

Home and away

The politics and policy of family leave in Massachusetts

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The politics and policy of family leave in Massachusetts

by Charles H. Yelen*

Achieving an appropriate balance between the public and private realms has always posed a central challenge in American public policy. A nation that celebrates individualism, family, and private enterprise often views proposals for government action with skepticism. Even in historically liberal and reform-oriented states like Massachusetts, proposals to provide new benefits to address social problems are viewed warily. Critics – ranging from Edward King to William Weld, from Barbara Anderson to Thomas Finneran – question new government benefits on both economic and cultural grounds. On economic grounds, the skeptics wonder how many resources the state can afford to devote to day care, public health, affordable housing, public transportation, school equity, parks and environmental protection, the challenges of special-needs populations, and other causes. On social grounds, the skeptics question whether public provision of services undermines the capacity of private actors to supply the same services more creatively and efficiently.

Complicating the public-private tension is the system of American federalism, in which Washington often prods the states toward certain goals but allows them great leeway in establishing the specifics of policy and implementation. Since the New Deal, the federal government has played a significant role in setting goals and strategies for virtually every aspect of American life. But the federal government often operates indirectly, issuing mandates, providing money, and writing regulations – and expecting that the states will implement policy in accord with their own needs and circumstances. The result is a complex nest of programs that promote an approach of “muddling through,” rather than comprehensive, coherent, and consistent policy to address basic needs everywhere.¹

The public-private balance and the fragmentation of the federal system pose difficult dilemmas for the challenges of work and family at the dawn of a new century. On the one

* Dulcy Anderson and Charles C. Euchner contributed research and writing to this report.

hand, both families and business enterprises are considered strictly private operations. The very character of these institutions – their uniqueness, their creativity, their ability to create special opportunities for every kind of person – stems from their private character. Every encroachment of this private character takes away something special. On the other hand, in a world as complex and volatile as 21st-century America, these private institutions need support that can be provided only by the public realm. Families and businesses both need all manner of public goods – public schools, infrastructure, hospitals, museums, parks, and more – to thrive. Policy analysts of all ideological stripes recognize that private entities depend on public entities, and vice versa. The question is how much and what kind of public policies and public goods are needed to foster vibrant families, businesses, and other private entities.

Both families and businesses are like boats on choppy waters, venturing to tend to their own needs but often rocked by forces beyond their control. Mothers and fathers feel a need to take time off from work to care for a newborn, and if they cannot get that time off, they cannot provide the proper care. They also need time to address medical emergencies or to look after vulnerable members of the family at critical times. When they cannot get this time off, the health and well-being of the family may be compromised. On the other hand, many businesses are reluctant to offer extensive benefits to workers who would like to take time off to tend to their families. In competitive industries, the costs and lost time can be damaging – but not offering benefits can cost the company important skills, experience, and morale.

In order to maintain the strength and resiliency of both the family and the firm – so that they, in turn, can offer important benefits to society – the public sector can provide important standards and resources on workers and family policy. By tapping into existing insurance funds for unemployment or disability, or by creating new revenue streams, the government can provide the kind of benefits that help both families and private business. The question for policymakers is twofold. First, is this kind of extension of the social insurance system warranted? Second, how can public policy achieve the best balance between public goals and private benefits and responsibilities? Who should be eligible for benefits? When? What kinds of companies should be part of the family-leave system and which, if any, should be exempt? What resources will be used to pay the benefits? How can the benefit system provide the kind of stability that both families and businesses need, while at the same time encouraging everyone to draw on their own resources as much as possible?

The year 2001 was a year of great contrast in Massachusetts on the issue of paid family leave. During the first part of the year, the issue rode a wave of sympathy and willingness to act legislatively, motivated by the Department of Labor regulatory change in late August of 2000 that allowed states to experiment with utilizing unemployment insurance for paid family leave as well as by the highly visible paid leave taken by the Governor of Massachusetts upon the birth of her twins. Then, as the economy veered toward recession and the country faced the challenge of the September 11 terrorist attacks, the momentum slowed. The issue now lies in dormancy, but it is far from extinct. Both advocates and opponents are

2 Home and away

aware of the potential for a revived interest in paid family leave once an economic recovery is in sight. As Lissa Bell of the National Partnership for Women and Families suggests, surveys consistently show that large majorities of Americans want family and medical leave to be more affordable.²

Paid family leave could become a major issue in the 2002 Massachusetts gubernatorial campaign, particularly if the state and the nation experience an economic recovery. Pro-labor candidates Thomas Birmingham and Robert Reich have shown willingness to support a paid leave plan. Steve Grossman also has been a vocal spokesperson on the issue, touting his family-friendly credentials as the chief executive officer of MassEnvelopePlus. Governor Jane M. Swift developed her own middle-of-the-road strategy before exiting the campaign in March, setting a precedent for a Republican paid family leave plan and perhaps making it difficult for her successor to refuse a plan. In many different configurations of candidates for governor and lieutenant governor, the convergence of a rebounding economy, new data, and a major political campaign could give the family leave issue new energy and even lead to passage of a law inaugurating a paid leave policy.

The debate about paid family leave engages most of the important advocacy groups on social and economic policy nationally. Favoring expanded benefits are labor and women's advocates, and opposing them are business and anti-taxation advocates. At the federal level, advocates include the National Partnership for Women and Families (formerly the Women's Legal Defense Fund), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Institute for Women's Policy Research, and the National Employment Law Project. Conversely, the U.S. Chamber of Commerce, the National Federation for Independent Business, and the Heritage Foundation have been vocal opponents of many paid family leave initiatives. Emblematic of this divide, the Department of Commerce joined a federal lawsuit against the Department of Labor when the latter issued a ruling allowing

FMLA ground rules

A worker can take up to 12 weeks of unpaid leave per year under the FMLA – either all at once or spread over the course of the year. To be eligible for the FMLA, employees must:

- Be employed by companies with 50 or more employees within 75 miles of the leave-seeking employee.
- Have worked for the employer for at least 1,250 hours during the past 12 months – the equivalent of 31 weeks of 40 hours.

Such leave is allowed:

- Following the birth or adoption of a child or placement of a foster child.
 - For the care of a family member with a serious medical condition.
 - For the employee's own non-work related illness or injury.
- Employers are not required to compensate workers during the leave, but they are required to continue health insurance coverage and to pay whatever percentage of health insurance policy they paid before the leave. They can require that employees

give notice and that they deduct other forms of leave such as sick days and vacation from their FMLA mandated 12 weeks.

Upon return to work, the worker is guaranteed the same or an equivalent position to that that he or she occupied upon her departure unless the company has eliminated the function of the job or undergone major restructuring/layoffs.

states to experiment with using unemployment insurance trust funds for child birth and adoption in August 2000.

After FMLA: Family leave in Massachusetts and the U.S.

The modern debate in the U.S. about family leave reached a critical moment with President Bill Clinton's signing of the federal Family and Medical Leave Act (FMLA) into law in 1993. The law mandates unpaid leave with full protection of job status in a variety of circumstances including but not limited to maternity and paternity.³

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As is often the case with innovative social policy in the U.S., the path to the federal law was paved earlier by action in the states. By the early 1990's, 32 states had already enacted some form of unpaid (job protected) leave for new mothers or fathers. These policies varied significantly from state to state in almost every dimension of their provisions, from criteria of qualification for benefits, to length of benefits, to size of employers covered.

The legislation mandated the creation of a commission to study the impact of the legislation on employees and on employers. The report of this commission, *A Workable Balance: Report to Congress on Family and Medical Leave Policies*,

was published in 1996. A follow-up study, *Balancing the Needs of Families and Employers*, commissioned by the Department of Labor, was released in 2001. These reports, based upon surveys of a large national sample of employers and employees, provide many of the baseline statistics upon which most projections of costs, benefits, and areas of further concern for family leave—paid and unpaid—are based.⁴

One significant finding of both the 1996 and 2001 studies is that while the FMLA provides important protection for workers, many eligible workers may not be able to take advantage of their right to leave under the statute due to financial constraints. Of the 14 percent of eligible employees surveyed in the 2001 study who said that they needed family leave and did not take it, 77 percent said that they did not do so because they could not afford it. In addition, half of all workers taking leave worry they will not have enough money to pay their bills.⁵ As the limitations of the FMLA have become evident, a number of states began to explore ways of providing financial assistance to workers who take a leave of absence for family reasons.⁶

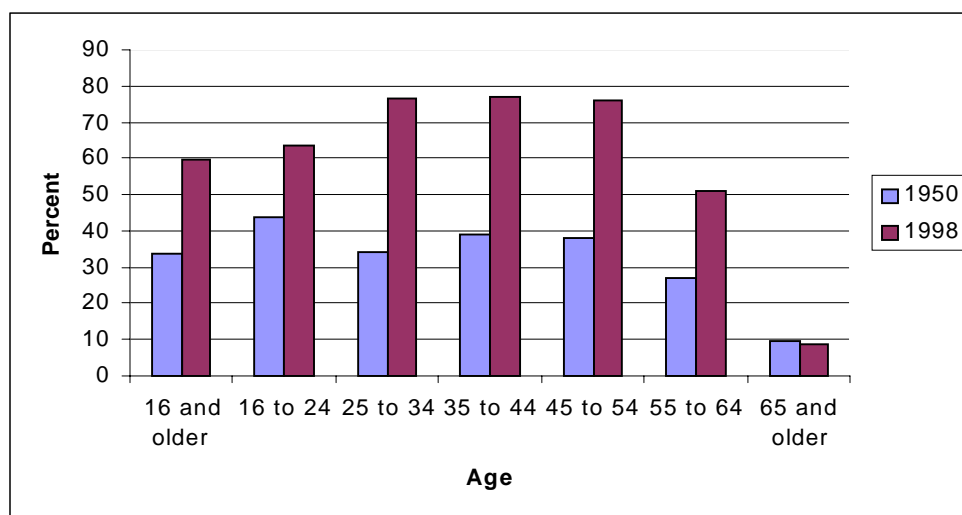
In support of paid family leave

Supporters of paid family leave cite the policies of other nations to argue that American social policy should provide more support for families. In 1998, a survey of 152 countries by the International Labour Organization, a United Nations agency, reported that the United States was one of three countries surveyed that offered no paid maternity benefits through social security, health insurance, or disability insurance programs and was the least generous of all industrialized countries in its maternity policies. The chief of ILO's work conditions department, F.J. Dy-Hammer, puts the matter simply: "My colleagues and I say that in the United States, it's a do-it-yourself maternity plan."⁷

Paid family-leave advocates point out that U.S. families are increasingly reliant on the wages of two earners to make ends meet, making women's employment through childbearing and rearing important for both their own and their families' economic security. Family leave supporters point to powerful shifts in employment demographics as indicating the need for policymakers to address the reality of the new world of work.⁸

- In 1998, for the first time since the Census Bureau started recording fertility information, families with children in which both spouses worked became the majority (51 percent) of all married-couple families in the US, compared with 33 percent in 1976.

Labor force participation rates of women by age, 1950 and 1998



Source: Bureau of Labor Statistics, <http://www.bls.gov/opub/ted/2000/feb/wk3/art03.htm>

- Of the 3.7 million women with infants under one year old in 1998, 59 percent were in the labor force, with 36 percent working full time, a record high and almost double the 31 percent participation rate from this group in 1976.
- Of the 31.3 million mothers aged 15 to 44 with children over one year old, 73 percent were in the labor force in 1998, with 52 percent working full time.⁹
- Only 27 percent of women quit their jobs around the time of first childbirth in 1991 to 1995, compared with 63 percent in 1961 to 1965. During the later period, 43 percent of women received paid leave before or after first childbirth; only 16 percent did so in the earlier period.¹⁰
- In 1998, women comprised five-sixths of all single parents.¹¹

While much of the discussion of paid leave focuses on improving the logistical concerns of workers with important family caretaking roles, proponents also point to other benefits, including better health of children and elders and reduced costs of dependence on other public programs like day care. While the full cost to Massachusetts of failing to provide paid leave has not been calculated, the analysis of other states suggests a raft of benefits. A report of the California legislature’s Audit and Evaluation Committee included the following roster of positive projected effects: less reliance on public assistance programs; savings in health care costs (through family care provision); an effective supplement to child care subsidies already in place; increased disposable incomes; reduction in workplace and school illnesses; increased financial support for caregivers; more parental time with children during early development; reduced child care costs; and improved employee health, welfare, job retention, productivity and morale.¹²

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In keeping with the FMLA’s broad mandate, advocates also see caregiving in a larger context than just caring for a newborn or newly adopted child and hope to provide both opportunity and incentives for men to provide family care as well as women. Caregiving activity for parents and elders is expected to increase in importance as Baby Boomers age. Advocates insist that American families are more anxious than ever about the quality of care for infants and their ability to care for elderly family members.¹³ In fact, the 2000 Department of Labor survey indicates that over 10.6 percent of leave takers took leave in order to care for an elderly family member, comparable to the 10.9 percent of leave takers taking leave for maternity disability.¹⁴

Advocates argue that for working- and middle-class families to take advantage of their new right to family leave, they need some kind of financial assistance.¹⁵ In introducing

the FIRST Act (now a provision of the Right Start Act of 2001, known as HR265 and S18), which would provide \$400 million in federal funding for demonstration programs in the states for paid leave, Senator Christopher Dodd of Connecticut stated: “The original Family

Leave bill – like a 911 call – helps families in times of need. This measure helps provide them the quarter to ensure they’re able to make the call.”¹⁶ The Massachusetts Executive Office of Administration and Finance (known as “A&F”) estimates that roughly 95,000 people took parental leave in Massachusetts in 2000. Of these, about 65 percent received some pay from employers. The A&F study concluded: “The primary determinant of whether workers received paid leave appears to be income. ... [For example,] only 25 percent of workers with family income less than \$20,000 received pay while on leave, while 86 percent of those with family income above \$75,000 received pay.”¹⁷

Extrapolating from the 2000 Department of Labor survey, A&F estimates that, out of about 100,000 people who wanted to take leave to care for a newborn in Massachusetts in 2000, about 6,000 workers felt they could not afford to do so. Even more telling, a significant number of workers – over 70,000 from families with annual incomes ranging from \$20,000 to \$75,000 – would have taken more time off had they received additional pay.¹⁸ Lastly, proponents of paid leave point to the components of the two federal surveys regarding paid family leave addressing costs to businesses and costs to co-workers of leave takers, concluding that business fears about costs are overstated. A large majority of businesses surveyed in both years reported that the FMLA has had no noticeable effects on their establishments’ productivity, profitability, and growth. In the 2000 survey, 76.5 percent reported no impact on productivity, 87.6 percent reported no impact on profitability, and 87.7 percent reported no impact on growth. Similarly, although the most commonly cited way for establishments surveyed to cover leaves was to temporarily assign work to other employees (98 percent used this method), 67 percent of employees felt that others having taken paid leave had no impact on them, 17 percent reported a positive impact, and only 15 percent responded that impact was negative. Interestingly, given opponents’ focus on the costs for smaller businesses, it is actually large establishments (over 250 employees) covered by the FMLA that voice more concerns when surveyed about productivity and profitability impacts, rather than smaller establishments.¹⁹

Business and other concerns about paid family leave

While policy makers face a broad range of proposals on paid leave – ranging from carefully targeted voluntary programs to broad mandates – businesses and fiscal conservatives oppose new entitlement programs that would add new financial and administrative burdens to government or private businesses.

The National Federation of Independent Business (NFIB) has 11,000 members in Massachusetts, nearly all of them small businesses with well under 500 employees. The median number of employees in each member company is five; the median annual gross revenue is \$430,000. The NFIB’s state director, Bill Vernon, says the NFIB represents a very

diverse group of companies that includes insurance agents, dry cleaners, and small manufacturers – “Main Street,” he calls it.²⁰

There is no proposal for paid leave in Massachusetts that Main Street favors, says Vernon, though some appear less onerous than others. “Companies just want to be left alone,” he states. If there is a program that will help business keep employees, and if it is a

program that makes sense for the health of the company, the individual companies will provide that program Vernon says. Business, he says, is the element in society responsible for creating wealth, and no one knows better than business about how to do this.²¹

Rick Lord of the Associated Industries of Massachusetts testified in June 2000 that 70 percent of his membership offers some form of paid family leave, through temporary disability or sick leave or some other mechanism. Since many small companies may have no workers who would take advantage of any of the leave provisions, he points out, many companies would be paying a tax for a benefit their workers would never realize.

Other business leaders say that companies, particularly small ones, have little room for error in an age of increasing competition, especially during a recession. While employees currently have the right to paid leave, it is not in the interest of business, particularly small businesses, to further encourage them to actually take this leave. A paid leave program that helps an employee to take off for 12 weeks could have a huge impact on productivity, especially when a company employs only a handful of workers. How does the work of the employee on leave get done? By workers who stay behind and who might feel resentful? By expensive temporary workers? What about training if the work is specialized?²²

Opponents argue that the mechanisms most commonly proposed for implementing paid leave are not efficient or appropriate. Such programs “are a bad mechanism for advancing social goals,” James Klocke of the Boston Chamber of Commerce told a legislative committee on insurance. “They hinder job creation and income growth.”²³ Most opponents feel quite strongly that unemployment insurance was created to provide for involuntary leave that occurs through the actions of an employer rather than for leave necessitated by the private lives of employees. Nancy Connolly, president of Lasertone, a \$9 million Littleton company that rebuilds and services cartridges for laser printers remarks: “If someone’s pregnant, they can plan what to do about it for nine months; they shouldn’t look to business for a solution, particularly small businesses, where losing employees for several weeks can severely affect productivity.”²⁴

Similarly, Temporary Disability Insurance programs in other states pay the majority of their benefits to workers who are injured or ill, rather than caring for others or having a baby.

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The majority of workers taking leave under FMLA provisions in both the 1995 and 2000 federal surveys took leave for their own illnesses, rather than for caregiving. While it may be important to pay workers in the case of their own (non-work-related) injury or illness, this is not the issue that most advocates are promoting.

Another difficult argument against paid leave proposals is that even if the cost is imposed on business rather than employees, the costs would in the end be covered by employees as businesses adjust and pay less salary or reduce other benefits. This argument is implicit in statements by the Greater Boston Chamber of Commerce and the Associated Industries of Massachusetts when they say that employees who are not of childbearing age or unlikely to utilize the benefit would prefer higher wages to paid family leave. In the worst case scenario, assuming that women will continue to be more likely to utilize paid leave benefits, businesses will tend to discriminate against women of childbearing age in order to avoid the cost of employing them.

Finally, while the recession may not continue indefinitely, the crisis in the Massachusetts state budget is very real for the foreseeable future, with a projected \$700 million deficit for fiscal year 2002 alone, and a potential \$2 billion budget gap in fiscal 2003.²⁵ Many proposals for paid leave are problematic in the current fiscal climate given their reliance on unemployment insurance, general revenues, or the Medical Security Trust Fund, which provides health insurance to the unemployed. While it is difficult to deny paid leave to someone struggling to care for a newborn or an elderly parent, it is also difficult to instate a new entitlement at a time when basic services, schools, and programs for other needy constituents are at risk.

Insurance mechanisms for paid family leave

The Employment Retirement Income Security Act of 1973, which regulates private insurance and benefits plans offered by employers, limits the ability of states to mandate new insurance requirements for private employers.²⁶ The limits on the states have three exceptions—Temporary Disability Insurance, Unemployment Insurance, and Workers' Compensation. Thus, paid family leave plans mandating private employer and/or employee participation are configured to work through either disability or unemployment insurance pools. Because these two mechanisms are so frequently referenced in the debate on paid family leave, it is important to understand how each might function and what precedents are invoked in each case. Alternatives to disability and unemployment funding streams – including funding through general tax revenues, funding through federal grants (not yet available), and funding through tax credits – are described below.

Unemployment insurance

In May 1999, advocates' efforts to create paid family leave through an insurance program

got a major push when President Clinton directed Secretary of Labor Alexis Hermann to develop new regulations that, for the first time, would give states the power to use unemployment insurance pools for workers on leave to care for new children.²⁷ The regulations, issued in August 2000, prompted an outburst of legislation in the states.

The so-called Baby UI experiment sought, in the words of the regulation, to:

allow parents of newborns and newly-adopted children to strengthen their availability for

work by providing them with the time and financial support to address several vital needs that accompany the introduction of a new child into the family. The experiment will test whether this opportunity for parents to provide the initial care that the child will need, to form a strong emotional bond with the child, and to establish a secure system of child care, will promote the parents' long-term attachment to workforce.²⁸

While Baby UI initiatives would provide income for parents giving birth or adopting a child, regulations do not extend to all of the situations included in FMLA

The new policy did not provide funding, but instead gave states permission to use state and federal unemployment insurance contributions, which are carefully regulated and restricted in their use, for the purpose of providing birth and adoption "insurance" to parents. All states were immediately eligible to participate in the experiment, but it was not mandatory and there were no cash incentives.

These regulations are known as "BAA-UI" (birth and adoption unemployment insurance) or "Baby UI" for short. While Baby UI initiatives would provide income for parents giving birth or adopting a child, regulations do not extend to all of the situations included in FMLA. To provide the greater

range of coverage, proposed policies in New Jersey and Rhode Island, which already have TDI insurance pools, would combine Baby UI with an expansion of TDI.

In general, workers cannot receive unemployment benefits unless they are unemployed through no fault of their own and are available and able to work. In the ruling in which Baby UI was formalized, the Department of Labor engaged in a long discussion of the modifica-

Baby UI proposals

States considering the use of unemployment insurance pools to provide funding for paid family leave include:

Arizona
Florida
Hawaii
Illinois

Kansas
Louisiana
Maryland
Massachusetts
Minnesota
Nebraska
New Jersey
New Mexico
Oregon

Pennsylvania
Texas
Vermont

in mind that the FMLA only applies to companies with 50 or more employees.) However, unlike the FMLA, TDI is still only available to a worker for his or her own disabilities, not for infant care or for another family member's illness.³³

States with TDI have recently sought to expand their programs to provide benefits for family caregiving. Advocates have looked at TDI as the most pragmatic, cost-effective way to harness wage replacement to the FMLA. They point, in part, to the history of financial solvency for these programs.³⁴

However, the financial health of TDI programs can only offer a partial guide to the ultimate cost of establishing wage replacement for allowable leave under FMLA. In fact, there are great unknowns in estimating the cost of paid family leave, making this exercise far more art than science. Robert Carey, senior policy associate for the Massachusetts Taxpayers Foundation, states simply: "Since no state has this kind of policy now, there is no on-point data telling us what the likely take-up rate will be. We just don't know how this will go."³⁵

Take-up rate – or, the percentage of people who will actually take advantage of such a program, and the length and purpose of leaves taken – is a critical variable in estimating costs. The actual amount of the benefit is also clearly a factor. Another variable that is difficult to estimate is how many larger companies that currently offer their own paid leave programs will decide that a public plan is more efficacious for them. By ending their private plans, effectively forcing workers to use the state program, the ultimate cost of such a program could increase considerably.³⁷ Four states – Hawaii, Massachusetts, New Hampshire, and Washington – considered bills in 2001 to establish new TDI programs for paid family leave. Two more states, New Jersey and New York, are considering bills to expand existing TDI-based family-leave programs to include more family circumstances.

Alternatives in Massachusetts for paid family leave

In 1932, Supreme Court Justice Louis Brandeis wrote: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."³¹ Massachusetts has always been one of the national leaders in policy experimentation. Family leave poses a challenge to the Commonwealth to determine whether such a new entitlement ought to become part of Massachusetts' – and the nation's – system.

Since 1972, women in the Commonwealth have had access to the Massachusetts Maternity Leave Act (MMLA). Adoption has been covered since 1984. This law ensures that women who work in very small businesses (six or more employees) have access to job-protected leave, ensures eight weeks of unpaid, job-protected leave following birth or adoption. The Massachusetts Executive Office of Administration and Finance estimates that over 90 percent of employees in Massachusetts are allowed unpaid leave for the specific circumstance of maternity under the MMLA.³⁸ According to A&F estimates, almost 60 percent of Massachusetts' employees are covered under the provisions of the FMLA.

The question is how these protections might be expanded to provide for greater financial protection during periods of leave. Each of the major proposals under consideration in Massachusetts is summarized here.

Swift seeks mix of grants and loans

Governor Jane M. Swift filed House bill No. 4491 to create paid parental leave for mothers and fathers following the birth or adoption of a child. Eligible employers would be those covered under the FMLA or the MMLA. Employees would be eligible for paid leave benefits if they are normally eligible for benefits under the state UI provisions. The Executive Office of Administration and Finance estimates the cost of this program to be between \$27 million and \$32 million in the first year and, after loans begin to be repaid, \$22 million and \$27 million in outlying years.

Benefits under this law would be 50 percent of the individual’s average weekly wage prior to departing work, plus \$25 for each dependent, capped at \$300 per week for 12 weeks. Depending on family income, the benefit would either be considered an outright grant or an interest free loan to be repaid over five years. The precise amount needed to be repaid would be a function of how much income the family earns. For families earning 250 percent or less than the federal poverty level, the benefit would be an outright grant. Families earning between 250 percent and 300 percent of the federal poverty level would be required to pay back 25 percent of the benefit. The repayment percentage would increase, according to family income, until the point of 500 percent of the poverty level, or \$88,250 annually, in which case all of the benefit would be required to be repaid over the five-year period. Payments would begin one year after the start of benefits.

The Swift plan

Chief proponent	Governor Jane Swift
Who is covered	UI eligible employees upon birth or adoption of a child
How long	Twelve weeks
Benefit size	Fifty percent of average weekly wage prior to departing work capped at \$300 per week, plus \$25 for each dependent
Who pays	Families who are above income guidelines must repay all or part of the benefit as an interest-free loan. Medical Security Trust Fund will fund remaining portion of benefits.
Job protection	No new protection; FMLA/MMLA standards would be used
Cost estimate	\$27-32 million in first year of implementation, according to proponents
Effect on businesses with plans in place	Employees may substitute for benefits currently provided if these benefits are less than those provided by the state. Employers who provide plans with more generous benefits would not be paying a new tax, but they would not see the benefit of funds paid into the Medical Security Trust Fund.
Effect on businesses with no family leave plans in place	Low-income employees may be more likely to take leave that they are legally entitled to in case of birth or adoption of a child.
Effect on nonprofit and public sectors	Same as for-profit sector

The Governor's program would draw on the Medical Security Trust Fund, which provides health benefits to unemployed workers. Employers' contribution of \$16.80 per employee would be expected to remain steady for 17 years under this plan (or 10 years with a more conservative estimate), according to A&F. Some funding would also come from the repayment of loans.

Governor Swift argues that low-income employees are the ones most in need of a paid parental leave program, and her legislation provides direct grants to these individuals. In a document making the case for Swift's plan, A&F states: "The primary determinant of whether a worker received paid leave [from his/her employer] appears to be income ... only 25 percent of workers with family income less than \$20,000 received pay while on leave, while 86 percent of those with family income above \$75,000 received pay."³⁹

Middle-income workers would also receive a benefit under the governor's plan and, depending on their income would repay 25 percent to 100 percent of their loan, with no interest. Importantly, this proposal envisions more parental leave without imposing any more burden on business or workers because it believes the Medical Security Trust Fund is more than sufficient to absorb the program's cost. In recent years, that fund has collected about \$45 million each year from employers and \$5 million in interest, and expenditures have been less than \$15 million per year.⁴⁰

A&F acknowledges uncertainty about the take-up rate. Based on projections from the 2000 Department of Labor study, the Governor's plan assumes a much higher take-up rate for low-wage workers (70 percent) than others and a lower rate for higher-income workers (10 percent) than others, as the Labor Department survey and A&F estimates indicate.⁴¹

While applauding the Governor's interest in the issue, some groups are sharply critical of its lack of universal application, and the loan repayment provision.⁴²

The Women's Statewide Legislative Network notes that under the Governor's plan, people with the lowest incomes would get outright grants, while others would either have to repay a loan or, if the family makes more than \$88,000 a year, get no benefits at all. Such "means testing," critics say, is a recipe for failure. Paige Whittaker of the WSLN states: "This makes it a poor people's program rendering it, like welfare, as too vulnerable to those who are against it."⁴³

Perhaps more disturbing, critics of the Governor say, is the loan repayment provision. Despite the fact that the loan would be repaid over several years at no interest, paying off a loan could be a heavy burden for low and middle-income families. "Repayment would provide a strong disincentive to take the leave, or it would serve to limit the length of the leave. If you have to repay the loan, you'll naturally try to limit the pain," Whitaker said.⁴⁴ A spokesperson for the speaker suggested that a loan repayment program might be difficult and costly to administer.⁴⁵

House Speaker Thomas Finneran also observed that the funding mechanism relied on by the governor, the Medical Security Trust Fund, has less money today than it did when the governor announced her proposal. An aide to Finneran stated: "The governor has already used much of this fund for other purposes in the budget and, with more people out of

work, the fund will be used more than it has in the past, and replenished at a diminished rate.”⁴⁶

House speaker proposes tax credits

Thomas Finneran, speaker of the state House of Representatives, has proposed a bill (HD 4670) to provide tax benefits to encourage the private sector to provide a paid-leave program for mothers and fathers after the birth or adoption of a child.

Employers with 250 or fewer employees may voluntarily offer full-time employees 50 percent of their average weekly wage, capped at \$477 a week, for new parents for a period of four and six weeks.⁴⁷

Employers providing this benefit would receive a 20-percent income tax credit on the amount of the benefit paid to the employee.⁴⁸ The cost of the program, therefore, would be borne by the General Fund. Citing the unknown variables, including take-up rate, the Speaker is reluctant to attach hard cost estimates to the program, but insists that in the first year the cost would not exceed \$10 million because awareness of the program is likely to be quite low.⁴⁹

Finneran’s proposal is supported by some of the state’s large business interests, including the Greater Boston Chamber of Commerce. In an opinion article published in October, Finneran and Paul Guzzi, president of the Chamber, said the credit “would cover approximately 67 percent of the state’s work force and more than 90 percent of the state’s businesses.”⁵⁰

The Speaker’s goal is to find a way to stimulate good business practice without placing an undue burden on the Commonwealth’s finances. His plan emphasizes fiscal prudence while exploring the viability of a program that has never been tried.

The Finneran plan

Chief proponent	House Speaker Thomas Finneran
Who is covered	Employees of employers who offer benefits (this is not a mandatory program); mothers and fathers who are full-time employees upon birth or adoption of a child
How long	Four to six weeks
Benefit size	Fifty percent of average weekly wage, capped at \$477 per week
Who pays	Employer pays benefits. If employer has fewer than 250 employees and offers a program with minimum requirements above, the employer receives a 20 percent rebate of the cost of the program from the General Fund.
Job protection	No new protection; FMLA/MMLA standards would be used
Cost estimate	About \$10 million in first year of implementation, according to proponents
Effect on businesses with plans in place	This would provide a tax break for companies with fewer than 250 employees that are already offering maternity/paternity leave that meets minimum requirements.
Effect on businesses with no family leave plans in place	Program may provide incentives for some companies that do not currently have a program in place. Since it is voluntary, it would not affect companies that do not choose to participate.
Effect on nonprofit and public sectors	No incentive to nonprofit and public sectors

Supporters believe a 20-percent credit would be a “powerful incentive,” and that a 25 percent take-up rate by employers in the first year would be a success. As awareness increases, the expectation would be that participation would also increase.⁵¹ An informal canvassing of Chamber members found that a significant number of companies would take advantage of the credit.⁵² By targeting companies with up to 250 employees, Finneran’s plan suggests that larger companies do not need the credit incentive to provide leave benefits.

Critics say Finneran’s proposal takes critical decisions about child care out of the hands of families. The WSLN’s Whitaker states: “The voluntary system [proposed by the Speaker] takes the choice of whether or not new parents can bond with their child out of the hands of the parents and into the hands of the employer.”⁵³

Opponents also attack the Speaker’s tax credit concept, claiming it may not change the behavior of a significant number of businesses.⁵⁴ Research indicates that the low participation rates for small businesses in many voluntary tax incentive programs in the states, ranging from credits for employing welfare recipients to credits for providing childcare programs, may be attributed not only to reluctance to participate, but to the “expense of the benefit in comparison to the credit as well as the high administrative costs of filing for the credit. To be truly effective, a tax credit would have to be much larger [than the 20 percent credit proposed by the Speaker].”⁵⁵

Despite the fact that the Speaker’s credit targets many companies that offer no paid leave, other advocates worry that the credit would be available to some companies already offering paid leave, thereby providing them a windfall without inducing new behavior.

But Katherine Craven, fiscal policy analyst for Finneran, responds that experience shows that opting-out behavior can be changed. The state’s Insurance Partnership Program offers to pay qualifying companies up to 50 percent of the total cost of their comprehensive insurance. The program targets companies with a large number of low-wage workers. When the program was instituted in 1996, participation started slowly but it has grown to be quite significant. Craven believes the same scenario can unfold for Finneran’s tax-credit plan as well.

Another shortcoming of the speaker’s plan, according to critics, is that non-profit employers, including some health care facilities and municipalities, do not pay taxes – and would be unable to take advantage of the credit. These employers hire many of the state’s lowest wage workers, who need assistance the most.⁵⁶

Finally, claiming parents need more than six weeks to bond with their children, organized labor and the Women’s Statewide Legislative Network criticize the Speaker’s plan for the short duration of leave that is allowed.

Comprehensive coverage to cover childbirth, adoption, illness and injury

Representative Patricia Jehlen and Senator Susan Fargo have proposed providing comprehensive, paid leave for employees giving birth, adopting children, or caring for loved ones in the event of illness or injury.

The Family and Employment Security Act (FESA, House 4005, Senate 744), modeled on Temporary Disability Insurance programs in other states, would apply to all employers and all employees currently eligible for unemployment benefits under the UI program.⁵⁷

Benefits, paid by the state, would be 66 percent of the employee's average weekly wage – capped currently at \$477 – plus \$25 weekly per dependent.

Benefits could last as long as 26 weeks for temporary disability leave and up to 12 weeks for family disability leave, including caring for a newborn or newly adopted child. The leave could be taken incrementally, however, under any circumstance, job protection would only last for 12 weeks.

To fund the new benefit, employers would contribute to the new Family and Employment Security Trust Fund, administered by the Department of Employment and Training. Pending the availability of new data this spring, sponsors are also open to the concept of some employee contribution. Initial estimates report the cost at \$2 per week per worker, or \$350 million to \$365 million per year.⁵⁸

The Women's Statewide Legislative Network, as the lead group in the Massachusetts Paid Family Leave Coalition, has been the prime mover behind the proposal outside of Beacon Hill.

The Jehlen/Fargo plan

Chief proponent	Representative Patricia Jehlen and Senator Susan Fargo
Who is covered	All UI-eligible workers
How long	Twenty-six weeks for injury, illness of worker or family member; sixteen weeks for parental leave
Benefit size	Sixty-six percent of average weekly wage, capped at \$477 per week, plus \$25 per child dependent allowance; total benefit cannot exceed 75 percent of weekly wage.
Who pays	Employer paid (as written, some discussion of employee/employer shared expense); \$2 per employee per week
Job protection	Twelve weeks
Cost estimate	From \$350 - 365 million
Effect on businesses with plans in place	Employers providing equivalent benefits are exempt.
Effect on businesses with no family leave plans in place	All would have to contribute to the plan regardless of size. While employers with fewer than fifty employees would not be required to offer leave further than stipulated by MMLA/FMLA, they would not be paying for a benefit that they do not use if they chose not to allow employees to participate.
Effect on nonprofit and public sectors	Would have to pay into plan or be exempted like other businesses

Proponents say the bill would ensure that a large number of workers now excluded from FMLA coverage because they work for small companies would enjoy paid leave. It would also ensure that those cut out by the MMLA – fathers, as well as men and women seeking to care for ill family members – are also protected. Since the FMLA and the MMLA leave are unpaid, FESA would ensure that workers are not forced to choose between work and their health or the health of their families. This will have a particularly salutary effect on low-income, single-parent households.⁵⁹

Proponents also argue that FESA will have a positive impact on business. For example, they cite statistics revealing that workers taking family leave would be far more likely to return to work if they received compensation during the leave period. They also claim that small businesses would be more competitive with larger firms because they would be better able to attract and retain workers if they offered paid leave.⁶⁰ Small firms have much larger per employee administrative costs for any benefit or policy, so they have a much lower likelihood of offering these benefits without a larger administrative entity such as the DET taking on this administrative burden.

Following the economic downturn, advocates also claimed that FESA is like an economic stimulus package, since workers who are economically stressed are most likely to actually spend any money that they receive, pumping it right back into the economy.⁶¹

The business community vigorously opposes this approach. Business advocates express alarm at the prospect of sweeping new mandates, fearing an unreasonably high price tag and a dire impact on the competitiveness of Massachusetts businesses.

One initial estimate of the cost of FESA by AIM was about \$1.5 billion per year. This was derived by starting with recent DOL statistics showing that, under the FMLA, 16.5 percent of employees took leave. Assuming that passage of FESA would increase utilization, AIM estimates that, 25 percent of employees would seek leave under the law. In Massachusetts, with a workforce of about 3.2 million, that would translate to 800,000 workers taking paid leave annually. If each leave taker took only eight of the allowable 12 weeks of leave, and if the average benefit per week were half of the maximum benefit (\$478) allowed by the law – estimates they say are conservative – the total annual cost of the law would be \$1.53 billion.⁶² The bill is currently being held for study by the Joint Committee on Insurance.

New Families Trust Fund

State Representative Anne Paulsen, former State Senator (now Congressman) Stephen Lynch, and the Massachusetts AFL-CIO have proposed a three-year pilot program of paid parental leave for mothers and fathers following the birth or adoption of a child. This initiative has not yet been filed as a bill, but was unveiled as a ballot initiative backed by the AFL-CIO and U.S. Senator Edward M. Kennedy on July 30, 2001. Sponsors withdrew the petition in response to the economic recession and the events of September 11, 2001.

Workers who are normally eligible for UI benefits would receive 50 percent of their average weekly wage capped currently at \$477, plus \$25 per week for each dependent. The

length of leave would be up to 12 weeks, and workers would receive job protection if they were eligible under the FMLA or the MMLA. Eligible companies would also be those covered by the FMLA or the MMLA.

Funding at the rate of \$20 per employee, from every eligible employer, annually would raise approximately \$64 million.⁶³ The revenue would be deposited to a new trust fund administered by DET. Tax credits would be available for business on a sliding scale. Companies with 10 or fewer employees would get a tax credit of 100 percent; the credit would decrease incrementally to zero for companies with 250 or more employees. Based on the cost estimates of Baby UI by the U.S. Department of Labor, the Department of Economic Transition, and the Urban Institute, the AFL-CIO believes the cost of the program would not exceed \$64 million.⁶⁴

The initiative, announced last July is similar to Baby UI but, instead of drawing on the sacrosanct UI fund, it creates a parallel pool for employers to fund. A series of tax credits are intended to make the proposal more attractive to the business community. Also more attractive to business, proponents argue, is that the statute would only apply to parental leave, and not the broader family leave provisions of the FMLA.⁶⁵

Putting a three-year limit on the program allows the state to adapt the program to take into account the lack of hard numbers regarding variables such as take-up rate.⁶⁶

Major business groups, including the Associated Industries of Massachusetts, NFIB, and the Greater Boston Chamber of Commerce, oppose the proposal. While not yet ready to publicly release its findings, the Massachusetts Taxpayers Foundation is working on a study that estimates the price tag to be over \$100 million annually. This figure would represent the direct cost of the program in its first year, but does not take account cost escalation due to increased awareness of the program over the years.⁶⁷

The New Families Trust Fund plan

Chief proponent	Representative Anne Paulsen, AFL-CIO, and Congressman and former State Senator Stephen Lynch
Who is covered	UI-eligible workers, mothers and fathers, following birth or adoption of a child
How long	Up to twelve weeks
Benefit size	Fifty percent of average weekly wage, capped at \$477 per week, plus \$25 per child dependent allowance
Who pays	Employers pay \$20 per employee, with tax credit ranging from 100 percent to 25 percent for employers with under 10 (100 percent) to 100 - 250 (25 percent) employees.
Job protection	No new protection; through FMLA/MMLA.
Cost estimate	\$64 million
Effect on businesses with plans in place	Tax would be mandatory, regardless of existing plans. State program could be substitute for private maternity/paternity benefit program.
Effect on businesses with no family leave plans in place	All employers would be required to pay tax. Employers with fewer than 50 employees would not be required to allow men to take leave or to allow women more than 8 weeks, and employers with fewer than 6 employees would not be required to allow women to take leave, but they would pay taxes into the plan nonetheless.
Effect on nonprofit and public sectors	Same as for-profit sector; may include substitute for tax credit for nonprofit and public sectors

This organization suggests that, if the cost of the new program were over \$100 million, the mechanism to fund the program would be insufficient. Whereas the AFL-CIO says a \$20-per-employee tax would raise over \$60 million, other estimates suggest that net revenues, that is, the amount available for benefits after deducting the cost of the tax credits allowed to participating businesses, would only be about \$40 million, leaving a large shortfall requiring funding from another source.⁶⁸

Other proposals

Two other proposals for paid leave in Massachusetts are unlikely to see success, though both have been quite influential.

In August 2000, Governor A. Paul Cellucci rejected the Massachusetts “Baby UI” bill which had been slipped into a last-minute supplementary budget at the end of the legislative session. In his veto statement, Cellucci said: “Although I am supportive of the goals of a paid parental leave program ... the proposed funding source [–] the Unemployment Insurance Trust Fund – is inappropriate and places an undue burden on employers. In addition, it is unlikely that the Unemployment Insurance Trust Fund could support a program of this magnitude beyond the very short term.”⁶⁹ Cellucci amended the bill radically to provide a tax credit for employers, much like the Finneran proposal, but the legislature adjourned before it could act on this, killing the bill.

The successor to this bill in the current session of the legislature is H. 774, sponsored by Representative Anne Paulsen. In April 2001, the unemployment trust fund in Massachusetts stood at a record high of \$2.1 billion, encouraging both advocates for paid family leave and

The Paulsen/Lynch plan

Chief proponent	Representative Anne Paulsen and former State Senator Stephen Lynch
Who is covered	UI-eligible workers, for all conditions named under FMLA (non-work-related serious injury or illness; care for seriously ill child, spouse, or parent; or childbirth, adoption, placement of foster child)
How long	Twelve weeks
Benefit size	Fifty percent of average weekly wage prior to departing work, capped at \$477 per week; counts against total unemployment eligibility for 12 month period
Who pays	Unemployment Insurance Trust Fund; \$1.25 per worker per week
Job protection	No new protection; same eligibility as existing FMLA and MMLA programs
Cost estimate	From \$60million to \$100 million per year
Effect on businesses with plans in place	Already pay into UI fund. Could substitute public for private maternity/paternity leave.
Effect on businesses with no family leave plans in place	Already pay into UI fund. Greater likelihood that employees who are eligible will actually take leave. Employers with fewer than 50 employees would not be required to allow men to take leave or allow women more than eight weeks, and employers with fewer than six employees would not be required to allow women to take leave.
Effect on nonprofit and public sectors	Already pay into UI fund

business advocates seeking rate cuts.⁷⁰ Even before the recession, business strongly opposed the notion of tapping funds thought to be set aside for unemployed workers, and using those funds for any other purpose. As John Regan of the Associated Industries of Massachusetts stated, “anyone who wants to raid the Trust Fund should be beaten back with sticks.”⁷¹ Paulsen’s bill would create a three-year pilot program that tracks UI eligibility and benefits for up to 12 weeks leave for the birth or adoption of a child. The program would be funded entirely by the UI Trust Fund.

Even advocates of using unemployment insurance to fund family leave came to recognize the broad sensitivity of the public to expanding the uses of the UI Trust Fund. According to one of the major advocates for paid leave, Paige Whittaker of the Women’s Statewide Legislative Network, “people feel very particular about what UI is for.”⁷² Business advocates argue that this sensitivity is a reasonable response to an historical reality: Massachusetts has the sixth highest UI tax in the country; Commonwealth residents pay \$308 per employee, compared with \$63 per employee in neighboring New Hampshire.⁷³ In the early 1990s, Massachusetts required a massive infusion of funds from the federal government to keep the UI system afloat, but now the system is more than solvent.

Given the strong opposition that faces utilization of UI funds for any new purposes, Baby UI does not seem likely to be the preferred vehicle for establishing a program for paid parental leave in the near future. Because of the great sensitivity to such funding, nearly all sides see this approach as “dead on arrival” at Beacon Hill. Paulsen is likely to substitute the AFL-CIO New Families Trust Fund proposal for Baby UI.⁷⁴

Also intriguing is a bill that passed through the Senate last summer as part of a supplemental budget (A.S. 2097). The chief sponsor was the Senate President Thomas Birmingham, a leading candidate for the democratic nomination for Governor in 2002. The bill’s

The Birmingham plan

Chief proponent	Senate President Thomas Birmingham and Senate Ways and Means Chairman Mark Montigny
Who is covered	UI-eligible employees upon birth or adoption of a child
How long	Twelve weeks
Benefit size	Fifty percent of average weekly wage prior to departing work, capped at \$477 per week
Who pays	First \$70 million through surplus in the General Fund (no longer extant) and second \$50 million through underutilized Medical Security Trust Fund
Job protection	No new protection;FMLA/MMLA
Cost estimate	Three-year cost of this pilot program would be approximately \$210 million.
Effect on businesses with plans in place	Could substitute public for private maternity/paternity leave
Effect on businesses with no family leave plans in place	Greater likelihood that employees who are eligible will actually take leave. Employers with fewer than 50 employees would not be required to allow men to take leave or allow women more than eight weeks, and employers with fewer than six employees would not be required to allow women to take leave.
Effect on nonprofit and public sectors	Same as for-profit sector

provisions mirror Baby UI benefits and tracked UI eligibility but was partially funded through the surplus that existed in the General Fund as well as the Medical Security Trust Fund. That surplus no longer exists and, as Birmingham’s chief counsel stated, “there is no free way to create this program.”⁷⁵

Birmingham remains supportive of the principle behind the legislation and is looking for another funding mechanism. Birmingham’s movement on paid leave could become crucial once attention is refocused on the issue.

Making sense of policy alternatives

As in most policy areas, the dilemma about family leave policy turns on political scientist Harold Lasswell’s classic definition of politics: “Who gets what, when, and how?”⁷⁶

In the past generation, the understanding of “who” deserves leave from work to tend to family duties has expanded greatly, from mothers to all parents and wage earners with some kind of responsibility to tending to family concerns. Even the strictest understanding of family emergencies today embraces concerns for elderly parents, troubled children, and other

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concerns that are best addressed directly by a member of the family. Likewise, the question of “when” enjoys a broad consensus. Most leave policies offer up to 12 weeks off, in conformity with the Family and Medical Leave Act and various corporate policies, though one plan calls for a more limited period for benefits.

The issue gets controversial with the question of “what” and “how.” The what question involves age-old concerns about how certain uniform public entitlements might discourage private

actors from contributing their fair share to the issue. Providing a universal benefit has the effect of discouraging firms that already providing the benefits to continue to do so. Benefit levels, then, need to have some kind of sliding scale that encourages all firms to do more so that the best mix of public and private benefits is offered – or replace the whole system with a universal entitlement, which would be too expensive in absolute terms for Massachusetts and also have the effect of creating a competitive disadvantage for many firms in the Commonwealth.

The “how” question is toughest of all. Using existing insurance funds might be the simplest approach, but might also cause concern because of the fiscal sanctity of the funds’ purposes – care for the unemployment and disabled. Creating a new program would involve creation of a whole new bureaucracy, with the inevitable complexities of staffing and funding, as well as the possibility of unintended consequences. Leaving the matter to the private

sector – either in the form of mandates or incentives – invites uneven benefits for different groups.

Rethinking the public-private distinction

In the last generation, the United States and other Western nations have experienced major changes in the very concepts of “public” and “private.” Private matters once were considered fundamentally off-limits to intrusion from public influences – and, at the same time, required private actors to tend to themselves without external assistance. The private realm was, in the words of John Stuart Mill, the zone of “noninterference.” The public realm, on the other hand, was the community’s common ground. On matters from free speech to education, the public realm was considered the proper place to insure that people in the private sector enjoyed an adequate foundation to pursue their separate ends.

The public and private realms were never as cleanly separated as theory might suggest, but in 21st-century America they are almost impossible to separate. Today’s family faces pressures from all sides. In most two-adult families, both adults work. Schools, distracted by an expanded mission, cannot always be relied up to provide a strong basic education. In today’s sprawling metropolitan setting, more time is spent in the car driving children to various educational and social events. Each of these challenges makes it difficult for families to meet their everyday needs – especially during extraordinary periods like birth, illness, or the need to care for elders – without some assistance from the public sector.

Social theorists across the political spectrum from James Q. Wilson to Susan Moller Okin argue that a whole raft of social problems can only be addressed with a reinvigorated family structure. Echoing the depiction of the United States as “two nations” defined by race, Wilson argues that family status defines the two major “nations” of the U.S. Only when the family is strengthened, Wilson argues, can the U.S. address social problems like poverty, violence, drug abuse, and education. “Most people wish to be part of one family and one nation,” Wilson has stated. “If we wish to be one nation again, we must make the second one part of the first. We have tried almost everything to do this except for the one thing that matters most—rebuilding the family.”

Wilson’s paradigm insists upon a two-parent family, but Okin embraces a broader definition. Nonetheless, the concern for supporting the family is the same. “If we wish to be

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one nation again, we must make the second one part of the first.”⁷⁷ Okin argues that the family is a diverse institution, but all forms of the family need support. “Since evidently we do not all agree on about what it is or what it should be, we must think in terms of building family and work institutions that enable people to structure their personal lives in different ways.”⁷⁸

The question is what kinds of public policies keep families together and strong and allow the private sector to retain its vitality. In the coming years, as the Massachusetts economy becomes ever more reliant on human capital and as the Commonwealth’s fiscal condition improves, the debate over paid family leave could drive a range of other social policy discussions.

About the author

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Notes

- ¹ Charles E. Lindblom, “The Science of ‘Muddling’ Through.” *Public Policy: The Essential Readings*, Stella Theodoulou and Matthew Can, editors (New York: Prentice Hall, 1995), p. 113-127.
- ² Interview with Lissa Bell, senior policy associate, National Partnership for Women and Families, December 18, 2001.
- ³ 29 U.S.C. Sec. 2601 et. seq.
- ⁴ David Cantor *et al.*, *Balancing the Needs of Families and Employers: Family and Medical Leave Surveys* (1991).
- ⁵ *Ibid.*
- ⁶ Testimony of Vicky Lovell, Institute for Women’s Policy Research, to the Illinois General Assembly, September 7, 2000.
- ⁷ Kristen Downey Grimsley, “Study: U.S. Mothers Face Stingy Maternity Benefits,” *The Washington Post*. February 15, 1998.
- ⁸ Interview with James Klocke, vice president for public policy, Greater Boston Chamber of Commerce, November 29, 2001.
- ⁹ “Record Share of New Mothers in Labor Force, Census Bureau Reports,” U.S. Department of Commerce News, October 24, 2000, available at www.census.gov/Press-Release/www/2000/cb00-175.html.
- ¹⁰ “New Census Bureau Analysis Indicates Women ‘Making Longer-Term Commitments’ to Workplace,” Census Bureau News, December 5, 2001, available at <http://www.census.gov/Press-Release/www/2001/cb01-192.html>.
- ¹¹ Press release available at <http://www.census.gov/Press-Release/cb98-228.html>.
- ¹² See the site of the Employment Development Department at <http://www.edd.ca.gov>.
- ¹³ Interview with Lissa Bell.
- ¹⁴ U.S. Department of Labor study, “Balancing the Needs of Families and Employers: The Family and Medical Leave Surveys 2001 update,” available at <http://www.dol.gov/asp/fmla/main.htm>.
- ¹⁵ Interview with Paige Whittaker, policy director, Women’s Statewide Legislative Network, November 30, 2001.
- ¹⁶ “Dodd Introduces Legislation to Put Working Families FIRST,” Press Release, July 13, 1999. Online available: <http://www.senate.gov/~dodd/press/Releases/99/0713.htm>.
- ¹⁷ “Parental Leave Benefits for Massachusetts Workers,” Policy Brief Series, No. 9, August, 2001, Massachusetts Executive Office of Administration and Finance.
- ¹⁸ *Ibid.* A&F’s data are extrapolated from the U.S. Department of Labor study, “Balancing the Needs of Families and Employers: The Family and Medical Leave Surveys 2001 update,” available at <http://www.dol.gov/asp/fmla/main.htm>. Many contend that, although this study may contain the best data available on the paid leave issue, it is extremely difficult to quantify the number of working parents that have difficulty taking unpaid leave.

¹⁹ US Department of Labor, 2001, available at <http://www.dol.gov/asp/fmla/chapter6.htm>.

²⁰ Interview with Bill Vernon, executive director, Massachusetts Chapter of NFIB, November 30, 2001.

²¹ *Ibid.*

²² *Ibid.*

²³ Testimony of James Klocke, March 30, 2001.

²⁴ Interview with Nancy Connolly, president, Lasertone, January 4, 2002.

²⁵ Frank Phillips, "Swift Seen Ready to Deal on Taxes in Fiscal Talks." *The Boston Globe*, April 10, 2002.

²⁶ Under the Employment Retirement Income Security Act of 1973, 29 USC s. 1101 *et seq.*, states are restricted in their ability to mandate benefits. However, exemptions were created for unemployment insurance, temporary disability programs, and workers compensation.

²⁷ 20 CFR Part 604. These regulations became effective in the summer of 2000.

²⁸ *Ibid.*

²⁹ Department of Labor Employment and Training Administration, "Final Rule: Birth and Adoption Unemployment Compensation," *The Federal Register*, June 13, 2000.

³⁰ In the states that do not have a mandatory program, many employers voluntarily offer group TDI plans to their employees.

³¹ Wayne Vroman, "Compensating American Families for Births and Adoptions," The Urban Institute, April, 2001, available at <http://www.urban.org/econ/BAAUC.html>.

³² *Ibid.*

³³ Jillian Dickert, "Making Family Leave More Affordable in Massachusetts: The Temporary Disability Model," The John W. McCormack Institute of Public Affairs, University of Massachusetts, Boston, 1998.

³⁴ *Ibid.*

³⁵ Interview with Robert Carey, Massachusetts Taxpayers Foundation, December 19, 2001.

³⁶ *Ibid.*

³⁷ Michael S. Greve, "Laboratories of Democracy: Anatomy of a Metaphor," *Federalist Outlook*, May 2001, available at <http://www.federalismproject.org/outlook/5-2001.html>.

³⁸ "Parental Leave Benefits for Massachusetts Workers" Executive Office of Administration and Finance. Policy Brief Series Number 9, August 2001.

³⁹ *Ibid.*

⁴⁰ *Ibid.* A&F recognizes that those numbers will change in a recession, but is still confident, at this writing, that the fund can support this program.

⁴¹ *Ibid.*

⁴² Interview with Paige Whittaker, *op cit.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Interview with Elaine Tabor, Senior Policy Analyst to Speaker Finneran, December 10, 2001

⁴⁶ *Ibid.* It should be noted that the Governor's A&F still believes the fund is sufficiently flush

to support her program.

⁴⁷ Committee on Taxation – Bill Summary, HD 4670, An Act Relative to Paid Parental Leave.

⁴⁸ The notion of a tax credit for business to encourage paid leave programs was introduced by Governor Cellucci when he vetoed Baby UI.

⁴⁹ Interview with Elaine Tabor, *op. cit.*

⁵⁰ Thomas M. Finneran and Paul Guzzi, “Tax Credit the Right Choice for Paid Parental Leave,” *The Boston Business Journal*, October 19-25, 2001.

⁵¹ Interview with Elaine Tabor, *op. cit.* The Speaker’s office believes that most companies targeted by the credit do not currently offer paid leave, so the credit would be planted in fertile ground, creating considerable potential for companies to change behavior.

⁵² Interview with Jim Klocke, *op. cit.*

⁵³ Testimony from Paige Whittaker, policy coordinator of the WSLN, submitted to the Joint Committee on taxation, September 26, 2001.

⁵⁴ Interview with Ken Arden, *op. cit.*

⁵⁵ Testimony from Paige Whittaker, *op. cit.* The research Whittaker cites is a study by the National Women’s Law Center which is referenced by Julie Poppe of the National Conference of State Legislatures, in a “Legisbrief” titled, “Business Tax Credits for Child Care,” August-September 2000.

⁵⁶ Interview with Ken Arden, *op. cit.* Advocates for the Speaker’s plan, including the Greater Boston Chamber of Commerce, say they recognize the non-profit problem, and are working on a solution.

⁵⁷ See C. 151A, Sec. 24(a) of the Mass. General Laws.

⁵⁸ Interview with Paige Whittaker, *op. cit.* In estimating the cost of FESA, supporters have relied on extrapolating data from a detailed New Jersey study in 2000 focusing, in part, on the utilization rate of that state’s TDI program. (See Estimate of Utilization and Cost of Family Leave Benefits Under Assembly Bill, No. 2037, by Gregory L. Williams, Lead Research Analyst, New Jersey State Legislature Office of Legislative Services, March 16, 2000.)

⁵⁹ *Ibid.*

⁶⁰ Whittaker, *op. cit.*

⁶¹ *Ibid.*

⁶² *Ibid.* Needless to say, FESA advocates claim that many of these assumptions are ludicrous and insist that their numbers, based on the in depth New Jersey study (see footnote 53) are far more sturdy.

⁶³ As this is a tax on all employers, and does not force them to create their own paid leave plans, advocates claim that the provisions of ERISA are not contravened.

⁶⁴ Interviews with Rich Marlin, legislative director of the Massachusetts AFL-CIO, December 10, 2001 and January 8, 2002.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ A spokesman for this organization suggested, as others have, that the greatest variable for figuring cost is the take-up rate. If one extrapolates from Department of Labor’s FMLA

survey data, which show that about one-third of new fathers and more than two thirds of new mothers took leave to care for a new child, then about 60,000 people would participate in this new state program. This number is reached after noting that there are over 82,000 births and adoptions in Massachusetts each year and, with a majority of parents working, about 112,000 eligible to take leave.

⁶⁸ *Ibid.*

⁶⁹ Veto message of Governor A. Paul Cellucci and Lieutenant Governor Jane M. Swift, August, 2000.

⁷⁰ Michael Levenson, "Economy, Paid Family Leave Shift Debate on Jobless Premium Rate Cuts," *State House News Service*, April 11, 2001.

⁷¹ Interview with John Regan, vice president for legislative policy, Associated Industries of Massachusetts, December 19, 2001.

⁷² Interview with Paige Whittaker, *op. cit.*

⁷³ See a press release of the North Central Massachusetts Chamber of Commerce at http://www.northcentralmassonline.com/unemployment_insurance_tax.php3.

⁷⁴ Interview with Lisa Gurgone, legislative assistant to Representative Paulsen.

⁷⁵ Interview with Noah Berger, counsel to the Senate President, December 20, 2001. In addition to the surplus, Birmingham's plan also relied on the Medical Security Trust Fund for financing.

⁷⁶ Harold Lasswell, *Politics: Who Gets What, When, and How?* (New York: McGraw-Hill, 1936).

⁷⁷ James Q. Wilson, "Two Nations," 1997 Francis Boyer Lecture, delivered at the Annual Dinner of the American Enterprise Institute, December 4, 1997; available at <http://www.aei.org/boyer/jwilson.htm>.

⁷⁸ Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), p. 169.

Rappaport Institute for Greater Boston

The Rappaport Institute is a non-partisan policy center at the Kennedy School of Government that seeks to improve governance in the Greater Boston area by engaging students in public service, strengthening networks of academics and practitioners involved in public policy work, contributing useful and academically rigorous research to inform policy debates, promoting dialogue on policy matters in forums and on the web, and providing training for municipal officials in the Greater Boston area.

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Center for Women and Enterprise

Founded in 1995, the Center for Women & Enterprise (CWE) is the largest entrepreneurial training organization in Southern New England, with offices in Boston and Worcester, Massachusetts, and Providence, Rhode Island. CWE's mission is to empower women to become economically self-sufficient and prosperous through entrepreneurship. The Center for Women & Enterprise offers education, training, technical assistance, women's business enterprise certification and access to both debt and equity capital to entrepreneurs at every stage of business development. As a non-profit, charitable organization, the Center for Women & Enterprise provides its services on a sliding-scale basis in order to serve all women, regardless of their ability to pay. Since its inception, CWE has served over 4,000 entrepreneurs.

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