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Making Family Leave More Affordable in Massachusetts: The Temporary Disability Insurance Model

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Center for Women in Politics and Public Policy

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Introduction

The passage of the Family and Medical Leave Act (FMLA) in 1993 was a milestone in the development of America's basic labor standards. But many realized that the Act—which guaranteed 12 weeks unpaid leave for employees of large businesses—was only a cautious first step. The US continues to lag far behind most other nations in providing paid time off for employees needing to care for family members or their own non-work-related illnesses.

States have begun to examine ways to expand both federal and state family and medical leave policies to make them accessible to more workers. State Temporary Disability Insurance (TDI) programs—which currently exist in five US states to provide wage replacement for employees needing to take time off from their jobs due to personal illnesses or disabilities unrelated to their work (medical leave)—have emerged as promising models for providing paid family leave. States like New Jersey and California have begun to consider expanding their TDI programs by enlarging the definition of disability to include "family disability," thereby enabling workers to take paid leave for FMLA-type reasons: for the birth or adoption of a child, to care for young children, or to care for a sick child, spouse or parent.

Massachusetts—which does not have a TDI program—also considered paid family and medical leave legislation modeled on TDI between 1988-1993, but these efforts were halted just after the passage of the FMLA in 1993. However, recent interest in expanding TDI to offer paid family leave in other states has grown in large part from the sense that the FMLA is inadequate in four main ways: 1) FMLA leave is unpaid; 2) many employees—particularly those of low income—are unable to take advantage of the new FMLA leave benefit (mainly because it is unpaid); 3) employees of businesses with fewer than 50 workers—about half of the American workforce—are not covered by the law; and 4) 12 weeks leave is considered too short for many leave needs. TDI programs, by contrast, offer paid leave for longer periods of time (as long as 26 to 52 weeks) and are generally not restricted by employer size, thereby covering more workers.

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The Center for Women in Politics and Public Policy

serves as a catalyst for the participation of women from diverse social, cultural, and economic backgrounds in the political life of the Commonwealth and the nation. The Center has three components: a one-year graduate program for women focused on policy training and leadership development; a political network for women featuring a series of panels, debates, symposia, and celebrations related to women's issues and advancement; and research projects examining the political empowerment of women and the impact of policy decisions on women, and the economic and social status of women in Massachusetts. Currently, the Center is developing a resource collection to include data, reference, archival, and other materials relevant to women and public policy. The Center collaborates with a range of organizations, institutes, and media to promote awareness of issues involving women, politics, and policy development.

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The need for wage replacement during periods of family and medical leave was underscored in 1996 by the bipartisan US Commission on Leave, which found that among employees who need but do not take FMLA leave, fully 64% cannot afford the loss of wages. Indeed, the Commission found that only 2-3% of employees eligible for FMLA leave actually use it. The Commission recommended that states consider creating and expanding TDI programs to offer wage replacement for family and medical leave.

Researchers studying family and medical leave policies like TDI have highlighted their potential benefits to employers, including reduced costs of absenteeism; reduced costs of recruiting, selecting, retraining, and training qualified employees; enhanced productivity associated with higher employee morale and company loyalty; and the development of a more positive image in the community.[1] Some employers have found that offering paid leave gains them a competitive advantage in the marketplace.

Others have emphasized the potential benefits for children, families and working women. The American Academy of Pediatrics, for example, has noted that an infant's physical, cognitive, and social development depend on establishing a strong attachment to its parents or primary caregiver, particularly during the first few months of life. Researchers have also found that paid leave increases women's labor force attachment, with women returning to work sooner when they have paid leave—thus spending less time looking for work or receiving unemployment insurance or public assistance, and enabling them to avoid loss of seniority and related financial penalties.[2] These additional benefits of offering paid leave are especially pertinent as welfare reform requires more and more single mothers to work—mostly in low-wage jobs offering few benefits—while child poverty rates remain particularly high among single mother families.

States looking to TDI as a model for developing paid family and medical leave point to the consistent solvency of existing state TDI programs. Advocates of paid family leave in New Jersey, for example, have been able to propose legislation that requires no new taxes in part because of annual surpluses in the state's TDI trust fund. National AFL-CIO President John Sweeney called the New Jersey paid family leave bill "a model for the nation."

Paid family leave is widely popular—particularly among women. Nevertheless, the politics of family and medical leave will no doubt present challenges for Massachusetts, just as was true during the national debate over the FMLA (an eight-year effort). Bearing this in mind, this brief analyzes both the policy and political aspects of TDI as a model for developing paid family leave in Massachusetts. The policy analysis includes documentation of the need for paid leave, an examination of TDI programs in other states, and a discussion of cost projections for paid family and medical leave based on the TDI model. The political analysis examines why attempts to pass family leave in the Commonwealth failed to pass muster by 1993, and outlines ways in which the state's political environment has changed since then to offer a more promising scenario for recommending a paid family leave program in the near future.

TDI and the Need for Paid Family & Medical Leave

The FMLA: Unpaid and Underutilized The bipartisan US Commission on Leave, established by Congress to study the impact of the 1993 Family and Medical Leave Act (FMLA) called in 1996 for serious consideration of "the development of a uniform system of wage replacement for periods of family and medical leave," and recommended that states "consider voluntarily establishing or expanding existing Temporary Disability Insurance (TDI) programs to provide wage replacement for periods of family and medical leave."[3] Only two percent of private sector establishments in the US offer paid family leave to their employees.[4] (See Table 1) State TDI programs are the only government-mandated paid benefits currently available in the US that cover pregnancy, childbirth and other non-work-related disability leaves.

The US Commission on Leave—which consisted of representatives of business, labor, women's groups, and government—found that only two to three percent of employees eligible for 12 weeks of job-protected family and medical leave under the FMLA actually use it. Most cannot afford to, because leave under the FMLA is unpaid. The Commission reported that among employees who need but do not take FMLA leave, 64% percent cannot afford the accompanying loss of wages.[5] Those employees least likely to use unpaid FMLA leave are more likely to be non-white, non-salaried or non-union workers in the lowest income and education groups.

How TDI Works Researchers and policymakers have looked to TDI as the most pragmatic means of expanding the FMLA to include wage replacement, as it builds on what already exists in five states (New York, New Jersey, Rhode Island, California and Hawaii). The Commission reported that all of these state TDI programs "operate in the black with low overhead rates, covering a wide range of workers at a relatively low cost for both employers and employees."[6]

TDI programs provide wage replacement for employees needing to take time off from their jobs due to personal illnesses unrelated to their work (medical leave). Like unemployment insurance, TDI works by replacing a portion of workers' earnings lost during the leave periods, thereby filling a gap in coverage not met by worker's compensation plans, which only cover work-related illnesses or injuries.

As currently designed, existing state TDI programs do not cover parental leave (for mothers and fathers to care for a newborn or newly adopted child) or family leave (to care for a sick child, spouse or parent). However, by covering non-work-related disabilities, TDI plans offer wage replacement during leave for pregnancy and childbirth (the "disability" portion of maternity leave), with benefits paid at the same rate as for other disabilities.[7]

An Alternative to Welfare About 40% of all employees think they will need to take leave for an FMLA reason at some time within the next five years, most likely to care for a seriously ill parent.[8] However, employees who take FMLA-type leave often suffer financial hardship, since a majority receives no pay or only partial pay during their leave period.[10] The Commission on Leave found that 21% of all low-income leave-takers turn to

TABLE 1

Percent of US Employees Receiving Family and Medical Leave Benefits Versus Other Benefits (After Passage of the FMLA)

EMPLOYEE BENEFIT (Paid time off)	Medium and Large Private Establishments, 1995 *percent*	Small Private Establishments, 1994 *percent*	State and Local Government 1994 *percent*
Family leave	2	2	4
Funeral leave	80	50	62
Holidays	89	82	73
Jury duty leave	85	58	94
Personal leave	22	13	38
Military leave	44	17	75
Sick leave (1)	58	50	94
Vacations	96	88	66
EMPLOYEE BENEFIT (2) (Unpaid time off)			
Family leave	84	47	93
INSURANCE			
Short-term disability (1)	53	±	21
Long-term disability insurance	42	20	30
Medical care	77	66	87
Dental care	57	28	62
Life Insurance	87	61	87

(1) The definitions for paid sick leave and short-term disability (previously, sickness and accident insurance) were changed for the 1995 survey. (The state and local government figure from 1994 thus refers to sickness and accident insurance.) Paid sick leave now includes only plans that either specify a maximum number of days per year or unlimited days. Short-term disability now includes all insured, self-insured, and state-mandated plans available on a per disability basis as well as the unfunded per disability plans previously reported as sick leave. Sickness and accident insurance, reported in years prior to this survey, only included insured, self-insured, and state-mandated plans providing per disability benefits at less than full pay.

(2) Except for family leave, benefits paid for entirely by the employee were excluded from the tabulations.

NOTE: Workers reported in family leave plans are eligible for these benefits, but may not participate. For all other benefits reported, workers participate in the plans. Where applicable, dash indicates no employees in this category, or data not available.

± data not available

SOURCE: Employee Benefits Survey, BLS Tables 5 (private) and 4 (government), 8/1/97 news release.

public assistance to cover lost wages during FMLA leave.[11] With the recent dismantling of the entitlement to welfare through Aid to Families With Dependent Children (AFDC) and the widespread institution of work requirements for AFDC recipients at the state level, the need has grown for alternatives to welfare that support working mothers in particular.

Nationwide Popularity Paid family leave is widely popular across the US. A 1998 national survey by the National Partnership for Women & Families found that 82% of women and 75% of men in the sample favored expanding state unemployment and disability insurance to include family leave insurance.[11] Women, who continue to be the main providers of family caregiving, are especially supportive. A 1994 US Women's Bureau survey of over

250,000 working women found that 63% of mothers with children under age six gave high priority to paid leave to care for children or relatives.[12] This finding was echoed in a national 1997 AFL-CIO survey of 50,000 working women, which found that 70% ranked paid leave to care for sick family members as "very important" and among their top ten concerns.[13]

The Need for Paid Family Leave in Massachusetts

The FMLA did not fully address the need for family leave in the Commonwealth, given that the law does not cover 94% of all Massachusetts businesses.[14] Because of this, as many as 35% of Massachusetts workers do not receive the benefits of the FMLA—not to mention the FMLA-covered workers who cannot afford to take unpaid leave. Meanwhile, trends that inspired the need for family leave have only intensified in Massachusetts, as in the rest of the country.

Working Mothers Today, most families in Massachusetts are juggling work and family. A report by the Center for Women in Politics & Public Policy (CWPPP) found that 70% of all married women with children in Massachusetts were in the labor force in 1990—a rate fast approaching the general labor force participation of men (76%).[15] By 1990, the labor force participation of women with children under age six had exceeded that of women without children. In 1970, the reverse was true. In 1970, 24% of married women with children under the age of six worked outside the home; by 1990, 64% did—a 40% increase.[16] As the percentage of mothers who work increases, so does the importance of their paychecks to overall family income, thus making paid family leave even more essential for sucessfully juggling work and family.

Family Poverty The report also found that over 50% of single mother families in Massachusetts lived below the poverty line in 1993—five times the overall poverty rate in Massachusetts.[17] The child poverty rate has also been high (17.3%) in Massachusetts, and markedly so among Black and Latino children: one out of every two Black children and two out of every three Latino children in Massachusetts lived in a poor family in 1993.[18] Welfare reform has increasingly required more single mothers to work, mostly in low-wage jobs offering few benefits. Not surprisingly, the Commission on Leave found that 11.6% of all female FMLA leave-takers turned to public assistance in order to deal with lost income during their needed family leave.[19]

Work/Family Stress A dramatic rise in the number of two-earner families—where both incomes are needed to maintain living standards—has been accompanied by a steady increase in the average number of hours worked per household, particularly among families with children.[20] This has occurred at the same time as the growth of "the sandwich generation," with more families needing to care for both aging parents and young children. Almost 80% of care received by the elderly is provided by family members (mostly wives and daughters).[21] Together, these trends have fueled a rising need for family-friendly policies like paid time off from work to provide care for family members in need.

A 1993 survey of employees from over 100 New England firms found that balancing family and work responsibilities was the most stressful aspect of workers' lives.[22] The survey found that workers with children and aging parents felt the most stress, and of those, 29% said a lack of time with family members was the most trying aspect of their lives, while 23% cited financial obligations. Fully 59% of respondents said they would find family and medical leave more helpful than any other benefit for resolving these problems.[23]

Statewide Popularity A 1997 report to the Women's Committee of the Massachusetts AFL-CIO—based on focus groups of 100 Massachusetts women union members—found that "support for family care" was one of two critical issues repeatedly cited by participants, with paid family leave for child and elder care a main recommendation for action.[24] At the 1995 Family Policy conference co-sponsored by the Massachusetts Caucus of Women Legislators and the CWPPP, participants identified TDI as a policy demanding serious consideration as a means of developing paid family leave.[25] Participants highlighted TDI's universal, cross-class appeal and the potential benefits it offers low-wage workers without the stigma attached to means-tested welfare programs like AFDC.

TDI Plans in Other States

Existing state TDI programs vary in the amount of benefits they offer and the duration for which benefits can be paid out. (See Table 2.) The percentage of salary paid under state TDI programs vary from 50 to 65% of an employee's weekly wages, and the duration of pay varies from 26 to 52 weeks. However, according to the Institute for Women's Policy Research, the weekly benefit actually received in these states has only averaged between $170 and $200—well below the cap set in most states—and the duration of TDI benefits actually claimed has only averaged between five and 13 weeks.[26] Pregnancy and childbirth disability claims make up just a small portion of total claims.[27]

Table 2 contains additional comparative information regarding the five existing state TDI programs. State TDI plans also vary in terms of their costs and funding mechanisms, who is eligible for their benefits, whether they are public or private, and whether they are mandated or voluntary.

TDI Compared to the FMLA It is notable the state TDI programs—besides offering longer paid leave periods (as long as 26 to 52 weeks) than the FMLA's 12 weeks unpaid leave—generally cover more workers. Unlike the FMLA— which only covers businesses employing 50 or more workers—and like Unemployment Insurance and Worker's Compensation, TDI programs are generally not restricted by the size of employer. In addition, a greater percentage of low income workers use TDI than the FMLA. For example, in 1990, the New Jersey Department of Labor reported that almost 97% of women who filed for TDI benefits in that state earned less than $25,000 per year.[28] Meanwhile, the Commission on Leave found that only 17.5% of FMLA leave-takers earned less than $20,000 and only 15.8% earned less than $30,000 annually.[29] In other words, existing TDI plans tend to benefit those most in need of support during periods of leave.

However, TDI programs as currently designed only cover a worker's own medical related disabilities—including pregnancy and childbirth, but not infant care leave—and do not offer job reinstatement guarantees. By contrast, the FMLA—in addition to offering job-protected leave for one's own illness (medical leave)—provides caregiving leaves for newborns and newly adopted children (parental leave) as well as leave to care for a sick child, spouse, or parent (family leave). The FMLA, unlike TDI programs, also allows for the taking of intermittent leave (part-time leave or irregular leave days stretched out over time).

Table 2

Comparison of Existing State TDI Plans*

State	Year** Enacted	Funding Mechanism	Leave Benefit Amount/Length
CALIFORNIA	1946	Employee only: 1.25% of first $31,000 annual earnings.	Minimum: $50/week Maximum: $336/week based on schedule, up to 52 weeks.
HAWAII	1969	Employer only: 1/2 premium cost; capped at $2.78/week	58% of average weekly wage; cap set each year ($323 in 1993); maximum of 26 weeks.
NEW JERSEY	1948	Employee pays .5% of first $16,500, capped at $80.53/year; Employer pay-in varies according to claims experience	2/3 average weekly wage; maximum $364 per week (in 1998) for up to 26 weeks.
NEW YORK	1949	Employer only; .5% earnings; capped at $.60/week	50% of weekly wage: maximum $170 for up to 26 weeks.
RHODE ISLAND	1942	Employee only: 1.3% of $38,000 allowance for up to 30 weeks.	4.2% of total wages in one quarter; maximum $374 plus dependent

***Data as of 1993 unless otherwise specified**
****The US Territory of Puerto Rico also passed a TDI bill in 1968**
Sources: Wever, 1996; US Women's Bureau, 1993; Aaronson, 1993; Lord, 1990.

Expanding TDI to Cover Paid Family Leave In recent years, states with TDI have sought to expand their programs in order to offer benefits for a wider range of leaves, including family caregiving. (See Table 3) Members of the New Jersey and California assemblies made serious efforts in 1996-98 to study and pass paid "family disability leave" extensions to their TDI programs, and plan to continue those efforts in 1999. Since the early 1990s, New York (under Governor Mario Cuomo) attempted to expand its TDI program to include family leave, and in 1998, filed legislation similar to the New Jersey proposals.[30] Vermont—a state without a pre-existing TDI program—also proposed legislation that would allow workers on FMLA leave to receive partial wage replacement through its unemployment compensation program.[31] None of these paid leave bills passed by the end of 1998, but it is important to note that the FMLA—unpaid family leave—took eight years to be signed into law. Enacting a paid family and medical leave program will take time.

Cost Estimates for Paid Family and Medical Leave

Estimating the cost of a paid family and medical leave program is a tricky business due to insufficient data and difficulty in estimating the numbers of employees who will take leave under a new program, and for how long leave will be taken. This situation has improved somewhat with the publication of new data, but available estimates continue to vary, sometimes widely. One readily available estimate of the cost of paid family and medical leave in Massachusetts is the 1989 average cost calculated by the Massachusetts TDI Commission (discussed later in this brief) for cost to both employers and employees.

Estimated Average Cost, Per Employee, for Paid Family & Medical Leave (1989 Proposal).

FAMILY/MEDICAL LEAVE COMPONENT	AVERAGE COST/WEEK	AVERAGE COST/YEAR
Parental Leave	$ 0.17	$ 9.00
Disability Leave	0.66	34.25
Dependent Care Leave	0.62	32.00
TOTAL CONTRIBUTION:	$ 1.45 per employee	$75.25 per employee

(by payroll deduction)
(Source: MA TDI Commission, 1989)

However, it is important to note that these figures were projections based specifically on the Massachusetts legislation proposed between 1989 and 1993 (discussed later), and are derived from 10-year-old data. The cost estimates will need to be adjusted according to the bill filed, and updated to incorporate changes in weekly wage rates as well as new data on usage rates from other states' experiences with TDI and from the 1996 report of the Commission on Leave as well as other new data.

Both New Jersey and New York have estimated the costs of expanding their existing TDI programs to include paid family caregiving. (These proposals and their funding mechanisms are summarized in Table 3). Initial projections suggest that the Massachusetts estimate from 1989 is in range.[32] Overall, cost projections for paid family and medical leave will vary with regard to:[33]

- who would be eligible for paid leave;
- whether part-time leave would be available as well as full-time leave;
- what percentage of wages would be replaced by paid leave;
- how many employees would utilize the leave;
- how many weeks of leave would be offered and actually used;
- whether pre-existing sources of paid leave might be used instead (e.g. sick leave);
- which current social expenditures (such as unemployment insurance and public assistance) might be reduced if paid family and medical leave was made available.

How a paid family leave is funded will of course affect the costs to employers and employees. For example, the TDI expansion bill proposed in New Jersey in 1997 involved using a portion of the annual surplus in the state's TDI trust fund to partially fund its paid family leave component. Using this surplus while shifting a small portion of the state's unemployment insurance (UI) trust fund—which also had a surplus in 1997—enabled NJ policymakers to propose a bill that would involve no additional employer or employee contributions to the insurance fund. The fact that TDI programs in all five states tend to run surpluses suggests that this strategy could be used elsewhere to reduce the costs of paid family leave to employers and employees.

In 1989, the Institute for Women's Policy Research (IWPR) made an important contribution to family leave cost analysis by arguing that policymakers and employers alike must take into account the costs to business, government and employees of <u>not</u> having a family leave policy when calculating the cost of offering leave.[34] The costs of not having family leave include the costs of employee turnover and of permanently replacing workers; usage of other social programs like welfare, unemployment insurance, and health care benefits; and lost earnings for employees.

In 1995, the IWPR produced perhaps the most widely circulated paid family leave cost projections.[35] Using 1990 data, the IWPR considered the overall costs of expanding existing TDI programs to offer paid family leave, as well as the costs of providing comprehensive paid family and medical leave programs in five states without pre-existing TDI programs. However, the IWPR projections ranged widely from state to state, and the IWPR appears to have overstated these costs—perhaps by as much as 50%—in part due to assumptions regarding who would take leave.[36] The result has been that the IWPR estimates seem to have influenced public policy in a manner unintended by the researchers, since those opposing paid family leave point to the IWPR estimates as proof that such leave would be too costly.[37]

To project the cost of a paid family leave program specifically for Massachusetts, new calculations will be needed and will depend on the comprehensiveness of the proposal. Since no comprehensive paid family and medical leave law currently exists in the US, the average usage and cost-per-employee data for TDI states (adjusting for differences in states' worker populations, levels of wage replacement and leave lengths offered) offer perhaps the most realistic means of calculating the cost of the medical leave portion of a family and medical leave insurance program. Given that leave for one's own personal illnesses (TDI or medical leave) is by far the major reason why workers take leave,[38] this approach should generate a majority of the estimated cost. The cost of the remaining family leave portion could then be estimated based on the FMLA "leave-taker" and "leave-needer" usage data from the Commission on Leave's employer and employee surveys, adjusting for the fact that the data refers to unpaid leave.[39] Fortunately, the paid family leave portion should be much less costly than TDI, which has itself proven to be relatively inexpensive for states.

Attempts to Pass Paid Family Leave in Massachusetts

In addition to the 1993 FMLA requirements, Massachusetts has had a state maternity leave policy on its books since 1972, which provides for eight weeks of unpaid maternity leave for mothers working in businesses with more than six employees.[40] From 1986 to 1997,[41] several efforts have been made to expand Massachusetts's leave policy to offer various forms of parental and family leave, including a paid family and medical leave bill based on the TDI wage replacement model that was introduced each year from 1989 to 1993. As described below, neither the paid nor unpaid leave bills made much progress in the Massachusetts legislature during this period.

Paid Parenting Leave In 1986, Rep. Mary Jane Gibson [D-Belmont]—Massachusetts's first female Majority Whip— filed a paid parental leave bill, H5200. A Special Commission on Parenting Leave that supported this bill met concurrently.[42] The "Parenting Leave" bill called for 18 weeks of job-protected parental leave (for both mothers and fathers),[43] with 12 weeks of wage replace-

Table 3

Other State Proposals for Paid Family and Medical Leave

State Proposal (s)	Year(s) Proposed	Expansion Mechanism	Funding Mechanism	Leave Benefit Amount/Length
CALIFORNIA Senate Bill	1997-1998 continuing in 1999 as a proposed study.	Amend state unemployment Insurance code (TDI by law) by revising the definition of "disabled" to include persons granted family care and medical leave.	Use state Unemployment Compensation Disability funds for family care and medical leave (funded entirely by employers) 12 weeks.	One-seventh of employee's weekly benefit amount for each full day during which he or she is unemployed due to a "disability" for up to
NEW JERSEY Assembly bill 1842 (in 1998); Assembly bills 3016, 1660 and Senate bills 2102, 947 (in 1996-7)	1996-1998 continuing in 1999	Extend existing state TDI program to add "family temporary disability insurance" FTDI	1998 bill would be funded by 0.3% payroll tax on the first $19,300 of worker's wages, (maximum of $58/year per worker; this tax would be fully offset by 0.1% reduction in worker UI taxes over past 2 years by existing law.	Equal to TDI benefits, two thirds of employees normal weekly pay, capped at 53% of state's average weekly wage ($364/week in 1998) for up to 12 weeks.
NEW YORK Assembly bill 9463 (In 1990, the Governor's Project on Family Leave proposed similar legislation.)	1998 with new bill planned for 1999.	Extend existing state TDI program (part of worker's compensation law) to add family leave benefits for employees qualifying for FMLA leave.	Contributions from both employer and employee (employee payroll contributions capped at 5% of the first $120 in weekly wages at $.60/week.)	Equal to TDI benefits: 50% of average weekly wages capped at $170/week for up to 12 weeks.
VERMONT Senate bill 143	1997, currently pending review by the U.S. Department of Labor	Amend state Unemployment Compensation laws to allow compensation for family parental leave.	Use state Unemployment Insurance funds for family or parental leave (funded entirely by employers)	Not specified in bill; depends on employee's weekly wage and length of time taken.

*None of these proposals had been enacted as of 12/31/98 ment at approximately 60% of wages, funded by a .025% tax on all wage earners.[44] While the parental leave bill stalled in the Commerce and Labor Committee over the tax on employees, a second commission—the Temporary Disability and Dependent Care Leave Commission—was established by the legislature in 1988 to explore wage replacement alternatives. This "TDI" Commission would also analyze non-pregnancy-related disability issues that were well beyond the mandate of the first parenting leave commission.

Employment Leave Insurance The Massachusetts TDI Commission—which included representatives from business, labor, women's groups and government—recommended an "Employment Leave Insurance" bill, H2191, modeled on state TDI plans and sponsored by Gibson, which would have offered not only 16 weeks parental leave, but also family and medical leave for up to 26 weeks. The new plan would have provided partial wage replacement during leave—66% of regular salary, capped at 60% of the state's average weekly wage, plus an additional $25 for each dependent—funded through a payroll deduction shared equally by employers and employees (0.3% of weekly wages between $200 and $769). The Commission's cost estimates for the insurance fund—which were based on the actual experience of state TDI plans—projected that wage replacement would cost approximately $75 per year per employee ($1.45 per week) paid by both employers and employees, with a range of $0 to $89 per employee per year depending on each employee's weekly wages.

The paid family leave bills gained several legislative co-sponsors and were eventually supported by a coalition of over 40 interest groups, including women's groups, labor organizations, elderly and health care associations, and religious groups.[45] Meanwhile, the Associated Industries of Massachusetts (AIM)[46] and other members of the business community opposed the bills, arguing that family leave would make some small businesses less competitive because they would have to hire temporary workers to fill slots while employees were on leave, and that a paid leave mandate would hinder economic revival in Massachusetts.[47]

Rep. Gibson re-filed H2191 every year from 1989 until 1992, when she retired from the House. In 1993, the paid family leave bill was filed for the last time—by Rep. Patricia Jehlen—as H2411. In none of these years did any leave bill pass, but Senator Lois Pines (D-Newton) did report H2191 out of the Commerce and Labor Committee in 1991.[48] Senator Pines declared in 1992 that she would make family leave her top priority, and continued to file unpaid family leave bills of varying types every year through the 1997 legislative session (none passed).

Plans are currently underway to propose two alternative pieces of legislation in Massachusetts in 1999: one modeled on TDI and similar in content to the Gibson bill, but would be less costly, and another designed somewhat like the Vermont legislation (see Table 3) except that it would treat family and medical leave as an "unemployment recall." The following sections will outline some of the political and policy considerations likely to be key to the success of such legislation in the Commonwealth.

Opportunities and Obstacles for Paid Family Leave in Massachusetts

Why Leave Failed to Pass by 1993 The failure to pass paid family leave in the years since the first bill was filed in 1986 has been attributed to several primary factors:[49]

Opposition/Lack of Support from Key Actors in the Policy Process:
Several recent developments address some of the obstacles that have hindered the passage of paid family leave in Massachusetts, and provide a potentially favorable scenario for the future:

- Strong business opposition, particularly from AIM and insurance companies
- Lack of support from progressive businesses voluntarily offering paid leave
- Lack of top legislative leadership on the issue
- Relatively small percentage of women in the Legislature
- Union opposition to employee contributions to the insurance fund[50]
- Supporting women's groups distracted by other goals
- Lack of extensive media coverage to raise awareness of/legitimize the issue
- Lack of ongoing grassroots outreach and participation

Timing/Competing Priorities:

- Paid leave seen as not politically feasible at that particular time
- Distractions: loss of Governor Dukakis' presidential bid in 1988 and election of a Republican governor; late 1980s collapse of "Massachusetts Miracle" and subsequent budget deficit; passage of universal health care bill in 1988 to take effect in 1992[51]
- The adoption of federal family leave legislation in 1993 (FMLA), which took the wind from the sails of the Massachusetts family leave movement just after its passage

In addition, there was a loss of strong, committed leadership on the issue of paid family leave since Rep. Mary Jane Gibson's retirement in 1992. These obstacles should be addressed in any further attempts to pass paid family leave legislation.

Recent, Promising Developments Several recent developments address some of the obstacles that have hindered the passage of paid family leave in Massachusetts, and

- Strong economy, resulting in a projected positive balance of $2 billion in the MA Unemployment Insurance Trust Fund by the year 2000, some of which could be used to set up a paid family leave program
- New, serious interest in expanding the FMLA among the state legislative leadership, especially the Massachusetts Senate President
- Increased commitment of labor unions to paid family leave, including the national AFL-CIO under John Sweeney, coupled with growing political clout of organized labor

- Strengthend Democratic majority in the Legislature, along with more women legislators
- The passage of the FMLA, though it may have slowed state efforts immediately after its passage, served to legitimize and raise awareness of the issue; the US Commission on Leave's report shows that the cost to businesses has been minimal
- New welfare reform work requirements increase the need for family-friendly policies to enable low income workers to keep their jobs
- A state advisory board focused on the status of women—like that which provided key data to the Massachusetts TDI Commission but has not operated since Dukakis left office—is being set up as a permanent commission independent of the governor
- Both the national and state campaigns for family and medical leave have been successful in attracting a broad coalition of supporters, given the universality of the policy

Conclusion

As this brief has emphasized, the need for wage replacement for family and medical leave has become increasingly urgent. The vast majority of those who need leave but do not take it cannot afford it. Welfare-to-work reforms and the current era of devolution have transferred a great deal of power and responsibility for social policy to the state level. It is incumbent upon state legislatures to find new ways to improve their employment-based social insurance systems, which were originally established to benefit the typical male worker earning a family wage. As the labor force participation rate of mothers rapidly approaches that of single men, the social space that spans the bridge between work and family—a space that has traditionally been associated with women—must gain more of states' attention.

Despite this growing need, it has been the issue of cost—and who pays that cost—that has dominated the recent politics of family leave in the US, and is likely to continue to do so. The passage of the FMLA took eight years and many compromises, and that debate was over unpaid leave. Any paid family leave policy proposal is likely to generate debates over the following issues, all of which affect cost:

- Who Will Be Covered? Cost is intrinsically linked to coverage. Should all employers be covered under the law, or should certain small businesses be exempted? How should "employee" be defined? Should part-time employees be covered? How should "family" be defined? Should domestic partners be covered?
- Which Leave Conditions Will Be Covered? Should pregnancy/child birth, medical disability, parental, and/or family leave be covered, and for how long?

- What Percentage of Wages Will Be Replaced? Should the leave program offer full or partial wage replacement?
- Who Will Pay For It? Should the state, the employer, the employee, or some combination of the three pay for this benefit?
- How Much Will It Really Cost? Given the dearth of available data on usage rates for paid family and medical leave—in large part due to the fact no US/state program is yet in operation—which data are most reliable, and which approach for estimating unknowns is best?

A Massachusetts Opportunity The TDI plans and recent state proposals to expand on the TDI model analyzed here offer promising models for addressing the need of families for paid caregiving time. Massachusetts has an opportunity to follow the lead of several other states by moving towards establishing an effective insurance system with widespread public appeal. As a social benefit TDI has many advantages. It is a low cost measure analogous in many ways to the worker's compensation system. The universality of the program means that paid family leave would be a society-wide benefit, not one limited to a particular gender or only a few eligible employers. TDI could move the Commonwealth forward by creating a floor of economic security for workers whose family responsibilities necessitate a temporary leave.

Because of its success in five states, TDI is the leading mechanism for generating a wage replacement system for family and medical leave. The models described in this paper could be replicated in Massachusetts by expanding the disability concept to include family caregiving needs. Or, alternative approaches could be considered, such as the Canadian-style initiative advanced in the state of Vermont, whereby the FMLA would be linked to the state's unemployment insurance (UI) system, such that employees eligible for FMLA leave would be able to receive unemployment compensation. At the time of this printing, the US Labor Department was reviewing the legal questions surrounding such a proposal.

In Massachusetts, there is already a precedent for expanding the purpose of UI funds and connecting them with family care needs. For example, employees receiving UI benefits can continue to receive them if they are unable to work when child care arrangements fall through. Another example is the $18 million in UI tax dollars earmarked in 1998 for worker retraining. Together these developments, though comparatively small in scope, provide additional grounding for the legal and political argument that UI could be expanded to benefit employees who cannot work because of family caregiving responsibilities.

Massachusetts could also follow in the footsteps of New Jersey, which has proposed offsetting the cost of its "family temporary disability insurance" initiative by taking advantage of a surplus in the state's UI trust fund resulting from a strong economy. (See Table 3.) At the end of 1998, Massachusetts's UI trust fund had a balance of $1.7 billion—enough to pay out UI benefits under the existing system for over two and a half years, and a sum expected to reach $2 billion by the year 2001. This presents an important window of opportunity for neutralizing the inevitable debate over cost.

This approach offers an alternative to Governor Paul Cellucci's plan for utilizing the Massachusetts UI surplus. Governor Cellucci proposed legislation in 1998 to reduce UI by $100 million, or by $65 per employee per year. An earlier reduction, which took effect January 1, 1998, had already reduced employer's rates by $89 per worker over 1997 rates. Instead of another rate cut for employers, an equivalent amount of UI surplus funds could go a long way toward meeting the cost of a new state paid family leave program, which would cost roughly the same as the proposed rate cuts. It could be argued that, in fairness—since Massachusetts employers already received a UI rate cut in 1997—an equivalent amount of surplus UI funds should now go to the employees. Given the excellent condition of the UI trust fund, there is a sufficient amount of funds to provide family and medical leave in Massachusetts.

Regardless of whether the approach to paid family leave ultimately involves updating the UI system or fashioning a new program modeled on TDI, a thorough understanding of the history, politics, and economics of state TDI programs should be key in the debate.

Endnotes

[1] Kirsten Wever, *The Family and Medical Leave Act: Assessing Temporary Wage Replacement for Family and Medical Leave*, (Cambridge, MA: Radcliffe Public Policy Institute), p. 19.
[2] Heidi Hartmann, Young-Hee Yoon, Roberta Spalter-Roth and Lois Shaw, *Temporary Disability Insurance: A Model to Provide Income Security for Women Over the Life Cycle*, paper presented at the 1995 Annual Meetings of the American Economics Association (Washington, DC: Institute for Women's Policy Research, 1995).
[3] Commission on Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* (Washington, DC: United States Department of Labor, Women's Bureau, April 30, 1996) p. 199.
[4] United States Department of Labor, Bureau of Labor Statistics, *Employee Benefit Surveys, 1994-5*, Tables 5 (private) and 4 (government), 8/1/97 news release.
[5] Commission on Leave, 1996, p. xix.
[6] Ibid., 1996, p. 48.
[7] Stephanie Aaronson, *What is Temporary Disability Insurance? Research-in-Brief*, (Washington, DC: Institute for Women's Policy Research, 1993), p. 1.
[8] Commission on Leave, 1996, p. xix.
[9] Ibid., 1996, p. 108.
[10] Ibid., 1996, Table 5.R, p. 283. Here, "low income" refers to annual family incomes of less than $20,000.
[11] Lake, Sosin, Snell, Perry & Associates, p. 6.
[12] Women's Bureau, US Department of Labor, *Working Women Count! A Report to the Nation (Executive Summary)*, 1994.
[13] Working Women's Department, AFL-CIO, *Ask a Working Woman Executive Summary: A Report on the National Survey from the Working Women's Department of the AFL-CIO*, 1997. Only 52% reported that their job provided this type of leave at the time of the survey.
[14] Data from the March 1993 Report on Employment, Wages and Contributions (ES 202), Office of the Commissioner, Massachusetts Department of Employment and Training.
[15] Randy Albelda, *An Economic Profile of Women in Massachusetts*, (Boston, MA: Center for Women in Politics & Public Policy and the President's Office, University of Massachusetts Boston, 1996), p. 16. The general participation rate for women in Massachusetts overall (all women 16 years and older) was 60% in 1990—up from 45% in 1970. This rate was higher than the national average, which as of 1994 was still below 50%. (Commission on Leave, 1996, p. 5.)
[16] Albelda, 1996, p. 16.
[17] Ibid., p. 12. The poverty rate for all persons in Massachusetts was 10.7% in 1993.
[18] Ibid., p. 13.
[19] Commission on Leave, 1996, p. *xxi.*
[20] Ibid., 1996, p. 5.
[21] Wever, 1996; 18, op. cit.
[22] The survey was conducted by Atlantic Marketing Research in Boston.
[23] 53% cited flexible scheduling, 43% selected child care and referral services, 39% said job sharing arrangements and 37% for elder care resources or referral.
[24] Cheryl Gooding, *Women and the Labor Movement in Massachusetts: Analysis of Issues and Proposed Solutions. A Report to the Women's Committee of the Massachusetts AFL-CIO*. (Boston, MA: University of Massachusetts Boston Labor Resource Center, January 1997), pp. 4-5.
[25] See the conference proceedings by Randy Albelda, Diane D'Arrigo and Phyllis Freeman, eds., *Collision Course? Massachusetts Families and the Economy at the Crossroads*, (Boston, MA: Center for Women in Politics & Public Policy, June 1996).

[26] Aaronson, 1993.
[27] Ibid.; pregnancy claims account for between 12 and 22% of all claims. (Ibid. and Wever, 1996, pp. 4-15.)
[28] Anne Mitchell, Louise Stoney and Harriet Dichter, *Financing Child Care in the United States: An Illustrative Catalog of Current Strategies* (Ewing Marion Kauffman Foundation and The Pew Charitable Trusts, 1997), p. 79.
[29] Commission on Leave, 1993, Table 5.A, p. 266.
[30] All of these reports will continue in 1999.
[31] The legality of this bill was under review by the US Department of Labor at the time of this printing.
[32] Greg Williams, Office of Legislative Services, NJ State Legislature, personal communication & Carolyn Boldiston, Fiscal Policy Institute, NY, personal communication.
[33] Wever, 1996.
[34] Roberta Spalter-Roth and Heidi Hartmann, *Unnecessary Losses: The Costs to Workers of the Lack of Family and Medical Leave* (Washington, DC: Family and Medical Leave Coalition, 1989).
[35] Young-Hee Yoon, Heidi Hartmann and Jill Braunstein, *Using Temporary Disability Insurance to Provide Paid Family Leave: A Comparison With the Family and Medical Leave Act (Research-in-Brief)*, (Washington, DC: Institute for Women's Policy Research, 1995). IWPR's estimates were based on 1990 data.
[36] Williams, Personal Communication, 12/22/97. Most prominently, the IWPR estimates assumed that more pregnant women would take disability leave for pregnancy and childbirth than has actually been the experience in most states with TDI programs. By contrast, the Massachusetts TDI commission based its estimates by averaging the actual number of disability claims made annually in all five states with existing TDI programs. (In Yoon et al, 1995, the IWPR itself admits that its projections might be way off due to assumptions made and lack of available data.)
[37] Williams, 12/22/97. This has been an aspect of opponents' arguments against paid family leave in New Jersey.
[38] Commission on Leave, 1996, p. *xx.* The Commission found that about 60% of FMLA leave takers took leave because of their own serious health problems—not including women who took maternity-disability leave, which is covered by TDI.
[39] See Commission on Leave, 1996.
[40] Massachusetts General Laws, Chapter 149, Section 105D. There has been concern that this law—by only covering mothers but not fathers—might be unconstitutional under the Massachusetts Equal Rights Amendment.
[41] Massachusetts began sustained (but failed) attempts to pass TDI in the 1950s—when most other states were considering such legislation—but the focus was on disability rather than family leave. (See Grant M. Osborn, *Compulsory Temporary Disability Insurance in the United States* (Homewood, IL: Richard D. Irwin, Inc., 1958) p. 60.)
[42] See the *Special Interim Report of the Special Commission Relative to Parenting Leave* established by the Massachusetts General Court pursuant to Chapter 5 of the resolves of 1985, and most recently revised and revived and continued by Chapter 1 of the resolves of 1987, published on April 11, 1988, and available at the Massachusetts State Archives.
[43] Eighteen weeks was considered the "minimum medically recommended time" for a child to bond with parents. (Ann Bookman, "Parenting Without Poverty: The Case for Funded Parental Leave," in Janet Shibley Hyde and Marilyn J. Essex, eds., *Parental Leave and Child Care: Setting a Research and Policy Agenda* [Philadelphia, PA: Temple University Press, 1991].)
[44] Wage replacement would be capped at 66% of the statewide average wage but not less than the prevailing minimum wage, and administered by the Commonwealth under a new Division of Parental Leave within the Department of Labor and Industries, the enforcement agency. Leave could be taken either full or part-time within 12 months following the birth, adoption or placement for the purposes of adoption of a child. For a worker earning the Massachusetts average annual

income ($20,000), the .025% tax would have amounted to $5 per year. For a wealthy worker earning $100,000 it would have amounted to $25/year. For a person earning $7,384 the annual cost would have been $1.85 per year. The bill would have applied to employers with six or more employees, and would have covered wage earners employed at these establishments at least half-time, who had worked for the same employer for three consecutive months (or who had completed the probationary period set by the employer). H5200 was referred for further study by the Committee on Commerce and Labor in 1987. It was re-filed for 1988 as H3333 but died again in the Committee.

[45] The family/medical leave coalition included the Alzheimer's Association, American Association of Retired Persons, American Association of University Women, American Jewish Congress, American Planning Association of Massachusetts, B'nai B'rith Women, Boston Children's Service, Boston NOW, Caucus of Women State Legislators, Civil Liberties Union of Massachusetts, Coalition of Labor Union Women, Disability Law Center, Hotel Restaurant Employees Union, Local 26, Junior League of Boston, Jewish Community Relations Council, Jewish Labor Committee, Latin American Adoptive Families Association, League of Women Voters of Massachusetts, March of Dimes, Massachusetts Association of Older Americans, Massachusetts Catholic Conference, Massachusetts Citizen Action, Massachusetts Council of Churches, Massachusetts Federation of Business and Professional Women, Massachusetts Nurses Association, MASSPIRG, Massachusetts Society for Prevention of Cruelty to Children, Massachusetts Teachers Association, Massachusetts Women's Political Caucus, Multiple Sclerosis Society, National Association of Social Workers-Massachusetts Chapter, National Organization for Women-Massachusetts, Nine to Five, Older Women's League, Parents United for Child Care, Service Employees International Union Local 285, Women for Economic Justice, Women's Bar Association, Women's Equity Action League, Women's State-wide Legislative Network and Alliance.

[46] Eighty percent of AIM members employed less than 100 employees in 1988.

[47] Bookman, 1991, p. 77. See also Robert Duffy, "Passage of Leave Bill Looms Likely," *Boston Business Journal*, April 9, 1990, p. 21.

[48] No action was taken given the lateness of the session.

[49] See Anya Bernstein, *The Moderation Dilemma: Legislative Coalitions and the Politics of Family and Medical Leave*, PhD Dissertation, Department of Sociology, Harvard University, 1997; Julie Kashen, "Conspicuous Institutions: Women, Democrats and Interest Groups in the State Policymaking Process," *Michigan Journal of Political Science*, Vol. 22, Winter, 1997; Wever, 1996; Bookman, 1991; Ellen Bravo, *Wage Replacement for Family Leave: Is it Necessary? Is it Feasible?* (Washington, DC: 9 to 5, Working Women Education Fund, 1991); Mary Jane Gibson, "Employment Leave: Foundation for Family Policy," *New England Journal of Public Policy*, Vol. 6, No. 1, 1990, pp. 209-216.

[50] The Massachusetts AFL-CIO offered only qualified support because the bills did not require business to pay for the entire plan themselves, arguing that the weekly cost would be an undue burden on low wage workers. (Gibson, 1990, 213; Bookman, 1991.)

[51] According to Gibson (1990, 213), business representatives cited the financial burden on the universal health care bill, scheduled to go into effect in 1992, noting that for small business especially, the costs of health insurance together with those of TDI might be too much.

[52] Quarterly Trust Fund Report, October 1998, Commonwealth of Massachusetts, Division of Employment and Training.

[53] In 1997, Senate president Thomas F. Birmingham filed legislation proposing a Small Necessities Leave Act that would provide employees working at places of business with 50 or more employees with 24 hours of unpaid leave on an annual basis. The time could be used to participate in activities at a child's school, to take a child to the doctor or dentist, and to accompany an elderly relative on a health related appointment.

[54] See for example, Adrian Walker, "Unions Build Back Some Muscle," *Boston Globe*, 11/24/97.

[55] See Doris Sue Wong, "Women Push for State House Panel," *Boston Globe*, 12/17/97.

[56] See Ronald Elving, *Conflict and Compromise: How Congress Makes the Law*, (New York: Simon & Schuster, 1995).

[57] Cellucci's plan would thereby lower the average rate employers would pay for UI to $337 per worker ($491 in 1997). (*Boston Globe*, 1/8/98, p. C3.)

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