WISCONSIN POLICY FORUM

# MORE STATES ADOPT PAID LEAVE; MANDATE IS KEY QUESTION FOR POLICYMAKERS

*Gov. Tony Evers wants to make Wisconsin the first Midwestern state to require employers to provide workers with paid family and medical leave. While it's unlikely legislative Republicans will support his plan, more states nationally are building on the federal requirement to provide unpaid leave. At least two states have adopted voluntary paid leave programs that may appeal to policymakers reluctant to enact new mandates on employers.*

A plan within Gov. Tony Evers' budget would require employers to offer employees 12 weeks of annual paid leave for life events including the birth or adoption of a child, serious illness for the worker or for a loved one requiring care, military deployment, closure of a child care facility, or aftermath of domestic violence or sexual assault. Drawing upon the state's record surplus, it would provide $243 million in state funds to launch the program. The governor frames the proposal as one that might address Wisconsin's mounting demographic challenges by helping to attract and retain working-age residents, especially young families.

In 2021, about 23% of all U.S. civilian workers had access to paid family leave, U.S. Bureau of Labor Statistics (BLS) data show. That share has more than doubled since 2010, as more states mandate paid leave and more employers provide it to workers voluntarily.

These paid leave requirements in other states go beyond the federal Family and Medical Leave Act, which requires employers to offer qualifying employees 12 weeks of unpaid leave. The state laws are largely a recent phenomenon, outside of a few early-adopting states such as California that acted more than two decades ago. Of the 13 states and the District of Columbia that have paid leave laws, 10 had their laws take effect in 2020 or later (see Table 1).

**Table 1: Leave Duration, Wage Replacement Rates Vary**

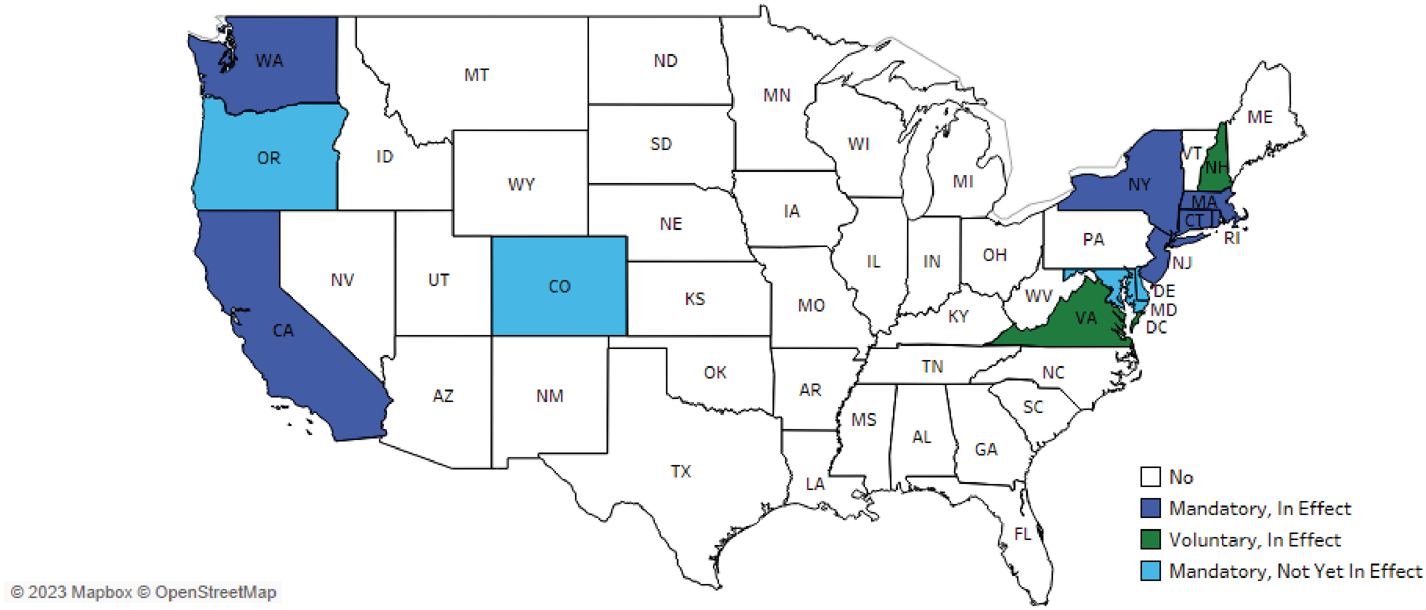
Features of state paid leave laws

| State | Year Effective | Parental Leave Max. Time | Family/Caregiving Leave Max. Time | Personal Medical Leave Max. Time | Share of Wages Replaced by Benefits |
|---|---|---|---|---|---|
| **Wisconsin** | Proposed/Not yet enacted | 12 weeks | 12 weeks | 12 weeks | Up to 90% |
| **California** | 2004 | 8 weeks | 8 weeks | 52 weeks | 60-70% |
| **Colorado** | 2023/2024 | 12 weeks | 12 weeks | 12 weeks | Up to 90% |
| **Connecticut** | 2021/2022 | 12 weeks | 12 weeks | 12 weeks | Up to 95% |
| **Delaware** | 2025/2026 | 12 weeks | 6 weeks** | 6 weeks** | Up to 80% |
| **District of Columbia** | 2020 | 12 weeks | 12 weeks | 12 weeks | Up to 90% |
| **Maryland** | 2023/2025 | 12 weeks | 12 weeks | 12 weeks | Up to 90% |
| **Massachusetts** | 2019/2021 | 12 weeks | 12 weeks | 20 weeks | Up to 80% |
| **New Hampshire** | 2023 | 6 or 12 weeks | 6 or 12 weeks | 6 or 12 weeks | 60% |
| **New Jersey** | 2009 | 12 weeks | 12 weeks | 26 weeks | 85% |
| **New York** | 2018 | 12 weeks | 12 weeks | 26 weeks | 67% |
| **Oregon** | 2023 | 12 weeks | 12 weeks | 12 weeks | Up to 100% |
| **Rhode Island** | 2014 | 6 weeks | 6 weeks | 30 weeks | 60% |
| **Virginia** | 2022 | Set by insurer | Set by insurer | Set by insurer | Determined by insurer |
| **Washington** | 2019/2020 | 12 weeks | 12 weeks | 12 weeks | Up to 90%*** |

Source: Bipartisan Policy Center and Congressional Research Service. Note: multiple effective dates denote effective dates for premiums/benefits. **One period of six weeks of leave in any 24-month period. ***100% wage replacement of average weekly wage up to $100.

**Figure 1: Coastal States Quicker to Adopt Paid Leave**

Paid leave policy by state




Source: Bipartisan Policy Center and Congressional Research Service. Alaska and Hawaii do not have paid leave laws.

Twelve of the jurisdictions with paid leave laws mandate that employers offer some duration of paid leave to employees; two, Virginia and New Hampshire, have voluntary programs. New Hampshire also enacted provisions aimed at incentivizing private employers to participate in its program, as explained later in this brief.

The duration of leave ranges from as little as six weeks for parental, family, or personal medical leave in some states to as much 52 weeks for personal medical leave in California. Personal medical leave should not be confused with sick leave, as the latter is used for much shorter durations by workers experiencing less serious illness.

As shown in Figure 1, all of the states with paid leave laws except Colorado are located on the coasts (California, Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Virginia, and Washington). However, lawmakers in at least one of Wisconsin's neighboring states, Minnesota, are debating a paid family medical leave law that, if enacted, would make it the first Midwestern state to do so.

Shortly after the governor's budget address announcing the paid leave proposal, Wisconsin Senate Majority Leader Devin LeMahieu said it was "very doubtful" that Republican lawmakers would support it. He noted the state's family medical leave law already extends beyond the federal law.

The federal FMLA requires employers with 50 or more workers to provide unpaid leave (with the assurance that their job will be protected until they return) to an employee to care for a newborn or newly adopted child, recover from a serious illness, or care for a family member who is seriously ill. FMLA defines family members as dependent children, spouses, and parents. Employees can also qualify for unpaid leave for issues relating to a family member on active military duty.

Wisconsin's current law provides fewer hours of leave but extends slightly more favorable terms in other areas: it includes domestic partners and domestic partners' parents under its definition of "family member," and requires employees to work slightly fewer hours to become eligible for leave (1,000 in the preceding 12 months versus 1,250). It also allows for intermittent use of leave, unlike the federal law, which permits it only in certain circumstances. In cases where the federal and state leave requirements differ, the employee is entitled to the protections of whichever law requires more favorable terms.

In states with paid leave programs, workers become eligible for paid leave after hitting a minimum threshold of hours worked at their current employer. Evers' proposal would set the threshold at 680 hours during the preceding 52-week period.

As is the case with the federal FMLA, Evers' plan would only require employers with at least 50 employees to provide paid leave to their employees. Self-employed workers could elect to participate in the program by providing written notice to the state Department of Workforce Development (DWD). An employer who provides paid leave benefits identical to or more generous than those provided under the proposal also would be able to request an exemption from the program.

## WAGE REPLACEMENT IS KEY QUESTION

Evers' proposal would provide $243 million in state funds to launch a trust fund to pay benefits for the program beginning Jan. 1, 2025. Starting that same day, the state would collect payroll contributions split equally between employers and employees to replenish the trust fund going forward.

Contribution rates would be set under the proposal by the state DWD. Of the 14 jurisdictions with paid leave, five finance it with employee-only contributions or taxes, eight with an employee-employer split, and one (D.C) with employer-only contributions or taxes.

As is the case in other states, Evers' plan would base the amount of family or medical leave insurance benefits paid to a claimant on their average weekly earnings. For their average weekly earnings below 50% of the state annual median wage, benefits would cover 90% of their wages. For the share of their average weekly earnings equal to or above 50% of the state annual median wage, 50% of their wages would be covered.

In other states with paid family medical leave, their wage replacement rates vary considerably, from as little as 60% to as much as 100%.

New Hampshire's program may be worth special attention for policymakers and advocates open to building upon Wisconsin's existing paid leave program but opposed to a mandatory proposal. According to the Bipartisan Policy Center, New Hampshire has contracted with a private insurer to administer a voluntary paid family medical leave plan that launched in January, with employers able to voluntarily opt in and pay a premium to provide their workers with paid leave.

In an attempt to hold down premium rates, New Hampshire is including its own state government workforce in the risk pool for the program. Its law also allows employers to establish premium cost sharing with employees and creates a new business tax credit that covers 50% of the employer's portion of the premium for up to six weeks of benefits per worker.

## WORKING WOMEN WOULD BENEFIT

While a paid leave law would apply to all working Wisconsinites, it likely would disproportionately be used by women in the workforce, given that surveys show they assume a greater share of responsibility for caregiving in many households.

There would also be a greater impact for workers in lower-paying occupations and in industries where paid leave is not widely offered by employers. There are currently massive differences between industries and professions in the availability of employer-provided paid leave, BLS data show.

According to BLS' 2022 Employee Benefits Survey, 51% of those working in the information industry had employer-provided paid family leave. This was more than five times the share of those working in the leisure and hospitality industry, where 10% had employer-provided paid family leave.

There are signs that a paid leave requirement enjoys support from Wisconsinites across the political spectrum. A Marquette University Law School poll conducted last fall found 73% of respondents favored requiring businesses to provide paid leave for new parents, including 62% of those who self-identified as Republican and 95% of Democrats. In addition, the 2022 GOP gubernatorial nominee, Tim Michels, pledged to enact paid parental leave during last year's campaign. That suggests the issue is likely to remain salient even if no action is taken in the upcoming budget.

## CONCLUSION

As Wisconsin's debate over paid leave unfolds, neighboring states are bolstering their policies, too. In addition to the paid leave debate in Minnesota, Illinois Gov. J.B. Pritzker recently signed a law requiring that state's employers to provide paid time off for any reason, totaling one hour of paid leave for every 40 hours worked up to 40 hours total. Local ordinances in

Cook County and Chicago in Illinois and Minneapolis, St. Paul, and Duluth in Minnesota already require paid sick leave.

Nonetheless, some policymakers and business groups have objected to creating a new mandate on employers. For those who harbor such concerns, the voluntary model embraced by states such as New Hampshire may provide a template for a plan that assists employers who choose to offer paid leave to their workers.

For his part, Evers called paid family and medical leave an important tool for attracting more workers to Wisconsin to address its worker shortages. Such shortages already are emerging and are projected to worsen considerably in the coming years as more Baby Boomers age out of the workforce.

Offering paid leave benefits to families may also incentivize more couples to have or adopt children. It's a critical issue in Wisconsin, given declines in birth rates and the state's lackluster net migration over the past two decades.

At the same, a paid leave proposal could also add to the cost of job creation or affect workers' overall compensation. Those potential impacts would be mitigated in the short term by the use of the state surplus as seed money, but they are also worth considering.

In recent years, lawmakers have removed major policy items that are divorced from fiscal matters from the governor's budget proposals. That's likely to happen with this proposal too as lawmakers review the legislation.

Notably, there is a clear link between this policy as put forward by the governor and the state's strong finances. In light of the state's unprecedented budget surplus, the governor was able to propose jump-starting his plan with nearly a quarter billion dollars of state funds. That approach does not eliminate the policy issues on both sides of the debate that will be difficult to reconcile. Yet it does show that if policymakers wish to pursue a paid leave program in the near future, then the upcoming state budget may offer the best opportunity to do so.