



Utah is Changing:

Should Our Leave
Laws Follow Suit?

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Utah is Changing: Should Our Leave Laws Follow Suit?

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Introduction

Nearly three decades ago, President Clinton signed the Family and Medical Leave Act (FMLA) into law, guaranteeing eligible employees with up to 12 weeks of *unpaid*, job-protected leave per year.¹ In 1996, the bipartisan Commission on Family and Medical Leave released a report stating that only “slightly more than half (54.9 percent) of U.S. workers . . . actually [met] . . . the requirements for taking leave” under FMLA.² Based on recent data, the number of employees eligible for FMLA has hardly changed: only around 56 percent of U.S. employees are currently eligible.³ In addition to the narrow scope of coverage, FMLA also lacks several key protections shared by the vast number of developed countries: namely, *paid* parental leave.⁴ While the protections afforded by FMLA are limited by the standards of the developed world,⁵ the law still represents the U.S.’ most sweeping and *only* successful attempt to “help employees balance work and family life” through a federal leave law.⁶ In fact, mothers in the U.S. are the only women in the developed world that lack support from a specific national policy that grants paid time off to bond with and care for their infants. To supplement unpaid leave coverage with paid coverage, mothers are likely to use up their sick and vacation pay or utilize short-term disability insurance if offered by their employer where wage replacement is up to 66% of their income.⁷ This means that if these women get sick or have an emergency later in the year, they have no leave time left to utilize.

Given the narrow scope of FMLA coverage and concomitant lack of paid leave protections, some states have responded with their own leave laws, leaving the U.S. with a patchwork of family and medical leave protections.⁸ In most cases, states simply expanded the coverage for *unpaid* leave to those working for private employers with less than 50 employees. In 2002, California became the first state to enact a *paid* family leave program, leveraging the financing structure of the state disability program to provide up to eight weeks of benefits to covered workers.⁹ As of 2021, eight states and the District of Columbia have

¹ In particular, FMLA only protects those employees who have worked for a covered employer for at least 12 months and have worked at least 1,250 hours during the 12 months preceding the start of FMLA leave. Covered employers are further limited to private employers with at least 50 employees and public entities. Finally, FMLA only covers a narrow range of absences, such as an employee’s absence due to a serious health condition or leave for the birth and care of a child. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654 (2009). *See also* Congressional Research Service. (2020, February 19). Paid Family and Medical Leave in the United States. <https://crsreports.congress.gov/product/pdf/R/R44835>

² Commission on Family and Medical Leave. (1996, April 30). A workable balance: Report to Congress on Family and Medical Leave Policies. <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FMLAReport1995.pdf>

³ Brown, S., Herr, J., Roy, R., & Klerman, J. A. (2020, July). Employee and worksite perspectives of the Family and Medical Leave Act: Results from the 2018 surveys. <https://www.dol.gov/agencies/oasp/evaluation/fmla2018>

⁴ Livingston, G., & Thomas, D. (2019, December 19). Among 41 countries, only U.S. lacks paid parental leave. *Pew Research Center*. <https://www.pewresearch.org/fact-tank/2019/12/16/u-s-lacks-mandated-paid-parental-leave/>

⁵ Across the member states of the Organisation for Economic Co-operation and Development (OECD), mothers are entitled to an average of over 18 weeks of paid maternity leave around childbirth. The United States “is the only OECD country to offer no statutory entitlement to paid leave on a national basis.” OECD. (2019, August). Parental leave systems. *OECD Family Database*. <https://www.oecd.org/els/family/database.htm>

⁶ Note failed 2009 attempt.

⁷ Stearns, J. (2015). The effects of paid maternity leave: Evidence from Temporary Disability Insurance. *Journal of Health Economics*, 43, 85-102. <https://doi.org/10.1016/j.jhealeco.2015.04.005>

⁸ *See* Appendix.

⁹ California Employment Development Department. (2021). Overview of California’s paid family leave program. DE 2530 Rev. 4 (12-20). https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf

also enacted paid family leave programs,¹⁰ with some, such as New Jersey, following the California approach of funding the benefits through employee payroll deductions, whereas others use combined employer and employee premiums. In 2012, Connecticut became the first state to require private employers of 50 or more employees to provide paid *sick* leave to their employees and was soon followed by 13 more states and the District of Columbia.¹¹ Nevertheless, across Utah and more than a dozen other states, FMLA continues to provide the only family and medical leave protection for workers.¹²

Despite the fact that paid family and medical leave has only been adopted by a handful of states, the reshuffling of the U.S. labor market due to the COVID-19 pandemic (where more women dropped out of the labor force, and the most affected industries employ more women)¹³ and long-term demographic trends may finally signal a paradigm shift.¹⁴ Across the country, the prospect of paid family and medical leave draws significant—not to mention *rare*—bipartisan support, particularly among women voters. Indeed, one recent poll found that as many as 82 percent of U.S. adults favored some form of paid parental leave, with high support across political lines.¹⁵ In Utah specifically, the gendered labor force effects during COVID-19 has helped prompt calls for expanded family leave protections and has started to shape the very leave policies offered by state and municipal employers, as well as private businesses.¹⁶

As Utah lawmakers face mounting calls for legislative actions to address the lack of state leave laws, the following White Paper provides lawmakers and policy advocates with an overview of state leave laws across the country and a discussion of the effects of expanded family and medical leave. Finally, this paper concludes with targeted recommendations for Utah.

State Leave Laws

In addition to the protections afforded by FMLA, there has been a proliferation of state leave protections implemented over the past couple of decades. In many cases, states have simply bolstered the coverage of FMLA to cover employees working less than 1,250 hours per year or employees working for smaller employers.¹⁷ Additional states have created completely new forms of protected employee absences, such as crime victim leave, voting time-off, and school-related leave. Ultimately, the most notable departure from the scope of FMLA has been the growing number of states to adopt *paid* family and medical leave protections.

Expanded FMLA Coverage: More than 20 states have passed so-called “mini FMLA” laws, expanding family and medical leave protection to cover more employees, more employers, or a broader range of absence types. As of 2021, at least 14 states have expanded the scope of covered employers under FMLA

¹⁰ Kaiser Family Foundation. (2020, December 14). Paid family and sick leave in the U.S.

<https://www.kff.org/womens-health-policy/fact-sheet/paid-family-leave-and-sick-days-in-the-u-s/>

¹¹ National Conference of State Legislatures. (2020, July 21). Paid sick leave. <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>

¹² See Kaiser Family Foundation, *supra* note 9.

¹³ Kem C. Gardner Policy Institute. (2021, March). *COVID-19 impacts by gender*. <https://gardner.utah.edu/wp-content/uploads/C19Impacts-FS-Mar2021.pdf>

¹⁴ Canham, M. (2021, June 11). Utahns are having fewer kids. Why that may be a problem and what to do about it. *Salt Lake Tribune*. <https://www.sltrib.com/news/politics/2021/06/11/utahns-are-having-fewer/>. See also Collins, L. M. (2018, October 1). In the last 25 years, who’s working and who’s staying home with the kids? *Deseret News*. <https://www.deseret.com/2018/10/2/20654936/in-the-last-25-years-who-s-working-and-who-s-staying-home-with-the-kids>.

¹⁵ Weber, L. (2016, December 13). Most Americans support paid leave for workers, poll finds. *Wall Street Journal*. <https://www.wsj.com/articles/most-americans-support-paid-leave-for-workers-poll-finds-1481641205>. See also Horowitz, J. M., Parker, Kim., Graf, N., & Livingston, G. (2017, March 23). Americans widely support paid family and medical leave, but differ over specific policies. *Pew Research Center*. <https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>

¹⁶ Israelsen-Hartley, S. (2018, February 12). Inside the movement for paid time off to have a baby—in Utah and beyond. *Deseret News*. <https://www.deseret.com/2018/2/12/20639891/inside-the-movement-for-paid-time-off-to-have-a-baby-in-utah-and-beyond>

¹⁷ See Appendix.

for certain types of absences. In Montana, for example, state law requires *all* employers to give employees time off for pregnancy and childbirth,¹⁸ whereas other states, such as Maine and Minnesota have lowered the threshold number of employees down to 15 and 20, respectively.¹⁹ Several additional states have lowered the number of hours or months an employee needs to work for a particular employer before becoming eligible for FMLA, such as New Jersey and Wisconsin.²⁰ Finally, some states extend the maximum length of FMLA leave or provide additional reasons for FMLA leave. In Rhode Island and Connecticut, for example, state law allows employees to take as many as 13 and 16 weeks off, respectively, for the birth of a child²¹

Pregnancy Leave: Perhaps the most notable departure from FMLA has been states' willingness to expand leave protections for pregnant women and women who have recently given birth. These expanded protections have found particular resonance across the Rocky Mountain West and many politically conservative states. These laws supplement federal protections, such as the Pregnancy Discrimination Act (PDA), which requires employers to treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes as other persons not so affected but *similarly situated* based on their ability to work.²² However, at least a dozen states have gone slightly further than the PDA, requiring employers to treat pregnancy-related disabilities *the same as* other temporary conditions regarding leave and other benefits.²³

As of 2021, at least five states have expressly extended the length of protected leave for pregnancy and childbirth beyond the federal standard of 12 weeks: California, Hawaii, Louisiana, Massachusetts, and Tennessee.²⁴ Nearly half of all states have passed laws requiring employers with less than 50 employees to provide unpaid pregnancy leave for workers and a handful of states have even expanded eligibility to cover workers with less than 1,250 hours of work during the preceding 12 months. In Utah and several other states, the respective state statutes provide that employers must provide pregnant employees with “reasonable accommodation,” which can extend to short-term leave.²⁵

Military Family Leave: Under FMLA, covered employers must permit employees to take 12 weeks of unpaid leave for any qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is a member of the Armed Forces, National Guard, or Reserves on covered active duty or call to covered active-duty status.²⁶ Nevertheless, FMLA does not preempt state and local laws providing greater military family leave rights. As of 2021, at least 11 states have passed laws that supplement FMLA military family leave protections.

Non-FMLA Protected Absences: Whereas only around half of states have expanded FMLA coverage through state law to provide greater protections for military families or pregnant employees, nearly *every* state has protected at least one other form of employee absence beyond the terms of FMLA, such as crime victim leave, voting time off, or school-related leave.

- **Crime Victim Leave:** At present, 34 states have laws that require employers to provide some form of *unpaid* leave for qualified crime victims. An additional eight states have laws that provide for unpaid leave for domestic violence victims, but do not have a general crime victim leave statute on the books. In Utah and 19 other states, crime victims are only provided with protected leave when they are *required* to appear before a court, *e.g.*, when they receive a subpoena to testify as a witness, or when they are required to provide pre-trial support to the prosecution. The remaining

¹⁸ Mont. Code Ann. 49-2-310.

¹⁹ 26 M.R.S. 637; Minn. Stat. § 181.9414.

²⁰ N.J. Admin. Code § 13:14-1.2; Wis. Stat. § 103.10(2)(c).

²¹ Conn. Gen. Stat. § 31-511(a)(1) (effective Jan. 1, 2022); R.I. Gen. Laws § 28-48-2. *See also* Paycor. (2020, July 29). Maternity leave laws by state. <https://www.paycor.com/resource-center/articles/maternity-leave-laws-by-state/>

²² Pregnancy Discrimination Act of 1978, 42 U.S.C. §§ 2000e et seq.

²³ *See, e.g.*, Tex. Lab. Code Ann. § 21.001 et seq.

²⁴ *See* Appendix.

²⁵ *See, e.g.*, Utah Code Ann. § 34A-5-106(1)(g).

²⁶ *See supra* note 1.

14 states with crime victim leave provisions provide broad protection for employees to attend criminal proceedings more generally, even absent a subpoena to testify.

- **Voting Time Off:** Currently, 30 states have laws that protect anywhere from 1-4 hours of voting time for qualified employees, such as those who do not have at least three non-work hours available while polls are open. In 22 states, including Utah,²⁷ employers may not penalize or deduct from an employee’s usual salary or wages on account of their absence. However, the rest of the states only allow *unpaid* voting time-off, wherein the employer may deduct employees’ wages for time spent at the polls.
- **School-Related Leave:** Finally, 10 states provide protections for “school-related” leave—generally between 4-24 hours per academic year—so that parents can attend parent-teacher conferences, school performances, and other school-related functions.

Paid Family and Medical Leave: Notwithstanding these expanded state leave protections, the most significant development over the past 20 years has been the emergence of paid family and medical leave programs across the U.S. In 1993, less than 3 percent of full-time U.S. workers employed by the private sector had access to paid *maternity* leave.²⁸ By 2020, the share of private-sector employees entitled to paid family leave had grown to 20 percent,²⁹ driven largely by state adoptions of paid family leave programs. In 2002, California became the first state to adopt a paid family leave program, followed by New Jersey in 2008 and Rhode Island in 2013. Between 2016-2020, six additional states adopted paid family leave programs: New York, Washington, Massachusetts, Connecticut, Oregon, and Colorado.³⁰ While California and Connecticut finance their paid family leave policies solely through employee payroll taxes, most states, including Colorado, Washington, and Massachusetts, generally require employees and employers to share the costs of the paid family leave programs through premium payments made to a state plan.

Paid Sick Leave: While FMLA provides for up to 12 weeks of unpaid leave for certain medical situations, there are no federal requirements for general paid or unpaid sick leave. Nevertheless, at least 14 states have passed laws requiring some form of *paid* sick leave, covering not only conditions under the FMLA but also short-term medical conditions that may fall outside the terms of the law. These laws have seen slightly more success than paid family leave and have been adopted by a handful of more politically moderate states, such as Arizona and Minnesota.

In sum, the unique nature of American federalism, combined with the narrow protections afforded by FMLA, has led to the development of a complex patchwork quilt of leave laws across the country. Importantly, the status quo has allowed states to find solutions that accord with their socioeconomic circumstances and policy preferences but has also created a complex maze for multi-state employers to navigate.³¹

The Effects of Paid Family and Medical Leave

Despite the fact that paid family and medical leave has not yet been widely adopted across the U.S., these early programs have prompted considerable academic and policy research. In recent years, studies have ranged from reports on the effects of paid family leave on birth outcomes and maternal health to analyses on mothers’ labor market outcomes. In one recent paper, neonatological researchers concluded that the “[i]mplementation of paid family leave policies in California was associated with a 12 percent reduction

²⁷ Utah Code Ann. § 20A-3-105.

²⁸ Waldfogel, J. (1999, October). Family leave coverage in the 1990s. *Monthly Labor Review*. <https://www.bls.gov/opub/mlr/1999/10/art2full.pdf>

²⁹ U.S. Department of Labor. (2020, September). National Compensation Survey: Employee benefits in the United States, March 2020. <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf#page=299>

³⁰ See Kaiser Family Foundation, *supra* note 9.

³¹ See Kaiser Family Foundation, *supra* note 9.

in postneonatal mortality after adjusting for maternal and neonatal factors.”³² An additional study found that after California’s adoption of paid family leave, “California children experienced lower probabilities of overweight, ADHD, hearing problems, and frequent ear infections,” and that “parents’ overall assessment of their children’s health improved.”³³ In terms of labor participation, successive studies have found that paid family leave programs are associated with higher rates of labor market participation among women.³⁴

Nevertheless, paid family leave proposals have encountered stiff oppositions from some private employers, who point to the costs of providing paid family leave and the suitability of employer-elected benefits.³⁵ Moreover, some researchers suggest that the overall effects of paid family leave may be far less rosy than some proponents claim. One study found that, “[a]mong young women, California’s unemployment rate and unemployment duration increased after the law . . . consistent with firms increasing their demand for men and older women at the expense of young women.”³⁶ Ultimately, the recent emergence and limited scope of paid family leave programs in the U.S. necessitates caution in making broad assessments about the potential effects of paid family leave on unaffected states, such as Utah.

The Politics of Paid Family and Medical Leave

Thus far, only states with so-called Democratic “trifectas” have managed to pass some form of paid family and medical leave.³⁷ Even still, polling data and recent efforts by Republican politicians suggests that the political landscape around paid family leave might be quickly transforming. During the course of the 2016 U.S. presidential election, for example, surveys found that Republican support for expanded family leave grew markedly—as then-presidential candidate Donald Trump spoke positively of the paid family leave plans proposed by his daughter, Ivanka Trump.³⁸ One poll found that “majority of voters in every subgroup, including the most ideologically conservative men who voted for President-elect Trump, say it is important for the next president and Congress to consider laws that would ensure access to paid

³² Montoya-Williams, D., Passarella, M., & Lorch, S.A. (2020, October). The impact of paid family leave in the United States on birth outcomes and mortality in the first year of life. *Health Services Research*, 55(52), 807-814. <https://doi.org/10.1111/1475-6773.13288>

³³ Lichtman-Sadot, S., & Bell, N. P. (2017). Child health in elementary school following California’s paid family leave program. *Journal of Policy Analysis and Management*, 36(4), 790-827. <https://pubmed.ncbi.nlm.nih.gov/28991423/>

³⁴ Byker, T. S. (2016, May). Paid parental leave laws in the United States: Does short-duration leave affect women’s labor-force attachment? *American Economic Review*, 106(5), 242-246.

<https://www.aeaweb.org/articles?id=10.1257/aer.p20161118>. (“short-duration paid leave increases labor force attachment of women who otherwise would have exited the labor force temporarily in the months around a birth”). See also Das, T., & Polachek, S. W. (2015, February 12). Unanticipated effects of California’s paid family leave program. *Contemporary Economic Policy*. <https://doi.org/10.1111/coep.12102>. (“Our analyses clearly suggest that the CPFL induced young women to participate somewhat more in the labor market than the typical state”).

³⁵ But see Bartel, A.P., Rossin-Slater, M., Ruhm, C. J., Slopen, M., & Waldfogel, J. (2021, April). The impact of paid family leave on employers: Evidence from New York.

https://www.nber.org/papers/w28672?utm_campaign=ntwh&utm_medium=email&utm_source=ntwg1. See also Appelbaum, E., & Milkman, R. (2011, January 19). Paid family leave pays off in California. *Harvard Business Review*. <https://hbr.org/2011/01/paid-family-leave-pays-off-in>

³⁶ See Das & Polachek, *supra* note 32. See also Miller, C. M. (2015, May 26). When family friendly policies backfire. *New York Times*. <https://www.nytimes.com/2015/05/26/upshot/when-family-friendly-policies-backfire.html>; Miller, C. M. (2019, November 11). A surprising finding on paid leave: ‘this is not the way we teach this.’ *New York Times*. <https://www.nytimes.com/2019/11/11/upshot/paid-family-leave-research-surprise.html>

³⁷ A state government trifecta is a term used to describe a single party government, wherein one party holds the governorship, a majority the state senate, and a majority in the state house in a state government. See Ballotpedia. (2021). State government trifectas. https://ballotpedia.org/State_government_trifectas

³⁸ Sullivan, S., & Costa, R. (2016, September 13). Donald Trump unveils child-care policy influenced by Ivanka Trump. *Washington Post*. <https://www.washingtonpost.com/news/post-politics/wp/2016/09/13/donald-trump-joined-by-ivanka-trump-to-outline-child-care-policy/>

sick days and create a paid family and medical leave program.”³⁹ More recent polling data found that “[a]mong Republicans, 72 percent favor paid sick days and 67 percent favor paid family and medical leave,” compared with 93 percent of Democrats.⁴⁰

In response to changing public opinion and demographic trends, conservative politicians have started proposing plans for paid family leave, including Senators Marco Rubio, Joni Ernst, Bill Cassidy, and Mike Lee.⁴¹ When President Trump first announced his paid leave plan, then-Representative Cynthia Lummis (R-WY) noted that she was “so delighted to have a Republican talking about maternity leave, because it finally puts Republicans in the debate.”⁴² These Republican plans can be distinguished from the state-level family leave programs adopted by California and other states, as they are not based on payroll taxes or employer contributions. Rather, the plans seek to expand paid leave opportunities without adding to the deficit or creating new taxes. The “New Parents Act,” announced by Senators Marco Rubio and Mitt Romney, would do so by allowing new parents to take one to three months off by “pull[ing] forward a portion of their Social Security benefits to use for paid parental leave after the birth or adoption of a child,” *i.e.*, essentially borrowing from their future Social Security benefits.⁴³ The Republican-backed American Action Forum would expand paid family leave to low-income households through a so-called Earned Income Leave Benefit—modelled after the Earned Income Tax Credit.⁴⁴ While none of these approaches have come to fruition, the mobilization of conservative groups—from the Independent Women’s Forum to the American Enterprise Institute—as well as stalwart conservative politicians hints at a consensus that the protections afforded by the FMLA are no longer adequate.⁴⁵

Utah’s Changing Circumstances

In Utah, economic trends and demographic transformations are starting to challenge the state’s longstanding deference to the protections afforded by FMLA. Utah is within the top third of U.S. states for the percentage of women who are workforce participants (61 percent).⁴⁶ Additionally, Utah women are becoming more politically and economically active, accounting for a growing percentage of elected

³⁹ National Partnership for Women & Families. (2016, November). Key findings: 2016 election eve/election night survey. <https://www.nationalpartnership.org/our-work/resources/economic-justice/key-findings-2016-election-eve-election-night-survey.pdf>

⁴⁰ National Partnership for Women & Families (2020, November). Voters show bipartisan support for permanent paid sick days and paid family and medical leave. <https://www.nationalpartnership.org/our-work/resources/economic-justice/voters-show-bipartisan-support-for-permanent-paid-sick-days-and-paid-family-and-medical-leave.pdf>. See also Horowitz, J. M. et al., *supra* note 13.

⁴¹ Vesoulis, A. (2019, May 4). Paid family leave has stalled in Congress for years. Here’s why that’s changing. *TIME*. <https://time.com/5562960/paid-family-leave-congress/>

⁴² Rubin, R. (2016, September 14). Republicans are slow to back Donald Trump’s paid maternity-leave plan. *Wall Street Journal*. <https://www.wsj.com/articles/republicans-are-slow-to-back-donald-trumps-paid-maternity-leave-plan-1473895995>

⁴³ Office of U.S. Senator Marco Rubio. (2019, Mar. 27). Rubio, Romney, Wagner, Crenshaw introduce bill giving parents an option for paid family leave. <https://www.rubio.senate.gov/public/index.cfm/2019/3/rubio-romney-wagner-crenshaw-introduce-bill-giving-parents-an-option-for-paid-family-leave>

⁴⁴ Gitis, B. (2016, August 15). The earned income leave benefit: Rethinking paid family leave for low-income workers. *American Action Forum*. <https://www.americanactionforum.org/solution/earned-income-leave-benefit-rethinking-paid-family-leave-low-income-workers/#ixzz74yZhZZi9>

⁴⁵ See, e.g., Rachidi, A., McCloskey, A., & Roth, P. (2020, October 7). Designing a paid leave policy to support our most vulnerable workers. American Enterprise Institute. <https://www.aei.org/research-products/report/designing-a-paid-leave-policy-to-support-our-most-vulnerable-workers/>. See also Desanctis, A. (2019, July 25). Is paid family leave conservative? *National Review*. <https://www.nationalreview.com/2019/07/is-paid-family-leave-conservative/>. (conservative commentators “maintained that paid parental leave is popular with most Americans and cautioned that if conservatives refuse to show up to the table with their own proposals, they will be left behind as the public coalesces around the expansive Democratic solution.” Additionally, they “also argued that a conservative plan would be a pro-life policy to help those most in need and reduce infant mortality, filling in the gaps especially for low-income families who don’t already have paid leave through their employers”).

⁴⁶ Madsen, S. R., Dillon, J., & Scribner, R. T. (2017, August 2). *The gender wage gap in Utah*. Utah Women & Leadership Project. <https://www.usu.edu/uwlp/files/snapshot/22.pdf>

office seats and new business activity.⁴⁷ The state’s fertility rate has continued to decline,⁴⁸ of which insufficient leave policies could be a contributing factor for future Utah parents that are facing a rising cost of living—particularly for housing. This has taken away many parents’ economic ability to withdraw from the labor market for a number of years to focus on childrearing.⁴⁹ Finally, the state’s growing number of residents from California, Oregon, and Washington may portend an eventual political shift, though the true effect of the so-called “liberal exodus” remains to be seen.⁵⁰

Recommendations for Utah

While it seems unlikely that Utah legislators will face serious pressure to adopt a California-style paid family leave program anytime soon, the trend of advocacy around expanded leave protections—such as paid family leave for state employees or expanded FMLA eligibility—appears likely to continue. Amidst the growing bipartisan conversation on paid family leave, Utah leaders would thus be well-advised to explore alternative pathways to “help employees balance work and family life,” thereby realizing the untapped potential of the “Utah Way.” In addition to potential expansions of the coverage for unpaid leave (i.e., FMLA), this White Paper proposes the following initial recommendations based on a review of the 50-state analysis of state leave laws:

1. EXPAND PREGNANCY LEAVE PROTECTIONS TO COVER MORE UTAHNS:

At present, the Utah Anti-Discrimination Act requires employers with 15 or more employees and all state and political divisions to provide “reasonable accommodations” to employees affected by pregnancy, childbirth, breastfeeding, or related conditions. In some cases, this *could* require covered employers to provide *unpaid*, job-protected time off as a reasonable accommodation, but this is by no means guaranteed. Instead, expectant mothers bear the burden of requesting reasonable accommodations disproving any employer claims of “undue hardship.” As such, FMLA continues to provide the *only* substantive leave protection for Utah mothers—and only those who meet the federal law’s onerous requirements, *i.e.*, they must have worked for the employer for at least 12 months, completed at least 1,250 hours of work during the 12 months preceding FMLA leave, and finally, the employer must also be a covered employer under the terms of FMLA. Instead, Utah should follow the direction of other conservative and Rocky Mountain West states by expressly expanding the scope of workers entitled to job-protected pregnancy leave. For example, under Montana law, all employers must provide job-protected pregnancy leave to eligible employees, leaving Montana employees with far greater discretion and flexibility to make safe and healthy pregnancy decisions than their Utah counterparts.⁵¹

2. PROTECT CRIME VICTIMS’ RIGHT TO SEEK JUSTICE WITHOUT FEAR OF LOSING THEIR JOB.

Across the U.S., over a dozen states have guaranteed victims of violent crime unpaid, but protected leave, allowing them to attend the criminal proceedings relevant to their own case without fear of losing their job. In Utah, however, we have no such law requiring private employers to provide employees with crime victim leave, *except* for those who must attend depositions or hearings in response to subpoenas. This narrow protection creates undue tension with a proud and well-established constitutional tradition of public trials and undermines a victim’s practical ability to see justice served in their case—whether that be against a rapist,

⁴⁷ Madsen, S. R., Dillon, J., & Scribner, R. T. (2017, August 2).

⁴⁸ See *supra* note 12.

⁴⁹ See *supra* note 12.

⁵⁰ Dorsey, C. (2021, March 17). America’s mass migration intensifies as ‘leftugees’ flee blue states and counties for red. *Forbes*. <https://www.forbes.com/sites/chrisdorsey/2021/03/17/americas-mass-migration-intensifies-as-leftugees-flee-blue-states-and-counties-for-red/?sh=f0f230631460>. See also Robert J. DeBry & Associates. (2021, April 28). Where are all the new Utah move-ins coming from? Here’s a breakdown.

<https://www.ksl.com/article/50155808/where-are-all-the-new-utah-move-ins-coming-from-heres-a-breakdown>

⁵¹ See *supra* note 16.

attempted murderer, or repeat domestic violence offender. As such, Utah legislators should consider a law guaranteeing Utah crime victims with job-protected leave to attend proceedings in their case generally, rather than only when they are required by court order or subpoena.

3. DEVELOP A SERIOUS, BIPARTISAN WORKING GROUP TO EVALUATE PLANS FOR PAID LEAVE—PARTICULARLY PAID SICK LEAVE.

Over the past few years, there has been a proliferation of peer-reviewed articles on the effects of paid family leave, as well as an emergence of broad conservative support for paid family leave. As Utah’s current congressional delegation continues to drive the conversation on paid family leave within the Republican party, state legislators should make sure that this conversation does not only take place at the federal level. To that end, Utah legislators should form a serious, bipartisan working group to evaluate the changing landscape of paid family leave policies and develop practical approaches for our rapidly growing and changing state.

Conclusion

Today, an estimated 47.7 percent of Utahns are younger than our state’s most substantive leave protection: FMLA.⁵² In the 28 years that have followed the law’s passage, the state has experienced unprecedented socioeconomic transformation, producing one of the world’s youngest and most dynamic labor markets. While the economic and demographic landscape of our state has transformed, the aging protections afforded by FMLA have failed to keep up with the demands of Utah women. As Utah women continue to expand their presence on the state’s political and business scene—as leaders, entrepreneurs, and professionals—state legislators will need to flex the renowned dynamism of the “Utah Way” to find new ways to help employees balance work and family life and guarantee the continued success of Utah working parents for years to come.

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⁵² Kem C. Gardner Policy Institute. (2019, November). State of Utah population by age, sex, race and ethnicity, 2010-2018. <https://gardner.utah.edu/wp-content/uploads/State-of-Utah-Demographic-Profile-2010-2018.pdf>