



## *Providing Paid Family Leave Through the Temporary Disability Insurance Program: An Attractive and Affordable Option*

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Over the last twenty-five years, the numbers of people that work and also care for children and parents have increased dramatically. To respond to this situation, Congress passed the Family and Medical Leave Act (FMLA) in 1993 which finally required employers to provide leave to care for one's own serious health condition, including pregnancy, and to care for a new child or a seriously ill child, spouse or parent.

While the FMLA protects an employee's job, seniority and health benefits during a maximum 12 weeks leave from work, it does not replace wages. In the Survey of Employees on the Impact of the Family and Medical Leave Act (Survey of Employees), published by the U.S. Commission on Family and Medical Leave, 64 percent of respondents who needed leave but did not take it said they could not afford it. This situation is troubling in many regards and leads to the question of whether a system of paid family leave can be established without imposing an unreasonable cost on individual employers.

Rather than requiring employers to provide paid leave, attention is increasingly being given to the idea of using a pooled risk or pooled cost mechanism to provide wage replacement, such as the Unemployment Insurance system. In the small number of states with mandatory disability insurance programs, including New York, New Jersey and California, legislation has been introduced to provide paid family leave through this program. In New York, the disability benefits program has provided paid leave to employees since 1950 for their own non-work related disabilities, including - since 1977 - pregnancy and recovery after childbirth.

Assembly Bill 9463 (A9463), introduced by Assembly Labor Committee Chair Catherine Nolan on February 26, 1998, would provide benefits to employees who take family leave. By amending the disability benefits section of the state workers' compensation law, A9463 would extend workers' access to paid leave for the care of a new child (newborn, adopted or foster) or an ill child, spouse or parent. Workers must meet provisions of the federal FMLA to receive benefits.

Under this legislation, new costs for the disability benefits program would result from providing benefits to two groups: those who take leave for family reasons currently and those who do not take leave because they cannot afford it. Among the first group are those who take unpaid leave now and would receive disability benefits under the new legislation, and, those who take paid leave now and would lengthen their leave with the availability of benefits for 12 weeks. Among the second group are those who could afford

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to take family leave with the partial wage replacement offered by the disability benefits program.

This issue brief consists of three parts: 1) discussion of the benefits that would derive from a program of paid family leave; 2) a summary of the Fiscal Policy Institute's analysis of the costs of providing paid family leave through the current Temporary Disability Insurance program under Assembly Bill 9463; and, 3) issues to be considered in reviewing and refining this proposed approach.

**The benefits of providing paid family leave in New York**

Establishing a program of paid family leave would make it possible for workers, particularly women workers, to come back to work sooner; to continue to accrue seniority; to participate more continuously in the labor force; and therefore, to take less time searching for jobs and receiving unemployment compensation benefits.

Paid family leave provides a greater level of economic security for any recipient than unpaid leave. Earnings of new mothers using paid leave under temporary disability insurance are greater than mothers without access to such coverage. This is particularly significant for women who are single parents.

In addition, expanding New York State's temporary disability insurance program to provide paid family leave could reduce the amount of public funds that go to welfare, unemployment compensation, food stamps, Medicaid and other public programs that support workers who give up jobs to care for family, at no additional cost to the taxpayer. At the same time, the increased cost to employees and employers would be very low. Administrative costs would be virtually nonexistent since a well-established program would be used to provide benefits.

The Survey of Employers on the Impact of the Family and Medical Leave Act contracted for the U.S. Commission on Leave, reports that the FMLA has had no noticeable effect on business or employee performance to date. The impact of FMLA utilization on most employers has been minimal. It is relatively easy to administer and compliance involves little or no costs.

**The cost of providing paid family leave through New York's Temporary Disability Insurance Program would be modest**

To understand what New York would be likely to experience under A9463, the Fiscal Policy Institute used state disability claims data and vital health statistics, along with national random sample survey data (from the Survey of Employees), to estimate the rates and lengths of leave taken by employees for family reasons. Specifically, we adjusted pregnancy-related leave-taking found by the Survey of Employees with New York pregnancy claims data and statewide practice on the length of leave allowed for maternity. We looked then at the impact of various proportions of pregnancy leave-takers

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caring for a new child who would increase their leaves under Assembly Bill 9463 due to the 12-week period allowed for benefits.

To estimate leaves taken to care for an ill family member, we used national leave-taking rates found by the Survey of Employees and as an alternative, adjusted these rates for pregnancy leave experience in New York compared to the national survey's results. Employed pregnant women receive partial pay for pregnancy leave already under New York's disability program. Therefore, we can use their leave experience as a model to estimate paid leave to care for ill family under A9463.

The costs of providing paid family leave in New York vary depending on the leave-taking rates and average benefit amounts used to estimate such leave. In New York, some workers are covered for disability benefits at the statutory level and some have benefits that go beyond statutory requirements. All of these employees would be covered by the new legislation (if they have FMLA coverage and eligibility) but it is unlikely that all employees covered by plans that go beyond statutory requirements would be affected by it since they may have benefits already that go beyond those provided by A9463. However, to estimate a range of costs, it is useful to apply the weekly benefit amounts that correspond to the range of current disability coverage.

Using existing 1990 data, we estimated average weekly benefits for both groups in 1995: \$136 is the estimated average weekly amount paid on disability claims to workers with statutory coverage (the trend in this rate varied from 1989 through 1996); and, \$284 is the estimated average weekly benefit paid on claims allowed to all employees. These amounts were multiplied by total weeks of leave to estimate costs.

Total new costs for 1) leave to care for ill family based on national rates of leave found by the Survey of Employees, and for 2) additional leave taken by current pregnancy leave-takers to care for a new child, range from \$10.85 to \$12.70 million with an average weekly benefit of \$136 per week and from \$22.65 to \$26.53 million with an average weekly benefit of \$284 per week. Total new costs for 1) leave to care for ill family based on national survey rates of leave adjusted for pregnancy leave experience in New York compared to the national survey's results ("New York" rates), and for 2) additional leave taken for care of a new child, range from \$16.55 to \$18.41 million with an average weekly benefit of \$136 per week and from \$34.57 to \$38.44 million with an average weekly benefit of \$284 per week.

The range of costs above represents also the range of pregnancy leave-takers caring for a new child who would lengthen their leaves under A9463 towards the maximum 12-week FMLA period. For example, if 33.3 percent of these leave-takers extended their leave an average of two weeks, or up to 12 weeks for those already taking more than ten weeks of leave, total benefits would range in cost from \$11.65 to \$36.24 million. While the overall costs for expanding the disability benefits programs are not high, the cost of leave estimated at national rates are 66 to 69 percent of those estimated at "New York" rates - a substantial difference.

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Given this likely increase in benefit payments, premiums may go up for New York employers who purchase disability benefits insurance. At a minimum, costs would shift for those employers who purchase disability insurance and provide full pay (voluntarily or through collective bargaining agreements) during disability leave. The weekly wage for an employee on leave would be made up from two sources: the insurance carrier who would provide the maximum amount that can be replaced according to law or the benefit plan in place, and, the usual payroll account which would provide the remainder of the wage. However, the employer's price for shifting the risk of disability leave-taking to insurance carriers would be higher premiums. Currently, protection that is limited to statutory coverage costs relatively little. Rates provided by the State Insurance Fund in July 1998 were \$38.90 for males and \$93.70 for females annually.

In turn, employee payroll contributions may increase. The statutory limit on employee contributions currently is one-half of one percent of the first \$120 of weekly wages up to a maximum 60 cents per week. Some jointly agreed upon benefit plans require employees to pay more; these plans must be accepted by the chair of the Workers' Compensation Board and the increased contributions must be related to the value of the benefits. Also, workers that do not contribute currently to their disability benefits coverage may be asked to contribute.

**Issues to be considered in reviewing and refining this approach to providing a program of limited paid family leave to New York workers**

Assembly Bill 9463 does not increase access to family leave overall. The legislation limits it to those workers who meet the eligibility criteria of both New York's DBL and the federal FMLA, and whose employers are FMLA covered - taken together, about half of New York's employed population. FMLA eligibility for employees is met if they have worked 1,250 hours for a covered employer in the 12 months preceding leave (eligibility for disability benefits is less strict). FMLA coverage is limited to employers with 50 or more employees at the worksite or within a 75-mile radius. The combined DBL and FMLA criteria act to omit public sector workers, employees who work for small businesses, many part-time employees and others. Therefore, access to unpaid family leave, which secures an employee's job and benefits under the FMLA, would not increase under this legislation. It is important to note, however, that A9463 does expand access to paid family leave.

Currently, the disability benefits program covers all private sector workers in New York (if employees have worked at least four consecutive weeks; there are many exclusions in the law also). But, some of these employees work for FMLA covered employers and some do not. Furthermore, some of the employees who work for FMLA covered employers are eligible for FMLA leave and some are not. In general, as the size of worksite increases, the likelihood that employees have access to job-protected leave and benefits increases. In addition, employees at smaller worksites tend to be younger, female, non-union and less educated compared with employees at larger worksites. Therefore, under Assembly Bill 9463, those employees that are FMLA covered, and

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likely possess more benefits already compared to other employees, will have access to another benefit - family leave that is paid.

Employers who now buy disability benefits insurance fall into either of two categories: those that are FMLA covered and those that are non-FMLA covered. Under Assembly Bill 9463, would these categories become two separate risk pools or one risk pool with two sets of ratings? Should this legislation spell out how insurance carriers respond to this situation? Given that the disability benefits law is broader in its coverage than the FMLA, should non-FMLA covered worksites be able to opt into the insurance provided to FMLA covered firms? Could it become another type of additional cover to be offered? Insurance companies know how to and do so provide coverage beyond the statutory requirements already.

Finally, it is likely that a large number of people would be deterred from taking paid leave because the wage replacement rate under New York's disability benefits program is one half of the employee's average weekly wage with a maximum \$170 replaced per week. Findings from the Survey of Employees indicate that losing wages was a major reason for not taking leave. The partial pay made available with 1998 Assembly Bill 9463 may not be sufficient to induce many employees to take paid family leave. Clearly, this is an issue for further discussion.

A technical appendix (Estimating the Cost of Using New York's Temporary Disability Insurance Program to Provide Partial Pay to Covered Workers During Leaves Taken Under the Family and Medical Leave Act) providing greater detail on the findings and methodology described in this issue brief is available from the Fiscal Policy Institute, 1 Lear Jet Lane, Latham, NY 12110. Telephone: 518-786-3156. E-mail: [info@fiscalpolicy.org](mailto:info@fiscalpolicy.org).