

Paid Family and Medical Leave: Current Policy and Legislative Proposals in the 116th Congress

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The Family and Medical Leave Act of 1993 (FMLA; P.L. 103-3, as amended) is the primary federal policy governing family and medical leave. Under FMLA, eligible workers are provided with a federal entitlement to unpaid leave for a limited set of family caregiving and medical needs. With few exceptions, FMLA guarantees only *unpaid leave*. Recently, Congress has expanded access or created incentives for expanded access to paid family and medical leave for certain groups of workers, in some cases temporarily. Starting October 1, 2020, most federal civil service employees eligible for FMLA leave will have a paid parental leave benefit. Additionally, through 2020, Internal Revenue Code (IRC) Section 45S allows a tax credit designed to encourage private-sector employers to provide paid family and medical leave. The Families First Coronavirus Response Act (FFCRA; P.L. 116-127, as amended) created a temporary entitlement for certain worker groups to partially paid FMLA leave to care for the employee's minor child whose school or place of care is closed, or whose care provider is unavailable due to the Coronavirus Disease 2019 (COVID-19) public health emergency; this entitlement applies to leave taken between April 1 and December 31, 2020.

Legislators in the 116th Congress have put forth numerous proposals that would provide paid leave for at least some FMLA-related purposes. One proposal, the Family and Medical Insurance Leave Act (H.R. 1185, S. 463), or the FAMILY Act, would create a new social insurance program to provide up to 60 days per year of paid family or medical leave. Payments from the new social insurance program would equal about two-thirds of income, up to \$4,000 per month. The new benefit would be financed with a 0.2% payroll tax on workers and employers, such that the combined tax rate on covered employment wages and self-employment income would be 0.4%.

Other proposals would modify existing entitlement programs. The New Parents Act of 2019 (H.R. 1940, S. 920) would effectively allow new parents to temporarily access Social Security retirement benefits before the current-law eligibility age. In return, parents who elected to receive benefits upon the arrival or adoption of a new child would accept an increase in their retirement age or receive reduced Social Security benefits at their current-law retirement age. The delay in retirement benefit receipt or reduction in individuals' Social Security benefits would be expected to largely offset the cost of providing up to three months of benefits for new parents.

Several tax policy proposals would either provide temporary tax savings, or create a tax incentive for private savings, to financially support family (largely parental) leave or medical leave taking. The Advancing Support for Working Families Act (S. 2976, H.R. 5296) is not explicitly linked to leave taking following the birth of a child, but would effectively allow taxpayers to reduce their tax liability (which for many taxpayers can mean a larger tax refund) upon the arrival of a child, with these funds being repaid through an increase in individual income tax liability over time. The Supporting Working Families Act (S. 2437) would allow taxpayers the option to receive a refundable parental leave tax credit. The tax credit would later be repaid through increased taxes during a future recapture period. The Working Parents Flexibility Act of 2019 (H.R. 1859) would create a tax-advantaged parental leave savings account. The Freedom for Families Act (H.R. 2163) would allow taxpayers to use health savings accounts (HSAs) to self-finance periods of family or medical leave. These policies generally do not guarantee access to leave or protect workers' jobs if they take leave. Instead, they aim to reduce the financial burden associated with individuals' leave taking.

Lawmakers in the 116th Congress have been exploring various paid family and medical leave policy options. In the House, the Committee on Ways and Means has held hearings on paid family and medical leave. In 2019, the Senate Finance Committee established a bipartisan Finance Committee working group to "consider the issue of federal paid family leave policy." This report discusses legislative proposals in the 116th Congress designed to either provide or promote access to paid family or medical leave.

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Lawmakers in the 116th Congress have been exploring various paid family and medical leave policy options. In the House, the Committee on Ways and Means has held hearings on paid family and medical leave.¹ In 2019, the Senate Finance Committee established a bipartisan Finance Committee working group to “consider the issue of federal paid family leave policy.”² As discussed in this report, there are several legislative proposals designed to either provide or promote access to paid family or medical leave.

There is broad support for family and medical leave policies that provide employees with financial security when circumstances require them to take leave from work for their own serious medical needs or to care for their child or a family member.³ There is less consensus, however, as to what the federal role should be in providing or ensuring that leave is available to all employees. There are also questions about who should pay for paid leave: the federal government (through tax revenue), employers, or employees?

Currently, access to paid family and medical leave varies across worker groups. Higher-wage workers are more likely to have access to paid family leave than workers in the lower part of the wage distribution.⁴ Access to paid family leave also varies across industries. Those in management or professional fields are more likely to have access to paid family leave than those in other industries. Large employers are more likely to provide paid family leave than small ones. There is also geographic variation in access to paid family and medical leave. Some states have created state-level paid family and medical leave programs, which provide cash benefits to eligible workers.⁵

This report provides an overview of current federal family and medical leave policies. It then discusses proposals in the 116th Congress, including proposals that would create a new social insurance program, proposals related to the federal workforce, and tax policy proposals. For background information, as well as information on state-level paid family and medical leave policies, see CRS Report R44835, *Paid Family and Medical Leave in the United States*, by Sarah A. Donovan.

Family and Medical Leave: Current Federal Policies

The Family and Medical Leave Act of 1993 (FMLA; P.L. 103-3, as amended) is the primary federal policy governing family and medical leave. Under FMLA, eligible workers are provided with a federal entitlement to unpaid leave for a limited set of family caregiving and medical

¹ U.S. Congress, House Committee on Ways and Means, *Paid Family and Medical Leave: Helping Workers and Employers Succeed*, 116th Cong., May 8, 2019, at <https://waysandmeans.house.gov/legislation/hearings/paid-family-and-medical-leave-helping-workers-and-employers-succeed-0>; and U.S. Congress, House Committee on Ways and Means, *Legislative Proposals for Paid Family and Medical Leave*, 116th Cong., January 21, 2020, at <https://waysandmeans.house.gov/legislation/hearings/legislative-proposals-paid-family-and-medical-leave>.

² United States Senate Committee on Finance, “Grassley, Wyden Convene Finance Committee Paid Family Leave Working Group,” press release, May 22, 2019, at <https://www.finance.senate.gov/chairmans-news/grassley-wyden-convene-finance-committee-paid-family-leave-working-group>. An update on the working group’s work, as of March 6, 2020, can be found at <https://www.finance.senate.gov/download/paid-leave-update>.

³ Yuki Noguchi, “Paid Family Leave Gains Momentum in States as Bipartisan Support Grows,” NPR, March 5, 2019, at <https://www.npr.org/2019/03/05/698336019/paid-family-leave-gains-momentum-in-states-as-bipartisan-support-grows>.

⁴ Data on paid family and medical leave access by worker and employer establishment characteristics can be obtained from the Bureau of Labor Statistics, Employee Benefits Survey. The most recent data on paid leave benefits are for March 2019, available at https://www.bls.gov/ncs/ebs/benefits/2019/benefits_leave.htm.

⁵ CRS Report R44835, *Paid Family and Medical Leave in the United States*, by Sarah A. Donovan.

needs. With the exception of a temporary paid leave entitlement created in response to the Coronavirus Disease 2019 (COVID-19) public health emergency, no federal law requires private-sector employers to provide paid leave of any kind.⁶ Starting October 1, 2020, most federal civil service employees who are eligible for FMLA leave will have a paid parental leave benefit. Additionally, through 2020, there is a tax credit designed to encourage private-sector employers to provide paid family and medical leave. Other federal policies, such as those that allow borrowing of or early access to retirement funds, may also support individuals during periods of leave taking.⁷ Summary information for key federal leave-related laws discussed in this section is presented in **Table 1**.

The Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act of 1993 (FMLA; P.L. 103-3, as amended) entitles eligible employees to unpaid, job-protected leave for certain family and medical needs, with continuation of group health plan benefits.⁸ The FMLA requires that covered employers grant up to 12 workweeks of leave in a 12-month period to eligible employees for one or more of the following reasons:

- the birth and care of the employee's newborn child, provided that leave is taken within 12 months of the child's birth;
- the placement of an adopted or fostered child with the employee, provided that leave is taken within 12 months of the child's placement;
- to care for a spouse, child (generally a minor child), or parent with a serious health condition;⁹
- the employee's own serious health condition that renders the employee unable to perform the essential functions of his or her job; and
- qualified military exigencies if the employee's spouse, child (of any age),¹⁰ or parent is a covered military member on covered active duty.

In addition, the act provides up to 26 workweeks of leave in a single 12-month period to eligible employees for the care of a covered military servicemember (including certain veterans) with a serious injury or illness that was sustained or aggravated in the line of duty while on active duty.

⁶ The Families First Coronavirus Response Act (FFCRA; P.L. 116-127) created two new and temporary leave benefits for eligible employees: (1) emergency Family and Medical Leave Act (FMLA) leave to care for the employee's minor child whose school or place of care is closed, or whose care provider is unavailable due to the COVID-19 public health emergency (such leave is paid leave after an initial 10 days of unpaid leave), and (2) paid sick leave for certain COVID-19-related needs. The FFCRA included tax credit provisions to help employers (including the self-employed) cover costs related to paid leave. Both paid leave benefits took effect on April 1, 2020, and apply to leave between April 1, 2020, and December 31, 2020. Additional information on the FFCRA temporary paid leave entitlements is in CRS In Focus IF11487, *The Families First Coronavirus Response Act Leave Provisions*, by Sarah A. Donovan and Jon O. Shimabukuro.

⁷ For example, the Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted as Division O to the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), contained a provision allowing penalty-free IRA distributions of up to \$5,000 for one year following a qualified birth or adoption. Generally, retirement plan distributions made before an individual is 59½ are subject to a 10% penalty. This policy is not tied to leave taking and therefore is not discussed in detail in this report.

⁸ See 29 U.S.C. Chapter 28. For additional information on the Family and Medical Leave Act (FMLA), see CRS Report R44274, *The Family and Medical Leave Act: An Overview of Title I*, by Sarah A. Donovan.

⁹ Under the FMLA, a serious health condition is one that requires inpatient care or continuing treatment by a health care provider. See 29 U.S.C. §2611(11) and 29 C.F.R. §825.113-115 for definitions.

¹⁰ See 29 C.F.R. §825.102.

FMLA leave has four fundamental characteristics:

- It is an entitlement, which means that, unlike other forms of leave (e.g., vacation days), it must be granted to an eligible employee with an FMLA-qualifying need for leave who meets the act's notification and documentation requirements.
- FMLA guarantees unpaid leave, but provides that employees may elect to substitute (or employers may require the substitution of) certain types of accrued paid leave for unpaid FMLA leave, within the constraints of employer policy.
- FMLA leave is job-protected, which means that—with few exceptions—an employer must return the employee to the same job or to one that is equivalent in terms of pay, benefits, working conditions, and responsibilities to the one held prior to taking leave.
- Preexisting group health benefits must be maintained during the employee's absence under the same conditions that were in place prior to taking leave.

FMLA eligibility is defined in terms of an employee's work history with her or his current employer. Workers covered by Title 29 FMLA provisions (private sector, state and local governments, and some federal workers) must work for a covered employer for at least 12 months and have worked at least 1,250 hours the 12 months prior to the start of leave.¹¹ The employer must also employ at least 50 or more employees within 75 miles of the employee's worksite. Most federal civil service employees are covered by Title 5 FMLA provisions; such employees must only meet a 12-month service requirement for eligibility.¹²

Employees must provide a 30-day advance notice to employers when the need for leave is foreseeable based on an expected birth or a scheduled medical treatment. Otherwise, notice must be provided as soon as practicable. In general, the FMLA does not include a return to work requirement (separate rules apply to certain federal workers), but allows some employers to recover their share of health benefit premiums paid during a period of FMLA leave if the employee does not return to work following the expiration of the employee's leave entitlement, with some exceptions.¹³

Federal Employees

Federal civil service employees are entitled to paid sick leave and paid annual leave as workplace benefits, and both may be used for certain family and medical leave needs. Full-time federal employees can earn up to 13 days of sick leave per year and are entitled to use such leave for personal medical needs, care of a family member, the death of a family member, and the adoption of a child.¹⁴ Sick leave may not be used to bond with a healthy child. Federal employees can earn between 13 and 26 days of annual leave, which may be used for any purpose, subject to a supervisor's approval of the timing of leave.¹⁵

¹¹ Private-sector employers are covered by the act if they engaged in commerce and had 50 or more employees for 20 weeks in the current or previous calendar year. Federal, state, and local governments are covered employers regardless of their staffing levels in the previous or current calendar year. Separate hours-of-service requirements apply to airline flight crew employees.

¹² 5 U.S.C. §6381(1).

¹³ 29 U.S.C. §2614(c)(2).

¹⁴ 5 U.S.C. §6307 and 5 C.F.R. §630.401.

¹⁵ 5 U.S.C. §6303 and U.S. Office of Personnel Management (OPM), *Fact Sheet: Annual Leave*, at <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/annual-leave/>.

The National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA, P.L. 116-92) amended the FMLA to provide a new paid parental leave benefit to most federal civil service employees. Covered federal employees may use up to 12 weeks of paid parental leave for the arrival of a new child by birth, adoption, or foster care placement and for bonding with that child. The leave is available for children born to or placed with the employee on or after October 1, 2020, and must be used within 12 months of the child's arrival. This leave is in addition to federal employees' annual and sick leave benefits. The paid parental leave benefit must be used together with the employee's FMLA leave entitlement.

There are some differences between legislative branch employees' access to paid parental leave benefits and those of the broader federal civil service. Federal civil service employees must meet the FMLA eligibility requirement (i.e., 12 months of service). In contrast, the FMLA eligibility requirements for legislative branch employees covered by the Congressional Accountability Act (CAA, P.L. 104-1) and for Government Accountability Office (GAO) employees do not apply to the paid parental leave benefit (i.e., such workers are immediately eligible for paid parental leave benefits). In addition, use of the paid parental leave benefit by federal civil service employees is conditioned upon an agreement from the employee that he or she will return to work for the employing agency for 12 workweeks following the conclusion of that leave. Should an employee fail to do so and if certain conditions enumerated in the act do not apply, the employing agency may recoup its contributions to the employee's health care premiums made during the period of leave. No such requirement is provided for legislative branch employees covered by the CAA or for GAO employees.

Table 1. Family and Medical Leave: Current Federal Policies

	Family and Medical Leave Act (FMLA)	Paid Parental Leave for Federal Civil Service Employees	Employer Tax Credit
General Overview	Provides an entitlement to unpaid, job-protected leave for certain family and medical needs, with continuation of group health care benefits.	Provides 12 weeks of paid parental leave. To claim the paid leave benefit, employees must invoke their rights to FMLA-protected leave for the arrival and care of a new child.	Tax credit for employers who provide paid family and medical leave to their employees.
Effective Years	Took effect on August 5, 1993, with no expiration date.	Takes effect on October 1, 2020, with no expiration date.	Taxable years beginning in 2018, 2019, or 2020.
Qualifying Events	<p>For the arrival of the employee's child by birth, adoption, or foster care placement, and to care for that child within the first 12 months after arrival (i.e., <i>parental leave</i>).^a</p> <p>To care for a spouse, child, or parent with a serious health condition.^b</p> <p>The employee's own serious health condition that renders the employee unable to perform the essential functions of his or her job.</p> <p>Certain military family needs.^c</p>	<p>For the arrival of the employee's child by birth, adoption, or foster care placement, and to care for that child within the first 12 months after arrival (i.e., <i>parental leave</i>).^a</p>	Providing leave that is specifically designated for one or more FMLA purposes. Employers may elect to forego the tax credit for any tax year.
Eligibility	<p>In general, 12 months of employment and 1,250 hours of employment with current employer, and work at a worksite with at least 50 employees in a 75-mile radius.^d</p> <p>Most federal civil service employees must have 12 months of service before taking FMLA leave.^e</p> <p>No eligibility requirements for legislative branch employees covered by the Congressional Accountability Act (CAA, P.L. 104-1) and GAO employees who take FMLA <i>parental leave</i>.</p>	<p>In general, 12 months of service before taking leave.</p> <p>No eligibility requirements for legislative branch employees covered by the CAA or for GAO employees.</p>	<p>An eligible employer is a taxable employer (i.e., subject to the federal income tax) that has a written policy that covers all qualifying employees. An employer must provide at least 2 weeks of annual paid family and medical leave to full-time employees to be tax-credit eligible. The leave rate of payment must be at least 50% of the wages normally paid to employees for an employer's leave policy to be tax-credit eligible.</p> <p>Qualifying employees are those who (1) have been employed by the employer for at least one year; and (2) did not have previous-year compensation in excess of 60% of the amount determined for highly compensated employees under IRC §414(q)(1)(B)(i), or \$72,000 in 2018.</p>

	Family and Medical Leave Act (FMLA)	Paid Parental Leave for Federal Civil Service Employees	Employer Tax Credit
Benefit Duration	Up to 12 weeks of unpaid leave in a 12-month period. ^f Employees are also entitled to 26 weeks of leave in a <i>single</i> 12-month period to care for a seriously ill or injured covered military servicemember. ^g	Up to 12 weeks of paid parental leave in a 12-month period. ^f	Up to 12 weeks in paid leave may be taken into account for the purposes of computing the tax credit.
Benefit Amount	FMLA leave is unpaid.	Employee's regular pay rate.	The tax credit is computed as wages paid to a qualifying employee multiplied by an applicable percentage. The applicable percentage is 12.5% if paid leave wages are 50% of wages normally paid. The applicable percentage increases by 0.25 for each percentage point by which paid leave wages exceed 50% of wages normally paid, until the maximum applicable percentage of 25% is reached.
Interaction with Other Benefits	An employee's group health insurance coverage is maintained during FMLA leave on the same terms as if he or she had continued to work. FMLA leave may be used concurrently with employer-provided paid leave (e.g., annual or sick leave). However, employers are not required to approve paid sick leave for uses that are not covered under the employer's sick leave policy.	The paid parental leave benefit must be used concurrently with FMLA leave, drawing down the employee's FMLA leave entitlement. As such, an employee's group health insurance coverage is maintained during FMLA leave on the same terms as if he or she had continued to work.	The tax credit cannot be claimed for leave paid by a state or local government or required by state or local law.
Job Protection	In general, yes. ^h The FMLA provides, with few exceptions, that an employee is entitled, upon return from FMLA leave, to be restored to the position held by the employee when the leave commenced; or to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.	In general, yes, because the paid leave is used together with FMLA leave, which is job protected.	Similar to FMLA. If an employer employs qualifying employees who are not covered by title I of the FMLA, the employer's written policy must include language providing "non-interference" protections.

	Family and Medical Leave Act (FMLA)	Paid Parental Leave for Federal Civil Service Employees	Employer Tax Credit
Employer Notice or Return to Work Requirements	<p>Employees must provide a 30-day advance notice to employers when the need for leave is foreseeable based on an expected birth or a scheduled medical treatment. Otherwise, notice must be provided as soon as practicable.</p> <p>In general, the FMLA does not include a return to work requirement, but does allow some employers to recover their share of health benefit premiums paid during a period of FMLA leave if the employee does not return to work following the expiration of the employee's leave entitlement, with some exceptions.</p> <p>Effective October 1, 2020, federal employees covered by 5 U.S.C. Chapter 63, subchapter V who use paid leave during periods of FMLA-protected parental leave must agree in writing to return to their employing agency for 12 workweeks at the conclusion of such leave. Should an employee fail to do so and if certain statutory conditions do not apply, the employing agency may recoup its contributions to the employee's health care premiums made during the period of leave.</p>	<p>Because the paid parental leave benefit must be claimed concurrently with FMLA, the FMLA notice requirement applies (i.e., 30-day notice to employers for foreseeable leave).</p> <p>Most federal employees who use paid parental leave or otherwise substitute paid leave (e.g., sick or annual leave) for unpaid leave during periods of FMLA-protected parental leave must agree in writing to return to their employing agency for 12 workweeks at the conclusion of such leave. Should an employee fail to do so and if certain statutory conditions do not apply, the employing agency may recoup its contributions to the employee's health care premiums made during the period of leave. This requirement does not apply to legislative branch employees covered by the CAA or to GAO employees.</p>	Similar to FMLA, but details of employer policies may vary.
Financing	None.	Employing agencies' salaries and expenses accounts.	Reduces federal income tax revenue by reducing employer tax liabilities.

Sources: CRS analysis of the National Defense Authorization Act for FY2020 (FY2020 NDAA, P.L. 116-92), the Family and Medical Leave Act of 1993 (FMLA, P.L. 103-3, as amended), the Congressional Accountability Act (CAA, P.L. 104-1 as amended), and 26 U.S.C. §455.

Notes:

- a. Under FMLA, a child refers to a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.
- b. The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

- c. Eligible employees may use FMLA-protected leave for a qualified military exigency arising from the covered active-duty status of a covered military member who is the employee's spouse, child, or parent, and to care for a covered military servicemember (including certain veterans) with a serious injury or illness that was sustained or aggravated in the line of duty while on active duty, if the eligible employee is the covered servicemember's spouse, child, parent, or next of kin.
- d. These provisions apply to private-sector and state and local government employees, and federal employees not covered by FMLA provisions at 5 U.S.C. Chapter 63, subchapter V. Legislative branch employees covered by the CAA and GAO employees must also have worked 1,250 hours in the 12 months preceding leave, unless the hours-of-service requirement is waived in rules or regulations governing the legislative branch agency's personnel management system.
- e. This applies to federal employees covered by 5 U.S.C. Chapter 63, subchapter V.
- f. The employer determines how the 12-month period is calculated (e.g., calendar year, fiscal year, 12 months starting on the first day of leave).
- g. The combination of military caregiver leave and other FMLA-qualified leave cannot exceed 26 weeks in a 12-month period that starts on the first day that military caregiver leave is used. FMLA leave used for the arrival and care of a new child, serious health conditions, and qualified military exigencies is always capped in total at 12 workweeks in the 12-month period. See 29 C.F.R. §825.127(e).
- h. Private-sector employers, state and local governments, and certain federal employers may deny job reinstatement to certain highly paid, salaried employees—called *key employees*—if doing so is “necessary to prevent substantial and grievous economic injury to the operations of the employer”; 29 U.S.C. §2614(b).

Employer Tax Credit for Paid Family and Medical Leave

An employer tax credit for paid family and medical leave (PFML) can be claimed by employers providing paid leave (wages) to employees under the FMLA.¹⁶ The credit can be claimed for wages paid during tax years that begin in 2018, 2019, and 2020. Only taxable employers, those subject to federal income taxes, can claim the tax credit.

The credit amount is equal to up to 25% of PFML wages paid to qualifying employees.¹⁷ The credit can only be claimed for PFML provided to certain employees with incomes below a fixed threshold.¹⁸ For credits claimed in 2019, employee compensation in 2018 cannot have exceeded \$72,000. The amount of PFML wages for which the credit is claimed cannot exceed 12 weeks per employee per year. Further, all full-time employees must be provided at least two weeks of PFML for an employer to be eligible to claim the credit. Tax credits cannot be claimed for leave paid by state or local governments, or for leave that is required by state or local law. To claim the credit, an employer must have a written family and medical leave policy in effect. The policy cannot exclude certain classifications of employees, such as unionized employees.

The employer credit for paid family and medical leave was added to the IRC in the 2017 tax revision (P.L. 115-97; commonly referred to as the Tax Cuts and Jobs Act). Initially, the credit was effective for wages paid in 2018 and 2019. The credit was extended for one year, through 2020, by the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).¹⁹

Paid Family and Medical Leave: Legislative Proposals in the 116th Congress

Legislators in the 116th Congress have put forth numerous proposals that would provide paid leave for at least some FMLA-related activities.²⁰ The proposals reflect the wide range of policy options that legislators can use to pay cash benefits for family leave or medical leave. For instance, the Family and Medical Insurance Leave Act would create a new social insurance program, whereas the New Parents Act would extend the benefits of an already existing social insurance program. Summary information for the proposals discussed in this section is presented in **Table 2**.

¹⁶ 26 U.S.C. §45S. For additional information, see CRS In Focus IF11141, *Employer Tax Credit for Paid Family and Medical Leave*, by Molly F. Sherlock.

¹⁷ The applicable percentage is 12.5% if paid leave wages are 50% of wages normally paid. The applicable percentage increases by 0.25 for each percentage point by which paid leave wages exceed 50% of wages normally paid, until the maximum credit amount of 25% is reached.

¹⁸ A qualifying employee is one who, in the preceding year, did not have compensation in excess of 60% of the amount applicable for a highly compensated employee under the nondiscrimination rules for qualified retirement plans (26 U.S.C. §414(q)(1)(B)).

¹⁹ The Paid Family Leave Pilot Extension Act (S. 1628/H.R. 4964), which was introduced before P.L. 116-94 extended the credit for one year, proposed that the credit be extended through 2022.

²⁰ For the purposes of this report, paid leave legislation does not include proposals that would support caregiving. Examples of legislation in the 116th Congress that would provide support to caregivers include the Americans Giving Care to Elders (AGE) Act (S. 1351) and the Credit for Caring Act of 2019 (S. 1143/H.R. 2730).

Create a New Social Insurance Program: The FAMILY Act

The Family and Medical Insurance Leave Act (H.R. 1185), or the FAMILY Act, was introduced in the House by Representative Rosa DeLauro. Its companion bill, S. 463, was introduced in the Senate by Senator Kirsten Gillibrand. The FAMILY Act would essentially create a new social insurance program administered by the Social Security Administration (SSA). Thus, in addition to the continuing administration of the Old-Age and Survivors Insurance (OASI) program, the Disability Insurance (DI) program, the Supplemental Security Income (SSI) program, and the low-income subsidy for Medicare Part D, SSA's newly established Office of Paid Family and Medical Leave would be responsible for administering benefits payable under the FAMILY Act.²³

To be eligible for benefits under the FAMILY Act, a worker must be insured for Disability Insurance (DI) at the time of application for paid family and medical leave as well as have earned income from employment during the 12 months prior to the application month.²⁴ To be insured for DI, a worker must be *fully insured* and meet a *recency-of-work* requirement. Fully insured status is attained by earning one *credit* or *quarter of coverage* for each calendar year after the worker has turned 21 years old.²⁵ Thus, the number of credits needed to be fully insured increases with the worker's age. Generally speaking, workers must have worked in Social Security covered employment for about one-quarter of their adult lives (i.e., after turning 21 years of age).²⁶ To fulfill the recency-of-work requirement, workers generally need 20 credits during the 40-quarter period prior to disability (or application for benefits in the case of the FAMILY Act).²⁷ This indicates workers must have worked for 5 of the 10 years before disability (or application for paid family or medical leave benefits in the case of the FAMILY Act) to fulfill the recency-of-work

Credits or Quarters of Coverage

Generally speaking, workers become insured for Social Security by earning credits or quarters of coverage (QC) during work in Social Security-covered employment.²¹ The amount needed for a credit or QC increases annually with growth in average earnings in the economy, as measured by Social Security's average wage index.²² In 2020, a worker earns one credit or QC for each \$1,410 of earnings, up to four per year. Therefore, a worker earning \$5,640 in covered employment at any point in the calendar year would be credited with the maximum number (i.e., four) of QCs for that year.

²¹ The SSA Office of the Chief Actuary (OACT) estimates that about 93% of workers in paid employment and self-employment are working in Social Security-covered positions; about 89% of persons aged 21-64 who work in covered employment are insured for DI. SSA, OACT, "Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program," press release, December 31, 2019, at https://www.ssa.gov/oact/FACTS/fs2019_12.pdf.

²² The average wage index is the average of all workers' wages subject to federal income taxes and contributions to deferred compensation plans. It is calculated using some wages that are not subject to the Social Security payroll tax.

²³ The Center for Medicare and Medicaid Services (CMS) administers Medicare, however, individuals can enroll through the Social Security Administration (i.e., at SSA field offices). For more information on CMS, see CRS In Focus IF10885, *Medicare Overview*.

²⁴ At the time of application, the applicant must attest that his or her employer has been notified of the intent to take leave as well as attest to not engaging in "regular employment."

²⁵ Section 214(a) of the Social Security Act; 42 U.S.C. §414(a). See also 20 C.F.R. §404.110.

²⁶ See Social Security Administration (SSA), *How You Earn Credits*, January 2020, at <https://www.ssa.gov/pubs/EN-05-10072.pdf>. A worker in noncovered employment (i.e., not subject to the Social Security payroll tax) would not earn credits needed to become or maintain status for disability insurance. Thus, such a worker would not be eligible for benefits under the FAMILY Act.

²⁷ Section 223(c)(1) of the Social Security Act; 42 U.S.C. §443(c)(1). See also 20 C.F.R. §404.130.

requirement.²⁸ Applicants must also meet the additional FAMILY Act income requirement (i.e., income from employment during the 12 months prior to application) to be eligible for benefits.²⁹

The FAMILY Act would cover most FMLA-related caregiving activities. Workers could apply for benefits under the FAMILY Act for the arrival and care of a new child (through birth, adoption, or foster care placement), for the employee's own serious health condition or the care of a close family member with a serious health condition, and for the provision of certain military family needs.³⁰ While engaged in a qualified caregiving activity, eligible workers could collect benefits for up to 60 days per year—with a limit of 20 days per month. The effective amount of cash benefits paid to eligible workers would be, on a prorated basis, equal to two-thirds of the highest annual income earned in the three-year period prior to application. For instance, a worker whose highest annual income in the three-year period prior to application was \$33,000 would receive an annualized cash benefit of \$22,000 or \$1,833 during a month in which the maximum number of leave days (i.e., 20) was used.³¹ This benefit amount would be prorated based on the number of days of paid leave that were to be used. Thus, a similar worker taking 10 leave days would receive a benefit of \$917. The FAMILY Act would also establish a maximum monthly benefit of \$4,000 and a minimum monthly benefit of \$580. Both the monthly maximum and minimum benefit amounts would be indexed to growth in average earnings in the economy, as measured by the Social Security Administration's average wage index (AWI).³²

The FAMILY Act would pay for cash benefits by levying a tax on workers' wages and self-employment income, similar to the primary financing mechanism for OASI and DI.³³ The act would establish a 0.2% payroll tax on workers and employers, such that the combined tax rate would be 0.4% on covered employment wages and self-employment income. As currently written, the act appears to apply its payroll tax to wages above the taxable maximum (\$137,700 in 2020) but not to self-employment income above the taxable maximum.³⁴ However, it appears from a letter sent to Representative DeLauro on January 28, 2020, by the SSA's Office of the Chief Actuary (OACT) that OACT's interpretation is that the proposal's payroll tax would not be applied to wages above the taxable maximum for either category of worker. The letter states the following: "Earnings covered under Social security but above this base [taxable maximum], as well as earnings not covered under Social Security program, would not be taxed."³⁵

²⁸ Workers under the age of 31 may meet the recency-of-work requirement with fewer credits based on their age. For more details on Social Security Disability Insurance, see CRS Report R44948, *Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI): Eligibility, Benefits, and Financing*.

²⁹ As currently introduced, neither H.R. 1185 (February 13, 2019) nor S. 463 (February 12, 2019) stipulates a level of income that would satisfy this requirement.

³⁰ FAMILY Act benefits would, however, not be available to employees who use FMLA leave to care for a covered military servicemember (including certain veterans) with a serious injury or illness that was sustained or aggravated in the line of duty while on active duty. Persons who are already receiving an SSA-administered benefit (i.e., OASI, DI, or SSI) would not be eligible for benefits under the FAMILY Act.

³¹ The median net compensation for workers in 2018 was \$32,838 (see <https://www.ssa.gov/oact/cola/central.html>). Two-thirds of a \$33,000 annual income is \$22,000, one-twelfth of which is \$1,833.

³² SSA, OACT, "National Average Wage Index," at <https://www.ssa.gov/oact/cola/AWI.html>.

³³ For more information on financing Social Security, see CRS Report RL33028, *Social Security: The Trust Funds*.

³⁴ The taxable maximum is the annual limit on which the Social Security payroll tax is applied to covered earnings. Under current law, the taxable maximum is indexed to national average wage growth (using the AWI) for years in which a cost-of-living adjustment is payable. SSA, OACT, "National Average Wage Index," at <https://www.ssa.gov/oact/cola/AWI.html>.

³⁵ Letter from Stephen C. Goss, Chief Actuary, to Rep. Rosa DeLauro, January 28, 2020, at https://www.ssa.gov/OACT/solvency/RDeLauro_20200128.pdf.

Benefits would be payable under the FAMILY Act indefinitely. That is, the program would not require additional reauthorization.

The OCACT and Congressional Budget Office (CBO) have estimated that the combined 0.4% payroll tax proposed in the FAMILY Act would not fully cover the cost of proposed paid family and medical leave benefits.³⁶ Estimates suggest that a combined payroll tax of 0.62% would be necessary to raise enough revenue to finance proposed FAMILY Act benefits.³⁷ Benefits could also be financed using general fund revenue.

Proposals to Modify Existing Social Insurance Programs

The New Parents Act of 2019

The New Parents Act of 2019 (H.R. 1940) was introduced in the House by Representative Ann Wagner. Its companion bill, S. 920, was introduced in the Senate by Senator Marco Rubio. The New Parents Act would modify the current-law Social Security program to make it available to new parents, through birth or adoption.³⁸

To be eligible for benefits under the New Parents Act, a worker would need to have earned a certain amount of credits or quarters of coverage (QCs). An eligible worker is one who has earned at least 12 QCs at any time prior to application for paid family or medical leave benefits or one who has earned at least 8 QCs, 4 of which were earned in the calendar year preceding the qualifying birth or adoption.³⁹ Under this first option, it would be possible for an applicant to be eligible for benefits although not attached to the workforce at the time of application.

The New Parents Act would cover the arrival of a new child—through birth or adoption—as the sole qualifying event for benefits. Given this, it is commonly referred to as a *parental leave* program.⁴⁰ While engaged in childcare, eligible parents could elect to receive one, two, or three months of Social Security benefits. Benefit amounts would be calculated using the current-law Social Security benefit formula as if the applicant had become disabled.⁴¹

³⁶ See Letter from Stephen C. Goss, Chief Actuary, Social Security Administration, to Rosa DeLauro, Representative, January 28, 2020, at https://www.ssa.gov/OACT/solvency/RDeLauro_20200128.pdf and Letter from Phillip L. Swagel, Director, Congressional Budget Office, to Kevin Brady, Ranking Member, Committee on Ways and Means, February 13, 2020, at https://www.cbo.gov/system/files/2020-02/hr1185_2.pdf.

³⁷ An expanded analysis estimates that a combined 0.4% payroll tax would finance about 64% of scheduled benefits. See Letter from Stephen C. Goss, Chief Actuary, Social Security Administration, to Rep. Rosa DeLauro, January 28, 2020, at https://www.ssa.gov/OACT/solvency/RDeLauro_20200228.pdf. Using the budget scoring convention that assumes benefits not payable under the FAMILY Act would be paid with additional transfers from the General Fund of the U.S. Treasury, would result in an increase of the unified budget deficit and an increase in publicly held debt (see Table 1b of OCACT cost estimates). However, under current law, such transfers from the general fund are prohibited (see CRS Report RL33028, *Social Security: The Trust Funds*). Using a similar budget scoring mechanism, a CBO estimate published on February 13, 2020, also concluded that the FAMILY Act would increase the unified budget deficit.

³⁸ Under the New Parents Act, multiple births (i.e., twins) would count as a single qualifying event. The act does not stipulate a similar standard for adoption.

³⁹ At the time of application, the applicant must attest that his or her benefit would be used to finance spending time with the child and away from employment.

⁴⁰ The New Parents Act would require that applicants attest the cash benefit would be used to finance time to be spent with the new child and away from employment. Additionally, the new child must reside with the parent during the benefit period.

⁴¹ Under the New Parents Act, benefits would be calculated as if the applicant had become disabled, although the applicant need not be fully insured for Social Security Disability Insurance. For more information on the current-law

The New Parents Act would effectively allow parents the option to temporarily access Social Security benefits before the current-law retirement benefit eligibility age. In return, eligible parents would need to elect one of the two methods the act uses to finance the benefits—(1) accept an increase in their Social Security retirement age or (2) elect a future Social Security old-age benefit offset—at the time of their application for the parental leave program.⁴² Under method one, parents would elect to increase both their earliest eligibility age (EEA) and normal retirement age (NRA) by about two months for each month of benefits taken.⁴³ For instance, a parent who received 3 months of cash benefits and who would otherwise be first entitled to Social Security old-age benefits at age 62, would now be first entitled to benefits at age 62 and 6 months. Under method two, a parent would elect to have the first 60 months of Social Security old-age benefits reduced by about 4.5 percentage points for each month of benefits taken. For instance, an old-age worker retiring at NRA could expect to receive 100% of his or her benefits.⁴⁴ However, if that worker had taken 3 months of cash benefits under the New Parents Act, the benefit would be reduced to about 86.5% of the original benefit for the first 60 months (a reduction of 13.5%). Additionally, because eligible parents have the option of using this benefit under the New Parents Act more than once, the ultimate old-age benefit reduction at the time of EEA or NRA could surpass 13.5%; there is no set limit on how many times a new parent could use this benefit. This old-age benefit reduction does not preclude other possible current-law benefit reductions based on age or noncovered earnings.⁴⁵

Payments under the New Parents Act would only be made if the *trust funds ratio* is greater than 20%. The trust funds ratio is a measure of the Old-Age, Survivors, and Disability Insurance (OASDI) program's actuarial status. The ratio is defined as the amount of reserves held in the OASDI Trust Funds expressed as a percentage of annual program cost.⁴⁶ Under the current benefit schedule, OACT projects the trust funds ratio to fall below 20% sometime in 2034.⁴⁷ Thus, under current law and the projected schedule of benefits, the last year benefits would be

Social Security benefit formula, see CRS Report R43542, *How Social Security Benefits Are Computed: In Brief*.

⁴² The version of the New Parents Act introduced on March 27, 2019, does not specify the interaction of new parent benefits and disability benefits. That is, it is unclear if use of the new parent benefit would increase the age (i.e., require more credits or quarters over coverage) to qualify for Social Security disability benefits.

⁴³ Normal retirement age (NRA) is commonly referred to as full retirement age (FRA). Under the New Parents Act, the Commissioner of the Social Security Administration would determine the number of months increase in EEA or NRA required to offset the number of months of benefits taken under the act. In a letter to Sen. Rubio and Rep. Wagner, OACT estimated this would require two months increase in EEA or NRA for every month of benefits taken. Letter from Stephen C. Goss, Chief Actuary, to Sen. Marco Rubio and Rep. Ann Wagner, April 9, 2019, at https://www.ssa.gov/OACT/solvency/RubioWagner_20190409.pdf.

⁴⁴ Similar to method one, the exact percentage point reduction in old-age benefits required to finance the cash benefits would be set by the Commissioner of SSA; OACT estimated the 4.5 percentage point per month of benefits taken in its April 9, 2019, letter to Sen. Rubio and Rep. Wagner.

⁴⁵ For information on adjustments to Social Security benefits based on age, see CRS Report R43542, *How Social Security Benefits Are Computed: In Brief*. For information on possible benefit reductions due to noncovered earnings, see CRS Report 98-35, *Social Security: The Windfall Elimination Provision (WEP)*.

⁴⁶ According to the Social Security Board of Trustees, who manage the Social Security Trust Funds, a trust funds ratio above 100% throughout the short-range period (10 years) indicates a financially healthy program, whereas a ratio below 100% signals the program is in a financially inadequate position.

⁴⁷ Letter from Stephen C. Goss, Chief Actuary, to Sen. Marco Rubio and Rep. Ann Wagner, April 9, 2019, at https://www.ssa.gov/OACT/solvency/RubioWagner_20190409.pdf. This projection aligns with the 2020 intermediate assumptions used in the 2020 Board of Trustees annual report, see <https://www.ssa.gov/OACT/TR/2020/tr4b4.html>.

payable under the New Parents Act is estimated to be 2033. The OCACT has estimated that the New Parents Act would have a negligible effect on the OASDI's long-term actuarial status.⁴⁸

The CRADLE Act

The Child Rearing and Development Leave Empowerment Act, or CRADLE Act, has yet to be introduced. Draft language for the proposal can be found on Senator Mike Lee's website.⁴⁹ The CRADLE Act is similar to the New Parents Act in that it would also modify current-law Social Security, making it available to new birth or adoptive parents.⁵⁰

The CRADLE Act is similar to the New Parents Act in many ways. The CRADLE Act's qualifying event is the arrival of a new child through birth or adoption, its possible benefit duration is three months (applicants could also elect to receive one or two months of benefits), and benefit amounts would be determined using the current-law Social Security DI benefit formula.

The CRADLE Act differs from the New Parents Act with respect to eligibility conditions and the total amount of benefits a parent could receive. Similar to other proposals that would be administered by SSA, workers would become eligible for benefits under the CRADLE Act by earning credits or quarters of coverage in Social Security-covered employment. To be eligible at the time of application for CRADLE Act benefits, an applicant must have

- earned a total of 20 QCs, or
- earned 5 QCs in the 6 quarters preceding application, or
- earned 4 QCs in the calendar year preceding application.⁵¹

Additionally, whereas the FAMILY Act and New Parents Act would allow parents to collect other benefits (e.g., employer-provided paid family and medical leave benefits), the CRADLE Act would specify a total amount of benefits payable under the act. That is, CRADLE Act benefits would be reduced by the amount of state, local, and employer-provided benefits. If an applicant were to receive other parental leave benefits, CRADLE Act benefits would be reduced such that a parent's total amount of benefits did not exceed 100% of his or her average indexed monthly earnings (AIME).⁵²

⁴⁸ Under the New Parents Act, benefits would essentially be financed by the parent claiming benefits. Each beneficiary would *repay* the trust funds through an increase in claiming age or a decrease in benefits. That is, the OASDI program would experience, on a per parent basis, a higher cost in the short term (i.e., the newparent benefit for 1-3 months) and experience an equal and offsetting lower cost in the long term (i.e., lower benefit payments at claiming age). As such, OCACT estimates this bill would have a negligible effect on the long-term actuarial status of the OASDI program. See Letter from Stephen C. Goss, Chief Actuary, Social Security Administration, to Sen. Marco Rubio and Rep. Ann Wagner, April 9, 2019, at https://www.ssa.gov/OACT/solvency/RubioWagner_20190409.pdf.

⁴⁹ Sen. Mike Lee, "Sens. Ernst, Lee Put Forward Paid Parental Leave Plan That is Budget Neutral and Flexible for Parents," press release, March 12, 2019, at <https://www.lee.senate.gov/public/index.cfm/2019/3/sens-ernst-lee-put-forward-paid-parental-leave-plan-that-is-budget-neutral-and-flexible-for-parents>.

⁵⁰ Under the New Parents Act, multiple births (i.e., twins) would count as a single qualifying event. The act does not stipulate a similar standard for adoption. Additionally, persons who are already receiving an SSA-administered benefit (i.e., OASI, DI, or SSI) would not be eligible for benefits under the CRADLE Act.

⁵¹ At the time of application, the applicant must attest that his or her employer has been notified of intent to take leave from employment.

⁵² For more information on AIME, see CRS Report R43542, *How Social Security Benefits Are Computed: In Brief*. The AIME calculation uses a worker's highest 35 years of career earnings. For workers with less than 35 years of earnings, such as many disability beneficiaries, this may result in lower benefit amounts as zeros are used for years with no earnings. Depending on the beneficiaries' age, drop out years may apply; see CRS Report R43370, *Social Security*

Lastly, the CRADLE Act would provide for one method of benefit financing. The act would require that parents who received the benefit would have their EEA or NRA increased by two months for each month of benefits received.⁵³ The CRADLE Act would also allow eligible parents to receive cash benefits multiple times; there would be no limit on how many times a new parent could apply for this benefit.

The CRADLE Act would authorize payments through 2025.

Disability Insurance (SSDI): Becoming Insured, Calculating Benefit Payments, and the Effect of Dropout Year Provisions.

⁵³ As currently written (the draft version release on March 12, 2019), the CRADLE Act would still require the increase in EEA or NRA if the benefit amount was reduced due to a parent's receipt of state, local, or employer-provided benefits.

Table 2. Family and Medical Leave: Entitlement Program Proposals

	FAMILY Act^a	New Parents Act^b	CRADLE Act^c
General Overview	Would create a new social insurance program to provide cash benefits to individuals engaged in qualified caregiving.	Would create an option within Social Security for cash benefits to individuals engaged in qualified childcare.	Would create an option within Social Security for cash benefits to individuals engaged in qualified childcare.
Effective Years	Applications for benefits could be submitted 18 months after enactment. No additional reauthorization required.	Applications could be submitted after 2021. Benefits would be projected to be paid until 2033. ^d	Applications could be submitted after 2020. Benefits payable after 2025 would require reauthorization.
Qualifying Event	Arrival and care of new child (birth, adoption, or foster care), care of close family member or self with a serious health condition, and certain military family needs.	Arrival and care of new child (birth or adoption).	Arrival and care of new child (birth or adoption).
Eligibility	<p>Applicants must be insured for Social Security Disability Insurance (DI) and have received income from employment during the past 12 months.^e</p> <p>Persons receiving Old-Age, Survivors Insurance (OASI), Disability Insurance (DI), or Supplemental Security Income (SSI) as a result of a disability are ineligible for benefits under the FAMILY Act.</p>	<p>Applicants must have earned 12 quarters of coverage (QCs) at any time or 8 QCs of which 4 were earned in the calendar year preceding birth or adoption.^f</p>	<p>Applicants must have earned 20 QCs preceding application or 5 QCs in the 6 quarters preceding application or 4 QCs in calendar year preceding application.^f</p> <p>Persons receiving OASI, DI, or SSI as a result of a disability are ineligible for benefits under the CRADLE Act.</p>
Benefit Duration	Up to 60 days (limit 20 days per month) per year.	Up to three months. Applicants could also elect to receive one or two months of benefits.	Up to three months. Applicants could also elect to receive one or two months of benefits.
Benefit Amount	On a prorated basis, the benefit amount would equal two-thirds of the highest annual income earned in the three-year period prior to application. The act would establish a minimum monthly benefit of \$580 and a maximum monthly benefit of \$4,000, each indexed to the national average wage index. ^g	Benefit amounts would be determined using the Social Security benefit formula (i.e., benefits would be computed as if the worker was disabled). ^h	<p>Benefit amounts would be determined using the Social Security benefit formula (i.e., benefits would be computed as if the worker was disabled).^h</p> <p>Benefits would be taxed according to adjusted thresholds for provisional income.ⁱ</p>

	FAMILY Act^a	New Parents Act^b	CRADLE Act^c
Interaction with Other Benefits	Benefits under the FAMILY Act would be reduced by the amount of total or partial disability under a workmen's compensation law and any unemployment benefits. ^j Applicants could also receive employer-provided paid family and medical leave (PFML) benefits with no change to FAMILY Act benefits.	Benefits under the New Parents Act do not replace or supersede any state benefits. Applicants could also receive employer-provided PFML benefits. Receipt of employer-provided benefits would not change the amount of benefits under the New Parents Act.	Benefits under the CRADLE Act could supplement state, local, or employer-provided PFML benefits. Benefits under the CRADLE Act would be reduced so as to not exceed 100% of applicant's average indexed monthly earnings. However, the full increase in retirement age would still apply even if the CRADLE benefits are reduced.
Job Protection	None beyond Family and Medical Leave Act (FMLA). ^k Applicants not covered by FMLA would need employer approval for leave, and may not be returned to the job held prior to taking leave.	None beyond FMLA. Applicants not covered by FMLA would need employer approval for leave.	None beyond FMLA. Applicants not covered by FMLA would need employer approval for leave.
Employer Notice or Return to Work Requirements	The applicant must attest their employer has been notified of intent to take leave. Applicant may not engage in "regular employment."	The applicant must attest to use the benefit to finance spending more time with child and away from employment.	The applicant must attest that they have notified their employer of intent to take leave from employment.
Financing	Benefits are financed by a 0.2% payroll tax paid by both employer and employee (i.e., 0.4% total) on wages up to the taxable maximum. ^l	Recipients of benefit would elect to increase their Social Security normal retirement age (NRA) and earliest eligibility age (EEA) by about 2 months for each month of benefit received or reduce their first 60 months of Social Security benefits by about 4.5% for each month of benefit received. ^m Negligible long-range effect on the OASDI Trust Fund. ⁿ	Recipients of benefit would have their NRA and EEA increased by 2 months for each month of benefit received. ^m Negligible long-range effect on the OASDI Trust Fund. ⁿ

Sources: H.R. 1185 (116th Congress), H.R. 1940 (116th Congress), and CRADLE Act bill text at <https://www.lee.senate.gov/public/index.cfm/2019/3/sens-ernst-lee-put-forward-paid-parental-leave-plan-that-is-budget-neutral-and-flexible-for-parents>.

Notes:

- a. The Family and Medical Insurance Leave Act (H.R. 1185), or the FAMILY Act, was introduced in the House by Representative DeLauro. Its companion bill, S. 463, was introduced in the Senate by Senator Gillibrand.
- b. The New Parents Act of 2019 (H.R. 1940) was introduced in the House by Representative Wagner. Its companion bill, S. 920, was introduced in the Senate by Senator Rubio.

- c. The Child Rearing and Development Leave Empowerment Act, or CRADLE Act, has yet to be introduced. Draft language for the proposal can be found on Senator Lee's website. See Senator Mike Lee, "Sens. Ernst, Lee Put Forward Paid Parental Leave Plan That is Budget Neutral and Flexible for Parents," press release, March 12, 2019, at <https://www.lee.senate.gov/public/index.cfm/2019/3/sens-ernst-lee-put-forward-paid-parental-leave-plan-that-is-budget-neutral-and-flexible-for-parents>.
- d. Applications for benefits under the New Parents Act could not be submitted if the OASDI trust fund ratio is less than 20%. The OASDI trust fund ratio is a measure of the trust funds' asset reserves at the beginning of the year divided by the projected total cost for the year (using the Board of Trustees' intermediate assumptions). According to the trustees, a trust funds ratio above 100% through the short-range period (10 years) indicates a financially healthy program, whereas a ratio below 100% signals the program is in a financially inadequate position. According to the trustees' intermediate assumptions, the trust fund ratio is projected to fall below 20% in 2034 (see https://www.ssa.gov/OACT/solvency/RubioWagner_20190409.pdf). The projected year for a 20% OASDI trust fund ratio under the 2020 Board of Trustees intermediate assumptions is 2034, see <https://www.ssa.gov/OACT/TR/2020/lr4b4.html>.
- e. To obtain DI insured status, a worker must be fully insured for Social Security and must meet a recency of work requirement. To be fully insured, workers must have at least one quarter of coverage from paid employment or self-employment covered by Social Security for each calendar year after turning 21, up to the year in which they became disabled. A quarter of coverage in 2020 is earned for each \$1,410 in covered earnings, up to a maximum of 4 quarters of coverage per year (see <https://www.ssa.gov/oact/COLA/QC.html>). The amount of earnings needed for a quarter of coverage each year is adjusted for growth in average, economy-wide earnings. To meet the recency of work requirement, workers generally must have 20 quarters of coverage during the 40-quarter period prior to the onset of the disability, which amounts to 5 years of covered employment in the 10-year period prior to disability onset. Young workers (under age 24, aged 24 to 31) must have covered employment for half of the time between age 21 and when they became disabled. For additional information, see CRS Report R44948, *Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI): Eligibility, Benefits, and Financing*.
- f. A quarter of coverage in 2020 is earned for each \$1,410 in covered earnings, up to a maximum of 4 quarters of coverage per year. The amount of earnings needed for a quarter of coverage each year is adjusted for growth in average, economy-wide earnings. See <https://www.ssa.gov/oact/COLA/QC.html>.
- g. The national average wage index is the average of all workers' wages subject to federal income taxes and contributions to deferred compensation plans. It is calculated using some wages that are not subject to the Social Security payroll tax. See <https://www.ssa.gov/oact/COLA/AWI.html>.
- h. For more information on how Social Security benefits are computed, see CRS Report R43542, *How Social Security Benefits Are Computed: In Brief*. Depending on a worker's age, dropout years may apply. For more information on the potential for dropout years, see CRS Report R43370, *Social Security Disability Insurance (SSDI): Becoming Insured, Calculating Benefit Payments, and the Effect of Dropout Year Provisions*.
- i. The CRADLE Act would double the provisional income thresholds that determine tax liability for Social Security beneficiaries. For more information on provisional income thresholds, see CRS Report RL32552, *Social Security: Taxation of Benefits*.
- j. Under the FAMILY Act, the Commissioner of Social Security would have the ability to issue regulations that would make certain state benefits deductible from the benefits paid under the FAMILY Act.
- k. Section 5(h)(1) of the FAMILY Act would make it "unlawful for any person to discharge or in any other manner discriminate against an individual because the individual has applied for, indicated an intent to apply for, or received family and medical leave insurance benefits," with provided remedies [Sec. 5(h)(2)(A)(ii)] including damages and "equitable relief as may be appropriate, including employment, reinstatement, and promotion."
- l. In a letter from Stephen A. Goss, Chief Actuary, to Rep. DeLauro, OCACT interprets the proposed payroll tax as applying only to covered wage and self-employment income. That is, no earnings above the contribution and benefits base would be taxed (see https://www.ssa.gov/OACT/solvency/RDeLauro_20200228.pdf). However, as currently written, the FAMILY Act appears to apply its payroll tax to wages above the OASDI contribution and benefit base but not to self-employment income above the contribution and benefit base. Because of the differences in interpretation of this provision, there may need to be refinement of the proposal's bill text. Funds necessary to administer benefits for the first three years of payments would be transferred from the General Fund of the Treasury. Upon enactment, the newly established Federal Family and Medical Leave Insurance Trust Fund would reimburse the initial appropriation.

- m. The New Parents Act would require the SSA's Office of the Chief Actuary (OACT) to estimate the number-of-months increase in NRA and EEA or percentage-point benefit reduction necessary to finance the parental benefit. The CRADLE Act specifies the number-of-months increase in NRA and EEA to finance parental benefits.
- n. The New Parents Act and the CRADLE Act would essentially increase the short-range costs of the Social Security program (i.e., increased benefits for applicants) while decreasing long-range costs (i.e., decreased benefits for applicants in future years). For more detail, see estimates of the financial effects for the respective proposals at https://www.ssa.gov/OACT/solvency/RubioWagner_20190409.pdf and https://www.ssa.gov/OACT/solvency/LeeErnst_20190314.pdf.

Paid Family and Medical Leave: Federal Workforce Proposal

The Federal Employee Paid Leave Act (FEPLA, H.R. 1534/S. 1174) proposes to make 12 weeks of FMLA leave used in a 12-month period paid leave for most federal civil service employees. The bill would also grant OPM the authority to extend paid FMLA leave to 16 weeks in the 12-month period. Unlike the federal employees' paid parental leave benefit, created by the FY2020 NDAA (see discussion of "Federal Employees" in the "Family and Medical Leave: Current Federal Policies" section of this report), the paid leave proposed by FEPLA would be available for all FMLA-qualifying uses of leave.⁵⁴ The proposed paid FMLA leave would be in addition to federal employees' annual and sick leave entitlements. Also unlike the existing paid parental leave benefit, FEPLA would not require federal employees to agree to return to their employing agency after the conclusion of leave in order to use the proposed paid FMLA leave. FEPLA summary information is provided in **Table 3**.

Table 3. Family and Medical Leave: Federal Workforce Proposal

Federal Employee Paid Leave Act (FEPLA)	
General Overview	Would provide that 12 weeks of Family and Medical Leave Act (FMLA) leave in a 12-month period is paid leave for most federal civil service employees. ^a
Covered Employees	Federal employees covered by FMLA provisions at 5 U.S.C., chapter 63, subchapter V. Legislative branch employees covered by the Congressional Accountability Act of 1995 (CAA, P.L. 104-1, as amended), and Government Accountability Office (GAO) employees (who are not covered by the CAA). Transportation Security Administration (TSA) screeners.
Effective Years	FEPLA would take effect six months after its enactment.
Qualifying Event	The arrival of the employee's child by birth, adoption, or foster care placement, and to care for that child within the first 12 months after arrival (i.e., <i>parental leave</i>); to care for a spouse, child, or parent with a serious health condition; the employee's own serious health condition that renders the employee unable to perform the essential functions of his or her job; and certain military family needs. ^b
Eligibility	In general, 12 months of service preceding leave. Legislative branch employees covered by the CAA and GAO employees must have been employed for 12 months in any employing office covered by the CAA or by the GAO, respectively, and for at least 1,250 hours during the 12 months preceding leave, unless the hours-of-service requirement is waived in rules or regulations governing the legislative branch agency's personnel management system.
Benefit Duration	Up to 12 weeks of paid FMLA leave in a 12-month period. The Office of Personnel Management (OPM) would have authority to issue regulations to increase the benefit duration to 16 weeks in the 12-month period.
Benefit Amount	Employee's regular pay rate.
Interaction with Other Benefits	The employee's group health insurance coverage is maintained during paid FMLA leave on the same terms as if he or she had continued to work.
Job Protection	In general, yes, because the paid leave is FMLA leave, which is job protected.

⁵⁴ The version of the NDAA bill that was engrossed by amendment in the House of Representatives on September 17, 2019, would have provided paid leave to federal employees for all FMLA-qualifying needs for leave. The narrowing of the entitlement to paid parental leave for federal employees was the result of a House amendment, recommended by the committee of conference, filed on December 9, 2019, agreed to in the House on December 11, 2019, and agreed to in the Senate on December 17, 2019.

Federal Employee Paid Leave Act (FEPLA)

Employer Notice or Return to Work Requirements	No employer notice or return to work requirements beyond what is required by FMLA.
Financing	Payable from any appropriation or funds available for salaries or expenses within the employing agency.

Source: CRS analysis of H.R. 1534/S. 1174, 116th Congress, the Federal Employee Paid Leave Act.

Notes:

- a. The employer determines how the 12-month period is calculated (e.g., calendar year, fiscal year, 12 months starting on the first day of leave).
- b. Under FMLA, a child refers to a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or an individual 18 years of age or older and incapable of self-care because of a mental or physical disability. The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider. Eligible employees may use FMLA-protected leave for a qualified military exigency arising from the covered active-duty status of a covered military member who is the employee’s spouse, child, or parent, and to care for a covered military servicemember (including certain veterans) with a serious injury or illness that was sustained or aggravated in the line of duty while on active duty, if the eligible employee is the covered servicemember’s spouse, child, parent, or next of kin.

Tax Policy Proposals to Support Paid Family and Medical Leave

Several tax policy proposals would either provide temporary tax savings, or create a tax incentive for private savings, to support parental or medical leave taking. These policies generally do not guarantee access to leave. Instead, they aim to reduce the financial burden associated with individuals’ leave taking. These proposals are summarized in **Table 4**.

Advancing Support for Working Families Act

The Advancing Support for Working Families Act (S. 2976, H.R. 5296) is not explicitly linked to leave taking following the birth of a child.⁵⁵ Instead, this policy would effectively allow taxpayers to reduce their tax liability (which for many means an increased tax refund) upon the arrival of a child, with these funds being repaid through an increase in individual income tax liability over time.

The Advancing Support for Working Families Act would allow taxpayers to elect to receive up to \$5,000 following the birth or adoption of a child, in the form of an increased child tax credit (CTC).⁵⁶ Taxpayers could elect to claim this increased credit on their prior year’s tax return. Allowing taxpayers to claim the credit on their prior year’s return would accelerate receipt of this benefit. Taxpayers having multiple children can make this election following the birth or adoption of each child.

If a taxpayer elects to receive an increased CTC, the additional amount received would generally be paid back, in the form of higher taxes, over a 10-year period. The payback period would begin in the year in which the child for whom the benefit was received was born or adopted. Special

⁵⁵ The sponsors of the Advancing Support for Working Families Act have characterized the bill as a parental leave plan. See <https://www.sinema.senate.gov/parentalleave>.

⁵⁶ For more information, see CRS In Focus IF11077, *The Child Tax Credit*, by Margot L. Crandall-Hollick.

rules would provide a longer payback period for certain low-income taxpayers. Payback could also be deferred for taxpayers whose earned income decreases by more than 20%.

The Working Parents Flexibility Act of 2019

The Working Parents Flexibility Act of 2019 (H.R. 1859) would create a tax-advantaged parental leave savings account. Individuals with employment earnings would be allowed a tax deduction for contributions of up to \$6,750 per year to a parental leave savings account. Total contributions would be limited to \$24,000. Both of these amounts would be adjusted for inflation. No deduction would be allowed for taxpayers with adjusted gross income (AGI) above \$250,000; this limit applies to all tax filing statuses (e.g., single, joint, and head of household filers).

Employers can also make contributions to an individual's parental leave savings account. Employer contributions to parental leave savings accounts would not be taxable to the employee, up to the contribution limits. The amount an individual can deduct for parental leave savings account contributions would be reduced by the amount of employer contributions that are excluded from income.

Distributions from a parental leave savings account made not later than one year after the birth or adoption of a child would be excluded from income, and thus not subject to tax. Taxpayers can take tax-free distributions following the birth or adoption of each child. However, the annual contribution limit (\$6,750) and total contribution limit (\$24,000) are per-taxpayer limits, and do not depend on the number of children a taxpayer has. Distributions not taken for early parenthood purposes would be taxable and subject to a 20% penalty, with exceptions as noted below.

In addition to contributions being tax deductible and qualifying distributions being tax exempt, parental leave savings accounts would also be exempt from tax. Thus, income earned on savings within a parental leave savings account would not be subject to tax.

If savings in a parental leave savings account were not withdrawn as early parenthood payments, they could be transferred without penalty to other tax-advantaged savings accounts. Specifically, parental leave savings account savings could be rolled over tax free to qualified retirement savings accounts,⁵⁷ 529 plans,⁵⁸ or qualified ABLE programs.⁵⁹

The Freedom for Families Act

The Freedom for Families Act (H.R. 2163) would allow taxpayers to use health savings accounts (HSAs) to self-finance periods of family or medical leave. Currently, HSAs are available for individuals covered under a high-deductible health plan.⁶⁰ Individuals able to contribute to HSAs are subject to annual contribution limits of \$2,250 for individuals with self-only coverage and \$4,500 for individuals with family coverage. These limits are adjusted for inflation. For 2020, these limits are \$3,550 and \$7,100, respectively.

HSAs have several tax advantages. First, individual contributions are generally tax deductible. Second, employer contributions (and pretax salary reductions) are excluded from taxable income

⁵⁷ Eligible retirement plans include individual retirement accounts (IRAs), individual retirement annuities, and other eligible retirement plans described in IRC §402(c)(8)(B). For more information on IRAs, see CRS Report RL34397, *Traditional and Roth Individual Retirement Accounts (IRAs): A Primer*, by Elizabeth A. Myers.

⁵⁸ For more information, see CRS Report R42807, *Tax-Preferred College Savings Plans: An Introduction to 529 Plans*, by Margot L. Crandall-Hollick.

⁵⁹ For more information, see CRS In Focus IF10363, *Achieving a Better Life Experience (ABLE) Programs*, by William R. Morton and Kirsten J. Colello.

⁶⁰ For more information, see CRS Report R45277, *Health Savings Accounts (HSAs)*, by Ryan J. Rosso.

and from Social Security, Medicare, and unemployment insurance taxes. Third, withdrawals are not taxed if used for qualified medical expenses. Finally, account earnings are exempt from tax. Withdrawals that are not used for qualified medical expenses must be included in income and are subject to tax. Additionally, for individuals under age 65, nonqualified withdrawals are subject to a 20% penalty. The penalty is waived in cases of disability or death and for individuals aged 65 and older.

The Freedom for Families Act would modify HSAs, allowing these tax-advantaged savings vehicles to be used to save for periods of qualified caregiving. A period of qualified caregiving is one during which an individual is on leave or not employed because of the arrival or adoption of a child; due to their own or a family member's serious health condition; or because of certain military family needs. The proposal would waive the HSA requirement that individuals be covered by a high-deductible health plan. Additionally, the proposal would increase the annual contribution limit to \$9,000 for individuals (\$18,000 for married couples filing a joint return).

The Support Working Families Act

The Supporting Working Families Act (S. 2437) would allow taxpayers the option of receiving a refundable parental leave tax credit. The tax credit could be claimed for weeks of leave taken during a one-year period following the birth or adoption of a child. This tax credit would later be repaid through increased taxes during a future recapture period.

The tax credit is the lesser of (1) a calculation based on the taxpayer's past average weekly wages or (2) \$6,000.⁶¹ To determine the tax credit amount, individuals would elect a replacement percentage equal to 40% to 90%. This replacement percentage would be multiplied by the taxpayer's average weekly wage, with this product then multiplied by the number of weeks of parental leave taken. For the purposes of the tax credit, parental leave weeks taken must be at least 4 but no more than 12.⁶² The parental leave tax credit is limited to \$6,000 per year.

The tax credit is refundable, and can also be carried back and claimed on the previous year's tax return. Because it is refundable, if the amount of the tax credit exceeds a taxpayer's tax liability, the excess is received as a refund (payment) from the Treasury. The carryback provision allows taxpayers to claim the tax credit for the previous tax year by filing an amended return. Allowing this carryback could accelerate receipt of the tax credit, and the legislation would require "a separate and expedited process for reviewing and processing" amended returns filed for the purposes of claiming the parental leave tax credit.

There are employment requirements for parental leave tax credit eligibility. Specifically, to be eligible for the credit, an individual must have been employed for at least 52 of the 64 weeks before taking credit-eligible leave. During those 52 weeks, the taxpayer must have worked at least 1,000 hours.

To claim the credit, taxpayers must attest that they have provided their employer with written notice of their leave taking and will be taking leave each week used in the calculation of the amount of the parental leave tax credit. Additionally, as noted above, the individual must take at least 4 weeks of leave to be able to claim the tax credit.

⁶¹ The \$6,000 credit maximum would be adjusted for inflation.

⁶² The following example illustrates how this credit may be calculated for a hypothetical taxpayer. Assume a taxpayer has an average weekly wage rate of \$800. Also assume that this taxpayer elects the maximum replacement percentage of 90%. If this taxpayer claims the tax credit for 8 weeks of leave, the taxpayer would receive a tax credit of \$5,760.

The credit could not be claimed for any paid leave that was government- or employer-provided. Additionally, there would be limits on claiming this tax benefit for individuals receiving disability, workman's compensation, or unemployment payments.

The credit would be recaptured (repaid) over a five-year period beginning four years after an individual elects to receive a parental leave tax credit, although earlier repayment would be allowed.

Table 4. Family and Medical Leave: Tax Policy Proposals

	Advancing Support for Working Families Act^a	The Working Parents Flexibility Act of 2019^b	The Freedom for Families Act^c	The Support Working Families Act^d
General Overview	Would allow taxpayers to elect to receive up to \$5,000 of the child tax credit in the year of the child's birth or adoption.	Would provide tax-advantaged parental leave savings accounts.	Would expand health savings accounts (HSAs) for family or medical leave.	Would provide a refundable parental leave tax credit.
Effective Years	Effective starting in 2020.	Effective starting in 2020.	Date of enactment.	Effective starting in 2020.
Qualifying Event	Arrival of a new child (birth or adoption).	Distributions from a parental leave savings account would be allowed for one year following the arrival of a new child (birth or adoption).	Distributions from an HSA would be allowed for periods of qualified caregiving. Qualified caregiving leave periods are those described in FMLA.	Arrival of a new child (birth or adoption).
Eligibility	Taxpayers could make election. A taxpayer can be an individual or a married couple. Child must have or qualify for a Social Security number. ^e Taxpayer does not need to take leave from work to claim the benefit.	Individuals could withdraw from a parental leave savings account for one year following the arrival of a new child (birth or adoption).	Individuals could withdraw from HSA while taking qualified caregiving leave.	Taxpayer could elect to receive a parental leave tax credit for periods of parental leave. Taxpayer and child must have Social Security numbers. ^f
Benefit Duration	Not applicable. Electing to receive the tax credit is not directly connected with leave taking.	Not applicable. Accessing parental leave savings account funds is not directly connected with leave taking.	The ability to take a qualified caregiving distribution is contingent on qualified caregiving leave.	Tax credit is calculated on 4-12 weeks of leave taking.
Benefit Amount	Election to increase, by up to \$5,000, the child tax credit following the arrival of a new child. If the taxpayer makes the election, future tax liability is increased such that the additional credit is repaid. For taxpayers with multiple children, election can be made following the birth or adoption of each child.	Individuals would be able to contribute up to \$6,750 per year, subject to a \$24,000 maximum contribution amount. The amount withdrawn during an early parenthood period would be decided by the taxpayer, based on available savings.	Taxpayers would be able to contribute up to \$9,000 per year (\$18,000 for joint filers) to HSAs. The amount withdrawn during a period of qualified caregiving would be decided by the taxpayer, based on available savings.	Election to receive tax credit, up to \$6,000. If the taxpayer makes the election, future tax liability is increased such that the additional credit is repaid. For taxpayers with multiple children, election can be made following the birth or adoption of each child.

	Advancing Support for Working Families Act^a	The Working Parents Flexibility Act of 2019^b	The Freedom for Families Act^c	The Support Working Families Act^d
Interaction with Other Benefits	None. ^g	None. ^h	None.	Tax credit reduced by the amount of workman's compensation or unemployment benefits received during the parental leave period. Tax credit disallowed if the individual is entitled to disability benefits.
Job Protection	None beyond the Family and Medical Leave Act (FMLA).	None beyond FMLA.	None beyond FMLA.	FMLA plus antidiscrimination provision for taxpayers claiming credit.
Employer Notice or Return to Work Requirements	None. Benefit not connected to leave taking.	None. Benefit not connected to leave taking.	FMLA continues to govern leave taking.	Taxpayers must attest that they have provided their employers with written notice of their intent to take parental leave.
Financing	Would reduce federal income tax revenue. Cost estimate not available. Reduction in federal income tax revenue is expected to be limited. For a taxpayer, the elected one-time increase in the child tax credit results in additional tax liability in future years.	Would reduce federal income tax revenue. Cost estimate not available.	Would reduce federal income tax revenue. Cost estimate not available.	Would reduce federal income tax revenue. Cost estimate not available. Reduction in federal income tax revenue is expected to be limited. For a taxpayer, electing to receive a parental leave tax credit results in additional tax liability in future years.

Sources: CRS analysis of S. 2976/H.R. 5296, H.R. 1859, H.R. 2163, and S. 2437, 116th Congress.

Notes:

- a. The Advancing Support for Working Families Act (S. 2976) was introduced in the Senate by Senator Cassidy. Its companion bill, H.R. 5296, was introduced in the House by Representative Allred.
- b. The Working Parents Flexibility Act of 2019 (H.R. 1859) was introduced in the House by Representative Katko.
- c. The Freedom for Families Act (H.R. 2163) was introduced in the House by Representative Biggs.
- d. The Supporting Working Families Act (S. 2437) was introduced in the Senate by Senator Young.
- e. The adoption taxpayer identification number can be provided in the case of adopted children.
- f. Social Security numbers may be provided at a later date if not available when a taxpayer files for the credit. Exceptions may be provided for religious objections.

- g. Under IRC Section 6409, any refund (including refunds from refundable tax credits) cannot be counted as income in determining eligibility for, or the amount of, any federally funded public benefit program.
- h. No deduction would be allowed for amounts taken into account for determining the child care tax credit. For background, see CRS Report R44993, *Child and Dependent Care Tax Benefits: How They Work and Who Receives Them*, by Margot L. Crandall-Hollick, *Child and Dependent Care Tax Benefits: How They Work and Who Receives Them*, by Margot L. Crandall-Hollick.

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