

**GETTING PAST THE “WHO” AND THE “HOW”:
ANALYZING THE LANDSCAPE, CHALLENGES, AND
PROSPECTS OF PAID FAMILY AND MEDICAL LEAVE
POLICIES IN THE UNITED STATES AND CANADA**

*Alex Suarez**

The United States is the only major industrialized nation that does not mandate paid parental leave for private-sector employees and remains among a handful of high-income nations without guaranteed paid caregiving or sick leave. The absence of a national Paid Family and Medical Leave (PFML) program places immense financial and emotional strain on American workers, forcing them to choose between their livelihood and critical caregiving responsibilities. This Comment examines the current PFML landscape in the United States, the economic and social benefits of a national program, and the challenges of implementation. A comparative analysis with Canada highlights the feasibility of a robust PFML system, demonstrating how a well-structured federal policy can balance worker protections with economic sustainability. The paper concludes with a proposal for a federally administered PFML program based on seven core principles, addressing free-market criticisms and emphasizing financial viability, administrative efficiency, and the necessity of a strong social safety net in the post-COVID-19 era.

* Ramon Alejandro Suarez, J.D. Candidate, Temple University, Beasley School of Law, 2025. Thank you to Professor Nancy Knauer for her mentorship and guidance throughout this research process! I am also deeply grateful to the Temple Law and Public Policy Program for providing me with the opportunity to explore this important topic. Special thanks to my TICLJ colleagues and friends for their unwavering support. Above all, thank you to my family for their constant belief in me and for teaching me the value of perseverance and advocacy for the rights of working people.

TABLE OF CONTENTS

I. INTRODUCTION.....	172
II. THE BENEFITS OF PAID FAMILY AND MEDICAL LEAVE LAWS	175
III. THE CURRENT PFML LANDSCAPE	177
A. PFML Law in the United States	177
B. PFML in Canada.....	178
IV. GETTING PAST SHOULD: THE CONSENSUS FOR PFML IN THE UNITED STATES	182
V. DISAGREEING ABOUT THE HOW AND THE WHO: THE POLITICAL DIVIDE ON PFML IN THE UNITED STATES VERSUS CANADA	184
A. Political Differences in the United States.....	184
B. Political Consensus in Canada.....	188
VI. FIGURING OUT THE “HOW” AND THE “WHO”: THE SEVEN TENETS OF PFML	189
A. Social Insurance Funding over Employer Mandates	189
B. Universal Coverage.....	192
C. Progressive Distribution.....	193
D. Expansive Definition of PFML.....	194
E. Viable Wage Replacement Rate.....	196
F. Flexible Work Eligibility.....	198
G. Outreach	200
VII. CONTENDING WITH MARKET-BASED APPROACHES TO PFML	201
VII. POLICY POINTS OF EMPHASIS	203
A. Financial Sustainability.....	203
B. Centralized Administrability.....	204
C. Scrutiny of Public–Private Partnerships.....	205
IV. CONCLUSION	206

I. INTRODUCTION

Currently, the United States stands alone among the forty-one member nations of the Organization for Economic Cooperation and Development (OECD) in not enforcing mandatory paid parental leave for private-sector employees.¹ Furthermore, it is one of only eight OECD countries that do not provide any form of guaranteed paid caregiving leave² and is the sole representative among the top twenty-two

1. *PF2.1. Parental Leave Systems*, OECD FAMILY DATABASE (Dec. 2022), https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf.

2. *Paid Family Leave across OECD Countries*, BIPARTISAN POLICY CENTER 4–7 (Jan. 2020), <https://bipartisanpolicy.org/download/?file=/wp->

economies in the United Nations' Human Development Index lacking a nationally ensured paid sick leave program.³ Paid family and medical leave (PFML) policies enable worker compensation for extended periods off from work to 1) tend to a serious health condition, 2) bond with a new child, 3) care for a seriously ill loved one, 4) fulfill active military duty requirements, and/or 5) cope with sexual or domestic violence.⁴ The absence of guaranteed paid leave in these situations throws families into immense financial strain, forcing them to make impossible choices between their loved ones and their livelihood.⁵ A lack of PFML can lead to increased stress, mental and physical health problems, decreased job satisfaction and productivity, and even job loss among a nation's workforce.⁶ PFML provides a vital safety net, allowing individuals to navigate challenging life events without sacrificing their well-being or economic security.⁷ This Comment provides a comprehensive analysis of the current landscape of PFML laws in the United States, exploring the benefits, challenges, and prospects associated with implementing a nationwide PFML program in a high-income nation, such as the United States, whose lack of caregiving infrastructure has contributed to labor shortages and undermined workers' rights in the workplace.⁸

To enhance the discussion, it is crucial to juxtapose the U.S. model with that of Canada, a nation that has implemented robust paid leave policies.⁹ As a North American neighbor with a more diversified paid leave system,¹⁰ Canada offers a significant case for scrutiny regarding the

content/uploads/2020/01/PFL6-Final_.pdf.

3. Hye Jin Rho, Shawn Fremstad, & Jared Gaby-Biegel, *Contagion Nation 2020: United States Still the Only Wealthy Nation without Paid Sick Leave*, CENTER FOR ECONOMIC AND POLICY RESEARCH (Mar. 19, 2020), <https://cepr.net/report/contagion-nation-2020-united-states-still-the-only-wealthy-nation-without-paid-sick-leave>.

4. *The State of Paid Family and Medical Leave in the U.S. in 2023*, CENTER FOR AMERICAN PROGRESS (Jan. 5, 2023), <https://www.americanprogress.org/article/the-state-of-paid-family-and-medical-leave-in-the-u-s-in-2023>.

5. Amanda M. Irish et. al., *Paid Family Leave and Mental Health in the U.S.: A Quasi-Experimental Study of State Policies*, 61(2) AM. J. PREV. MED. 182, 186 (Aug. 2021).

6. *Id.* at 185.

7. Heather Boushey, Ann O'Leary, & Alexandra Mitukiewicz, *The Economic Benefits of Family and Medical Leave Insurance*, CENTER FOR AMERICAN PROGRESS (Dec. 12, 2013), <https://www.americanprogress.org/article/the-economic-benefits-of-family-and-medical-leave-insurance>.

8. See Amanda Novello, *The Great Resignation Shows Great Need for Paid Leave*, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, at 2 (Dec. 2021), <https://nationalpartnership.org/wp-content/uploads/2023/02/issue-brief-the-great-resignation.pdf>.

9. See Service Canada, *EI Maternity and Parental Benefits: What These Benefits Offer* (Dec. 29, 2023), <https://www.canada.ca/en/services/benefits/ei/ci-maternity-parental.html>.

10. *Leave of Absence in Canada*, Canadian Work Leaves, <https://www.canpay.com/payroll-information/provincial-leaves-of-absence.html> (last visited Feb. 6, 2025).

potential implementation of PFML in the United States. On the one hand, the scope of parental benefits in Canada surpasses that in the United States; however, they fall within the low to middle range when compared to other highly developed Western nations.¹¹ Examining how Canada's federal policy aligns its parental benefits' duration with many European nations, despite benefit levels being comparatively modest and positioned at the lower spectrum of what is typically provided in Europe, offers a pivotal north star.

Drawing upon empirical studies and data, this Comment overviews the immense benefits that a national PFML law would yield for individuals, families, employers, and U.S. society.¹² Part I asserts that while there may be additional expenses associated with federally implementing a national PFML program, the long-term benefits will outweigh such costs in economic, social, developmental, and psychological terms.¹³ Part II of the Comment examines the current landscape of PFML policy in the United States to present an overview of existing federal and state law.¹⁴ Part III will explore how Canada's PFML policies have contributed to the well-being of its citizens.¹⁵

Part IV of this Comment will subsequently examine the existing PFML policy landscape in the United States, drawing attention to the current federal and state laws.¹⁶ This part will shed light on the growing acknowledgment of the need for PFML legislation in the United States; this Comment will highlight bipartisan support and public consensus. Part V will explore the major consensus for PFML in the United States across various demographic divides.¹⁷ This part will also conduct a quick overview of Canada's reassessment of its paid leave policies during the COVID-19 pandemic.¹⁸

Finally, the Comment will explore the prospects of federal PFML legislation in the post-COVID-19 era to put forth a comprehensive proposal that draws inspiration from successful elements of Canada's PFML system and those of various U.S. states. Part VI will propose seven

11. PF2.1. *Parental Leave Systems*, *supra* note 1; *Paid Family Leave across OECD Countries*, *supra* note 2; Rho *et al.*, *supra* note 3.

12. *See infra* Part I for a discussion of the potential economic, social, developmental, and psychological benefits fostered by preexisting PFML programs in different contexts.

13. *Id.*

14. *See infra* Part II for a discussion of the current landscape of PFML laws in the United States on the federal and statewide levels.

15. *See infra* Part III for a discussion of the current landscape of PFML laws within Canada on the national and provincial levels.

16. *See infra* Part IV for an overview of the current policy debate surrounding PFML in the United States.

17. *See infra* Part V for a breakdown of demographic support for PFML in the United States.

18. *See infra* Part V for a history of the increased emphasis on PFML in Canada after COVID-19.

core tenets for a future PFML program predicated upon social insurance funding, universal coverage, progressive distribution, an expansive definition of PFML, a viable wage replacement rate, flexible work eligibility standards, and public outreach.¹⁹ Part VII will counter free-market libertarian counterproposals to my social funding proposal through a presentation of the empirical data.²⁰ Finally, Part VIII will counter free-market approaches to argue a socially funded PFML program can be implemented in a way that is financially feasible and administrable within an efficiently centralized bureaucratic structure via policy that emphasizes financial sustainability and centralized administrability within preexisting federal infrastructure to fund and implement a non-privatized national PFML program.²¹ Extra scrutiny is paid to public-private relationships as a solution.²²

II. THE BENEFITS OF PAID FAMILY AND MEDICAL LEAVE LAWS

Myriad economic, health, and developmental benefits accompany a PFML program. PFML laws enable workers to balance their personal and professional lives more effectively,²³ positively correlating with increased job satisfaction,²⁴ greater economic security,²⁵ and higher levels of employee loyalty²⁶ and productivity.²⁷ Workers with access to paid leave are more likely to have the work flexibility to rest during an illness

19. See *infra* Part VI for the seven proposed tenets for a national PFML plan in the United States.

20. See *infra* Part VII for a discussion of free-market critiques of a socially funded PFML program.

21. See *infra* Part VIII for a discussion of free-market critiques of a socially funded PFML program.

22. See *infra* Part VIII for a quick overview of the potential failings of a public-private solution.

23. Nabanita Datta Gupta *et al.*, *Child Care and Parental Leave in the Nordic Countries: A Model to Aspire To?*, IZA DISCUSSION PAPER NO. 2014, at 32 (Mar. 2006), http://papers.ssrn.com/paper.taf?abstract_id=890298.

24. Karen Z. Kramer *et al.*, *The Positive Spillover and Crossover of Paternity Leave Use: A Dyadic Longitudinal Analysis*, 115 J. VOCATIONAL BEHAV. 2, 11 (2019).

25. Julia M. Goodman & Daniel Schneider, *The Association of Paid Medical and Caregiving Leave with the Economic Security and Wellbeing of Service Sector Workers*, 21 BMC PUB. HEALTH 1969, 7 (Nov. 2021), <https://doi.org/10.1186/s12889-021-11999-9>.

26. Ann P. Bartel *et al.*, *The Impact of Paid Family Leave on Employers: Evidence From New York*, NBER WORKING PAPER SERIES, at 3 (Apr. 2021), https://www.nber.org/system/files/working_papers/w28672/w28672.pdf.

27. Maya Rossin-Slater *et al.*, *The Effects of California's Paid Family Leave Program on Mothers' Leave-Taking and Subsequent Labor Market Outcomes*, 32(2) J. POLICY ANALYSIS & MGMT. 224 (2013), <https://doi.org/10.1002/pam.21676>.

or care for sick family members.²⁸ This can result in healthier individuals²⁹ and a reduction in the spread of illnesses within communities.³⁰ Paid family leave can reduce the caregiving burden often placed disproportionately on women,³¹ who tend to assume the majority of caregiving³² and child-raising responsibilities within their families.³³ Paid parental leave also provides a greater opportunity to optimize the critical bonding period between parents and their newborns,³⁴ resulting in better child development outcomes.³⁵

As such, providing PFML acknowledges the inherent value and dignity of individuals and their personal lives, recognizing that people have responsibilities and needs outside of work by supporting the well-being of both employees and their families during important life events.³⁶ Paid leave laws reflect a commitment to a healthier, more caring, and compassionate society.³⁷ They show that a society values the well-being of its members and is willing to provide support during challenging

28. Sarah Jane Glynn, *Working Parents' Lack of Access to Paid Leave and Workplace Flexibility*, CENTER FOR AMERICAN PROGRESS (Nov. 12, 2012), <https://www.americanprogress.org/article/working-parents-lack-of-access-to-paid-leave-and-workplace-flexibility/>.

29. Adam Burtle & Stephen Bezruchka, *Population Health and Paid Parental Leave: What the United States Can Learn from Two Decades of Research*, 4 HEALTHCARE 30 (May 24, 2016), <https://doi.org/10.3390/healthcare4020030>.

30. Abay Asfaw et al., *Potential Economic Benefits of Paid Sick Leave in Reducing Absenteeism Related to the Spread of Influenza-Like Illness*, 59(9) J. OCCUPATION ENV'T MED. 822 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649342/>.

31. Pinka Chatterji, Sara Markowitz, & Jeanne Brooks-Gunn, *Effects of Early Maternal Employment on Maternal Health and Well-Being*, 26(1) J. POPULATION ECON. 285 (Jan. 1, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3640562/>.

32. *Caregiving in the U.S. 2020*, NAT'L. ALLIANCE CAREGIVING & AMERICAN ASS'N. RETIRED PERSONS (May 2020), <https://www.aarp.org/content/dam/aarp/ppi/2020/05/full-report-caregiving-in-the-united-states.doi.10.26419-2Fppi.00103.001.pdf>.

33. Usha Ranji et al., *Difficult Tradeoffs: Key Findings on Workplace Benefits and Family Health Care Responsibilities From the 2020 KFF Women's Health Survey*, KFF (Apr. 21, 2021), <https://www.kff.org/womens-health-policy/issue-brief/difficult-tradeoffs-key-findings-on-workplace-benefits-and-family-health-care-responsibilities-from-the-2020-kff-womens-health-survey/>.

34. Willem Maria del Carmen Huerta et al., *Fathers' Leave, Fathers' Involvement and Child Development: Are They Related? Evidence from Four OECD Countries*, Org. for Econ. Coop. & Dev., 2013) (OECD Soc., Emp. & Migration Working Papers No. 140), <https://doi.org/10.1787/5k4dlw9w6czq-en>.

35. Mariam S. Khan, *Paid Family Leave and Children Health Outcomes in OECD Countries*, 116 CHILD. & YOUTH SERV. REV. (July 14, 2020), <https://doi.org/10.1016/j.childyouth.2020.105259>.

36. *See Examining the Importance of Paid Family Leave for American Working Families: Hearing before the Subcomm. on Social Security, Pensions, and Family Policy*, 115th Cong. 61–78 (2018) (statements of workers, civic organizations, business leader, politicians arguing moral and health benefits of PFML).

37. *Id.*

times.³⁸ Moreover, paid leave can contribute to an increase in labor force participation.³⁹ Job-protected paid leave helps maintain women's ties with their employers, preventing some from exiting the labor force to care for their newborns.⁴⁰ It also enhances the likelihood of their returning to work within a year after giving birth, thus promoting gender equality by allowing women to take time off to care for their families without facing added financial hardship.⁴¹

III. THE CURRENT PFML LANDSCAPE

A. PFML Law in the United States

At present, American workers only have the option to utilize paid family or medical leave if provided by their employer, or they can tap into leave insurance benefits, such as temporary disability insurance or, to a lesser extent, family leave insurance, to fund periods of unpaid medical leave or caregiving for family members.⁴² Instead of providing a PFML program that applies to all workers, the United States relies on a patchwork of federal guarantees along with states implementing their own paid leave programs.⁴³

On a federal level, the Family and Medical Leave Act (FMLA) of 1993 allows eligible public- and private-sector employees to take up to twelve weeks of unpaid leave during any twelve-month period for specific family and medical reasons.⁴⁴ These reasons include the birth or adoption of a child, serious health conditions, or caring for a family member with a serious health condition.⁴⁵ In 2020, the U.S. Congress expanded upon the FMLA with the Federal Employee Paid Leave Act to guarantee federal workers twelve weeks of paid time off for the birth, adoption, or foster placement of a child.⁴⁶

At the local level, several state governments have taken the initiative to implement their own paid leave programs to further support workers.⁴⁷ As ~~of~~ of April of 2025 July of 2023, a total of fourteen

38. *Id.*

39. Christine M. Veenstra et al., *Association of Paid Sick Leave with Job Retention and Financial Burden among Working Patients with Colorectal Cancer*, 314(24) J. AM. MED. ASS'N 2688 (Dec. 22, 2015), <https://dx.doi.org/10.1001/jama.2015.12383>.

40. Tanya S. Byker, *Paid Parental Leave Laws in the United States: Does Short-Duration Leave Affect Women's Labor-Force Attachment?*, 106(5) AM. ECON. REV. 242 (May 2016), <https://dx.doi.org/10.1257/aer.p20161118>.

41. CTR. FOR AM. PROGRESS, *supra* note 4.

42. *The Family and Medical Leave Act of 1993*, 29 U.S.C. §§ 2601–2654 (2024).

43. CTR. FOR AM. PROGRESS, *supra* note 4.

44. *Id.*

45. *Id.*

46. Federal Employee Paid Leave Act, Pub. L. No. 116-92, 133 Stat. 1198, 2304–2306 (2019).

47. CTR. FOR AM. PROGRESS, *supra* note 4.

jurisdictions—thirteen states and one federal district—have enacted PFML programs that provide partial wage replacement during eligible leave periods, a total of eleven states, comprising—These include California (2002),⁴⁸ New Jersey (2008),⁴⁹ Rhode Island (2013),⁵⁰ New York (2016),⁵¹ Washington—(2017),⁵² Washington D.C. (2017),⁵³ Massachusetts (2018),⁵⁴ Connecticut (2019),⁵⁵ Oregon (2019),⁵⁶ Colorado (2020),⁵⁷ Maryland (2022),⁵⁸ and Delaware (2022),⁵⁹ Maine (2023),⁶⁰ and Minnesota (2023).⁶¹ the one federal territory of Washington, D.C. (2017),⁶² have enacted PFML laws that provide partial wage replacement during eligible leave periods. While ten jurisdictions have fully implemented their programs, Maine, Minnesota, Maryland, and Delaware are scheduled to begin providing benefits by late 2026.⁶³

More recently, another ten states have implemented alternative voluntary Paid Family and Medical Leave (PFML) systems, allowing private insurers to offer benefits. Eight of these states—Virginia (2022), Alabama (2023), Arkansas (2023), Florida (2023), Tennessee (2023), Texas (2023), Kentucky (2024), and South Carolina (2024)—follow a model that permits the sale of paid family leave insurance policies.⁶⁴ The remaining two states, New Hampshire (2021) and Vermont (2023), partner with a single insurer to provide a baseline plan and establish a risk pool by purchasing coverage for all state employees.⁶⁵

B. PFML in Canada

Canada's journey towards comprehensive paid family and medical leave has seen significant milestones over the decades, demonstrating an

48. A.B. 908, 2015–2016 Leg., Reg. Sess. (Cal. 2016).

49. N.J. Stat. Ann. § 43:21–38; A. 3975, 218th Leg., Reg. Sess. (N.J. 2019).

50. R.I. Gen. Laws § 28-41-35(h); H.B. 6090, § 1, 2021–2022 Leg. Sess. (R.I. 2021).

51. S. 6406C, Part SS, 239th Leg., Reg. Sess. (N.Y. 2016) (enacted); S. 2928, §§ 1–2, 244th Leg., Reg. Sess. (N.Y. 2021).

52. S.B. 5975, 65th Leg., 3rd Special Sess. (Wash. 2017).

53. D.C. Law 21-264 (D.C. 2016); D.C. Code Ann. § 32-541.01 et seq (West).

54. H. 4640 § 29, 190th Gen. Court, Reg. Sess. (Mass. 2018).

55. S.B. 1 § 3, 2019 Leg., Reg. Sess. (Conn. 2019).

56. H.B. 2005 § 63, 80th Leg. Assembly, Reg. Sess. (Or. 2019).

57. Colo. Rev. Stat. §§ 8-13.3-501–24).

58. S.B. 275, § Subtitle 6, 8.3-601(A), 444th Leg. Reg. Sess. (Md. 2022).

59. S.B. 1 § 3705(b) & § 3704(a)(3), 151st Leg. Reg. Sess. (Del. 2022).

60. 26 Me. Rev. Stat. Ann. § 850-B; L.D. 1964, 131st Leg., 2d Reg. Sess. (Me. 2024).

61. H.F. 2, 93rd Leg. Assembly, Reg. Sess. (Minn. 2023).

62. D.C. Law 21-264 (D.C. 2016); D.C. Code Ann. § 32-541.01 et seq (West).

63. *Paid Family and Medical Leave Across States*, PRENATAL-TO-3 POLICY CENTER, (Nov. 2024), https://pn3policy.org/wp-content/uploads/2024/11/PN3-Snapshot_PFML_final-1.pdf.

64. *Id.*

65. *Id.*

enduring commitment to supporting workers whose foundation was laid in 1940 with the establishment of Employment Insurance (EI), providing a safety net for Canadians facing job loss.⁶⁶ The evolution continued in 1971 with the introduction of maternity leave benefits and expanded further in 1990 with the inclusion of parental leave, recognizing shared parental responsibilities.⁶⁷ In 2004, the Compassionate Care Benefit (CCB) was introduced, providing up to twenty-six weeks of paid leave to care for terminally ill loved ones.⁶⁸ Over the past two decades, ongoing debates, advancements, and a patchwork of provincial programs have shaped this evolving social policy.⁶⁹ Notably, in 2008, parental leave was extended to fifty-two weeks, offering flexibility for parents to split the duration.⁷⁰ In 2016, Quebec introduced its own PFML program, setting a provincial precedent. Federal consultations and negotiations from 2017 to 2019 paved the way for a national framework, culminating in 2019 with Employment Insurance Act amendments that established a national floor for PFML entitlements, including fifteen weeks of leave at 55% of earnings.⁷¹

Canada's PFML system is characterized by a stronger commitment to ensuring that workers across professional sectors have access to paid leave in situations such as tending to a serious health condition, bonding with a new child, caring for a seriously ill loved one, fulfilling military duties, and coping with sexual or domestic violence.⁷² This model is a combination of leave programs that provide employees with time off work to care for their families or for their own medical needs.⁷³

1. Parental and Family Leave

Parental leave is administered by the Government of Canada and is funded through Employment Insurance (EI), which is a social insurance program that provides benefits to workers who are unemployed, sick, or injured.⁷⁴ The paid portion of the program is called the EI Caregiving Benefits.⁷⁵ These benefits are available to eligible employees who need to

66. *Passage of the Unemployment Insurance Act*, CANADIAN LABOUR CONGRESS (2019), <https://canadianlabour.ca/passage-of-the-unemployment-insurance-act/> (last visited Feb. 6, 2025).

67. *Id.*

68. Kate Osborne & Naomi Margo, *Compassionate Care Benefit: Analysis and Evaluation*, GOV'T OF CAN. (Dec. 2005), https://publications.gc.ca/collections/collection_2007/hcc-ccs/H174-10-2005E.pdf.

69. *Id.*

70. *Id.*

71. *Id.*

72. *EI Caregiving Benefits*, GOV'T OF CAN., <https://www.canada.ca/en/services/benefits/ei/caregiving.html> (last visited Feb. 6, 2025).

73. *Id.*

74. *Id.*

75. *Id.*

take time off work to care for a family member with a serious medical condition, to care for a critically ill child or adult, or to provide end-of-life care to a family member.⁷⁶ EI Caregiving Benefits can now be taken for up to thirty-five weeks for a child under eighteen, up to fifteen weeks for an adult eighteen or over, or up to twenty-six weeks for end-of-life care.⁷⁷ The unpaid portion of the program is called the Canada Labour Code.⁷⁸ This legislation provides employees with up to twenty-eight weeks of unpaid job-protected leave in a twenty-six-week period to care for a newborn or newly adopted child or a sick or injured family member, recover from their own serious illness or injury, or attend to personal or family emergencies.⁷⁹ Employees are eligible for unpaid leave under the Canada Labour Code if they have worked for their employer for at least ninety days in the twelve months prior to taking leave.⁸⁰

While the Canadian model is more centralized and provides a national baseline, there may still be variations in specific details or additional measures at the provincial or territorial level.⁸¹ Provinces and territories in Canada may also introduce additional measures to supplement the federal PFML program.⁸² Quebec, for example, operates its own parental insurance program known as the Quebec Parental Insurance Plan (QPIP), which provides financial support to eligible individuals during periods of parental leave.⁸³ This provincial initiative, separate from the federal EI system, exemplifies the extent of the autonomy Canadian provinces have in shaping their PFML policies. Under the QPIP, eligible workers in Quebec can receive benefits for parental leave, including maternity and paternity leave.⁸⁴ The program also encompasses adoption leave and provides income replacement to ease the financial burden on individuals during these significant life events.⁸⁵ The Quebec model reflects a regionalized approach, allowing the province to tailor its PFML program to the specific needs and

76. *Id.*

77. *Id.*

78. *Canada Labour Code*, GOV'T OF CAN., <https://laws-lois.justice.gc.ca/eng/acts/l-2/index.html> (last visited Feb. 6, 2025).

79. *Id.* at § 206.3(2).

80. *Id.* at §§ 206.3(2), 239.

81. *Parental Leave, Employment Insurance and Paid Family Leave*, GOV'T OF CAN., <https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html> (last visited Feb. 6, 2025).

82. *Employment Insurance (EI) and Paid Family Leave (PFL)*, GOV'T OF CAN., <https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html> (last visited Feb. 6, 2025).

83. *Quebec Parental Insurance Plan (QPIP)*, GOV'T OF QUE., <https://www.rqap.gouv.qc.ca/en/home> (last visited Aug. 4, 2023).

84. *Id.*

85. *Adopting a Child*, GOV'T OF QUE., <https://www.quebec.ca/en/family-and-support-for-individuals/pregnancy-parenthood/adoption/adoption-in-quebec> (last visited Feb. 6, 2025).

preferences of its residents.⁸⁶ This approach contrasts with the federal EI system, showcasing the flexibility within Canada for provinces to design and implement their own systems while adhering to certain overarching principles.⁸⁷

2. Sick Leave

Paid sick leave (PSL) law is more piecemeal throughout Canada, with a nationally enacted mandatory benefit alongside many provinces and territories' own PSL laws.⁸⁸ Starting December 31, 2022, employees in all federally regulated private-sector workplaces governed by the Canada Labour Code were guaranteed the accrual of a total of ten days of paid sick leave.⁸⁹ Additionally, federally regulated public-sector entities such as the federal public service and Parliament are covered by this provision, and private-sector firms and municipalities in Yukon, the Northwest Territories, and Nunavut are also subject to these regulations.⁹⁰

The Canadian government also provides some PSL benefits through the EI program. Recently, the maximum duration of unpaid medical leave was extended from seventeen to twenty-seven weeks, in alignment with the extension of EI sickness benefits from fifteen to twenty-six weeks.⁹¹ Such income replacement benefits are provided to workers who are unemployed, sick, or injured.⁹² However, EI benefits are only available to workers who have lost their jobs or who are unable to work due to a serious illness or injury.⁹³ EI does not provide benefits to

86. *The Quebec Parental Insurance Plan: A Regionalized Approach*, GOV'T OF QUE., <https://www.rqap.gouv.qc.ca/en/home> (last visited Aug. 4, 2023).

87. *EI Parental Leave: Flexibility for Provinces and Territories*, GOV'T OF CAN., <https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html> (last visited Feb. 6, 2025). (The Canadian and Quebec paid family and medical leave systems differ in terms of duration and eligibility requirements. Quebec offers up to 55 weeks of paid leave for a variety of reasons, while Canada offers up to 35 weeks for parental leave and 15 weeks for family caregiving. Quebec also has less stringent eligibility requirements, requiring only 6 months of employment in the 12 months prior to taking leave, compared to Canada's 90-day requirement.")

88. Press Release, Seamus O'Regan, Jr., Minister of Labour, Minister O'Regan announces final regulations to bring 10 days of paid sick leave into force (Nov. 7, 2022), <https://www.canada.ca/en/employment-social-development/news/2022/11/minister-oregan-announces-final-regulations-to-bring-10-days-of-paid-sick-leave-into-force.html>.

89. *New Paid Sick Leave Regulations Come into Effect in Federally Regulated Workplaces*, GOV'T OF CAN. (2022), <https://www.canada.ca/en/employment-social-development/news/2022/11/minister-oregan-announces-final-regulations-to-bring-10-days-of-paid-sick-leave-into-force.html>.

90. *List of Federally Regulated Industries and Workplaces*, GOV'T OF CAN. (Oct. 31, 2023), <https://www.canada.ca/en/services/jobs/workplace/federally-regulated-industries.html>.

91. S.B. 1 § 3705(b) & § 3704(a)(3), 151st Leg. Reg. Sess. (Del. 2022).

92. *Id.*

93. *EI Regular Benefits*, GOV'T OF CAN.,

workers who need to take time off work for short-term illnesses or medical appointments.⁹⁴ Previously, several provinces and territories have enacted their own PSL laws. These laws independently require employers to provide employees with a certain number of paid sick days per year regardless of whether they work for federally regulated industries.⁹⁵ For example, the Ontario Paid Personal Emergency Leave Act also requires employers to provide employees with ten paid sick days per year.⁹⁶ The Nova Scotia Personal Leave Act requires employers to provide employees with a minimum of five paid sick days per year.⁹⁷

IV. GETTING PAST SHOULD: THE CONSENSUS FOR PFML IN THE UNITED STATES

While U.S. states have made great strides in providing paid leave options, a comprehensive federal approach is needed to ensure uniformity and accessibility for all working Americans. Less than one out of four (24%) private-industry employees had access to paid family leave.⁹⁸ Just over half (56%) the workforce is eligible for unpaid leave under the FMLA because many small employers are exempt, and even in covered worksites, not all employees are eligible.⁹⁹ Less than half (42%) of individuals employed in the private sector possessed the option of utilizing short-term disability insurance to recuperate from illnesses or injuries.¹⁰⁰ Socioeconomic disparities are evident when considering diverse forms of paid leave, with low-wage employees and racial minorities encountering greater barriers to access.¹⁰¹ Less than one out of ten (8%) workers situated in the lowest wage quartile were able to avail themselves of paid family leave during the same year,¹⁰² while Black and

<https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/eligibility.html> (Oct. 24, 2024).

94. *See id.*

95. *Id.*

96. Bill 247, 42nd Leg., 1st Sess. (Ont. 2021), <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-247>.

97. *Leaves from Work*, N.S. CAN., <https://novascotia.ca/lae/employmentrights/leaves.asp> (last visited Feb. 6, 2025).

98. U.S. Bureau of Labor Statistics, *What Data Does the BLS Publish on Family Leave?*, U.S. DEPT. OF LABOR, <https://www.bls.gov/ebs/publications/pdf/family-leave-benefits-fact-sheet.pdf> (last visited Feb. 6, 2025).

99. Scott Brown et al., *Employee and Worksite Perspectives of the FMLA: Who Is Eligible?* U.S. DEPT. OF LABOR (Jul. 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHHD_FMLA2018_PB1WhoIsEligible_StudyBrief_Aug2020.pdf.

100. U.S. Bureau of Labor Statistics, *Employee Benefits*, U.S. DEPT. OF LABOR (Sept. 22, 2022), <https://www.bls.gov/ebs/home.htm#page=239>.

101. Ann P. Bartel et al., *Racial and Ethnic Disparities in Access to and Use of Paid Family and Medical Leave: Evidence from Four Nationally Representative Datasets*, MONTHLY LAB. REV. (Jan. 2019) <https://doi.org/10.21916/mlr.2019.2>.

102. U.S. DEPT. OF LAB., NATIONAL COMPENSATION SURVEY: EMPLOYEE

Hispanic workers exhibited lower chances of accessing PFML than non-Hispanic white workers.¹⁰³

As a result, policymakers and citizens are acknowledging the vital importance of supporting families during critical life events, with most Americans, regardless of their political affiliation, race, gender, or ethnicity, overwhelmingly supporting a federal PFML program.¹⁰⁴ According to a Global Strategy Group public opinion survey, among a sample of 1,001 registered voters in the fall of 2022, four in five (80%) Americans supported a national PFML program.¹⁰⁵

Furthermore, this consensus transcends political and racial divides. Almost nine in ten Democrats (89%), more than three in four Independents (76%), and seven in ten Republicans (70%) support a national PFML.¹⁰⁶ More than three in four Americans across every major racial and ethnic group support such a plan, with nine out of ten African Americans (90%), over four out of five Hispanic Americans (84%) and Asian Americans/Pacific Islanders (84%), and over three out of four (77%) white Americans expressing support.¹⁰⁷ Even a 2018 survey conducted by the Cato Institute, a libertarian think tank that advocates a limited governmental role in domestic affairs, found that 74% of 1,700 surveyed participants were in favor of a twelve-week federal government initiative to furnish paid leave for workers who were new parents or grappling with personal or family-related medical conditions.¹⁰⁸

Specifically, large percentages of Democrats, African Americans, and Hispanic Americans enthusiastically affirmed the likelihood of any candidate who promised to endorse a national PFML program, with a fractional minority of Republicans, Independents, and white and Asian Americans indicating that they would oppose any such political platform.¹⁰⁹ The data from a 2017 poll even suggests that seven out of ten (70%) small business owners supported funding a nationally administered, twelve-week PFML program,¹¹⁰ as a majority already

BENEFITS IN THE UNITED STATES, MARCH 2018 AT 123 (Sep. 2018), <https://www.bls.gov/ebs/publications/pdf/bulletin-2789-september-2018-employee-benefits-in-the-united-states-march-2018.pdf>.

103. Julia M. Goodman et al., *Racial and Ethnic Inequities in Paid Family and Medical Leave: United States, 2011, and 2017–2018*, 112 AM. J. PUB. HEALTH 1050, 1054 (2022).

104. *Paid Family and Medical Leave: A Guide for Advocates*, NAVIGATOR (Sept. 23, 2022), <https://navigatorresearch.org/wp-content/uploads/2022/09/Navigator-Update-09.23.2022.pdf>.

105. *Id.*

106. *Id.*

107. *Id.*

108. Emily Ekins, *Poll: 74% of Americans Support Federal Paid Leave Program When Costs Not Mentioned — 60% Oppose if They Got Smaller Pay Raises in the Future*, CATO INST. (Dec. 11, 2018), <https://www.cato.org/survey-reports/poll-74-americans-support-federal-paid-leave-program-when-costs-not-mentioned-60>.

109. *Paid Family and Medical Leave: A Guide for Advocates*, *supra* note 96.

110. SMALL BUS. MAJORITY, OPINION POLL: SMALL BUSINESSES SUPPORT PAID

offered their employees some sort of parental leave program with the help of a federal income tax credit.¹¹¹

V. DISAGREEING ABOUT THE HOW AND THE WHO: THE POLITICAL DIVIDE ON PFML IN THE UNITED STATES VERSUS CANADA

A. *Political Differences in the United States*

A recent polling survey in anticipation of the 2024 election cycle ultimately suggests that any political candidate who supports this initiative would be more likely to win a majority of a multiracial coalition of support for reelection in key battleground states, including Arizona, Michigan, Nevada, North Carolina, Pennsylvania, Wisconsin, Georgia, Florida, and Ohio.¹¹² This survey revealed historic, overwhelming bipartisan support for paid parental, family, and medical leave, with nearly two-thirds of battleground voters strongly favoring various paid leave initiatives, including 85% of Democrats, 65% of Independents, and over 50% of Republicans.¹¹³ The creation of a paid family, parental, and medical leave program emerged as a potent motivating factor for voters, particularly Democrats (85% motivated), young voters of color (73%), and suburban women (68%).¹¹⁴ Additionally, voters showed a strong preference for candidates endorsing comprehensive paid leave programs, with 74% of Democrats, 56% of young voters of color, and 55% of Millennial and Gen Z low-turnout voters much more likely to vote for such candidates.¹¹⁵

So, if there is such a great need and support for a national PFML program, then why is the United States the only major developed country in the world that has no such program?¹¹⁶ The answer is that while citizens and federal legislators can generally agree that such legislation should be enacted, they cannot agree on how it will be implemented.¹¹⁷

FAMILY LEAVE PROGRAMS 5 (Mar. 30, 2017), <https://smallbusinessmajority.org/our-research/workforce/small-businesses-support-paid-family-leave-programs>.

111. *Internal Revenue Bulletin*, INTERNAL REVENUE SERV. (Oct. 9, 2018), https://www.irs.gov/irb/2018-41_IRB#NOT-2018-71.

112. Lake Research Partners & Paid Leave for All Action, *Survey Findings Show Broad and Deep Support for Paid Parental, Family and Medical Leave* (Nov. 2023), <https://irp.cdn-website.com/167e816a/files/uploaded/Lake.Paid.Leave.for.All.Poll.Press%20Memo.pdf>.

113. *Id.*

114. *Id.*

115. *Id.*

116. PF2.1. *Parental Leave Systems*, *supra* note 1; *Paid Family Leave across OECD Countries*, *supra* note 2; Rho et al., *supra* note 3.

117. JULIANA M. HOROWITZ ET AL., AMERICANS WIDELY SUPPORT PAID FAMILY AND MEDICAL LEAVE, BUT DIFFER OVER SPECIFIC POLICIES 4 (Mar. 23, 2017), <https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>.

According to data gleaned from a 2016 Pew Research Poll, this underlying policy consensus supporting a federal PFML program particularly falls apart in two critical ways: first, there is a lack of support for utilizing government resources to fund a national program, and secondly, there are more nuanced differences of opinion among Americans as to who should qualify to benefit from a national paid leave program and the range of activities such a program should cover.¹¹⁸

The Pew Research polling data revealed that there was no consensus on a federal government mandate, as there was a nearly even split among Americans as to whether the federal government should require employers to provide PFML (51%) or allow employers to decide what, if any, PFML they will provide employees (49%).¹¹⁹ This reluctance to support a federal PFML mandate was especially pronounced along political lines, as more than two out of five (44%) Democrats said they would strongly support a government paid leave program funded by new or higher taxes on wealthy people or corporations, compared with about a quarter (24%) of Independents and just 11% of Republicans.¹²⁰ Moreover, a little over a third (34%) of Democrats expressed strong support for a government paid leave fund that all employers and employees would pay into through payroll contributions, while smaller shares of Independents (20%) and Republicans (15%) said they would strongly favor this approach.¹²¹

While substantial majorities of various political groups acknowledged that mothers should have access to paid maternity leave, and that workers should be entitled to paid leave for their own severe health conditions, there was considerably less support for alternative forms of family and medical leave.¹²² Democrats, Republicans, and Independents all expressed relatively lower support for paid paternity leave and for workers providing care to a family member with a serious health condition, in comparison to paid maternity and medical leave, as less than half (45%) of Democrats and less than a third (31%) of Republicans supported paid leave for workers taking care of ill family members.¹²³

Modest but discernible demographic differences are also evident in diverging opinions about PFML across gender and generational lines, as women and young adults more generally supported paid leave compared to men and adults aged thirty years and above.¹²⁴ Over four in five (82%) individuals aged eighteen to twenty-nine believed that fathers should

118. *Id.* at 9–10.

119. *Id.* at 11.

120. *Id.*

121. *Id.* at 13.

122. *Id.* at 4–5.

123. JULIANA M. HOROWITZ ET AL., *supra* note 110, at 9.

124. *Id.* at 10.

have the option of taking paid leave after the birth or adoption of a child, compared to a little more than three out of four (76%) aged thirty to forty-nine, a little over three out of five (61%) of those aged fifty to sixty-four, and a little more than half (55%) of adults aged sixty-five and older.¹²⁵

These divisions regarding the particulars of how to implement a national PFML solution were most tragically made manifest when a Democratically controlled Congress included a \$200 billion PFML provision in the Build Back Better Act (BBBA).¹²⁶ The BBBA would have entitled eligible workers engaged in qualified caregiving activities to receive up to 90% of their regular income in benefits, capped at \$800 per week, for four work weeks of cash benefits in a twelve-month benefit period.¹²⁷ However, the provision, which passed the U.S. House of Representatives on November 19, 2021, was eventually removed from the BBBA, reduced, and then rejected altogether following Congressional Democrats' failure to reach a compromise with Sen. Joe Manchin (W. Va.) because it did not have adequate bipartisan support in the Senate for being "too far left."¹²⁸

Because such federal policy proposals are proposed and opposed along staunch partisan lines, a PFML agenda has been either reduced or dropped altogether from congressional legislation five times¹²⁹ since March 2020, even as the COVID-19 pandemic socially, financially, and psychologically devastated hundreds of thousands of American working families.¹³⁰ The heart of this contention was best encapsulated when Terri

125. *Id.*

126. SARAH A. DONOVAN & BARRY F. HUSTON, CONG. RSCH. SERV., BUILD BACK BETTER ACT: UNIVERSAL COMPREHENSIVE PAID LEAVE (Dec. 9, 2021), <https://crsreports.congress.gov/product/pdf/IF/IF11994>; Raquel Artecona & Helvia Velloso, *Towards a New Industrial Policy: The United States Economic Policy Post-Covid-19* at 27, Econ. Comm. for Latin Am. and the Caribbean Series No. 22 (2022), https://www.cepal.org/sites/default/files/news/files/towards_a_new_industrial_policy.pdf.

127. SARAH A. DONOVAN & BARRY F. HUSTON, *supra* note 119.

128. Veronica Stracqualursi, *Manchin Objects to Paid Family Leave Added Back into Social Spending Bill*, CNN (Nov. 4, 2021, at 10:19 AM), <https://www.cnn.com/2021/11/04/politics/joe-manchin-democrats-spending-bill-cnntv/index.html>.

129. Christopher Hickey, *Not the Year for Women and Parents: Child Care Provisions Were Cut from the Inflation Reduction Act. It's Not the First Time*, CNN (Aug. 12, 2022), <https://www.cnn.com/2022/08/12/politics/inflation-reduction-children-families/index.html>.

130. See generally Claudia Andrade et al., *The Social and Economic Impact of COVID-19 on Family Functioning and Well-Being: Where Do We Go from Here?*, 43(2) J. FAM. ECON. ISSUES 205 (2022), <https://doi.org/10.1007/s10834-022-09848-x>; John Gramlich, *Mental Health and the Pandemic: What U.S. Surveys Have Found*, PEW RSCH. CTR. (Mar. 2, 2023), <https://www.pewresearch.org/short-reads/2023/03/02/mental-health-and-the-pandemic-what-u-s-surveys-have-found>; Rakesh Kochhar & Stella Sechopoulos, *COVID-19 Pandemic Pinches Finances of America's Lower-and Middle-Income Families*, PEW

Rhodes, CEO of the Disability Management Employer Coalition, recently lamented that Republican and Democratic legislators “can’t agree how it’s [PFML] going to be managed, and they can’t agree how it’s going to be funded.”¹³¹

As an alternative to the traditional social insurance approach championed by the BBBA, Republican policymakers in Congress have advanced two alternative national paid leave programs: the most recent iteration of the Parents Act that was originally proposed by Senators Marco Rubio (Fla.) and Mitt Romney (Mass.), then reintroduced in the wake of the recent Supreme Court decision overturning *Roe v. Wade*,¹³² and the 2019 Cradle Act, proposed by U.S. Senators Joni Ernst (Iowa) and Mike Lee (Utah).¹³³

The Parents Act bill allows working parents to use the benefit to take between eight and twelve weeks off work, with enough government support to finance up to 70% of wages for nearly all parents making less than the median family income.¹³⁴ The Cradle Act proposed a similar arrangement for parental leave whereby employees can access paid leave benefits spanning four to twelve weeks.¹³⁵ However, Republican proposals like the Parents Act and the Cradle Act only offer parental leave and require workers to borrow against future Social Security retirement benefits with interest, thereby forcing working parents to postpone their retirements in order to bond with newly born or adopted children.¹³⁶

RSCH. CTR. (Apr. 20, 2022), <https://www.pewresearch.org/social-trends/2022/04/20/covid-19-pandemic-pinches-finances-of-americas-lower-and-middle-income-families/>; John Gramlich, *Mental Health and the Pandemic: What U.S. Surveys Have Found*, PEW RSCH. CTR. (Mar. 2, 2023), <https://www.pewresearch.org/short-reads/2023/03/02/mental-health-and-the-pandemic-what-u-s-surveys-have-found>.

131. Emilie Shumway, *Beyond the FMLA: Will a Federal Paid Leave Law Ever Come to Pass?*, HR DIVE (Mar. 6, 2023), <https://www.hrdive.com/news/beyond-fmla-will-federal-paid-leave-law-ever-come-to-pass/644239/>.

132. *Romney, Rubio Reintroduce Bill Giving Parents Option for Paid Leave*, MITT ROMNEY U.S. SENATOR FOR UTAH (Sep. 15, 2021), <https://www.romney.senate.gov/romney-rubio-reintroduce-bill-giving-parents-option-paid-leave/>.

133. Alexia Fernández Campbell, *The GOP’s Deeply Flawed Paid Family Leave Plan, Explained*, VOX (Mar. 13, 2019), <https://www.vox.com/policy-and-politics/2019/3/13/18263790/paid-family-leave-bill-cradle-act>.

134. Press Release, Marco Rubio, U.S. Senator for Florida, English/Español: Rubio Unveils Bill Giving Parents an Option for Paid Family Leave (Aug. 2, 2018), <https://www.rubio.senate.gov/english-espa-ol-rubio-unveils-bill-giving-parents-an-option-for-paid-family-leave/>.

135. Press Release, Mike Lee, U.S. Senator for Utah, Sens. Ernst, Lee Put Forward Paid Parental Leave Plan That Is Budget Neutral and Flexible for Parents (Mar. 12, 2019), <https://www.lee.senate.gov/2019/3/sens-ernst-lee-put-forward-paid-parental-leave-plan-that-is-budget-neutral-and-flexible-for-parents>.

136. Kathleen Romig & Kathleen Bryant, *Cutting Social Security to Offset Paid Parental Leave Would Weaken Retirement Security*, CTR. ON BUDGET AND POL’Y PRIORITIES (Sept. 12, 2019), <https://www.cbpp.org/research/social-security/cutting-social-security-to->

Under both programs, working parents who choose to take parental leave would experience lasting reductions in their Social Security retirement benefits, which would ultimately surpass the actual value of their parental leave benefits due to the accrual of interest from their Social Security loans.¹³⁷ Consequently, to counterbalance the expenses associated with these parental leave benefits, both bills would raise Social Security's full retirement age and early eligibility age by two months for each month of parental leave taken, resulting in more significant monthly benefit reductions during retirement.¹³⁸

Democrats, on the other hand, favor a traditional social insurance approach that authorizes the government to collect a payroll tax that both employers and employees would pay into,¹³⁹ the most prominent being an enhanced version of a previous FAMILY Act initiative that New York Senator Kristen Gillibrand and Connecticut Representative Rosa DeLauro reintroduced to the 118th Congress.¹⁴⁰ If approved, the enhanced version of the FAMILY Act would secure the opportunity for most employed individuals in the United States to avail themselves of up to twelve weeks of paid family and medical leave to bond with a new child, to care for one's own or a family member's serious medical condition, for military caregiving and deployment purposes, or even to recover from and seek assistance related to domestic violence, stalking, and sexual assault.¹⁴¹

B. Political Consensus in Canada

In Canada, the examination of the paid leave policy gained prominence amid the COVID-19 pandemic, with the Public Health Agency of Canada stressing the importance of sick individuals staying at home.¹⁴² However, a 2021 survey by the Environics Institute for Survey Research uncovered a substantial discrepancy in adherence to health advice, as 51% of respondents who had not previously worked from home expressed a willingness to go to work when unwell.¹⁴³ A 2020 report from Statistics Canada reveals that about half of full-time workers

offset-paid-parental-leave-would-weaken.

137. *Id.*

138. *Id.*

139. Nat'l P'ship for Women & Fams., *FAMILY Act Comparison Chart*, KRISTEN GILLIBRAND U.S. SENATOR FOR NEW YORK (May 5, 2023), <https://www.gillibrand.senate.gov/wpcontent/uploads/2023/05/FAMILY-Act-Comparison-Chart.pdf>.

140. *The Family and Medical Insurance Leave (FAMILY) Act*, NAT'L P'SHIP FOR WOMEN & FAMS. (Nov. 2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/family-act-fact-sheet.pdf> [hereinafter NAT'L P'SHIP].

141. *Id.*

142. Samuel MacIsaac & René Morissette, *Employee Paid Sick Leave Coverage in Canada, 1995 to 2022*, 3 ECON. & SOC. REPS. 1, 2 (2023).

143. *Id.*

and 40% of part-time workers had access to paid sick days, with lower-paid workers facing greater disparities.¹⁴⁴ These challenges spurred a new political consensus, particularly as the pandemic prompted a reevaluation of PSL, with a specific focus on frontline workers.¹⁴⁵ In response, the Government of Canada implemented temporary sickness supports, including the Canada Recovery Sickness Benefit.¹⁴⁶

VI. FIGURING OUT THE “HOW” AND THE “WHO”: THE SEVEN TENETS OF PFML

Canada’s experience with paid sick leave policies, marked by challenges and subsequent political consensus, provides a valuable point of comparison for proposing a comprehensive national PFML policy in the United States, allowing for insights into addressing disparities and fostering a cohesive and inclusive approach across diverse jurisdictions. By honestly addressing the challenges of raising bipartisan support in Congress for a just and equitable PFML program, U.S. policymakers in the federal government can build upon both the Canadian example and the FAMILY Act to move towards a national PFML program. Baseline standards for PFML that have already been achieved at the local and state levels, and the Canadian model provides clear examples and lessons for policymakers to learn from.

A. *Social Insurance Funding over Employer Mandates*

Imposing a PFML mandate requiring employers to individually provide and administer weeks of job-protected leave will not work because this funding mechanism is unpopular among the American public and businesses alike for its costliness and unfeasibility.¹⁴⁷ Mandating employers to absorb the full financial load of a paid leave policy will burden them with higher costs and incentivize adverse unintended consequences for workers employed by small or less-

144. *Id.*

145. *Id.*

146. *Id.*

147. See, e.g., Sarah Jane Glynn, *Administering Paid Family and Medical Leave*, CTR. FOR AM. PROGRESS (Nov. 19, 2015), <https://www.americanprogress.org/article/administering-paid-family-and-medical-leave> (describing weaknesses of employer mandates paid leave programs); Abby M. McCloskey, *Paid Parental Leave, Sensibly Applied, Benefits Working Mothers the Most*, NAT’L REV. (Aug. 3, 2017, 9:00 AM), <https://www.nationalreview.com/2017/08/paid-parental-leave-plan-trump-administration-employees-employers-working-mothers-conservatives-right-left> (noting negative effects to employer mandated program and opposition to it); Peter Jamison, *Bowing to Business Unrest, D.C. Council will Revisit Paid-Leave Law*, CHAIRMAN SAYS, WASH. POST (Feb. 17, 2017), https://www.washingtonpost.com/local/dc-politics/bowing-to-business-unrest-dc-council-will-revisit-paid-leave-law-chairman-says/2017/02/17/5fd5bdba-f538-11e6-b9c9-e83fce42fb61_story.html (describing heated opposition to employer mandated paid leave from businesses).

profitable businesses.¹⁴⁸ In attempting to offset the costs associated with PFML, businesses may adopt measures that pass the fiscal burden onto their workforce by reducing employee work hours, increasingly using temporary workers, and decreasing other benefits such as sick and vacation time.¹⁴⁹ Enacting such a policy without taking into account the varying effects on businesses of different sizes and the unintentional adverse outcomes for workers could worsen, rather than improve, disparities in working conditions among different groups within the workforce, as numerous countries that have introduced employer mandates have experienced documented instances of burdensome employer compliance challenges, decreased participation of women in the workforce, biased hiring practices, and a reluctance among employers to hire women who are of childbearing age.¹⁵⁰

A national social insurance program like Canada's EI system offers a compelling alternative that attempts to equalize the cost across all businesses and industries, nullifying competitive disadvantage concerns. This model fosters shared responsibility: both employees and employers contribute to a central fund through various forms of remuneration such as salary, wages, commissions, bonuses, taxable benefits, honorariums, tips, and gratuities—spreading the cost and bolstering a sense of collective effort.¹⁵¹ Employers are obligated to deduct EI premiums from employees' insurable earnings, starting from the first earned dollar up to the yearly maximum, without an age limit.¹⁵² Employers also contribute 1.4 times the deducted EI premiums and remit the combined total. The deduction ceases when an employee's annual insurable earnings reach the maximum employee premium for the year.¹⁵³ For employees with multiple jobs under different employers, each job's earnings are subject to the EI annual maximum.¹⁵⁴

In Canada, the government's involvement in administering its EI program mitigates the impact on individual businesses through the Premium Reduction Program (PRP), initiated in 1971, which aims to alleviate strain on the EI program by supporting existing employer-based plans.¹⁵⁵ Under specific circumstances, employers who have contributed

148. Glynn, *supra* note 140, at 10.

149. Aparna Mathur, Am. Enterprise Inst., Statement Before the District of Columbia City Council on D.C. Paid Leave Proposal: An Employer Mandate vs. a Social Insurance Model for Paid Leave (Oct. 10, 2017), <https://www.aei.org/wp-content/uploads/2017/10/DC-Testimony-Mathur-1.pdf>.

150. *Id.*

151. Government of Canada, Employment Insurance (EI) and the Various Types of Earnings (Dec. 29, 2023), <https://www.canada.ca/en/services/benefits/ei/various-types-earnings.html>.

152. *Id.*; Glynn, *supra* note 139, at 9–11.

153. *Id.*

154. *Id.*

155. Employment and Social Development Canada, *Chapter 2: Impact and*

to EI premiums may be eligible for refunds, particularly if their insurable earnings are \$2,000 or less in a calendar year, making them unlikely to qualify for EI benefits.¹⁵⁶ Some employees, such as those with multiple jobs or those changing jobs during the year, may copay EI premiums on earnings exceeding a cap known as the Maximum Insurable Earnings (MIE).¹⁵⁷ In such cases, affected employees can claim a refund of all or part of the EI premiums paid when filing their tax returns.¹⁵⁸ Additionally, the PRP encourages employers to offer short-term income protection plans to their employees, potentially reducing the EI premiums payable by recognizing employer-based plans equivalent to EI sickness benefits.¹⁵⁹

In the United States, economically successful examples of social insurance programs for PFML are currently being implemented at the state level in California, New Jersey, and Washington, D.C.¹⁶⁰ For instance, in the area of parental leave alone, studies of these contemporary PFML programs have shown affording paid leave through a social insurance model correlates with longer periods of maternity leave,¹⁶¹ enhancements in labor force attachment,¹⁶² extended periods of

Effectiveness of Employment Insurance Benefits (Part I of the Employment Insurance Act), in EMPLOYMENT INSURANCE MONITORING AND ASSESSMENT REPORT, 2018–2019 (July 7, 2020), available at <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/monitoring2019/chapter2.html>.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. KELLY BEDARD & MAYA ROSSIN-SLATER, THE ECONOMIC AND SOCIAL IMPACTS OF PAID FAMILY LEAVE IN CALIFORNIA: REPORT FOR THE CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT 7 (Dec. 2020), https://edd.ca.gov/siteassets/files/disability/pdf/PFL_Economic_and_Social_Impact_Study.pdf; D.C. DEP'T OF EMP. SERVS., D.C. PAID FAMILY LEAVE: QUARTER 4 REPORT, FISCAL YEAR 2021 8 (2021), https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/DOES%20-%20Paid%20Family%20Leave%20FY21%20Q4%20Report_.pdf; see generally NAT'L P'SHIP FOR WOMEN & FAMS., PAID FAMILY AND MEDICAL LEAVE IS GOOD FOR BUSINESS (Sept. 2018), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-good-for-business.pdf> (reporting positive results of survey of small businesses on effects of state paid leave programs).

161. Martha Bailey et al., *The Long-Term Effects of California's 2004 Paid Family Leave Act on Women's Careers: Evidence from U.S. Tax Data*, (Nat'l Bureau Econ. Rsch. Working Paper No. 26419, 2019), <https://www.nber.org/system/files/workingpapers/w26416/w26416.pdf>; Brenden Timpe, *The Labor Market Impacts of America's First Paid Maternity Leave*, 231 J. PUB. ECON. 1, 55 (2022).

162. Charles L. Baum II & Christopher J. Ruhm, *The Effects of Paid Family Leave in California on Labor Market Outcomes*, 35 J. POL'Y ANALYSIS & MGMT. 333, 352-53 (2016); Byker, *supra* note 40, at 245–46; Maya Rossin-Slater et al., *The Effects of California's Paid Family Leave Program on Mothers' Leave-Taking and Subsequent Labor Market Outcomes*, 32 J. POL'Y ANALYSIS & MGMT. 224, 243 (2012).

breastfeeding,¹⁶³ and greater numbers of socioeconomically disadvantaged parents utilizing leave time to raise their children.¹⁶⁴ As a result, this social insurance model best ensures that all low-income workers have access to family leave without enduring significant losses of income.¹⁶⁵

B. Universal Coverage

Universally expanding PFML coverage to all adult workers, especially lower-wage earners, is essential to create equitable leave policies that reduce preexisting disparate impacts across socioeconomic,¹⁶⁶ ethno-racial,¹⁶⁷ and gender divides.¹⁶⁸ A national PFML program must avoid means-testing, which could create a situation where social groups are pitted against one another. This priority of expanding PFML coverage to all eligible workers across such divides is especially important as the responsibility of caregiving is increasingly shared by both men and women due to changing work trends in the United States. A continuous upward trend in the labor force participation of American women,¹⁶⁹ increasing the long-term rise of working wed and unwed mothers,¹⁷⁰ has resulted in a growing proportion of infants residing in households where both parents are employed.¹⁷¹ For example, while in 1965, married fathers living with their children dedicated about

163. See Ariel Marek Pihl & Gaetano Basso, *Did California Paid Family Leave Impact Infant Health?*, 38 J. POL'Y ANALYSIS & MGMT. 155 (2018); Rui Huang & Muzhe Yang, *Paid Maternity Leave and Breastfeeding Practice Before and After California's Implementation of the Nation's First Paid Family Leave Program*, 16 ECON. & HUM. BIOLOGY 45, 55 (2015); Bethany C. Lee et al., *The Effect of California's Paid Family Leave Policy on Parent Health: A Quasi-Experimental Study*, 251 J. SOC. SCI. & MED. 1, 1, (2020).

164. See Alexandra Boyle Stanczyk, *Does Paid Family Leave Improve Household Economic Security Following a Birth? Evidence from California*, 93 SOC. SERV. REV. 262, 285 (2019); Otto Lenhart, *The Effects of Paid Family Leave on Food Insecurity—Evidence from California*, 19 REV. ECON. HOUSEHOLD 615, 627 (2021).

165. *Id.*

166. CHANTEL BOYENS ET AL., URBAN INST., ACCESS TO PAID LEAVE IS LOWEST AMONG WORKERS WITH THE GREATEST NEEDS 7 (July 2022), <https://www.urban.org/sites/default/files/2022-07/Access%20to%20Paid%20Leave%20Is%20Lowest%20among%20Workers%20with%20the%20Greatest%20Needs.pdf>.

167. Julia M. Goodman et al., *Racial/Ethnic Inequities in Paid Parental Leave Access*, 5 HEALTH EQUITY 738, 739 (2021).

168. Baker, *supra* note 40, at 242.

169. *Women in the Labor Force: A Databook*, BUREAU OF LAB. STATS. (Mar. 2020), <https://www.bls.gov/opub/reports/womens-databook/2021/home.htm>.

170. *Women's Labor Force Participation Rates by Age of Youngest Child Since 1975*, U.S. DEPT OF LAB.: WOMEN'S BUREAU, <https://www.dol.gov/agencies/wb/data/mothers-families/Laborforceparticipationrates-women-ageyoungestchild> (last visited Feb. 6, 2025).

171. *Id.*

two and a half hours per week to childcare, by 2016 this figure tripled.¹⁷² And when it comes to caregiving for older adults, men (24%) were almost as inclined as women (27%) to offer eldercare, with both devoting almost equal amounts of time to these responsibilities.¹⁷³ Such shifting demographic trends defeat antiquated stereotypes about the proper roles of childrearing and caregiving among Americans who solely support PFML for women taking maternity leave.

Also notable is the need not to cap PFML benefits for senior citizens, as the changing demographic work trends display that older Americans are remaining employed longer than in the past.¹⁷⁴ In 2016, almost one in five individuals aged sixty-five or older were still participating in the workforce, a figure that has risen from 12% in 1980, according to an analysis of Current Population Survey data conducted by the Pew Research Center.¹⁷⁵ In this changing landscape where the median national working age has increased from 39.6 years in 2001 to 41.7 years in 2021 and is expected to increase to 42.6 years in 2031,¹⁷⁶ many American workers will need greater access to PFML to either take care of themselves as they stay in the workforce for longer periods or assist in the childrearing of children and grandchildren while maintaining their jobs.

C. *Progressive Distribution*

In examining Canada's paid parental leave policy, we gain valuable insights that can inform improvements in the United States. According to UNICEF's¹⁷⁷ assessment of family-friendly policies ranking forty-one wealthy nations, Canada is nineteenth for the availability of paid leave for mothers and ties for last place for fathers or second parents, largely because of narrow eligibility requirements and a low rate of pay that disproportionately exclude children in families with low income or parents in precarious employment.¹⁷⁸ If PFML programs are funded

172. Gretchen Livingston & Kim Parker, *8 Facts About American Dads*, PEW RSCH. CTR. (June 12, 2019), <https://www.pewresearch.org/short-reads/2019/06/12/fathers-day-facts/>.

173. *Unpaid Eldercare in the United States—2017–2018 Summary*, BUREAU OF LAB. STATS. (Nov. 19, 2022), <https://www.bls.gov/news.release/elcare.nr0.htm>.

174. *Report: The State of American Jobs*, PEW RSCH. CTR. (Oct. 6, 2016), <https://www.pewresearch.org/social-trends/2016/10/06/1-changes-in-the-american-workplace/>.

175. *Id.*

176. *Employment Projections*, U.S. DEPT. OF LAB. (Sept. 8, 2022), <https://www.bls.gov/emp/tables/median-age-labor-force.htm>.

177. UNICEF stands for United Nations Children's Fund. *UNICEF History*, UNICEF (last accessed Jan. 19, 2025) (<https://www.unicef.org/history>).

178. UNICEF Can., *Canada Ranks in the Middle of the Pack for Family-Friendly Policies among Wealthy Countries*, NEWSWIRE CANADA (Jun. 13, 2019), <https://www.newswire.ca/news-releases/canada-ranks-in-the-middle-of-the-pack-for-family-friendly-policies-among-wealthy-countries-855617739.html>.

through supplementary payroll taxes, then the weight of these taxes will disproportionately affect low-income earners, thus creating a vertical inequality.¹⁷⁹ A future program must, therefore, consider and address this disproportionality when devising any potential federal PFML program.¹⁸⁰

One solution is to design a policy where the benefits are most substantial for those with lower incomes, thereby offsetting the vertical inequality inherent within the federal tax structure. UNICEF Canada proposes a standard parental leave income ranging from 55% of average weekly earnings to at least 70%.¹⁸¹ The FAMILY Act provides a PFML system whereby payments could be provided on a sliding scale basis, designed in such a way that those with lower wages would receive up to 85% of their regular earnings while workers with incomes at the median level for the country would receive around 70% of their usual pay.¹⁸² It is also important to maintain job security for workers irrespective of the size of their employer or the duration of their service or work hours.¹⁸³ This safeguard ensures that individuals can rejoin the workforce without being subjected to the risk of job loss or any form of retaliation connected to their leave.¹⁸⁴

D. *Expansive Definition of PFML*

Examining the Canadian parental leave landscape underscores the importance of a PFML program with expansive eligibility criteria: the disparity in access to benefits between Québec's provincial model and the federal program for the rest of Canada, particularly concerning family income, highlights the need for a more inclusive approach.¹⁸⁵ The remarkable improvement in maternal access to leave benefits in Québec, especially for low-income households, stands in stark contrast to the consistent exclusion of around 38% of mothers in the rest of Canada

179. See generally *Briefing Book*, URB. INST. & BROOKINGS INST. (May 2020), <https://www.taxpolicycenter.org/briefing-book/how-does-federal-tax-system-affect-low-income-household> (stating that payroll taxes are largest tax burden on low income households).

180. Kali Grant et al., *The Paid Family and Medical Leave Opportunity: What Research Tells Us about Designing a Paid Leave Program That Works for All*, GEORGETOWN CTR. ON POVERTY & INEQUALITY 8 (July 2019), https://www.georgetownpoverty.org/wp-content/uploads/2019/08/Georgetown_PLUS-PaidFamilyMedicalLeaveOpportunity-20190804.pdf.

181. UNICEF Can., *supra* note 171.

182. Vicki Shabo, *Explainer: Family And Medical Insurance Leave (FAMILY) Act of 2023*, NEW AMERICA (May 18, 2023), <https://www.newamerica.org/better-life-lab/blog/explainer-family-and-medical-insurance-leave-act-family-act-of-2023>.

183. Grant et al., *supra* note 173, at 7.

184. *Id.*

185. Lindsey McKay et al., *Parental-Leave Rich and Parental-Leave Poor: Inequality in Canadian Labour Market Based Leave Policies*, 58 J. INDUS. REL. 543, 543–62 (2016), <https://doi.org/10.1177/0022185616643558>.

under the federal program.¹⁸⁶ This glaring inequity emphasizes the urgency of adopting a more comprehensive eligibility framework for PFML, ensuring that the program supports social reproduction across all income levels and fosters a more equitable and inclusive caregiving landscape.¹⁸⁷

A PFML program should enable workers to receive paid leave for tending to the full range of family- and medical-related issues.¹⁸⁸ Under the FAMILY Act, the scope of family members for whom a worker could offer care enables individual workers to take not only parental leave but also leave to care for immediate family members.¹⁸⁹ This definition of family is in accordance with the direction states have recently assumed. For example, in Oregon and Colorado—two states that recently enacted PFML in 2019 and 2020, respectively—“family leave” has been expanded to include leave related to the care of any individual related by blood, or any affinity whose close association with an employee is the equivalent of a family relationship regardless of the biological relationship: including a parent, an in-law, a spouse or a domestic partner, a grandparent or their spouse or domestic partner, a grandchild or their spouse or domestic partner, and a sibling or their spouse or domestic partner.¹⁹⁰

This expansive definition of “family leave” assumes special relevance as the senior population in the United States continues to grow. In 2020, 16.9% of the population was aged sixty-five or above, while projections indicate that by 2050, a little more than one in five (22%) Americans will fall within this age bracket.¹⁹¹ Today, most caregivers medically assist adults aged fifty and above, and over one-sixth of adults in the United States, totaling 53 million individuals, take care of adult family members or children with special needs.¹⁹² Nearly half of this number reports experiencing negative financial consequences due to their caregiving responsibilities, and a substantial three out of five (61%) continue to balance their work commitments while shouldering caregiving duties.¹⁹³

186. *Id.*

187. *Id.* at 562.

188. Molly Weston Williamson, *The State of Paid Family and Medical Leave in the U.S. in 2023*, CTR. FOR AM. PROGRESS (May 10, 2023), <https://www.americanprogress.org/article/the-state-of-paid-family-and-medical-leave-in-the-u-s-in-2023/>.

189. NAT’L P’SHIP FOR WOMEN & FAMILIES, *supra* at 132.

190. H.B. 2005 § 2(18), 80th Leg. Assemb., Reg. Sess. (Or. 2019) (enacted); COLO. REV. STAT. § 8-13.3-503(11) (2024).

191. *Share of Old Age Population (65 years and Older) in the Total U.S. Population from 1950 to 2050*, STATISTICA (Sept. 2021), <https://www.statista.com/statistics/457822/share-of-old-age-population-in-the-total-us-population>.

192. NAT’L ALLIANCE FOR CAREGIVING & AM. ASS’N OF RETIRED PERSONS, *supra* note 32, at 4.

193. *Id.*

Additionally, the FAMILY Act expands the definition of “medical leave” to include survivors of domestic violence, stalking, and sexual assault who would be able to access leave to seek medical services related to such situations.¹⁹⁴ This expansion is especially important in a country where more than one in three women (35.6%) and more than one in four men (28.5%) have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.¹⁹⁵

E. Viable Wage Replacement Rate

Currently, the national minimum benefit under the Employment Insurance Act stands at 55% of eligible earnings, with variations in rates across provinces such as Quebec and Manitoba.¹⁹⁶ These rates are influenced by factors such as regional living costs, income replacement needs, and international benchmarks.¹⁹⁷ The federal government consistently reviews and adjusts PFML provisions, including benefits, to ensure the program aligns with evolving societal needs and strives to achieve a genuinely “viable” wage replacement during family and medical leave.¹⁹⁸ As such, a viable PFML replacement rate should be applied to wage and salary income during a specified period before taking leave to create relief that is commensurate with employee earnings. Paid family and medical leave, akin to other forms of social insurance, serves to replace lost wages, making it necessary for most paid leave initiatives and propositions to stipulate a minimum threshold of recent earnings for benefit coverage.¹⁹⁹

Many middle-class families struggle with the expenses of a newborn or adopted child, and many report that a wage-replacement rate of 55% of their weekly salary is too low for them to feel comfortable taking this time off.²⁰⁰ Reduced wage replacement for caregiving leave especially disadvantaged employees with caregiving responsibilities, predominantly

194. Shabo, *supra* note 175.

195. Michele C. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*, NAT'L CTR. FOR INJURY PREVENTION & CONTROL 2 (Nov. 2011), https://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf.

196. Employment Insurance Act, S.C. 1996, c. 50, § 4 (Can.), <https://laws-lois.justice.gc.ca/eng/acts/e-5.6/page-4.html>.

197. *Employment Insurance (EI) Maternity and Parental Benefits: How Much You Could Receive*, at *What's Included in Benefit Calculations*, GOV'T OF CAN. (Dec. 30, 2022), <https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental/benefit-amount.html#formula>.

198. *Id.*

199. *Id.*

200. Pamela Winston et al., *Exploring the Relationship Between Paid Family Leave and the Well-Being of Low-Income Families: Lessons from California*, U.S. DEP'T OF HEALTH AND HUM. SERV. (Jan. 2017), <https://aspe.hhs.gov/sites/default/files/private/pdf/255486/PFL.pdf>.

affecting women.²⁰¹ When women take caregiving leave with a lower wage replacement rate, their available income to support their families diminishes. This situation worsens gender disparities, especially for the 64.2% of mothers who are the primary or co-breadwinners within their households.²⁰²

In general, diminished wage replacement levels in paid leave initiatives tend to dissuade employees from taking leave due to their inability to afford even a partial reduction in earnings. For example, a study conducted in 2011 on California's paid leave program revealed that inadequate wage replacement could prevent low-wage workers from availing themselves of a portion or the entirety of the leave they require.²⁰³ Particularly, men are less inclined to take leave if the wage replacement is insufficient.²⁰⁴ Conversely, when wage replacement levels are higher, as exemplified by San Francisco's Paid Parental Leave Ordinance, men demonstrate a greater willingness to take leave, thereby contributing to an enhancement of gender equality.²⁰⁵

For this reason, a suitable federal PFML program should follow the blueprint established by most state governments, which have instituted plans that favor a wage replacement rate with a weekly cap on benefits and offer a fixed weekly cash benefit that would offer a nearly full wage-replacement rate for the lowest-income workers and would phase out for middle- or higher-income workers.²⁰⁶ Wage replacement rates at this income level have varied from 67% of the average weekly wage (AWW) enacted by the New York state government²⁰⁷ to 95% of AWW in Connecticut for workers paid wages less than or equal to the Connecticut

201. *Bearing the Cost: How Overrepresentation in Undervalued Roles Disadvantaged Women During the Pandemic*, U.S. DEP'T OF LAB. 12 (Mar. 15, 2022), <https://www.dol.gov/sites/dolgov/files/WB/media/BearingTheCostReport.pdf>.

202. *Release: Nearly Two-Thirds of Mothers Continue to Be Family Breadwinners, Black Mothers Are Far More Likely to Be Breadwinners*, CTR. FOR AM. PROGRESS (May 10, 2019), <https://www.americanprogress.org/press/release-nearly-two-thirds-mothers-continue-family-breadwinners-black-mothers-far-likely>.

203. Eileen Appelbaum & Ruth Milkman, *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*, CTR. FOR ECON. AND POL'Y RSCH. (2011), <https://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.

204. *Meeting the Promise of Paid Leave: A Research Brief*, NAT'L P'SHIP FOR WOMEN AND FAMILIES (Aug. 2019), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/meeting-the-promise-of-paid-leave-a-research-brief.pdf>.

205. William H. Dow et al., *San Francisco's Paid Parental Leave Ordinance: The First Six Months*, POP. SCI. AT U.C. BERKLEY 1 (Nov. 2020), <https://www.populationsciences.berkeley.edu/sites/default/files/SF%20Paid%20Parental%20Leave%20-%20UC%20Berkeley%20issue%20brief%201.pdf>.

206. *Explainer: Paid Leave Benefits and Funding in the United States*, NEW AM. (Dec. 14, 2020), <https://www.newamerica.org/better-life-lab/briefs/explainer-paid-leave-benefits-and-funding-in-the-united-states/>.

207. N.Y. Workers' Comp. Law §§ 204(2)(a)–(b) (as amended by S. 6406C).

minimum wage multiplied by forty.²⁰⁸ In this regard, the FAMILY Act's wage replacement rate of 85% for the lowest income bracket and approximately two-thirds for the typical full-time worker, capped at approximately \$4,000/month, presents an acceptable figure in line with workable benefits proven at the state level.²⁰⁹

F. Flexible Work Eligibility

Most PFML laws in the United States and Canada are intended to replace lost wages, so employees must have a certain length of service with their employer, measured in terms of months or hours worked, before becoming eligible for PFML benefits.²¹⁰ Such laws typically stipulate a minimum number of hours an employee must work or pay they must earn within a defined period such as a year to qualify for leave benefits.²¹¹ Employees seeking family and medical leave benefits are required to provide medical documentation certifying the need for leave, especially for medical-related reasons.²¹² However, the prerequisites related to work history should be designed in a manner that will not unduly exclude a substantial number of workers who need PFML.²¹³ Once individuals meet the insurance criteria, they become eligible to take paid leave when facing a qualifying event.²¹⁴ Moreover, laws should extend coverage to self-employed individuals or part-time workers and need not consider an employee's citizenship or immigration status, as in British Columbia, Canada.²¹⁵

One key advantage of adopting the social insurance approach is that

208. S.B. 1 § 3(c)(2), 2019 Leg., Reg. Sess. (Conn. 2019) (enacted).

209. *Fact Sheet: The Family and Medical Insurance Leave (FAMILY) Act*, NAT'L P'SHIP FOR WOMEN & FAMILIES (May 2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/family-act-fact-sheet.pdf>.

210. *Types of Leaves Offered to Federally Regulated Employees*, GOV'T OF CAN. (Feb. 16, 2024), <https://www.canada.ca/en/services/jobs/workplace/federal-labour-standards/leaves.html>; *Paid Family Leave: Key Issues and Considerations*, U.S. Congressional Research Service, R44835, at 20–26 (Sep. 25, 2023), <https://crsreports.congress.gov/product/pdf/R/R44835>.

211. *Types of Leaves Offered to Federally Regulated Employees*, *supra* note 203.

212. *Id.*; see also *Fact Sheet #28G: Medical Certification under the Family and Medical Leave Act*, U.S. DEP'T OF LAB. (Jan. 2024), <https://www.dol.gov/agencies/whd/fact-sheets/28g-fmla-serious-health-condition>.

213. Emmalyn Krantz, *Paid Family Leave: How a Global Pandemic Exacerbates the Need for a Comprehensive National Paid Leave Policy*, 2022 U. ILL. L. REV. 1294, 1322 (2022).

214. See *Qualifying for Paid Family and Medical Leave*, WAS. STATE EMP. SEC. DEP'T, <https://paidleave.wa.gov/help-center/individuals-and-families/qualifying-for-paid-leave/> (last visited Feb. 6, 2025) (example of state providing extensive list of qualifying events).

215. *What Self-Employed Individuals Should Know about the Employment Insurance (EI) Special Benefits for Self-Employed Persons*, GOV'T OF CAN. (Dec. 30, 2022), <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/self-employed-special-benefits.html>.

all work that is covered contributes towards eligibility.²¹⁶ Benefits remain portable across various employers, eliminating the need for a specific tenure requirement with any single employer.²¹⁷ Moreover, workers should be theoretically able to accumulate credits from multiple jobs, part-time engagements, and unconventional work setups, as allowed in the Canadian EI model.²¹⁸ Decision-makers must also devise work history prerequisites that do not unintentionally exclude those who are most in need of paid leave, including new parents and individuals earning lower wages. The eligibility criteria should encompass individuals with intermittent earnings and career gaps—instances such as the birth of a prior child or periods of unemployment as were experienced during the COVID-19 pandemic.²¹⁹

In this regard, the first iteration of the FAMILY Act is instructive because it originally suggested mirroring the work history prerequisites set forth by Social Security Disability Insurance (SSDI).²²⁰ However, SSDI's stringent two-year work eligibility requirement was criticized for excluding 30% of new parents, many of whom were presumably working-class women of color.²²¹ Therefore, to expand coverage to a broader spectrum of workers, policymakers could establish a more modest threshold. By anchoring benefits to recent earnings, individuals with limited work histories would still be entitled to relatively modest benefits at a reasonable cost. This would not only simplify eligibility requirements but also increase inclusivity without causing a significant financial burden. A case in point is California's paid family leave program, which mandates that a worker must have earned a minimum of \$300 in covered employment during the preceding year.²²²

216. See generally Mitchell Barnes et al., *The Social Insurance System in the U.S.: Policies to Protect Workers and Families*, THE HAMILTON PROJECT & BROOKINGS INST. 2–3 (June 2021), https://www.brookings.edu/wp-content/uploads/2021/06/Social-Insurance-FP_v4.5.pdf (highlighting that social insurance programs such as Social Security and Unemployment Insurance rely on contributions through taxes by employees and employers during working years to determine eligibility when qualifying events occur such as retirement, disability, or unemployment).

217. *Id.* (nothing that programs like Social Security are designed to provide benefits based on cumulative work records, regardless of the employer, ensuring that workers do not need specific tenure with a single employer to qualify for benefits).

218. GOV'T OF CAN., *supra* note 174.

219. Eric M. Tucker & Leah F. Vosko, *Designing Paid and Protected Employment Leaves for Short-Term Sickness and Caregiving*, INST. FOR RSCH ON PUB. POL'Y (Oct. 7, 2021), <https://irpp.org/research-studies/designing-paid-and-protected-employment-leaves-for-short-term-sickness-and-caregiving/>.

220. Matt Bruenig, *FAMILY Act Would Deny Benefits to One-Third of New Parents*, PEOPLE'S POL'Y PROJ. (Mar. 8, 2020), <https://www.peoplespolicyproject.org/2020/03/08/family-act-would-deny-benefits-to-one-third-of-new-parents/>.

221. *Id.*

222. Employment Development Department, *Fact Sheet: California Paid Family Leave*, STATE OF CAL. (June 2022),

G. Outreach

Finally, ensuring a national PFML entails more than just a centralized bureaucracy; it hinges on effective administrative practice within the preexisting bureaucratic structure.²²³ Reaching the individuals who require leave the most demands a strategic approach involving targeted outreach, a streamlined application process, and expedient disbursement of benefits.²²⁴ Consequently, for a federal paid leave program to succeed, a comprehensive outreach strategy must be implemented with a specific focus on reaching out to low-income workers, individuals from diverse ethno-racial backgrounds, immigrants, and women.²²⁵ To illustrate, approximately five years after California pioneered the nation's inaugural paid family leave initiative, just below half of workers undergoing qualifying circumstances such as childbirth or a serious illness were acquainted with the newly introduced benefits.²²⁶ This awareness was even more limited among low-wage earners, immigrants, Hispanics, and individuals without a high school diploma.²²⁷ Moreover, the emergency COVID-19 paid leave program also suffered from inadequate outreach, leading to a lack of awareness among many workers.²²⁸ This knowledge gap was especially pronounced for those with lower incomes, with less formal education, or residing in rural regions.²²⁹ With this in mind, collaborative efforts should be established between employers, healthcare providers, community organizations, social service providers, businesses, payroll administrators, and governmental agencies to foster awareness about any new PFML benefits.²³⁰ Multimedia

https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de8714cf.pdf.

223. Gabriel Zucker, *Implementing Paid Family and Medical Leave*, NEW AM. (Mar. 31, 2021), <https://www.newamerica.org/better-life-lab/reports/implementing-paid-family-and-medical-leave/>.

224. *Id.*

225. *Id.*

226. Julia M. Goodman et al., *Expand and Simplify to Reach Low-Income Workers with Paid Family Leave Policies*, POP. SCI. AT UNIV. OF CAL. BERKELEY (July 7, 2020), https://www.populationsciences.berkeley.edu/sites/default/files/SF_Paid_Parental_Leave_UC-Berkeley_Issue_Brief_3_0.pdf.

227. *Id.*

228. E.C. Barrett, *Few US workers aware of COVID sick leave protections*, CORNELL CHRONICLE (Aug. 30, 2021), <https://news.cornell.edu/stories/2021/08/few-us-workers-aware-covid-sick-leave-protections>.

229. Eleanor Mueller, *Democrats Say DOL Keeping Workers in the Dark about Paid Leave*, POLITICO (Jun. 5, 2020), <https://www.politico.com/news/2020/06/04/democrats-say-dol-keeping-workers-in-the-dark-about-paid-leave-302478>; see also Claire C. Miller & Jim Tankersley, *Paid Leave Law Tries to Help Millions in Crisis. Many Haven't Heard of It*, N.Y. TIMES (May 8, 2020), <https://www.nytimes.com/2020/05/08/upshot/virus-paid-leave-pandemic.html>.

230. See generally Suma Setty et al., *Protecting Workers, Nurturing Families: Building an Inclusive Family Leave Insurance Program. Findings and Recommendations from the New Jersey Parenting Project*, NAT'L CTR. FOR CHILDREN IN POVERTY (Mar. 2016),

advertising across television, radio, print, and social media platforms should also be employed to reach mass audiences.²³¹ Furthermore, there should be a dedicated emphasis on communicating with workers during the occurrence of qualifying events, such as being in a hospital post-stroke or childbirth. Information dissemination should be accessible, employing straightforward language, offering translations in various languages, and catering to individuals with visual and auditory impairments.²³² Administrators must also utilize real-time data to discern application trends and reasons for rejections, ensuring a responsive and adaptable approach.²³³

VII. CONTENDING WITH MARKET-BASED APPROACHES TO PFML

Free-market libertarian opponents of a national PFML program counter that placing the financial burden of paid leave on businesses with a social insurance program financed by an employer tax can be unfair and lead to economic challenges, especially for small businesses.²³⁴ Such critics argue that individuals should be responsible for planning and managing their personal and family matters without relying on government or employer support.²³⁵ They assert that paid leave laws could disrupt labor markets and potentially lead to unintended consequences, such as reduced job opportunities or increased costs for businesses.²³⁶

In this alternative view, the primary focus should revolve around implementing policy alternatives that amplify the flexibility and options available to working families. The federal government should explore avenues to alleviate regulatory burdens on employers, enabling them to explore diverse work arrangements through adjustments made to the tax code like eliminating the marriage penalty and augmenting child tax credits. According to the free-choice and anti-statist view, families, rather than any type of federally administered bureaucracy, are in the best position to assess what aligns with their needs, but they can only exercise this agency when presented with choices.

To support such claims, these critics point to the fact that most Americans are less likely to support a one-size-fits-all national PFML

<https://www.nccp.org/publication/protecting-workers-nurturing-families/>.

231. *Id.*

232. *Id.*

233. *Id.*

234. See Carrie Lukas, *Libertarians' Lost Voice in the Paid Leave Debate*, REASON (Jul. 12, 2017), <https://reason.com/2017/07/12/libertarians-lost-voice-in-the-paid-leave/>; Nita Ghei, *The Argument against Paid Family Leave*, NEWSWEEK (Aug. 4, 2009), <https://www.newsweek.com/argument-against-paid-family-leave-78741>.

235. Lukas, *supra* note 227.

236. Vanessa B. Calder, *Parental Leave: Is There a Case for Government Action?*, CATO INST. (Oct. 2, 2018), <https://www.cato.org/policy-analysis/parental-leave-there-case-government-action#side-effects-of-mandated-or-subsidized-leave>.

mandate that costs over \$200 per year because such a mandate would infringe upon their autonomy to make the most suitable choices for their family allowed by their family budgets.²³⁷ Such concerns, however, are more ideological than they are based on an honest assessment of the factual record, as several empirical studies in Canada have conclusively proven that paid leave policies offer advantages to businesses by enhancing employee retention and productivity without imposing additional operational expenses and may even result in cost savings.²³⁸

In the United States, a seven-year study of California's paid leave program, the oldest working PFML plan in the nation, demonstrates that approximately nine out of ten businesses observed either a positive or a neutral impact on productivity, while nearly all businesses (99%) reported positive or neutral effects on employee morale.²³⁹ Moreover, evidence suggested that these enhancements to the workplace incur minimal costs for businesses, as almost nine out of ten (87%) surveyed businesses reported no heightened expenses, with a small fraction (9%) even noting cost savings due to reduced employee turnover or decreased expenditure on employee benefits.²⁴⁰ Similar positive outcomes were reported during the COVID-19 outbreak by a recent 2021 study released by the National Bureau of Economic Research, which surveyed firms employing 1099 workers in New York and New Jersey on their attitudes towards PFL programs before and during the pandemic.²⁴¹ The research found high support for state PFL programs in 2019 that rose substantially over the course of the pandemic.²⁴²

By fall of 2020, almost seven out of ten firms were supportive.²⁴³

237. "As an employee, you can't choose to take a greater share of your compensation as take-home pay; you can't decide to save on your own for time away from work in the future; government has decided how this must be handled." Lukas, *supra* note 227.

238. See G. Garon-Carrier et al., *Maternal Labor Force Participation During the Child's First Year and Later Separation Anxiety Symptoms*, 50(6) HEALTH EDUC. & BEHAV. 792 (2023); see also R. Margolis et al., *The Effect of Expanded Parental Benefits on Union Dissolution*, 83 J. MARRIAGE & FAM. 191 (2021); R. Margolis et al., *Use of Parental Benefits by Family Income in Canada: Two Policy Changes*, 81(2) J. MARRIAGE & FAM. 450 (2019); F. Hou et al., *Estimating Parental Leave in Canada Using Administrative Data: A Technical Report*, STATS. CAN. (Aug. 29, 2017), <https://www150.statcan.gc.ca/n1/pub/11-633-x/11-633-x2017009-eng.htm>; Y. Choi et al., *The Effects of Paternity Leave on Parents' Earning Trajectories and Earnings Inequality*, CTR. FOR OPEN SCI. (Aug. 8, 2019), <https://ideas.repec.org/p/osf/socarx/tx2vh.html>.

239. *Paid Family and Medical Leave: Good for Business*, NAT'L P'SHIP FOR WOMEN & FAMILIES (Sept. 2018), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-good-for-business.pdf>.

240. *Id.*

241. Ann P. Bartel et al., *Support for Paid Family Leave among Small Employers Increases During the COVID-19 Pandemic*, NBER WORKING PAPER SERIES 1 (Dec. 2021), https://www.nber.org/system/files/working_papers/w29486/w29486.pdf.

242. *Id.*

243. *Id.*

Increases in support were larger among firms that had an employee use paid family leave or the Families First Coronavirus Response Act, suggesting that experience with PFML led to employers becoming more receptive to the benefits of a socially insured PFML program.²⁴⁴

VII. POLICY POINTS OF EMPHASIS

To counter the free-market libertarian criticisms against PFML, a national program must be implemented in a way that is financially feasible and administrable, and within an efficiently centralized bureaucratic structure. Therefore, a national PFML program should emphasize three overarching policy points: 1) financial sustainability, 2) centralized administrability, and 3) scrutiny of the profit-driven public-private partnerships that characterize the usual free-market alternative solutions.

A. *Financial Sustainability*

Right-libertarian economists rightly worry that offering paid leave may strain taxpayer resources or disrupt business operations.²⁴⁵ Financial sustainability ensures that the program can continue to operate over time without relying on short-term funding solutions and is essential for providing consistent support to employees and their families.²⁴⁶ A sustainable PFML program also encourages broader employer participation and reduces potential resistance because it is better equipped to adapt to changing needs and shifts in demographics, economic conditions, and societal trends.²⁴⁷

Fortunately, preexisting state/territory paid leave programs prove a cost-effective, responsibly funded, and robust paid leave program is attainable without the need for major cuts. For example, the Universal Paid Leave Fund provided Washington, D.C., residents with parental, family, medical, and prenatal leave initially using a 0.62% employer payroll tax that was so successful, a surplus was generated.²⁴⁸ Moreover, the tax rates in other state leave programs that alternatively utilize an

244. *Id.*

245. Ghei, *supra* note 227.

246. See generally *Tools for Sustainable State Budgeting*, PEW CHARITABLE TRUSTS (Nov. 15, 2023), <https://www.pewtrusts.org/en/research-and-analysis/reports/2023/11/tools-for-sustainable-state-budgeting>.

247. See *Response to the Request for Information (RFI) from the Bipartisan Bicameral Congressional Paid Leave Working Group on Paid Leave*, BETTER BALANCE 2–10 (Jan. 30, 2024), <https://www.abetterbalance.org/wp-content/uploads/2024/02/Final-RFI-response-from-A-Better-Balance.pdf> (describing best practices from state paid family leave programs including financing to be applied to sustainable national program).

248. S. Libby Henninger & Rosa T. Goodman, *DC Workers Will Soon Receive More Paid Leave, Employers to Obtain Tax Cut*, LITTLER (June 14, 2022), <https://www.littler.com/publication-press/publication/dc-workers-will-soon-receive-more-paid-leave-employers-obtain-tax-cut>.

employee payroll tax span from 1.1% of covered payroll in Rhode Island to 0.4% in the state of Washington.²⁴⁹ Meanwhile, the proposed 2023 FAMILY Act is paid for by a joint 0.2% payroll tax on employers and employees, based on the Medicare taxable wage base.²⁵⁰

B. Centralized Administrability

By centralizing national PFML administration under a single federal entity, eligibility rules and access can be harmonized for a more equitable, consistent, and efficient approach.²⁵¹ A centralized system streamlines the implementation process, reducing administrative complexities and ensuring a consistent application of the program's rules and regulations.²⁵² Centralized administration can lead to cost savings through economies of scale by consolidating administrative processes and resources that reduce redundancy and inefficiencies.²⁵³

In this regard, the existing state of Social Security, which remains a popular federal program among American citizens,²⁵⁴ despite continued right-wing attacks from fiscally conservative pro-market advocates,²⁵⁵ is instructive. The effectiveness of Social Security's administration stems from its universal participation and lack of means-testing, which allows the program to offer a superior yearly payout compared to private retirement annuities for each dollar contributed.²⁵⁶ In contrast to the typical free-market stereotypes of big government programs as wasteful and inefficient, Social Security provides a clear example of a federal

249. *TDI/TCI for Employers*, STATE OF RHODE ISLAND DEP'T OF LAB. & TRAIN., <https://dlt.ri.gov/individuals/temporary-disability-caregiver-insurance/tdi-tci-employers>; S.B. 5975, 65th Leg., 3rd Special Sess. (Wash. 2017) (enacted).

250. Shabo, *supra* note 175.

251. Tanya Byker & Elena Patel, *A Proposal for a Federal Paid Parental and Medical Leave Program*, HAMILTON PROJECT (May 12, 2021), <https://www.hamiltonproject.org/publication/policy-proposal/a-proposal-for-a-federal-paid-parental-and-medical-leave-program/>.

252. *Id.*

253. *Id.*

254. Linley Sanders, *How Americans Evaluate Social Security, Medicare, and Six Other Entitlement Programs*, YOUNG (Feb. 8, 2023), <https://today.yougov.com/topics/politics/articles-reports/2023/02/08/americans-evaluate-social-security-medicare-poll>.

255. David Ginsberg, *Republicans Are Bringing Back Their Plan to Gut Social Security and Medicare*, NEW REPUBLIC (Jun. 14, 2023), <https://newrepublic.com/post/173661/republicans-bringing-back-plan-gut-social-security-medicare>; Gregory Krieg, *Nikki Haley Proposes Overhaul of Social Security and Medicare*, CNN POLITICS (Dec. 5, 2023), <https://www.cnn.com/2023/12/05/politics/nikki-haley-social-security-medicare-reform/index.html>.

256. *See generally Social Security Coverage of State and Local Government Employees*, CONG. RSCH. SERV. Mar. 19, 2024), <https://crsreports.congress.gov/product/pdf/R/R46961> (showing how compared to state and local pension plans in general, Social Security provides better inflation protection and benefits).

government program whose administrative costs are minimal, comprising just 0.5% of yearly benefits,²⁵⁷ in stark contrast to the industry average fee of 1.29% associated with private retirement annuities.²⁵⁸

Senator Gillibrand has proposed that under a new Office of Paid Family and Medical Leave, administration could be fully funded by a payroll tax, with an estimated range of 4.33% (Rhode Island) to 6.43% (New Jersey) of benefit disbursements allocated toward administration.²⁵⁹ By coordinating the administration of PFML claims with the Social Security Administration, the federal government may take advantage of the existing infrastructure for receiving, evaluating, and disbursing Social Security Disability Insurance benefits.²⁶⁰ Currently, FMLA leave eligibility is determined by employers,²⁶¹ which may lead to varying access to the same underlying claims across different employers. The revenues generated from the PFML tax should be collected by the U.S. Treasury Department and subsequently transferred to a fund with a dedicated program office that will be set up within the Social Security Administration.²⁶²

C. *Scrutiny of Public–Private Partnerships*

Proponents of providing paid leave benefits via the privatization of government services believe that combining the strengths of both private and public sectors allows for the pooling of resources, expertise, and

257. *Social Security Administrative Expenses*, SOC. SEC., <https://www.ssa.gov/oact/STATS/admin.html> (last visited Feb. 6, 2025).

258. *Schwab Genesis Advisory Variable Annuity*, CHARLES SCHWAB n. 1, <https://www.schwab.com/annuities/variable-annuities/schwab-genesis-variable-annuity> (last visited Feb. 6, 2025) (“Comparatively, according to an April 18, 2022 Morningstar survey of 2,344 non-group variable annuities, the industry average fee is 1.29%.”).

259. IMPAQ Int’l, *A Review of the Administrative Costs of Establishing a State Paid Family and Medical Leave Program*, U.S. DEP’T OF LAB. 1–6, 9 (Jan. 5, 2021), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/microsim_doc_admin_cost_508.pdf.

260. See KAREN ENGLISH, SPRING CONSULTING GRP., *STUDY OF MARYLAND FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM* 30 (2023), https://dls.maryland.gov/pubs/prod/NoPblTabPDF/MarylandDLS_StudyofFAMILIProgram.pdf (examining the Maryland Department of Legislative Service’s proposal request of implementing the Family and Medical Leave Insurance Program).

261. See Wage & Hour Div., *Fact Sheet #28: The Family and Medical Leave Act*, U.S. DEP’T OF LAB. (Feb. 2023), <https://www.dol.gov/agencies/whd/fact-sheets/28-fmla> (last visited Feb. 6, 2025) (explaining only employees working for a “covered employer” is eligible for FMLA).

262. Cf. Chantel Boyens & Jack Smalligan, *Evolution of Federal Paid Family and Medical Leave Policy*, URB. INST. 11 (Nov. 2022), <https://www.urban.org/sites/default/files/2022-11/Evolution%20of%20Federal%20Paid%20Family%20and%20Medical%20Leave%20Policy.pdf> (last visited Feb. 6, 2025) (explaining how the Treasury Department is better equipped to process income tax and earnings data for programs including Social Security).

funding for bureaucratic teams to enhance efficiency and service delivery.²⁶³ Such advocates argue that bureaucracies implementing PFML programs should consider engaging private vendors who are well versed in insurance management practices.²⁶⁴ They believe that incorporating private vendors' expertise and extensive resources into government medical services will yield improved customer interactions, efficient implementation, and cost savings.²⁶⁵ In their view, private businesses bring operational knowledge and financial capacity, while government agencies can provide a regulatory framework, oversight, and public funding.²⁶⁶

While such private–public partnerships might theoretically offer certain benefits, such as choice and competition, privately administered government programs could inflate and complicate the overall cost of providing leave benefits compared to a centralized, government-administered program.²⁶⁷ In the context of PFML, this problem was especially evident in Connecticut after its government entered into a \$72 million contract with insurance giant Aflac to manage claims administration for its recently enacted paid leave program.²⁶⁸ It was recently revealed that Aflac fell short of the worker coverage originally anticipated by Connecticut government officials only a year after the commencement of the state's PFML program, which began accepting applications in December 2021. During their initial year, nearly one-third of all program applications were turned down, excluding those still pending with state records; a significant portion of rejections resulted from missing or incomplete documentation, and several applicants who engaged with the program complained it was unnecessarily byzantine, with prolonged waiting periods for benefit disbursement.²⁶⁹

IV. CONCLUSION

In exploring how funding for a viable PFML program can be feasibly

263. MANAL FOUAD, ET AL., INT'L MONETARY FUND, *MASTERING THE RISKY BUSINESS OF PUBLIC-PRIVATE PARTNERSHIPS IN INFRASTRUCTURE* 5–9 (2021) <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2021/05/10/Mastering-the-Risky-Business-of-Public-Private-Partnerships-in-Infrastructure-50335>.

264. ENGLISH, *supra* note 254, at 30.

265. *Id.*

266. *Id.*

267. See Frank Beckers & Uwe Stegemann, *A Smarter Way to Think about Public–Private Partnerships*, MCKINSEY & CO. (Sept. 10, 2021), <https://www.mckinsey.com/capabilities/risk-and-resilience/our-insights/a-smarter-way-to-think-about-public-private-partnerships>. (explaining the upwards relationship between costs and risk management when partnering with private corporations).

268. Wage & Hour Div., U.S. DEP'T OF LAB., *supra* note 254.

269. Bria Lloyd & Jim Haddadin, *CT Paid Leave Authority to Withhold \$375,000 from Claims Company*, CT MIRROR (Feb. 13, 2023), <https://ctmirror.org/2023/02/13/ct-paid-leave-authority-to-withhold-375000-from-claims-company-aflac/>.

achieved on a federal level, this Comment contributes to the ongoing dialogue among policymakers, researchers, and stakeholders regarding the crucial importance of national protections in supporting American workers and their families during times of need. This Comment has delved into the multifaceted dimensions of what a minimally acceptable PFML should entail, exploring its financial, administrative, and ethical components. Through a comprehensive examination of various arguments and case studies, it becomes evident that a national, socially insured PFML program not only benefits individual employees and their families but also contributes to a healthier and more productive workforce. From enhancing gender equality to addressing the needs of an aging population and promoting overall well-being, paid family and medical leave has demonstrated its potential to positively impact diverse aspects of society.

Since 2022 a privatized alternative has unfolded among the several Southern states which have enacted laws establishing voluntary PFML systems administered entirely by the health insurance market.²⁷⁰ Modeled on legislation developed by the National Council of Insurance Legislators (NCOIL), these laws authorize private insurers to sell paid family leave policies to employers but impose no coverage mandates, benefit guarantees, or oversight mechanisms.²⁷¹ As a result, workers have no enforceable right to paid leave, and access depends solely on whether an employer opts into the system—an unlikely prospect in low-wage sectors where voluntary benefits are rare.²⁷² The plans that are offered often provide minimal leave at low wage replacement rates and allow risk rating, which can inflate premiums for employers with disproportionately female, disabled, or caregiving workforces—reinforcing discrimination and existing inequities.²⁷³

However, In this evolving landscape, a growing consensus supports the idea of a robust and socially insured PFML program at the federal level amidst this evolving landscape. Many preexisting models at both the state and international levels showcase the feasibility and success of such a system. The current trajectory guided by the NCOIL model risks hindering the adoption of a unified, nationally consistent PFML program. While immediate needs may necessitate pragmatic solutions, the long-term objectives should not be overlooked. Achieving a universal standard of coverage is crucial to address disparities among states and elevate the United States among developed nations in PFML care. While

²⁷⁰ PRENATAL-TO-3 POLICY CENTER, *supra* note 63.

²⁷¹ See NAT'L COUNCIL OF INS. LEGISLATORS, *Paid Family Leave Insurance Model Act* (Nov. 2022), <https://ncoil.org/wp-content/uploads/2022/11/NCOIL-PFL-Model-Adopted-Nov.-2022.pdf>.

²⁷² See Deborah Widiss, *Privatizing Family Leave Policy: Assessing the New Opt-in Insurance Model*, 53 Seton Hall L. Rev. 1543, 1570–1572 (2023).

²⁷³ *Id.*

acknowledging the urgency, policymakers should be mindful of not compromising the pursuit of a superior and socially insured federal PFML program.