



Inequities in Eligibility for FMLA leave

Inequities in FMLA eligibility, overall and by race/ethnicity¹

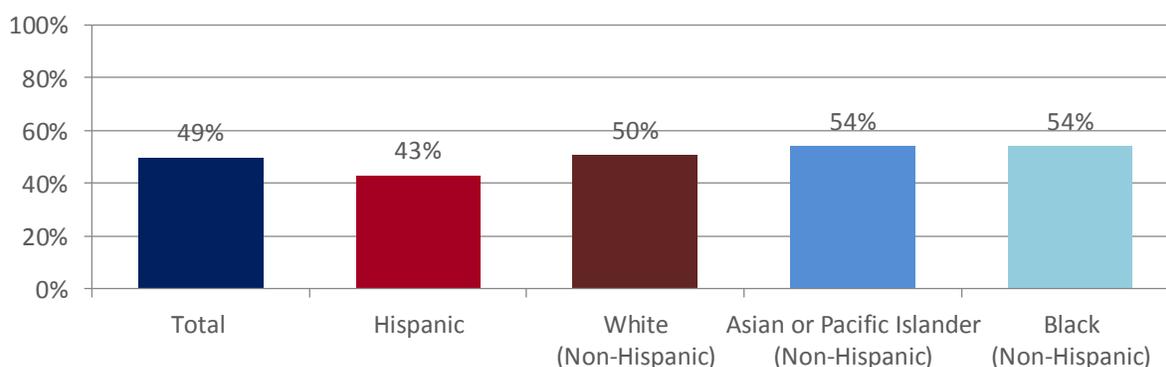
About 60% of workers are estimated to be eligible for FMLA leave,² meaning that they:

- (1) have worked for their employer for at least 12 months (the 12 months do not have to be consecutive),
- (2) have worked at least 1,250 hours for their employer in the past 12 months, and
- (3) work in a worksite in which the employer has at least 50 employees within 75 miles (a covered FMLA worksite).³

While 60% represents a majority, it also means that four out of every 10 workers are not eligible for unpaid FMLA job-protected leave. Workers who are not eligible for FMLA leave include small-business employees, new employees who have not yet worked for their employer for 12 months, seasonal, part-year, and some part-time workers who worked less than 1,250 hours for a single employer in the past 12 months. Workers employed in multiple part-time jobs may be ineligible for FMLA unless one of those jobs provided them with 1,250 work hours over the last 12 months.

Importantly, about half of working parents⁴ and 43% of women of childbearing age (ages 18-44)⁵ are not eligible for job-protected leave under the FMLA. Behind these overall numbers, not all racial/ethnic groups have equal eligibility rates.⁶ A breakdown of working parents by race/ethnicity reveals that Hispanic working parents have the lowest levels of eligibility among all race groups, with just 43% eligible for FMLA leave. On the other hand, black working parents have relatively high eligibility rates (54%), reflecting the fact that a disproportionate share of black workers are employed in the public sector⁷ (all public agencies are covered by the FMLA regardless of size, unlike in the private sector).⁸ Nevertheless, while relatively high eligibility rates are a positive sign for black working parents, many working parents – both black and Hispanic – struggle to afford unpaid FMLA leave. Click [here](#) for more on issues of affordability and unpaid leave.

Share of working parents who are eligible for FMLA leave, by race/ethnicity



Source: diversitydatakids.org calculations of Current Population Survey, 2011-2014 March Annual Social and

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Economic Supplement, Public Use Microdata Files
Hispanics may be of any race.

FMLA eligibility and vulnerable workers

The FMLA's eligibility restrictions exacerbate inequities between more and less vulnerable workers. Rather than providing targeted protections to workers facing socioeconomic hurdles (which could reduce inequities in job security and family leave coverage), the FMLA instead excludes a disproportionate share of vulnerable workers. Employees with lower levels of educational attainment are more likely to be ineligible for FMLA leave, especially young men with a high school degree or less. Low-income employees are also less likely to be eligible for FMLA leave for a variety of reasons, including lower educational attainment and overrepresentation in jobs with higher turnover, seasonality, and less income security.⁹

For already vulnerable families and children without health care or adequate wages, the disproportionate lack of eligibility for job-protected leave can put them at increased risk of negative developmental and health outcomes. Expanding eligibility for job-protected leave for vulnerable working families can increase the benefits of the FMLA.

In sum, these statistics reveal that a very large proportion of American workers – a disproportionate share of whom are socioeconomically vulnerable – are not entitled to the FMLA's job protections. Additionally, although some employees may be eligible based on worksite size, their hours worked and their tenure, they may still lack access to FMLA leave because their reason for leave is not considered to be 'FMLA-qualifying.' For example, nine percent of covered and eligible employees who reported that they needed leave but did not take it said that they needed family leave because of a relative's health condition (who was not a child, spouse or parent), a non-relative's health condition, or a domestic partner's health condition. None of these family members are considered FMLA "qualifying family members," defined as a son, daughter, parent or spouse (including same-sex spouse). Yet increasingly, family/household structure and caregiving responsibilities are expanding beyond the traditional nuclear family to also include grandparents and grandchildren, unmarried domestic partners, same-sex partners and others. Between 2000 and 2010, nonfamily households¹⁰ grew twice as fast as family households in the U.S. (16% growth compared to 8%),¹¹ signaling that the limits of the FMLA's definition of a qualifying family member may exclude more workers from using family leave to care for loved ones.

State and federal efforts to address inequities in FMLA eligibility

A few policy changes have occurred at the federal and state levels to address some inequities in eligibility and access. At the **federal** level, recognizing the changing needs of families, in 2010 the Department of Labor (DOL) expanded the qualifying family member definitions of "parent" and "son or daughter." The DOL specified that "parent" includes an individual who stood *in loco parentis* (in the place of a parent) to an employee when the employee was a child, and "son or daughter" includes a child of a worker standing *in loco parentis*.¹² These broader definitions enable employees who may not have a biological or legal relationship with a child or parent to take FMLA-eligible leave, making the FMLA more inclusive of non-traditional families.¹³ To learn more about changes to these definitions and how they play out in practice, [click here](#).

At the **state** level, recognizing the limitations of the FMLA, several states have enacted state family medical leave

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and parental leave laws that expand coverage, qualifying family members, or qualifying reasons for job-protected leave. For example, in Hawaii, qualifying family members include in-laws, grandparents, and stepparents. In Maine, private employers with 15 or more employees are covered (compared to 50 employees required by the FMLA), and in Washington state workers are eligible if they have been employed for at least 680 hours in the qualifying year (compared to 1,250 hours required by the FMLA).¹⁴ These state-led initiatives address multiple root causes of inequities in eligibility and access by expanding coverage and creating a more inclusive definition of family members for whom workers can take leave to provide care. Although state laws expand access to job-protected leave, with federal legislation lagging behind, geographic inequities in eligibility for family and medical leave have begun to develop. Federal efforts to expand FMLA coverage could partially mitigate differences in state policies. For example, recent research estimates that an additional 8.3 million employees nationwide would gain FMLA eligibility if the FMLA was expanded to cover worksites with at least 30 employees within 75 miles (instead of the current 50) and to allow eligibility for employees who have worked at least 750 hours in the past 12 months (instead of the current 1,250).¹⁵ This expansion would be a great improvement, yet would still leave over 30% of workers without FMLA protections. As a result, state and federal expansion efforts should be coordinated to promote equitable access to job-protected family leave for all U.S. families and workers, especially the most vulnerable.

Sources & notes

- ¹ FMLA eligibility is determined at both the employer and employee level. FMLA covered employers include any public agency, any private or public elementary or secondary school, or any private employer with at least 50 employees in 20 or more workweeks in the current or preceding calendar year. In order to be considered eligible under the FMLA, employees must work for a covered employer, have worked for the employer for at least 12 months, have worked at least 1,250 hours in the past 12 months, and work at a worksite where the employer has at least 50 employees within 75 miles. Source: U.S. Wage and Hour Division. (2012). *Fact Sheet #28: The Family and Medical Leave Act*. Washington, D.C.: U.S. Department of Labor. Retrieved from <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.
- ² Klerman, J.A., Daley, K., & Pozniak, A. (2012). *Family and medical leave in 2012: Technical report*. Cambridge, MA: Abt Associates. Retrieved from <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.
- ³ U.S. Wage and Hour Division. (2012). *Fact Sheet #28: The Family and Medical Leave Act*. Washington, D.C.: U.S. Department of Labor. Retrieved from <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.
- ⁴ diversitydatakids.org calculations using Current Population Survey, 2011-2014 March Annual Social and Economic Supplement, Public Use Microdata Files. For more information, see diversitydatakids.org parental employment indicators: <http://www.diversitydatakids.org/data/ranking>.
- ⁵ Jorgenson, H & Appelbaum, E. (2014). *Expanding federal family and medical leave coverage: Who benefits from changes in eligibility requirements?* Washington, D.C: Center for Economic and Policy Research. Retrieved from <http://www.cepr.net/documents/fmla-eligibility-2014-01.pdf>.
- ⁶ diversitydatakids.org calculations using Current Population Survey, 2011-2014 March Annual Social and Economic Supplement, Public Use Microdata Files. To see state level variation in FMLA ineligibility for working parents overall and by race/ethnicity, see diversitydatakids.org parental employment indicators: <http://www.diversitydatakids.org/data/ranking>.
- ⁷ Cooper, D., Gable, M., & Austin, A. (2012). *The public-sector jobs crisis: Women and African Americans hit hardest by job losses in state and local governments* (Briefing paper #339). Washington, D.C.: Economic Policy Institute. Retrieved from <http://s3.epi.org/files/2012/bp339-public-sector-jobs-crisis.pdf>.
- ⁸ Importantly, even though an employee may work for a public agency (which is covered by the FMLA), this does not guarantee eligibility, as eligibility also depends on an employee's work hours and tenure.
- ⁹ Jorgenson, H & Appelbaum, E. (2014). *Expanding federal family and medical leave coverage: Who benefits from changes in eligibility requirements?* Washington, D.C: Center for Economic and Policy Research. Retrieved from <http://www.cepr.net/documents/fmla-eligibility-2014-01.pdf>.
- ¹⁰ Nonfamily households consist of a householder living alone or with nonrelatives only. Family households consist of households with people related to the householder by birth, marriage or adoption.
- ¹¹ Lofquist, D., Lugaila, T., O'Connell, M., & Feliz, S. (2012). *Households and families: 2010* (2010 Census brief). United States Census Bureau, U.S. Department of Commerce, Economics and Statistics Administration. Retrieved from <http://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>.
- ¹² Definitions of spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on active

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duty or call to active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember. 29 CFR § 825.122(c)(3) (2011). Retrieved from <http://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol3/pdf/CFR-2011-title29-vol3-sec825-122.pdf>.

¹³ U.S. Wage and Hour Division. (2010). *Fact Sheet #28C: FMLA leave to care for a parent with a serious health condition on the basis of an in loco parentis relationship*. Washington, D.C.: U.S. Department of Labor. Retrieved from <http://www.dol.gov/whd/regs/compliance/whdfs28C.pdf>.

¹⁴ National Conference of State Legislatures. (2013). *State family and medical leave laws*. Retrieved from <http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>.

¹⁵ Jorgenson, H & Appelbaum, E. (2014). *Expanding federal family and medical leave coverage: Who benefits from changes in eligibility requirements?* Washington, D.C: Center for Economic and Policy Research. Retrieved from <http://www.cepr.net/documents/fmla-eligibility-2014-01.pdf>.