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Testimony Regarding the Family and Medical Leave Insurance Program—Time to Care Act of 2022 (H.B. 8)

Submitted to the record of the House Economic Matters Committee Hearing on February 15, 2022 by Molly Weston Williamson, Director of Paid Leave and Future of Work, A Better Balance

This testimony is submitted 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 and proud to support this critical legislation.

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.¹ Washington State, Washington, D.C., Massachusetts, and Connecticut have created new insurance systems to provide similar benefits. In addition, 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.² 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,



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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 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 and Connecticut (with an additional two weeks in each state for certain pregnancy-related health needs), and six weeks in Washington, D.C. Workers will be able to receive benefits for their own medical needs for twelve weeks in Oregon (with an additional two weeks for certain pregnancy-related health needs), and Colorado (with an additional four weeks for certain pregnancy-related health needs). For paid family leave, New York, New Jersey, Washington State, Connecticut, and Massachusetts³ offer twelve weeks, California offers eight weeks, and Rhode Island offers five weeks; 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. 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.⁴

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



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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.

Maryland needs paid family and medical leave now—for workers, businesses, families, and the economy. Families who have access to paid leave are healthier, more economically secure, and less likely to require taxpayer-funded public assistance resources. The lack of paid leave costs U.S. workers and their families \$22.5 billion each year in lost wages alone.⁵

This bill is especially timely now. Paid family and medical leave will be crucial as our nation recovers from the COVID-19 pandemic. States that had paid family and medical leave programs in place prior to the pandemic were better able to respond to workers’ needs, while, even with emergency interventions, our lack of a national paid leave policy compromised the effectiveness of our pandemic response.⁶ As we move forward, paid family and medical leave will ensure workers can take the time they need to address their own or a loved one’s COVID-related needs in the years to come,⁷ while also responding to longstanding existing needs.

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.⁸ Only 23% of civilian 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.⁹

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.¹⁰ 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.¹¹ For working fathers, taking longer paid family leave means



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increased satisfaction in their contact with their children¹² and greater engagement in their children's lives.¹³

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.¹⁴ For foster children, the first few months are a critical adjustment period in the transition to a new placement,¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹ Because most caregivers providing care for adults are employed,²⁰ 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 civilian 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.²¹ Among low-income workers, these numbers are even more stark. Eighty percent of those in the bottom quarter of earners and 90% of those in the bottom tenth of earners lack access to short-term disability insurance through their employers.²² When workers do not have the leave they need, they may defer or forego necessary medical treatment.²³ 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.²⁴

Medical problems are a leading cause of personal bankruptcy in this country²⁵ and a frequent contributor to home foreclosures.²⁶ Without paid leave, those dealing with a disabling illness are often pushed onto public benefits.²⁷ Nearly 1 in 3 seriously ill workers either lose their jobs or have to change jobs as a result of their illness.²⁸ Paid medical leave can help workers balance their health needs with work and keep their jobs. Paid medical leave also helps keeps 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 job²⁹ or deaths on



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the job.³⁰ 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.³¹ 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 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.³² 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.³³ 52% of military spouses reported that unemployment and underemployment are the main obstacles to financial security.³⁴ 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

Eight states, California, New Jersey, Rhode Island, New York, Washington State, Washington, D.C., Massachusetts, and Connecticut have already implemented paid family and medical leave programs, with programs in the works under laws passed in Oregon and Colorado.³⁵ 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,³⁶ saving employers the costly step of replacing an existing employee.³⁷ A majority of California employers also reported positive or neutral effects on productivity (88.5%), profitability/performance (91.0%), and employee morale (98.6%).³⁸ And the California Society for Human Resource Management, a group of human resources professionals that initially opposed the state's paid family leave law, declared that the law is less onerous than expected, and few businesses in their research reported challenges resulting from workers taking leave.³⁹

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.⁴⁰ Providing paid leave through a social insurance program levels the playing field for small businesses. That is why, for example, one



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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.⁴¹

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.⁴² 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.⁴³ 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.⁴⁴

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%.⁴⁵ 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.⁴⁶ Moreover, there are 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.⁴⁷ 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.⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.⁵¹

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



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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.⁵² 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 job⁵³ or deaths on the job (for example, from heart conditions).⁵⁴ 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.⁵⁵ Nationally, one in three U.S. adults under 65 has at least one chronic health condition.⁵⁶ 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.

Paid leave can help fight substance abuse, including the rising threat of opioid abuse, which costs our nation over \$740 billion each year.⁵⁷ Key treatment options, including both in-patient and outpatient care,⁵⁸ generally require time off work, which is why treatment of substance use disorders is covered under existing leave laws.⁵⁹ Family caregivers are critical in ensuring those with substance use disorders can get treatment,⁶⁰ but caregiving can come at a high mental, physical, and financial cost.⁶¹ Paid leave can ensure they have the time away from work they need, along with easing the financial burdens of caregiving. Recovery benefits workers, their families, and their employers. Workers in recovery from substance use disorders have the lowest rates of turnover and absenteeism—lower, even, than the general workforce.⁶²

While critics charge that employees will abuse the program, the evidence does not support that claim. Studies in California⁶³ and New Jersey⁶⁴ show little to no abuse of the programs by workers.

III. H.B. 8 would create a strong paid family and medical leave program.

Key policy elements must be included for a strong paid family and medical leave program, building on lessons learned from successful programs in the states that have enacted paid family and medical leave. H.B. 8 would provide these crucial policy elements to offer strong protections to Maryland workers.

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

H.B. 8 would provide at least twelve weeks of paid family and medical leave (with additional weeks in certain situations where workers have multiple needs). This minimum benchmark, which is also consistent with the FMLA, ensures that workers have the time they need to attend



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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.⁶⁵ Mothers who take at least 12 weeks of leave are also more likely to breastfeed, with important lasting health benefits for their children.⁶⁶ Fathers who take longer leaves experience greater engagement in their children's lives;⁶⁷ greater paternal engagement has cognitive and developmental advantages for children.⁶⁸ For foster children, the first few months are a critical adjustment period in the transition to a new placement,⁶⁹ 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.⁷⁰

For new birth mothers, having less than 12 weeks of family leave is associated with increased symptoms of postpartum depression.⁷¹ For working fathers, taking longer paid family leave means increased satisfaction in their contact with their children.⁷²

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

H.B. 8 protects the jobs of workers taking paid family and medical leave under the law. 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 workers⁷³ and are more likely to be working part time⁷⁴ (including many part-time workers who would prefer to be working full time).⁷⁵ Massachusetts provides job protection to all employees covered by its paid family and medical leave law, while Oregon, Connecticut, and Colorado provide (or will provide) job protection to nearly all employees covered by their paid family and medical leave laws and New York and Rhode Island 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



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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.⁷⁶ 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.⁷⁷

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.⁷⁸ 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.⁷⁹ 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.⁸⁰

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

H.B. 8 follows established best practices, providing a progressive wage replacement rate that will provide meaningful, accessible benefits to workers across the economic spectrum and ensure a benefit that low-income workers can afford to use. By adopting H.B. 8, Maryland would mirror the progressive wage replacement rates already in place California, Washington State, Massachusetts, the District of Columbia, and Connecticut and those that will be implemented in coming years in Oregon and Colorado.

Under progressive wage replacement systems like the one proposed here, 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. This bill provides that workers will receive 90% of their wages up to 65% of the state average weekly wage (in current terms, this amount equals approximately \$870) 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



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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.⁸¹ 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.

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. Here, H.B. 8 offers a strong foundation covering a range of loved ones, helping to 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. This bill would allow workers to take the time they need to care for these and other loved ones when they are seriously ill or injured.

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

Significantly, H.B. 8 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),⁸² though some counts place the number even higher.⁸³ A disproportionately high number of caregivers—in one study, as many as one in six—are self-employed.⁸⁴ Self-employment can be a double-edged sword for the ability to take leave, trading off (at least theoretically) greater control



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of one's work schedule with less reliable income and fears of losing clients or work due to absence.

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.⁸⁵ 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.⁸⁶ 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.⁸⁷ For this reason, it is critically important that new laws, 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”—as H.B. 8 would do.

Portable benefits meet the needs of a changing workforce.

H.B. 8 would provide the type of portable benefits—benefits that workers can take with them as they move from job to job or combine multiple sources of income—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 strong paid leave program 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—especially as the economic effects of the COVID pandemic continue to shape our economy, especially for women.

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. This bill



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includes critically needed provisions committing the state to providing outreach and education on the new program and requiring 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.

¹ 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.

² 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.

³ For military caregivers, Massachusetts provides up to 26 weeks of benefits.

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