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**Testimony Regarding the Family and Medical Leave Insurance Program (H.B. 0375)  
Submitted to the record of the Economic Matters Committee Hearing on February 16,  
2021 by Cassandra Gomez, Staff Attorney, A Better Balance**

We are submitting this testimony on behalf of A Better Balance, a legal advocacy organization whose mission is to fight for policies that will protect American workers from having to choose between caring for themselves and their families and maintaining their economic security. To that end, we have been working on paid family and medical leave issues in states throughout the country for over a decade. We are delighted that Maryland is considering this important issue.

**I. Paid family and medical leave laws are working in other states.**

Since the middle of the last century, five states (California, New Jersey, Rhode Island, New York, and Hawaii) have provided a legal right to temporary disability insurance (TDI), which provides partial wage replacement to those unable to work due to an off-the-job illness or injury. In recent years, California, New Jersey, Rhode Island, and New York have expanded these programs to provide benefits to workers bonding with a new child or caring for a seriously ill loved one.<sup>1</sup> Washington State, Washington, D.C., and Massachusetts have created new insurance systems to provide similar benefits. In addition, Connecticut, Oregon, and Colorado have passed laws to create new insurance systems to provide benefits in these same situations, which those states are currently working to implement. Though their exact structures vary, all existing comprehensive paid family and medical leave programs provide benefits through a social insurance model.

In each state with a paid family and medical leave law, almost all private sector (non-government) employees have an automatic legal right to coverage, including hourly, part-time, and subcontracted workers.<sup>2</sup> These laws cover employees regardless of the size of their employer, meaning that even those who work for an employer with just one employee have the right to coverage. Most programs also allow self-employed workers to opt in to coverage if they choose.

These laws provide benefits in a few types of situations. Workers can receive medical leave benefits (sometimes called TDI benefits) when they are unable to work due to a serious off-the-job illness or injury. In all programs, family leave benefits are available to those taking leave from work to bond with a new child (including children newly placed for foster care or adoption) or to care for a family member with a serious health condition. New York, Washington State, Massachusetts, California, Connecticut, and Colorado also provide (or will provide) paid family leave benefits to workers dealing with certain needs in connection with a family member's military deployment. New Jersey, Oregon, Connecticut, and Colorado also provide (or will



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provide) benefits known as “safe time,” which covers certain needs arising from domestic or sexual violence.

Programs vary in the number of weeks of benefits workers can receive. For their own medical needs, workers can receive benefits for fifty-two weeks in California, thirty weeks in Rhode Island, twenty-six weeks in New York and New Jersey, twenty weeks in Massachusetts, twelve weeks in Washington State (with an additional two weeks for certain pregnancy-related health needs), and two weeks in Washington, D.C. Workers will be able to receive benefits for their own medical needs for twelve weeks in Connecticut and Oregon (with an additional two weeks for certain pregnancy-related health needs in each of these states), and Colorado (with an additional four weeks for certain pregnancy-related health needs). For paid family leave, New York, New Jersey, Washington State, and Massachusetts<sup>3</sup> offer twelve weeks, California offers eight weeks, and Washington, D.C. offers six weeks of benefits to care for a seriously ill or injured loved one and eight weeks of benefits to bond with a new child, while Rhode Island offers four weeks of paid family leave benefits. Connecticut, Oregon, and Colorado will each offer twelve weeks of paid family leave benefits. Programs vary in the extent to which workers can combine family and medical leave benefits sequentially.

Benefits are calculated as a percentage of workers’ income. In some programs, this is a flat percentage of workers’ own income. Workers receive a flat percentage of their average weekly wage in Rhode Island (approximately 60%) and New Jersey (85%). New York also uses a flat wage replacement rate, currently 50% for medical leave and 67% for family leave.

Other programs use what are called progressive wage replacement rates, where lower income workers receive a higher percentage of their income. California uses a progressive wage replacement rate ranging from 60% to 70% for most workers, with lower-income workers receiving a higher percentage of their income. Washington, D.C., Washington State, Massachusetts, Connecticut, Oregon, and Colorado use (or will use) progressive rates structured in a similar way. In these states, workers will receive a higher percentage of their income up to a threshold (ranging from 80% to 100%) and then a lower percentage of income (ranging from 50% to 65%) above that threshold. In effect, this will create a sliding scale of benefits. The exact thresholds vary from state to state, but are typically tied to a percentage of the state’s average weekly wage or to the state’s minimum wage.<sup>4</sup>

In every program, benefits are subject to a cap (a maximum weekly benefit). In many states, this cap is set as a percentage of the state’s average weekly wage, so that it adjusts each year in response to growth in wages. Other programs use other mechanisms to ensure the benefit keeps pace with growth; for example, D.C.’s program adjusts benefits each year in response to regional inflation.

Paid family and medical leave laws are social insurance systems. Though the mechanics vary by state, in all states the programs work by combining small contributions from employers, employees, or both into an insurance system. When workers need family or medical leave, the insurance system pays their benefits. This means that employers do not have to pay workers' wages out of pocket when they are out on leave, making providing paid leave inexpensive to the employer. This feature may be especially important for small employers, who often cannot afford to pay for paid leave out of pocket and therefore are at a competitive disadvantage in hiring the best employees as compared to larger employers who can afford to do so.

## **II. The need for Maryland to pass a paid family and medical leave law is overwhelming.**

Shockingly, the United States remains one of only two countries in the world, along with Papua New Guinea, with no national paid parental leave benefit of any kind.<sup>5</sup> Only 20% of private sector workers receive paid family leave through their employers to bond with a new child or care for a seriously ill or injured family member; among low-income workers, the number is even lower.<sup>6</sup>

This lack of access has predictable and devastating consequences for American families. Women without paid leave are more likely to be pushed into lower-paying jobs or to drop out of the work force entirely.<sup>7</sup> In contrast, women who take paid leave after a child's birth are more likely to be employed nine to twelve months after the child's birth than working women who take no leave and new mothers who take paid leave are also more likely to report wage increases in the year following the child's birth.<sup>8</sup> For working fathers, taking longer paid family leave means increased satisfaction in their contact with their children<sup>9</sup> and greater engagement in their children's lives.<sup>10</sup>

Lack of paid leave also hurts children. When parents cannot take the leave they need, babies are less likely to get checkups and important vaccinations, less likely to breastfeed, and more likely to develop behavioral problems.<sup>11</sup> For foster children, the first few months are a critical adjustment period in the transition to a new placement,<sup>12</sup> during which children need time to bond with their foster parents. Seriously ill children benefit when their parents can afford time off to care for them. Research shows that ill children have better vital signs, faster recoveries, and reduced hospital stays when cared for by parents.<sup>13</sup>

Nor is the need for family leave limited to new parents: today, nearly one in three U.S. households provide care for an adult loved one with a serious illness or disability.<sup>14</sup> With an aging population, these numbers will only increase in the future. Family caregivers can help these individuals recover more quickly and spend less time in hospitals.<sup>15</sup> Policies that support family caregiving create savings that benefit all Maryland taxpayers. Unpaid family caregivers not only help to ease the burden on our crowded hospitals and long-term care facilities but also

create enormous financial savings. For example, recipients of family caregiving are less likely to have nursing home care or home health care paid for by Medicare.<sup>16</sup> Because most caregivers providing care for adults are employed,<sup>17</sup> the demands of providing care are in constant tension with earning a much-needed income.

Workers also need time off to address their own serious health needs. Nationwide, about 3 in 5 private sector workers lack access to short-term disability insurance through their employers, leaving them vulnerable when they need time off from work to address their serious health needs.<sup>18</sup> Among low-income workers, these numbers are even more stark. Over 80% of those in the bottom quarter of earners and over 90% of those in the bottom tenth of earners lack access to short-term disability insurance through their employers.<sup>19</sup> When workers do not have the leave they need, they may defer or forego necessary medical treatment.<sup>20</sup> For example, paid medical leave helps cancer patients and survivors determine a course of treatment, follow through with and avoid that treatment, and manage side effects.<sup>21</sup>

Medical problems are a leading cause of personal bankruptcy in this country<sup>22</sup> and a frequent contributor to home foreclosures.<sup>23</sup> Without paid leave, those dealing with a disabling illness are often pushed onto public benefits.<sup>24</sup> Nearly 1 in 3 seriously ill workers either lose their jobs or have to change jobs as a result of their illness.<sup>25</sup> Paid medical leave can help workers balance their health needs with work and keep their jobs. Paid medical leave also helps keep workers safe on the job, increasing productivity and decreasing employer costs. Workers with paid medical leave are significantly less likely to suffer dangerous injuries on the job<sup>26</sup> or deaths on the job.<sup>27</sup> When workers must return to work before a chronic condition is stabilized or before they have healed from an injury, they are more likely to relapse or re-injure themselves while working.<sup>28</sup> Paid leave allows workers to recover and return to full productivity more quickly than they would by continuing to work.

Finally, military families lack the protections they need when their loved ones are called to active duty service of our country. In one recent national survey, the amount of time service members spend away from family was ranked as the top issue of concern for service members and military spouses.<sup>29</sup> Families that make these sacrifices deserve the paid time off they need to address the effects of deployment on their families and their lives. Moreover, due to the impacts of the military lifestyle, a shocking 30% of military spouses are unemployed, despite actively seeking employment, and many more are underemployed.<sup>30</sup> 52% of military spouses reported that unemployment and underemployment are the main obstacles to financial security.<sup>31</sup> Ensuring that these patriots can take the time away they need and then return ready to work can help them maintain employment and better support their loved ones serving abroad and those who remain at home.

## **The Business Case for Paid Leave**

Seven states, California, New Jersey, Rhode Island, New York, Washington State, Washington, D.C., and Massachusetts have already implemented paid family and medical leave programs, with programs in the works under laws passed in Connecticut, Oregon, and Colorado.<sup>32</sup> The experiences of these states have shown that paid family and medical leave laws can provide critically needed benefits at an affordable cost and without burdening businesses.

Contrary to opponents' claims, paid leave does not hurt businesses and can even help. In California, 92.8% of employers reported that paid family leave had a positive or neutral effect on employee turnover,<sup>33</sup> saving employers the costly step of replacing an existing employee.<sup>34</sup> A majority of California employers also reported positive or neutral effects on productivity (88.5%), profitability/performance (91.0%), and employee morale (98.6%).<sup>35</sup>

Nor is it true that paid family and medical leave is bad for small businesses. Without a state program, small businesses that cannot afford to offer the same generous leave benefits as larger companies are at a competitive disadvantage in hiring.<sup>36</sup> Providing paid leave through a social insurance program levels the playing field for small businesses. That is why, for example, one year after Rhode Island's paid family leave law went into effect, a majority of small employers reported they were in favor of the program.<sup>37</sup>

## **The Health Case for Paid Leave**

A robust and growing body of research demonstrates the substantial health benefits of paid family and medical leave for working families. For example, paid leave is associated with better physical and mental health for mothers, including a lower risk of postpartum depression.<sup>38</sup> Moms who return to work within twelve weeks of giving birth are less likely to breastfeed and, when they do, breastfeed for less time than those who stay home longer.<sup>39</sup> In this context, it is unsurprising that access to paid leave has substantial positive effects on breastfeeding. For example, one leading study of California's paid family leave program found that use of paid family leave more than doubled the average number of weeks of breastfeeding and, among workers with low-quality jobs, notably increased the percentage of women who initiated breastfeeding at all.<sup>40</sup>

Paid leave is also tied to reduction in infant and child mortality. In one study of 141 countries, controlling for other factors, an increase of ten full-time-equivalent weeks of paid maternal leave reduced neonatal and infant mortality rates by 10% and the mortality rate of children younger than five by 9%.<sup>41</sup> Expanding paid leave may also help redress existing maternal health disparities. For example, one study found that the positive effects of increasing the length of paid maternity leave are especially pronounced for low-resource families.<sup>42</sup> Moreover, there are



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significant racial disparities in maternal health, especially for Black women who are significantly more likely to die in childbirth or experience serious complications than white women.<sup>43</sup> Greater access to paid leave can help bridge these gaps.

Family care leave also provides significant health benefits to both caregivers and care recipients. Ill children have better vital signs, faster recoveries, and reduced hospital stays when cared for by parents.<sup>44</sup> Paid leave is a crucial part of this equation, because parents with paid leave are more than five times more likely to care for their sick children than those without.<sup>45</sup> In one study, parents of children with special needs who received paid leave were more likely to report positive effects on their children's physical and mental health than those who took leave without pay.<sup>46</sup> Paid family care leave also has important health benefits for caregivers, who face many negative health repercussions from caregiving. Research shows that access to paid leave improves caregivers' mental and emotional health.<sup>47</sup>

Paid medical leave provides workers extended time off to deal with their own serious health need, including acute conditions like cancer, chronic conditions like diabetes or asthma, or recovery from an accident or serious injury. Paid leave allows workers to get the treatment they need, when they need it. For example, paid medical leave helps cancer patients and survivors determine a course of treatment, follow through with that treatment, afford treatment, and manage side effects.<sup>48</sup> Paid leave also helps keep workers safe on the job, increasing productivity and decreasing employer costs. Workers with paid leave are significantly less likely to suffer dangerous injuries on the job<sup>49</sup> or deaths on the job (for example, from heart conditions).<sup>50</sup> When workers must return to work before a chronic condition is stabilized or before they have healed from an injury, they are more likely to relapse or re-injure themselves while working.<sup>51</sup> Nationally, one in three U.S. adults under 65 has at least one chronic health condition.<sup>52</sup> For workers who receive health insurance through their employers, taking needed leave can mean risking their coverage when they need it the most. Strong paid leave laws, like the bills before you today, protect workers' right to keep their employer-provided health insurance, ensuring that workers do not lose the coverage they need at these critical junctures.

While critics charge that employees will abuse the program, the evidence does not support that claim. Studies in California<sup>53</sup> and New Jersey<sup>54</sup> show little to no abuse of the programs.

### **III. A strong paid family and medical leave program contains several important aspects.**

Key policy elements must be included for a strong paid family and medical leave program. New programs should be crafted along the same lines as the successful programs in the states that have enacted paid family and medical leave. The insurance program, like other state programs, should be financed by small contributions that will enable workers to take time off when they



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and their families need it the most. The following are key policy points that should be included in a comprehensive bill.

### **Private plans need appropriate guardrails.**

Most state paid family and medical leave programs allow employers to meet their obligations under the law by using a private plan that meets all the law’s requirements, rather than providing benefits through a state-run fund. However, in state paid family and medical leave laws that allow this option, the use of private plans is subject to certain essential safeguards to ensure that workers whose employers use private plans still receive the full protections of the law.

We are concerned that the private plan language currently in the bill is insufficient to guarantee that workers covered by private plans will truly receive the rights the law promises them in practice. We urge you to consult the examples of states like California,<sup>55</sup> New Jersey,<sup>56</sup> and Massachusetts,<sup>57</sup> which provide rigorous, specific criteria for the approval of private plans and for their continuing oversight to ensure compliance with the law in practice.

Specifically, we urge you to amend the existing private plan language (Section 8.3-706) in your bill to provide the following essential protections. First, the law must provide specific minimum requirements which all policies must meet, including things like covered purposes, eligibility criteria, number of weeks of benefits, and wage replacement rate. These criteria should make clear that, in order to be approved as meeting the law’s requirements, a private plan must meet or exceed what the state plan provides on *each* of these points.

Second, the law must provide clear limits on worker contributions, such that workers will never be asked to pay more than an amount set by the state, regardless of how their employer chooses to provide coverage. Workers should never be required to pay more because their employer has chosen to provide coverage privately rather than through the state fund.

Third, the law must set clear rules for how the benefits will be provided. Where the benefits are provided through the purchase of an insurance policy, the policy must be approved by and regulated by the state. Where the benefits are provided through employer self-insurance, that self-insurance must also be approved by the state, including requiring that employers provide proof that they have specifically set aside sufficient funds to pay for benefits. States that allow for self-insurance for paid family and medical leave benefits often provide that employers who seek to self-insure can be required to deposit a bond or other security with the state, further guaranteeing that funds will be there to pay for workers’ benefits when they need them.<sup>58</sup>

Fourth, the law must provide for strong, proactive enforcement to ensure that employers are meeting their obligations. The state must provide this ongoing enforcement to ensure that



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workers covered by private plans are truly receiving the benefits to which they are entitled under the law. As part of this enforcement, the law must provide serious penalties for employers or other plan providers who break the law.

Fifth, the law must explicitly provide for an appeals process through the state to challenge wrongful denials of workers' claims, regardless of how coverage is provided. This ensures that workers have equal recourse if their claim is denied, as well as providing the state with an essential oversight tool.

Sixth, to avoid any doubt or confusion, the law must explicitly state that workers covered by private plans are entitled to the same employment protections (such as the right to job protection or continuation of employment benefits) as those covered through the state fund. Workers' rights under the law remain the same regardless of how their benefits are provided.

Finally, the law must provide clear requirements for employers to provide notice to workers covered by private plans, to ensure that workers can easily identify who provides their coverage and apply for benefits when they need them. Without these requirements, the use of private plans can provide a barrier to workers' ability to access the benefits to which they are entitled by law due to confusion over where and how to apply. For example, New Jersey recently enacted a strong notice requirement for private plans.<sup>59</sup>

### **12 weeks is a minimum length of leave time to serve the purposes of this legislation.**

A strong bill would provide at least twelve weeks of paid family and medical leave, as H.B. 375 would do. This minimum benchmark, which is also consistent with the FMLA, ensures that workers have the time they need to attend to their own or a family member's serious health needs, address the impact of a family member's military deployment, or bond with a new child. Providing twelve weeks of coverage would also match the length of paid family leave coverage in New York, New Jersey, and Massachusetts and of paid family and medical leave coverage in Washington State, Connecticut, Oregon, and Colorado.

The health benefits of providing 12 weeks of leave for bonding are overwhelming for children, mothers, and fathers. Children whose mothers do not return to work full time in the first 12 weeks are more likely to receive medical checkups and critical vaccinations.<sup>60</sup> Mothers who take at least 12 weeks of leave are also more likely to breastfeed, with important lasting health benefits for their children.<sup>61</sup> Fathers who take longer leaves experience greater engagement in their children's lives;<sup>62</sup> greater paternal engagement has cognitive and developmental advantages for children.<sup>63</sup> For foster children, the first few months are a critical adjustment period in the transition to a new placement,<sup>64</sup> during which children need time to bond with their foster parents. Experts including the American Academy of Pediatrics recommend that healthy full-



term infants should not be enrolled in child care until they are at least 12 weeks old due to rapid developmental changes and the risk of developing severe undetected illness.<sup>65</sup>

For new birth mothers, having less than 12 weeks of family leave is associated with increased symptoms of postpartum depression.<sup>66</sup> For working fathers, taking longer paid family leave means increased satisfaction in their contact with their children.<sup>67</sup>

**Job protection is critical to the ability of a worker to take this benefit for which the worker is paying.**

A strong bill protects the jobs of workers taking paid family and medical leave under the law, as this bill would do. Job protection for all employees covered by the program is an essential element—without it, it’s not leave. This is especially important for low-income workers, who change jobs more often than other workers<sup>68</sup> and are more likely to be working part time<sup>69</sup> (including many part-time workers who would prefer to be working full time).<sup>70</sup> Massachusetts provides job protection to all employees covered by its paid family and medical leave law, while Oregon, Connecticut, and Colorado will provide job protection to nearly all employees covered by their paid family and medical leave laws and New York and Rhode Island already provide job protection to all employees covered by their paid family leave laws.

The need for paid family and medical leave occurs at some of the most stressful times in a person’s life: the arrival of a new child, a health crisis in the family, or a looming deployment. At these times, workers shouldn’t have to worry whether they will have a job to return to after their leave. Without job protection, workers will pay for a program they can’t use. Without a legal right to get their job back, many workers will be unable to take the leave they need—the risk to their long-term economic security will be too great. In one California study, fear of being fired was a commonly cited reason workers who were eligible for paid family leave under that state’s program did not take it.<sup>71</sup> In Rhode Island, 45% of workers who took leave under their state’s paid family leave law (which provides job protection) said that without the law they would not have taken leave for fear of losing their job.<sup>72</sup>

Job protection keeps workers attached to the workforce. When workers are unable to take short-term leave and then return to their job, they are often pushed out of the workforce altogether. One study estimated that men who leave the labor force early due to caring for an aging parent lose almost \$90,000 in wages, while women who do so lose over \$140,000 in wages.<sup>73</sup> Women who take paid leave after having a baby are more likely to be working 9 to 12 months after the birth than women who take no leave.<sup>74</sup> And keeping workers on the job saves taxpayers money. Both men and women who return to work after taking paid leave are much less likely to be receiving public assistance or food stamps in the year following their child’s birth than those who return to work without taking family leave.<sup>75</sup>

**Workers need a decent wage replacement in order to be able to take time off, especially workers at the bottom of the economic spectrum.**

A strong bill would provide a wage replacement rate that workers, especially low-income workers can afford to use. At a minimum, we strongly recommend providing a wage replacement rate of at least two-thirds (67%) of wages for all workers.

If possible, we also recommend adopting a progressive wage replacement system to ensure that all workers can afford to take the leave they need, as this bill would do. Under progressive wage replacement systems, lower-income workers, who need to use all of their income to meet their basic needs, receive a higher proportion of their income while they are on leave. For example, the paid family and medical leave program in Washington State provides 90% of workers' wages up to a certain amount and 50% of workers' wages above that amount. Washington State's program currently caps benefits at 90% of the state average weekly wage (currently \$1,206). Similar to Washington State, section 8.3-704 of this bill provides that workers will receive 90% of their wages up to a certain amount and 50% of their wages above that amount. Benefits will initially be capped at \$1,000 per week, and will be adjusted in subsequent years based on inflation. Progressive wage replacement systems strike a reasonable balance between meeting the needs of low-wage workers and offering a reasonable maximum benefit to help protect the solvency of the fund.

The wage replacement rate (the percentage of their own income workers receive while on leave) is an extremely important element of a paid family and medical leave law: if the rate is too low, workers will not be able to afford to take the leave they need. This problem can be especially acute for low-income workers living paycheck to paycheck, who need every dollar of their income to pay their bills. Moreover, for programs that are partially worker-funded, it is particularly essential to ensure that workers will not be required to pay for a program they cannot afford to use.

Though low-income workers are the most vulnerable, workers of any income level can find themselves unable to afford to take leave if the wage replacement rate is too low. In a major California study, workers across income levels reported that the 55% wage replacement level made it difficult to afford to use the program, potentially contributing to low rates of use.<sup>76</sup> For this reason, California amended their statute to raise the wage replacement rate, especially for low-wage workers. Maryland can learn from the experience of existing programs and create a benefit level that works for workers.



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### **For purposes of family care, all close family members should be covered.**

A strong bill includes the close family members for whom many workers will feel responsible and will therefore need leave to provide care should there be a serious illness. A thoughtful definition should help reflect and protect the diversity of Maryland's families. In today's families, many grandparents are raising grandchildren and both grandparents responsible for their grandchildren and grandchildren who owe their grandparents the care given them should be covered. Adult children with a serious illness are no less in need of care from their parents than any other adult to whom the worker is related. And many siblings look to their sisters or brothers as the first person to whom they would turn for care in the event of a serious illness.

Further, a strong bill would give covered workers the right to paid leave to care for their chosen families, loved ones to whom they may not have a legal or biological relationship. Four states—New Jersey, Connecticut, Oregon, and Colorado—have already adopted paid family and medical leave laws that include these loved ones. Over 600,000 households in Maryland, or 27% of households in the state, consist of an individual who lives alone.<sup>77</sup> In an emergency or during an illness, many individuals rely on care from chosen family—like close friends and loving neighbors—or extended family. Over 224,000 Maryland residents live with nonrelatives—such as roommates, friends, or significant others.<sup>78</sup> When an individual is sick or has a medical emergency, they often rely on individuals they live with—even absent a blood or legal relationship—for help and caregiving. In a 2016 national survey conducted by the Center for American Progress, 32% of people in the United States reported that they took time off work to provide care for a chosen family member. Higher rates were reported by LGBTQ participants (42%, compared with 31% of non-LGBTQ participants) and participants with disabilities (42%, compared with 30% of participants without disabilities).<sup>79</sup> While many people rely on their chosen families for care, chosen families can be especially important to LGBTQ people, particular LGBTQ older adults, who are especially likely to rely on those loved ones.<sup>80</sup>

### **Self-employed workers deserve the opportunity to get coverage if they choose.**

Like H.B. 375, a strong bill would allow self-employed workers, including independent contractors and freelancers, to opt in to coverage. Eight states—California, New York, Washington, D.C., Washington State, Massachusetts, Connecticut, Oregon, and Colorado—have laws that allow or will allow such workers to opt in to coverage under their respective programs. By even conservative measures, more than one in ten American workers are self-employed (as of 2015),<sup>81</sup> though some counts place the number even higher.<sup>82</sup> A disproportionately high number of caregivers—in one study, as many as one in six—are self-employed.<sup>83</sup> Self-employment can be a double-edged sword for the ability to take leave, trading off (at least theoretically) greater control of one's work schedule with less reliable income and fears of losing clients or work due to absence.



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Recently, the rise of the so-called “gig economy” has placed increasing importance on ensuring basic protections for independent contractors and other self-employed workers, even as it raises significant questions regarding whether these workers are in fact employees who have been misclassified as contractors.<sup>84</sup> Despite their claims to provide flexibility, in practice platform companies like Uber often punish workers for not being available during profitable time slots, making it risky to take needed leave.<sup>85</sup> Moreover, as with other low-income workers, taking unpaid time away from work may be economically unfeasible for many gig economy workers who struggle to find enough hours of work.<sup>86</sup> New laws must, therefore, account for the needs of these workers and ensure that they can access the tools they need to take real leave regardless of whether they are considered traditional “employees.”

### **Portable benefits meet the needs of a changing workforce.**

A strong bill would provide portable benefits—benefits that workers can take with them as they move from job to job or combine multiple sources of income. H.B. 375 would provide workers with the portable paid family and medical leave benefits needed to fulfill the realities of today’s workforce. As workers increasingly find themselves in nonstandard, precarious, and insecure jobs, portable benefits are increasingly essential. Low-income workers in particular may be more likely to change jobs than other workers more generally, even with employment that is not formally set up as temporary. Without needed protections, like eligibility standards that promote portability, a worker who happens to change jobs shortly before a life event requiring leave could be excluded, even if that worker had a long tenure and qualified in their prior position.

Additionally, a bill should provide benefits to previously covered workers during unemployment. Many nonstandard employees may go through periods of unemployment between periods of employment. For example, temporary workers may have gaps between engagements or seasonal workers may struggle to find sufficient work in the off-season. For these workers, it is important that they can still access benefits they previously qualified for if the need arises during a period of unemployment.

### **Outreach and education are important.**

Especially in a program in which employees are paying in part for the benefit, it is very important that workers know about the benefit if there is a covered event in their lives. Strong bills include provisions committing the state to providing outreach and education on the new program and require employers to provide their employees with notice of their rights.

Maryland has taken an important step forward today by examining paid family and medical leave. We thank you for the opportunity to submit this testimony and for all your efforts to enact the crucial protections working families need.

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<sup>1</sup> Hawaii's law continues to provide for TDI benefits, but has not been expanded to provide paid family leave benefits. Under the law, workers can receive TDI benefits for up to twenty-six weeks. Workers receive 58% of their own income through TDI, up to a cap.

<sup>2</sup> Some state paid family and medical leave laws also cover state or local government employees, while others generally allow public sector employer to opt in to coverage or allow unionized public sector workers to negotiate for coverage through the bargaining process.

<sup>3</sup> Though benefits for most purposes began on January 1, 2021, benefits for civilian family caregiving will begin in Massachusetts on July 1, 2021. Massachusetts already provides up to twenty-six weeks of family leave benefits for military caregivers.

<sup>4</sup> For exact details by state, please see the attached chart.

<sup>5</sup> INTERNATIONAL LABOUR ORGANIZATION, *MATERNITY AND PATERNITY AT WORK: LAW AND PRACTICE ACROSS THE WORLD* 16 (2014), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_242615.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf).

<sup>6</sup> *National Compensation Survey: Employee Benefits in the United States, Mar. 2020*, U.S. Bureau of Labor Statistics, Table 31 (2020), <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>.

<sup>7</sup> Sara Cohen, *Have Your Cake and Eat It Too: How Paid Maternity Leave in the United States Could End the Choice Between Career & Motherhood*, 36 *WOMEN'S RTS. L. REP.* 1, 9 (2014).

<sup>8</sup> Linda Houser & Thomas Vartanian, *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public*, CENTER FOR WOMEN AND WORK (2012), p. 6-7, available at <http://www.nationalpartnership.org/research-library/work-family/other/pay-matters.pdf>.

<sup>9</sup> Linda Haas & C. Phillip Hwang, "The Impact of Taking Parental Leave on Fathers' Participation in Childcare and Relationships with Children: Lessons from Sweden," *Community, Work & Family*, 11:1, 85-104.

<sup>10</sup> Maria del Carmen Huerta *et al.*, *Fathers' Leave, Fathers' Involvement and Child Development Are They Related? Evidence from Four OECD Countries* (2013).

<sup>11</sup> Lawrence M. Berger, Jennifer Lynn Hill, & Jane Waldfogel, *Maternity Leave, Early Maternal Employment and Child Health and Development in the US*, 115 *THE ECON. J.L.* no. 501, F29, F45 (2005).

<sup>12</sup> Annette Semanchin Jones & Susan J. Wells, *PATH/Wisconsin-Bremer Project: Preventing Disruptions in Foster Care* (2008).

<sup>13</sup> See S. J. Heymann, A. Earle & B. Egleston, *Parental Availability for the Care of Sick Children*, *Pediatrics*, Vol. 98 No. 2 (Aug. 1996), p. 226-30; S.J. Heymann, *THE WIDENING GAP: WHY AMERICA'S WORKING FAMILIES ARE IN JEOPARDY AND WHAT CAN BE DONE ABOUT IT* (2000), p. 57.

<sup>14</sup> Catherine Albiston & Lindsey Trimble O'Connor, *Just Leave*, 39 *HARV. J. L. & GENDER* 1, 16 (2016).

<sup>15</sup> See, e.g., A. Houser & M.J. Gibson, *Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update*, AARP Public Policy Institute (Nov. 2008), pp. 1-2, 6; *Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving*, AARP (June 2007), p. 6.

<sup>16</sup> Houser & Gibson, *supra* note 15, at 6.

<sup>17</sup> *Caregiving in the U.S.*, AARP & National Alliance for Caregiving (June 2015), p. 56, available at <http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf>.

<sup>18</sup> U.S. Bureau of Labor Statistics, *Employee Benefits Survey: Mar. 2020*, Table 16 (2020), <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>.

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<sup>19</sup> *Id.*

<sup>20</sup> See Abt Associates Inc., *Family and Medical Leave in 2012: Technical Report* 131 (Sep. 2012), <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

<sup>21</sup> Elizabeth Harrington & Bill McInturff, *Key Findings -- National Surveys of Cancer Patients, Survivors, and Caregivers*, American Cancer Society Cancer Action Network (2017), <https://www.acscan.org/sites/default/files/ACS%20CAN%20Paid%20Leave%20Surveys%20Key%20Findings%20Press%20Memo%20FINAL.pdf>. The results of this survey strongly suggest that other workers with chronic or serious illnesses will have better access to treatment and care when they are able to take paid time off from work.

<sup>22</sup> See David U. Himmelstein, Deborah Thorne, Elizabeth Warren, Steffie Woolhandler, *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 AM. J. OF MED. 742 (2009).

<sup>23</sup> Christopher Tarver Robertson, Michael Hoke, & Richard Egelhof, *Get Sick, Get Out: The Medical Causes of Home Mortgage Foreclosures*, 18 HEALTH MATRIX 65, 68 (2008).

<sup>24</sup> See Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, LAW & CONTEMP. PROBS. 285, 311-12 (Winter 2010).

<sup>25</sup> The Commonwealth Fund, The New York Times, & Harvard T.H. Chan School of Public Health, *Being Seriously Ill in America Today* 8 (Aug. 2018), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2018/10/CMWF-NYT-HSPH-Seriously-Ill-Poll-Report.pdf>.

<sup>26</sup> Abay Asfaw *et al.*, *Paid Sick Leave and Nonfatal Occupational Injuries*, 102.9 AMERICAN JOURNAL OF PUBLIC HEALTH e59-e64 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3482022/>.

<sup>27</sup> Daniel Kim, *Paid Sick Leave and Risks of All-Cause and Cause-Specific Mortality Among Adult Workers in the USA*. 14.10 Int. J. of Env. Research and Pub. Health 1247 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664748/pdf/ijerph-14-01247.pdf>.

<sup>28</sup> T.G. Hollo, *Evaluating family and medical leave insurance for Washington state*, 11 Economic Opportunity Institute (May 2012), <http://www.opportunityinstitute.org/wp-content/uploads/family-leave-insurance/EvaluatingFamilyandMedicalLeave-Jan13.pdf>.

<sup>29</sup> *Military Family Lifestyle Survey: Comprehensive Report*, BLUE STAR FAMILIES, p. 20 (2018), available at <https://bluestarfam.org/wp-content/uploads/2019/03/2018MFLS-ComprehensiveReport-DIGITAL-FINAL.pdf>.

<sup>30</sup> *Id.* at 10

<sup>31</sup> *Id.*

<sup>32</sup> Paid family and medical leave benefits will begin in Connecticut in 2022, Oregon in 2023, and Colorado in 2024.

<sup>33</sup> Eileen Appelbaum & Ruth Milkman, *Leaves That Pay: Employer and Worker Experience with Paid Family Leave in California* (2011), CENTER FOR ECONOMIC AND POLICY RESEARCH, p. 8, available at <https://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.

<sup>34</sup> Replacing an employee costs 50-75% of an hourly employee's annual pay and up to 150% of a salaried employee's annual pay. Jodie Levin-Epstein, *Getting Punched: The Job and Family Clock* (2006), CENTER FOR LAW AND SOCIAL POLICY, p. 9, available at <http://www.clasp.org/resources-and-publications/files/0303.pdf>.

<sup>35</sup> Appelbaum & Milkman, *supra* note 33, at 8.

<sup>36</sup> Eileen Appelbaum & Ruth Milkman, *Achieving a Workable Balance*, CENTER FOR WOMEN AND WORK (2006), p. 23, available at <https://smlr.rutgers.edu/sites/default/files/images/achieving%20a%20workable%20balance%202006%20Appelbaum.pdf>.

<sup>37</sup> 56% of employers with 10-19 employees and 59% of employers with 20-49 employees were in favor of the program. Ann Bartel, Maya Rossin-Slate, Christopher Ruhm, & Jane Waldfogel, *Assessing Rhode Island's Temporary Caregiver Insurance Act: Insights from a Survey of Employers* (2016), p. 7, available at [https://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct\\_InsightsFromSurveyOfEmployers.pdf](https://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct_InsightsFromSurveyOfEmployers.pdf).

<sup>38</sup> Zoe Aitken *et al.*, *The Maternal Health Outcomes of Paid Maternity Leave: A Systematic Review*, SOCIAL SCIENCE & MEDICINE 130 (2015) 32-41; Belinda Hewitt *et al.*, *The Benefits of Paid Maternity Leave for Mothers'*

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<sup>39</sup> Berger, Hill, & Waldfogel, *supra* note 11, at F29, F39-F40.

<sup>40</sup> Appelbaum & Milkman, *supra* note 33, at 25-26.

<sup>41</sup> Jody Heymann, Amy Raub, & Alison Earle, *Creating and Using New Data Sources to Analyze the Relationship Between Social Policy and Global Health: The Case of Maternal Leave*, PUBLIC HEALTH REP. 126 (Suppl 3): 127-134 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3150137/>.

<sup>42</sup> Louise Voldby Beuchert et al., *The Length of Maternity Leave and Family Health*, 43 LABOUR ECONOMICS 55, 67 (2016).

<sup>43</sup> National Partnership for Women & Families, *Black Women's Maternal Health: A Multifaceted Approach to Addressing Persistent and Dire Health Disparities*, <http://www.nationalpartnership.org/research-library/maternal-health/black-womens-maternal-health-issue-brief.pdf> (April 2018).

<sup>44</sup> See Heymann, Earle & Egleston, *supra* note 13, at 226-30; Heymann, *supra* note 13.

<sup>45</sup> Jody Heymann, Sarah Toomey, & Frank Furstenberg, *Working Parents: What Factors Are Involved in Their Ability to Take Time Off from Work When Their Children Are Sick?* ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE, vol. 163, no. 8, fn 4-2 (Aug 1999).

<sup>46</sup> Mark A Schuster, et al., *Perceived Effects of Leave from Work and the Role of Paid Leave Among Parents of Children with Special Health Care Needs*. AMERICAN JOURNAL OF PUBLIC HEALTH, 99(4):698-705 (April 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661484/>.

<sup>47</sup> Alison Earle & Jody Heymann, *Protecting the Health of Employees Caring for Family Members with Special Health Care Needs*, SOCIAL SCIENCE & MEDICINE, 73:68-78 (July 2011) <http://www.sciencedirect.com/science/article/pii/S0277953611002917?via%3Dihub>; Schuster, et al., *supra* note 46.

<sup>48</sup> Harrington & McInturff, *supra* note 21. The results of this survey strongly suggest that other workers with chronic or serious illnesses will have better access to treatment and care when they are able to take paid time off from work.

<sup>49</sup> Asfaw et al., *supra* note 26.

<sup>50</sup> Daniel Kim, *Paid Sick Leave and Risks of All-Cause and Cause-Specific Mortality Among Adult Workers in the USA*. 14.10 INT. J. OF ENV. RESEARCH AND PUB. HEALTH 1247 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664748/pdf/ijerph-14-01247.pdf>.

<sup>51</sup> Hollo, *supra* note 28.

<sup>52</sup> *Workers Affected By Chronic Conditions: How Can Workplace Policies And Programs Help?*, GEORGETOWN UNIV. HEALTH POLICY INST., Issue Brief Number 7 (June 2004), <https://hpi.georgetown.edu/workplace/>.

<sup>53</sup> California Employment Development Department's Annual Report on Fraud, Deterrence and Detection Activities, A Report to the California Legislature. June 2018; [https://www.edd.ca.gov/About\\_EDD/pdf/Fraud\\_Deterrence\\_and\\_Detection\\_Activities\\_2018.pdf](https://www.edd.ca.gov/About_EDD/pdf/Fraud_Deterrence_and_Detection_Activities_2018.pdf).

<sup>54</sup> Sharon Lerner & Eileen Appelbaum, *Business As Usual: New Jersey Employers' Experiences with Family Leave Insurance*, Center for Economic and Policy Research (June 2014), [www.cepr.net/documents/nj-fli-2014-06.pdf](http://www.cepr.net/documents/nj-fli-2014-06.pdf).

<sup>55</sup> Cal. Unemp. Ins. Code §§ 3251-3272.

<sup>56</sup> N.J. Stat. Ann. §§ 43:21-32 to -36

<sup>57</sup> Mass. Gen. Laws ch. 175M, § 11.

<sup>58</sup> See, e.g., Cal. Unemp. Ins. Code § 3258; NY Workers' Comp. Law § 211(3).

<sup>59</sup> N.J. Stat. Ann. § 43:21-32.

<sup>60</sup> Berger, Hill, & Waldfogel, *supra* note 11.

<sup>61</sup> *Id.*

<sup>62</sup> del Carmen Huerta et al., *Fathers' Leave, Fathers' Involvement and Child Development Are They Related?*

<sup>63</sup> Ann Sarkadi et al., "Fathers' involvement and children's developmental outcomes: a systematic review of longitudinal studies," *Acta Paediatrica* 97: 153-158 (2008).

<sup>64</sup> Jones & Wells, *supra* note 12.

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<sup>67</sup> Haas & Hwang, “The Impact of Taking Parental Leave on Fathers’ Participation in Childcare and Relationships with Children”, 85-104.

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<sup>71</sup> Appelbaum & Milkman, *supra* note 33.

<sup>72</sup> Barb Silver, Helen Mederer, & Emilija Djurdjevic, *Rhode Island’s Temporary Caregiver Insurance Program: Findings from the First Year* (2015).

<sup>73</sup> MetLife Mature Market Institute, *The Metlife Study of Caregiving Costs to Working Caregivers* (2011).

<sup>74</sup> Houser & Vartanian, *supra* note 8.

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<sup>76</sup> *Paid Family Leave Market Research* (Dec. 2015), p. 70, CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT, available at [http://www.edd.ca.gov/Disability/pdf/Paid\\_Family\\_Leave\\_Market\\_Research\\_Report\\_2015.pdf](http://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf).

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<sup>78</sup> *Id.*

<sup>79</sup> Katherine Gallagher Robbins et al., *People Need Paid Leave Policies That Cover Chosen Family*, Washington: Center for American Progress (2017), available at <https://www.americanprogress.org/issues/poverty/reports/2017/10/30/441392/people-need-paid-leave-policies-that-coverchosen-family/>.

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<sup>85</sup> *Id.* at 6.

<sup>86</sup> See *id.* at 5-6.