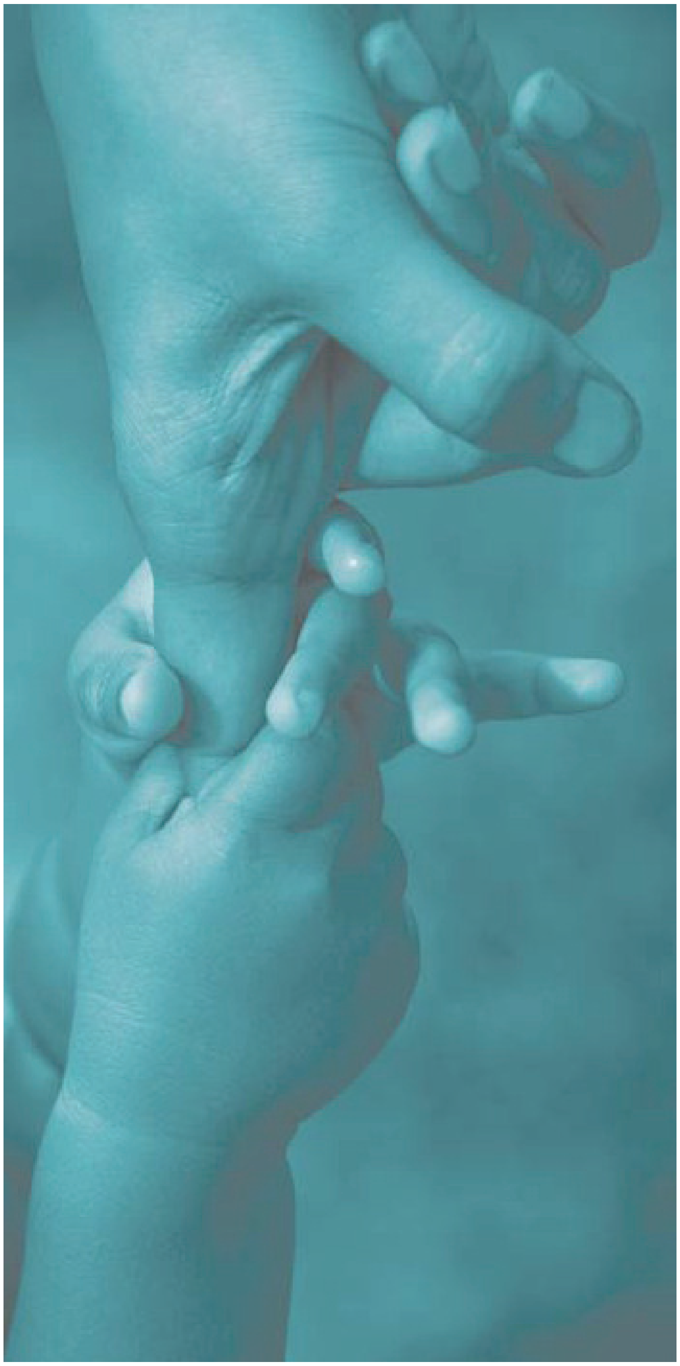

BRIEF

Paid Leave in the States

A Critical Support for Low-wage Workers and Their Families

Sarah Fass

March 2009

National Center for Children in Poverty
Mailman School of Public Health
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The National Center for Children in Poverty (NCCP) is the nation's leading public policy center dedicated to promoting the economic security, health, and well-being of America's low-income families and children. Using research to inform policy and practice, NCCP seeks to advance family-oriented solutions and the strategic use of public resources at the state and national levels to ensure positive outcomes for the next generation. Founded in 1989 as a division of the Mailman School of Public Health at Columbia University, NCCP is a nonpartisan, public interest research organization.

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Juggling work and family responsibilities is a challenge for millions of families. Low-wage workers can find this balancing act especially difficult since they are more likely to work in jobs with few benefits and limited flexibility. *Paid Leave in the States* finds that paid leave can support both child and family well-being and family economic security. In the absence of a federal paid leave policy, a handful of states have enacted paid leave. This brief examines existing state policies and concludes with recommendations for state policymakers.

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Introduction

Millions of working families experience a day-to-day struggle to make ends meet – nearly 40% of America's children live in low-income families.[1] When these families experience a major life event, such as having a baby or taking care of a family member with a serious illness, their already fragile financial situation can be further jeopardized.

With recent social and demographic shifts – including the increased participation of women in the labor force and the aging of the population – balancing work obligations with family responsibilities has become more and more challenging for all families. Low-wage workers can find this balancing act especially difficult as they are more likely to work in jobs with few benefits and limited flexibility and they have fewer financial resources at their disposal.[2] Everyone loses when families are forced to make tough compromises, and consequences for children's healthy development can be especially troubling.

Current public policies in the United States do not adequately support workers striving to meet the obligations of work and family. For instance, the U.S. is one of four nations that do not guarantee paid time-off to new mothers; the other countries that similarly provide no guarantee are Liberia, Papua New Guinea, and Swaziland.[3] The federal Family and Medical Leave Act (FMLA) provides 12 weeks of unpaid leave from employment for major life events, but coverage is far from universal, and many cannot afford to take time-off from work without pay. Low-wage workers, in particular, would benefit from expanded paid leave policies, as they are less likely to be covered by the federal policy and are in greater need of pay during time-off from work for major life events.

A handful of states have enacted policies that provide partially paid leave under certain circumstances. This brief begins by discussing research on the benefits of family leave and describing the federal Family and Medical Leave Act. It then examines the strengths and limitations of existing state-level policies, with a focus on California, which in 2002 became the first state to enact paid family leave. Finally, the brief concludes with recommendations for state policymakers considering paid family leave, with an emphasis on how these policies could be crafted to best serve the needs of low-wage workers and their families.

Background

Why Families Need Access to Paid Leave: What the Research Says

Research indicates that family leave policies help to improve child and family health and well-being and contribute to greater family economic security.

In terms of children's health, access to paid parental leave has been found to reduce child mortality, particularly when the leave is paid and provides job-protection benefits.[4] Researchers have concluded that parental leave may be a cost-effective way to improve children's health.[5] Granting longer periods of leave post-birth can contribute to healthy child development: babies whose mothers return to work within 12 weeks of child birth are less likely to be breast-fed, less likely to be up-to-date on their immunizations, and more likely to exhibit externalizing behavior problems. Children whose mothers return to work full-time shortly after giving birth are also less likely to be taken to the pediatrician for regular check-ups.[6]

There is also some evidence that parents – both mothers and fathers – benefit from being able to take leave. Mothers who were employed prior to child birth and who delay returning to work after giving birth experience fewer depressive symptoms than those who return to work earlier.[7] Fathers who take longer leaves after a child's birth are more involved in childrearing activities once they return to work.[8] These benefits for parents also contribute to improved child well-being.

In addition, family leave policies have a number of consequences for parental employment, mainly for women. Access to leave, even unpaid leave, increases the likelihood of women's return to work following child birth; it also increases the likelihood of women returning to the same job.[9] Rights to parental leave increased women's rate of employment in Europe.[10] And state and federal leave policies, even unpaid leave policies, increase the likelihood of leave-taking as well as the length of leave taken for mothers and fathers.[11] Since family leave policies increase parents' ability to maintain attachment to the labor force, even after they have children, these policies are an important way of promoting family economic security.

Employers also stand to benefit from family leave through increased employee retention, reduced turnover, and increased loyalty and morale.[12]

Defining the Terms

What is "family" leave and how is it different from other forms of leave?

Family leave is the concept of taking time-off from employment in order to care for a family member during a major life event, including a serious illness or the birth of a baby or adoption or foster placement of a child.

Medical leave is leave used for an individual's own serious illness.

Maternity and paternity leave is for new mothers and new fathers (respectively) around the birth of a child.

Parental leave refers to time-off for new parents (mothers and fathers) around the birth of a baby, or adoption or foster placement of a child in order to bond with and care for the new child.

What are some of the important dimensions of leave policy?

- Family leave can be mandated by federal or state government, or it can by provided on a voluntary basis by individual employers.
- Some policies include provisions for full or partial pay during a worker's time-off, while others provide only unpaid leave.
- Leave policy can include a guarantee of job-protection, which means that a worker is entitled to the same position or an equivalent position upon returning to work.
- The length of leave also varies depending on the policy: federal law entitles certain workers to 12 weeks of unpaid leave, but state paid leave laws typically provide a shorter leave.

The Policy Context at the Federal Level

The federal Family and Medical Leave Act (FMLA) provides up to 12 weeks a year of *unpaid* leave from employment to certain workers for major life events. Signed into law in 1993, FMLA was the first piece of federal legislation to address the competing demands of work and family.

Under FMLA, covered and eligible workers are guaranteed 12 weeks of leave annually in the event of the worker's own serious illness, or to care for a seriously ill parent, child, or spouse, or for the birth of a baby, or adoption or foster placement of a child. A key provision of FMLA is that the leave is job-protected, which means that workers who take leave are entitled to the same position, or one that has equivalent pay and seniority, upon return from leave. Employers are required to extend health insurance to workers who take leave, if such benefits are ordinarily offered by the employer.

Although FMLA represents a significant policy achievement for working families, FMLA has two significant weaknesses: it does not cover all workers, and the leave offered is unpaid. These weaknesses disproportionately affect low-income parents. FMLA does not apply to small businesses – only employers with fifty or more employees have to comply with FMLA. It also excludes some part-time workers and those with less stable employment histories. To be eligible for leave under FMLA, an employee has to have worked for the same employer for at least one year and must have worked for the same employer for at least 1,250 hours in the previous 12 months (25 hours per week, on average, for 50 weeks).

These provisions lead to substantial gaps in coverage under FMLA. Workers who are least likely to have access to voluntary leave benefits through an employer are also less likely to be covered by FMLA. It is estimated that only half of all workers are both covered (that is, work for an employer with 50 or more employees) and eligible (that is, have been with their employer for the previous year and worked at least 1,250 hours) for FMLA.[13] Less than half (46 percent) of all women workers are estimated to be covered, and some estimates show that only 20 percent of new mothers are covered and eligible for FMLA.[14]

Low-wage workers are not as likely as higher earners to be covered by and eligible for FMLA as they are more likely to be employed by companies that are too small to qualify. Moreover, these workers typically have erratic employment histories due to frequent job changes, intermittent or seasonal employment, and/or part-time employment that make them ineligible for coverage. And low-wage workers who work full-time hours by combining jobs would not qualify for FMLA.[15]

Yet even workers who are fortunate enough to qualify for FMLA often cannot afford to take leave without pay. One analysis found that 77 percent of employees who needed leave but decided not take it made that decision for financial reasons, and 88 percent of this group said that they would have taken leave had some wage replacement been available.[16] Salaried workers and those with higher incomes are more likely to take family leave compared to hourly workers.[17] Low-income workers are more likely to work for employers who do not provide pay during leave: one survey found that 74 percent of workers earning less than $20,000 annually received no pay from their employer while on leave, whereas 24 percent of workers earning between $50,000 and $75,000 received no pay during leave.[18] While there have been efforts to address the lack of paid leave at the federal level, many expect that in the near future, states will lead efforts to enact paid family leave.[19]

State-Level Paid Leave Policy

States have long been innovators in developing and implementing family leave policy. Prior to the enactment of FMLA in 1993, several states already had some form of leave policy in place. Since the passage of FMLA, a number of states have expanded access to *unpaid* leave either by extending coverage to more workers or by increasing the length of FMLA leave.[20]

But several states have taken up the issue of *paid* leave policy. California became the first state to pass paid family leave in 2002, since then Washington and New Jersey have followed suit.[21] Additional states are considering legislation.

Specific aspects of paid family leave programs vary in each state, including who is covered and the amount of wage replacement offered to leave-takers. However, one common factor among most state paid leave policies is that they do not extend job-protection benefits. In some cases, as discussed below, this leaves a gap between state and federal policy, since many state paid leave policies apply to all or nearly all workers in a state, whereas the reach of FMLA is more limited.

The following section details the strengths and limitations of state-level paid leave policies. The section begins with a description of state temporary disability insurance programs, which provide income replacement to workers with a temporary disability (pregnancy is treated as a "temporary disability" for the purpose of such programs), but do not provide broader family leave benefits.

What ultimately emerges is a complicated picture: who is covered, for what kind of leave (paid or unpaid), and for how long, varies depending on where one lives and on one's employment history and employer. In some states, multiple laws confer rights to leave. The result is a patchwork system that can be confusing for families who are attempting to determine what kind of leave benefits are available. But until there is further action on family leave at the federal level, states will continue to drive innovations in family leave policy and the patchwork will continue.

Paid Leave for New Mothers: Temporary Disability Insurance

New mothers can receive partial wage replacement through state temporary disability insurance (TDI) programs in five states: California, Hawaii, New Jersey, New York, and Rhode Island. With the exception of Hawaii, these programs were created in the 1940s but did not apply to pregnant women until the 1970s with the passage of the Pregnancy Discrimination Act. Two of the three states that have paid family leave programs (California and New Jersey) had a TDI program in place prior to the establishment of paid family leave.

The level of wage replacement through TDI varies across the five states (see Figure 1). Typically, benefits are a percentage of weekly wages, up to a specified maximum. The length of leave for pregnancy-related "disability" under TDI is on average six weeks, although some states allow eight weeks if birth was through Cesarean section. Financing of TDI is either through an employee contribution or through both an employer and employee contribution to a state fund.

Unlike FMLA, TDI policies typically do not offer job-protection. Yet, in most states, more workers are covered by TDI than are covered by FMLA. States with an existing TDI program have the advantage of already having the administrative capacity to deliver family leave benefits.

Figure 1. State Temporary Disability Insurance (TDI) Wage Replacement

State	TDI Benefits
CALIFORNIA	55% - 60% of highest quarterly earnings during a 12-month base period up to $959 (2009)
HAWAII	58% of average weekly wages up to $510 (2009)
NEW JERSEY	66% of average weekly wages up to $524 (2008)
NEW YORK	50% of weekly wages up to $170 (2008)
RHODE ISLAND	4.62% of employees highest calendar quarter wages in the base year, up to $671, plus dependent allowance of $10 or 7% of weekly benefit for up to 5 dependents (2008)

California's Paid Family Leave Insurance Program

In 2002, California became the first state in the nation to enact paid family leave. The Paid Family Leave Insurance program builds on the state's existing TDI program and offers six weeks of leave annually with partial pay for workers who need to care for a seriously ill child, spouse, domestic partner, or for parents to bond with a newborn or newly adopted child or recently placed foster child. Unlike FMLA, almost all private-sector workers in California are eligible for paid leave benefits, including part-time workers and small-business employees.[22]

While on leave, Californians can receive partial wage replacement: 55 percent of weekly earnings with a maximum of $959 per week (in 2009). This maximum benefit amount is indexed to the state's average weekly wage and is annually updated. Compared to the handful of other states with a paid family leave policy or TDI, California's program has the highest maximum weekly benefit (see Figure 2). The program is financed solely by a payroll tax on workers that collects funds for TDI benefits and paid family leave benefits.

A critical difference between paid family leave in California and unpaid leave through FMLA is that the leave offered under the state paid family leave program is not job-protected. Unfortunately, this leaves workers who are not covered by FMLA – those who work for employers with fewer than 50 employees and workers with part-time work histories – but who are covered by the California law, in an awkward position. Although these workers may be entitled to some wage replacement for six weeks of leave, their jobs are not guaranteed upon their return to work. Employers are also not required to extend benefits, including health insurance, to workers on paid leave as is required under FMLA.

Benefits through TDI and Paid Family Leave Insurance for new mothers are especially significant in California. Under the state's TDI program, new mothers can receive partial pay for four weeks prior to a child's birth, and six to eight weeks after birth. Workers in companies with five or more employees who take pregnancy-related TDI leaves are job-protected. After taking maternity leave through TDI, new mothers can take an additional six weeks of bonding leave through Paid Family Leave Insurance.[23] But these additional weeks of leave are not job-protected.

Who Takes Paid Family Leave in California?

In 2006, 161,000 workers in California took paid family leave (out of a workforce of 13 million).[24] According to data from 2006, women filed nearly 80 percent of all claims for paid family leave.[25] Adults who work for very large employers (with more than 1,000 employees) account for almost half of all family leave claims, even though they represent only 14 percent of the state's workforce.[26] Most of the claims filed for paid family leave have been for bonding with a new baby (rather than care for an ill family member).

Only two-thirds of women who received TDI benefits for leave related to pregnancy also filed for bonding claims under the Paid Family Leave Insurance program. One possible explanation is that pregnancy leave taken under TDI is job-protected for most, but time-off through paid family leave is not. So for those who are not covered by FMLA, there is no guarantee of a job upon return from time-off, nor is there a guarantee that health insurance benefits must be extended during leave.[27] In addition, it is possible that many women, especially low-income women, simply can not afford to take so much time-off with only partial wage replacement.

Another potential reason for low take-up rates of paid family leave is that public awareness of the program remains low, even years after the law's implementation in 2004.[28] One survey found that in 2003, 22 percent of respondents were aware of the program. By 2007, awareness increased only slightly: 28 percent of respondents knew about the paid leave program. Those most in need of paid family leave benefits are also the least likely to be aware of the program: low-income, minority, and young respondents were among the groups least likely to know about paid family leave. Overall, there was greater awareness of FMLA and the state's TDI program than paid family leave.[29]

California's Paid Family Leave Insurance program is a model for other state and federal efforts to implement paid leave. At the same time, there are important lessons to be learned from the California experience. In particular, job-protection benefits are a critical element of family leave policy, as is raising public awareness of the program. Both will ensure that workers who need to take time-off from work for family reasons are able to take advantage of the available benefits.

Paid Family Leave in Other States

Since California passed its landmark legislation in 2002, several other states have considered family leave legislation. To date, two states have joined California in passing paid family leave laws: Washington (in 2007) and New Jersey (in 2008). (See Figure 2 for a comparison of the three state paid family leave programs).

Figure 2. Comparison of State Paid Family Leave Programs

	CALIFORNIA	NEW JERSEY	WASHINGTON
Length of leave	6 weeks	6 weeks	5 weeks
Type of leave	Family	Family	Parental
State has TDI program?	Yes	Yes	No
Benefit structure	55% of weekly pay up to cap	66% of weekly pay up to cap	$250/week flat benefit (3)
Maximum weekly benefit (2009)	$959	$546	$250
Policy offers job-protection to all workers eligible for paid benefits?	No	No	No (4)
Cost to employees	$64/year cap (2005)	$33/year cap (2009)	TBD
Employer contribution	None	None	TBD
Part-time workers eligible for benefits?	Yes (1)	Yes (2)	Yes (5)
Workers in companies with under 50 employees eligible for paid leave benefits?	Yes	Yes	Yes

Notes:

1. Employees must have earned at least $300 in previous 12 months to be covered.
2. Employees who have worked for at least 20 weeks and earned at least $143 in a base week are covered.
3. The weekly benefit amount will be prorated for part-time workers.
4. Employers of 25 or more are required to offer job-protection; however only employees who have worked for 1,250 hours in the previous 12 months are entitled to job-protection.
5. Employees who have worked 680 hours in the previous year are covered.

New Jersey

New Jersey's Family Leave Insurance program will provide six weeks of paid leave for workers to care for a new baby, or a seriously ill parent, child, spouse, domestic partner, or civil union partner. Paid leave benefits will be available as of July 2009. Building on the state's existing TDI program, the law offers wage replacement of up to two-thirds of weekly pay, up to a maximum of $546 in 2009. Like California, the maximum amount will be adjusted annually. The program is funded entirely by a payroll tax on employees, with contributions capped at $33 per year.

As in California, coverage under New Jersey's Family Leave Insurance will be broader than under FMLA, including part-time workers and small business employees. Workers who already pay into the state's existing TDI program will be eligible for wage replacement, which includes those who have worked for at least 20 weeks in the past year and who have earned at least $143 in a base week.[30]

However, as is the case in California, New Jersey's Family Leave Insurance does not guarantee job-protection, so that only workers who are employed by organizations with 50 or more employees will be guaranteed their jobs upon returning from leave.

Washington

In Washington State, the recently passed State Family Leave Insurance program would provide five weeks of paid leave from employment for parents to spend time with a newly born or newly adopted child. The program was originally slated to begin in October of 2009, but as of this writing, work on determining program administration has been suspended by the governor.

The proposed benefit structure for the Washington program differs slightly from California and New Jersey. Workers who work at least 35 hours per week would receive a flat weekly benefit of $250 per week while on leave. Part-time workers would be eligible for prorated benefits. Although the weekly benefit is lower than the maximum benefits in California and New Jersey, low-wage workers in particular benefit from this structure since they would receive a greater proportion of their wages compared to higher-wage earners.[31]

Unlike California and New Jersey, job-protection benefits are extended beyond FMLA under the Washington law. Workers in companies with 25 or more employees who have worked 1,250 hours in the previous year would be entitled to job-protected leave. Although this provision would not cover all of the workers in the state who would be eligible for wage replacement benefits, it signals the importance of job-protection.

Other State Efforts

A handful of other states have considered enacting paid family leave. In New York State, for instance, the State Assembly passed legislation expanding the state TDI system to include 12 weeks of paid family leave to care for seriously ill family members and new children. The proposal features broad coverage (including companies with fewer than 50 employees, part-time workers, and a broad definition of eligible family members), but lower wage replacement levels (with a maximum weekly benefit of $170). Advocates in New York expect paid family leave to be reintroduced in the state legislature in the current session and are pushing for an increase in the weekly benefit amount. Other states are expected to take up paid family leave in the coming year.[32]

Policy Recommendations

Paid family leave provides a critical support to families who need access to time-off from work for family reasons. This support is particularly important for low-wage workers who are less likely to have access to leave and are most in need of pay when they have to take time-off. Paid family leave has been found to promote healthy child development and family well-being.

Given the patchwork nature of the current policies and the universal need for access to paid family leave, the long-term goal is clearly a federal paid leave policy. However, in the short-term, it appears that innovation in paid family leave policy will continue to occur at the state level.[33] Thus, NCCP recommends the following policy strategies for guiding state-level efforts to enact paid family leave policy that best serves the needs of low-wage workers and their families:

- **Ensure adequate wage replacement.** Wage replacement benefits provide needed income during time-off for major life events. Washington State's proposed model of providing a flat benefit amount is an interesting model for other states, as it gives low-wage workers a greater share of their lost earnings. However, wage replacement benefits must be enough to ensure that workers can make ends meet while on leave.

- **Guarantee job-protection.** Job-protected leave is critical for ensuring that workers feel comfortable taking time-off from their job. Since FMLA's coverage is currently limited to full-time workers and employers larger than 50 employees, states should ensure that state policy provides job-protection to all workers eligible for state paid leave benefits.

- **Extend coverage to both full- and part-time workers and to employees in small businesses.** Paid family leave is a basic labor protection, and as with other labor protections like the minimum wage, part-time workers and small business employees also need access to the right to leave for major family events, such as the birth of a baby or a family member's serious illness.

- **Ensure that the length of leave is sufficient.** The research on child development indicates that a minimum of 12 weeks of paid leave benefits would be best for promoting both healthy child development and family economic security. The length of paid leave available through state policy should be at least as long as the 12 weeks provided by FMLA.

- **Use a broader definition of family.** Many adults have family care responsibilities that extend beyond the immediate family members included in FMLA (parents, spouses, and children). Policymakers should consider expanding the definition of family to also include siblings, grandparents, aunts, uncles, and in-laws. Particularly with an aging population, families would best be supported by a broader concept of "family."

The bottom line is that paid family leave promotes both child and family well-being and economic security, and ensuring that low-income families have access to these benefits is critical.

Endnotes

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14. See Endnote 12.

15. Phillips, Katherin Ross. 2004. *Getting Time Off: Access to Leave among Working Parents*. Washington, DC: Urban Institute.

16. Ibid.

17. See Endnote 11.

18. Waldfogel, Jane. 2001. Family and Medical Leave: Evidence from the 2000 Surveys. *Monthly Labor Review* 124(9): 17-24.

19. As of this writing, President Obama has expressed support of expansion of unpaid leave through FMLA to additional employees and encouraging states to enact paid family leave through the creation of a state innovation fund.

20. Grant, Jodi; Hatcher, Taylor; Patel, Nirali. 2005. *Expecting Better: A State-by-State Analysis of Parental Leave Programs*. Washington, DC: National Partnership for Women and Families.

21. Due to begin in 2009, the Washington State paid leave program has been suspended by the governor as of this writing.

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31. See Endnote 23.

32. For more about state efforts to enact paid family leave, see Paid Leave Activity in Other States. Paid Family Leave California. Accessed Feb. 4, 2009 from: http://www.paidfamilyleave.org/otherstates.html.

33. See Endnote 19.

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