

Paid Family and Medical Leave Study

Offices of the Secretary of Commerce and Trade
and the
Chief Workforce Development Advisor

September 2020

Executive Summary

Pursuant to the Appropriations Act approved during the 2020 Session of the General Assembly, the Secretary of Commerce and Trade and the Chief Workforce Development Advisor were directed to study the development, implementation, and costs of a statewide paid family and medical leave program for all employers. This report contains the findings of this study across five main areas as required by the authorizing budget language:

1. Research regarding paid family and medical leave programs that have been established in other states across the country;
2. An assessment and quantification of the economic impact on businesses and workers if a paid family and medical leave program were implemented;
3. An operating plan which includes a designated agency or entity, staffing needs, technology requirements, implementation timeline, and business practices;
4. An identification of what resources are necessary to implement a statewide program; and
5. Research regarding start up loans for paid leave programs in other states and loan payback.

Additionally, the Appropriations Act required that the Secretary of Commerce and Trade and the Chief Workforce Development Advisor—in completing their required study—convene a workgroup of industry stakeholders. As the Secretary and the Chief Workforce Development Advisor conducted their study, they engaged with the participants of the industry stakeholder workgroup to understand their unique perspective on the potential impacts of a paid family and medical leave program. The insights garnered from discussions with these participants have informed the study and shaped this report.

The Secretary and the Chief Workforce Development Advisor also sought to collect public comment through a survey that received nearly 5,500 responses. This survey was shared with businesses, employees, and associations across the Commonwealth. A summary of the responses is provided in the Appendix C.

Findings on the impacts of a paid family and medical leave program are divided into distinct sections around benefits and costs. In general, research indicates that paid family and medical leave programs are associated with economic benefits including improved employee retention, increased employee productivity, and greater labor force attachment for women. Published research on this issue also indicates that such programs are associated with possible benefits to health outcomes. Paid family and medical leave programs also result in costs to businesses and workers, which can include an increased tax burden on employers and workers, administrative costs to employers, and potential business disruptions. As will be described later in this report, this study estimates that financing this program would result in a contribution rate of 0.5 percent of wages that would be split between employees and employers. For example, an employee

earning annual wages of \$60,000 would be required to contribute .25 percent of wages, which equals approximately \$2.89 per week. Likewise, the employer for that covered employee would also be required to contribute \$2.89 per week. While the administrative costs and the cost of potential business disruptions are indeterminate, this study offers a general estimation of costs to employers and employees in the form of premiums paid into the program. The estimated startup cost to implement this program during Year 1 and Year 2 are \$55,600,000, with estimated ongoing annual costs of \$43,500,000.

In addition to studying the laws and programs implemented in other states with paid family and medical leave programs, the Secretary of Commerce and Trade and the Chief Workforce Development Advisor engaged in numerous conversations with staff and stakeholders in other states, including Washington, Massachusetts, Rhode Island, Connecticut, Oregon, and the District of Columbia. Based on an examination of the policies implemented and considered by other states, it is clear that there is no singular model for paid family and medical leave. There are numerous policy differences across the states in their approaches to structure, benefits, financing, eligibility requirements, and implementation plans. These differences have varying effects on the workers and businesses covered under each respective program. This variety makes evident that if a paid family and medical leave program is a public policy that the Commonwealth seeks to pursue, there is room to craft this policy in a way that fits Virginia's unique needs and provides the most benefit to working Virginians and the economy while also limiting the impacts of costs.

After researching many other states' development and implementation plans, convening a workgroup for guidance, and receiving over 5,500 survey responses, if there is a desire to pursue a paid family and medical leave program in Virginia, the following considerations are offered:

1. The Virginia Employment Commission would be the most appropriate agency to have oversight of the Paid Family and Medical Leave Program because of the similarity of technology and process in collection of unemployment insurance premiums, relationship with the business community, enforcement and familiarity with fraud and adjudication processes.
2. For additional oversight of the program, a Paid Family and Medical Leave Board should be formed to advise the Commissioner. This Board would include small and large business owners, business organizations, members of the General Assembly, government officials, labor, and citizen members. Members of this Board would be appointed by the Governor and General Assembly.
3. An Office of the Paid Family and Medical Leave Ombuds should be created and physically located at the Virginia Employment Commission. The Ombuds would be appointed by the Governor and serve as an independent third party to investigate, report, and help settle complaints from employers and employees.

4. A full, independent actuarial study should be conducted within the first six months after the bill has passed to ensure that the authority has sufficient time to project the necessary funds for a solvent trust and determine the payroll tax rate necessary to achieve such an amount.
5. Both covered employees and employers should jointly fund the program.
6. Premiums should be paid into the Paid Family and Medical Leave Trust at least one year in advance of awarding benefits.
7. The Commonwealth should consider a grant fund that supports small businesses' administrative, technology, and personnel replacement costs needed to implement Paid Family and Medical Leave.
8. The Commonwealth should consider an exemption for small businesses from contributing to the program; however, employees who pay into the program at such exempted business should still be eligible for benefits.
9. The Commonwealth should consider exemptions for businesses who currently have equal or more generous paid leave policies.
10. Regulations and guidelines should align as closely as possible to the federal Family Medical Leave Act to eliminate confusion of eligibility, leave time and administration. Using the same terminology, forms, technology, and reporting will help employers navigate the new program.
11. An outreach and public education campaign is essential to ensure all employers and employees are aware of the new program's contribution and benefits structures as well as the requirements and responsibilities of the program.
12. Future deliberations regarding a statewide paid family and medical leave proposal should consider how such a program would interact with existing state policies and benefits offered to state employees. State agencies should not be exempted from full benefits, but there should be discussion around how existing state benefits may fit into the policy.
13. As more states begin enacting statewide paid family and medical leave programs, further discussions should include input on how this affects attracting economic development projects to the Commonwealth of Virginia.

Background

Given the similarities and differences between various leave programs implemented across the country, it is important to define the scope of what is considered paid family and medical leave.

Paid Family and Medical Leave

Paid family and medical leave is a type of benefit program that typically provides leave for an employee's serious illness or medical condition, the need to care for a family member, or the need to care for a new child. While there is no national policy, several states have implemented or are in the process of implementing some form of a paid family and medical leave program. There is no single format for such a program and—as will be detailed in the following section entitled “An Overview of Programs Implemented in Other States”—the existing programs are diverse in terms of each program's structure, benefits, eligibility requirements, and funding mechanisms. Paid family and medical leave programs often take the form of insurance programs, whereby workers and/or employers pay into a trust fund from which the benefit—typically a partial wage replacement—is drawn when an employee goes on leave following a qualifying event.

In Virginia, proposals seeking to establish a paid family and medical leave program were introduced during the 2020 Session of the General Assembly by Senator Jennifer Boysko (Senate Bill 770) and Delegate Jennifer Carroll Foy (House Bill 825). Both proposals were passed by indefinitely, but with letters sent requesting that the issue be studied by the Secretary of Commerce and Trade and the Chief Workforce Development Advisor.

It is important to note that paid family and medical leave is separate and distinct from two other commonly discussed benefit programs: the Family and Medical Leave Act (FMLA) and earned paid sick leave.

Family and Medical Leave Act

Under the federal Family and Medical Leave Act (FMLA), eligible employees of certain employers can receive **unpaid leave** due to family and serious medical reasons. This unpaid leave is job-protected, meaning that an employer cannot terminate an individual's employment as long as the employee returns to work after their leave is exhausted. To be eligible, employees must be employed by a private sector employer with 50 or more employees, a public agency, or a K-12 school.¹

¹ United States Department of Labor, "The Employee's Guide to the Family and Medical Leave Act," United States Department of Labor, June 2015, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employeeguide.pdf>.

FMLA provides eligible employees with twelve weeks of unpaid leave in a twelve-month period for a number of eligible reasons. Pursuant to §2612 of 29 USC Ch. 28, eligible reasons for leave under FMLA include:

1. The birth of a child of the employee and in order to care for such child;
2. The placement of a child with the employee for adoption or foster care;
3. In order to care for the spouse, child, or parent of the employee, if such person has a serious health condition;
4. A serious health condition that makes the employee unable to perform the functions of the position of such employee;
5. Any qualifying exigency (as covered by regulation) arising out of the fact that the spouse, child or parent of the employee is on covered active duty in the Armed Forces.

While leave taken under FMLA is unpaid, employers must continue an employee's health insurance.² Additionally, employers are permitted to require that an employee taking leave under FMLA substitute any accrued leave that the employee has saved up (i.e. personal, vacation, or sick leave). In those instances when an employee uses such accrued leave that would have qualified as paid leave, the employee will receive such pay as typically provided under such leave programs. Employees may also elect to utilize such accrued leave for this purpose.³

Earned Paid Sick Leave

Earned paid sick leave—often referred to as paid sick days or sick pay—is a type of paid leave program under which employees can accrue paid sick leave hours to be used typically for short time illnesses. There is no permanent national policy and only fourteen states and the District of Columbia have implemented such a law (Arizona, California, Colorado, Connecticut, Maryland, Massachusetts, Maine, Michigan, Nevada, New Jersey, Oregon, Rhode Island, Vermont, Washington, and Washington, D.C.). However, in the states that have adopted an earn sick leave policy, such laws often allow workers to accrue between 24 and 72 hours of paid leave. State policies differ in terms of what purposes such leave can be taken, which employees are eligible to accrue such leave, and the rate by which eligible employees accrue leave. Through the CARES Act, Congress temporarily enacted paid sick leave policy to address issues caused by the COVID-19 pandemic. California, Connecticut, Massachusetts, New Jersey, Oregon, Rhode Island, Washington, and the District of Columbia have both paid sick leave requirements and paid family and medical leave programs.⁴

² United States Department of Labor, "The Employee's Guide to the Family and Medical Leave Act," United States Department of Labor, June 2015, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employeeeguide.pdf>.

³ Family and Medical Leave Act, 29 U.S.C. Ch. 28 §2612, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter28&edition=prelim>.

⁴ National Conference of State Legislatures, "Paid Sick Leave," July 2020, <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>.

In Virginia, variations of earned paid sick leave have been introduced in recent sessions of the General Assembly. In the 2020 Session of the General Assembly, Senator Favola and Delegate Guzman introduced Senate Bill 481 and House Bill 898, respectively. Neither of these legislative proposals passed the General Assembly during the regular session, and proposals specific to COVID-19 were passed by indefinitely during the 2020 Special Session I.

An Overview of Programs Implemented in Other States

Currently, eight states plus the District of Columbia offer some form of paid family and medical leave program. Six of these nine programs are fully implemented (California, the District of Columbia, New Jersey, Rhode Island, New York, and Washington), while three programs have been enacted, yet not fully implemented (Massachusetts, Connecticut, and Oregon). These programs vary in many aspects. Included in this section is research specific to each of these nine programs, which details the programs' structures, eligibility requirements, durations and types of leave, benefits, and financing models.⁵

An important distinction across the states that have—or are—implementing paid family and medical leave programs is whether or not that state previously offered any sort of temporary disability insurance (TDI). Rhode Island was the first to implement a TDI program in 1942, and four other states followed suit: California in 1946, New Jersey in 1948, New York in 1949, and Hawaii in 1969. Of those five states, all but Hawaii have built upon their TDI program to also provide some form of paid family leave.

In the absence of a preexisting program, the others that have since enacted a paid family and medical leave program—Massachusetts, Connecticut, Oregon, Washington, and the District of Columbia—made different decisions on how to implement and administer the plan. These decisions included where to house the program, a process for collecting contributions and paying benefits, and how to best develop the infrastructure needed to make the program functional. In seeking to better understand how a statewide paid family and medical leave program would be implemented in Virginia, the experiences of these states offer an opportunity to understand the various options for developing a program and building the infrastructure in the absence of an existing TDI program.

Overviews of Fully-Implemented Programs

California

Background and Structure

In 2002, California enacted the nation's first Paid Family Leave (PFL) program as an additional benefit to be incorporated into the preexisting State Disability Insurance (SDI) infrastructure. The California Employment Development Department (EDD) administers SDI in addition to Unemployment Insurance, payroll tax collection, and workforce development programs. California's program provides more than 18.7 million workers with family leave benefits.⁶

⁵National Conference of State Legislatures, "Paid Family Leave Resources," July 2020, <https://www.ncsl.org/research/labor-and-employment/paid-family-leave-resources.aspx>

⁶ Employment Development Department, 2020, *Overview of California's Paid Family Leave Program*, State of California, https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf.

Eligibility

In order to be eligible for PFL benefits, an individual must meet several requirements. First, an individual must have earned at least \$300 during the base period from which SDI deductions were withheld. Second, the leave must have caused a loss in wages and be unable to work due to the need to provide family care. Thirdly, an individual must be employed or actively looking for work prior to taking family leave. Lastly, the individual must submit their claim between the first and forty-first day of leave as well as provide a medical certificate on the claim.⁷

The eligibility requirements for SDI benefits are similar to the requirements for PFL. An individual must be unable to work for at least eight days and be employed or actively looking for work prior to taking leave due to their disability. Additionally, they must have earned at least \$300 during the base period from which SDI deductions were withheld. The individual must be under the care and treatment of a licensed physician or practitioner or an accredited religious practitioner, and that practitioner must provide a medical certificate.⁸

Duration and Types of Leave

California SDI allows for 52 weeks of paid benefits for an individual's own nonwork-related disability while California PFL allows for eight weeks of benefits for a seriously ill family member or to bond with a new child. These eight weeks of PFL can be paid consecutively or split up if the employee is working part-time or intermittently due to family leave.⁹ Beginning on January 1, 2021, PFL will also allow for eight weeks of leave for qualifying military exigency.¹⁰ While California's programs provide partial wage replacement benefits, the programs do not provide job protection, which means that an employer is not required to give a covered individual their job back when they return from leave. However, some employees may receive job protections under the federal Family and Medical Leave Act or the California Family Rights Act.¹¹

For the purposes of PFL, California includes in its definition of "family member" a spouse, domestic partner, parent, parent-in-law, children, grandparent, grandchild, and sibling.¹²

⁷Employment Development Department (CA), 2020, *Am I Eligible for Paid Family Leave Benefits*, https://edd.ca.gov/Disability/Am_I_Eligible_for_PFL_Benefits.htm.

⁸Employment Development Department (CA). 2020. *Am I Eligible for Disability Insurance Benefits*. https://edd.ca.gov/Disability/Am_I_Eligible_for_DI_Benefits.htm.

⁹Employment Development Department (CA), 2020, *Overview of California's Paid Family Leave Program*, State of California.

¹⁰Employment Development Department (CA), 2020, *Am I Eligible for Paid Family Leave Benefits*, https://edd.ca.gov/Disability/Am_I_Eligible_for_PFL_Benefits.htm.

¹¹Employment Development Department (CA), 2020, *Paid Family Leave*, https://edd.ca.gov/Disability/Paid_Family_Leave.htm,

¹²California Unemployment Code §3302, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=UIC&division=1.&title=&part=2.&chapter=7.&article=

Benefits

For the duration of leave taken under both SDI and PFL, a covered employee receives a weekly benefit equal to a percentage of their average weekly wage or the state average weekly wage. The amount of this benefit is calculated by determining which quarter of the base year contained the highest earnings, dividing that sum by the number of weeks in the quarter, and multiplying that fraction by the wage replacement rate, which is 60 or 70 percent.

The wage replacement rate is determined by where the covered individual's highest quarterly earnings fall relative to the state average quarterly wage. According to the EDD, a covered individual's weekly benefit amount is:

- **\$50** if their highest quarterly earning was less than \$929
- **Approximately 70 percent of their earnings** if their highest quarterly earnings were between \$929 and \$5,741.66
- **Approximately 60 percent of their earnings** if their highest quarterly earnings were in excess of \$5,741.66

However, a covered individual's benefit could be reduced if that same individual receives conflicting wages while receiving PFL benefits. The EDD defines possible conflicting wages as sick leave pay, paid time off, employer required vacation, military pay, residuals, holiday pay, self-employment income, commissions, bonuses, insurance settlements, workers' compensation benefits, and wages (including part-time earnings).¹³

Premiums and Contributions

Both SDI and PFL are funded by employee payroll deductions deposited to the State Disability Insurance Fund. The Fund is financed using a statutory formula—established in the State of California's Unemployment Insurance Code (UIC) Section 984—to set an annual contribution rate that is applied to covered workers' wages. Pursuant to UIC Section 984, the rate of worker contributions for each year is set at 1.30 times the amount disbursed from the Disability Fund during the preceding 12-months less the Fund balance, and divided by the total wages paid that were subject to SDI contributions or deductions.¹⁴ Additionally, California state law requires that the contribution rate shall not exceed 1.5 percent or be less than 0.1 percent, and that it shall not decrease from the previous year's rate by more than two-tenths of one percent.¹⁵

¹³ Employment Development Department (CA), 2020, *Overview of California's Paid Family Leave Program*, State of California, https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf.

¹⁴ California Unemployment Insurance Code, Section 984, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=984.&lawCode=UIC.

¹⁵ California Unemployment Insurance Code, Section 984, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=984.&lawCode=UIC.

Similarly, UIC Section 985 establishes a statutory formula for the taxable wage ceiling. This ceiling is calculated by multiplying four times the maximum weekly benefit for each calendar year by 13, and then dividing that total by 55 percent.¹⁶ The result of this formula is to increase the SDI program's taxable wage ceiling when the maximum weekly benefit amount increases as the state average weekly wage increases.¹⁷

To assess the adequacy of the Fund's solvency, California defines the Adequacy Rate of the SDI Fund balance as being equal to 25 to 50 percent of the prior 12-months of disbursements. If the Adequacy Rate falls below 25 percent, thus indicating a warning sign that the Fund could become insolvent, the Director can use their authority to increase the contribution rate by 0.1 percent to generate additional revenue and achieve the target Adequacy Rate. Similarly, in situations where the Adequacy Rate increases above 50 percent, the Director can use their authority to decrease the contribution rate by 0.1 percent to reduce costs for workers.

In summary, the SDI and PFL are funded entirely by an employee payroll tax, with no contributions coming from employers. For 2020, the contribution rate remained at 1 percent of wages and the taxable wage limit is \$122,909 per year. Therefore, the maximum premium any single employee would be required in 2020 is \$1,229.09.¹⁸

District of Columbia

Background and Structure

In implementing its paid family and medical leave program, the District established the Office of Paid Family Leave (OPFL) under the Department of Employment Services (DOES). The OPFL houses a variety of divisions and functions, including a Division of Tax, Division of Benefits, Benefit Payment Control, Appeals, Medical, Call Center, and Support. The District created the OPFL and its related systems over the course of a three-year implementation period that began in 2018. This program only recently became fully operational and began administering paid leave benefits on July 1, 2020.

The District's paid family and medical leave program does not allow for a private plan option.

Eligibility and Covered Employees

Pursuant to D.C. Law 21-264, a covered employer is defined as "Any individual, partnership, general contractor, subcontractor, association, corporation business trust, or any group of persons

¹⁶ California Unemployment Insurance Code, § 985,

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=985.&lawCode=UIC.

¹⁷ Employment Development Department (CA), 2020, *Overview of California's Paid Family Leave Program*, State of California, https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf.

¹⁸ Employment Development Department (CA), 2020, *Overview of California's Paid Family Leave Program*, State of California, https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf.

who directly or indirectly or through an agent or any other person, including through the services of temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee and is required to pay unemployment insurance on behalf of its employees”. Excluded from the definition of a covered employer are the United States, the District of Columbia, or any employer that the District of Columbia is not authorized to tax under federal law or treaty. If a self-employed individual opts into the paid-leave program, they are also included in the definition of a covered employer.¹⁹

The Act defines a covered employee as an employee of a covered employer (i) who spends more than 50 percent of their work time for that employer working in the District or (ii) whose employment is based in the District and who works predominantly in the District and not more than 50 percent of their work time in another jurisdiction. An employee can be eligible both as a part-time and full-time employee that meets these criteria.

Duration and Types of Leave

The District of Columbia’s paid family and medical leave programs allows for employees to take a combined total of eight weeks of paid leave. This leave provides two weeks of medical leave for a covered employee’s own serious health condition, six weeks of family leave to care for a family member with a serious health condition, and eight weeks of parental leave to bond with a new child. Following a qualifying event, an employee may use these leave benefits up to the maximum leave durations described within a 52-workweek period. Furthermore, an employee can utilize all three leave options within a 52-workweek period if the respective qualifying events occur for each.²⁰

Benefits

When a covered employee takes leave under this program following a qualifying event, they receive a weekly benefit that is a percentage of the employee’s average weekly wage. Following a qualifying event, eligible individuals must wait one week before being entitled to receive paid-leave benefits. However, this benefit is capped at \$1,000 per week until October 1, 2021, after which the amount will increase in proportion to the annual average increase in the CPI-U. Before there is an increase in the maximum benefit amount, the District’s Chief Financial Officer must certify that there are sufficient funds in the Universal Paid Leave Implementation Fund.²¹

An individual’s weekly paid-leave benefit is statutorily established in D.C. Law 21-264 and is based on how the covered individual’s average weekly pay compares to the District’s minimum wage. If an individual has multiple sources of income, the average weekly wage will be

¹⁹ D.C. Law 21-264, “Universal Paid Family Leave Act of 2016”

²⁰ D.C. Law 21-264, “Universal Paid Family Leave Act of 2016”

²¹ D.C. Law 21-264, “Universal Paid Family Leave Act of 2016”

determined based on the combination of those incomes. The benefit payouts are based on the following schedule²²:

- 90 percent of the eligible individual's average weekly wage, if an eligible individual earns an average weekly wage that is equal to or less than 150 percent of the District's minimum wage multiplied by 40
- 90 percent of 150 percent of the District's minimum wage multiplied by 40 plus 50 percent of the amount by which the eligible individual's average weekly wage exceed 150 percent of the District's minimum wage multiplied by 40, if an eligible individual earns an average weekly wage that is greater than 150 percent of the District's minimum wage multiplied by 40. (This amount cannot exceed the statutorily established maximum benefit limit).

Premiums and Contributions

Beginning on July 1, 2019, covered employers began contributing an amount equal to 0.62 percent of the wages of each of its covered employees to the Universal Paid Leave Implementation Fund. Similarly, self-employed individuals who opted-in to the paid-leave program began contributing an amount equal to 0.62 percent of their annual self-employment income to the fund. There are no caps on the payroll tax contributions from any covered employer.²³

The financing of the District's program is entirely employer funded. This makes the District the only paid family and medical leave program in the nation that does not require employee contributions to the fund. It is important to note that this funding model is a product of the District's taxing authority, as it was unable to fund its paid family and medical leave program with employee contributions.

New Jersey

Background and Structure

In 1948, New Jersey passed the Temporary Disability Benefits Law (TDBL), which required employers and employees to pay payroll taxes to fund a wage replacement insurance program for employees who suffer from a medical condition that prevents them from working.²⁴ This Temporary Disability Insurance (TDI) is offered either through a state plan or a private plan. As of July 1, 2020, New Jersey law also provides for up to twelve weeks of Family Leave Insurance

²² D.C. Law 21-264, "Universal Paid Family Leave Act of 2016"

²³ Department of Employment Services (D.C.), n.d., *DC Paid Family Leave*, <https://does.dc.gov/page/dc-paid-family-leave>.

²⁴ New Jersey Business & Industry Association, 2016, "Understanding New Jersey's Temporary Disability Benefits Law (TDBL)," New Jersey Business & Industry Association, August 4, https://njbja.org/wp-content/uploads/2016/05/FFUnderstanding_New_Jersey_s_Temporary_Disability_Benefits_Law_TDBL.pdf.

(FLI) benefits to bond with a new child.²⁵ These programs are administered by New Jersey's Division of Temporary Disability and Family Leave Insurance.

TDI and FLI Eligibility and Covered Individuals

Eligibility for TDI benefits is based on whether an individual's employment has paid into the program and met the minimum gross earning requirements. However, federal government employees, out-of-state employees, and workers that do not meet the definition of an employee (such as independent contractors) do not qualify for TDI. In order to qualify for TDI benefits, an employee must meet a minimum gross earnings requirement. Minimum gross earnings are based on the last five quarters prior to the week your disability began. The period that comprises the first four of those five quarters is considered the "base year." In 2020, an individual must have worked 20 weeks over the base year during which they earned at least \$200 weekly a combined total of \$10,000.²⁶ For individuals whose base year earnings do not meet the requirements, the Division of Temporary Disability and Family Leave Insurance review a workers earnings over the course of two alternate base year periods.

The same minimum gross earnings requirements that apply for TDI eligibility also apply for FLI eligibility. The program is available for New Jersey workers to bond with a newborn, newly adopted, newly placed foster child, or to provide care for a seriously ill or injured family member.²⁷ It is worth noting that New Jersey defines "family member" more broadly than most states. Their definition includes siblings, any individual related by blood, and any individual whose close association is like family.²⁸

TDI and FLI Duration

There is a 7-day waiting period after the first day of disability. Additionally, an individual has 30 days from the first day of their disability to file their application.²⁹ Over a 52-week period, an individual may take up to 26 weeks of leave for one's own disability. Beginning July 1, 2020, covered employees may receive up to 12 weeks of FLI benefits over a 52-week period.³⁰

²⁵ New Jersey Department of Labor & Workforce Development, 2020, "Expansion of NJ Family Leave Insurance and Temporary Disability Insurance: How Parents Can Maximize Their Benefits," My Leave Benefits, May 22, <https://myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/TDI%20FLI%20Expansion%20of%20Benefits%20May%202022%20DRAFT%202.pdf>.

²⁶ New Jersey Department of Labor and Workforce Development, n.d., *Temporary Disability Insurance*, <https://myleavebenefits.nj.gov/worker/tdi/>.

²⁷ New Jersey Department of Labor and Workforce Development, n.d., *Family Leave Insurance*, <https://myleavebenefits.nj.gov/labor/myleavebenefits/worker/fli/index.shtml>.

²⁸ New Jersey Department of Labor & Workforce Development, 2020, "Expansion of NJ Family Leave Insurance and Temporary Disability Insurance: How Parents Can Maximize Their Benefits," My Leave Benefits, May 22, <https://myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/TDI%20FLI%20Expansion%20of%20Benefits%20May%202022%20DRAFT%202.pdf>.

²⁹ New Jersey Department of Labor and Workforce Development, n.d., *FAQ: Temporary Disability Insurance*, <https://myleavebenefits.nj.gov/labor/myleavebenefits/help/faq/tdi.shtml>.

³⁰ New Jersey Department of Labor & Workforce Development, 2020, "Expansion of NJ Family Leave Insurance and Temporary Disability Insurance: How Parents Can Maximize Their Benefits," My Leave Benefits, May 22,

The TDI and FLI programs do not offer additional job protections when a worker takes paid leave beyond what is afforded under FMLA and the New Jersey Family Leave Act.

TDI and FLI Benefits

An individual's earnings over the base year also determine the amount of weekly benefits one may receive, and the total amount one can receive throughout the life of a claim. Beginning July 1, 2020, individuals may now receive an increased benefit amount of 85 percent of the employee's average weekly wage, up to a maximum benefit of \$881 per week for both TDI and FLI.³¹

TDI and FLI Premiums and Contributions

Both employers and employees contribute to the cost of the TDI program. For 2020, workers contribute 0.26 percent on the first \$134,000 in covered wages earned during the calendar year. The maximum worker contribution for 2020 is \$350.74. This contribution is in the form of a salary deduction taken from the employee's weekly wage.³² Meanwhile, employers contribute a variable rate, ranging from 0.10 percent to 0.75 percent. For 2020, employers contribute between \$35.30 and \$264.75 on the first \$35,300 earned by each employee during the calendar year.³³ On January 1 of each year, the taxable wage cap changes (presumably pegged to inflation, but it's not explicitly stated).

New Jersey's Family Leave Insurance is entirely financed by employee payroll deductions. Employers do not contribute to the program. In 2020, workers contribute 0.16 percent of the first \$134,900 earned during the calendar year. The maximum yearly deduction for FLI in 2020 is \$215.84. This contribution is in the form of a salary deduction that your employer takes from your weekly wages.³⁴

New York

DBL/PFL Structure and Background

New York's paid family and medical leave system is different from other states in that it does not offer a state managed plan or trust fund, but rather is built upon a private insurance model.

<https://myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/TDI%20FLI%20Expansion%20of%20Benefits%20May%202022%20DRAFT%202.pdf>.

³¹ New Jersey Department of Labor & Workforce Development, 2020, "Expansion of NJ Family Leave Insurance and Temporary Disability Insurance: How Parents Can Maximize Their Benefits," My Leave Benefits, May 22, <https://myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/TDI%20FLI%20Expansion%20of%20Benefits%20May%202022%20DRAFT%202.pdf>.

³² New Jersey Department of Labor and Workforce Development, n.d., *Temporary Disability Insurance*, <https://myleavebenefits.nj.gov/worker/tdi/>.

³³ New Jersey Department of Labor and Workforce Development, n.d., *Information for Employers*, <https://myleavebenefits.nj.gov/labor/myleavebenefits/employer/index.shtml>.

³⁴ New Jersey Department of Labor and Workforce Development, n.d., *Family Leave Insurance*, <https://myleavebenefits.nj.gov/labor/myleavebenefits/worker/fli/index.shtml>.

New York law requires employers to obtain paid leave coverage and collect employee contributions to pay for their coverage.³⁵ The state first implemented its Disability Benefits Law in 1949, when it required private employers to provide disability insurance for their employees. Disability benefits are covered through the employer’s insurance carrier, or employers may self-insure. Employers may provide benefits using a Board approved plan when it is insured through an insurer licensed by New York. These plans must meet—or be more generous than—the statutory requirements for DBL.

New York built upon this policy in 2016 by requiring employers to obtain paid family leave coverage from private insurers that met certain statutory criteria. As of January 2018, the Paid Family Leave policy (PFL) has provided workers with job-protected, paid leave to bond with a child, care for a family member with a serious health condition, or qualifying military exigency.

*Eligibility*³⁶

In order to be eligible for DBL, an employee must have been employed by a covered employer for at least four consecutive weeks, or 25 days if they are a part-time employee. An individual must be under the care of a physician, chiropractor, podiatrist, psychologist, dentist, or certified nurse midwife in order to qualify for disability benefits.

In order to be eligible for PFL, an employee must be currently employed by a covered employer for 26 or more consecutive weeks. Part-time employees become eligible once they have been employed by a covered employer for 175 days. An employee must also provide sufficient medical certification or documentation verifying the need for leave.

Duration and Types of Leave

Covered workers can take up to 26 weeks of combined leave between DBL and PFL. Under DBL, a covered worker is able to take up to 26 weeks of paid leave for their own disability over a 52-week period. Additionally, benefits are payable after a waiting period of the first seven days of leave.³⁷ For PFL, the duration of leave has increased from 8 weeks of leave in 2018 to 10 weeks of leave in 2019. Beginning in 2021, the duration of PFL allowed will be 12 weeks of leave.³⁸

New York defines a “family member” for the purposes of paid family leave as being a child, parent, spouse, domestic partner, grandparent, or grandchild.

³⁵ New York State, n.d., *Paid Family Leave Information for Employers*, <https://paidfamilyleave.ny.gov/employers>.

³⁶ New York Workers' Compensation Board, n.d., *Disability Benefits*, <http://www.wcb.ny.gov/content/main/offthejob/db-overview.jsp>.

³⁷ New York Workers' Compensation Board, n.d., *Disability Benefits*, <http://www.wcb.ny.gov/content/main/offthejob/db-overview.jsp>.

³⁸ New York State, n.d., *Benefits Schedule*, <https://paidfamilyleave.ny.gov/benefits>.

Benefits

For DBL benefits, covered employees are eligible to receive 50 percent of their average weekly wage for the last eight weeks worked. The maximum weekly benefit allowed is currently set at \$170.³⁹

PFL benefits are currently being phased in over the course of a four-year period, which began in 2018. In 2020, covered employees are eligible to receive PFL benefits of 60 percent of a worker's average weekly wage up to 60 percent of the state average weekly wage. In 2021, PFL benefits will increase to 67 percent of the worker's average weekly wage and is similarly capped at 67 percent of the state average weekly wage. A worker's average weekly is defined as the average of your last eight weeks prior to taking PFL, including bonuses and commissions.⁴⁰

Premiums and Contributions

New York's disability benefits and paid family leave benefits are funded using different calculations. Disability benefits are jointly funded by employee and employer payroll contributions. Covered employees contribute 0.5 percent of workers wages, but not more than 60 cents per week. Employers are responsible for covering any remaining costs associated with the disability benefits plan. However, employers are not required to deduct employee contributions and can instead cover the costs entirely.⁴¹

Unlike the financing of disability benefits, paid family leave benefits are financed entirely by employer contributions. The Department of Financial Services sets the employee contribution rate, which was set at 0.270 percent of employees' wages in 2020. The maximum annual contribution in 2020 was set at \$196.72.⁴²

Rhode Island

Structure and Background

In 1942, Rhode Island first enacted its Temporary Disability Insurance program to provide paid leave to workers who suffered a loss of wages caused by a non-work related medical condition. Building upon this longtime established program, Rhode Island enacted its Temporary Caregiver Insurance law in 2013 to provide paid family leave to eligible workers. This program is administered by the Temporary Disability Insurance division of the Department of Labor and Training. Collectively, these two programs provide eligible Rhode Island workers with paid family and medical leave benefits that are paid out of a single state fund.

³⁹ New York Workers Compensation Board, n.d., *Disability Benefits*, <http://www.wcb.ny.gov/content/main/offthejob/db-overview.jsp>.

⁴⁰ New York State, *New York Paid Family Leave Updates for 2020*, <https://paidfamilyleave.ny.gov/2020>.

⁴¹ New York Workers Compensation Board, n.d., *Complying with the Disability Benefits Law*, <http://www.wcb.ny.gov/content/main/DisabilityBenefits/Employer/complyWithLaw.jsp>.

⁴² New York State, n.d., *Cost and Deductions*. <https://paidfamilyleave.ny.gov/cost>.

Eligibility

In order to be eligible for paid leave under the TDI/TCI program, an employee must meet a wage requirement of \$12,600 in the base period in Rhode Island. Additionally, the employee must have paid into the trust fund from which TDI/TCI benefits are paid. The Department of Labor and Training requires that TCI claimants provide proof to validate the need for paid leave, including either medical evidence of a serious medical condition or evidence of a parent/child relationship for any bonding claim. TCI claimants must be out of work for seven days in order to meet the eligibility requirements.

Duration and Types of Leave

In a 52-week period, a covered employee can take a combined total of 30 weeks of paid leave per year under the TDI/TCI program. The TDI program allows covered employees to take up to 30 weeks of paid leave for the employee's own temporary disability. The TCI program allows covered employees to take up to four weeks of paid family leave to bond with a new child or to care for a seriously ill family member. Rhode Island defines "family member" as a spouse, domestic partner, parent, parent-in-law, child, and grandparent.⁴³

Covered employees receive job protections while on paid leave under TCI. However, there is no greater job protection for leave taken under TDI than is afforded under FMLA or Rhode Island's Paid Family and Medical Leave Act.

Benefits

While on leave through the TDI and TCI programs, a covered employee is eligible to receive benefits of approximately 60 percent of their weekly earnings (the exact calculation of the benefit is set at 4.62 percent of wages received in the highest quarter of the worker's base period). As of July 1, 2020, the minimum and maximum weekly benefits that a covered employee can receive while on paid leave is set at \$107 and \$887, respectively.⁴⁴

Premiums and Contributions

Rhode Island's TDI and TCI programs are entirely employee funded and premiums and contributions are paid into a single state fund. As of January 1, 2020, the contribution rate was set at 1.3 percent of the individual's first \$72,300 in earnings.⁴⁵

⁴³ Rhode Island Department of Labor and Training, *Temporary Disability / Caregiver Insurance FAQ*, Rhode Island, <https://dlt.ri.gov/tdi/faq/>.

⁴⁴ Rhode Island Department of Labor and Training, *Temporary Disability / Caregiver Insurance FAQ*, Rhode Island, <https://dlt.ri.gov/tdi/faq/>.

⁴⁵ Rhode Island Department of Labor and Training, *Temporary Disability / Caregiver Insurance FAQ*, Rhode Island, <https://dlt.ri.gov/tdi/>.

Washington

Structure and Background

In July 2017, the state of Washington enacted legislation to implement a statewide paid family and medical leave program. Pursuant to the timeline set out in Senate Bill 5975, the state started collecting contributions for the fund through payroll deductions on January 1, 2019 and began providing benefits January 1, 2020. Contributions are paid to—and benefits are drawn from—the Family and Medical Leave insurance account that is housed in the state treasurer’s office. However, the program is administered through the Employment Security Department, which is the Department that also administers Washington’s unemployment and workforce systems.

The Commissioner of the Employment Security Department appoints an advisory committee that is tasked with reviewing issues and topics related to paid family and medical leave. Specifically, the committee is charged with providing comment on department rulemaking, policies, and other aspects of paid family and medical leave, as well as conducting any studies the committee deems necessary. The committee is made up of four members tasked with representing employees’ interests (appointed from a list of at least four names submitted by a recognized statewide organization of employees), four members representing employers (appointed from a list of at least four names submitted by a recognized statewide organization of employers), and two ex officio members (one representing the Department and the other shall be the Ombuds for the family and medical leave program).

The Office of the Paid Family and Medical Leave Ombuds is responsible for working to improve the delivery of services and the effectiveness of Washington’s paid family and medical leave program. They serve as an advocate for both employees and employers in solving problems and in the parties’ interactions with the Employment Security Department.⁴⁶

Eligibility and Covered Employees

Covered employees are defined as any individual who is in the employment of any private employer, the state of Washington or its institutions or agencies, or any unit of local government. Employees of the federal government are not covered by this legislation, nor is the United States of America considered to be an employer pursuant to this law. Furthermore, self-employed individuals are not required to participate in Washington’s paid family and medical leave program, but they do have the option to opt into the program. In order for a covered employee to be eligible for benefits under Washington’s paid family and medical leave program, they must have worked for at least 820 hours in employment during the qualifying period.⁴⁷

⁴⁶ Office of the Paid Family and Medical Leave Ombuds, n.d., *About the Office.*, <https://paidleaveombuds.wa.gov/about>.

⁴⁷ Substitute Senate Bill 5975, <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/5975-S.PL.pdf>.

Duration of Leave

Covered employees who have met the eligibility requirements for paid leave under this program are able to take up to a total of sixteen weeks of paid leave in a 52-week period. However, if the leave is pregnancy related, such employees can take a total of eighteen weeks of paid leave. So long as they do not exceed the combined maximum duration, an employee is eligible to take:

- **up to 12 weeks of paid family leave** to care for a family member with a serious health condition, bond with a new child, or for qualifying military exigency; and
- **up to 12 weeks of paid medical leave** to care for an employee's own serious health condition (or 14 weeks if pregnancy related).

Under Washington's paid family leave policy, a family member is defined as a child, grandchild, grandparent, parent, sibling, or spouse of an employee.

Benefits

For the duration of their paid leave, a covered employee is eligible to receive a percentage of such employee's average weekly wage up to a weekly maximum amount of \$1,000. There is no waiting period required prior to receiving benefits during family leave for the birth or placement of a child. However, for all other instances of paid leave, benefits are payable after a waiting period of the first seven days of leave.⁴⁸

A covered employee's weekly benefit is determined relative to how their average weekly wage compares to the state average weekly wage. According to SB5975, an employee's weekly benefit is:

- **90 percent of the employee's average weekly wage**, if the employee's weekly wage is 50 percent or less of the state average weekly wage;
- **The sum of 90 percent of the employee's average weekly wage up to 50 percent of the state average weekly wage and 50 percent of the employee's average weekly wage that is greater than 50 percent of the state average weekly wage**, if the employee's average weekly wage is greater than 50 percent of the state average weekly wage.

The Employment Security Department is the state agency responsible for administering Washington's paid family and medical leave program.

⁴⁸ Substitute Senate Bill 5975, <http://lawfilesexext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/5975-S.PL.pdf>.

Premiums and Contributions

On January 1, 2019, the Department began assessing premiums on employee and employers that would fund the paid family and medical leave program. Pursuant to state law, the premium rate for family leave benefits is set at one-third of the total premium rate and the premium rate for medical leave benefits is set at two-thirds of the total premium rate. Beginning in 2022, the Commissioner of the Department is charged with determining the percentage of paid claims related to family leave benefits and the percentage of paid claims related to medical leave benefits and adjusting the premium rates by the proportional share of paid claims.

From January 1, 2019 until December 31, 2020, the total premium rate is set at 0.4 percent of the one percent of the individual's first \$137,700 in wages.⁴⁹

⁴⁹ Washington Paid Family and Medical Leave Program, n.d., *Employers*, <https://paidleave.wa.gov/employers/>.

Overviews of Programs Not Yet Fully Implemented

Connecticut⁵⁰

Background and Structure

Connecticut's paid family and medical leave program, which was enacted in 2019, will begin collecting premiums in January 2021 and paying benefits in January 2022. Connecticut law allows for the utilization of either the state plan or a private plan. Employers are able to opt out of the state plan if they have a program that is equal to—or more generous than—the state plan. The Authority will coordinate with the Insurance Department to evaluate employers' private plans and ensure that they meet the standards and requirements set out in law.

Eligibility

In order to be eligible for family and medical leave insurance benefits, an individual must have earned at least \$2,325 during the highest earning quarter of their base period.⁵¹ Additionally, the individual must be either presently employed, have been employed in the previous twelve weeks, or is a self-employed individual or sole proprietor and Connecticut resident that has opted into the program.⁵²

Duration and Types of Leave

Connecticut's Paid Family and Medical Leave Insurance Program provides up to twelve weeks of family and medical leave compensation during a one-year period. This includes leave for a covered employee's serious health condition, to care for a family member with a serious health condition, to serve as an organ or bone marrow donor, to bond with a new child, or for a qualifying military exigency.⁵³

A covered employee is also eligible to receive an additional two weeks of compensation for a serious health condition that results in incapacitation that occurs during a pregnancy.

Connecticut's paid family and medical leave law defines a family member as a child, spouse, sibling, grandparent, grandchild, parent, or an individual related by blood or affinity whose close association to employee is the equivalent of a family relationship.⁵⁴

⁵⁰ Connecticut Public Act No. 19-25, <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>.

⁵¹ Paid Family and Medical Leave Insurance Authority, n.d., *FAQs*, <https://portal.ct.gov/DAS/Communications/PFMLI-Authority/FAQ>.

⁵² Connecticut Public Act No. 19-25, <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>.

⁵³ Connecticut Public Act No. 19-25, <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>.

⁵⁴ Connecticut Public Act No. 19-25, <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>.

Benefits

For the duration of their leave period, a covered employee is eligible to receive a weekly compensation that is a proportion of the employee's average weekly wage. A covered employee's weekly benefit rate is equal to:

- 95 percent of their average weekly wage if their wages are less than or equal to the Connecticut minimum wage multiplied by 40; or
- 95 percent of the Connecticut minimum wage multiplied by 40 plus 60 percent of the amount their weekly wage exceeds the minimum wage multiplied by 40.

The maximum benefit rate that a covered employee could receive is set at 60 times the Connecticut minimum wage.⁵⁵

Premiums and Contributions

Connecticut's paid family and medical leave program is entirely employee funded. Each employee as well as self-employed individuals and sole proprietors who are enrolled in the program are required to contribute to the Family and Medical Leave Insurance Trust Fund at a rate established by the Authority. Contributions cannot exceed 0.5 percent and up to the Social Security contribution and benefit base.⁵⁶

Massachusetts

Background and Structure

On June 28, 2018, Massachusetts enacted legislation to implement a statewide paid family and medical leave program with benefits beginning January 1, 2021. The legislation created the Department of Paid Family and Medical Leave within the Executive Office of Labor and Workforce Development to be responsible for implementing and administering the program. The director of the Department is appointed by the Governor of Massachusetts.⁵⁷

Massachusetts law allows for the utilization of either the state plan or a private plan. Employers are able to apply to opt out of the state plan if they have a program that is equal to—or more generous than—the state plan. In order to meet this criteria, all of the protections from the state plan must still apply and both the duration of leave and benefit is equal to or greater than what would be offered under the state plan.⁵⁸

⁵⁵ Connecticut Paid Leave. n.d. For Employers. Connecticut Public Act No. 19-25, <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>.

⁵⁶ Connecticut Public Act No. 19-25, <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>.

⁵⁷ Massachusetts Acts of 2018, Chapter 121, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>.

⁵⁸ Massachusetts Acts of 2018, Chapter 121, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>.

Eligibility and Covered Employees/Employers

In general, Massachusetts' paid family and medical leave program covers all W-2 employees that work in the state, including individuals that live in other states but work in Massachusetts. This includes full-time, part-time, and seasonal workers. 1099-MISC workers who work in Massachusetts but do not qualify as independent contractors are covered by the paid family and medical leave program if they collectively make up more than 50 percent of their employer's workforce. Independent contractors and non-W-2 employees are able to opt in to the state plan if their work is centered in Massachusetts.

In order to be eligible under this program, an employee must meet the financial eligibility requirements of to be a covered individual under Massachusetts' unemployment insurance (Chapter 151A, Section 24(a)).⁵⁹

Duration and Types of Leave

Beginning on January 1, 2021, covered employees who have met the eligibility requirements for paid leave under this program are able to take up to a total of 26 weeks of job-protected paid leave in a 52-week period. So long as an employee does not exceed the combined maximum duration, an employee is eligible to take:

- **up to 12 weeks of paid family leave** to care for a family member with a serious health condition, bond with a new child, or for qualifying military exigency
- **up to 20 weeks of paid medical leave** to care for an employee's own serious health condition
- **up to 26 weeks of paid military caregiver leave** to care for a family member who is a covered service member with a serious illness or injury

For the purposes of Massachusetts' program, the definition of "family member" includes a covered individual's spouse, domestic partner, child, parent, grandchild, grandparent, or sibling as well as the parent of a spouse or domestic partner of the covered individual and a person who stood in loco parentis to the covered individual when the covered individual was a minor.⁶⁰

Benefits

No benefits are payable during the first seven calendar days of leave taken under this program, but employees may use accrued sick or vacation pay or paid leave provided under an employer policy during this time.⁶¹ A covered individual's weekly benefit amount is the sum of:

⁵⁹ Massachusetts General Laws, Part I, Title XXI, Chapter 151A, Section 24,

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section24>

⁶⁰ Massachusetts Acts of 2018, Chapter 121, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>.

⁶¹ Massachusetts Acts of 2018, Chapter 121, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>.

- 80 percent of the portion of a covered individual's average weekly wage that is equal to or less than 50 percent of the state average weekly wage; and
- 50 percent of the portion of a covered individual's average weekly wage that is greater than 50 percent of the state average weekly wage.

The weekly benefit amount is capped at \$850 per week. The Department will annually adjust the maximum weekly benefit amount to be 64 percent of the state average weekly wage.⁶²

The weekly benefit amount is reduced by the amount of wages or wage replacement that the covered individual receives while on paid leave under this program for:

- Any government program or law, including but not limited to workers' compensation, (other than that for permanent partial disability incurred prior to the family or medical leave claim, or any other state or federal temporary or permanent disability benefits law); or
- A permanent disability policy or program of an employer.

However, the law specifies that weekly benefit amount cannot be reduced by the amount of wage replacement that an employee receives from an employer's temporary disability policy or paid family or medical leave policy, unless the aggregate amount an employee would receive would exceed the employee's average weekly wage. Employers that make payments to a covered employee who takes paid family or medical leave will be reimbursed out of any benefits due from the trust fund.⁶³

Premiums and Contributions

Beginning on January 1, 2019, employers and employees began making contributions to the Family and Employment Security Trust Fund. The sums received by and held in this non-reverting fund are used both to pay benefits under this program as well as to pay for the administrative costs of the Department. The Trust Fund is required to maintain an annualized amount of at least 140 percent of the previous fiscal year's expenditure for benefits paid and for the administration of the Department. The administration costs of the Department are prohibited from exceeding 5 percent of the amount deposited in the Trust Fund for each fiscal year following 2021.

Family leave is entirely employee funded, while medical leave is jointly funded by employees and employers (40 percent employee funded and 60 percent employer funded). The contribution

⁶² Massachusetts Acts of 2018, Chapter 121, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>

⁶³ Massachusetts Acts of 2018, Chapter 121, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>

rate is adjusted annually by the director. For 2020, the payroll tax is 0.75 percent of wages up to \$132,900.⁶⁴

Additionally, employers that employ fewer than 25 employees in Massachusetts are not required to pay the employer portion of premiums for family and medical leave. Employees of these small businesses will contribute to the Trust Fund and remain covered by the program.

Oregon

Structure

Oregon's Employment Department is currently implementing the state's paid family and medical leave insurance program and will be responsible for administering the program. As the program was only recently enacted, the Department will begin receiving contributions from a payroll tax by January 2022 and will begin paying benefits by January 2023. Oregon law allows for the utilization of either the state plan or a private plan. Employers are required to participate unless the employer has an equivalent paid family and medical leave program that has been approved by the Employment Department.

Eligibility

In order to be eligible for family and medical leave insurance benefits, an individual must have contributed to the Paid Family and Medical Leave Insurance Fund and earned \$1,000 or more in the year prior to their claim. Self-employed individuals and independent contractors are able to opt into the program.⁶⁵

Duration and Types of Leave

Covered individuals are able to qualify for up to 12 weeks of family and medical leave insurance benefits per year. The types of job-protected leave covered under this program are medical leave for one's own serious health condition, family leave for the care of a family member's serious health condition or to bond with a new child, and safe leave. Safe leave pertains to leave taken for reasons related to domestic violence, harassment, sexual assault, or stalking.

Covered individuals may take an additional two weeks for limitations related to pregnancy, childbirth, or a related medical condition.

Covered individuals may also be eligible for an additional four weeks of unpaid family leave to care for a sick or injured child, military exigencies, and the death of a family member if they meet certain requirements.

⁶⁴ Department of Family and Medical Leave., n.d., *Family and medical leave contribution rates for employers*, <https://www.mass.gov/info-details/family-and-medical-leave-contribution-rates-for-employers>.

⁶⁵ 80th Oregon Legislative Assembly, 2019 Regular Session, House Bill 2005, <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>.

Oregon’s paid family and medical leave law uses an expansive definition of “family member” relative to that used in most other states. Under this program, the definition of “family member” includes a child, spouse, domestic partner, parent, grandparent, grandchild, sibling as well as any individual related by blood or affinity whose close association is the equivalent of a family relationship.⁶⁶

Benefits

A covered employee’s weekly benefit is determined relative to how their average weekly wage compares to the state average weekly wage. According to Oregon law, a covered individual’s weekly benefit is:

- 100 percent of the employee’s average weekly wage if their average weekly wage is less than or equal to 65 percent of the state average weekly wage;
- The sum of 65 percent of the average weekly wage and 50 percent of the employee’s average weekly wage that is greater than 65 percent of the average weekly wage, if the eligible employee’s average weekly wage is greater than 65 percent of the state average weekly wage.

Oregon law sets the maximum weekly benefit amount at 120 percent of the average weekly wage and the minimum weekly benefit amount at five percent of the average weekly wage.⁶⁷

Premiums and Contributions

Beginning January 1, 2022, the Department will begin collecting contributions from the employees and employers that jointly fund the program. On an annual basis, the Employment Department is responsible for setting the total payroll tax rate, which cannot exceed one percent of the worker’s first \$132,900 in wages. Employees are responsible for contributing 60 percent of this tax while employers contribute 40 percent. However, employers with fewer than 25 employees are not required to pay the employer contribution. For those small businesses that do pay their share of the contribution, Oregon offers grants to offset some of the employer’s costs. Specifically, qualifying small businesses can receive up to \$3,000 to offset the cost of hiring temporary employees and up to \$1,000 for the reimbursement of wage-related expenses that are incurred while an employee is out on leave.⁶⁸

⁶⁶ 80th Oregon Legislative Assembly, 2019 Regular Session, House Bill 2005, <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>.

⁶⁷ 80th Oregon Legislative Assembly, 2019 Regular Session, House Bill 2005, <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>.

⁶⁸ 80th Oregon Legislative Assembly, 2019 Regular Session, House Bill 2005, <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>.

Impacts of Paid Family and Medical Leave Programs

A recent study of paid family and medical leave conducted by the Congressional Research Service, a nonpartisan staff to congressional committees and Congress, demonstrates that there are a number of potential benefits (ranging from stronger labor force attachment to greater income stability) as well as potential costs (ranging from contributions to expenses related to employees taking leave).⁶⁹ In seeking to understand and quantify the impact of paid family and medical leave programs, researchers have studied the effects of implemented programs both nationwide and internationally. This section will summarize key findings to highlight the potential effects of a paid family and medical leave program in Virginia and provide an estimated cost to employers and employees.

Advantages of Paid Family and Medical Leave Programs

Research on other paid family and medical leave programs suggests several key economic benefits for employers—including improved increased employee productivity and greater labor force attachment for women—as well as both economic and health benefits for workers. Additionally, the establishment of a statewide paid family and medical leave program would provide cost savings to those employers that currently provide paid leave to its employees. In conversations with businesses that continue to pay their employees while they are out on medical or family leave, those employers explained that a statewide paid family and medical leave program funded by contributions would ultimately save their businesses money.

First, it is worth offering examples of the macroeconomic effects of paid family and medical leave. The passage of the federal Family and Medical Leave Act, a study written by Christopher Ruhm and Jackqueline Teague sought to explore the economic impact of mandated family leave policies.⁷⁰ This study found that “leave entitlements of moderate duration (especially when paid) operate to raise employment levels”.⁷¹ Additionally, an analysis of the effects of paid leave programs on unemployment rates conducted by Danielle Corley, Sunny Frothingham, and Kate Bahn at the Center for American Progress illustrate that states that implemented paid family and medical leave programs did not experience a rise in unemployment one year later.⁷² These findings as well as the impacts of paid family and medical leave on labor force participation and productivity (described below) suggest that paid family and medical leave policies could support

⁶⁹ Donovan, Sarah A., 2020, "Paid Family and Medical Leave in the United States," Congressional Research Service, February 19, <https://crsreports.congress.gov/product/pdf/R/R44835>.

⁷⁰ Ruhm, Christopher J., and Jackqueline L. Teague, 1995, *Parental Leave Policies in Europe and North America*, Research Paper, Cambridge, MA: National Bureau of Economic Research, Inc.

⁷¹ Ruhm, Christopher J., and Jackqueline L. Teague, 1995, *Parental Leave Policies in Europe and North America*, Research Paper, Cambridge, MA: National Bureau of Economic Research, Inc.

⁷² Corley, Danielle, Sunny Frothingham, and Kate Bahn, 2017, "Paid Sick Days and Paid Family and Medical Leave Are Not Job Killers," *Center for American Progress*, January 5, <https://www.americanprogress.org/issues/women/reports/2017/01/05/295908/paid-sick-days-and-paid-family-and-medical-leave-are-not-job-killers/>.

overall economic growth, as suggested in a 2017 report from an American Enterprise Institute-Brookings Working Group report.⁷³

A 2018 report from an American Enterprise Institute-Brookings Working Group discussed the potential economic effects of paid family and medical leave. The AEI-Brookings report notes that paid leave programs could reduce productivity losses caused by presenteeism, which is defined as when an employee is present at their job but is unable to perform their work to the best of their abilities due to an injury or medical condition.⁷⁴ The report references a study that found that “the cost associated with performance based work loss or ‘presenteeism’ greatly exceeded the combined costs of absenteeism and medical treatment combined”.⁷⁵ The AEI-Brookings report explains that the loss of productivity caused by presenteeism could be combated by paid family and medical leave programs, which would encourage workers to seek necessary medical treatment when it is needed to address a health problem rather than continue to work through their condition due to financial insecurity or an inability to take leave. This example illustrates one area in which paid family and medical leave could provide benefit to businesses by way of enhancing its long-term output and productivity.

There is a considerable amount of research demonstrating the positive relationship between women’s access to paid family leave programs and labor force participation levels. According to a 2012 Rutgers study, paid family leave “may strengthen women’s workforce attachment and workforce stability by allowing women to retain employment both before and after a birth, particularly employment with the same employer and at the same, or better, wage”.⁷⁶ A more recent study conducted by Kelly Jones and Britni Wilcher further illustrates the positive effects that paid family and medical leave could have on labor force participation rates amongst women. Analyzing data from California and New Jersey, Jones and Wilcher find that state paid family leave programs can reduce the negative impact of having a child on women’s labor force participation by up to 20 percent.⁷⁷

⁷³ Mathur, Aparna, Isabel V. Sawhill, Heather Boushey, Ben Gitis, Ron Haskins, Doug Holtz-Eakin, Harry J. Holzer, et al., 2017, "Paid Family and Medical Leave," AEI – Brookings, May, https://www.brookings.edu/wp-content/uploads/2017/06/es_20170606_paidfamilyleave.pdf.

⁷⁴ Mathur, Aparna, Isabel V. Sawhill, Heather Boushey, Ben Gitis, Ron Haskins, Doug Holtz-Eakin, Harry J. Holzer, et al., 2018, "The AEI-Brookings Working Group Report on Paid Family and Medical Leave," AEI – Brookings, September, <https://www.aei.org/wp-content/uploads/2018/09/The-AEI-Brookings-Working-Group-Report-on-Paid-Family-and-Medical-Leave.pdf>.

⁷⁵ Collins, James J., Catherine M. Baase, Claire E. Sharda, Ronald J. Ozminkowski, Sean Nicholson, Gary M. Billotti, Robin S. Turpin, Michael Olson, and Marc L. Berger, June 2005, "The assessment of chronic health conditions on work performance, absence, and total economic impact for employers." *Journal of Occupational and Environmental Medicine* 547-57.

⁷⁶ Houser, Linda, and Thomas P. Vartanian, 2012, "Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public," Rutgers Center for Women and Work, January. https://smlr.rutgers.edu/sites/default/files/images/CWW_Paid_Leave_Brief_Jan_2012_0.pdf.

⁷⁷ Jones, Kelly, and Britni Wilcher, 2019, Reducing Maternal Labor Market Detachment: A Role for Paid Family Leave, Working Paper 2019-07, Washington, DC: American University.

A statewide paid family and medical leave program would offer numerous benefits to employees, particularly to those who do not currently have access to such leave. At its most basic level, a statewide paid family and medical leave program is likely to benefit the economic security of workers.

In addition to these benefits, researchers have argued that the increased health outcomes are associated with economic benefits. Firstly, and as has been previously described, access to paid family and medical leave enables individuals who are suffering from a serious health condition to take leave and seek necessary medical treatment without fear of sacrificing their economic security. Secondly, access to paid family leave is associated with better infant and maternal health. Research conducted by Jody Heymann, et al. found that 10 weeks of paid maternity leave was associated with statistically significant lower neonatal and infant mortality rates.⁷⁸ A study written by Ariel Pihl and Gaetano Basso further found that infant hospitalizations decreased—particularly with regards to outcomes positively affected by improved home-care—following implementation of California’s paid leave program.⁷⁹ These studies are just a few select examples of the studies that have been conducted on these topics.

According to the U.S. Bureau of Labor Statistics (BLS), there are disparities in access to paid family and medical leave by race and ethnicity. In this study published in January 2019, the most statistically significant finding was that Hispanic workers have lower rates of access to paid family and medical leave access compared to White non-Hispanic workers. Additionally, this BLS study finds evidence that Black non-Hispanic have less access to paid family and medical leave than White non-Hispanic workers. These findings illustrate the positive economic impact that the implementation of a statewide paid family and medical leave program would have on reducing disparities in access to paid leave by race, ethnicity, and income level, thereby supporting greater equity in health and economic security.⁸⁰

Costs of Paid Family and Medical Leave Programs

The primary economic costs that would be caused by a paid family and medical leave program include an increased tax burden on employees and employers, administrative costs to employers, and potential business disruptions.

⁷⁸ Heymann, Jody, Amy Raub, and Alison Earl. 2011. "Creating and Using New Data Sources to Analyze the Relationship Between Social Policy and Global Health: The Case of Maternal Leave." *Public Health Reports*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3150137/pdf/phr126s30127.pdf>.

⁷⁹ Pihl, Ariel Marek, and Gaetano Basso. 2018. "Did California Paid Family Leave Impact Infant Health?" *Journal of Policy Analysis* 38 (1): 155-180. <https://onlinelibrary.wiley.com/doi/epdf/10.1002/pam.22101>.

⁸⁰ U.S. Bureau of Labor Statistics, 2019, "Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets." *U.S. Bureau of Labor Statistics Monthly Labor Review*, January, <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>.

As is illustrated in the experiences of other states, there are several variables that influence how many dollars would need to be contributed and placed into a trust fund from which benefits would be paid out to covered employees who qualify for paid family and medical leave. The total amount that would be required to maintain solvency of the trust fund dictates how the payroll tax rate that employers and employees would be required to pay into the fund.

The specifics of any enacting legislation would have a significant impact on the necessary amount to keep the trust solvent and likewise on the payroll tax rate. These determinants include:

1. **Eligibility requirements.** Expanding eligibility requirements will shift the duration and utilization rate of the program. Such considerations as definition of family members, minimum average earned income, and length of employment are all considerations when developing an economic model.
2. **Pool Size and Risk-** Several states that have employer contributions have exemptions for small businesses. The larger the pool of workers, the lower the risk of employees utilizing benefits, which can drive down individual contribution rates.
3. **The duration of paid leave allowed under the law.** This component will determine the maximum amount of time that a covered employee could take paid leave. As a result, increases to the duration of paid leave will increase the amount of funds needed to be contributed to the fund (likewise, decreases to the duration of paid leave will decrease the amount).
4. **The wage replacement rate that will determine the benefit amount.** Similar to the effect that the duration of paid leave has on the contribution rate, a more generous wage replacement rate will result in a greater amount of funds needed to be contributed to the fund, and vice versa. Additionally, the maximum benefit amount allowed under the law would also have a similar effect.
5. **Whether or not there is an annual maximum contribution amount.** Many states have implemented a ceiling on the amount of taxable wages or have outright capped the amount an individual is required to contribute.
6. **The framework that will determine the Commonwealth's role and responsibilities for implementing and administering the program.** Assuming that the administration of the program is self-funded using resources from the fund, it will be necessary to ensure that the incoming contributions are enough to offset the amount being paid to cover the administrative costs.

In addition to the variables that are controlled by the program framework set out in legislation, several factors that also affect these calculations. These factors are largely related to demographic and economic data, such as who would be covered by the program and their annual wages. Relatedly, the utilization rate of paid leave will impact these costs. The utilization rate

will need to be predicted in advance of benefits being officially paid out in order to garner the initial period of contributions. However, once benefits begin to be paid out, the contribution rate for programs in other states is typically based on the program's expenditure amounts and utilization in the previous year.

In order to quantify the precise tax burden that would be caused by a statewide paid family and medical leave program, the Commonwealth would need to procure an independent actuarial study. The actual premiums and amount necessary to be held in the fund would be based on these actuarial principles and, in out-years, on real usage and demand for the program. However, an initial estimation of this cost was calculated as part of this study to provide a preliminary understanding. This estimation uses BLS Average Annual Employment 2019 data, for which employment was 3,938,841 individuals. This data also indicates that for these employees, the average employee wage was \$60,200 and the total annual wages were \$237,119,277,133. In order to calculate an estimated amount of funding in the trust fund and contributions, certain assumptions needed to be made regarding the program's utilization rate and the average duration of leave taken. For the purposes of this estimation, these calculations assumed that the medical leave utilization would be 3 percent and that the family leave utilization rate would be 1 percent. Additionally, these calculations assumed that the average duration taken for medical leave would be eight weeks and for family leave would be ten weeks. Conversations with experts and staff in other states regarding the projections calculated by VEC for the 2020 Fiscal Impact Statement indicated that the average duration of leave was higher than would likely be expected and that the utilization rate was lower than would likely be expected. These assumptions were further based off of findings regarding other programs' estimated and realized utilization rates and durations.

The total, estimated amount needed for the trust is approximately \$1.2 billion. The estimated premium rate for this model would be .50 percent, which would be split 50-50 between employers and employees under the framework set out in the legislation introduced in the 2020 General Assembly Session. For example, an employee that earns \$60,000 annually would pay a contribution rate of .25 percent, which equal approximately \$2.89 per week or \$150.35 annually. The other .25 percent (or \$2.89 per week) would be covered by the employer of the covered individual.

Several states with paid family and medical leave programs that are jointly funded by employers and employees have taken steps to decrease the tax burden borne by small businesses. As described in Section 2 ("An Overview of Programs Implemented in Other States"), Massachusetts, Washington, and Oregon have all exempted small businesses from having to pay their share of premiums. However, their employees still contribute to the fund and are eligible to take paid leave after qualifying events. Massachusetts and Oregon exempt businesses from the payroll tax requirements if they have fewer than 25 employees while Washington exempts

businesses with fewer than 50 employees. It is important to note that both Washington and Oregon offer incentives to smaller employers who choose to contribute despite qualifying for the exemption. These incentives are intended to help offset technology and administrative costs.

The administrative costs to employers associated with paid family and medical leave programs are caused by the changes that would be necessary to ensure compliance with the law and the proper withholding of payroll tax contributions. The administrative costs to each employer will vary based on individual circumstances. Additionally, available data from other states illustrates this range of impacts. One study conducted by the New Jersey Business and Industry Association indicated that smaller businesses face higher administrative costs relative to other sized employers, with 54.7 percent of small businesses experiencing higher costs relative to 36 percent of medium-sized businesses and 41.2 percent of large businesses.⁸¹ **Such costs to Virginia employers are indeterminate.** These administrative costs are similar to those associated with other changes in payroll taxes that an employer is obligated to pay, such as deductions paid towards the unemployment insurance fund. Currently in the Commonwealth, when the payroll tax that is paid towards unemployment insurance changes in response to trust fund balances, employer layoff numbers and overall pool tax, employers must adapt. Oftentimes, this results in changes to the payroll system or software.

Lastly, there are some economic costs associated with potential business disruptions. These include the loss of an employee who takes leave, the need to hire and train a temporary employee to fill in, to pay for overtime for employees filling in, and sometimes to retrain returning employees. However, it should be noted that these costs are not solely and uniquely caused by the establishment of a statewide paid family and medical leave systems, but rather are costs inherently associated with any incident that causes an employee to take leave, paid or unpaid. The New Jersey Business and Industry Association study indicated that costs spent due to overtime pay had ranging effects on different sized employers, with 34.9 percent of small businesses, 73.1 percent of medium sized employers, and 59.4 percent of large employers experiencing increased costs due to overtime pay.⁸² These numbers are likely associated with the study's finding that New Jersey businesses overwhelmingly cover work for an employee on leave by temporarily assigning that work to other employees.⁸³ While there are certainly instances when these savings do not cover the complete cost of potential business disruptions,

⁸¹ Ramirez, Miriam, 2012, "New Jersey Business and Industry Association: Impact of Paid Family Leave on New Jersey Businesses," Bloustein School of Planning and Public Policy, <https://bloustein.rutgers.edu/wp-content/uploads/2012/03/Ramirez.pdf>.

⁸² Ramirez, Miriam, 2012, "New Jersey Business and Industry Association: Impact of Paid Family Leave on New Jersey Businesses," Bloustein School of Planning and Public Policy, <https://bloustein.rutgers.edu/wp-content/uploads/2012/03/Ramirez.pdf>.

⁸³ Ramirez, Miriam, 2012, "New Jersey Business and Industry Association: Impact of Paid Family Leave on New Jersey Businesses," Bloustein School of Planning and Public Policy, <https://bloustein.rutgers.edu/wp-content/uploads/2012/03/Ramirez.pdf>.

some businesses can offset some costs because they do not pay for the wages of employees while they are on paid leave.

Administrative Impact to the Commonwealth of Virginia (from the “2020 Fiscal Impact Statement” for House Bill 825, prepared by the Department of Planning and Budget)⁸⁴

It is anticipated that implementing the new family and medical leave program will have impacts on the Commonwealth’s technology infrastructure that are yet to be determined. Impacts are expected to occur for systems that manage time, labor, payroll, and benefits offered. The Commonwealth is currently in the process of developing the new Cardinal Human Capital Management (HCM) system, which is expected to be deployed by October 2021. Therefore, if any immediate changes to this system are necessary, such changes likely would cause significant disruption to the project schedule and cost.

The Department of Human Resource Management’s Personnel Management Information System (PMIS) and the Department of Account’s central payroll and leave system, Commonwealth Integrated Payroll Personnel System (CIPPS), will be decommissioned and are expected to be replaced by the new Cardinal HCM system in October 2021, based upon the current project schedule. Technology staff are currently dedicated to day-to-day operational systems maintenance and critical Cardinal transition tasks. Consequently, all labor-intensive system reconfigurations to these antiquated, legacy systems (PMIS and CIPPS) have been discontinued. Therefore, the systems changes that would be necessary to implement this legislation cannot be implemented in PMIS or CIPPS. Any system changes to the new Cardinal HCM system would need to wait until the new system is implemented to avoid disruption to the system development schedule.

In addition to these statewide systems, there are also multiple state agencies that use their own systems for time, labor, payroll, and benefits, including some that have been purchased with general fund appropriations and others that have been purchased with state non-general fund or federal fund revenues. A cost estimate for the impact to these agencies is currently indeterminate. The statewide administrative impact and impact to the Department of Human Resource Management and the Department of Accounts is also indeterminate.

⁸⁴ Department of Planning and Budget, 2020 Fiscal Impact Statement, House Bill 825, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+oth+HB825F122+PDF>.

Operating Plan

In conducting this study, the Secretary of Commerce and Trade and the Governor's Chief Workforce Advisor considered several options for how to best administer a statewide paid family and medical leave program. As is detailed in Section 2 ("An Overview of Programs Implemented in Other States), other states have implemented a variety of operating plans to administer their program, each of which is significantly influenced by their existing institutions and benefit programs. Some states—such as California and Rhode Island—built upon their existing temporary disability insurance programs to deliver paid family leave as well. Others—such as Washington state and the District of Columbia—incorporated the administration of their paid family and medical leave program into the responsibilities of the department that administers their unemployment systems, as they did not have the existing policy foundation from temporary disability insurance.

Based on the research of other states' programs as well as the existing resources and agency structures in the Commonwealth of Virginia, it is recommended that any statewide paid family and medical leave program be administered under the Virginia Employment Commission, but in a separate department from that which handles unemployment insurance. This option would provide the Commonwealth with the greatest cost-savings related to standing up the program's infrastructure by aligning the contributions system with the existing system as much as allowed by the U.S. Department of Labor.

Below is an operating plan for administering a statewide paid family and medical leave program, should such a program be enacted into law.

Currently, the Virginia Employment Commission (VEC) oversees a variety of U.S. Department of Labor programs such as the Virginia Unemployment Insurance Program (UI), Workforce Innovation Opportunity Act Title III Wagner Peyser, Jobs for Veterans State Grant, and Workforce Information Grants for States. VEC is a non-general fund state agency that receives all of its funding from the federal government and employer contributions into the Unemployment Insurance Trust Fund. The Virginia Unemployment Insurance Program is a joint state-federal program that provides cash benefits to eligible workers who have been dislocated from their jobs. Each state administers a separate unemployment insurance program, but all follow the same guidelines established in federal law.

By law, employers are required to pay 100 percent of all employees' unemployment insurance contributions to the VEC. Contributions are calculated based on an individual's wages and the employer tax rate, which can vary by pool tax, experience tax and fund building tax. The

Commissioner of the VEC sets the tax rates each year. Employers are familiar with the process of providing payroll data on wages and calculating contributions that are paid quarterly. Paid family and medical leave divisions such as claims, contributions, compliance, fraud, technology, appeals, and outreach are very similar divisions to the current organization structure of VEC.

Similar to unemployment insurance, the Commissioner of the VEC should provide administrative oversight over the Paid Family Medical Leave Program. The Commissioner, Deputy Commissioner and the Confidential Assistant for Policy and Legislation are appointed by the Governor every four years. **To advise the Commissioner, a Paid Family and Medical Leave Board should be established. This Board may include small and large business owners, business organizations, General Assembly members, government officials, labor, and citizen members. Members of this Board would be appointed by the Governor and General Assembly.**

An office of the Paid Family and Medical Leave Ombuds should be created and physically located at the Virginia Employment Commission. The Ombuds would be appointed by the Governor and serve as an independent third party to investigate, report, and help settle complaints from employers and employees. This position will be lead staff to the Paid Family and Medical Leave Board.

The Paid Family Medical Leave Program will be overseen by a Deputy Commissioner who reports directly to the Commissioner. Due to similarities between the Unemployment Insurance Program and Paid Family Medical Leave, many roles and responsibilities between the programs will be similar. Leveraging the agency's current talent and reducing duplicative services will be a cost savings for both benefits programs. The US DOL establishes guidelines that the unemployment insurance program must follow and combining funds, staff and technology is prohibited.

The following departments are recommended to run an effective and efficient Paid Family Leave Program:

- *Contributions:* This department will work with employers on calculations of employer and employee contributions, collect payroll data on wages of individuals, collect contributions quarterly from employers and employees, cross check data collected for UI, and provide outreach and support to employers.
- *Benefits/Claims:* This department would verify benefit determinations, collect needed documentation, notify employers of employee requests, process claims, and distribute benefits through electronic transfer or other means. To support this department, a call center will be contracted to handle questions and claims submitted by phone.
- *Compliance/Fraud:* Investigators will be hired to review cases that are fraudulent and make sure businesses are abiding the law.

- *Appeals*: Employees that are denied benefits may enter into an appeals process.
- *Technology*: A new technology will be created to accept employer and employee contributions, access benefit applications, upload documents, distribute benefits, and communicate with employees on balances, payouts, and denials. Initially, this department will include leadership and potentially contracted staff to develop and integrate a new system.
- *Outreach/Communications*: This department will communicate with employees and employers about annual rate changes, develop and update FAQs and general resources, engage communities that are exempted from contributions and encourage participation in the program, and provide reports to the Governor and General Assembly members.
- *Audit/Data Collection*: An internal auditor will review internal processes, evaluate compliance, and inspect a random sample of benefits for accuracy. A report from the internal auditor will be presented to the Board annually. Data collection will be needed to set annual rates, examine uptake trends, and calculate any additional economic impacts.
- *Administration*: Accounting, human resources, maintenance, procurement and other administrative responsibilities will be needed and can be shared with other divisions at VEC.

Staffing Needs

An estimated 250 people are needed to administer a successful Paid Family and Medical Leave Program, based on the average number of VEC employees who work on the unemployment system. Overall, administrative tasks such as accounting, human resources, and procurement can be shared amongst the other divisions at VEC. Unlike the Paid Family Leave Program, unemployment insurance staffing needs can shift with the economy. By leveraging some of VEC's current staff in similar departments, cost savings would be achieved.

An alternative to fully staffing the Paid Family and Medical Leave Program would be to contract with vendors to provide services such as benefit claims processing, call center work, and technology support. Connecticut is preparing to use this model for cost savings. This option could be more affordable if more states implement PFML programs using a shared service model.

Paid Family and Medical Leave Trust Fund

The Paid Family and Medical Leave Trust Fund should be created in the state treasury as a special, nonreverting fund and established on the books of the Comptroller. This fund will receive employer and employee contributions, collect interest and earnings, disburse benefits, and support start-up and ongoing administrative costs. **To determine the full amount needed in the Trust, a full, independent actuarial study should be conducted within the first six**

months after the bill has passed to ensure that the Program has sufficient time to project the necessary funds for a solvent trust and determine the payroll tax rate necessary to achieve such amount.

Annually, no later than December 1, the Commissioner shall calculate and announce the annual employee and employer contribution rate for the following calendar year. The annual contribution rate should be calculated so the Trust's total amount would be equal or greater than 140 percent of the previous year's expenditures for benefits and administrative costs.

Both covered employees and employers should jointly fund the program. Employers are required to deduct from employees' wages the amount established by the Commissioner or a lesser percentage if agreed upon by the employer and employee. Both employee and employer contributions are remitted to the Fund through a technology system quarterly. **Premiums should be paid into the Paid Family and Medical Leave Trust at least one year in advance of awarding benefits.**

To develop and build the infrastructure of the Program, several states have used state treasury loans to pay for new technology and start-up staffing costs. These loans are paid back within the first several years of the program through increased contribution rates established through actuarial studies.

The Trust should also provide **grants that support eligible small businesses by offsetting some of the administrative, technology, and personnel replacement costs** that are incurred due to the implementation and utilization of a statewide paid family and medical leave program.

Technology Needs

In 2019, the VEC started a modernization of its technology system that was disrupted by the unprecedented number of claims in March 2020 due to COVID-19. This upgrade will create a more citizen-centered technology used to track claims and submit documentation. The new upgrades and technology might provide similar functionality needed for the Paid Family and Medical Leave technology and can be replicated to build a similar program.

After an initial conversation with the U.S. Department of Labor, the current unemployment insurance tax system that collects contributions can be used to collect Paid Family Medical Leave contributions. These contributions will come from employers through one technology and then be distributed into the two different trust funds. A new technology will need to be built to file a claim, upload documentation and finance information, track progress of approval and benefit allocations, distribute funds and communicate through multiple means such as text, chat and email.

Outreach and Education

Many states and workgroup members agreed that developing an outreach and education plan is a must. This plan should include multiple ways to communicate to employers and employees about the new benefit system, potential contributions, timeline, and eligibility requirements.

Leveraging connections of chambers of commerce, trade associations, nonprofit organizations, and labor unions, a statewide communication strategy should be developed and implemented.

Other states have required in regulations or law that an employer must communicate to employees about the new Paid Family and Medical Leave Program. This communication could include written notice upon hiring and annually, displaying and maintaining a poster with employee rights, and having employees sign documents demonstrating an understanding of the benefits system. All materials need to be in multiple languages and in an accessible form for people with disabilities.

Regulations and Business Practices

The Virginia Employment Commission will promulgate regulations to implement and operate the paid family and medical leave program. This rulemaking process will include extensive public comment from businesses and employees. This process will be essential for operationalizing the program set out in language in a manner that fits the needs of both employees and employers.

Many states that were interviewed encouraged any state developing a new Paid Family and Medical Leave program to **create policies, procedures, and business practices that are similar to other programs such as the Federal Family and Medical Leave Act and unemployment insurance**. This does not necessarily mean the same guidelines and eligibility, but using the same terminology, forms, technology, and reporting will help employers navigate the new program.

Enforcement/Civil Penalties

Should the Commonwealth adopt certain exemption and waiver policies similar to Washington, Oregon, and Massachusetts, agency staff will develop processes for ensuring proper compliance with paid family and medical leave policies under the Program. This could include **reviewing waivers submitted from employers that provide paid time off programs that are equal to or more generous than the Program**. These procedures could also include **oversight of small businesses that may be exempt from paying the employer share of the contribution** to guarantee proper compliance with such exemption. The specific details of such procedures—including any reporting and documentation requirements—can be established and set out in regulations to best fit the needs of employers and employees.

Oversight and Program Integrity

In order to guarantee and verify the necessity of paid leave claims under the program, employees will be required to submit detailed documentation along with their claim. As is practiced in other states with existing programs, claims must include medical certification forms from a physician or practitioner indicating a determination that the employee—or the family member of an employee—has a serious medical condition that qualifies them for a paid leave. This documentation should indicate the duration of leave that is necessary so that the amount of paid leave that is approved is specific to the employee’s true need.

Other states have articulated that fraud is not a rampant problem, and employing these best practices in the Commonwealth would provide an effective safeguard against abuse of the program. These documentation requirements, coupled with the development of an efficient system for thoroughly reviewing claims and staff dedicated to investigating and eliminating any suspected cases of abuse, will ensure the program’s integrity.

Reporting

By December 1 each year, the Commissioner shall submit a report to the Governor and General Assembly which should include:

1. The total amount of family and medical leave insurance benefits paid by the Commission during the previous fiscal year;
2. The total amount remaining in the Fund at the close of such fiscal year;
3. The total amount equal to 140 percent of the previous fiscal year's expenditure for family and medical leave insurance benefits paid and for the administration of the family and medical leave insurance program;
4. The amount by which the total amount remaining in the Fund at the close of the previous fiscal year is less than or greater than 140 percent of the previous fiscal year's expenditure for family and medical leave insurance benefits paid and for the administration of the family and medical leave insurance program; and
5. The amount by which the contribution rate shall be adjusted to ensure that the Fund shall maintain or achieve an annualized amount of not less than 140 percent of the previous fiscal year's expenditure for family and medical leave insurance benefits paid and for the administration of the family and medical leave insurance program.

Implementation Plan

The following implementation plan has been developed after consulting and researching other states who have implemented paid family and medical leave programs with similar administrative schemes. The implementation timeline detailed below spans three years and is designed to ensure a smooth launch of the program for the Commonwealth, employers, and employees. However, one consistent theme from discussions with other states is the value in allowing for ample time to develop the program’s infrastructure and adapt to changing circumstances. The complexity and details of any final legislation or policy could feasibly alter the design of an implementation plan.

Fiscal Year 1 of the implementation timeline focuses primarily on ensuring the key department leadership is in place to commence hiring of personnel responsible for managing communications and the contributions system. Additionally, Fiscal Year 1 will see the establishment of a Paid Family and Medical Leave Board that will serve as an advisory body. The various perspectives represented on this body—ranging from business and labor representatives to government officials and legislators—will provide essential insights to the implementation of the Program, the development of regulations, and the launching of a communications plan to educate businesses and workers of their responsibilities and the Program.

Fiscal Year 2 of the implementation timeline shifts the focus to building out the benefits system and hiring the necessary personnel to manage benefits and claims. Division staff will continue to execute the communications and outreach plan in order to raise awareness of the program, answer questions, and receive feedback from stakeholders on the implementation of the program. Also, in Fiscal Year 2, covered employees and employers will begin to contribute to the Fund beginning January 1.

Fiscal Year 3 of the implementation timeline consists of the final preparations for the launch of the benefits system and the full implementation of a statewide paid family and medical leave program. This third phase of hiring focuses on meeting the remaining programmatic needs of the Department necessary for successful administration and oversight of the benefits program.

Fiscal Year 1	Personnel: Phase One of hiring prioritizes hiring agency leadership that will be essential in overseeing the implementation of a paid family and medical leave program. This includes hiring: <ul style="list-style-type: none">● A Deputy Commissioner of the Division of Paid Family and Medical Leave● A director of communications and external affairs
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- A director to oversee the development and implementation of the contributions and benefits systems
- An Ombuds serves as an independent third party who investigates, reports, and helps settle complaints from employers and employees. Additionally, the Ombuds will staff the Paid Family and Medical Leave Board
- Staff to review waivers from employers, if the program includes certain exemptions for employers who have equal or more generous leave options

In addition to these leadership personnel hires, Phase One of hiring will also include the onboarding of staff necessary to:

- Develop and run the contributions systems
- Launch a communications and outreach plan tailored to covered employers and employees

Procurement of New Contracts: There will be several areas in which the Commonwealth will need to initiate the RFP process for contracts that meet the needs of the program.

- Independent Actuary Study: Immediately beginning this study will ensure that the authority has sufficient time to project the necessary funds for a solvent trust and determine the payroll tax rate necessary to achieve such an amount
- IT Developers: IT developers will be necessary to develop contributions systems

Public Education and Outreach Campaign: In order to ensure that employers and employees are aware of the new program, their responsibilities under the program, and the implementation timeline, it is essential to develop and execute an effective public education campaign. This includes but is not limited to:

- A notice to employers and employees alerting them of the program
- A website with answers to frequently asked questions, a detailed timeline, and resources to assist businesses with any transition/changes
- Outreach to employers and employees for town halls, webinars, and other engagement opportunities to offer assistance, answer questions about the program, and solicit feedback to inform the development of regulations

	<p>Paid Family and Medical Leave Board: This board will serve as an advisory body to the Commissioner. It shall include small and large business owners, business organizations, General Assembly members, government officials, labor, and citizen members. Members of this board will be appointed by the Governor and General Assembly. The Ombuds will serve as the lead staff to the advisory body. This board will commence regular meetings to advise the Commissioner on the implementation of the paid family and medical leave program.</p> <p>Regulations: The Virginia Employment Commission will begin promulgating regulations to implement and operate the paid family and medical leave program. This rulemaking process will include extensive public comment from businesses and employees. This process will be essential for operationalizing the program set out in language in a manner that fits the needs of both employees and employers. The Commission will finalize regulations by the conclusion of Fiscal Year 1.</p>
<p>Fiscal Year 2</p>	<p>Personnel: Phase Two of hiring focuses primarily on building out the necessary staff responsible for managing the contributions and benefits systems.</p> <p>Contracts: There will be several areas in which the Commonwealth will need to initiate the RFP process for contracts that meet the needs of the program.</p> <ul style="list-style-type: none"> ● <u>IT Developers:</u> It will be necessary to contract out for the development of a claims management and processing system to handle benefits ● <u>Contact Center:</u> The Commonwealth will need to contract out for a call center to assist customers with claims <p>Implement the Contributions System: The Commission will launch the contributions system on January 1 of Fiscal Year 2. In preparation, the Commissioner will determine the contribution rate at which premiums will be assessed for the upcoming calendar year based on the independent actuarial study. The Commissioner shall announce this rate by October of Fiscal Year 2. On January 1, the</p>

	<p>Commission will assess premiums to employees and employers.</p> <p>Public Education and Outreach Campaign: The communications and external affairs staff will continue to execute the public education and outreach campaign to spread awareness of the program and educate employers and employees of their responsibilities. In addition to the ongoing outreach efforts from Fiscal Year 1, this campaign will engage with community and advocacy organizations to inform minority and hard-to-reach communities about the benefits that are available under this program to raise awareness amongst these populations.</p>
<p>Fiscal Year 3</p>	<p>Personnel: Phase Three of hiring focuses on meeting the remaining programmatic and oversight needs. This includes:</p> <ul style="list-style-type: none"> ● Staff to review submitted claims and the required documentation validating eligibility ● Staff to ensure program integrity and conduct audits ● Staff to review and process appeals and disputed claims <p>Implement the Benefits System: The Commission will launch the benefits system on January 1 of Fiscal Year 3. In preparation, the Commission will develop and make publicly available an online tool that employees can use to calculate benefits.</p> <p>Assess Trust Solvency: The Commissioner will assess the solvency of the trust and will report on the collection of contributions. If it is necessary to adjust the contribution rate at which premiums will be assessed, the Commissioner will announce such change by December 1 and the adjustment will be made effective January 1.</p> <p>Public Education and Outreach Campaign: The communications and external affairs staff will continue to execute the public education and outreach campaign to spread awareness of the program and educate employers and employees of their responsibilities.</p>

An Overview of Resources Necessary for Implementation

In order to determine what resources are necessary to implement the statewide program, the Secretary and the Chief Workforce Advisor studied the implementation experiences of other states through resources published by those states, conversations with staff at those states' agencies, and published research. The findings of this research along with discussions with staff at the Virginia Employment Commission informed the estimated implementation costs to stand up and launch a statewide paid family and medical leave program. As detailed in the table below, the estimated startup cost to implement this program during Year 1 and Year 2 are \$55,600,000. **These startup costs could be paid for using a treasury loan that the Program would pay back to the Commonwealth.**

This approach—which has been taken by other states including Washington, Connecticut, and Oregon—offers a budget-neutral approach to standing up and implementing the program. **The fiscal impact statements for each of these programs along with details regarding the startup loans that they were appropriated by their respective legislatures are included in the appendices.** It is important to note that given each state's differences in infrastructure, existing personnel, and technology needs, that each are not precisely comparable to what specific resources the Commonwealth would need to build such a program.

In the long-run, any paid family and medical leave program would be self-funded by the contributions paid into the Fund. This includes repaying the treasury loan back to the Commonwealth, paying benefits to approved claimants, and also funding the ongoing costs needed for VEC to administer the program. VEC anticipates that ongoing operational costs would be approximately \$33.5 million annually, which is comparable to the ongoing costs the agency incurs to administer the federal Unemployment Insurance Program. An additional \$10 million is estimated to cover the cost of a grant assistance program for small businesses.

Estimated Year 1 Budget		
Resource	Cost	Description
Independent Actuarial Study	\$300,000	A full, independent actuarial study should be conducted within the first six months after the bill has passed to ensure that the Program has sufficient time to project the necessary funds for a solvent trust and determine the payroll tax rate necessary to achieve such amount.

Technology	\$25,000,000	This cost would provide funding to develop the IT infrastructure necessary for developing the benefits and contributions systems.
Personnel	83 FTEs, \$5,000,000	VEC estimates that a staff of approximately 250 individuals will be needed for this program. These hires should be phased in over the course of the three years of the implementation plan as appropriate and needed for the implementation and administration of each program component. This includes call center staff.
Operations and Maintenance	\$5,000,000	This cost accounts for other operational expenses VEC would incur, including for facilities, telecommunications, postage, legal services, etc.
Estimated Year 2 Budget		
Technology	\$8,000,000	This cost would provide funding to develop the IT infrastructure necessary for developing the benefits and contributions systems.
Personnel	166 FTEs, \$10,000,000	VEC estimates that a staff of approximately 250 individuals will be needed for this program. These hires should be phased in over the course of the three years of the implementation plan as appropriate and needed for the implementation and administration of each program component. This includes call center staff.
Operations and Maintenance	\$2,300,000	This cost accounts for other operational expenses VEC would incur, including for facilities, telecommunications, postage, legal services, etc.
Estimated Startup Cost of a Treasury Loan for Year 1 and Year 2:	\$55,600,000	
Estimated Ongoing Costs		
Personnel	\$14,000,000	This cost accounts for salaries and benefits for personnel administering the Program. VEC estimates that it would need 250 FTEs once the Program is fully implemented and operation, which is comparable to the number of personnel necessary to administer the

		federal Unemployment Insurance Program. This includes call center staff.
Technology	\$16,000,000	This cost accounts for ongoing IT costs to cover anticipated VITA expenses, call center systems, and other IT Services.
Operational Expenses	\$3,500,000	This cost accounts for other operational expenses VEC would incur, including for facilities, telecommunications, postage, legal services, etc.
Small Business Grant Assistance Program	\$10,000,000	This is an estimated cost of a grant program to support small businesses. As the program is funded out of the trust, the funding dedicated to this program could be adjusted to meet demand.
Estimated Ongoing Cost:	\$43,500,000	

Existing COV Policies and Benefits

The Fiscal Impact Statement produced for House Bill 825 (Carroll Foy, 2020) outlines the various impacts that this legislation would have to other benefit programs offered to public employees in the Commonwealth.⁸⁵ Other state benefits are absent from that Fiscal Impact Statement, but worthy of flagging, such as the Commonwealth’s existing parental leave policy (§ 2.2-1210), which provides eligible employees with 320 hours of parental leave and receive full pay as well as the Commonwealth’s traditional sick leave policy.

After reviewing existing policies—including, but not limited to, the Commonwealth’s traditional sick leave policy, the Virginia Sickness and Disability Program, the Virginia Locality Disability Program, and the Commonwealth’s parental leave program—this study suggests that future deliberations regarding a statewide paid family and medical leave proposal should consider how such a program would interact with existing state policies and benefits. State agencies should not be exempted from full benefits, but there should be discussion around how existing state benefits may fit into the policy. (Department of Planning and Budget 2020)

⁸⁵ Department of Planning and Budget, 2020 Fiscal Impact Statement, House Bill 825, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+oth+HB825F122+PDF>.

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Appendices Overview

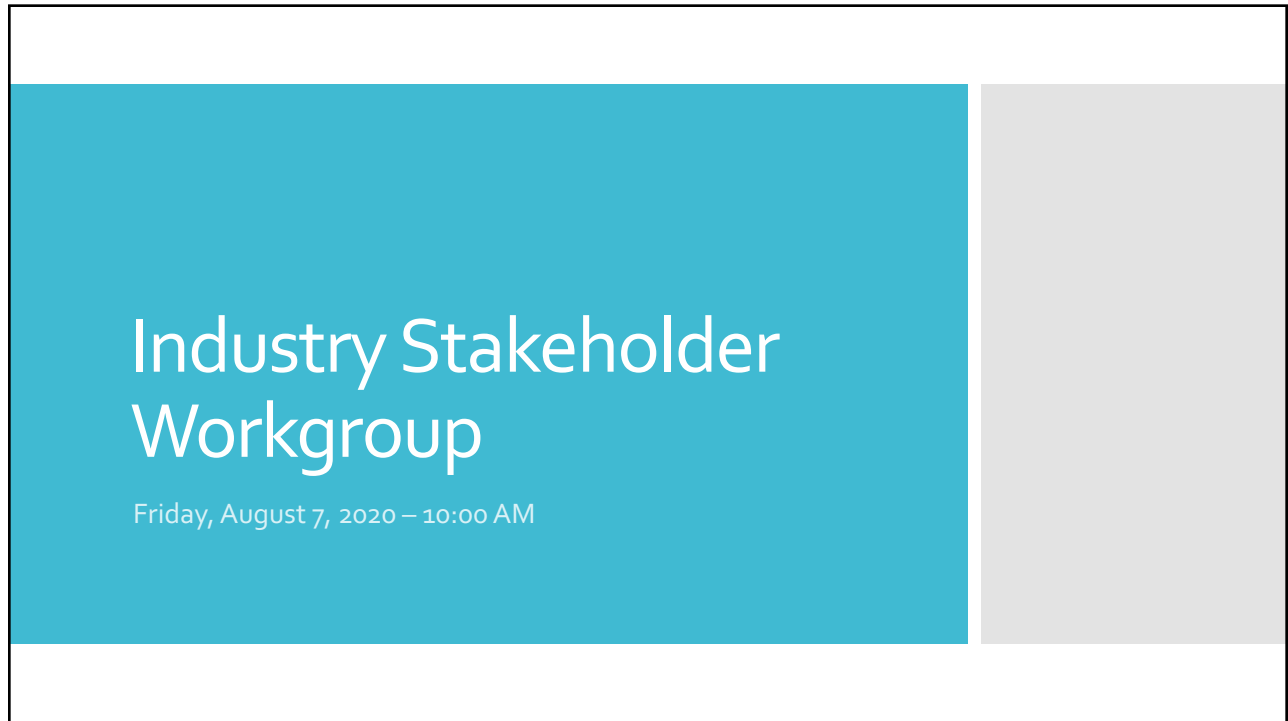
- Appendix A: Copy of the Budget Language
- Appendix B: Workgroup Slideshow Presentations
 - Meeting 1: Slideshow Presentation
 - Meeting 2: Slideshow Presentation
 - Meeting 3: Slideshow Presentation
- Appendix C: Survey/Public Comment Summary
- Appendix D: Links to Relevant Fiscal Impact Statements
- Appendix E: Methodology for Estimating Contributions

Appendix A: Copy of the Budget Language

D.1. The Chief Workforce Development Advisor and Secretary of Commerce and Trade are hereby directed to study the development, implementation and costs of a statewide paid family and medical leave program for all employers including the Commonwealth of Virginia. In conducting this study, the designated executive branch officials shall: (i) research other states that have fully implemented paid family and medical leave; (ii) quantify economic impact on businesses and workers if a paid family and medical leave was implemented; (iii) develop an operating plan which includes designated agency or entity, staffing needs, technology requirements, implementation timeline and business practices; (iv) identify resources needed to implement a statewide program; and (v) research start up loans for paid leave programs in other states and loan payback. Such study shall be reported to the Governor and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees on or before September 30, 2020.

2. In completing the study required in paragraph D.1. of this item, the Chief Workforce Development Advisor and Secretary of Commerce and Trade shall convene a workgroup of industry stakeholders. Such stakeholders may include, but not be limited to, representatives from small business owners, chambers of commerce, the insurance industry, labor, and health care.

Appendix B: Workgroup Slideshows

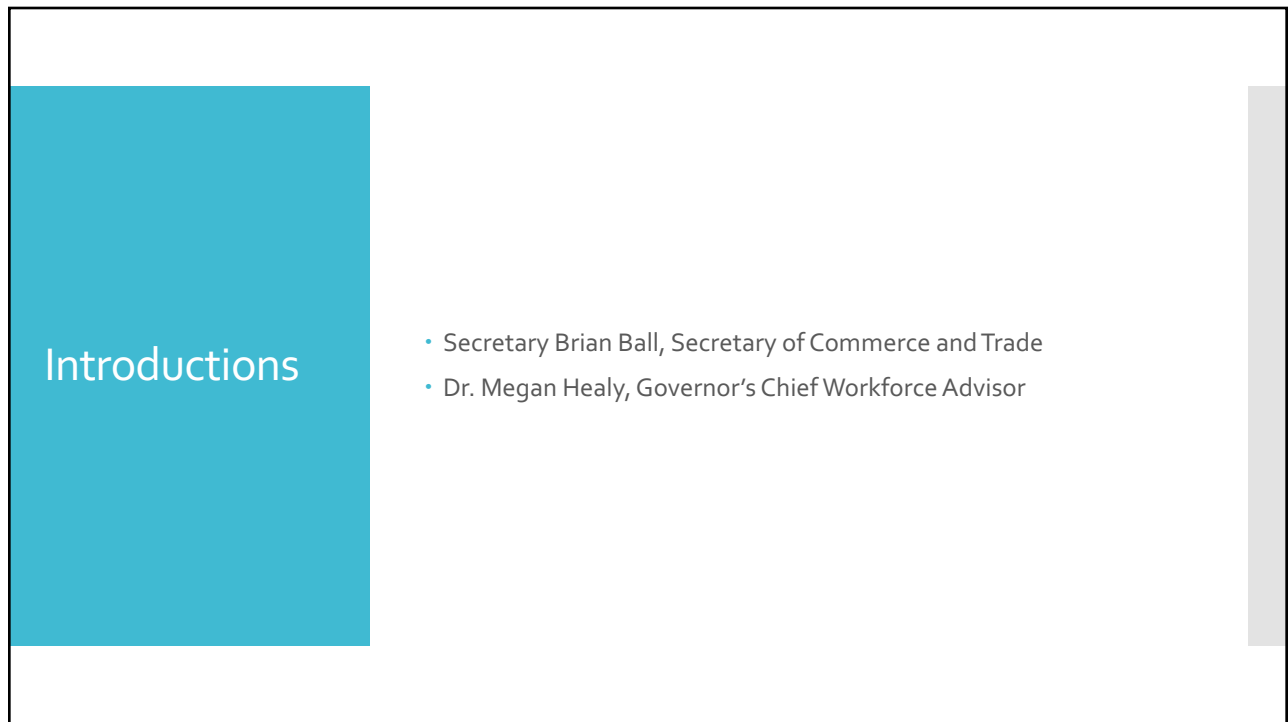


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Industry Stakeholder Workgroup

Friday, August 7, 2020 – 10:00 AM

1



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Introductions

- Secretary Brian Ball, Secretary of Commerce and Trade
- Dr. Megan Healy, Governor's Chief Workforce Advisor

2

Budget Language

- The Chief Workforce Development Advisor and Secretary of Commerce and Trade are hereby directed to study the development, implementation and costs of a statewide paid family and medical leave program for all employers including the Commonwealth of Virginia. In conducting this study, the designated executive branch officials shall:
 - (i) research other states that have fully implemented paid family and medical leave;
 - (ii) quantify economic impact on businesses and workers if a paid family and medical leave was implemented;
 - (iii) develop an operating plan which includes designated agency or entity, staffing needs, technology requirements, implementation timeline and business practices;
 - (iv) identify resources needed to implement a statewide program; and
 - (v) research start up loans for paid leave programs in other states and loan payback.
- Such study shall be reported to the Governor and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees on or before September 30, 2020.

3

Budget Language

- In completing the study required in paragraph D.1. of this item, the Chief Workforce Development Advisor and Secretary of Commerce and Trade shall convene a workgroup of industry stakeholders. Such stakeholders may include, but not be limited to, representatives from small business owners, chambers of commerce, the insurance industry, labor, and health care.

4

Role of the Workgroup

- As Secretary Ball and Dr. Healy conduct their study and write their report, they will be engaging with the industry stakeholder workgroup as resource that can provide unique perspectives.
- Secretary Ball and Dr. Healy will utilize this group and each participant's networks to gather insights from the individuals that would be affected by a Paid Family and Medical Leave program.
- The thoughts and discussions of the workgroup participants will help inform Secretary Ball and Dr. Healy's study as they research the elements outlined in the budget language.

5

What is Paid Family and Medical Leave?

- **Paid Family and Medical Leave** typically provides long-term leave due to an employee's serious illness or medical condition, the need to care for an ill family member, and parental leave when one has a new child.
- PFML usually takes the form of an **insurance program** that is paid into by workers and/or employers. Eligible employees can draw down partial wage replacement while on leave.
- PFML is different from both the **Family and Medical Leave Act** and **Paid Sick Leave**.
 - FMLA provides unpaid leave for family and serious medical reasons at private sector employers with 50 or more employees, public agencies, and K-12 schools.
 - Paid Sick Leave laws allow employees to accrue paid sick leave hours that they can use typically for short time illnesses. Laws vary by state, but often allow workers to accrue between 24 and 72 hours.

6

An Overview of the National Landscape

- Kristin Henshaw, Mercer
- Tom DeSimone, Mercer

7

Review of Past Legislation

- Senate Bill 770
 - Patrons: **Boysko**, Hashmi, McClellan, McPike, and Morrissey
 - Action: Passed by indefinitely with a letter
- HB825
 - Patrons: **Carroll Foy**, Helmer, Hurst, Kory, Ayala, Convis-Fowler, Hope, Jenkins, Keam, Rasoul, Samirah, Sickles, Simon, Simonds, Wampler
 - Action: Passed Labor and Commerce and left in Appropriations

8

2020 Legislation: Eligibility

- Individual who:
 - Is caring for a new child during the first year after birth, adoption or placement
 - Is caring for a family member with a serious health condition
 - Has a serious health condition that makes the covered individual unable to perform the functions of the position of such employee
 - Is caring for a covered service member who is the covered individual's next of kin or other family member
 - Is eligible for qualifying exigency leave arising out of the fact that a family member of the covered individual is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces

9

2020 Legislation: Duration and Amount Benefits

- Duration
 - 12 weeks
 - Starts immediately with no waiting period
 - First payment of benefits shall be made to an individual within two weeks after claim is filed
- Amount
 - 80 percent of covered individual's average weekly wages during the 12 months preceding or 80 percent state average weekly wage if employed less than a year
 - Shall not be less than \$100 per week

10

2020 Legislation: Contribution

- Payroll contribution rates are set by the Commissioner of the Virginia Employment Commission annually
- Each employer shall deduct up to 50 percent from the employee
- Self-employed person may elect coverage for an initial period of not less than three years

11

2020 Legislation: Protections and Retaliation

- Any covered individual who takes family and medical leave shall be restored by the employer to the position held by the covered individual or to an equivalent position
- During leave, the employer shall maintain any health care benefits. The individual will continue to pay the covered individuals share of the cost of health benefits
- An employer shall not take retaliatory personnel action or otherwise discriminate against an individual who requests, files, applies for or uses family and medical benefits

12

Discussion

- What is your initial reaction? How would this impact your business, workers, or stakeholder community?
- Do any of you already provide these benefits? All or some?
- What are the biggest strengths? Weaknesses?
- What's missing?

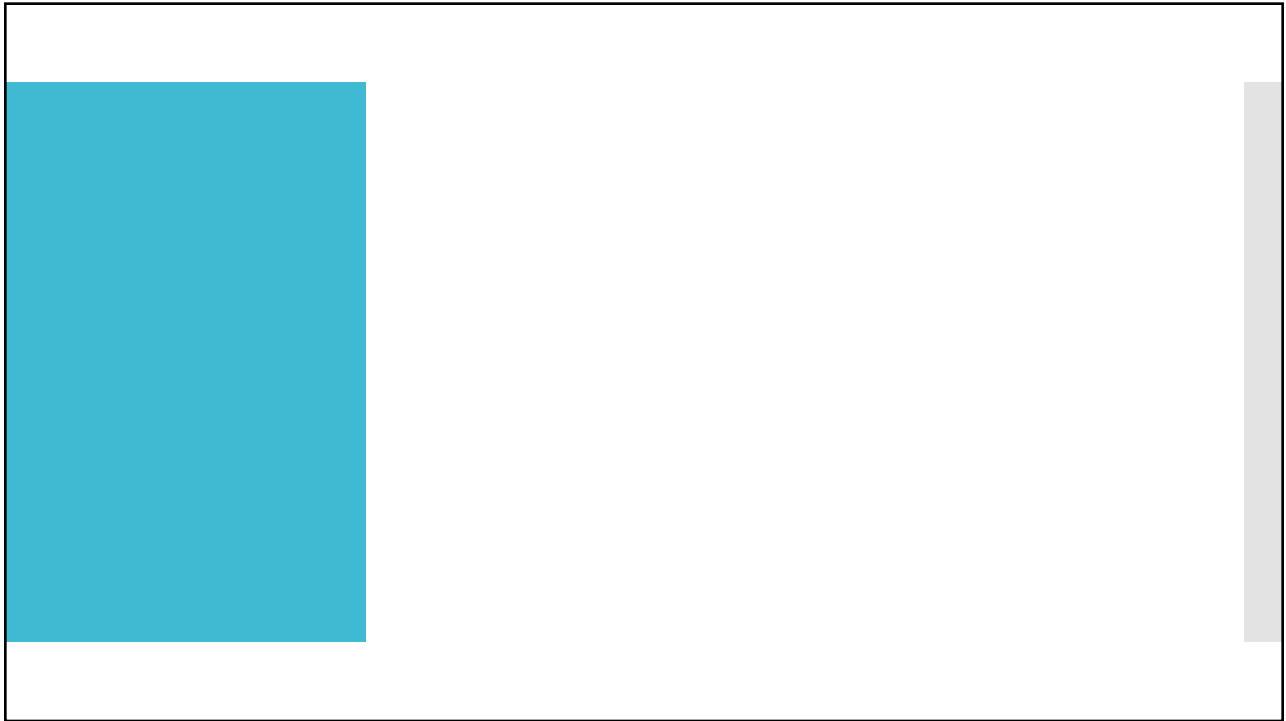
13

Upcoming Meetings (Tentative)

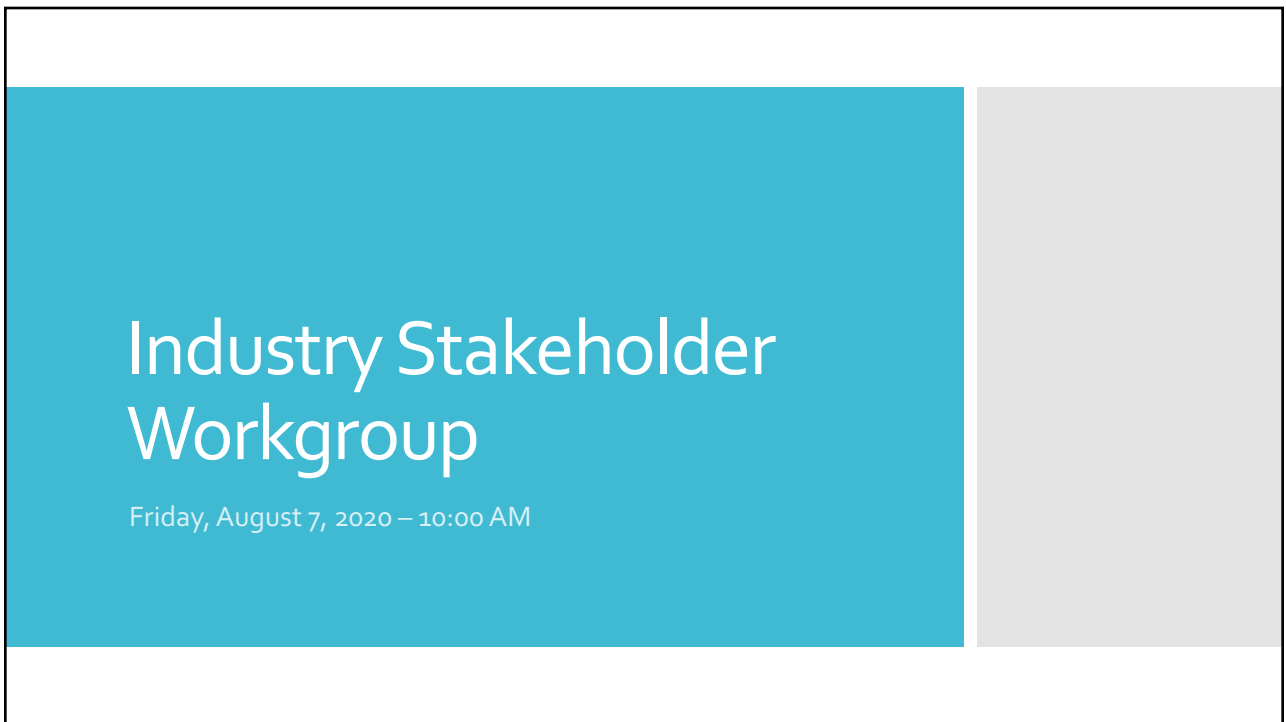
These dates are still tentative, particularly in light of the upcoming Special Session of the General Assembly.

- Friday, September 4, 2020 at 11:00 AM
- Monday, September 21, 2020 at 1:00 PM

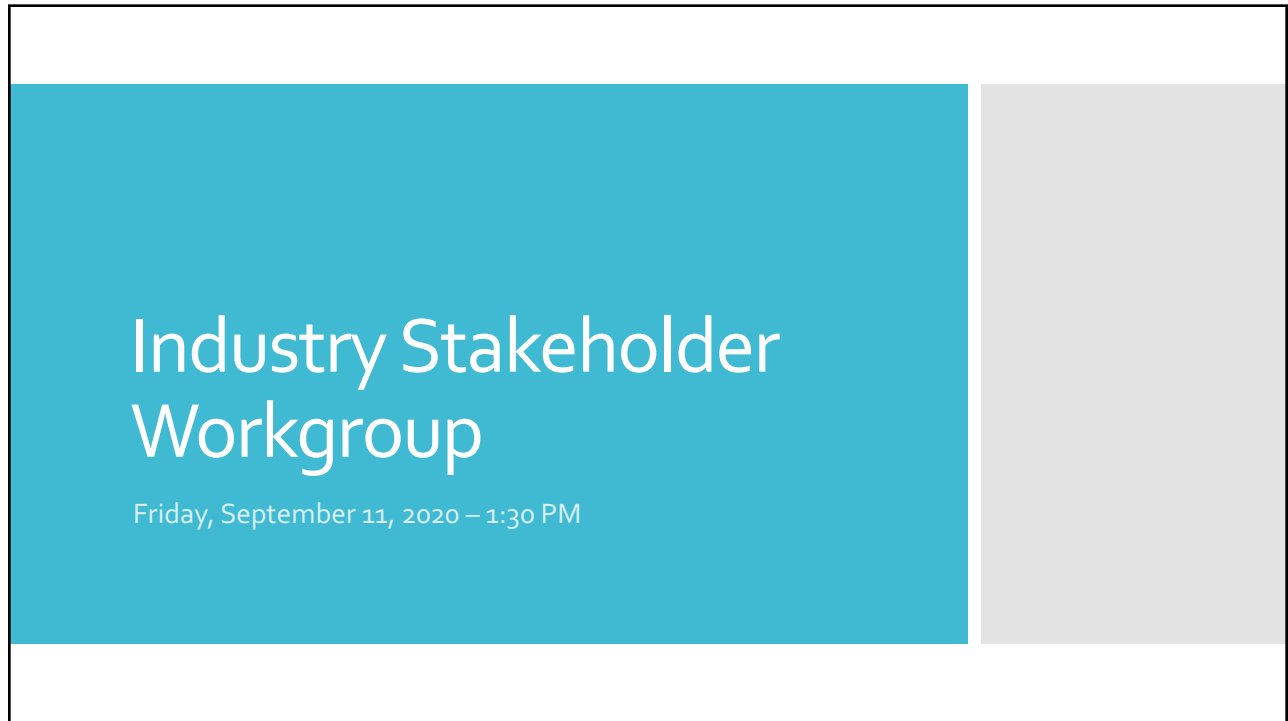
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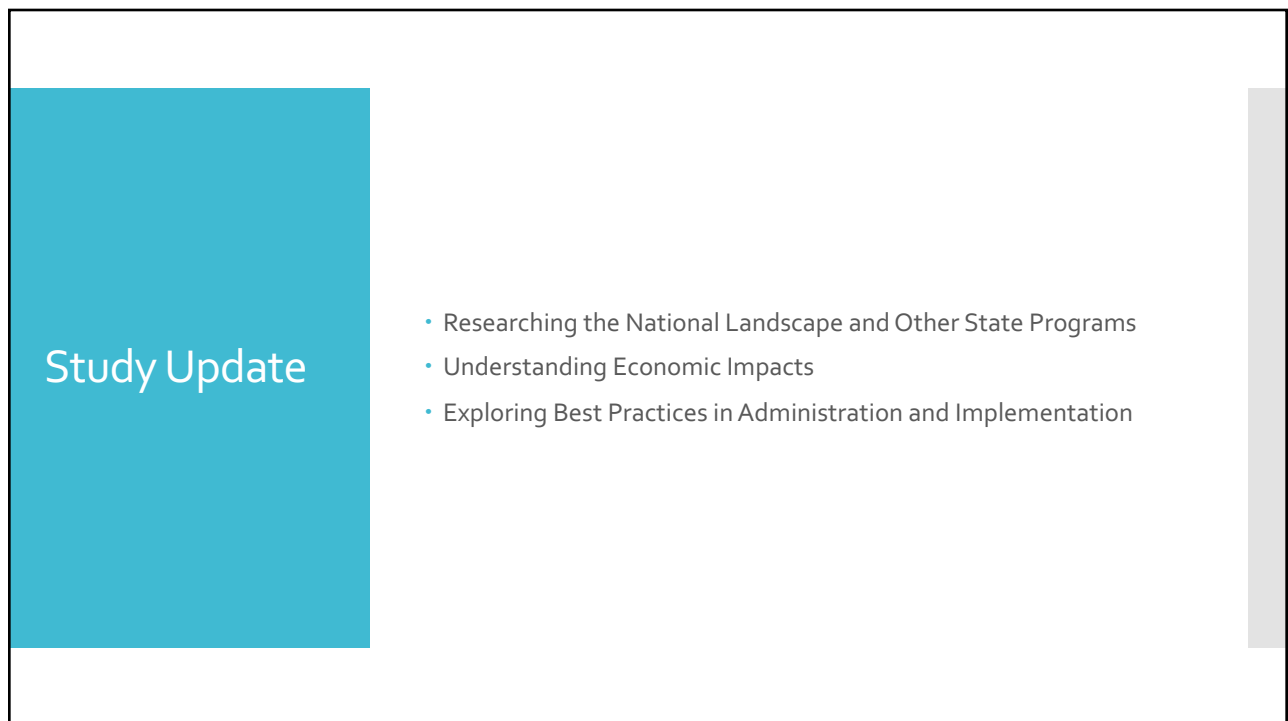


Industry Stakeholder
Workgroup

Friday, September 11, 2020 – 1:30 PM

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1



Study Update

- Researching the National Landscape and Other State Programs
- Understanding Economic Impacts
- Exploring Best Practices in Administration and Implementation

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2

Study Update

- National Landscape and State-by-State Research
 - Reviewing laws and frameworks
 - Discussing programs with other states and administering agencies
 - Currently engaged in conversations with Massachusetts, Washington, Connecticut, Rhode Island, D.C. and Oregon

3

Understanding Economic Impacts

- Benefits
 - Retention
 - Productivity
 - Participation
- Costs
 - Contributions
 - Administrative costs
 - Possible disruptions to business (costs associated with hiring temporary replacements, etc.)

4

Understanding Economic Impacts

- Understanding Economic Impacts - Contributions
 - California
 - Employee Funded – 1 percent of employee's first \$118,371 of wages
 - Connecticut
 - Employee Funded – 0.5 percent of employee's first \$132,900 of wages
 - Rhode Island
 - Employee Funded – 1.1 percent of employee's first \$71,000 of wages

5

Understanding Economic Impacts

- Understanding Economic Impacts - Contributions
 - District of Columbia
 - Employer Funded – 0.62 percent of the wages of each of its covered employees
 - No cap

6

Understanding Economic Impacts

- Understanding Economic Impacts – Contributions
 - Massachusetts
 - Employee and Employer Funded – Premium rate is 0.75 percent of wages of employee's first \$132,900
 - Family Leave is 100 percent employee funded
 - Medical Leave is 40 percent employee funded; 60 percent employer funded
 - Employers with fewer than 25 employees are exempt from paying the employer contribution
 - Oregon
 - Employee and employer funded – 1 percent of wages of employee's first \$132,900
 - Employers with fewer than 25 employees are exempt from paying the employer contribution
 - Washington
 - Employee and Employer Funded – 0.4 percent of employee's first \$132,900
 - Family Leave is 100 percent employee funded
 - Medical Leave is 45 percent employee funded; 55 percent employer funded
 - Employers with fewer than 50 employees are exempt from paying the employer contribution, but are eligible to receive state assistance if they do contribute.

7

Understanding Economic Impacts

- As seen in the experiences of other states, the potential costs of any PFML program are largely determined by specific policy details, including
 - How contribution shares are divided
 - Payroll tax rate (dependent upon certain variables to maintain solvency in the Fund from which benefits are paid)
 - Caps on contributions
 - Amount of benefits and duration of leave
 - Whether or not exemptions / waivers are included
 - State operations

8

Study Update

- Exploring Best Practices in Development, Operations, and Implementation
 - Different approaches to administering such programs based on each states' existing infrastructure and policies
 - Allow for more time than you think you need to implement
 - Leverage existing systems wherever possible
 - If possible, use systems that employees/employers are familiar with
 - A clear policy and a clear public education plan is necessary

9

Presentations on PFML Research

- Dr. Sarah Jane Glynn, Senior Fellow at the Center for American Progress

10

Center for American Progress

The need for Paid Family and Medical Leave in the United States

- **Most leaves are taken for a worker's own health concern**
- Nearly 1 in 5 people in U.S. have a disability
- **Families – and the economy – cannot afford to go back to having a stay-at-home caregiver**
 - From 1979-2008, women's earnings as a share of total family income increased by 156%, making up for more than 33% of the decrease in men's earnings
- **The workers who need paid leave the most are the least likely to have access**
 - 8% of workers in the bottom earnings quarter have employer-provided paid leave, compared to 30% in the top quarter

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Center for American Progress

Family and Medical Leave Usage

- **Overall, 15 percent of U.S. employees report taking parental, family caregiving, or medical leave in the past 12 months.**

Reason for leave

Reason for leave	Percentage
Personal medical	~55%
Parental	~25%
Caregiving	~20%

■ Personal medical ■ Parental ■ Caregiving

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Center for American Progress

Need for Paid Family and Medical Leave in Virginia

- More than one-quarter (28.6%) of all households in Virginia have children.
- Two-thirds of children under age 6 (67.0%) and nearly three-fourths of children age 6 to 17 (72.8%) have all parents in the family in the labor force, either because a single working parent or a dual-earner couple heads the household.
- Seniors projected to comprise 20% of Virginia's population by 2030, and there are already nearly as many people age 62 and older (18.1%) as there are school age children (18.9%).

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Center for American Progress

Benefits of Paid Family and Medical Leave

For firms:

- Improved employee retention, lower turnover costs
- Boosts to employee productivity, higher performance
- Anecdotal evidence of reductions to workers compensation claims
- Social insurance programs can provide cost savings over employers providing benefits themselves

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Center for American Progress

Benefits of Paid Family and Medical Leave, cont.

For workers:

- Improved labor force attachment over time
- Fewer gaps in employment lead to better wage trajectories over time
- Parental leave associated with better maternal physical and mental health outcomes, higher rates of vaccinations, and improved child outcomes
- Temporary disability and caregiving leaves associated with better health outcomes

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Center for American Progress

Benefits of Paid Family and Medical Leave, cont.

For the economy:

- Increases in women's labor force attachment between 1979-2012 account for 11 percent of growth in gross GDP, i.e. \$1.7 trillion less spending on goods + services
- Reduced state and local spending on public assistance (e.g. TANF, SNAP) due to family income predictability

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Center for American Progress

Benefits of Paid Family and Medical Leave, cont.

For public health:

- Parental leave associated with better maternal physical and mental health outcomes, higher rates of vaccinations, and improved child outcomes
- Temporary disability and caregiving leaves associated with better health outcomes

California's program has resulted in an 11% decline in nursing home usage among older adults

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Center for American Progress

Necessary components of a Paid Family and Medical Leave program

In order to function efficiently and effectively, any PFL program must be able to:

- Evaluate qualifying events
 - Requires the ability to verify births/adoptions/foster placement and make medical determinations related to family caregiving
 - Applications for TDI and Caregiving leave should require medical certification from licensed medical providers. This should include:
 - HIPAA waivers
 - IDC codes
 - Additional detailed diagnostic information as appropriate
 - Signed certification from the care recipient (in the case of family caregiving leave)
 - Penalties for falsifying medical information should be significant.
- Determine program eligibility
 - Varies depending on exact program rules, in most cases will require access to individual-level data on earnings for workers employed in the state/municipality
- Calculate benefit amount and process payments
 - With the exception of flat benefits, also requires access to data on prior earnings.
- Process information efficiently and effectively (IT)
- Review and process appeals for claims that are initially declined

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Center for American Progress

Thank you!

Sarah Jane Glynn
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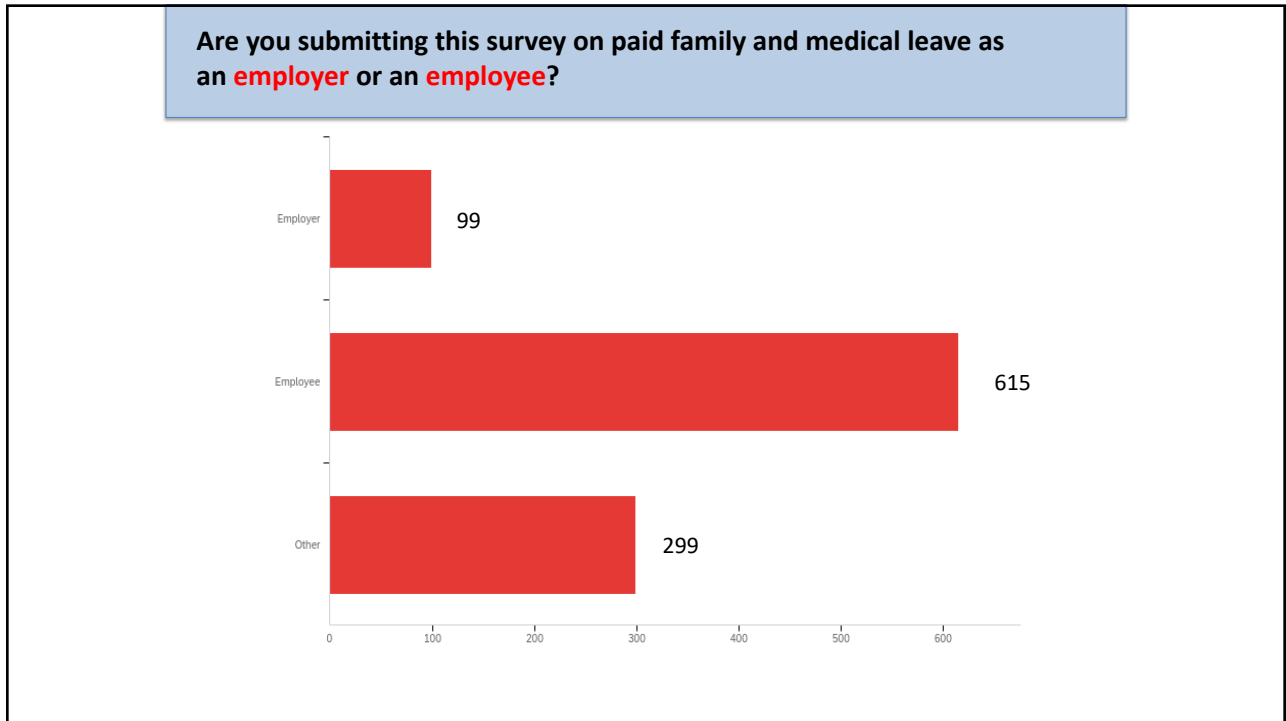
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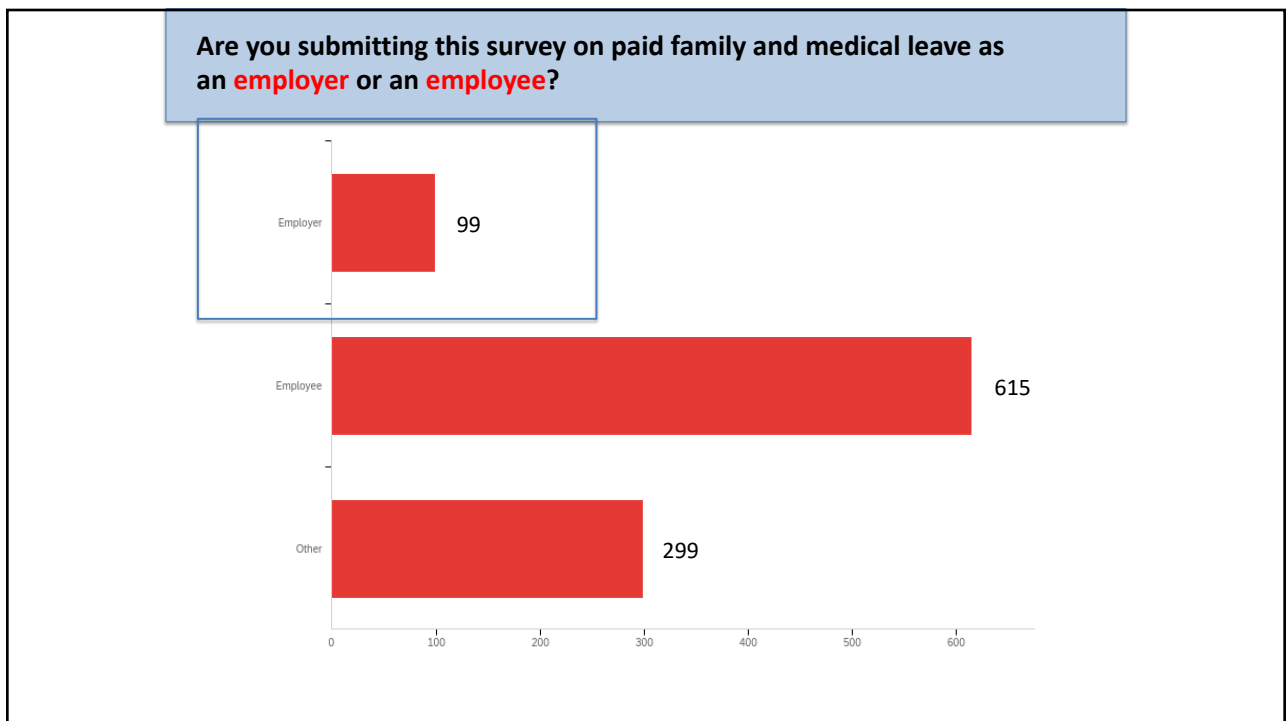
Survey Responses

- The following slides offer an overview of the responses that we have received thus far.
- As of Thursday, September 10, over 1,000 responses and comments had been submitted.
- Due to the outpour of comments, we will be continuing to leave the survey open through next week to ensure that as many individuals as possible can share their perspective through this avenue.

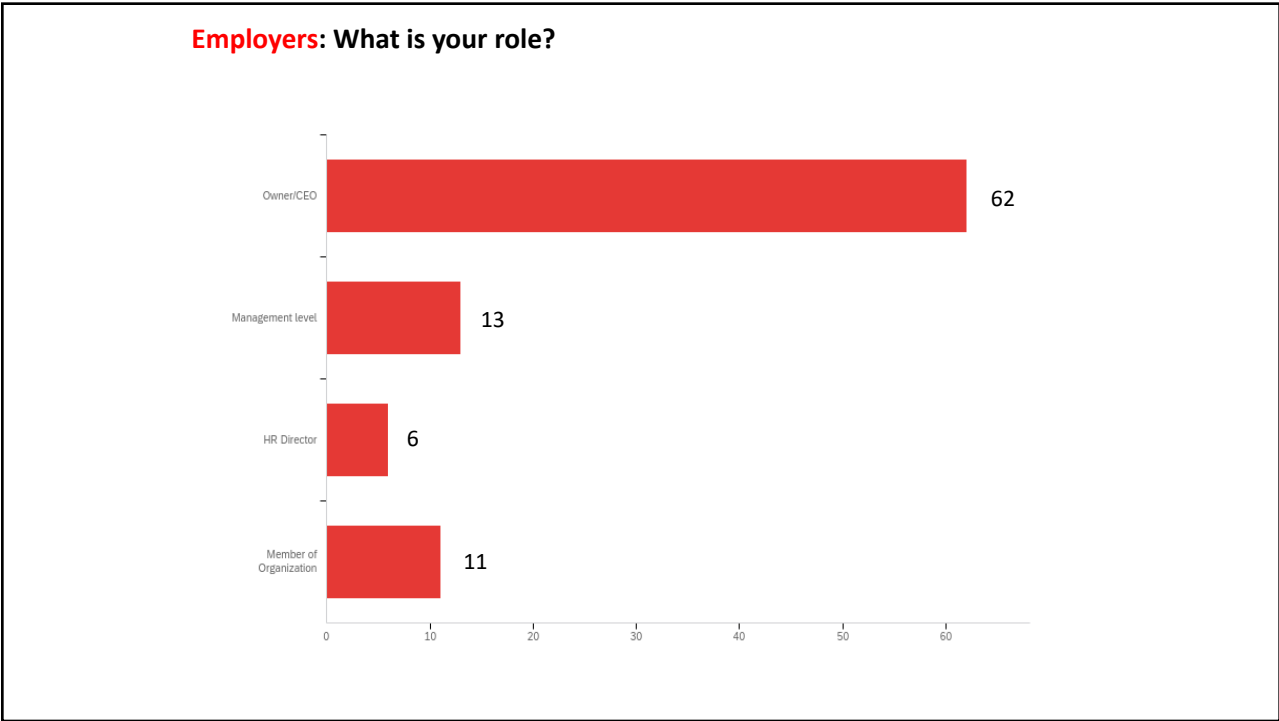
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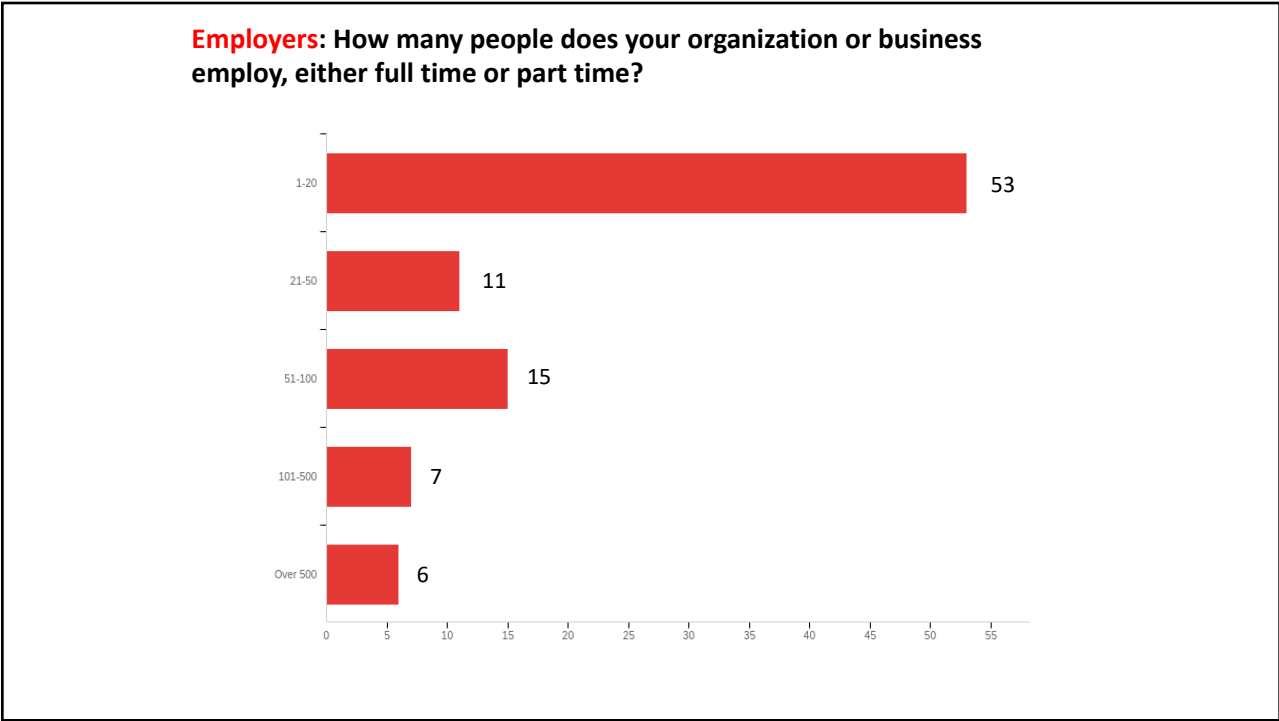
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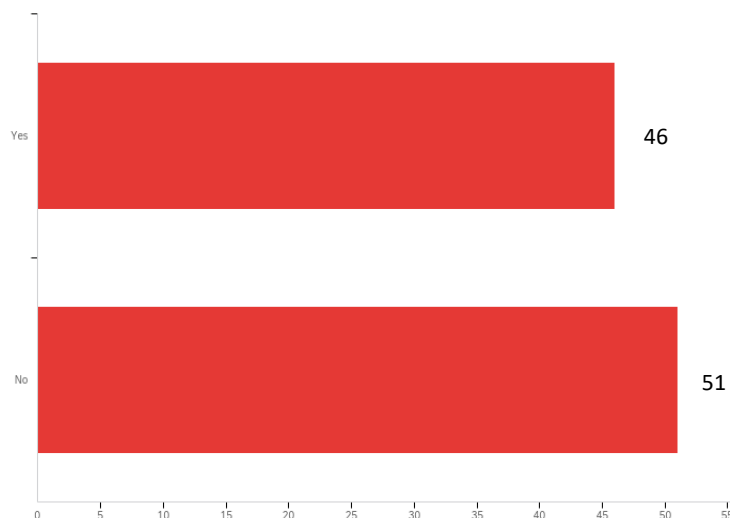
Additional Comments from Small Business Employers

“Paid family leave is a wonderful BENEFIT but it should not be forced upon small employers... The benefit should be a perk if a business chooses to provide it in order to attract excellent employees... And if a business does not offer paid leave but is a wonderful place to work, people get to have that choice to work there or leave for a job that does have the benefit.”

“I am third generation [small business] owner and we have paid our employees when they have been out for hip replacements, maternity leave and other personal reasons. We still have to replace the labor that is missed while the employee is not working. This will be a great program for the Commonwealth of Virginia and will encourage people to go back to work.”

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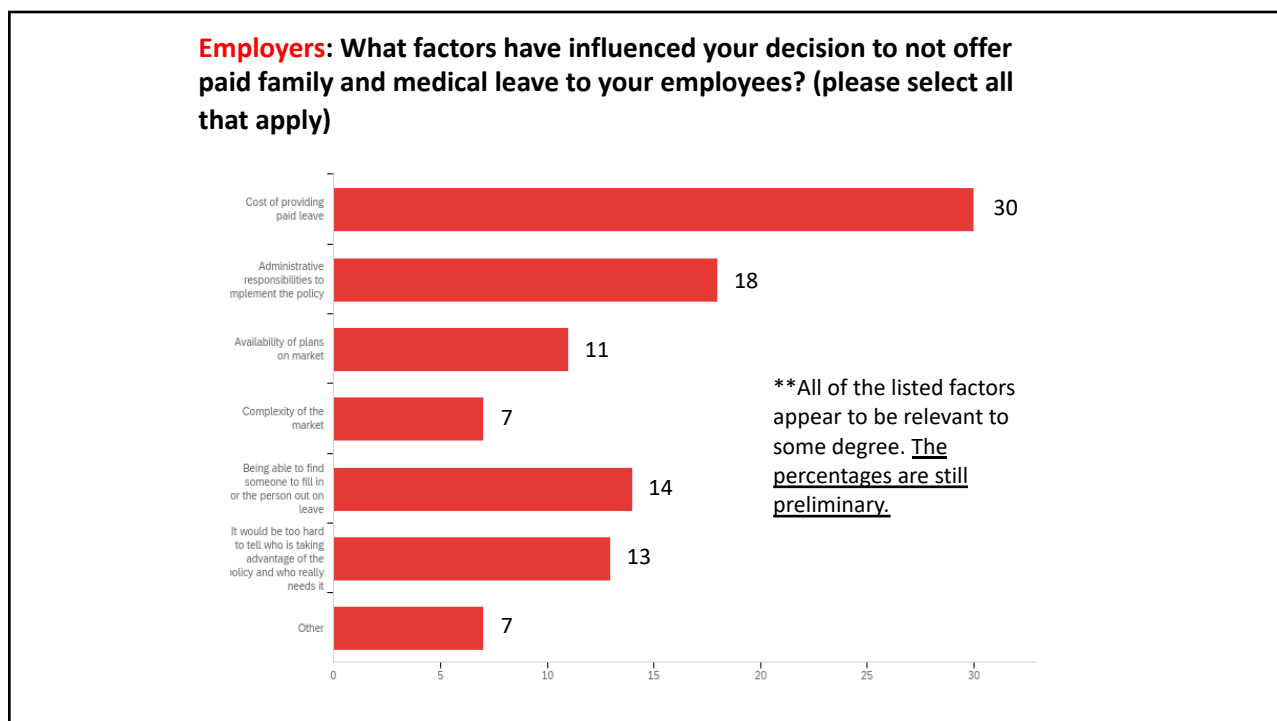
Employers: Does your organization or business offer some form of paid family and medical leave to employees?



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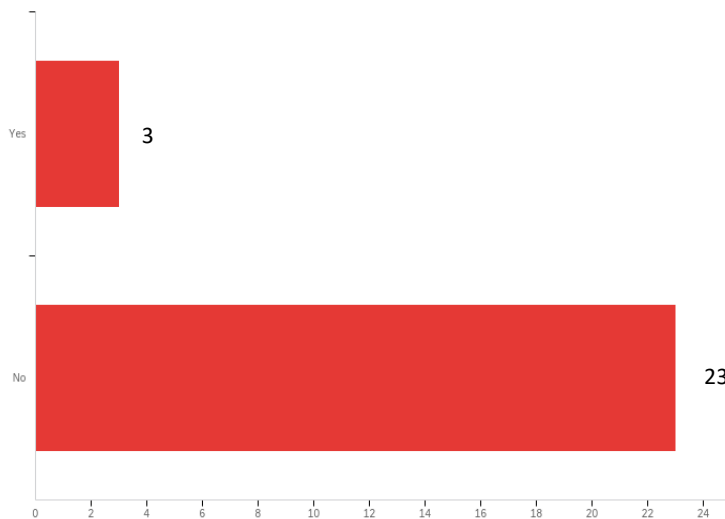
Additional Comments from Employers That Do Not Offer PFML

“With 97% of business in Virginia as small and most with 7% or less profit, we cannot afford this without reducing the commission to staff and paying less to hourly in conjunction with raising prices... Piggy backing this on top of raising the minimum wage is crazy for current times for sure.”

“I think the biggest barrier is the complexity of the market for an employer. Though I'm only a small business, I want to offer this benefit to my employees - but it's rather difficult to figure out on my own. If the state set up the infrastructure and mechanism, that would relieve so much of the burden on my business.”

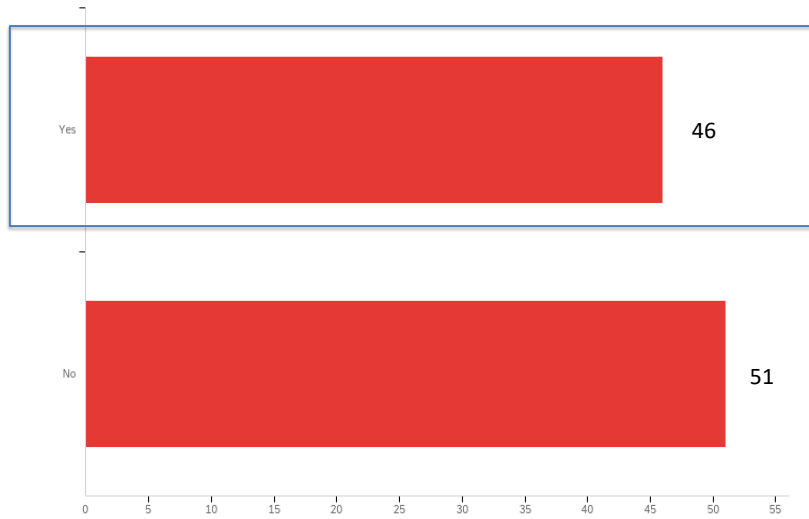
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Employers: Have you been able to find adequate paid leave programs to offer your employees in the private marketplace?



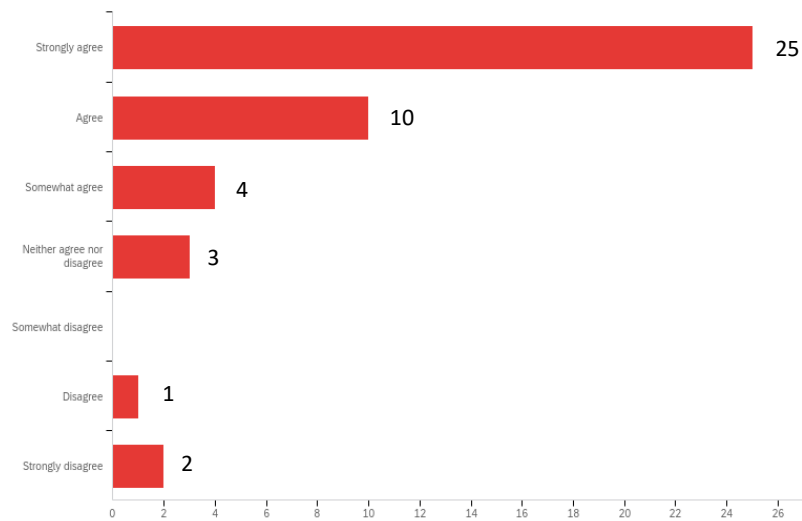
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Employers: Does your organization or business offer some form of paid family and medical leave to employees?

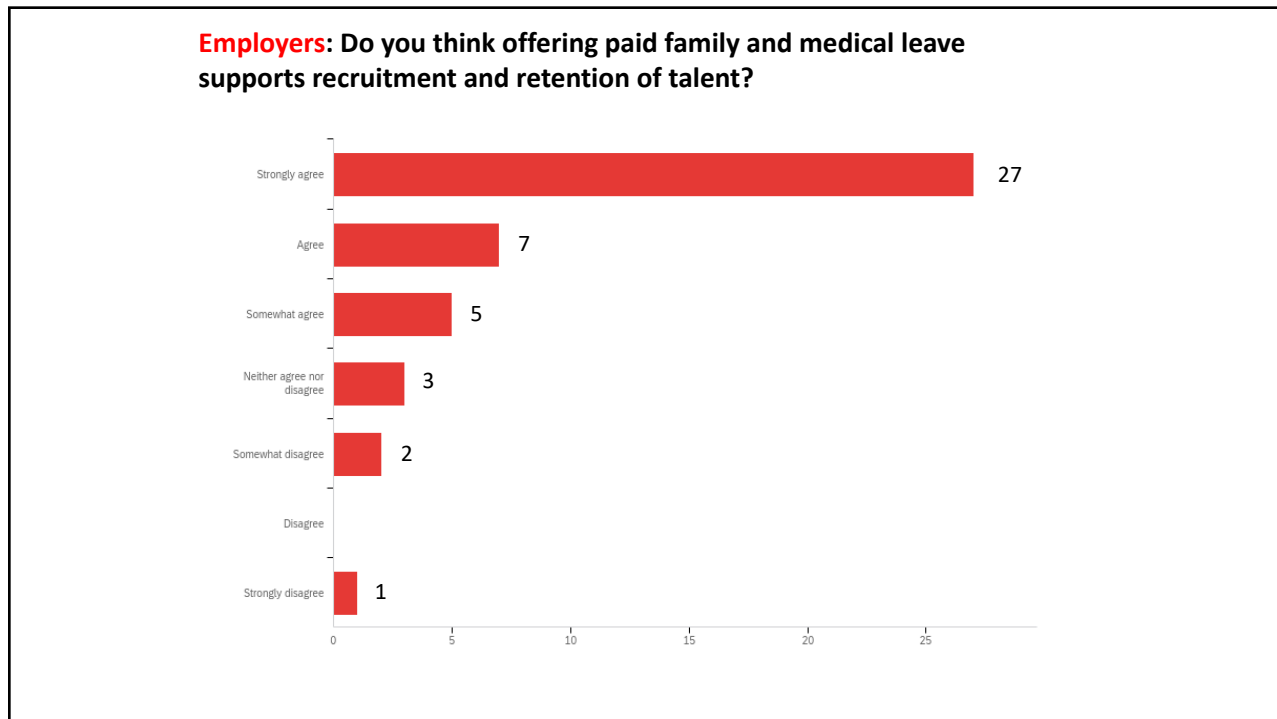


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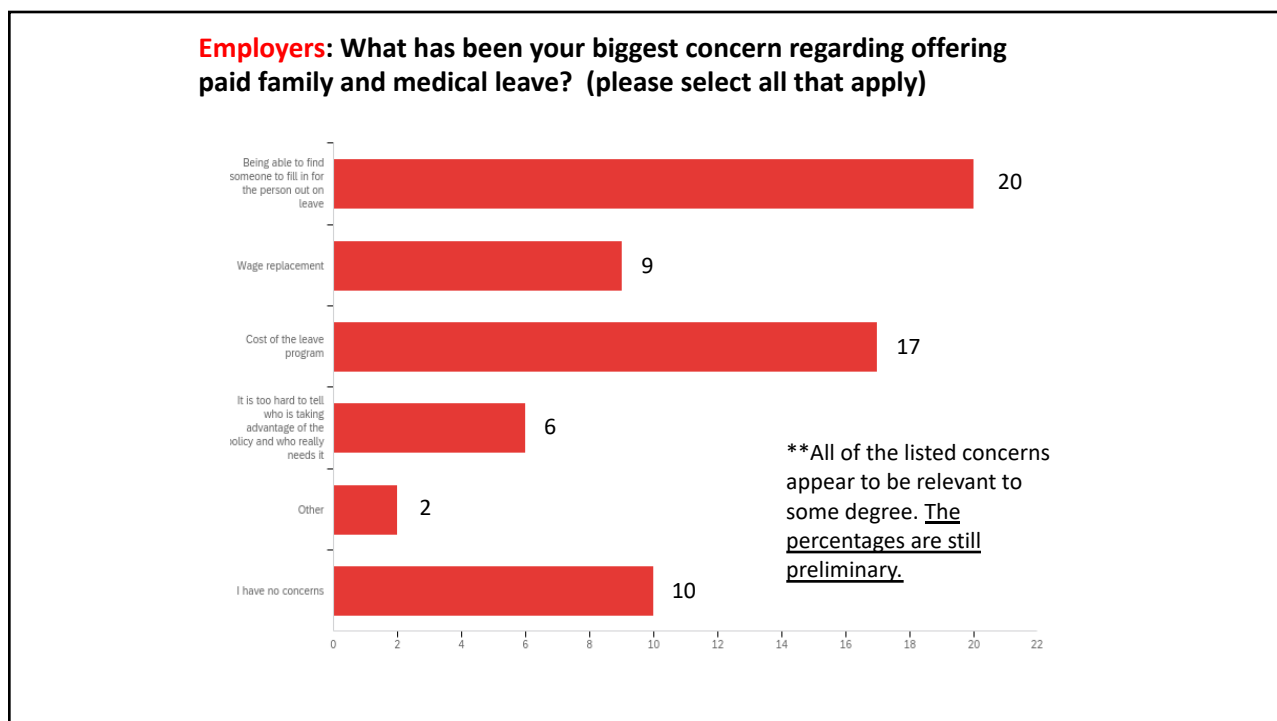
Employers: Would you say that offering paid family and medical leave has been positive for your organization overall?



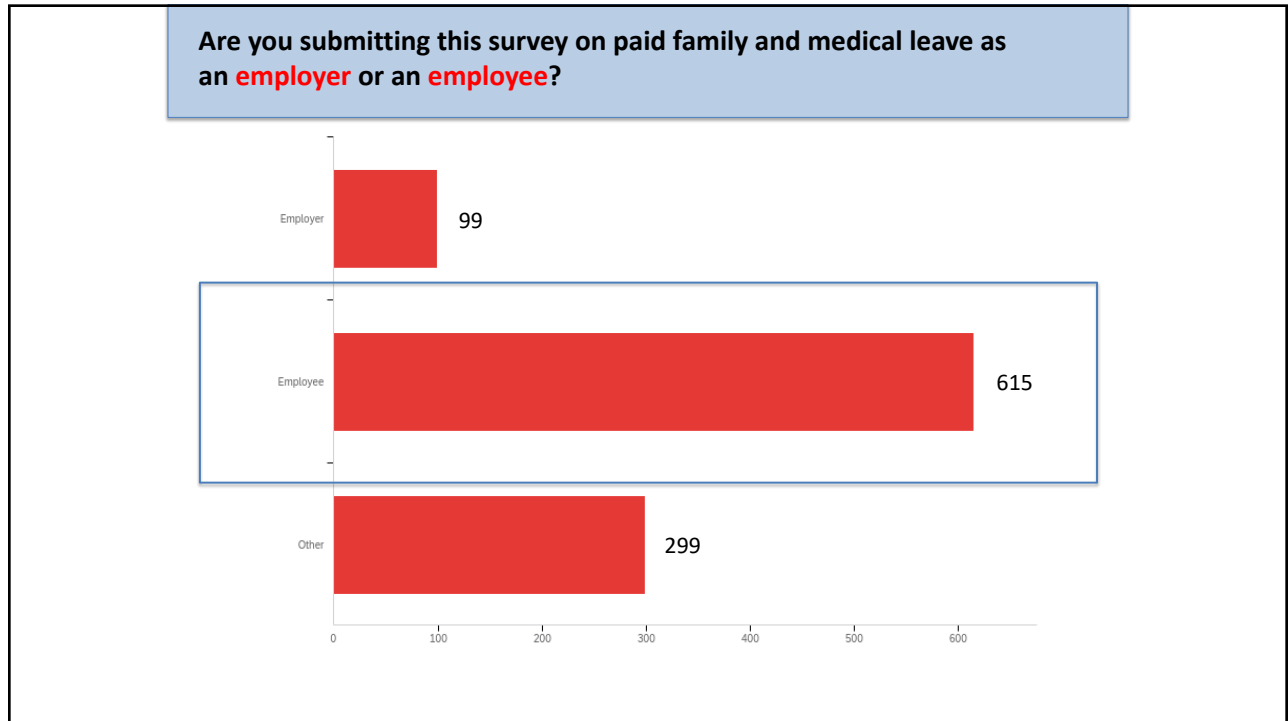
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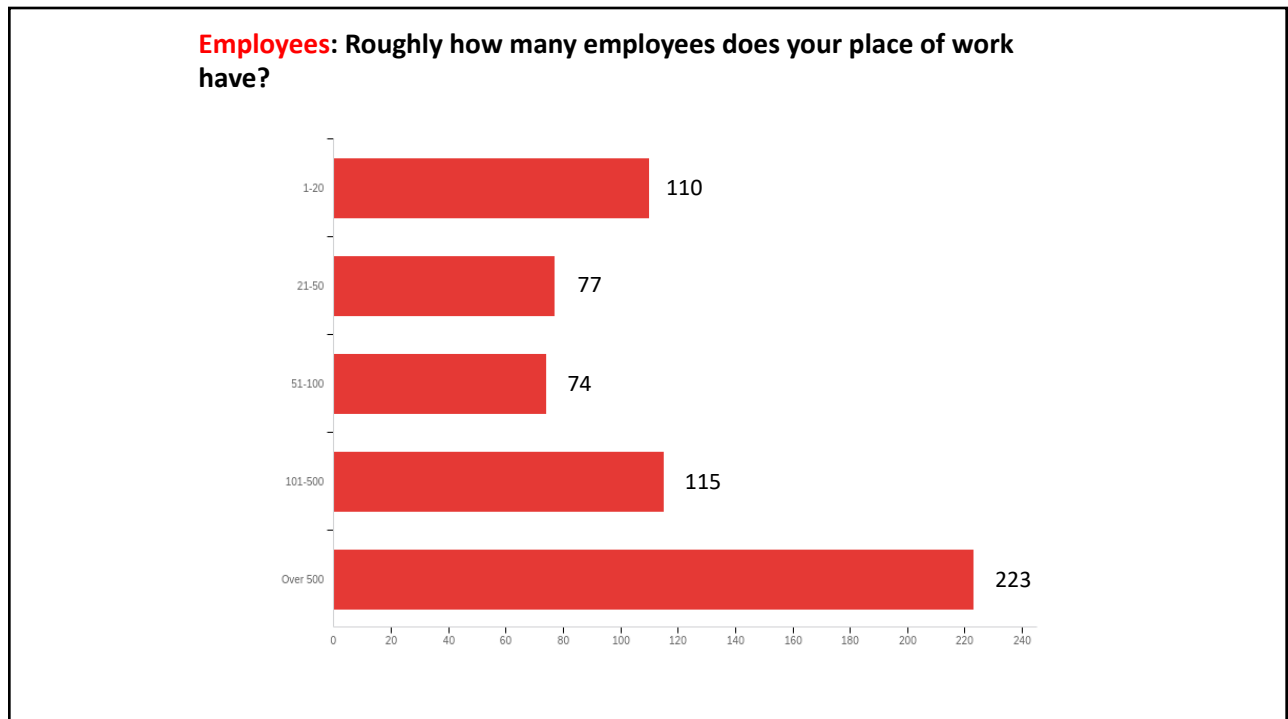
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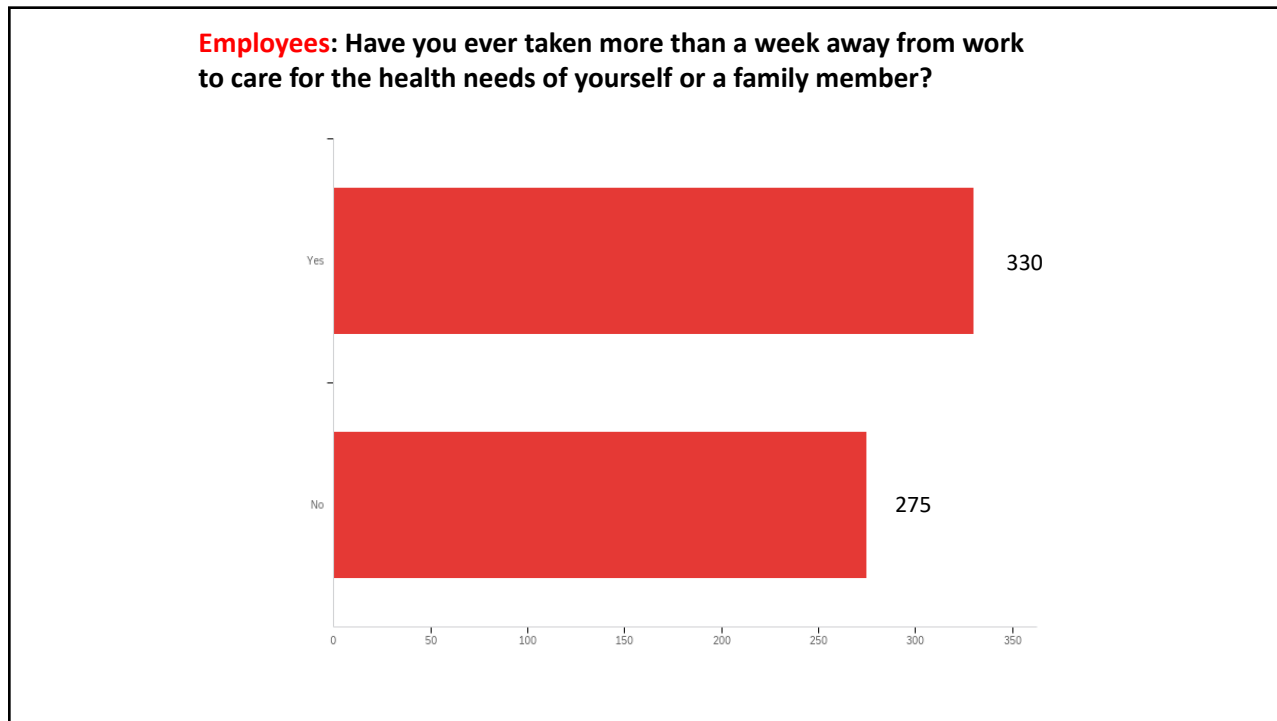
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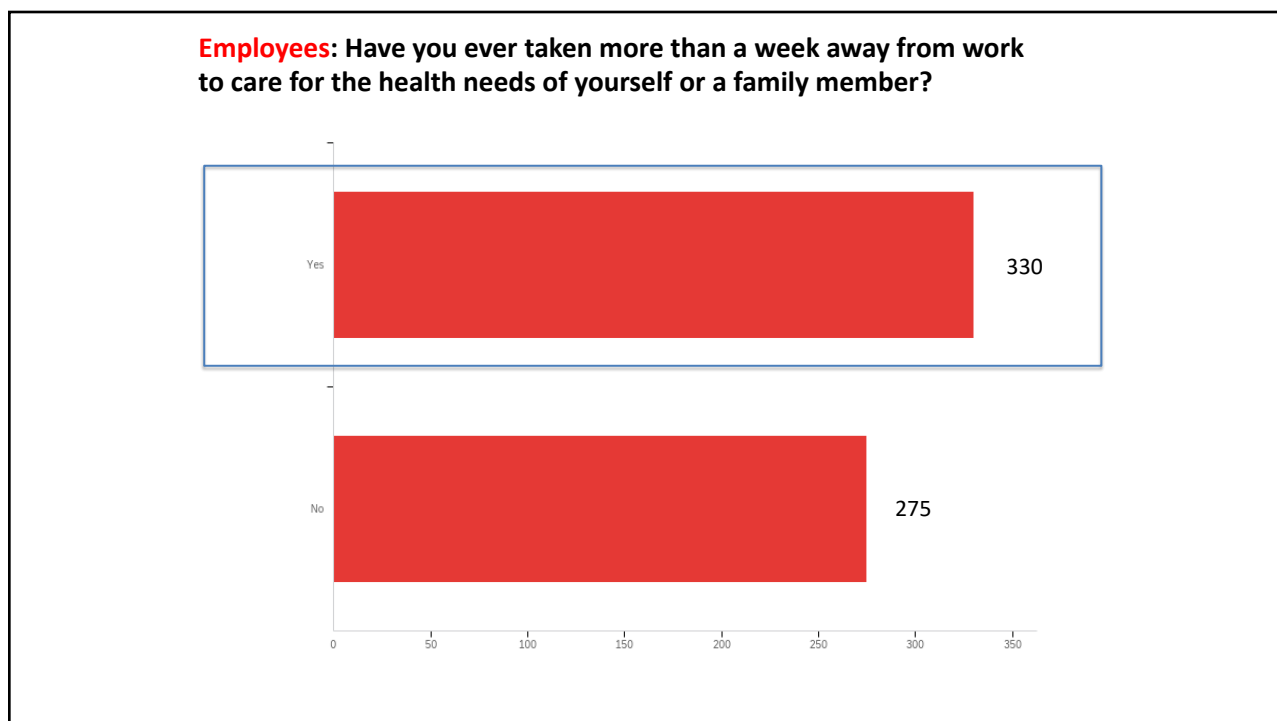
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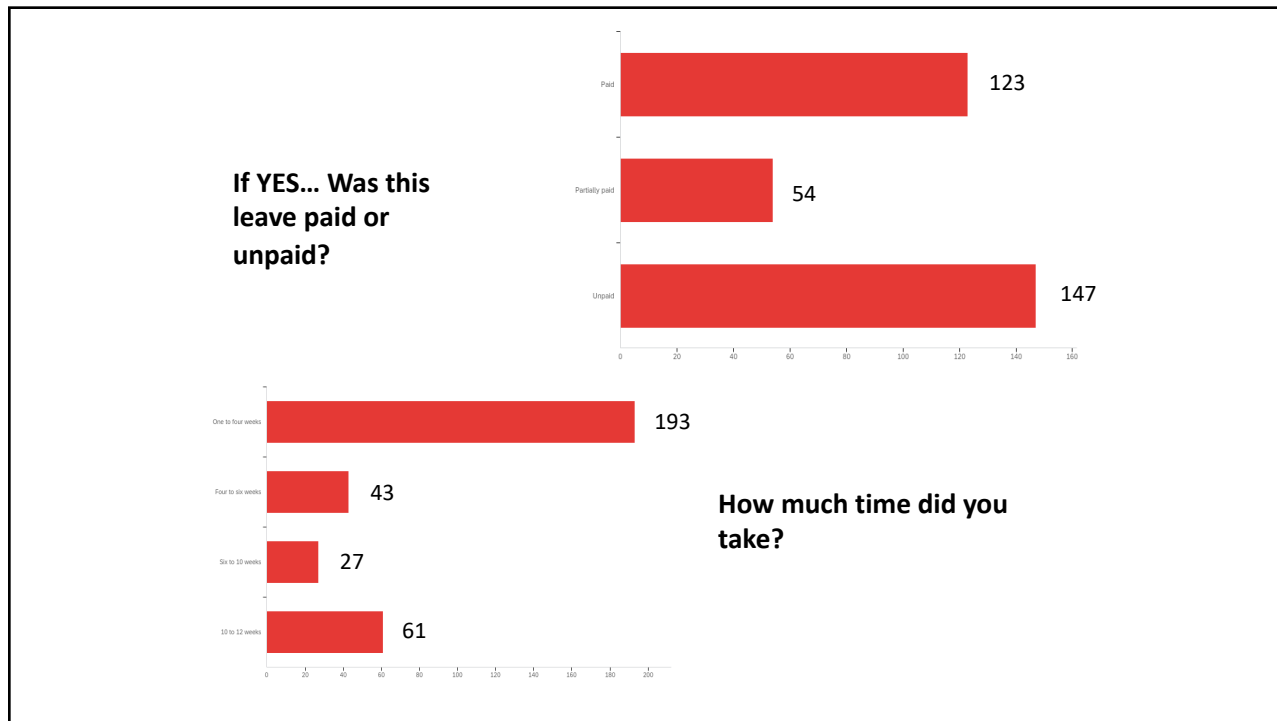
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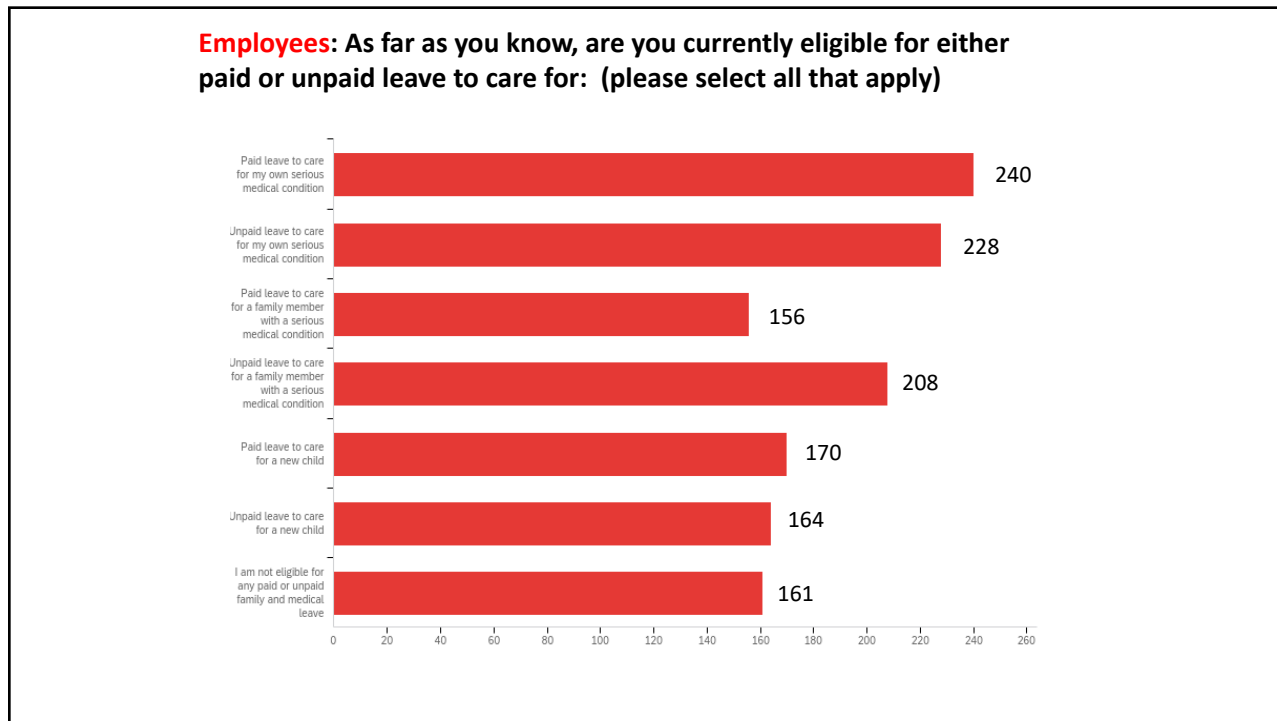
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Additional Comments From Employees on Access to PFML

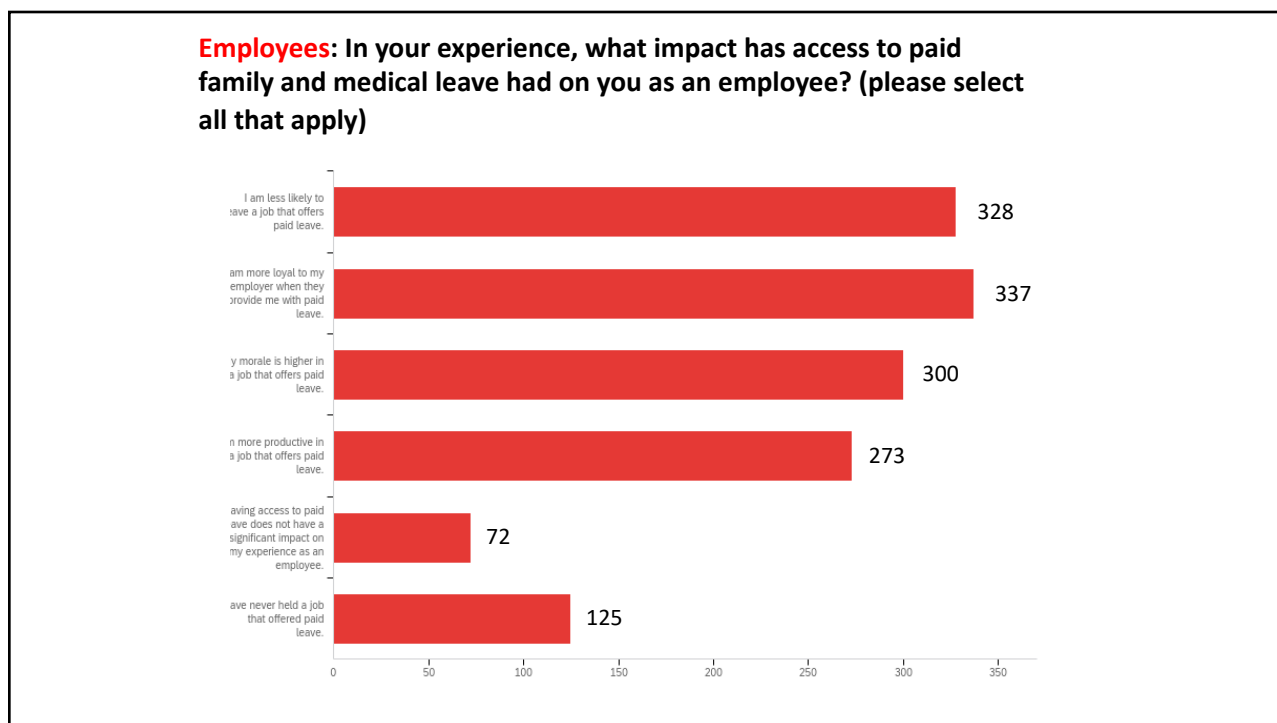
“While my employer does not offer paid leave, I do have paid time off that I have accumulated that I can use to cover any missed income while on leave for up to the banked amount (8 weeks). Beyond that, I also have disability protection that would kick in. I think people often forget our goal as a society is to move beyond minimum-level jobs, and with those better opportunities come more benefits.”

“When I had my knees replaced, my husband was able to use his paid leave to care for me. He would not been able to care for me otherwise.”

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Additional Comments from Employees on Impact of PMFL

“Paid leave is the only way I can happily balance my family responsibilities and do the job I love well.”

“It's not the place of government to have anything to do with leave of any sort, but should be solely between an employer and employee. “

“Expanding paid leave benefits would make me happier, more satisfied, and less likely to leave my job. In addition, it would give me peace of mind knowing that I can care for other or myself in times of need (especially given COVID) without fear of loss of pay or losing my job.”

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Discussion

44

Next Steps

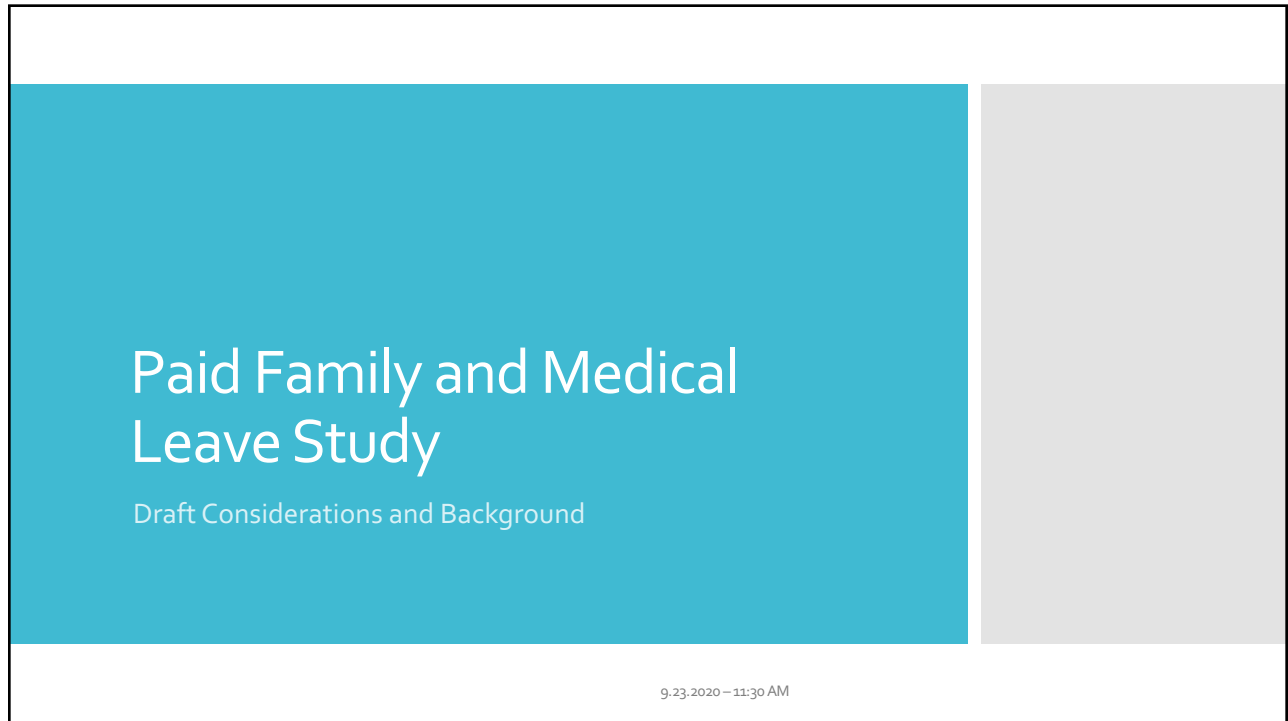
- Additional Conversations and Follow Up
- Tentative Upcoming Meeting Date
 - Monday, September 21, 2020 at 1:00 pm

45

Industry Stakeholder
Workgroup

Friday, September 11, 2020 – 1:30 PM

46



The slide features a large teal rectangle on the left side containing the title and subtitle. The right side of the slide is a light gray vertical bar.

Paid Family and Medical Leave Study

Draft Considerations and Background

9.23.2020 – 11:30 AM

1



The slide features a teal rectangle on the left side containing the word 'Background'. The right side of the slide contains a list of bullet points. The bottom right corner has a light gray vertical bar.

Background

- The 2020 Appropriations Act directed the Secretary of Commerce and Trade and the Governor’s Chief Workforce Advisor to study the development, implementation and costs of a statewide paid family and medical leave.
- The designated executive branch officials were tasked with:
 - Researching other states that have fully implemented programs;
 - Quantifying economic impact on businesses and workers;
 - Developing an operating plan which includes designated agency or entity, staffing needs, technology requirement, implementation timeline, and business practices;
 - Identifying resources needed to implement; and
 - Researching start up loans for paid leave programs in other states and loan payback.

9.23.2020 – 11:30 AM

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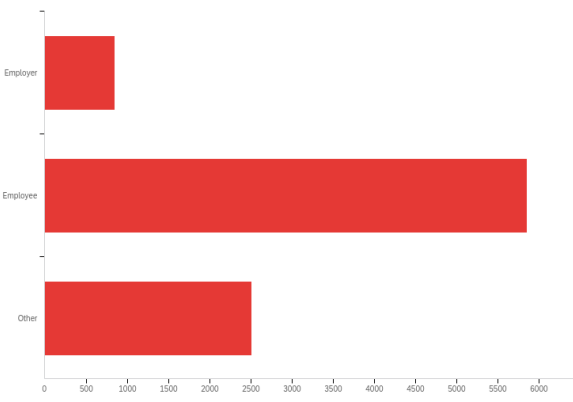
Background

- In conducting this study, the Secretary of Commerce and Chief Workforce Advisor:
 - Organized a work group comprised of industry stakeholders for the purpose of gaining their perspectives on this issue.
 - This work group brought together a number of viewpoints, including small businesses, larger employers, labor organizations, DHRM, chambers of commerce, and the insurance industry.
 - Met virtually with other states—including Washington, Massachusetts, Rhode Island, Connecticut, Oregon and Washington, DC—that have implemented, or are implementing, paid family and medical leave programs.
 - Conversations included staff from state agencies and Governor’s offices as well as some stakeholders from the business and labor communities.
- Analyzed and synthesized available, published research.
- Collected public comment through an electronic survey.

9.23.2020 – 11:30 AM

3

Preliminary Findings for Paid Family and Medical Leave Survey



- **9218** respondents began the survey and **5463** respondents completed
- **4801** responses from employees and **662** from employers
- **3852** public comments received

*Respondents in the “other” category included independent contractors, advocacy groups, retirees, and the unemployed.

4

Draft General Considerations

- The following slides outline a number of items that it is recommended be considered in any General Assembly deliberation of a statewide paid family and medical leave program.

9.23.2020 – 11:30 AM

5

Draft General Considerations: Operations and Implementation

- The Virginia Employment Commission would be the most appropriate agency to have oversight of the Paid Family and Medical Leave program because of the similarity of technology and process in collection of unemployment insurance premiums, relationship with the business community, enforcement, and familiarity with fraud and adjudication processes.
- For additional oversight of the Program, a Paid Family and Medical Leave Board should be formed to advise the Commissioner. This board would include small and large business owners, business organizations, legislators, government officials, labor, and nonprofit organizations. Members of this board would be appointed by the Governor and General Assembly.
- An office of the Paid Family and Medical Leave Ombudsman should be created and physically located at the Virginia Employment Commission. The Ombudsman would be appointed by the Governor and serve as an independent third party who investigates, reports, and helps settle complaints from employers and employees.

9.23.2020 – 11:30 AM

6

Draft General Considerations: Operations and Implementation

- An outreach and education campaign is essential to ensure all employers and employees are aware of the new program's contribution and benefits structures as well as the requirements and responsibilities of the program.
- Premiums should be paid into the Paid Family and Medical Leave Trust at least one year in advance of awarding benefits.
- A full, independent actuarial study should be conducted within the first six months after the bill has passed to ensure that the program has sufficient time to project the necessary funds for a solvent trust and determine the payroll tax rate necessary to achieve such amount.

9.23.2020 – 11:30 AM

7

Draft General Considerations: Policy Details

- Regulations and guidelines should align as closely as possible to the federal Family Medical Leave Act to eliminate confusion of eligibility, leave time and administration.
- The Commonwealth should consider a grant fund that supports small businesses' administrative, technology, and personnel replacement costs.

9.23.2020 – 11:30 AM

8

Draft General Considerations: Policy Details

- Small businesses should be exempted from having to contribute to the program. Employees who pay into the program at such exempted businesses should still be eligible for benefits.
- Employers should be exempted who currently have equal or more generous paid time off, short term disability, or other leave options. This exemption is contingent upon verification of a waiver.
- Both covered employees and employers should jointly fund the benefits system.

9.23.2020 – 11:30 AM

Appendix C: Survey Results Report

DATA COLLECTED

Respondents were first asked if they were submitting the survey as an employer, employee, or other. **A total of 9218 respondents answered this first question, including 848 employers, 5853 employees, and 2517 other.** Those that selected “other” were taken directly to the question asking for any general comments or concerns on the issue of paid family and medical leave.

Approximately 4795 employees and 662 employers completed the survey, for a total of 5463 respondents. 3852 respondents, including those in the “other” category, provided additional comments in the open-ended portion of the survey. The full list of survey questions is below:

1. Are you submitting this survey on paid family and medical leave as an employee or an employer: employer, employee, or other?

Employer Questions

1. What is the name of the organization you represent (optional)?
2. What is your role: Owner/CEO, Management level, HR Director, or Member of an Organization?
3. How many people does your organization or business employ, either full time or part time: 1-20, 21-50, 51-100, 101-500, or over 500?
4. Does your organization offer some form of paid family and medical leave to employees: yes or no?

If answered “no” to #4...

- a. What factors have influenced your decision to not offer paid family and medical leave to your employees (select all that apply): cost of providing paid leave, administrative responsibilities to implement the policy, availability of plans on the market, complexity of the market, being able to find someone to fill in for the person on leave, it would be too hard to tell who is taking advantage of the policy and who really needs it, and other?
- b. Have you been able to find adequate paid leave programs to offer your employees in the private marketplace: yes or no?

If answered “yes” to #4...

- a. Would you say that offering paid family and medical leave has been positive for your organization overall: strongly agree, agree, somewhat agree, neither agree nor disagree, somewhat disagree, disagree, and strongly disagree?

 - b. Do you think offering paid family and medical leave supports recruitment and retention of talent: strongly agree, agree, somewhat agree, neither agree nor disagree, somewhat disagree, disagree, and strongly disagree?

 - c. What has been your biggest concern offering paid family and medical leave: being able to find someone to fill in for the person on leave, wage replacement, cost of the leave program, it is too hard to tell who is taking advantage of the policy and who really needs it, other, and I have no concerns?
5. Do you have any additional comments or concerns you would like to share on the issue of paid family and medical leave?

Employee Questions

1. What is the name of your employer (optional)?

2. Roughly how many employees does your place of work have: 1-20, 21-50, 51-100, 101-500, or over 500?

3. Have you ever taken more than a week away from work to care for the health needs of yourself or a family member: yes or no?

If answered “yes” to #4...

- a. Was this leave paid or unpaid: paid, partially paid, or unpaid?

- b. How much time did you take: one to four weeks, four to six weeks, six to 10 weeks, or 10 to 12 weeks?

4. As far as you know, are you currently eligible for either paid or unpaid leave to care for: my own serious medical condition, a family member with a serious medical condition, a new child, or I am not eligible for any paid or unpaid family and medical leave?

5. In your experience, what impact has access to paid family and medical leave had on you as an employee: I am less likely to leave a job that offers paid leave, I am more loyal to my employer when they provide me with paid leave, my morale is higher in a job that offers paid leave, I am more productive in a job that offers paid leave, having access to paid leave does not have a significant impact on my experience as an employee, or I have never held a job that offered paid leave?

6. Do you have any additional comments or concerns you would like to share on the issue of paid family and medical leave?

KEY FINDINGS

Key findings are informed both by quantitative trends in survey responses as well as respondents' comments to the open-ended question, "Do you have any additional comments or concerns you would like to share on the issue of paid family and medical leave?"

1. While their opinions of paid family and medical leave vary from strongly support to strongly oppose, most small business respondents are concerned about the cost burden of a new program.

The majority of employer respondents to the survey are owners/CEOs (63.9 percent) from businesses with 1 – 20 employees (54.7 percent). The open-ended additional comments section reflects a diversity of small business perspectives on paid family and medical leave, with some in favor and some against. However, there is significant concern about the ability of small businesses in particular to shoulder the cost of a new paid family and medical leave program. Additional comments include:

"We are a small business and take care of our employees based on length of time worked and circumstances as to medical situation. To just have a blank card to have to pay people and then get replacements is unreasonable. Not to mention pay additional payroll taxes and then on top of that to create the necessary payroll changes. Not every company is big and has the means to implement this type of thing. The small businesses are the ones taking the big blow." – Real estate firm

“I am third generation owner and we have paid our employees when they have been out for hip replacements, maternity leave and other personal reasons. We still have to replace the labor that is missed while the employee is not working. This will be a great program for the Commonwealth of Virginia and will encourage people to go back to work.” – Funeral home

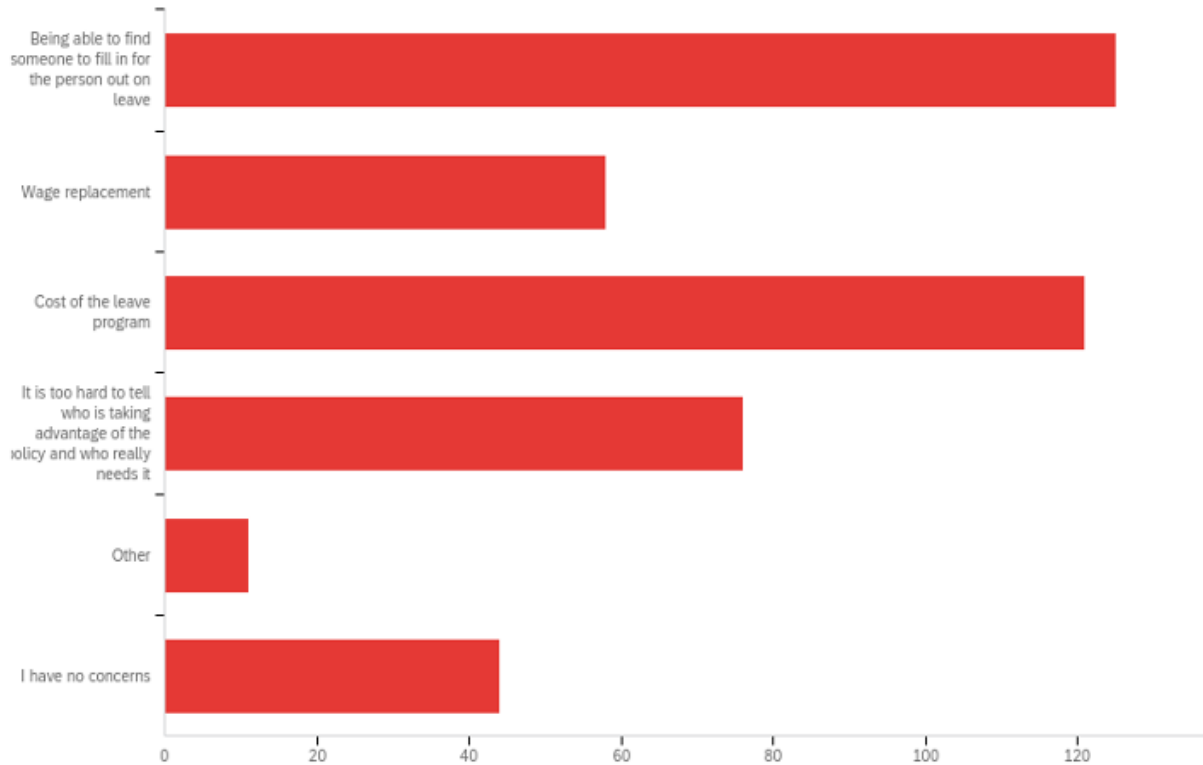
“Mandatory paid family leave, while a nice benefit for an employee to have, is a financial and person-hour burden on businesses with fewer than 50 employees. While we try as much as possible to assist an employee with a long absence is necessary, if we were told we had to pay them not to work for the entire time they are out, it would be very difficult. We recommend accident & disability insurance to our team instead.” – Furniture retailer

“With 97% of business in Va. as small and most with 7% or less profit, we cannot afford this without reducing the commission to staff and paying less to hourly in conjunction with raising prices. Payroll cut with commission-based stylist would probably have many leave and that would close us. Piggy backing this on top of raising the minimum wage is crazy for current times for sure.” – Salon business

2. Of the employer respondents that already offer paid family and medical leave, a majority feel that it has been positive for their organization overall. However, employer respondents with and without leave programs share similar concerns about cost and finding someone to fill in for the person out on leave.

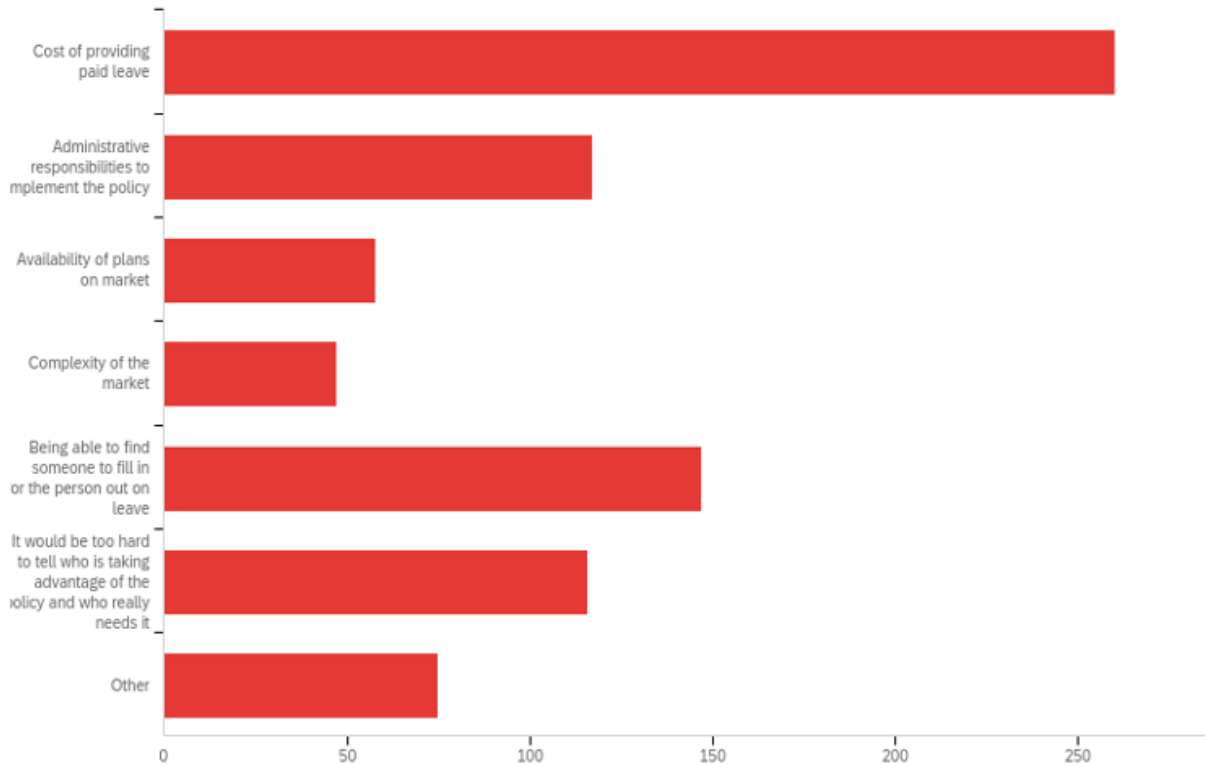
For those 43.3 percent of employer respondents that do offer some form of paid family and medical leave to their employees, 77 percent somewhat to strongly agree that it has been positive for their organization overall. 80.77 percent somewhat to strongly agree that offering the leave supports recruitment and retention of talent. However, only 44 respondents say that they have no concerns with offering paid family and medical leave. The most common concerns are “being able to find someone to fill in for the person on leave” and “the cost of the leave program.”

Graph 1: In your experience, what impact has access to paid family and medical leave had on you as an employee (please select all that apply)?



56.7 percent of employer respondents do not offer any form of paid family and medical leave to employees. The factor that most greatly influenced their decision to not offer the benefit was “the cost of providing paid leave,” with the second “being able to find someone to fill in for the person out on leave”. The availability of adequate paid leave programs is also a significant factor. 95 percent of employer respondents say they have not been able to find anything to offer their employees in the private marketplace.

Graph 2: What factors have influenced your decision to not offer paid family and medical leave to your employees (please select all that apply)?



3. A majority of employee respondents have had to take time away from work, but many either did not have leave or the leave was unpaid.

60 percent of employee respondents have taken more than a week away from work to care for the health needs of themselves or a family member. For many, this leave was only partially paid or unpaid. The open-ended additional comments section reflects a variety of both negative and positive experiences with needing to take time off. Additional comments include:

“When I had my knees replaced my husband was able to use his paid leave to care for me. He would not been able to care for me otherwise.”

“From discussions with coworkers who had children before paid family leave (maternity/paternity leave) was made available to VA employees, I realize how fortunate I was to have had a child in 2019 when this benefit was available. I was better able to care for myself and my new child knowing that my employment and our household income would not be negatively impacted.”

“I was just starting a new job, and two months later I found out I was pregnant. I didn’t have sick time accrued so I didn’t get paid. This would have been great to get paid for this time. The bills didn’t stop just because I had a baby.”

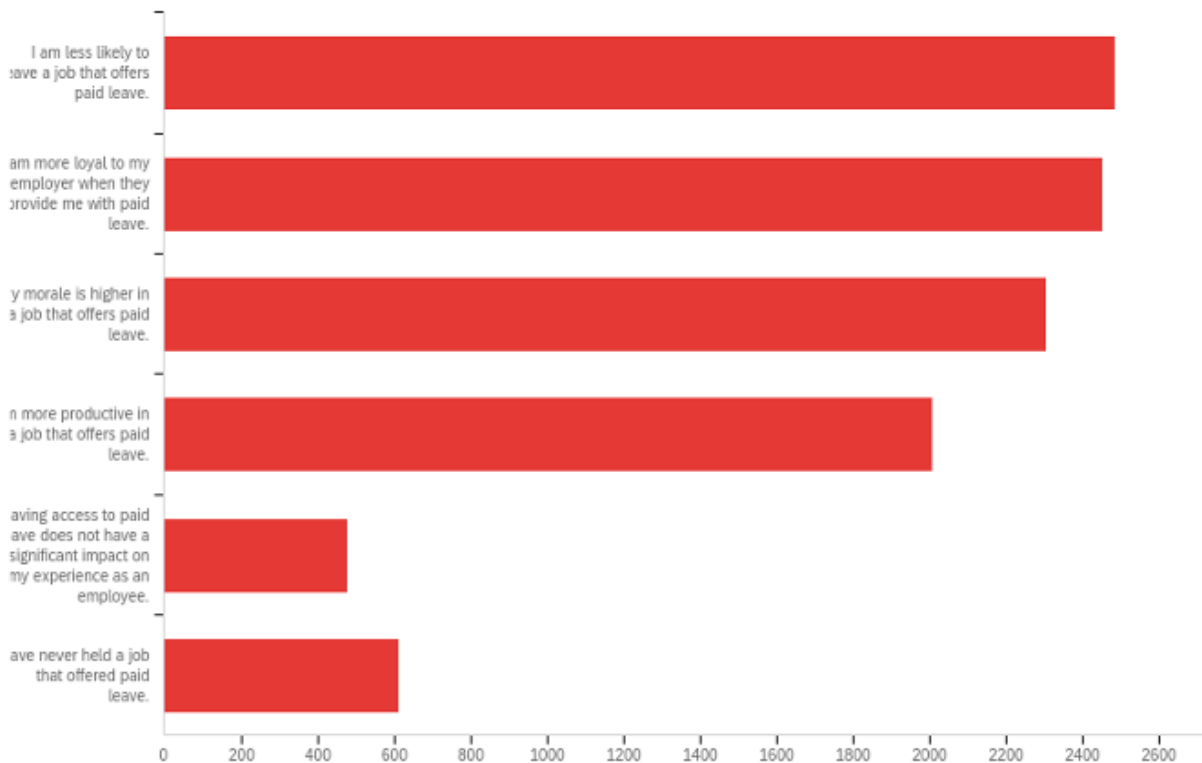
“I have been in this situation before and had paid leave once. Another time I did not have paid leave. It put a terrible hardship on our family without the paid leave.”

“Though I am blessed to have it now and my kids are grown, I know what it’s like to not have paid leave. I was that single mother, two small children both with asthma. I couldn’t afford for them to get sick literally.”

4. The majority of employee respondents feel that having access to paid family and medical leave has had a significant impact on them and their relationship with their employer.

Only 478 employee respondents said that “having access to paid leave does not have a significant impact on my experience as an employee.” A majority selected at least one positive impact.

Graph 3: In your experience, what impact has access to paid family and medical leave had on you as an employee (please select all that apply)?



Appendix D: Fiscal Impact Estimates

Below are links to the fiscal impact estimates that were produced for states that—similar to Virginia—did not have an established temporary disability insurance law/program.

Connecticut: <https://www.cga.ct.gov/2018/FN/2018SB-00001-R000205-FN.htm>

Washington: <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=49094>

Oregon: <https://olis.oregonlegislature.gov/liz/2019R1/Measures/Analysis/HB2005>;
<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureAnalysisDocument/51681>

Washington, D.C.:

https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/UPLA%20Report_v12_0.pdf

Appendix E: Methodology for Estimating Contributions

In order to quantify the precise tax burden that would be caused by a statewide paid family and medical leave program, the Commonwealth would need to procure an independent actuarial study. The actual premiums and amount necessary to be held in the fund would be based on these actuarial principles and, in out-years, on real usage and demand for the program. However, an initial estimation of this cost was calculated as part of this study to provide a preliminary understanding. This estimation uses BLS Average Annual Employment 2019 data, for which employment was 3,938,841 individuals. This data also indicates that for these employees, the average employee wage was \$60,200 and the total annual wages were \$237,119,277,133. In order to calculate an estimated amount of funding in the trust fund and contributions, certain assumptions needed to be made regarding the program's utilization rate and the average duration of leave taken. For the purposes of this estimation, these calculations assumed that the medical leave utilization would be 3 percent and that the family leave utilization rate would be 1 percent. Additionally, these calculations assumed that the average duration taken for medical leave would be eight weeks and for family leave would be ten weeks. Conversations with experts and staff in other states regarding the projections calculated by VEC for the 2020 Fiscal Impact Statement indicated that the average duration of leave was higher than would likely be expected and that the utilization rate was lower than would likely be expected. These assumptions were further based off of findings regarding other programs' estimated and realized utilization rates and durations.

The calculations used by this study to estimate the total amount needed in the fund is different from the methodology employed in the 2020 Fiscal Impact Statement prepared for House Bill 825 (Carroll Foy). This analysis used two sets of data: BLS Average Annual Employment 2019 data and 2018 Census/ACS Data. The BLS data was used to establish the number of employees (3,938,841) and the total annual wages (\$2.37 billion). The 2018 Census/ACS Data provided an approximation of how many individuals in Virginia fell within certain wage ranges. The proportions of these wage ranges were used to determine the proportion of how many employees would receive the maximum benefit amount (80 percent of the average weekly wage) when on paid family and medical leave. The Census/ACS breakdowns facilitated the estimation of an average weekly wage and benefit for those employees who would not receive the maximum benefit amount (and would instead receive 80 percent of their average weekly wage).

Using these inputs, this study calculated the estimated amount needed to cover the cost of benefits for both categories of workers: maximum benefit earners and non-maximum benefit earners.

- The amount needed to cover the benefits for maximum benefit earners was calculated by determining the amount needed to pay for paid medical leave. This was calculated by first multiplying the assumed medical leave uptake rates, the assumed medical leave duration, the total weekly wages, and the partial wage replacement (80%). This was then

repeated using the appropriate paid family leave inputs. The sum of these amounts was multiplied by the proportion of how many employees would receive the maximum benefit amount out of the total employee population (34%).

- The amount needed to cover the benefits for those individuals who would not receive the maximum weekly benefit was calculated by multiplying the average weekly wage that was calculated for non-maximum benefit earning employees and the total number of non-maximum benefit earning employees. That product was then multiplied by the paid medical leave duration and uptake rates to estimate the amount needed to cover the payment of medical leave benefits for this population. This calculation was then repeated using the paid family leave duration and uptake rates. These two products were then added together to estimate the total amount needed to cover benefits for the population of employees who would not receive the maximum weekly benefit.
- The amounts needed to cover benefits for both of these groups of employees were added together, multiplied by 1.4 (the adequacy rate needed to maintain solvency in the fund), and combined with the ongoing administrative costs necessary for the VEC to administer this program. This total sum is the estimated amount needed in the trust under this set of assumptions.

The total, estimated amount needed for the trust is approximately \$1.2 billion. The estimated premium rate for this model would be .50 percent, which would be split 50-50 between employers and employees under the framework set out in the legislation introduced in the 2020 General Assembly Session. For example, an employee that earns \$60,000 annually would pay a contribution rate of .25 percent, which equal approximately \$2.89 per week or \$150.35 annually. The other .25 percent (or \$2.89 per week) would be covered by the employer of the covered individual.