

**National Paid Family and Medical Leave:
A PROPOSAL FOR SMALL
BUSINESS SUCCESS**

2017 Report



EXECUTIVE SUMMARY

The United States has one of the least generous paid family and medical leave (PFML) policies in the world. Just 14 percent of the workforce has paid family or medical leave through their employers, and less than 40 percent has personal medical leave through an employer-provided disability program. The lack of a national PFML policy not only harms employees, but it also puts small business owners at a disadvantage.

Recognizing these challenges, the Main Street Alliance convened a small business working group for a series of focused policy conversations through 2016 on how best to design a national PFML program. These conversations probed the business owners on a range of topics, including length of leave, type of coverage, funding stream, family definition, eligibility criteria, and implementation needs. Insights from these conversations, coupled with evidence and insights gleaned from existing programs, form the basis for the following policy recommendations for a federal PFML proposal.

1 *All individuals who work should have the ability to earn extended leave from work to care for their families or themselves, without fear of losing their job.* PFML should be available in all businesses, regardless of size or sector, and to all individuals, whether they work part-time, full-time, or are self-employed. Furthermore, the amount of leave time should not discriminate based on gender; everybody should be able to access the same amount of leave time.

2 *Any PFML policy must be financed in a way that is affordable and cost effective for small business owners and their employees.* Any national PFML proposal must provide a financially viable way for even the smallest business owner to offer this leave while providing a high enough wage replacement rate to enable workers to take time off and meet their basic expenses. Policymakers should consider a social insurance system, a model widely used internationally and in existing state PFML plans.



The lack of a national PFML policy not only harms employees, but it also puts small business owners at a disadvantage.

3 *Any PFML policy must be comprehensive and specific in addressing serious family and medical needs.* The policy must be both broad enough to include the key reasons people need time away from their jobs and sufficient in length to meet their medical/caregiving needs. At the same time, specific language that details the range of well-established reasons people need time away from work is important to reduce ambiguity about coverage eligibility and limit the potential for confusion or, in the rare cases, fraud. Policymakers should strongly consider using FMLA as the guideline [or at least a floor] for the length of leave and categories of medical and family qualifying conditions.

An inclusive family definition should be used to cover the range of family configurations.



4 *An inclusive family definition should be used to cover the range of family configurations and care responsibilities that business owners and their employees face.* For business owners and employees alike, caregiving responsibilities often extend outside of the nuclear or residential family. A sound PFML program that meets the needs of today's workforce must reflect the diversity of individuals' lives. At the minimum, any proposal should include a definition of "family" that should cover care for elders, siblings, same-sex families, domestic partners, grandparents, grandchildren, and adult children.



5 *The PFML implementation process should be simple and minimize the administrative responsibilities of small business owners.* The federal program should build off and align with existing laws and administrative programs to maximize program efficiency, reduce transition costs, and ease coordination. It should include a dedicated funding stream for employer outreach and education, and the government should partner with small business owners to perform targeted outreach. Furthermore, the employee, not the employer, should be responsible for filing a leave claim and for providing the verifying materials to the government (such as the medical documentation), and a grace period for compliance should be available for small business owners as they adjust to their new responsibilities and work through any unexpected complications.

6 *PFML program should be sensitive to the unique workforce challenges facing small business owners.* For small business owners, particularly micro-businesses or mom-and-pop shops, an extended employee absence may raise concerns about additional costs or workload burdens. At the minimum, education and technical assistance to support businesses in adapting to limited staffing could be valuable. Additionally, a targeted tax credit for small businesses should be considered to help defray the added cost of an absent employee.

INTRODUCTION

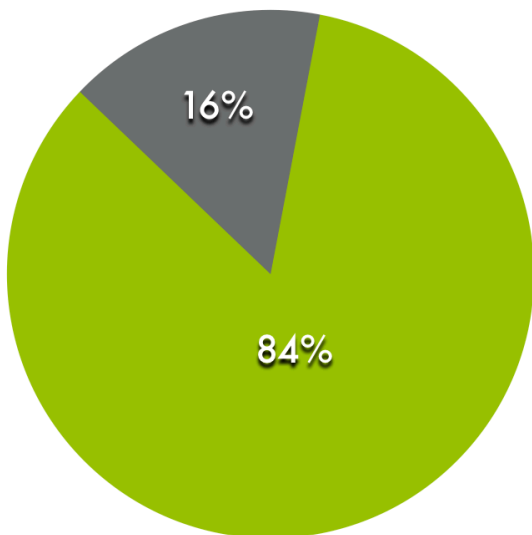
The United States has one of the least generous paid family and medical leave (PFML) policies in the world. Currently, the Family and Medical Leave Act (FMLA), which guarantees up to 12 weeks of job-protected unpaid leave, is the only federal legislation to help individuals who need to care for a family member or recuperate from their own serious health condition. Yet, almost 40 percent of the workforce is ineligible for FMLA, and millions more cannot afford to take unpaid leave.¹ Furthermore, just 14 percent of the workforce has paid family or medical leave through their employers, and less than 40 percent has personal medical leave through an employer-provided disability program.

The lack of a national PFML policy not only harms employees, but it also puts small business owners at a disadvantage. Eighty-four percent of small business owners surveyed in 2016 by the Main Street Alliance did not offer paid family and medical leave (figure 1). These, and other, small businesses often have trouble matching the more generous leave benefits offered by larger employers – making it difficult for



them to compete. Without paid leave, small business owners themselves have no protection in case of an illness or caregiving need. A single accident or a medical emergency could plunge the small business owner into financial free-fall.

Small Businesses Currently Offering Paid Family & Medical Leave



Currently offering PFML
Not currently offering PFML

Figure 1. Data from 2016 Main Street Alliance survey

Within the last decade, several states have passed laws to address the gap in coverage. New Jersey, California, and Rhode Island, for instance, currently have PFML policies, and New York and Washington, D.C. passed a bill this past year. A range of other states, including Vermont, Oregon, Tennessee, Connecticut, Massachusetts, Ohio, Montana, and Hawaii, have active campaigns.

This state-level activity has, in large part, spurred growing momentum for a national solution. A 2016 survey of over 1,570 Main Street Alliance small business owners across 13 states found that the majority (64 percent) supported passing a federal paid family and medical leave bill. Among female business owners and business owners of color, the support rose to 76 percent (figure 2).

For the first time in history, both major Presidential candidates offered PFML proposals in their campaign platform. And in debates, media coverage, and campaign

events, the issue of PFML has received unprecedented attention. Advocacy groups and policy experts alike are calling for Congress to pass a federal PFML law. On February 7, Senator Kirsten Gillibrand [D-NY] and Representative Rosa DeLauro [D-CT] reintroduced the Family and Medical Insurance Leave [FAMILY] Act, with an unprecedented number of cosponsors.

It is in this context that the Main Street Alliance has decided to issue the following white paper. We are at a historic crossroad, with a window of opportunity to pass a national PFML law. However, small business owners—who would be the frontline implementers of such policies—have, to date, had few venues to voice their perspectives in the policy construction process. Recognizing that small business owners are the best experts on what they need to make such a policy workable, the Main Street Alliance convened a small business working group for a series of focused policy conversations on PFML. These conversations probed the business owners on a range of topics, including length of leave, type of coverage, funding stream, family definition, eligibility criteria, and implementation needs. Insights from these conversations, coupled with evidence and insights gleaned from existing programs, form the basis for the following policy recommendations for a federal PFML proposal. We at the Main Street Alliance are hopeful that these policy parameters will help ensure that a national PFML law best meets the needs of small businesses, their employees, and the local economy.

In the next section, we briefly describe the benefits of PFML for business owners. We then follow with six policy recommendations that we believe are critical for the success of any national PFML program.

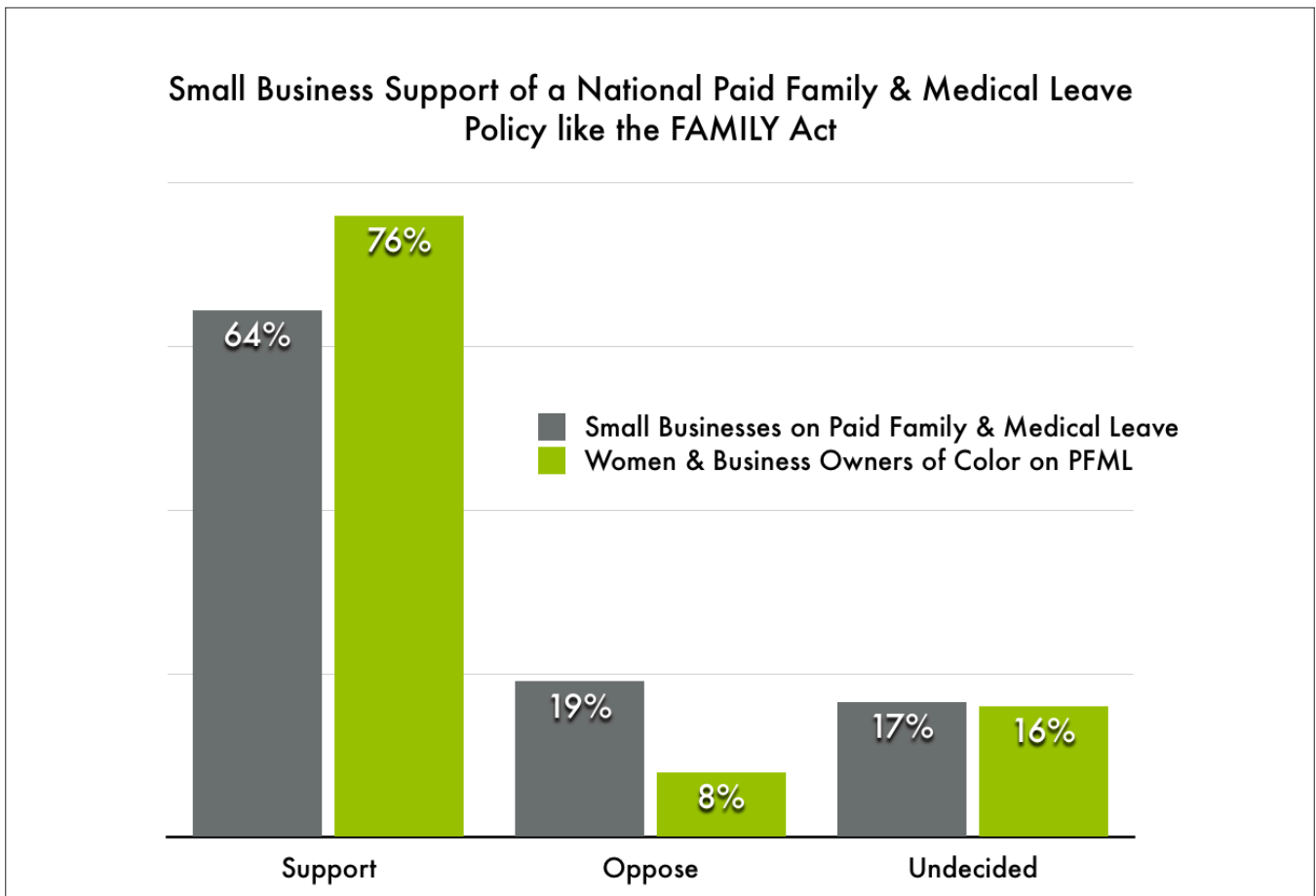


Figure 2. Data from 2016 Main Street Alliance survey

THE BUSINESS CASE FOR PFML

Anecdotal conversations with our small business working group participants, backed by research from existing state programs, highlighted several benefits of a national PFML policy program.



First, national PFML public policy standard would level the playing field for small employers.

Large corporation, such as Microsoft, Adobe Systems, Goldman Sachs, Nestlé, Facebook, Vodafone, Netflix, Chobani, and IBM, are increasingly instituting paid parental leave and family-friendly benefits to attract and retain the best talents.² Yet small businesses, often operating on tight margins and without the same levels of working capital, simply cannot afford to offer comparable leave policies, making it difficult for them to compete. Consequently, small business owners who do not offer paid leave may struggle to retain talented staff. However, when all employers must abide by the same rules, the playing field is leveled. Furthermore, a paid leave program funded as an insurance pool particularly benefits small business owners because cost of leave is shared. Not surprising, in California, although all employers reported positive outcomes overall, small- and medium-sized businesses [those with fewer than 50 employees and those with 50 to 99 employees] reported more positive outcomes than large businesses [100+ employees].³

Second, a national PFML program would improve worker retention,

saving employers money through reduced turnover costs [estimated to be 20 percent of an employee's annual salary].⁴ In California, 83 percent of workers in "lower-wage" jobs who used the PFML program returned to their previous employer – a 10-point improvement compared to workers who did not use the program.⁵ And a majority of California businesses [87 percent] had no increased costs as a result of the program and nine percent indicated that the program had generated cost savings for their businesses by reducing employee turnover and/or reducing their own benefit costs.⁶

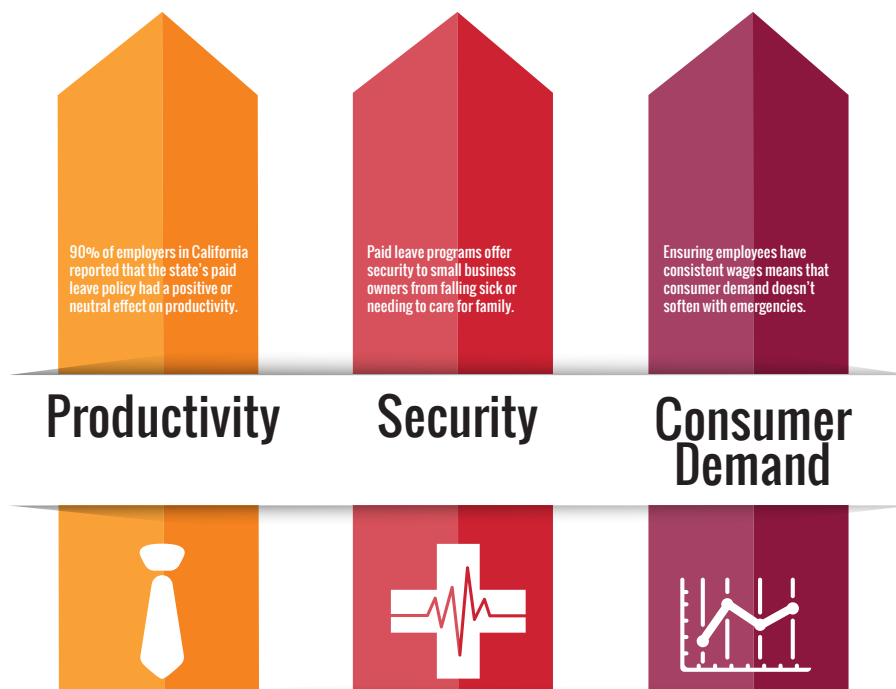
A national PFML would level the playing field for small employers.

Third, paid leave would increase worker productivity and improve employee loyalty and morale.

Nearly 90 percent of businesses surveyed in California reported that the program had either a positive effect on productivity or no noticeable effect; virtually all employers (99 percent) reported that the state's program had positive or neutral effects on employee morale.⁷ Likewise, several New Jersey employers noted that the state's paid leave program helped reduce stress among employees and improve morale among employees who took leave and their co-workers.⁸

Fourth, a PFML program would offer vital security for small business owners.

Most conversations regarding the need for PFML focus on the foregone employee wages. Often overlooked, as reflected from Main Street Alliance's business owners, is the financial freefall that could result from a business owner or family member falling ill. As noted above, a single accident or a medical emergency could jeopardize the health of a small business. With a PFML insurance program, a small business owner would have a guaranteed revenue source while out on leave.



Fifth, a PFML policy would help ensure more steady consumer demand.

Main Street Alliance business owners cite weak sales as the largest problem for their business and the economy.⁹ When individuals have no access to PFML, it impacts their consumption patterns, with negative spillover effects for local businesses. Indeed, sixty percent of workers without fully paid leave reported difficulty making ends meet and many reported putting off paying bills, drawing down savings and cutting leave short.¹⁰ Eighty-four percent of employees who had unpaid or partially paid leave reported putting off spending.¹¹ This lack of consistent wages means fewer dollars circulating in the local economy and lost income to local stores and restaurants. Ensuring that employees have consistent wages means that consumer demand would not soften with each family event or emergency.

Finally, these benefits would likely accrue to small business owners with minimal costs or inconvenience.

Despite rhetoric from the opposition warning that a national PFML policy would negatively impact small businesses, the evidence clearly suggests otherwise. Extensive evaluation of California's state leave program found that, despite concerns from the business community about negative cost impacts prior to the passage of the law, the overwhelming majority of businesses reported no cost increase and no negative effect on profitability or performance.¹² Likewise, in a survey of New Jersey business owners, the majority reported no negative effect on profitability or productivity because of the law.¹³ Moreover, 65 percent of small businesses reported no increased overtime costs in response to employee intermittent leave. More than half of small businesses reported no difficulties in complying with the law. Furthermore, in these states, very few employers have suspected, and even fewer have confirmed, fraud or abuse;¹⁴ program administrative has also proven surprisingly easy.¹⁵

In short, a nationally administered PFML program would enable small businesses to compete on a level playing field with larger employers; reduce costs associated with turnover; provide an important safety net for business owners; and support the local economy, while causing minimal disruptions to small business owners.



POLICY RECOMMENDATIONS

Based on feedback from small business owners in our network and through our survey, evaluations from existing programs, and empirical research, the Main Street Alliance believes that the following parameters are necessary to ensure a successful PFML program that supports business owners and their employees.



1 All individuals who work should have the ability to earn extended leave from work to care for their families or themselves, without fear of losing their job.

PFML should be available in all businesses, regardless of size or sector, and to all individuals, whether they work part-time, full-time, or are self-employed. Furthermore, the amount of leave time should not discriminate based on gender; everybody should be able to access the same amount of leave time.

A broadly available leave policy is important for several reasons. First, broad accessibility is the only way that the smallest business owners will be able to compete with their larger, more resource-rich counterparts. Carve-outs for small business owners reinforce an unlevel playing field, allowing those businesses who opt-out to wield a competitive advantage, ultimately making it harder for those high-road employers of equal size to comply. Furthermore, the need to care for a loved one or oneself does not discriminate based on business size, the number of hours worked, or whether the business is

in manufacturing or service. Likewise, all people suffer from illnesses and/or have caregiving responsibilities that require extended time away from work. Small business owners, whether sole proprietors or employers, and their employees, should be afforded the right to bond with a new child, recuperate from an illness, or take care of a family member, regardless of their gender. An all-inclusive policy is fundamental to meeting the needs of all business owners and their employees, including those participating in the gig economy and are self-employed.

2 Any PFML policy must be financed in a way that is affordable and cost effective for small business owners and their employees.

As noted from MSA's survey, many small business owners want to, but cannot afford to, offer extended paid leave to their employees. Any national PFML proposal must provide a financially viable way for even the smallest business owner to offer this leave while providing a high enough wage replacement rate to enable workers to take time off and meet their basic expenses. Policies which use an employer mandate--that is, an obligation imposed on employers to provide paid leave to their workers and finance the leave themselves--raise serious concerns for small business owners. They fail to address the underlying affordability issue for small business owners and could cause undue financial hardship, particularly on those businesses with low revenues, small margins, or with employees more likely to have a need for leave. Furthermore, structured this way, an employer-mandate system limits the availability of leave to working employees, excluding the self-employed or business owners themselves.

Instead, policymakers should consider a social insurance system, a model widely used internationally and in

existing state PFML plans. As with social security, an employer and employee in this model would make matching contributions in the form of a tiny payroll taxes on earnings (estimates range from .2 percent to 1 percent), into a social insurance program administered by the federal government. This “premium” would create a national fund from which the wage replacement could later be drawn. Qualifying leave takers would receive a portion of their normal wages up to a cap (e.g., the current federal proposal provides 66% of monthly wages, capped at \$4,000 per month) paid by the government, rather than the employer. For small business owners, this model has several advantages. With a national pool, the employer cost would be minimal (about \$1.50 per week for typical employee), and predictable, enabling small businesses with cash flow challenges to plan and incorporate these expenses into their operating budget. Furthermore, the federal government, rather than the small business owner, would shoulder the administrative responsibilities and could capitalize on existing infrastructures to facilitate implementation. Finally, the model would be self-financing and sustainable.

Another, less popular but viable option would be to rely on the federal government to finance the program through a dedicated revenue stream (i.e., increased taxes on highest income earners). Affordable for small businesses and their employees, this proposal nevertheless poses some concerns about its political viability and warrants further consideration. Regardless of the payment mechanism chosen, any funding proposal must be sustainable, practical, and affordable.



Policymakers should strongly consider using FMLA as the guideline for the length of leave and categories of medical and family qualifying conditions.

3 *Any PFML policy must be comprehensive and specific in addressing serious family and medical needs.*

For small business owners and their employees to realize the benefits of a PFML--increased productivity and retention, reduced turnover, greater economic security--the policy must be both broad enough to include the key reasons people need time away from their jobs and sufficient in length to meet their medical/caregiving needs. At the same time, specific language that details the range of well-established reasons people need time away from work is important to reduce ambiguity about coverage eligibility and limit the potential for confusion or, in the rare cases, fraud.

The FMLA has already set a nationally agreed-upon precedent for the length of leave (12 weeks) and the types of qualifying events that trigger benefit eligibility. FMLA has the further benefits of broad familiarity by employers and established verification procedures to determine eligibility. For these reasons, policymakers should strongly consider using FMLA as the guideline (or at least a floor) for the length of leave and categories of medical and family qualifying conditions.

Small Business Support For Broad Family Definition

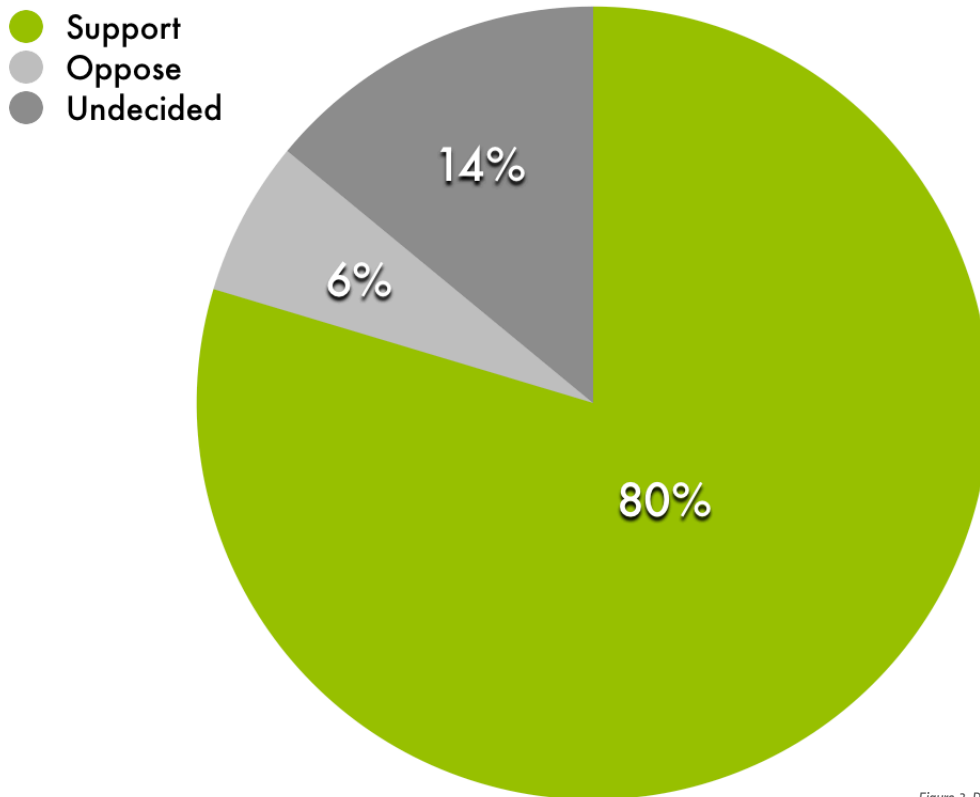


Figure 3. Data from 2016 Main Street Alliance survey

4

An inclusive family definition should be used to cover the range of family configurations and care responsibilities that business owners and their employees face.

For business owners and employees alike, caregiving responsibilities often extend outside of the nuclear or residential family.¹⁶ A sound PFML program that meets the needs of today's workforce must reflect the diversity of individuals' lives. At the minimum, any proposal should include a definition of "family" that should cover care for elders, siblings, same-sex families, domestic partners, grandparents, grandchildren, and adult children (figure 3).

Despite some concerns that the use of a broader family definition could lead to employee misuse, existing evidence from state laws argue otherwise. For instance, though California's state PFML law covers domestic partners, grandparents, parents-in-law, adult children, siblings and grandchildren, employers and program staff have reported little to no evidence of fraud or abuse.¹⁷ Furthermore, in Rhode Island and California, which has broader family definitions, only a minority of paid family leave claims are to care for a seriously ill family member; the overwhelming majority of paid family leaves are for bonding with a child.¹⁸ And when paid family leave is used to care for a family member, a tiny percentage of these claims are used to care for extended relatives, like grandparents, siblings, and domestic partners. The evidence shows that a broad family definition provides important protection to some individuals without leading to a significant increase in usage or uptake.^{19, 20}

5

The PFML implementation process should be simple and minimize the administrative responsibilities of small business owners.

Once again, it is useful to look at existing state policies to identify best practices. As mentioned above, the federal program should build off and align with existing laws and administrative programs [i.e., FMLA, the Social Security Administration, the Temporary Disability Insurance] to maximize program efficiency, reduce transition costs, and ease coordination.

The passage of a new law can generate considerable anxiety for small business owners, many of whom have no separate human resource department. Small business owners need assistance from the federal government to understand their new obligations and minimize compliance errors. A PFML program should include a dedicated funding stream for employer outreach and education; clear, accessible resources should be available for businesses seeking to comply with the new law. Research from state programs have found that fellow business owners are the most effective messengers; government should partner with small business owners to perform targeted outreach.

Furthermore, the employee, not the employer, should be responsible for filing a leave claim and for providing the verifying materials to the government [such as the medical documentation], as is done in Rhode Island's Temporary Disability Program. The administering agency, in turn, would determine whether an applicant meets the program eligibility criteria, through verifying that a qualifying condition has occurred and establishing the appropriate length of leave for the qualifying condition. This would not only minimize the responsibility on the employer, but ensure employee privacy and sidestep potential HIPAA concerns.

Finally, a grace period for compliance should be available for small business owners as they adjust to their new responsibilities and work through any unexpected complications.

6

PFML program should be sensitive to the unique workforce challenges facing small business owners.

For small business owners, particularly micro-businesses or mom-and-pop shops, an extended employee absence may raise concerns about additional costs or workload burdens. Though evidence from California's PFML program suggest that these concerns are largely overblown,²¹ additional support from the administering agency could do much to alleviate lingering doubts.

At the minimum, education and technical assistance to support businesses in adapting to limited staffing could be valuable. For instance, the administering agency could develop a module or pamphlet that identifies and trains business owners on best practices and creative strategies to use whenever an absent employee needs to be covered. Additional, small policy provisions could help business owners plan for absences or pay for additional support. For instance, New York's PFML law requires an employee to give 30 days-notice before taking leave, if the need for leave is foreseeable because of an expected birth or planned medical treatment.

Additionally, a targeted tax credit for small businesses could help defray the added cost of an absent employee. Eligible for only the smallest business owners [e.g., fewer than ten employees], this tax credit would kick in once an employee is out for an extended period [e.g., four weeks]. The tax credit amount would be a percentage of the employee's salary for the time they are out [i.e., ten percent for four weeks] and could be paid for either through the existing payroll tax or federal funds. Designed this way, the tax credit would be affordable, since most leave takers use fewer than four weeks, the credit amount would be minimal, and the eligible businesses relatively few. Combined with the extra salary from the employee on leave, this tax credit could go a long way to supporting those businesses under the greatest strain.

CONCLUSION

For far too long, business owners, their employees, and the larger economy have suffered because of a lack of PFML leave. We now have an unprecedented opportunity to change this and pass a national policy that keeps pace with the needs of today's workforce while benefitting small business owners. The Main Street Alliance believes that the above policy recommendations, based on the guidance of our business owners and lessons from state and national programs, provide the most successful roadmap forward for a successful, effective, and practical national PFML program.

We now have an unprecedented opportunity to change this and pass a national policy.



ENDNOTES

¹In the summer of 2016, Main Street Alliance staff surveyed 1,572 small business owners from Washington, Oregon, San Diego, Minnesota, Ohio, Iowa, Vermont, New York, New Jersey, Maine, Florida, Connecticut, and Washington D.C. Results are unpublished but available through correspondence with the author at press@mainstreetalliance.org.

²The Cost of Doing Nothing: The Price We All Pay Without Paid Leave Policies to Support America's 21st Century Working Families [2015, September 4]. Department of Labor. Accessed October 26, 2016, from <https://www.dol.gov/featured/paidleave/cost-of-doing-nothing-report.pdf>.

³Appelbaum, E. & Milkman, R. [2011]. Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California. Center for Economic and Policy Research Publication, from www.cepr.net/index.php/publications/reports/leaves-that-pay.

⁴Boushey, H., & Glynn, S. [2012, November 16]. There Are Significant Business Costs to Replacing Employees. Center for American Progress Publication. Retrieved 25 October 2016, from <https://cdn.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>.

⁵See note 3.

⁶Appelbaum, E., & Milkman, R. [2013]. Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy [pp. 78-79]. Ithaca, NY: Cornell University Press.

⁷See note 3.

⁸Lerner, S., & Appelbaum, E. [2014, June]. Business as Usual: New Jersey Employers' Experiences with Family Leave Insurance. Center for Economic and Policy Research Publication. Accessed 25 October 2016, from <http://www.cepr.net/documents/nj-fli-2014-06.pdf>.

⁹Voices of Main Street [October 2015]. Main Street Alliance. Accessed 25 October 2016, from https://d3n8a8pro7vhm.cloudfront.net/mainstreetalliance/pages/9/attachments/original/1445897235/VOICES_OF_MAIN_STREET.pdf?1445897235.

¹⁰Klerman, J., Daley, K., and Pozniak, A. [2012]. Family and Medical Leave in 2012: Technical Report, Cambridge, MA: Abt Associates [Prepared for the U.S. Department of Labor]. Accessed 25 October 26, from <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report>.

¹¹See note 10.

¹²See note 3.

¹³Ramirez, M. [2012]. New Jersey Business and Industry Association: The Impact of Paid Family Leave on New Jersey Businesses. Bloustein School of Planning and Public Policy, Rutgers University. Last accessed 25 October 2016, at <http://policy.rutgers.edu/academics/projects/presentations/AFE2012/Ramirez.pdf>.

ENDNOTES

¹⁴See note 3.

¹⁵See note 13.

¹⁶For instance, one of Main Street Alliance business owners had to take a considerable amount of time away from his business to care for his dying sister, who resided in another state.

¹⁷As reported in <https://www.leg.state.mn.us/docs/2016/mandated/160419.pdf>. In addition to studies from California, this statement is based on interviews conducted in November 2015 with staff from the California Economic Development Department, the agency that enforces the California program.

¹⁸In 2014, only 11.9% of claims processed in CA, 18% of eligible claims in NJ, and 27.8% of claims in RI were to care for a seriously ill family member.

¹⁹See Paid Family Leave Market Research, Andrew Chang & Co. for the California Employment Development Department [2015], p. 31, http://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf; Family Leave Insurance Workload in 2014: Summary Report, New Jersey Department of Labor and Workforce Development, Office of Research and Information [October 2015], http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/FIL%20Summary%20Report%20for%202014.pdf

²⁰TDI Annual Update: January-December 2014, Rhode Island Department of Labor and Training [2015], p. 1, <http://www.dlt.ri.gov/lmi/pdf/tdi/2014.pdf>. TDI Annual Update: January-December 2015, Rhode Island Department of Labor and Training, p. 2, <http://www.dlt.ri.gov/lmi/pdf/tdi/2015.pdf>.

²¹Multiple surveys of California businesses found no additional cost increases associated with absent workers. Employers typically covered the work of employees on leave by assigning the work temporarily to other employees. Indeed, most employers (86.9 percent) indicated that the introduction of paid family leave had not resulted in increased costs associated with covering the work of absent employees.