

Testimony of Kemi Role

National Employment Law Project

Legislative Proposals for Paid Family Leave

Hearing before U.S. House of Representatives

Ways and Means Committee

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Good morning Chairman Neal, Ranking Member Brady, and Members of the Committee. I am grateful for the opportunity to testify today and for your attention to this critical issue. I am Kemi Role, Director of Work Equity at the National Employment Law Project. NELP is a non-profit research, policy, and capacity building organization that for more than 50 years has sought to ensure that America upholds the promise of opportunity and economic security for all its workers, including those between jobs who require employment services. For decades, NELP has researched and advocated for policies that create good jobs, expand access to work, and strengthen protections and support for underpaid and jobless workers both in the workplace and when they are displaced from work.

I am here today to share with you why the FAMILY Act is such a critical investment for all workers, particularly those often left behind in the legislative process.

Let me say at the outset that Paid Family and Medical Leave is already a reality in the United States but only for those people fortunate enough to be in a position to work for an employer who provides it, either through some generosity, state law, or because they fought for the benefit through their union. What I wish to spotlight today are the millions of workers who have been systemically excluded from accessing this benefit. This Congress has the opportunity to ensure that for millions of workers and their families, caring for themselves and/or their families does not put them at risk for financial catastrophe.

NELP has a long history of fighting for social insurance programs that are universal, equitable, and accessible. Because we have broad experience fighting for more inclusive and workable programs like the unemployment insurance system, we welcome the opportunity to bring our experience to the conversation around building a paid family and medical leave program that helps to balance out uncertainties that workers face and helps to build stronger and more resilient communities.

A Paid Leave Program Must Provide Broad Coverage for All Family Caregiving and Personal Medical Needs

There is broad agreement that the current reality of who gets paid leave and how they access it is not working and that it exacerbates inequality. Currently, only nineteen percent of workers have access to paid family leave through their employers. Unsurprisingly, that figure jumps to 27% for workers in the top quarter of earnings, and down to a paltry six percent for those in the bottom quarter. For

part-time workers, only six percent have access to paid leave. A full 62% of people whose households earn less than \$30,000 reported that they were unable to get paid during caregiving periods.¹

Through NELP's decades of engagement in policy and research, we know that we must center the needs of the most systemically oppressed workers, those traditionally left behind by theoretically universal programs, if we are to truly have an expanded and equitable paid leave program. So-called "colorblind" policy approaches have ignored a long arc of structural racism, occupational segregation, and harmful narratives about Black and brown workers that curtail job opportunities and benefits for workers. We also can't design a program without acknowledging the reality that the bulk of caregiving work done in this country is done by women. These structural issues contribute to the fact that women and people of color are also more likely to be concentrated in low-wage and low-quality jobs that offer fewer protections and workplace supports.²

It is clear that a universal paid leave program is long overdue, which is why NELP supports this committee taking swift action to advance the FAMILY Act. We favor this bill over all other proposals because it is the only one that has several key components that will dramatically expand universal coverage and equity including a definition of family that recognizes the realities of who are our families in the modern era, and coverage of all forms of family and medical leave, not just select ones such as parental leave. And, as I will discuss below, it is the only one that has a responsible financing scheme.

A Paid Leave Program Must Consider the Needs of People of Color and the Structural Inequities that Compound their Need for Paid Leave

From our peers at National Partnership for Women and Families, we know that "[i]nequitable access to paid leave exacerbates the race-based disparities, including a huge wealth gap and dramatic inequalities in access to economic supports and quality health care."³ We must ensure that paid leave addresses the context that families of color face and doesn't exacerbate the "economic, racial, and health inequities" that already exist.

The current Family and Medical Leave Act (FMLA), which provides access to unpaid, job-protected family and medical leave, covers only about 60 percent of the workforce, and workers of color are disproportionately likely to either not be covered or to be unable to afford a period of unpaid leave without serious financial distress. Just 46 percent of Asian/Pacific Islander workers, 39 percent of Black workers, 33 percent of American Indian/Alaska Native workers, and 29 percent of Latinx workers are both covered by and able to afford unpaid FMLA leave. And while no national data reports access to dedicated paid family or medical leave provided through an employer, data on access to other forms of paid time away from work, such as paid sick days or vacation leave, show similar racial disparities.⁴ As of 2018, Black and Latinx workers lag behind white workers in terms of access to paid time away from work that they could use for FMLA purposes, though once

provided access, utilization rates even out. It is also important to note that FMLA usage is much lower among Black and Latinx workers, in large part because workers self-report that they cannot afford to take unpaid time off. For example, with regard to access to any paid time off for birth or adoption, without controlling for elements that are part and parcel of structural racism like employment characteristics, 47.4% of white (not Hispanic) workers have access to some paid time, but only 40.8% of Black workers and 23.2% of Latinx workers have access.⁵

Access to paid time off that can be used to care for a sick family member is similar; 49.4% of white workers who do not identify as Hispanic had some amount of paid time they could use for these purposes, but only 42.8% of Black workers and 26.4% of Latinx workers have access. Access to paid time for childcare follows the trend; with 32.9% of white workers, 29.8% of Black workers, and 17.2% of Latinx workers having access to it. The disparity in paid time that could be used for elder care is slightly more dramatic, which is especially troublesome given the already large gap in retirement income. When it comes to time in order to provide elder care, 31.7% of white workers have access but only 25.1% of Black workers and 13.7% of Latinx workers have access. Households of color are also more likely than white households to be multi-generational, which suggests they are more likely to have elder care responsibilities despite being less likely to have access to leave for elder care.⁶

Moreover, there has been relatively little attention paid to the particular work-and-family needs of women of color, even though women of color often hold dual roles as breadwinners and caregivers for their families; and are the majority of employed caregivers for other families. To ensure that we do not once again exclude home care and domestic workers from essential protections, we must create a paid family and medical leave program that covers all workers. No one is immune from the demands of caring for a child, parent, spouse, partner, or loved one and we all deserve the right to be able to be there for our family when they need us most. But, without a financial cushion, low-wage workers and paid caregivers face particular challenges.

For people of color who need family or medical leave, discrimination, retaliation and job loss are real threats. Overall, nearly 40 percent of workers have no legal guarantee of job protection through the FMLA, which means employers can dictate whether and how a person is able to take time for a personal or family health issue. For many people of color, this results in job loss or the continual fear that providing caregiving will result in job loss.⁷

Black and Latinx workers are also overrepresented in temporary help and staffing agency work. Black workers are overrepresented by a factor of more than 2: they comprise 12.1% of the overall workforce, but 25.9% of the temporary help and staffing agency workforce. Latinx workers are overrepresented by a factor of over 1.5: they are 16.6% all workers, but 25.4% of temporary help and staffing agency workers.⁸

Decades of significant literature has documented how the social determinants of health, the conditions in which people are born, grow, live, work and age, shape health outcomes. Due to the interlocking nature of structural oppression's impact on health, people of color tend to experience greater health needs and have more caregiving responsibilities – making paid leave even more important for these communities.

Many workplace supports are needed to address these overlapping, structural challenges and paid leave is an important one. To be truly effective at ensuring women of color can participate fully in the labor force and family caregiving, paid family and medical leave programs must be responsive to the needs of people of color, and especially women of color.

Finally, we can't ignore the reality that in decades past, caregiving work was provided largely by unpaid or poorly paid full-time domestic labor. And that labor was provided overwhelmingly by Black women who were expected to provide poorly compensated caregiving work outside of their own homes. Thankfully, decades of work to erase Jim Crow laws and standards, including Obama-era revisions to the FLSA regulations about homecare work that finally eliminated the exclusion of this work from minimum wage and overtime protections, have made it unlawful for employers to take advantage of Black women in this manner any longer. But with those reforms, we must also face the reality that caregiving work is hard work that should be properly compensated, including paid leave and fair wages to those who provide it.

The FAMILY Act Will Create Real Opportunities for Choice and Change

Too much of the conversation about worker benefits like paid leave is about all of the choices that workers supposedly make involving everything from when they take leave to the kinds of jobs that they hold. We have to take a step back and recognize that we have been systemically limiting workers' choices and increasing those limits at an astounding rate.

For example, I raised the fact that part time workers currently have just a six percent chance that they will work at a job with access to paid family leave. While it is a valid decision for workers to make the choice to work part-time for a variety of reasons, the reality is that fewer and fewer workers are voluntarily working part time. In the past decade alone, the number of workers who would prefer full time work but are involuntarily employed part time has increased by 40%.ⁱⁱ

Similarly, the decision to provide caregiving is not simple and not purely a choice. Many workers simply cannot afford to take the leave they need and must make the heartbreaking decision to sacrifice care of a loved one. Other workers have family members with such dire and urgent needs that they must sacrifice their financial well-being to provide care that would otherwise be unavailable despite the urgent need for it. Paid family leave will actually give workers real choices, rather than the

illusion of choice that exists now. It could provide a step toward worker freedom - which makes for a more inclusive, better society.

Another supposed choice we are talking about in this hearing is the idea of asking people to sacrifice their future retirement security to make ends meet today. If we ask workers today to raid their Social Security funds in order to care for present family and medical needs, we are asking them to essentially risk their economic security during their golden years to make rent this month. Again, this is not really a choice for far too many people when presented with immediate medical or caregiving needs. The FAMILY Act does not force this Hobson's choice onto workers.

One of the best provisions of the FAMILY Act is its coverage of those working part-time, as well as contingent and self-employed workers, and workers for employers of any size. Generally speaking, worker protections and social insurance programs are struggling to keep up with the dramatic and sweeping changes that are taking place in the way work is characterized and performed. As a result, millions of workers are operating without many of the basic protections that the rest of us take for granted, creating a downward spiral in job quality and threatening the integrity of the structural supports we rely on. The inclusive nature of this legislation should be a model for all worker protections.

According to a recent Internal Revenue Service study of administrative tax data, almost 25 million workers in the US, about 11 percent of the workforce, receive independent contractor earnings.⁹ The study also finds that independent contracting is growing fastest among workers in the bottom earnings quartile, for whom contractor earnings are the primary individual and household source of income, and is growing faster for women than for men—women comprise approximately 55 percent of the increase in independent contractors between 2001 and 2016, while they are about 48 of the labor force.¹⁰

Another key aspect of the FAMILY Act is its portability. People are shifting jobs faster than ever before. Low-income workers are especially likely change jobs due to the frequent churn that is common in low wage industries, much of which is involuntarily foisted upon workers. Given this reality, if we really want to provide effective paid leave for our workforce, we need to move away from a framework in which benefits are tied to a specific employer. If we maintain a system where credits are built up and then lost during every subsequent change in employment, then we are perpetuating and compounding the inequity inherent in our current system.

The United States Can Well-Afford to Provide Universal Paid Leave

Universal paid leave is not only a long-overdue benefit, it's one that we, as a society, can surely afford. Indeed, we simply cannot afford not to provide paid leave.

If paid leave is available for all workers, fewer people get left behind when illness necessitating caregiving happens in their family. This also means that people don't lose the progress they have made in their work lives anytime something unexpected

happens requiring more than a day or two to care for a loved one. Today, for too many workers, their only real option is leaving a job. When this happens, the long-term cost to that worker is much greater than the immediate opportunity cost of lost wages in the short-term. Those workers will suffer cascading effects throughout their career. Job loss, especially for low income workers, is also associated with future unemployment spells, settling for lower quality jobs in the future, family disruption, withdrawal from important social structures, depression, and long-term effects on children's well-being and education.¹¹ A meaningful option to take paid leave and return to work without any loss in seniority or stature is important to reduce the long term pay gap.

That is also why meaningful access to paid leave strengthens workers and their communities. A primary principle of any social insurance structure is not just individual payments, but community support. A recent National Institute for Retirement Security found that without Social Security, 6 million households would become poor or near poor, and the number of households in poverty would increase by 200 percent.¹² Those Social Security payments don't just benefit the people and families who receive them; they also benefit their communities. Every dollar someone receives in Social Security generates \$1.98 in the community.¹³ Similarly large community multipliers apply to programs like unemployment insurance. When a worker falls on hard times and gets a benefit that replaces some of their old income, it gets spent in their community. When they are left without any kind of support, that likewise ripples through the community.

There are two ways to think about labor and the economy – one vision is that of a high road, where we lift up everyone and all can participate in life equally. The other is a low road where we view everyone as a competing economic entity, and one in which we must figure out who to exploit and how to lower wages and benefit standards. In that latter scenario, we are left with a society too tired and overworked to meaningfully participate. We lose the vitality of our communities.

Some have raised concern about the funding mechanism for paid leave -- a small payroll tax. But like Social Security, a payroll tax in this instance is an important investment in workers' broader economic well-being. At NELP, we are keenly aware of the realities for workers living paycheck to paycheck, and that workers who have an additional expense each month will be faced with much tougher decisions than workers with more resources. However, we have collectively supported this tradeoff in programs like Social Security and Medicare, because the individual risk associated with not spreading this cost throughout society means some people face a level of risk that could be truly devastating.

Similarly, we understand that in some of these state programs, workers have not been participating in paid leave programs at optimal levels. But learning from state experience is one of the hallmarks of allowing states to experiment. We now understand how to better disseminate information about this benefit to increase participation. We have to understand that we live in an inherently unequal society where workers with less power also are less likely to have a supportive workplace structure with either a union representative or caring H.R. workers to point them to

benefits. No program exists in a vacuum, and until we achieve greater equality in a broader way, no program will perfectly cover every worker. This is another case of how we need to aggressively pursue workplace equity on all available fronts at all times.

The FAMILY Act is Superior to the Other Legislative Proposals

As a final matter, I want to discuss why competing proposals to provide for paid leave are insufficient and rely on ill-advised financing schemes. First, any proposal that does not provide for paid leave for the full range of personal and caregiving needs is a non-starter for NELP. Some have praised legislation providing only paid parental leave as a good start; we don't think it is. We think it's a wholly insufficient response to the increasingly crippling realities that people face in providing care for themselves and their family members.

Second, any plan that relies on depleting Social Security savings is a disaster waiting to happen. MetLife studied the financial costs of providing family care, and found that nationally, women who leave work to provide caregiving work lose on average \$142, 693 and stand to lose \$131, 351 in Social Security benefits due to this time out of the workforce.¹⁴ Legislation that would borrow from future benefits to provide these benefits would only exacerbate the shortfall these workers will experience at retirement. NELP believes that the answer to this problem is to expand Social Security for everyone. Rather than increasing the Social Security penalty for caregiving work, we urge this committee to continue considering ways to improve final benefits for these and all workers as it continues its work to improve the program and achieve long term solvency.

Finally, a policy that would carve out the benefits from existing Unemployment Insurance programs simply will not work. NELP has written extensively about how state UI systems have been reducing the amount of benefits and the number of people who are eligible to receive them over the past decade. Much of that is due to the fact that states entered the last recession with UI trust funds that were insufficient to meet the challenges they faced and had to borrow from the federal system to pay promised benefits. As states recovered, many made the decision to make it harder to get benefits through their systems. To make matters worse, during times of low unemployment, states also receive less funding for administrative activities. Adding any burden to already stretched UI staff and system simply is not workable for UI or paid leave. Right now, we must focus on restoring state UI systems to sufficiency and solvency rather than add another drain on their resources.

Conclusion

Thank you for your time and attention today. I will be pleased to answer any questions you may have today or at a later date. NELP looks forward to being an active partner in the fight to ensure that Congress passes The FAMILY Act.

Endnotes

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