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# **Family and Medical Leave Insurance**

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# Chapter 1. Overview and Background

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## Introduction

Paid family and medical leave insurance (FAMLI) programs insure workers against wage loss when they take time off from work for eligible reasons by replacing a percentage of the qualifying workers' wages for a period of time. Similar to other forms of insurance, the benefits are funded through contributions – employee, employer, or both. Paid family and medical leave for an employee generally includes parental leave to care for and bond with a child after the birth or placement of the child, family leave to care for a family member with a serious health condition, and medical leave to attend to the employee's own serious health condition. This is distinct from both paid sick leave, which is generally for shorter term medical conditions, and from benefits available under the federal Family and Medical Leave Act (FMLA), which authorizes longer term unpaid leave. Based on other state experiences, implementing a paid FAMLI program has significant costs, but there are also nonmonetary benefits of providing paid family and medical leave insurance.

Support for state-level FAMLI programs has been gaining momentum. Prior to 2016, three states (California, New Jersey, and Rhode Island) had FAMLI programs. However, in the past four years, five states and the District of Columbia have enacted FAMLI programs. Moreover, California and New Jersey enacted legislation in 2019 to expand their existing FAMLI programs. Additionally, during the past several years, legislation has been considered nationally and by many state legislatures, including the Maryland General Assembly, which would establish some sort of FAMLI program.

In Maryland, Chapters 677 and 678 of 2016 established the Task Force to Study Family and Medical Leave Insurance. The task force's primary purposes were to, in consultation with appropriate State and local agencies and community organizations, study existing family and medical leave programs in other states and the District of Columbia, review specified family and medical leave program implementation studies and reports, and receive public testimony from relevant stakeholders. The task force issued its [report](#) in December 2017. Most recently, during the 2019 session, Senate Bill 500 and House Bill 341 proposed FAMLI programs in Maryland. The bills, which did not pass, included many of the task force's recommendations.

This report delves deeper into the costs and issues of FAMLI programs, provides an overview of other states' experiences with FAMLI programs, and provides Maryland-specific considerations and costs related to establishing a FAMLI program.

## **Paid FAMLI Differs from Other Leave and Insurance Programs**

FAMLI is distinct from other types of leave that might be offered by an employer or mandated by law. As discussed below, there are a variety of overlapping paid and unpaid leave benefits under federal and State law.

### **FAMLI versus Paid Sick Leave**

FAMLI differs from paid sick leave in that the former is longer term leave for the birth or adoption of a child, to care for a family member, or for an employee's medical issue. Paid sick leave is a benefit offered to employees for shorter term medical conditions. Paid sick leave generally means that leave may be taken with no break in an employee's compensation.

The Maryland Healthy Working Families Act, which took effect in February 2018, requires employers to provide sick and safe leave, subject to certain conditions. The Act requires an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of paid sick and safe leave for every 30 hours that an employee works. An employer with 14 or fewer employees must at least have a sick and safe leave policy that provides an employee with at least 1 hour of unpaid sick and safe leave for every 30 hours that an employee works. An employer is not required to allow an employee to earn or carry over more than 40 hours of earned sick and safe leave in a year, use more than 64 hours of earned leave in a year, accrue more than 64 hours at any time, or use earned sick and safe leave during the first 106 calendar days that the employee works for the employer.

### **FAMLI versus the Federal Family and Medical Leave Act**

The federal Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions:

- the birth and care of an employee's newborn child;
- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

Generally, an FMLA-covered employer must employ at least 50 employees. Public agencies and public or private elementary or secondary schools are considered to be covered employers regardless of the number of individuals they employ. An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these months may be nonconsecutive. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

FMLA differs from FAMILI in that the former authorizes unpaid leave for eligible employees while the latter provides some type of income replacement for eligible employees over an extended time period. FMLA is a federal program while current FAMILI programs are state-administered, so FAMILI does not replace FMLA. Private-sector employers with fewer than 50 employees are not subject to FMLA, but if Maryland enacted a FAMILI program, most employers would potentially have to collect and remit employer and/or employee premiums and complete required reporting for FAMILI.

### **FAMILI versus Temporary Disability Insurance**

Temporary disability insurance (TDI) provides benefits to workers who suffer an illness, injury, or other disability that prevents them from working and was not caused by their job. While TDI may cover pregnancy, it does not provide benefits for adoptions or to care for a family member with a serious health condition. Several states that have a FAMILI program added on to an existing TDI program, many of these states are among the earliest adopters of a FAMILI program. Maryland does not have a TDI program; however, having a TDI program is not a necessary precursor to a FAMILI program. Other states and the District of Columbia are currently moving forward with FAMILI programs without existing TDI programs.

### **Other Leave Available to Maryland Residents**

Certain employees in Maryland may access the federal FMLA and sick and safe leave granted under the Maryland Healthy Working Families Act. Maryland residents may also be eligible for other similar types of leave, depending on their individual circumstances.

The Maryland Flexible Leave Act requires that a private-sector employer, with 15 or more employees, who provides paid leave to its employees must allow an employee to use the earned paid leave to care for immediate family members with an illness. Family members include a child, spouse, or parent. Employees who earn more than one type of paid leave from their employers may elect the type and amount of paid leave to be used in caring for their immediate family members. An employer is prohibited from taking action against an employee who exercises the rights granted under the act or against an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of the act.

The Maryland Parental Leave Act requires businesses with 15 to 49 employees to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental

leave for up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health plan and may recover the premium if the employee fails to return to work. Similar to FMLA, to be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. An eligible employee does not include an independent contractor or an individual who is employed at a work site at which the employer employs fewer than 15 employees if the total number of employees employed by that employer within 75 miles of the work site is also fewer than 15.

State and local governments generally offer expansive paid leave to their employees. Additionally for Maryland State employees, Chapter 752 of 2018 provides up to 60 days of paid parental leave to an employee who is the primary caregiver responsible for the care and nurturing of a child to care for the child immediately following either the child's birth or the adoption of a child who is younger than age six. An employee entitled to parental leave may use available accrued annual leave and personal leave. If that leave is less than 60 days, the State agency that employs the employee must provide the employee with additional paid leave to attain 60 days of parental leave.

## **Federal Legislation**

The United States is the only Organization for Economic Co-operation and Development (OECD) member to not offer paid leave to new mothers. In May 2019, the U.S. Senate Finance Committee convened a bipartisan [working group](#) to consider the issue of a federal FAMILI policy. The paid family leave working group will consider:

- existing paid family leave plans and any gaps in coverage;
- opportunities to make paid family leave more widely available;
- the type of benefit, criteria for eligibility, wage replacement rate, protections for workers, and other parameters of coverage;
- potential funding mechanisms and potential offsets; and
- the possibility of reaching consensus on legislation in this area.

Outside of the Finance Committee working group, proposals have been introduced in the 116th Congress to expand nationwide access to FAMILI. [The Family and Medical Insurance Leave Act](#) (FAMILY Act; S. 463/H.R. 1185) proposes to create a national wage insurance program for persons engaged in family caregiving activities or who take leave for their own serious health condition (*i.e.*, a national FAMILI program). [The New Parents Act](#) (S. 920/H.R. 1940) proposes to allow parents to receive Social Security benefits following the birth or adoption of a child for the



purposes of financing parental leave. A [bipartisan plan](#) in the Senate has been proposed to provide parents the option of advancing up to \$5,000 from their child tax credit upon the birth or adoption of a child and then having future child tax credits reduced accordingly.

## **Federal Paid Family and Medical Leave Tax Credit**

The federal Tax Cuts and Jobs Act of 2017 created a tax credit for employers who voluntarily offer paid family and medical leave to employees. Eligible employers are entitled to claim a credit for paid family and medical leave equal to 12.5% of wages paid to qualifying employees during any period in which such employees are on leave under FMLA, provided that the rate of payment is at least 50% of the wages normally paid to the employee. Only paid family and medical leave provided to employees whose prior-year compensation was at or below a certain amount qualify for the credit. Generally, for tax year 2018, the employee's 2017 compensation from the employer must have been \$72,000 or less. The credit is only available for wages paid in tax years 2018 and 2019.

## **Access to Paid Family Leave**

Family leave is granted to an employee to care for a family member and includes paid maternity and paternity leave. According to the U.S. Bureau of Labor Statistics, in 2018, only 16% of workers in private-industry businesses nationally had access to paid family leave (PFL), while 25% of state and local government workers had such access. Low-wage workers or those who worked in small businesses were less likely to receive paid family leave.

The Pew Research Center performed a study on paid family and medical leave based on two nationally representative online surveys conducted in 2016. The study that found 27% of adults employed in the previous two years reported taking parental, family, or medical leave during that period, while 16% said they needed or wanted to take these types of leave during that period but were unable to do so. The Pew Research Center reports blacks and Hispanics, those without a bachelor's degree, and those with annual household incomes of less than \$30,000 are more likely than whites and those with more education or higher incomes to say they were not able to take leave when they needed or wanted to. According to the 2016 [survey](#), employees that received only some pay or no pay when they took family or medical leave did the following:

- 78% reduced spending;
- 41% shortened their leave duration;
- 37% took on debt;
- 33% delayed paying their bills; and
- 17% went on public assistance.

Leave takers, and parental leave takers in particular, with household incomes of less than \$30,000 were more likely than those with higher incomes to say they had to compensate for lost wages by taking on debt, delaying paying bills, and going on public assistance when they receive less than full pay for their leave.

## Chapter 2. Literature Review

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### Overview

Proponents of paid family and medical leave insurance cite the benefits of paid family and medical leave, such as stronger labor force attachment for family caregivers, improved family health, and improved worker morale. Opponents are concerned about the costs of such programs and potential unintended consequences. Researchers have examined the business and health effects of providing paid family and Medical Leave Insurance (FAMLI), and the results have generally been positive. Employers surveyed generally reported paid family and medical leave insurance having a minimal or positive impact on their businesses.

### Health Effects

There is general consensus among researchers that providing paid family leave improves family health and well-being. A study of California's FAMLI program found an estimated 10.2% decrease in the risk of poverty among mothers of one year-olds and an estimated 4.1% increase in household income.<sup>1</sup> Another recent study found that California's FAMLI law appears to have improved the mental health of mothers and the overall welfare of their infant children.<sup>2</sup> The researcher suggested that these findings are attributable to delayed entry to nonparental child care, greater parental care and engagement, and improved economic well-being.

An [academic study](#) found that California's FAMLI program is associated with improved health outcomes for children in early elementary school, including reduced probability of being overweight, attention deficit/hyperactivity disorder, and hearing-related problems. The improvements are driven by children from less advantaged backgrounds. This finding is consistent with the notion that California's FAMLI program has had the greatest effect on parents taking extended leave after childbirth, mostly for less advantaged mothers who previously could not afford to take unpaid leave.

A study of the Organization for Economic Co-operation and Development (OECD) countries found that a one-week increase in job-protected paid parental leave would result in a 0.2% decrease in the infant mortality rate; thus, a 12-week increase in job-protected paid leave

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<sup>1</sup> Alexandra Boyle Stanczyk, Does Paid Family Leave Improve Household Economic Security Following a Birth? Evidence from California, *Social Service Review* 93, no. 2 (June 2019): 262-304. <https://www.journals.uchicago.edu/doi/abs/10.1086/703138>

<sup>2</sup> Bullinger, L. R. (2019). The Effect of Paid Family Leave on Infant and Parental Health in the United States. *Journal of Health Economics*, 66, 101116.

would result in a 2.4% decline in the infant mortality rate.<sup>3</sup> According to results of another study, infant admissions due to upper respiratory complications, which are classified as avoidable when babies receive more preventive care, declined in California after the introduction of the FAML I program by about 33%.<sup>4</sup> Another study found that FAML I reduced nursing home use by about 0.65 percentage points, which meant for California, there was an 11% relative decline in elderly nursing home utilization over a five-year timeframe.<sup>5</sup>

## Business Effects

As noted above, researchers have examined the business and health effects of providing paid FAML I, and the results have generally been positive. For example, the District of Columbia's Office of the Budget Director undertook a review of more than 170 peer-reviewed studies and government reports on FAML I's impact on the health and well-being of individuals, households, the labor market, and businesses. It found that while the effects of providing FAML I may vary across different firms and employees, most managers surveyed reported that public FAML I programs had either negligible or positive effects on their business.

[The Center for Economic and Policy Research](#) surveyed a small sample of New Jersey employers and found that New Jersey's FAML I law had little impact on how employers do business. A survey of 253 businesses in California found that the business community's concerns over that state's FAML I legislation (that it would impose extensive new costs on employers and involve a particularly serious burden for small businesses) were unfounded with a vast majority of employers reporting paid family leave had minimal impact on their business operations.<sup>6</sup> In the preceding survey, most employers reported that FAML I had either a positive effect or no noticeable effect on productivity, profitability/performance, and employee morale. Based on a survey of small and medium-sized businesses in the food services and manufacturing sectors in Connecticut, Massachusetts, and Rhode Island, researchers concluded that Rhode Island's temporary caregiver insurance program does not have significant impacts on small and medium-sized employers in terms of productivity and other related metrics.<sup>7</sup>

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<sup>3</sup> Dana Patton et al., Paid Parental Leave Policies and Infant Mortality Rates in OECD Countries: Policy Implications for the United States, 9 (1) WORLD MEDICAL AND HEALTH POLICY 6 (2017). <https://onlinelibrary.wiley.com/doi/pdf/10.1002/wmh3.214>

<sup>4</sup> Pihl, A.M., Basso, G., 2019. Did California Paid Family Leave Impact Infant Health? *Journal of Policy Analysis and Management* 38 (1), 155-180.

<sup>5</sup> Does Paid Family Leave Reduce Nursing Home Use? The California Experience <https://onlinelibrary.wiley.com/doi/full/10.1002/pam.22038>

<sup>6</sup> Appelbaum, E., Milkman, R., 2011. Leaves that pay: Employer and worker experiences with paid family leave in California. *Center for Research on Economic Policy*, 1-36.

<sup>7</sup> Bartel, A., Rossin-Slater, M., Ruhm, C., Waldfogel, J., Retrieved from 2016. Assessing Rhode Island's Temporary Caregiver Insurance Act: Insights from a Survey of Employers., pp. 1-11. <http://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceActInsightsFromSurveyOfEmployers.pdf>.

## Labor Force Effects

The District of Columbia's Office of the Budget Director found substantial evidence that FAML I programs increase women's labor force participation. Other academic studies found evidence that California's FAML I program increased the likelihood of mothers returning to work within a year after the birth of a child; mothers also increased the number of hours and weeks worked during the second year of the child's life by 15% to 20%.<sup>8</sup> Some studies found improved customer service, reduced employee turnover, and lower recruitment and training costs. Multiple studies have found that mothers of small children with access to moderate lengths of paid leave tend to go back to work sooner, thereby strengthening women's attachment to the labor force and narrowing the gender wage gap, as more work experience and accumulated job-specific human capital are factors in career advancement and wage growth.

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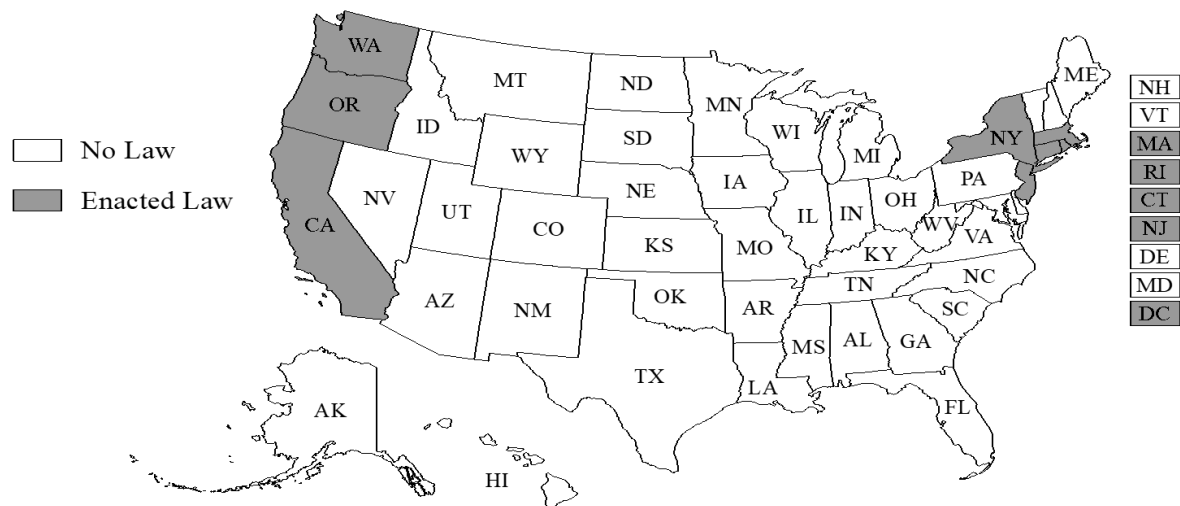
<sup>8</sup> The Effects of Paid Family Leave in California on Labor Market Outcomes, Charles L. Baum and Christopher J. Ruhm, NBER Working Paper No. 19741, December 2013, JEL No. J1, J18, J2, J3.



## Chapter 3. Family and Medical Leave Insurance Programs in Other States

As shown in **Exhibit 3.1**, eight states plus the District of Columbia have enacted legislation to create state Family and Medical Leave Insurance (FAMLI) programs. California, New Jersey, and Rhode Island currently operate FAMLI programs, while the remaining states are in various stages of implementation following the enactment of FAMLI laws. The New York program began phased implementation in 2018 and plans to be fully implemented in January 2021. The District of Columbia and Washington have FAMLI laws that took effect in 2017 with benefit payments starting in 2020. Massachusetts' FAMLI law was enacted in June 2018; its benefit payments will begin in January 2021. Most recently, Connecticut and Oregon enacted FAMLI laws in 2019 with benefit payments beginning in January 2022 for Connecticut and benefit payments beginning in January 2023 for Oregon.

**Exhibit 3.1**  
**States with Enacted Family and Medical Leave Insurance Law**  
**August 2019**



Note: Hawaii does not have a paid family leave program, but it has a temporary disability insurance program.

Source: National Partnership for Women & Families; Oregon State Legislature; U.S. Census Bureau (geographic data)

**Exhibit 3.2** shows a summary of the programs in the states with enacted FMLI laws. The District of Columbia's program is the only program funded entirely by employer contributions; the other programs are funded by employee and employer contributions or just employee contributions. The District of Columbia's program is also the only program not to have a wage ceiling on contributions. Half of the states with FMLI programs set their wage ceiling on contributions by matching the wage ceiling on Social Security, which is currently \$132,900. Maximum weekly benefits are capped, ranging from \$650 in New Jersey to \$1,252 in California.

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**Exhibit 3.2**  
**Details of States with Family and Medical Leave Insurance Laws**

State	Program Contributors	Maximum Tax Rate	Wage Ceiling on Tax	Maximum Weekly Benefit as of 2019
California	Employee	1.00%	\$118,371	\$1,252
Connecticut	Employee	0.50%	\$132,900	\$780 (60 x Min Wage)
District of Columbia	Employer	0.62%	No Wage Ceiling	\$1,000
Massachusetts	Employee and Employer	0.75%	\$132,900	\$850
New Jersey	Employee and Employer	0.25% but will increase in 2020	\$34,400 in 2019, \$131,000 in 2020	\$650
New York	Employee and Employer	0.153% PFL 0.5% TDI	\$70,570 PFL \$6,240 TDI	\$746
Oregon	Employee and Employer	1.00%	\$132,900	\$1,215
Rhode Island	Employee	1.10%	\$71,000	\$867
Washington	Employee and Employer	0.40%	\$132,900*	\$1,000

PFL: Paid Family Leave

TDI: Temporary Disability Insurance

Note: \$132,900 is the current limit on the Social Security tax.

Source: National Partnership for Women & Families; Oregon State Legislature; Rhode Island Department of Labor and Training; Department of Legislative Services

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## Washington

In 2007, Washington passed a family leave benefit program, but it was never implemented. In 2017, Washington enacted a new FAML I law, which allows employees leave from work for certain medical reasons, the birth or placement of a child, and the care of certain family members (including registered domestic partners) who have a serious health condition. The program provides almost every Washington employee with paid time off to give or receive care. Specifically, the program allows eligible employees to take up to 12 weeks, as needed, if the employee:

- welcomes a child into the family (through birth, adoption, or foster placement);
- experiences a serious illness or injury;
- needs to care for a seriously ill or injured relative; or
- needs time to prepare for a family member's pre- and post-deployment activities, as well as time for child care issues related to a family member's military deployment.

If an employee faces multiple events in a year, the employee may be eligible to receive up to 16 weeks and up to 18 weeks if the employee experiences a serious health condition during pregnancy that results in incapacity.

The program is funded by premiums paid by both employees and employers. It will be administered by the state's Employment Security Department (ESD), and premium collections started on January 1, 2019. In 2019, the premium is 0.4% of wages. Employers can either pay the full premium or withhold a portion of the premium from their employees. Employers who choose to withhold premiums from their employees may withhold up to about 63% of the total premium, or \$2.44 per week for an employee making \$50,000 annually. The employer is responsible for paying the other 37%. Employers with fewer than 50 employees are exempt from the employer portion of the premium but must still collect or opt to pay the employee portion of the premium.

Beginning January 1, 2020, employees who have worked 820 hours in the qualifying period (equal to 16 hours per week for a year) will be able to apply to take FAML I leave. The 820 hours are cumulative, regardless of the number of employers or jobs someone has during a year. All paid work over the course of the year counts toward the 820 hours, including part-time, seasonal, and temporary work. While on leave, the employee is entitled to partial wage replacement, which means the employee will receive a portion of their average weekly pay. The benefit is generally up to 90% of the weekly wage, with a minimum of \$100 per week and a maximum of \$1,000 per week, which is paid by ESD rather than the employee's employer.

Employees who return from leave under the law must be restored to the same or an equivalent job if they work for an employer with 50 or more employees, have worked for the employer for at least 12 months, and have worked 1,250 hours in the 12 months before taking leave (about 24 hours per week, on average).

Washington is the first state to implement a FAMLI program without building onto an existing Temporary Disability Insurance (TDI) program. As such, Washington presents itself as a case study to examine the implementation costs of administering a new paid FAMLI program. The 2017-2019 Washington Operating Budget appropriated \$82 million to ESD for implementation of the FAMLI Program. The appropriation must be paid back using the FAMLI premium collections by June 30, 2019, including interest as determined by the Washington State Treasurer. The ongoing administrative and operating costs will be funded through premium collections.

ESD estimates that the program may have a peak claims uptake rate of about 164,000 claims per year. Comparatively, Washington's Unemployment Insurance (UI) program served an average of 230,000 claimants per year from 2014 to 2016. To manage this projected number of claims, a new claims unit is needed. Originally, Washington estimated staffing of between 146 and 172 full-time equivalent (FTE) positions beginning in fiscal 2020; however, they have since revised that number down to 94. This staffing requirement includes claims agents, adjudication, management, and administrative support at similar staff levels and organization to the state's current UI claims staff.

## **Oregon**

In August 2019, Oregon established a FAMLI program to be administered by the Oregon Employment Department (OED) or a third-party contract with OED. The law provides employees compensated time off from work to care for and bond with a child during the first year of the child's birth or arrival through adoption or foster care; to provide care for a family member who has a serious health condition; recover from their own serious health condition; and to take leave related to domestic violence, stalking, sexual assault, or harassment (safe leave). The law establishes the following operative dates:

- rules established no later than September 1, 2021;
- contributions collected beginning January 1, 2022; and
- benefits payable beginning January 1, 2023.

Employees must have earned at least \$1,000 during the first four of the last five completed calendar quarters or the last four completed calendar quarters to qualify for benefits. Employees and employers share the costs of both family and medical leave. Employers contribute 40% of the

premiums, and all employers can withhold 60% of the premium from workers' wages. Employers with fewer than 25 employees are not required to pay the employer contribution, but these employers may apply to receive certain grants if they elect to do so. The total premium for FAML I will be no more than 1% of employee wages, up to a maximum of \$132,900 in wages. Employees earning an amount up to 65% of the state average weekly wage (SAWW) will receive 100% of the worker's average weekly wage. Employees earning more than 65% of SAWW will receive 65% of SAWW, plus 50% of the employee's average weekly wage that is greater than 65% of SAWW. The maximum benefit is 120%, and the minimum benefit is 5%.

Oregon added a new general fund appropriation of \$15.7 million to the OED 2019-2021 biennium budget to cover start-up costs for establishing the FAML I program. OED must reimburse the appropriation to the General Fund, without interest, when it determines the balance in the family and medical leave insurance fund is sufficient, but no later than January 1, 2023. The general fund appropriation for OED represents only those expenditures for planning and designing the program. Oregon notes that ongoing administrative costs, the cost of benefits, the cost of contributions for the state as an employer, and other costs are indeterminate until OED establishes rules and operational processes for the program.

OED estimates that 13 positions will be needed for the initial planning team, which will oversee the development of the program's rules and functions as specified by law, and begin the process for the acquisition of an information technology (IT) system. OED estimates an additional 20 positions will be needed for the expanded planning team for establishing ongoing operations and planning the IT solution. Although the actual cost of an IT system to support the program will be determined based upon results from a Request for Proposal process, OED estimates the total cost of the system and related expenses, based on information from the state of Washington, to be \$60 million.

## **Rhode Island**

In 1942, Rhode Island became the first state to enact a TDI program. The program provides benefit payments to insured Rhode Island workers for up to 30 weeks of unemployment caused by a temporary disability or injury. It protects workers against wage loss resulting from a nonwork-related illness or injury and is funded exclusively by Rhode Island workers. Rhode Island was the third state to provide FAML I when the Temporary Caregiver Insurance (TCI) program became effective in January 2014. TCI provides 4 weeks of paid leave for the birth, adoption or fostering of a new child or to care for a family member with a serious health condition. All Rhode Island private-sector workers who pay into the TDI system are eligible for TCI; thus, approximately 80% of Rhode Island's workforce is covered. An employee's job is secure while out on caregiver leave.

As of July 1, 2019, benefits generally range from \$98 to \$867 per week based on earnings. The current withholding rate as of July 1, 2019, is 1.1% of an employee's first \$71,000 in earnings. A total of 46,233 initial applications for TDI benefits were filed in 2018 with 77% of applications approved. Of the applications filed, 12,279 (26.6%) were TCI benefits. In 2018, TDI benefit payments totaled \$187.1 million with TCI benefit payments of nearly \$13.3 million. The majority of TCI claims approved were for bonding with a newborn (77.8%), followed by care of a spouse (10.9%), and care of a parent (5.7%). TDI payments averaged \$500 per week, and TCI payments averaged \$551 per week.

## **New Jersey**

Since its enactment in 1948, the New Jersey Temporary Disability Benefits Law has provided benefits to workers affected by nonwork-related injuries or illnesses. All employers, except local government, for which coverage is optional, are subject to the provisions of this law when their quarterly payrolls are at least \$1,000. In 2008, New Jersey extended the temporary disability benefits program to provide family leave insurance (FLI) benefits for covered individuals bonding with newborn or newly adopted children or caring for seriously ill family members. In February 2019, New Jersey amended and expanded its FLI law.

Beginning July 1, 2020, the maximum FLI benefit period increases from 6 to 12 weeks during any one-year period, and the maximum intermittent FLI leave increases from 42 to 56 days. Moreover, coverage is expanded to include family members for whose care employees may receive FLI benefits to siblings, grandparents, grandchildren, parents-in-law, and others related by blood or relationship equivalent to a family relationship. FLI benefits are also extended to employees who take time off from work to assist a family member who is a victim of domestic or sexual violence. For leave periods beginning on or after July 1, 2020, the amount of weekly FLI and TDI benefits increases from two-thirds of a claimant's average weekly wage to 85% of that wage, subject to a maximum amount. The maximum will rise from 53% of the statewide average weekly wage (\$650 per week in 2019) to 70% of the statewide average weekly wage for all employees (\$860 per week in 2019).

The most recent change also increases payroll taxes to pay for the benefit expansion and additional program administration expenditures, which includes expanding the wage base on which the taxes are imposed from 28 times to 107 times SAWW. Thus, instead of taxing the first \$34,400 in wages, approximately \$131,000 in wages will be taxed. The benefit increases, and higher administrative costs are to be charged exclusively to employees. The New Jersey Department of Labor and Workforce Development (DOLWD) sets the annual TDI and FLI assessment rates according to existing statutory formulas that consider estimated annual benefit payments, estimated administrative costs, and any unexpended account balances.

From 2009 to 2015, FLI paid out nearly half a billion dollars in benefits for more than 200,000 claims. About 8 in 10 claims are to bond with a child, while 2 in 10 claims are to take care of a family member. The New Jersey Office of Legislative Services estimates that recent changes will increase annual FLI and TDI benefit payments by a range of \$277.0 million to \$363.3 million starting in 2021. In 2017, employer and employee contributions to the TDI program totaled \$436.0 million (\$259.0 million by employers and \$177.0 million by employees), and DOLWD estimated combined 2018 contributions at \$417.9 million (\$267.8 million by employers and \$150.1 million by employees). Employers, however, do not contribute to the FLI program. In 2017, employee FLI contributions totaled \$108.6 million with DOLWD projecting 2018 collections at \$106.0 million.

In addition to increased TDI and FLI benefit payments, \$1.2 million must be allocated annually to education and outreach efforts for the two programs. DOLWD must publish an annual report on these efforts. DOLWD must also, starting in the second year of implementation, meet additional reporting requirements regarding the timely determination and payment of TDI and FLI benefits. If DOLWD attempted to meet the related performance goals by restoring program staffing to 2008 levels when the speed of determinations was closest to the goals, the number of program personnel would have to grow from 125 to 170, or 36%. The New Jersey Office of Legislative Services, however, believes that with possible alternative approaches, such as the increased use of automation in claims processing and the use of data currently available from the unemployment insurance program's automated wage data systems, additional personnel will not be needed.

## **California**

The State Disability Insurance program was added to the California Unemployment Insurance Code in 1946 to provide disability insurance benefits to workers who suffer a loss of wages due to a nonwork-related illness or injury or due to pregnancy or childbirth. In 2004, California became the first state in the country to implement a FAMILI program hereafter Paid Family Leave (PFL). PFL currently provides workers with six weeks of leave with 55% of usual pay replaced and with almost universal eligibility among private-sector employees. Approximately 18.7 million California employees are covered by the PFL program, which is funded through mandatory employee payroll deductions. To be eligible for the program, employees are required to have worked at least 300 hours during a "base period" 5 to 18 months before the initiation of the leave. An eligible employee can receive about 60% to 70% (depending on income) of wages earned 5 to 18 months before his or her claim start date (maximum wage replacement rate is \$1,252 per week) for up to six weeks within any 12-month period, increasing to eight weeks beginning July 1, 2020. The PFL program does not provide job protection, but other state and federal laws, such as the federal FMLA and the California Family Rights Act, do.

California extended the duration of PFL program benefits from six weeks to eight weeks beginning July 1, 2020. A related reserve requirement for the Disability Insurance Fund was reduced from 45% to 30% beginning July 1, 2019. A task force was convened to develop a proposal by November 2019 to extend the duration of PFL benefits to six months by 2021 to 2022 for parents to care for and bond with their newborn or newly adopted child. The proposal will also address job protections for employees and the goal of providing a 90% wage replacement rate for low-wage employees utilizing the PFL program to bond with a child.

## **Hawaii**

Hawaii does not have a FAMILI program, but it has a TDI program. The Hawaii TDI law was enacted in 1969 and requires employers to provide partial “wage replacement” insurance coverage to their eligible employees for nonwork-related injury or sickness, including pregnancy. If an employee is unable to work because of an off-the-job injury or sickness and the employee meets the qualifying conditions of the law, the disabled employee is paid disability or sick leave benefits to partially replace the wages lost. Generally, the weekly benefit amount is 58% of the average weekly wage, rounded up, to a maximum of \$632 for 2019. Wages in excess of \$1,088.08 need not be included in the computation of the weekly benefit amount.

Legislation enacted in 2018 required the Hawaii Legislative Reference Bureau to conduct a sunrise analysis of the impacts of, and best framework for, the establishment of a FAMILI program. The resulting consultant report was completed in November 2019 and provides an in-depth [analysis](#) on the impacts of establishing a paid family leave program on industries, consumers, employees, employers, and caregivers.

## **New York**

On January 1, 2018, New York launched a FAMILI program, which is being phased in over a four-year period. In 2019, eligible employees can take up to 10 weeks to (1) bond with a newly born, adopted, or fostered child within the first 12 months of birth or placement; (2) care for a spouse, domestic partner, child/stepchild, parent/stepparent, parent-in-law, grandparent, or grandchild with a serious health condition; or (3) assist a spouse, domestic partner, child/stepchild, parent/stepparent, or parent-in-law when they are deployed abroad on active military service. The number of weeks employees can take will continue to rise through 2021, at which time employees will be able to take up to 12 weeks of job-protected, paid time off. Employees are also entitled to be reinstated to their job when their leave ends and to the continuation of their health insurance during their leave. New York also has a TDI program.

In 2019, employees taking FAMILI leave will receive 55% of their average weekly wage, up to 55% of the current SAWW of \$1,357.11. The maximum weekly benefit for 2019 is \$746. When the program is fully phased in, the maximum benefit will be 67% of the employees' average weekly wage, up to 67% of the statewide average weekly wage for up to 12 weeks of leave. The FAMILI program is funded through employee payroll contributions that are set each year to match the cost of coverage. The rate of employee contributions is reviewed annually and is subject to change by the New York State Department of Financial Services. In 2019, the contribution is 0.153% of an employee's gross wages each pay period with a maximum annual contribution of \$107.97. Employees earning less than the current Statewide Average Weekly Wage of \$1,357.11 will contribute less than the annual cap of \$107.97, consistent with their actual wages.

## District of Columbia

The Council of the District of Columbia passed the Universal Paid Leave Amendment Act of 2016 in December of that year. An eligible employee may receive up to eight weeks of paid leave within one year of the birth of a child, the placement of a child with an eligible employee for adoption or foster care, or the placement of a child with an eligible employee for whom the employee legally assumes and discharges parental responsibility. An eligible employee may receive up to six weeks of paid leave to care for a family member's serious health condition. In addition, an eligible employee may receive up to two weeks of paid leave to care for his or her own serious health condition.

Beginning July 1, 2019, private-sector employers in the District must pay a 0.62% tax to fund the paid-leave benefit. The Paid Family Leave tax is 100% employer-funded and may not be deducted from an employee's paycheck. The maximum weekly benefit amount is \$1,000.

To appropriately prepare to administer the program, a working group was created prior to the availability of any funding in order to continually move each component of the District's implementation plan forward. The District of Columbia's Department of Employment Services (DOES) established the Office of Paid Family Leave (OPFL) to implement the program. OPFL will be comprised of the Division of Tax (collection of taxes, premiums, contributions, fees, and revenue functions); the Division of Benefits (claim filing, claim processing, and payment of paid leave benefits); Benefit Payment Control (prevention and detection of fraud and overpayments, and recovery of improper payments of benefits); Appeals (fair hearings on protested claims); Medical (physician certifications); Call Center (customer service); and Support (procedures, budget, studies, *etc.*).

In fiscal 2019, the District of Columbia budgeted for 64 FTE positions within OPFL, which will grow to 106.2 FTE positions in fiscal 2020. By July 1, 2020, OPFL is expected to be comprised

of 124 full-time employees who will ensure the District remains in compliance with the appropriate laws, titles, regulations, directives, and requirements pertaining to the administration of an effective FAMLI program. OPFL had a budget of \$5.0 million in fiscal 2019 and is budgeted for \$9.4 million in fiscal 2020. In fiscal 2019, the District of Columbia approved a \$19.9 million spending plan for a FAMLI IT application.

## **Connecticut**

Connecticut passed the paid Family and Medical Leave Insurance (FMLI) program in 2019. The program provides 12 weeks of paid family and medical leave benefits over a 12-month period, plus 2 additional weeks of benefits for a serious health condition that results in incapacitation during pregnancy. The Paid Family and Medical Leave Insurance Authority, which is a quasi-public agency, must annually determine the employee contribution rate not to exceed 0.5% of an employee's "subject earnings." Earnings subject to FMLI contributions are the same as those subject to Social Security tax (currently up to \$132,900). Employee contributions start on January 1, 2021.

The FMLI program is scheduled to begin paying benefits on January 1, 2022. A covered employee's weekly benefits under the program are generally calculated as 95% of his or her average weekly wage, up to 40 times the state minimum wage, plus 60% of his or her average weekly wage that exceeds 40 times the minimum wage, with total weekly benefits capped at 60 times the minimum wage. If employee contributions are at the maximum rate allowed and the authority determines that they are insufficient to ensure the program's solvency, Connecticut's law requires it to reduce the benefit by the minimum amount needed to ensure the program's solvency.

The FMLI program allows employers to alternatively provide benefits through a private plan, which must provide employees with at least the same level of benefits under the same conditions and employee costs as the FMLI program. Private plans must meet certain requirements for approval, and employees covered by an employer's private plan do not have to contribute to the FMLI program.

The program will incur start-up administrative costs to Connecticut's Department of Labor of at least \$13.6 million prior to fiscal 2022. The start-up costs include approximately \$4.7 million in salaries and fringe benefits, \$7.7 million for IT, \$776,700 for overhead and capital needs, and \$340,000 for outreach and marketing. The legislation establishing the program includes an authorization of \$20 million of general obligation bonds (\$10 million for start-up costs in each of fiscal 2020 and 2021). Beginning in fiscal 2021, the ongoing administrative expenses are estimated to be at least \$18.6 million annually, including fringe benefits. These costs will be covered by the FMLI Trust Fund, which receives revenue from employee contributions.



## **Massachusetts**

The Massachusetts FAML I law was enacted in 2018. Beginning in January 2021, most employees in Massachusetts will be eligible to receive up to 12 weeks of paid family leave, up to 20 weeks of paid medical leave, or a combined 26 weeks of leave. The program is funded by premiums paid by employees, employers, and the self-employed. Contributions to the program should have begun on July 1, 2019, but were delayed three months to ensure businesses had adequate time to implement the program and for technical changes to clarify the program design. Thus, contributions to the program began on October 1, 2019, and are managed through the Department of Family and Medical Leave (DFML). The weekly benefit is currently capped at \$850 per week. Employers have the option to opt out of Massachusetts' paid leave program and to fulfill their obligations under the law through a private plan.

In fiscal 2019, \$1.5 million was appropriated to DFML, which must be reimbursed, and \$3.5 million was appropriated to DFML for fiscal 2020. The state also appropriated \$18.0 million in anticipated costs for employer contributions to the Family and Employment Security Trust Fund. The FAML I law states the costs of administering DFML must not exceed 5% of the amount deposited in the Family and Employment Security Trust Fund for each fiscal year following the initial year benefits have been paid.

## **Lessons from Other States**

As discussed above, several states have implemented, or are in the process of implementing, FAML I programs. Valuable insight can be gained from examining their experiences with implementation – particularly in relation to timing, funding, and IT. Some states have also allowed for private competition.

### **Allow Adequate Time for Implementation**

Massachusetts' FAML I law was enacted in June 2018, and contributions to the program were scheduled to begin on July 1, 2019. However, Massachusetts' rollout of the program created confusion and uncertainty. For example, there was confusion as to how the program affects existing benefit plans and payroll. Consequently, in June 2019, legislation was enacted to delay the start of employer and employee contributions by three months to October 1, 2019, in order to provide the state and employers with adequate time to prepare for the program's impact. In contrast to these statutory deadlines, Oregon's FAML I law stipulates that rules must be established at least three months prior to when contributions begin, thus mitigating any confusion employers may have surrounding the program.

If Maryland were to implement a FAML I program, the State could learn from Massachusetts' experience by having a longer delay from enactment of the program to contributions commencing or by requiring regulations to be finalized several months in advance of the start of contributions. Either option could allow sufficient time to ensure regulations are finalized before contributions begin, which would alleviate confusion and uncertainty surrounding the program.

### **Start-up Assistance Could be Repaid after Program is Self-funding**

The start-up costs of a FAML I program can be a major hurdle to implementation of the program. The 2017-2019 Washington Operating Budget appropriated \$82 million for implementation of its Family and Medical Leave Insurance (FML I) Program. This appropriation must be paid back using the FML I premium collections including interest as determined by the Washington State Treasurer. Meanwhile, ongoing administrative and operating costs will be funded through premium collections. Likewise, Oregon's program was initially funded by a general fund appropriation, but the Oregon Employment Department must repay the appropriation without interest when there are sufficient funds in the FAML I fund to do so. Connecticut specifies that any funds expended from its general fund for the purpose of administering the FAML I program, or providing compensation to employees, must be reimbursed no later than October 1, 2021.

If Maryland were to implement a paid FAML I program, the State could fund start-up costs through the general fund, similar to other states, which could be repaid once contributions commence – with or without interest. Ongoing administrative costs could be covered through employer and/or employee contributions and the use of a dedicated special fund established for that purpose.

### **Consider the Use of Unemployment Insurance's Information Technology**

A FAML I program is generally administered in a manner similar to the unemployment insurance program as both programs assess and collect a contribution and pay a benefit. Thus, some states have used, or plan to use, their IT infrastructure under their UI program to administer their FAML I programs. The federal government provides funds to states to meet the necessary costs of administering UI programs; therefore, some states believe they are prohibited from using their UI IT infrastructure for a FAML I program. Washington's fiscal note for its FAML I program stated "a state program may not use any infrastructure paid for with federal funds without appropriate recompense to those federal programs, which may limit anticipated efficiencies for the state in implementing and operating FML I." The Washington ESD assumes its FAML I program requires a separate, complete IT system to manage premium assessment and collections, benefit payments, and coordinate with existing programs to determine eligibility and streamline customer

interactions. Thus, Washington is initially spending \$58.0 million on an IT system with \$25.6 million in maintenance costs for five years. Oregon estimates that it will have similar IT development costs of approximately \$60 million.

Creating a new IT infrastructure is significantly more expensive than using existing UI infrastructure. The Maryland Department of Labor (MDL) has advised that it would need to develop a new IT infrastructure for a FAML I program, but given that some states currently use UI IT infrastructure and the high costs of developing a new IT system, a letter or opinion from the Maryland Attorney General and/or a determination letter from the U.S. Department of Labor would be helpful in ascertaining the extent to which the State could leverage its existing UI IT infrastructure in the administration of a FAML I program.

### **The Private-sector Is Becoming Involved**

If a FAML I program is enacted in Maryland, private-sector insurance companies may want to be involved. Rhode Island and the District of Columbia require paid FAML I coverage to only be provided through the state or district, but other states authorize employers to meet the programs' requirements through voluntary plans or private insurers. Connecticut's Governor Ned Lamont threatened to veto its FAML I bill as it was moving through the legislature because he wanted it to be easier for private insurance companies to compete under the program. Connecticut's program will be a quasi-public authority, which the Governor said could possibly be run by a private insurance company. Connecticut's FAML I program is estimated to cost \$400 million, so allowing private-sector insurance companies to be involved could significantly benefit them.

Private-sector businesses are also beginning to provide generous maternity and paternity leave packages on their own accord. Microsoft provides five months of paid leave to all new birth mothers and three months for fathers, adoptive parents, and foster parents. The company also only partners with vendors and suppliers that offer a 12-week minimum parental leave for birth or adoptive parents. Netflix provides a full year of paid time off to parents, and Deloitte's paid family leave program provides eligible employees up to 16 weeks of paid leave.

Consequently, if Maryland were to implement a paid FAML I program, the State could consider the role of private-sector businesses in the program. This includes the potential for private FAML I plans, the potential private administration of a State plan, and the extent of voluntary leave benefits offered by some employers.



## **Chapter 4. Potential Cost of Implementing a Family and Medical Leave Insurance Program in Maryland**

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Implementing a Family and Medical Leave Insurance (FAMLI) program in Maryland will have a significant fiscal impact. The State must raise sufficient tax revenues to cover the leave benefits. When setting the contribution rate, consideration should be given to the tax rate and whether to have a ceiling. All states with a paid FAMLI program have a wage ceiling with half of these states setting the wage ceiling equal to the Social Security tax wage ceiling. The District of Columbia's program is the only program without a wage ceiling.

In its report, the Maryland Task Force to Study Family and Medical Leave Insurance focused on using Washington as a model FAMLI program. If Maryland implements a FAMLI program to Washington's program, with the contribution rate set at 0.4% (the applicable rate in Washington) and a wage ceiling set at the wage limit for Social Security, beginning in fiscal 2021, based on data from the Social Security Administration and the Board of Revenue Estimates' projection for wages and salaries, State special fund revenues could increase by approximately \$750.3 million in fiscal 2021. Based on an analysis by the Institute for Women's Policy Research, the task force's report estimated that a FAMLI program modeled after Washington's program would cost an estimated \$541.3 million. If the costs of administering the program are not allowed to exceed 5% of contributions, similar to Massachusetts' program, administrative costs would not exceed \$37.5 million. After administration costs and benefit costs, approximately \$171.5 million would remain as a reserve.

The State program's fund balance would have to be monitored to ensure that there is adequate funding to cover benefits being claimed. In Washington, the contribution rate is based on the account balance ratio, which is calculated by dividing the fund's account balance by the total wages paid by employers and those electing coverage. Washington requires an account balance ratio of between 0.2% and 0.29% to maintain a contribution rate of 0.4%. If the account balance ratio is below 0.09%, the contribution rate would increase to 0.6%, and if the account balance is 0.5% or greater, the contribution rate would decrease to 0.1%. Thus, if Maryland implements a program similar to Washington's, contribution rates could vary between 0.1% and 0.6% based on the fund balance.

When developing a FAMLI program in Maryland, consideration should also be given to the benefits. Many advocates of FAMLI believe that benefits should be at least two-thirds of previous wages, while a tiered system would ensure that low-wage workers are able to access the program without overextending the program. If the amount of benefits are similar to those projected for Washington, the Department of Legislative Services (DLS) estimates employee benefits will total at least \$541.3 million annually.

Maryland Department of Labor (MDL) would most likely be tasked with administering a FAML I program because the department currently collects payroll taxes for unemployment insurance (UI). MDL employees will be needed to set up the program initially, and more MDL employees will be needed to process and investigate claims once benefits commence. Additional legal staff will be necessary for assistant Attorneys General to enforce civil actions and for the Judiciary to handle increased caseloads once covered employees start claiming benefits. Washington expects to employ 94 full-time employees once its program is fully implemented, while the District of Columbia estimates having 106 employees once its program is fully implemented. New Jersey has approximately 125 employees running its program. DLS expects that a similar staffing level of approximately 100 employees would be needed at MDL to run a FAML I program. Based on information technology (IT) costs related to FAML I implementation in other states, DLS estimates that the State would incur \$60 million in contractual services over three years to develop a framework necessary to implement a paid FAML I program. If existing UI IT infrastructure is utilized, the IT costs could be significantly less.

If a FAML I program requires employer contributions, there will be significant costs to the State as an employer. However, if the program only mandates employee contributions, the potential costs are largely diminished. When State employees are eligible to take paid family and medical leave, there is potential for a minimal increase in State personnel costs, which is largely mitigated since accumulation of overtime or other shift-covering personnel requirements is typically uncommon, and the impact of the program represents a marginal increase in use of leave compared to use of existing leave available to State employees. An increase in personnel costs would only be expected to occur in situations where overtime, temporary hires, or other measures are necessary to ensure proper employee coverage. Additionally, the potential increase in personnel costs refers only to the marginal increase in leave taken or extended due to the availability of paid leave, where shorter or no leave would have been taken in absence of the program. The State already provides State employees with paid parental leave, so DLS does not expect a significant increase in leave.