

## PAID FAMILY AND MEDICAL LEAVE

BY DAPHNE HERLING

Twenty-five years ago, the Family and Medical Leave Act (FMLA) was passed with the lofty goal of helping American families balance the demands of the workplace with family needs. It was underpinned by the belief that preserving the integrity, stability and economic security of families is in the nation's interest. While the act may or may not have been effective at the time, economic reality and societal structures have changed the American workplace and the American family. In today's world, FMLA is no longer adequate.

While FMLA's primary goal remains to help families retain their jobs, it fails to ensure the financial security of working families as it grants unpaid leave to only a limited number of workers. To support families, businesses and the economy, some form of expanded paid family leave is essential either at the federal, state or local levels. Recognizing this, some states and local governments have enacted their own paid leave programs and/or legislation designed to provide more support for workers not covered by the federal FMLA.

### THE CASE FOR PAID LEAVE

Only 12 percent of private-sector employees and about 40 percent of the entire U.S. workforce have access to leave under FMLA.<sup>1</sup> As of 2016, FMLA has been used over 100 million times by employees with the average leave duration around 10 days – most commonly for an employee's own health event.<sup>2</sup> Under the current law, FMLA allows for unpaid leave for qualified workers for qualified reasons. Once an employee uses



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## FAMILY AND MEDICAL LEAVE ACT (1993)

A United State labor law, FMLA requires covered employers to provide employees with 12 weeks of unpaid and job-protected leave for qualified medical and family reasons, including to attend to the serious health condition of the employee, parent, spouse or child, or for pregnancy or care of a newborn child, or for adoption or foster care of a child. In order to be eligible for FMLA leave, an employee must have worked at the business at least 12 months, for at least 1,250 hours over the past 12 months and work at a location where the company employs 50 or more employees within 75 miles. The FMLA covers both public- and private-sector employees.

When workers use up their regular paid vacation leave, sick leave or other paid time off hours, they are left with the option of unpaid leave or going back to work. This option disproportionately affects low-income workers. Forty-six percent of those who needed to take leave did not do so because they could not afford to go unpaid.<sup>3</sup> Many workers in the lowest wage quartiles are unlikely to even have access to such paid time off benefits.<sup>4</sup>

Data on Montana's workers and their income is seen in Table 1 and shows that Montana's numbers are similar to U.S. numbers. One key difference is that

Montana's median and per capita incomes are lower than the nation's. Many Montana measures highlight the tenuous financial security of families; particularly the number of low wage jobs in the state (28 percent) resulting in a high number of working poor (21 percent); the number of households without short-term savings to subsist at the poverty rate for three months (42 percent); and the high number of people without employer-based health insurance (43 percent). When working Montanans have to take unpaid time off to care for a sick child, to deal with their own health event or to care for an elderly parent, it creates a financial hardship in a time of heightened need. Once all other sources of paid leave are used up and a worker has to take unpaid time off, there is an increased likelihood of family financial instability, especially for low income workers.

A family of three (two full-time working parents, plus one child) at 200 percent of the Federal Poverty Level (FPL) earns \$48,600 annually, however a living wage for such a family is \$51,507 annually. The living wage is the annual total needed to pay for such basic necessities as childcare, food, medical expenses, housing, income taxes and transportation. Thus, if this family were faced with the need of taking unpaid leave they would soon experience significant financial hardship. Once both parents use up any paid leave they may have and have to take additional unpaid leave, a loss of one or two months of income would

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Table 1. Montana workers compared to U.S. workers. Source: U.S. Census Bureau or Bureau of Labor Statistics (unless otherwise noted).

	Montana	U.S.
<b>Income (2016)</b>		
Median income	\$48,380	\$55,322
Pre-capita personal income	\$27,306	\$29,829
<b>Poverty</b>		
100% of federal poverty level (FPL) (2016)	13%	13%
200% of FPL (2016)	33%	32%
Working poor* (2015) <sup>5</sup>	21%	22%
Liquid Asset Poverty Rate** (2015)	42%	44%
Households paying more than 50% of income on housing (2015)	7%	9%
<b>Employment Status (2017)</b>		
Unemployed	4%	4%
In civilian workforce	63%	63%
Low wage jobs***	28%	25%
<b>Health Insurance</b>		
Employer provided Insurance Coverage (2016) <sup>6</sup>	43%	49%
Children 0–18 with employer provided insurance coverage (2015) <sup>7</sup>	47%	48%
Uninsured children ages 0–18 (2015) <sup>8</sup>	8%	5%
Uninsured rate (all) (2014-2017) <sup>9</sup>	7%	9%

\* The share of families that met three criteria: 1) the family income was less than twice the federal poverty level; 2) at least one parent worked 50 or more weeks during the previous year; 3) there was at least one “own child” under age 18 in the family.

\*\* Percentage of households without sufficient liquid assets to subsist at the poverty level for three months in the absence of income, 2011.

\*\*\* Percentage of jobs in occupations with median annual pay below 100% poverty threshold for a family of four.

unglue their family’s financial stability. A family could descend into true poverty if the cause of the unpaid leave were a health event with its associated cost burden and the unlikelihood of such a family having comprehensive health insurance.

In low-paying Montana service industries, the two wage earners in a family of three earn a combined annual income of \$29,922.<sup>10</sup> Working full-time

year-round, this family’s income will not reach 200% of poverty. Additionally, the likelihood individuals in such jobs having paid time off or health insurance is low; if one parent were to suffer a health event requiring time off without pay, the family would be

\* For the purposes of this issue brief, paid leave/paid family leave are used to indicate paid leave for ALL family needs: maternal, paternal, adoption, caregiving or medical.

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unable to cover basic expenses. Further, if the parent's employer was not required to provide leave under the FMLA, the parent would have no assurance of retaining their job once able to return to work.

Single working parents are even more vulnerable if they need to take unpaid time off work as their family relies on only one paycheck. According to the Census Bureau, 76 percent of custodial single mothers are employed: 53 percent work full-time, year-round and 23 percent work part-time or part-year. Nationally, nearly 20 percent of these single mothers work in low wage jobs, defined as jobs paying \$10.10 per hour or

less. In Montana, 22 percent of single mothers with children ages three or

younger work in low wage jobs. Thus, taking unpaid leave is rarely an option, even if they are covered by the FMLA.

In addition to families with children, working adults who take on a caregiving role also need paid family leave. Because of demographic shifts, American workers increasingly need to look after aging parents or other relatives. The number of Americans ages 65 and older is projected to more than double in the next 40 years, from 46 million in 2015 to over 98 million by 2060, growing from 15 percent to nearly 24 percent of the total population.<sup>11</sup>

A Gallup Poll showed that one in six Americans working full-time or part-time reported caring for an elderly or disabled family member, relative or friend. Seventy percent of working caregivers suffered work-related difficulties due to their dual roles. Thirty-nine percent of caregivers left their job to have more time to care for a loved one and 34 percent left because their work did not provide flexible hours.<sup>12</sup> Additionally, 69 percent of workers caring for a family member reported having to rearrange their work schedule, decrease their hours or take an unpaid leave in order to meet their caregiving responsibilities.<sup>13</sup>

Nationally in 2010, the approximately 10 million caregivers ages 50 and over who cared for their parents lost an estimated \$3 trillion in wages, pensions, retirement funds and benefits. The total



Table 2. California employer's assessment of paid family leave, by number of employees, 2010. Source: Center for Economic and Policy Research, 2011.

No noticeable effect or positive effect on:	Less than 50 employees	50-99 employees	100+ employees	All employer respondents
Productivity	89%	87%	71%	89%
Profitability/performance	91%	91%	78%	91%
Turnover	92%	99%	97%	93%
Morale	99%	96%	92%	99%

costs were higher for women, whose total lifetime loss of wages and benefits was an estimated \$324,044 due to caregiving, compared to \$283,716 for men.<sup>14</sup> At any given time during 2007 there were about 197,000 Montana workers providing unpaid care at an estimated value of just under \$10 per hour for a total value of over \$1 million.<sup>15</sup>

## HEALTHY DEVELOPMENT OF CHILDREN

Society will reap the benefit if working parents are supported by having access to paid family leave. Research is clear that long term outcomes for children who grow up in poverty are not positive. These children are:

- More often sick and underweight as toddlers or born premature and at a low birth weight.
- Less ready to start school, more likely to fall behind in grade school and more likely to drop out of high school.

- More likely to suffer from mental health problems, such as personality disorders and depression.
- More likely to engage in higher rates of risky health-related behaviors.
- More likely to be either a victim or a perpetrator of a crime.
- Less likely to be economically successful adults.<sup>16</sup>

Children growing up in poverty are at risk regardless of whether their parents are working. However, if a parent loses their income because they took unpaid leave, or loses their job because they do not have protection under FMLA, that family is likely to fall further into poverty.

In addition, there are also numerous short- and long-term health benefits that result from strong paid leave policies. For example, new mothers with paid maternal leave have increased rates and duration of breastfeeding, which benefits the health and well-being of new born babies and very young children. Children whose mothers take time off work after

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Table 3. Montana business perspective on paid parental leave.<sup>25</sup> Source: Montana Department of Labor and Industry.

	Agree	Neutral	Disagree
Improves profitability	19%	44%	37%
Improves productivity	30%	50%	20%
Retains employees	49%	43%	32%
Requires retraining	25%	43%	20%
Employees return to same job	53%	42%	10%

childbirth are more likely to receive well-baby checkups and all their recommended vaccinations. All of these factors have a positive effect on child health, as well as the physical and mental health of the mother. Poor maternal mental health and being forced to return to work less than 12 weeks after giving birth are linked to greater levels of depressive symptoms, stress and self-reported poor health.<sup>17</sup>

### BUSINESS INTERESTS

Workplace policies that support families, such as paid family leave, have been shown to improve employee retention. This reduces recruitment and training costs to employers, as the typical cost of employee turnover is 21 percent of the employee’s annual salary.<sup>18</sup> In their survey of businesses, The Boston Consulting Group found that offering paid leave could influence the choice of jobs for 77 percent of workers. They found it to be a concrete way for businesses to show a commitment to their workers and thus reinforce the company’s values and positive

branding both internally and externally. Additionally, 80 percent of employers (out of 1,500) reported a positive impact on employee morale and over 70 percent reported an increase in employee productivity.<sup>19</sup>

Furthermore, the FMLA unpaid leave mandate has not proven to be a burden. Nationally, 85 percent of employers report that complying with FMLA was easy or had no noticeable effect. Additionally, 91 percent of employers reported that complying with FMLA had either a positive or no noticeable effect on employee absenteeism, turnover and morale.<sup>20</sup>

National surveys show that costs from enacting family leave policies can be best managed through thoughtfully designing benefits. Many companies avoid the cost of hiring temporary labor by distributing the work of the absent worker among existing staff. Additionally, designing flexible policies, such as adjusting the amount of time off or the level of wage replacement, allows businesses to meet their needs as well as the needs of their workforce.<sup>21</sup>

**Seventy percent of working caregivers suffered work-related difficulties due to their dual roles.**

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Having trained employees remain in the labor force is in the interest of all businesses. New mothers who have access to paid leave have a more positive attachment to the labor force than those without such access. Studies on the relationship between paid leave and pre- and post-birth employment show that women with access to paid leave are more likely to work later into their pregnancies. Overall, women who are offered paid leave are more likely to return to the labor force in the year after they give birth than women who are not offered paid leave.<sup>22</sup>

## MONTANA'S BUSINESSES

Montana's economy is built on small businesses. Over 90 percent of Montana businesses have fewer than 20 employees, constituting 40 percent of employment in the state. Over 20 percent of employees work for firms with 20-49 employees, 25 percent work for firms with 50-249 employees and only 10 percent work for firms with more than 250 employees.<sup>23</sup> Thus, only a small number of Montana companies are required to provide leave under FMLA. However, the impetus to provide paid family leave is growing as research shows that the cost burden on companies, both large and small, is not as great as feared and benefits for employers are realized.

To help understand how paid family leave might impact Montana's employers, it is useful to look at how paid leave has impacted firms with such policies. Three states – California, New Jersey and Rhode Island – have enacted legislation requiring paid leave for workers in times of medical or family need, while New York has passed legislation as well, which took effect in January 2018. These states rely on employee payroll tax contributions or a combination of employee and employer contributions by having paid



leave built into their Temporary Disability Insurance (TDI) programs. Although Washington state has also passed paid leave legislation, it does not have an existing TDI and there is no financing or administrative infrastructure to run the program, so implementation has been delayed.

Research from states with experience with this issue show that businesses report a positive experience overall. A survey of California businesses conducted six years after their law was enacted is summarized in Table 2. It is interesting to note that firms with fewer than 50 employees showed more positive results than the larger ones. In all, 91.2 percent of employers were not aware of any employees abusing the paid leave policy, a fear that is often mentioned as a reason not to offer the benefit. Additionally, because of the carefully designed law drawing on existing TDI programs, 86.8 percent of employers reported no increased costs to their business from implementing paid leave.<sup>24</sup>

An industry association's survey of New Jersey businesses showed that 67 percent experienced no

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effect on profitability, performance or employee productivity regardless of the number of employees.

These findings can potentially allay the fears of Montana's business community, which is ambivalent about the benefits of paid parental leave. The 2015 Montana Paid Family Leave Study asked for an employer's perspective on paid leave. The results (Table 3) indicate employers have few opinions, perhaps based on a lack of knowledge rather than an outright antipathy.

## THE MONTANA ECONOMY

In 2016, Montana's economy added almost 7,000 jobs (1.2 percent growth) and personal income grew by 2.3 percent. The state's gross domestic product (GDP) was 1.1 percent in 2016, not far behind the nation at 1.5 percent.<sup>26</sup> However, these positive economic numbers do not reflect the poverty existing in the state.

Income inequality has received a lot of attention nationally and in Montana the benefits of the state's growth is primarily seen by the richest Montana households. The wealthiest 5 percent of households have average incomes 11 times higher than the bottom 20 percent of households and 4.3 times as large as the middle 20 percent of households. The change in household income\* over the past few decades has grown by 13 percent for the lowest 20 percent of workers, whereas it grew by 43 percent for the top 20



percent of Montanans.<sup>27</sup> More dramatic is the average real income\*\* growth from 1979 to 2007. During that time period the income for the top 1 percent of Montanans grew by 147 percent, while the income for the remaining 99 percent grew by 11 percent.<sup>28</sup>

Montana has a labor shortage. The strong economy in Montana over the past five years has reduced unemployment and increased wages. The economy is projected to expand further, building on 2016 when 6,740 new jobs were created. It is estimated that 5,500 jobs will be added each year over the next ten years. However, population data shows that Montana's labor force will grow slowly, adding only

\* Income is post-federal tax and includes the value of the Earned Income Tax Credit and the value of food stamps and housing subsidies. Income is adjusted for inflation to 2009 dollars and for household size.

\*\* Real income refers to the income of an individual or group after taking into consideration the effects of inflation on purchasing power.



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# Designing a good paid family leave policy can create a win-win for Montana's employees and employers.

4,500 workers per year to fill these jobs.<sup>29</sup> It is in the state's best interest to do everything it can to help businesses attract and retain workers.

In 2014, 13,000 Montana workers became birth parents. This number represents nearly twice the annual growth in worker demand expected in the future. Retaining these parents in the workforce would certainly help meet the need for workers and also provide support for parents during a time when they face high medical costs and significant demands on their time.<sup>30</sup> Montana workers, especially in urban areas, face high housing costs, which places an additional burden on low- and middle-income families.<sup>31</sup>

## THE FUTURE OF PAID FAMILY LEAVE

All other industrialized countries in the world have paid family leave policies in place. Of the 193 countries in the United Nations, only New Guinea, Suriname, a few South Pacific island nations and the United States do not have a national paid parental leave law. Until the federal FMLA includes a paid provision, it will be up to the states to take the lead. In 2015, 23 states introduced legislation on some type of paid family leave. The cost of such legislation is of concern to businesses, especially small business owners. However, if legislation is well-crafted, supporting families and growing business is not mutually exclusive. Some of the lessons learned on state family paid leave laws are:

- Lawmakers in states without a Temporary Disability Insurance program, such as Montana, must consider alternative financing structures.
- Eligibility criteria should cover as many workers as possible and address all family needs; families must be broadly defined to include all differences.
- Paid leave must provide sufficient benefits to ensure an employee's financial security.
- Laws should use existing human capital and infrastructure where possible.
- Outreach and education must be included in the legislation to ensure a workers' awareness and understanding of the policies and programs.
- Policies and protocols must ensure data collection on utilization.<sup>32</sup>

## CONCLUSION

Designing a good paid family leave policy can create a win-win for Montana's employees and employers. Montana is ripe for paid family leave legislation. Positive research conducted in other states shows the benefits to small businesses, the increasingly tight labor market in the state, the past few years work to educate state lawmakers and their subsequent receptivity and the fact that 73 percent of Montanans support some form of paid family leave,<sup>33</sup> because paid family leave is good for businesses, workers, families and the economy. ■

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