

Key Facts: The Family and Medical Leave Act

FEBRUARY 2023

The Family and Medical Leave Act (FMLA) was signed into law 30 years ago.

The FMLA provides eligible workers with up to 12 weeks of unpaid, job-protected leave to:

- Bond with a newborn, newly adopted or foster child;
- Care for a seriously ill, injured or disabled spouse, parent or child;
- Address their own serious health condition, including illness, injury or disability;
- Care for a service member (up to 26 weeks) or address needs related to a family member's deployment.

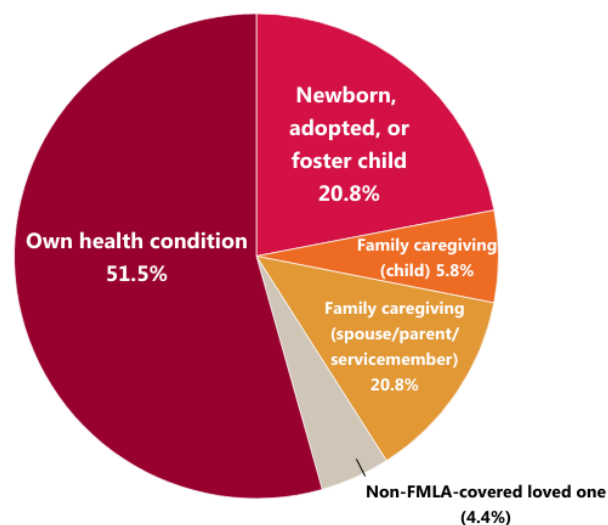
Research by the National Partnership for Women & Families estimates that the FMLA has been used nearly 463 million times by working people who needed to care for their own health or the health of their families.¹ The National Partnership estimates that in 2022 alone nearly 15 million workers were supported by the FMLA.²

The most common reason for taking leave is to address a worker's own serious health condition, which includes serious illness, injury or disability.³

Among workers eligible for FMLA leave:

- More than one-quarter of leave-takers (27 percent) needed to care for a family member with a serious health condition.⁴
- About one in six family caregiving leaves that workers needed was for an individual not included in the FMLA's narrow definition of "family" – meaning the worker's job was not protected during their leave.⁵

Workers Most Often Take FMLA Leave for Their Own Health



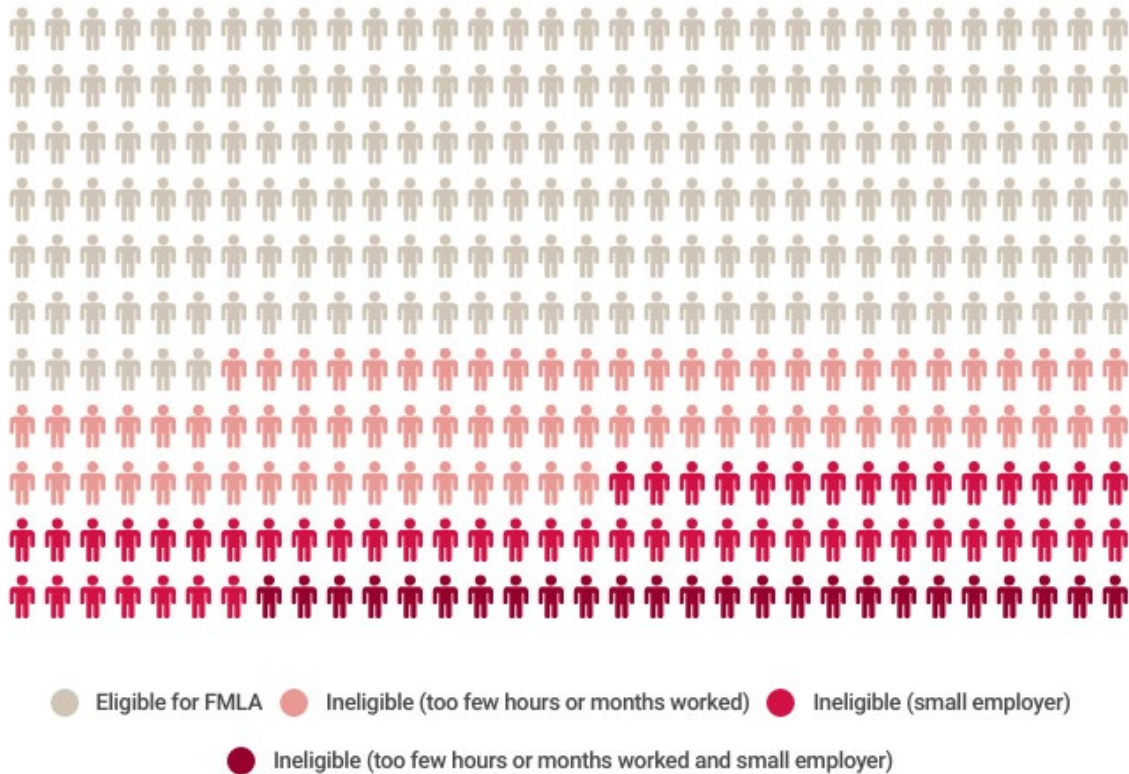
Source: U.S. Department of Labor FMLA Survey, 2018

- Most leaves are modest in length, with about 40 percent lasting two weeks or less, and more than three-quarters lasting eight weeks or less.⁶

The FMLA has helped to transform workplaces, but too many people – especially workers of color – are still left behind.

- About 44 percent of workers are not eligible for FMLA-supported leave because they work for small employers (15 percent), do not work enough hours or have not worked for their employer for long enough (21 percent), or both (7 percent).⁷
- Workers of color are less likely to be eligible for FMLA-supported leave: 55 percent of workers who identify as Native American, Pacific Islander, or multiracial, 48 percent of Latinx, 47 percent of Asian American and 43 percent of Black workers are ineligible, compared to 42 percent of white workers.⁸
- The National Partnership estimates that in 2022, among workers who were not protected by FMLA, nearly 2.7 million needed leave but did not take it because they feared losing their job.⁹

Nearly Half of Workers Are Not Eligible for FMLA Leave



Source: U.S. Department of Labor FMLA Survey, 2018

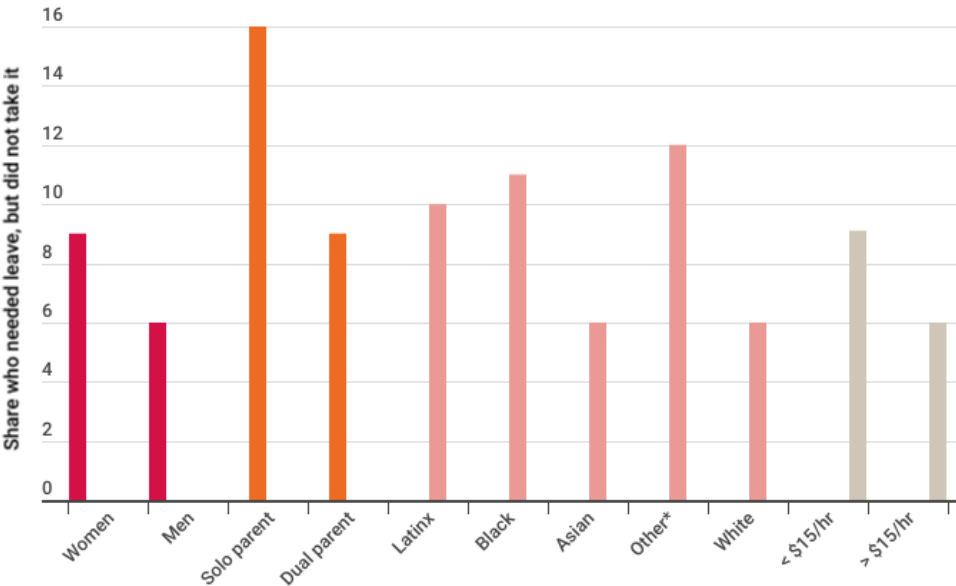


- Millions of workers cannot afford to take unpaid leave. The National Partnership estimates that in 2022 about 10.9 million workers needed leave but did not take it, and two-thirds – nearly 7.2 million – say it is because they could not afford unpaid leave.¹⁰
- The FMLA’s limited definition of family – a spouse, parent or child under 18 or incapable of self-care – does not reflect the caregiving needs of many people. The National Partnership estimates that in 2022, 8.4 million people each year (5.3 percent of all workers) took leave for a non-FMLA-covered individual – meaning their jobs were not protected during leave. Among workers who did not take leave when they needed it, 14 percent said the person they needed to care for was not covered.¹¹

Black Women Urgently Need National Paid Leave and an Expanded FMLA

- There are significant inequities by race and ethnicity, gender, family structure and income among workers who needed leave but could not take it.

Women, Workers of Color, Solo Parents More Likely to Be Unable to Take Needed FMLA Leave



* Includes workers identifying as Native American, Pacific Islander, and multi-racial.
 Source: U.S. Department of Labor FMLA Survey, 2018



- For example, relative to other groups of women, Black women have higher labor force participation,¹² and their families are more reliant on their income: nearly 80 percent of Black mothers are breadwinners for their households.¹³ But the FMLA's limitations – stringent eligibility rules and lack of pay – limit the ability of millions of Black women to support their households and care for their own health and their loved ones each year.
 - In a typical year, 1.1 million Black women need leave but do not take it,¹⁴ often resulting in delayed or foregone medical treatment.¹⁵ That's nearly four out of every ten leaves Black women need.
 - Even when Black women are able to take leave, 42 percent of the time they do so with no pay – more than 757,000 unpaid leaves per year.¹⁶
 - For Black women, wages lost during unpaid or poorly-paid leaves add up to an estimated \$3.9 billion in lost income each year.¹⁷

Most employers report neutral or positive effects when employees take FMLA leave.

- The majority of worksites (92 percent) report no difficulty complying with FMLA. Most (65 percent) report little overall effect from complying with FMLA, while nearly one-third (32 percent) experienced positive effects.¹⁸
- The most common way worksites manage work during an employee's absence is to temporarily assign it to another worker (58 percent of worksites). Just 6 percent of worksites report needing to hire a temporary replacement.¹⁹
- There is little evidence that employees misuse leave. The most recent data show less than 2 percent of worksites report any misuse of FMLA.²⁰

¹ Calculation is based on the number of FMLA-eligible workers (in this fact sheet, workers are defined as "eligible" if they work for employers with a sufficient number of employees, have worked a sufficient number of hours in the previous year, and have a sufficiently long tenure) multiplied by the rates of leave-taking (the percentage of the people who were eligible for FMLA leave who actually took it) for each period covered by an FMLA survey. These figures are then summed to determine total uses. The number of eligible workers for each period is based on the average civilian noninstitutionalized, employed workers calculated using 1994-2022 Current Population Survey workforce statistics multiplied by a percentage of eligible workers reported in the 1995 (Figure 4.1), 2000 (Table A2-3.1), 2012 (Exhibit 2.2.1) and 2018 DOL surveys (Appendix Exhibit 2-1). All reports can be accessed through the DOL Data Hub at <https://www.dol.gov/agencies/oasp/evaluation/data-repo>. For employed worker data, see U.S. Bureau of Labor Statistics. (n.d.) *Current Population Survey*. Retrieved 23 January 2023, from <https://www.bls.gov/cps/>. For rates of leave-taking among eligible workers, see Klerman, J. A., Daley, K., & Pozniak, A. (2014, April 18). *Family and Medical Leave in 2012: Technical Report* (p. 62). Retrieved 23 January 2023, from Department of Labor website: <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/FMLA-2012-Technical-Report.pdf>; and Brown, S., Herr, J., Roy, R., & Klerman, J. A.. (2020, July). *Employee and Worksite Perspectives of the Family and Medical Leave Act: Supplemental Results from the 2018 Surveys* (p. 20). Retrieved 23 January 2023, from Department of Labor website: https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHF_FMLA2018SurveyResults_Appendices_Aug2020.pdf

² Ibid, Brown et al. (2020) and U.S. Bureau of Labor Statistics. Estimate based on 2018 data from Brown et al. regarding the share of FMLA-eligible employees who report taking leave for a qualifying FMLA reason multiplied by the annual average civilian noninstitutionalized, employed workforce in 2022 of 158,291,000.

³ See note 1 Brown et al. (2020), *Appendix Exhibit B4-3*.

⁴ Ibid.

⁵ Ibid. Note that these were FMLA-type leaves reported by employees who were eligible for FMLA; leaves to care for individuals not included in the FMLA's definition of "family" would not have been eligible for FMLA protections. Under FMLA "family" is limited to the worker's parent, spouse, child under 18 or adult child who is incapable of self-care.

⁶ Ibid, *Appendix Exhibit B4-4*.

⁷ See note 1 Brown et al. (2020), *Appendix Exhibit B2-1*.

⁸ Ibid.

⁹ National Partnership for Women & Families analysis. See note 1, Brown et al (2020). *Appendix Exhibit B6-2* and *Appendix B6-4*; Bureau of Labor Statistics. Estimate based on the rate of unmet need among workers ineligible for FMLA, the share of such workers reporting the reason for not taking leave was "thought might lose job," and the annual average civilian noninstitutionalized, employed workforce in 2022.

¹⁰ Ibid. Includes both FMLA-eligible and FMLA-ineligible workers.

¹¹ National Partnership for Women & Families analysis. See note 1 Brown et al (2020), *Appendix Exhibit B6-4*; Bureau of Labor Statistics. Includes both FMLA-eligible and FMLA-ineligible workers.

¹² U.S. Bureau of Labor Statistics. (2023, January). *Labor force characteristics by race and ethnicity, 2021*. Retrieved 24 January 2023, from <https://www.bls.gov/opub/reports/race-and-ethnicity/2021/home.htm>

¹³ Shaw, E., & Mason, C. N. (2020, May). *Holding Up Half the Sky: Mothers as Workers, Primary Caregivers, & Breadwinners During COVID-19*. Retrieved 23 January 2023, from Institute for Women's Policy Research website: <https://iwpr.org/wp-content/uploads/2020/07/Holding-Up-Half-the-Sky-Mothers-as-Breadwinners.pdf>. The report defines "breadwinners" as mothers who contribute at least 40 percent of their household's income or earnings.

¹⁴ Milli, J., Frye, J., & Buchanan, M. J. (2022, March 4). *Black Women Need Access to Paid Family and Medical Leave*. Retrieved 20 January 2023, from <https://www.americanprogress.org/article/black-women-need-access-to-paid-family-and-medical-leave/>

¹⁵ See note 1 Brown et al. (2020), *Appendix Exhibit B6-5*. Based on rates for all workers; data was not disaggregated by race/ethnicity or gender.

¹⁶ See note 14.

¹⁷ Ibid.

¹⁸ See note 1 Brown et al. (2020), *Appendix Exhibit B7-9* and *Appendix Exhibit B7-12*.

¹⁹ Ibid, *Appendix Exhibit B7-4*.

²⁰ See note 1, Klerman, J. A., Daley, K., & Pozniak, A. (2014), p. 156. A comparable analysis was not included in the most recent FMLA survey report.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help all people meet the dual demands of work and family. More information is available at NationalPartnership.org.

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