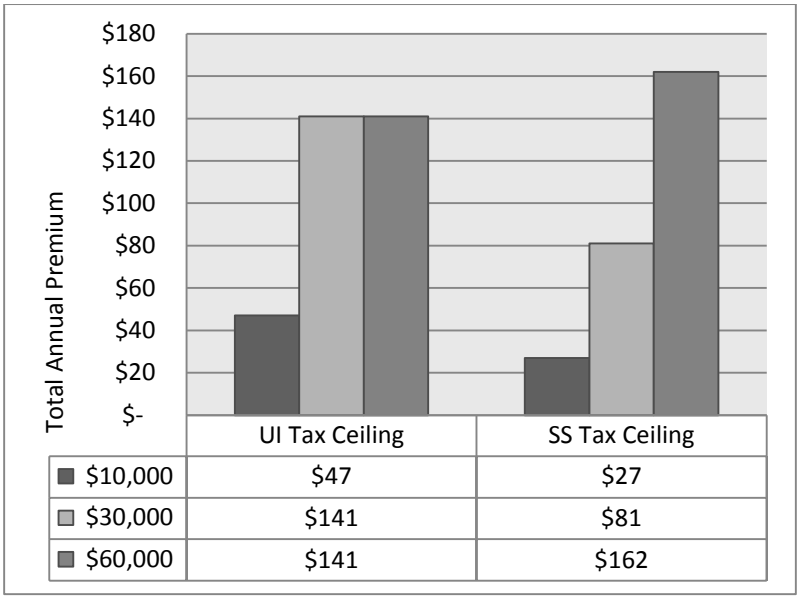
FUND MANAGEMENT:

Rhode Island, New Jersey and California program governing statutes include annually adjusted formulas for calculating all major program elements and maintaining a healthy but not excessive fund balance. Minnesota could do the same. While nothing short of a constitutional amendment will completely protect the fund from being used for other state purposes, regular public reports on the fund balance could be required to increase transparency and statutes include language making it clear the intention is to maintain the fund for program purposes. An advisory council can also help to draw attention to how funds are being used and hold the system accountable.

HOW MUCH WOULD IT COST THE STATE, WORKERS OR EMPLOYERS TO IMPLEMENT AND DELIVER A PFML PROGRAM?

The annual cost for the suggested program – one that provides up to 12 weeks of wage replacement (between 55% and 80% depending on earnings) for all three FMLA covered events -- is .5% of Minnesota's Social Security wage base and a little less than 1% of the UI wage base. If the payroll premium is split equally between employers and workers the estimated *average* weekly cost for each ranges from $1.25 to $2.71 depending on the program model implemented (and assuming the Social Security wage base is used).

FIGURE 2: ANNUAL PROGRAM PREMIUMS FOR SUGGESTED PROGRAM BY WORKER EARNINGS AND WAGE BASE (COSTS SHARED EQUALLY BY WORKERS AND EMPLOYERS)



HOW COULD PUBLIC AND PRIVATE BENEFITS BE COORDINATED UNDER A MINNESOTA PFML PROGRAM?

Benefits offered through the state and employers can serve similar or overlapping purposes to a PFML program. To the extent that a PFML program is designed to supplement and not supplant private sector benefits, it is also critical to examine how states policies are constructed to accomplish this balance. Based on the analysis of current programs and the three program goals summarized in the introduction, maximizing program access and workforce attachment most efficiently, the following suggestions are offered related to the coordination of public and private benefits with a Minnesota PFML program.

COORDINATION WITH UI AND WORKERS' COMPENSATION:

The PFML, UI and Workers' Compensation programs have separate goals and incentives and workers should receive benefits from the appropriate program depending on their circumstances. Minimizing designed interaction between programs will reduce the amount of inter-agency efforts required and reduce administrative burden.

INTERACTION WITH SAFETY NET PROGRAMS:

If Minnesota's PFML program does not offer low wage workers wage replacement levels that are competitive with MFIP and offer childcare assistance to eligible new parents taking bonding leave, workers will be more likely to turn to public assistance. In addition, the PFML program will better serve low income workers if MFIP does not subtract wage replacement dollar for dollar from benefits during new child and family care and allows eligible workers to use both programs simultaneously. This may reduce or offset some of the potential savings due to fewer families turning to MFIP during major care events. However, it will help achieve shared MFIP and PFML goals of supporting working caregivers and incentivizing attachment to an employer.

COMBINING PUBLIC AND PRIVATE PAID TIME OFF:

Minnesota's PFML program could encourage "integration of benefits" with minimal state intervention to ensure 100% wage replacement when possible and require continuation of health insurance coverage during leave. Many employers "make their worker's whole" during leave, by making up the difference between state wage replacement and the workers regular wages. Loss of health insurance during leave may be a significant deterrent to program use and diminish any economic stability gained through partial wage replacement. While FMLA can provide this protection for those covered, Rhode Island included a specific provision requiring continued health insurance coverage for workers who are eligible and taking wage replacement benefits under the Temporary Caregiver Insurance program but not covered by FMLA. Minnesota could elect a similar approach, or potentially expand the Pregnancy & Parenting Leave law to include more employers and workers and additional qualifying events. Allowed or required concurrent use of FMLA, Pregnancy & Parenting Leave and paid leave can help ensure health insurance coverage.

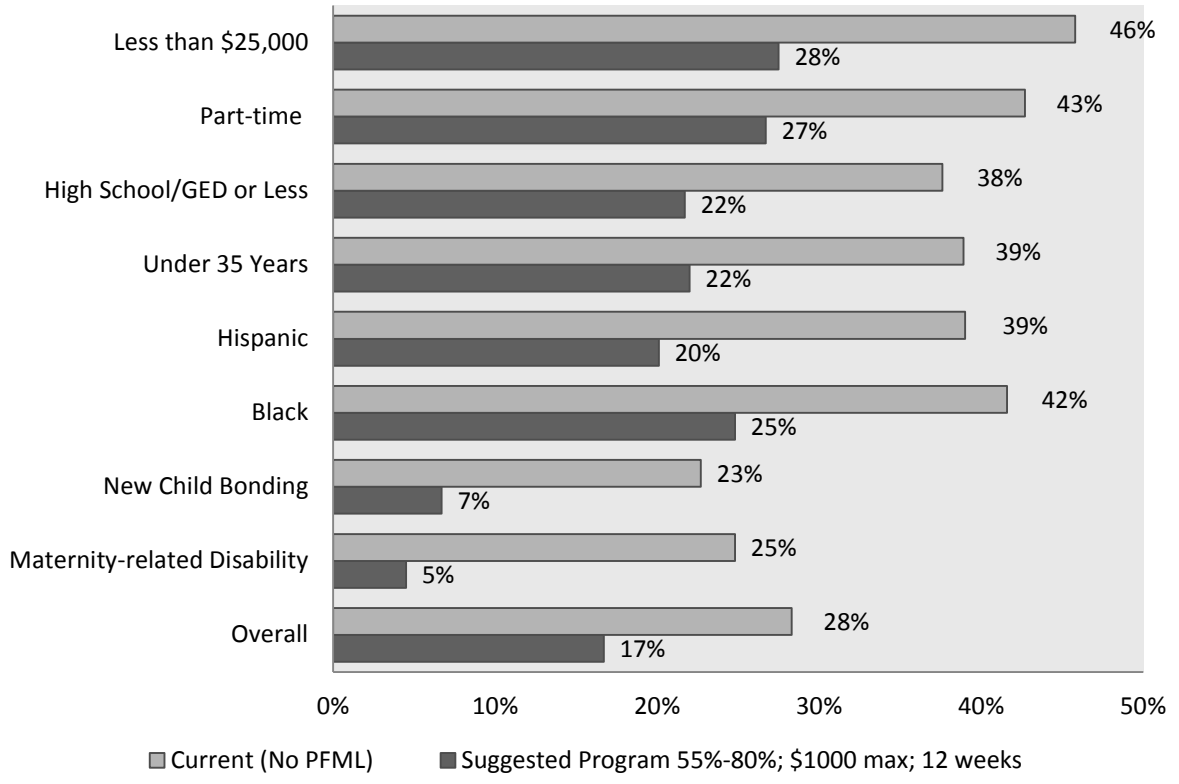
HOW MIGHT LEAVE-TAKING CHANGE IN MINNESOTA IF THE STATE ADOPTS A PFML PROGRAM?

Research on paid leave programs in California, New Jersey and Rhode Island, as well as most developed countries around the world, and simulation model estimates of changes in leave usage and costs suggest that Minnesota can expect important and significant "pay-offs" from the adoption of a paid leave program.

Application of a sophisticated simulation model shows that proposed Minnesota Paid Family and Medical Leave (PFML) insurance program options would significantly increase worker access to wage replacement while on leave. An estimated 361,000 private sector workers in Minnesota take leave for FMLA qualifying reasons each year and lose an aggregate of $839 million in uncompensated wages when they do so. Based on the suggested program parameters (see previous sections), the following changes in access to pay while on family and medical leaves in Minnesota are estimated.

- Overall the proportion of private sector workers taking uncompensated leaves drops 40%, from 28.3% to 16.7%.
- The largest drops occur for uncompensated pregnancy-related disability leaves. Without PFML, 25% of those leaves are uncompensated. That falls to between 4 and 6% with a program – an 81% drop.
- An almost equally dramatic drop in uncompensated leaves occurs for bonding/parental leaves, a 70% decrease under the most generous program model.
- Currently only 55 percent of leaves taken by workers earning less than $25,000 annually are paid. Under proposed PFML program models, that percentage rises to just over 70%.
- The proportion of leaves that is uncompensated for Minnesota's Hispanic workers declines by half from 40% to 20%.
- A similar decrease occurs for African Americans, dropping from almost 42% to less than 25%.

FIGURE 3: PERCENTAGE OF MINNESOTA PRIVATE SECTOR LEAVES THAT ARE UNCOMPENSATED, CURRENTLY AND UNDER THE SUGGESTED PROGRAM



Source: IWPR/ACM Family and Medical Leave Simulation Model

Under a Minnesota paid leave program, there is a shift from employer-paid wage benefits among the generous employers that provide them to the paid leave program, thereby decreasing the cost of leave among the employer community by an estimated $45 million and better providing for all of Minnesota's workers. Estimates suggest the number and length of leaves increase modestly with the introduction of a PFML program. The average length of all leaves increases by around one week under the suggested program, while the total number of leaves increases by around 6%.

- Duration of leaves to manage a worker's own serious health condition, other than pregnancy, increase the most, by almost 2 weeks under the suggested program.
- The percentage of very short (less than a week) leaves for pregnancy-related disability and new child bonding drop. Currently, almost a quarter of new child bonding leaves taken by women are for less than two weeks.

NOTES: EXECUTIVE SUMMARY

[1] Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010

[2] Family and Medical Leave in 2012: Technical Report http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf

[3] IWPR/ACM Family and Medical Leave Simulation Model

[4] Ibid

[5] Addati, Cassirer and Gilchrist "Maternity and Paternity at Work: Law and Practice Across the World" 2014 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf

[6] Lerner, S., & Appelbaum, E. (2014, June). Business As Usual: New Jersey Employers' Experiences with Family Leave Insurance Center for Economic and Policy Research Publication. http://www.cepr.net/documents/nj-fli-2014-06.pdf

[7] Ruth Milkman and Eileen Appelbaum, Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy.(2011)

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[10] Peter Harbage, "Too Sick for Health Care: How Insurers Limit and Deny Care in the Individual Health Insurance Market" (Washington: Center for American Progress, 2009), available at https://cdn.americanprogress.org/ wp-content/uploads/issues/2009/07/pdf/too_sick.pdf

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ACKNOWLEDGEMENTS

THE RESEARCH TEAM

The Center on Women, Gender & Public Policy at the University of Minnesota assembled a team of the nation's most prominent and respected researchers and organizations (national and Minnesota-based) conducting applied scholarship in the area of paid family and medical leave to respond to a request for proposal issued by the Minnesota Department of Employment and Economic Development to conduct this analysis. The team was led by the University of Minnesota and the Institute for Women's Policy Research (IWPR). The lead organizations are complemented by advisors from the most prominent organizations working at the national level to understand and implement paid leave programs at the state level and University of Minnesota faculty with a background in economics and business, work and pay policy, public and organizational benefits policy and administration.

UNIVERSITY OF MINNESOTA, HUMPHREY SCHOOL OF PUBLIC AFFAIRS AND CARLSON SCHOOL OF MANAGEMENT

The report was researched and written by Debra Fitzpatrick, director of the Humphrey School's Center on Women, Gender and Public Policy with significant input, support and review by Colleen Flaherty Manchester, Assistant Professor, Department of Work and Organizations, Carlson School of Management and Research Assistants, Brooke McManigal and Madeline Mitchell (Humphrey School of Public Policy Masters in Public Policy students). Professor Flaherty Manchester's expertise augmented Fitzpatrick's deep involvement and knowledge of Minnesota's policy landscape. Professor Manchester completed her PhD in economics from Stanford University, with a specialization in labor economics and public finance. Her research investigates the provision of benefits and programs by employers, including flexible work practices, work-family policies, human capital investment, and retirement plans, and the incentives they create for workers. She uses a multidisciplinary, multi-method research approach for studying the effects of workplace practices on the careers of workers.

THE INSTITUTE FOR WOMEN'S POLICY RESEARCH

IWPR conducts rigorous research and disseminates its findings to address the needs of women, promote public dialogue, and strengthen families, communities, and societies. IWPR has been conducting research on public benefits programs in general and paid leave polices in particular since its founding in 1987. IWPR works with policymakers, scholars, and public interest groups to design, execute, and disseminate research that illuminates economic and social policy issues affecting women and their families, and to build a network of individuals and organizations that conduct and use women-oriented policy research. The Institute's work is supported by foundation grants, government grants and contracts, donations from individuals, and contributions from organizations and corporations. IWPR is a 501(c)(3) tax-exempt organization that also works in affiliation with the women's studies and public policy and public administration programs at The George Washington University.

IWPR together with the Labor Research Center (University of Massachusetts at Boston) and IMPAQ International developed and updated a simulation model to estimate the usage and costs of family leave for both employers and workers in Minnesota and other states. The model uses observable leave-taking

behavior available in a national, comprehensive survey of family medical leaves conducted by Abt Associates under contract to the U.S. Department of Labor in 2012 to estimate the probability and distribution of various aspects of leave-taking behaviors. Based on these estimates, coupled with a few assumptions about unobservable behavior in the presence of a program, IWPR simulated specific leave-taking behavior (including number, length, employer benefit levels, and eligibility for FMLA) onto individual workers working in Minnesota from the Census Bureau's Current Population Survey Annual Social and Economic Supplement or American Community Survey (ACS). For more information about the simulation model see Appendix A.

IWPR Project Staff involved in writing and reviewing this report were Jeffery Hayes, Ph.D., Study Director; Jessica Milli, Ph.D., Senior Research Associate; Heidi Hartmann, Ph.D, President; Barbara Gault, Ph.D., Vice President & Executive Director and Jenny Xia, Research Assistant and Mariam K. Chamberlain Fellow.

NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES AND A BETTER BALANCE

Founded in 1971 as the Women's Legal Defense Fund, the National Partnership for Women & Families is a non-profit, nonpartisan advocacy organization with more than 40 years of experience promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. A Better Balance was founded in 2005 to use legal advocacy to address the problems that women and their families face in caring for their families while maintaining their economic security. The National Partnership and A Better Balance have designed model paid family and medical leave legislation and providing technical assistance to most of the states researching and drafting paid family and medical leave legislation across the United States. Vicki Shabo, Vice President, National Partnership for Women & Families and Sherry Leiwant co-founder of A Better Balance interviewed state paid family and medical leave program staff in New Jersey and California and served as advisors and reviewers on the entire report. Sarah Fleisch Fink, Senior Policy Counsel, National Partnership for Women & Families, provided analysis of existing and proposed state paid family and medical leave laws.

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT ANALYSIS LEADERSHIP TEAM

Research team leader Debra Fitzpatrick talked weekly with Kim Babine (Director of Policy), Michael Vaughn (Acting Director of Government Affairs), and Chelsea Georgesen (Government Affairs Coordinator) from DEED. The content and options presented in this analysis are the responsibility of the research team, but the DEED leadership group provided ongoing assistance and facilitated agency connections. Other staff at DEED also provided feedback and information (including data) during the research process. These staff included Jim Hegman (Unemployment Insurance Division Deputy Director), Steve Hine (Research Director), Rachel Vilsack (Performance Management Director) and Neal Young (Economic Analysis Director).

MINNESOTA STATE AGENCY ADVISORY GROUP

An important aspect of this analysis is an examination of current Minnesota state infrastructure and the opportunities to realize efficiencies by building on that infrastructure. The appropriation language funding this analysis called specifically for collaboration with the Departments of Labor and Industry and Health and Human Services. To facilitate this collaboration, DEED assembled a Core Advisory Group with point people from each agency. Research team leaders met by phone once with the agency point people. Agency

point people also assembled key agency staff for an initial meeting with researchers and facilitated follow-up conversations and information exchange. The content and suggestions included in this analysis are the responsibility of the research team and do not constitute an endorsement or commitment on the part of any Minnesota state agency, including the Department of Employment and Economic Development. Agency point people included: Jessica Looman, (Deputy Commissioner), Department of Labor and Industry; Dan Pollock, (Deputy Commissioner), Department of Health; Jenny Ehrnst, Minnesota Department of Human Services; Nathan Jesson, (Tax Policy Research Specialist) Minnesota Department of Revenue; Scott Buetel, (Legislative and Public Affairs Liaison) Minnesota Department of Human Rights. In addition, Alexis Russell, Assistant to the Commissioner, Minnesota Department of Labor and Industry and Deborah Schlick, Minnesota Department of Human Services, provided significant support to the research team.

CALIFORNIA ECONOMIC DEVELOPMENT DEPARTMENT STAFF INTERVIEW

Vicki Shabo with the National Partnership for Women & Families led research team efforts to collect new data and information from the California Economic Development Department (EDD) for this study. She conducted an interview with a team of EDD staff on November 25, 2015, as well as communicating written questions and answers throughout the research process. EDD staff involved include: Regina Luster-Shaw and Randy Pascual with the Disability Insurance Branch; Theresa Sheldon and Sharon Aguinaldo with the Elective Coverage area; Cora Espanol and Caroline Owoyele with Voluntary Plan Oversight; Jim Moore on statistics; Steve Sheehan with EDD investigations; as well as Coleen Laquihon, Sharisse Kemp, Connie Anderson, Mai Do and Ana Gregory.

NEW JERSEY LEGISLATIVE STAFF INTERVIEW

Sherry Liewant with A Better Balance led research team efforts to collect new data and information from New Jersey. Data and information came primarily from written communication and information exchange as well as a November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section of the New Jersey Nonpartisan Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee**.** In addition to publicly available annual reports, Mr. Williams provided budget process documentation to the research team that included additional data and information about program administration.

KEY CONCEPTS

SOCIAL INSURANCE – As defined by the Actuarial Standards Board, Social insurance is any government-sponsored program with the following four characteristics: the benefits, eligibility requirements and other aspects of the program are defined by statute; explicit provision is made to account for the income and expenses (often through a trust fund); it is funded by taxes or premiums paid by (or on behalf of) participants (although additional sources of funding may be provided as well); and the program serves a defined population, and participation is either compulsory or the program is subsidized heavily enough that most eligible individuals choose to participate. Social insurance has also been defined as a program where risks are transferred to and pooled by an organization, often governmental, that is legally required to provide certain benefits.

FAMILY AND MEDICAL LEAVE ACT – The federal Family and Medical Leave Act (FMLA) was passed in 1993 and entitles eligible workers (worked 1250 hours and 12 months) with covered employers (50 or more workers within 75 miles) to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the worker had not taken leave. Eligible workers are entitled to twelve workweeks of leave in a [rolling] 12-month period for: (1) the birth, adoption or foster placement of a child within one year of birth or placement; (2) to care for the worker's spouse, child, or parent who has a serious health condition; or (3) a serious health condition that makes the worker unable to perform the essential functions of his or her job.

LEAVE – The term "leave" is used throughout this analysis to refer to leaves taken of any length for FMLA qualifying reasons or events.

FAMILY LEAVE – As defined under the federal Family and Medical Leave program and three state programs, family leave refers to or includes leave from employment for the birth, adoption or foster placement of a child within one year of birth or placement or to care for the worker's spouse, child, or parent who has a serious health condition.

PARENTAL LEAVE – Usually refers to leave from employment after the birth, adoption or foster placement of a child

BONDING LEAVE -- The term used by paid leave programs and in this analysis to describe leave from employment after the birth, adoption or foster placement of a child

MATERNITY LEAVE – Leave from employment that is taken during pregnancy or after birth usually by a biological mother

PATERNITY LEAVE – Leave from employment that is taken after the birth of a child usually by a father

MEDICAL LEAVE – Leave that is taken when a worker's own serious health condition makes them unable to perform the essential functions of their job

TEMPORARY OR SHORT-TERM DISABILITY INSURANCE – Public or private insurance that provides wage replacement during leave to manage a serious health condition that makes an worker unable to

perform essential functions of their job; federal law requires these plans in the public and private sector to cover pregnancy in the same way it handles other health conditions

MAXIMUM WEEKLY BENEFIT – Social insurance programs allow eligible workers to make claims to the state for weekly wage replacement benefits that are usually based on a formula or percentage of earnings. These programs often set a maximum benefit amount. Even if the formula for determining the weekly benefit would result in a higher amount, the worker is only entitled to the maximum.

WAGE REPLACEMENT RATE -- Under social insurance programs, eligible workers make claims to the state for weekly wage replacement benefits that are usually based on a formula or percentage of earnings. The wage replacement rate is the percentage of earnings (defined in various ways) that are replaced.

BASE PERIOD – The period of earnings that is used to determine program eligibility and/or the weekly benefit amount.

MONETARY ELIGIBILITY – The level of earnings that workers must meet in order to be eligible for the program

TAXABLE WAGE CEILING – The maximum level of earnings upon which the premium or payroll tax is levied.

MAKING WORKERS "WHOLE" – Paid family & medical leave programs provide only partial wage replacement (55-66%). When an employer provides or an worker uses employer provided benefits to fill the gap between full pay and the partial wage replacement provided by the government that is referred to as making the worker "whole" during their leave.

VOLUNTARY OR PRIVATE PLAN – California and New Jersey allow employers (or a majority of workers at a place of employment) to offer their own family and/or temporary disability plan equal to (NJ) or better than (CA) the state plan. These plans are exempt from state program contributions, but fund oversight through a partial contribution.

COMMON ACRONYMS

TDI – **T**emporary **D**isability **I**nsurance offered by five states (California, Hawaii, New Jersey, New York and Rhode Island) and on the private market to provide wage replacement during leave to manage a serious health condition that makes the worker unable to perform essential functions of their job

TCI – **T**emporary **C**aregiver **I**nsurance program: Rhode Island's paid family leave program covering bonding and care of seriously ill family member

PFL – **P**aid **F**amily **L**eave program: California's paid family leave program covering bonding and care of seriously ill family member

FLI – **F**amily **L**eave **I**nsurance Program: New Jersey's paid family leave program covering bonding and care of seriously ill family member

UI – **U**nemployment **I**nsurance programs: The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under State law), and meet other eligibility requirements of State law. Each State administers a separate unemployment insurance program within guidelines established by Federal law.

FMLA – The federal **F**amily and **M**edical **L**eave **A**ct. See Key Concepts above for more information.

PFML – **P**aid **F**amily and **M**edical **L**eave This is the acronym used in this analysis to reference the three state insurance programs (California, New Jersey and Rhode Island) and a potential Minnesota program that offer **p**aid **f**amily and **m**edical **l**eave (wage replacement benefits for events covered under the federal Family and Medical Leave Act). This acronym is used when family leave and medical leave program parameters are defined or administered in the same manner within the state programs. If policies or administration is handled differently for medical leave and family leave, then the specific program is referenced instead.

MFIP – **M**innesota **F**amily **I**nvestment **P**rogram is Minnesota's welfare reform (public assistance) program. It helps families and pregnant women who have low income go to work and move toward financial stability. The program provides employment services and income assistance.

EDD – California's **E**mployment **D**evelopment **D**epartment, the agency that administers the state's paid family (PFL) and medical leave (TDI) program

SECTION 1: INTRODUCTION

> *"Over the past 40 years, powerful demographic and societal shifts have irrevocably changed the American workforce. Today, women make up nearly half of all U.S. workers. This change has had a dramatic impact on the way families manage their responsibilities at home and at work. Our population has aged significantly — many older Americans are working well past the traditional age of retirement. Transformative civil rights laws empower people with disabilities, allowing them to be productive workers. But the way our workplaces are set up to get work done has failed to keep pace with these changes. The result is a profound 'mismatch' between the needs of the modern workforce and the structure of the modern workplace."* [1]-- *Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security*

Public policy designed to address this 'mismatch' has changed little since the 1993 enactment of the federal Family and Medical Leave (FMLA) law. FMLA entitles eligible workers (who have worked 1250 hours and 12 months) with covered employers (50 or more workers within 75 miles) to take *unpaid*, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the worker had not taken leave. Eligible workers are entitled to twelve workweeks of *unpaid* leave in a [rolling] 12-month period for: (1) the birth, adoption or foster placement of a child within one year of birth or placement; (2) to care for the worker's spouse, child, or parent who has a serious health condition; or (3) a serious health condition that makes the worker unable to perform the essential functions of his or her job. While Minnesota's *unpaid* Pregnancy and Parenting leave law was expanded in 2014 to provide leave for pregnant women as well as new parents who meet workforce attachment requirements and work for employers with 21 or more workers (approximately 83% of employers in the state), neither law addresses wage replacement during leave nor do they apply to a significant portion of the workforce.

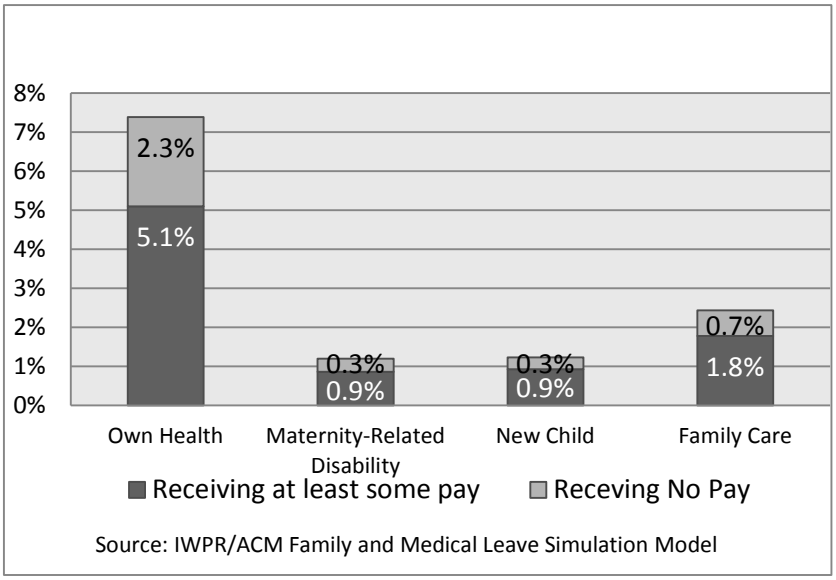
Almost every worker at some point in his or her work life experiences a temporary but extended illness, the serious illness of a family member, or the birth and/or adoption of a child. Workers are already engaged in the practice of taking time off from work to tend to a serious health condition they or a relative may have or to give birth to and bond with a new child, and employers are, one way or other, dealing with these absences, electing in some cases to provide workers with paid leave for family or medical reasons through benefits such as sick leave, vacation time, parental leave, or medical leave, or negotiating collective bargaining agreements with such plans. However, there is no legal requirement to do so. As a result, only 13% of workers nationally receive full pay while on FMLA qualifying leaves.[2]

CURRENT LEAVE LANDSCAPE IN MINNESOTA

A simulation model developed by the Institute for Women's Policy Research (IWPR) and researchers at the Labor Research Center, University of Massachusetts Boston (IWPR/ACM simulation model hereafter) was used to estimate current leave usage in Minnesota. The model uses US Department of Labor's 2012 Family and Medical Leave Act survey to estimate leave taking behavior and leave characteristics that are then applied according to work characteristics to a larger and more current sample of workers in the Minnesota labor force using a sophisticated strategy. This model allows the estimation of the number of leaves, the

characteristics of the leaves (length, wage replacement), and the characteristics of workers taking leaves (for more detail on the simulation model see Appendix A).

FIGURE 4: ESTIMATED PERCENT OF MINNESOTA WORKERS CURRENTLY TAKING FAMILY AND MEDICAL LEAVES ANNUALLY, LONGEST LEAVE BY EMPLOYER PAY



As the results summarized in Table 1 and Figure 4 show:

- Based on most recent data, Minnesota workers take an estimated 459,259 leaves (some workers take more than one leave annually).
- Around 10% of Minnesota workers take a family or medical leave in any given year (see Figure 1).
- Fifty-nine percent (59%) of current leaves in Minnesota are for own-health reasons (other than pregnancy), 17 percent are for bonding/parental leave (including pregnancy disability), and 24 percent of leaves are for caretaking a seriously ill family member.

TABLE 1: CURRENT MINNESOTA LEAVE USAGE AND COMPENSATION

	Private Wage & Salary workers	State & Local government workers	Self-employed	Total
Total Leaves Taken				
Own Health	212,921	29,846	28,029	270,796
Pregnancy & Bonding	60,307	8,306	6,143	74,756
Family Care	88,269	13,293	12,145	113,707
Total	361,497	51,445	46,317	459,259
Number Receiving Some Level of Employer Compensation				
Own Health	149,404	23,129	19,902	192,435
Pregnancy & Bonding	46,014	6,639	4,523	57,176
Family Care	63,700	10,106	8,987	82,793
Total	259,118	39,874	33,412	332,404

The average length of leave for all leaves within Minnesota's private sector is 5.6 weeks, ranging from 10.3 weeks for pregnancy-related disability to 3.3 weeks for care of a seriously ill family member (see Table 2).

TABLE 2: CURRENT LEAVE DURATION IN MINNESOTA'S PRIVATE SECTOR

	Own Health	Maternity Disability	New Child Bonding	Other Family Care	Total
Total Leaves Taken	212,921	28,296	32,011	88,269	361,497
Leaves Lasting 1 Week or More	165,362	25,586	22,399	53,275	266,622
Leaves Lasting Less than 1 Week	47,559	2,710	9,612	34,994	94,875
Share of Leaves Less than 1 Week	22%	10%	30%	40%	26%
Share of Leaves 1 Week or More	78%	90%	70%	60%	74%
Average Weeks of Leave Taken	6.1	10.3	5.1	3.3	5.6

While almost three-quarters of Minnesota workers are estimated to be receiving *at least some pay* when they are out of work for family or medical reasons, access to pay during leave is unequally distributed.

Currently 26-28% percent of all family and medical leaves are without any wage replacement, however low-wage (46%); black (42%) or Hispanic (39%); younger (39%); part-time (38%) or less educated (38%) workers are much more likely to receive no compensation during leave.

Minnesota workers are less likely to receive compensation during leave for their own serious health condition or family care than for pregnancy or parental (bonding/maternity/paternity) leave.

TABLE 3: PERCENTAGE OF MINNESOTA PRIVATE SECTOR LEAVES WITH NO COMPENSATION

Reason for Leave		Educational Attainment	
Own Health	29.8%	High School/GED or Less	37.6%
Maternity-related Disability	24.8%	Some College or Associates	30.1%
New Child Bonding	22.7%	Bachelors	19.5%
Family Care	27.8%	Masters, PhD, or Professional	13.1%
Gender		Work Schedule	
Men	26.2%	Part-time	42.7%
Women	30.1%	Full-time	24.5%
Race & Ethnicity		Total Personal Earnings	
White	26.9%	Less than $25,000	45.8%
Black	41.6%	$25,000 to $49,999	26.9%
Hispanic	39.0%	$50,000 to $74,999	19.4%
Asian & Pacific Islander	25.3%	$75,000 to $99,999	14.9%
Other/Mixed	43.5%	$100,000 or More	8.2%
Age			
Under 35 Years	38.9%	45 to 54 Years	22.0%
35 to 44 Years	22.7%	55 Years and Older	26.1%

POLICY APPROACHES

While the U.S. federal government has not yet addressed these trends and the challenges they create for workers and employers, five states and most countries around the world have developed solutions. These take two general approaches – public social insurance or employer mandate.

PUBLIC SOCIAL INSURANCE

As defined by the Actuarial Standards Board, social insurance is any government-sponsored program with the following four characteristics: (1) the benefits, eligibility requirements and other aspects of the program are defined by statute; (2) explicit provision is made to account for the income and expenses (often through a trust fund); (3) it is funded by taxes or premiums paid by (or on behalf of) participants (although additional sources of funding may be provided as well); and (4) the program serves a defined population, and participation is either compulsory or the program is subsidized heavily enough that most eligible individuals choose to participate. Social insurance has also been defined as a program where risks are transferred to and pooled by an organization, often governmental, that is legally required to provide certain benefits. The most familiar social insurance programs in the US are Social Security, Medicare and Unemployment Insurance.

> *The insurance model is attractive because it can provide universal coverage at a very low per-person cost and spread the risk broadly.*

Most countries and U.S. states that have paid family *and* medical leave programs (as well as New York's program that provides paid temporary disability/medical leave) use a social insurance model. All of these states run a public insurance program funded by payments made into a state insurance fund, often through a small payroll tax.[3] Workers become eligible based on an earnings history and when an eligible life event occurs that requires the worker to take a leave from their job. Eligible workers make a "claim" on the fund and receive a benefit from the government.

EMPLOYER MANDATE OR LIABILITY

Under this structure, employers are required to provide wage replacement to their workers while they are on leave, either by directly self-financing the leave program or by purchasing insurance on the private market. "In its purest form, this organizing structure consists of the government imposing a mandate on businesses to provide paid leave to workers, but it does not include a transfer of government funds to businesses in order to offset costs."[4] Employers either purchase insurance coverage in the private market or self-insure to provide the mandated benefit. A mandate to insure or provide proscribed benefits is the least common way to structure paid family and medical leave internationally and there is no precedent for offering paid family leave in this format in the United States. Indeed, there is no meaningful private insurance market currently for paid family leave. [5] [6]

> *This option requires individual businesses, even small ones, to bear the full cost of paid family and medical leave even though paid leave has been shown to have many societal benefits that extend beyond a particular firm or employer.*

Hawaii provides temporary disability benefits (TDI) through a similar approach but does not offer paid family leave. A majority of states, including Minnesota, structure their workers' compensation insurance program as a mandate on employers to provide a defined set of benefits. Most employers meet this requirement by purchasing insurance in the private market. Oversight is funded in various ways. In Minnesota, workers' compensation oversight is largely funded by a tax on the insurance companies that employers turn to for required coverage.[7]

STRUCTURE OF THIS REPORT

Because the goals of a PFML program differ from those of other state worker support programs, the creation of such a program for Minnesota is not as simple as expanding a current program to also cover family and medical leave. However, there are lessons that can be learned from existing programs and established infrastructures that can be built upon. Within Minnesota state agencies, including the Department of Employment and Economic Development, there are opportunities to share data, infrastructure, and resources. Each state needs to assess these opportunities for itself and answer a variety of questions. Such as: *Who is eligible? What benefits are available and how are they accessed? How is the program funded? How are public and private benefits coordinated?*

In 2015, the Minnesota legislature provided funding to the Department of Employment and Economic Development (DEED) to conduct the analysis necessary for Minnesota agencies and policymakers to answer these questions and assess opportunities to build on existing infrastructure.

A team of researchers from the University of Minnesota's public policy and business schools and leading national organizations working with multiple states to conduct similar studies was chosen to conduct this analysis (for more detail on the research team see the Acknowledgements section) based on an RFP issued by DEED in September of 2015.

The analysis summarized in this report is based on an extensive review of research documenting the demographic and societal shifts over the past 40 years, the current variability in access to paid time off, the legal landscape, and the public policy solutions adopted and implemented in five U.S. states. Through an extensive review of programs and meetings with Minnesota state agency advisory group members (see Acknowledgements for more detail), the potential to build a Minnesota Paid Family and Medical

Statutory Reference for Report
2015 Minnesota Session Laws

Sec. 22. MECHANISMS AND COSTS; MINNESOTA PAID FAMILY AND MEDICAL LEAVE PROGRAM.

The Department of Employment and Economic Development, in collaboration with the Departments of Labor and Industry and Health and Human Services, shall report on the most efficient and effective mechanisms that would provide partial wage replacement for workers taking parental, family, or medical leave.

Leave program using existing state infrastructure was considered. The analysis summarizes and assesses how access and costs of leave are currently distributed and how that distribution changes under various policy approaches. Finally, the policy suggestions included in this report are based on the needs of individuals across income, gender, age, race and geography and employers of various sizes and the financial implications for individuals, employers, and the government.

MINNESOTA PFML PROGRAM APPROACH

For this report, the decision was made to focus the analysis on the public social insurance model for delivering a paid family and medical leave program in Minnesota. The research team carefully considered the merits of other models, including Minnesota's workers' compensation employer mandate or liability approach to delivering wage replacement benefits and Minnesota's UI social insurance approach as well as various other broad-based state and federal insurance programs.

This decision was informed by the goals of a PFML program discussed below and potential negative unintended consequences of an employer mandate or liability approach. Some workers will have a greater need for paid leave and organizations that disproportionately employ women of childbearing age or older workers, who are more likely to need leave, would bear a larger burden than those without such workers. Such a scenario could create a disincentive to hire or retain workers that may need leave. "Internationally, mandated employer provided maternity leave has been linked to negative outcomes for women, such as employment discrimination, lowered labor force participation rates, and a large wage gap.[8] Additionally, the involvement of for-profit insurance companies with rates based on use could incentivize the denial of claims for leave, replicating some of the problems seen in the private health insurance market."[9] In the case of paid family and medical leave, employers have no control over the events that necessitate program use.

MINNESOTA PFML PROGRAM GOALS

Throughout this analysis policy options are assessed based their ability to achieve the following three goals:

TO PROVIDE FINANCIAL AND ECONOMIC STABILITY FOR MINNESOTA WORKERS BY EXPANDING PAID FAMILY AND MEDICAL LEAVE (PFML) ACCESS TO AS MANY MINNESOTANS AS POSSIBLE

- Women lose an estimated $324,000 and men $274,000 in lifetime earnings and Social Security benefits as a result of leaving the workforce early to provide family care.[10]
- In 3 in 10 families with children with special healthcare needs at least one parent had to cut back on work, but those with paid leave had a decreased likelihood of financial problems. [11] [12]
- 90% of individuals receiving long term care in their communities rely on unpaid care from family members. Access to leave has a documented positive impact on the likelihood that these caregivers for older family members can remain employed since they do not have to quit their jobs to fulfill caregiving responsibilities.[13]
- Without pay, fathers (who are more likely the primary breadwinner) aren't able to take leave or only a very short leave, but paid leave in California has doubled the rate of leave taking among fathers.[14] [15]
- California's paid leave program has had a particularly positive impact on low-income workers, reducing the need for women and men to turn to public assistance. [16]

- Mothers are more likely to face lower pay after giving birth and paid leave. Paid leave (for men and women) decreases the price some women pay, equalizing the work histories of men and women and reducing the "motherhood penalty." [17] [18]
- New Jersey senior human resources personnel report particularly positive impacts of paid leave benefits on morale and reductions in stress and financial concerns for workers. Similarly, Rhode Island found workers are able to main better financial stability when they take advantage of its new Temporary Caregiver Insurance Program.[19]

TO IMPROVE ECONOMIC COMPETITIVENESS OF MINNESOTA BUSINESSES BY INCREASING WORKFORCE ATTACHMENT

- Several studies show that paid leave increases workforce attachment and the likelihood that new mothers stay with the same employer,[20] reducing turnover costs that are estimated to be 21% of a worker's annual salary.[21]
- 86% of millennial workers said they would be less likely to quit an employer who offered paid parental leave.[22]
- Workers in lower quality jobs (those with paying less or with fewer benefits) who used California's paid family leave benefits were more likely to return to their same employer following leave than those who did not use the leave benefits.[23]
- Paid leave can place businesses in a state with a program at a competitive advantage and level the playing field between smaller and larger, rural and urban businesses in the state; with few negative effects. [24]

TO CREATE AN EFFICIENT PFML SYSTEM THAT MAXIMIZES BENEFITS AND REDUCES BURDENS TO WORKERS AND BUSINESSES.

- Paid leave programs in California, New Jersey and Rhode Island are effectively delivering paid leave insurance programs for a small payroll tax of around 1% or less; Minnesota could do the same.
- Paid leave programs are built on existing UI infrastructure that minimizes the burden to workers and employers; most New Jersey and California employers report positive or neutral experiences after enactment of paid leave programs, as do small employers in Rhode Island.[25]

REPORT ORGANIZATION

The analysis is broken into three major sections.

SECTION 1: INTRODUCTION

In this section, a brief review of policy approaches and the current leave landscape were summarized.

SECTION 2: OPTIONS AND APPROACHES FOR KEY PROGRAM ELEMENTS

Who is eligible? What benefits are available and how are they accessed? How is the program funded? How are public and private benefits coordinated?

In each of the subsections that follow, the policies that govern state-level PFML programs are detailed, along with relevant federal and Minnesota worker support programs. The way these policies have been implemented and administered follows. Finally, policy options are considered based on the three goals. Under each area the opportunities to build on current Minnesota infrastructure are highlighted and integral to the framing of "efficient" and suggested solutions.

SECTION 3: ESTIMATED PROGRAM COSTS AND USAGE

How are the costs of leave currently distributed across different kinds of workers and employers? How do various program approaches change paid leave access for different kinds of Minnesota workers? How much would it cost the state, workers or employers to implement and deliver these alternative program models?

Based on the simulation model, the extent to which various Minnesota PFML program models change access to paid leave and the associated costs are summarized in this section of the report. In addition, start-up and administrative costs are estimated.

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24 Ruth Milkman and Eileen Appelbaum, Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy.(2011) Lerner, S., & Appelbaum, E. (2014, June). Business As Usual: New Jersey Employers' Experiences with Family Leave Insurance Center for Economic and Policy Research Publication. http://www.cepr.net/documents/nj-fli-2014-06.pdf; Assessing Rhode Island's Temporary Caregiver Insurance Act: Insights from a Survey of Employers (2016)
http://www.dol.gov/asp/evaluation/completedstudies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct_InsightsFromSurveyOfEmployers.pdf
25 Ibid.

SECTION 2.1: OPTIONS AND APPROACHES FOR KEY PROGRAM ELEMENTS

DEFINING ELIGIBLE WORKERS, EMPLOYERS, REASONS FOR LEAVE, AND FAMILY MEMBERS

One of the key questions policymakers must address is who will be eligible to receive benefits under a paid family and medical leave program in Minnesota. This section of the report summarizes the way current state and federal policies define covered workers, employers and life events and the implementation of these policies, as well as current Minnesota state government infrastructure and policy.

DEFINITION OF ELIGIBLE WORKERS

POLICIES

Paid family and medical leave programs in the US require some measure of workforce attachment to a covered employer. As shown in Table 4, these include minimum earnings (California and Rhode Island), minimum time in covered employment (New York) or both (New Jersey and Hawaii). Earnings and time criteria are applied to a base period, usually 4 quarters or 52 weeks. Social insurance programs in the United States generally don't require that the hours worked or earnings be tied to a particular covered employer to trigger eligibility for benefits, including unemployment insurance and state temporary disability or family leave insurance programs (hereafter referred to as PFML if program requirements are the same for both types of wage replacement).[1] This policy allows workers who have paid into the program at a previous place of employment or simultaneously at two or three different jobs with covered employers to qualify. Unlike unpaid leave laws, the insurance programs outlined above do not condition program eligibility on size of employer.

IMPLEMENTATION & ADMINISTRATION

Each state has a workforce development agency (Department of Employment and Economic Development for Minnesota) responsible for administering a federally mandated unemployment insurance (UI) program that collects quarterly employment data on workers. These data are housed at the state level and are used to determine if workers are eligible for UI benefits if they lose their job through no fault of their own. Records are based on employment and wages and do not include federal workers. In two states (California and Rhode Island) with PFML insurance programs, the same employment records are used to make both UI and PFML eligibility determinations. These states have agreements that allow for transfer of information and provide for cost sharing to pay for access and usage of the data. New Jersey asks employers to provide data on earnings during the most recent eight-week period as part of the claim process.

Use of wage records collected through the state workforce agency for their unemployment insurance program provides frequently collected and updated data on a quarterly basis. Individual wage records are usually available with no more than a three-month lag between the last piece of wage information collected and the date the worker would be applying for wage replacement. Recent wage and employment data is more useful for determining whether a worker has sufficient labor force attachment to qualify for paid leave.

TABLE 4: PROGRAM ELIGIBILITY REQUIREMENTS

PFML	Monetary requirement	Base Period	Time Requirement
California [2]	Employee must have been paid $300 in gross wages during the base period	Last 4 completed quarters or first 4 of last 5	None
New Jersey [3]	Paid $8,300 or more in covered New Jersey employment during the base period (1,000 times minimum wage) OR standard under "Time requirement"	52 calendar weeks immediately preceding	Employee must have had at least 20 calendar weeks of covered New Jersey employment, each being a week of being paid $165 +
Rhode Island [4]	Paid into fund at least $10,800 in the base period; may also be eligible if earned $1,800 in at least one of the base period quarters, have total base period taxable wages at least 1.5 times as high as the highest quarter of earnings, and total base period earnings of $3,600	First 4 of last 5 quarters or alternative base last 4 completed quarters if fail to meet requirements	None
New York [5]	None	Coverage after 4 weeks worked for the employer regardless of when those were.	4 or more consecutive weeks of covered employment for 1 employer (or 25 days of regular part-time work)
Hawaii [6]	14 weeks with at least 20 hours and earnings of $400	52 weeks immediately preceding	14 weeks with at least 20 hours and earnings of $400
MN Programs	**Monetary requirement**	**Base Period**	**Time Requirement**
Unemployment Insurance [7]	Higher of $2,400 in Base Period or 5.3 percent of Average Annual Wage ($2,600)	Last 4 quarters or first 4 quarters of last five	
Workers' Compensation [8]	None- An employee is any individual who performs services for another, for hire, including minors, part-time and non-citizen workers	None	
Unpaid Leave	**Monetary requirement**	**Base Period**	**Time Requirement**
Federal FMLA	None	At least one year	1250 hours
MN Pregnancy & Parenting Leave Act [9]	None	At least one year	Equivalent of "half-time"

SUGGESTIONS FOR DEFINING ELIGIBLE WORKERS

The Minnesota UI monetary eligibility standard is one that Minnesota lawmakers have already settled on as a reasonable marker for the significant workforce attachment necessary to qualify for unemployment benefits. [10] This standard falls somewhere in the middle of current state PFML worker eligibility standards. Minnesota policymakers could use this definition of eligible worker.

In Minnesota, this standard would require workers to have earned at least 5.3% of average annual wage ($2,600 in 2015) in the last four quarters or the first four quarters of the last five. By comparison, California has the lowest threshold for eligibility with a $300 earnings requirement in a four quarter base period and Rhode Island the highest with $10,800. A $2,600 earnings minimum would allow most Minnesota workers to qualify, which is important especially if all will contribute on every dollar they earn. In 2014, about 94% of Minnesotans with any earnings earned $2,500 or more. [11]

A low but adequate earnings requirement to establish eligibility will ensure that workers have access when needed and state wage replacement could transfer responsibility for a portion of a worker's wages during leave to the state program, freeing up resources that the employer would have paid workers to cover their responsibilities, including hiring a temporary worker or paying overtime. Under an insurance program, an earnings threshold also helps to insure the fund's solvency since workers will have earned some minimum amount of wages on which they have paid into the fund.

A Minnesota PFML program must have enough information about a worker to know whether he or she is eligible for the program, ideally tapping into already existing UI data on workers and their earnings, rather than creating a redundant—and prohibitively expensive—new source of information.[12] Use of a common standard and data already provided on quarterly UI reports will also minimize the amount of redundant reporting required of employers. As discussed, California and Rhode Island PFML insurance programs use UI quarterly wage data to establish a workers' labor force attachment. New Jersey's approach that requires employers to fill out wage data on a claim form is unnecessarily cumbersome and more difficult to verify.

OTHER CONSIDERATIONS:

If more workers are eligible for wage replacement than the federal or state FMLA standard, some workers will not have job-protection or guaranteed healthcare continuation while on leave. For more information on the interaction of state and federal FMLA laws and wage replacement programs, see the Job Protection section of this report.

NOTES: DEFINING ELIGIBLE WORKERS

[1] Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010
[2] http://www.edd.ca.gov/disability/PFL_Benefit_Amounts.htm
[3] http://lwd.state.nj.us/labor/fli/content/fli_faq.html#22
[4] http://www.dlt.ri.gov/tdi/tdifaqs.htm
[5] http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[6] http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[7] http://www.unemploymentinsurance.doleta.gov/unemploy/pdf/uilawcompar/2015/monetary.pdf
[8] http://www.dli.mn.gov/WC/AboutCov.asp
[9] MN Statutes 181.941
[10] Glynn, Sarah Jane, "State Paid Leave Administration," September 2015
https://www.americanprogress.org/issues/economy/report/2015/09/30/122354/state-paid-leave-administration/
[11] American Community Survey, 2014 one year dataset, analysis by author using Social Explorer
[12] Glynn, Sarah Jane, "State Paid Leave Administration," September 2015
https://www.americanprogress.org/issues/economy/report/2015/09/30/122354/state-paid-leave-administration/

DEFINING COVERED EMPLOYERS

POLICIES: PRIVATE SECTOR EMPLOYERS

As summarized in Table 5, with minor exceptions, most current PFML programs rely on Unemployment Insurance (UI) definitions of "covered employer." Based on 2014 Minnesota UI covered employment reporting, 74% of workers are in the private sector, compared to 13% in the public sector and 12% in the nonprofit sector.[1] The American Community Survey 2014 estimates that 67% of Minnesota workers are in the private sector; compared to 9.4% who are self-employed, 11.2% in the non-profit sector and 12% in the public sector.[2]

TABLE 5: DEFINITION OF COVERED EMPLOYERS WITHIN THE PRIVATE SECTOR

PFML	Private Sector
California [3]	All private sector (UI) employers with payroll of at least $100 in the quarter are covered. May elect not to participate in state plan and create a Voluntary Plan (see Table 2A5&6)
New Jersey [4]	All private sector (UI) employers with payroll of at least $1,000 in a year are covered for family care and own disability. May elect not to participate in state plan and create a Private Plan (see Table 2A5&6)
Rhode Island [5]	All private sector (UI) employers (any employees at any time)
New York [6]	Employers of 1 or more workers in 30 days
Hawaii [7]	All (UI) employers covered (any employees at any time)
Minnesota Programs	
Unemployment Insurance [8]	Every individual or organization that pays covered wages (any employees at any time); nonprofits report wage data but may elect to reimburse instead of paying tax
Workers' Compensation [9]	An employer is generally defined as an individual or business that hires an individual to perform services; must purchase insurance or self-insure
Unpaid Leave	
Federal Family & Medical Leave Act [10]	50 or more employees within 75 miles during each of 20 or more calendar workweeks
Minnesota Pregnancy & Parenting Leave Act [11]	All with 21 or more employees at at least one site

Household, domestic and nonprofit employers are sometimes treated differently than other private sector employers. In each case, most PFML programs again cross reference UI definitions for purposes of defining covered employment. The largest variation among states occurs within the agricultural sector, with California including most employers with a low $100 in wages paid threshold and Rhode Island covering all employers to the more restrictive New Jersey with a $20,000 wages paid standard. Minnesota's UI standard is closer to New Jersey by only including agricultural employers with at least 4 employees in 20 weeks and wages paid of $20,000 or more.

TABLE 6: HOUSEHOLD, AGRICULTURAL AND NONPROFIT EMPLOYERS

PFML	Agricultural Workers	Domestic Household Workers	Nonprofits
California	Covered employer if 1 employee at any time and wages in excess of $100 in calendar quarter	Covered after $750 in wages for remainder of current and next calendar year	Yes, with 1 or more employee
New Jersey	Covered if wages in cash of $20,000 or more; OR 10 or more workers on at least 1 day in each of 20 different weeks; both in any calendar quarter or preceding calendar year	Earned $1,000 in cash wages in any calendar quarter in the current or the preceding year	Yes, with 1 or more employee
Rhode Island	Covered if 1 or more workers at any time	Earned $1,000 in cash wages in any calendar quarter in the current or the preceding year	Yes, with 1 or more employee
New York	$500 in calendar quarter	Covered if working 40 hours a week	4 or more employees in 20 weeks
Hawaii	Covered if 1 or more workers at any time		4 or more employees in 20 weeks
Minnesota Programs			
Unemployment Insurance	4 in 20 weeks or $20,000 in calendar quarter	Earned $1,000 in cash wages in any calendar quarter in the current or the preceding year	Yes, with 1 or more employee, for UI quarterly reporting, but can reimburse instead of payroll tax

VOLUNTARY/PRIVATE COVERAGE

Two states, New Jersey and California, allow employers who agree to provide their own comparable private program to "opt-out" of the state plan, including associated payroll taxes. While these employers do not contribute payroll taxes for their workers or themselves, they do pay a small tax to cover oversight costs. Tables 7-9 describe the major policies associated with the private plan option in these two states and Table 10 the number and percent of workers covered under this option.

TABLE 7: PRIVATE PROVISION OPTIONS WITHIN STATE PFML PROGRAMS

	California (Voluntary-VP-Plan) [12]	**New Jersey (Private Plan)** [13]
Option for Employers to Provide Own Similar Coverage	Allows an employer or a majority of employees to apply to the Employment Development Department (EDD) for approval of a Voluntary Plan for the payment of Disability Insurance and Paid Family Leave benefits in place of the mandatory State Disability Insurance coverage (that includes both disability and family leave benefits).	Allows employers the option of choosing to establish a private plan for the payment of temporary disability benefits **or** family leave insurance in place of paying benefits under the State Plan.
Oversight	CA EDD approves plan and reviews the records of all approved Voluntary Plans to ensure that they are being properly administered by the employer. The EDD conducts annual reviews and has established criteria used to identify employers eligible for review (audit) each year.	Private Plan Operations, a special office within the Division of Temporary Disability, must approved all Private Plans before they become effective. This office also oversees the administration of private plan policies and the processing and payment of private plan benefits.
Program Requirements	A Voluntary Plans must provide all the benefits of California's State Disability Insurance (SDI), *at least one benefit that is better* than SDI	At a minimum, approved private plans must meet the basic provisions required of the State Plan.
Decision-making Structure	Employers and employee groups may establish a Voluntary Plan with mutual consent of the employer and a majority of the employees (who have consented in writing to the plan)	If employees are to be required to contribute toward the cost of the plan, a written election must be held and a majority of employees must agree to the plan prior to the effective date of the plan.

TABLE 8: PRIVATE PROVISION OPTIONS WITHIN STATE PFML PROGRAMS

	California (Voluntary-VP-Plan) 14	New Jersey (Private Plan) 15
Employee Opt-in to State Program	An employee may choose State Disability and Family Leave Insurance coverage even though a Voluntary Plan is available where he/she works. The employer must remit State Plan contributions for those employees who choose state coverage.	
Coverage Providers	An employer can administer a self-insured Voluntary Plan or obtain coverage from an admitted insurer.	The private plan may be insured by the employer, by an insurance company, or by a union welfare fund.
PFL/TDI link	If a Voluntary Plan employer provides company disability coverage in lieu of the state plan, then it must also provide family leave coverage.	Employers can establish a private plan for temporary disability benefits **and/or** family leave insurance.
Costs	The cost to the employee will not be greater than the cost for state coverage. Employers who have EDD approval to operate a Voluntary Plan are exempt from remitting contributions for those employees who have not opted out of Voluntary Plan coverage.	Neither the employer, nor their workers are required to contribute to the State's Temporary Disability Insurance Trust Fund while the private plan remains in existence. The cost to the worker for the private plan cannot be more than it would be under the State Plan.
Financial Assurances	A security deposit must be posted with the EDD to guarantee that the employer meets all obligations.	Some self-insured employers are required to provide security to guarantee the payment of disability benefits.
Reporting Requirements	The Voluntary Plan employer or authorized plan administrator is required to submit an *Annual Report of Self-Insured Voluntary Plan Transactions* to ensure that funds set aside by employer or workers are used to provide benefits.	The New Jersey Administrative Code requires that insurance companies, self-insured employers and union welfare funds file semi-annual and annual reports showing the temporary disability claims activity under their approved Private Plan(s).

TABLE 9: PRIVATE PROVISION OPTIONS WITHIN STATE PFML PROGRAMS

	California (Voluntary-VP-Plan) [16]	New Jersey (Private Plan) [17]
Dispute Resolution	When a claimant is denied any or all benefits, he/she must be informed in writing of the right to appeal. To appeal a denial of Voluntary Plan benefits, the claimant must send a letter to the Employment Development Department. If not resolved, the claim is referred to the state plan appeals process.	All claimants who are denied private plan benefits must be notified of the denial in writing by the insurer, self-insured employer or union welfare fund. The notification must state the reason for denial, and must advise the claimant of his or her right of appeal. A copy of the denial, together with a copy of the claim file, must be submitted to Private Plan Operations.
Waiting Period	Voluntary Plan employers have the option to waive the waiting period as part of the "greater right" provided by the plan, but this must be specified in the plan text. The waiting period may not constitute part of the maximum weeks of Voluntary Plan benefit payments.	Blank
Oversight Funding	.14% of California's State Disability Insurance tax charged based on Voluntary Plan covered workforce	Actual administrative oversight costs prorated across private plan employers each year, not to exceed 1/20 of 1% of wages

Most employees in both California and New Jersey remain in the state plan, but around 20% of workers in New Jersey are covered through a private plan for Temporary Disability. While California requires employers to opt-out for both types of leave, New Jersey allows employers to choose. The private market for Temporary Disability Insurance is robust, allowing more options for employers who wish to provide their own coverage in this area. This likely explains the much higher levels of private provision of Temporary Disability Insurance compared to Family Leave Insurance (FLI) in New Jersey.

TABLE 10: NUMBER OF WORKERS COVERED THROUGH PRIVATE, PUBLIC AND ELECTIVE PLANS IN 2014

	Private Plan	State Plan	Elective Coverage
California Temporary Disability & Family Leave [18]	3.3% (567,000)	96.5% (16,145,900)	.03% (5,100)
New Jersey Temporary Disability [19]	20.6%% (683,400)	79.4% (2,623,000)	NA
New Jersey Family Leave [20]	.3% (12,666)	99.7% (3,760,600)	NA

In California, there are 2,551 active Voluntary Plans and the types of businesses run the gamut from Facebook, Google and Pinterest all the way down to "Al's Plumbing." [21] In 2014, New Jersey had 6,078 Temporary Disability Insurance private plans and 113 Family Leave private plans in force, covering 638,400 and 12,666 workers respectively.[22]

THIRD PARTY ADMINISTRATORS

The number of employers with Voluntary Plans in California increased in 2010 with the passing of Assembly Bill 2778 (Chapter 399, Statutes 2010) allowing for Small Business Third Party Administrators to administer multiple voluntary plans. This new statute created a market for Third Party Administrators (TPAs). Any TPA that can find 1000 clients can offer a voluntary plan. Small companies choose voluntary plans through TPAs because the TPA offers a "three-for-one" service (i.e. they administer workers' compensation, Temporary Disability Insurance/Paid Family Leave and the company's payroll). Prudential, GE and Liberty are the biggest insurers in California that serve as TPAs.[23]

ELECTIVE COVERAGE FOR SELF-EMPLOYED WORKERS

Self-employed workers represent 9.4% of the workforce in Minnesota and nationally; these individuals are "often entrepreneurial risk-takers who are particularly subject to the uncertainties of the market, and therefore arguably even more in need of protection."[24] Self-employed individuals are required to maintain coverage under similar social insurance programs such as Social Security and Medicare by paying both employer and worker payroll taxes.[25] Self-employed individuals can elect PFML coverage in California, based on annual profits of at least $4,600 as reported on IRS Form 1040, Schedule SE or C. In 2014, 5,100 independent contractors and sole proprietors elected coverage.[26] According to program staff, most commonly they are "Individual Professional Corporations" (lawyers, doctors, etc). Applicants for elective coverage commit to stay in the program for 2 years unless their business is discontinued and are not eligible to make a claim for six months. The system does not allow claims before the six months has been met and refers entities that do not fulfill the two year commitment to collections where all means available are used to collect premiums due. Additional requirements include: (1) must be nominally and continuously engaged in a regular trade, business or occupation and must derive the major portion of your income portion of your income from same; (2) must not be seasonal and (3) must be able to perform full-time at the time of application.

POLICIES: PUBLIC EMPLOYERS

Depending on the data source, approximately 12-13% of Minnesota workers are employed in the public sector. With the exception of New Jersey's Paid Family Leave Program, for all other Temporary Disability and Family Leave programs state or local government employers (while covered under UI reporting) are not covered unless they elect to do so through a governing body action or collective bargaining agreement. In Minnesota, local governments are covered under UI and must report quarterly employment data. However, they are automatically reimbursing employers unless they elect to join the state plan and submit payroll taxes.[27] Very few make this choice currently. Less than 1% of government payroll was covered under this option in 2014.[28]

TABLE 11: PUBLIC SECTOR EMPLOYERS

	Temporary Disability or Own Serious Health Condition		Family Leave
Paid Leave	**State**	**Local**	**State & Local**
California	Unionized state employees may be covered through collective bargaining Non- Industrial Disability Insurance (NDI) available for State Plan ineligible employees [29]	Local public entities and agencies may elect to be covered [30]	Automatically included if eligible for TDI coverage [31]
New Jersey [32]	All state, including most state universities, employees are covered but must use all accumulated sick leave before becoming eligible for state benefits	Any governmental entity or instrumentality may elect to be a "covered employer" but employees must use all accumulated sick leave before state benefits	All Employees, including public, covered
Rhode Island [33]	Unionized state employees may be covered through collective bargaining	By election (resolution or act of legislative body in accordance with ordinances) for all or select classes	Covered through election or collective bargaining
Unpaid Leave			
Federal Family & Medical Leave Act [34]	Public agencies are covered employers without regard to the number of employees employed		
Minnesota Pregnancy & Parenting Leave Act [35]	All with 21 or more employees at at least one site (Pregnancy Only)	All with 21 or more employees at at least one site (New Child Leave Only)	

In California, Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21 have bargained for inclusion in the state PFML (Temporary Disability Insurance/Family Leave Insurance) program.[36]

UNIT 1: Professional Administrative, Financial & Staff Services **UNIT 3**: Professional Educators & Librarians **UNIT 4:** Office & Allied Workers **UNIT 11:** Engineering & Scientific Technicians **UNIT 14**: Printing Trades **UNIT 15:** Allied Service Workers **UNIT 17:** Registered Nurses **UNIT 20**: Medical and Social Services Specialists **UNIT 21:** Educational Consultants & Librarians

5,211 employers in California elected coverage in 2015. Of these, 49 are state agencies and 1,363 are public entities.[37]

IMPLEMENTATION & ADMINISTRATION

Administratively, largely consistent "covered employer" definitions between UI, Temporary Disability Insurance and Family Leave Insurance create important efficiencies in handling the vast majority of employers. However, most state UI systems treat government and nonprofit employers differently, allowing them to be "reimbursing" employers. Instead of contributing quarterly payroll taxes, these employers reimburse the state for any unemployment insurance claims. With the exception of New Jersey's Family Leave Insurance program, state and local government employers (and bargaining units where applicable) elect coverage and then contribute on behalf of their workers like any other employer. In California, 4 staffers spend about one-third of their time administering elective coverage (or around $220 per participant) for exempt employers (largely churches and public entities).[38]

Separate offices have been created in California (Voluntary Plan Group) and New Jersey (Private Plan Operations) to provide oversight for employers that choose to offer their own comparable program. A separate funding mechanism is in place to cover these administrative costs. Tables 7-9 outline many program elements that are managed by these separate offices. In California, around 10 workers and two managers oversee (including auditing) around 2,500 active Voluntary Plans.[39] New Voluntary Plan participants are audited annually in the first 3-5 years. After that, companies are audited at random about every 3-5 years. California has flags in their system to audit an employer more frequently if they get multiple worker complaints about the employer. Once issues are found, the Voluntary Plan Group puts the employer on a corrective action plan to get them to come into compliance. The most common problems with Voluntary Plans are "processing issues" and not willful non-compliance. For example, staff sometimes finds administrative issues involving an employer who is paying a worker lower benefits than the state plan would. Employers can underestimate benefits pending more information from the state plan and then, when they get it, they don't go back to adjust the payments.[40]

When a worker is covered by, and entitled to benefits from more than one insurance plan (including one or more Voluntary Plans and the State Plan), this is considered simultaneous coverage. This can happen when a worker has more than one employer. In a simultaneous coverage situation, the liable plans equally share the State Plan benefit amount. There is a process in place to notify the Voluntary Plan employer when there is potential simultaneous coverage.[41]

While appeals or disputes may be initially received by the separate private/voluntary plan office, they are often referred to and handled by the regular state administrative structure (see the section of this report on Appeals for more details). In many ways these offices function like the Workers' Compensation offices at the Minnesota Department of Labor & Industry. They ensure that privately provided benefits meet or exceed state standards. These benefits can be provided by licensed insurers or directly by the employers (self-insured). The offices also function like the Minnesota Department of Commerce to make sure that employers have adequate resources (or bonds) to cover expected costs related to wage replacement during eligible leaves. In California, the Voluntary Plan oversight office also makes sure that worker contributions withheld for Voluntary Plan coverage are managed appropriately.[42]

There are two separate "Elective Coverage" branches in California: (1) self-employed, sole proprietors and (2) workers who vote to opt-in to coverage as a unit. Those who opt-in as a unit are treated just like other employers in the system with no special costs or administrative tasks. Elective coverage for the first category (self-employed) is managed through collaboration with the Tax Office. As discussed, eligibility for elective coverage is determined based on profits as reported on prior year taxes. Auditors in the Tax Branch's Field Compliance Division review all applications for the program to determine

eligibility and register those who are eligible. The maintenance of accounts in this part of the program is handled by another group in the Tax Branch. The cost of participating, which is set annually, is obtained by contacting the local Employment Development Department Employment Tax Office.[43]

SUGGESTIONS FOR DEFINING COVERED EMPLOYERS

Using Minnesota's UI definition of covered employer is expansive, covering the vast majority of workers in the state. From an administrative standpoint, it is also the most efficient approach for both employers and the state. "Piggy-backing" on UI's system of data and payroll tax collection is the most cost effective approach and is significantly easier if the same definition of "covered employer" is used (see section of this report of Collection of Premiums). This would be consistent with the definitions used by five other states with similar programs. If Minnesota's paid family and medical leave program is structured as an insurance program, like unemployment insurance, and, like unemployment insurance, then it should provide near universal coverage. The UI definition of employer is beneficial to workers since it is relatively broad, encompassing most employers, and does not depend on the number of workers (with a few exceptions such as agriculture employers, see Table 6). While these efficiencies will not be recognized in the same way for reimbursing employers (government and nonprofit employers), at least three quarters (74%) of the state's workers are covered under employers that are currently subject to payroll taxes.

The 390,000 Minnesota workers in the public sector have the same need for leave as other workers in the state. In order to maximize access, Minnesota could adopt the New Jersey approach of including all public workers in at least the family leave part of the program. In light of limited public resources, more generous sick leave programs and higher levels of access to affordable temporary disability among some public workers and better private sector options for obtaining temporary disability insurance, there may be a justification for offering public sector workers access to paid family leave benefits only. If Minnesota's public sector employers are covered under all or part of a Minnesota PFML program as is the case in New Jersey, it may make sense to require (as New Jersey does) use of all or some portion of sick leave before becoming eligible for PFML benefits.

It is important to acknowledge that there has been significant discussion and change with respect to parental leave (new child bonding) among Minnesota's public sector employers. Several public sector employers (Hennepin County, Ramsey County, St. Paul, Minneapolis, and others) have established fairly progressive paid parental leave programs, laws or benefits in the last couple years. In addition, after conversations during the 2015 collective bargaining session and at the request of the Governor and Lt. Governor, a work group of labor and management representatives worked together to present several options for a paid parenting leave benefit for state of Minnesota workers. Likewise, some Minnesota private sector employers already offer more generous paid leave programs than those proposed for Minnesota in this analysis or in current state run PFML programs.

California's experience suggests that only a small percentage of employers will choose the option of offering their own program (see Table 10) and staff there suggest that the added complexity of creating the additional infrastructure necessary to oversee such an option may not be advisable when the program first begins. In addition, at present there is no meaningful market for paid family leave insurance. However, if there is significant interest among Minnesota employers (public and private), Minnesota's PFML program could follow the lead of New Jersey and California and allow employers that wish to continue their own leave benefits that are at least as generous as the state program. "At last

as generous" is defined in rules governing these programs but could include a combination of paid leaves that are used together to create an equally generous program. If Minnesota allows this option, the expertise of Minnesota's Departments of Labor & Industry and Commerce overseeing private provision of workers' compensation could be utilized.

Using a state PFML program with partial wage replacement won't always be the best option for workers in the public or private sector. The PFML programs currently in operation or proposed in for Minnesota in this analysis only offer partial wage replacement. Workers with access to more generous sick leave programs that provide 100% wage replacement may be better off receiving benefits from their employers. Simulation results for proposed models detailed Section 3 of this analysis suggest that a significant proportion of workers taking leaves will continue to rely solely on employer provided benefits during leave, even with a state program in place, for a variety of reasons (short duration, intermittent nature, access to more generous and/or convenient employer provided benefits, lack of program awareness). This reality can be accommodated by allowing workers to simultaneously or sequentially access public and private benefits or by allowing workers and employers to opt-out and provide their own program. Whether or not employers are allowed to offer their own comparable program, California's "integrated benefits" approach is beneficial (see the section of the report on Integration of Public and Private Benefits for more detail).Working with employers to structure benefits programs that "top off" state wage replacement can enhance worker attachment to their employers.

Minnesota can also provide an opportunity for the quarter million business owners or self-employed individuals to "elect" coverage in the state PFML program. California's experience suggests that this is a workable option. While few currently take advantage of it, Minnesota's UI program currently provides an opportunity for Minnesota business owners to elect coverage.

NOTES: DEFINING COVERED EMPLOYERS

[1] Data provided by the Minnesota Unemployment Insurance program, December 2015, available from author
[2] Calculated by author using ACS 2014 one year data set on Social Explorer
[3] http://www.edd.ca.gov/Payroll_Taxes/FAQ_-_Payroll_Taxes_General_Information.htm
[4] http://www.unemploymentinsurance.doleta.gov/unemploy/pdf/uilawcompar/2015/coverage.pdf
[5] R.I. Gen. Laws § 28-39-3
[6] http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[7] http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[8] http://www.uimn.org/uimn/employers/publications/emp-hbook/new-registration.jsp
[9] http://www.dli.mn.gov/WC/AboutCov.asp
[10] 29 CFR 825.104
[11] MN Statutes 181.940
[12] http://www.edd.ca.gov/Disability/Employer_Voluntary_Plans.htm
[13] http://lwd.dol.state.nj.us/labor/tdi/employer/private/pp_emp_program_info.html; http://lwd.dol.state.nj.us/labor/fli/worker/private/family_leave_pp_general_information.html
[14] http://www.edd.ca.gov/Disability/Employer_Voluntary_Plans.htm
[15] http://lwd.dol.state.nj.us/labor/tdi/employer/private/pp_emp_program_info.html; http://lwd.dol.state.nj.us/labor/fli/worker/private/family_leave_pp_general_information.html
[16] http://www.edd.ca.gov/Disability/Employer_Voluntary_Plans.htm
[17] http://lwd.dol.state.nj.us/labor/tdi/employer/private/pp_emp_program_info.html; http://lwd.dol.state.nj.us/labor/fli/worker/private/family_leave_pp_general_information.html
[18] http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf; November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
[19] November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section NJ Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee; 2014-15 legislative budget documents provided by Greg Williams available from author
[20] Ibid
[21] November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
[22] November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section NJ Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee; 2014-15 legislative budget documents provided by Greg Williams available from author
[23] November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
[24] American Community Survey 2014, accessed and analyzed by author at socialexplorer.org
[25] The Self-Employment Contributions Act of 1954: 26 U.S.C. § 1401 (2006).
[26] November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
[27] http://www.uimn.org/uimn/employers/wages-taxes/reimbursers/index.jsp
[28] Data provided by Minnesota Unemployment Program staff, November 2015, available from auhtor
[29] http://www.edd.ca.gov/Disability/FAQ_DI_State_Employees.htm
[30] http://www.unemploymentinsurance.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[31] http://www.edd.ca.gov/Disability/FAQ_PFL_Eligibility.htm
[32] 43:21-27 (a) (1): http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/Law.pdf
[33] R.I. Gen. Laws § 28-39-3
[34] 29 CFR 825.104
[35] MN Statutes 181.940
[36] http://www.calhr.ca.gov/documents/bu01-03-04-11-14-15-17-20-21-seiu-ta-legislative-summary-accessible-version-dated-06132013.pdf
[37] November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
[38] Ibid
[39] Ibid
[40] Ibid
[41] Ibid
[42] Ibid
[43] November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)

POLICIES

The current states that offer PFML cover the same broad categories eligible under the federal Family and Medical Leave Act. In five states, a worker's own serious health condition is covered and in three of those states family caregiving for a new child or seriously ill or injured family member is also covered (see Table 12).

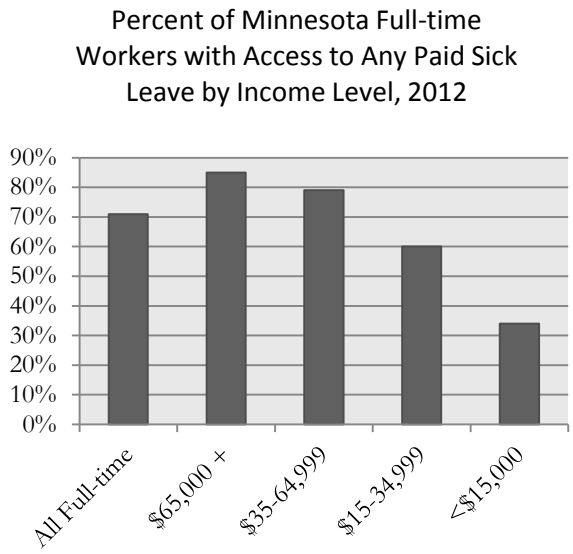
TABLE 12: ELIGIBLE REASONS FOR LEAVE UNDER STATE PAID LEAVE PROGRAMS

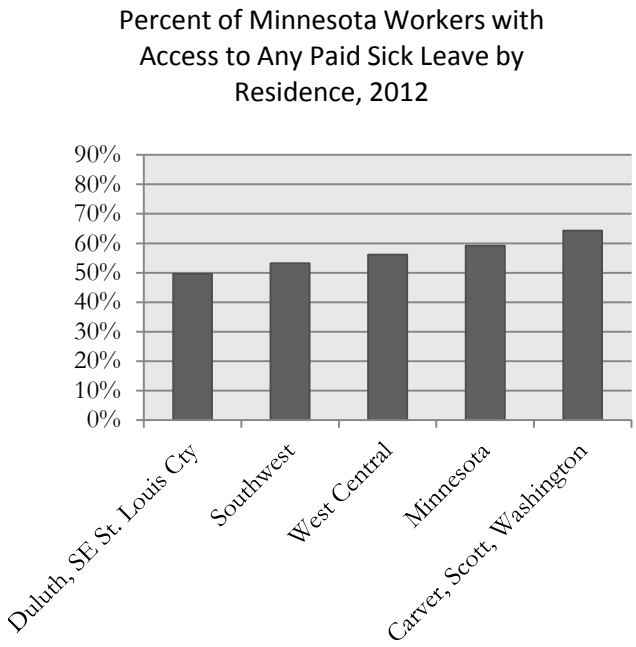
Partial Wage Replacement	Care for Own Disability or Serious Health Condition (TDI)	Care for a New Child (Birth, Adoption, Foster)	Care for Family Member with a Serious Health Condition
California [1]	✓	✓	✓
New Jersey [2]	✓	✓ (No Foster)	✓
Rhode Island [3]	✓	✓	✓
New York [4]	✓		
Hawaii [5]	✓		
Unpaid Leave			
Federal Family & Medical Leave Act [6]	✓	✓	✓
Minnesota Pregnancy & Parenting Leave Act [7]	✓ (Pregnancy Only)	✓ (No Foster)	

To understand how workers currently manage leaves for family and medical reasons it is important to consider how state paid leave programs build on and intersect with employer provided paid leave of various types. Employer-provided wage replacement for periods of illness or injury is usually provided through a combination of paid sick, vacation or Paid Time Off (PTO) days and, for longer periods of disability, short-term disability insurance plans.

In general, paid sick days provide wage replacement for short periods of time off (less than one week), whereas short-term disability benefits provide wage replacement for illnesses or injuries that last one week or longer. Workers who have access to only paid sick days, however, will often use those days for longer-term illnesses, to the extent they can. The average worker receives 7 days of sick leave per year.[8] Although access to paid sick days is highly correlated with income level, as Figure 2 shows for Minnesota, and around 40% of all workers (full and part-time) do not have access to any paid sick leave. For those who do have sick leave, Minnesota is one of eight states with a "kin care" law allowing workers to use some portion of that leave to care for family members.

FIGURE 5: ACCESS TO PAID SICK LEAVE BY INCOME AND GEOGRAPHY [9]





Approximately 40% of U.S. workers are covered by a temporary disability plan. These plans generally replace 60-70% of wages up to 26 weeks.[10] Under both public and private temporary disability plans and public paid family leave plans, there is typically a one week or seven day waiting period during which workers are expected to use sick leave as a "co-pay." Also, since temporary disability and family leave programs are designed to address more serious health issues, waiting periods can help minimize program usage for more routine, minor and intermittent care needs and thus insure that the program is used only for more serious illnesses or a new child, helping keep the cost of the program down. (For more detailed information, see the section of this report on Waiting Periods.)

Workers without paid sick leave or temporary disability often turn to paid vacation or PTO to replace wages during leaves. More private sector workers have access to paid vacation time (77 percent) than have access to paid sick days (62 percent) or short term disability plans (39 percent). After one year on the job, private-sector workers receive an average of nine paid vacation days. Increasingly employers are combining leave in the form of Paid Time Off (PTO) instead of separate sick days and vacation days. Employers that provide Paid Time Off generally provide between 15 and 25 Paid Time Off days per year.[11]

Most individuals will experience a temporary disability, illness or injury some time in their life. In 2012, nationally approximately 15% of women and 11% of men took a leave to manage their own serious health condition. An additional 3% of men and 6% of women had an "unmet need" to take leave for the same. Nationally, African-American, Asian American and Native American workers are twice as likely to have an unmet need for leave as white workers. More than half of all leaves taken for FMLA reasons (paid and unpaid) are for a worker's own serious health condition.[12] The proportion is similar for New Jersey and California PFML program claims (see Table 13).

Around half of all leaves for FMLA reasons are 10 days or less, and the vast majority of leaves to care for a family member with a serious health condition fall into this category.[13] While 18% of all leaves involve

family care, they are more likely not to exceed the seven days waiting period for the three state paid family leave programs. For this reason, they account for only 3- 4 % of paid leave claims in those two state programs. Research looking at the recent start-up and implementation of paid family leave (Temporary Caregiver Insurance) in Rhode Island found that the seven-day minimum qualifying event requirement made the program less accessible for family caregiving purposes.[14] Within paid family leave programs, claims related to the birth or adoption of a new child are more common, constituting 42% of claims in California and 40% in New Jersey (see Table 13). The higher rate in California is due to higher uptake rates among men (see section on Leave to Bond with a New Child).

TABLE 13: DISTRIBUTION OF ALL FMLA TYPE LEAVES AND STATE PAID LEAVE PROGRAM CLAIMS

	Care for Own Disability or Serious Health Condition (TDI)	Care for a New Child And Pregnancy (Bonding)	Care for Family Member with a Serious Health Condition*
Leaves for FMLA covered events [15]	55% of all leaves	21% (includes pregnancy and bonding) of all leaves	18% (child, parent, spouse) of all leaves
Estimated Leaves for FMLA covered events in Minnesota [16]	58% of all leaves	16% (includes pregnancy & bonding) of all leaves	24% (family care) of all leaves
California [17] (TDI and FLI combined)	55% of all paid leave claims	42% of all paid claims (pregnancy and bonding)	3% (care of family member) of all paid claims
New Jersey [18] (TDI and FLI combined)	56% of all eligible claims	40% of all eligible claims (pregnancy and bonding)	4% (care of family member) of all eligible claims

*Family care claims are more likely to be less than a week (an eligibility threshold for paid leave programs)

TABLE 14: DISTRIBUTION OF CLAIMS BY TYPE IN STATE PAID LEAVE PROGRAMS

	Care for Own Disability or Serious Health Condition (TDI)		Family Care Leave (PFL/FLI/TCI)	
	Pregnancy	**Other Own Health**	**Care for a New Child (Birth, Adoption)**	**Care for Family with a Serious Health Condition**
California [19] (FY13-14)	26% 165,388	74% 468,198	88% 200,524 (filed)	12% 27,306 (filed)
New Jersey (CY 2014 FLI) [20] (CY2014 TDI) [21]	25.3% 24,111	74.7% 70,952	82.2% 26,442 (eligible)	17.8% 5,726 (eligible)
Rhode Island [22] (CY 2014)	40,711(filed)		73.6% 2,847 (approved)	26.4% 1,023 (approved)
New York (2011) [23]	29.3% 53,565	70.7% 129,039	NA	NA

PAID LEAVE FOR A TEMPORARY DISABILITY OR WORKER'S OWN SERIOUS HEALTH CONDITION

Serious illnesses or injuries are usually out of the control of individuals, most of whom want and need to work. Advances in health care have allowed many with health conditions that previously would have resulted in death or an inability to work to get back to work and continue to work. People with serious illnesses and temporary disabilities are now expected to stay in the workforce and support themselves. The Americans with Disabilities Act has also helped many more people work and contribute to the economy.[24]

Time off to receive medical treatment and recover with wage replacement can help individuals and families maintain economic stability and remain attached to the workforce. Despite the need, there is neither a national system nor a nationally encouraged state system for wage replacement during periods of non-work-related, temporary disability. However, five states and one territory have state-level Temporary Disability Insurance (TDI) programs, funded by employer and/or worker payroll taxes (see Premiums section of this report).

SERIOUS HEALTH CONDITION UNDER FMLA

The federal FMLA definition of serious health condition is similar to most state program definitions: "an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider."

- Any overnight admission to hospital, hospice, or residential care facility triggers FMLA eligibility
- Chronic conditions that require periodic visits to a health care provider (ex. asthma, diabetes, epilepsy)
- Incapacity for pregnancy or prenatal care (ex. morning sickness)
- Includes Alzheimer's, severe stroke, terminal diseases, conditions requiring multiple treatments (cancer, severe arthritis, kidney disease)
- Treatment for substance abuse

Claims related to own health condition require that the condition be non-work related and that the worker is unable to do customary work.

> *"In 1946, the Federal Unemployment Tax Act was amended to permit states to use surplus funds from their unemployment insurance programs to pay for disability benefits (but not administrative costs), if they set up new temporary disability programs (U.S. Social Security Administration, Office of Retirement and Disability Policy 2012). Prior to the passage of this federal amendment, Rhode Island had passed a state law in 1942, which similarly allowed for the use of accumulated unemployment funds for disability benefits, making it the first state to institute a system of Temporary Disability Insurance (TDI). California (1946), New Jersey (1948), and New York (1949) were next, enacting their own state laws establishing TDI. Puerto Rico and Hawaii followed two decades later (in 1968 and 1969 respectively; Social Security Administration, Office of Retirement and Disability Policy 2012)."25*

As Table 14 shows, around a quarter of Temporary Disability Insurance claims are related to pregnancy. Approximately 13 percent of women will have a complication from pregnancy requiring them to be hospitalized before delivery, likely requiring at least some time off from work.[26] These complications may range from gestational diabetes to pre-eclampsia[27] to pre-term labor. Pregnant women with medical complications often have to go on partial or full bed rest prior to childbirth; 20 percent of pregnant women spend a minimum of one week on bed rest during the course of their pregnancy.[28] In the postnatal period, the minimum period of physical recovery from a normal pregnancy and delivery is six weeks (eight weeks for Cesarean deliveries).[29]

TABLE 15: MOST COMMON HEALTH CONDITIONS FOR NEW JERSEY TEMPORARY DISABILITY CLAIMS, 2014

Major Morbidity Group	Percent of Cases (Claims)
Pregnancy and Childbirth	25.4%
Bones and "Organs of Movement"	18.6%
Accidents, poisoning and violence	13.5%
Cancers (Neoplasms)	7.8%
Digestive System	6.7%
Mental	5.9%
Circulatory	5.9%

Based on the Medical Disability Advisor recommendation,[30] the majority of private, short-term disability plans provide six weeks of wage replacement for a normal delivery.[31] If there are complications from the pregnancy or childbirth, or if the woman has a Cesarean section, a doctor will certify a longer period of recovery, and wage replacement will be provided for that period.[32] Employers who do not provide wage replacement through a short-term disability plan will sometimes provide specific maternity-leave benefits on their own. For example, according to a study conducted by the Society for Human Resource Management (SHRM) of its members, 14 percent of respondents stated that they offered paid maternity leave other than what was covered by their short-term disability plans.[33] Similarly, the 2012 FMLA survey found that 17% of worksites offered paid maternity leave. Other employers, who do not specifically provide paid maternity leave benefits, allow their workers to use their paid sick days and other sources of

paid time off (vacation leave, holidays, Paid Time Off days, etc.) for pregnancy and recovery from childbirth.

TABLE 16: TEMPORARY DISABILITY INSURANCE USE FOR PREGNANCY

	Normal Pregnancy Before Birth	Normal Pregnancy After Birth	C-section or other Complications
California [34]	4 weeks	6 weeks	8 weeks or longer (with medical certification)
New Jersey [35]	4 weeks with inability to work certification	6 weeks with inability to work certification	8 weeks or longer
Rhode Island [36]	Qualified Healthcare Provider (QHP) determines that you are unable to perform your customary and regular work duties due to medical complications as a result of your pregnancy		
New York [37]	No formal rules but generally 6 weeks total for normal pregnancy; 8 weeks for C-section. More than 4-6 weeks may require additional medical certification.		
Private TDI Plans [38]	6 weeks total before and after		May certify longer

PAID LEAVE TO BOND WITH A NEW CHILD

In addition to pregnancy-related paid leave, as described in the last section, most countries in the world and the three states with paid family leave programs offer leave to mothers and fathers to care for and bond with a new child (birth, adoption and in most cases foster placement).

> *"Of 186 countries examined in Heymann and McNeill's (2013) analysis of the World Policy Analysis Centre Adult Labour Database, 96 percent provide some pay to women during maternity leave. Nearly every member of the European Union (EU) provides at least 14 weeks of job-guaranteed paid maternity leave, during which workers receive at least two-thirds of their regular earnings (International Labour Organization 2010). Eighty-one countries extend paid leave to new fathers, through paternity leave (specific to fathers), through parental leave that can be taken by either parent, or through some combination of the two (Heymann and McNeill 2013). Sixty of these countries pay fathers at least 75 percent of their wages for at least part of the leave taken, yet only 37 provide fathers with the option of taking 14 weeks or more of paid time off (Heymann and McNeill 2013). Several high-income countries also provide workers with the option to combine part of the paid parental leave entitlement with paid employment, facilitating a gradual return to work for mothers, as well as a greater take up of leave provisions by fathers (Fagan and Hebson 2006)."39*

While temporary disability programs in the private or public sector can provide some leave for mothers after birth, they do not provide opportunities for care and bonding to non-birth parents, including fathers, same-sex parents, adoptive or foster parents. California, New Jersey and Rhode Island Family Leave programs offer all parents the same amount of non-transferable leave. While fewer fathers take parental

leave than mothers, California's paid family leave program has seen a steady increase in the percent of bonding leaves taken by men and an almost doubling the number of leaves taken, from 20% of bonding leaves (34,898) in 2006-7 to 32% (65,571) in 2013-14. Research comparing California father's leave taking before and after the paid leave program went to effect and comparing California fathers to those in states without paid leave programs, found that California's paid leave policy increased leave-taking by fathers by 46%. [40]

> *California's paid leave policy increased paternal leave-taking by 46%*

In California, approximately six percent of bonding leave claims are filed by someone other than a biological parent.

PAID LEAVE FOR FAMILY CAREGIVING

Several demographic and economic trends are converging to create growing demands for unpaid caregiving within families. Over the next 50 years, the number of people aged 65 and older is expected to more than double and the number of people aged 85 and older is expected to triple. The number of Minnesotans turning 65 in this decade will be greater than the past four decades combined; 25% have difficulty with at least one activity of daily living.[41] The ratio of elderly to working age population will nearly double from 1990 to 2050. "Around 2020, Minnesota's age 65 plus population is expected to eclipse the age 5-17 'K-12' population, for the first time in history."[42] The graying of rural communities, including those in Minnesota, is particularly acute.[43] Most of these older Americans (86%) have at least one chronic condition and the majority (61%) has two or more chronic conditions.

> *At the same time, care is moving out of institutions and back in to homes.*

Affordable Care Act provisions that have significantly reduced complications and re-hospitalizations by increasing home care following hospitalization have shifted these costs to and are putting additional pressure on families. Between 2000 and 2010, for example, one study found a "steady, compounded growth rate of 8% per year in the use of home health care as an alternative to lengthy hospital stays, nursing homes and other inpatient treatments."[44]

Deinstitutionalization of care for acute or chronically ill or disabled adults and children as well as the elderly is driven in part by attempts to reduce costs, but is premised on the assumption that most of the care will be provided for free by family and friends.[45] Simultaneously, those who traditionally perform unpaid care are increasingly in the paid labor force. Working caregivers are a rapidly growing segment of the population. Over the course of a year, approximately one-third of households have someone (typically a woman in her 50's) who is providing care to someone else, usually an older relative. Six in 10 caregivers report having to make a workplace accommodation as a result of caregiving, such as cutting back on their working hours, taking a leave of absence, receiving a warning about performance or attendance, or other such impacts. Twelve percent of caregivers who work more than half time report giving up work entirely and another 8% retire early.[46] The majority of mothers (including nearly 80% of Minnesota mothers with children under 5) is now in the paid workforce and remains there throughout pregnancy.[47] While men are more interested in participating as equal caregivers in their families, many workplace policies and attitudes don't support their

aspirations.[48] Grandparents, another key source of family support, are also expected to or need to stay in the workforce longer. Almost one-third of 65-74 year old Minnesotans are employed.[49]

There is growing recognition of the public value of unpaid care. In Minnesota, the often invisible contribution to families and the state's economy of unpaid family caregiving (care for a family member, partner or friend with a chronic, disabling or serious health condition) has an estimated value of $7.8 billion per year.[50] According to a 2015 AARP study, Minnesota ranked next to last — 49th in the country – for the cost to care for somebody privately at home as a percentage of median household income. Compared with a national average of 84 percent of annual income, the cost in Minnesota was 110 percent.[51]

TABLE 17: FAMILY CAREGIVING CLAIMS BY TYPE OF FAMILY MEMBER, 2014

	Spouse	Child (other than newborn)	Parent	Other Family
California [52]	9,256 (33.6%)	5,843 (21.4%)	9,147 (33.5%)	3,058 (11.2%)
New Jersey [53]	1,831 (32%)	1,384 (24%)	2,511 (44%)	
Rhode Island [54]	462 (45%)	227 (21%)	303 (30%)	31 (3%)

Family caregiving usually involves a spouse, child or parent, but in some cases workers take leave to care for other family members such as a grandparent, grandchild or a sibling. California's program requires the claimant to make a statement that no other caregivers are available to care for the family member. Caregiving includes physical, psychological and logistical help. Seventy-nine percent of people caring for an elderly family member, for example, are involved in medical care.[55]

> *Rhode Island Statutes 28-41-36*
>
> *"(b) For leave for reason of caring for a seriously ill family member, an employee shall file a certificate with the department that shall contain:*
>
> *(5) A statement that the serious health condition warrants the participation of the employee to provide care for his or her family member. 'Warrants participation of the employee' includes, but is not limited to: providing psychological comfort, arranging third party care for the family member as well as directly providing, or participating in the medical and physical care of the patient."*

While few employers offer wage replacement specifically for family caregiving, under "kin care" laws like Minnesota's, family members can use available sick leave or Paid Time Off for caregiving. Under Minnesota's law employers are allowed to limit the use of paid time off for family care (other than a minor child) to 160 hours per year.[56] A private market for family leave insurance hasn't really developed, even in New Jersey where nearly 20% of employers opt-out of the state Temporary Disability Insurance program and use private Temporary Disability Insurance coverage (see section on Covered Employers). In New Jersey, employers are allowed to provide comparable private coverage for temporary disability and use the state plan to cover family leaves (see Tables 7-9). Some private short or long-term disability plans and, in most states (including Minnesota), Medicare include reimbursement for in-home health support that can be used to pay a family caregiver. Reimbursement is typically not based on a caregiver's current earnings, however, and it can be complex to qualify.[57]

IMPLEMENTATION AND ADMINISTRATION

Current paid leave programs rely on certifications from medical professionals to determine whether the person submitting the claim or a family member is suffering from a qualifying illness or injury. In California, for example, medical certification is provided directly to the state from a wide variety of licensed medical professionals (see Table 18).[58]

Rather than hiring a large number of claim administrators with medical training or medical backgrounds to review certifications, current Temporary Disability Insurance programs use a set of medical guidelines to assist administrators in making initial determinations. In California, New Jersey and Rhode Island, medical practitioners (see Table 18) provide the state with either a diagnosis or detailed statement of disabling symptoms and an International Classification of Diseases, or ICD, code. These codes are used internationally and by U.S. hospitals, health care facilities, and the Centers for Medicare & Medicaid Services. Medical professionals who submit documentation to the state must also provide an anticipated date when the individual is likely to be able to return to work.[59]

Claims staff without medical training use medical guidelines, such as the ICD, to effectively review applications by providing accessible descriptions of common ailments, their typical duration, and the factors that can speed or slow recovery from them. As a result, highly trained medical experts, such as Registered Nurses, are needed only for the review of suspicious cases and testimony in support of agency determinations.[60] Rhode Island, for example, employs two registered nurses to provide information to health providers, claimants and employers and deal with complex Temporary Disability Insurance claims.[61] This approach is much less expensive than employing experts to review all applications or requiring extensive training for all administrators, and is much faster than having experts complete an extensive review of all applications. If concerns remain, all of the state programs reserve the right to request an independent medical exam, paid for by the state, to verify disability status.

TABLE 18: CERTIFYING HEALTH PROFESSIONALS UNDER STATE PFML PROGRAMS

State	Physician	Psychologist	Dentist	Podiatrist	Chiropractor	Certified Nurse Midwife	Other
California [62]	Yes	Yes	Yes	Yes	Yes	Yes (for disabilities related to pregnancy or childbirth)	- Nurse practitioner (pregnancy, or w/ physician surgeon) - Religious practitioners accredited by EDD - Osteopath Authorized medical officer of a US government facility
Hawaii [63]	Yes	No	Yes	No	Yes	No	- Surgeon - Osteopath - Naturopath Accredited practitioner of a faith-healing group
New Jersey [64]	Yes	No	Yes	No	Yes	Yes	- Optometrist Advanced practice nurse
New York[65]	Yes	Yes	Yes	Yes	Yes	Yes	Spiritual healers must be duly accredited practitioner and use Practitioner's Statement
Rhode Island [66]	Yes	Yes	No	No	No	Yes	- Nurse practitioners - Physician assistants - Psychiatric clinical nurse specialists - Licensed clinical social workers Licensed independent clinical social workers

TABLE 19: INDEPENDENT MEDICAL EXAMS

	IME Structure	Purpose
California [67]	Panel of Independent Medical Examiners, physicians/ practitioners who conduct examinations to verify a disability status	An examination may be requested when the given duration of a disability supplied by the claimant's own health care provider is significantly longer than normal for the diagnosis in question, and the claimant's health care provider has not medically justified the additional time period. Or there is another dispute.
New Jersey [68]	State-appointed physicians	If there is any doubt about the validity of an employee's disability or a question about the duration of the disability, the employer or the agency may request that an independent medical examination be scheduled by the agency.
Rhode Island [69]	Impartial medical examiners apply, agree to a fee structure, and are selected in all locations throughout the state and in all medical specialties. RI considers it generally inappropriate for a physician to perform an IME and to offer or serve as subsequent treating provider for a patient.	Impartial medical examiners examine patients, determine fitness for duty and submit reports in a timely manner, based on agency needs and/or employee or employer disputes.

The proof and analysis required to prove a new child claim (around 40% of all claims) is generally more straightforward.[70] California, for example, requires a birth certificate, hospital discharge, declaration of paternity, adoption or foster placement records, or passport that demonstrates the claimant's relationship to the child. Claim staff verifies that the proof presented is authentic.

For other types of caregiving claims, the relationship between the care recipient and claimant, the medical status of the care recipient, and the recipient's need for care from the claimant are all verified. None of the current public insurance programs require proof of family relationship at the claim stage of the process, except for bonding claims. Within New Jersey and California family leave insurance systems, the primary evidence in support of a caregiving claim consists of a statement from a physician or other healthcare provider stating that the care recipient has a serious health condition and requires care, information about the condition (including ICD code), and dates of needed care. California's form also requires a confirming statement and signature from the care recipient. Examples of current forms are provided in an appendix to this report. California's program also requires the claimant to make a statement that no other caregivers are available to care for the family member. All three states also have the ability to request an independent medical exam, paid for by the state, to verify the family member's serious, qualifying health condition (see Table 19).

Many employers who currently offer paid leave and the approximately 60% that are covered under the FMLA already have similar processes for verification of qualifying events.

> *"Under the FMLA, workers provide official documentation to their employers that contains information that their medical provider has provided and signed. The types of information provided may include: the name and contact information for the worker's medical provider; the date that the worker's health condition began and how long it is anticipated to last; relevant and appropriate information about the worker's health condition; information establishing that the worker cannot perform the essential functions of his or her job or a statement establishing that a family member is under the supervision of a medical provider due to a serious health condition and that the worker needs to provide care."*[71]

Under FMLA, if an employer is concerned that such information may be inaccurate, incomplete, or outdated, an appropriate representative—not the worker's direct supervisor— may contact the worker's medical provider in order to obtain authentication or clarification of the information provided in the initial FMLA certification process. If an employer questions the validity of the initial certification, it can request a second opinion, provided that the medical professional providing the second opinion is not also an worker—for example, a principal could not request that the school nurse provide the second opinion for a teacher requesting medical leave—and that the employer pay for the cost of the additional certification. If the second opinion differs from the first, the employer may also request—and must pay for—a third opinion. The third opinion is considered final, and the employer must accept that decision.[72] Under state PFML programs, much of this verification work would be conducted within the program if disputes occur (see Appeals section of this report).

SUGGESTIONS FOR DEFINING COVERED EVENTS

Aligning Minnesota's PFML program with the federal FMLA in terms of qualifying events would minimize confusion and maximize access. Given a social insurance model that requires all workers to contribute, a Minnesota PFML program that covers the full range of FMLA events would help ensure that most workers and employers will benefit from the program.

Minnesota's program can cover the full-range of FMLA qualifying events without re-creating the adversarial dynamics of a worker's compensation or unemployment insurance program. In order to do so, the proposed Minnesota program should not be experience rated (penalizing employers for program usage). It is also important to note that unlike long-term Social Security Disability Insurance, workers' compensation or unemployment insurance benefits —which are intended to cover serious, long-term disabling conditions or periods of absence from work that last for up to a year or may be terminal[73]—the short-term benefits options for a Minnesota PFML program would cover a much more modest length of time (see section of this report on Benefit Duration), which should result in a vastly simplified, less contentious certification process.

It would make sense for Minnesota's program to follow the example of current state temporary disability insurance and family leave insurance programs that evaluate qualifying events after receiving official documentation from licensed medical professionals treating individual workers or family members.

Minnesota's workers' compensation program does involve some level of medical certification or verification in the case of disputes. It may be possible to share resources and expertise with the medical

experts in the Minnesota Department of Labor and Industry's state workers' compensation office, but new staff, training, and systems will have to be developed. "However, the lessons from state Temporary Disability Insurance and workers' compensation programs and FMLA certifications can help provide a road map for how [Minnesota's] PFML program can set up rules and procedures to develop a medical certification process that is streamlined and efficient without encouraging fraud."[74]

NOTES: DEFINING COVERED EVENTS

[1] Cal. Unemp. Ins. Code§ 2626
[2] N.J. Admin. Code§ 43:21-25 et seq.
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DEFINING FAMILY MEMBER

Among those caring for an older adult (age 65 plus), one survey found that 49% cared for a parent, 18% a grandparent, 11% the caregiver's spouse/partner, 12% the caregiver's parents in-law, and 11% an extended family member (e.g., a sibling, cousin, aunt/uncle, etc.).1 In 2014, an estimated 21,659 Minnesota grandparents were living with and responsible for grandchildren under 18 and 41,000 households were multi-generational.2 For a variety of demographic and economic reasons, including growing ethnic and racial diversity in Minnesota, multi-generational or extended family households are on the rise.

> *"Another factor has been the big wave of immigration, dominated by Latin Americans and Asians, that began around 1970. Like their European counterparts from earlier centuries, these modern immigrants are far more inclined than native-born Americans to live in multi-generational family households."* [3]

Nationally, Hispanics (22%), blacks (23%) and Asians (25%) are all significantly more likely than whites (13%) to live in a multi-generational family household. [4] Likewise, re-marriage is common among the high proportion of Minnesota workers who have been divorced, increasing the prevalence of care for step-children or step-parents.

> *"Data on caregiving in the United States shows that non-immediate family members make significant sacrifices to care for extended family and friends —One study found that more than 14 percent of caregivers are caring for a non-relative.[5] Another study found that more than 40 percent of caregivers for Alzheimer's patients are not covered under the FMLA's narrow definition of family, and yet another found that nearly 20 percent of primary caregivers for chronically disabled individuals are neither the spouse nor the child of the person receiving care.[6] Non-immediate family care is likely to become more prevalent as workers become increasingly mobile and, as a result, cease to live near immediate family members."*[7]

POLICIES

Definitions of family member vary across state and federal paid and unpaid leave laws and programs, as well as "kin care" laws, as shown in Table 20. In general, the FMLA definition is the narrowest. In addition to being restricted to parents, spouses and children, a "child" or "son or daughter" is defined by the FMLA regulations as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either *under 18 years of age or is 18 years of age or older and "incapable of self-care because of a mental or physical disability"* at the time FMLA leave is to commence. This definition excludes care for an adult child that is not disabled, as well as a host of other less immediate family members. California's program expanded its definition of family in 2014 to include in-laws, grandparents, grandchildren and siblings. Minnesota's "kin-care" law that allows workers to use accumulated sick leave to care for a family member, has among the broadest definitions, including adult children who are not disabled (see Table 20)

TABLE 20: FAMILY MEMBERS COVERED UNDER FAMILY LEAVE PROGRAMS AND POLICIES

Paid family leave	Parent	In-law	Spouse	Domestic Partner	Child (including step)	Grand parent	Grand child	Sibling	Step-parent
California [8]	✓	✓	✓	✓	All ages	✓	✓	✓	
New Jersey [9]	✓		✓	✓	19 or < unless disabled				
Rhode Island [10]	✓	✓	✓	✓	All ages	✓			
Other									
Federal Family & Medical Leave Act [11]	✓		✓		18 or under unless disabled				
Minnesota Sick Leave Benefits; Care of Relatives [12]	✓	✓	✓	✓	Adult and minor separate category	✓	✓	✓	✓
Federal Employee "kin care"	All categories, plus "any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship"								

Family leaves to care for someone other than a new child make up around 18% of all FMLA covered leaves, but a smaller percentage of all combined paid leave claims in Temporary Disability Insurance /Family Leave Insurance programs (3-4% in New Jersey and California). This discrepancy is in large part due to the nature of non-bonding family leaves which are more often intermittent and less than 10 days in length. The percentage of all family leaves that are for care of all family members other than a newborn range from 12% in California to 26% in Rhode Island (see Eligible Reasons for Leave section of this report). Table 21 shows the number of family leave claims by type of family member and the percentage of all non-bonding family leaves. The small number of "other family" claims in Rhode Island compared to California is likely a function of the inclusion of fewer types of family members (see Table 21).

TABLE 21: FAMILY CAREGIVING CLAIMS BY TYPE OF FAMILY MEMBER, 2014S

	Spouse	Child (other than newborn)	Parent	Other Family
California [13]	9,256 (33.6%)	5,843 (21.4%)	9,147 (33.5%)	3,058 (11.2%)
New Jersey [14]	1,831 (32%)	1,384 (24%)	2,511 (44%)	2,511 (44%)
Rhode Island [15]	462 (45%)	227 (21%)	303 (30%)	31 (3%)

IMPLEMENTATION AND ADMINISTRATION

An eligible paid leave recipient must attest that he or she is acting as a caregiver for a family member during any time period in which benefits are received. State paid family leave programs require eligible claimants to attest that they are acting as a caregiver while benefits are received to ensure that the program is being used for its intended purpose (for more detail see Claims Process section of this report and claim forms in the appendix). Online and paper forms include check boxes for each type of eligible family member. California also requires claimants to certify that no other caregiver is willing able and available for the same period the claimant is claiming Paid Family Leave benefits.

A medical certificate is also required for a Paid Family Leave claim to provide care for a seriously ill family member. The certificate must be completed by the care recipient's physician/practitioner.[16]

As part of the claim process, the claimant (if 18 or over), care recipient and medical professional all certify the family relationship. None of the current public insurance programs require proof of family relationship at the claim stage of the process, except for bonding claims. All three states accept a birth certificate, hospital discharge, foster placement record, child's passport or adoption agreement as proof of eligible event for a new child bonding claim.

SUGGESTIONS FOR DEFINING FAMILY MEMBER

Using the definition of family member included in Minnesota's "kin care" law that requires employers to allow workers to use accumulated paid leave to care of a broad list of relatives will maximize access and consistency and minimize confusion for the majority of workers with access to sick leave and their employers.

There is merit to allowing workers to provide care to those individuals who most need it, whether or not the care recipient is part of the individual's immediate family (usually a child or parent). Allowing a worker to use benefits earned through his or her premium contributions to care for a person for whom they have caregiving responsibilities will make the program useful to a broader cross-section of workers. Helping a wider group of workers who want to maintain their responsibilities and connections to their employers and fulfill responsibilities to their families will minimize the disruption of hiring and training new workers and maximize the number of workers who remain with the employer through serious caregiving life events.

Current Minnesota law requires employers who offer sick leave to allow workers to use up to 160 hours for care of a broad list of relatives (see Table 20). Using this definition will maximize consistency and minimize confusion for the 60% of workers with access to sick leave and their employers. A standard definition across sick leave and paid leave policies also creates a more seamless connection when short-term needs turn in to longer term ones. If Minnesota's program requires or allows employers to require a period during which

workers are required to use sick leave or other paid time off, a consistent definition also makes sense. In practice, paid leaves to care for extended family, where they have been allowed, have been an important support to those workers, but have not added significantly to program usage or costs.

OTHER CONSIDERATION: EXPANDING THE POOL OF CAREGIVERS

As a matter of social policy, Minnesota could consider encouraging family caregiving, especially as the state's population ages. Currently, an estimated 88,269 family care leaves are taken annually in Minnesota. Allowing benefits to be used to provide care for a broader group of family members increases the number of potential caregivers in the state. Allowing care from a family member can be more economical than paying for professional nursing care, institutional care or public assistance support. Pew Research found that 83% of Americans express an obligation to care for a parent, 77% a grown child and 55% a step-parent.[17] The state could also consider the benefits, financial and other, of helping workers fulfill this sense of obligation and responsibility. These caregivers can and currently do play a role in dealing with ever-increasing shortages of medical personnel in rural areas and climbing long term care costs in the state.[18]

OTHER CONSIDERATION: ADDRESSING HEALTH DISPARITIES

Multi-generational households are more common in communities of color and immigrant and refugee communities. The Minnesota Department of Health has documented significant racial disparities in health within the state. Broader definitions of family that recognize a variety of family configurations and encourage and support family caregiving during events of serious illness could help reduce these disparities as detailed in a recent Minnesota Department of Health White Paper.[19]

OTHER CONSIDERATION: ALIGNING BENEFITS AND WORKER PROTECTIONS

It is important to note that if Minnesota's paid leave insurance program offers paid leave to workers who are caring for family members beyond those covered through the federal FMLA, those workers who qualify based on size of employer and their own work history otherwise would not be protected from retaliation or potential job loss as a result of taking leave. This potential mismatch of benefits and worker protections would need to be addressed in state law either by providing additional protections as discussed in the Job Protection section of this report or by expanding the Pregnancy and Parenting Leave statute.

NOTES: DEFINING FAMILY

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SECTION 2.2: OPTIONS AND APPROACHES FOR KEY PROGRAM ELEMENTS

WHAT BENEFITS COULD BE AVAILABLE AND HOW WILL THEY BE ACCESSED?

A second set of questions revolve around how a state defines a reasonable and sustainable benefit that will accomplish program goals within worker and employer budget constraints. The benefit structure will also be dependent on an administrative structure that disburses wage replacement in a streamlined and efficient manner. This section of the report summarizes current state policies that specify parameters for wage replacement (how much, how long) and administrative infrastructure to deliver and ensure access to benefits, as well as current Minnesota state government infrastructure and policy.

BENEFIT LEVELS

POLICIES

States with PFML programs set the benefit level as a percentage of the amount the worker earns over a specified "base" period, to a maximum weekly benefit level. Table 22 describes these policies. Maximum weekly benefit rates are defined by a formula which is based on a percentage of the statewide average weekly wage. These formulas allow the maximum benefit to fluctuate with inflation.

While maximum weekly benefit amounts range from $604 to $1,108 and replacement rates from 55% to 66%, the average weekly benefit paid out across the three states is within a much narrower range: between $460 to $486 for own health and from $535 to $560 for bonding leave. Those who take bonding leaves tend to be higher earners, driving the averages up in this category.

As a comparison, for the 40% of workers that have access to temporary disability (own health) insurance through their employer, private sector short term disability insurance plans generally provide 60-70% replacement rates without a cap.[1] Within Minnesota's other wage replacement programs, UI maximums (and formula) are in line with New Jersey's PFML program and Workers' Compensation with California's PFML program.

Higher replacement rates and maximums allow more workers to receive benefits that correspond to their income. As Figure 3 and Table 22 show, the most generous maximum weekly benefits levels (California and Minnesota Workers' Compensation) are tied to average weekly wages (100% and 102% respectively). In California and Rhode Island, the taxable wage ceiling is matched to the maximum weekly benefit level to ensure that workers are not contributing beyond the level at which they maximize the benefits available.

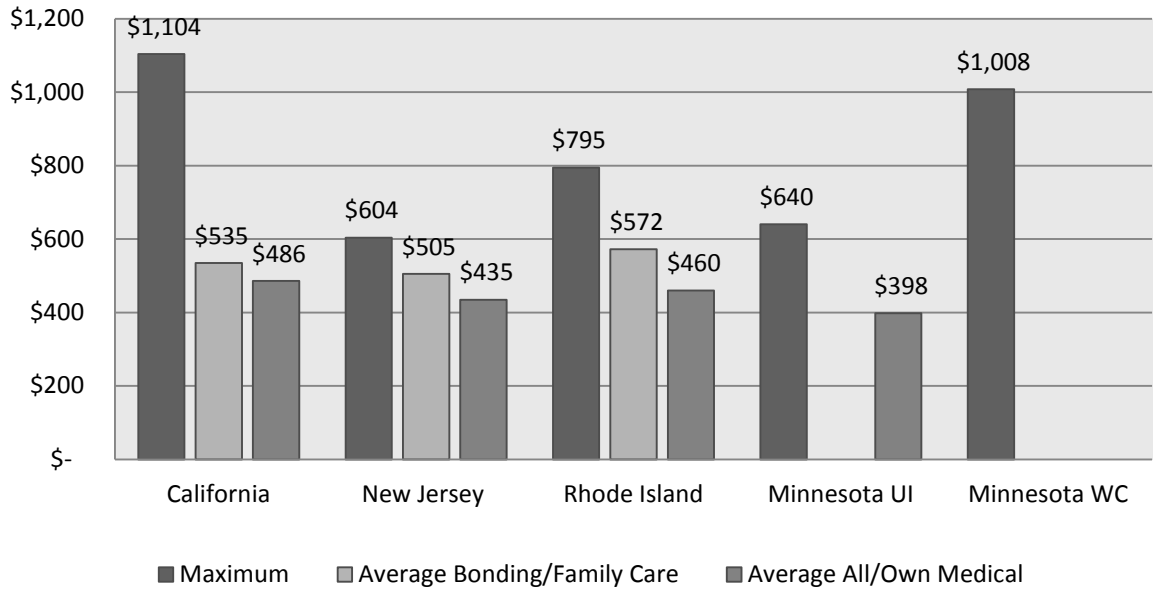
> Rhode Island Dependent Allowance
>
> §28-41-5 ((2)(b)
>
> "If you have dependent children less than 18 years of age, you may be entitled to a dependency allowance. Incapacitated children over 18 may also be counted toward the dependency allowance. The dependency allowance is limited to 5 dependents and is equal to the greater of $10 or 7% of your benefit rate. Your dependency allowance is determined at the start of your benefit year and remains the same for the entire period."

TABLE 22: PAID FAMILY AND MEDICAL LEAVE BENEFIT LEVEL POLICIES (2015 UNLESS OTHERWISE NOTED)

PFML Programs	Maximum Weekly Benefit Amount (MWBA)	Formula for Adjusting MWBA	Wage Replacement Rate	Base Period for Benefit	2014 Average Weekly Benefit
California [2]	$1,104	100% average weekly wage (same as workers' comp)	55% (unless high quarter wages are less than $1,749.20)	High quarter wage divided by 13	Own medical (TDI): $483 Family Care: $537
New Jersey [3]	$604	53% of statewide average weekly wage	66%	Average weekly wage during prior 8 weeks	$435 TDI $505 all Family Leave
Rhode Island [4]	$795 *	85% of Average Weekly Wage last CY	4.62% (usually equivalent to 55-60%)	High quarter wage	$460 Bonding: $572
Other MN Wage Replacement Programs					
Unemployment Insurance[5]	$640	66 2/3rd% with 4 quarter base or 43% with high quarter base of State Average Weekly Wage ($989 in 2015)	50%	Last four quarters or high quarter	$398
Workers' Compensation[6]	$1008	102% of state average wage	66 2/3%	Pre-injury earnings	

*Rhode Island also includes a dependent allowance (see box on previous page)

FIGURE 6: MAXIMUM AND AVERAGE WEEKLY BENEFIT LEVELS



Data from California and New Jersey's Paid Family Leave programs suggest that higher benefit levels increase usage among men. California's Paid Family Leave program, with a high maximum benefit level, has much higher take-up rates among men than New Jersey's Paid Family Leave program with its much lower maximum benefit amount.[7]

Research on California's paid leave recipients shows that low-income workers have not used the program in the same proportions as higher income workers, at least in part due to low wage replacement levels. One legislative study reported:

> *"Nearly a third of respondents who were aware of Paid Family Leave did not apply for it when family needs arose because the wage replacement level was too low - making it difficult for workers that live pay check to paycheck to meet their basic needs … these workers cannot absorb the pay cut imposed by the current Paid Family Leave benefit limits, particularly when it is coupled with the increased financial burdens that accompany supporting a newborn child or caring for a relative."* [8]

Similarly, research conducted on the recent start-up of Rhode Island's Temporary Caregiver Insurance (TCI) program found that half of the recipients who did not take the full four weeks of benefits cut their leave short because they couldn't afford the loss of income.[9]

The approach that provides the most generous benefit for low wage workers depends on the earnings profile of the worker as shown in Table 23. Use of a high quarter as one of two alternative ways of calculating the benefit amount is designed to maximize benefits for all workers, but is especially effective for those with an uneven earnings profile.

TABLE 23: ESTIMATED WEEKLY BENEFIT AMOUNTS BY STATE AND INCOME/EARNINGS PROFILE

Hypothetical Worker Earnings Profile	Wage Replacement Rate	$11,000 annual ($4,000 high quarter/$2K last quarter)	$11,000 annual ($2,750 per quarter)	$52,000 annual ($13,000 per quarter)	$80,000 annual ($20,000 per quarter)
California	**55% of high quarter/13**	$169.00	$116.35	$550.00	$846.00
New Jersey	**66% of last 8 weeks ****	$101.00	$139.62	$604.00	$604.00
Rhode Island	**4.62% of high quarter**	$184.00	$127.05	$600.00	$795.00

*Weekly benefit amounts are before taxes. The estimated effect of taxation on benefits is explored in greater detail in the section of this report of Benefits Taxation.
**Last quarter of earnings is used as a proxy for most recent 8 weeks.

IMPLEMENTATION & ADMINISTRATION

California and Rhode Island PFML programs use quarterly UI wage data to verify high quarter wages during the past four full quarters and calculate benefit levels. New Jersey requires employers to provide wage data for the most recent 8 weeks as part of the claim form process. The agency sends a determination of benefit notice with the weekly benefit amount that will be provided and, in addition in California and New Jersey, the wage data that was used to calculate the benefit level (see the section of this report on Claims Processing or more details).

On a set date each year, maximum benefit levels are adjusted based on the prior year's average weekly statewide wage data. Weekly benefit levels, however, remain the same for the entire claim period. In the case of a Temporary Disability pregnancy claim that turns into a bonding claim, the benefit level remains the same throughout the whole period.

As Table 23 shows, the method for determining the wage upon which the replacement percent will be applied to calculate the weekly benefit amount can have a dramatic effect for low wage workers with an uneven earnings history. To maximize access, the benefit amount is often based on a worker's average wages across a base period defined two alternative ways. Agencies use the method that results in the highest benefit for the worker. An alternative wage base is a common way to ensure that more workers will be eligible for benefits. Alternative calculations can maximize a worker's earnings history. Such an approach is prevalent in UI programs, including Minnesota's, for determining eligibility (see Table 22). A high quarter calculation is particularly helpful for low wage workers whose wages may fluctuate significantly from week to week or month to month.

SUGGESTIONS FOR DEFINING BENEFIT LEVELS

Federal and state legislation, including a bill introduced in Minnesota, include a progressive wage replacement system. These bills propose that lower income workers receive a higher wage replacement rate. Such a pay-out structure would help ensure that workers who are less likely to have any paid leave, least able to manage loss of income, and less likely to be able to pay others to handle caregiving needs would be able to use the program. A progressive wage replacement structure coupled with a high maximum wage replacement will ensure that both middle income and low income families are able to access the program while minimizing overall program benefit costs.

Since all workers are paying in to the system, a progressive wage replacement structure and a high maximum weekly benefit matched to the average weekly wage (like Minnesota's workers' compensation system) ensures that at least half of Minnesota's workers are able to receive benefits matched to their income. The replacement rate and maximum benefit could be set high enough to ensure that middle income primary household earners, who are disproportionately men, can afford to take parental or caregiving leave.

Table 24 shows estimates for weekly benefit amounts using a progressive Minnesota structure for various income levels compared to those in current PFML programs, assuming a $1,000 maximum benefit (approximately the statewide average wage in 2014).

TABLE 24: ESTIMATED WEEKLY BENEFIT AMOUNTS BY STATE AND INCOME/EARNINGS PROFILE

% State Average Weekly Wage		**Low Income <50% /80% replacement**	**Middle Income 51-100% / 66% replacement**	**High Income >100% / 55% replacement**
Hypothetical Worker Earnings Profile	**Wage Replacement Rate**	**$11,000 annual ($4,000 high quarter/$2K last quarter)**	**$52,000 annual ($13,000 per quarter)**	**$80,000 annual ($20,000 per quarter)**
Proposed Minnesota	80% to 55% of high quarter	$246.00	$660.00	$846.00
California	55% of high quarter/13	$169.00	$550.00	$846.00
New Jersey	66% of last 8 weeks **	$101.00	$604.00	$604.00
Rhode Island	4.62% of high quarter	$184.00	$600.00	$795.00

*Weekly benefit rates are before taxes. The estimated effect of taxation on benefits is explored in greater detail in the section of this report of Benefits Taxation.

**Last quarter of earnings is used as a proxy for most recent 8 weeks.

If the goal is to maximize access, the benefit amount can be based on a worker's average wages across a base period defined two alternative ways. The method that results in the highest benefit for the worker is then used by the agency. An alternative wage base is a common way to ensure that more workers will receive a benefit calculation that maximizes their earnings history. A high quarter calculation is an alternative to ensure low wage workers with uneven earnings that fluctuate significantly from week to week or month to month receive adequate support to take advantage of the leave program. The maximum benefit can be based on formula that is tied to average weekly wages (or another similar marker) so that it moves with inflation.

Minnesota's PFML program can use UI wage data to determine benefit levels, even if it means the data will not represent the workers most recent earnings. Quarterly UI data can lag 3-6 months. However, using this data will minimize the burden on workers, employers and claims processors. California staff work with claimants that have unusual earnings histories to maximize benefits by helping claimants understand when to submit claims to maximize their earnings history or otherwise make adjustments.

A broad-based system of contributions and benefits will help foster statewide investment – much like social security. In addition, a high-wage replacement rate appropriately signals that society views the time off as worthy of support because of the long-term benefits that children, families, and society experience.

NOTES: DEFINING BENEFIT LEVELS

[1] Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010
[2] http://www.edd.ca.gov/Disability/FAQ_DI_Benefits.htm; http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf (Cal. Stat. §2655)
[3] http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_calculating_bene_amounts.html; (NJ § 43:21-40);
[4] http://www.dlt.ri.gov/tdi/
[5] Comparison of State Unemployment Laws: http://workforcesecurity.doleta.gov/unemploy/comparison2015.asp
[6] Common benefits and expenses chart, MN Dept. of Labor & Industry: http://www.dli.mn.gov/WC/Pdf/annladj1015.pdf
[7] Ibid; Katherine Marshall, *Fathers' Use of Paid Parental Leave*, 75-001-X Perspectives – Statistics Canada 7 (2008).
[8] http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_09010950/ab_908_cfa_20150622_170210_sen_comm.html
[9] Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm

BENEFIT DURATION

POLICIES

Policies that define the maximum duration of benefits seek to balance worker and employer needs. The maximum benefit duration needs to be long enough to support worker, parental and child health and economic security, but not so long that the program discourages workforce attachment or significantly undercuts an employer's ability to carry on business. While research shows that leaves of less than a year do not have a significant negative impact on workforce attachment,[1] such lengthy leaves could have a significant negative effect on employers, especially small ones.

Almost one quarter of women take two weeks or less of leave for the birth of child

The average length of all leaves taken for FMLA covered events (paid and unpaid) is a little more than 5 weeks. Nearly half (42.4%) of all leaves are less than 10 days and only 17% are more than 60 days.[2] However, these averages obscure some important differences based on type of leave and demographic characteristics of leave takers. As Figure 4 shows, bonding leaves for women are the longest, with more than half exceeding 41 days (or roughly 6 weeks). On the other hand, bonding leaves for men are the shortest, with 70% falling into the 10 [working] days (2 weeks) or less category.

FIGURE 7: AVERAGE LEAVE LENGTHS FOR FMLA COVERED EVENTS BY GENDER, 2012

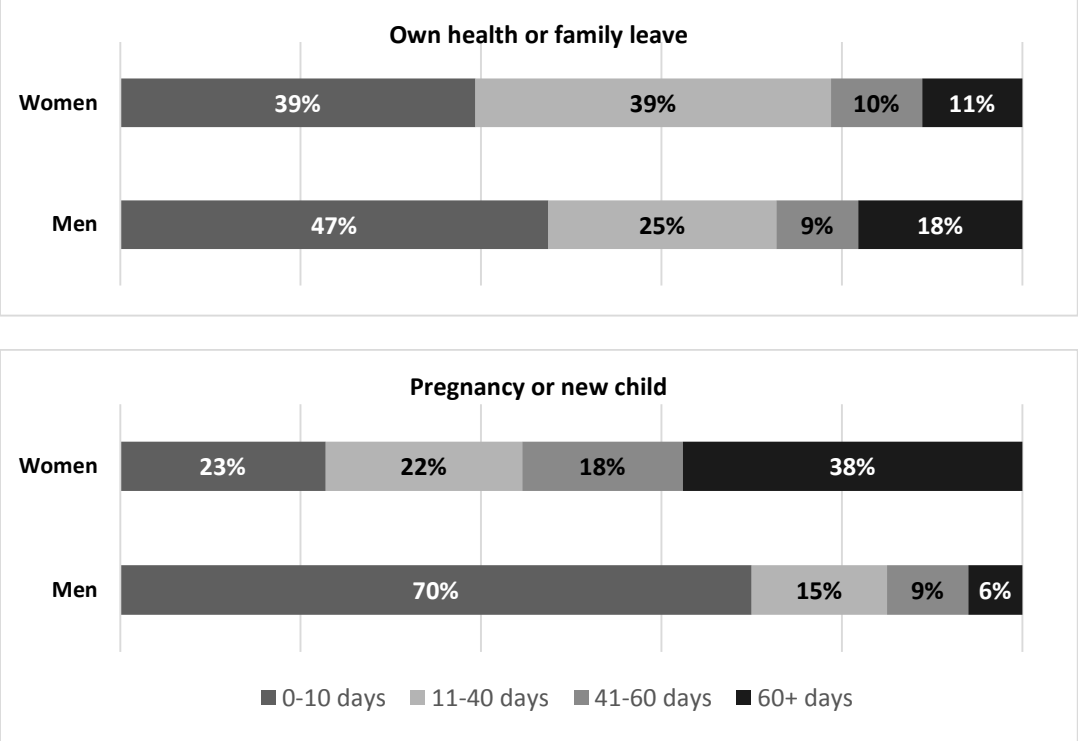


TABLE 25: MAXIMUM AND AVERAGE CLAIM DURATIONS BY TYPE, BASED ON MOST RECENT DATA AVAILABLE

	Family Leave (Bonding and care for seriously ill family member)		Own Medical Leave (Temporary disability)	
Partial Wage Replacement	**Maximum per year**	**Average leave or claim length**	**Maximum per year**	**Average leave or claim length**
California [3]	6 weeks	5 weeks	52 weeks	16 weeks (10.7 for pregnancy/child birth)
New Jersey [4]	6 weeks* (42 days)	5 weeks 5.4 for bonding 4.1 for other	26 weeks	10.1 (9.4 for pregnancy/ child birth)
Rhode Island [5]	4 weeks	88% took full 4 weeks	30 weeks (total all uses)	Not available
New York	NA	NA	26 weeks	7.9 weeks
Hawaii	NA	NA	26 weeks	Not available
Private Plans [6]	NA	NA	26 weeks (standard)	Blank
Unpaid Leave				
Federal Family & Medical Leave Act [7]	12 weeks (total all uses)	5 weeks for all types combined (27.7 days)	12 weeks (total all uses)	5 weeks for all types combined (27.7 days)
Minnesota Pregnancy & Parenting Leave Act [8]	12 weeks (total all uses) Bonding only		12 weeks (total all uses) Pregnancy-related only)	

*may be reduced by two weeks of employer required sick leave use

To some extent, average claim lengths for state paid leave programs are a function of the maximum allowed. This is true especially for family leave programs, which have low maximums of 4-6 weeks. Averages within the family leave category are also driven by bonding claims. Bonding claims make up the vast majority of family leave (Temporary Caregiver Insurance, Paid Family Leave, Family Leave Insurance) claims (80% or more as shown in Table 14) and the majority of those leaves are taken by women who are more likely than men to use the maximum number of weeks allowed. In Rhode Island, for example, 90% of women used the full four weeks of wage replacement allowed for bonding, compared 68% of men.[9] Average claim lengths for own serious health condition are significantly shorter than the maximums allowed (see Table 25) likely due to worker needs, but also to replacement rates and maximum benefits levels, as well as lack of job protection beyond FMLA's 12 weeks. The most common medical conditions involved in New Jersey Temporary Disability Insurance claims are summarized in Table 15. Pregnancy is most common followed by bones and organs of movement and accidents and violence.

As Table 25 also shows, claim duration for own health, including pregnancy, is on average longer than for family care. The average claim length for "all own health" is longer than the average for pregnancy claims. Women with pregnancy related temporary disability claims often take additional wage replaced bonding leave after the birth. In 2014, 41% of bonding claims made by women in New Jersey were preceded by a Temporary Disability Insurance (TDI) claim.[10] As described in Table 16, a mother with a normal pregnancy and birth could combine up to 10 weeks (4 before birth and 6 after) and another 6 weeks of new child bonding leave for a total leave of 16 weeks. In California pregnancy-related leaves average 10.7 weeks and New Jersey almost 10 weeks. Some portion of these leave weeks likely occur after the birth and are combined with family leave coverage for bonding with a new child. While a new mother may be able to receive 16 weeks or more of partial wage replacement, she will only be eligible for job protection and health insurance coverage for 12 weeks and only if she is covered by FMLA.

CONCURRENT LEAVE REQUIREMENT

Most state paid or unpaid medical and family leave programs require workers or allow employers to require workers to use leave entitlements concurrently. Figure 5 provides an example of how concurrent paid and unpaid, state and federal entitlements might be used concurrently.

FIGURE 8: CALIFORNIA EXAMPLE OF CONCURRENT USE OF FMLA, STATE WAGE REPLACED LEAVE AND STATE UNPAID LEAVE (CFRA)

	Wait Period	< ---- Six Weeks Wage Replacement ------ >										
Week	1	2	3	4	5	6	7	8	9	10	11	12
	< ---------- Twelve Weeks of Job-Protected FMLA Leave ---------- >											
	< ---------- Twelve Weeks of Job-Protected CFRA Leave ---------- >											

New Jersey Regulations provide an example: "Where an employee requests leave for a reason covered by both the Act and another law, the leave simultaneously counts against the employee's entitlement under both laws. For example, the Federal Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601 et seq., provides leave to care for a seriously ill spouse and the Act also provides leave for that reason. Under this example, since the leave is taken for a purpose covered by both the FMLA and the Act, the leave simultaneously counts against the employee's entitlement under both laws." Minnesota's Pregnancy & Parenting Leave Law includes this type of provision (see §181.943).

181.943 RELATIONSHIP TO OTHER LEAVE.

(a) The length of leave provided under section 181.941 may be reduced by any period of:

(1) paid parental, disability, personal, medical, or sick leave, or accrued vacation provided by the employer so that the total leave does not exceed 12 weeks, unless agreed to by the employer; or

(2) leave taken for the same purpose by the employee under United States Code, title 29, chapter 28 [federal FMLA]

IMPLEMENTATION AND ADMINISTRATION

Maximum benefit periods are usually tied to a rolling "benefit year" that starts on the first day the claim begins, following a required waiting period when there is one (See the section of this report on Waiting Periods for more detail).

In the three states with both a temporary disability insurance and paid family leave program (PFML programs), maximum paid leave durations are separate for own health (temporary disability) and family leaves. So, that a person could take up to 52 or 26 weeks for their own health condition and another 6 weeks for combined family leave qualifying events. Women with pregnancy related temporary disability leaves often take additional bonding leave after the birth and state programs make the transition seamless. As described in the Reasons for Leave section of this report, a mother with a normal pregnancy and birth could combine up to 10 weeks (4 before birth and 6 after) and another 6 weeks of new child bonding leave for a total leave of 16 weeks.

Parents may take new child leave sequentially or simultaneously any time during the 12 month period following birth, adoption or foster placement within the first year the child's life. However, in Rhode Island leave must be taken in one continuous period (see section of this report on Minimum or Intermittent Leave for more detail) of at least seven days. Requiring one continuous period reduces administrative burdens, but may make the program less useful for non-bonding family leaves. Research on implementation of the Rhode Island program suggests that this program requirement may be contributing to low levels of program usage for ill family member care.[11]

SUGGESTIONS FOR DEFINING BENEFIT DURATION

Alignment with federal FMLA and Minnesota Pregnancy & Parenting Leave (both of which entitle workers to 12 weeks of unpaid leave) will help ensure that most workers using the wage replacement program have job protection and health insurance coverage during their leave. Twelve weeks of wage replacement is sufficient to cover the average number of weeks taken by workers for various types of leave both under and outside of current state programs. If less than 12 weeks are provided, Minnesota's program could follow the lead of the current PFML state programs and provide two separate categories of leave, each with its own allocation of 6-12 weeks.

The FMLA survey and a large body of research cited in the Eligible Reasons for Leave section of this report, as well as claims data and policy in current PFML programs suggest that a minimum of 6 weeks of leave could be available for bonding and 12 weeks for own serious medical condition or temporary disability. Medical guidelines suggest a minimum 6-week recovery period following a normal birth and 8 weeks or more for a Cesarean section or complicated birth. By providing leave for family care and own medical, many Minnesota mothers would be able to follow in the footsteps of those in California, New Jersey and Rhode Island by combining temporary disability benefits and bonding leave benefits to create an adequate period of leave. Up to 3 months (12 weeks) of leave would (1) ensure most women with a complicated birth have sufficient time to heal; (2) provide mothers and babies adequate time to establish a solid nursing routine; (3) align with when babies are more likely to sleep through the night[12]; and (4) help families manage the significant logistical and financial challenges involved in finding suitable childcare arrangements, especially for infants. Most child care centers do not accept infants under 6 weeks old and "there are often very long waiting lists for infant childcare. Paid time off for parents while they are out of work waiting for a suitable childcare arrangement may help relieve significant stress. In addition, infant childcare is generally the most expensive type of childcare and is often unaffordable for low- and middle-class families." [13] According to the Parents and High Cost of Childcare, Minnesota has the highest infant center-based care costs relative to income of any state in the country. [14]

Making family leave length the same for men and women and not be transferable between parents can help reduce current gender-based inequities in caregiving. Millennial fathers are more committed to caregiving, but institutional constraints such as lack of paid paternity leave contribute to ongoing inequities.[15] Wage replacement makes it more likely that both men and women can contribute equally to caregiving – for infants and others. Families can make the best decisions about whether it makes sense to have both parents take leave concurrently or sequentially or some combination.

Workers may need longer periods of wage replacement to manage serious health conditions. When an individual is unable to work because of illness or injury, there is no one else who can recover for the individual. In contrast, when an individual's family member is seriously ill or injured, there will often be more than one person who can provide care to that family member, especially when the term "family member" is broadly defined. Minnesota could provide wage replacement during temporary disability for up to the federal FMLA standard of 12 weeks. While current states have significantly longer maximum leaves, average leave lengths are at or below 12 weeks, suggesting that 12 weeks may be sufficient to handle the needs of at least half of workers.

Providing up to 12 weeks of wage replacement is consistent with federal FMLA and Minnesota's Pregnancy and Parenting Leave programs, reducing confusion for employers. These laws currently cover a majority of Minnesota workers and employers. Wage replacement during these allowed leaves will help offset some

employer benefit costs (as discussed in more detail in Section 3 of this report). Employers may require that wage replaced leave run concurrently with unpaid leave entitled to under state or federal FMLA laws. Employees could be required, as they are in New Jersey, to provide notice to employers whenever possible so that they can plan for the absence, especially if the goal is to keep a job available for the worker when they return from leave. Several studies show that paid leave results in greater workforce attachment, especially for women.[16]

NOTES: BENEFIT DURATION

[1] Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010

[2] 2012 FMLA Survey Technical Report

[3] http://www.edd.ca.gov/Disability/FAQ_DI_Benefits.htm; http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf

[4] http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_calculating_bene_amounts.html; Family Leave Insurance and TDI Workload in 2014: Summary Reports (New Jersey Department of Labor and Workforce Development)

[5] http://www.dlt.ri.gov/tdi/; Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm

[6] Employee Benefit Research Inst., Fundamentals of Employee Benefit Programs, 346-47 (6th ed. 2009), *available at* http://www.ebri.org/pdf/publications/books/fundamentals/2009/33_Disablty-Ins_OTHER-BENS_Funds-2009_EBRI.pdf

[7] http://www.dol.gov/whd/regs/compliance/1421.htm

[8] MN Statutes 181.941

[9] Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm

[10] FLI Eligible New Claims: Family Leave Insurance Workload in 2014 (Table 5) http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202014.pdf

[11] Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm

[12] http://www.webmd.com/parenting/baby/news/20101025/most-babies-sleep-through-night-at-3-months

[13] Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010 http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1002&context=pub_rep

[14] "Parents and the High Cost of Childcare" (2015) National Association of Child Care and Referral Agencies, see Minnesota highest accredited childcare center-based costs relative to income: http://usa.childcareaware.org/wp-content/uploads/2015/12/Parents-and-the-High-Cost-of-Child-Care-2015-FINAL.pdf

[15] David S. Pedulla and Sarah Thébaud, Can We Finish the Revolution? Gender, Work-Family Ideals, and Institutional Constraint, *American Sociological Review, February 2015; vol. 80, 1: pp. 116-139* ; "Millenial men aren't the fathers they thought they'd be" New York Times, http://www.nytimes.com/2015/07/31/upshot/millennial-men-find-work and-family-hard-to-balance.html?_r=0.

[16] Maya Rossin-Slater, Christopher J. Ruhm and Jane Waldfogel. 2013. "The Effects of California's Paid Family Leave Program on Mothers' Leave Taking and Subsequent Labor Market Outcomes." Journal of Policy Analysis and Management 32(2): 224-245

MINIMUM AND INTERMITTENT LEAVE

Under the federal FMLA, intermittent leave for covered reasons is allowed when deemed "medically necessary (see box right)." Approximately 24% of all leaves reported on the 2012 FMLA survey were intermittent and among those most involve two (35%) or three (20%) separate periods of leave. Less than one-fifth involve seven or more separate periods. Intermittent leave is most commonly used to manage one's own or a family member's serious health condition (39% and 41% respectively). Chronic health conditions account for the bulk of intermittent leaves (40%). Intermittent leave is less common for new child bonding, largely due to the "medically necessary" requirement of FMLA (see box right). Most periods of intermittent leave last six days or more (75%) and only about 2% are 1 day or less.[1]

POLICIES

New Jersey, California, and Rhode Island Temporary Disability programs set the minimum amount of leave at 1 day or 8 consecutive hours. Most programs also define a period of disability. Both California and New Jersey use the definition: "Consecutive disability periods due to same or related cause and separated by not more than 14 days." New Jersey also stipulates that that wages can be paid within the 14-day separation. These policies do allow someone to return to work and resume wage replaced leave within the 14-day window without having to start a new claim.[2]

New Jersey and California paid family leave programs allow claimants to receive wage replacement during intermittent leave, but their policies differ (see Table 26).[3] In New Jersey, wage replacement for bonding with a newborn or newly adopted child must be taken during one continuous period of time of seven days or more, unless both the worker and the employer have agreed to an intermittent leave schedule. In those cases, leave may be taken in non-continuous intermittent periods of seven days or more. Other family leave may be taken in increments of one full day. About 3% of New Jersey's family leave claims are "intermittent."[4] California's program has the most expansive intermittent leave

FMLA AND INTERMITTENT LEAVE

The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. (CFR Section 203)

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.
- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. Employers may account for FMLA leave in the shortest period of time that their payroll systems use, provided it is one hour or less. (See CFR Section 825-205)

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

policy, allowing workers to receive wage replacement for intermittent periods on an hourly, daily, or weekly basis as needed. Rhode Island's caregiver leave program does not allow intermittent leave and requires all leave to be in a single consecutive period of at least seven days. However, Rhode Island's Temporary Disability Partial Return to Work Program allows individual collecting Temporary Disability Insurance benefits to return to work on a partial basis (reduced hours for a usual maximum of eight weeks) without entirely ending Temporary Disability Insurance benefits. California offers a similar "part-time" option.[5]

TABLE 26: INTERMITTENT AND MINIMUM LEAVE POLICIES

	Family Leave (Bonding and care for seriously ill family member)		Own Medical Leave (Temporary disability)	
Partial Wage Replacement	**Intermittent Leave Allowed**	**Minimum Period**	**Intermittent Leave Allowed**	**Minimum Period**
California [6]	Yes Partial or part-time return also allowed	Hour, day or week as necessary	Yes Partial or part-time return also allowed	1 day or 8 hours To maintain claim period of disability can only work for 14 days between leave periods
New Jersey [7]	Yes for family leave Yes with employer agreement for bonding leave	1 day	Yes	1 day or 8 hours To maintain claim period of disability can only work for 14 days between leave periods
Rhode Island [8]	No	Seven days	Partial return to work option	Not defined; maximum usually 8 weeks

IMPLEMENTATION AND ADMINISTRATION

Paying a wage replacement benefit requires certain administrative costs. Because of this, a minimum amount of leave is usually set; otherwise the cost to pay the benefit for the workers will be greater than the benefit that the worker will receive.

California's application includes a question about whether the applicant will continue to work during leave and requires a separate statement detailing the arrangement, including the amount of time that will be missed each week. New Jersey includes a separate section on the claim form (section E) for detailing intermittent leave taken that must be signed by the employer. Rhode Island workers must be totally unable to work due to disability for at least seven consecutive days before they are eligible to receive benefits.

While intermittent leave is one of the most challenging aspects of FMLA for employers, this type of leave only represents around a quarter of all FMLA leaves. New Jersey minimizes the impact on employers by

requiring notice, a medical rationale for intermittent leave (similar to federal FMLA), an attempt to schedule when least disruptive to the business, and a requirement that workers and employers agree on an intermittent schedule during bonding leave (otherwise it is not allowed).

California's PFML and Rhode Island's Temporary Disability programs provide an option for workers to receive wage replacement if they continue or return to work part-time. In Rhode Island, Qualified Healthcare Providers notify the Temporary Disability program that the worker is returning to work part-time, which triggers a partial earnings statement sent to the worker to report reduced hours/wages. California also allows workers to return or work part-time while claiming Temporary Disability Insurance benefits or family leave related wage replacement under certain circumstances:[9]

> *"If you return to work part-time and still suffer a loss of wages, we can pay benefits equal to your wage loss but not more than your weekly benefit rate. We will look at what you earned on a weekly basis before your claim began, then subtract what you're currently earning working part-time. The difference between the two figures is your wage loss, or the amount of wages you are losing by working part-time. If your wage loss is greater than your weekly benefit amount, you'll receive benefits at your full Paid Family Leave rate. If the wage loss is less than your weekly rate, you'll receive the amount of your wage loss only. Since each situation is different, if you return to work on a part-time basis, please contact Paid Family Leave for clarification."* [10]

SUGGESTIONS FOR DEFINING MINIMUM LEAVE LENGTHS

Allowing workers to take leave in one day increments will help ensure that workers can manage their own or a family member's chronic illnesses better while balancing the burden of claims processing. Better management of chronic conditions could potentially reduce racial and income based health disparities in the state.[11] When chronic conditions are not managed appropriately, they can lead to more serious health events that require longer periods of time away from work. Providing wage replacement for intermittent leave is especially important for low-income workers who are least likely to have access to other forms of paid leave.

Requiring notice and planning on the part of workers if possible can increase predictability and help employers better manage leaves. Minnesota's program could also build on California and Rhode Island's approach and its own UI and workers' compensation models for a partial return to work option. This approach does add administrative complexity, but has been shown to be workable and helpful in other states and in other countries and can be beneficial for both a worker and the employer during a transitional period.

State administrative burdens would be minimized and worker access maximized if Minnesota's program is set up so that workers can take small amounts of leave intermittently (as they can with the FMLA) and then get paid when those small amounts reach a certain threshold, one day or one week. Under this approach, a worker could take paid leave in small increments, but would not receive wage replacement for that time until the increments add up to a certain amount (for example 8 hours). New Jersey's requirements for notice (when possible), medical certification outlining the rationale and long term planning shared with the

employer would help ensure workforce attachment and provide some degree of predictability for the employer. If Minnesota's program requires a seven-day minimum event to qualify, intermittent leave will only be available for more serious conditions and most intermittent leaves (75% or more) will fall outside of program requirements.

NOTES: MINIMUM LEAVE LENGTH

[1] 2012 FMLA Tech Report

[2] http://www.workforcesecurity.doleta.gov/unemploy/pdf/temporary.pdf

[3] http://www.edd.ca.gov/Disability/FAQ_PFL_Benefits.htm

[4] November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section NJ Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee; 2014-15 legislative budget documents provided by Greg Williams available from author

[5] http://www.edd.ca.gov/disability/FAQ_DI_Part-time_Intermittent_Reduced_Work_Schedule.htm

[6] http://www.edd.ca.gov/Disability/FAQ_DI_Benefits.htm; http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf; http://www.edd.ca.gov/disability/FAQ_DI_Part-time_Intermittent_Reduced_Work_Schedule.htm

[7] http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_calculating_bene_amounts.html

[8] http://www.dlt.ri.gov/tdi/

[9] http://www.edd.ca.gov/Disability/Part-time_Intermittent_Reduced_Work_Schedule.htm

[10] Ibid

[11] White Paper on Paid Leave and Health, Minnesota Department of Health, Center for Health Equity, March 2015 http://www.health.state.mn.us/news/2015paidleave.pdf

WAITING PERIOD FOR BENEFITS

POLICIES

As summarized in Table 27, under most private and public wage replacement programs and plans, there is a waiting period of at least one week during which the worker receives no wage replacement benefits (although they may use their accrued paid sick, vacation or PTO days, if they have any, to replace wages during this time).[1]However, New Jersey and Minnesota's workers' compensation programs allow workers to receive wage replacement for the waiting period week if the event becomes longer term (at least three weeks in the case of New Jersey or 10 calendar days for MN Workers' Compensation).

TABLE 27: PROGRAM WAITING PERIODS

	Length	Reimbursed	Other requirements
California [2]	○ One week (7 days including weekends) per qualifying event or period of disability ○ Do not need to be in a row or full days	No, considered "co-pay"	An additional seven-day waiting period is **not** required between TDI pregnancy and an immediate new child claim
New Jersey [3]	Seven consecutive days per period of "disability"	If leave lasts three weeks, the worker can receive wage replacement for the waiting period	An additional seven-day waiting period is **not** required for a new child claim when it immediately follows a TDI pregnancy claim
Rhode Island [4]	None	NA	Under TCI, claimant must be unable to work for seven consecutive days due to qualifying event to be eligible
New York	Seven consecutive days		
Hawaii	Seven consecutive days		
Unpaid Leave			
Federal Family & Medical Leave	None		
MN Pregnancy & Parenting Leave [5]	None		
Other MN Programs			
Unemployment Insurance	One week		
Workers' Compensation	Three calendar days	Waiting period wage-replacement if the disability continues for 10 calendar days	

Alternatively, Rhode Island does not have a waiting period, but requires a minimum seven-day event to qualify for the program. Once that minimum threshold has been met, workers can apply for and receive wage replacement for the seven days used to qualify and any weeks that follow for the same event.

A waiting period serves three purposes. First, it helps ensure that the paid leave will only be used for "serious" illnesses. Second, it reduces the costs of the programs because workers with shorter term illnesses will not be able to draw down benefits. Third, it makes the administration of benefits easier because benefits will not be available for short term illnesses, however serious. [6]

A waiting period also helps to ensure that the wage replacement program supplements, not supplants, shorter-term, voluntary employer policies such as paid sick days or "paid time off." Workers with access to employer benefits will ordinarily receive wage replacement during their one-week waiting period.[7] State paid leave programs with a waiting period usually require one waiting period per year for the same qualifying serious health condition.

Most Temporary Disability Insurance programs define a period of disability. Both California and New Jersey use a definition "Consecutive disability periods due to same or related cause and separated by not more than 14 days."[8] New Jersey also stipulates that that wages can be paid within the 14-day separation. The three states with a temporary disability and family leave program do not require workers who are using temporary disability during pregnancy and then transition to a bonding leave to fulfill a waiting period between the two.

IMPLEMENTATION AND ADMINISTRATION

In order to accommodate chronic conditions or other medical situations that require care to be spread over a longer period of time, the California program allows claimants to serve the seven-day waiting period in either a consecutive block or by accumulating seven full or partial days over a period of time. After the worker has taken leave to manage the qualifying condition on seven separate days (again full or partial days), the worker becomes eligible for wage replacement.[9] Figure 9 demonstrates how a hypothetical worker would accumulate "waiting period" days non-consecutively to care for his mother's chronic health condition following a hospitalization. He takes two days of leave when she is released (April 3 and 4 in the California figure). Then each day he takes leave to accompany his mother on a doctor's appointment counts towards the wait period (April 8, 14, 22 and 27, and May 6). The combination of two days of leave after hospitalization and five doctor's appointments satisfies the seven-day wait period. Any appointments after that qualify for wage replacement (May12, 20 and 26 in this example). The worker in this example applies for and receives partial wage replacement for three days. During the claims process, a detailed note explaining how the wait period and subsequent intermittent leave will be or has been used is provided by the worker.

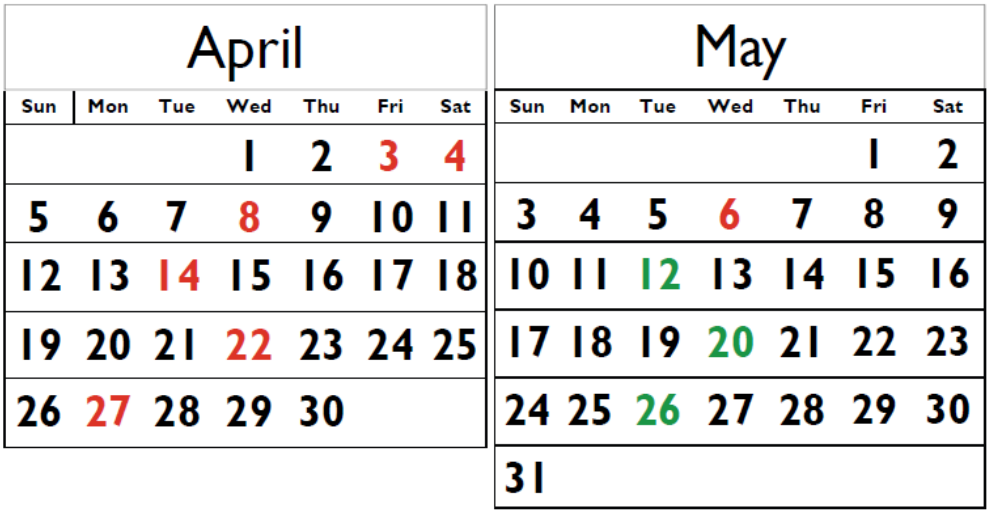
FIGURE 9: CALIFORNIA WAITING PERIOD EXAMPLE

Serving the Waiting Period on Non-Consecutive Days

The first seven days of a PDL claim is a non-payable benefit waiting period. It can be served on any day or partial day of family care leave the claimant provides regardless if the claimant is scheduled to work or not.

A claimant's mother is hospitalized on April 3 for a heart attack. His mother is released on April 4, but needs follow-up treatment consisting of daylong medical appointments over the next eight weeks. The claimant is absent from work on April 3 and 4 to provide care to his mother. His mother's follow-up appointments are scheduled from April 8, 14, 22, 27, and May 6.

The claimant established a claim on April 3 to care for his mother. The initial two days of April 3 and 4 as well as the follow-up appointments (April 8, 14, 22, 27, and May 6) are eligible days that count towards the 7 day waiting period. The claimant certifies to and is eligible to receive benefits as of May 12.



Waiting Period
Eligible for Benefits

Rhode Island does not require a waiting period but a claim must be for at least seven consecutive days to receive wage replacement under the Temporary Caregiver Insurance Program. Research on Rhode Island's program suggests that the requirement of seven consecutive days may be a barrier to use for family caregiving other than bonding.[10] In New Jersey, the claim form requires applicants to provide information about when the leave began and the first seven days do not receive wage replacement.

SUGGESTIONS FOR DEFINING A WAITING PERIOD

Adopting Rhode Island's approach of requiring a one-week event to qualify and allowing employers to require use of one week of earned and available paid time off first before accessing state benefits would have the same functional benefit of a waiting period, but would make the program more accessible for workers who do not currently earn paid time off. Federal FMLA and state FMLAs (including Minnesota's Pregnancy and Parenting Leave statute) and Rhode Island's PFML programs do not require a waiting period. Inclusion of a waiting period will certainly limit the benefits for some workers, particular the 40% of Minnesota workers that do not currently have access to paid sick leave. These workers are most economically precarious and are experiencing significant health disparities in Minnesota.[11] To maximize financial and economic stability for Minnesota workers, the PFML program would benefit from Rhode Island's approach of requiring at least a seven-day event to collect benefits but allowing workers to access PFML wage replacement during that period.

To balance needs of workers and employers, Minnesota's PFML program could allow employers to require workers to use one week of earned and available paid time off first before accessing state benefits in lieu of a mandatory waiting period. For those workers without paid leave, once their event meets the seven-day eligibility requirement, they would be able to make a claim for the week used to meet eligibility as well as additional weeks or days up to the maximum allowed. This approach would have the same functional benefit of a worker "co-pay" for those with access to paid time off, while not penalizing workers without access to paid time off. Policymakers may want to follow California policy (rather than New Jersey) by not subtracting the one week (or more) of employer provided paid time off from the maximum wage replacement benefit duration. Figure 10 demonstrates the way these requirements would function for workers with and without access to paid time off.

In this suggested approach, policies related to exhaustion of existing, accrued and accumulated paid time off before accessing state benefits and policies related to a waiting period are interconnected. As discussed in the Duration of Leave Section of this report, California and New Jersey allow employers to require workers to use up two weeks of vacation (in the case of California) or two weeks of paid time off in the case of New Jersey (also see the Claims Processing section of the report). In the case of New Jersey, public workers are included in the state Family Leave Insurance program but are required to exhaust all available leave before accessing the program. In all of these cases, use of this leave does satisfy a one week waiting period. Exhaustion of all available, accrued paid leave can make it difficult for workers to manage the shorter term, intermittent needs that sick leave is designed to cover. Minnesota could consider a middle approach that allows workers to set aside a certain amount of accumulated leave for those purposes but also recognizes that some employers, including the state of Minnesota, currently make generous leave available to at least some of their workers.

If Minnesota's PFML program does include a waiting period, there are a number of steps that can be taken to maximize worker access. One waiting period per qualifying event, even if leave is taken on a number of non-consecutive days or weeks, helps ensure access. If the program offers both temporary disability benefits and new child benefits, it may not make sense to have an additional no waiting period between the two. Finally, Minnesota could follow California's lead and allow workers to accrue the seven days non-consecutively for any day (part or whole) that the worker takes time to manage the qualifying event (see the Figure 9 and accompanying narrative). To further balance the needs of workers and employers, Minnesota's PFML program could allow employers to require workers to use seven days of available paid time off but

allow payments to cover the seven days retroactively if the need for leave is longer than 10 days (as is the case under Minnesota's workers' compensation program) or three weeks (like New Jersey's program).

FIGURE 10: WAITING PERIOD USE OF EMPLOYER PROVIDED PAID TIME OFF FOR WORKERS

Worker *without* access to paid time off

	< ---------- Six Weeks of Wage Replacement ---------- >					
	7 day qualifying period					
Week	1	2	3	4	5	6

Worker *with* access to paid time off and an employer that requires use of one week of current accumulated fully paid time off before accessing the program

		< ---------- Six Weeks of Wage Replacement ---------- >					
	7 day qualifying period						
	7 day employer provided PTO						
Week	1	2	3	4	5	6	7

NOTES: WAITING PERIOD

[1] Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010

[2] Cal. Unemp. Ins. Code§ 3303(b)

[3] N.J. Stat. Ann. § 43:21-39(a)(2))

[4] R.I. Gen. Laws § 28-41-12

[5] MN Statutes 181.941

[6] Employee Benefit Research Inst., Fundamentals of Employee Benefit Programs, 346-47 (6th ed. 2009), *available at* http://www.ebri.org/pdf/publications/books/fundamentals/2009/33_Disablty-Ins_OTHER-BENS_Funds-2009_EBRI.pdf

[7] BLS "Employee Benefits Survey, 2010" at 297 (Table 32).

[8] N.J. Stat. Ann. § 43:21-27(g)(1)

[9] http://www.edd.ca.gov/Disability/pdf/PFL_WP.pdf

[10] Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm

[11] White Paper on Paid Leave and Health, Minnesota Department of Health, Center for Health Equity, March 2015 http://www.health.state.mn.us/news/2015paidleave.pdf

JOB PROTECTION

According to the 2012 FMLA survey, most workers who take an FMLA eligible leave return to work for the same employer (see Table 28). However, 16.6% of those who were not eligible and covered either returned to a different employer (4.1%) or did not return to work (12.5%), compared to just 5% of FMLA covered workers. While job protection is not the only contributing factor, workforce attachment is lower for workers who are not covered by FMLA.

TABLE 28: RETURN TO WORK STATUS FOR FMLA EVENT LEAVE TAKERS BY FMLA COVERAGE, 2012

	FMLA eligible and covered employees	All other leave takers
Returned to work for same employer	94.4%	82.5%
Returned to work for different employer	.2%	4.1%
Did not return to work	4.8%	12.5%

POLICIES

Job protection — the right to return to the same or equivalent job after a period of leave— is, in a theory, separate from the issue of wage replacement and most states handle it that way. The statutes establishing wage replacement programs are generally, with the exception of Rhode Island's Temporary Caregiver Insurance program (see box right), either silent (California) or explicit about *not* guaranteeing job reinstatement (New Jersey).

While generally state and federal law make distinctions, for workers it is difficult to separate the two. Without wage replacement, workers entitled to job-protected time off may be unable or reluctant to exercise their rights to leave because they cannot afford to do so. Recent research suggests that the number one reason workers did not take leave was that they could not afford the loss of wages.[1] Conversely, without job protection workers with access to wage replacement may not want to risk leaving. Research on Rhode Island's program suggests that the job protection elements of the program have been important to its success.[2]

RHODE ISLAND JOB PROTECTED TEMPORARY CAREGIVER LEAVE

Pub. Laws § 28-41-35(f)

"Any employee who exercises his or her right to leave covered by temporary caregiver insurance under this chapter shall, upon the expiration of that leave, be entitled to be restored by the employer to the position held by the employee when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment including fringe benefits and service credits that the employee had been entitled to at the commencement of leave."

TABLE 29: JOB PROTECTION UNDER FEDERAL FMLA AND STATE FAMILY & MEDICAL LEAVE PROGRAMS AND POLICIES IN CALIFORNIA, RHODE ISLAND AND NEW JERSEY

	Employer Size	Worker Eligibility	Requirement	Length
California – TDI/FLI (Paid)	All private sector (UI) employers with payroll of at least $100 in quarter *	$300 in past 4 quarters*	No job protection	6 weeks for family leave 52 weeks for own serious health condition
California Family Rights Act (Unpaid)[3]	Employs at least 50 within a 75-mile radius of worksite	Worked at least 1,250 hours and 12 months before the leave	Same or equivalent	12 weeks
California Pregnancy Leave (Unpaid)[4]	Employs at least 5 employees	Disabled due to pregnancy, childbirth or related medical conditions	Same or equivalent	Up to 4 months
New Jersey – TDI/FLI (Paid)	All private sector (UI) employers with payroll of at least $1,000 in year	$8,300 in preceding 52 weeks*	Explicitly NOT guaranteed (43:21-39.1 (d))	6 weeks family leave 26 weeks own health condition
New Jersey Family and Medical Leave Law [5] (Unpaid)	Employers with at least 50 employees anywhere worldwide	At least 1,000 hours in the last 12 months for the employer	Employers cannot use the taking of leave as factor in employment actions	12 weeks in 24 months (bonding or family only)
Rhode Island TDI/TCI (Paid)	All private sector (UI) employers (any employees at any time)*	$10,800 in past 4 quarters *	Only temporary caregiver: Return to same or similar (see box for more detail)	4 weeks for family caregiving 26 weeks own health condition
Rhode Island Parental & Family Medical Leave Act(Unpaid) [6]	50 or more employees local government 30 or more	Average 30 or more hours over past consecutive 12 months	Entitled to be restored to the same or equivalent position	13 consecutive work weeks for new child bonding or family care
Federal FMLA	Location with at least 50 employees within 75 miles of worksite	1250 hours and 12 months	Return to same or equivalent	12 weeks for own disability, new child or care of family

*More detail available in the Covered Employer and Eligible Worker sections of this report

Rhode Island is the only state that provides job protected leave with wage replacement and for four weeks only to bond with a new child or care for a seriously ill family member (see box). In all other cases, workers taking leave and accessing wage replacement must rely on a combination of federal FMLA (where it applies) or similar state laws (see Table 30) for job protection (also see Figure 11). Unfortunately, minor differences between state and federal laws and significant coverage gaps between paid and unpaid leave laws create significant confusion for workers and employers and can result in unexpected job loss.

TABLE 30: FEDERAL AND STATE UNPAID LEAVE LAWS

Other Unpaid	Employer Size	Worker Eligibility	Requirement	Length
Federal FMLA	Location with at least 50 employees within 75 miles of worksite	1250 hours and 12 months	Return to same or equivalent	12 weeks for own disability, new child or care of family
Minnesota Pregnancy and Parenting Act [7]	21 employees at at least one site	Equivalent of half time	Former or comparable	12 weeks for pregnancy or new child bonding
Maine [8]	15 or more (private employers) 25 or more (city or town employers)	12 consecutive months but no employment threshold specified	Entitled to be restored to the same or equivalent position	10 work weeks of family medical leave in any 2 years
Oregon [9]	25 or more	180 days 25 hours/week	Entitled to be returned to the same job or equivalent	12 weeks for own disability, new child or care of family
Vermont [10]	10 or more (parental leave) 15 or more (family and medical leave)	12 consecutive months, 30 hours/week	Entitled to same or similar job	12 weeks for own disability, new child or care of family

*More detail available in the Covered Employer and Eligible Worker sections of this report

The principal federal source of job protection for people who take time off from work for medical or caregiving reasons is the Family and Medical Leave Act (FMLA).[11] In most circumstances, FMLA requires the restoration of the same job upon the worker's return to work. If that is not possible, the worker must be placed in an equivalent job. The FMLA job protection clause differs for highly compensated workers, however. Employers who believe restoring the worker on leave to their original position would be unduly burdensome and costly, are not obligated to adhere to the job protection clause.

FIGURE 11: CALIFORNIA EXAMPLE OF CONCURRENT USE OF FMLA, STATE WAGE REPLACED LEAVE AND STATE UNPAID LEAVE (CFRA) TO RECEIVE JOB-PROTECTION DURING LEAVE

	Wait Period	< ---- Six Weeks Wage Replacement ------ >										
Week	1	2	3	4	5	6	7	8	9	10	11	12
	< ---------- Twelve Weeks of Job-Protected FMLA Leave ---------- >											
	< ---------- Twelve Weeks of Job-Protected CFRA Leave ---------- >											

However, the FMLA only applies to persons who work for employers with 50 or more employees, and only those who have worked 1,250 hours in the past year. About 40 percent of workers are employed by institutions that do not meet the FMLA employer threshold, and, among the approximately 60 percent who do work for covered employers, another 20 percent are excluded from FMLA coverage by the hours requirement.[12] As summarized in Table 30, some state family and medical leave laws are broader in coverage and scope, providing job-protected time off to employees who work for smaller employers or who work part time. Minnesota's Pregnancy & Parenting Leave law is among these. Nevertheless, this still leaves approximately 40-45% of private sector workers nationally without job protection if they need to take time off for medical or family caregiving reasons.[13]

Low-wage workers are more likely to work for employers with less than 50 employees: Fifty-six percent of workers with a family income of up to twice the poverty line compared to 42 percent of higher wage workers. Preliminary data from the California Paid Family Leave (PFL) program suggests a connection between wage replacement and job protection, resulting in lower up-take rates for low income workers. [14]

Minnesota UI system employer data suggests that roughly 10,000 more employers are covered under Minnesota's Pregnancy and Parenting Leave policy than under FMLA. In Table 31, these are employers with between 21 and 49 workers. Census data on Minnesota businesses shows that an estimated 240,000 workers worked for employers with between 21 and 49 workers in 2012. These are rough estimates and do not take in to account how many these workers are at separate sites or outside of mileage requirements or other eligibility criteria of either law, such as qualifying events or required attachment to the employer.

TABLE 31: MINNESOTA EMPLOYERS BY NUMBER OF WORKERS, 2014

Number of Workers	Private	Public	Nonprofit	Total[15]	Total Workers (2012)[16]
0-10	75,867	912	4,319	81,098	229,000 (0-9)
11 - 20	11,674	207	883	12,764	161,228 (10-19)
21-49	9,125	289	827	10,241	240,000 (20-49)
50+	7,141	850	906	8,897	1,743,064 (50+)
Total	103,807	2,258	6,935	113,000	

RETALIATION

In addition to job protection, the federal FMLA prohibits employment related retaliation based on use. "Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions; nor can FMLA leave be counted under 'no fault' attendance policies."[17] New Jersey's unpaid leave law includes similar requirements: "No employer shall discharge or in any way retaliate against or penalize any employee because such employee sought information about family leave provisions, filed a complaint alleging a violation of the Act or this chapter or exercised any right granted under the Act or this chapter." Minnesota's Pregnancy & Parenting Leave does not allow employer retribution "An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section."[18]

DISCRIMINATION PROTECTIONS

Use of paid family and medical leave programs or unpaid leave for similar purposes can trigger negative stereotypes about a worker's commitment to their employer, resulting in adverse employment outcomes. "Family responsibility discrimination" is one of the fastest growing categories of federal EEOC complaints.[19] As summarized in Table 32, the EEOC has issued guidance to employers about a range of possible activities that might constitute illegal caregiver discrimination under Title VII and the ADA. In practice, state and federal anti-discrimination laws can overlap with anti-retaliation protections or provide additional protection in some cases depending upon the unique circumstances in a case and precedent in the state or federal jurisdictions where the case is brought. "Protections from FRD [family responsibility discrimination] have emerged from innovative use of existing statutes by employment lawyers. The result is a complex patchwork of protections under 17 different legal theories using state and federal law." [20]

If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, under the Pregnancy Discrimination Act the employer must treat her in the same way as it treats any other temporarily disabled worker. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant workers if it does so for other temporarily disabled workers.

> *"Additionally, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities under the Americans with Disabilities Act (ADA). An employer may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability related to pregnancy, absent undue hardship (significant difficulty or expense). The ADA Amendments Act of 2008 makes it much easier to show that a medical condition is a covered disability."*[21]

Minnesota is one of three states that include "familial status" as a protected class under the state Human Rights Act. Under the Human Rights Act, employment related discrimination against parents (with minor children at home) and pregnant women is illegal for all employers. Minnesota's Human Rights employment protections based on sex or disability may also provide protections against caregiver discrimination, do apply to fringe benefits and explicitly include protections similar to those in the federal Pregnancy Discrimination Act:

> *"Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, an employment agency, or a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work, including a duty to make reasonable accommodations as provided by subdivision 6."*

ADMINISTRATION & IMPLEMENTATION

With the exception of Rhode Island, most unpaid family and medical leave laws and the job protections that come with them, as well as discrimination laws, are administered by a different agency than the wage replacement program, in most cases the department that is responsible for administering the state's civil rights laws. The enforcement agency has an administrative complaint investigation and resolution process that does not require an attorney and may lead to the courts if there is probable cause and settlement is not reached. Workers may also go straight to court. All agencies have an online process for making a complaint.

TABLE 32: RELEVANT STATE AND FEDERAL ANTI-DISCRIMINATION LAWS

Policy	Provisions
Pregnancy Discrimination Act [22]	Forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment
	Employer that allows temporarily disabled employees to take disability leave or leave without pay, must allow an employee who is temporarily disabled due to pregnancy to do the same.
Caregiver Protections under Title VII [24]	Various circumstances under which the EEOC can find discrimination against a worker with caregiving responsibilities constitutes unlawful disparate treatment under Title VII: • sex-based disparate treatment of female caregivers, focusing on sex-based stereotypes • stereotyping and other disparate treatment of pregnant workers • sex-based disparate treatment of male caregivers, such as the denial of childcare leave that is available to female workers • disparate treatment of women of color who have caregiving responsibilities • harassment resulting in a hostile work environment for a worker with caregiving responsibilities.
Caregiver Protections under the ADA [25]	EEOC can find discrimination under the Americans with Disabilities Act if there is disparate treatment of a worker with caregiving responsibilities for an individual with a disability, such as a child or a parent
Familial Status Protections under the Minnesota Human Rights Act [26]	Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, because of . . . familial status . . . to: (1) refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or (2) discharge an employee; or (3) discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.”

TABLE 33: ADMINISTRATIVE PROCESSES RELATED TO JOB PROTECTION, ANTI-RETALIATION, DISCRIMINATION AND BENEFIT ACCESS

	Agency	Process and Remedies
California – TDI/FLI (Paid)	Economic Development Department	Administrative appeals process; court*
California Family Rights Act (Unpaid) California Pregnancy Leave (Unpaid) [27]	Department of Fair Employment and Housing is the state agency charged with enforcing California's civil rights laws. The Department is part of the Business Consumer Services and Housing Agency	DFEH receives and investigates discrimination complaints in its five district offices throughout the California. The district offices handle employment complaints. See process chart. The FEHC may award or order reinstatement, back pay, out-of-pocket losses, affirmative relief, training, policy changes and emotional distress damages and administrative fines. Emotional distress damages and administrative fines are limited to a total of $150,000 per Respondent. In the event the matter is removed to Superior Court, remedies are identical, with three exceptions: There is no limit on emotional distress damages. Instead of administrative fines, unlimited punitive damages may be awarded. The prevailing party may recover their reasonable attorney's fees, expert witness fees and costs.
New Jersey – TDI/FLI (Paid)	Department of Labor & Workforce Development	Administrative appeals process; court*
New Jersey Family and Medical Leave Law [28] **(Unpaid) Law Against Discrimination (LAD)** [29]	Division on Civil Rights within the department of Law & Public Safety's Office of the Attorney General	Workers choose the "administrative track" or file a complaint in New Jersey Superior Court within two years of the alleged violation. A person who files an action in Superior Court is entitled to a jury trial. A successful litigant may be awarded reinstatement, hiring or upgrading and back pay as well as damages for pain and humiliation. In more egregious cases, an award of punitive (punishment) damages may be made. An award of attorney's fees is also available to prevailing parties in Superior Court. In addition, the Division may impose penalties on the party who violated the FLA of up to $2,000 for the first violation, and up to $5,000 for a second or subsequent violation. These penalties are payable to the State, not the complainant. Division may impose penalties on the party who violated the LAD of up to $10,000 for the first violation, up to $25,000 for a second violation within 5 years, and up to $50,000 for third and subsequent offenses within 7 years. These penalties are payable to the State, not the complainant. Punitive damages are only available in Superior Court actions.

*See sections of this report on Appeals for more details

TABLE 34: ADMINISTRATIVE PROCESSES RELATED TO JOB PROTECTION, ANT-RETALIATION, DISCRIMINATION AND BENEFIT ACCESS

	Agency	Process and Remedies
Rhode Island TDI/TCI (Paid)	Department of Labor and Training	Administrative appeals process; court*
Rhode Island Parental & Family Medical Leave Act (Unpaid)	Department of Labor and Training	DLT may issue a civil penalty of not more than one thousand dollars ($1,000). A civil action may be brought in the superior court by an employee or by the DLT director against any employer to enforce the provisions of this title If, after giving an employer written notice and an opportunity to be heard, the director finds that the employer has failed to comply with any provision of this chapter, the director may issue the orders that he or she deems necessary to protect the rights of any employee.
Federal FMLA [30]	Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration	The agency investigates complaints of violations. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance. An eligible employee may bring a private civil action against an employer for violations. An employee is not required to file a complaint with the Wage and Hour Division prior to bringing such action.
MN Human Rights Act -- Sex, Familial Status, Disability discriminatio n	Department of Human Rights	See process chart. Charging party may decide to pursue their charge in district court at any time during this process by withdrawing their charge(s); MDHR will close the case at this time. n any action or proceeding brought pursuant to this section the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. In any case brought by the department, the court shall order a respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the department and the attorney general for all appropriate litigation and court costs expended in preparing for and conducting the hearing, unless payment of the costs would impose a financial hardship on the respondent.
MN Pregnancy & Parenting Leave (Unpaid)	Department of Labor and Industry	The Department investigates complaints and may issue an order to comply. An order must include the payment of back pay and compensatory damages, and an additional equal amount as liquidated damages. Willful or repeated violations shall be subject to a civil penalty of up to $1,000 for each violation. A person injured by a violation may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by a court.

FIGURE 12: MINNESOTA DEPARTMENT OF HUMAN RIGHTS COMPLAINT PROCESS

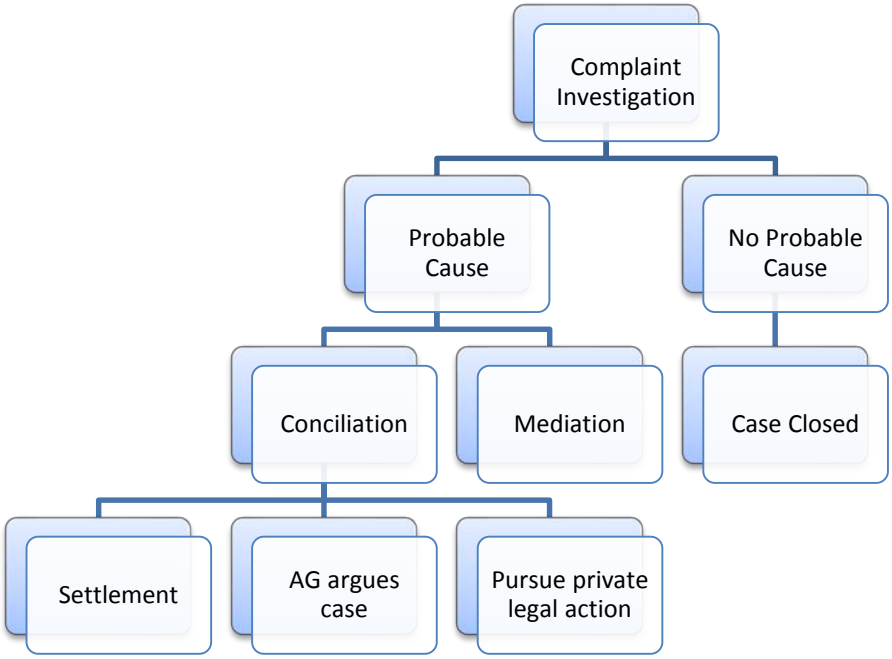
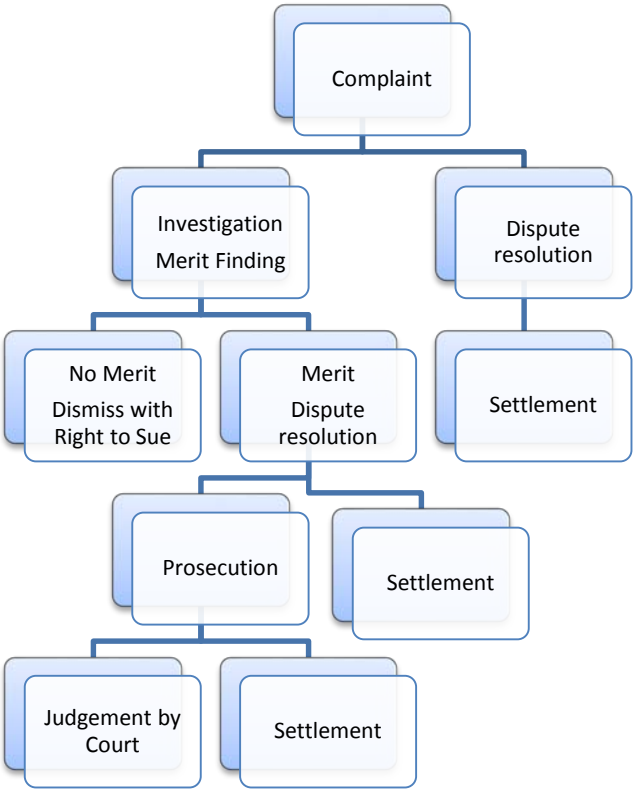


FIGURE 13: CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING COMPLAINT PROCESS



SUGGESTIONS FOR PROVIDING JOB PROTECTION

Job protection can be accomplished in a variety of ways. Specific language modeled after Rhode Island § 28-41-35(f) can be added to the PFML governing statute. Alternatively, Minnesota's Pregnancy and Parenting Leave law could be expanded to be consistent with the PFML definitions of employer and worker. Either way, retaliation for program use, as well as return to same or similar job, is important for ensuring access to a PFML program. Many workers who do not use the existing programs cite concern about negative employment consequences.[31]

Because FMLA coverage does not apply to 40% or more of the workforce, ensuring job and anti-retaliation protection is important for maximizing access. While the dynamic between the lack of job protection and the utilization rate for California family leave is still being studied, several scholars believe there is a strong likelihood that employees who need time off may not elect to take it — even if it is paid — if it does not come with some form of job protection.[32] As a result, if a program goal is to maximizing access, all Minnesota workers eligible for wage replacement could be given some form of job & anti-retaliation protection, as is the case in Rhode Island. It is also an equity consideration—if all workers will be paying into the system, all workers should be able to actually take the leave; job and retaliation protection is part of what makes workers actually able to do so.

The simplest and most effective means for creating job protection for people who take time off under a Minnesota paid family and medical leave program is to amend the Pregnancy and Parenting Leave Law so that it covers all workers and leaves eligible for wage replacement. While it makes sense to require a minimum attachment to the employer, the current 12-month standard leaves many low wage workers without protection. A standard of half time at 6 months would also increase access but ensure workers have a commitment to the employer. Such a standard would automatically remove seasonal workers, for example, from those that receive job protection, but help increase workforce attachment for many more part-time workers with significant workforce attachment. Minnesota policymakers could also consider expanding the discrimination protections under the Human Rights Act to all caregivers, not just those that are pregnant or have a minor child in their home.

If Minnesota policymakers choose to exempt extremely small employers, the expansion of the Minnesota's Pregnancy & Parenting Leave Law could be limited to employers with 5, 10, 15 or more employees. It is estimated that an employer threshold of 10 employees could bring upwards of 90 percent of private sector employees (up to 161,000 more Minnesota workers) under employers with job and retaliation protection.

Most workers return to their previous job after taking a FMLA qualifying leave (see Table 28). Expanding job protection will codify this reality and create greater certainty for both employers and workers, leading to stronger relationships. FMLA survey data suggest that workers that are not covered by the current FMLA protections are less likely to stay attached to their employer and are 3 times more likely not to return to their pre-leave employer. [33]

NOTES: JOB PROTECTION

[1] Sandra L. Hofferth & Sally C. Curtin, *Parental leave statutes and maternal return to work after childbirth in the United States*, 33 Work & Occupations 73, 78 (2006); Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm
[2] Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm
[3] http://www.dfeh.ca.gov/Publications_CFRADefined.htm
[4] http://www.dfeh.ca.gov/res/docs/publications/dfeh-186.pdf
[5] http://www.state.nj.us/lps/dcr/law.html#FLA
[6] R.I. Gen. Laws § 28-48
[7] MN Statutes 181.940-942
[8] 26 ME. REV. STAT. ANN. § 843 (3)(A), 26; ME. REV. STAT. ANN. § 843 (3)(C); 26 ME. REV. STAT. ANN. § 844 (1)
[9] OR. REV. STAT. § 659A.153 (1); OR. REV. STAT. § 659A.156 (1)(a); OR. REV. STAT. § 659A.156 (1)(b); http://www.employmentlawhq.com/state-requirements/oregon.html
[10] 23 VSA § 471(4); 23 VSA § 471(3); 23 VSA § 471(2); http://women.vermont.gov/sites/women/files/pdf/Parental_Family_Leave_Guide.pdf
[11] 29 U.S.C. § 2601 *et seq.;* Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010
[12] Jane Waldfogel, Family and Medical Leave: Evidence from the 2000 Surveys, Monthly Labor Review, Sept. 2001, at 19-20 http://www.bls.gov/opub/mlr/2001/09/art2full.pdf.
[13] Waldfogel, ibid; Appelbaum & Jorgensen, Expanding Federal Family and Medical Leave Coverage: Who Benefits from Changes in Eligibility Requirements? Center for Economic and Policy Research (2014): http://cepr.net/documents/fmla-eligibility-2014-01.pdf
[14] Katherine Ross Phillips, Working for All Families? Family Leave Policies in the United States, in The Economics of Work and Family 165 (Jean Kimmel & Emily P. Hoffman eds., 2002). See also Jane Waldfogel, "The Impact of the Family and Medical Leave Act," 18 J. Pol'y Analysis & Mgmt. 281, 300 n.29 (1999)
[15] Minnesota Unemployment Quarterly Employer Data (2014) obtained from Minnesota Department of Employment and Economic Development
[16] Likely understates employee totals, which have grown since 2012. US Census Bureau, 2012 County Business Patterns and 2012 Economic Census: http://www.census.gov/econ/susb/
[17] http://www.dol.gov/whd/fmla/APPENDIXF.htm
[18] 181.941 Subd.3.
[19] *Joan C. Williams, et. al.* Protecting Family Caregivers from Employment Discrimination, Center for WorkLife Law, University of California, Hastings College of the Law: http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf
[20] Ibid
[21] http://www.eeoc.gov/laws/types/pregnancy.cfm
[22] http://www.eeoc.gov/laws/statutes/pregnancy.cfm
[23] http://www.eeoc.gov/laws/statutes/pregnancy.cfm
[24] http://www.eeoc.gov/policy/docs/qanda_caregiving.html
[25] http://www.eeoc.gov/policy/docs/qanda_caregiving.html
[26] Minn. Stat. § 363A.08, subd. 2
[27] http://www.dfeh.ca.gov/Complaints_eCompProc.htm
[28] http://www.state.nj.us/lps/dcr/law.html#FLA
[29] http://www.nj.gov/oag/dcr/about.html
[30] http://www.dol.gov/whd/regs/compliance/1421.htm
[31] Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm
[32] Sandra L. Hofferth & Sally C. Curtin, Parental leave statutes and maternal return to work after childbirth in the United States, 33 Work & Occupations 73, 78 (2006).
[33] 2012 FMLA Survey Technical Report

TAXATION OF BENEFITS

POLICIES

The taxation of family leave benefits varies from state to state, but benefits are treated as income for federal tax purposes. Unemployment insurance benefits are taxed federally and in Minnesota, though they are exempt in some states. In contrast, workers' compensation benefits are exempt from both federal and state tax.

TABLE 35: TAX TREATMENT OF WAGE REPLACEMENT BENEFITS

	Own Disability (TDI)		**Family Care Leave**	
	State Taxes	**Federal Taxes**	**State Taxes**	**Federal Taxes**
California [1]	No (except when considered to be a substitute for unemployment compensation)	No (except when considered to be a substitute for unemployment compensation)	No (Contributions post-tax)	Yes
New Jersey [2]	Employer portion yes Employee no	Employer portion yes Employee no	No (Contributions post-tax)	Yes
Rhode Island [3]	No	No	Yes (Contributions deductible)	Yes
New York	Yes	Yes	NA	NA
Hawaii	Yes	Yes	NA	NA
	State		Federal	
MN UI	Yes		Yes	
MN Workers' Comp	No		No	

The effect of a wage replacement program such as PFML can be better determined by analyzing the "net replacement rate" of income -- that is the fraction of a worker's after tax wages that the program replaces. This approach is a better gauge of benefits received than the gross replacement rate that is typically thought of as the benefit. The fairness of the PFML should be viewed in terms of net rather than gross replacement rates. The net replacement rate indicates what percentage of the beneficiary's true loss in earnings has been restored.

TABLE 36: ESTIMATED NET BENEFIT LEVELS FOR VARIOUS APPROACHES TO BENEFIT TAXATION

Income			Weekly Family Leave Pay (55% capped at $1,000)					
Gross Weekly	Gross Annual	Net Weekly (after State and Federal Taxes)	55% of Gross Weekly Wages	Net Benefit if State and Federal Taxes are Applied	MN Tax Rate	Weekly Value of MN Tax Exemption	Net Benefit if only Federal Taxes are Applied	Value Over 6 weeks
$400	$20,800	$336	$220	$200	5.35%	$12	$212	$71
$800	$41,600	$622	$440	$370	5.35%	$24	$394	$141
$1,200	$62,400	$911	$660	$543	5.35%	$35	$578	$212
$1,600	$83,200	$1,162	$880	$692	7.05%	$62	$754	$372
$2,000	$104,000	$1,420	$1,000	$769	7.05%	$71	$840	$423
$2,400	$124,800	$1,655	$1,000	$690	7.05%	$71	$861	$423
$2,800	$145,600	$1,980	$1,000	$707	7.85%	$79	$786	$471
$4,000	$208,000	$2,747	$1,000	$687	9.85%	$99	$786	$591

*Assumes family leave pay will be subject to federal income tax but not Social Security taxes. Federal and state income taxes are estimated for a non-senior taxpayer with median dollars of itemized deductions at each selected level of income. Social Security tax at a rate of 7.65% applies to the first $118,500 of wages.

In Table 36, the net "take-home pay" associated with a 55% gross wage replacement benefit is summarized for different income levels under state and federal taxation of benefits or just federal taxation (with a Minnesota state tax exemption, as is the case in New Jersey for family leave and in part for temporary disability benefits and California for both family and temporary disability benefits (see Table 35)). For example, a worker earning $800 per week has an estimated take home pay of $622 per week. With 55% gross wage replacement and state and federal taxation, her benefit would be $370 per week. Because the benefits would not be subject to the Social Security tax (as her wages would) her net replacement rate would be 60%. If her benefit were exempted from state taxation, her weekly benefit would be $394 ($24 more per week or $366 over the course of a six week leave) raising her net replacement rate to 63%.

The benefit of the state tax exemption is larger for those with higher wage levels. A worker earning $2000 per week ($104,000 per year) would gain $71 per week from the exemption; a worker earning $4,000 per week ($208,000 per year) would gain $99 per week from the exemption.

In addition, an exemption would treat married beneficiaries with the same wage differently depending on how much income their spouse earns. A $400 per week worker could gain up to $46 per week from the exemption if her spouse's earnings put them in the 9.85% tax bracket, compared to $24 per week if they were in the 5.35% bracket. Table 37 demonstrates the effect of state and federal taxation on the net replacement rate received by workers. Exempting the benefits from state income tax increases the net replacement rate at every wage level. Since Minnesota has a progressive income tax the increases in the net replacement rate is larger for those with higher incomes.

TABLE 37: NET REPLACEMENT RATES APPLYING VARIOUS APPROACHES TO BENEFIT TAXATION

			Effective Replacement Rates		
Gross Weekly	Annual Gross	Wage Replacement before Taxes (55% up to $1,000)	Gross (Before Tax Benefit as % of Gross Income)	Net if State & Federal Taxation is Applied (Benefit as % of Net Weekly)	Net if only Federal Taxation is Applied (Benefit as a Percent of Net Weekly)
$400	$20,800	$220	55%	60%	63%
$800	$41,600	$440	55%	60%	63%
$1,200	$62,400	$660	55%	60%	63%
$1,600	$83,200	$880	55%	60%	65%
$2,000	$104,000	$1,000	50%	54%	59%
$2,400	$124,800	$1,000	42%	42%	46%
$2,800	$145,600	$1,000	36%	36%	40%
$4,000	$208,000	$1,000	25%	25%	29%

TAX TREATMENT OF CONTRIBUTIONS

A second policy question involves the deductibility of worker contributions from "federal income." In Rhode Island Temporary Disability (TDI) withholdings from earnings are deductible for Federal income tax reporting purposes. In California and New Jersey, worker contributions for Paid Family and Medical Leave (PFML) programs are taken post-tax. This means the contributions do not receive preferential tax treatment. The income that is deducted and submitted to the state has been included in the income subject to federal taxation. Many states, including Minnesota, use federal taxable income as the basis for determining state taxes owed. If benefits were taxable, though, worker contributions could be exempted from tax.

ADMINISTRATION & IMPLEMENTATION

If benefits are taxable for state or federal purposes, the program creates and forwards a copy of the 1099G to the claimant and the Internal Revenue Service (IRS) with the total amount of benefits received during the year.

California makes the distinction if disability benefits are received in lieu of UI benefits. In that case benefits up to the Unemployment Insurance (UI) maximum are reported as income and provides the claimant with a 1099G form showing amounts paid which are reportable (no more than the original UI maximum) and forwards a copy of the 1099G to the Internal Revenue Service (IRS). More information about the interaction of Temporary Disability or Family Leave and UI can be found in that section of this report.

The tax treatment of New Jersey State Plan temporary disability benefits is complicated by the contribution of both employers and workers. These benefits are considered third party sick pay for both social security (F.I.C.A.) and federal income tax purposes and must be reported on federal income tax returns. Also, the portion of State Plan benefits paid which is attributable to the last employer's contribution is taxable income. Those benefits are included on the W-2 annual earnings statement issued by the employer.

WITHHOLDING

Most state PFML programs allow workers to withhold federal or state taxes (if applicable), usually up to 10%.

REFUNDS FOR OVERPAYMENTS

Since Rhode Island and especially New Jersey have a lower taxable wage base ceiling, the potential for workers to pay more than their share (or the maximum contribution) is increased.[4] Both states, as well as California, allow workers who have earned more than the taxable wage ceiling for more than one employer to apply for a tax refund for the overpaid amount.

SUGGESTIONS FOR TAXATION OF BENEFITS

Minnesota could consider whether it is best to follow the lead of California and New Jersey in exempting wage replacement benefits from state taxation and collect worker contributions or premiums post tax. Another alternative would be to exempt worker contributions from tax. All workers in Minnesota would pay a small percentage of their total earnings for PFML premiums. If workers are taxed on the full amount of their wages, then then the premiums paid into the PFML trust fund will have been already taxed once at the state level. An example helps to illustrate how this works:

> *Gloria makes $100 a week and she pays a 1 percent payroll premium into the Family and Medical Leave Insurance program trust fund. So $1 of Gloria's earnings goes into the pool. She still pays state income tax on all $100. So the $1 that goes into the PFML trust fund has already been taxed at the state level. When Gloria later has to take care of her ill father, she will receive $66 a week as her wage replacement under the program, for up to 12 weeks. The wage replacement money will be exempt from state income taxes, but not federal income tax.*[5]

Unemployment Insurance is taxable at both the state and federal level. To the extent that workers pay for the program through contributions, one reason to exempt PFML benefits would be that these benefits are different from UI, which is an employer-funded program.

If benefits are taxed at the state level, the revenue generated could be returned to the program and used to increase program benefit levels. While this would involve potential revenue transfers to the program trust fund, using the revenue to raise the gross replacement rate above 55% would result in a more progressive benefit, aimed at those with lower incomes. Net replacement rates would not be dependent on the wage of the spouse.

If the Minnesota PFML program uses a low taxable wage ceiling, such as UI conformity at $30,000 per year, an overpayment refund could be made available, just as it is in New Jersey, California and Rhode Island. Workers on the lower end of the income scale are most likely to be hurt by lack of a refund, since they are more likely to work for multiple employers resulting in more frequent over payments. This scenario has the potential to harm low wage workers, who are at the maximum contribution rate paying more of their income as a percent in to the fund than higher wage workers and may actually pay more than

the maximum if they work for multiple employers. If Minnesota's PFML program benefits are taxable at either the state or federal level, then the program could also offer withholding to help workers and families plan ahead to ensure better financial planning for beneficiaries.

NOTES: TAXATION OF BENEFITS

[1] http://www.edd.ca.gov/disability/FAQ_Employers_Benefits.htm
[2] http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_tax_info.html; http://lwd.dol.state.nj.us/labor/fli/content/tax_information.html
[3] http://www.dlt.ri.gov/tdi/; Q30: http://www.dlt.ri.gov/tdi/tdifaqs.htm
[4] http://www.uitax.ri.gov/docs/TX-Forms/2014/TX-16-2014.pdf
[5] Adapted from "Estimating the Costs and Financing of Family and Medical Leave Insurance in Colorado (2013)" http://www.coloradofiscal.org/wp-content/uploads/2014/06/Estimating-the-Costs-and-Finance-Mechanisms-of-Family-and-Medical-Leave-in-CO.pdf

ENSURING ACCESS AND PROGRAM AWARENESS

Access to information about program benefits and processes is a critically important component of a state PFML program for both employers and workers. Research on California's program suggests that program awareness is low, especially among low income workers, even though the program has been in existence for more than a decade.[i] Research on the recent launch of Rhode Island's Temporary Caregiver Insurance program also found low levels of awareness, with only a little more than half of respondents aware of the program. Respondents were chosen from those who had some interaction with the state's temporary disability program the prior year, so awareness is likely even lower in the general population. Program awareness in both states is also skewed towards those with higher educations and incomes, more access to paid leave, working for larger employers, and white, contributing to disparities in paid leave access. [ii]

Rhode Island researchers also found low levels of understanding related to several program components among those who were aware of the program. Only 28% understood that the program was financed by their own contributions, for example. A little more than half knew about the unique and important entitlement to the same or similar job upon returning from leave. Fear of job loss was a frequently cited barrier to program use, suggesting better information dissemination is necessary to improve access.

The same study found that Rhode Islanders were most likely to hear about the program from family and friends, followed by employers, co-workers or the Department of Labor and Training, and finally a doctor or clinic. Low income respondents were more likely than higher income ones to have heard about the program from a doctor or clinic. [iii]

POLICIES

All three states require employers to inform workers about the program when they start employment and to post notices in readily accessible places (see Table 38). New Jersey and Rhode Island require notification at various times during employment as well, especially when a worker is taking eligible leave. Despite these requirements, studies in both California and Rhode Island found issues with employer provision of program information. In California, those workers with employers who already offered leave were more likely to be aware of the program. This finding suggests that "high-road" employers that stand to benefit from worker use of wage replacement or have a demonstrated prior support for paid leave are more likely to provide information and/or help their workers to understand and access the state program. Rhode Island Temporary Caregiver Insurance recipients reported relatively low levels of satisfaction with the amount of employer-provided information and other leave options. In addition, in-depth interviews revealed that some employers do not readily share program information. [iv]

TABLE 38: EMPLOYER NOTICE POLICIES

	Policy
California [5]	Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations and shall make available to each such individual copies of such printed statements, regulations or matters relating to claims for disability benefits as the Director of Employment Development may prescribe.
New Jersey [6]	Employer must conspicuously display the notification poster in each of your workplaces, in a place or places accessible to all employees. Employer must also provide each employee with a written copy of the notification: • at the time of an employee's hiring • whenever an employee notifies you that he/she is taking time off to bond with a newborn or newly adopted child or to care for a seriously ill family member • at any time, upon the first request of an employee For employers who participate in a temporary disability benefits program, the notice shall also describe the temporary disability benefits available to the employees and prominently disclose that pregnancy is regarded by law as a disability and that pregnant employees are regarded as disabled and entitled to temporary disability benefits to the same extent as other disabled employees.
Rhode Island [7]	The *Notice to All Employees on UI and TDI* poster must be displayed in a prominent place in employer's establishment. Employers are required "To inform Rhode Island employees of their disability insurance rights and benefits due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care for any sick or injured family member or new child. The notice shall be given by every eligible employer to each new employee hired on or after January 1, 2014, and to each employee taking leave from work on or after January 1, 2014 due to pregnancy or the need to provide care for any sick or injured family member or new child."

New Jersey is only state to require a statutorily mandated annual report. The statute includes detailed requirements for the report including a variety of specific data related to claims and demographics of claimants. It allows the commissioner to conduct surveys of workers, employers and the general public and conduct other analyses and allocates up to a maximum of $150,000 per fiscal year from program administrative funds to produce the annual report. [8]

ADMINISTRATION & IMPLEMENTATION

All three PFML states pay for and make available online or in hard copy form posters that must be placed in conspicuous locations at employer establishments. Each state also requires information sharing about the program when workers start or take leave for qualifying reasons.

Rhode Island is the only state that explicitly addresses information dissemination in its governing statutes and allows use of program funds on an ongoing basis to pay for public information efforts (see box below).

Recognizing the need for increased and improved public information efforts, California's legislature appropriated the first year of funding for a $6.5 million three year outreach project in 2014. These funds are being used for: market research to help target outreach efforts; the production and dissemination of information kits to community partners; grants to community partners to provide statewide outreach activities; creation of a listserv to share information and improvements to the Temporary Disability Insurance online system that provides information about Paid Family Leave benefits for caregivers during that claim process.[9]

According to a report on outreach efforts, California's program staff and representatives from various Paid Family Leave advocacy groups have committed to meeting monthly to share information, discuss outreach strategies, and provide updates. Groups working with the agency include: AARP, American Civil Liberties Union of Southern California, Breastfeed LA, California Association of Caregiver Resource Centers, California Black Health Network, Inc., California Center for Research on Women and Families, California Commission on the Status of Women, California Labor Federation, California Small Business Majority, Child Care Law Center, Disability Rights Legal Center, Equal Rights Advocates, Legal Aid Society- Employment Law Center, Los Angeles Care Giver Resource Center, Next Generation, the Senate Office of Research, and Western Center on Law and Poverty.[10]

INFORMATION DISSEMINATION

RHODE ISLAND §28-41-39

(3) To disseminate information regarding the program to Rhode Island employers and shall carry out a public education program to inform workers and employers about the availability of benefits under the temporary caregiver insurance program. The director may use a proportion of the funds collected for the temporary caregiver insurance program in a given year to pay for the public education program and funding received from other sources for the purpose of educating the public about their benefits. Outreach information shall be available in English and other languages.

> *"Using best marketing practices, pursuing market research, and collaborating with Paid Family Leave stakeholders has allowed the Employment Development Department to determine the most appropriate outreach activities to increase Paid Family Leave awareness. The Employment Development Department recognizes that individuals are most attentive when there is a need for a particular service or program. It is for this reason that it is critical for working Californians to be made aware of the support Paid Family Leave can provide for them during their specific times of need. To maximize results, the Employment Development Department will partner with those support organizations who have direct contact with the customer or patient and their families before and during these times."* [11]

New Jersey Statutes §43:21-45 provide a more formal approach by including an advisory council and annual report:

> *(b) There is hereby established an Advisory Council on Disability Benefits to consist of the following: Four representatives of labor, two representatives of employers, two representatives of the insurance industry, and two*

> *representatives of the medical profession, to be appointed by the Governor with the advice and consent of the Senate; the executive director of the commission and the commissioners of Banking and Insurance, and of Labor, for the time being. Each appointive member shall serve for a term of five years, and vacancies shall be filled for the unexpired term only. Members of the advisory council shall serve without compensation but may be reimbursed for their necessary expenses. The advisory council shall:*
> *(1) study the administration and operation of this act; (2) aid the commission in formulating policies, rules and regulations and consult and advise with the executive director; (3) report to the Governor and the Legislature on or before March first, one thousand nine hundred and fifty-one, and at such other times as it may deem appropriate its recommendations for legislation or administration necessary or desirable to improve and perfect the operation of this act; (4) report to the Governor and the Legislature on such other matters relating to this act, and at such other times, as it may deem in the public interest.*

SUGGESTIONS FOR ENSURING ACCESS AND PROGRAM AWARENESS

A significant body of research in states with PFML programs underscores the critical importance of ongoing and robust information dissemination in order to achieve program goals of maximizing access and workforce attachment. Resources for all state departments that reach workers during times when leave may be necessary and community-based groups supporting workers and employers should be not be short-changed and must be built in to ongoing administration of the program.[12]

To maximize access by Minnesota families, Minnesota policymakers may make outreach a primary and ongoing funded program element. Minnesota could follow Rhode Island's example and explicitly include outreach in the program's governing statutes, as well as the allowed and ongoing use of administrative funding for outreach. Early research from Rhode Island suggests that significant ongoing efforts will be needed to ensure that all workers are aware of the program.[13] While Minnesota can require employers to provide information when workers are hired but also when they have qualifying life events as New Jersey and Rhode Island do, it should not rely on this means of information dissemination alone. Rhode Island's experience recently launching the Temporary Caregivers Insurance program suggests that extensive work with employers will be necessary.[14] California's experience also suggests that this method is much more successful among higher wage workers and employers that already offer paid leave, compounding unequal access to wage replacement.[15] Minnesota can build on California's recent experience with community-based organizations by: including grants to organizations to implement the best practice of providing program information at the point of need; creating an advisory group that meets regularly; and developing a listserv for program information.

Minnesota employers can be given sufficient access to materials online and in hard copy formats and receive information annually through the payroll tax system. However, that should not be the only way workers receive information about wage replacement. Research on the recent launch of Rhode Island's Temporary Caregiver Insurance program shows that significant attention should be given to working with employers in advance and on an ongoing basis.[16] In California, the Chamber of Commerce has been especially helpful in assisting employers with implementation of the law.[17] Similar organizations that serve both large and small or

other subgroups of employers should be eligible for grants as well as community-based organizations to provide information and assistance. Some other countries have created "best practice" clearinghouses to help employers come up with creative ways to solve staffing issues while workers are on leave.[18] The workforce attachment benefits of a Minnesota PFML program will not be fully realized if workers are not aware of the program and do not use it when necessary.

In addition to building employer and worker outreach through the administering agency and community based organizations with connections to workers and employers in to the program structure, Minnesota can also make use of the significant existing statewide infrastructure used to deliver health and human services. According to research on Rhode Island's Paid Family Leave/Temporary Caregiver Insurance program launch, low-income workers were more likely to get information about the program from their doctor or health clinic. A limited amount of administrative funding could be made available to the Departments of Health and Human Services to ensure that program information is regularly reaching healthcare clinics, physicians, nurses, community health agencies, counties, low wage workers and their families.

Finally, an advisory group consisting of organizations representing workers and employers could be part of Minnesota's program and tasked with (among other responsibilities) outreach program development and implementation. The advisory group can play a vital role in helping policymakers and agency staff understand how the program is working for different types of workers and employers and improve both policy and implementation over time.

NOTES: ENSURING ACCESS AND AWARENESS

1 Ruth Milkman and Eileen Appelbaum, Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy.(2011)
2 Ibid; Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm
3 Ibid
4 Ibid
5 §2706
6 §43:21-49
7 §28-41-39 (4)
8 §43:21-49.4
9 Paid Family Leave Outreach Funding: A report to the legislature (April 1, 2015): http://www.edd.ca.gov/About_EDD/pdf/pflOutreachFundingApril_1_2015.pdf
10 Ibid
11 Ibid
12 Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm
13 Ibid
14 Ibid
15 Ruth Milkman and Eileen Appelbaum, Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy.(2011)
16 Launching the Rhode Island temporary Caregiver Insurance Program (TCI): Employee Experiences One year Later: http://www.dlt.ri.gov/TDI/URIStudyonTCI.htm
17 Ruth Milkman and Eileen Appelbaum, Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy.(2011)
18 Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010

APPEALS AND DISPUTE RESOLUTION

POLICIES

An important part of ensuring access and support for both employers and workers is a robust system to handle disputes related to benefits and ensure enforcement of program protections related to retaliation and discrimination. All state PFML insurance programs have a process for both employers and workers to dispute determinations related to claims.

Appeals processes are free and do not require an attorney. In all states, individuals who are not satisfied with the outcome of the administrative appeal(s) may appeal their cases in the state court and federal courts (see Table 39 for details). In all states, employers who have an interest are granted the right to appeal decisions on claims as well. Most of the programs provide at least two levels of administrative appeals before an appeal to the court system. The first level appeal beyond agency reconsideration is handled by a single evaluator (administrative law judge, referee or appeal tribunal examiner) then moves on to a full board if necessary.

REVIEW BODIES

The Rhode Island Board of Review is an autonomous, quasi-judicial agency statutorily independent from the Department of Labor and Training.

The New Jersey Board of Review is the highest appellate level within the Department of Labor and Workforce Development for deciding unemployment and disability insurance benefit disputes.

California Unemployment Insurance Appeals Board (CUIAB) is an independent administrative court system for workers and employers seeking to challenge decisions made by the Employment Development Department (EDD).

IMPLEMENTATION AND ADMINISTRATION

It is important to note, that since state PFML programs provide benefits for shorter periods of time and are generally (with the exception of New Jersey and New York's Temporary Disability Insurance programs) not experience rated and are funded by workers, claims processes tend to be less contentious than UI or workers' compensation claims processes. Nonetheless, in all three PFML states, the appeal process used for Temporary Disability Insurance or Family Leave Insurance claims is the same one used for Unemployment Insurance claims or other workforce agency decisions.

While all three states provide recourse through a formal hearing, both California and New Jersey have an agency level "redetermination" process before moving disputes to a formal hearing process. California is explicit about working to help resolve disputes before a hearing.

> *"The Employment Development Department will evaluate the detailed facts you provide in your DE 1000A or appeal letter and notify you of our findings. If you provide additional information showing you are eligible for benefits, the Employment Development Department will issue payments on the claim, if funds are still available on the claim, and will advise you of the action taken."*

TABLE 39: APPEALS PROCESSES

PFML	Benefits Determination	1st Level	2nd level	3rd level	4th level
California [1]	File complaint within 20 days	EDD Evaluation and possible resolution (redetermination)	Impartial Admin. Law Judge hearing via CA UI Appeals Board local Appeals Office	California Unemployment Insurance Appeals Board	Courts
New Jersey [2]	Submit appeal in writing within 7 days	Agency evaluation and redetermination	Telephone hearing with an Appeal Tribunal examiner	Full Board of Review (Most appeals are decided on the Appeal Tribunal record without new hearing)	New Jersey Superior Court, Appellate Div.; up to NJ Supreme Court
Rhode Island [3]	Submit a request in writing to the TDI Appeals Coordinator within 15 days	Referee at Board of Review (autonomous, quasi-judicial)	Full Board of Review (likely to review existing information but may hold a new hearing)	Superior Court, then Supreme Court	Blank
Minnesota Programs					
MN UI	File an appeal within 20 calendar days	Telephone hearing with Unemployment Law Judge	Re-review by same Unemployment Law Judge	Minnesota Court of Appeals	Blank
MN Workers' Comp	Contact insurance company and/or DLI (assigned DLI or Office of Administrative Hearings route)	DLI: Informal Intervention	Mediation	Administrative Conference	OAH (then process below)
		OAH: Mediation and possible settlement conference	Administrative Conference	Formal Hearing	Workers' Comp Court of Appeals; Supreme Crt
DLI Wage and Hour (177/181/181A)*	Employee complaint or agency initiated investigation	Notice of violation	Order to comply	Office of Administrative Hearings	Minnesota Court of Appeals
MN Human Rights*	File a complaint by phone, in person/ online	MDHR determines if complaint is covered	Mediation	Investigation and Determination	Probable Cause = Conciliation or AG argued court
	Court				

*These are regulatory enforcement tools for an alleged violation of Minnesota Law and are useful in considering enforcement of job protection, retaliation and discrimination aspects of a PFML program. Other processes outlined in this table are dispute resolution or appeals tools for the denial of a state provided benefit.

As described in the Application Process and Covered Employer sections of this report, disputes arising in the context of Private or Voluntary Plans are also handled within the same framework, although they start in the respective office responsible for oversight.

In New Jersey the first level of appeal is handled by phone. The California Unemployment Insurance Appeals Board has hearing facilities in twelve field offices and 43 satellite facilities around the state.[4]

Just like in the UI context, "an **employer's** appeal will not affect the continuance of payment of benefits until a subsequent decision is issued denying benefits. The majority of state laws specifically provide for the payment of benefits pending an appeal of a determination or decision allowing benefits, while other states have either interpreted their laws or have been required by court order to follow this procedure. In all states, this procedure applies to any determination or decision issued allowing benefits."

While data about the number of appeals handled in the three PFML states is not currently available, there is wide variation in the number of claims denied. As discussed in the Benefit Claims Process section of this report, workers whose claims are denied have a right to appeal. The California Employment Development Department processes appeals within 7 days. In both California and New Jersey appealed claims may be "re-determined" at the agency level before being forwarded to the formal hearing process. In this case, if the agency determines the claim is valid upon review of additional information provided through the appeal documentation, the original determination is reversed and the claim is paid.

Data on New Jersey's Family Leave re-determinations related to eligibility shows that these represent a relatively small portion of total claims (around 7%) and the vast majority (95%) of redeterminations result in a reversal or decision to pay benefits.[5] Within New Jersey's Temporary Disability (TDI) program "Of the 9,909 total redeterminations during 2014, 85.9 percent resulted in claimants being eligible for benefits." While the single most frequent reason for New Jersey Temporary Disability Insurance claim denial was lack of medical evidence (32% of ineligible claims), "About 51 percent of ineligible claim denials were attributed, wholly or in part, to coverage under other programs, including Disability During Unemployment, Workers' Compensation and coverage by a private plan." [6]

TABLE 40: CLAIM DENIAL RATES IN FAMILY AND MEDICAL LEAVE PROGRAMS, 2014

	Family Leave	Temporary Disability
New Jersey* [7]	14%	23%
Rhode Island [8]	24%	13%
California * [9]	6%	9%

*Includes original determinations and redeterminations

SUGGESTIONS FOR APPEALS PROCESS

Minnesota has the benefit of two distinct departments with unique strengths and expertise that both serve workers and employers in the state – DEED and DLI. Minnesota's PFML program approach should build on DEED's expertise in revenue collection and claims processing and DLI's expertise in working with employers and workers to maintain relationships and resolve disputes. Minnesota's PFML program should build on DLI expertise and multi-stage process for resolving disputes and provides an "independent" dispute resolution process that is somewhat separate from claims processing. However, experience in states where UI programs are divided suggests that there may be significant downsides to this approach.

Minnesota UI program staff suggest that the experiences in states where UI appeals functions are split from program administration are instructive. In these states the following challenges have been identified: technology changes are more complicated and are less likely to be completed, bureaucratic finger-pointing between agencies can lead to poor administration, performance measures are much more difficult, there are frequent fights over turf/money since agencies are not accustomed to dividing up administrative dollars and finally divided responsibilities slow responses. When issues comes up in a person's life that require PFML, often the person needs to act quickly and benefits need to be paid quickly.

For those cases where a formal appeal is necessary, the appeals process could include a second level appeal to another body before requiring the parties to pursue resolution in the courts. This approach could minimize the burden on workers, while bringing additional perspectives to the decision-making process. Just as in the UI and Workers' Compensation systems under the Minnesota PFML program, workers and employers could be allowed to have benefit determinations reviewed both administratively and in court. The economic stability of workers will be maximized if have the option to continue benefits during an employer appeal.

If Minnesota's program follows the lead of most other PFML programs by collecting premiums from based on a standard rate and not one based on program usage, the process is less contentious than UI in those states with both programs. When constructed this way, the goal of an appeals process would not be to minimize program usage and negative "scores" that drive up payroll tax costs for employers. Unlike UI, the goal of a PFML program is to keep workers attached to employers and not to penalize use.

The option of resolving as many disputes at the agency level, as is the practice at the Minnesota Department of Labor & Industry and California Employment Development Department, may lead to more timely and cost efficient resolutions. Adequate claims staffing should be available to resolve as many disputes at this stage as possible. Ninety-five percent of eligibility 2014 Family Leave Insurance redeterminations in New Jersey resulted in a reversal and benefits payments to workers.

Minnesota's PFML program can build on Minnesota Department of Labor and Industry Workers' Compensation Division's experience resolving disputes through agency intervention, informal mediation, administrative hearing and then Office of Administrative Hearing. It also has experience dealing with independent medical examination processes, maintaining employer-employee relationships during medically necessary work absences, and a mature alternative dispute resolution program. Given the nature of medical and caregiving claims, prompt resolution of disputes will also be especially important.

NOTES: APPEALS PROCESS

[1] §2707.2; http://www.edd.ca.gov/Disability/Appeals.htm
[2] http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_appeals.html;
http://lwd.dol.state.nj.us/labor/handbook/chap2/chap2sec4Appeals.html
[3] §28-41-15 through §28-41-33
[4] http://cuiab.ca.gov/index.asp#
[5] Family Leave Insurance Workload in 2014: Summary Report (New Jersey Department of Labor and Workforce Development)
http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202014.pdf
[6] Temporary Disability Workload in 2014 (Table 1):
http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/TDI%20Report%20for%202014.pdf
[7] Temporary Disability Workload in 2014 (Table 1):
http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/TDI%20Report%20for%202014.pdf; Family leave Insurance Workload in 2014 (Table 1): http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202014.pdf
[8] TDI Annual Update 2014: http://www.dlt.ri.gov/lmi/pdf/tdi/2014.pdf
[9] http://www.edd.ca.gov/Disability/pdf/qsdi_DI_Program_Statistics.pdf;
http://www.edd.ca.gov/Disability/pdf/qspfl_PFL_Program_Statistics.pdf

FRAUD DETERRENCE

Fraud can undermine the sustainability and support for a PFML program. While fraud can show up in PFML programs in several ways, state PFML staff do not find it to be common. California program staff estimate that benefits paid fraudulently represent just .48% of total authorized benefits in 2014.[1] Employers may not fully pay their employment taxes as required by law; applicants may use the identities of others or claim benefits while working; physicians may certify disability inappropriately; and claimants or physicians may submit forged documents.

POLICIES

Penalties for fraud committed by applicants, employers and medical personnel vary considerably across the Temporary Disability Insurance/Paid Family Leave states, from fines of up to $20,000 in California to a maximum of $50 in Rhode Island. In the case of medical certification fraud, penalties in California and Rhode Island are 25% of the benefits that were obtained fraudulently. Fines and penalties are in addition to repayment of all benefits received.

Rhode Island provides additional guidance on what constitutes fraud related to medical certification.

A Qualified Healthcare Provider (QHP) is committing fraud if:

- The Qualified Healthcare Provider colludes with the patient so that he/she may unlawfully receive Temporary Disability Insurance benefit payments
- The Qualified Healthcare Provider certifies the patient medically unable to work to instead allow the patient to travel or attend school
- The Qualified Healthcare Provider continues to certify the patient unable to work after the patient has recovered from the illness/injury
- The Qualified Healthcare Provider certifies the patient medically unable to work to permit the patient to receive Temporary Disability Insurance benefits instead of Unemployment Insurance benefits. Please note: patients may prefer to receive Temporary Disability Insurance benefits since it has a higher benefit rate and the benefit payments are considered non-taxable income.

All programs can require repayment of fraudulently obtained benefits. Any time a new claim is made for benefits, overdue payments (including fines or repayments of any kind) are deducted. California, like Minnesota's UI program, also imposes a period during which someone who has committed fraud cannot collect new benefits.

TABLE 41: PENALTIES FOR APPLICANT FRAUD

California [2]	Willfully make a false statement or knowingly conceal a material fact in order to obtain the payment of any benefits, such violation being punishable by **imprisonment** and/or by a **fine not exceeding $20,000 or both**.
New Jersey [3]	Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense, to obtain or increase any disability benefit under the State plan or an approved private plan, or for a disability during unemployment, including any benefit during a period of family temporary disability leave, either for himself or for any other person, shall be liable for a **fine of $250** to be paid to the division. Any person, employing unit, employer or entity violating any of the provisions of the above subsections with intent to defraud the division shall in addition to the penalties hereinbefore described, be liable for each offense **upon conviction** before the Superior Court or any municipal court for a **fine not to exceed $1,000 or by imprisonment for a term not to exceed ninety days**, or both, at the discretion of the court.
Rhode Island [4]	Whoever knowingly makes a false statement or representation to obtain or increase any benefit or other payment … for himself or herself … shall upon conviction be punished by a **fine of not less than twenty dollars ($20.00) nor more than fifty dollars ($50.00), or by imprisonment not longer than thirty (30) days**, or by both that fine and imprisonment; and each false statement or representation shall constitute a separate and distinct offense.
MN Programs	
Unemployment Insurance [5]	A monetary penalty of **40 percent of the total amount overpaid** is assessed on all overpayments established as a result of a fraudulent act. In addition, Interest is added to any outstanding overpayment or penalty amount at a rate of 1.0 percent per month.

TABLE 42: PENALTIES FOR EMPLOYER FRAUD

New Jersey [6]	Any employer or any officer or agent of any employer or any other person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to prevent or reduce the benefits to any person entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employer under this act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be liable for a **fine of $250** to be paid to the division. Any person, employing unit, employer or entity violating any of the provisions of the above subsections with intent to defraud the division shall in addition to the penalties hereinbefore described, be liable for each offense upon **conviction before the Superior Court** or any municipal court for a **fine not to exceed $1,000 or by imprisonment for a term not to exceed ninety days**, or both, at the discretion of the court.
Rhode Island [7]	Any individual, or employing unit or its agent, who willfully makes a false statement or representation to avoid becoming or remaining subject thereto, or to avoid or reduce any contribution or other payment required of an employing unit under chapters 39 – 41 of this title, or who willfully fails or refuses to appear or to testify or produce records as lawfully required hereunder, or who tries to induce any individual to waive any right under those chapters, shall **upon conviction** be punished by a **fine of not less than twenty dollars ($20.00) nor more than two hundred dollars ($200), or by imprisonment not longer than sixty (60) days**, or by both. Each false statement or representation, and each day of that failure or refusal, shall constitute a separate and distinct offense.
MN Programs	
Unemployment Insurance [8]	An employer who colludes* with an applicant(s) to receive benefits illegally or who commits fraud to avoid paying unemployment insurance tax will be **penalized a minimum of $500**. In addition, the Minnesota Unemployment Insurance Program refers flagrant cases of fraud for criminal prosecution. *Collusion is knowingly helping applicants obtain benefits to which they are not entitled as determined by the Minnesota Unemployment Insurance Program. This may involve cash wages or other hidden compensation for services.

TABLE 43: PENALTIES FOR FRAUD RELATED TO MEDICAL CERTIFICATION

California [9]	Any individual falsely certifies the medical condition of any person in order to obtain benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of **25 percent of the benefits paid** as a result of the false certification.
New Jersey [10]	Any person who shall willfully violate any provision hereof or any rule or regulation made hereunder, for which a fine is neither prescribed herein nor provided by any other applicable statute, shall be liable to a fine of $500 to be paid to the division. Any person, employing unit, employer or entity violating any of the provisions of the above subsections with intent to defraud the division shall in addition to the penalties hereinbefore described, be liable for each offense **upon conviction** before the Superior Court or any municipal court for a **fine not to exceed $1,000 or by imprisonment for a term not to exceed ninety days**, or both, at the discretion of the court.
Rhode Island [11]	If the director finds that any individual falsely certifies the medical condition of any person in order to obtain family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of **twenty-five percent (25%) of the benefits paid** as a result of the false certification.

TABLE 44: BENEFITS REPAYMENT AND FUTURE ACCESS TO BENEFITS

California [12]	PFL: Applicant is liable for amount of benefits and disqualified from receiving benefits for no less than 7 and no more than 35 subsequent days; for multiple violations, the director may exten9d period of ineligibility for an additional period not to exceed 56 days. Ineligibility must occur within 3 years from initial determination. TDI: 52 week bar on receiving benefits and pay-back plus 30%
New Jersey	Repay sum in full; may be deducted from future benefits
Rhode Island [13]	At discretion of director, applicant is liable to have sum deducted from future benefits or liable to repay
MN Programs	
Unemployment Insurance [14]	The applicant will **not be eligible for benefits** until the week after the overpaid amount is paid in full, including penalties and interest; and An administrative penalty of **ineligibility of up to 104 weeks** may be assessed for false representation or concealment of facts.

IMPLEMENTATION & ADMINISTRATION

All three states with Temporary Disability Insurance/Paid Family Leave insurance programs use a consolidated fraud deterrence and detection system for the department as a whole, including Hotlines and online reporting tools. For example, the California Employment Development Department consolidates fraud deterrence efforts across all its major programs, including Unemployment Insurance (UI), Disability Insurance (Disability Insurance and Paid Family Leave), Employment Tax Collection, and Workforce Investment Act (WIA) programs.[15] According to California Employment Development Department staff the average for all fraud investigations is $2,100. However, the average is skewed by a few very costly, long term investigations. Most are resolved quickly.[16]

Although fraud is infrequent, when it does occur the most common type of fraud committed in California for both Temporary Disability Insurance and Paid Family Leave is a Work and Earnings violation. With California's State Disability Insurance the next most common type is altered/forged medical certifications and within the Family Leave Insurance program impostor fraud. [17] The claim, social security number or doctor's license number may be flagged for tracking purposes. Claims or reports are reviewed or analyzed for fraud or abuse and common patterns. A fraud referral is submitted to the Investigation Division, if accepted the case will proceed criminally, if not, administrative actions are taken (i.e. duration control, disqualification, overpayment and penalty, etc.) The cases with the greatest evidentiary challenges are much more pedestrian than dealing with medical evidence or fraudulent claims. The thorniest problems are proof of who falsely received money – that the claimant is the one who withdrew funds from the ATM.[18]

Fraud prevention is integrally connected to verification efforts included in the claims process, including the opportunity to appeal. The Appeals and Claims Process sections of this report provide additional details on administration in these two interconnected areas.

SUGGESTIONS FOR FRAUD DETERRENCE

When the process for making and verifying a claim is as simple as possible unnecessary errors that could be inadvertently interpreted as fraud on the part of employers and workers, consuming time and creating animosity among all parties are more likely to be averted. In addition, well designed appeals processes for both workers and employers that provide mediation as well as other low cost paths to resolution should play an important role in uncovering and deterring fraud. The experience in other states suggest that Minnesota's PFML program is unlikely to experience high levels of fraud, and UI level penalties are sufficient to deter serious abuse.

California employers as well as program staff report little to no evidence of fraud or abuse of the program.[19] However, any fraud deterrence efforts should be balanced by the need to reduce barriers to access the program, such as cumbersome, complicated and time consuming processes. Consequences for both employers and claimants can include fines and repayment with interest, with the option of judicial remedies and benefits prohibitions in more serious cases.

Minnesota's PFML program should reinforce the use of the program as beneficial to both employers and workers. As discussed in the sections on Benefit Level and Duration in this report, the benefits provided are relatively short term and lower stakes and could ultimately create stronger relationships between employers and workers that result in greater workforce attachment during times of significant health or family events.

Minnesota's fraud prevention efforts should be designed to encourage relationships between employers and workers.

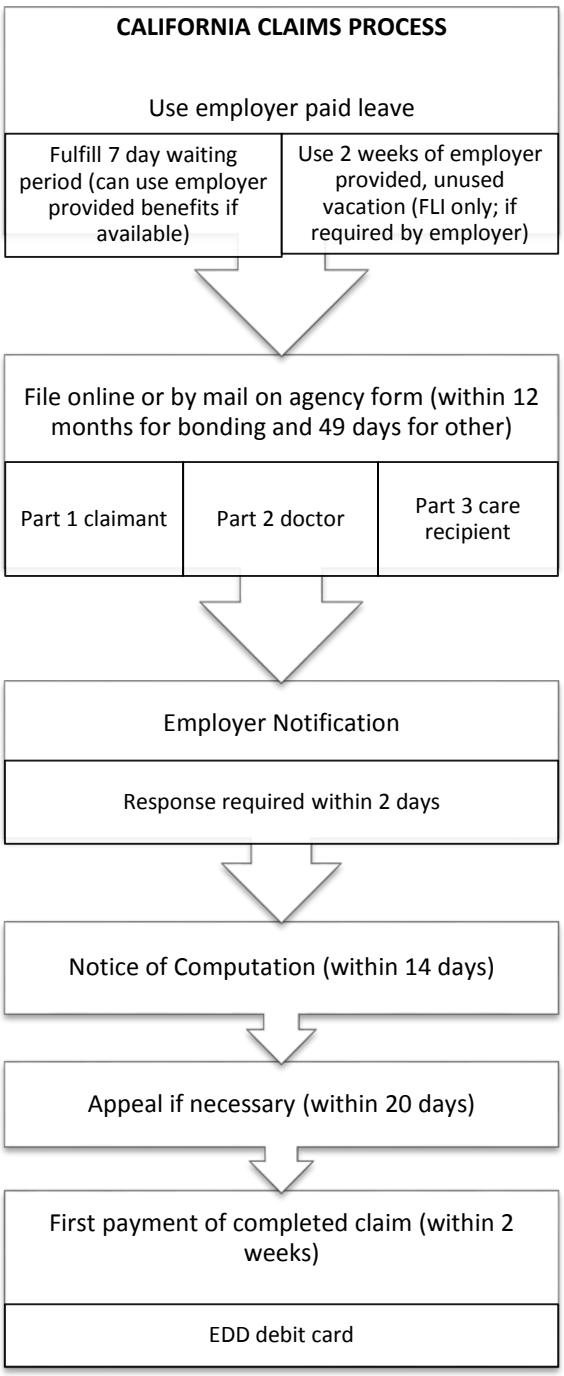
Minnesota's PFML fraud prevention efforts can be consistent with UI and can be incorporated in to DEED's broader efforts to ensure collection of payroll taxes and deter fraud related to claims. MN DLI's significant expertise dealing with fraud prevention and medical certifications within the workers' compensation context can also be tapped to develop appropriate checks (see the Reasons for Leave section of this report for more information on Independent Medical Exams). Minnesota's PFML should also replicate UI efforts to collect overpayments from tax returns. Finally, the UI program should be able to collect overpayments or fraudulently obtained benefits from workers receiving PFML benefits.

NOTES: FRAUD DETERRENCE

[1] November 2015 Interview with California EDD staff
[2] http://www.edd.ca.gov/disability/report_fraud.htm
[3] §43:21-55
[4] §28-39-23
[5] §268.18 Subd.2 and §268.182 subd.2
[6] §43:21-55
[7] §28-39-23
[8] §268.18 Subd.2 and §268.182 subd.2
[9] §1143
[10] §43:21-55
[11] § 28-41-40 (a)
[12] §2735 & 2675
[13] § 28-39-29
[14] §268.18 Subd.2 and §268.182 subd.2
[15] http://www.edd.ca.gov/About_EDD/pdf/Fraud_Deterrence_and_Detection_Activities_June_2014.pdf
[16] November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
[17] Ibid
[18] Ibid
[19] Ruth Milkman and Eileen Appelbaum, Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy (2011); November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)

CLAIMS PROCESSING

While all three states with PFML programs rely on the UI system for data or payroll tax collection, each has established separate processes for paying claims. While UI, temporary disability and paid family leave programs provide wage replacement, they have different goals necessitating specialized claims processes. In addition, there are legal limits on how UI administrative infrastructure, funded by the federal government, can be used. US Department of Labor approval may be required. An appendix includes claim forms.



CALIFORNIA CLAIMS PROCESS[1]

The Employment Development Department (EDD) implemented a convenient and secure online filing system for DI and Paid Family Leave benefits. However, claims may still be filed by mail.

The online process allows claimants, physicians and employers to:

Create an account in less than 10 minutes.
Check DI claim status and payment history online.
Reduce claim processing time.
Provide immediate electronic confirmation of forms submitted.
Decrease costs in paper and postage.
Include security safeguards.
Provide 24-hour access.

After registering for an online account, a claimant may fill-in and review information for accuracy. For Temporary Disability Insurance claims, a Receipt Number is issued which can be provided to the physician/practitioner to reference the claim and provide certification online. A physician/practitioner may also search for a claim using the last four digits of a Social Security number, last name, and date of birth. For Paid Family Leave Bonding claims, a claimant may upload and electronically submit Proof of Relationship. For other Paid Family Leave Care claims, the Physician Certification and Care Recipient Authorization for Disclosure of Personal Health Information form can be uploaded and electronically submitted after signatures from the physician/practitioner and care recipient have been obtained or mailed if filing a paper claim. A separate sheet is required to provide details about intermittent leave plans.

Once the claim is processed, the claimant receives a Notice of Computation that explains the benefit award and the wages used to calculate the award. If eligible for benefits, the claimant is issued an Employment Development Department Debit Card[SM]. If they have received benefits in the last three years from any one of the Employment Development Department programs (Unemployment Insurance, Disability Insurance, or Paid Family Leave benefits), the benefits are deposited on the card previously issued.

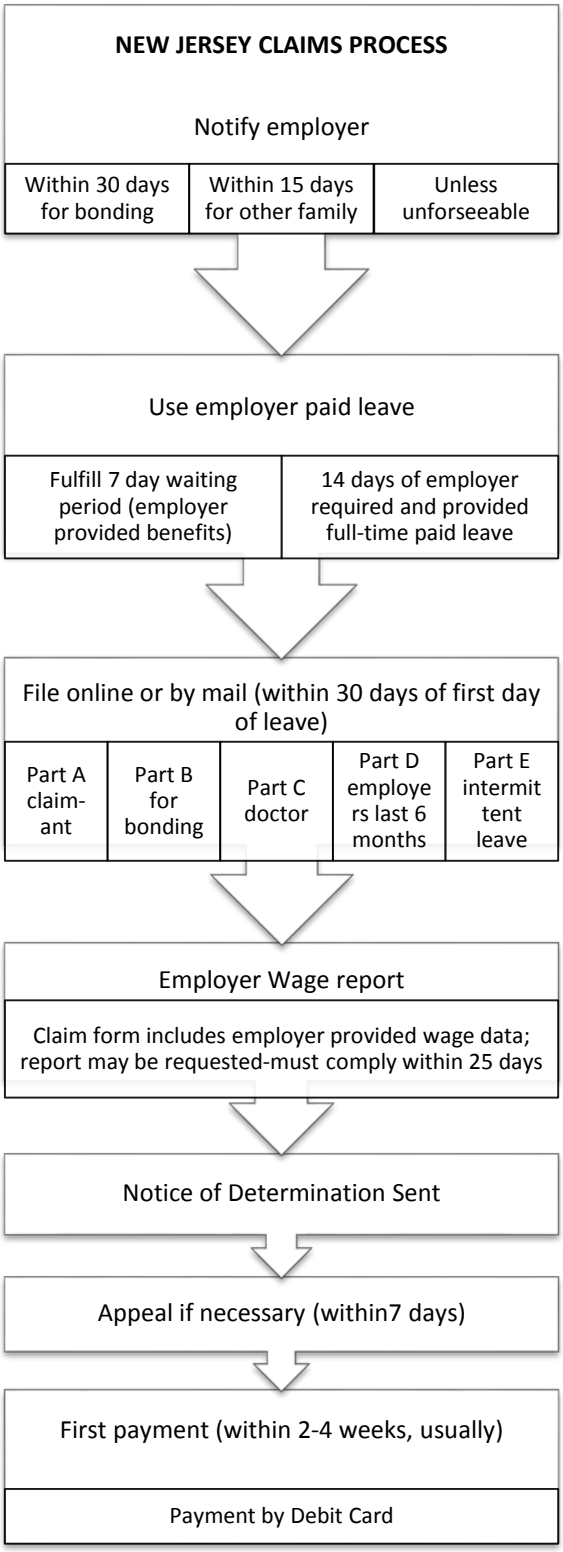
If the claimant is not eligible for benefits, a Notice of Disqualification is mailed with an Appeal form. An Appeal must be filed in writing within 20 days of the mailing date of the disqualification notice. For Temporary Disability Insurance claims, benefits are paid up to the expected return-to-work date established by the physician/practitioner. At that point, California's State Disability Insurance mails a Physician/Practitioner's Supplementary Certificate that can be returned by the physician/practitioner if the claimant is still disabled and eligible for benefits.

California's online claim process is described in YouTube Videos for employers, claimants and physicians.[2]

NEW JERSEY CLAIM PROCESS [3]

New Jersey's Family Leave and Temporary Disability claim process is similar (see right), although New Jersey has an employer notification requirement of 30 days for bonding claims and 15 days for other family leaves. Eligible leave can be reduced if workers do not comply with the required leave notice to employers. If the leave is unforeseen, this requirement is waived. Claimants can apply for Family Leave benefits online or by mail within 30 days or with a written explanation about why the claim has been delayed.

The application for Paid Family Leave benefits consists of four parts. Part A is completed by the claimant. If the leave claim is for bonding, Part B is completed. If the family leave claim is for care, the family member's treating physician completes Part C. Each of the claimant's employers during the last six months completes Part D. If the applicant is taking intermittent leave, Part E is filled out by the worker and signed by the employer.



Temporary Disability benefits claims consist of three parts one each for the claimant, the treating physician and each employer in the last six months. After all claim materials are received and processed, a Notice of Determination is sent. An appeal must be made within a shorter 7-day period for New Jersey.

New Jersey also has an online claim process (available from 7am to 6pm, Monday through Friday) that allows claimants for State Plan Temporary Disability or Family Leave Insurance to see and print some basic claim information for any claim filed in the past 1,000 days. Available information includes:

- Claim Status
- Entitlement Details
- Payment History
- Payment Status

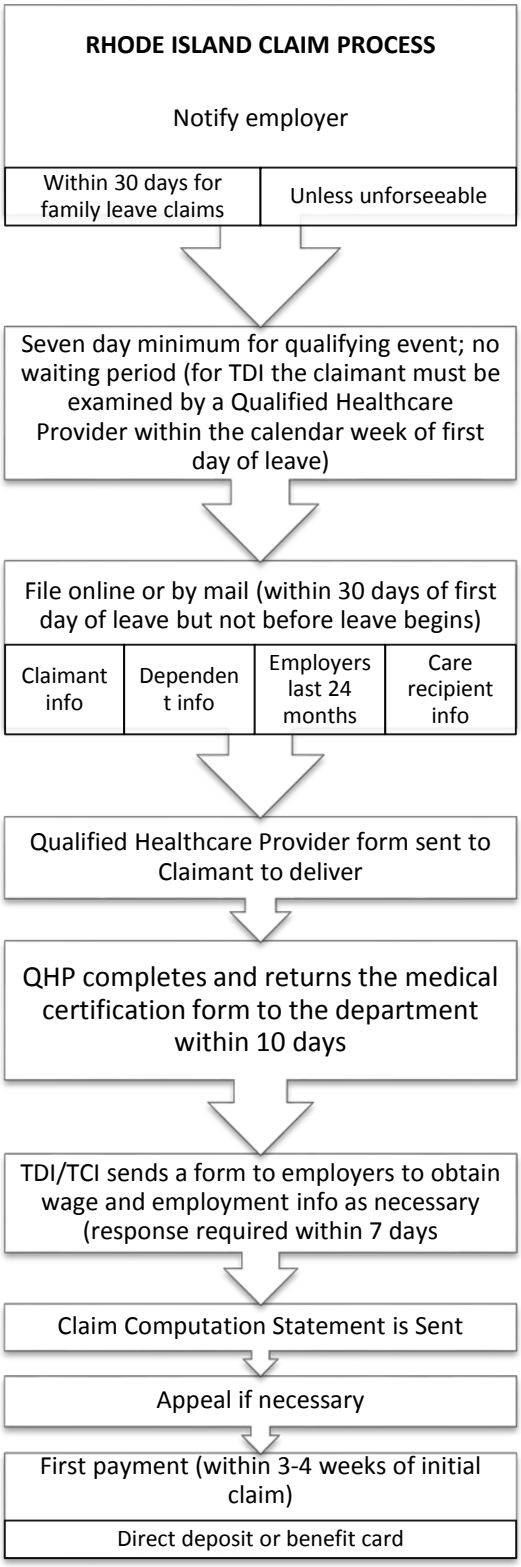
RHODE ISLAND CLAIM PROCESS [4]

Rhode Island has a similar process (see right), with a few key differences. One key difference involves Rhode Island's dependent allowance (see more in Benefits Level section of this report). Additional information about dependents is collected as part of the claims process. Rhode Island also has a Temporary Disability Insurance Partial Return to Work Program that allows an individual collecting Temporary Disability Insurance to return to work on a partial basis (reduced hours) without entirely ending their Temporary Disability Insurance benefits. Additional documentation from the Qualified Healthcare Provider triggers the "partial return" status and the Temporary Disability Insurance program collects wage information from the provider.

Rhode Island also has online and paper claims processes.

PAYMENT OF BENEFITS

All three state systems have gone away from payments in the form of checks. However, only Rhode Island uses direct deposit, as well as benefit cards. California and New Jersey provide all benefits through cards and California spends considerable resources dealing with questions related to disputes around fraudulent ATM withdrawals from these cards.



INCOMPLETE OR COMPLICATED CLAIM FORMS

Data available from New Jersey's family leave program shows that over time the percentage of claims with "insufficient data on receipt" has remained the same at around 27%.[5] California staff estimate that 40% of claims are "clean" and very straightforward to process. Documentation for bonding claims is significantly more straightforward as discussed in the "Reasons for Leave" section of this report. Others may require more care and thought. "Redeterminations" made up a relatively small proportion of total New Jersey claims (2,371) but these are disproportionately family care claims (39% of redeterminations versus 18% of claims in 2014) not bonding claims. In 2014, the vast majority (94%) was determined to be eligible after redetermination.

CALL CENTERS

All three PFML Programs provide customer service by phone. Although level of service varies. New Jersey's Customer Service Section is only available during regular business hours and is not toll-free, which may be a barrier to some workers. Research on Rhode Island's recent Temporary Caregiver Launch found that users were frustrated by the lack of response to phone inquiries. Web site information explains "Due to high call volume, wait times for customer assistance may exceed 20 minutes." California provides separate toll-free numbers for each program and multiple languages including Spanish, Cantonese, Vietnamese, Armenian, Tagalog and Punjabi.

VOLUNTARY AND PRIVATE PLANS

New Jersey and California workers who work for a Voluntary or Private Plan employers follow the procedures developed by their employer. Workers who are having difficulty obtaining the benefits they are entitled to or have other disputes with their employer related to paid leave benefits are able to use a state appeals process in both states.

The Claims Review Unit in Private Plan Operations of the New Jersey Department of Labor and Workforce Development handles claim problems and provides assistance and information to all private plan claimants, employers and insurers. California also has a separate office, the Voluntary Plan Group, to assist employers, workers, health practitioners and insurers as necessary.

In California, Voluntary Plan employer are required to notify the California Economic Development Department within 15 days when a worker files a claim and again when the claim is closed. Employers must request and the California Employment Development Department provides a Notice of Determination for any Voluntary Plan worker whose PFML benefit is calculated at less than the maximum, so that the employer and worker know the full benefit the worker is entitled to under state law.

SUGGESTIONS FOR CLAIMS PROCESSING

It is possible and desirable to "clone" and adapt Minnesota's online UI claims process. While there will be some important differences in the specifics, DEED has spent considerable time and money upgrading, modernizing and streamlining its online claim system for the UI program in recent years. To the extent that that significant investment can be built upon for delivering PFML wage replacement benefits, important efficiencies can be realized.

This would allow the claims process to use wage and other employment data already available through Minnesota's UI system and not require workers to remember and enter redundant, complicated wage data from prior periods. An online calculator that estimates benefits, like the one available for Minnesota's UI program, will help workers with financial planning for their leave. In this case, structuring a Minnesota PFML claims process that builds as much as possible on existing UI data systems benefits both workers and employers. Not only does it minimize administrative and paperwork hassles, it keeps claims processing costs and associated payroll contributions to a minimum. In conversations with California program staff, the critical importance of a streamlined, online application process for processing efficiency was stressed.[6] California projects significant increases in participation over the next five years with little change in administrative costs.[7]

To maximize access, there should be adequate claims staff and a simple process that results in workers receiving benefits within two weeks of filing. Data on New Jersey's program shows that as staffing levels have declined relative to claims load, the percentage of claims distributed within 14 days has declined from 77% to 60%.

The ability to file a claim within a generous time window (49 days for California) will help ensure access. Minnesota's PFML benefit payment can build on DEED's current UI vendor relationships and be available through direct deposit or electronic payment card. Maximizing direct deposit of benefits, as Minnesota's UI system does, will help minimize problems California has had with fraudulent ATM withdrawals. However, payment by cards should still be an option for the "unbanked" population of Minnesota.

Ideally, Minnesota employers will be able to use the account they have set up for Minnesota's UI program and receive consolidated reports to verify worker information or respond to other information requests as necessary. Maximizing use of existing UI employment and wage data and minimizing redundant reporting is important for employers as well.

NOTES: CLAIMS PROCESS

[1] Filing for Disability Insurance (DI) or Paid Family Leave (PFL) Benefits
http://www.edd.ca.gov/Disability/Filing_for_State_Disability_Insurance_(SDI)_Benefits.htm
[2] https://www.youtube.com/watch?v=o6DrLs0IIow&list=UUydrq_qXRZAREX3isrGy6lg&index=4
[3] http://lwd.dol.state.nj.us/labor/fli/content/file_a_claim.html;
http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_how_to_apply.html
[4] How can I file a TDI/TCI Claim? http://www.dlt.ri.gov/tdi/TDIfile.htm
[5] 2014 NJ Workload Report
[6] November 2015 Interview with California EDD staff
[7] May 2015 Disability Insurance (DI) Fund Forecast: http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf

Section 2.3: OPTIONS AND APPROACHES FOR KEY PROGRAM ELEMENTS

HOW COULD THE PROGRAM BE FUNDED?

Continuing with the assumption that Minnesota's PFML program will be delivered as a social insurance program funded with a payroll tax, this section of the report summarizes the way current state and federal policies determine and collect premiums from workers and employers, as well as current Minnesota state government payroll tax infrastructure.

DETERMINING AND COLLECTING PREMIUMS

A number of other countries, including the majority of advanced economies, have crafted their PFML policies as social insurance policies where all, or nearly all, workers or employers pay into an insurance fund, often through a small payroll tax. A social insurance program can provide universal coverage at a very low per-person cost. While social insurance programs are popular internationally, they also have a precedent in the United States. Social Security and Medicare are the best-known national social insurance programs, but federally mandated and state run unemployment insurance systems also function similarly. In all of these programs, workers and/or employers pay into the funds during periods of work and then receive benefits from the government when needed.[1] The three state PFML programs operate in a similar manner. A social insurance model also has the advantage of risk pooling across the state instead of each individual employer or worker.

POLICIES

PUBLIC PLANS

As summarized in Table 45, in all three PFML states (California, New Jersey and Rhode Island) workers contribute a percentage of covered wages up to a wage ceiling. New Jersey, New York and Hawaii Temporary Disability Insurance programs may involve a worker contribution as well. In all cases, except those three (Temporary Disability Insurance programs in New York, New Jersey and Hawaii) the contribution rate is not tied to program usage. New York and Hawaii require employers to pay costs of providing required benefits but allow them to charge back a limited amount of those costs to workers. In Hawaii, up to one-half plan costs, but not more than 0.50% of weekly wage or $4.76 per week (whichever is less) is paid by workers, the rest by employers. New York workers can be required to pay .5% of first $120 weekly wages with employers covering the balance of costs (if any).[2]

TABLE 45: CONTRIBUTION RATES AND POLICIES

	Contribution Rate							Taxable wage ceiling
	2009	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2015**
California TDI and FLI Combined [3] (employee only)	1.1%	1.1%	1.2%	1%	1%	1%	.9%	$104,378 (4 times the maximum weekly benefit multiplied by 13 and divided by 55%)
New Jersey TDI (Employer & employee contribute) [4]	.5%	.5%	.5%	.2%	.36%	.38%	.25% employee .1-.75% employer	$32,000 (UI: 28 times the Statewide Average weekly wage)
New Jersey FLI (employee only) [5]	.09%	.12%	.06%	.08%	.1%	.1%	.09%	$32,000
Rhode Island TDI and FLI/TCI Combined[6] (employee only)	NA	NA	NA	NA	NA	1.2%	1.2%	$64,200 (annual earnings needed by an individual to qualify for the maximum weekly benefit amount)[7]
Social Security (Employer & employee) [8]	None	None	None	None	None	None	6.2% each	$118,500
MN UI (employers) [9]	None	None	None	None	None	None	.1% base rate; plus 1.66-8.9%	$30,000 (60 percent of MN average annual wage)

The tax rates and the amount of earnings subject to taxation vary, but are generally quite low (see Table 45). For example, as of 2015, employed workers covered by California's Temporary Disability Insurance/Paid Family Leave program pay a .9 percent tax on the first $104,378 of their earnings to finance the program. In New Jersey, both employers and workers contribute to the state's Temporary Disability Insurance program, but only workers contribute to the state's Paid Family Leave program. As of 2015, New Jersey employers paid at least .1% to a max of .75% on the first $32,000 of worker wages and New Jersey workers paid .25% percent for Temporary Disability Insurance program and .09% for Paid Family Leave (a combined rate of .34%). A New Jersey employer's disability tax rate is computed in a manner similar to the unemployment insurance rate.[10]

> *In 2014, New Jersey workers paid a maximum of $108 or about $2 per week. An average New Jersey employer with a rate of .5% would contribute $160 or $3 per week per worker.*

Tax rates have varied over the years, as Table 45 shows. Among the longer term programs, the rates have been relatively stable in the case of California or declined in the case of New Jersey. Statutes usually specify a range of possible rates and a process and parameters for adjustments necessary to keep the fund solvent. For example, in California the rate "shall not exceed 1.5 percent or be less than 0.1 percent" and rates cannot be adjusted more than .1% per year. In California, an ad hoc Advisory Committee, comprised of labor and employer representatives, worked with the Department and independent actuaries to develop the contribution formula to maintain a prudent reserve, reflect benefit costs, and avoid excessive volatility and instability.[11] In all three states, the tax rate is calculated to cover costs of benefits and administration of the programs.

All of the programs also include a statutory formula for defining the wage ceiling. In New Jersey that formula is tied to the UI wage ceiling. In California and Rhode Island, the ceiling is connected to other statutorily defined elements of the PFML program that move with the economy. In both Rhode Island and California, the ceiling is tied to the maximum weekly benefit so that workers are not paying beyond the point at which their benefits are maximized. Each state accomplishes this is a slightly different way (see Benefit Levels section of this report).

It is helpful to place state PFML contribution rates and amounts in the context of the total wage and benefit costs for US employers on average. Table 46 provides this comparison.

STATUTORY TAX RATE FORMULAS

Rhode Island (§ 28-40-1)

(1) The total amount of disbursements made from the fund for the twelve (12) month period ending on the immediately preceding September 30 shall be divided by the total taxable wages paid by employers during the twelve (12) month period ending on the immediately preceding June 30. The ratio thus obtained shall be multiplied by one hundred (100)

(2) If the fund balance as of the preceding September 30 is less than the total disbursements from the fund for the six (6) month period ending on that September 30, that difference shall be added to the total disbursements for the twelve (12) month period ending September 30 for the purpose of computing the fund cost rate.

California (§ 984(a)(2) of the CUIC)

The rate of worker contributions for calendar year 1987 and for each subsequent calendar year shall be 1.45 times the amount disbursed from the Disability Fund during the 12-month period ending September 30 and immediately preceding the calendar year for which the rate is to be effective, less the amount in the Disability Fund on that September 30, with the resulting figure divided by total wages paid pursuant to Sections 926, 927, and 985 during the same 12-month period, and then rounded to the nearest one-tenth of 1 percent.

New Jersey P.L. 2009 c. 195

Changed assessment used to fund the Family Leave Insurance Account from a set tax of 0.12 percent to a variable assessment that equals the rate that is sufficient to obtain a total amount of contributions equal to 125% of the benefits estimated to be payable for family disability leave benefits during the calendar year, plus 100% of the amount estimated to be necessary for the cost to administer the benefits, less the amount of net assets which will remain in the account as of December 31 of the immediately preceding year.

New Jersey P.L. 2011 c. 88

For CY 2012 and each subsequent year, a determination is made by the Commissioner of the annual rate of contribution to be paid by employees in the State Disability Fund. The rate will equal that amount which is sufficient, when added to employer contributions, to obtain a total amount of contributions equal to 120% of the benefits estimated by the commissioner to be payable for temporary disability benefits during the next calendar year, plus an amount equal to 100% of the cost of the administration of the payment of those benefits … less net assets.

TABLE 46: EMPLOYER COSTS PER HOUR WORKED, CIVILIAN, JUNE 2015

Compensation Component	Cost	Percent	Compensation Component	Cost	Percent
Total	**$33.19**	**100**			
Wages and Salary	**$22.72**	**68.5**			
Total Benefits	**$10.47**	**31.5**			
Paid Leave	**$2.30**	**6.9**	**Retirement & Savings**	**$1.70**	**5.1**
Vacation	$1.14		Defined Benefit	$1.06	
Holiday	$.69		Defined Contribution	$.64	
Sick	$.34		**Legally Required**	**$2.52**	**7.6**
Personal	$.13		SS & Medicare	$1.83	
Supplemental Pay	**$1**	**3**	Social Security	$1.45	
Overtime	$.26		Medicare	$.38	
Shift differentials	$.06		Federal UI	$.03	
Nonproduction bonuses	$.68		State UI	$.19	
Insurance	**$2.95**	**8.9**	Workers' Comp	$.46	
Life	$.04				
Health	$2.80				
Short–term Disability	$.06		**CA PFL-TDI (.9%)**	**$.20**	
Long-term Disability	$.05				

VOLUNTARY OR PRIVATE PLANS

As discussed in the Definition of Employer section of this report, California and New Jersey allow employers to provide their own coverage that is at least as good as the state plan in New Jersey or at least one element better in the case of California. Based on the most recently available data, about 3.6% of California's workers are covered for Temporary Disability Insurance and Paid Family Leave through an employer provided plan and 20% of New Jersey workers get their Temporary Disability Insurance coverage this way. In both states, employers that provide their own coverage are exempt from paying the payroll tax. However, in both cases employers are required to cover private plan oversight costs (see Table 47). Both states collect the oversight charges along with quarterly payroll taxes on behalf of their workers or for themselves.

TABLE 47: PRIVATE PLAN ADMINISTRATIVE CHARGES

	Private Plan oversight
California [12]	14% of public/state plan State Disability Insurance tax on wages (.14% in 2014)
New Jersey [13]	Actual administrative oversight costs prorated across private plan employers each year, not to exceed 1/20 of 1% of wages

While California and Rhode Island handle unemployed workers who become disabled through the normal Temporary Disability Insurance program, New Jersey has a separate Disability during Unemployment Program and account. The Unemployment Disability account is funded by interest on worker contributions withdrawn from the unemployment trust fund and an assessment of no more than .1% of taxable wages if necessary.[14]

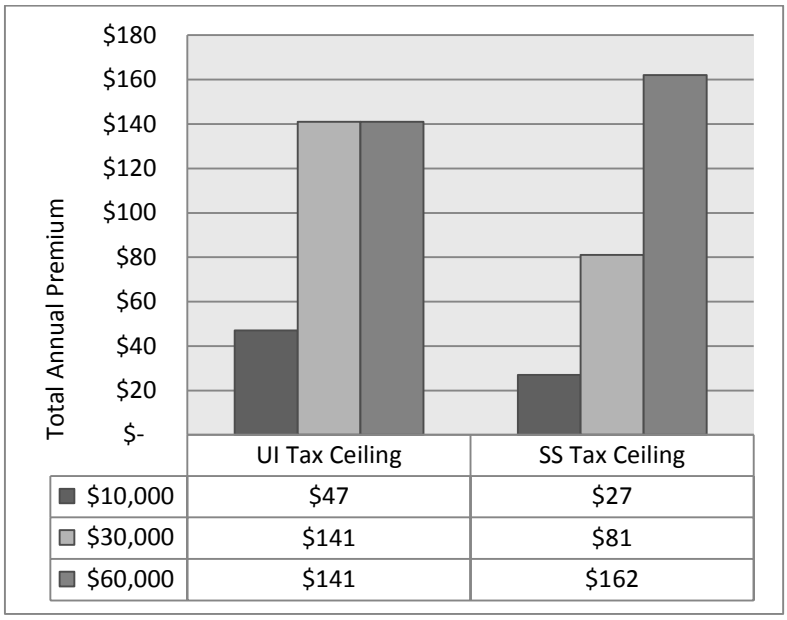
IMPLEMENTATION AND ADMINISTRATION

California, New Jersey and Rhode Island, all built their Paid Family Leave administrative systems on their existing Temporary Disability Insurance (TDI) programs. Those Temporary Disability Insurance programs, in turn, were built on top of the state Unemployment Insurance (UI) infrastructures. The programs — UI, Temporary Disability Insurance, and Paid Family Leave — have distinct policies, procedures, and funding sources, yet all three are run out of the same department and share some of the same administrative resources and the same payroll tax collection system.[15] Although in California and Rhode Island, the taxable wage ceiling is different (significantly higher) for PFML than UI.

"Indeed, the connection between these systems reflects a long-standing tie between UI and Temporary Disability Insurance programs at the national level. Since 1946, the federal laws governing the certification of state unemployment compensation programs — namely the Federal Unemployment Tax Act (FUTA) and Title III of the Social Security Act — have specifically permitted the use of funds derived from state UI taxes on workers for Temporary Disability Insurance benefits." [16]

Employers submit Paid Family Leave and Temporary Disability Insurance taxes based on their worker's wages as reported under UI quarterly reporting (for workers and themselves in the case of New Jersey Temporary Disability Insurance) along with their UI taxes and any other payroll taxes required by the employment agency. These contributions are then deposited in the appropriate fund (combined Temporary Disability Insurance/ Paid Family Leave for California and Rhode Island and separate for New Jersey).

FIGURE 14: ANNUAL PROGRAM PREMIUMS FOR SUGGESTED PROGRAM BY WORKER EARNINGS AND WAGE BASE (COSTS SHARED EQUALLY BY WORKERS AND EMPLOYERS)



SUGGESTIONS FOR DETERMINING AND COLLECTING PREMIUMS

Collecting shared premiums using a system based in part on MN UI payroll tax processes would help reduce the need for inventing an entirely new and redundant system. By replicating components of the UI system, both employer and worker contributions could be collected at the same time, and in a similar manner to how they are paid currently under the UI system. This would reduce complexity for both the employer and the state.

A higher wage ceiling allows a more robust program of wage replacement with a minimized tax burden on employers and workers. The higher wage replacement rates and maximum weekly benefits that can be provided at a very low tax rate will ensure that many more low and middle income families can make use of the program. The taxable wage ceiling is an important determinant of who will bear the costs for a Minnesota paid family and medical leave program. As shown in Figure 14, a higher taxable wage ceiling will spread the costs across a greater range of worker income, reducing the burden on the lowest wage workers who are least able to afford contributions to the program.

The goal of maximizing access to wage replacement during major medical and caregiving life events is undermined by an experience rated funding mechanism. In the case of serious health conditions for workers and their families, employers have little or no control over the triggering events.

> *"In general, social insurance programs that experience-rate employer contributions have features giving employers some control over the cost of their premiums through their own behavior, and penalize those who have higher usage rates. For instance, workers' compensation is experience-rated on the assumption that employers can take measures to provide safer workplaces, which will reduce their premiums through fewer work-related injuries and illnesses. Unemployment Insurance is experience-rated to discourage frequent layoffs and fairly allocate the costs imposed on society at large by unemployment. But employers do not have any control over whether their employees will need time off or will utilize benefits for temporary disability, parental care, or caregiving. Hence, employers should not be penalized for their employees' use of benefits. Furthermore, if employers were experience-rated based on how often employees utilized time-off programs, they might actively discourage leave taking, or discriminate against those employees perceived to be at "high risk" of leave-taking, such as women of childbearing age or employees with disabilities or young children."* [17]

Both employers and workers benefit from paid family and medical leave. As such, employers and workers could share the costs through a joint payroll tax.

> *Employers — especially small employers — benefit because the program allows them to provide their employees with paid time off at an affordable price and levels the benefits playing field among employers of all sizes. In addition, low-wage and middle-income workers will find it easier to maintain their attachment to small employers, as well as the large ones that have the ability to offer this benefit currently, increasing retention and reducing turnover costs for employers of all sizes.*

With current labor shortages, attracting and keeping the best workers in Minnesota is beneficial to all. Increased labor force participation, the potential for lower health care costs, and better physical and emotional health outcomes for children, all are broadly beneficial, leading to future economic growth

and productivity. Sharing the program costs provides a framework for shared responsibility in managing caregiving and work.[18]

Choosing a high wage base that employers are familiar with, such as the Social Security wage ceiling, would spread the costs across a larger pool of earnings (see Figure 14) and minimize confusion among employers who currently must pay social security taxes based on this ceiling. Using Minnesota's current UI tax base would minimize payroll tax infrastructure changes. However, California and Rhode Island use two different tax bases for UI and the PFML payroll taxes. In addition, a low ($30,000) tax base requires many low wage workers to contribute the same amount to the fund as high wage workers as shown in Figure 14. If Minnesota takes this route to maximize efficiencies associated with "piggy-backing" on the existing UI payroll tax collection system (as described below), the state should design the eligibility and benefit structure to ensure that low wage workers with multiple employers receive a level of wage replacement that is adequate to allow participation.

Collecting the payroll tax through the UI quarterly payroll system is possible and desirable. Cost Sharing Agreements (CSA's) with the Unemployment Insurance (UI) system to "piggyback" family and medical leave premium assessment and collection on the existing structure for collection of UI taxes is allowed by federal requirements under USDOL TEGL 6-05 and OMB Circular A-87. This type of cost-sharing arrangement is used by Minnesota's UI program, for example, to collect the Workforce Development Assessment using the UI tax collection system. Using the UI tax collection system minimizes the administrative burden of premium collection on businesses and has been a successful approach in current states where businesses find the additional collection has been minimally disruptive.

A statutorily defined formula could be established to raise or lower the premium rate within established limits. Otherwise, the fund may not be able to stay solvent without going back to the legislature. In addition, the statutes that govern the program can include a formula that allows the wage ceiling to automatically adjust to changes in the economy. Minnesota's UI system and the three state PFML programs offer a precedent for this approach.

NOTES: COLLECTING AND DETERMINING PREMIUMS

[1] Social Security Administration, "Social Security: A Snapshot" (2014), available at http://ssa.gov/pubs/EN- 05-10006.pdf.
[2] US Department of Labor, UI State Law Comparison 2015, Chapter 8:http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[3] Semi-annual Disability Fund Forecasts: available at http://www.edd.ca.gov/About_EDD/Archived_EDD_Legislative_Reports.htm
[4] http://lwd.dol.state.nj.us/labor/ea/rates/rateindex.html; Reform of New York's temporary Disability Insurance Program and Provision of Family Leave Insurance: Estimated Costs of Proposed Legislation, Technical Supplement (Figure 4): http://fiscalpolicy.org/wp-content/uploads/2014/06/Reform-of-NY-TDI-and-FLI-Technical-Supplement.pdf
[5] Ibid
[6] http://www.dlt.ri.gov/tdi/QuickRef4emp.htm
[7] Chapter 28-40-1
[8] https://www.ssa.gov/OACT/ProgData/oasdiRates.html
[9] http://www.uimn.org/uimn/employers/wages-taxes/tax-rates/index.jsp
[10] New Jersey Department of Labor and Workforce Development:Online Employer Handbook: http://lwd.dol.state.nj.us/labor/handbook/chap1/chap1sec5ExperienceRating.html#13
[11] http://www.edd.ca.gov/About_EDD/pdf/edddiforecastoct15.pdf
[12] http://www.edd.ca.gov/Disability/Employer_Voluntary_Plans.htm
[13] http://lwd.dol.state.nj.us/labor/tdi/employer/private/pp_emp_program_info.html; http://lwd.dol.state.nj.us/labor/fli/worker/private/family_leave_pp_general_information.html
[14] Department of Labor, Comparison of State UI Laws: Temporary Disability Insurance8 (2015) http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[15] Ibid, Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010
[16] 26 U.S.C. § 3304(a)(4)(A) ("all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation . . . except that: (A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration); 42 U.S.C. § 503(a)(5) ("The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act includes provision for— [. . .] (5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act: Provided, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration").
[17] Georgetown University Law Center & Berkeley Center on Health, Economic & Family Security, "Family Security Insurance: A New Foundation for Economic Security," 2010
[18] Ibid

FUND MANAGEMENT & SOLVENCY

POLICIES

The three state programs that operate as public insurance programs collect premiums as described in the Premiums section of this report and deposit them in a fund within the "state treasury" for program use (Table 48).

TABLE 48: FUND STRUCTURE

	Fund Structure	Fund Home	Administration
California [1]	One fund for Temporary Disability and Family Leave called the Unemployment Compensation Disability Fund or "Disability Insurance Fund"	State Treasury, separate and apart from all other public money or funds of this state	Necessary administrative expenses, as determined by the Director of Finance, are withdrawn from the DI fund
New Jersey [2]	State Disability Benefits Fund, with separate administrative account and unemployment disability account; separate accounts for FLI and TDI	State Treasurer	.01 percent of taxable wages is credited to the administrative account
Rhode Island [3]	One fund for Temporary Disability and Family Leave called the Temporary Disability Fund for disbursements; and an associated Reserve Fund for contributions	General Treasurer shall be custodian	Requires annual appropriation payable from the reserve fund; requires use of any available federal funds first

ADMINISTRATION AND IMPLEMENTATION

As described in the Determining and Collecting Premiums section of this report, each state has a formula in statute that is used to adjust the tax rate to ensure fund solvency. The statutory formula for calculating the contribution rate helps to maintain an adequate fund balance without having excess money in the fund. Generally, a fund balance of 1.2 to 1.5 times expected benefit payments in any given year is deemed prudent. For example, the following describes the "fund adequacy rate" for California during recent years:

> *"A DI Fund balance ranging from 25 percent to 50 percent of the prior 12 months of disbursements is generally considered adequate to maintain solvency through typical fluctuations in contributions and disbursements. The DI Fund adequacy rate was 55 percent for 2013, 58 percent in 2014, and is projected to be 51 percent for 2015, and 51 percent for 2016." 4*

In addition, to these ongoing efforts to maintain an adequate fund by adjusting premium rates, Rhode Island statutes provide the director and governor extraordinary "emergency" powers to change program parameters to protect fund solvency if necessary (see box right).

While all three states have provisions outlining the use of fund revenue for program related expenditures, generally benefits and administration, revenue has historically been loaned or otherwise (temporarily or permanently) transferred between the Temporary Disability Insurance fund, the UI fund, workforce funds and the general fund. In some ways, this is rooted in the historical connections between UI and Temporary Disability Insurance programs (for more details see the Determining and Collecting Premiums Section of this report). These transfers can and have cut both ways. Loans to the Temporary Disability Insurance fund from the UI fund have in many cases helped to cover start-up costs when adding temporary disability or family leave benefits, for example.

On the other hand, Temporary Disability Insurance and Paid Family Leave funds have been looked to in efforts to balance state budgets. A constitutional amendment prohibiting use of worker benefit funds for other purposes in New Jersey was passed by voters in 2010. Prior to passage of the constitutional amendment, in New Jersey a 2/3 majority was required in the legislature to overrule the diversions.

Also in 2010, California's Governor proposed but was unsuccessful in using $500 million from the Temporary Disability Insurance fund to pay for job training.[5] California's 2015 Disability Insurance fund balance report also includes information of the impact on fund balances of loan repayments and interest on prior advances from the UI fund.

EMERGENCY MODIFICATION OF RULES

Rhode Island § 28-39-11

(a) Whenever the director believes that a change in contribution and benefit rates shall become necessary to protect the solvency of the fund, he or she shall at once inform the governor and the general assembly of this and make recommendations accordingly.

(b) In that case the governor may declare an emergency and authorize the director to announce a modified scale of benefits, an increased waiting period, or other changes in rules and regulations regarding eligibility for payment of benefits which the director may deem necessary to assure the solvency of the fund. The modified regulation shall be in effect until the governor declares the emergency at an end, or until further action is taken by the general assembly.

FUND TRANSFERS AND INTEREST

California §3001

(b) Notwithstanding any other law, the Controller may use the moneys in the Unemployment Compensation Disability Fund for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. However, interest shall be paid on all moneys loaned to the General Fund from the Unemployment Compensation Disability Fund. Interest payable shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which loaned. This subdivision *does not authorize any transfer that will interfere with the carrying out of the object for which the Unemployment Compensation Disability Fund was created (author's emphasis).*

Statutes have also required that any loans or transfers hold harmless the rates charged to workers or employers and that the loan not impact benefits paid to eligible workers. Other provisions provide re-payment terms as described for California in box left.

SUGGESTIONS FOR FUND MANAGEMENT & SOLVENCY

Rhode Island, New Jersey and California program governing statutes include annually adjusted formulas for calculating all major program elements and maintaining a healthy but not excessive fund balance. Minnesota could do the same. While nothing short of a constitutional amendment will completely protect the fund from being used for other state purposes, regular public reports on the fund balance could be required to increase transparency and statutes include language making it clear the intention is to maintain the fund for program purposes. An advisory council can also help to draw attention to misuse or re-direction of funds and hold the system accountable.

A well-run stable fund with an adequate but not excessive surplus will serve both workers and employers well. A statutory formula agreed upon by business and labor representatives, like the one in use in California, will help ensure that balance. Every effort should be made to ensure that worker and employer contributions to an insurance fund for purposes of providing wage replacement during significant medical and caregiving events are not used for purposes outside of the PFML program. If current premium rates are generating more revenue than necessary to carry-out a high quality program, a statutory formula should be used to decrease the tax rate and minimize the financial impact on workers and/or employers. On the other hand, if not enough revenue is being generated to cover administrative and benefit costs, the formula would increase the premium. The statutes establishing Minnesota's PFML program should include a formula that ensures ongoing analysis of fund balance and premium needs and language requiring use of the fund for program administration, payroll tax collection and worker benefits. Workers are expected through program parameters to plan ahead if possible for medical and caregiving needs. If workers do their part and plan for wage replacement during qualifying leaves, the state should do the same. Large changes in premiums from year to year can contribute to economic instability and should be minimized if possible, as California's law requires.

Whether or not the program is funded by employers, they have an interest in ensuring that the fund is managed wisely and not repurposed so that workers have access to wage replacement when they need it. If employers contribute, they, like their workers, should be able to plan on premium amounts they owe from year to year, without large fluctuations.

NOTES: FUND MANAGEMENT & SOLVENCY

[1] May 2015 Disability Insurance (DI) Fund Forecast: http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf
[2] §43:21-46; November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section NJ Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee; 2014-15 legislative budget documents provided by Greg Williams available from author
[3] §28-40-3.1
[4] May 2015 Disability Insurance (DI) Fund Forecast: http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf
[5] http://calbudgetcenter.org/wp-content/uploads/100514_May_Revise.pdf

SECTION 2.4: OPTIONS AND APPROACHES FOR KEY PROGRAM ELEMENTS

HOW COULD PUBLIC AND PRIVATE BENEFITS BE COORDINATED?

As discussed throughout this report, benefits offered through the state and employers can serve similar or overlapping purposes to a PFML program. This section of the report examines the way current state and employer provided benefit programs interact with PFML programs. To the extent that a PFML program is designed to supplement and not supplant private sector benefits, it is also critical to examine how state policies are constructed to accomplish this balance.

INTERACTION WITH UNEMPLOYMENT INSURANCE & WORKERS' COMPENSATION

POLICIES

Generally, in states with PFML programs workers are not allowed to claim unemployment insurance or workers' compensation wage replacement at the same time as temporary disability and paid family leave. However, there is some variation and interaction between the three programs (as shown in Table 49).

TABLE 49: TEMPORARY DISABILITY PROGRAMS AND WORKERS' COMPENSATION

	Higher Benefit Levels	Workers' Compensation Dispute or Determination Period
California [1]	Not eligible for disability benefits unless the disability benefit is higher than the weekly workers' compensation payment; in that case, the claimant is entitled to the difference from the disability fund.	If the claimant's eligibility for workers' compensation has not been determined, he/she may receive disability benefits subject to reimbursement from any workers' compensation benefits subsequently awarded.
New Jersey [2]	Both the definition of disability and the eligibility conditions exclude disability benefits for any week for which workers' compensation, other than for permanent total or partial disability, is payable.	If a claim for workers' compensation is contested, temporary disability benefits may be paid to an otherwise eligible claimant until his/her disability becomes compensable under the workers' compensation law.
Rhode Island [3]	NA	A claimant may receive disability benefits if there is doubt as to his eligibility for workers' compensation. If the claimant later receives such benefits, he/she is liable for repayment of the disability benefits.

DISABLED WHILE UNEMPLOYED

In some cases, a worker who is receiving unemployment benefits may become temporarily disabled and therefore unable to meet UI requirements to be available and looking for work. Under these circumstances, there are different rules for which fund is responsible for the worker's benefits. According to the US Department of Labor's UI State Policy Report for 2015, "In Rhode Island, all benefits are paid from the state [disability fund] with no distinction between disabilities beginning during employment and those beginning during unemployment." [4] In California, where contracting out is permitted, there is no distinction between the amount of benefits payable to the employed and the unemployed, but the latter are charged to a special account in the state fund depending on whether the workers were covered by the state plan or a private plan when employed. Each voluntary plan pays 14 percent of the amount due annually for contributions into the state fund to finance benefits to persons who are either unemployed or in non-covered work at the time their period of disability commences." New Jersey has a separate program for disability during unemployment that is financed by interest on worker contributions withdrawn from the unemployment trust fund and possible assessment against all employers up to 0.1 percent of taxable wages.[5]

CAREGIVING LEAVE WHILE UNEMPLOYED

If workers on unemployment insurance are not able to meet program requirements to be eligible and looking for work due to an eligible paid family leave event, they are required to notify UI and make a claim to the paid family leave program.

RELATIONSHIP TO WORKERS' COMPENSATION

None of the temporary disability insurance laws are intended to replace workers' compensation, although the relationship between the two programs differs among states.

SUGGESTIONS FOR COORDINATION WITH UI AND WORKERS' COMPENSATION

The PFML, UI and Workers' Compensation programs have separate goals and incentives and workers should receive benefits from the appropriate program depending on their circumstances. Minimizing designed interaction between programs will reduce the amount of inter-agency efforts required and reduce administrative burden.

Workers should only be able to access wage replacement from one state program at a time. If wage replacement is available for a worker's own temporary disability, California's approach of allowing workers to collect the difference between PFML wage replacement and the indemnity wage replacement benefits and the policy of allowing Temporary Disability coverage during determination processes (common across programs) would maximize economic security for Minnesota families, but result in significant potential program interaction.

Minimizing designed interaction between programs will reduce the amount of inter-agency efforts required and reduce administrative burden. Requiring participants to access one program at a time accomplishes this goal. However, regular cross checking between the programs will be required to ensure workers are not "double-dipping." This has not been a significant documented problem in any of the three PFML states.

NOTES: COORDINATION WITH UI AND WORKERS' COMPENSATION

[1] http://www.edd.ca.gov/Disability/FAQ_DI_Workers_Compensation.htm
[2] http://lwd.dol.state.nj.us/labor/tdi/content/faq.html (see Can I collect temporary disability benefits if I was injured on the job?)
[3] http://www.dlt.ri.gov/tdi/tdifaqs.htm (see Q26: I filed for Workers' Compensation (WC). Can I collect TDI or TCI too?)
[4] http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf
[5] http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/disability.pdf

INTERACTION WITH MINNESOTA SAFETY NET PROGRAMS

POLICIES

Nationally, the Temporary Assistance for Needy Families (TANF) program provides support to low-income families, a majority of them single mothers with children. Several researchers have examined and theorized that women, especially low-income women, will use public assistance as a pseudo-maternity leave program in the absence of any other paid leave options.[1] Evidence suggests that the share of TANF caseloads comprised of single mothers who enter the system after a birth has been increasing and that these TANF recipients are less likely to return to TANF or remain on it for extended periods of time.[2] Research on Wisconsin's W2 (TANF) program found that between 1998 and 2004, this category of recipients increased from 18% to almost 40% of caseloads. W2 staff attributes this increase to lack of employer provided leave.[3] In CY 2013, Minnesota's TANF program (Minnesota Family Investment Program - MFIP) had 762 new enrollments by pregnant women and 2,910 new enrollments by mothers of a new baby.[4]

According to the US Department of Labor's 2012 FMLA survey about 15% of women turned to public assistance for income support when they were out of work on unpaid family or pregnancy-related leave.

Through Minnesota's TANF program, low-income families receive a monthly benefit that includes cash and food assistance. Parents also get help to find and keep a job. Families receiving MFIP who meet the income, asset and other requirements receive child care assistance and can qualify for Medical Assistance, which is a free federal and state-funded health care program. Families who have income above Medical Assistance (MA) limits can qualify for subsidized healthcare through MinnesotaCare.[5]

HANNA: A MINNESOTA PROFILE

Hanna is a single adult not receiving MFIP assistance who works at least half-time at about $9 an hour and has worked for two different low-wage employers in the last year. She is pregnant and expecting a baby in one month. Hanna does not have health insurance, paid medical leave or paid vacation leave. Because of her low wages, she has no savings to rely on if she takes time off from work after the baby is born. Hanna is not covered under FMLA because she has not worked for either of her employers for at least a year and for 1250 hours, but she plans to take 6 weeks leave when the baby is born. She will not be paid during that time. Hanna has the baby and applies for health care coverage while in the hospital. She is also granted 6 weeks PFML to care for her new baby. Without a PFML program or if she did not qualify for a PFML program, her only option may be to turn to MFIP for support.

Impact of PFML on Safety Net Program Access: Depending on how much benefit the paid family medical leave offers, she may or may not be eligible for MFIP. If she is not allowed to receive MFIP and she is going to go back to work because she had job protection under the PFML program, she will need assured access to child care assistance, because her job will not cover the cost of her child care, especially infant care which is the most expensive.

BONNIE: A MINNESOTA PROFILE

Bonnie is a single adult who works full-time for a low-wage employer. She is pregnant and expecting a baby in one month. Bonnie does not have health insurance. Bonnie is hoping to take 6 weeks leave when the baby is born. She will not be paid during that time. Bonnie has the baby and applies for health care coverage while in the hospital. She is also granted 6 weeks PFML to care for her new baby.

Impact of PFML on Safety Net Program Access: Since the income limit for Medical Assistance for pregnant women is 278% of the federal poverty guidelines, it is likely that Bonnie qualifies for Medical Assistance regardless of the PFML. Bonnie will qualify for Medical Assistance as a pregnant woman through the two calendar months following the birth. At the end of the second month, her eligibility will be redetermined. If Bonnie's monthly income is within 133% federal poverty guidelines (FPG) for a household of 2 ($21,186) she will continue to qualify for Medical Assistance. If her income is above this, but her annual income is within 200% FPG ($31,460), she will qualify for MinnesotaCare. Since Bonnie was enrolled in Medical Assistance at the time of the birth, Bonnie's newborn will have automatic eligibility for Medical Assistance through the month of her first birthday.

Minnesota's cash and food benefits are provided through an Electronic Benefit Transfer (EBT) card. Recipients are generally required to find and keep employment between 25-30 hours per week or participate in federally required work activities. Benefits change depending on income. To encourage work, in Minnesota the first $65 and 50 percent of remaining earned income does not count against benefits.[6]

Minnesota Example: A single parent of two children who does not work will get a cash benefit of $532 and food benefits of $459, for a total of $991. If the parent finds a full-time job that pays $7.25 per hour, he or she will earn $1,247 a month. With earnings of $1,247, the family receives $40 in cash and $459 in food, for a combined earnings and MFIP benefit of $1746 per month. The family income is $755 more each month than if the parent did not work.[7]

Federal TANF rules allow states to exempt recipients from work requirements for up to a year after one birth. MFIP allows the maximum year per these requirements, but there is a 12-month lifetime limit on this exemption. Parents of newborns will not be exempt from work requirements if they have previous MFIP experience and have used their 12 months exemption already.[8]

Family Stabilization Services are also available and provide a broader set of services to those caring for a seriously ill or disabled family member or struggling with mental illness, learning impairments, etc. Family Stabilization Services is a state-funded employment service track designed to serve participants who are at risk of long term welfare dependency due to employment barriers. The goal of support through FSS is also to make it possible for the participants to work.

When families exit MFIP due to increased earnings or time limits, they may still be eligible for food, health care, energy and child care assistance. For one year after receiving MFIP, families may be eligible for Transition Year Child Care. Transition year child care assistance can help families pay for child care while they work or look for work. Families may also be eligible for healthcare assistance, but eligibility is determined separately.

Data from Minnesota's Unemployment Insurance Wage System suggests that there is significant potential overlap between Minnesota workers served by MFIP and a potential new Minnesota PFML program. Most

adults who apply for MFIP are workers, 50% of whom had earnings in the quarter in which they enrolled.[9] Between 52 and 65% of MFIP recipients had wages reported to the UI system, averaging between $3,987 and $5,885 in quarterly wages (2nd quarter, 2014).[10] These earning levels suggest that many working MFIP recipients meet Minnesota's UI monetary requirements, signifying significant and sufficient attachment to the workforce.

One researcher who studied the relative benefits of Wisconsin's W2 TANF program and current paid family and medical leave program configurations (CA, NJ) found that "most of W2's new mothers would have received more benefits from welfare than from Paid Family Leave."[11] Only 31% of W2 recipients would receive a higher cash benefit under California's program and 23% under New Jersey's program.[12] In applying this scenario to Minnesota, it is also important to note MFIP recipients are also eligible for child care subsidies. This additional support is not included in the Wisconsin analysis. Minnesota's child care assistance program, particularly important for new mothers, is forecasted (guaranteed) for MFIP recipients. Other low income families may have to wait for child care subsidies depending on where they live and they face more stringent work/activity requirements than under MFIP. As of November 2015, there were 7,062 families on the waiting list for child care subsidies (Basic Sliding Fee Childcare Assistance or CCAP), more than half of them in Hennepin County.[13]

> *"Much of the focus on the Paid Family Leave debate has centered on expanding coverage to paid leave, particularly for low-income workers. These findings suggest that, at least for those with access to TANF, substituting Paid Family Leave benefits would result in a decrease in benefits for some new-mother TANF participants. Although advocates have voiced concern about women who rely on public assistance during maternity leave, families actually fare better with TANF compared with some Paid Family Leave programs."* [14]

A new paid family and medical leave program in Minnesota would have a complex and multi-faceted interaction with state programs designed to help low-income families. How Minnesota PFML wage replacement benefits are structured has an important impact on the interaction of PFML and safety net programs. The more frequent fluctuation in earnings for low-wage workers complicates the picture. Table 50 demonstrates the way that wage replacement (at various levels) based on high quarter earnings (as is the case in California and an option for Minnesota's program in this report) or alternatively on average earnings over four quarters would affect benefit levels for a hypothetical low wage worker with fluctuating earnings.

Table 50 provides an example for a working parent enrolled in the MFIP program. In this example, a working parent could receive more resources ($169-246) under PFML wage replacement based on high quarter earnings than they would receive in the quarter that they would enter MFIP ($153). In Table 50 MFIP maximum cash benefits for a parent with two children ($532) can be compared to wage replacement at various levels. Under a 55% wage replacement program based on annual earnings, the hypothetical caregiver would have less income from wage replacement than the MFIP cash grant ($464 monthly under PFML compared to $532 under MFIP). However, a 66% wage replacement program based on high quarter earnings would make PFML a more reasonable alternative ($812 PFML compared to MFIP at $532). Supplemental Nutrition Assistance Program benefits (SNAP), formerly known as Food Stamps, would be potentially available for families on PFML, which might be comparable to the food benefit on MFIP.

TABLE 50: ESTIMATED WAGE REPLACEMENT LEVELS FOR A LOW WAGE WORKER WITH UNEVEN EARNINGS

	Quarter 1	Quarter 2	High Quarter Quarter 3	Entering MFIP Quarter 4	Annual
Total Earnings	$3,000	$2,000	$4,000	$2,000	$11,000
Weekly Average	$230	$153	$307	$153	$211
		Weekly Wage Replacement based on High Quarter		Weekly Wage Replacement based on 4 Quarters (annual)	
		55%	$169	55%	$116
		66%	$203	66%	$139
		80%	$246	80%	$169

IMPLEMENTATION AND ADMINISTRATION

California, Rhode Island and New Jersey statutes are silent on the interaction of PFML programs and TANF.

With an "income exit level" for MFIP at $26,928 for a family of three (full-time minimum wage earnings equal $18,792 in Minnesota for large employers) and a low earnings threshold for PFML eligibility, many low income workers will qualify for both MFIP and PFML. MFIP considers wage replacement from either UI or Workers' Compensation as "unearned income" and as such every dollar received from either program results in a dollar reduction in MFIP cash benefits.[15] By comparison, to encourage work, in Minnesota the first $65 and 50 percent of remaining earned income does not count against benefits.

Within all of the state PFML programs in operation, workers are not eligible if they are receiving UI or workers' compensation wage replacement. In practice, it would seem that TANF and PFML are mutually exclusive. It is unclear how Paid Family Leave participants are combining means-tested support (like TANF, food stamps and child care assistance) in the three states with Paid Family Leave. California received a grant in 2015 from the US Department of Labor to study the issue. Those eligible for both programs may go one route or the other, perhaps the one they are either most familiar or comfortable with or the one that is the most financially beneficial for themselves or their family.

SUGGESTIONS FOR INTERACTION WITH SAFETY NET PROGRAMS

If Minnesota's PFML program does not offer low wage workers wage replacement levels that are competitive with MFIP and offer childcare assistance to eligible new parents taking bonding leave, workers will be more likely to turn to public assistance. In addition, the PFML program will better serve low income workers if MFIP does not subtract wage replacement dollar for dollar from benefits during new child and family care and allows eligible workers to use both programs simultaneously. This may reduce or offset some of the potential savings due to fewer families turning to MFIP during major care events. However, it will help achieve shared MFIP and Paid Family Leave goals of supporting working caregivers and incentivizing attachment to an employer.

In order to maximize access, Minnesota's paid family and medical leave program must pay special attention to those workers and families whose economic stability are most at risk and whose needs for leave are the greatest. The women and children who currently rely on or are eligible for MFIP are among the most economically and medically vulnerable, among those with the least access to paid leave of any kind and among those most likely to need leave to care for themselves and their family members, especially during pregnancy and the critical early weeks of an infant's life. Research does show that women in states with paid family or temporary disability programs are less likely to rely on public assistance following the birth of a child than women in states without these programs, especially if they use the paid leave program.16

To maximize economic stability, Minnesota could encourage eligible workers that are part of the MFIP program to simultaneously access Paid Family Leave benefits. Let's reconsider the example shared earlier in this section in light of access to a PFML program:

> *A single parent of two children who is working a full-time job that pays $9.00 per hour is earning $1,548 a month. With earnings of $1,548 and a food benefit of $348.50, the combined earnings and food benefit is $1,896.50 per month. The parent also receives child care assistance for one of the children. The other child becomes seriously ill and requires round the clock care for eight weeks. Unfortunately, she has no access to paid leave at her job. She can quit her job and see her overall benefits drop $634 per month at this critical time for her family. Or she can take a leave from her job and receive wage replacement through Minnesota's paid family and medical leave program. At 80% under a progressive wage replacement program she would still receive $1238 in wage replacement and a slightly larger food benefit, as well as continued child care assistance. At a 66% replacement rate, she would still have $1021 in "earnings benefit," food assistance and perhaps a small MFIP cash benefit. In either case, when her son has recovered, she returns to her job.*

MFIP could count wage replacement during new child and family care as earned income or treat it as unearned income that is not counted against the MFIP grant. The value of unpaid family caregiving in Minnesota is estimated at $7.9 billion annually.[17] If the care provided during family leave was carried out by someone else (i.e. a PCA or child care worker), it would be considered work (and represents a

potential increased cost to the state). The wage replacement is earned and is in lieu of wages while on leave. In this way, it is fundamentally different than unemployment or workers' compensation. Under these circumstances, it may make the most sense for wage replacement to be exempt from the dollar for dollar cut in benefits applied to workers' compensation or unemployment benefits.

Without a high replacement rate, the paid family and medical leave program will not be competitive with MFIP (as discussed earlier and shown in Table 50) and workers may not be able to afford to take leave and keep their job, leading to greater turnover costs for employers. A progressive wage replacement rate that provides higher levels of wage replacement for lower wage workers will target resources to those most in need while maintaining significant benefits for middle class families. Higher wage replacement rates at lower income levels do not add significantly to overall program costs, while providing critical resources to families without access to savings or paid leave of other kinds. Tying the progressive pay-out structure to quarterly wage data that is readily available to DEED will minimize the burden for the administering agency, workers and employers of calculating multiple benefit levels.

In order to maximize return to work incentives and workforce attachment, Minnesota could provide basic sliding fee child care subsidies to all parents who receive PFML (earning less than $33,786 for a family of three) with an infant following the leave. One of the goals of PFML is to help parents stay attached to the workforce. That would be undermined if families face a long waiting list for child care assistance at the end of the paid leave period. That would again increase the relative attractiveness of MFIP. It is important to note, however, that giving childcare assistance priority to PFML families without guaranteeing access to all Minnesota families who meet the eligibility criteria for the Basic Sliding Fee Childcare Program may increase the waiting list for other families.

An efficient PFML program provides a reasonable alternative to MFIP for low wage workers with a major caregiving event, but for those already receiving MFIP benefits, Minnesota's PFML program can build on MFIP and make sustained employment possible for low wage workers experiencing serious health events in their own or a family member's life. A revolving door in and out of employment takes its toll on workers and employers. Ensuring that workers can access wrap around supports, particularly child care subsidies, while on PFML and without leaving employment is critical to making PFML a workable solution for low income families.

In addition to MFIP, the Department of Human Services is an important conduit to workers who need paid leave access to manage their own or a family member's serious medical condition, especially those receiving services through Medical Assistance and MinnesotaCare. As a White Paper produced by the Minnesota Department of Health summarizes, paid leave has important health benefits that have the potential to reduce racial health disparities and lower healthcare costs both in the private and public sector.[18] Research on low wage worker access to PFML in California suggests that lack of program awareness is one important barrier.

NOTES: INTERACTION WITH SAFETY NET PROGRAMS

[1] Cantor, D.,Waldfogel, J., Kerwin, J.,Wright, M. M., Levin, K., Rauch, J., et al. (2001). Balancing the needs of families and employers—Family and Medical Leave surveys; Hill, H. D. (2012).Welfare as maternity leave? Exemptions from Welfare Work Requirements and Maternal Employment. Social Service Review, 86, 37–67; Lester, G. (2005). A defense of paid family leave. Harvard Journal of Law & Gender, 28, 1–83.
[2] Ybarra, Marci A. 2013. Implications of paid family leave for welfare participants. SOCIAL WORK RESEARCH 37(4): 375-87.
[3] Ibid: Ybarra
[4] Preliminary data provided by MFIP DHS/EASD/Research Unit 10/10/15
[5] Minnesota Family Assistance: A Guide to Public Programs Providing Assistance to Minnesota Families (November 2012): Research Department, Minnesota House of Representatives http://www.house.leg.state.mn.us/hrd/pubs/famasst.pdf
[6] http://mn.gov/dhs/people-we-serve/children-and-families/economic-assistance/income/programs-and-services/mfip.jsp
[7] Ibid
[8] Interview with Minnesota Department of Health and Human Services staff, November 2015
[9] Deborah Schlick, project manager, Transitions to Economic Stability, Minnesota Department of Human Services, presentation to the Select Committee on Living Wage Jobs, February 15, 2013
[10] Minnesota Family Investment Program and the Diversionary Work Program: Characteristics of December 2014 Cases and Eligible Adults (October 2015). https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4219Q-ENG
[11] Ybarra, Marci A. 2013. Implications of paid family leave for welfare participants. SOCIAL WORK RESEARCH 37(4): 375-87.
[12] Ibid
[13]http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs_id_057782
[14] Ybarra, Marci A. 2013. Implications of paid family leave for welfare participants. SOCIAL WORK RESEARCH 37(4): 375-87.
[15] Interview with Minnesota Department of Health and Human Services staff, November 2015
[16] Linda Houser and Thomas P. Vartanian.2012. Policy Matters: Public Policy, Paid Leave for Workers, and Economic Security for U.S. Parents. Rutgers, NJ: Center forWomen and Work
[17] Valuing the Invaluable: 2015 Update, AARP Public Policy Institute
[18] White Paper on Paid Leave and Health, Minnesota Department of Health, Center for Health Equity, March 2015 http://www.health.state.mn.us/news/2015paidleave.pdf

INTERACTION WITH EMPLOYER PROVIDED BENEFITS

As discussed in various sections of this report, many employers provide some paid time off to workers in the form of sick leave, vacation leave or PTO that can be used in the event of a major health or caregiving event. The goal of a state program of paid leave is not to supplant or replace current employer provided paid leave, but rather to complement or supplement it and share costs across a broader risk pool for serious conditions that require longer periods of leave. Current state paid leave programs recognize the need to coordinate state and employer provided leave and strike a balance between the two in varying ways.

POLICIES

TABLE 51: EMPLOYER AND STATE PAID LEAVE INTERACTIONS

	Required Use of Existing Leave	Combining Employer Benefits and State Wage Replacement
California [1]	PFL-Employer can require use of 2 weeks of available, employer provided vacation or PTO (not sick leave); can be used to satisfy waiting period TDI-No	Integrated leave program (see details below) allows employees to combine both to receive 100% wage replacement during leave; wages received during a period of disability or family care leave, plus DI or PFL benefits, cannot exceed the employee's normal gross weekly wage (excluding overtime pay) immediately prior to leave
New Jersey [2]	PFL-Employer can require use of 14 days of fully-paid, earned time off and reduce total leave length by the same amount; can be part of the required 7 day waiting period TDI-No, except state workers who must use all available sick leave (including donated leave) before accessing state benefits	Family Leave Insurance benefits will not be paid for any day the employee receives wages or other paid time off at **full pay**. Nothing prohibits partial pay to cover gap between replacement rate and full pay.
Rhode Island [3]	TDI/TCI - None	Can continue to receive employer pay while totally unable to work and receiving state wage replacement; employer policy dictates terms

COORDINATION OF STATE AND EMPLOYER PAY DURING LEAVE

All three of the state insurance models provide only partial wage replacement and recognize that employer provided paid leave, where and when available to workers, can be an important source of income to fill the gap between the wage replacement level and full pay. California has a specific program in place, "the Integrated Leave Program," to accommodate the coordination of state and employer provided benefits.[4]

PROVISION OF HEALTH INSURANCE DURING LEAVE

State paid leave programs, except Rhode Island's Temporary Caregiver Insurance (see box right), do not address the continuation of health insurance during leave. However, the federal FMLA and some state FMLAs (including Minnesota's Pregnancy and Parenting Leave law) require that benefits, including health care benefits, must continue while the worker is on leave, although the laws do not usually require employers to pay for these benefits during the leave period. Minnesota's Pregnancy & Parenting Leave law currently requires covered employers (those with 21 or more employees in one location) to continue health insurance benefits during 12 weeks of leave for pregnancy related disability or bonding with a new child during the first year for covered employees (working half time for past year with covered employer). Because workers take leave due to their own serious health condition or the serious health condition of a family member, the continuation of health insurance is often critical. Approximately 40% of workers are not covered by the FMLA and are not guaranteed health insurance coverage during leave. According to the 2012 FMLA survey, 62% of businesses that are not covered by FMLA continue employee health insurance benefits during an FMLA leave and 7% do not.26% of these employers don't provide health insurance at all.[5]

HEALTH INSURANCE CONTINUATION UNDER TEMPORARY CAREGIVER INSURANCE LEAVE

Rhode Island §28-41-35

(g) During any caregiver leave taken pursuant to this chapter, the employer shall maintain any existing health benefits of the employee in force for the duration of the leave as if the employee had continued in employment continuously from the date he or she commenced the leave until the date the caregiver benefits terminate; provided, however, that the employee shall continue to pay any employee shares of the cost of health benefits as required prior to the commencement of the caregiver benefits.

USE OF AVAILABLE PAID LEAVE BEFORE PROGRAM ACCESS

Both California and New Jersey allow employers to require use of up to two weeks of earned, available fully paid leave before accessing state family leave benefits (but not temporary disability benefits). New Jersey requires use of any paid time off, California only vacation or PTO. New Jersey also allows employers to deduct the number of days required from the total allowed leave length. During the last year of available data (2014), about 15% of all eligible New Jersey Family Leave Insurance claims had a reduced benefit duration due to required use of paid time off. On average claims were reduced by 10 days. The number of claims with a reduced benefit duration has been declining over the past 5 years. [6]

PRIVATE OF VOLUNTARY PLANS

As discussed in the Eligible Employer section of this report, New Jersey and California allow employers or a majority of workers to "opt-out" of the state plan and provide their own comparable (or in the case of California better) benefits.

IMPLEMENTATION AND ADMINISTRATION

COORDINATION OF STATE AND EMPLOYER WAGE REPLACEMENT

California employers apply to and are approved to integrate/coordinate wages. It is then the responsibility of the employer and the worker to ensure that the worker is not receiving more than 100% of their normal gross wages when receiving integrated/coordinated wages from their employer in conjunction with the DI or Paid Family Leave weekly benefit amount balance. Workers may give permission during the claims process for employers to receive information about benefit amounts or directly provide weekly statements detailing benefits received from the state to help ensure overpayments do not occur. In addition, California claimants indicate during the claim process if their employers will continue to pay them while on leave and the type of leave they will receive. While California staff did not have data on how many employers are formally using the integrated benefits program, they felt that many "high-road" employers do make the workers "whole" during PFML leaves. The largest challenge under these circumstances is ensuring that is no overpayment.[7] The employer portion of New Jersey's claim process requires employers to share information about types and levels of continued pay during leave. Rhode Island allows employers and workers to work out the details with no state involvement. [8]

REQUIRED USE OF EXISTING EMPLOYER PROVIDED PAID LEAVE

The New Jersey Family Leave Insurance claim process includes a section on the "Entitlement Reduction Option." Employers indicate whether they are invoking the option, the dates the worker will be required to use existing paid time off and the number of days (Part D Q5, see claim forms in Appendix B). For state workers, the Temporary Disability Insurance claim process requires employers to indicate how many days of sick leave were available as of the last day worked and information on any donated days. These existing, accumulated leave days must be used before state benefits kick-in.

VOLUNTARY OR PRIVATE PLANS

Information about the administration of Voluntary or Private Plans can be found in the Eligible Employer section of this report.

SUGGESTIONS FOR INTERACTION WITH EMPLOYER PROVIDED BENEFITS

Minnesota's PFML program could encourage "integration of benefits" with minimal state intervention to ensure 100% wage replacement when possible. Many employers "make their worker's whole" during leave, by making up the difference between state wage replacement and the workers regular wages. Supporting and encouraging workers to combine leave from the state and the employer in order to receive 100% wage replacement during leave will add to the economic stability of Minnesota families and can create stronger ties between employers and workers and help ensure that workers return to prior employment. California's approach, allowing employers to register and then requiring employers and workers to ensure there are no overpayments, strikes this balance well. Alternatively, Rhode Island's policy of leaving the particulars to employers is the least intrusive. In this case, the claim process could provide an option for workers to release benefit information to employers, which might help with the coordination process. Minnesota should adopt the least intrusive and most helpful

approach to ensuring coordination of state and private benefits. Such an approach will minimize the administrative burden on claims staff and employers.

Loss of health insurance during leave may be a significant deterrent to program use and diminish any economic stability gained through partial wage replacement. Like Rhode Island, Minnesota could include a specific provision requiring continued health insurance coverage or expand the Pregnancy & Parenting Leave law to include more employers and workers and additional qualifying events to ensure as many workers as possible do not lose employer provided health insurance during a leave. While workers may be eligible for state provided health insurance or subsidies for insurance purchased on the private market through the healthcare exchange, it would be very disruptive and time consuming to switch for such a short period of time. According to the FMLA this impacts a relatively small number of workers (7%) but could make a large difference for them. The impact of employers of a health insurance continuation requirement could be mitigated by allowing employers to require that workers pay the full cost for the insurance while on leave.

Requiring workers to or allowing employers to require that workers to use some of their accumulated leave in the short term and shifting responsibility to the broad based risk pool for longer leave balances employer and worker contributions to managing the serious qualifying medical or caregiving event balances responsibilities can be an appropriate way to balance and share responsibilities. As discussed in the Waiting Period section, this approach can serve as a "co-pay" without making the program unworkable for those without access to paid time off. While New Jersey allows this option, only a small proportion of New Jersey employers require their workers to use accumulated leave first. For some employers, requiring the usage of accumulate sick leave (not necessarily PTO or annual leave) would also be a way to allow employers to offer a more complete benefit in a manner that is administratively more efficient that developing an integration of benefits model (particularly for employers that have fairly complex or generous leave systems – like the state)

NOTES: INTERACTION WITH EMPLOYER BENEFITS

1 Cal. Unemp. Ins. Code§ 3303.1(c); http://www.edd.ca.gov/disability/FAQ_Integration_Coordination.htm
2 N.J. Stat. Ann. § 43:21-39.1(c)
3 http://www.dlt.ri.gov/tdi/tdifaqs.htm
4 http://www.edd.ca.gov/disability/FAQ_Integration_Coordination.htm
5 Note: These health insurance coverage rates pre-date implementation of the Affordable Care Act and may be different now.
6 FLI Eligible New Claims: Family Leave Insurance Workload in 2014
http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202014.pdf
TDI Eligible New Claims: Temporary Disability Workload in 2014;
http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/TDI%20Report%20for%202014.pdf
7 November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
8 http://www.dlt.ri.gov/tdi/tdifaqs.htm

SECTION 3: ESTIMATED LEAVE COSTS AND USAGE

HOW ARE THE COSTS OF LEAVE CURRENTLY DISTRIBUTED ACROSS WORKERS AND EMPLOYERS?

The IWPR/ACM simulation model (described in more detail in Appendix A) was used to estimate current paid and unpaid family and medical leaves in Minnesota and employer and worker wage costs when workers take those leaves. As the results summarized in Table 52 show:

- There are already significant costs borne by employers and workers for family and medical leave taking.
- When taking family & medical leaves, workers forego over $839 million annually in wages (uncompensated leave in Table 52) and employers provide $1.7 billion in wage replacement.
- The average cost to the worker who takes a leave is $1,900 while the average cost of employer provided benefits is close to $3,690.

TABLE 52: CURRENT MINNESOTA LEAVE USAGE AND COSTS

	Private Wage & Salary workers	State & local government workers	Self-employed	Total
Total Leaves Taken				
Own Health	212,921	29,846	28,029	270,796
Pregnancy & Bonding	60,307	8,306	6,143	74,756
Family Care	88,269	13,293	12,145	113,707
Total	361,497	51,445	46,317	459,259
Employer Wages Paid (millions)				
Own Health	$829.6	$115.0	$128.2	$1,072.8
Pregnancy & Bonding	$276.1	$46.8	$27.1	$350.0
Family Care	$228.3	$41.6	$33.5	$303.4
Total	$1,334.1	$203.4	$188.7	$1,726.2
Uncompensated Leave (millions)				
Own Health	$467.7	$55.6	$53.1	$576.4
Pregnancy & Bonding	$158.1	$22.4	$8.7	$189.2
Family Care	$59.9	$7.7	$6.5	$74.1
Total	$685.7	$85.7	$68.3	$839.7

HOW DO VARIOUS PROGRAM APPROACHES CHANGE PAID LEAVE ACCESS FOR DIFFERENT KINDS OF MINNESOTA WORKERS?

Under the current system, significant costs are already being borne and by employers (paid wages) and workers (lost wages) as summarized in Table 52. Introducing a paid leave program will increase costs overall by increasing coverage, but costs will also be shifted.

Even with a new PFML program, there are non-wage costs associated with workers taking leave – such as maintaining health benefits for workers on leave or hiring temporary replacement workers. "*These costs are not likely to change significantly for those firms that already provide FMLA or FMLA-type leaves.* In most cases, these employer costs will only change to the extent that the number of leaves taken increases, the average length of leaves increases, or the number of workers retained increases in response to the new paid leave provision." [1] Costs and benefits that are associated with current patterns of leave-taking behavior should not be included in the measurement of economic impacts of a new program. [2]

The most obvious cost associated with a new PFML program is the cost of the program itself, both benefits and administration. However, who ultimately bears these costs depends in part on the design of the program as discussed throughout this analysis but also in part on how workers and employers respond to the existence of the program. For this analysis, a payroll tax paid equally by employers and workers or paid entirely by workers is considered to cover program costs (benefits and administration).

A new PFML program will also have effects on how employers provide benefits and how workers use those benefits. As discussed in the Reasons for Leave section of this analysis, only a small percentage of employers (less than 15%) offer specific comprehensive paid leave programs for family, parental, or maternity/paternity leave. Instead, many employers offer sick leave, vacation time, and optional disability insurance. "With a mandatory, comprehensive paid leave program, it is quite likely that employers and workers would substitute specific employer-based benefits for the new broad-based program, reducing the number of leave days paid by employers. As is the case in current [PFML] states, some employers 'top-off' payments (to provide full wage replacement) under the paid leave program, still providing the benefit to employees but paying less than they would without a program."[3] A new PFML program is unlikely to lead employers to reduce the amount of sick time available to all workers (extended leaves are the exception, getting sick for a day or two is the rule), employers might change policies on allowed uses of sick time or might package several leave types into one time-off plan, as is the current trend even in the absence of a PFML program. While not reducing employer provision of sick leave, a PFML program will likely result in reduction in worker use of employer-provided paid time off such as sick time. [4]

The IWPR/ACM simulation model was used to estimate distributional effects on the number of leaves, the characteristics of the leaves (length, wage replacement), and the characteristics of workers taking leaves as well as associated employer and worker costs under possible Minnesota PFML program models. For this aspect of the simulation model, additional data from the agencies administering family and medical leave insurance programs in California and New Jersey were used for estimating the program take-up rates that are specified by the analyst as an input to the simulation models. In the simulation model, the take-up rate represents the fraction of persons eligible for the paid leave program that will participate. The model allows this fraction to be reduced further based on the program benefit level. The higher the benefit level relative to the next best alternative (which is either employer pay or nothing, if the leaver does not receive any pay) the greater the probability of participating in the program.

MINNESOTA PFML PROGRAM MODELS

For cost and distributional modelling, the following possible Minnesota PFML program models were selected by the research team, in consultation with the Minnesota Department of Employment and Economic Development, based on the policy and practice suggestions and discussion included in Section 2 of this analysis.

MODEL 1: Up to 6 Weeks of Paid Family and Medical Leave at 66% Replacement Rate and Maximum Weekly Benefit of $1,000 (similar to MN workers' compensation indemnity benefit)

MODEL 2: Up to 6 Weeks of Paid Family and Medical Leave at 66% Replacement Rate and Maximum Weekly Benefit of $640 (current MN UI maximum weekly benefit)

MODEL 3: Up to 6 Weeks of Paid Family and Medical Leave at 50% Replacement Rate and Maximum Weekly Benefit of $640 (current UI replacement rate and maximum weekly benefit)

MODEL 4: Up to 12 Weeks of Paid Family and Medical Leave at 66% Replacement Rate and Maximum Weekly Benefit of $1,000

MODEL 5: Up to 6 Weeks of Paid Family and Medical Leave using a Progressive Replacement Rate Structure (80% replacement for workers earning 50% or less of the statewide average weekly wage; 66% replacement for workers earning between 51% and 100% of the average weekly wage; and 55% for workers earning more than the statewide average weekly wage) and Maximum Weekly Benefit of $1,000

MODEL 6: Up to 12 Weeks of Paid Family and Medical Leave using a Progressive Replacement Rate Structure (80% to 55% as described under Model 5) and Maximum Weekly Benefit of $1,000 (generally the program structure suggested in this analysis)

All models assume the following:

- Worker eligibility is consistent with monetary eligibility for Minnesota's Unemployment Insurance program, presented in the Eligible Workers section of this analysis.
- Job-protection is available only for those who currently have it under Minnesota's Pregnancy & Parenting Leave law or the federal FMLA.
- Covered employers are defined in that section of this analysis, consistent with Minnesota's UI program, and all employers are covered under the state plan.
- Leaves lasting less than seven days are not eligible for wage replacement and are thus not included.
- Public and self-employed workers are excluded since it is difficult to predict how many will "opt-in" to a state program.

HOW WOULD LEAVE TAKING CHANGE UNDER PROPOSED PFML PROGRAMS?

CHANGES IN THE NUMBER OF LEAVES

The number of leaves taken in the private sector and the number of those leaves for which workers access program benefits is shown in Tables 53 and 54. Under the current policy, an estimated 361,497 family and medical leaves per year are taken in the private sector. As already discussed, almost every Minnesota worker at some point in his or her work life experiences an extended own illnesses, the serious illness of a loved one, or the birth or adoption of a child, but typically not all in the same year and certainly not every year. In a single year, about 10 percent of Minnesota workers take some form of leave for FMLA qualifying events. The results for possible Minnesota program models show that when wage replacement is provided, workers will take more leaves but not significantly more. Under the range of programs modeled, Minnesota's private employers would see an increase of between 8,000 and 25,000 leaves per year, or at most a 7% increase in the number of leaves taken overall (see Table 54).

Because of the serious nature of the leaves under consideration, workers would be expected to take leave only when absolutely necessary and would often do so even in the absence of a paid leave program. There are many reasons workers might not take the full leaves for which they are eligible, including the reluctance to fall behind at work and the desire to advance in their career. Research on paid sick days has shown that, even when workers report that they have paid sick days, the typical worker misses only two days of work in a given year.[5]

It is also important to consider the make-up of the Minnesota workforce. Men are half of the state's potential leave-taking workforce. If men are offered greater access to paid leave, will they take it—and take the full amount—to bond with a new child or to care for a sick relative? In the first ten years of California's paid family leave program, men's proportion of leaves taken for family reasons climbed from 17 percent in 2005 to 30 percent in 2013. In Norway, where leave is nearly fully paid and taking leave is less stigmatized, only 21 percent of fathers took the maximum that was available to them in 2012. Taken together, the results of these studies and others suggest that while paid leave can have an effect on the gendered nature of care leaves, change will be incremental rather than dramatic.

TABLE 53: ESTIMATED NUMBER OF LEAVES TAKEN AND RECEIVING PROGRAM BENEFITS UNDER PROPOSED MINNESOTA PFML PROGRAM MODELS

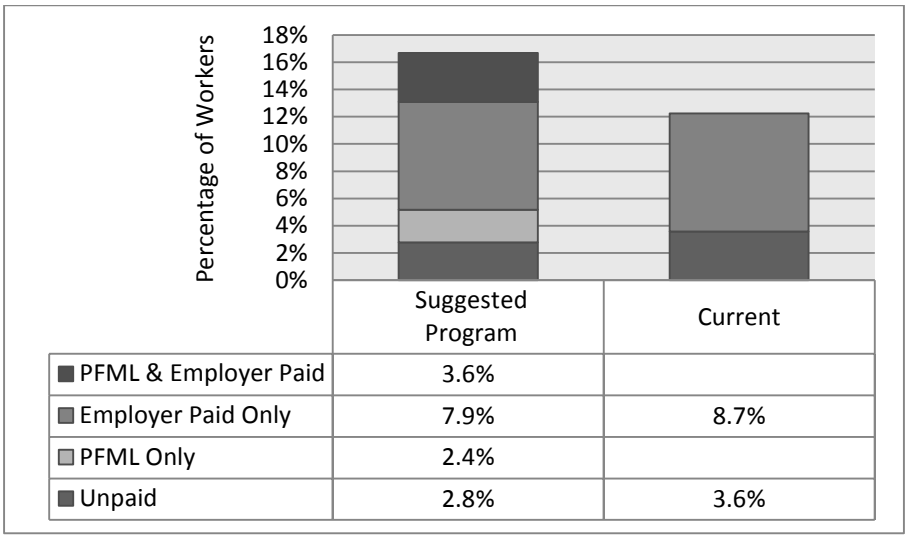
	Model 1: 66% $1000 max 6 weeks	Model 2: 66% $640 max 6 weeks	Model 3: 50% $640 max 6 weeks	Model 4: 66% $1000 max 12 weeks	Model 5: 55%-80% $1000 max 6 weeks	Model 6: 55%-80% $1000 max 12 weeks
Total Leaves Taken	378,987	381,385	369,471	376,129	386,151	375,648
Number Receiving Program Benefits	136,206	135,784	131,665	134,844	141,629	135,845

TABLE 54: ESTIMATED LEAVE-TAKING UNDER PROPOSED MINNESOTA PFML PROGRAM MODELS

	Own Health	Pregnancy-related Disability	New Child Bonding	Other Family Care	Total
Model 1: 66%/$1000/6 weeks	222,352	29,569	35,208	91,858	378,987
Model 2: 66%/$640/6 weeks	223,526	29,450	34,745	93,664	381,385
Model 3: 50%/$640/6 weeks	221,693	29,015	32,109	86,654	369,471
Model 4: 66%/$1000/12 weeks	224,843	29,637	33,302	88,347	376,129
Model 5: Progressive/$1000/6 weeks	230,189	29,429	35,387	91,146	386,151
Model 6: Progressive/$1000/12 weeks	223,797	29,207	34,759	87,885	375,648
Current (no PFML)	212,921	28,296	32,011	88,269	361,497

As Table 53 and 54 demonstrate, program parameters might result in different kinds of worker and employer responses that may seem counter intuitive. The simulation model incorporates a complex array of responses and decision-making of employers and workers based on best available options. Researchers have theorized, for example, that a more generous program (such as Model 6) might result in more employers reducing their own coverage assuming workers will access a state program instead. Under this scenario, if workers choose not to access program benefits through the state based on lack of knowledge, inconvenience or other reasons, the total number of leaves taken might be less than under a less generous program (Model 5 for example) that does not result in employers reducing benefits.

FIGURE 15: PERCENT OF MINNESOTA WORKERS TAKING FAMILY & MEDICAL LEAVES BY COMPENSATION DURING LEAVE UNDER CURRENT AND SUGGESTED PFML PROGRAM (MODEL6)



ACCESS TO WAGE-REPLACED LEAVE

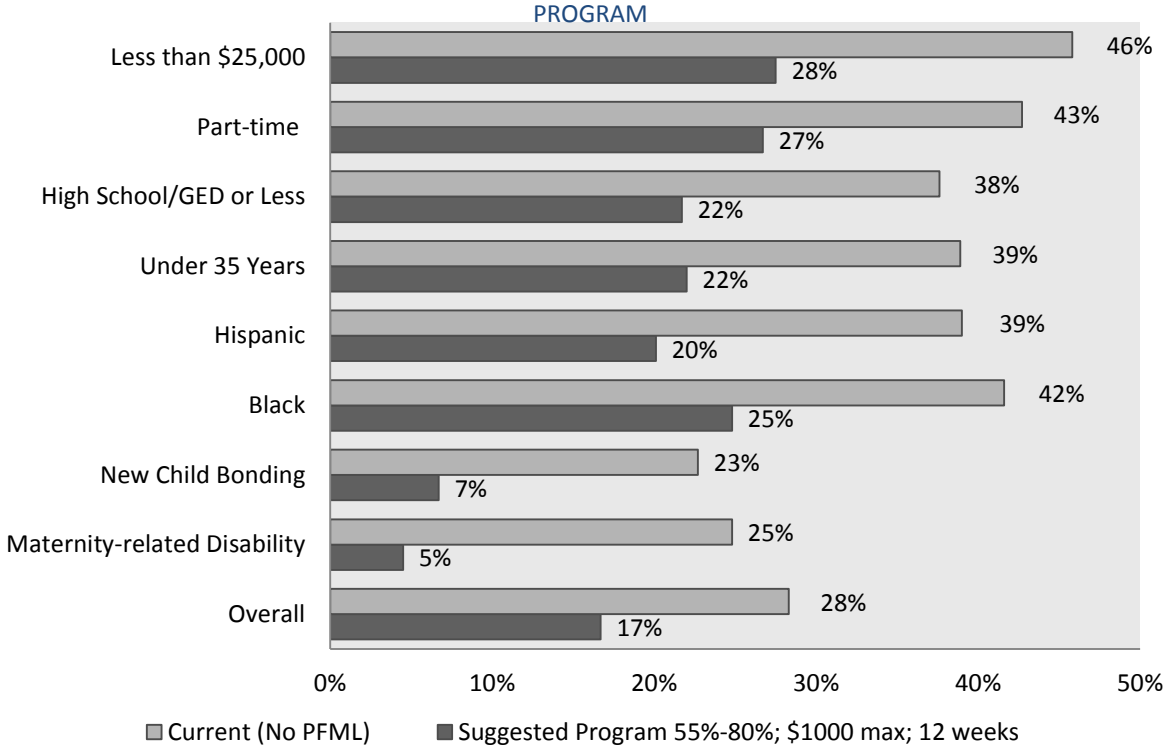
While the number of leaves does not increase appreciably, simulation modelling suggests that Minnesota PFML program models will significantly increase access to wage replacement while on leave.

- Overall the proportion of workers taking uncompensated leaves drops 40%, from 28.3% to 16.7%.
- The largest drops occur for uncompensated pregnancy-related disability leaves. Without PFML, 25% of those leaves are uncompensated. That falls to between 4 and 6% with a program – an 81% drop.
- An almost equally dramatic drop occurs for bonding/parental leaves, a 70% decrease under the most generous program model.

As outlined in Section 1 of this analysis and Table 55, leaves taken by Minnesota's low-income, non-white, younger, and less educated workers are the ones least likely to be paid currently. All of the proposed paid leave programs increase access to wage replacement while on leave generally and also reduce disparities among workers.

- Currently only 55 percent of leaves taken by workers earning less than $25,000 annually are paid. Under proposed PFML models, that percentage rises to just over 70%.
- The proportion of leaves which are uncompensated for Minnesota's Hispanic workers declines by almost 50%, from 40% to 20%.
- A similar decrease occurs for African Americans, dropping from almost 42% to less than 25%.

FIGURE 16: PERCENTAGE OF MINNESOTA PRIVATE SECTOR LEAVES THAT ARE UNCOMPENSATED, CURRENTLY AND UNDER THE SUGGESTED PROGRAM



Source: IWPR/ACM Family and Medical Leave Simulation Model

TABLE 55: SHARE OF LEAVES THAT RECEIVE NO COMPENSATION UNDER PROPOSED PROGRAMS

	Current (No PFML)	Model 1: 66% $1000 max 6 weeks	Model 2: 66% $640 max 6 weeks	Model 3: 50% $640 max 6 weeks	Model 4: 66% $1000 max 12 weeks	Model 5: 55%-80% $1000 max 6 weeks	Model 6: 55%-80% $1000 max 12 weeks
Overall	28.3%	14.2%	17.8%	17.3%	16.7%	17.0%	16.7%
Reason for Leave							
Own Health	29.8%	17.0%	17.2%	16.9%	16.6%	16.8%	16.9%
Preg. Disability	24.8%	5.1%	4.6%	4.1%	5.0%	5.7%	4.5%
New Child Bonding	22.7%	7.8%	8.0%	7.9%	7.3%	8.0%	6.7%
Family Care	27.8%	26.9%	27.0%	26.2%	24.5%	24.7%	24.0%
Gender							
Men	26.2%	16.7%	17.2%	17.3%	16.6%	16.9%	17.1%
Women	30.1%	18.4%	18.3%	17.2%	16.8%	17.1%	16.3%
Race & Ethnicity							
White	26.9%	16.7%	16.8%	16.6%	15.9%	16.3%	16.0%
Black	41.6%	29.3%	31.9%	23.5%	22.1%	24.8%	24.8%
Hispanic	39.0%	26.2%	26.2%	24.5%	23.4%	23.7%	20.1%
Asian & Pacific Isl.	25.3%	11.2%	10.4%	15.6%	17.4%	12.6%	16.1%
Other/Mixed	43.5%	21.7%	20.7%	19.1%	21.9%	26.1%	24.5%
Age							
Under 35 Years	38.9%	23.0%	23.2%	22.6%	22.0%	21.2%	22.0%
35 to 44 Years	22.7%	14.2%	15.0%	13.3%	12.7%	15.0%	12.3%
45 to 54 Years	22.0%	14.2%	13.9%	14.4%	13.4%	13.8%	13.2%
55 Years and Older	26.1%	17.0%	16.7%	16.5%	16.7%	16.5%	17.4%
Educational Attainment							
HS/GED or Less	37.6%	23.9%	24.0%	23.5%	22.1%	21.9%	21.7%
Some College or Associates	30.1%	18.9%	19.2%	18.5%	18.1%	18.6%	18.7%
Bachelors	19.5%	10.6%	10.8%	10.6%	10.8%	11.9%	9.9%
Masters, PhD, Prof	13.1%	7.5%	7.4%	7.8%	6.3%	6.5%	7.4%
Work Schedule							
Part-time	42.7%	25.8%	25.6%	25.6%	27.0%	26.5%	26.7%
Full-time	24.5%	15.4%	15.7%	15.1%	14.1%	14.5%	14.0%
Total Personal Earnings							
Less than $25,000	45.8%	29.5%	29.4%	28.0%	27.3%	27.6%	27.5%
$25,000 to $49,999	26.9%	16.1%	16.7%	16.6%	15.9%	15.3%	15.4%
$50,000 to $74,999	19.4%	9.6%	9.7%	10.2%	10.8%	10.5%	10.5%
$75,000 to $99,999	14.9%	8.8%	8.5%	8.7%	6.3%	8.8%	8.1%
$100,000 or More	8.2%	5.3%	4.4%	4.8%	5.5%	6.4%	5.0%

With a broad-based PFML program, why are some leaves still uncompensated? Recall from earlier sections of this analysis, that a large proportion of leaves fall outside program specified parameters. A quarter of all Minnesota leaves for FMLA qualifying reasons are less than a week long and would not qualify for the programs modelled. Workers without paid sick or vacation leave may still find themselves taking uncompensated leave for these shorter term situations. Even with the suggested and modelled low earnings threshold for eligibility, some workers (especially part-time ones) will not be eligible for the program. Finally, some proportion of workers will choose not to use the program for a variety of reasons or because they are not aware of the program. As discussed in another section of this report, program awareness remains a significant problem in the three states with PFML programs.

While the proportion of workers who will have access to some compensation during leave is important, the level of compensation is also dependent on the program design parameters. Table 56 shows the average weekly benefit amount under each of the program models.

TABLE 56: LEVELS OF WAGE REPLACEMENT UNDER VARIOUS PROGRAM MODELS

	Model 1: 66% $1000 max 6 weeks	Model 2: 66% $640 max 6 weeks	Model 3: 50% $640 max 6 weeks	Model 4: 66% $1000 max 12 weeks	Model 5: 55%-80% $1000 max 6 weeks	Model 6: 55%-80% $1000 max 12 weeks
Own Health	$533	$450	$387	$538	$592	$575
Maternity-related Disability	$469	$410	$345	$447	$485	$523
New Child	$619	$501	$433	$607	$623	$650
Family Care	$515	$447	$369	$535	$575	$604
Overall	$535	$451	$387	$535	$581	$579

PREDICTED CHANGES IN LEAVE DURATION

Table 57 shows average lengths of leaves currently and with the proposed paid leave programs in place.

- There is a shift from employer wage benefits to the paid leave program and the average length of all leaves increases by around one week, with the most generous program increasing leave by a little more than a week on average.
- Duration of leaves to manage a worker's own serious health condition, other than pregnancy, increase the most, by almost 2 weeks under the most generous proposed program.
- Leave to care for a seriously ill family member remains virtually the same and the shortest type of leave, at a little more than 3 weeks.

With any of the proposed PFML programs in place, around 22% of leaves will not qualify under the one-week minimum. Twenty-six percent (26%) of all family and medical leaves last one week or less. Leaves to care for a seriously ill family member are most likely to fall into this category, with around 37% being less than one-week long. The proportion of leaves that are one week or less falls in every category but not dramatically under all proposed PFML programs, as summarized in Table 58, compared to current

circumstances. The percentage of very short (less than a week) leaves for pregnancy-related disability and new child bonding fall the most under proposed programs.

TABLE 57: AVERAGE NUMBER OF LEAVE WEEKS TAKEN UNDER CURRENT AND PROPOSED PROGRAM MODELS

	Own Health	Pregnancy-related Disability	New Child Bonding	Other Family Care	All
Current (No PFML)	6.1	10.3	5.1	3.3	5.6
Model 1: 66%/$1000/6 weeks	7.1	10.2	5.2	3.3	6.2
Model 2: 66%/$640/6 weeks	7.1	10.2	5.2	3.2	6.2
Model 3: 50%/$640/6 weeks	7.3	10.1	4.9	3.3	6.3
Model 4: 66%/$1000/12 weeks	7.7	10.4	5.2	3.2	6.6
Model 5: Progressive/ $1000/6 weeks	7.1	10.0	5.3	3.4	6.3
Model 6: Progressive/ $1000/12 weeks	7.9	10.7	5.3	3.3	6.8

TABLE 58: SHARE OF LEAVES TAKEN THAT ARE LESS THAN ONE WEEK

	Own Health	Pregnancy-related Disability	New Child Bonding	Other Family Care	All
Current (No PFML)	22.3%	9.6%	30.0%	39.6%	26.2%
Model 1: 66%/$1000/6 weeks	18.4%	3.9%	20.9%	37.9%	22.2%
Model 2: 66%/$640/6 weeks	18.6%	4.1%	20.4%	37.7%	22.3%
Model 3: 50%/$640/6 weeks	18.2%	4.3%	18.7%	36.6%	21.6%
Model 4: 66%/$1000/12 weeks	17.8%	5.6%	19.7%	38.0%	21.7%
Model 5: Progressive/ $1000/6 weeks	17.6%	5.0%	21.3%	37.2%	21.6%
Model 6: Progressive/ $1000/12 weeks	17.7%	5.0%	19.3%	37.3%	21.4%

HOW ARE THE COSTS OF LEAVES REDISTRIBUTED UNDER VARIOUS MINNESOTA PFML PROGRAM MODELS?

The estimated number of leaves taken and associated costs under the six alternative program models are shown in Tables 59 and 60 along with the distribution of the cost across employers, workers, and a proposed paid leave program.

TABLE 59: ESTIMATED LEAVES AND ASSOCIATED COSTS FOR PRIVATE SECTOR EMPLOYERS UNDER PROPOSED MINNESOTA PFML PROGRAM MODELS

	Model 1: 66% $1000 max 6 weeks	Model 2: 66% $640 max 6 weeks	Model 3: 50% $640 max 6 weeks	Model 4: 66% $1000 max 12 weeks	Model 5: 55%-80% $1000 max 6 weeks	Model 6: 55%-80% $1000 max 12 weeks
Total Leaves Taken	378,987	381,385	369,471	376,129	386,151	375,648
Number Receiving Program Benefits	136,206	135,784	131,665	134,844	141,629	135,845
$ Millions						
Benefit Cost	$273.8	$233.3	$199.0	$391.2	$318.0	$431.6
Employer Wages Paid	$1,271.5	$1,283.8	$1,336.8	$1,299.8	$1,258.1	$1,288.7
Uncompensated Leave	$712.7	$774.6	$866.6	$789.3	$725.8	$745.9
Total Cost of Leave	$2,258.1	$2,291.7	$2,402.5	$2,480.3	$2,301.9	$2,466.1
Administrative (7% of benefits)	$19.2	$16.3	$13.9	$27.4	$22.3	$30.2
Total Program Cost	$293.0	$249.6	$213.0	$418.6	$340.2	$461.8
Average leave cost	$2,151	$1,838	$1,617	$3,104	$2,402	$3,399

The total cost of the PFML program ranges from $213 million to $461 million per year. Between 131,665 and 141,629 workers will use benefits under a paid leave program. About 5.3% percent of all covered workers in the private sector would use the program annually. Table 60 breaks program benefit costs out by type of leave.

Currently, in the absence of a Minnesota PFML program, around 64% of employer and worker costs associated with leaves is attributable to leaves for non-pregnancy-related own serious health conditions. With a program in the state, that percentage grows to almost 70% of total costs under the most generous model (Model 6). (Total costs include those borne by workers through lost wages, employers through their benefit programs, and by the state through the new program itself.)

TABLE 60: ESTIMATED BENEFIT COSTS (IN MILLIONS, EXCLUDING ADMINISTRATIVE COSTS) BY TYPE OF LEAVE FOR PRIVATE SECTOR WORKERS UNDER PROPOSED MINNESOTA PFML PROGRAM MODELS

	Own Health	Pregnancy -related Disability	New Child Bonding	Other Family Care	Total
Model 1: 66%/$1000/6 weeks	$222.2	$26.8	$21.1	$3.7	$273.8
Model 2: 66%/$640/6 weeks	$188.8	$23.9	$17.2	$3.3	$233.3
Model 3: 50%/$640/6 weeks	$164.6	$18.7	$13.1	$2.7	$199.0
Model 4: 66%/$1000/12 weeks	$311.1	$45.1	$30.3	$4.8	$391.2
Model 5: Progressive/$1000/6 weeks	$252.3	$32.7	$26.0	$7.0	$318.0
Model 6: Progressive/$1000/12 weeks	$341.6	$48.8	$36.4	$4.7	$431.6

In Figure 17, the proportion of Minnesota workers taking leaves for FMLA qualifying reasons under current law and the suggested PFML program (Model 6) that receive different types of compensation during leave is summarized. A significant portion of workers will continue to receive only employer pay during their leave, although that percentage shrinks with the suggested program in place. Who bears the cost of leave with the suggested program also varies across the type of leave, as shown in Table 61. For example, 75% of workers taking leave to care for a seriously ill family member receive compensation only from their employer during their leave compared to 35% of workers taking leave for their own serious health condition. This is likely due to the shorter term nature of family care leaves as discussed throughout this analysis. For this same reason, workers taking these types of leaves are less likely to have a qualifying event (at least seven days) and thus remain the most likely to receive no compensation during their leave (22%).

FIGURE 17: PERCENT OF MINNESOTA WORKERS TAKING FAMILY & MEDICAL LEAVES BY COMPENSATION DURING LEAVE UNDER CURRENT AND SUGGESTED PFML PROGRAM (MODEL6)

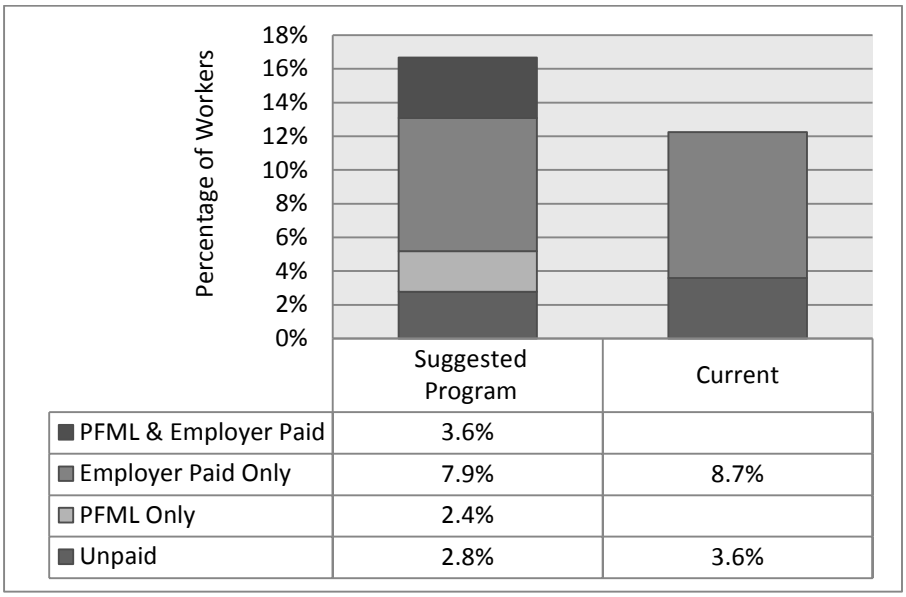


TABLE 61: PERCENTAGE OF MINNESOTA WORKERS TAKING FAMILY AND MEDICAL LEAVES ANNUALLY BY COMPENSATION DURING LEAVE AND TYPE OF LEAVE UNDER THE SUGGESTED PFML PROGRAM (MODEL 6)

	Unpaid	PFML Only	Employer Paid Only	PFML & Employer Paid
Own Health	1.4%	1.4%	2.8%	2.4%
Maternity-Related Disability	0.1%	0.3%	0.5%	0.4%
New Child	0.1%	0.3%	0.6%	0.4%
Family Care	0.5%	0.1%	1.7%	0.1%

HOW MUCH WILL WORKERS OR EMPLOYERS PAY FOR A PFML PROGRAM?

WAGE BASE AND DISTRIBUTION OF PROGRAM COSTS

Table 62 shows the estimated values of three taxable wage bases using the 2009-2013 American Community Survey for individuals employed in Minnesota and living in Minnesota, Iowa, North Dakota, South Dakota, or Wisconsin. These are used to express program costs relative to the value of earnings to estimate a premium level that would be necessary to pay for the leave benefits. The first wage base is Minnesota's unemployment insurance taxable earnings calculated as the total of the first $30,000 of wages paid to each employee. The second wage base is based on Social Security taxable earnings calculated as the total of the wages paid to each employee up to $118,500. The third wage base is the total of all earnings reported. The ACS provides information on total earnings, number of hours usually worked each week, and the number of weeks worked in the year.

TABLE 62: TAXABLE WAGE BASES FOR PRIVATE SECTOR

	Taxable Wage Ceiling	Taxable Wages (millions)
MN Unemployment Insurance*	$30,000	$48,909.10
Social Security	$118,500	$84,917.33
Total Wages		$93,305.40

*This estimate was generated by IWPR using CPS, ACS and QCEW as described above. Estimates of 2014 total taxable wages for private and nonprofit sectors provided by the Unemployment Insurance Program at DEED are slightly higher at $49.2 billion. For estimating premiums, the lower amount was used to generate the most conservative estimate.

Annually, if the premium is split equally between employers and workers the estimated *maximum* weekly cost for each would be between $1.26 and $6.20 depending on the taxable wage ceiling used and program model (see Table 63). If the Social Security (SS) wage ceiling is used, the *average* weekly cost ranges from $1.25 to $2.71 depending on the program model implemented. Costs would double, or max out at $2.52 to $12.40 per week if the premium is paid entirely by workers.

FIGURE 18: ANNUAL PROGRAM PREMIUMS FOR SUGGESTED PROGRAM BY WORKER EARNINGS AND WAGE BASE (COSTS SHARED EQUALLY BY WORKERS AND EMPLOYERS)

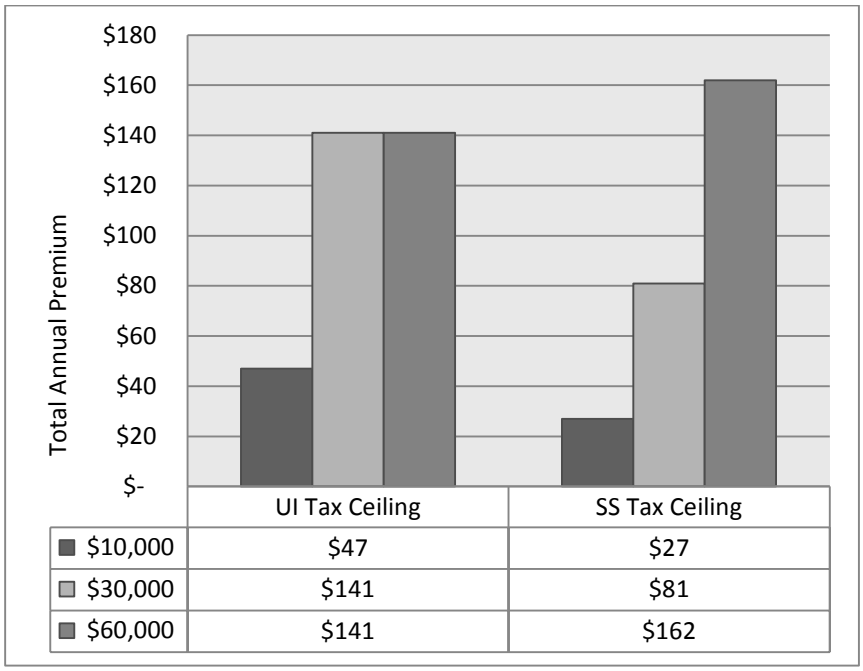


Figure 18 displays the way program funding (assuming costs are split equally between workers and employers) is distributed across income based on the wage base or taxable wage ceiling selected for the collection of premiums. In Section 2 of this analysis, use of the Social Security wage base is suggested (for more detail, see the Premiums section of this analysis). While there are administrative efficiencies associated with using the UI wage base as discussed in Section 2, using the Social Security wage base distributes program costs across a much larger income pool and matches premium amounts more closely to a worker's ability to contribute. Under the scenario depicted in Figure 18, a worker making $30,000 pays the same in to the program fund as one making twice as much ($60,000) if the UI wage base is used. By spreading costs over the larger Social Security wage base, the annual premium for the worker making $10,000 can be dropped from $47 to $27. However, Figure 18 also shows that even if the UI wage base is used, the worker earning $10,000 would be contributing less than a $1 per week for access to wage replacement during leave.

TABLE 63: ESTIMATED TOTAL PREMIUM LEVELS NEEDED TO FUND PROPOSED MINNESOTA PFML PROGRAM MODELS (ADMIN @ 7% AND BENEFITS)

	Model 1: 66% $1000 max 6 weeks	Model 2: 66% $640 max 6 weeks	Model 3: 50% $640 max 6 weeks	Model 4: 66% $1000 max 12 weeks	Model 5: 55%-80% $1000 max 6 weeks	Model 6: 55%-80% $1000 max 12 weeks
Benefit Cost as a Percent of UI Wage Base	0.60%	0.51%	0.44%	0.86%	0.70%	0.94%
Benefit Cost as a Percent of SS Wage Base	0.35%	0.29%	0.25%	0.49%	0.40%	0.54%
Benefit Cost as a Percent of Total Wages	0.31%	0.27%	0.23%	0.45%	0.36%	0.49%
Maximum weekly cost for each, employer & worker @ UI Tax Ceiling ($30,000)	$1.73	$1.47	$1.26	$2.47	$2	$2.72
Maximum weekly cost for each, employer & worker @ SS Tax Ceiling ($118,500)	$3.93	$3.35	$2.86	$5.62	$4.56	$6.20
Average weekly employer & worker cost, each @ SS Tax Ceiling ($118,500)	$1.73	$1.47	$1.25	$2.46	$2	$2.71
Maximum annual contribution (UI), per worker/employer, each	$89.87	$76.55	$65.32	$128.39	$104.34	$141.62
Maximum annual contribution (SS)	$204.45	$174.16	$148.60	$292.09	$237.40	$322.19
Average annual contribution (SS)	$89.72	$76.42	$65.21	$128.18	$189.61	$257.35

TABLE 64: ESTIMATED TOTAL PREMIUM (EMPLOYER/WORKER COMBINED) NEEDED TO FUND PROPOSED MINNESOTA PFML PROGRAM MODELS (ADMIN @ 7% AND BENEFITS) BY WAGE BASE AND TYPE OF LEAVE

	Wage Base	Own Health	Maternity -related Disability	New Child Bonding	Other Family Care	Total
Model 1: 66%/$1000/6 weeks	**UI**	0.48%	0.06%	0.04%	0.01%	0.59%
	SS	0.28%	0.03%	0.03%	0.005%	0.34%
Model 2: 66%/$640/6 weeks	**UI**	0.41%	0.05%	0.04%	0.01%	0.50%
	SS	0.23%	0.03%	0.02%	0.004%	0.29%
Model 3: 50%/$640/6 weeks	**UI**	0.36%	0.04%	0.03%	0.01%	0.43%
	SS	0.21%	0.02%	0.02%	0.004%	0.25%
Model 4: 66%/$1000/12 weeks	**UI**	0.66%	0.09%	0.06%	0.01%	0.82%
	SS	0.38%	0.05%	0.04%	0.01%	0.47%
Model 5: Progressive/$1000/6 weeks	**UI**	0.55%	0.07%	0.06%	0.02%	0.70%
	SS	0.32%	0.04%	0.03%	0.01%	0.40%
Model 6: Progressive/$1000/12 weeks	**UI**	0.75%	0.11%	0.08%	0.01%	0.94%
	SS	0.43%	0.06%	0.05%	0.01%	0.54%

The total cost (employers, workers and state) for leaves increases by between $238 million and $460 million annually (an 11 percent to 22 percent increase over total current costs). While costs increase over all, they also shift in two ways. First, the total costs borne by all workers increases, as this analysis suggests that workers contribute half the new Minnesota PFML program costs. In addition, to the extent that some workers take additional leave under a program that they would not otherwise have taken and receive only partial wage replacement, the "out of pocket contributions" will increase total uncompensated leave. However, the costs for any worker taking leave is reduced, as the cost of the program is shared by all workers. Social insurance programs, including this one, share the costs among all workers even though at any point in time not all workers use the program. Given the high likelihood of taking a leave or being a recipient of care from someone taking a leave, many if not most workers are likely to benefit from this program over their work lives. Finally, some proportion of workers will choose not to use the program for a variety of reasons or because they are not aware of the program. This is because the model estimates whether a worker will use a paid leave program versus what the employer provides. However, these decreases are offset by the employer share of the premiums (as proposed in this analysis). When the program benefits are more generous than those offered by an employer, a worker will use the insurance program. As a result, employers end up spending less on providing workers sick days and other paid days off when workers substitute these paid days off for the paid family and medical leave program.

HOW MUCH WILL IT COST TO START AND ADMINISTER THE PFML PROGRAM?

START-UP COSTS

The three states with PFML programs built their family leave insurance components on temporary disability program infrastructure that had been in place since the 1940's or 50's. Accordingly, their start-up and implementation experiences are not applicable in many ways and need to be adapted for the 45 other states, including Minnesota, that do not have a temporary disability program to build on.

In 2007, Washington State passed legislation creating a paid parental (baby bonding) leave program. While the program was statutorily established, a funding mechanism was not. Legislation has been introduced to collect premiums and expand the benefits provided under the original program to include medical and other family leave. Other aspects of the proposed legislation include:

- 4 year implementation period with two years of start-up activity, family leave rolled out in third year and medical leave in the 4th year
- 12 weeks of leave for bonding and family care and another 12 weeks for own medical care (temporary disability)
- Benefit level of 5.2% of average quarterly wages to a max of $1000

Given the passage of a program, Washington state agencies have done significantly more work than any other state without an existing Temporary Disability Program infrastructure to consider the fiscal implications of implementation. This work provides an excellent starting point for better understanding the potential start-up tasks and costs as well as the nature and costs of ongoing administration for a Minnesota PFML program that builds on UI infrastructure. In Washington, UI is administered by the Employment Security Department. Washington is similar to Minnesota, in that it also has a separate Department of Labor and Industry.

Washington's Employment Security Department estimates start-up costs at $11.6 million over two years. Key assumptions include:

- Piggy-backing on UI data and payroll collection system using a cost-sharing agreement (this would look similar to the arrangement the Minnesota currently has in order to use the UI system to collect the Workforce Development Assessment)
- Creation of new system to deal with Elective Coverage for employers not currently covered under UI
- Creation of a new claims/benefit process that would use UI data to determine program eligibility
- Consolidated employer reports
- Major rulemaking on both the premium and benefit sides
- The key components for program implementation include project team, one time facilities and initial outreach, information technology staffing and equipment as well as agency indirect costs

Minnesota UI staff provided an initial review of the Washington State Fiscal note to assess it as a model for estimating Minnesota PFML start-up and administrative costs. While it provides a good general map, Minnesota UI staff suggests that Washington has significantly underestimated the costs of developing the

new claims processing infrastructure, including a sophisticated and functional online claim system. They estimate $20 - $30 million to ensure a well-tested and "functional on day one" online claims processing system based on recent experience overhauling Minnesota's UI claims processing system. Adaptation of the payroll collection system is also estimated to be higher than Washington's estimate to accommodate the potential use of alternate tax base ($15 million versus $7 million). Interviews with California staff also suggest that significant attention to and investment in the Information Technology program infrastructure is critical to success. This analysis suggests a conservative estimate for start-up costs at approximately $60 million over four years ($5 million for planning and rulemaking, $15 million for adding payroll collection of the new premium, $30 million for adapting the UI Information Technology claims infrastructure, and a $10 million augmentation in administrative costs during year 1 of claims processing).

TABLE 65: REVENUE GENERATED BY PREMIUMS AND ALTERNATIVE WAGE BASES

		.1 % premium		.2 % premium		.4% premium	
(millions)	**Wage Base**	**Annual**	**6 months**	**Annual**	**6 months**	**Annual**	**6 months**
UI	$48,909.1	$48.9	$24.5	$97.8	$48.9	$195.6	$97.8
Social Security	$84,917.3	$84.9	$42.5	$169.8	$84.9	$339.7	$169.8

START-UP TIMELINE

Minnesota could phase in the premium collection. As Table 65 summarizes, a .2% payroll premium on the UI wage base would yield $49 million or $85 million based on SS wage base for the PFML fund over a 6 month period during the second half of the first start-up year. This level of funding would be sufficient to cover the start-up costs in beginning in the second half of year 2 of the start-up phase and begin accumulating a surplus for administrative costs in start-up year 3 as well as program benefits that would begin to be paid out in year 4. Table 66 shows a possible start-up timeline with a premium level that increases gradually, assuming the UI wage base and the suggested program Model 6.

TABLE 66: START-UP COSTS AND TIMELINE FOR PROGRAM MODEL 6, USING UI TAX BASE

	Year 1		**Year 2**		**Year 3**		**Year 4**	
			.2% premium		**.4% premium**		**.94% premium**	
Millions	**1st half**	**2nd half**	**1st half**	**2nd half**	**1st half**	**2nd half**	**1st half**	**2nd half**
Revenue Collected	$0	$0	$0	$49	$97	$97	$ 229	$229
Start-up Expend	$5	$10	$5	$10	$10	$10	$5	$5
Admin Expend	$0	$0	$0	$0	$0	$10	$15	$15
Benefits Expend	$0	$0	$0	$0	$0	$0	$213	$213
Fund Balance	$(5)	$(15)	$(20)	$19	$106	$183	$179	$175
Activity	Planning	Set-up Revenue Collection		Set-up claims process; test system; hire and train processors			Begin processing claims	

ONGOING ADMINISTRATIVE COSTS

Ongoing program administration will require certain fixed costs as well as variable costs. Costs associated with maintaining the revenue collection and claims processing infrastructure will be largely fixed, as will some program elements like outreach to employers and workers, public and legislative reporting and relations. Other costs will vary based on the number of claims and program design decisions, such as:

- Which FMLA events will be covered? Bonding claims are the most straightforward, requiring less claims staff involvement and intervention, and own medical or Temporary Disability Insurance are the most complex, requiring more complicated medical determinations.
- How long will benefits be available and will intermittent or partial return to work leave be allowed? Longer leaves will not necessarily add more staff time to the process depending on how much they can be automated, but the number of times workers access the system to manage intermittent or partial returns could increase the need for claim staff intervention.
- How will eligibility and benefit levels be determined? Building on current data collection will minimize the administrative costs associated with both.

Administrative costs can be expected to be higher in the first years of the program and marginal cost increases based on growth in claims should decline over time as experience increases, the system becomes more efficient and fixed costs are spread over a larger number of claims. For example, California's fairly mature PFML program estimates an 8% growth rate in the number of first PFML claims (65,000 more) between 2013 and 2016, while administrative costs remain somewhat flat around $254 million. Overall administrative costs as a percent of total program costs during the same time actually fall from around 4.8% to 4.1%

TABLE 67: ADMINISTRATION AND WAGE REPLACEMENT COSTS FOR CURRENT PROGRAMS, 2014

Program	Admin Costs as a Percent of Total Program Costs	Admin Costs as a Percent of Benefits	Total Wage Replacement Benefits	Total Annual Admin Cost	Cost per Claim*
CA TDI/FLI[6]	4.5%	4.7%	$5.28 billion	$250 million	$270
NJ TDI ** [7]	5.4%	5.7%	$418 million	$23.7 million	$149
NJ FLI ** [8]	2.9%	2.9%	$83 million	$2.4 million	$53
WA Estimate [9]	3.9%	4%	$432 million	$17.6 million	$189
MN UI	6.1%	6.5%	$827 million	$53.8 million	

*Rough estimate based on number of first claims divided by total admin costs; as such the number represents more than just the physical processing of each claim. It also is assigned a share of program wide costs.
**Calculated based on cost per claim multiplied by total number of claims

Administrative costs for a new PFML program in Minnesota are estimated conservatively at 7% of wage replacement benefits. This level of administration is somewhat higher than current PFML programs and

estimates for Washington. The higher (7%) administrative cost incorporated in projected program costs in this analysis also reflects options throughout that:

- add administrative complexity but benefit workers and employers (allowing intermittent leave and partial return to work options, for example)
- call for sophisticated, online wage replacement process that pays the vast majority of claims within two weeks of filing
- provide higher levels of service than current programs, particularly in the area of ensuring access (grants to community-based groups, robust support of state infrastructure reaching workers at critical times; ongoing and aggressive outreach)
- allow employers to offer their own better plan or elect coverage if they are exempt from the beginning which will require parallel administrative structure and additional involvement of the Department of Commerce and Revenue

These costs may fall over time, as they have in current states due to a variety of factors, including improved efficiency and the spreading of fixed costs over a larger pool of benefits. While total administrative costs might fall if the program is scaled back in a variety of ways, fixed start-up and ongoing infrastructure costs will remain and may result in administrative costs as a percentage of total program or benefit costs being higher than the estimated 7%.

TABLE 68: ADMINISTRATIVE STAFFING LEVELS FOR CURRENT PROGRAMS, 2014

	State Plan			Voluntary/Private Plan	
	Positions/FTEs	Number of First Claims Filed	Claims per Position	Positions	Number of Plans
CA TDI [10] [11]	1100-1200	695,182	579-631	12	2,551
CA FLI [12] [13]	110	227,830	2071		
NJ TDI/FLI* [14]	141	205,598	1458	41	6,191
WA TDI/FLI Estimate [15]	124	93,000	750		
MN UI [16]		240,924			

*Does not include "Disability during Unemployment" Claims

Administrative costs should be built in to the formulas that drive premium levels, as described in the Fund Solvency section of this analysis. The administering agency, likely DEED, should not have to return to the legislature to receive administrative appropriations each biennium since funding will come from the trust fund as is the case in California.

PROJECTED PROGRAM GROWTH OVER TIME

Data from the early experiences of California and New Jersey state plans are used to estimate program growth during the first five years following family leave insurance implementation. The family leave insurance growth is used in both states to try to capture the early growth as the program became more familiar to employers and workers. Both states began providing family leave insurance as an expansion of

disability insurance that had been operating for decades. In general, New Jersey's program seems to have grown more slowly than California's, so the experience of these two states suggests a range of trajectories.

FIGURE 19: NEW JERSEY PFML PROGRAM CLAIMS AND COSTS

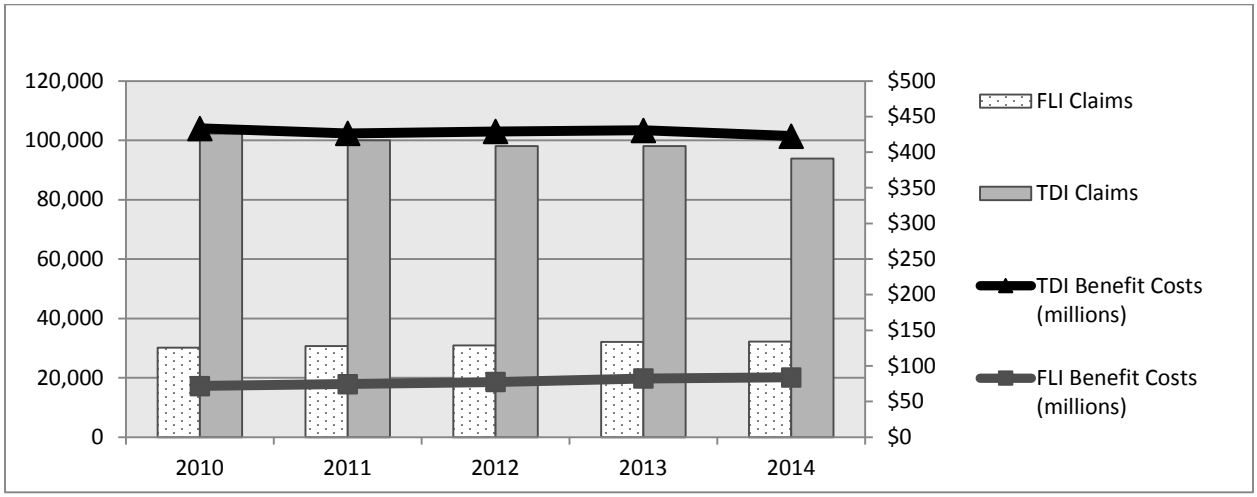
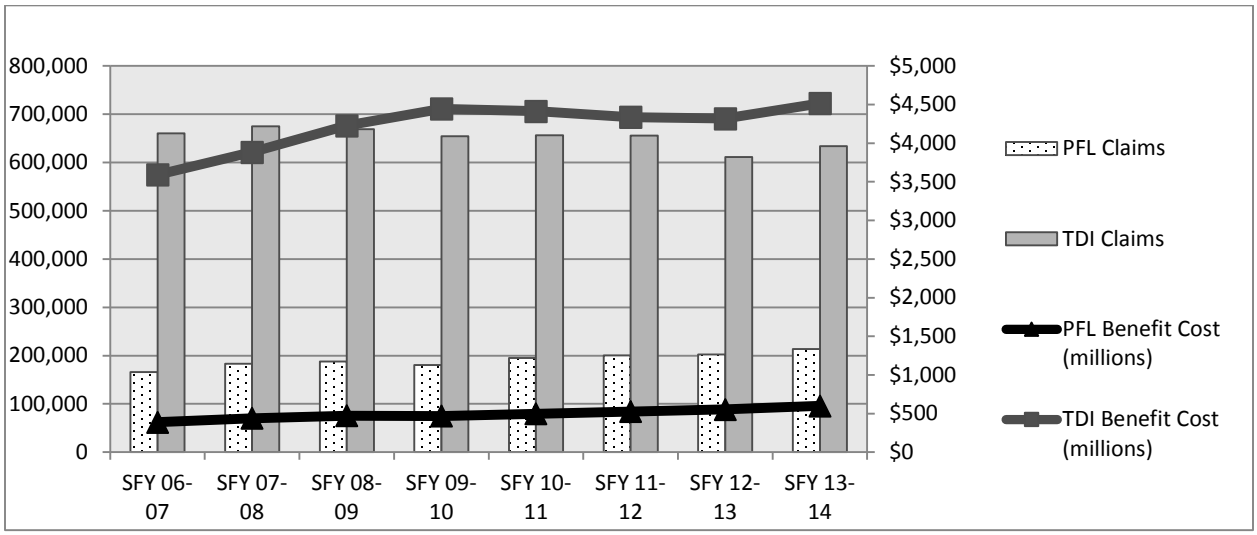


FIGURE 20: CALIFORNIA PFML PROGRAM CLAIMS AND COSTS



New Jersey's Family Leave Insurance program began paying benefits in July 2009, immediately following the Great Recession. The growth based on full calendar years 2010-2014 are used for measuring increasing increase in claims in a fairly steady, linear path resulting in a 16 percent increase over 5 years. The data from California's Paid Family Leave program statistics are reported for the state's fiscal year that runs from July 1 to June 30 and 2006-07 to 2010-11 were used. This period includes the great recession and recovery and results in a 20 percent increase in claims over across the period. Figures 19 and 20 provide the most recent information about claims and benefit costs over time in California and New Jersey.

California's semiannual Disability Insurance fund (used to pay for both family leave and temporary disability) report explains that net benefit increases in recent years are primarily due to Average Weekly Benefit Amounts (AWBA) increasing. The Average Weekly Benefit Amount is a function of, as described in

the Benefit Levels section of this analysis, the average weekly wage in the state. While claims increased over these periods for both programs by double digit percentages, the premium amounts needed to cover program costs did not increase in the same way. For example, over the period from 2009 to 2015, New Jersey's Family Leave Insurance premium rates fluctuated but started at .09% in 2009 and ended up at the same level in 2015. To the extent that program claims grow at the same rate as the workforce and the economy, the average wage-based formulas described in the Premium and Benefits sections of this analysis result in increased and off-setting contributions to the PFML fund at the same or a similar premium rate.

The take-up rates that drive the simulation model are based on current experiences in New Jersey and California. This suggests that the initial take-up rates and the associated, estimated claim levels for Minnesota may be overstated. On the other hand, the options included throughout this analysis and in the models, particularly Model 6, attempt to correct for documented barriers to program access in the three current PFML states, suggesting the Minnesota may experience higher take-up rates at earlier stages in the program's history than the three current PFML states. Table 69 summarizes the effect on program costs and total premium levels if program usage rises 20% as experienced in California's early years or program costs are underestimated by 20% for the lowest and highest cost models simulated in this analysis. While the taxable wage base would also likely grow, Table 69 holds the wage base constant to provide a conservative estimate of possible premium increases.

TABLE 69: ESTIMATED PREMIUM AND PROGRAM COST WITH A 20% INCREASE IN CLAIMS AND NO GROWTH IN WAGE BASE

	Model 3: 50%; $640 max; 6 weeks	**Model 6: 55%-80%; $1000 max; 12 weeks**
Total Program Costs (Benefits & Administration) in Millions	$255.20	$554.10
Premium under 2014 MN UI Wage Base	0.52%	1.13%
Premium under 2014 MN SS Wage Base	0.30%	0.65%

NOTES: COSTS AND USAGE

[1] Albelda, Randy and Clayton-Matthews, Alan, "Sharing the Costs, Reaping the Benefits: Paid Family and Medical Leave in Massachusetts" (2006). Labor Resource Center Publications. Paper 1. http://scholarworks.umb.edu/lrc_pubs/1
[2] Ibid
[3] Ibid
[4] Ibid
[5] The Economics of Paid and Unpaid Leave, The Council of Economic Advisors, https://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf
[6] May 2015 California DI Fund Forecast report: http://www.edd.ca.gov/About_EDD/pdf/edddiforecastmay15.pdf
[7] November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section NJ Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee; 2014-15 legislative budget documents provided by Greg Williams available from author
[8] Ibid
[9] 2015 SHB1273 Multiple Agency Fiscal Note Summary: https://fortress.wa.gov/binaryDisplay.aspx?package=41824
[10] November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section NJ Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee; 2014-15 legislative budget documents provided by Greg Williams available from author
[11] State Disability Insurance (SDI) Statistical Information: http://www.edd.ca.gov/Disability/pdf/qsdi_DI_Program_Statistics.pdf
[12] November 2015 interview with California EDD staff and follow-up documentation (see acknowledgements)
[13] Paid Family Leave (PFL) Program Statistics: http://www.edd.ca.gov/Disability/pdf/qspfl_PFL_Program_Statistics.pdf
[14] November 2015 interview with Greg Williams, Lead Research Analyst, Commerce, Labor and Industry Section NJ Office of Legislative Services, Nonpartisan research staff assigned to Senate Labor Committee; 2014-15 legislative budget documents provided by Greg Williams available from author
[15] 2015 SHB1273 Multiple Agency Fiscal Note Summary: https://fortress.wa.gov/binaryDisplay.aspx?package=41824
[16] US Department of Labor Unemployment Insurance Data Summary: Second Quarter 2015

APPENDIX A

SIMULATION MODEL METHODOLOGY

A simulation model developed by the Institute for Women's Policy Research (IWPR) and researchers at the Labor Research Center, University of Massachusetts Boston and recently updated by IWPR, Alan Clayton Matthews, and Randy Albelda (IWPR/ACM simulation model hereafter) was used to estimate current leave usage for this analysis. The model uses observable leave-taking behavior available in a national, comprehensive survey of family medical leaves conducted by Abt Associates under contract to the U.S. Department of Labor in 2012 to estimate the probability and distribution of various aspects of leave-taking behaviors. Based on these estimates, coupled with a few assumptions about unobservable behavior in the presence of a program, IWPR simulated specific leave-taking behavior (including number, length, employer benefit levels, and eligibility for FMLA) onto individual workers working in Minnesota from the Census Bureau's Current Population Survey Annual Social and Economic Supplement or American Community Survey (ACS).

Using the model in two steps, IWPR first estimated the current coverage, use, and cost of family and medical leaves in Minnesota and then estimated the expected coverage, use, and cost under various proposed family and medical leave insurance (PFML) plans. Each set of results estimates the wage costs when employers pay workers on leave, the cost of uncompensated wages when workers take unpaid leave, and the wage replacement costs of PFML program benefits when one is modeled.

The underlying methodology is based on a sophisticated simulation model that estimates many behavioral patterns and will apply them to the specific characteristics of the Minnesota work force. Specifically, the model:

- Estimates probabilities of taking a leave (or multiple leaves) by type of leave, eligibility, and important demographic characteristics of the leave-taker both under current leave provisions as well as under the proposed PFML program.
- Estimates length of leave taking by type of leave and degree to which there is employer pay. The model allows for feedback loops where higher wage replacement increases the probability of a worker using leave when they have family care needs arise.
- Simulates paid program leave taking behavior based on family income levels and the existence and level of employer-paid leave benefits both under current leave provision conditions as well as under the proposed PFML.
- Simulates extended length of leave due to the program based on current length of leave, likelihood of wanting a longer leave, and if the extended leave is job protected.
- Allows for an analysis of leave takers by gender, age, marital status, race, ethnicity, family income, and other characteristics, both in the absence of a program and with a new PFML program in place.
- Flexibly incorporates the specific features of proposed or envisioned paid programs such as maximum length of program leave, wage replacement rates, waiting periods, employment, income and FMLA eligibility requirements, and dependent allowances.

Figure 1 (right) shows a simplified diagram of the complex series of decisions and behaviors that a worker might go through for a single reason the he or she might need to take leave from work: a new child. Each broad reason for needing leave (own health conditions, maternity-related disability, bonding with a new child, children's healthcare needs, spouse's healthcare needs, or parents' healthcare needs) is modeled separately with a similar series of decisions and leave characteristics estimated.

The simulation model is based on:

- 2012 Department of Labor Family and Medical Leave Act Survey data for the estimation of behavioral models
- The 2009-2013 American Community Survey for Minnesota labor force characteristics

Analyses were supplemented using additional data:

- Program data from temporary disability insurance and paid family leave programs in California and New Jersey
- 2012-2014 Current Population Surveys Outgoing Rotation Groups for estimating the number of workers per year who were absent from work during the survey reference week for (1) Own illness/injury/medical problems, (2) Other family/personal obligation, or (3) Maternity leave to estimate the need for leaves for own serious health conditions, family care demands, and maternity-related disability, respectively.
- 2013 American Community Survey for estimating the number of people who work in Minnesota, including those who commute from surrounding states, with a child under age one in the household for the population at risk of needing a new child leave

For estimating distributional effects on the number of leaves, the characteristics of the leaves (length, wage replacement), and the characteristics of workers taking leaves as well as associated employer and worker costs under possible Minnesota PFML program models, additional data from the agencies administering family and medical leave insurance programs in California and New Jersey were used for estimating the program take-up rates that are specified by the analyst as an input to the simulation models. In the simulation model, the take-up rate represents the fraction of persons eligible for the paid leave program that will participate. The model allows this fraction to be reduced further based on the program benefit level. The higher the benefit level relative to the next best alternative (which is either employer pay or nothing, if the leaver does not receive any pay), the greater the probability of participating in the program.

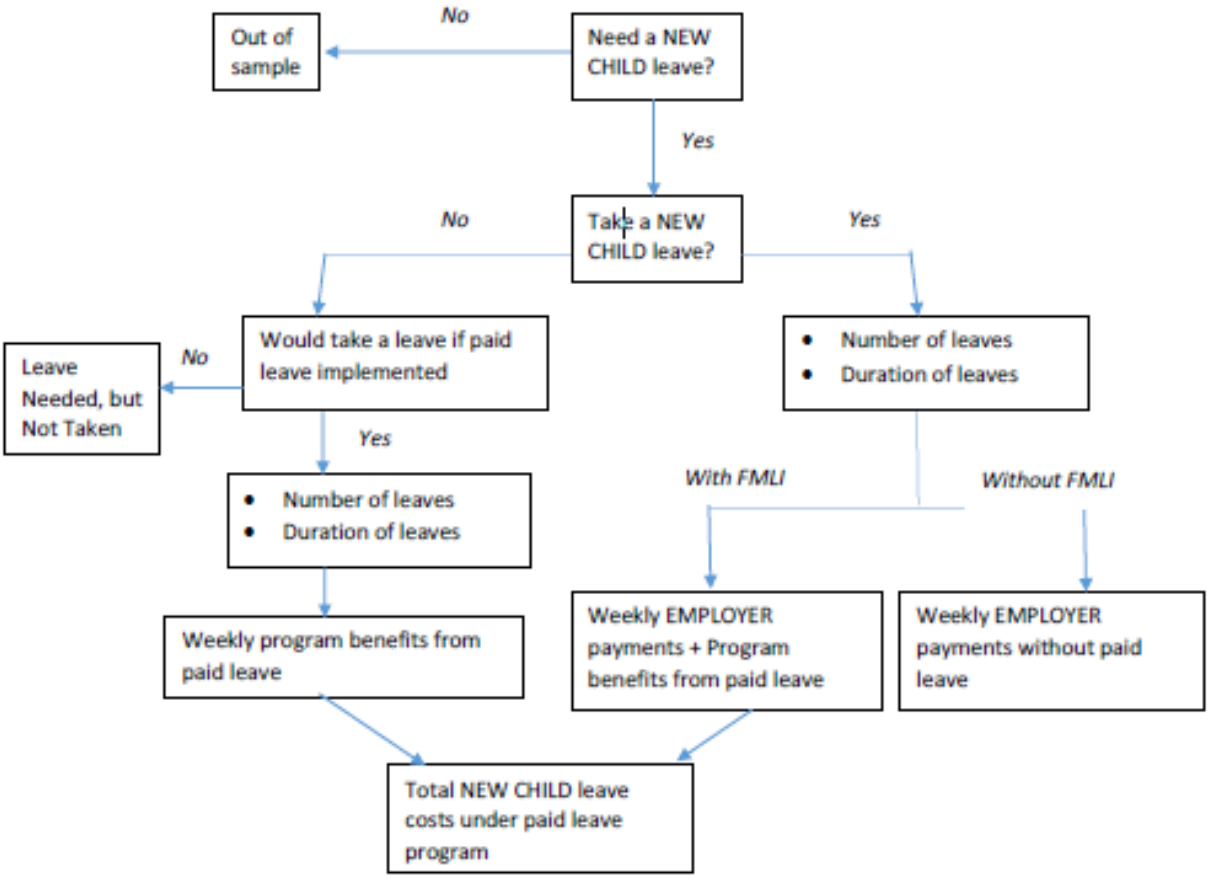
Claims data from California and New Jersey were compared to state level labor force estimates of the workers with the need for family and medical leaves to estimate program participation in those two states.

The estimates of take-up rates from this step were used in a second round of simulation models to see how well they predicted the reported claims data from California and New Jersey. The final take-up rates used in specifying the simulation models estimated for the cost of family and medical leave benefits in Minnesota are shown in Table 70.

TABLE 70: PROGRAM TAKE-UP RATES USED AS SIMULATION MODEL INPUT

Qualifying event	Resulting Estimates to be Used as Model Input for Minnesota
Own Health	55%
Maternity-related Disability	99%
New Child Bonding	80%
Family Care for Children	12%
Family Care for a Spouse	15%
Family Care for Parent(s)	10%

FIGURE 21: SIMPLIFIED FLOWCHART EXAMPLE SIMULATING NEW CHILD BONDING LEAVE BEHAVIOR



APPENDIX B: CLAIM FORMS

EDD Employment Development Department State of California

Claim for Paid Family Leave (PFL) Benefits

2501F07141

PART A – STATEMENT OF CLAIMANT (CARE OR BONDING PROVIDER)

A1. YOUR SOCIAL SECURITY NO.: 1 2 3 4 5 6 7 8 9

A2. YOUR DATE OF BIRTH (M M D D Y Y Y Y): 0 5 2 1 1 9 5 9

A3. LANGUAGE YOU PREFER TO USE: ENGLISH [X] ESPAÑOL [ ] OTHER (PRINT BELOW)

A4. YOUR LEGAL NAME: FIRST NAME JANE; MI D; LAST NAME JONES

A5. YOUR GENDER: MALE [ ] FEMALE [X]

A6. YOUR TELEPHONE NUMBER: 916 5551212

A7. OTHER LAST NAMES, IF ANY, UNDER WHICH YOU HAVE WORKED: SMITH

A8. YOUR MAILING ADDRESS (TO RECEIVE MAIL AT A PRIVATE MAIL BOX—NOT A US POSTAL SERVICE BOX—YOU MUST SHOW THE NUMBER IN THE "PMB#" SPACE.): 321 SPRING STREET; PMB# (IF APPLICABLE):

CITY: ANYTOWN; STATE/PROV.: CA; ZIP OR POSTAL CODE: 99999 9999; COUNTRY (IF NOT U.S.A.):

A9. NAME OF YOUR EMPLOYER: ABC CORPORATION; MAILING ADDRESS: 987 BUSINESS BLVD

CITY: ANYTOWN; STATE/PROV.: CA; ZIP OR POSTAL CODE: 99999 7777; EMPLOYER'S TELEPHONE NUMBER: 916 5559999

A10. DATE YOU LAST WORKED (M M D D Y Y Y Y): 0 9 1 0 2 0 1 4

A11. DATE YOU WANT YOUR PFL CLAIM TO BEGIN (M M D D Y Y Y Y): 0 9 2 0 2 0 1 4

A12. DATE YOU RETURNED OR WILL RETURN TO WORK (M M D D Y Y Y Y): 1 1 0 8 2 0 1 4

A13. DID YOU WORK OR WILL YOU CONTINUE TO WORK DURING YOUR FAMILY LEAVE PERIOD? NO [X] YES [ ]

A14. WHY DID YOU OR WILL YOU REDUCE YOUR WORK HOURS OR STOP WORKING? CARE FOR FAMILY MEMBER [X] BOND WITH CHILD [ ] OTHER (EXPLAIN) [ ]

A15. WHAT IS YOUR OCCUPATION? RESEARCH ANALYST

A16. LEGAL NAME OF PERSON FOR WHOM YOU ARE CARING (FIRST MIDDLE INITIAL LAST) OR WITH WHOM YOU ARE BONDING (CARE OR BONDING RECIPIENT): MARY J SMITH

A17. THE ABOVE-NAMED CARE OR BONDING RECIPIENT IS YOUR: CHILD [ ] SPOUSE [ ] REGISTERED DOMESTIC PARTNER [ ] PARENT [X] PARENT IN-LAW [ ] GRAND PARENT [ ] GRAND CHILD [ ] SIBLING [ ] OTHER (EXPLAIN)

A18. IS ANY OTHER FAMILY MEMBER READY, WILLING, AND ABLE AND AVAILABLE TO PROVIDE CARE FOR THE SAME PERIOD YOU ARE CLAIMING PFL BENEFITS? NO [X] YES [ ]

A19. HAVE YOU CLAIMED OR DO YOU PLAN TO CLAIM WORKERS' COMPENSATION BENEFITS FOR ANY PORTION OF THE PERIOD COVERED BY THIS CLAIM? NO [X] YES [ ]

A20. DO YOU HAVE MORE THAN ONE EMPLOYER? NO [X] YES [ ]

A21. IF YOUR EMPLOYER(S) CONTINUED OR WILL CONTINUE TO PAY YOU DURING YOUR FAMILY LEAVE, INDICATE TYPE OF PAY: SICK [ ] VACATION [ ] OTHER (EXPLAIN) [ ]

A22. MAY WE DISCLOSE BENEFIT PAYMENT INFORMATION TO YOUR EMPLOYER(S)? NO [ ] YES [X]

A23. AT ANY TIME DURING YOUR PFL LEAVE, WERE YOU IN THE CUSTODY OF LAW ENFORCEMENT AUTHORITIES BECAUSE YOU WERE CONVICTED OF VIOLATING A LAW OR ORDINANCE? ..... [X] NO [ ] YES

A24. **Declaration and Signature.** By my signature on this claim statement, I (1) claim Paid Family Leave benefits and certify that throughout the period covered by this claim I was providing care for or bonding with the care recipient named above; (2) authorize EDD to release my personal information as shown on this claim to the care recipient and to the care recipient's treating physician as they are respectively listed in Part C and Part D of this claim; (3) authorize my employer(s) to disclose to EDD all facts concerning my employment that are within their knowledge; and (4) authorize release and use of information as stated in the "Information Collection and Access" portion of this form. I understand that willfully making a false statement or concealing a material fact in order to obtain payment of benefits is a violation of California law punishable by imprisonment or fine or both. I declare under penalty of perjury that the foregoing statement, including any accompanying statements, is to the best of my knowledge and belief true, correct, and complete. I agree that photocopies of this authorization shall be as valid as the original, and I understand that authorizations contained in this claim statement are granted for a period of fifteen years from the date of my signature or the effective date of the claim, whichever is later.

Claimant's Signature (DO NOT PRINT): *Jane D. Jones*

If signature is made by mark (X), please place mark here.*

Date Signed (MM DD YYYY): 0 9 2 2 2 0 1 4

*If your signature is made by mark (X), it must be attested by two witnesses with their addresses

1st Witness Signature and Address

2nd Witness Signature and Address

DE 2501F Rev. 1 (7-14) (INTERNET) Page 1 of 4 CU

SAMPLE

CARE RECIPIENT'S AUTHORIZATION FOR DISCLOSURE OF PERSONAL-HEALTH INFORMATION

I authorize my physician or practitioner, as identified on Part D of this claim, to disclose my current personal-health information to my care provider, as identified on Part A of this claim, and to the California Employment Development Department (EDD).

I understand that such information includes a diagnosis and prognosis of my current condition, the date it commenced, and an estimation of the amount of care that I require from my care provider as a result of my current condition. I further understand that disclosure of my personal-health information may include my AIDS/HIV status, drug or alcohol addiction, or any other physical or mental condition.

I understand that EDD may disclose this information as authorized by the California Unemployment Insurance Code and that such re-disclosed information may no longer be protected. I agree that photocopies of the authorization form in conjunction with my signature on Page 3 in Item 6 of Part C shall be as valid as the original.

I understand that unless I inform EDD in writing at P.O. Box 989315, West Sacramento, CA 95798-9315, that I wish to revoke this authorization, it will be valid for 10 years from the date EDD receives it or the effective date of this claim, whichever is later. I understand that I have the right to receive a copy of an authorization form from EDD if I request one in writing.

I make this authorization to support my care provider's claim for Paid Family Leave benefits. I understand that I may not revoke my authorization to avoid prosecution or to prevent EDD's recovery of monies to which it is legally entitled.

WE CANNOT PROCESS THIS CLAIM UNLESS YOU SIGN BOTH THIS PAGE AND PAGE 3 IN ITEM C6 OF PART C.

MARY J. SMITH

Care recipient's name (Print your name)

Sept. 23, 2014

Date signed

Mary J. Smith

Care recipient's signature (Sign your name)

SAMPLE

2501F07142

PART B – BONDING CERTIFICATION (TO BE COMPLETED BY PERSON CLAIMING PFL BENEFITS TO BOND WITH A CHILD)

B1. YOUR SOCIAL SECURITY NUMBER: 1 2 3 4 5 6 7 8 9

B2. DATE OF FOSTER CARE OR ADOPTION PLACEMENT (M M D D Y Y Y Y):

B3. CHILD NAMED IN B8 IS MY: BIOLOGICAL CHILD ☐ STEPCHILD ☐ FOSTER CHILD ☐ ADOPTED CHILD ☐ OTHER ☐

B4. YOUR LEGAL LAST NAME (NEEDED IN CASE PAGES OF THIS CLAIM BECOME SEPARATED): J O N E S

B5. CHILD'S SOCIAL SECURITY NUMBER (IF AVAILABLE):

B6. CHILD'S DATE OF BIRTH (M M D D Y Y Y Y):

B7. CHILD'S GENDER: MALE ☐ FEMALE ☐

B8. LEGAL NAME OF CHILD (FIRST | MIDDLE INITIAL | LAST):

B9. CHILD'S RESIDENCE ADDRESS (IF DIFFERENT FROM CLAIMANT'S):

CITY | STATE/PROV. | ZIP OR POSTAL CODE | COUNTRY (IF NOT U.S.A.)

B10. AS EVIDENCE OF THE RELATIONSHIP IN B3, CHECK ONE OF THE FOLLOWING AND ATTACH A COPY OF THE DOCUMENT CHECKED. (DO NOT SEND ORIGINAL DOCUMENT. IT WILL NOT BE RETURNED.)

- ☐ CHILD'S BIRTH CERTIFICATE
- ☐ CHILD'S HOSPITAL DISCHARGE RECORD
- ☐ DECLARATION OF PATERNITY, CS-909
- ☐ FOSTER CARE PLACEMENT RECORD, SOC-815
- ☐ CERTIFICATE OF PLACEMENT, AD-907
- ☐ CHILD'S PASSPORT SHOWING IMMIGRATION AND NATURALIZATION SERVICE STAMP I-551
- ☐ INDEPENDENT ADOPTION PLACEMENT AGREEMENT, AD-924
- ☐ OTHER

B11. **Declaration and Signature.** By my signature on this bonding certification, I authorize the medical provider, adoption agency, adoption party(ies), or foster care placement agency to disclose to the Employment Development Department all facts concerning the birth, adoption, or foster care placement of the above-named child. I understand that willfully making a false statement or concealing a material fact in order to obtain payment of benefits is a violation of California law punishable by imprisonment or fine or both. I declare under penalty of perjury that the foregoing statement, including any accompanying statements or documents, is to the best of my knowledge and belief true, correct, and complete. I agree that photocopies of this authorization shall be as valid as the original, and I understand that authorizations contained in this claim statement are granted for a period of fifteen years from the date of my signature or the effective date of the claim, whichever is later.

Original Signature of Bonding Claimant – RUBBER STAMP IS NOT ACCEPTABLE | Date Signed (M M | D D | Y Y Y Y)

PART C – STATEMENT OF CARE RECIPIENT

(MAY BE COMPLETED BY CLAIMANT IF CARE RECIPIENT IS MENTALLY OR PHYSICALLY UNABLE TO DO SO. MUST BE SIGNED BY CARE RECIPIENT OR CARE RECIPIENT'S AUTHORIZED REPRESENTATIVE.)

C1. RECIPIENT'S DATE OF BIRTH (M M D D Y Y Y Y): 0 2 0 9 1 9 2 8

C2. RECIPIENT'S TELEPHONE NUMBER: 5 3 0 5 5 5 7 7 7 7

C3. RECIPIENT'S GENDER: MALE ☐ FEMALE X

C4. LEGAL NAME OF CARE RECIPIENT (FIRST | MIDDLE INITIAL | LAST): M A R Y J S M I T H

C5. CARE RECIPIENT'S RESIDENCE ADDRESS: 3 4 5 P I N E S T R E E T

CITY: S O M E C I T Y | STATE/PROV.: C A | ZIP OR POSTAL CODE: 9 7 7 7 7 0 0 0 0 | COUNTRY (IF NOT U.S.A.)

C6. **CONFIRMATION OF MEDICAL DISCLOSURE AUTHORIZATION.** I have read and signed the Care Recipient's Authorization for Disclosure of Personal-Health Information on page 2 of this claim. I understand that by signing it I have agreed to all its provisions and terms. I further understand that copies of my signature below are as valid as the original.

Care Recipient's Signature (DO NOT PRINT): *Mary J. Smith* | Date Signed (M M | D D | Y Y Y Y): 0 9 2 3 2 0 1 4

C7. **Authorized Representative** signing on behalf of care recipient must complete the following: I, _____, represent the care or bonding recipient in this matter as authorized by ☐ parental right ☐ power of attorney (attach copy) ☐ court order (attach copy) (For spouse or domestic partner, contact EDD.)

Authorized Representative's Signature (DO NOT PRINT) | Date Signed (M M | D D | Y Y Y Y)

SAMPLE

Doctor's Certification may be made by a licensed medical or osteopathic physician and surgeon, chiropractor, dentist, podiatrist, optometrist, designated psychologist, or an authorized medical officer of a United States Government facility

2501F07143

If using **typewriter/printer**, type across boxes in UPPER CASE as shown.

PATIENT'S DATE OF BIRTH (M M D D Y Y Y Y)	TYPE OF DOCTOR
07 26 1930	PODIATRIST

If **hand printing**, place each letter/number in a separate box as shown.

M M D D Y Y Y Y	TYPE OF DOCTOR
0 7 2 6 1 9 3 0	P O D I A T R I S T

PART D – DOCTOR'S CERTIFICATION (DO NOT COMPLETE THIS PART IF REASON FOR PFL LEAVE IS BONDING WITH CHILD)

D1. PFL CLAIMANT'S (CARE PROVIDER'S) SOCIAL SECURITY NUMBER: 1 2 3 4 5 6 7 8 9

D2. PFL CLAIMANT'S NAME (FIRST MIDDLE INITIAL LAST): JANE D JONES

D3. PATIENT'S DATE OF BIRTH (M M D D Y Y Y Y): 02 09 1958

D4. DOES YOUR PATIENT REQUIRE CARE BY THE CARE PROVIDER? NO (SKIP TO D15) [ ] YES [X]

D5. PATIENT'S NAME (FIRST MIDDLE INITIAL LAST): MARY J SMITH

D6. DIAGNOSIS OR, IF NOT YET DETERMINED, A DETAILED STATEMENT OF SYMPTOMS: FRACTURED FEMUR

D7. PRIMARY ICD CODE: 820 • 09

D8. SECONDARY ICD CODES: S72 • 0 •

D9. DATE PATIENT'S CONDITION COMMENCED (M M D D Y Y Y Y): 09 13 2014

D10. FIRST DATE CARE NEEDED (M M D D Y Y Y Y): 09 20 2014

D11. DATE YOU EXPECT RECOVERY (M M D D Y Y Y Y) TERMINAL: 02 15 2015

D12. DATE YOU ESTIMATE PATIENT WILL NO LONGER REQUIRE CARE BY THE CARE PROVIDER (M M D D Y Y Y Y): 12 31 2014

D13. APPROXIMATELY HOW MANY TOTAL HOURS PER DAY WILL PATIENT REQUIRE CARE BY A CARE PROVIDER? HOURS: 24 COMMENTS:

D14. WOULD DISCLOSURE OF THIS CERTIFICATE TO YOUR PATIENT BE MEDICALLY OR PSYCHOLOGICALLY DETRIMENTAL? ..... [X] NO [ ] YES

D15. DOCTOR'S LICENSE NUMBER: A987654

D16. STATE OR COUNTRY (IF NOT U.S.A.) IN WHICH DOCTOR IS LICENSED TO PRACTICE: CALIFORNIA

D17. DOCTOR'S NAME (FIRST MIDDLE INITIAL LAST): DONALD R BROWN

D18. DOCTOR'S ADDRESS (POST OFFICE BOX IS NOT ACCEPTABLE AS THE SOLE ADDRESS): 678 CENTRAL BLVD

CITY: SOME CITY STATE/PROV.: CA ZIP OR POSTAL CODE: 97777 COUNTRY (IF NOT U.S.A.): 9999

D19. TYPE OF DOCTOR: MEDICAL DOCTOR

D20. SPECIALTY (IF ANY): ORTHOPEDICS

D21. Doctor's Certification and Signature (REQUIRED): I certify under penalty of perjury that, based on my examination, this Doctor's Certificate truly describes the patient's condition and need for care and the estimated duration thereof.

Original Signature of Attending Doctor – RUBBER STAMP IS NOT ACCEPTABLE: *Donald R. Brown, M.D.*

DOCTOR'S TELEPHONE NO.: 530 5554444

Date Signed (MM | DD | YYYY): 09 27 2014

Under sections 2116 and 2122 of the California Unemployment Insurance Code, it is a violation for any individual who, with intent to defraud, falsely certifies the medical condition of any person in order to obtain disability insurance benefits, whether for the maker or for any other person, and is punishable by imprisonment and/or a fine not exceeding $20,000. Sections 1143 and 3305 require additional administrative penalties.

SAMPLE

TDI-1 no bar (12-1-14)

Dept. of Labor and Training
Temporary Disability Insurance (TDI)
Temporary Caregiver Insurance (TCI)
P.O. Box 20100 Cranston, RI 02920-0941 Phone: 401-462-8420
APPLICATION FOR BENEFITS

Do Not Fax
←Mail to this Address

APPLICANT PERSONAL AND WORK INFORMATION

Social Security Number: ___ - __ - ____

First Name:_____ M.:___ Last Name:_____
Address:_____
City/Town: _____ State: _____ Zip: _____

What program are you applying for (check one only)?

☐ **Illness/surgery/ injury**
☐ **Care for a seriously ill Family Member**
☐ **Bond with Child**

Date of Birth (Month/Day/Year): _____/_____/_____

Gender: Male ☐ Female ☐
Home Phone Number: ___-___-____ Cell #:___-___-____

E-mail address:_____
I prefer to receive information in: English ☐ Spanish ☐ Portuguese ☐

Please provide the following dates if pertinent to you today:

Date you returned to work to normal hours: ___/___/_____
Date you recovered from illness or injury: ___/___/_____
Date you returned to work to reduced hours: ___/___/_____

If you are filing for Caregiver or Bonding benefits, how many weeks are you requesting?_____
(Maximum of 4 weeks only)

COMPLETE THIS SECTION IF FILING FOR YOUR OWN ILLNESS / SURGERY / INJURY

What is your illness or injury? _____
The first workday you were unable to work due to this illness, surgery or injury: ___/___/_____
Date of your medical examination for this illness/injury, closest to the unable to work date listed above: ___/___/_____
(As required by law, you must be physically examined by a doctor the week prior , the week of, or the week following your unable to work date.)

Were you hospitalized for this disability? Yes ☐ No ☐ Dates admitted to hospital: From:_____To: _____
Name of Hospital:_____Address:_____

Doctor or Medical Practitioner:_____
Address:_____
City/Town: _____ State: _____ Zip: _____
Phone Number: ___-___-____
(Forms will be mailed to you to submit to your Doctor)

Doctor or Medical Practitioner:_____
Address:_____
City/Town: _____ State: _____ Zip: _____
Phone Number: ___-___-____
(Forms will be mailed to you to submit to your Doctor)

REQUIRED FOR ALL PROGRAMS

Enter your last day of work or date you last performed services: __/__/__

Have you applied for or received Temporary Disability Insurance Benefits in the last 12 months? Yes☐ No☐
Have you applied for or received Temporary Caregiver Insurance Benefits in the last 12 months? Yes☐ No☐
Have you applied for or received Unemployment Insurance Benefits in the last 12 months: Yes☐ No ☐
If yes, the last week ending date you were paid from Unemployment Insurance: __/__/__ From which state were you paid?_____

COMPLETE THIS SECTION IF FILING FOR TEMPORARY CAREGIVER INSURANCE PROGRAM (TCI)

If you are caring for a family member **or** bonding with child, what date do you want your claim to begin: Month: ____ Day:_____ Year:_____
(NOTE: The date of this application must be no later than 30 days after the start date of your claim. Social Security #'s required only if child is over 12 months of age).

Information of individual for whom you are caring for **or** bonding with?
Legal First Name: _____Last Name:_____Middle _____
Address: _____
Telephone Number: _____-_____-_____ Date of Birth: Month_____Day_____Year_____ Gender: ☐ Male ☐ Female

The Care Recipient is your: ☐Spouse & Common Law Marriage ☐Domestic Partner- Same Sex Relationship ☐Parent ☐Parent-in-law ☐Grandparent ☐Child ☐Adopted Child ☐Foster Child

The Bonding Recipient is your: ☐Newborn Child ☐Adopted Child ☐Foster Child ☐Other: Please explain_____
Child's Social Security Number:_____-_____-_____ (Required only if over 12 months of age)
Date of Adoption: Month: _____ Day:_____ Year:_____ Date Foster Child was Placed with you: Month: _____ Day:_____ Year:_____

Copy of the following documents are required as proof of relationship for bonding claims (do not send originals- they will not be returned).
What proof and copy of document are you providing with this application (check one below):
(Document may be sent at a later date when received. The document must show your name and the child's name.)

☐ Child's Birth Certificate ☐ Proof of Adoption ☐ Proof of Foster Care Placement ☐Proof of Legal Guardianship
(Benefit payments will not be provided without proof of relationship; however, you must file within 30 days of your first leave date.)

FOR OFFICE USE ONLY

DEP	PHYS	PHYS	DD	SE	TCI	WC	UI	BYB	BYE

TDI-1 no bar (12-1-14)

APPLICANT EMPLOYER INFORMATION- Please include all employers in the last 2 years, attach a separate sheet with your S.S. # and name at the top.

Employer:_____
Address:_____
City/Town: _____ State: ____ Zip: _____
Phone Number: __ __ __ - __ __ __ - __ __ __ __
Employment Dates: __ __ /__ __ /__ __ to __ __ /__ __ /__ __
How many hours per week do you normally work? _____
Job Title:_____
Was your work performed in RI? Yes ☐ No ☐
Are you a corporate officer, partner or owner? Yes ☐ No ☐

Employer:_____
Address:_____
City/Town: _____ State: ____ Zip: _____
Phone Number: __ __ __ - __ __ __ - __ __ __ __
Employment Dates: __ __ /__ __ /__ __ to __ __ /__ __ /__ __
How many hours per week do you normally work? _____
Job Title:_____
Was your work performed in RI? Yes ☐ No ☐
Are you a corporate officer, partner or owner? Yes ☐ No ☐

Check each day of the week you normally work: ☐ Sun ☐ Mon ☐ Tues ☐ Wed ☐ Thurs ☐ Fri ☐ Sat

Have you earned wages or performed services through self-employment in the past 2 years? Yes ☐ No ☐
List beginning and ending dates of any period of self-employment during the past two years. Employment Dates: __ __ /__ __ /__ __ to __ __ /__ __ /__ __

YOUR DEPENDENTS ALLOWANCE- REQUIRED TO CALCULATE THE CLAIM'S BENEFIT RATE

For how many dependent children do **you provide support** to? _____ (Include children under 18 as well as children 18 and older who are incapacitated.)
List below only the names of children who are your natural, adopted or step children, or are court-appointed wards that you provide support:
(Documentation is required for court appointed wards and children over 18 years of age that are incapacitated.)

Child's First Name	**Last Name**	**Relationship** (natural, adopted, step or court ward)	**Birth date** (mm/dd/yy)	**Social Security Number** (**Required** for children 12 months of age or older)

Do you have legal custody of all the children listed above? Yes ☐ No ☐
Do all children listed above live with you? Yes ☐ No ☐
If no, list name, address & social security number of the person who they reside with:
Name: _____
Address:_____
Social Security Number: __ __ __ /__ __ / __ __ __ __
If any legal dependent named above is 18 or older, please indicate the type of incapacity (mental or physical).
Name: _____ Incapacity Type: _____

Is any other person claiming your child/children as dependents under the Rhode Island Temporary Disability Act? Yes ☐ No ☐
If yes, indicate the name, address and social security number of the person claiming such children.
Name: _____
Address:_____
Social Security Number: __ __ __ /__ __ / __ __ __ __

WORKERS' COMPENSATION INFORMATION- Complete if injury/illness is work connected- REQUIRED FOR ALL PROGRAMS:

Do you currently have an illness or injury connected to your job or as a result of your job, a Worker's Compensation issue? Yes ☐ No ☐
Have you filed a Workers' Compensation claim for this disability or any other disability? Yes☐ No☐ Date of injury or start of illness: ___ /____ /_____
Name and address of company where injury occurred:
Name:_____Address:_____
Have you received any Workers' Compensation payments for this or any other disability? Yes☐ No☐ If yes, dates from: _____to: _____

If **yes**, please provide the contact information for your Workers' Compensation Insurance Company.
Workers' Compensation Insurance Co.:_____
Address:_____
City/Town: _____ State: _____ Zip: _____
If **no**, please explain why not:

If you have a lawyer representing you in this matter, please provide his/her name and address.
Lawyer Name: _____
Address:_____
City/Town: _____State: _____ Zip: _____

SELECT YOUR PERFERRED BENEFIT PAYMENT METHOD- REQUIRED FOR ALL PROGRAMS.

Select your preferred **payment method** for benefit payments. ☐ **Direct Deposit** into my account (Complete a Direct Deposit Form) **Or**
☐ **Electronic Payment Card**-EPC (Works like a debit card, fees may apply if not used properly)

► SIGNATURE REQUIRED ◄

Rhode Island Temporary Disability Insurance (TDI) I understand to claim **TDI benefits** I am/was physically unable to work, including self-employment, during the period for which I am claiming benefits, and that the information I have provided on this application is true and complete. Also, I hereby authorize my Qualified Healthcare Provider, hospital or other health care provider to make available to TDI any medical information, including hospital records, which may be requested. I understand that I am responsible to report to TDI the date that I return to work part time or full time to prevent any overpayments of benefits. I understand that I'm responsible for costs/fees incurred by my QHP for providing medical records to TDI.

Temporary Caregiver Insurance Program (TCI) I understand that all information I have provided regarding the **TCI Program** is true and correct. I agree to provide the medical certification required as proof of care needed for my seriously ill family member. I also understand that I am responsible **to pay taxes** on all benefit payments received from the TCI Program. I understand that I am responsible to report to TDI the date that I return to work to part time or full time to prevent any overpayments of benefits.

☐ By signing this acknowledgement, I am indicating that I have been informed of the TDI & TCI Program requirements above and understand them.

Your Signature: _____ **Social Security Number:** __ __ __ /__ __ / __ __ __ __ **Date** __ __ /__ __ /__

DIVISION OF TEMPORARY DISABILITY INSURANCE
APPLICATION FOR FAMILY LEAVE INSURANCE BENEFITS (FL-1)

DETACH THIS PAGE AND KEEP FOR YOUR RECORDS

RULES FOR FILING A CLAIM AND APPEAL RIGHTS

1. It is **your** responsibility to file this claim form promptly **after** you stop working and begin your family leave. **Filing your claim before your last day of work will delay its processing.** The law requires that claims must be filed within 30 days after the beginning of the family leave. Benefits may be denied or reduced if the claim is filed late. If your claim is filed beyond the 30-day period, please use the space provided on the reverse side of Part A to give your reasons for the late filing. **If you are receiving temporary disability benefits from the State Plan for a pregnancy related disability, you will receive instructions for claiming Family Leave benefits for bonding with your newborn child.**

2. Your signature certifies that you understand any misrepresentation of fact or failure to disclose a material fact may be punishable under the law. This includes any changes to the care recipient's Medical Certificate or the Employer's Statement made by you without authorization by the care recipient's physician or your employer.

3. You must inform us of any other payments you are receiving such as paid time off, a pension from your most recent employer, Workers' Compensation benefits, Social Security Disability benefits, disability benefits from your employer or union or Unemployment Insurance benefits.

4. If you receive a Family Leave Insurance Continued Claim Certification (Form FL3), it must be completed before further benefits can be authorized. Follow the instructions provided on the form and return it promptly.

5. If you return to work during the period for which you claimed Family Leave Insurance benefits, you must report this date immediately to the Division of Temporary Disability Insurance, at the telephone number listed below.

6. Family Leave Insurance benefits are subject to federal income tax and to federal rules that apply to the reporting of income and payment of taxes. However, these benefits are not subject to New Jersey state income tax. When you file your application for benefits, you can voluntarily have 10% of your benefits withheld for federal income tax. Following the end of each calendar year, you will be mailed a statement (Form 1099-G) of the total amount of benefits you received during the year. This information will also be given to the Internal Revenue Service (IRS).

7. If your home and/or mailing address changes, you must notify the Division of Temporary Disability Insurance, PO Box 387, Trenton, NJ 08625-0387 in writing. Notification must include your Social Security Number and signature. Family Leave Insurance checks cannot be forwarded by the postal service.

8. If you disagree with a determination on your claim, you may appeal. Instructions for filing an appeal will appear on your Notice of Determination.

Claim Assistance:
If you require any assistance with your claim, call: **Customer Service Section (609) 292-7060.**

Hearing impaired individuals may contact our office by: Telecommunication Device for the Deaf (TDD)-(609) 292-8319, New Jersey Relay Service: TT user 1-800-852-7899, Voice User: 1-800-852-7897

Important: Please allow fourteen (14) days processing time before inquiring about your claim.

Division of Temporary Disability Insurance FAX number: (609) 984-4138

For additional information about the Family Leave Insurance Program, visit our website at: www.nj.gov/labor

READ THE FOLLOWING INSTRUCTIONS BEFORE COMPLETING THE ATTACHED APPLICATION FOR FAMILY LEAVE INSURANCE BENEFITS

A Family Leave Insurance claim can be filed when you:

Care for a seriously ill family member as supported by a certification provided by a health care provider. Family member means child (biological, adopted, foster, stepchild, legal ward or child of a civil union or domestic partner) less than 19 years of age, child over 19 and incapable of self care, spouse, domestic partner, civil union partner or parent of a covered individual. Claims may be filed for six consecutive weeks, for intermittent weeks or for 42 intermittent days during the 12-month period beginning with the first date of the claim.

or

Bond with a new born or newly adopted child during the first 12 months after the child's birth or adoption. Bonding leave must be for a single continuous period of time unless the employer permits the leave to be taken in non-consecutive periods. In this case, each leave period must be at least seven days.

Requirements for taking Intermittent Leave

If your claim is for intermittent leave, you **must complete** Part E of this form, Intermittent Family Leave Schedule. The schedule must include the dates that you have been absent from work to care for a family member or bond with a newborn or newly adopted child. Be sure to include your name and social security number on the schedule. In order to prevent overpayment, no benefits can be authorized beyond the date of your employer's signature. Family Leave Insurance may only be claimed for whole days of leave. Benefits will not be paid for partial days of leave.

Instructions

Complete both sides of the claimant's portion of this form (Part A) making sure to:

- Include your full name and complete address.
- Print or type all information clearly. Illegible information will cause a delay in processing.
- List exact dates.
- Be sure that your social security number appears on all attachments.
- Sign your application.

1. If you are claiming benefits because you are bonding with a child, you must complete Part B and have Part D completed by your employer. Do not complete Part C.
2. If you are claiming benefits because you are caring for a seriously ill family member, you are responsible for having Part C completed by the care recipient and the care recipient's health care provider and Part D completed by your employer. Do not complete Part B.
3. If you have worked for more than one employer during the past year, you may copy Part D for completion by the other employer(s) to avoid processing delays. **Any missing or incorrect entries on this form will delay processing of your claim.** If you cannot have the entire application completed timely, complete Part A and submit the application as soon as possible.
4. Read all questions carefully! Print or write clearly since this information is used to determine your right to benefits. If you need any assistance in completing this form, please call the Customer Service Section in Trenton at (609) 292-7060 and hold for an agent.
5. **BE SURE TO WRITE YOUR SOCIAL SECURITY NUMBER, NAME, ADDRESS AND TELEPHONE NUMBER ON EACH PORTION OF YOUR CLAIM.**

Important: We suggest that you keep a copy of the completed claim form for your records.

SENDING IN SEPARATE PARTS OF THE APPLICATION WILL DELAY YOUR CLAIM. NOTE: IF YOU CHOOSE TO FAX THIS FORM TO OUR OFFICE, BE SURE TO FAX BOTH SIDES OF EACH PAGE.

MAIL OR FAX PARTS A, B, C, D and E TOGETHER TO:

Division of Temporary Disability Insurance
PO Box 387
Trenton, NJ 08625-0387
FAX No: (609) 984-4138

FL-1(R-1-16)

FL-1

STATE OF NEW JERSEY – DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF TEMPORARY DISABILITY INSURANCE

APPLICATION FOR FAMILY LEAVE INSURANCE BENEFITS

PART A **TO BE COMPLETED BY THE CARE OR BONDING PROVIDER - Print or Type** FL-1(R-1-16)

1. **Name:** Last First Middle | 2. **Birth Date** | 3. **Social Security Number**

4. **Home Address – required** (Street, Apt #, City, State, Zip Code) | 5. County

6. **Mailing Address – if different** (Street, Apt #, City State, Zip Code) | 7. Male ☐ Female ☐ | 8. Occupation

9. Are you a citizen of the United States? Yes ☐ No ☐
If no, answer #10 & 11 and give country of origin: _____ | 10. Alien Reg. No. | 11. Work Authorization From _____ To _____

12. What was the last day that you worked? _____ (Month Day Year)

13. Date you want your Family Leave Insurance claim to begin:
(Include Saturday, Sunday, or Holiday.) **If this date is in the future or if this date is left blank, this application will be returned to you.** _____ (Month Day Year)

14. Reason for family leave: ☐ Care of Family Member ☐ Bond With Child

15. Will your family leave be taken on an intermittent basis? ☐Yes ☐No. **NOTE:** To claim benefits for intermittent family leave you must complete the Intermittent Family Leave Schedule, Part E, of this form (see instruction page for required information). If the intermittent leave is to bond with a newborn or newly adopted child, your employer must approve the schedule and the leave must be taken in increments of at least seven consecutive days.

16. Date you returned to work or will return to work: _____ (Month Day Year)

17. Person For Whom You Are Caring/Bonding:
Last_____ First _____ Middle_____
Street _____ City_____ State _____ Zip_____
Telephone No:_____ Date of Birth ____|____|_____ Gender: ☐ Male ☐ Female

18. The Care Recipient is your: ☐ Child ☐ Spouse/ Civil Union Partner/ Domestic Partner ☐Parent ☐ Other: _____

Employment Information – Beginning with your last employer, list all employment (both full and part-time) in the past 18 months. If needed, space to list additional employers can be found on the reverse side of Part E.

19a. Name and address of your most recent employer:
_____
_____
(Street) (City) (State) (Zip)
Period of employment: From _____ (month/day/year) To_____ (month/day/year)
Telephone: _____ Work Location _____ (City State)
Occupation: _____ Full time ☐ Part time ☐ Union _____ Division_____
Check the days of the week you normally work. SUN ☐ MON ☐ TUE ☐ WED ☐ THUR ☐ FRI ☐ SAT ☐

19b. Name and address of additional employer:
_____
_____
(Street) (City) (State) (Zip)
Period of employment: From _____ (month/day/year) To_____ (month/day/year)
Work Telephone: _____ Location _____ (City State)
Occupation: _____ Full time ☐ Part time ☐ Union _____ Division_____
Check the days of the week you normally work. SUN ☐ MON ☐ TUE ☐ WED ☐ THUR ☐ FRI ☐ SAT ☐

19c. Name and address of additional employer:
_____
_____
(Street) (City) (State) (Zip)
Period of employment: From _____ (month/day/year) To_____ (month/day/year)
Work Telephone: _____ Location _____ (City State)
Occupation: _____ Full time ☐ Part time ☐ Union _____ Division_____
Check the days of the week you normally work. SUN ☐ MON ☐ TUE ☐ WED ☐ THUR ☐ FRI ☐ SAT ☐

FL-1 (R-1-16)

Claimant's Name: _____

Claimant's Address:_____

Claimant's Telephone No:(_____)_____

Social Security Number

| |

PART A Continued

MUST BE COMPLETED AND SIGNED BY THE CARE/BONDING PROVIDER

20. **Have you received Family Leave Insurance benefits in the last 18 months?** Yes ☐ No ☐

21. **You must answer each question listed below for the period of family leave covered by this claim:**
   a. Did you or will you receive paid time off from your employer? Yes ☐ No ☐
   b. Have you been involved in a labor dispute (strike, lockout, etc.)? Yes ☐ No ☐

22. **Since your last day of work have you received or applied for any of the following? If yes, please list dates in the space provided.**

a. Federal Social Security Disability Benefits? Yes ☐ No ☐
b. Pension benefits from your most recent employer? Yes ☐ No ☐
c. Disability benefits provided by your employer or union? Yes ☐ No ☐
d. Unemployment Insurance Benefits? Yes ☐ No ☐
e. Worker's Compensation Benefits? Yes ☐ No ☐

Date benefit began:_____ Date benefit will end:_____

23. **Do you wish to have 10% of your benefits withheld for federal income tax?** ☐ Yes ☐ No

USE THIS SPACE TO PROVIDE ANY ADDITIONAL INFORMATION FOR QUESTIONS ON PART A

_____

_____

_____

_____

_____

If more space is needed, attach an additional sheet of paper. Be sure your Social Security Number appears on all pages.

Certification and Signature I claim Family Leave Insurance benefits and certify that throughout the period covered by this claim I was providing care for or bonding with the care recipient identified in Part A. I hereby certify that I have read and understand my benefit rights and responsibilities. I am aware that if any of the foregoing statements made by me are known to be false, or I knowingly fail to disclose a material fact, I may be subject to penalties, which may include criminal prosecution. You are hereby authorized to verify my Social Security Account Number, and obtain any medical, employment and other benefit entitlement information that is necessary to determine my eligibility for benefits.

Signature of Claimant_____Date_____

Witness signature if claimant writes an "X" _____

Phone No. (_____)_____ Cell Phone No. (____)_____

E-Mail Address _____

Note: The Division of Temporary Disability Insurance is not a "covered entity" under the Federal Health Information Portability & Accountability Act (HIPAA). All medical records of the Division, except to the extent necessary for the proper administration of the Temporary Disability Benefits Law are confidential & are not open to public inspection. The Division protects all records that may reveal the identity of the claimant, or the nature or cause of the disability/family leave and the records may only be used in proceedings arising under the Law.

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Claimant's Name: _____

Claimant's Address:_____

Claimant's Telephone No:(_____)_____

Social Security Number

| |

Part B

BONDING CERTIFICATION

To be completed by the person claiming Family Leave Insurance benefits to bond with a newborn or newly adopted child. NOTE: Benefits are not payable for bonding with a foster child.

DO NOT complete this portion of the application if the reason for this Family Leave Insurance benefits claim is to care for a sick family member. Complete Part C on the reverse side if your claim is for care giving.

DO NOT use this claim form if you are filing for Family Leave Insurance benefits to bond with your newborn child immediately after your claim for State Plan Temporary Disability or Disability During Unemployment ends. Instructions for filing a transitional bonding claim will be sent to you by the Division of Temporary Disability Insurance.

1. Legal Name of Child:

_____
(Last) (First) (Middle)

2. Child's Soc. Sec No. (If available)

| |

3. Child named in item 1 above is my:

- ☐ Child
- ☐ Adopted Child
- ☐ Domestic or Civil Union Partner's newborn or newly adopted child

4. Child's Date of Birth

_____|_____|_____
(Month) (Day) (Year)

5. Date of Adoption

_____|_____|_____
(Month) (Day) (Year)

6. Gender

- ☐ Male
- ☐ Female

7. As evidence of the relationship in Item 3, check one of the following and **attach a copy** of the document checked. The document that you submit must show your name and your child's name. **(Do not send original document, it will not be returned.)**

- ☐ Child's Birth Certificate
- ☐ Birth Mother May Submit Child's Hospital Discharge Record
- ☐ Declaration of Paternity
- ☐ Certificate of Placement for Adoption
- ☐ Independent Adoption Placement Agreement
- ☐ Other_____

8. Have you provided your employer with at least 30 days notice that you would be taking this leave? ☐ Yes ☐ No

9. **Declaration and Signature:** I authorize the medical provider, adoption agency or adoption party to disclose to the New Jersey Division of Temporary Disability Insurance all facts concerning the birth or adoption of the above-named child. I am aware that if any of the foregoing statements made by me are known to be false, or I knowingly fail to disclose a material fact, I may be subject to penalties, which may include criminal prosecution.

Signature of Claimant_____ Date _____

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Care Provider's Name: _____

Care Provider's Address: _____

Care Provider's Telephone No:(_____)_____

Care Provider's Social Security Number

| |

PART C

Page 4 of 8

CARE RECIPIENT'S RELEASE OF MEDICAL INFORMATION

Must be signed by the care recipient or the care recipient's authorized representative.

DO NOT complete this portion of the application if the reason for this Family Leave Insurance benefits claim is to bond with a child. Complete Part B on the reverse side if your claim is for bonding.

1. Care Recipient's Name: _____
(Last) (First) (Middle)

2. Care Recipient's Social Security Number | |

3. Care Recipient's Medical Disclosure Authorization and Confirmation

I authorize my physicians/health care providers to disclose my current personal health information to my care provider, identified above and to the New Jersey Division of Temporary Disability Insurance. I make this authorization to support my care provider's claim for Family Leave Insurance benefits. I understand that I may not revoke my authorization to avoid prosecution or to prevent the Division of Temporary Disability Insurance's recovery of money to which it is legally entitled. I further understand that copies of my signature below are as valid as the original.

Note: The Division of Temporary Disability Insurance is not a "covered entity" under the Federal Health Information Portability & Accountability Act (HIPAA). All of your medical records, except to the extent necessary for the proper administration of the Temporary Disability Benefits Law are confidential & are not open to public inspection. The Division also protects all records that may reveal your identity or the identity of your care provider.

Care Recipient's Signature _____ Date_____

Witness signature if care recipient writes an "X"_____

If unable to sign, Item 4 below must be completed.

4. Authorized representative signing on behalf of care recipient must complete the following:

I, _____, represent the care recipient in this matter and I am authorized by
(print name)

☐ parental right ☐ power of attorney (attach copy) ☐ court order (attach copy) to do so.

Representative's Signature _____ Date_____Phone No._____

MEDICAL CERTIFICATE - To be completed by the care recipient's physician or health care provider

1. Does your patient require full time care? ☐ Yes ☐ No If no, how many days per week does your patient require care? _____

1a. What type of care can be provided to your patient by the family member submitting this claim?

_____
(Example: ADL's, emotional support, transportation, visitation, etc)

1b. Check here ☐ if the family member is unable to provide any type of care for this patient

2. Date patient's condition commenced:	3. First date care is needed:	4. Date you estimate patient will no longer require care by the care provider:	5. Date you expect patient to recover:
___|___|___ Month Day Year	___|___|___ Month Day Year	___|___|___ Month Day Year	___|___|___ Month Day Year

6. Diagnosis: (nature and cause of the condition which requires care from care provider)_____

_____ **ICD Code:** _____

7. I certify that the above statements, in my opinion, truly describes the patient's condition and need for care and the estimated duration thereof:

_____ (Print Name and Degree) _____ (Original Signature Required) _____ (Date Signed)

_____ (Address) _____ (Certificate License No. and State)

_____ (City) (State) (Zip Code) _____ (Specialty of Treating Physician)

If Resident, check ☐ Telephone Number: ( )_____ FAX No. ( )_____

Claimant's Name: _____ Clt's Tele #(____)_____ Clt's Address: _____	SOCIAL SECURITY NUMBER | |

PART D — **EMPLOYER'S STATEMENT - SECTION 1**
TO BE COMPLETED BY YOUR EMPLOYER OR COMPANY REPRESENTATIVE

 FL-1(R-1-16)

1. EMPLOYER STATUS
What is your Federal Employer Identification Number: _____
Payroll number (For N.J. State Employers) _____

2. PRIVATE PLAN COVERAGE (NJ approved plan/replaces State Plan coverage)
a. Do you have a N.J. approved Private Plan for family leave? ☐Yes ☐No
b. If yes, is claimant covered? ☐Yes ☐No

3. PRIVATE PLAN TEMPORARY DISABILITY BENEFITS
a. Do you have an approved private plan for temporary disability benefits? ☐ Yes ☐ No If yes, please provide the following:
1. Did the claimant collect benefits from your approved private plan immediately prior to the family leave? ☐ Yes ☐ No
2. If known, provide the dates and Weekly Benefits Rate that your private plan paid temporary disability benefits:

From ____|____|____ (Month Day Year) through ____|____|____ (Month Day Year) Weekly Benefit Rate $_____

4. LAST ACTUAL DAY WORKED before the family leave
(do not use payroll week ending dates) ____|____|____ (Month Day Year)

a. Is the separation permanent? ☐ Yes ☐ No Reason for separation: _____

b. Has claimant returned to work? ☐ Yes ☐ No If yes, give date ____|____|____ (Month Day Year)

5. ENTITLEMENT REDUCTION OPTION (do not enter dates prior to family leave)
a. Do you want to reduce the employee's maximum entitlement up to two (2) weeks if the employee is required to use paid time off (vacation, sick, personal, etc)? ☐Yes ☐ No

b. If yes, provide the dates and the number of full days the employee is required to use.

From ____|____|____ (Month Day Year) To ____|____|____ (Month Day Year) Number of Days _____

6. OTHER PAID TIME OFF
a. Is the employee receiving or will he/she receive any paid time off not included in (5b.) above. ☐ Yes ☐No If yes, please provide the following.

Dates Paid : From ____|____|____ (Month Day Year) To ____|____|____ (Month Day Year)

Amount per week $_____, if amount or dates vary attach a list for each time period.
b. Check the number that best describes the monies paid in item a. **Note:** Items 3 and 4 will not affect the benefits.
☐ 1. Paid Time Off (Vacation, Sick, Personal, etc)
☐ 2. Pension
☐ 3. Supplemental benefits or gratuities
☐ 4. Difference between regular weekly wage and Family Leave Insurance benefits to be received or full salary advanced to effect the difference.

7. LEAVE INFORMATION
a. Did your employee provide you with reasonable and practicable notice of this period of family leave? ☐ Yes ☐ No If no, attach explanation.
b. Is the employee taking this leave on an intermittent basis? ☐Yes ☐No
c. If yes, have you agreed to the intermittent schedule? ☐Yes ☐No

8. OTHER BENEFITS
Has the claimant filed for or received:
a. Workers' Compensation Benefits ☐ Yes ☐ No
b. Sick Leave Injury (gov't workers only) ☐ Yes ☐ No
c. Unemployment Benefits ☐ Yes ☐ No

9. Check the days of the week the employee normally works.
SUN ☐ MON ☐ TUE ☐ WED ☐ THUR ☐ FRI ☐ SAT ☐

PLEASE BE SURE TO COMPLETE AND SIGN SECTION 2 ON THE REVERSE SIDE OF THIS PAGE

Claimant's Name: _____ Clt's Tele #(____)_____ Clt's Address:_____	SOCIAL SECURITY NUMBER | |

PART D Continued | **EMPLOYER'S STATEMENT - SECTION 2**

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10. EDUCATIONAL INSTITUTIONS (complete this section)

a. Is your facility classified as an "educational institution" which is approved to operate as a school by the State Department of Education? ☐ Yes ☐ No

b. Does any part of the period claimed occur during a school wide recess, vacation period or between academic terms? ☐ Yes ☐ No
If yes, list the dates: Beginning Date_____ Date School Resumes _____

11. BASE WEEKS AND BASE YEAR GROSS WAGES

A BASE WEEK is a calendar week in which the claimant had New Jersey earnings of $168 or more **OR** any week (up to 13 weeks) in which the claimant is separated from employment due to a declared state of emergency during the base year.

The BASE YEAR is the 52 calendar weeks preceding the week in which the family leave began. If the claimant collected temporary disability benefits from either the State Plan or a Private Plan immediately prior to the family leave, the base year is the 52 weeks prior to the beginning of the temporary disability claim.

a. Total Number of **Base Weeks** _____
b. Total **Gross Wages in Base Year** _____
(Include all wages earned by the claimant)

12. REGULAR WEEKLY WAGE $ _____

13. Weekly wages

Indicate below: dates and claimant's GROSS earnings in N.J. employment during the listed calendar weeks. If the claimant collected temporary disability benefits from either the State Plan or a Private Plan immediately prior to the family leave, list the weekly wages prior to the beginning of the temporary disability claim.

Description of Calendar Week	Calendar Week Ending Date	Gross Wages	Description of Calendar Week	Calendar Week Ending Date	Gross Wages
Week Family Leave Began		$	6th Week Before Family Leave		$
Week Before Family Leave		$	7th Week Before Family Leave		$
2nd Week Before Family Leave		$	8th Week Before Family Leave		$
3rd Week Before Family Leave		$	9th Week Before Family Leave		$
4th Week Before Family Leave		$	10th Week Before Family Leave		$
5th Week Before Family Leave		$	**Total Gross Wages for these Weeks**		$

I CERTIFY THE INFORMATION GIVEN ABOVE IS CORRECT

Firm Name _____

Address _____

City, State, Zip_____ Print or Type Name _____

Signature_____ Date_____

Mailing Address, if different_____ Official Title_____

FAX No. ( ) _____ Phone No. ( ) _____E-Mail Address_____