Supporting Families, Supporting States:
A framework for expanding paid family leave

Joshua McCabe | October, 2022 | NiskanenCenter.org

Social Policy   Issue Brief

Key Takeaways

- The family is the cornerstone of American society, but most working-class families still lack access to any sort of paid family leave.
- While efforts to introduce a new federal paid family leave program continue to stall in Congress, the number of states that have introduced their own programs climbed to 11 last year.
- Congress can help keep this state momentum going by introducing reforms allowing states to build paid family leave (PFL) into their unemployment insurance (UI) programs.
- To be effective, any PFL/UI reform package must also change the rules governing how states can finance their programs by removing requirements for onerous employer-side contributions and by broadening the taxable wage base.

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Joshua McCabe

Families are the cornerstone of American life. The care that parents provide to children, that spouses provide to each other, and that adult children provide to their elderly parents is essential to a thriving civil society and a strong economy. Despite widespread recognition of this reality, our public policies[1] have been slow to catch up to it.

The persistent gaps in access to paid family leave are a case in point. A vast and bipartisan majority[2] of the public supports access to paid family leave. Nevertheless, this consensus quickly falls apart at the level of policy specifics. Should a national paid leave program be comprehensive or focused on parental leave, where bipartisan support is greatest? Should policymakers push employers to provide paid leave with tax incentives and mandates or set up a federal program funded by payroll taxes?

Congress has toyed with both the tax credit approach and payroll tax approaches in recent years. In 2017, Republicans enacted an Employer Credit for Paid Family and Medical Leave[3], but program participation has been lackluster. In 2021, Democrats tried and failed to pass the FAMILY Act as part of a larger reconciliation bill.[4] Despite conceptual popularity in public polling, these top-down approaches have failed to significantly expand access to paid family leave at the federal level.

State governments are another story. To date, 11 states and Washington D.C. have enacted paid family leave programs in some form. The growing number of ballot initiatives and proposals before state legislatures suggest other states are facing pressure to follow suit. This paper makes the case for building on these state successes by laying out a national framework for supporting paid family leave from the bottom up. While policymakers have entertained the idea of allowing states to, for instance, provide paid family leave through their unemployment insurance programs, such efforts have typically failed to embrace the structural reforms necessary to make bottom-up approaches fiscally and administratively viable. Rather than give up, national policymakers can glean important lessons for the path forward by studying why federal and state-led efforts to expand paid family leave have succeeded or failed.

1 Samuel Hammond and Jason Peirce. *Family Matters: Toward Universal Paid Family Leave* (Washington DC: Niskanen Center, 2021). https://www.niskanencenter.org/family-matters-toward-universal-paid-family-leave/

2 Juliana Horowitz et al., "Americans Widely Support Paid Family and Medical Leave, But Differ Over Specific Policies," Pew Research Center, March 23, 2017. https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/

3 Molly Sherlock. *Employer Tax Credit for Paid Family and Medical Leave*. (Washington DC: Congressional Research Service, January 2020). https://crsreports.congress.gov/product/pdf/IF/IF11141

4 Molly Sherlock et al. *Paid Family and Medical Leave: Current Policy and Legislative Proposals in the 116th Congress*. (Washington DC: Congressional Research Service, June 2020). https://crsreports.congress.gov/product/pdf/R/R46390

The case for paid family leave

Expanding access to paid family leave is important for all families, especially working-class families, for three reasons:

1) Working-class families are much less likely to have access to paid family leave relative to their professional-class counterparts.

Working households in the top income quartile are nearly three times more likely to have access to paid family leave and two and half times more likely to have access to paid sick leave than working households in the bottom quartile (see Table 1).

In the absence of external support, employers tend to treat paid leave as an attractive perk to compete for higher-wage workers. There is little indication that market competition alone will lead to the widespread adoption of paid leave. Access to sick leave, for example, is widespread among workers in the top two quartiles but remains elusive for those at the bottom.

Table 1:

Percentage of civilian workers with access to paid leave, March 2021

	Paid Family Leave	Paid Sick Leave
Lowest 25%	12%	35%
Second 25%	22%	53%
Third 25%	26%	83%
Top 25%	35%	90%

Source: Bureau of Labor Statistics

2) Access to paid family leave provides the economic stability that undergirds family stability.

Budget shocks can wreak havoc on family life. Family expenses suddenly rise with the birth/adoption of a child and medical issues. At the same time, earnings fall due to the need to divert time from work to family or medical care. Family experiences leading up to and following the birth of a child best illustrate the problem.

Using several distinct measures of income instability that account for both needs and available resources, Alexandra Stanczyk finds that expenses begin to rise before childbirth as expectant parents prepare for the arrival of their baby.[5] On the income side, maternal earnings loss is the largest source of the decline as new mothers leave employment for childbirth, recovery, and bonding. This instability is not inevitable. Countries with paid family leave do not have similar dips in gross income. Within the United States, Stancyzk (2019) finds that California's paid family leave program similarly mitigates the income drop.[6]

The instability associated with leave-taking is particularly problematic for working-class families.

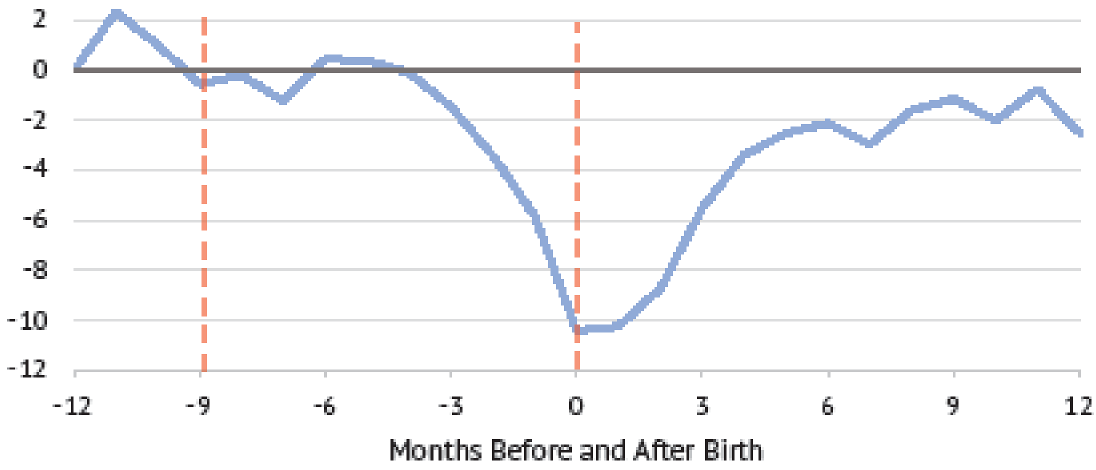
5 Alexandra Stancyk, "The Dynamics of U.S. Household Economic Circumstances Around Birth," *Demography* volume 57, no. 4 (2020): 1271-1296. https://doi.org/10.1007/s13524-020-00897-1

6 Alexandra Stancyk, "Does Paid Family Leave Improve Household Economic Security Following a Birth? Evidence from California," *Social Service Review* volume 93, no. 2 (2019): 262-304. https://doi.org/10.1086/703138

While they face a similar percentage decline of income as professional-class families without access to paid leave, working-class families are starting from a much lower income. Without a cushion, this leaves them in a more precarious situation.

Figure 1:

Percentage change in household income around childbirth



Source: Alexandra Stanczyk, "The dynamics of household economic circumstances around a birth," Washington Center for Equitable Growth working paper series, October 2016.

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2) Public assistance is not an acceptable substitute for a contributory paid family leave program.

According to a recent Pew survey, almost half of parents without full access to paid leave reported relying on public assistance to compensate for the income loss.[7] A growing literature shows that parents often resort to TANF and SNAP (colloquially known as welfare and food stamps) in the absence of paid parental leave and that paid family leave is associated with a decline in nursing-home utilization, which is often funded by state Medicaid programs.[8]

For some families, this can marginally reduce – but does not come close to eliminating – the income loss associated with taking family leave. In other cases, the stigma of "welfare" means families will forgo public assistance benefits altogether. There is no reason families should be subjected to the means-testing and administrative complications of welfare because they need to temporarily step away from their job to care for a child, parent, or themselves.

7 Horowitz et al., "Americans Widely Support Paid Family and Medical Leave, But Differ Over Specific Policies."

8 Ji Young Kang, "The Effect of Paid Maternity Leave on Low-Income Families' Welfare Use in the US," *Social Policy & Administration* volume 54, no. 6 (2020): 952-970. https://doi.org/10.1111/spol.12618; Kanika Arora and Douglas Wolf, "Does Paid Family Leave Reduce Nursing Home Huse? The California Experience," *Journal of Policy Analysis and Management* volume 37, no. 1 (2018): 38-62. https://doi.org/10.1002/pam.22038

States leading the way

In contrast to federal failures, the last two decades have seen a wellspring of state innovation, with eleven states introducing paid family leave programs since 2002. Initial studies of state programs show positive results across several dimensions, including economic stability, child health and development, business satisfaction, and the ability to reach ideal fertility levels.[9] The proliferation of state programs also allows us to observe what states see as best practices.[10]

There are several common themes across all state programs:

- **State programs provide comprehensive coverage.** This coverage includes access to parental, medical, and family caregiving benefits. Some began by covering only some cases (e.g., maternal) but have expanded over time.
- **State programs finance benefits through broad-based payroll taxes with low rates.** This is the standard funding model. Early-adopting states tended to rely on employee-side payroll taxes. More recent adopters tend to split the cost between employees and employers. Combined tax rates range from 0.14 percent (New Jersey) to 1.2 percent (California). Taxable wage bases range from the first $81,500 in wages (Rhode Island) to all wages (Delaware, Massachusetts).
- **State programs have moderate leave durations and benefit levels.** Leave duration ranges from five weeks for parental leave (Rhode Island) to 52 weeks for medical leave (California). Replacement rates are complex, but maximum benefit levels range from $780/week (Connecticut) to $1,446/week (Oregon).

These common program characteristics are indicative of best practices in program design. However, a question arises of why these particular states – but not others – have taken the lead on adopting paid family leave.

There are several common themes across adopting states:

- **Earliest adopting states built on existing administrative capacity.** The first four states all adopted Temporary Disability Insurance (TDI) programs in the 1940s and used this pre-existing administrative capacity to build their paid family leave programs half a century later.[11]
- **Adopting states tend to have more legislative capacity.** It takes a lot of work to create a new program from scratch. Higher levels of legislative professionalism are often required to give policymakers the tools they need to craft viable programs.[12]

9 Stancyk, "Does Paid Family Leave Improve Household Economic Security Following a Birth?."; Maya Rossin-Slater and Jenn Stearns, "Time On with Baby and Time Off from Work," *Future of Children* volume 30, No. 2 (2020): 35-51. https://eric.ed.gov/?id=EJ1293603; Ann P. Bartel et al. "The Impact of Paid Family Leave on Employers: Evidence from New York," Working Paper 28672, National Bureau of Economic Research, April 2021. https://www.nber.org/papers/w28672; Eleanor Golightly and Pamela Meyerhofer, "Does Paid Family Leave Cause Mothers to Have More Children? Evidence from California," *Journal of Labor Research* volume 43 (2022); 203-238. https://doi.org/10.1007/s12122-022-09329-y

10 Bipartisan Policy Center. *State Paid Family Leave Laws Across the U.S.* May 2022. https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/

11 Molly Weston Williamson, "Structuring Paid Family and Medical Leave: Lessons from Temporary Disability Insurance," *Connecticut Public Interest Law Journal* volume 17, no. 1 (2017): 1-57. https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2019/06/Structuring-Paid-Family-and-Medical-Leave-Lessons-from-Temporary-Disability-Insurance-by-Molly-Weston-Williamson.pdf

12 Peverill Squire, "A Squire Index Update," *State Politics & Policy Quarterly* volume 17, no, 4 (2017): 361-371.

- **Adopting states tend to have more fiscal capacity.** It takes a lot of resources to put together a new program from scratch. Wealthier states are more able to afford the costs associated with building new administrative infrastructure. Indeed, among the 11 states with paid family leave programs, eight are in the top 10 for fiscal capacity.[13]

Table 2:
Characteristics of states with paid family leave programs

State	Year Introduced	TDI Legacy	Legislative Capacity Bank	Fiscal Capacity Rank
California	2002	Yes	1st	7th
New Jersey	2008	Yes	20th	6th
Rhode Island	2013	Yes	28th	18th
New York	2016	Yes	3rd	1st
Washignton	2017	No	11th	4th
Massachusetts	2018	No	2nd	3rd
Connecticut	2019	No	13th	2nd
Oregon	2019	No	23rd	27th
Colorado	2020	No	12th	14th
Maryland	2022	No	10th	8th
Delaware	2022	No	27th	5th

The rise of these programs suggests states are eager to move into the paid family leave space and have the popular support of their residents. But the clustering of these successful initiatives in states that possess the requisite administrative, legislative, and fiscal capacity suggests that not all states can follow suit under current circumstances. If we want to see more state initiatives, we will need to identify and enact federal reforms to remove obstacles and better support state efforts.

Yet, the federal government has abandoned attempts to support state paid family leave programs twice in the past two decades – under the Clinton administration and under the Trump administration – which offer lessons on how to better structure federal support going forward.

Learning from past state-led reform efforts

One intermittently popular idea has been to build paid family leave into existing unemployment insurance (UI) programs.[14] Canadian policymakers took this route when they introduced maternity leave benefits as part of their UI program in 1971. Subsequent reforms expanded coverage to include more comprehensive family leave benefits.[15]

https://doi.org/10.1177%2F1532440017713314

13 U.S. Department of the Treasury, "Total Taxable Resources" https://home.treasury.gov/policy-issues/economic-policy/total-taxable-resources

14 Julie Whittaker and Katelin Isaacs, *Unemployment Compensation (UC) and Family Leave* (Washington DC: Congressional Research Service, February 2018). https://crsreports.congress.gov/product/pdf/IF/IF10643

15 Government of Canada, "Employment Insurance benefits and leave," https://www.canada.ca/en/services/

Implementing paid leave options as part of UI is appealing as it leverages existing fiscal and administrative infrastructure to provide new but similar benefits to the same target population. The bones of the program stay the same (contributory social insurance for temporary work loss) with relatively minor tweaks to expand the program rationale (involuntary layoffs versus important family needs).

The transition in Canada was more straightforward because UI is a wholly federal program there. In America, our joint federal-state UI structure requires an additional degree of state buy-in to any proposed federal changes. Historically, the focus has been on changing the UI provision that requires workers to be "able and available to work" while drawing benefits. By definition, this precludes paid family leave because workers' caregiving responsibilities leave them unavailable for work.

The Clinton administration attempted to get around this clause by issuing a Birth and Adoption Unemployment Compensation (BAA–UC) executive order, directing the Secretary of Labor to develop regulations for parental leave and model legislation for states that wanted to adopt what was dubbed "baby UI."[16] The Department of Labor published the final rule in June 2000. Fourteen states, including a number of Republican-leaning states such as Arizona, Florida, Nebraska, Pennsylvania, and Texas, proposed parental leave reforms to their UI programs, but a recession quickly made them politically nonviable, and none passed. The Bush administration repealed the legally dubious rule in 2002.[17]

The Trump administration took another stab, proposing in its 2018 budget to require states to establish six weeks of paid parental leave within state UI programs. According to the proposal, states would be given "broad latitude to design and finance the program," but no other guidelines were provided. While this had the advantage of being proposed as legislation rather than executive fiat, it largely amounted to an unfunded mandate and was thus poorly received by states and advocates who had little appetite for this particular program design.[18]

A better way to support states

Previous proposals had the right idea to focus on federal support for building paid family leave into state unemployment insurance programs. There are several advantages to this approach. First, it helps address states' limited administrative capacity by allowing them to build on existing administrative infrastructure rather than forcing them to build an entirely new bureaucracy from scratch. Second, it helps address states' limited fiscal capacity by allowing federal support for program administration. Finally, it is potentially more worker- and business-friendly because it streamlines the fiscal and administrative processes under one agency.

But previous federal proposals failed to produce comprehensive frameworks that address the broader needs of states and the shortcomings of UI programs as they exist today. Rather than tinkering

benefits/ei.html

16 William J. Clinton, "Memorandum on New Tools To Help Parents Balance Work and Family" (Memorandum for Heads of Executive Departments and Agencies, May 24, 1999). https://www.govinfo.gov/content/pkg/PPP-1999-book1/pdf/PPP-1999-book1-doc-pg841.pdf

17 Whittaker and Isaacs, *Unemployment Compensation (UC) and Family Leave*

18 Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2018* (Washington DC: U.S. Government Publishing Office, 2017). https://www.govinfo.gov/app/details/BUDGET-2018-BUD/summary

with UI rules, any viable expansion plan must include the comprehensive series of reforms necessary to modernize it. In particular, these three reform principles are essential:

1) Encourage (don't mandate) paid family leave.

Under current law, federal provisions that require workers 1) to have lost their job through no fault of their own and 2) to be actively seeking employment are the most obvious obstacles to using UI programs to provide paid family leave. Both requirements prevent states from providing benefits to those voluntarily taking leave to care for themselves or family members. An easy fix is to reform federal requirements to make an exception in the case of qualifying events covered under the Family and Medical Leave Act of 1993.

By clearing the path for states to offer family leave through UI rather than the Temporary Disability Insurance infrastructure many do not even have, this reform only opens the door to federal support for administrative costs. States providing paid family leave through UI programs would be eligible for additional federal funds to set up and run their program.[19]

It is crucial that any reform allows states to provide any particular set of paid family leave benefits without imposing the burden of an unfunded mandate. States must retain autonomy to develop innovative policies within a broad set of parameters. One of the institutional and legal lessons of the Affordable Care Act is that draconian federal mandates can potentially undermine efforts to support state expansion.[20] States should introduce paid family benefits based on their voters' preferences – not top-down mandates from Washington.

2) Eliminate onerous employer contribution requirements.

Federal provisions require states to tax employers and vary their tax rate based on the amount of unemployment benefits paid out to their employers when their workers claim unemployment benefits, experience rating incentivizes employers to complicate application processes and appeal claims whenever possible to deter workers from applying in the first place.[21]

The easiest way to fix these problems is to eliminate experience rating and allow states to finance their UI and potential paid family leave programs with traditional, flat payroll taxes on employers and employees as they see fit.

3) Expand and index the taxable wage base.

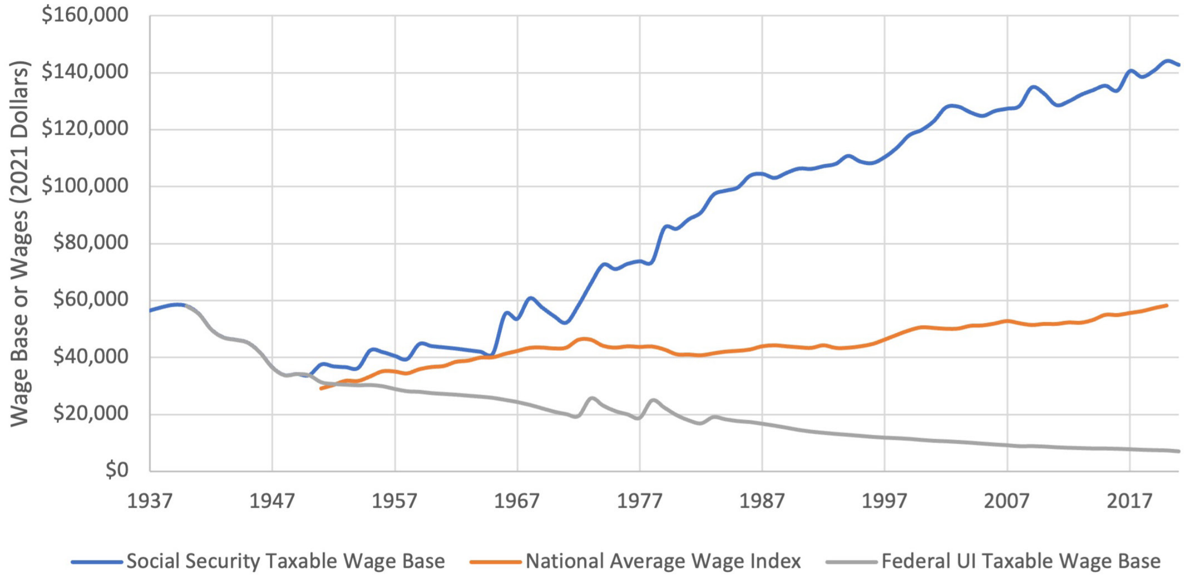
Federal law determines the minimum taxable wage base to which state UI taxes are applied. Congress set the taxable wage base to $3,000 in 1940 but did not include any inflation or wage growth adjustments. It has only been updated three times in the decades that followed. The most recent adjustment (in 1983) set it to $7,000. The result was a steady erosion of the base in real terms.

19 Julie Whittaker et al. *Funding the State Administration of Unemployment Compensation (UC) Benefits*. (Washington DC: Congressional Research Service, March 2022). https://crsreports.congress.gov/product/pdf/IF/IF10838

20 Jonathan Oberlander, "The Ten Years' War: Politics, Partisanship, and the ACA," *Health Affairs* volume 39, no. 3 (2020): 471-478. https://doi.org/10.1377/hlthaff.2019.01444

21 Patricia Anderson and Bruce Meyer, "The Effects of Unemployment Insurance Payroll Tax on Wages, Employment, Claims and Denials," *Journal of Public Economics* volume 78, no. 1-2 (2000): 81-106. https://doi.org/10.1016/S0047-2727(99)00112-7; Marta Lachowska et al. "Firms and Unemployment Insurance Take-up," Working Paper 30266, National Bureau of Economic Research, July 2022. https://www.nber.org/papers/w30266

Figure 2:
The federal UI taxable wage base has eroded in real dollars



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If that 1940 base had been indexed using the national average wage base, it would have been about $58,000 last year. If it had kept pace with the broader taxable wage base used to fund Social Security benefits, it would have been $142,800

last year. The ever-narrowing base has led to long-term reduction in trust fund solvency, resulting in a chronic crisis.[22] States have responded by reducing access and benefit levels. Broadening the base would increase trust program solvency while still allowing states to lower tax rates on many employers.

When taken together, these three reforms would provide states with the support and flexibility they need to continue making progress on expanding access to paid family leave in the years ahead.

Looking ahead

Efforts to use reconciliation to introduce paid family leave are dead. As advocates begin to refocus and search for a way forward, they should look to and build upon state successes.[23] These early successes teach us important lessons about the opportunities and challenges states face when crafting paid family leave policies. While there is ample demand for state programs, the ability

22 Alexander Hertel-Fernandez. "Dismantling Policy Through Fiscal Constriction: Examining the Erosion in State Unemployment Insurance Finances," Social Service Review volume 87, no. 3 (2013): 438-476. https://doi.org/10.1086/672460

24 Eleanor Mueller. "After Reconciliation Rebuff, Paid Leave and Child Care Advocates Refocus," Politico, August 1, 2022. https://www.politico.com/newsletters/weekly-shift/2022/08/01/after-reconciliation-rebuff-paid-leave-and-child-care-advocates-refocus-00048888; Alix Gould-Werth and Kathleen Romig. "It's Up To the States to Take the Lead on Paid Leave," The Hill, September 9, 2022. https://thehill.com/opinion/healthcare/3632369-its-up-to-the-states-to-take-the-lead-on-paid-leave/

of states to meet that demand hinges on their fiscal and administrative capacities. In the future, we should be pessimistic regarding the ability of many states to "go it alone" on paid family leave.

Past attempts to provide federal support by allowing or mandating some form of paid family leave in state unemployment programs have also left critics skeptical of this approach. But this experience should not discredit the entire strategy: It merely demonstrates the perils of tacking paid family leave onto state unemployment programs *as is*, without undertaking larger reforms that are urgently needed in and of themselves.

This paper identifies the key obstacles that set previous attempts up for failure. Changing federal law to allow states to use UI infrastructure for paid family leave is a necessary (but not sufficient) first step. Policymakers also need to address UI's fiscal shortcomings by eliminating onerous burdens on employers, such as experience rating requirements and sole reliance on employer contributions, and addressing the decades-long erosion of UI's taxable wage base, which leaves it with a narrow and inefficient source of funding. American families need and deserve our support. Modernizing federal UI rules and supports provides the most promising vehicle for expanding paid family leave for the foreseeable future.

About the author

Joshua McCabe is a senior family economic security analyst, who works on issues related to child poverty and household stability. McCabe previously worked as an Assistant Professor of Sociology and Assistant Dean for Social Sciences at Endicott College. McCabe has received his B.A. in Political Science from Emmanuel College, his M.A. in Regional Economic and Social Development from the University of Massachusetts, Lowell, and his Ph.D. in Sociology from the State University of New York at Albany.

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