PAID FAMILY LEAVE PROGRAM DEVELOPMENT AND ADMINISTRATION: HAWAII

By Sarah Jane Glynn

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Section 1: An Introduction

Every year roughly 20 million workers in the United States take leave to address a serious personal or family illness or to care for a new child. In an additional 7 million instances workers report needing to take leave, but being unable to do so. At some point in their working years virtually everyone will require at least some time off in order to address a family caregiving or personal health concern, yet despite the near universal need only 14 percent of the workforce has paid family leave provided by their employers. While Hawaii does have a law requiring employers to provide temporary disability insurance to their workers, only 38 percent of the private-sector nationwide is covered by such a policy and fewer than a third of those policies are fully employer funded. Younger workers, low-wage workers, and workers of color are all less likely to be covered by paid leave policies. For example, only 6 percent of workers in the lowest earnings quartile are covered by paid family leave policies, compared to 22 percent of those in the highest earnings quartile.

Workers’ access to paid leave in the United States is wildly out of step with every other advanced economy in the world. Out of 185 countries and territories surveyed by the International Labour Organization (ILO) in 2014, the United States was one of only two countries (along with Papua New Guinea) to offer no paid maternity leave – although both countries do provide unpaid leave to mothers after the arrival of a new child. The United States is the only high-wealth country that does not provide paid leave to new mothers; the majority of these countries guarantee at least 14 weeks of paid maternity leave. The United States is also one of only a handful of high-wealth countries that does not provide paid parental leave to new fathers. Overall the United States is unique among its peers for not guaranteeing its workers the right to any form of paid leave for any reason at all.

Lacking access to paid leave is not simply a problem for individual families – it also has a profound impact on the economy overall. Working families in the United States annually lose an estimated $20.6 billion in lost wages due to the lack of access to paid family and medical leave. While most of this is due to losses related to temporary disability, $7.3 billion in wages are lost due to the lack of paid parental and family caregiving leave policies. Hawaii already has a law requiring employers to provide temporary disability leave, but working families are not covered if they need time off to care for a seriously ill or injured family member, or to care for a new child.

This lack of access to paid leave can have profound consequences for working families.

Seven-in-ten children in Hawaii (69.5 percent) live in households where all of the parents work, meaning there is likely to be no full-time-stay-at-home caregiver, and more than a quarter of children in Hawaii live in households headed by a single parent (20.35 percent live with a single mothers and 7.8 percent with a single father.) Due to lack of access to paid leave, when a new child is welcomed into a home or when a caregiving emergency arises many families are left to make impossible choices between their jobs and source of income and their families. And these effects are not universally felt, with some populations more vulnerable than others. For example, Native Hawaiian and other Pacific Islander children are disproportionately more likely to live in single parent homes and although the overall poverty rate in Hawaii is
lower than in the rest of the United States, Native Hawaiian and other Pacific Islander children are also the most likely to live in poverty. These are the families that are the most economically vulnerable and thus the least able to be able to afford to take unpaid leave. Access to paid parental and family caregiving leave is not only helpful to parents; it also pays dividends to children. Babies whose parents are able to take leave are more likely to be breastfed which is associated with a host of health benefits, and are more likely to receive regular medical checkups and their recommended vaccinations. Children with serious health concerns also benefit beyond infancy when parents have access to paid leave, since children recover faster from medical conditions when they are able to be cared for by their parents and the presence of a parent has been shown to shorten children’s hospital stays by 31 percent. The majority of parents of children with special health needs report that access to paid leave has a positive impact on their child’s physical health (81 percent) and emotional health (85 percent) in addition to having positive effects on their own emotional health (57 percent).

And children are not the only family members who are likely to need care. The Baby Boom generation is aging, and by 2030 seniors will comprise nearly 20 percent of the population while the number of people requiring long-term care services will more than double in the coming decades to a predicted 27 million people in 2050. The population of Hawaii is both older than the United States as a whole, and is aging faster. Currently, 15.6 percent of the population in Hawaii is 65 or older, and that proportion will continue to grow in the coming years. A significant amount of adult care is provided by family members, and there were more than 40 million family caregivers in the United States in 2013, providing an estimated 37 billion hours of unpaid elder care or care to another adult with a disability or serious health condition with an economic value of $470 billion. When workers are able to take paid leave to care for an aging relative or another family member with medical needs they are better able to help them fulfill their treatment plans and avoid medical complications and hospital readmissions. As a result, family-provided care can help to improve health outcomes while decreasing the need for additional medical interventions and lowering healthcare costs. But nearly half of family caregivers are employed outside the home, with approximately three-quarters (73 percent) in their prime working years between the ages of 35 and 64. And of these, 19 percent reported that their family caregiving responsibilities led to negative employment impacts, including “time off from work, missed professional opportunities, and financial losses.” Providing elder care to a parent has a negative impact on labor force participation and the impact is stronger for women, who are already more likely to provide care than men. Workers over the age of 50 who leave the labor force to care for an aging parent lose, on average, more than $300,000 in wages and Social Security retirement benefits.

An abundance of evidence shows that paid leave is needed in the United States, and that current policies fall short of addressing this critical support for working families.

Current Paid Leave Landscape in the United States

National

There is no national program to provide or mandate access to paid family and medical leave in the United States. However, seven states have passed paid leave laws and four have currently
operational social insurance programs to provide at least one form of paid leave. Federal law also provides access to job-protected unpaid leave for qualifying workers.

The Family and Medical Leave Act (FMLA) of 1993 provides up to 12 weeks of unpaid, job-protected leave to qualifying workers. FMLA leaves can be taken to address the worker’s own serious health condition, to care for a seriously ill immediate family member, to care for a new child (biological or adopted) or to address contingencies that arise out of military deployment. Workers may qualify for FMLA leave if they: work for an employer with at least 50 employees within a 75-mile radius; have accrued at least 12 months of tenure with a covered employer; and have worked a minimum of 1,250 hours in the prior year. As a result of the eligibility requirements only 56 percent of all private-sector workers are covered by the FMLA. Workers are most likely to be excluded from coverage because they work for an employer with fewer than 50 employees (29.4 percent of all private-sector workers) or because they worked fewer than 1,250 hours in the previous 12 months (21.8 percent.)

The majority of FMLA-type leaves are taken in order for a worker to address their own serious health condition (54.6 percent.) Roughly one-fifth of leaves relate to a new child (21.1 percent) which can include pregnancy-related medical leaves, recovering from pregnancy and/or childbirth, and caring for a newborn or newly adopted child. Family caregiving leaves for a spouse, parent, or child account for approximately one-fifth of all leaves as well (18.2 percent.) Military leaves are relatively uncommon and thus are not addressed in this report. There are also substantial numbers of workers who need to take leave, but are unable to do so. While there are many reasons why workers report being unable to take leave, the most common reason (46.1 percent) was because they could not afford to take unpaid leave.

<table>
<thead>
<tr>
<th>Reason for needing leave</th>
<th>Leave-takers</th>
<th>Workers with unmet need for leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Own illness</td>
<td>54.6%</td>
<td>49.7%</td>
</tr>
<tr>
<td>Related to a new child</td>
<td>21.1%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Care for a family member with a serious health condition</td>
<td>18.2%</td>
<td>40.8%</td>
</tr>
</tbody>
</table>

Only 48 percent of workers who take FMLA-type leaves receive full pay from their employer while on leave, and another 17 percent receive partial pay. Among workers who took FMLA-type leaves without full pay, 60 percent reported difficulties making ends meet, and 84 percent reported that they limited their spending. Workers whose annual family income was above the median ($62,000) were three times less likely to have to take unpaid leave, and were nearly twice as likely to receive full pay while out on leave, compared to workers with annual family incomes below the median. While only 14 percent of workers have access to dedicated paid family leave through their employers, many of those receiving pay while on leave do so by using accrued sick leave or vacation days. These are benefits that workers who are older, employed full-time, and have higher earnings are more likely to have access to, when compared to otherwise identical workers. Hourly workers, workers in the service industry, and Latino workers are all significantly less likely to have access to paid sick days than otherwise identical workers.
States have long been leaders on a myriad of policy issues, including paid leave. Just as 34 states passed their own state-level job-protected unpaid leave laws prior to the passage of the federal FMLA,45 a handful of states have passed their own paid leave laws. California, New Jersey, Rhode Island, New York, the District of Columbia, and Washington state have all passed legislation to create social insurance programs to provide workers with temporary disability leave and paid family leave. Rhode Island was the first state to create a temporary disability social insurance program in 1942, followed by California in 1946, New Jersey in 1948, and New York in 1949.46 The programs are funded through small payroll taxes, provide wage replacement to workers who cannot work temporarily due to a work-disabling health condition that was incurred outside the workplace.47 In 2002 California passed legislation to add paid family leave onto their already existing state temporary disability insurance system. New Jersey passed similar legislation in 2008, Rhode Island in 2013, and New York in 2016. The exact rules for eligibility and coverage differ by state, but all the state temporary disability insurance (TDI) and paid family leave (PFL) programs provide workers with partial wage replacement when they need leave to care for themselves, a family member with a serious health condition, or a new biological, adoptive, or foster child.48 (For more information on the structure of state paid leave programs, please see Glynn, Bradley, and Veghte, “Paid Family and Medical Leave Programs: State Pathways and Design Options.”)49

Under California’s program workers are eligible for up to 52 weeks of temporary disability leave and up to 6 weeks of family leave. In order to be eligible, workers must have earned a minimum of $300 in the first four of the last five completed quarters (also known as the base period.)50 As of 2017 the wage replacement level for leave-takers is 55 percent of normal wages, up to a cap of $1,173 per week. In 2018, this will increase to 70 percent for those earning less than one-third of the state average weekly wage, and 60 percent for all others. New Jersey’s program provides up to 26 weeks of temporary disability leave and 6 weeks of family leave, with a wage replacement level of 66 percent of normal wages up to a cap of $633 per week in 2017. Workers in the state are eligible if they worked for at least 20 weeks and have earned at least $8,400 in the previous 52 weeks (also known as the base year). 51 Rhode Island’s program allows for up to 30 weeks of temporary disability and up to 4 weeks of family leave per year. The wage replacement is set at 60 percent of normal wages, up to a weekly maximum of $817 in 2017. Workers in Rhode Island are eligible if they have earned at least $11,520 in the base period (first four of the last five completed quarters) or alternate base period (last four completed quarters.) Workers may also be eligible if they earned at least $1,920 in one of the base period quarters, and have a total base period earnings of at least 1.5 times the highest quarter of earnings, and their total base period earnings are at least $3,840.52

New York’s TDI system has been in place for nearly 70 years, and paid family leave will go into effect in 2018. While other states also allow employers to opt out of the state administered system by self-insuring or purchasing a commercial temporary disability insurance product to cover their workers,53 New York has a much higher incidence rate with about three-quarters of eligible workers covered by private insurance.54 Workers are eligible for TDI if they have worked for at least 4 consecutive weeks, or if they work for an employer that provides more generous voluntary coverage. The New York paid family leave program (PFL) will begin in
2018 by providing up to 8 weeks of family leave paid at 50 percent wage replacement up to a cap of 50 percent of the state average weekly wage. The length of leave and wage replacement level will increase over time until 2021, when workers will be eligible for up to 12 weeks of family leave paid at 67 percent wage replacement up to a cap of 67 percent of the state average weekly wage. Workers will be eligible for PFL if at least 26 consecutive weeks or at least 175 days if they work part-time.

These four state programs were developed by first creating a temporary disability insurance infrastructure and later adding paid family leave as an additional qualifying condition for leave. However, there are no additional states with TDI social insurance programs in place, so new states looking to develop paid leave proposals have to take a slightly different approach. The District of Columbia and Washington state have both passed legislation to create new programs that will provide both TDI and PFL.

Washington State first passed a law to create a state-wide paid parental leave only plan in 2007. This program would have provided a flat rate benefit to new parents, but was never implemented because there was no initial source of funding for the program. In 2017, the state passed legislation to create a more comprehensive program that, once in effect, will provide up to 12 weeks of leave for TDI or PFL (or up to 14 weeks for serious pregnancy related complications), with a maximum annual total of no more than 16 weeks of leave (or 18 weeks in the case of serious pregnancy related complications.) The program will provide 90 percent wage replacement on earnings up to 50 percent of the statewide average weekly wage, plus 50 percent wage replacement of earnings above this threshold, with a cap of $1,000 per week. Workers will be eligible if they worked in at least 4 of the last 5 completed quarters and worked at least 820 hours in that time period.

The District of Columbia passed legislation to establish a paid family and medical leave program in 2017, and the program is slated to go into effect in 2020. Once operational, it will provide up to 8 weeks of paid parental leave, up to 6 weeks of family caregiving leave, and up to 2 weeks of temporary disability leave, for a total of no more than 8 weeks of leave taken annually. The program will provide 90 percent wage replacement on weekly wages up to 150 percent of the D.C. minimum wage times 40 (in other words, up to 150 percent of full-time minimum wage weekly earnings), plus 50 percent wage replacement of earnings above this threshold, with a cap of $1,000 per week. Workers will be eligible if they worked in the District for an employer other than the D.C. or federal government for at least some time in the last 52 weeks. Self-employed workers will be covered if at least half of their work was conducted in the District and they opted into the paid family and medical leave system and have paid the appropriate taxes.

Hawaii’s approach to temporary disability insurance is significantly different than the one taken by other states. Rather than forming a state government-run social insurance program, the state passed legislation in 1969 to establish an employer mandate, with public and private employers of all sizes required to provide TDI. Most employees are covered, with the exception of federal employees, some domestic workers, insurance agents and real estate workers paid solely commission, some family employees, and a few other categories of workers who are excluded under current law. Employers may require workers to contribute up to half of premium costs, provided that the costs do not exceed 0.5 percent of the worker’s weekly wages and are not more
than $5.12 per week.\textsuperscript{57} Workers are eligible if worked at least 20 hours per week for the last 14 weeks, and earned at least $400 in the previous 52 weeks. Employers can choose to provide TDI by purchasing a private plan through an authorized insurance carrier, or through state-approved self-financing. Unemployed workers who experience a disabling condition or workers whose employer is bankrupt or non-compliant receive wage replacement through a state-run fund.\textsuperscript{58} Leave-takers can receive up to 26 weeks of leave per year, at 58 percent wage replacement up to a cap of $594 per week in 2017, and the maximum allowable benefit is adjusted annually based on averages wages in the state.\textsuperscript{59} There are no current provisions in Hawaii for paid family leave.
Table 2. Comparison of existing and pending paid family and medical leave programs

<table>
<thead>
<tr>
<th>Program</th>
<th>Architecture and Funding</th>
<th>Cost</th>
<th>Length of Leave Available</th>
<th>Wage Replacement</th>
<th>Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary Disability Insurance (TDI)</td>
<td>Paid family leave (PFL)</td>
<td>TDI</td>
<td>TDI</td>
<td>None</td>
<td>Worked at current job for at least 12 months &amp; logged at least 1,250 hours in previous year AND Work for an employer with at least 50 employees within a 75-mile radius</td>
</tr>
<tr>
<td>FMLA</td>
<td>Unpaid</td>
<td>n/a</td>
<td>Up to 12 weeks</td>
<td>None</td>
<td>Worked at current job for at least 12 months &amp; logged at least 1,250 hours in previous year AND Work for an employer with at least 50 employees within a 75-mile radius</td>
</tr>
<tr>
<td>California</td>
<td>Social insurance with limited employer private options; funded through employee payroll tax</td>
<td>0.9% of taxable wages, up to a maximum of $998.12</td>
<td>Up to 52 weeks</td>
<td>Up to 6 weeks</td>
<td>55%, weekly max of $1,173 In 2018 PFL benefit increases to 70% for those earning &lt; 1/3 of state average weekly wage (AWW), &amp; 60% for all others, up to benefit cap Earned at least $300 in base period</td>
</tr>
<tr>
<td>Program</td>
<td>Architecture and Funding</td>
<td>Cost</td>
<td>Length of Leave Available</td>
<td>Wage Replacement</td>
<td>Eligibility Requirements</td>
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<tr>
<td>New Jersey</td>
<td>Social insurance with limited employer private options;</td>
<td>Social insurance with limited employer private options;</td>
<td>Employee: 2017 - 0.24% on $33,500</td>
<td>Up to 26 weeks</td>
<td>66%, weekly max of $633</td>
</tr>
<tr>
<td></td>
<td>Funded through employee/employer payroll tax;</td>
<td>Funded through employee payroll tax;</td>
<td>2018 - 0.19% on $33,700;</td>
<td></td>
<td>Earned at least $8,400 in base year OR Earned at least $168 per week for a minimum of 20 weeks</td>
</tr>
<tr>
<td></td>
<td>Employers may request approval to opt out of state plan to self-insure or provide insurance through private carrier</td>
<td>New employers: 0.5%;</td>
<td>2017: 0.10% up to the wage base of $33,500;</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>All other employers: experience rated, 2017 wage limit - $33,500, 2018 wage limit - $33,700</td>
<td>2018: 0.09% on $33,700</td>
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</tr>
<tr>
<td>Rhode Island</td>
<td>Social insurance with exclusive state fund;</td>
<td>1.2% of the first $68,100 in earnings</td>
<td>Up to 30 weeks</td>
<td></td>
<td>60%, with a weekly maximum of $817 plus dependent benefits</td>
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<td></td>
<td>Funded through employee payroll tax</td>
<td></td>
<td>Up to 4 weeks</td>
<td></td>
<td>Earned at least $11,520 in base or alternate base period OR Earned at least $3,600 in base period &amp; at least $1,800 in a quarter &amp; have total base period earnings of at least 150% of highest quarter's earnings</td>
</tr>
<tr>
<td>Program</td>
<td>Architecture and Funding</td>
<td>Cost</td>
<td>Length of Leave Available</td>
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<tr>
<td>New York (PFL: Enacted in 2016, effective 2018)</td>
<td>State fund, with highly-regulated private options</td>
<td>Employee: 0.5% of wages paid, up to $0.60 per week</td>
<td>Up to 26 weeks</td>
<td>Up to 8 weeks in 2018, 10 weeks in 2019, 12 weeks in 2021</td>
<td>For temporary disability: worked at least 4 consecutive weeks for a covered employer OR Work for an employer who provides voluntary coverage OR Work at least 40 hours per week for one employer as a domestic or personal employee; For family leave: currently employed by a covered employer &amp; worked at least 26 consecutive weeks for a covered employer OR Worked at least 175 days for a covered employer if part-time</td>
</tr>
<tr>
<td></td>
<td>Funded through employee/employer payroll tax; Employers must provide coverage either through private insurance or state plan, or request approval to self-insure</td>
<td>Employer: all additional costs</td>
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<td></td>
<td>Employers may wave the employee contribution to fully fund coverage</td>
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<tr>
<td></td>
<td>State fund, with highly-regulated private options</td>
<td>0.126% of an employee’s weekly wage up to the state AWW</td>
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<td></td>
<td>Funded through employee payroll tax; Employers may opt to cover full cost of PFL for employees</td>
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<td></td>
<td>Employers must provide coverage either through private insurance or state plan, or request approval to self-insure</td>
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<td>Program</td>
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<tr>
<td>Hawaii</td>
<td>Employer mandate</td>
<td>n/a</td>
<td>Employee: all additional costs</td>
<td>Up to 26 weeks</td>
<td>58%, with a weekly maximum of $594</td>
</tr>
<tr>
<td></td>
<td>Temporary Disability Insurance (TDI)</td>
<td>TDI</td>
<td></td>
<td>TDI</td>
<td>Worked at least 20 hours per week for at least 14 weeks AND</td>
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<td>Paid family leave (PFL)</td>
<td>PFL</td>
<td></td>
<td>PFL</td>
<td>Earned at least $400 in the 52 weeks prior to the claim date AND</td>
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<td></td>
<td>Be in current employment</td>
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<td>Program</td>
<td>Architecture and Funding</td>
<td>Cost</td>
<td>Length of Leave Available</td>
<td>Wage Replacement</td>
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<tr>
<td>District of Columbia (Enacted 2017, effective July 2020)</td>
<td>Social insurance with exclusive state fund; Funded through employer payroll tax</td>
<td>TDI 0.62% of the annual salary of each covered employee</td>
<td>Up to 2 weeks</td>
<td>Up to 8 weeks of parental leave &amp; up to 6 weeks of family caregiving leave; No more than 8 weeks of total leave in a 52-week period</td>
<td>For workers with weekly earnings &lt;150% of D.C. min wage ($690 in 2017), 90% of AWW; For workers with weekly earnings &gt;150% of D.C. min wage, 90% of earnings up to 150% of D.C. min wage, plus 50% of earnings above this threshold, with weekly max of $1,000</td>
</tr>
<tr>
<td>Program</td>
<td>Architecture and Funding</td>
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<td>Length of Leave Available</td>
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<tr>
<td>Washington State</td>
<td>Temporary Disability Insurance (TDI) Paid family leave (PFL)</td>
<td>TDI</td>
<td>TDI</td>
<td>Up to 12 weeks; Combined family/medical leave may not exceed 16 weeks; or 18 in case of serious pregnancy-related complication</td>
<td>For workers with earnings at &lt;50% of statewide AWW, 90% of worker’s AWW; For workers with over 50% of statewide AWW, 90% AWW up to 50% of statewide AWW, plus 50% of employee’s AWW for all earnings above 50% of statewide AWW, with weekly max of $1,000</td>
</tr>
<tr>
<td>(Enacted 2017, effective 2019 (premiums) / January 2020 (benefits))</td>
<td>Social insurance with limited employer private options; Funded through an employee &amp; employer payroll tax</td>
<td>PFL</td>
<td>PFL</td>
<td>Up to 12 weeks;</td>
<td>Worked at least four out of five completed quarters prior to application AND Must have worked for at least 820 hours in the qualifying period</td>
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<td>Up to 12 weeks;</td>
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<td>Combined family/medical leave may not exceed 16 weeks; or 18 in case of serious pregnancy-related complication</td>
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Hawaii State Paid Family Leave Analysis Grant Report, Page 56 of 187
An abundance of evidence shows that there are multiple benefits to paid family and medical leave. The majority of research focuses on the impacts of parental leave for new mothers (maternity leave) because although maternity leave is not the most common leave-taking behavior it is, for a variety of reasons, the most easily studied form of leave. The importance of mother’s leave-taking should not be underplayed however, as most mothers – including the mothers of children who have not yet reached school age – work for pay in addition to being responsible for the majority of family care.61

Two-thirds of mothers bring home at least a quarter of the family’s total earnings and low-income mothers tend to account for a larger share of their family’s earnings.62 Women of color are especially likely to be economically supporting their families, and black mothers are nearly twice as likely to be the primary breadwinner for their families compared to white mothers.63 As wages have stagnated, one of the only ways working families have been able to get ahead is by increasing their labor force participation and working hours. Most of this has been achieved by increasing the paid work done by mothers. It is no surprise, then, that the families that have seen real, inflation-adjusted income growth since the 1970’s are married couples where the wife also works.64

The increased labor force participation of women has not only boosted individual families’ economic prospects; it has also played a key role in bolstering our overall economy. If women had not increased their work hours to the extent that they did from 1976 to 2012, our GDP today would be approximately 11 percent lower.65 And recent research indicates that growth could have been greater still if the movement of women into the work force had been accompanied by policies to facilitate their integration of work and family responsibilities. American women’s labor force participation has fallen from 1990 to 2010 relative to other advanced economies – and much of this is due to the fact that the U.S. remains the only highly industrialized country without national policies to support working families like paid family and medical leave.66 If U.S. women in the prime working age category of 25 to 54 participated in the labor force at the same rate as women in Canada or Germany - where they have access to paid leave and other work-family policies – there would be more than 5 million additional women in the labor force, and this would result in more than $500 billion of additional economic activity per year.67 In this context, it is worthwhile to note that Hawaii has relatively low rates of breadwinning mothers. When breadwinning is defined as bringing home at least 40 percent of household income, Hawaii ranks 33rd in the nation, with less than half (48.9 percent) of mothers falling into this category.68

National research on access to paid leave shows that it makes mothers more likely to return to work after the birth of a child,69 makes women return to work more quickly compared to those without paid leave, and makes women more likely to return to the same or higher wages than they were earning before they gave birth.70 Women who take paid parental leave and return to work are 39 percent less likely to receive public assistance and 40 percent less likely to receive food stamps than women who do not take paid leave and return to work. Men who return to work after taking parental leave are also less likely to receive public assistance or food stamps than men who return to work after the birth of a child without taking leave.71 While data on leave-
takers for family caregiving is scarcer, there is evidence to suggest similar patterns are at play. Workers who live with a child with health problems are 48% more likely than their peers to have lost wages, and caregiving for an adult with health problems increases the odds of lost wages by 29 percent. However, access to paid leave to address family health needs reduces the likelihood of lost wages by 30 percent.72

Research on the existing state paid leave programs offers further evidence of the positive impacts of paid leave social insurance programs in the United States. First, access to paid leave makes fathers more likely to take parent leave, and fathers in California are now 46 percent more likely to take parental leave than they were previously.73 Leave-taking by fathers is associated with a host of benefits for children and families, including a more gender-equitable division of household labor and increased paternal involvement in children’s lives.74 As mothers’ access to paid leave in California increased, so did mothers’ labor force participation and work hours in the 1 to 3 years after giving birth.75 In addition to being more likely to return to work, mothers in California are also more likely to return to their same employer, replicating the results found at the national level under largely voluntary employer-provided paid leave plans.76 The implementation of paid family leave in California is also associated with an increase in breastfeeding duration among new mothers, which is associated with a host of health benefits for children.77 And contrary to concerns from the business community before California’s paid family leave plan went into effect in 2004, the majority of employers in the state have reported either a positive or null effect on employee productivity, profitability, and performance.78

There is less research available on the impacts of paid family leave programs in New Jersey and Rhode Island because they have been in effect for shorter periods of time. However, there is evidence to suggest that the implementation of paid family leave in New Jersey has led to a narrowing of the employment gap between men and women, and a narrowing of the gender wage gap.79 Employers in New Jersey, both large and small, report that they have been able to easily adjust to the expansion of the TDI system to also cover paid family leave,80 and the majority of workers across gender, race/ethnicity, age, marital status, union affiliation, employment status, and income lines report that they view the program favorably.81

Rhode Island has had paid family leave in place for the shortest period of time, but there are signs that the program is working well.82 Workers who were able to take state-provided paid parental leave were significantly more likely than those taking other forms of paid leave to report a better ability to maintain financial stability, arrange child care, and re-organize their life after the arrival of a new child.83 Workers who took state-provided paid leave to care for a family member were significantly more likely to report being satisfied with their ability to re-organize their life to be both a worker and a caregiver, and reported a greater ability to provide care to their family member in the long-term.84

Growing evidence of the benefits of paid leave has resulted in tangible shifts in the private sector and among policy makers, but progress is slow. Businesses are also recognizing the role that paid leave can play in retaining workers and boosting productivity. Yet while there has been substantial media coverage of high-profile companies implementing or expanding their paid leave policies, the benefit is often only extended to high-skill, high-wage workers and not the entire workforce. A recent survey of employers found that only 58 percent of employers
provided paid maternity leave, and only 15 percent offered paid paternity leave to fathers. And despite the media coverage, this does not represent a significant increase since 2012.

The 2016 presidential election marked the first time that nominees from both major political parties had paid leave as part of their policy platforms, although there were notable differences between the approaches. Republicans and Democrats in Congress have introduced multiple paid leave bills, although again the approach varies between the two parties. And recently, a bipartisan working group led by the American Enterprise Institute and Brookings released a report detailing a paid leave proposal that was developed by conservatives and progressives working together. In spite of these advances, no national legislation has been introduced on paid leave that received bipartisan support. States continue to lead the way on innovating and implementing paid family leave.

Purpose of this report

This report provides recommendations on policy design and program implementation in order to determine how best to implement paid family and medical leave in the state of Hawaii should the legislature pass a bill into law.

To develop the following recommendations key personnel in Hawaii were interviewed, as well as in states with existing paid leave programs. The research process also included review of literature, studies from other states interested in creating paid leave programs, and legislation proposed elsewhere. During this project, the following guidelines were followed while developing recommendations to create a paid family leave insurance program for the state:

- What will be the most efficient strategy?
- What will be the most cost-effective mechanism for implementation?
- What system will be the least onerous for administrators, employers, and employees?
- How to create a model that will balance potential costs with creating a more vibrant Hawaii where workers want to live and work?

Designing a Paid Family and Medical Leave Program

Based on domestic and international examples and experiences, the form and structure of a paid leave program can vary greatly. Design decisions are based, at least in part, upon what the intended goals and outcomes of a program are. Which conditions will be covered? How long will workers be able to take leave? What level of wage replacement will be available to leave-takers? How does an individual qualify for the program? How will the program be funded? What is the ultimate role of the government, employers, and workers? While the answers to each of these questions may differ from location to location, thus altering the ultimate type of program enacted, there are a number of commonalities and issues that must be addressed for any paid leave program.

In order to function efficiently, any paid leave program must have the ability to:

- Determine if a worker is experiencing a leave-qualifying condition
• Determine if a worker is eligible for program participation
• Calculate the amount of benefit that a worker is eligible for
• Process the leave benefit and disperse funds to the worker

Unlike in states with TDI social insurance programs, there is no perfect fit for a paid leave program within already existing programs in Hawaii. As a result, the creation of a new paid leave program is not as simple as it has previously been in other states that were able to expand another program to also cover family leave. However, this does not mean that there are not lessons to be learned from and resources that can be shared with already established programs.

Section 2: Potential program structures

Employer mandates

Because Hawaii implemented temporary disability insurance as an employer mandate, it may seem appropriate to implement paid family leave in a similar manner. However, while short-term benefits such as paid sick days are often provided as solely employer funded, there is no domestic precedent for offering paid family leave in this format. While there are countries that mandate employer provision of paid maternity leave - primarily in Africa and Asia - this is the least common way that paid leave is structured internationally. 88

In these countries employers, rather than the government, provide wage replacement to workers on leave funded through their own coffers or by purchasing private market insurance products. Under this format, the government requires employers to provide paid leave, but does not transfer government funds to businesses in order to offset costs. 89 There are a small number of countries, including Singapore, Thailand, and South Korea, where the government funds a portion of the leave benefit in addition to employers’ contributions. 90 Regardless of whether the government provides some funding, under employer mandates businesses are required to administer paid leave to workers themselves.

There are numerous reasons to be cautious about approaching paid family leave as an employer mandate. Employer mandates, such as Hawaii’s TDI law, require individual businesses to fund and administer workers’ paid leave benefits. This may lead to unintended consequences. Women are slightly more likely than men to take temporary disability leave in the United States, 91 but are much more likely than men to utilize paid family leave benefits in the states with operational systems. This is not surprising since women continue to provide the majority of care to children and aging relatives, due to a combination of gender norms and women having lower opportunity costs on average. (See Table 3 on page 21 for more information on the gender breakdowns of state paid leave program usage.)

In an ideal world men and women would take caregiving leaves at equal rates, and men’s usage of family leave has steadily increased over the years that California’s paid leave program has been in place. However, because paid family leave is currently more likely to be utilized by women, employer mandates can have a disproportionate economic impact on organizations where a significant portion of the workforce consists of women. There is reason to suspect that employer mandates for paid family leave may result in unintended negative employment
outcomes for workers, namely women, who are viewed as being more likely to take leave. For example, in other countries where employers are required to provide paid maternity leave to their workers without government supports, women are more likely to experience a host of negative outcomes including employment discrimination and large gender wage gaps.\(^92\)

Small businesses that are more likely than larger firms to need to hire replacement workers while an individual is out on leave may also face greater hardships under an employer mandated PFL program compared to organizations with larger workforces where duties can be more easily spread among coworkers. As of 2014, the most recent year of available data, nearly one-third (31.42 percent) of workers in Hawaii worked in a business with less than 100 employees, and one-in-ten (10.28 percent) worked in a business with less than 20 employees.\(^93\)

There are a number of private market TDI products offered by insurance carriers, and 22 insurers are currently authorized to write TDI policies in Hawaii.\(^94\) New York administers a state-wide social insurance program to provide TDI, but also allows employers to self-insure or purchase a private market policy. As New York expands their system to also include PFL, they are requiring employers with private insurance coverage to offer both PFL and TDI from the same carrier.\(^95\) As a result, a number of insurance carriers are developing PFL policies for their clients. Unlike in Hawaii, New York requires that premiums must be community rated in order to ensure that premiums are not different based on gender, age, or any other individual factor. Employees’ maximum contribution is 0.126 percent of their weekly wages up to the statewide average wage.\(^96\) In 2016 the average weekly wage was $1,305.92, leading to a maximum employee contribution of $1.65 per week.\(^97\) This does not, however, limit how much insurance carriers can charge for their product, and the state law only sets a floor on benefits but does not prohibit employers from providing more generous leave policies. It remains to be seen how cost effective and efficient private insurance carriers will be when compared to the state program in providing PFL, which offers higher levels of wage replacement than New York’s TDI system. It is also too soon to tell if the private PFL market will exhibit some of the same problems seen in the private for-profit health care insurance market, including the financial incentive for insurance companies to deny claims.\(^98\) And while employers in New York have the option of providing PFL through private insurers or self-insuring, there is no employer mandate requiring them to do so because they have the ability to ensure coverage through the state system.

California also allows employers to opt-out of the state TDI and PFL program by establishing a Voluntary Plan (VP) that is approved by the state. In order to qualify, the VP must provide all the same benefits as the state program in addition to at least one benefit that is more generous than that provided by the state, for example a longer length of leave or a higher level of wage replacement. The VP cannot cost workers more than the state program, and employers must provide a security deposit to the state in order to ensure that all obligations are met.\(^99\) California must approve every VP, and there is a dedicated unit within the state government that oversees and audits VPs to ensure that they are in compliance with state law.\(^100\) It is important to note that requiring paid leave as an employer mandate still requires state oversight and involvement in order to ensure that workers are covered for the benefits they are legally eligible for.

Therefore, structuring a PFL program as an employer mandate is likely to result in negative outcomes for women, older workers, workers with disabilities, other workers who are the most
likely to need leave, and the businesses that employ them. This is also the least common model for structuring paid family and medical leave internationally and has no precedent domestically. As a result of these drawbacks, this program structure is not recommended nor explored in greater detail throughout this report.

Social insurance

The majority of paid leave programs, internationally and domestically, are structured as social insurance programs. Social insurance is similar to other forms of insurance, wherein workers pay “premiums”, often through the payroll tax system, into a dedicated insurance fund. Unlike other forms of insurance, these premiums are not experience rated, where those who are most likely to file a claim pay higher rates, but community rated where each individual pays at a similar rate to equalize the financial impact. This is not to say that every worker necessarily pays the same total amount, but often the costs are calculated as a percentage of earnings. Higher wage workers pay more into the system, but when benefits are calculated as a percentage of their normal wages they also receive a larger benefit amount in absolute terms. Under social insurance, when a worker qualifies for leave they file a claim with the government program and receive wage replacement as a government benefit, rather than through their employer. This creates less burden on employers, and prevents workers from having to disclose potentially sensitive personal and medical information to their employers. Because social insurance allows for both risk and resources to be spread across a large community, in this case all workers, it allows for benefits to be provided at a low per-person cost. This model works well for paid leave because while every worker potentially will need leave at some point in their lives, these are relatively infrequent events in the life course. For example, the majority of mothers in the U.S. (63 percent) will have only 1 or 2 children by the time she ends her childbearing years.  

There are a number of well-functioning and popular social insurance programs already operating in the United States. The best known national examples are Social Security and Medicare, which the vast majority of workers will pay into during their working years. Both employers and employees contribute FICA taxes to fund the system, and are able to draw benefits when they reach retirement or become seriously disabled. Unlike with a personal savings account like a 401k, all of the contributions are pooled together into an intergenerational transfer system. In addition to funding retirement and disability benefits that the individual worker may receive, Social Security funds are also used to provide survivor benefits to qualifying families of workers who have died. Medicare operates similarly but provides health care coverage to those who qualify based on age or disability rather than cash benefits.  

The paid leave programs run in the states with currently operational programs are organized similarly. In California, New Jersey, and Rhode Island workers, and in the case of New Jersey employers, contribute to dedicated trust funds that are used to fund benefit payments and administrative expenses associated with running the programs. These trust funds are periodically audited to ensure that the payroll tax levels are sufficient to cover the payment of benefits, and taxes can be adjusted as needed to ensure the health of the funds. New Jersey and California do have options for employers to provide paid leave benefits to workers outside of the state social insurance systems, although this option is not widely utilized. In both instances, there are structures in place to ensure that workers who change jobs or have employers who are not in
compliance are still covered if they need access to paid leave.\textsuperscript{104} Workers in California cannot be compelled to accept coverage under a Voluntary Plan and have the option of opting into the state system instead if they choose.\textsuperscript{105}

**Noncontributory programs**

Other countries operate PFML through noncontributory programs, although this is a less common approach than the social insurance model. Under this program structure leave-takers still receive wage replacement through a government program, but they are financed through general funds rather than dedicated “premiums” submitted through payroll contributions. The most recent country to take this approach to paid leave is Australia, which implemented paid parental leave in 2011.\textsuperscript{106}

Under the Australian paid parental leave scheme, which is funded through general revenue, all leave-takers are eligible for the same flat benefit, paid at the national minimum wage. This is consistent with the pre-existing “Baby Bonus” which provided a lump sum benefit to parents after the birth of a child, but differs from the wage replacement offered under most social insurance programs.\textsuperscript{107} When workers fund the program directly through payroll taxes, it is logically consistent to base benefit payments on their taxed earnings. For example, high wage earners who pay the most into the Social Security system also receive the largest benefits in absolute dollars when they reach retirement age, although low wage earners may receive a higher percentage of their working income. However, because Australia funds their program through general revenue rather than a dedicated tax, it is consistent to provide a flat paid leave benefit rather than basing payments on an individual’s earnings.

Additionally, while the Australian paid parental leave benefit is paid at the minimum wage, their hourly minimum wage was $17.70 in 2016, compared to the current 2017 minimum wage of $9.25 in Hawaii.\textsuperscript{108} Because the Australian payment structure assumes full-time work some workers, primarily those working part-time, receive more income while on parental leave than they did while working. This is consistent with the previous Australian “Baby Bonus” model that existed prior to the implementation of the paid parental leave scheme, which did not require a parent to have been previously employed to receive the benefit. However, this is would be an unusual and unprecedented way to provide benefits in the U.S. context.

Australia’s program also differs from other paid leave programs domestically and around the world due to the ways benefits are dispersed. Rather than receiving a benefit directly from the government, Australian leave-takers receive their benefits through their employers’ payroll systems, meaning that they receive wage replacement through the same mechanism through which they receive their normal earnings. The government makes an advance payment to the employer in order to cover the cost of the leave benefit, paid out of general revenue, which is then paid out to the benefit recipient as if it were their normal earnings.

There are many different ways that a paid family and medical leave program could potentially be structured. Determining the best structure depends on the goals of the program and other existing programs and precedents. For example, employer mandates are inconsistent with programs
intended to help reduce employment discrimination, while flat rate benefits may not be appropriate in a context where the minimum wage is not a living wage.

Necessary components of a paid family and medical leave program

While some options are better than others, there are a number of examples both international and domestic that provide guidance on how a paid family leave program can be structured and administered, including: employer mandates, social insurance, or noncontributory programs. Regardless of the format a paid leave program takes, in order to function effectively and efficiently any paid leave program must be able to address the following requirements:

- Ability to determine the validity of a leave application. This involves making determinations about whether a worker’s need for family leave, either parental or caregiving, qualifies them for leave in addition to the ability to process claim submissions in an efficient and timely manner.
- Ability to determine whether the applicant meets requirements for program eligibility, whether based on earnings or labor force attachment
- Ability to determine the amount of the paid leave benefit
- Ability to process payment information and disperse funds to eligible applicants
- Ability to review and process appeals for claims that are initially declined

Evaluating qualifying events

All PFL programs, regardless of their administrative structure, must be able to evaluate claims and establish if an individual applicant is experiencing a qualifying leave-triggering life event. The currently operational or soon to be operational paid leave programs in the United States are intended to cover the same life events that are eligible for job-protected leave under the FMLA. These include: the need to care for a newborn, newly adopted, or newly placed foster child, the need to provide care for a seriously ill family member, or the need to address a worker’s own serious health concern. Because Hawaii already has a state law that mandates employers provide TDI coverage to their employees, this report assumes that any paid leave program pursued by the state would, at minimum, include paid parental leave and family caregiving leave.

Evaluating a qualifying event involves two components: verifying that a covered life event has taken place, and determining the appropriate amount of leave necessary. For example, while the FMLA provides up to 12 weeks of job protected leave each year for qualifying conditions, not all workers are automatically eligible for 12 weeks of leave. The exact amount of time off available is dependent upon the circumstances leading to the need for leave. Assessing parental leave is relatively straightforward because determining the birth, adoption, or foster placement of a child is generally uncomplicated. For example, in California and New Jersey parents are automatically eligible for 6 weeks of parental leave, and Rhode Island provides 4 weeks. Birth mothers in these states are also eligible for separate TDI leave to address physical recovery related to pregnancy and childbirth, with the amount determined based on their individual medical needs. As shown in the table below, on average workers do not maximize the full amount of leave available to them.
Table 3. Comparison between existing operational state family leave programs

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<td>Number of covered workers</td>
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<td>Total number of leaves</td>
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<td>Total percentage of population taking leave</td>
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<td>Average length of leave</td>
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**Distribution of leave types (may not sum to 100 percent)**

| Parental | 87.77 percent | 83.63 percent | 77.00 percent |
| Family Caregiving | 12.23 percent | 16.37 percent | 23.00 percent |

**Parental**

| Percentage of parental leave taken by men | 37.54 percent | 13.0 percent | 34.26 percent |
| Percentage of parental leave taken by women | 62.33 percent | 87.0 percent | 65.74 percent |

**Family Caregiving**

| Percentage of family caregiving leave taken by men | 34.10 percent | 25.0 percent | 31.63 percent |
| Percentage of family caregiving leave taken by women | 65.65 percent | 75.0 percent | 69.24 percent |

The existing state programs have processes and procedures in place to evaluate and verify claimants’ leave-triggering life events. The state family caregiving programs use state birth records to verify parental leave, and adoption or foster agency records if the parental leave is for a non-biological child. Official documentation submitted from licensed medical providers is used to determine program eligibility for claimants who need family caregiving leave to provide care.
to a seriously ill family member, and this medical documentation includes information about the length of leave necessary. For example, the length of leave needed for a worker who is caring for a child undergoing chemotherapy may differ from that of a worker caring for an aging parent recovering from a stroke. Replicating the best practices from the already operational state programs would allow a new paid family leave program to effectively and efficiently process and verify claimants needs and the necessary length of leave.

Potential fraud and program abuse often surfaces as a concern when developing paid family leave proposals, but fraud within the current systems is quite low because there are processes in place to ensure program integrity. A worker is not automatically eligible for the maximum length of leave available through the program simply by applying—they must submit documentation from a medical provider to ensure that the length of leave approved is appropriate for the individual circumstances. The documentation that is submitted by medical providers is also crosschecked against federally recognized classification systems and guidelines to ensure that it fits within accepted medical guidelines. And medical providers who submit false documents on behalf of an applicant can be prosecuted for fraud.

California has a robust process in place to ensure program integrity. In the case of family caregiving leave, applicants must make arrangements with the medical provider of the person requiring care to submit documentation directly to the state. This information must include the providers’ medical license number, the patient’s diagnosis with the corresponding International Classification of Diseases, or ICD, code, and the date the patient is estimated to no longer need care. ICD codes are part of an internationally recognized classification system that relays detailed information on medical conditions by U.S. hospitals, health care facilities, and the Centers for Medicare & Medicaid Services. The anticipated duration of care is also crosschecked against the Official Disability Guidelines (ODG), which include information on anticipated recovery times. Falsely certifying a medical condition is against state law and is punishable by imprisonment, fines, and/or a penalty to repay a portion of any benefits that may have been paid as a result of a fraudulent medical certification. Similar processes are in place in Rhode Island, which maintains licensed nurses on staff to address any discrepancies between the medical documentation submitted by an applicant’s medical provider and the ODG. In both states exams can be requested from independent medical examiners if needed to clarify the need for leave.

At least some of the concerns regarding paid leave fraud are based on a misunderstanding of the types of information that are required from applicants during the claims process. The application overview process is less involved than what is required under Social Security Disability Insurance (SSDI), which is intended to provide benefits to eligible individuals for the entirety of their disabling condition. Eligibility for SSDI is dependent upon, among other qualifying criteria, experiencing a work-precluding disability that is expected to last for a minimum of one year or be fatal. However, the required medical documentation to receive PFL state-benefits is considerably more detailed than the medical documentation required by the FMLA.

Under the FMLA, leave-takers must provide official documentation to their employers containing information that their medical provider has provided and signed to verify. The types of information provided may include: the name and contact information for the worker’s medical provider; the date that the worker’s health condition began and how long it is anticipated to last;
relevant and appropriate information about the worker’s health condition; information establishing that the worker cannot perform the essential functions of his or her job or a statement establishing that a family member is under the supervision of a medical provider due to a serious health condition and that the worker needs to provide care. Because the FMLA governs interactions that take place between an individual and their employer, workers are not required to waive HIPAA and provide their detailed medical history or diagnoses due to legitimate privacy concerns. This is particularly important for workers who may need leave for stigmatized conditions such as mental health and addiction support services. However, when applicants are applying for government-run programs they can be required to provide more detailed information, which is then subject to strict privacy protocols. This detailed medical information is not shared with an applicant’s employer, but it is used internally to support fraud prevention measures.

The state of Hawaii does not currently operate any state-level programs that provide a similar service of making medical determinations for any other programs, with the possible exemption of state workers’ compensation. The majority of states, - with the exception of North Dakota, Ohio, Washington and Wyoming – involve at least partial privatization of their workers’ compensation programs and only 19 states – including Hawaii – have state-run funds that are competitive with the private market. Ideally it would be possible to share resources and expertise with the medical experts in the state workers’ compensation office who have experience making medical determination. Best practices and processes from the proven expertise of the state workers’ compensation program could and should be used to inform the development of a PFL medical certification process. However, new staff, training, and systems will have to be developed for a PFL program which would operate very differently than workers’ compensation. There is potential for lessons from workers’ compensation combined with processes and procedures from the existing state TDI programs and FMLA certifications to help inform the development of rules and procedures for a medical certification process that would be streamlined and efficient without encouraging or permitting fraud.

Determining program eligibility and benefit levels.

In addition to certifying that applicants are eligible for paid family leave based on their qualifying condition, a PFL plan must also have access to enough individual-level data about workers to determine that they have met the additional program eligibility requirements and to determine their benefit level. The most efficient and cost effective way to make these determinations is by tapping into already existing state-held data on individuals’ work histories and earnings, rather collecting duplicative data into a new dataset. Because the existing and soon to be operational state paid leave plans require a demonstration of previous labor force attachment to qualify for leave and provide benefits as a percentage of normal wages, this report proceeds under the assumption that any plan pursued in Hawaii would operate under the same general guidelines.

The statute for eligibility requirements can be structured in a variety of ways when developing the structure for a PFML program. Because paid family and medical leave is intended to replace a worker’s wages when he or she is unable to work due to family responsibilities, eligibility rules tend to require the demonstration of labor force attachment through previous work history. This
has historically translated into looking at previous earnings, hours worked, or months employed over a specific look back period. From a strictly administrative perspective, some of these approaches are simpler and more streamlined than others.

If Hawaii is to develop a state PFL program, it will require access to two types of information on workers. First, data are needed at the individual level on prior labor force attachment in order to make program eligibility determinations. Other state paid leave programs have set requirements on prior employment, work hours, or earnings, generally within either the base period, alternative base period, or prior 52 weeks. The exact source of data used depends on the state and what data they are already collecting. For example, California uses prior earnings as a measurement for eligibility as this is data already collected by the state in relation to Unemployment Insurance (UI.) The paid leave program being developed in Washington State uses work hours as an eligibility determination, similar to the requirements under the FMLA which use work hours and job tenure rather than prior wages to determine eligibility. This is possible in Washington because the state UI system collects data on both wages and work hours. The Hawaii state UI system collects quarterly data on workers’ taxable wages (and thus contributions due to the UI system) but does not track work hours. Second, data are needed on wages in order to determine the appropriate level of wage replacement for workers who meet all the program eligibility requirements. Depending on the rules developed for a PFL system, this data may all come from the same source although the lookback periods for determining program eligibility and wage replacement may not be the same. For example, in New Jersey the lookback period for determining program eligibility is 52 weeks, while wage replacement is determined by looking only at wages within the last 8 weeks. The breadth, depth, and recentness of wage data necessary for a PFL program in Hawaii will depend on the exact rules for the program.115

Every state, as part of their Unemployment Insurance system, collects quarterly employment and wage data on workers employed in the state. These data are used to determine eligibility for unemployment insurance benefits if a worker becomes unemployed through no fault of their own. It is possible to use this data for purposes beyond making UI decisions, and State Workforce Agencies regularly share data with other agencies provided that the transfer of information does not result in additional uncompensated costs to the UI system. For example, California’s Employment Development Department administers both unemployment insurance and the state’s paid family leave and temporary disability insurance programs using the same data. While 19 states – including Hawaii – expanded their UI eligibility rules to include workers who separate from work due to “compelling family circumstances” under the 2009 UI Modernization program, these benefits are not a substitute for paid family and medical leave.117 Many people with family care responsibilities who need leave do not need to separate fully from employment, and many of those on leave are not available for part-time work.

Because Hawaii does not currently collect data on employees’ work hours, but does collect data on wages, it would be most efficient to use prior earnings data in order to make program eligibility determinations. Hawaii’s TDI law does use weeks and hours worked in order to determine eligibility for temporary medical leave, but that is a system that is privatized and employers have ready access to information on their employees’ job tenure and work hours. However, if the state were to import those same program eligibility rules when developing a PFL program, the system would require self-reporting from applicants and/or would have to verify
job tenure and work hours with each individual employer for each applicant, or would have to start collecting data on work hours through the UI system. Due to the difficulty using job tenure or work hours in Hawaii, this report will continue under the assumption that previous wages will be used to calculate program eligibility.

One source of data on workers’ labor force attachment and prior earnings comes from data that is collected as part of the UI system, but other options for data exists. The State Directory of New Hires also collects information on employment and earnings, which are shared with the National Directory of New Hires. This data is primarily collected in order to facilitate the collection of child support payment from parents who are frequent job-changers. Similar to sharing data with the state UI system, data sharing with the State Directory of New Hires would need to be covered though a memorandum of understanding (MOU) and could not result in uncompensated costs to the state system. Precedent for data sharing already exists in Hawaii as the UI system currently has data sharing capacities with the State Directory of New Hires, and information is shared to ensure that individuals are not inappropriately receiving UI benefits after they have found new employment. However, the utility of this data is limited, as it does not involve ongoing data collection on the employment and wages of workers, but rather only on the date of hire and wages at that time.¹¹⁻

Finally, the state taxing authority in Hawaii has data on workers’ earnings from the previous calendar year which are submitted through individual tax returns. Employers provide payroll tax data on a quarterly basis to the state, but this information is submitted in aggregate and does not include individual level data on the earnings of workers. Individual income tax filings do provide individual level data on earnings, but there are drawbacks to using tax filings as the source of data to make PFL program eligibility and wage replacement determinations. Very low-wage workers who do not have tax liabilities are not legally required to file their taxes and may not be present in the state data. Depending on how eligibility thresholds are determined these workers may not qualify for PFL, so this limitation may or may not be relevant. However, there is also a significant issue of the time lag between the date of filing this information and the potential application for PFL. Because this data is only submitted annually for wages earned in the prior calendar year it may not reflect an applicant’s current employment or earnings. Tax filings are typically due in April, or October if an individual is granted an extension, and consist of information on the prior year. At minimum, there is automatically a 4-month lag between the date the information is collected and the time period covered. For example, if a worker who was granted an extension on their 2016 income tax filing were to apply for leave in September 2017, the most recent data the state taxing authority would have for them would be based on their earnings from January through December 2015. This could complicate determining program eligibility for workers who have experienced spells of past unemployment and younger workers who were relatively recent entrants into the labor force, which would include many first-time parents and workers whose family caregiving or medical needs had previously resulted in a fragmented work history.

The best source of information on workers then comes from wage records collected through the state Unemployment Insurance system. This data is the most complete and up-to-date source of information on file for individual workers in the state. Theoretically, individual wage records should be available with no more than a maximum of a three-month lag from the timing an
individual applies for leave, although in practice the timing may be longer depending on the date of application. For example, if a worker submits a leave application in early June the UI system should have on file his or her wage data from the previous quarter, spanning January through March of that year.

Making benefit calculations is a relatively straightforward procedure, and depends on the time period being used to calculate a worker’s base wage. Rhode Island errs on the side of generosity, providing wage replacement based on the highest quarter of earnings in the base period. New Jersey focuses on a worker’s more current wages, using the prior 8 weeks as the basis for calculating wage replacement. There are benefits and drawbacks to each approach. Applicants who have seen a relatively recent increase in earnings due to a raise or new employment may not see their new income level reflected under Rhode Island’s benefit calculations, while a worker who has experienced a drop in earnings may receive a higher benefit level than they would under New Jersey’s benefit calculation formula. The UI system already has the capacity to contact employers directly to verify more recent wages and employment in cases where there is a time-lag between the date of application for UI benefits and the most recent information on file, and this practice could be replicated within a PFL program to ensure the most accurate and up-to-date information is being used when making eligibility and wage replacement determinations, as needed.

Processing Payments

After a PFL program has verified the need for leave and determined program eligibility and wage replacement, the program must then have the ability to transfer funds directly to claimants in a timely, efficient, and cost-effective manner. The majority of currently existing government programs no longer process payments through paper checks in favor of the electronic transfer of funds. This largely virtual system has the benefit of being less expensive, faster, and less susceptible to fraud.

At the national level, Social Security and Supplemental Security Income benefits can generally only be received in one of two ways: first by direct deposit into the benefit recipient’s bank account, or transferred to a Direct Express account which can be accessed using a Direct Express Debit MasterCard. Electronic Benefits Transfer, or EBT, cards, provided by independent contractors, are similar to debit and credit cards and are used to disperse benefits for the Supplemental Nutrition Assistance Program, or SNAP, formerly known as food stamps; Temporary Assistance for Needy Families, or TANF; and the Special Supplemental Nutrition Program for Women, Infants, and Children, or WIC. Many individual states have similar contracts with banks to provide UI benefits, although these benefits are provided using a separate card.

Federal law dictates that individuals cannot be required “to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of … receipt of a government benefit,” and that the direct deposit of benefits funds should always be the first choice due to its efficiency and cost-effectiveness. As of 2013, the rate of direct deposit for unemployment benefits ranged from 16 percent to 82 percent, with an average of 57 percent, indicating that there is more states could do more to encourage and facilitate the direct transfer of
funds into recipients’ bank accounts. The Hawaii UI system is ahead of the curve in this regard, as bank information is collected at the time of application for UI benefits and currently over 99 percent of benefit recipients receive their payments via direct deposit. However, because nearly one-fifth (19.8 percent) of households in Hawaii are unbanked or underbanked, it is important to ensure that individuals have alternate means of receiving their cash benefits.

There are two potential approaches to addressing claimants who, for whatever reason, are unable or unwilling to receive direct deposits. One option utilized by the other existing state paid leave programs is to provide preloaded debit cards, also known as Electronic Benefit Transfer or EBT cards, to leave-takers. While direct deposit is preferred, California and New Jersey have partnered with Bank of America to provide EBT cards that allow beneficiaries to access their funds, while Rhode Island provides cards through a contract with Chase Bank. In all three states, these are also the same cards that are also used to disperse UI benefits to claimants who do not utilize direct deposit. Hawaii does not have a similar contract for UI benefits, and recipients without direct deposit receive paper checks through the mail for their cash benefits. Hawaii does, however, have a current contract with J. P. Morgan Chase to provide EBT cards for recipients of benefits through Temporary Assistance for Needy Families (TANF), Temporary Assistance for Other Needy Families (TAONF), General Assistance (GA), Aid to the Aged, Blind or Disabled (AABD), Repatriates, Childcare, Employment and Training (E & T), First-To-Work (FTW) and the SNAP programs.

The use of such cards is not without its potential downsides, including fees for common actions such as checking the account balance or withdrawing funds. While cards that are associated with banks usually have free withdrawals when using an in-network ATM, recipients may not live in an area where they are readily accessible. However, paper checks also can present problems for people who may have difficulty cashing them, and they are relatively expensive to process and mail. The state of California estimated that it would save $4 million as a result of its switch from mailing checks to the use of EBT cards. As a result, Hawaii should continue in its efforts to make direct deposit the first option, in keeping with federal law and in order to minimize delays in receiving payments and costs for benefit recipients.

Reviewing and processing appeals

Any paid leave program needs to have a process to address appeals in instances where employees’ claims are initially denied. In Rhode Island, applicants who disagree with the decision made on their application for leave have the right to request a hearing with the Board of Review to address their case. The Board of Review is an independent entity that is not under the authority or direction of the Rhode Island Department of Labor and Training, which administers the state paid leave program. Workers have the options of bringing witnesses, representation, and any documents or evidence to support their claim to the hearing. This is not a common occurrence, however. In 2014, there were 5,109 applications for paid family and caregiving leave filed, and 1,239 were denied (24.3 percent.) Only 62 of those cases (1.2 percent of all filed claims, and 5.0 percent of denied claims) made their way to the Rhode Island Board of Review.

The appeals process in New Jersey is similar, and applicants have the right to request an appeal hearing with the Appeal Tribunal. Appeals are addressed through telephone hearings at no cost.
to the applicant, and they have the right to be represented by an attorney or another person of their choosing. Workers in New Jersey who are covered by private plans also have the right to appeal a denial of their claim to the Division of Temporary Disability Insurance. Applicants in California can file with the State of California Employment Development Department (EDD) providing detailed information about why their feel their claim should be approved. If the information provided is not enough for the EDD to approve the claim, it is then forwarded on to the California Unemployment Insurance Appeals Board local Office of Appeals. The Appeals Board holds hearing dates where an impartial Administrative Law Judge will make a decision based on the information provided by the claimant and an EDD representative. Workers who are appealing a claim denial from a Voluntary Plan immediately proceed to the hearing stage.

The Hawaii UI system already has a similar process in place to reconsider unemployment insurance claims when applicants feel that they have been improperly denied benefits. Workers can file a request for reconsideration online or through the mail, and these requests are reviewed by the correct claims office to see if the decision can be reconsidered in office or if it requires further review. At this point, the appeal comes under the jurisdiction of the Employment Security Appeals Referees’ Office (ESARO), which sets a hearing date. These hearings can occur in person or over the phone. Appeals officers are not bound by the original UI determination, and applicants have the opportunity to provide evidence and offer sworn testimony as to why they believe their claim should be approved. After the hearing the appeals officer issues a written decision on the outcome of the claim. If the claimant is still denied their claim and believes this decision is in error they can then apply for a reopening of the decision or file an appeal with the circuit court. A system based on the UI procedures could and should be expanded to also cover appeals for PFL benefits in order to ensure that workers are treated fairly and have access to any benefits they are legally entitled to while preventing the payment of fraudulent claims.

Section 3: Recommendations and best practices

Paid family leave can be structured in many ways, but many of the core competencies of an administering agency remain the same regardless of the form it takes. And regardless of how a paid leave program is structured it is important that the program:

- Covers the majority if not all of the workforce and addresses the diverse needs of the workforce
- Allows workers to take adequate time away from their workplace duties to address their family needs
- Provides workers, but especially low-wage workers, with adequate wage replacement to ensure that they can afford to take leave while still meeting their financial responsibilities
- Ensures that the required contributions to fund the program are equitable and reasonable and
- Is administratively viable in as efficient and cost-effective a manner as possible.
Eligibility requirements

There are a number of ways that eligibility requirements can be developed, as is evidenced by the differing requirements of the existing and soon to be implemented paid family leave programs in other states. Eligibility can be based on wages, hours worked, or job tenure over a specified lookback period. Some options are more administratively complicated than others, and decisions should be made to create a program that balances what is most fair, cost-effective, and sufficiently generous. Wage data that the state already uses to administer unemployment insurance is collected on a quarterly basis, therefore eligibility requirements based on quarterly earnings may be simpler to administer than requirements based on other forms of information. Currently the UI system in Hawaii requires claimants to have been paid taxable wages in at least two of the first four of the last five most recently completed quarters (the base period), and requires that total wages in the base period must be at least 26 times the weekly benefit amount in the base period. The benefit amount in the base period is determined by looking at the highest quarter of earnings and dividing that amount by 21. Creating a paid family leave program that determines eligibility based on earnings and employment in the base period and calculates wage replacement based on the highest quarter of earnings would be the most efficient way to administer a program since similar processes and procedures are already in place in another department.

Eligibility based on wages

Creating a relatively high earnings threshold for program eligibility results in an outcome where it is more difficult for low-wage workers to qualify for leave. For example, in Rhode Island a worker must have earned a minimum of $11,520 in the base period to qualify for benefits. If a similar threshold were created in Hawaii, a minimum wage worker earning $9.25 an hour would have to work at least 1,246 hours to qualify for paid leave. In contrast, a worker earning the Hawaiian median hourly wage of $19.24 would only have to work 599 hours. Part time workers may have a difficult time meeting this threshold, but would still be taxed to fund the program under a social insurance model. In Rhode Island 34 percent of ineligible filed claims were denied due to insufficient contribution into the fund. Other programs have set their earnings thresholds much lower, for example California where workers only need to have earned taxable wages of at least $300 in the base period to qualify. As a result, roughly the program covers three-quarters of all adults in the state.

Eligibility based on hours or weeks worked

The soon-to-be operational paid leave program in Washington state determines eligibility in part based on the number of hours worked in the base period. This strategy may appear to be more equitable because it does not differentiate between low- and high-wage workers as programs based on prior earnings do. However, in the state of Hawaii it would create administrative burdens because the state does not currently collect data on work hours or the number of weeks worked for an employer. Creating a program using this eligibility criteria would require new data collection by the state, or would have to rely on self-reported data or time-consuming verification with each individual employer for every claim. The latter option would be particularly burdensome in the case of workers who have more than one employer. And even if
the state chose to rely on this method it would still require an independent source of data to address scenarios where either the employee or employer challenged the number of verified weeks of employment.

Eligibility based on employer and continuous work

The paid family leave program in New York requires at least 26 weeks of consecutive employment with the same employer in order to qualify for leave benefits. In the case of a social insurance model where workers make payroll contributions to help fund the system, it is not recommended that eligibility be linked with job tenure for a specific employer. This could result in a scenario where an employee could pay into the fund for decades, change jobs, experience a need for family leave, and still be denied benefits. Because many employers with voluntary benefits programs have waiting periods before workers become eligible, new employees are especially unlikely to have access to any forms of wage replacement other than a state PFL program. Younger workers, women under 65, and black and Latino workers are all more likely to have shorter job tenures with their current employers and would be disproportionately impacted by these eligibility requirements. Low-wage workers in general are more likely to change jobs frequently and are less likely to have access to paid leave through their employers, putting them at risk of exclusion as well.

Eligibility based on quarters participating

Determining program eligibility based on a set wage threshold, hours worked, or job tenure can disproportionately exclude subsets of workers and create administrative burdens, but it is reasonable to base program eligibility on prior labor force attachment. Because paid leave is intended in this context to be a work support and requires employee payroll contributions to fund the system, requiring claimants to demonstrate their prior work history is a logical choice. One potential option would be to require workers to demonstrate that they have had at earnings in at least one quarters of the base period without establishing a minimum earnings threshold. Wages could be averaged over a longer time horizon when determining wage replacement in order to ensure that workers with weak ties to the labor force were not drawing disproportionately high cash benefits. Creating a requirement that workers have earnings in at least one quarter while averaging wages over a longer lookback period would ensure that the majority of workers were included in the program while also ensuring that those who had contributed very little via payroll deductions received a benefit amount reflecting their contributions to the fund.

Coverage of care for family members

The diversity of modern families requires a paid leave program with a broad and inclusive definition of family. Families are not simply parents and minor children, and the Hawaiian concept of ‘Ohana Nui, explicitly centered in the administration of the Department of Human Services, reflects an understanding of the depth and richness of intergenerational family ties. The existing programs in California, Rhode Island, and New Jersey all cover an array of family relationships. Notwithstanding the importance of incorporating a range of family leave relationships, the majority of caregiving leaves taken are for immediate family members.
Table 4. Family definitions in state paid family leave programs

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<tr>
<th>State</th>
<th>Family Relationships Covered by Paid Family Leave</th>
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<td>- parent</td>
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<td>- spouse/domestic partner</td>
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<td>New Jersey</td>
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<td>- spouse/domestic partner/civil-union partner</td>
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<td>Rhode Island</td>
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<td>New York</td>
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<td>Washington</td>
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<td>- spouse or domestic partner</td>
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<td>Washington, D.C.</td>
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Length of leave

The FMLA provides up to 12 weeks of job protected family leave, while the Hawaii Family Leave Law (HFLL) provides up to 4 weeks of job protected leave with more generous eligibility criteria. Currently the Rhode Island program offers up to 4 weeks of paid family leave, California and New Jersey offer up to 6 weeks, Washington D.C. will offer up to 8 weeks of parental leave and 6 weeks of family caregiving leave, and New York and Washington will offer up to 12 weeks when fully implemented.

The Academy of Gynecologists and Obstetricians recommends that 4-8 weeks is a minimum amount of time needed by a mother for recovery after a normal birth; and more time is required to establish breast-feeding. Recovery from childbirth, bonding and establishment of breast-feeding are important reasons for enacting a paid family leave program. Medical needs of family members requiring care can endure for much longer, and any paid leave program must balance the needs of working families with the need to create an affordable and sustainable paid leave program.

Hawaii should be consistent with existing standards when developing a paid family leave program. As previously mentioned in this report, the standards set by a program establish the maximum amount of leave available, but most leave-takers do not take all the time available to them. While parents who use PFL to care for a new child are more likely to utilize the maximum amount of leave available, family caregivers should be expected to only take the amount of time that is medically necessary. A program with a minimum of 12 weeks of total allowable leave would be consistent with the FMLA and with the more generous leave policies passed most recently in New York and Washington. One option would be to follow the example of New York and launch a program with a shorter amount of leave, ramping up to a more generous benefit over time.

Wage Replacement

The utility of a paid leave program to workers is dependent upon the level of wage replacement provided. In California wage replacement was initially set at only 55 percent, which has been identified as a significant cause of the low usage rate among workers. The effect is particularly acute among low-wage workers who are less likely to be able to make ends meet if their earnings are cut nearly in half while on leave. A study of Rhode Island’s paid family leave program, which offers roughly 60 percent wage replacement, found that 80 percent of respondents who did not use the program when experiencing a qualifying event did so because they could not afford the loss of income.

For example, a full-time minimum wage worker in Hawaii receiving 55 percent wage replacement would only receive $203.50 per week while on leave, compared to $370 in normal wages. This reduction in earnings may not be sufficient for low-wage workers who are likely to need every dollar they can earn. Using Washington State’s benefit calculations, that same worker would receive $333 per week in paid leave benefits.
Creating a tiered benefit system with caps on the total amount of cash benefits allowable can help to ensure that low-wage workers are able to utilize the program while lowering payments for high-wage workers who are likely to have less need. This has the benefit of protecting the most vulnerable workers while keeping program costs down. One way this can be achieved is by offering a high level of wage replacement on earnings up to a particular threshold, which can be determined based on the state minimum wage or average weekly wage as is the case in Washington D.C. and Washington State, respectively. Earnings above that amount can be replaced at a lower rate, and benefits capped at a reasonable amount. This prevents “cliff effects” while keeping payments for high-earners in a sensible range. California, for example, currently caps their weekly benefits at $1,173 and the state adjusts its maximum benefit amount annually so that benefits do not lose their value over time due to inflation.

Hawaii should provide either a high percentage of wage replacement, or a tiered wage replacement formula that will benefit low-wage workers in a cost-effective manner. Any paid leave program pursued should also require an increase in the weekly benefit cap that is the same as an increase in something that is related to wages in the state. The statewide average weekly wage, which is already calculated annually and reflects of how wages increase over time, is one good option. As previously stated in this report, Hawaii should continue to emphasize the direct deposit of cash benefits whenever possible, ideally by incorporating banking information in the initial application process, as is the case with UI.

Contribution rate

Funding a social insurance paid family leave program can be achieved through payroll tax deductions solely on employees, solely on employers, or as a combination of both. California, Rhode Island, New Jersey, New York, and Washington state fund paid family leave through employee contributions only, while Washington D.C.’s program will be funded entirely by employer contributions. New Jersey and New York fund temporary disability leave through a combination of employer and employee contributions.

If employee contributions are required it is important to ensure that low-wage workers are not disproportionately burdened. One option is to consider a sliding scale formula for deductions, another is to eliminate a cap on taxable wages. For example, in California workers solely fund their PFL and TDI systems through a 0.9 percent payroll tax on earnings up to $110,902, with a maximum annual deduction of $998.12. Increasing or eliminating that cap would allow the program to remain solvent while lowering the tax burden on low-wage workers.

Program Administration

After reviewing the existing program structures with the state of Hawaii, it is recommended that the State of Hawaii Department of Labor and Industrial Relations (HI-DLIR) be the administering agency that houses a new Paid Family Leave program. The HI-DILR already oversees the Unemployment Insurance program and the Disability Compensation Division, which provide similar benefits. Creating a new unit within the HI-DILR would prevent unnecessarily duplication of processes and streamline the sharing of information and best practices.
While there are other state agencies that could potentially house the program and that can provide useful guidance and best practices, most notably the State of Hawaii Department of Human Services (HI-DHS), it is not recommended that a PFL program be housed there. HI-DHS does administer benefits directly to residents, including Temporary Assistance for Needy Families (TANF), Temporary Assistance for Other Needy Families (TAONF), SNAP – Nutrition Program (Formerly Food Stamp Program), and Aid to the Aged, Blind and Disabled (AABD), however these are not work supports like UI and PFL. HI-DHS does have an existing data sharing agreement with the UI program and has implemented a cutting edge, highly effective and efficient application processing system. However, because HI-DHS administers benefits to vulnerable Hawaiian residents, many of whom are not working or are unable to work, it is not a natural or logical home for a paid leave program that is intended to first and foremost serve workers across the income spectrum while supporting their return to work. Those functions have far more in common with the mission and objectives of the UI system.

It is vital to stress that this recommendation is for the creation of a new unit, not the expansion of UI to also cover paid family leave. The Unemployment Insurance (UI) system in the United States has its legal parameters outlined in the Social Security Act (SSA) and Federal Unemployment Tax Act (FUTA.) The UI system is intended to provide temporary, partial wage replacement to workers who are unemployed due to lack of suitable work. UI functions as a state-federal partnership, with states collecting taxes and administering benefits and the U.S. Treasury holding state trust funds. The SSA and FUTA are generally understood as creating a legal framework and “floor” for UI benefits, but states have some flexibility to be more generous and to create their own program eligibility requirements and benefit levels, provided that they do not run afoul of federal law. The SSA and FUTA have been legally interpreted by the United States Department of Labor as requiring that all UI recipients must be able and available to return to employment as a condition of receiving benefits.\textsuperscript{141} The very nature of needing paid family leave is based upon the fact that the individual is not able and available to work. However, that same ruling states that “nothing in federal law prohibits a state from using the existing (UI) administrative infrastructure for other programs, providing it properly allocates the costs of administration between the (UI) and non-(UI) programs.”\textsuperscript{142} This is consistent with the existing state temporary disability and paid family leave insurance programs, which use UI data but are not administered through the state UI systems.

Streamlining the Application Process

Any state PFL program should be intentionally developed to be as efficient and cost-effective as possible. This efficiency should operate on both ends – the program should be efficient to administer in addition to being straightforward and streamlined for the worker applying for and receiving benefits. This helps to ensure that claims are processed quickly while also reducing overhead costs.

The application process itself should be as simple and modernized as possible, balancing these needs with the need to ensure the integrity of the program. This is another example of how the state UI system can serve as a useful guiding example, as the UI application process is entirely online and applications are submitted by creating a registration through the online portal. There are kiosks located in the branch offices on each island, with staff available to provide assistance.
as needed. The profile information submitted includes eligibility questions and the claimants’ employment history which is matched against the quarterly wage data base. UI receipt requires verification of the reason for separation from employment, and because most employers are registered through the State Information Data Exchange System the majority of these inquiries can be completed electronically.

A state PFL system should seek to replicate these practices as they are the most modern and efficient way to currently receive and process claims. All components of the application process, including supporting documents from medical professionals and ability to verify last day of work by employer, should be completed electronically to the fullest extent possible. The online portal, similar to that utilized in the UI program, should provide detailed information to applicants about the necessary documentation, timelines for submission, and detailed instructions on eligibility criteria and the claims submission process.

Benefit Payment

Most governmental programs, including those in Hawaii, have transitioned away from providing cash benefits via paper checks in favor of electronic transfers of funds in order to save money and to simplify and expedite an individual’s receipt of benefits. The UI program has a laudably high success rate in promoting direct deposit as the preferred way of dispersing funds, which is expedited by including bank information as part of the application process. A PFL program should take a similar approach, and include information about direct deposit and queries about bank information in the online portal for application.

Fraud detection

Any PFL program must include provisions for fraud detection. Housing a paid leave program with HI-DLIR would easily allow for fraud detection to be covered consistently with existing programs such as UI. Technology plays an important role in addressing potential fraud, and the UI system is currently able to detect fraud electronically in a number of ways. Due to Hawaii’s unique geographic isolation, combined with the entirely online application process, it is relatively easy for the UI program to check IP addresses to ensure that workers are submitting claims from the islands. While valid claimants may have legitimate reasons for submitting claims from another location, this serves as a flag that further information may be needed. There are other automated processes to check claimants against other state held data bases such as the Directory of New Hires to ensure that they are in compliance with the rules of the program. Individuals who are found to have committed UI fraud face a number of potential strong penalties, including prosecution and possible jail or prison sentences, responsibility for repaying any benefits fraudulently collected, and garnishment of future wages or income tax refunds, along with losing the ability to receive UI benefits at a future date.

The potential fraudulent activity that could take place in a paid family leave program could be detected, prevented, and addressed using the same strategies and processes used by the UI system. Routinely checking IP addresses can help to prevent non-residents from fraudulently applying for PFL. Most family leave-takers will return to their same employer, but data should still be cross-matched against the State Directory of New Hires as appropriate. Additional
safeguards will be necessary to ensure that workers are not receiving PFL benefits while continuing to work. SIDES could be used to easily contact employers electronically, notifying them of a worker’s paid leave benefit receipt and requiring them to confirm that the worker is on leave. Workers, employers, and medical providers should all be notified at the initiation of the claims process regarding the definition of fraud and potential penalties that could mirror those under UI.

IT

As already mentioned, the creation of a modern, user-friendly IT system to submit and process applications is vital to ensure an efficient and cost-effective system.幸好, Hawaii is a leader in this space, as is evidenced by the current UI program, system upgrades currently underway within HI-DHS, and the consolidation of the state’s IT departments into the Office for Enterprise Technology Services which has oversight into the purchasing and use of IT for all state executive offices. The result is a backdrop within which the development of a PFL program would be far more modern and tech-savvy than in many other states.

Any technology developed in the creation of a PFL program should be designed to be easily accessible and user-friendly for applicants, medical professionals submitting supplementary information, and HI-DLIR employees. The system developed should also incorporate workflow and document management to eliminate the need for paper and ensure that all records can be kept electronically. Each touch-point with applicants, health care providers, and employers should be documented within this electronic records management system.

One oft-overlooked component is that while the IT system should be structured to facilitate the application process, claims processing, and internal workflow, it must also be able to analyze data to ensure that that program is functioning well by detecting use patterns and maintaining an overview of program impact. The system should have the ability to analyze leave-taking from multiple perspectives, and include detailed data for internal usage on use of leave, wages, workforce categories, mean and median length of leave, costs, demographic information on employees, fluctuations in premium rates, and reasons for denial of applications.

Roles and responsibilities of employers

A Paid Family Leave program should incorporate processes to coordinate state-provided paid leave benefits with employer-provided benefits. Just as an individual cannot receive UI benefit payments after they start working at a new job, PFL claimants should not be able to receive state-benefits if they are still working.

In states that offer partial wage replacement to workers on paid family leave many employers choose to provide additional wages to workers in order to bring them up to 100 percent of their normal earnings. Rhode Island provides every leave-taker with a financial statement that details the length of leave they have been approved for and their benefit amount. Workers can then choose to share this information with their employers in order to make payroll adjustments as appropriate.
California has similar processes in place. In addition, San Francisco passed an ordinance in 2016 that requires employers to provide additional compensation to their employees utilizing state paid parental leave in order to bring their total earnings up to 100 percent of their gross weekly wage. Workers in California receive a Notice of Computation that details their paid leave weekly benefit amount to assist employers in making these calculations. Hawaii should implement similar procedures to ensure that program administration can be easily coordinated with employer benefits, using other state experiences as a template.

Voluntary plans and employer opt outs

In order to ensure access for all workers and a healthy trust fund, ideally a PFL plan should cover all employers and employees in the state. It is possible to create a program that allows certain employers to opt-out of the system as several other states have done, but doing so can have multiple negative effects.

California allows employers who offer Voluntary Plans (VPs) to exempt their employees from the state TDI and PFL programs, although workers have the right to opt-into the state system instead. An employer can choose to self-administer a VP or choose a third-party administrator. A VP must offer both TDI and PFL with the same rights as under the state program, cannot cost employees more than the state payroll tax for TDI and PFL, must offer at least the same benefit amount and duration of benefits, and most have at least one right or benefit that is greater than those provided under the state plan. The State of California Employment Development Department, which oversees the TDI and PFL programs, has created a Voluntary Plan Administration Section that must verify and approve each VP in addition to auditing claims to ensure that they are in full compliance. The Voluntary Plan Administration Section has 2 managers and 11 staff to oversee all VPs, which currently oversee the Voluntary Plans of approximately 2,500 employers in the state.

Creating an opt-out for employers would create unnecessary administrative overhead and burdens within a new state PFL program. A universal program is preferable because it will help to lower overall costs and create economies of scale – a factor that is of increased important in a small state such as Hawaii. It also helps to ensure that workers who change employers do not lose coverage when they may need it. It is therefore not recommended that any PFL plan developed in Hawaii include employer opt-outs or the creation of Voluntary Plans.

Outreach and education

The development of any new state program requires public education to ensure that residents are aware of the program, its basic rules for usage and eligibility, and how the program will work. This public education program should be funded by the PFL program and include information for employers, employees, and medical providers to ensure program awareness and their role within it. Employers should also be required to provide notice to workers about the program if and when they become aware that an employee has a need for paid family leave.

While California has had an operational PFL program for more than a decade, the program continues to be dogged with low levels of awareness among workers who are actively funding
the system through their payroll tax deductions. A survey of California workers found that less than half of all respondents were aware of the program and that low-income workers, workers of color, and younger workers had the lowest levels of awareness.145 This has clear negative implications for workers who may need the benefit but do not know that it is available. It also has the potential to create administrative difficulties if claimants apply to the program late into their leaves because they were not previously aware of its availability and timing guidelines.

In a 2015 report conducted by University of Rhode Island, respondents who had used the state Temporary Caregiver Insurance in its first year were asked how they heard about the program.146 Of those respondents, 26 percent of users learned of the program through family or friends, 20 percent were told by their employer, 14 percent learned of the expanded leave when speaking with Department of Labor and Training (DLT), 14 percent learned from co-workers, 9 percent were informed of the leave by their clinician, and an equal amount or heard about the leave from the media, internet, or other sources.

An effective education and outreach plan should be based at least in part around opportunities to identify and reach workers who experience the need for family leave.

Potential options include:

**Outreach to the general public**

- Purchasing radio public service announcements during commute hours
- Partnering with trusted community organizations to conduct outreach
- Distributing multi-language materials through other municipal and state agencies (such as school departments, and DHS staff)
- PSAs and commercials at large convening events, such as sporting events
- Traditional and social media, including targeted advertising
- Notices sent in tax refunds or other bills (such as partnering with a public utility to send basic information about the program).
- Information about the insurance on Hawaii state agencies website and communications.

**Outreach to employees**

- Working with employers and paycheck contractors (ADP, PayChex) to mail and email employees clear, concise information on how and when to apply
- Ensuring notices about the new insurance are placed in every workplace
- Requiring employers to notify employees on an annual basis, at the point of hire and at the point at which an employee might have reason to use the insurance fund
- Working with Employee Assistance Programs to understand the application process for insurance program
- Integrating with health insurance exchanges or employer-provided TDI programs, which can provide information about PFL when an employee submits notification of pregnancy or childbirth
- Coordinating with foster and adoptive family home-study and training programs for non-birth parents
Outreach to Employers

- Integrating training about new insurance into existing HR training and business outreach activities of HI-DLIR
- Integrating notice of the new program into employer communications from HI-DLIR, including newsletters, wage and hour posters, quarterly reporting and other points of contact
- Conducting regional training events for employers in partnership with nonprofit organizations, trade and business associations
- Conducting training with legal community to ensure business lawyers and employment lawyers understand the obligation of employers and employees

Medical Providers

- Regional trainings for clinicians – potentially offering continuing professional credits or webinars
- Coordinating with licensure oversight departments to communicate about new program during renewal process
- Train the trainer model to train heads of large healthcare systems, hospitals, community health centers and large physician practices on the application process
- Partnering with medical societies, Hawaii chapters of various membership groups such as the American Academy of Pediatrics, American College of OB/GYNs, National Association of Social Workers, etc.
- Ongoing communication through newsletters, advertising/PSAs at medical conferences or meetings
References


8 Ibid.


11 Ibid.


30 **Family and Medical Leave Act of 1993.** 1993. H.R. 1, 103rd Cong., 1 sess. [http://www.govtrack.us/congress/bills/103/hr1](http://www.govtrack.us/congress/bills/103/hr1)

31 Ibid.


33 Ibid.


35 Ibid.

36 Ibid.

37 Ibid.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid.


44 Ibid.


47 Workers whose disabling conditions were incurred at the workplace would instead be eligible for wage replacement through worker’s compensation insurance coverage.


Ibid.


Ibid.


84 Ibid.
86 Ibid.
88 Ibid.
90 Ibid.


Medical certification is accepted from: licensed medical or osteopathic physicians/practitioners; authorized medical officers of a U.S. government facility; chiropractors; podiatrists; optometrists; dentists; psychologists; nurse practitioners after examination and collaboration with a physician and/or surgeon; licensed midwives; nurse-midwives or nurse practitioners for normal pregnancy or childbirth; and/or accredited religious practitioners in order to claim benefits. See State of California. 2017. *Basics for Physicians-Practitioners.* Sacramento, CA: Employment Development Department. [http://www.edd.ca.gov/disability/Basics_for_Physicians-Practitioners.htm](http://www.edd.ca.gov/disability/Basics_for_Physicians-Practitioners.htm)


This is clearly a two-way street. A state may decide acceptable program eligibility rules first and then seek out a data source that provides the necessary information, or it can survey the information available and craft eligibility criteria based on the data that are readily available.


**References**


116 This is clearly a two-way street. A state may decide acceptable program eligibility rules first and then seek out a data source that provides the necessary information, or it can survey the information available and craft eligibility criteria based on the data that are readily available.


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142 Ibid.


146 Silver, Barb, Mederer, Helen and Djurdjevic, Emilija. 2015. Launching the Rhode Island Temporary Caregiver Insurance Program (TCI): Employee Experiences One Year Later. Kingston, RI: University of Rhode Island.