

# Appendix A: FMLA federal legislative history highlights

## 1978

[Pregnancy Discrimination Act \(PDA\) is passed.](#) This is the first federal law protecting pregnant workers' employment rights. The PDA amends Title VII of the Civil Rights Act of 1964 to ensure that employers cannot discriminate based on pregnancy in matters of employment including hiring, firing, pay, promotions or benefits. It states that for all employment-related purposes, employers must treat pregnant women equally as other employees who are not pregnant but are affected similarly in their "ability or inability to work."<sup>1</sup> In following years, the Supreme Court upholds the interpretation that Title VII, as amended by the PDA, prohibits employment discrimination against a woman because of her capacity to become pregnant.<sup>2</sup> A limitation is that Title VII, and therefore the PDA only applies to employers with 15 or more employees.<sup>3</sup>

## 1985

[The first version of the Family and Medical Leave Act is introduced in the House of Representatives.](#) This version allows for, over a two-year period, 18 weeks of unpaid parental leave for the birth, adoption, or serious illness of a child and 26 weeks of unpaid medical leave for an employee's own serious health condition. The law applies to employers with five or more employees.<sup>4</sup> The bill meets heavy political resistance and advocates have to build support and awareness through a multi-year campaign.

## 1993

[The FMLA is signed into law by President Bill Clinton.](#) The final law allows for 12 weeks of unpaid parental and medical leave and applies to employers with at least 50 employees. It allows employees to take medical leave to care for spouses, children and parents.

## 2008

[President George W. Bush signs the National Defense Authorization Act for Fiscal Year 2008, effective 2009, which amends the FMLA to include two special military family leave provisions:](#)<sup>5-7</sup>

- **Military caregiver leave:** An employee who is the parent, spouse, child or next of kin of a current service member with a serious illness or injury incurred during active duty may take up to 26 weeks of unpaid leave to care for the service member.
- **Qualifying exigency leave:** An employee who is the parent, spouse or child of a member of the National Guard or Reserves can take up to 12 weeks of unpaid leave for qualifying urgent matters arising from the service member's deployment (such as the need to make alternative child care, legal or financial arrangements or attend military events).

## 2009

President Obama signs the National Defense Authorization Act for Fiscal Year 2010 which includes statutory amendments to the FMLA:<sup>8</sup>

- **Military caregiver leave:** Includes leave to care for veterans receiving medical treatment or therapy, or who are recuperating from a serious illness or injury incurred or aggravated during active duty. Military caregiver leave is allowed for pre-existing injuries or illnesses aggravated during active duty for all covered service members, including veterans.
- **Qualifying exigency leave:** Expanded to eligible employees with family members in the Regular Armed Forces and is modified to be available only in cases where a service member's deployment is to a foreign country.

The Airline Flight Crew Technical Corrections Act establishes special FMLA hours of service requirements<sup>9</sup> for airline flight crewmembers and flight attendants because of the industry's non-traditional work hours.<sup>6; 10</sup>

## 2015

In June 2015, the Supreme Court ruled in *Obergefell et al. v. Hodges* that marriage is a civil right granted to same-sex couples, making same-sex marriage legal in all 50 states and effectively extended FMLA's coverage to married same-sex couples across the nation.<sup>11</sup>

## LOOKING FORWARD: NATIONAL PAID LEAVE APPROACHES

In recognition of the important benefits of paid family and medical leave (FML), several states (California, New Jersey, Rhode Island, New York, Washington, Massachusetts, Connecticut, and Oregon) and Washington, D.C. have enacted paid FML. While on the federal level there is consensus that more should be done to support working families, debates about the most appropriate method to do so continue. Below includes a selection of some approaches to FML.

### Tax credits: Tax Cuts and Jobs Act

An approach to expanding access to paid FML is by incentivizing workplaces to develop company-wide FML policies through tax credits. One such example passed in December 2017 as part of the Tax Cuts and Jobs Act, which includes a temporary tax credit to employers who provide paid family and medical leave.<sup>12; 13</sup> To claim the credit, an employer must have a written policy providing at least two weeks annually of family and medical leave to qualifying employees who work full time with wage replacement of at least 50% of normal wages.<sup>14</sup> Employers can offer prorated benefits to employees who work part time. To qualify, an employee must have worked for the employer for at least one year and cannot have compensation over a maximum amount (in 2018, the maximum compensation was \$72,000).<sup>14</sup> Employers receive a tax credit that is a percentage of the wages paid to employees while on leave for up to 12 weeks. The tax credit covers a minimum of 12.5% of the wages paid and increases if the percent of wages paid to an employee exceeds 50%.<sup>14</sup>

### Drawing from Social Security: The New Parents Act

Some lawmakers have proposed expanding paid FML access by drawing from existing safety net programs, such as Social Security. In this vein, Senators Marco Rubio (R-FL) and Mitt Romney (R-UT) and Representatives Ann Wagner (R-MO) and Dan Crenshaw (R-TX) introduced The New Parents Act in 2019. This proposed national legislation would have parents self-finance their own paid parental leave by drawing on their future Social Security benefits.<sup>15</sup> Workers who choose to

use paid parental leave would delay retirement or lower their Social Security benefits in retirement.<sup>16</sup> Parents in a household would share the twelve weeks of leave. Senator Marco Rubio's office estimated that nearly all parents with a family income below \$60,000 would be able to take up to three months of leave with two-thirds of their prior wages. It is estimated that parents who choose to use this leave option would opt to either delay the receipt of Social Security retirement benefits by three to six months per benefit taken or receive a proportional reduction in monthly Social Security benefits for the first five years of retirement.<sup>17</sup>

#### [Social insurance: Family and Medical Insurance Leave \(FAMILY\) Act](#)

Another approach to expanding access to paid FML is by developing a new federal social insurance program. Senator Kirsten Gillibrand (D-NY) and Representative Rosa DeLauro (D-CT) introduced the Family and Medical Insurance Leave (FAMILY) Act before Congress in 2013, 2015, 2017, and 2019. The FAMILY Act offers workers 12 weeks of up to 66% wage replacement to address one's own health conditions, the health of a child, parent, spouse, or domestic partner, the birth or adoption of a child, or care needs associated with military leave. The FAMILY Act would be administered through a new office, the Office of Paid Family and Medical Leave, funded through small employee and employer payroll contributions.<sup>18</sup>

#### [Compromise proposal: American Enterprise Institute \(AEI\)-Brookings](#)

In June 2017, a bipartisan working group organized by the American Enterprise Institute (AEI) and the Brookings Institution developed a national paid parental leave social insurance proposal. Their preliminary proposal suggests that a federal paid parental leave policy should be gender-neutral, provide 70% wage replacement up to a cap of \$600 per week for six weeks and address the birth or adoption of a child, financed through a small employee payroll tax and other savings in the federal budget.<sup>19</sup> In 2018, the working group reconvened to consider national family leave (to care for the health of family members) and national medical leave (to care for own health) policies; however, they did not endorse a national compromise proposal for either type of leave. The group agreed that a national medical leave policy should fill the gap between employer-provided sick leave and long-term Social Security disability insurance, but that additional research was necessary to produce a compromise proposal. The group did not come to a consensus regarding whether a federal program should provide family leave.<sup>13</sup>

## Endnotes and citations

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