

# Learning from the Past: How Prior Federal Legislative Efforts Can Inform Future Legislative Strategies

## Implications for a National Paid Family and Medical Leave Bill

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*Learning from the Past: How Prior Federal Legislative Efforts Can Inform Future Legislative Strategies* analyzes the key features of six legislative efforts between the late 1980s and 2018 and the strategies that contributed to their success or failure, in order to guide the development of future legislative campaigns and, more specifically, efforts to advance comprehensive national paid family and medical leave legislation.

Among high-wealth countries, the United States stands out as the only one to not guarantee new mothers access to paid maternity leave, one of a handful not to guarantee non-birth parents access to parental leave, and one of only a few to not guarantee access to medical or sick leave benefits (OECD, 2019; Raub et al., 2018). The Family and Medical Leave Act (FMLA) of 1993—which provides for up to 12 weeks of unpaid, job-protected leave to address a personal health condition or to care for a new child or seriously ill family

member—covers less than 60 percent of private-sector workers, and the unpaid nature of this leave makes the benefit inaccessible to many (Brown et al., 2020; Klerman et al., 2012).

In the absence of a federal paid leave law, several states have adopted paid family and medical leave programs over the past 18 years, creating a growing body of evidence that paid leave has myriad health, economic, and labor force benefits (Shabo, 2020a).<sup>1</sup> Prior to the COVID-19 pandemic, this momentum—spurred by decades of hard work by advocates—created growing receptivity among private-sector leaders and members of Congress towards advancing a national-level paid leave program.

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<sup>1</sup> Eight states plus the District of Columbia have enacted paid family and medical leave legislation over the last two decades. Programs in California, New Jersey, New York, Rhode Island, Washington, and the District of Columbia were providing benefits as of July 2020 and Massachusetts will make benefits available in January 2021, Connecticut in 2022, and Oregon in 2023.

The COVID-19 pandemic has only underscored the broader public health implications of the status quo. For the first time, Congress guaranteed access to paid leave for some private-sector workers, but only for a limited period of time and for pandemic-specific purposes. At the beginning of the pandemic, Congress included a COVID-related paid sick leave benefit for employees in covered workplaces as a part of the Families First Coronavirus Response Act (FFCRA). Congress also considered a longer duration of family and medical leave for COVID-19 purposes but only adopted an extended paid leave benefit for parents who are unable to access child care or whose children are out of school as a result of the pandemic. Even as the devastating consequences of the spread of COVID-19 make the necessity of widely accessible paid leave increasingly clear, significant barriers to the passage and implementation of a national paid family and medical leave program remain.

## Findings in Brief

**Part I of the report** explains our methodology; the theories from political science, sociology and public policy research that we applied; and the five factors we examined with respect to each case study. It also summarizes each prior legislative effort we studied: the Medicare Catastrophic Coverage Act of 1988; the Medicare Catastrophic Coverage Repeal Act of 1989; the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003; the failed 2009 cap-and-trade effort; the Healthy, Hunger-Free Kids Act of 2010; and the FIRST STEP Act of 2018. Each case was chosen with the goal of extracting big-picture lessons that can guide the development of successful legislative strategies for paid family and medical leave legislation. The cases selected were not intended to be, and are not, representative of all legislation. They come from diverse policy areas touching on health care, international development, energy and the environment, food and child nutrition, and law enforcement that span a 30-year period between 1988 and 2018.

**Part II of the report** analyzes the diverse set of case studies with respect to government actors, individuals and organizations outside of government, the broader political and policy context, contextual factors and focusing events, and policy frames. It presents key takeaways for each category of analysis that may be applicable to future legislative efforts. Although our analyses were conducted with an eye towards the enactment of a national paid family and medical leave proposal, we believe these insights and lessons may also help advocates and practitioners interested in pursuing other legislative policies.

Our findings illustrate the importance of relationship building, strategic thinking, flexibility in seizing unexpected opportunities, deliberate marketing, and creativity in pursuing legislative objectives. It also provides advocates and policymakers with tangible examples of how these dynamics can help create incentives among members of Congress and other key stakeholders to reach agreement on legislation.

**Part III of the report** applies key insights from our analyses to national paid family and medical leave campaign efforts. We intend for this part of the report to augment advocates' ongoing efforts to identify strategies for gaining and leveraging the support of key political actors both within and outside of government, shaping legislative tactics, utilizing legislative policy and political conditions and external focusing events and trends to their advantage, and developing policy frames that have the potential to help advance their legislative objectives and inoculate against attacks.

The key insights we examine in Part III are summarized below to serve as a quick guide for advocates.

## Government Actors

The report considers the roles that various government actors including committee leaders, party leaders, other engaged members of Congress, partisan congressional teams, the president, and government actors who have the president's ear played in shaping legislative outcomes.

Based on findings from our case study analyses, advocates should:

- Understand deeply the positions held by legislators on relevant committees
- Cultivate relationships with Democratic and Republican legislators on relevant committees
- Work closely with congressional sponsors and champions on every aspect of strategy and policy, including counseling them to go further or moderate their efforts when necessary, depending on political context
- Educate and facilitate educational opportunities for legislators, especially those with strong potential connections to the issue, jurisdiction over the legislation, or outsized influence over other members
- Work to secure majority party leadership's support and prioritization
- Seek support or at least neutrality from minority party leaders and influencers
- Press for presidential endorsement and prioritization of the proposal
- Identify and support champions within the executive branch who can press from the inside

## Individuals and Organizations Outside of Government

The report looks at actors outside of government, including advocacy groups and coalitions, industry groups, researchers, state and local officials, and outside influencers to examine their role in affecting the proposals we studied as they made their way through the legislative process.

Based on findings from our case study analyses, advocates should:

- Detail and quantify the benefits of a proposal to constituents for legislators
- Speak with, but not for, beneficiaries—and maintain open lines of communication with public-facing local organizations that have similar goals
- Include state-level advocates in discussions about legislative content and strategy to ensure federal legislation follows best practices from states
- Coordinate messaging and outreach with other advocacy groups, determining strategically the optimal mix of speaking with a unified voice through one spokesperson and using a variety of messages and messengers
- Start messaging campaigns early and aim for intensity across the local, state, and national levels, with special attention to geographies that are legislatively significant
- Be strategic in the formation of left/right or non-profit/for-profit alliances: the goal of these is to be inclusive, in order to mobilize bipartisan cooperation—but not at the cost of harming the integrity and vision of the proposal
- Be prepared for opposition from industry groups and from legislators who represent these interests
- Avoid making compromises early, and never without reason
- Identify celebrities who may wield influence over the president and inspire the public, and determine whether the investment in courting them is worthwhile
- Leverage high-quality research that quantifies the benefits of proposal while watching out for and countering the misuse of research by opponents

## Political and Policy Context

The report examines the influences of partisan demands, including the timing of elections and the strategic consideration of legislative pathways, as well as the degree to which new proposals build on existing legislative ideas and policy content to analyze the effectiveness of legislative strategies.

Based on findings from our case study analyses, advocates should:

- Advocate to the president and allies within the executive branch to have the proposal included in State of the Union and the president's budget proposal
- Strategically time bill introduction to maximize helpful political dynamics or moments ripe for public attention
- Have separate, detailed political strategies for moving a piece of legislation through each chamber of Congress
- Map out potential compromises early and consider under what conditions those compromises could become acceptable
- Be mindful of the relationship between financing and benefits

## Contextual Factors and Focusing Events

The report explores the ways in which external factors, such as shifts in the country's political mood and public attention; the release of new information; economic, demographic or social dynamics; international or domestic crises; or other kinds of dramatic happenings can contribute to the successful passage of substantive policies.

Based on findings from our case study analyses, advocates should:

- Highlight the ways in which a proposal addresses current crises and salient trends
- Anticipate opportunities and obstacles posed by the broader economic context
- Be mindful of opportunities and obstacles posed by changes in the political climate and focusing events such as scandals
- Design policy and messaging that accounts for the public's faith in institutions and public opinion about the role of government in people's lives

## Policy Frames

The report considers the ways in which politicians, advocates and the media frame arguments for and against a policy idea, and how this framing can affect legislative outcomes.

Based on findings from our case study analyses, advocates should:

- Be transparent about costs while emphasizing the value and scope of benefits
- Look for opportunities to frame a proposal around valuing and honoring families and the protection of vulnerable groups like babies, children or older loved ones
- Use personal stories in ways that reinforce the current lack of access to paid leave as a societal, structural failing and not an individual one
- Frame a proposal as building on state-level successes

## Concluding Thoughts

As we enter the fall of 2020, many would argue that the United States is at a crossroads with respect to taking policy actions related to public health, racial injustice, gender inequity and economic inequality. Paid family and medical leave would help to address each of these issues and is a policy ripe for serious consideration and enactment at the federal level. Recent congressional engagement on the issue has built on several years of rapid state-level progress. Advocates on the left have been working for decades to lay the groundwork for a national paid leave policy and have been joined more recently by advocates from the center and the right. 2021 may provide a new opportunity for action.

Success stories from states, a growing body of compelling research, and effective national coalition work has moved this policy issue further onto the national agenda than ever before—and the opportunities to advance this policy in the coming months and years are exciting. Much work remains, however. In reflecting on other federal initiatives, we find opportunities for advocates to continue to build on the lessons of past efforts to hone their legislative strategies and channel advocacy efforts as efficiently as possible. Overall, we hope this report will accelerate progress to the day when the United States is a country that guarantees paid family and medical leave for all.