



Paid Family Leave Report of the Southwest Women's Law Center



PAID FAMILY LEAVE

A Report by the Southwest Women's Law Center

I. INTRODUCTION

Since 1993, the year that the Family and Medical Leave Act (FMLA) was passed by the federal government, many states have looked for ways to adopt provisions of the Act for their citizens, particularly when those citizens worked for employers who are not covered by FMLA. Too often residents of states like New Mexico needed time off for the birth or adoption of a child, a personal medical issue, or to care for a sick family member. In recent years, several states have successfully enacted laws that expand family and medical leave in important ways to ensure that all employees, regardless of where they work or how many employees are maintained in the workplace, have access to some aspect of paid leave.

Like many other states in recent years, New Mexico has attempted to use state law to expand upon the protections that FMLA provides. While those attempts have been unsuccessful thus far, much can be learned from these experiences. However, New Mexico can utilize the experiences shared by the states that have successfully enacted such laws to ensure that it creates a law that adequately addresses the needs of New Mexicans.

This report will first look at the federal Family and Medical Leave Act, analyzing its strengths and weaknesses, and determining the provisions that would best fit a state application. Then, the report will look at the benefits and barriers that New Mexico Legislature may encounter in its attempts to strengthen some aspects of a state based FMLA with paid family and medical leave attributes for New Mexicans. This report will analyze the costs and benefits of enacting a paid leave act in New Mexico, analyze state laws that have successfully passed paid leave acts, and provide recommendations on how the state of New Mexico may successfully enact a paid leave law in New Mexico.

II. FEDERAL LAW and INTEGRATING A STATE LAW PLATFORM

FMLA grants certain categories of women and men up to twelve weeks of unpaid job-protected leave for the following reasons: (1) the birth and care of a newborn child, (2) the adoption or foster care placement of a son or daughter, (3) to care for an immediate family members (spouse, child, or parent) with a serious health condition, and (4) the employee's own serious illness or injury.ⁱ FMLA entitles an eligible employee to be restored to the same or an equivalent position with equivalent pay, benefits and working conditions when they return from leave.ⁱⁱ It also requires an employer who is covered by FMLA to maintain health benefits for eligible employees on FMLA leave.ⁱⁱⁱ Additionally, FMLA prohibits an employer from interfering with, restraining or denying the exercise of any right under FMLA or discriminating against any individual for opposing any practice unlawful under FMLA.^{iv}

Just as FMLA has helped millions of workers by ensuring job security, the goal is to have employees in the state of New Mexico develop a state based family paid leave law that

accomplishes the same types of outcomes, but with a guaranteed payment for employees when they are away from their jobs under approved conditions. The goal is to have state based paid leave law allow help employees, regardless of the number of employees in their workplace, to facilitate a viable paid leave platform in New Mexico.^v FMLA requires employees to be employed with their company for at least one year with 1,250 hours of work with the company^{vi}. Although FMLA provides unpaid job protections, individuals may utilize their accumulated sick or annual leave to supplement their income. Due to the limitations of FMLA, only about 60 percent of the nation's workforce is covered by FMLA, and an employee who does not qualify for FMLA leave may not be guaranteed any job-protected leave.^{vii} Only 13% of Americans have access to any type of paid family leave through their employer.^{viii} More than half of the working poor have no paid leave.^{ix}

III. FOCUSING ON NEW MEXICO

New Mexico does not have a state law in place to protect workers in need of family, medical or parental paid leave. Employees' only protection is to hope they qualify for FMLA. However, New Mexico is a state with many small businesses having less than 50 people. The employees of many of the businesses in New Mexico are not afforded the protections that FMLA provides. As of 2012, 96 percent of private businesses had 49 or fewer employees.^x Employees working in these smaller businesses cannot access the benefits of FMLA, nor can they protect their employment positions and health benefits, when they find the need to take leave. No matter how long they have been working, part-time employees cannot access FMLA. Whether or not they qualify for FMLA, employees in New Mexico will not receive paid leave unless their employer is voluntarily willing to pay them.

There is substantial need for paid family and medical leave in New Mexico. Access to paid maternity leave in New Mexico varies greatly by race and income. While 50% of white women and 40% of Hispanic women who were employed during pregnancy had access to paid leave, only 25% of Native American women had this same access.^{xi} Furthermore, the Childcare Assistance Program is not available to low-income families to assist with childcare costs until an infant is six weeks old, creating additional challenges for women who cannot afford to take time off from work.^{xii} New Mexico's workforce is aging. Twenty-nine percent of New Mexican residents are 55 years old or older.^{xiii} Older adults are likely to need time away from work to care for themselves when a serious health condition arises and in turn family members will also need to help. About 34.2 million Americans have provided unpaid care to an adult age 50 or older in the last 12 months.^{xiv}

Attempts to Enact a State-Level Paid Family Leave Program in New Mexico

Thus far, all legislative attempts to expand family and medical leave in New Mexico have been unsuccessful. In 2015, Rep. Gail Chasey (D-18) sponsored House Memorial 2, which requested that University of New Mexico's Bureau of Business and Economic Research convene a parental paid leave working group to develop recommendations for a parental paid leave program and a publicly managed parenting workers' leave fund.^{xv} The working group included business groups, state agencies, and non-profits with expertise on family leave policy, such as the Southwest Women's Law Center. Although there were a number of businesses identified and asked to be a part of the task force, many New Mexico businesses refused to participate in the task force. The final recommendations from the task force were primarily made by the advocates and the governmental agencies that participated in the task force.

The same year that Representative Chasey successfully carried HM 2 to passage, Senator Candelaria proposed SB 375, NM Family Act for Family and Medical Leave. The bill proposed to allow all employees to request unpaid medical leave for their own serious health issues, to provide health care for family members in need, or provide care for and bond with a newborn or newly adopted child.^{xvi} The specifics of Senator Candelaria's bill provided that once granted paid leave, the employee's job would be protected and the employer must offer the employee the same or an equivalent position when they return to work.^{xvii} Workers taking leave would be granted a reasonable level of compensation that would be funded by a .2 income tax applicable to all taxable income under the Income Tax Act and all taxable corporate income under the Corporate Income Tax Act.^{xviii} The tax levies would be partially offset by a deduction from net income equal to fifty percent of the family and medical leave income tax liability.^{xix} These revenues would be distributed to the Family and Medical Leave Compensation Fund.^{xx} For the first year, the legislation required a \$1 million dollar appropriation for expenditures associated with implementing the act's provisions.^{xxi} After that first year, the state would have an Unpaid Family and Medical Leave Program to be administered by WSD.^{xxii}

The Legislative Finance Committee expressed several concerns about the legislation including its belief that the estimates presented to fund the initiative were insufficient to cover any growing or recurring appropriations that may be needed, and were simply incorrect.^{xxiii} The LFC also expressed concerns about the specific details of the legislation such as appropriate forms, annual reports, actuarial and tax matters and lack of solvency to ensure the success of the proposed new policy.^{xxiv} The LFC concluded that a minimum work time needed to be added to the legislation in order for employees to access benefits and other protections needed to be in place before an employee could bring a cause of action, if they believed they were wrongfully denied benefits.^{xxv} Needless to say, SB 375 did not pass.

Despite the roadblocks that SB 375 faced, the Southwest Women's Law Center continued to fight for the passage of HM 2. SWLC presentations showed how the best route for implementation of a successful paid family leave policy in New Mexico should include at least a year to study the implementation in greater detail. SWLC presented data to show how a paid leave policy could allow employees to collect up to 67% percent of their weekly earnings while on paid family and medical leave. All employees would make contributions to the paid family and medical leave fund in order to fund the initiative and any associated administrative costs. In support of HM 2, SWLC presented studies from other states with paid family and medical leave laws, national studies, and international data about the benefits that paid leave would provide employees in the State of New Mexico. SWLC addressed the Legislature's concerns that some employees would be making contributions to the paid family and medical leave fund when their employment benefits would cover their time off. SWLC explained that by making contributions, the employee can be assured that no matter where they are employed, paid family and medical leave would be available when they needed it. Legislators asked questions about the cost associated with paid family and medical leave. The Southwest Women's Law Center explained that it was working with local and national partners to estimate the cost to administer the program with concepts that would keep a paid family and medical leave fund solvent. SWLC also explained that New Mexico has a model in the worker's compensation act and the implementation of that act supported the successful implementation of a paid family leave act in New Mexico. HM 2 was ultimately approved by the New Mexico House of Representatives to allow SWLC to lead a task force to study the best way to implement paid leave in New Mexico. It should be noted that HM 2 focused on parental paid leave, but the task force decided to expand its review and analysis to the broader implementation

of a family paid leave policy in New Mexico. A copy of HM2 authorizing the study of paid leave in New Mexico is attached.

Direction and Strategy of the Paid Leave Task Force

Once HM 2 was passed, SWLC began contacting the businesses and individuals on the Task Force to set dates and times for the Task Force to meet. The consensus was that the Task Force would meet at least quarterly for one year, gathering information, meeting with businesses and talking with interested parties about how best to implement a paid leave policy in New Mexico. The first step was to review models that other states had utilized in implementing Paid Leave in their states.

IV. ASSESSMENT OF STATES WITH PAID FAMILY LEAVE:

CALIFORNIA:

In 2002, California became the first state to enact Paid Family Leave. Under Paid Family Leave, workers who contribute to the California State Disability Insurance fund are entitled to six weeks of partial pay each year if they are taking time off from work to bond with a newborn, adopted or foster child or care for a seriously ill parent, child, sibling, grandparent, grandchild, parents-in-law, spouse or registered domestic partner^{xxvi}

Although Paid Family Leave addressed many of the holes in FMLA, for many years the program didn't cover employers with less than 50 workers. However, in 2017, a new law was passed in California, which, beginning in January 2018, will make it illegal for companies that employ 20 to 49 workers to refuse to grant new parents up to 12 weeks of unpaid leave.^{xxvii} The bill also requires that the Department of Fair Employment and Housing provide a parental leave mediation pilot program until 2020.^{xxviii} It also doubled the amount of unpaid leave small business workers would be eligible to take. To access Paid Family Leave, employees must have earned at least \$300 from which SDI deductions were withheld during their base period.^{xxix} This means that employees who are part time can potentially access Paid Family Leave.

The Paid Family Leave Program is connected to the state's Temporary Disability Program.^{xxx} The amount of the payment is 55 percent of the weekly income based on the highest paying quarter in a 12-month base period.^{xxxi} In 2018, the payment will raise to 60-70 percent in 2018.^{xxxii} Weekly benefits currently range from \$50 to a maximum of \$1,173.^{xxxiii} To access the benefits, the employee must make a claim and file a certification for temporary disability.^{xxxiv} Self-employed individuals can opt in and there is no opt out for the private sector.^{xxxv}

RHODE ISLAND:

The Temporary Caregiver Insurance (TCI) benefits program was signed into law in 2013 and made effective in January 2014.^{xxxvi} It provides those eligible with up to four consecutive weeks of wage replacement benefits to care of a seriously ill family member or to bond with a newborn, foster or adopted child.^{xxxvii} The program is an extension of Rhode Island's long running Temporary Disability Insurance program.^{xxxviii}

Claimants must have worked in Rhode Island and paid into the Temporary Disability Insurance fund and can collect about 60 percent of their salary for four weeks.^{xxxix} Even part time workers are eligible for TCI. The law requires an employee to provide the employer with 30-days' notice, in writing, unless "unforeseeable circumstances" prevail.^{xl} The program is funded by a 1.2 payroll tax on most employees.^{xli} The maximum paid out is about \$800 a week.^{xlii} Rhode Island's program

does not exempt companies with 50 or fewer employees.^{xliv} The state is currently working on a bill to double the state paid family leave to eight weeks.^{xlv}

WASHINGTON

The Family Leave Insurance Program was passed by the Legislature in July 2017.^{xlv} Under the new law, both employers and employees pay into the system.^{xlvi} Premiums of 0.4 percent of wages will begin being collected on Jan. 1, 2019, with 63 percent paid by employees and 37 percent paid by the employers.^{xlvii} Employers with 50 or fewer employees are exempt from paying the employer share.^{xlviii} Self-employed individuals who elect coverage pay only the employee share of the premiums.^{xlix} Benefits will be a percentage of the individual's average weekly wage during the two highest quarters in the qualifying period, and the amount paid will be between \$100 and \$1,000.^l Workers who earn less than the state average will get 90 percent of their income.^{li} Employees must work at least 820 hours before qualifying for the benefit.^{lii} Companies that already offer such programs can opt out if they are at least equivalent to the state program.^{liii}

The new law provides eligible workers up to 12 weeks of benefits annually for: 1) bonding after the birth or placement of a child who is under the age of 18; 2) their own serious health conditions, as defined in the federal FMLA; 3) a family member's serious health condition; or 4) certain military assignments.^{liv} Tribes and self-employed individuals, including independent contractors, may opt-in to the program.^{lv}

NEW YORK:

New York's Paid Family Leave program provides wage replacement to employees to help them bond with a child, care for a close relative with a serious health condition, or help relieve family pressures when someone is called to active military service.^{lvi} Employees are guaranteed return to their job and continuance of their health insurance.^{lvii} Paid Family Leave will phase in over four years. The maximum benefit in 2018 will be 8 weeks, 2019 and 2020 will be 10 weeks, and 2021 will be 12 weeks within a 52-week period.^{lviii} The premium will be fully funded by employees through payroll deductions and participation in the program is not optional.^{lix} Virtually every full-time or part-time private employee in New York State will be eligible for Paid Family Leave.^{lx}

A maximum rate of employees' contribution will be established each year. An employer may permit an employee to use sick or vacation leave for full pay, but may not require it.^{lxi} Citizenship status has no impact on Paid Family Leave Eligibility.^{lxii} Paid family leave is optional for those in a job that will not allow them to attain the 26 continuous weeks or 175 days needed to qualify for Paid Family Leave, such as a seasonal worker.^{lxiii}

WASHINGTON, DC

In 2015, Washington, DC passed the DC Family and Medical Leave Act, establishing that government employees could receive up to eight weeks of paid leave for the birth or adoption of a child or to care for a family member with a serious health condition.^{lxiv} In December 2016, the City Council passed the D.C. Universal Paid Leave Amendment Act of 2016 (UPLAA).^{lxv} If implemented, it will vastly expand paid leave for DC employees. Beginning in July 2020, UPLAA will guarantee certain periods of paid family and medical leave to all private-sector employees, regardless of their employer's size, except for those exempt by federal law or treaty.^{lxvi} Payments will be funded by an additional 0.62 percent employer payroll tax that the city will collect from private-sector employees starting on July 1, 2019.^{lxvii} This money would create a public insurance pool that would pay workers during their time off.^{lxviii} They will be paid for eight weeks within a 52-week period will be provided to new parents, six weeks for the care of a family member with a

serious health condition, and two weeks for an employee's own medical leave.^{lxxix} The city would reimburse employees for 90 percent of their first \$900 in weekly pay and 50 percent of their remaining weekly pay, with a cap of \$1,000 per week.^{lxxx} The requirements do not apply to federal workers or employees of the city government.^{lxxxi}

Currently, under DCFMLA, to qualify for unpaid leave, an employee must have worked for the employer for at least one year preceding the leave request. The UPLAA will require only that an individual must have been a covered employee during that time, and employees do not need to meet a minimum number of hours worked to access this leave. The UPLAA gives leave to employees of small businesses with fewer than 20 employees, but a clause in the law suggests that they are not entitled to job protection when they return from paid leave. The UPLAA also includes a variety of provisions aimed at protecting employees from retaliation for exercising or seeking to exercise their new rights to paid leave, such as threatening to report an employee for citizenship status.^{lxxii}

In October 2017, debates on the law were reopened.^{lxxiii} Opposition has criticized the added tax burden on D.C. employers, when many employees work in DC but live in Maryland and Virginia.^{lxxiv} Those in favor of UPLAA maintain that if large businesses that already provide paid family leave are able to opt out, this will put too much financial burden onto small businesses.^{lxxv} It remains to be seen how the law will be implemented.

NEW JERSEY

New Jersey enacted the Family Leave Insurance program in 2009.^{lxxvi} An individual can file to bond with a newborn or adopted child during the first 12 months after the child's birth or to care for a family member with a serious health condition.^{lxxvii} The program provides new parents or caregivers up to six weeks of benefits.^{lxxviii} Leave may be taken for consecutive weeks, intermittent weeks or intermittent days during a 12-month period.^{lxxix} While on leave, employees receive up to two-thirds of their pay, capped at \$633 a week.^{lxxx} Under the current law, only children, parents, spouses, domestic partners and civil union partners qualify.^{lxxxi} Employees that work for a business with less 50 employees do not qualify for paid family leave.^{lxxxii} In 2017, the legislature sought to expand this program to all employees regardless of the size of their company, but the Governor vetoed it.

This program does not give workers the right to return to their job after a period of family leave unless it is protected under the federal FMLA or the New Jersey Family Leave Act.^{lxxxiii} Starting January 1, 2017, each worker contributed 0.1% of the taxable wage base. The law allows employers to use an approved Private Plan for Family Leave Insurance, instead of the State Plan, but Private Plans must be equal to or better than the State Plan with regard to benefit amount, duration and eligibility requirements and cost may be no more restrictive than the State Plan.^{lxxxiv}

After reviewing the paid leave landscape in other states, the Task Force also reviewed the implementation of Paid Leave in other countries, with a focus on how paid leave was implemented in other developed countries.

V. PAID FAMILY LEAVE IN OTHER COUNTRIES

Of the 193 countries in the United Nations, only a few do not have a national paid parental leave law: New Guinea, Suriname, several South Pacific island nations and the United States.^{lxxxv} Our research and analysis showed that the United States is the only high-income country that does not provide paid family leave.^{lxxxvi} Several decades ago, members of the United Nations agreed to strive for its member nations to embrace a minimum of 14 weeks of leave, paid at two-thirds of a

worker's salary up to a cap.^{lxxxvii} Today, most countries meet or exceed that minimum, with at least 50 countries providing six months or more of paid maternity leave.^{lxxxviii} While systems vary by country, governments rely on a social insurance structure in which contributions may come from employers, employees and/or the government's general revenue.^{lxxxix} Such a structure ensures that no one entity or person carries all of the burden.^{xc} Policies around the world tend to be more centered on moms than dads, but most of the countries with the strongest economies and the lowest unemployment provide paid leave for dads.^{xci}

VI. RECOMMENDATIONS FOR NEW MEXICO:

States that have already enacted paid family leave demonstrate that there are a variety of approaches to implementation. Included below are several recommendations to help New Mexico advance legislation that expands and improves family and medical leave for New Mexicans. In 2019, a Paid Family Leave bill should be introduced to the Legislature and should include the following:

1. Job Protection for All Employees

Employees need assurance that they have a job to return to after they take leave. Because of the large number of small businesses in New Mexico, there are many employees not covered by FMLA who cannot take leave without risking their position and health benefits. Since all workers will be contributing to paid family leave, all should benefit.

Suggestion: New Mexico's bill should include a job protection element requiring all employers to reinstate all qualifying employees to the same or equivalent positions upon returning from leave. This requirement should apply to workers regardless of the size of their employer. Self-employed individuals should be allowed to opt out of the program (or opt in).

2. Length of Paid Leave

States that have enacted paid leave provide differing amounts of leave. Funding and employer challenges in replacing an employee should be balanced with the needs of employees for paid leave time. The benefits given to an employee during the term of paid time off need to be a livable wage. If the benefits are too low, low-income individuals will be excluded from utilizing the program. There are several ways to set up benefits.

Benefits can be based on the previous wage the employee received. Benefits can be a flat reimbursement rate, a reimbursement rate based on the employee's income classification, or a flat rate with minimums and maximums.

Suggestion: A flat rate would be easier to implement. The rate needs to be high enough to be a living wage. It is better to allow for a shorter period of leave at a higher reimbursement rate than a longer period with lower benefits.

This bill should propose four weeks of paid leave initially. Over the years after the bill is enacted and stabilizes, advocates should make proposals to increase paid leave time and provide intermittent leave. However, by starting with a straightforward and more modest paid leave, employees will be provided with the pay they need while the government and employers adjust to the new realities of paid leave.

The reimbursement rate should be at least 66% of the employee's salary. However, full time workers should not make less than \$300 a week. By making a minimum payment of \$300 per week, that puts the employee at 100% of the FPL for a household of 2. Part-time workers should not make below the minimum wage for the hours they traditionally work. For example, an employee who works 10 hours a week should not make less than \$75 a week.

While paid leave will initially just cover one month, job protection and health benefits should be expanded to 12 weeks for all employees who do not currently qualify for FMLA.

3. Employee Eligibility

FMLA requires employees to have worked for the employer for 1 year (not required to be consecutive) and must have worked 1,250 hours in the previous year before they are eligible for job protected leave. There is no minimum income requirement for FMLA. Often, employees need time off before these requirements have been met. Part time employees may never meet these requirements.

Suggestion: While an eligibility requirement is reasonable, the minimum amount of work time should be significantly lower than FMLA to accommodate part time employees. The minimum amount of work time should be closer to 400 hours. This represents 10 weeks for a full-time employee or 20 weeks for an employee working 20 hours a week. This should be an hourly requirement instead of an income requirement because making the requirement based on income gives higher income earners an edge to when they qualify for time off. By making it an hourly requirement, the eligibility is equal for all workers.

4. Health Benefits Protected

Employees need continued access to healthcare while on leave. FMLA requires employers to continue to provide health insurance to employees on leave as if the employee was attending work as regularly scheduled.

Suggestion: New Mexico's bill should include twelve weeks of health benefit protections for all employees who receive benefits and/or contributions to their benefits from their employer and otherwise qualify under the state paid family and medical leave bill. An employee on leave should have no change to their health benefits. Employers will only be responsible for continuing benefits if they were providing benefits or contributions to benefits before the qualifying employee took leave. If for some reason the employee does not return to work after their leave, the employer can collect their benefit contributions from the employee.

5. Retaliation Prohibited

To ensure employees are not discouraged from using their leave, the law should prohibit any retaliation in hiring, promoting, or compensation of an employee who utilizes their leave. Men and women both need to be able to access leave without negative consequences to their careers. By having strong retaliation provisions, the law can help to foster a workplace environment that is friendly to men and women with family obligations.

Suggestion: New Mexico's bill should have an extensive retaliation prohibited section. This should include any discrimination employers might make against an employee. This could include not hiring/promoting women of childbearing age, disfavoring workers with loved ones having serious health conditions, and other common issues.

6. Dispute Resolution/Appeals

Disputes will surely arise between employers and employees, and the government must be equipped to deal with them in a way that does not inundate the courts

Suggestion: New Mexico's bill should include a requirement that parties have an administrative hearing first, with court being the last option if the matter cannot be resolved. The appeals process should be clearly outlined in the statute or duplicate other appellate systems already in place and reference that section of the statute.

7. Bonding

Employees should have access to paid leave when bonding with a new child. This qualifying event should be broadly construed to support all families. Parents should have paid time away from work within a child's first year in the family. The bill should recognize families of all kinds.

Suggestion: Bonding should include the birth of a child, the adoption of a child, or the placement of a foster child. Bonding time should be available to biological parents and stepparents, and marriage should not be required.

8. Seriously Ill Family Members

Employees should have access to paid leave to care for family members facing a serious health condition. This should not be a short-term illness.

Suggestion: Paid time off should be accessible when caring for a family member. The employee should submit medical documentation detailing the family member's illness and need for care. This documentation should be accepted by all licensed practitioners in New Mexico.

9. Definition of Family Members

The definition of family member is vital for the success of paid family leave. Family is often different in different areas and among different cultures. It is important to be inclusive of New Mexico's diverse population when making this definition. The definition under FMLA is very narrow: spouse, parent or child (can include biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis).

Suggestion: Family member should be defined broadly. The definition should include spouse and domestic partners; parents, stepparents, and parents in-laws; grandparents and grandchildren; and children, including biological, stepchildren, legal wards, adopted, foster, in loco parentis.

10. Waiting Periods

Waiting periods accomplish a few things. First, they ensure that only those with a serious health condition are using paid leave. They also give the administration a period to process paperwork. However, waiting periods that are unpaid create hurdles for low-income residents. These are the employees that do not have sick time or PTO to sustain them for a week prior to qualifying for paid leave. Waiting periods also create hurdles to caring for sick family members.

Suggestion: The waiting period should be paid.

11. Contributions

The Legislative Finance Committee (LFC) has expressed concerns about accurately calculating the necessary contributions to make the fund solvent. They believe that startup and maintenance costs may be substantial. They also have expressed concerns that the Department of Workforce Solutions will need authority to assert tax provisions for compensation received under the act.

Suggestion: Work actively with the Department of Workforce Solutions and give the department some discretion to set the funds. This will ensure the fund is solvent if the workforce or wages change, while not overtaxing employees. Explore the possibility of spreading the responsibility among several government departments and programs, such as Risk Management and Worker's Compensation to lessen the burden on one specific department.

The cost to administer the program should be built into the contribution rates. These costs should not depend on appropriations or state funding. If necessary, New Mexico could consider extending the period of gathering funds to two years rather than just one.

Before the bill is enacted, the governing departments will need to clearly understand their authority to assert tax provisions. Such questions can be answered in partnership with the Legislature and through studying already implemented state family and medical leave programs.

12. Reporting

As the LFC suggested, reporting is an important part of ensuring that this bill is working to help families access paid leave. More conversations are needed with the Department of Workforce Solutions and any other agency where the fund could be held to minimize employer-reporting requirements while ensuring that needed information is obtained efficiently.

Suggestion: Reporting requirements should be as concise and minimal as possible. Employers already report data to the Department of Workforce Solutions. This information should be utilized as much as possible to process eligibility and benefit amounts.

13. Notice Requirements

An employee can know they will be taking paid family leave. Other times, an issue arises that is unsuspected. Both scenarios need to be anticipated in this bill.

Suggestion: Require 30 days' notice for an employee to take paid family leave for planned surgeries, birth, adoption, and foster care to the extent possible. Make allowances for early birth or placement or grave and unexpected illness. For the remaining situations, require the employee to give reasonable notice once they know they will need to take paid family leave.

14. Employer Contributions

Only one state requires employers to contribute to the fund.

Suggestion: In the interest of protecting New Mexico's small businesses and recognizing that accommodating employees for family leave already creates a strain on small business resources, they should not be required to financially contribute to paid family leave. However, they will be expected to continue any benefits they provide the employee (ex. health benefits) before the employee takes leave.

15. Administration of Paid Leave

All states with paid family leave laws being implemented have an existing temporary disability insurance program. New Mexico does not. The next closest program that New Mexico has is Unemployment Insurance, which is housed in the Department of Workforce Solutions. Unemployment insurance requires employers to report certain information about employees. This information could potentially streamline the applications for paid family leave. However, much of it is supposed to be utilized solely for federal government purposes.

Suggestion: The Department of Labor Women's Bureau has been working to make this federal hardware and data collection accessible on the state level. If this occurs, New Mexico could access this helpful software at a much more affordable cost, bringing implementation prices down significantly. However, in case this does not happen, New Mexico needs to explore other options as to how it might streamline applications for paid family leave at a price it can afford. While other states had temporary disability insurance in place when they enacted paid family and medical leave, they likely still have information and lessons that would be helpful to New Mexico.

16. Voluntary Plans

Many states allow a business to utilize a private or voluntary insurance plan if it is of equal and/or higher value than the state plan. These plans need to be monitored to ensure they are meeting requirements.

Suggestion: While businesses should be allowed to provide their own plans, the government should not be required to monitor them as this would create higher administrative costs. Companies with these plans should be encouraged but not required to utilize the state government paid leave program because their employees will be funding the program. Costs associated with these private plans could be redirected to supplement and lengthen the state paid leave plan for employees of these businesses.

Action Steps to Prepare to Propose Bill:

In preparation for the bill's proposal in 2019, the following actions should be taken by the Southwest Women's Law Center and other partners vested in the passage of this bill:

1. In-depth study

The LFC is correct that there needs to be a more detailed understanding of what this program will cost to implement, oversee and provide worthwhile benefits to employees. From their report, it is clear that previous estimates may be very low.

Suggestion: Conduct an in-depth study to understand costs and what employees should be paying. Other states that have implemented paid family leave can provide insight into what payments into the program will look like for taxpayers.

2. Business Community Support

Gaining community support, and in particular that of the business community, will be crucial. In hopes of increasing this communication, Southwest Women's Law Center has joined the Santa Fe Chamber of Commerce and plans to join other Chambers of Commerce throughout New Mexico.

Suggestion: Continue to find avenues for partnership with the business community both through partnership with Chambers of Commerce and by other means. With these partnerships strengthened, work to educate businesses on the benefits they will reap from employee paid leave. Find compromises through this strengthened communication. Help them to understand that exclusions for small businesses can actually harm small business's competitiveness. By creating paid family leave, small businesses are better able to compete with larger businesses that can afford to grant employees longer periods of paid time off. By excluding small businesses, employees would not have access to a benefit the rest of the workforce has. It would also create a disincentive to move from a larger corporation where the employee has been paying into the fund to a small

business where the employee would be unable to access the benefits. Educate them on the feasibility of these accommodations for even very small businesses.

3. Create Accommodations for Small Employers

While businesses will not be required to directly fund this program, they will inevitably face costs from losing employees temporarily to paid leave.

Suggestion: The state government and nonprofit community should work to create feasible options for small businesses as they face the reality of losing an employee for paid family and medical leave. One possibility is creating a program in which retired individuals with the skills for the position temporarily take over for the employee on leave at a discounted cost. Another option is to temporarily increase the pay of other employees so that they are not overly burdened with the loss of the employee temporarily. The larger community must help businesses find solutions to losing an important member of their team.

4. Create Partnerships

Many of the objectives of this act will only work successfully if New Mexicans work together. If small businesses are to receive the help they will need to accommodate paid leave, these partnerships will be especially important

Suggestion: Develop partnerships with the AARP and other organizations that support retired individuals to gauge interest and ability to lend skills while employees are taking paid family leave.

VII. COST BENEFIT ANALYSIS

Benefits to Employers:

Studies suggest that, when given paid time off to care for young children, women are more likely to return and work even harder. One study in California, a state with paid family and medical leave, showed that women who took leave and returned worked 15 to 20 percent more hours during second year of their child's life than those who did not.^{xcii} A short term leave can allow families to adjust to an important change in their lives and come back ready to put in quality work.

Costs to Employers:

Because the paid family leave program will be entirely employee funded, there are very few direct economic costs that New Mexican employers will suffer. The only anticipated direct cost could be continuance of employer-provided health benefits. However, because the paid family leave program will provide the employee with her/his salary during leave, the employer will have that employee's salary to hire a temporary worker.

The biggest cost for employers will be the loss of a skilled and experience employee for several months. In a state with many small businesses, the absence of one employee will be felt by employers. Additionally, it's likely that as paid leave is accessible to employees, more employees will want to utilize it. However, as mentioned above, the structure of the paid leave program will provide the employer with some economic flexibility to find another temporary worker to pick up responsibilities of the employee on paid leave. This should minimize the stresses of accommodating paid leave.

Benefits for Employees:

At this moment, there are many New Mexicans who need to take time off from work for family or medical reasons but cannot ensure that their job will be there when they get back. Paid leave will allow many employees throughout the state to not only guarantee that they keep their job, but also get paid a salary while they are out. This will be a huge step forward in protecting worker's rights in New Mexico.

Paid leave increases a woman's likelihood of making both a family and work feasible. Mothers in California who took leave were 6 percent more likely to be working a year later than those who did not.^{xciii}

One of the greatest benefits of paid family leave is that more employees, regardless of their economic status, can take time off to be home. Economists have found that with paid family leave more people take time off, and in particular low-income parents who may have taken no leave or had to quit work.^{xciv} Paid leave also helps employees to remain economically stable. A study on New Jersey's paid leave program found that a year after giving birth, women who take paid leave have been about 40 percent less likely to receive public aid or food stamps.^{xcv} Paid leave reduces the disparities in leave taking between socioeconomic groups and allows all families, regardless of income, to access the leave they need.

Among the states, New Mexico has consistently ranked at the bottom of the list in child welfare. Paid family leave would be a powerful tool to change this reality. Providing paid leave to new mothers lowers infant mortality.^{xcvi} Women who have sufficient paid maternity leave are much more likely to breastfeed, which lowers the risk of many infectious diseases, increases and improves cognitive outcomes, and benefits a woman's health.^{xcvii}

Costs for Employees:

While discrimination against employees taking leave would be prohibited, there will always be ways for employers to subtly discriminate against employees who take leave. For example, employers may be able to find ways to penalize employees by denying promotions and raises. Employers and employees will both need to stay aware of subtle forms of discrimination to avoid such situations.

Employees must pay into the paid leave program. While other states with such a model of paid family leave demonstrate that such costs are minimal, there are still costs. In a state where many have small incomes, these costs will be felt more significantly than in more wealthy states.

VII. CONCLUSION

Paid Family Leave for New Mexico is possible utilizing the recommendations described above. To increase support for a paid leave initiative in New Mexico, all invested parties must operate with full knowledge of the true benefits of how a state paid leave plan would be beneficial to both employees and employers in New Mexico.

The New Mexico Department of Workforce Solutions is in the best position to implement the logistics of a paid leave policy in New Mexico by virtue of its successful implementation of the New Mexico unemployment insurance program. Many of the same types of platforms utilized by the unemployment insurance program would be utilized a paid family leave program in New

Mexico. Lessons can be learned through the experiences of states that have already enacted paid family leave, as well as from past attempts here in New Mexico. Before the legislative session convenes in 2019, SWLC will continue to work to get businesses together to talk about the best process for implementing paid family leave in New Mexico with a focus on the options presented in this report.

ⁱ 29 U.S.C. §2612

ⁱⁱ 29 U.S.C. §2614(a)-(b)

ⁱⁱⁱ 29 U.S.C. §2614(c)

^{iv} 29 U.S.C. §2613

^v United States Department of Labor, FMLA Frequently Asked Questions, available at <https://www.dol.gov/whd/fmla/fmla-faqs.htm>

^{vi} *Id.*

^{vii} Rebecca Ray, Janet C. Gornick, and John Schmitt, “Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality,” Center for Economic and Policy Research, 2009; Jody Heymann and Alison Earle, *Raising the Global Floor: Dismantling the Myth That We Can’t Afford Good Working Conditions for Everyone* (2010).

^{viii} Strong Families New Mexico, Legislative Report Card 2015, available at <http://strongfamiliesmovement.org/assets/docs/sfnm-report-card-2015.pdf>

^{ix} *Id.*

^x New Mexico Business Establishment Size, REGIONAL REVIEW, Fall 2013, New Mexico Department of Workforce Solutions, available at https://www.dws.state.nm.us/Portals/0/DM/LMI/Regional_Review_Fall_2013.pdf

^{xi} *Id.*

^{xii} Southwest Women’s Law Center, Childcare Assistance in New Mexico, June 2016, available at <http://www.swwomenslaw.org/wp-content/uploads/2016/08/Childcare-Assistance-in-New-Mexico.pdf>

^{xiii} Kaiser Family Foundation, Population Distribution by Age: New Mexico, available at <https://www.kff.org/other/state-indicator/distribution-by-age/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22new-mexico%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

^{xiv} Family Caregiver Alliance, Caregiver Statistics: Demographics, available at <https://www.caregiver.org/caregiver-statistics-demographics>

^{xv} House Memorial 2, 52nd Legislature, State of New Mexico, First Session 2015, available at <https://www.nmlegis.gov/Sessions/15%20Regular/memorials/house/HM002.pdf>

^{xvi} Senate Bill 375, 52nd Legislature, State of New Mexico, First Session 2015, available at <https://www.nmlegis.gov/Legislation/Legislation?chamber=S&legtype=B&legno=375&year=15>

^{xvii} *Id.*

^{xviii} Fiscal Impact Report for Senate Bill 375, State of New Mexico Legislative Finance Committee, available at <https://www.nmlegis.gov/Sessions/15%20Regular/firs/SB0375.PDF>

^{xix} *Id.*

^{xx} *Id.*

^{xxi} *Id.*

^{xxii} *Id.*

^{xxiii} *Id.*

^{xxiv} *Id.*

^{xxv} *Id.*

^{xxvi} Paid Family Leave California, “What is Paid Family Leave?” Available at <http://paidfamilyleave.org/ask-us/what-is-paid-family-leave>

^{xxvii} Patrick McGreevy, “Brown Signs California Law Boosting Paid Family-Leave Benefits,” LOS ANGELES TIMES, Apr. 11, 2016, Available at <http://beta.latimes.com/politics/la-pol-sac-paid-family-leave-california-20160411-story.html>

^{xxviii} Taryn Luna and Christopher Cadelago, “California Extends Family Leave to Millions of Small Business Workers,” THE SACRAMENTO BEE, October 12, 2017, available at <http://www.sacbee.com/news/politics-government/capitol-alert/article178479586.html>

^{xxix} State of California Employment Development Department, “Am I Eligible for Paid Family Leave Benefits?,” available at http://www.edd.ca.gov/Disability/Am_I_Eligible_for_PFL_Benefits.htm

^{xxx} Montana Budget and Policy Center, Paid Leave in Four States: Lessons for Montana Policymakers and Advocates, Dec. 2015, available at <https://www.dol.gov/wb/media/Paid%20Family%20Medical%20Leave%20in%20Four%20States%20FINAL.pdf>

^{xxxii} Megan E. Hill and Michael W. Kelly, “Family Leave On the Rise – California and New York State Both Set to Expand Benefits Starting January 1, 2018,” THE NATIONAL LAW REVIEW, November 10, 2017, available at <https://www.natlawreview.com/article/paid-family-leave-rise-california-and-new-york-state-both-set-to-expand-benefits>

^{xxxiii} State of California Economic Development Department, Fact Sheet: California Paid Family Leave, available at http://www.edd.ca.gov/pdf_pub_ctr/de8714cf.pdf

^{xxxiiii} Id.

^{xxxv} Id.

^{xxxvi} Id.

^{xxxvii} Christopher Booker, “Can Rhode Island’s Paid Family Leave Be A National Model?” PBS News Hour, Apr. 16, 2017, available at <https://www.pbs.org/newshour/show/can-rhode-islands-paid-family-leave-national-model#transcript>

^{xxxviii} RI Department of Labor and Training Temporary Disability Insurance, Temporary Caregiver Insurance, Jan 2015, available at <http://www.dlt.ri.gov/tdi/pdf/TCIBrochure.pdf>

^{xxxix} Id.

^{xl} Id.

^{xli} Christopher Booker, “Can Rhode Island’s Paid Family Leave Be A National Model?” PBS News Hour, Apr. 16, 2017, available at <https://www.pbs.org/newshour/show/can-rhode-islands-paid-family-leave-national-model#transcript>

^{xlii} Id.

^{xliii} Id.

^{xliv} Id.

^{xlv} Rachel LaCorte, “Inslee signs bill guaranteeing paid family leave in Washington,” THE SEATTLE TIMES, July 5, 2017, available at <https://www.seattletimes.com/seattle-news/politics/inslee-signs-plan-for-paid-family-leave/>

^{xlvi} Id.

^{xlvii} Id.

^{xlviii} Id.

^{xlix} Id.

ⁱ Washington State Employment Security Department, Paid Family and Medical Leave, available at <https://esd.wa.gov/paid-family-medical-leave>

ⁱⁱ Rachel LaCorte, “Inslee signs bill guaranteeing paid family leave in Washington,” The Seattle Times, July 5, 2017, available at <https://www.seattletimes.com/seattle-news/politics/inslee-signs-plan-for-paid-family-leave/>

ⁱⁱⁱ Id.

^{lii} Id.

^{liii} Washington State Employment Security Department, Paid Family and Medical Leave, available at <https://esd.wa.gov/paid-family-medical-leave>

^{lv} Id.

^{lvi} New York State Paid Family Leave: How it Works, available at <https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-how-it-works>

^{lvii} Id.

^{lviii} Id.

^{lix} Id.

^{lx} Id.

^{lxi} Id.

^{lxii} Id.

^{lxiii} Id.

^{lxiv} DC Government Department of Human Resources, Paid Family Leave, available at <https://dchr.dc.gov/page/paid-family-leave>

^{lxv} Daniel I. Prywes, “Washington DC Finalizes Paid-Family-Leave Law,” SOCIETY FOR HUMAN RESOURCE MANAGEMENT, Feb. 8, 2017, available at <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/washington-d.c.-finalizes-paid-family-leave-law.aspx>

^{lxvi} Id.

^{lxvii} Id.

^{lxviii} Peter Jamison, “DC Council at Odds Over Changes to Landmark Paid Family Leave Law,” THE WASHINGTON POST, Oct. 10, 2017, available at https://www.washingtonpost.com/local/dc-politics/dc-council-at-odds-over-changes-to-landmark-paid-family-leave-law/2017/10/10/369679d8-adcc-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.db37b4495004

^{lxix} Id.

-
- ^{lxx} *Id.*
- ^{lxxi} *Id.*
- ^{lxxii} Daniel I. Prywes, “Washington DC Finalizes Paid-Family-Leave Law,” SOCIETY FOR HUMAN RESOURCE MANAGEMENT, Feb. 8, 2017, available at <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/washington-d.c.-finalizes-paid-family-leave-law.aspx>
- ^{lxxiii} Martin Austermuhle, “Paid Family Leave May Be Law In The District, But Some Big Details Are Still Up For Debate,” WAMU 88.5, Oct. 3, 2017, available at <https://wamu.org/story/17/10/03/paid-family-leave-may-law-district-big-details-still-debate/>
- ^{lxxiv} Daniel I. Prywes, “Washington DC Finalizes Paid-Family-Leave Law,” SOCIETY FOR HUMAN RESOURCE MANAGEMENT, Feb. 8, 2017, available at <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/washington-d.c.-finalizes-paid-family-leave-law.aspx>
- ^{lxxv} Peter Jamison, “DC Council at Odds Over Changes to Landmark Paid Family Leave Law,” THE WASHINGTON POST, Oct. 10, 2017, available at https://www.washingtonpost.com/local/dc-politics/dc-council-at-odds-over-changes-to-landmark-paid-family-leave-law/2017/10/10/369679d8-adcc-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.db37b4495004
- ^{lxxvi} Katherine Landergan, “Christie Guts Bill to Expand N.J.’s Paid Family Leave Law,” POLITICO, Jul. 21, 2017, available at <https://www.politico.com/states/new-jersey/story/2017/07/21/christie-guts-paid-family-leave-legislation-113566>
- ^{lxxvii} Samantha Marcus, “N.J. Lawmakers Push to Expand Paid Family Leave Benefits,” NJ.COM, Jul. 19, 2017, available at http://www.nj.com/politics/index.ssf/2017/06/assembly_committee_passes_family_leave_expansion.html
- ^{lxxviii} New Jersey Division of Temporary Disability Insurance, Your Guide to Family Leave Insurance in New Jersey, available at [http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WPR-119%20\(1-17\).pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WPR-119%20(1-17).pdf)
- ^{lxxviii} State of New Jersey Department of Labor and Workforce Development, Family Leave Insurance, available at <http://lwd.dol.state.nj.us/labor/fli/fliindex.html>
- ^{lxxix} *Id.*
- ^{lxxx} Samantha Marcus, “N.J. Lawmakers Push to Expand Paid Family Leave Benefits,” NJ.COM, Jul. 19, 2017, available at http://www.nj.com/politics/index.ssf/2017/06/assembly_committee_passes_family_leave_expansion.html
- ^{lxxxi} *Id.*
- ^{lxxxii} *Id.*
- ^{lxxxiii} New Jersey Division of Temporary Disability Insurance, Your Guide to Family Leave Insurance in New Jersey, available at [http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WPR-119%20\(1-17\).pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WPR-119%20(1-17).pdf)
- ^{lxxxiv} New Jersey Division of Temporary Disability Insurance, Your Guide to Family Leave Insurance in New Jersey, available at [http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WPR-119%20\(1-17\).pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WPR-119%20(1-17).pdf)
- ^{lxxxv} Jessical Deahl, “Countries Around the World Beat the U.S. on Paid Parental Leave,” NPR.ORG, Oct. 6, 2016, available at <https://www.npr.org/2016/10/06/495839588/countries-around-the-world-beat-the-u-s-on-paid-parental-leave>
- ^{lxxxvi} *Id.*
- ^{lxxxvii} *Id.*
- ^{lxxxviii} *Id.*
- ^{lxxxix} *Id.*
- ^{xc} *Id.*
- ^{xci} *Id.*
- ^{xcii} Claire Cain Miller, “The Economic Benefits of Paid Parental Leave,” NEW YORK TIMES, Jan 30, 2015 Claire Cain Miller Available at <https://www.nytimes.com/2015/02/01/upshot/the-economic-benefits-of-paid-parental-leave.html?mtrref=www.google.com&gwh=D9D2CAA0D0854C53865A0C8255EFFB8F&gwt=pay>
- ^{xciii} *Id.*
- ^{xciv} *Id.*
- ^{xcv} *Id.*
- ^{xcvi} Jessical Deahl, “Countries Around the World Beat the U.S. on Paid Parental Leave,” NPR.ORG, Oct. 6, 2016, available at <https://www.npr.org/2016/10/06/495839588/countries-around-the-world-beat-the-u-s-on-paid-parental-leave>
- ^{xcvii} *Id.*



House Memorial 2

A MEMORIAL

REQUESTING THE FAMILY-FRIENDLY WORKPLACE TASK FORCE TO CONVENE
A PARENTAL PAID-LEAVE WORKING GROUP TO MAKE FINDINGS AND
DEVELOP RECOMMENDATIONS FOR THE ESTABLISHMENT OF A PUBLICLY
MANAGED PARENTING WORKERS' LEAVE FUND.

WHEREAS, the first months of life have a lifelong impact
on the development of human beings; and

WHEREAS, an essential factor in healthy development of a
baby's cognitive, social and emotional development is the
amount of focused attention that the baby's caregiver provides
in the first months of the baby's life; and

WHEREAS, increased parental attention during a child's
first few months can reduce childhood illnesses and infant
mortality, which in turn lowers the health and human service
expenditures in the wider society; and

WHEREAS, experts advise that babies at risk for
developmental difficulties such as illness, birth defects, low
birth weight or premature birth are especially in need of
adequate time with their parents; and

WHEREAS, parents with well-nurtured children miss less
time from work to care for sick or disabled children; and

WHEREAS, for over a decade, the state of California has
implemented a parental-leave program that pays parents
benefits through the state's social disability insurance

program; and

WHEREAS, the state of California has seen an increase in low-wage job retention for workers who have made use of the state's parental paid-leave program; and

WHEREAS, eighty-seven percent of businesses in California have seen no increased costs as a result of that state's parental paid-leave policy; and

WHEREAS, New Jersey employers report that businesses have experienced no increase in administrative costs associated with the state's parental paid-leave program; and

WHEREAS, the *Harvard Business Review* reports that most companies with parental paid-leave policies experience stronger employee loyalty and morale; and

WHEREAS, a state-sponsored parental paid-leave policy allows smaller businesses to compete with larger businesses that might otherwise attract the best employees with parental paid leave; and

WHEREAS, the state of New Mexico has a strong interest in supporting strong, healthy families where young New Mexicans may develop into peaceful, productive and law-abiding residents; and

WHEREAS, the family-friendly workplace task force has worked since 2011 to encourage family-friendly policies and businesses in New Mexico; and

WHEREAS, the family-friendly workplace task force was

initially convened to assess and recommend policy options that promote family-friendly workplaces in New Mexico;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the university of New Mexico's bureau of business and economic research be requested to convene the family-friendly workplace task force and that the family-friendly workplace task force be requested, in turn, to convene a parental paid-leave working group of experts in child and family development, business, law and public finance and administration, including representatives of:

- A. the state investment council;
- B. the children, youth and families department;
- C. the workforce solutions department;
- D. the taxation and revenue department;
- E. New Mexico voices for children;
- F. New Mexico chambers of commerce;
- G. the southwest women's law center;
- H. the New Mexico pediatric society;
- I. New Mexico women's agenda;
- J. the New Mexico center on law and poverty;
- K. collective action strategies, incorporated;
- L. OLÉ;
- M. el centro de igualdad y derechos;
- N. encuentro New Mexico;

O. New Mexico comunidades en acción y de fé;

P. the bureau of business and economic research of the university of New Mexico;

Q. the Albuquerque Hispano chamber of commerce;

R. the Las Cruces Hispanic chamber of commerce;

S. the African American chamber of commerce of New Mexico;

T. the greater Albuquerque chamber of commerce;

U. the greater Las Cruces chamber of commerce;

V. the Santa Fe chamber of commerce;

W. the national association of women business owners; and

X. the New Mexico association of commerce and industry; and

BE IT FURTHER RESOLVED that the parental paid-leave working group be requested to develop recommendations for the establishment of a parental paid-leave program to provide paid leave to parents for childbirth and to care for newborn or newly adopted children or for newly acquired foster children; and

BE IT FURTHER RESOLVED that the parental paid-leave working group be requested to make findings and develop recommendations for the establishment of a publicly managed parenting workers' leave fund that can be accessed by both private and public employees and employers; and

BE IT FURTHER RESOLVED that the parental paid-leave working group develop recommendations as to choosing a state agency to manage the parental paid-leave program and the parenting workers' leave fund; and

BE IT FURTHER RESOLVED that the executive director of the southwest women's law center be requested to serve as chair of the parental paid-leave working group; and

BE IT FURTHER RESOLVED that the parental paid-leave working group be requested to present its findings and recommendations to the legislative health and human services committee and the legislative finance committee by October 1, 2016; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to:

- A. the governor;
- B. the secretary of children, youth and families;
- C. the secretary of workforce solutions;
- D. the secretary of taxation and revenue;
- E. the state investment officer;
- F. the president of the university of New Mexico;
- G. the director of the bureau of business and economic research at the university of New Mexico;
- H. legislative health and human services committee staff;
- I. legislative finance committee staff; and

J. the executive directors of:

- (1) New Mexico voices for children;
- (2) New Mexico chambers of commerce;
- (3) the southwest women's law center;
- (4) the New Mexico pediatric society;
- (5) New Mexico women's agenda;
- (6) the New Mexico center on law and poverty;
- (7) collective action strategies, incorporated;
- (8) OLÉ;
- (9) el centro de igualdad y derechos;
- (10) encuentro New Mexico;
- (11) New Mexico comunidades en acción y de fé;
- (12) the Albuquerque Hispano chamber of commerce;
- (13) the Las Cruces Hispanic chamber of commerce;
- (14) the African American chamber of commerce of New Mexico;
- (15) the greater Albuquerque chamber of commerce;
- (16) the greater Las Cruces chamber of commerce;

- (17) the Santa Fe chamber of commerce;
- (18) the national association of women
business owners; and
- (19) the New Mexico association of commerce
and industry.



Report to Legislature

November 15, 2016



**Report to the New Mexico State Legislature
On Proposed Paid Family Leave Legislation
Submitted by: Southwest Women's Law Center
November 15, 2016**

During the 2015 legislative Session, the House of Representatives, led by Representative Gail Chasey implemented HM 2

Purpose and Goals of the Parental Paid-Leave Working Group

1. Develop recommendations for the establishment of a parental paid-leave program to provide paid leave to parents for childbirth and to care for newborn or newly adopted children or for newly acquired foster children;
2. Make findings and develop recommendations for the establishment of a publicly managed parenting workers' leave fund that can be accessed by both private and public employees and employers;
3. Develop recommendations for choosing a state agency to manage the parental paid-leave program and the parenting workers' leave fund;
4. Develop recommendations for the state agency to manage the parental paid-leave program and the parenting workers' leave fund; and
5. Present our findings and recommendations to the legislative health and human services committee and the legislative finance committee.

The Southwest Women's Law Center convened a diverse group of businesses and individuals to create a Paid Leave Task Force to review and study the possibility of enacting a Paid Leave bill in New Mexico.

The Department of Labor, Women's Bureau is considering ways to create a state/federal partnership that will allow states to utilize federal infrastructure and resources in states for implementing a paid leave program. The task force would like additional time to examine how this state/federal partnership would operate.

Four states have enacted paid family leave laws

- California 2002
- New Jersey 2008
- Rhode Island 2013
- New York 2016

Other states are moving toward the enactment of paid leave legislation

- Washington has passed a paid family leave law, but implementation has been delayed
- Many other states are looking at creating paid family leave laws including New Hampshire, Massachusetts, Minnesota, Connecticut, Illinois, Colorado, Montana, Nebraska, North Carolina, Ohio, Oregon, Vermont, Wisconsin and Washington D.C.

Benefits of Leave to Care for a Serious Medical Condition

- New Mexico has a high population (28%) of residents over 55 years old. This is higher than the national average and surrounding states.ⁱ The passage of Paid Leave legislation will allow working family members the option of helping to care for aging relatives without the additional burden of financial concerns for the family
- 80% of older adults have at least one chronic condition.ⁱⁱ A viable Paid Leave policy in New Mexico will allow for a higher quality of care to be shared by family members who need to care for aging family members and still have a viable income for their personal well-being
- 42% of the workforce has provided care for a relative 65 years or older in the last 5 years.ⁱⁱⁱ New Mexico will be able to raise the standing of living for some many of its residents because of the passage of a viable paid family leave legislation.
 - 49% of men and 42% of women providing care experience “some” or “a lot” of work-life conflict.
 - 46% of women and 40% of men are also providing care to minor children while they care for a relative.
 - 48% of caregivers reported losing income.

The Paid Leave Task Force examined the possibility of enacting two forms of paid leave: (1) Parental Paid Leave which would offer a paid leave option for the birth of a child, adoption of a child, becoming a foster parent or (4) caring for a sick child; or (2) Paid Family Leave which would offer broader options for working individuals to take leave from their employment to care for themselves or for an aging or sick family member. The focus of parental paid leave would be focused on raising the standard for the well-being of children in New Mexico. The focus of a broader Paid Family Leave law would s would allow employee to cast a wider net over the individuals that they could help during illness without having to face a financial loss doing so.

Why should New Mexico enact a Parental and/or Paid Family Leave Law

- The United States is the **only industrialized country** without some form of paid family leave for new parents.^{iv} New Mexico has the opportunity to move the nation in more progressive culture of allowing its residents to take time from their places of employment to support their families when the time to do so arises for the following reasons:
- **New Mexico ranks 49th in Child Wellbeing^v**
 - Economic Wellbeing- New Mexico ranks 48th
 - 30% of children live at or below the poverty level (the highest in the country)
 - 36% of children have parents who lack secure employment
 - Family and Community
 - 41% of children live in single parent homes
- **Paid family leave has led to healthier parents and children**
 - Breastfeeding durations increased among women in California using paid family leave.^{vi}
 - Women with high quality jobs extended breastfeeding from 5 weeks to 11 weeks.
 - Women with low quality jobs extended breastfeeding from 5 weeks to 9 weeks.
 - Breastfeeding can increase a child's immune system and reduce health risks such as obesity, diabetes, asthma and sudden infant death syndrome.
 - Paid family leave has been shown to reduce infant mortality.^{vii}
 - In a study of 141 countries, controlling for social and economic factors, 10 weeks of full-time leave were associated with a 9-10% reduction in infant mortality and mortality rates of children under the age of 5 years old.
- **Paid family leave reduces the likelihood for new parents to use public assistance.^{viii}**
 - A 2000 study shows that nearly 10% of new mothers that take unpaid leave under FMLA must resort to using SNAP or other public assistance.
 - Women taking paid family leave are 38% less likely to receive any public assistance in the year following the child's birth than women who take unpaid leave.
 - Low-income women taking paid family leave are 43% less likely to receive SNAP benefits than low-income women taking unpaid leave in the first year of the child's life
- **Families in New Mexico have limited access to childcare for young infants.**
 - In New Mexico, infants under the age of six months cannot be admitted to a childcare facility without written approval from a physician.^{ix}

Focusing on the demographics of New Mexico with women comprising more than 50% of the states population, some type of paid leave legislation whether parental paid leave or the broader paid family leave would lead to improving the lives of more than 50% of the state's population.

- Women who report taking paid leave are more likely to be working 9 to 12 months after a child's birth than are those who report taking no leave at all ("non-leave takers").
- Women who return to work after a paid leave have a 39% lower likelihood of receiving public assistance and a 40% lower likelihood of food stamp receipt in the year following the child's birth, when compared to those who return to work and take no leave at all.
- Men who return to work after a paid family leave have a significantly lower likelihood of receiving public assistance and food stamps in the year following the child's birth, when compared to those who return to work and take no family leave at all.
- Given local, state, and national attention to workplace policies that address the integration of work and family life, better data on implementation of a paid leave policy is needed before submitting legislation for consideration.

Conclusions and Recommendations

We found there were many businesses who were skeptical about adopting a paid family leave law for the state of New Mexico. The primary objection was the financial harm that that would potentially fall upon small businesses if the one or two employees they had on staff would be on paid family leave. The resolution to this concern was to partner with the Economic Development Department and organizations such as AARP or Retired Employees of Sandia Laboratories who, although they were retired, were still willing to work occasionally. The skills that these senior level residents had could be utilized by having these highly skilled employees substitute for regular employees, on a temporary basis, until the employees who were taking paid family leave could return.

To ensure an effective paid leave policy in New Mexico, the roll out should be strategic, measured and in stages. This can be accomplished by first utilizing governmental entities to serve as the pilot organizations for the initial implementation of Paid Family and Medical Leave in New Mexico. The second phase of the state's implementation report will embrace private entities utilizing a paid family and medical leave policy. By using this two-step process to roll out New Mexico's paid family leave policy, the likelihood of success throughout the state would increase exponentially.

To best utilize the assets of the state, the governmental entity that would be responsible for housing the administrative arm of collecting and disbursing payments under a paid leave law was the Department of Workforce Solutions. This state entity is already receiving and implementing the unemployment insurance facets of our state's operations. They were uniquely qualified to carry out the implementation of the state's new paid leave law, once it is passed.

-
- ⁱ The New Mexico Department of Workforce Solutions, “New Mexico 2016 State of the Workforce Report: A Report Highlighting New Mexico’s Current and Future Workforce.” Retrieved October 21, 2016 from https://www.dws.state.nm.us/Portals/0/DM/LMI/NM_2016_State_of_the_Workforce_Report_033016.pdf.
- ⁱⁱ National Partnership for Women & Families, “Older Adults and Caregivers Need Paid Family and Medical Leave.” (2015) Retrieved on October 21, 2016 from <http://www.nationalpartnership.org/research-library/work-family/paid-leave/older-adults-and-caregivers.pdf>
- ⁱⁱⁱ Aumann, K., Galinsky, E., Sakai, K., et. al., “The Elder Care Study: Everyday Realities and Wishes for Change.” (2010) Families and Work Institute Publication. Retrieved 4 November 2015, from http://familiesandwork.org/site/research/reports/elder_care.pdf
- ^{iv} Gretchen Lingstrone, “Among 41 nations, U.S. is the outlier when it comes to paid parental leave.” Pew Research Center. Retrieved October 24, 2016 from <http://www.pewresearch.org/fact-tank/2016/09/26/u-s-lacks-mandated-paid-parental-leave/>
- ^v The Annie E. Casey Foundation, (2016) “2016 Kid Counts Data Book: State Trends in Child Well-Being.” Retrieved October 21, 2016 from <http://www.aecf.org/m/resourcedoc/aecf-the2016kidscountdatabook-2016.pdf>.
- ^{vi} Appelbaum, Eileen, and Ruth Milkman, “Leaves that Pay: Employer and Worker Experiences with Paid Family Leave in California,” 5. (2011) Washington, DC: Center for Economic and Policy Research. Retrieved October 21, 2016, from <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>
- ^{vii} Barbara Gault, Ph.D. Heidi Hartmann, Ph.D., et. al., “Paid Parental Leave in the United States,” 14. (2014) Institute for Women’s Policy Research. Retrieved October 21, 2016 from <http://www.iwpr.org/publications/pubs/paid-parental-leave-in-the-united-states-what-the-data-tell-us-about-access-usage-and-economic-and-health-benefits/>
- ^{viii} Houser, L., & Vartanian, T. (2012, April). “Policy Matters: Public Policy, Paid Leave for New Parents, and Economic Security for U.S. Workers,” 21. Center for Women and Work at Rutgers, The State University of New Jersey Publication. Retrieved October 21, 2016, from http://go.nationalpartnership.org/site/DocServer/RutgersCWW_Policy_Matters_April2012.pdf
- ^{ix} NMCA 8.16.2.26(C)(6).

Report to Legislature



AGENDAS AND MINUTES OF MEETINGS

Paid Leave Working Group

Minutes of Meeting - Paid Leave Working Group:

The first meeting of the Paid Leave Working Group was held on Friday, June 19, 2015. The information below is a summary of the meeting:

1. Susan Loubet was named as Co-Chair of the Paid Leave Working Group.
2. The Group decided to expand the membership in the Committee to include representatives of the following organizations: (1) Labor organizations - AFL-CIO, AFT, NEA and AFSME; (2) Interfaith Justice Worker; (3) Association of Catholic Bishops; (4) SWOP; and the National Partnership for Women. There is expected to be a maximum of 30 members of the Paid Leave Working Group.
3. We will be divided into four subgroups to create the most effective use of our time to ensure that we accomplish our goals by the October 2016 to make a presentation to the Legislature at that time.
4. The future meeting dates for the Working Group are as follows: August 14, 2015; October 16, 2015; January 15, 2016; April 15, 2016; July 15, 2016 and September 16, 2016. Our final report will be submitted to the Legislative Health and Human Services Committee in October 2016. We are also planning to submit an interim report to the Jobs Committee. We will establish a time for the subgroups to meet with sufficient time to report at each of the full Working Group meetings. All meetings of the Working Group will be held in the Conference Room of the Southwest Women's Law Center, 1410 Coal Avenue, SW from 10:00 - 11:30 am. Please reserve these meeting dates on your calendars. We are working to arrange a virtual meeting platform to facilitate attendance by those who live outside of the Albuquerque area.

Pamelya P. Herndon, Chair

Paid Leave Working Group - HM 2
Executive Director
Southwest Women's Law Center
1410 Coal Avenue SW
Albuquerque, NM 87104
Telephone: 505-244-0502



HM 2 Working Group on Paid Parental Leave August 14, 2015 Meeting Summary

Attendees (In Person):

Pamelya Herndon - Southwest Women's Law Center (SWLC), Susan Loubet - NM Women's Agenda, Mauricio Segovia- El Centro de Igualdad y Derechos, Gerry Bradley - NM Voice for Children, Jon Hendry - AFL-CIO, Lisa Barsumian – Project Assistant

Attendees (Via Phone):

Jason Dean - NM Department of Workforce Solutions, Heidi Fresdine - NM Breastfeeding Task Force

Pamelya Herndon opened the meeting and asked attendees to provide introductions. The Purpose and Goals of the Working Groups were defined as follows:

1. Develop recommendations for the establishment of a parental paid leave program to provide paid leave to parents for childbirth and to care for newborn or newly adopted children or newly-acquired foster children;
2. Make findings and develop recommendations for the establishment of a publicly-managed workers' leave fund that can be accessed by both private and public sector employers and employees;
3. Develop recommendations for choosing a state agency to manage the parental paid leave program and the parenting workers' leave fund; and
4. Present its findings and recommendations to the legislative Health and Human Services Committee and Legislative Finance Committee on or before October 1, 2016.

Group Discussion and Information

Ms. Herndon presented an overview of the California Paid Leave Program noting that the California program is funded by employees, not employers. The success of the California program was accomplished, in part, as a result of California expanding its existing disability program to include paid parental leave.

SWLC has responded to an RFP that will support the work of the HM 2 Working Group. We should know by October 1, whether the funding proposal has been approved. It was noted that 96% of NM businesses are considered small businesses. The average maternity leave is 10 weeks.

The group discussed the importance of having conversations with small businesses around the implementation of a statewide Parental Paid Leave plan. Accordingly, several options for implementation of a paid leave program were discussed centering around how to support small businesses including the possibility of a statewide pool of temporary employees administered by the Department of Workforce Solutions to assist businesses while permanent employees are on leave. Discussions also included the possibility of a Job Training Incentive Program to assist small businesses.

Labor unions may want to use Paid Leave in collective bargaining. Two recent studies, one conducted by UC-Berkley and one conducted by the state of California revealed that there may be significant savings to the state's public assistance programs when paid parental leave policies are enacted statewide thereby reducing the need for accessing these types of programs. In addition, the studies revealed there are also savings to businesses because of employee retention. Paid Leave Programs tended to help reduce the costs associated with training new employees. Further discussion during the meeting suggested there might also be savings to the unemployment insurance program.

The group discussed the length of paid leave. Some were concerned that if the leave period was too long, employees may not return to the workplace because of a loss of connection with their employer. Working Group member Justina Trott pointed out that we could develop a program that would allow two-parent families to take leave in turns so that each parent could continue to support their careers and their families. Susan Loubet mentioned that small business tend to like the California program because it enables them to compete with larger employers in terms of benefits.

The group discussed the possibility of dividing the group into subcommittees to solicit input and support across the state. Those subcommittees would work independently and provide their updates to the full Working Group at its quarterly meetings.

Other issues raised including addressing the general public assumption that workers already have paid leave because of the availability of sick leave for employees. The group will have to work to show that not all employees accrue sick leave. Often, the sick leave that is accrued is not enough to cover the time that employees will need when giving birth, adopting a child, becoming a foster parent or caring for a sick relative.

Items needing further research

1. Should a public fund be established that only employees contribute to without contributions from employers and would the fund be portable from one employer?
2. Are all workers entitled to have access to a paid leave fund, when established, regardless of whether the workers are considered employees as that term is defined by the Internal Revenue Service, or independent contractors?

NEXT STEPS

1. Review the platform used by the states that have implemented Paid Leave;
2. Determine which of those platforms may work best in New Mexico;
3. Develop Working Group Subcommittees and assign tasks to the subcommittees;

NEXT MEETING

October 16, 2015 from 10:00 a.m. to 11:30 a.m. in the SWLC Conference Room, 1410 Coal Avenue, SW. Conference call-in and Skype option will be available for those unable to attend in person.



**Paid Parental Leave
Working Group Meeting – 3
October 16, 2015
Call-In Number (605) 477-3000 - Code 1083959#**

AGENDA

Introductions

Review of Working Group's Task

Who is to be covered?

- Which Employers
- Which Employees

Maximum length of time for Paid leave

What types of leave should be covered

How should leave be paid?

Funding

Committees

Invitation to Other Members

Other Observations

Adjourn

NEXT MEETING: January 15, 2016

HM 2: Parental Paid Leave Working Group
January 15, 2016
10:00 AM – 11:30 AM

1. Overview: Paid leave laws in other states
(Sarah Coffey, SWLC Staff Attorney)
 - A. California
 - B. Rhode Island
 - C. New Jersey
 - D. Washington (not enacted)
 - E. Washington D.C. (proposed law; not passed)
2. **Common themes** of successful paid family leave laws in other states
3. Possible **funding sources**
4. Possible **state agency** to manage program and funds
5. Next Steps

NEXT MEETING – APRIL 22, 2016 – 10:00 A.M.



Parental Paid Leave Working Group

Agenda

April 15, 2016

1:30 pm – 3:00 pm

CONFERENCE CALL IN: (605) 477-3000 – CODE- 1083959#

- I. Welcome and Introductions
- II. Summary of Prior Work – Moving forward with next steps
- III. Crafting a Paid Leave Act for New Mexico
 - a. Family Paid Leave
 - b. Sick Leave
 - c. Combination of both
- IV. How is the Initiative Funded
 - a. California - 0.9% of annual wages combined
 - b. Rhode Island - 1.2% of workers first \$64,200 in wages
 - c. New Jersey- changes annually
 - d. Other options
- V. How does an employee qualify
 - a. Work at the company a year
 - b. Pay a certain amount into fund
- VI. What state entity or department should oversee the administration
 - a. Options
 - b. Statutory Requirements
- VII. Length of time for paid leave
 - a. 6 weeks
 - b. 42 days
 - c. 4 weeks
 - d. Other time period for consideration
- VIII. Other considerations
 - A. Cap on payment
 - B. Waiting period

NEXT MEETING: FRIDAY – AUGUST 19, 2016 – 10:00 am – 11:30 am

**U.S. Department of Labor Women's Bureau
New Mexico Paid Leave Roundtable
August 2, 2016**

1. What barriers or challenges exist as New Mexico begins to develop a paid leave program?
2. In developing a paid leave policy, what are the benchmarks that will demonstrate success in moving forward?
3. What models would you consider most effective for developing and implementing a paid leave policy in New Mexico?
4. What structural or substantive provisions of a paid leave program would enable or dissuade workers from using the program to provide care for loved ones?
5. What education and outreach strategies would you recommend in order to ensure successful implementation of a Paid Leave Policy in New Mexico?
6. What other factors would enhance or distract from the development or implementation of a successful Paid Leave Policy in New Mexico?
 1. For example: how do you feel about the importance of the wage replacement rate? (site examples in other states)
7. Is there any interest in finding the connections between public health and paid leave programs – for example in California – one of the outcomes attributed to California's paid family leave program is a doubling in the number of new mothers who breastfeed. Do you feel there's an understanding about the connections between workplace supports and public health here in New Mexico? Has there been any dialogue about how these issues are related?
8. What can be done to increase the likelihood that employers and employees will embrace a Paid Leave Policy in New Mexico?
9. What cultural issues must employers consider in order to adopt a Paid Leave Policy in New Mexico? Of the cultural issues that exist, which are the most critical to consider in order to ensure the successful adoption of a Paid Leave Policy in New Mexico?

10. What initiatives do you recommend to ensure that both men and women will utilize the paid leave policy, once it is implemented?
11. What role can the federal government take to support a New Mexico state initiative for Paid Leave?



Agenda
Paid Leave Task Force Meeting
Friday, September 9, 2016
10:00 am – 11:30 am

Conference Call-in: (605) 477-3000 Code 1083959#
Mute Button *6

- I. Introductions and Welcome
- II. Overview of the Task Force Work and Events to date
- III. Legislative Hearing – October 25, 2016
- IV. Discussion of Outstanding Issues
- V. Survey Distribution
- VI. Next Steps and Recommendations
- VII. Adjourn



Paid Leave Task Force
Areas of Discussion and Resolution

- I. Unpaid Leave
 - A. Qualifying Events for Job Protection
 - B. Length of Time for Job Protection
 - C. Employee Eligibility for Job Protection
 - D. Employers Covered
 - E. Health Benefits Protection
 - F. Retaliation Prohibited
 - G. Reporting Requirements for Job Protected Leave
- II. Paid Leave- Employee
 - A. Types of leave
 - 1. Bonding
 - 2. Seriously Ill Family Members
 - 3. Self Care
 - B. Definition of Family Members
 - C. Eligibility for an Employee to Take Paid Family Leave
 - D. Benefits for an Employee on Paid Family Leave
 - E. Length of Leave
 - F. Waiting Periods

- G. Other Restrictions
 - H. Contributions
 - I. Taxability
- III. Paid Leave- Employer
 - A. Types of Employers
 - B. Reporting Required from Employers for Paid Family Leave
 - C. Notice Requirements
 - D. Employer Contributions
- IV. Paid Leave- Administration
 - A. Agency to House and Distribute Paid Family Leave Funds
 - B. Process to Get Paid Family Leave
 - 1. Payment Timing
 - 2. Payment Frequency
 - C. Information Sharing
 - D. Appeals Process
 - E. Cost
 - F. Fraud Prevention
 - G. Private Plans Allowed/Exemptions for Companies with Private Plans
 - H. Independent Medical Exams Allowed