

Let's Expand Paid Leave Following Second "Year of the Woman"



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February 5 marks twenty-six years since the Family and Medical Leave Act (FMLA) was signed into law to guarantee twelve weeks of unpaid, job-protected leave for Americans of all genders to provide care to new babies and newly adopted children, seriously ill loved ones, and for their own serious medical needs. Since 1993, more than 200 million people have used FMLA leave. But many others have not been able to use it because they are not covered by the law, or because they cannot afford to take unpaid leave.

Six states and the District of Columbia have passed paid family and medical leave laws to address this disparity. It's time for Congress to do the same.

Then and Now, Then versus Now

When the FMLA was signed in 1993, more women were in Congress than ever before (four in the Senate and twenty-four in the House), and many of them, alongside some of their male colleagues, were key supporters of the bill.¹ For example, Representative Patricia (Pat) Schroeder (D-CO), who has been called “the mother of the Family Leave Act,” joined Congress in the 1980s as a thirty-two-year-old mom of two young children (ages six and two) and quickly became a key champion of the early versions of FMLA, as well as of the bill that ultimately passed. When President Clinton signed the bill, surrounded by the women elected to Congress as part of the 1992 “Year of the Woman,” FMLA was the first bill of his brand-new administration—a significant demonstration of political priorities. Today, as in 1993, more women are in Congress than ever before (twenty-five in the Senate and 102 in the House), including twenty-eight moms of young children. Having more congressional representation of people who have experienced the challenges of caring for family members was instrumental in passing FMLA in 1993, and it will be key for updating it to make it paid and more expansive.²

In looking deeper at the differences in circumstances between the time of FMLA's passage and now, what else can we learn about the chances of an update to the bill?

Representation and Party Influence

Congress is more diverse today than ever before. While many members take into account the views and experiences of their constituents regardless of their own experiences, having women of color, LGBTQ, immigrants, moms of young children, and others at the table will ensure that the 2019 legislation will be more reflective of the needs of more families.

However, while greater representation is necessary, it is not sufficient for progress. Furthermore, the progress made must be tempered by comparison with the big picture: while having achieved unprecedented gender diversity, less than a

quarter of Congress is comprised of women. More than twenty years ago, I performed a quantitative and qualitative study of which factors influenced whether a state had adopted a maternity leave policy.³ In it, I found that a combination of Democratic majorities and women in the legislature, along with strong interest groups, were the biggest predictors of whether a state had adopted a maternity leave policy. In no state did women have enough of a presence for women legislators on their own to make the difference, so Democratic majorities were a more significant factor; but combined with having women legislating, it was an even more powerful predictor.⁴

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Similarly, when the FMLA became federal law in 1993, Congress had Democratic majorities in both houses, a Democrat in the White House, and, as noted, more women in Congress than ever before. The Women's Legal Defense Fund—now the National Partnership for Women & Families—built a powerful coalition of interest groups who helped the bill succeed. If my analysis still holds, with another record-breaking number of women in Congress, a powerful coalition of interest groups—even broader than the coalition in 1993—and a Democratic majority in the House of Representatives, circumstances suggest that the 2019–2020 House of Representatives is in a strong position to pass a paid family and medical leave bill.

This will only be the first step, and without additional political changes, further progress may take some time. Unlike in 1993, today, the Senate has a Republican majority and the president is a Republican. This suggests that the House can make progress on paid leave, but that the bill has a steeper hill to climb than did FMLA to get to the president's desk and beyond. Yet, some experts argue that bipartisan progress is possible during this Congress.

State Precedents, National Conversations, and Bipartisan Support

States paved the way both then and now. In 1993, state maternity leave and temporary disability insurance policies set precedent for FMLA, just as state paid leave policies (in six states and Washington, D.C.) are setting the stage for paid family and medical leave. In addition, FMLA was a clear defining issue in the 1992 presidential race, whose context included the fact that then-president George H. W. Bush had twice vetoed the bill and his competitor Bill Clinton

supported it. It was an important issue again in 2016, when paid leave was talked about by both campaigns but with different approaches between Hillary Clinton and Donald Trump. Clinton's approach included twelve weeks of leave for FMLA purposes with two-thirds wage replacement. Trump proposed six weeks for childbirth only.

Support from across the aisle is another important parallel between 1993 and today. Then as now, there was Republican congressional interest in the issue—from Representative Marge Roukema (R-NJ) in 1993 and from Senators Marco Rubio (R-FL) and Deb Fischer (R-NE) in 2019—albeit in approaches that create unjust trade offs between retirement security and caregiving. Unprecedented attention to sexual violence is also a point in common between 1993 and 2019, then in the form of Anita Hill's testimony at the Clarence Thomas hearing and now through the #MeToo movement—whose name now graces federal legislation—and Dr. Christine Blasey Ford's testimony at the Brett Kavanaugh hearing.

The Changing and Unchanging Workforce

The numbers on women's participation in the labor force show both similarities and differences between 1993 and today. In 1993, women's labor force participation had been steadily increasing: the portion of women engaging in the formal economy has nearly doubled from 1950 to the turn of the century, though there has been a slight decline since then.⁵ While women's labor force participation rates today are more or less the same as they were in 1993, the rate for hispanic women has increased by 8 percent and for black women by 4 percent—by contrast, fewer of their white counterparts are working today. It's possible that FMLA enabled women to stay more attached to the labor force: the rate of participation for single women with young children increased substantially in the years following the 1993 policy by about 10 percent initially, and by about 8 percent later on. This was a significant achievement after decades of the rate of participation for this group being more or less flat.

One difference between then and now is that this increased share of working women, and the notably higher portion of black women who work, are paying much, much more in family care-related expenses. Between 1993 and today, the average cost of child care as a percent of family income has increased by more than 50 percent; and overall, from 1994 to 2014, child care costs grew at nearly twice the rate of economy-wide prices. In terms of paid family leave, parents need paid leave not only to bond with and care for their children, to recover from childbirth, and for the health and well being of their children, but also because they often can't afford any other option.

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The costs of infant care are particularly steep, and even within those prohibitively expensive care offerings, quality options are hard to find. The Center for American Progress found that in ten major areas of the United States, there is one licensed child care opening for every five infants. Another Center for American Progress study reported that, “on average, a family making the state median income would have to spend 18 percent of their income to cover the cost of child care for an infant.” It’s even more challenging for single parents, families without savings, those with multiple children, and those being paid the minimum wage or other poverty-level wages. These data show just how much the United States must also invest in affordable, high quality child care, and especially infant care options; but it is critical that paid leave be pursued in tandem with such investments, to ensure that parents and children have the time they need together to create a healthy and safe start to new life, as well as to address other health and caregiving needs.

An Heir to FMLA’s Legacy—and One that Works for More Families

The FAMILY Act, first introduced in 2013 by Senator Kirsten Gillibrand (D-NY)—who, like Representative Schroeder before her, was elected to Congress when her children were young; and Representative Rosa DeLauro (D-CT), who used paid leave to address her own ovarian cancer—will be reintroduced this year. The bill will reach its fullest potential if its advocates also consider the perspectives of this Congress’s historically diverse cohort and incorporate the lessons offered by the legislation’s state-level precedents. The most recently passed of those state laws—in New York, Washington State, Massachusetts, and Washington, D.C.—include provisions such as progressive wage replacement (D.C., Washington, and Massachusetts), expansive legal definitions of who and what makes a family (New York, Massachusetts, and Washington), and job protections regardless of employer size (Washington, Massachusetts, and New York). And the governor of California has recently proposed another excellent model, which would expand his state’s six weeks of paid leave to six months (specifically for new parents).

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With the Democratic majority in the House and women in leadership positions from the speaker of the House to committee chairs, coupled with the work of a strong and broad coalition of interest groups, the question of a great paid family leave bill in the House this year is not if, but when.

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Notes

1. Former representative George Miller (D-CA)—a TCF board member—was instrumental in the bill; former senator Christopher Dodd (D-CT) led the effort in the Senate.
 2. In 1993, the framers and supporters of the bill decided to settle on unpaid, job-protected leave for twelve weeks as a political compromise they felt was necessary to move the bill forward. One wonders whether, if Congress had been more diverse in class and race in 1993, the bill’s advocates would have found it acceptable to make compromises that left so many poorly paid families behind.
 3. Titled “Conspicuous Institutions: Women, Democrats and Interest Groups in the State Policymaking Process,” this was my undergraduate senior thesis. Suffice it to say that this issue has been central to my work from the very beginning. See Julie Kashen, “Conspicuous Institutions: Women, Democrats and Interest Groups in the State Policymaking Process,” *Michigan Journal of Political Science*, Vol. 22, Winter, 1997.
 4. Julie Kashen, “Conspicuous Institutions: Women, Democrats and Interest Groups in the State Policymaking Process,” *Michigan Journal of Political Science*, Vol. 22, Winter, 1997.
 5. It must be noted here that women have always worked in the informal economy—many of whose opportunities consist of care jobs that deserve to be valued much more highly than they are—in part because of historic sexism and racism and the association of women, and especially poor women of color, with poorly compensated and uncompensated care labor.
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