Thirty years of the FMLA: What's worked, what hasn't, and recommendations for more equitable policies

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Early 20th Historical Background

International Congress of Working Women, 1919



Siegel, M. (2019), NYT; Tamiment Library/Robert F. Wagner Labor Archives, NYU

Late 20th Century Historical Background

- Pregnancy Discrimination Act (1978)
- Family Employment Security Act (FESA) of 1984
- Parental and Disability Leave Act, introduced 1985
- The Parental and Medical Leave Act, introduced 1986
- Family and Medical Leave Act, first introduced 1996

Sholar, M.A., (2016) *Getting Paid While Taking Time: The Women's Movement and the Development of Paid Family Leave Policies in the United States.*

1993 Passage of the FMLA



FMLA: Provisions & Qualifying Leaves from Work

Annual Provisions

- 12 weeks of leave
- 26 weeks of leave, military
- Health insurance continuance
 - Job Protection
 - Retaliation protection

Qualifying FMLA Leaves

- Birth of a child, adoption, foster care placement
- Care for family member with a serious health condition
 - Own health condition

Qualifying for FMLA Coverage

Employees

- Works for a covered employer
- Works at firm with at least 50 employees
- Has worked at firm for at least 12 months
- Year prior to FMLA request: worked at firm least 1,250 hours

Employers/Firms

• Private sector: firm has 50 or more employees

• All public agencies

• All public and private primary and secondary schools

Worker Coverage immediately before and after FMLA



Waldfogel, J. (1999). The impact of the family and medical leave act. *Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management*, *18*(2), 281-302.

Who is covered?

Nearly Half of Workers Are Not Eligible for FMLA Leave

Eligible for FMLA

Ineligible (too few hours or months worked) 🛑 Ineligible (small employer)

Ineligible (too few hours or months worked and small employer)

Among those covered: What's FMLA used for?

Workers Most Often Take FMLA Leave for Their Own Health



national partnership for women & families

National Partnership for Women & Families, 2023

FMLA Eligibility & Affordability: Gender; Working Adults & Parents

Nationwide inequities in FMLA eligibility and affordability exist by sex, with women having less eligibility and affordability.

Percent of Working Adults and Working Parents Eligible for FMLA and Able to Afford 6 Weeks of Unpaid Leave, by Sex





Note: Excludes self-employed workers.

Source: diversitydatakids.org calculation s of the Current Population Survey Annual Social and Economic Supplement, 2018-2022.

Some Current FMLA Challenges

- FMLA *unpaid*, low-wage workers most likely to report unable to afford time off from work
- Leave affordability varies across states
- Program knowledge
- Compliance
- Racialized exclusion

FMLA AND STRUCTURAL RACISM

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POLICY IMPACT ON SOCIAL ADVANTAGE/DISADVANTAGE

Policies modify social conditions

Reduce unequal opportunities for socially disadvantaged groups

Health Equity

BUILDING HEALTH EQUITY

- AJPH (2019) more research is needed on how upstream social determinants of health (e.g., governance and policy) shape pathways that lead to health disparities.
- SDH's outlined in CDC's Healthy People 2020 campaign--economic stability, education, social and community context, health care, neighborhood and built environment—have extensive histories of racial disparities born out of <u>racism embedded in local, state, and</u> <u>national polices.</u>

MATERNAL MORTALITY AND POLICY

- The United States has the worse maternal mortality rates than the rest of the developed world (National Center for Health Statistics, 2022; The Commonwealth Fund, 2022).
- Black, non-Hispanic women rank dead last when it comes to healthy birth outcomes.
- Black women are dying at almost 3 times the rate as White women and Black babies have two times greater rate of infant mortality, preterm birth, and low birthweight (Office of Minority Health, 2023; Kaiser Family Foundation, 2022).
- 52% of maternal and pregnancy related deaths occur after birth or postpartum (The Commonwealth Fund, 2022).
- Only high income country that does not guarantee paid parental leave to mothers after childbirth.



FMLA: A POLICY OF ADVANTAGE OR DISADVANTAGE?



THEORETICAL FRAMEWORKS

Structural Racism

- Structural racism refers to a system in which public policies, institutional practices, cultural representations, and other norms work to reinforce and perpetuate racial group inequity.
- It identifies dimensions of our history and culture that have allowed privileges associated with "whiteness" and disadvantages associated with "color" to endure and adapt over time. —The Aspen Institute, 2004
- Structural Racism is a fundamental cause of health inequality (Gee & Ford, 2011)

THEORETICAL FRAMEWORK

- Critical race theory
 - Examines structural racism at its core
 - CRT identifies that power structures are based on white privilege and white supremacy, which perpetuates the marginalization of people of color
 - Centers on how racism is intensely entrenched within the structure of American society
- Adopting a lens of CRT analysis, we can fully assess the degree to which a given health policy will <u>contribute to or dismantle</u> structural racism and work to building health equity.

RESEARCH QUESTION

 Does the FMLA disparately impact workers by race and gender?

METHODS

- Utilized a methodology that integrates quantitative analysis and a policy analysis using critical race theory.
 - This type of analysis/methodology recognizes the world is controlled by systems that advantage some and disadvantage others based on race and second provides an important step from moving from knowledge to action.

METHODS: DATA

- Family and Medical Leave Act (FMLA) in 2012 Employee survey
- Designed to examine the use of family and medical leave, unmet need for leave, and awareness of FMLA
- U.S. adults who were employed for pay in private or public sector
- Oversampling of those who needed or took family leave
- Random digit dial (RDD) design, calling landline and cellular phones
- Interviews were conducted with 2,852 individuals
- Our final sample included N = 1266

ANALYSIS

- Weighted logistic regression analyses (DV's): Factors associated with
 - Being a leave needer
 - A financial reason for not taking leave among leave needers
 - Difficulty making ends during leave among leave takers
- We ran two different sets of logistic regression analyses using a different reference group of race/ethnicity and gender
 - Reference group: White males (1st set) and White females (2nd set)

FINDINGS

- Leave needer:
 - Black women had nearly seven times higher odds of unmet need for FMLA benefits compared to White men
 - Individuals with higher family income had lower odds of being a leave needer
 - Black females had higher odds of unmet need compared with White females
- Financial reason for not taking leave
 - White males and individuals with low education had higher odds of a financial reason for not taking leave compared with White females and college graduates,

FINDINGS

- Difficulty in making ends meet for leave takers
 - Black women had 3.5 higher odds of having difficulty in making ends meet compared with White men in the adjusted model
 - Leave takers with lower education also had higher odds of difficulty making ends meet compared with college graduates
 - Latinos had lower odds of having difficulty making ends meet compared with White females
 - Leave takers with lower education had higher odds of difficulty making ends meet compared with colleague graduates

FINDINGS

- Experience of family and medial leave overall by race
 - Among leave needers, over 60% did not take leave because of a financial reason
 - White respondents had the highest levels of education, income, and knowing about the FMLA
 - While leave takers represented about the same proportion of each group (14-17%), Black respondents had the highest level of difficulty making ends meet
 - Black respondents also had the most leave needers (15% vs. 6-10%) as well as the highest proportion of not taking leave for a financial reason (64%)

OUTCOMES

- FMLA does not work equally for all those who qualify or have access to it.
- FMLA disparately impacts Black respondents and those with low education levels

RATIONALE FOR A CRT ANALYSIS OF HEALTH POLICIES



AIMS OF A CRT POLICY ANALYSIS WITH FMLA

- Confront racism, sexism, classism and other forms of oppression
- Challenge dominant ideologies that call for neutrality in FMLA
- Offer counter storytelling as a credible methodological tool
- Incorporate transdisciplinary knowledge to better understand various manifestations of discrimination

CRITICAL RACE POLICY ANALYSIS FRAMEWORK

• The Critical Race Policy Analysis Framework (CRPA), provides guidance for policy analysis to examine racial inequities within policy development, language, and implementation.

KEY TENETS OF CRPA FRAMEWORK*

*CRPA framework is currently part of an unpublished manuscript that is under review.

- Permanence of Racism
- Racial Neutrality/ Critique of Color Blindness
- Historical and Contemporary Contexts
- Interest Convergence
- Counter Storytelling
- Intersectionality
- Commitment to Social Justice

MEASURING CRITERIA

- Address Racism
 - Recognizing racism leads to dismantling racism granting privileges within health institutions.

Build Inclusiveness

- Understanding inclusiveness involves all perspectives at the table and working toward bettering the lives of the most marginalized also works in the interest of the majority.
- Commitment to anti-racism
 - Health policies investing in social justice builds health equity and health maximization.

CRITICAL RACE POLICY ANALYSIS FRAMEWORK (CRPA)FRAMEWORK

Criteria	Addresses Racism	Builds Inclusiveness	Commits to Anti-Racism
Scoring Definitions	Low: None to very little addressing of racism	Low: None to very little action to build inclusiveness	Low: None to low actionable commitment to anti-racism
	Medium: Moderate addressing of racism	Medium: Moderate action to build inclusiveness	Medium: Moderate commitment to anti-racism
	High: High or through addressing of racism	High: High level of action to build inclusiveness	High: High commitment to anti-racism
Policy I	Low	Low	Low
	Medium	Medium	Medium
	High	High	High
Policy 2	Low	Low	Low
	Medium	Medium	Medium
	High	High	High
Policy 3	Low	Low	Low
	Medium	Medium	Medium
	High	High	High

FMLA AND ADDRESSING RACISM

Addressing Racism CRT Analysis Questions	Analysis	
 Does the policy recognize racism as a permanent system of society? If so, how? 	 Policy does not address racism or the differential impact of racism; Intention of the policy was to address the double burden of home and workplace for all women, its main beneficiaries are economically advantaged women and men. (Scholar, 2016). Eligibility requirements and unpaid leave increase the economic burden for those families who already have little in savings and have unfairly been excluded from historical and current asset policies, housing policies, and educational opportunities. 	
 How does the policy addresses the social and economic landscape that embeds racism? 	 Part-time work or industries which employ women of color or low SES women are not included as part of the policy, it disproportionately benefits the majority. Goal of FMLA is to close the gender gap, however our analysis shows the disparate economic burden for Black women to take FMLA. 	
 Does the policy work to bring unintentional and intentional racism disparities to light? If so, how? 	Does not address the intentional or unintentional racism disparities or implicit bias because the policy does not adjust for the disparities in access to FMLA or eligibility for women of color.	

FMLA AND BUILDING INCLUSIVENESS

Building Inclusiveness CRT Analysis Questions	Analysis
 Who are the primary beneficiaries of FMLA? 	 High income, high education, married individuals Men and women who have higher incomes
 Did the policy utilize narratives from marginalized groups when designed? If so, how? 	Initially FMLA took into account the historical and political contexts of economically disadvantaged women. The initial policy development, paid leave was on the table. Through negotiations and fractures in women's organizations, the debate between substantive and formal equality was central and key inclusive elements of the policy were removed.
 Does the policy take into account the historical, legal, social, cultural, and political contexts of the racially, socially, and economically marginalized? If so, how? 	No, the current policy does not account racism and social marginalization due to work requirements and full time requirement.

FMLA AND COMMITMENT TO ANTI-RACISM

Commitment to Anti-Racism CRT Analysis Questions	Analysis
 Does the policy work to dismantle social disadvantage and promote social advantage for the racially marginalized? 	 FMLA does not work to break down racism granted privileges for whites. The group with the most resources benefits from this policy, the racial group with the least resources loses—does not have the same outcome with this policy.

POLICY RECOMMENDATIONS

- Rewrite policy to include language around racism and gender
 - To balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity
 - To balance the health and well-being of the family with the demands of the workplace, to promote the stability and economic security of all families while taking into account this country's history of racism, sexism, classism, and other forms of oppression, and to promote national interests in preserving well-being for all families and communities.
POLICY RECOMMENDATIONS

- Comprehensive Family and Medical Leave Act
 - Paid family leave through insurance program for workers funded by employee and employer contributions
 - At a minimum 20 to 24 weeks of leave available
 - Eliminate the part time requirement to quality for FMLA
 - Flexible scheduling such that all leave is not required to be contiguous
- Reframing of the policy name
 - Family support
- Utilize substantive equality as a guide, not formal equality
- Adopt an economic model that incentivizes businesses to provide paid leave

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Emerging Evidence on the Impacts of Paid Family Leave on Workers, Families, and Employers

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Most Americans Juggle Work and Family Responsibilities

- In 2022, **72.34 percent** of mothers and **92.9 percent** of fathers with children under 18 participated in the labor force
 - For mothers of children under 6, labor force participation rate is 67.9 percent
 - For fathers, LFP rates are similar regardless of child age
- Nearly **one-in-three** US children live with only a single parent (most commonly, mother)
 - Large racial disparities (e.g., 64% of Black children live with a single parent)

• Work is a necessity for many of these parents

Paid Family Leave

- Provides workers with time off work with (partial) wage replacement to care for their newborn or adopted children as well as for severely ill family members
 - US is **one of two countries in the world** without a national paid maternity leave policy; one of a few high-income countries without paid paternity leave
 - Paid caregiving leave (to care for ill family member) is less common in other countries
 - Paid family & medical leave: includes leave for own temporary illness or disability → also less common around the world

Current U.S. Policy Landscape

No federal policy, so provision left up to states & employers

• Employer-provided PFL:

- According to 2021 data from National Compensation Survey, **23 percent** of civilian workers have access to PFL from their employers
- Substantial growth from 14% in 2016
- Very unequal: 40% of highest 10 percent of wage earners; 7% of lowest 10 percent of wage earners

Current U.S. Policy Landscape

State-level:

- Birthing parents eligible for 6-8 weeks of paid leave through Temporary Disability Insurance (TDI) since 1978 Pregnancy Discrimination Act in CA, HI, NJ, NY, and RI
- State-level PFL programs: CA (2004), NJ (2009), RI (2014), NY (2018), WA (2020), DC (2020), MA (2021), CT (2022), OR (2023), CO (2024), MD (2025), DE (2026)
 - 4-12 weeks of leave with partial wage replacement (longer for own temporary disability)
 - Varies in terms of job protection
 - Funded by mixture of employee and employer payroll taxes
 - Much wider eligibility than FMLA (e.g: no or lower firm size requirements)
 - Integrated with state temporary disability insurance systems in CA, NJ, NY & RI
 - Varies in definition of "family member"

Brief Roadmap

- PFL Take-Up
- Impacts of PFL on Workers' Labor Market Outcomes
- Impacts of PFL on Maternal and Child Health
- Impacts of PFL on Employers

Take-Up of Paid Family Leave: Lessons from First 10 Years of CA-PFL



Source: Bana, Bedard & Rossin-Slater (2018)

Estimated bonding leave take-up rates: 40 (5) percent of employed mothers (fathers) in 2005; 47 (12) percent of employed mothers (fathers) in 2014

Distribution of Leave Duration, CA-PFL

- Conditional on taking PFL, 97 percent of women also take SDI
 - Average leave duration among female bonding claimants pprox 12 weeks
- Conditional on taking any leave, 24 percent of men take the maximum 6 weeks of bonding leave

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• Caregiving leave: 65 (70) percent of women (men) take less than 6 weeks

Source: Bana, Bedard & Rossin-Slater (2018)

Additional Take-Aways re: CA-PFL Take-Up

- Access to the program is unequal: women and men in lowest earnings quartile and small firms are under-represented in the claims data
 - Lack of job protection and too low wage replacement rates may be barriers
- Patterns across industries \rightarrow "family-friendliness" may be important (Goldin, 2014)
 - No major differences in bonding claim rates across the most common industries for women
 - New fathers who use PFL over-represented in retail, transportation, and health; under-represented in construction
 - Caregiving claimants significantly over-represented in the health industry
- More recent work shows that there is substantial heterogeneity in take-up across firms \rightarrow information and culture likely channels (Bana, Bodard, Bossin Slater & Stearns, 2023)

(Bana, Bedard, Rossin-Slater & Stearns, 2023)

PFL and Workers' Labor Market Outcomes

- Family leave programs aim to help individuals balance the dual (and often conflicting) responsibilities of family and work
- Theoretically ambiguous impacts of family leave on workers' subsequent labor market trajectories
 - May increase job continuity (and therefore wages, employment status, promotions, etc.) for workers who would have otherwise quit
 - May reduce job continuity for workers who would have taken shorter leave (or no leave at all)

• Also a concern that employers may discriminate against women/mothers

CA-PFL and Maternal Labor Market Outcomes (1)

From Rossin-Slater, Ruhm & Waldfogel (2013):

- Nearly doubled leave-taking rates among mothers of children under 1 year old
 - From pprox 3 weeks to pprox 6 weeks on average
- Estimated effects largest for least advantaged mothers (unmarried, minorities, low education levels)
- Increase in usual weekly work hours of employed mothers 1-3 years later by 10-17 percent

From Baum & Ruhm (2016):

- Higher employment rate 9-12 months after childbirth
- Higher work hours and wages in the child's 2nd year of life

CA-PFL and Maternal Labor Market Outcomes (2)

From Bailey, Byker, Patel & Ramnath (2019):

- Use administrative tax data and compare women who gave birth in the first and third quarters of 2004 (right before and right after PFL went into effect)
- 6-10 years after childbirth: reduction in employment by 7 percent and lower annual wages by 8 percent

• Effects concentrated among first-time mothers

CA-PFL and Paternal Labor Market Outcomes

Bartel, Rossin-Slater, Ruhm, Stearns & Waldfogel (2018):

- Fathers of children under 1 year old increase leave-taking by nearly 50%
 - Because the base rate is so low, leave duration only increases by less than 1 week

• In dual-earner households, both joint leave-taking and "father-only" leave-taking increases

Effects of PFL on Children

- Most of the research has focused on maternity leave and child health
- Possible mechanisms: lower maternal stress in the pre- and post-natal periods; more time spent in maternal care; more breastfeeding; more financial resources (if otherwise would have quit job or taken unpaid leave)
- Key findings in existing studies:
 - Introduction of (unpaid) FMLA improves birth outcomes and reduces infant mortality, but only for more advantaged (college-educated + married) mothers (Rossin, 2011)
 - Paid maternity leave provided through SDI programs reduces shares of low birth weight and preterm births, especially for Black and unmarried mothers (Stearns, 2015)
 - CA-PFL increased breastfeeding duration (Huang & Yang, 2015; Hamad et al., 2019), improved immunization rates (Choudhury & Polachek, 2019), reduced infant hospitalizations (Pihl & Basso, 2019), and improved behavioral outcomes at kindergarten entry (Lichtman-Sadot & Pillay Bell, 2017)

Effects of PFL on Children

- Improvements in early childhood health are meaningful in light of a large body of evidence documenting lasting consequences of early life health on long-term and even intergenerational measures of well-being (Almond & Currie, 2011; Almond, Currie & Duque, 2017)
- Moreover, disparities in early life health persist over the life cycle and across generations (Currie, 2011; Aizer & Currie, 2014)
- PFL may help reduce these disparities
 - Introduction of paid maternity leave in Norway in 1977 \rightarrow improvements in disadvantaged children's long-run outcomes (Carneiro et al., 2015)
 - At the same time, extensions in already lengthy paid leave programs in Europe and Canada have had minimal impacts on child outcomes (Baker & Milligan, 2008, 2010, 2015; Liu Skans, 2010; Rasmussen, 2010; Dustmann & Schönberg, 2012; Dahl et al., 2016)

Effects of PFL on Maternal Health

"What's important to understand is that most maternal deaths happen after women have the baby and the fundamental failure is not unsafe medical care but lack of adequate social support...a lot of the risks around childbirth happen after the baby is born during that vulnerable time when you're trying to care for an infant while also taking care of your household and doing all the things we expect of moms."

-Neel Shah, Harvard Medical School

Effects of PFL on Maternal Health

- Research from other countries shows that longer paid maternity leaves are associated with improved maternal health, but causality is hard to establish (see, e.g.: Hyde et al., 1995; Avendano et al., 2015; Jou et al., 2018)
- Butikofer et al. (2021): Introduction of paid maternity leave in Norway in 1977 improved mother's health around age 40 (blood pressure, pain, BMI, and mental health)
- In the U.S.: CA-PFL has led to improvements in maternal mental health status (Bullinger, 2019); CA-PFL and NJ-PFL decreased psychological distress among both parents (Irish, White, Modrek & Hamad, 2021)
- Also evidence from Sweden that fathers' ability to take leave on a flexible basis in the weeks following childbirth improves maternal mental and physical health outcomes (Persson & Rossin-Slater, 2022)

Employers and PFL

- PFL programs are typically financed mostly or entirely through employee payroll taxes
 → limited direct costs to employers
- May be other costs due to having to hire temporary replacement workers or coordinating schedules
 - PFL opponents tend to be among business advocates. E.g.: Chamber of Commerce; National Federation of Independent Business, business community leaders...
- On the other hand: may be benefits for employers due to reductions in overall turnover rates, improved employee morale, greater productivity

Employers and PFL

- Appelbaum & Milkman (2011, 2013) conducted a survey of about 250 California firms in 2010
 - \approx 90 percent of firms report that CA-PFL had either a positive effect or no effect on employee productivity, morale, and costs
 - $\approx 2/3$ of firms temporarily re-assigned work to others, while the remainder hired temporary replacements
- Bartel, Rossin-Slater, Ruhm, Slopen & Waldfogel, 2023:
 - Designed and fielded a survey of a representative sample of firms with 10–99 employees in New York and Pennsylvania from 2016 to 2019, and use it to study the effects of NY's 2018 PFL policy
 - No evidence of adverse impacts on employers' ratings of employee performance in terms of attendance, commitment, cooperation, productivity, and teamwork
 - Substantial improvement in employers' reported ease of handling lengthy employee absences, but only in 1st year of policy
 - Large increase in incidence of employee leave-taking, driven by smallest employers

Employers' Attitudes toward PFL During COVID



Figure 1. Within-firm changes in support for and opposition to state paid family leave between 2019 and 2020 in New York and New Jersey (n = 539 firms).

Note: Columns represent the percentage of firms reporting that they are supportive of, neutral, or opposed to PFL policies in 2019 and 2020.

From Bartel, Rossin-Slater, Ruhm, Slopen & Waldfogel, 2021.

PFL: Conclusions and Implications

- Paid family leave policy increases leave-taking and leave duration among both mothers and fathers; effects larger for least advantaged populations
 - Has potential to reduce inequalities in leave access (contrasts with evidence from unpaid leave)
- Evidence on PFL and maternal labor market outcomes is mixed: PFL is not a "silver bullet" for solving gender equity issues
- Strong evidence that PFL improve infant and maternal health; structure of the program (and whether father can stay home) matters
- The benefits of PFL to employees and their families seem to come at little or no cost to employers. And most employers are supportive of PFL.