COVID-19 and Paid Leave
Roadmap

- Background
- Map of state action
- State spotlights
- Implications for federal policy
- Lawsuits
The Fed is using many of the tools at its disposal

5. Encouraging lending by banks
   - The Fed is temporarily doing away with various regulatory requirements; it has gotten rid of the reserve requirement, and is encouraging banks to reach in to loss-absorbing capital they are required by Dodd-Frank reforms to hold
   - By encouraging banks to utilize other forms of capital – like regulatory capital – the Fed wants to stimulate lending so that credit does not dry up

6. International liquidity swaps
   - The Fed is facilitating international central bank access U.S. Dollars by lowering the pricing on international liquidity swap arrangements and extending maturity periods
   - The Fed is trying to improve the global liquidity of the U.S. Dollar so that other central banks can lend those dollars to banks that need access to them

7. Expanded repo operations
   - Two repos capped at $500 billion
   - Repo = repurchase agreement operations
   - Repo market disruptions can disrupt the federal funds rate, so the Fed is injecting liquidity into these markets to keep them running smoothly

8. Small business lending
   - The Fed has announced that it will establish the Main Street Business Lending Program to support small and medium-sized businesses and make it easier for them to access credit
   - The program is meant to complement efforts by the Small Business Administration
The US has taken various internationally-focused actions

### Travel
- The US has enacted travel bans from 28 European nations in the Schengen Area, as well as the UK and Ireland; there are exemptions for Americans and family members of Americans.
- Travel into the US is also suspended for passengers who have been in China or Iran in the last 14 days; there are exemptions for Americans, but with certain restrictions in place.
- The US has closed its northern border with Canada and its southern border with Mexico, exempting only essential traffic.

### Trade
- President Trump initially said that restrictions on European travel also applied to cargo, but the White House later clarified that this was not the case.
- Still, passenger planes carry a lot of cargo, and the ban will likely lead to a decrease in flights/capacity, disrupting trade and supply chains.
- US trade officials granted tariff exemptions for dozens of Chinese medical exports, like exam gloves and surgical drapes; US officials are reportedly weighing further tariff relief for China and other nations.

### Oil
- President Trump stated that he instructed the Department of Energy to buy "large quantities" of crude oil for the Strategic Petroleum Reserve.
- The Strategic Petroleum Reserve stores petroleum for emergency situations and is meant to protect against disruptions in the international petroleum supply.
- President Trump said the move would aid the US oil industry in the wake of falling oil prices, in addition to helping the country achieve energy independence.
### Federal law

**Family and Medical Leave Act (FMLA)**
- Provides employees with 12 weeks of unpaid, job-protected leave per year for specified medical and family reasons
- Requires the continuation of medical insurance
- Provides leave to care for family members in the military under certain circumstances

**Fair Labor Standards Act (FLSA)**
- Is limited to certain kinds of leave
- Does not require vacation, holiday, severance or sick pay

### State trends

Historically, paid leave has been offered at an employer’s discretion. However, an increasing number of states have passed paid leave laws that require a certain minimum period of paid sick, family or other kind of leave within the last two decades. More states have enacted paid sick leave policies than paid family leave policies.

**Initiatives by localities** – Various localities have enacted their own paid leave policies. Most recently, San Antonio, TX and Duluth, MN, which are both located in states without paid leave laws, enacted paid sick leave.

### Timeline

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>1993</td>
<td>FMLA enacted</td>
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<tr>
<td>2002</td>
<td>Family leave</td>
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<tr>
<td>2011</td>
<td>Sick leave</td>
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<tr>
<td>2013</td>
<td>FAMILY Act</td>
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<tr>
<td>Jan. 2019</td>
<td>SOTU</td>
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<tr>
<td>Dec. 2019</td>
<td>NDAA</td>
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**Family and Medical Leave Act (FMLA)**
- Family and Medical Leave Act is enacted – it is the first federal legislation establishing guaranteed unpaid leave
- California is the first state to enact paid family leave legislation
- Connecticut is the first state to enact paid sick leave legislation
- The FAMILY Act, which guarantees federal paid leave, is first introduced; it has been reintroduced every legislative session since
- President Trump advocates for paid maternity leave at the State of the Union address
- The compromise NDAA includes 12 weeks of paid parental leave for the federal workforce
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Fourteen states and Washington, D.C. require employers to provide some kind of paid leave

Paid leave state policies, as of Jan. 2020

- No state paid leave legislation
- Sick
- Family


On August 9, 2019, Oregon enacted HB 2005, which takes effect on January 1, 2023.

On June 12, 2019, Nevada enacted SB 312, which went into effect on January 1, 2020.

*In 2019, Nevada and Maine each passed universal leave laws, which allow individuals to use paid leave for any reason, including sick and family leave.
Thirteen states and Washington, D.C. currently require paid sick leave

Paid sick leave state policies, as of Jan. 2020

- State or local employers are required to provide paid sick leave

### As of Jan. 2020


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**On June 12, 2019**

- **Nevada** enacted **SB 312**, which went into effect on January 1, 2020.

**On May 26, Maine enacted “An Act Authorizing Earned Employee Leave,” which takes effect on January 1, 2021.**

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**In 2019, Nevada and Maine each passed universal leave laws, which allow individuals to use paid leave for any reason, including sick and family leave.**

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**On Nov. 2019, a district judge blocked the ordinance, indefinitely delaying its effective date.**

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**Austin** passed a measure for paid sick leave that was supposed to be effective Oct. 1, 2018, but it was deemed unconstitutional by the Texas Court of Appeals.

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**San Antonio** passed a paid sick leave law, which was set to go into effect December 1, 2019; in Nov. 2019, a district judge blocked the ordinance, indefinitely delaying its effective date.
Ten states and Washington, D.C. require paid family leave

Paid family leave state policies, as of Jan. 2020

- No paid family leave legislation
- Partial paid family leave state policy

*Italics reflect when the law will take effect*

Only California, New Jersey, Rhode Island, New York, Washington, Massachusetts, Connecticut, Oregon, Maine, and Nevada mandate partially paid family leave. These states fund their programs through employee-paid payroll taxes or premiums.

New Hampshire’s paid leave proposal was vetoed by Gov. Chris Sununu (R) on the grounds that it instituted a new income tax.

In 2019, Nevada and Maine each passed universal leave laws, which allow individuals to use paid leave for any reason, including sick and family leave.
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In 2002, California became the first state to enact a paid family leave law. The California Paid Family Leave (PFL) program provides up to six weeks of partial pay to employees. On January 1, 2018, California increased the weekly benefit amount to 60-70% of an employees’ wages (with a cap at $1,252 per week). PFL contributions are deducted from employees’ wages. The State Disability Insurance program is responsible for administering PFL. Beginning on January 1, 2021, PFL can also be used to address certain needs for military families.
State spotlight: Maine

- On May 28, 2019, Governor Janet Mills signed into law “An Act Authorizing Earned Employee Leave, the first law in the US that allows employees to use paid leave for any reason
- The law will take into effect on January 1, 2021 and will impact 85 percent of Maine’s private sector employees
- Under this new law, Maine employers with at least 10 employees who work more than 120 hours a year must provide one hour of paid leave for every 40 hours an employee works
- Employers who violate the law will face penalties of up to $1,000 per violation
On June 28, 2018, Governor Charlie Baker signed into law a bill that made significant changes to labor policies. In addition to raising the minimum wage to $15/hour over the next five years, the bill also requires employers to offer workers paid leave to care for a sick family member or take care of a new child. On July 1, 2019, employers and employees started contributing to a state trust through a 0.63% payroll tax. On January 1, 2021, Massachusetts employees will become entitled to up to 12 weeks of paid leave for new children and up to 20 weeks for tending to their own medical needs. On July 1, 2021, these benefits will also apply to family caregiving.
On February 19, 2019, Governor Phil Murphy signed into law an expansion of New Jersey’s existing paid family leave program, which was established in 2009. Currently, parents or caregivers can receive six weeks of benefits equal to two-thirds of their pay and capped at $650 a week. On July 1, 2020, workers will be able to receive 12 weeks of benefits equal to 80% of their wages and capped at $860 a week. The program is funded through payroll contributions; every worker contributes on their first $34,400 in wages and contributions max out at $27.52/year.
On June 12, 2019, Governor Steve Sisolak signed a law requiring employers to provide 0.01923 hours of paid leave for each hour an employee works (an employee who works 40 hours per week for 52 weeks will receive ~40 hours of paid leave)
  • Only applicable to private employers with 50 or more employees
  • Employees are permitted to use up to 40 hours of available paid leave without providing a reason for absence
  • Similar to Maine’s new law, Nevada employees can utilize their paid leave for any reason
  • The law went into effect on January 1, 2020, a year before Maine’s new law
Oregon enacted a paid family and medical leave law that provides up to 12 weeks of leave per benefit year to be used for any combination of family, medical, and safe leave purposes:

- Applicable to employers with one or more employees
- Employees must earn at least $1,000 in annual wages

The law establishes a state-managed insurance program with both employers and employees paying into a paid leave insurance fund:

- Leave under the new law can be combined with up to four weeks of Oregon’s unpaid family leave program
- The law went into effect on September 29, 2019, but employees will become eligible for benefits beginning January 2023
• In June 2019, Governor Ned Lamont signed into law a new paid FLMA program
• Beginning in 2021, the state will levy a 0.5 percent payroll tax on employees to fund the program
• Under this law, employers with two or more employees must offer 12 weeks of paid family or medical leave
  • Employers must also employees up to roughly $900 per week
• These benefits will begin between Jan. 1 and Feb. 1, 2022
The House’s Democratic majority may increase the chance of paid leave legislation moving through Congress

**Congressional Action:**
H.R. 1185/S. 463: The Family and Medical Insurance Leave (FAMILY) Act

- **Passed committee** in House: 2/13/19
- **Passed committee** in Senate: 2/12/19
- **Passed** in House
- **Passed** in Senate
- **Differences resolved**
- **Signed into law**

**Bill overview**
- Institutes a family leave insurance in which eligible workers can earn up to 66% of their monthly wages for up to 12 weeks
- Reasons for leave include caring for a new child or addressing a serious health condition (employee’s own or a family member’s)
- Funds come from employee and employer payroll contributions of roughly $2.00/week

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**Enacted Legislation**

- **13** states and D.C. have enacted legislation to provide paid sick leave
- **10** states and D.C. have enacted legislation to provide paid family leave
- **23** localities have paid sick or family leave*

*Does not include localities in New Jersey that were pre-empted by a 2018 state law
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A Texas court of appeals ruled that Austin’s paid sick leave is unconstitutional

Texas Association of Business, et al. v. City of Austin
- In February 2018, the Austin City Council passed a bill that requires private employers to provide paid sick leave
- Companies and business associations filed a lawsuit that stated the ordinance was unconstitutional because it is preempted by the Texas Minimum Wage Act
- In November 2018, the Texas’ Third Court of Appeals entered a temporary injunction blocking the law’s implementation, siding with the plaintiffs; it found that the mandate would increase wages beyond what was required by state law
- The City of Austin can now ask for reconsideration by the court or seek review by the Supreme Court of Texas

Plaintiffs (not comprehensive)
- Texas Association of Business
- National Federation of Independent Business
- American Staffing Association

Defendants
- City of Austin
- Steve Adler, Mayor of Austin
- Spencer Cronk, City Manager of Austin

February 16, 2018
- The Austin City Council votes to require employers to offer paid sick leave. Business groups immediately file a lawsuit against the ordinance, which is subsequently denied, causing them to file an appeal

August 17, 2018
- Court of appeals stays the implementation of the ordinance pending resolution of the appeal

November 16, 2018
- Texas’ Third Court of Appeals orders a temporary injunction, ruling that the ordinance violates the Texas Constitution

April 11, 2019
- Texas Senate passed SB 2487 to prohibit localities from having autonomy over any paid leave ordinances; the bill did not make it through Texas legislature. The next legislative session begins January 2021
In 2018, the state legislature passed the New Jersey Paid Sick Leave Act, which requires employers to provide paid sick leave; however, it also preempted county and city sick paid ordinances.
Key considerations for paid leave laws

Paid leave laws have wide-ranging impacts for employers and workers

**Preemption laws**
- Under preemption laws, states ban local governments from introducing their own paid leave plans
- Some states with paid leave laws have preemption laws as well, such as Maryland and New Jersey. These preemption laws prohibit local governments from introducing more stringent paid leave requirements
- The goal behind these laws is to prevent employers from having to comply with a large number of local policies by instituting one statewide standard

**Safe harbor for employer policies**
- Some state paid leave policies, such as California's, include safe harbors for existing employer plans, if they are in compliance with the state plan's requirements
- Limited changes are allowed to put the plan in compliance with state regulations
- Safe harbor provisions from state laws are more common in federal proposals, such as the 2017 “Workflex in the 21st Century Act” which would have allowed a safe harbor for employers in compliance with the proposed federal program

**Employer vs. employee funded plans**
- A key consideration for paid leave proposals is whether the plans will be funded by employers or employees
- This is sometimes implemented through whether payroll taxes funding the plans are paid by employers or employees
- The CRADLE Act proposal from Sens. Joni Ernst (R-IA) and Mike Lee (R-UT) allows employees to receive Social Security benefits during family leave rather than retirement, which is a way of funding the plan through employees forgoing potential future benefits