

## Evidence to Support an Inclusive Family Definition in Oregon’s Paid Family and Medical Leave Legislation

It is important that paid leave laws and policies in Oregon apply to all families. To do so, Oregon’s paid family and medical leave law should define family to include “an individual related by blood or affinity to the employee whose close association with the employee is the equivalent of a family relationship.” This “blood or affinity” standard will ensure all workers can use their leave to care for those who are most important in their lives.

As described in this fact sheet, evidence from the federal government and state paid family leave laws demonstrate that the proposed family definition in Oregon, which covers chosen and extended family, will be successful. Since the overwhelming majority of Oregon’s families exist outside of the “nuclear family model” of a married couple and their biological children, inclusive family definitions provide important support to all. These inclusive family definitions help to achieve equitable health and economic outcomes for many communities that have been historically excluded from laws, programs, and benefits. Even though there is strong evidence that paid family leave programs are not abused, health certification requirements in the law will provide a check on any misuse. Due to these factors, many states are considering paid leave laws that include extended and chosen family, with recent successes both federally, at the state level in Arizona, and in municipalities across the country.

### The Federal Government’s Model Family Definition for the Federal Workforce

*The federal government’s definition of family, which includes “an individual related by blood or affinity to the employee whose close association with the employee is the equivalent of a family relationship,” comes with a track record of success.*

- The “blood or affinity” standard has been used by the federal government, the nation’s largest employer with more than two million employees, for more than 45 years, and it has been expanded repeatedly. This language has been used in the context of funeral leave since 1969, for voluntary leave transfers since 1989, and for sick leave generally since 1994.<sup>1</sup>
- Federal workers are entitled to use up to 12 weeks (or 480 hours) of sick leave a year to care for a family member—including chosen family—with a serious health condition. There are also opportunities under federal regulations to accumulate leave and transfer it.<sup>2</sup>
- The Office of Personnel Management reported to Congress favorably about usage rates of sick leave after paid sick time was expanded in 1994 to cover chosen family through this “blood or affinity” standard, noting that even after the federal government expanded the definition of family, employees used less than a third of the sick leave available.<sup>3</sup>
- In September 2015, President Obama signed an Executive Order to allow more than a million employees of federal contractors to earn paid sick time for personal or family health needs.<sup>4</sup> The Order used the “blood or affinity” model, and the U.S. Department of Labor (DOL) issued final rules to further clarify that the language “means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.”<sup>5</sup>
  - DOL noted that the “blood or affinity” standard could include, among other relationships, “a friend of the family in whose home the employee lived while she was in high school and whom the employee therefore considers to be like a mother or aunt to her, or an elderly neighbor with whom the employee has regularly shared meals and to whom the employee has provided unpaid caregiving assistance for the past five years and whom the employee therefore considers to be like a grandfather to her.”<sup>6</sup>

### Inclusive Family Definitions Provide Critical Support Without Leading to Significant Increases in Usage

*The existing state paid family leave laws show that a broad family definition provides important protection to some workers without leading to a significant increase in usage or uptake.*

- In existing paid family and medical leave programs, only a small minority of claims are to care for a seriously ill family member; the overwhelming majority of paid family and medical leave claims in California, New

Jersey, and Rhode Island are for a worker's own serious health needs or bonding with a new child. In 2014, only 2.96% of covered leaves in California, 4.49% of covered leaves in New Jersey and 2.57% of covered leaves in Rhode Island were to care for a seriously ill relative.<sup>7</sup>

- When paid family leave is used for care of a family member, an incredibly small percentage of these claims are used to care for family other than a child, parent, or spouse—even when state definitions of family go beyond just the nuclear family. Only a minority of claims are used for more extended family members; such usage statistics show that coverage of chosen family and more extended relatives like grandparents, siblings, and domestic partners will create an important right for workers with non-nuclear family structures without leading to significant increases in usage.<sup>8</sup>
- Workers treat paid family leave as insurance and save it for when it is necessary to use. Data from California and New Jersey show that on average workers take less than the maximum amount of time allowed by law, making clear that employees take only the time they truly need.<sup>9</sup>

### **Paid Family Leave Programs Work Well, Are Not Abused, and Require Workers to Obtain Certification for a Family Member's Health Condition**

*Research shows that paid family leave programs work well and can help employers, rather than hurting the bottom line. Furthermore, there is no evidence of fraud or abuse in these programs. The paid family leave laws in effect all require a worker to obtain documentation and submit certification regarding a family member's serious health condition, ensuring that workers will only use paid family leave when necessary.*

- In California, approximately 93% of employers reported that paid family leave had a positive or neutral effect on employee turnover, saving employers the costly step of replacing an existing employee.<sup>10</sup> A majority of California employers also reported positive or neutral effects on productivity (88.5%), profitability/performance (91.0%), and employee morale (98.6%).<sup>11</sup>
- The states with paid family leave laws require workers to submit documentation from the family member's health care provider in order to take the leave, and there may be additional safeguards to verify the details of the family member's health condition. For example, the paid family leave laws in California, New Jersey, and Rhode Island all require certification that includes, among other requirements, medical facts, probable duration of the condition, a statement that the serious health condition warrants the worker to help provide care, and an estimate of how long the worker's participation may be necessary.<sup>12</sup>
  - A study regarding employer experiences with paid family leave in New Jersey found no reports of abuse, with one human resources director noting "I don't know how anyone can abuse [the program]," given the documentation forms and required verification of medical conditions.<sup>13</sup>
- Both California employers as well as staff of the administering agency "report little to no evidence of fraud or abuse of the program."<sup>14</sup> Even despite a lack of fraud, paid family leave laws and regulations typically include penalties or other negative consequences for any fraud or misuse of the program.

### **Growing Support and Use of Inclusive Family Definitions in Other Localities**

*An increasing number of states and localities are passing paid leave protections with inclusive family definitions, providing support for a wider range of families and identifying themselves as family-friendly places to work.*

- Paid family leave coalitions in Colorado, Montana, New Mexico, Pennsylvania, Washington D.C., and a number of other states are actively working to build support for paid family leave protections that define family to include extended relatives and chosen family.
- In November 2016, Arizona voters approved, by a nearly three-to-two margin, a paid sick time law that defines family to include "chosen family" based on the federal workforce's "blood or affinity" standard. In June 2016, Los Angeles passed a paid sick time law that defines family to include this "blood or affinity" standard, as did Saint Paul (MN) in September 2016. Chicago and Cook County (IL) also passed paid sick time laws in 2016 that defined family to include chosen family.<sup>15</sup> Under these five laws, nearly seven million workers will gain the right to use paid sick time to care for chosen family.<sup>16</sup>

<sup>1</sup> Funeral Leave, Fed. Reg., Vol. 34, No. 163 (August 26, 1969) (codified at 5 C.F.R. pt. 630); Absence and Leave; Voluntary Leave Transfer Program, 54 Fed. Reg. 4749-01 (January 31, 1989) (codified at 5 C.F.R. pt. 630); Absence and Leave; Sick Leave, 59 Fed. Reg. 62266-01 (December 2, 1994) (codified at 5 C.F.R. pt. 630).

<sup>2</sup> 5 C.F.R. § 630.401(c).

<sup>3</sup> *Report to Congress on the "Federal Employees Family Friendly Leave Act" (Public Law 103-388)*, United States Office of Personnel Management (June 1997), <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/federal-employees-family-friendly-leave-act/>.

<sup>4</sup> *Paid Sick Leave for Workers on Federal Contracts: Executive Order 13706 – Frequently Asked Questions*, United States Department of Labor (2016), <https://www.dol.gov/whd/flsa/eo13706/faq.htm>.

<sup>5</sup> Establishing Paid Sick Leave for Federal Contractors, 81 FR 9591 (February 25, 2016) (codified at 29 C.F.R. pt. 13).

<sup>6</sup> *Ibid.*

<sup>7</sup> Sarah Jane Glynn et al., *Implementing Paid Family and Medical Leave Insurance: Connecticut*, Institute for Women's Policy Research (January 2016), p. 43, table 15, <https://www.ctdol.state.ct.us/FMLI%20report%20for%20CT.pdf>. For more information on usage, see *Paid Family Leave Market Research*, Andrew Chang & Co. for the California Employment Development Department (2015), p. 31, [http://www.edd.ca.gov/Disability/pdf/Paid\\_Family\\_Leave\\_Market\\_Research\\_Report\\_2015.pdf](http://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf); *Family Leave Insurance Workload in 2014: Summary Report*, New Jersey Department of Labor and Workforce Development, Office of Research and Information (October 2015), [http://lwd.dol.state.nj.us/labor/forms\\_pdfs/tdi/FLI%20Summary%20Report%20for%202014.pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202014.pdf); *TDI Annual Update: January-December 2014*, Rhode Island Department of Labor and Training (2015), p. 1, <http://www.dlt.ri.gov/lmi/pdf/tdi/2014.pdf>.

<sup>8</sup> *TDI Annual Update: January-December 2015*, Rhode Island Department of Labor and Training, p. 2, <http://www.dlt.ri.gov/lmi/pdf/tdi/2015.pdf>; *Paid Family Leave Market Research* (2015), p. 50; *Paid Family Leave Market Research* (2015), p. 50.

<sup>9</sup> *Family Leave Insurance Workload in 2014*, N.J. Department of Labor and Workforce Development (October 2015); *Paid Family Leave (PFL) Program Statistics: 2007-2015*, Employment Development Department of California (2015), [www.edd.ca.gov/Disability/pdf/qspfl\\_PFL\\_Program\\_Statistics.pdf](http://www.edd.ca.gov/Disability/pdf/qspfl_PFL_Program_Statistics.pdf). (last accessed Nov. 2016).

<sup>10</sup> Replacing an employee costs 50-75% of an hourly employee's annual pay and up to 150% of a salaried employee's annual pay. See Jodie Levin-Epstein, *Getting Punched: The Job and Family Clock*, Center for Law and Social Policy (2006), p. 9, <http://www.clasp.org/resources-and-publications/files/0303.pdf>; Eileen Appelbaum and Ruth Milkman, *Leaves That Pay: Employer and Worker Experience with Paid Family Leave in California*, Center for Economic and Policy Research (2011), p. 8, <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>;

<sup>11</sup> Appelbaum and Milkman, *Leaves That Pay*, p. 8.

<sup>12</sup> N.J. Stat. Ann. § 43:21-39.2; Cal. Unemp. Ins. Code § 2708(b); R.I. Gen. Laws § 28-41-36.

<sup>13</sup> Sharon Lerner and Eileen Appelbaum, *Business As Usual: New Jersey Employers' Experiences with Family Leave Insurance*, Center for Economic and Policy Research (June 2014), [www.cepr.net/documents/nj-fli-2014-06.pdf](http://www.cepr.net/documents/nj-fli-2014-06.pdf).

<sup>14</sup> *Paid Family & Medical Leave Insurance: Options for Designing and Implementing a Minnesota Program*, University of Minnesota (February 2016), p. 100, [https://mn.gov/deed/assets/paid-family-medical\\_tcm1045-186560.pdf](https://mn.gov/deed/assets/paid-family-medical_tcm1045-186560.pdf) (citing to Ruth Milkman and Eileen Appelbaum, *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy* (2011); and November 2015 interview with California EDD staff and follow-up documentation).

<sup>15</sup> L.A. Code § 187.04(G); Saint Paul Code § 233.02; Chicago Code §1-24-010; Cook County Code § 42-2.

<sup>16</sup> *Making Paid Leave Work for Every Family*, A Better Balance, Center for American Progress, Family Values @ Work & Forward Together (December 2016), p. 1, <http://www.abetterbalance.org/wp-content/uploads/2016/12/LGBTpaidLeave-report.pdf> (see endnote 1 for an explanation of how the figure of 7 million workers was calculated).