Introduction

At some point in their lives, all workers have the potential to need to take paid family and medical leave. Yet the United States is the only advanced economy—in fact, one of only a few countries in the world—that does not guarantee mothers the right to paid maternity leave. And, the United States is one of only a handful of wealthy countries that also does not extend the right to paid parental leave to fathers, workers with other family caregiving responsibilities, or workers who experience a short-term disability. In short, the United States is an extreme outlier among all comparable economies because its national policies do not guarantee the right to any form of paid leave from work for any reason. Other nations have had paid leave programs in place for decades, and similar programs are currently operating in a growing number of states. These programs, offer wage replacement to people who are temporarily unable to work due to their own medical issues or because they need to care for a family member, have been associated with a host of benefits to states including: increased labor force attachment and higher wages for women, decreased usage of public assistance, and decreased utilization of nursing homes which can lead to significant Medicaid savings.[1]

While not all workers will need leave to care for a new child or provide assistance to a seriously ill or injured family member, every individual has the potential to experience a serious medical event that requires time off for treatment or recovery. Unlike some public policy issues that only impact a small subsection of the population, every employed person in the state of Connecticut has the potential to utilize and benefit from the state's paid family and medical leave (PFML) program once it is operational. The broad impact of the program, as well as its direct public financing and the innovativeness of the program, mean that there will be considerable scrutiny of the program as it is developed and begins its operations. This report is intended to offer background information, including an overview of how the currently operational programs in other states are structured and administered, to help inform the creation of the Connecticut Paid Family and Medical Leave Insurance program. Learning from the experiences of other states, along with lessons from the private sector, will allow the Board to make decisions based on best practices to ensure the program's success.[2]

Paid family and medical leave (or PFML) in this context refers to programs that provide wage replacement (and in some cases, job protection) to workers when they need time off to care for themselves, a new child, or a seriously ill or injured family member. These

[1] Linda Houser and Thomas P. Vartanian, "Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public," (New Brunswick, NJ: Rutgers University, 2012) available at http://www.nationalpartnership.org/our-work/resources/economic-justice/other/pay-matters.pdf; Kanika Arora and Douglas A. Wolf, "Does Paid Family Leave Reduce Nursing Home Use? The California Experience," *Journal of Policy and Management* , 2018, 37(1): 38-62.

[2] The information presented here focuses primarily on the state administration of paid family and medical leave benefits, but the private sector also has a long history of providing temporary disability insurance. While an overview of best practices from the private sector is beyond the scope of this report, additional research is warranted to discover what lessons can be learned from the private insurance market.

programs are based on two precedents. First, the modern notion of a PFML program is rooted in the experiences and lessons learned from programs for temporary disability insurance (TDI) that were initially implemented in a handful of states in the 1940s. Even states such as Connecticut that are creating PFML programs in the absence of a pre-existing TDI infrastructure still borrow many of their features from the setup and structure of the original TDI programs in the United States. Second, the covered conditions or reasons for needing leave - namely the need to recover from a serious medical condition, the need to care for a new child (whether biological, adopted or fostered), the need to care for a close family member with a serious health condition, or the need to address exigencies or caregiving related to a family member's active military duty – are based on the same conditions covered by the federal Family and Medical Leave Act of 1993, which provides unpaid, job protected leave to workers for these same reasons.

On June 25, 2019 Connecticut joined seven other states – California, New Jersey, Rhode Island, New York, Massachusetts, Washington, and Oregon– and the District of Columbia by passing legislation to create a comprehensive paid family and medical leave program through the signing of Connecticut Public Act 19-25, as amended by Public Act 19-117.[3] Although the duration of leaves, wage replacement rates, and eligible workers vary across these state programs, they each provide workers access to paid leave for life events covered under the federal Family and Medical Leave Act of 1993 (FMLA) and the Connecticut Family and Medical Leave Act (CT FMLA):[4]

- To address the worker's own serious health concern;
- To care for a child after birth, adoption or foster placement;
- To provide care to a seriously ill or injured family member;
- To address qualifying exigencies arising from the foreign deployment of related service-member; or
- To serve as an organ or bone marrow donor.[5]

Connecticut law also provides leave for victims of family violence.[6]

While both the federal FMLA and the CT FMLA provide job protection and the continuation of health insurance benefits for covered leaves, these laws on their own do not guarantee a right to wage replacement.

[3] P.A. 19-25, as amended by sections 232 through 235 of P.A. 19-117

[4] The Connecticut FMLA and the Federal FMLA are largely similar, with the most notable differences being related to eligibility criteria, with the CT FMLA offering more generous coverage than the federal FMLA.

[5] While this category of medical leave is specifically detailed in the Connecticut Family and Medical Leave Act, similar leaves would be categorized as medical leave under the federal FMLA, which defines a serious health condition as ""illness, injury, impairment, or physical or mental condition that involves" either "inpatient care in a hospital, hospice, or residential medical care facility" or "continuing treatment by a health care provider." *Family and Medical Leave Act of 1993*. 1993. H.R. 1, 103rd Cong., 1 sess. http://www.govtrack.us/congress/bills/103/hr1.

[6] See C.G.S. 31-51ss

While eight states (including Connecticut) and Washington D.C. have passed laws to create PFML programs, as of July 2019 only 4 of these programs – in California, New Jersey, Rhode Island, and New York – are fully operational and paying benefits to leave-takers. Over the course of the last 15 years, these states have added paid family leave to their long-standing temporary disability insurance (TDI) programs that have been in place since the 1940s.[7] The existence of these well-established TDI programs made it relatively easier - politically and administratively - for these states to pass legislation providing additional paid parental and family caregiving leaves. The existing agencies in charge of administering TDI were expanded in order to also cover PFL, by building off of administrative efficiencies and avoiding unnecessary duplication of functions such as application processing or payment dispersal.

The already existing state Temporary Disability Insurance programs created some efficiencies while establishing the right to paid family leaves, and helped to ensure the success of what was at the time a new and novel paid leave benefit in the United States.

Yet it is important to note that the systems in place for TDI had been initially created during or in the immediate aftermath of World War II. Although the respective state programs in California, New Jersey, and Rhode Island been updated over time, they were not and are not at the cutting edge of current technological advances nor do they use the most modern evidence based practices in their administration. The existence of state TDI programs made the addition of PFL simpler in some ways, but also created path dependencies that can be avoided when crafting an entirely new program from scratch – like Connecticut has the opportunity to do.

Although the basic parameters of the Connecticut Paid Family and Medical Leave Insurance program are determined in Public Act 19-25 as amended, there are still a number of details left to be determined, primarily in regards to the administration of the program and the granular details of how the program will be accessed, applied for, verified, processed, and approved. These factors, which determine how workers, employers, and the state government will interact with the CT PFML program, are vital to ensuring the accessibility, stability, solvency, and longevity of the program. It is the authors' belief that these decisions should be guided by three underlying principles:

1) The program should be efficiently run. This means ensuring that the PFML program should be as modern and streamlined as possible, without jeopardizing program integrity.
2) The program should be as cost effective as possible. This means that all extraneous costs should be avoided and the program administration should be

[7] For more information on the history of state temporary disability insurance programs, please see: U.S. Department of Labor. 2014. *Chapter 8: Temporary Disability Insurance*. Washington, DC: U.S. Department of Labor employment and Training Administration. https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2014/disability.pdf.

structured to eliminate unnecessary overhead and costs whenever feasible, while maintaining program integrity.

3) The program should ensure the broadest possible access to the program for those funding it: namely the workers in the state of Connecticut. Special emphasis should ensure that the most vulnerable workers who are the least likely to currently have access to paid leave – low wage workers, people of color, working caregivers, etc. – are able to access and utilize the benefit they are funding through their tax contributions.

Brief Overview of How Existing State Administration Has Been Structured

The table below compares the four currently operational paid family and medical leave programs: California, New Jersey, Rhode Island, and New York, with the Connecticut program being developed. Key aspects of these laws are summarized in the table below.[8]

While the state laws differ in the specifics of the benefits offered, most notably in relation to the maximum duration of leave available, level of wage replacement, and definitions of covered family members, all provide some form of compensation to workers when they take leave for the same reasons covered under the FMLA. The policy specifics vary slightly, but because the core functions of the programs are the same the administrative structures for the operational programs have notable similarities.

In the majority of cases, the state to provision of Paid Family and Medical Leave to workers has tended to be accomplished by creating statewide social insurance programs. Three of the four currently operational PFML programs – in California, New Jersey, and Rhode Island, - are structured as social insurance programs where virtually all workers in the state are members of the same risk pool, with the state controlling the program trust fund. This is at least partially due to the way that the original Temporary Disability Insurance Programs were created. In the wake of the recovery from the Great Depression, state Unemployment Insurance programs enjoyed robust trust funds. An act of Congress allowed states that collected UI contributions from workers to reallocate these funds to create state Temporary Disability Insurance programs. California, New Jersey, and Rhode Island all collected UI contributions from both employers and employees, and were therefore able to reallocate this revenue stream to create their TDI systems using models that closely mimic the structure of UI in those states. This social insurance program structure allows for a very efficient and cost effective administration of benefits at a low per person cost. The District of Columbia, Washington state, Massachusetts, and Oregon, while not having existing TDI

[8] The text of this report primarily compares the administration of the currently operational state PFML programs. Because the programs in the District of Columbia and the states of Washington, Massachusetts, and Oregon are still being developed, less information is publically available about the details of their administrative structures – some of which are still being debated and developed at the time of this writing. As the D.C. and Washington state PFML programs come online and begin paying benefits in 2020, more public information will become available. Massachusetts and Oregon, the most recent states to pass PFML legislation in 2018 and 2019 respectively, are actively engaged in the same process being undertaken in Connecticut to determine their state's best options for implementation. While relatively little information on the deliberative processes in these states is currently available for public consumption, further communication between the Board and the appropriate actors in these states will allow opportunities to share information and strategies for administering PFML benefits.

programs, have all also chosen to structure their PFML programs as social insurance systems.

New York is a notable outlier, which is also due to the historical legacy of how the program was created. New York did not collect UI contributions from employees in the 1940s, which meant that it was not able to follow the same pathway as California, New Jersey, and Rhode Island. The New York system was instead modeled after their Workers' Compensation program, resulting in a different program structure that relies more heavily on tightly regulated private market insurance coverage, although the state does manage its own insurance product that is available for purchase by employers in the state. New York's system operates differently due to unique features within the state – including a strong regulatory body that oversees the provision of private market insurance plans and sets rates, rules, and regulations– that are not common in other states. Connecticut, for example, does not currently have a state level agency with the same oversight and authority as the New York State Workers' Compensation Board, nor does the state operate a large-scale non-profit insurance fund comparable to the New York State Insurance Fund (NYSIF).

While there is certainly room for innovation and for new and more efficient ways of ensuring program integrity and coverage, paid leave benefits have been offered at the state level in the United States for more than 70 years, and there are a number of lessons that can be learned to help ease the way for new states looking into developing their own PFML programs.

Program Administration

A paid family and medical leave program must have the ability to meet a basic set of criteria in order to function in an effective and efficient manner. Some of these core functions include being able to:

1. Determine whether the leave-taker meets the program eligibility requirements and whether an application for leave is valid. This includes both the ability to make determinations on whether the worker's condition—medical, parental, or caregiving—qualifies him or her for leave and the ability to process the appropriate application materials.
2. Determine the amount of the paid leave benefit.
3. Process payment information and disperse funds in a timely manner to eligible leave-takers.
4. Coordinate with existing employer-provided benefits to avoid overpayments or duplicative benefits.
5. Operate in the most efficient and cost-effective way possible, in order to ensure low overhead.

Several of these functions, including processing payments, dispersing funds, and addressing appeals to official decisions are already taking place, albeit in different forms, through the state's Unemployment Insurance and Workers' Compensation Commission.

The state has the valuable opportunity to learn from best practices within these programs and utilize policies and procedures that have been proven to work well within the context of UI and WC, in addition to adopting best practices from other states currently providing PFML benefits.

Eligibility Determinations.

The first and most basic task of a paid leave program is to determine whether or not an individual applicant is eligible for leave. Program eligibility is based on two overlapping criteria:

1. Does the individual meet the eligibility requirements in order to gain access to the program, and
2. Have they experienced a qualifying life event that would trigger access to paid leave?

The first function, determining whether an individual applicant meets the program eligibility requirements, is a relatively straightforward determination to be made by the administering agency based on the available government data. The statute mandates that individuals will be covered by the PFML program provided that they have earned a minimum of $2,325 in at least one quarter of the base period, defined as the first four of the last five recently completed quarters. Although the specific dollar amounts vary across the existing state PFML programs, all follow this same basic structure, with a minimum earnings threshold over a base period. California, New Jersey, and Rhode Island all verify this information by utilizing the same wage data collected by the state for the administration of Unemployment Insurance.

The second function, establishing whether or not a qualifying condition has occurred, requires two complimentary components:

1. Verifying that a qualifying condition has occurred, and
2. Determining the appropriate length of leave for the particular qualifying condition.

Making determinations regarding parental leave is relatively uncomplicated because verifying the birth, adoption, or foster placement of a child is usually very straightforward through documentation such as birth certificates. In the case of parental leave, qualifying individuals would be automatically eligible for up to 12 weeks of leave, although based on how such programs have operated at the state level, it is unlikely that all program participants would use the full 12 weeks.[9]

In the case of medical or family caregiving leave, the determination process typically involves a more detailed review to assess eligibility. The existing state paid leave programs provide a useful roadmap by demonstrating how programs can develop a straightforward yet rigorous process to ensure that leave is made available only to those with a legitimate

[9] The available data on program participation in California, New Jersey, and Rhode Island shows that the average length of parental leave is below the maximum threshold permitted in each state.

need and for an appropriate length of time. For example, when a worker applies for temporary disability leave in Rhode Island their medical provider must submit medical documentation, which contains an ICD code. The ICD refers to the International Statistical Classification of Diseases and Related Health Problems, a classification system that provides detailed information on medical conditions including the severity of the illness, and is used by medical providers for insurance, Medicare, and Medicaid billing, among other record keeping. The information provided by an applicant's medical provider is then crosschecked against the Official Disability Guidelines, or ODG, which includes information on anticipated recovery times. The same process is in place for claimants applying to take family caregiving leave, who must submit documentation from the care recipient's medical provider.

In other words, workers cannot simply claim they need extended medical leave of 12 weeks for themselves or caregiving leave for a seriously ill family member – they must provide documentation from a qualified medical provider that is rigorously reviewed against existing classification systems and guidelines. Should any discrepancies exist, for example if the return to work date indicated by the medical provider is later than what would be anticipated based on the ICD or ODG codes, licensed nurses are on staff in Rhode Island who are capable of requesting and reviewing additional medical notes and documentation in order to ensure that the length of leave requested is medically justified, while maintaining appropriate patient privacy measures in compliance with federal law. Such measures have been used successfully to minimize the potential for fraud or extended "unnecessary" leaves.

Notably, the medical documentation necessary to receive paid temporary disability leave or family caregiving leave under the existing state programs is far more detailed than the medical documentation required under the federal and Connecticut FMLA. Workers are not required to make their personal medical history and detailed diagnoses available to their employers when filing for FMLA leave due to worker and patient privacy considerations. Because individual employers are not, generally speaking, qualified to assess medical records and issue their own determinations on the validity of the medical provider's stated need for leave, they are only provided information that they can reasonably be expected to act upon. As a result, employers are generally only provided with a relatively minimal amount of information regarding an employee's medical condition, or the medical condition of the family member they are caring for, and leave-takers are not required to waive their HIPAA rights when applying for job protected leave. This can, at times, lead to employers feeling as if they have access to asymmetric information, and may fuel concerns around the potential for fraud.

However, government-run paid leave programs are permitted to require more detailed medical information for purposes of permitting access to the program. Although this detailed medical information is not shared with the leave-taker's employer, these more rigorous program requirements helps reduce even further the low risk of abuse and concerns about potential misuse.

Benefit Calculations.

Once a data source is identified for calculating benefit payment amounts, the resulting actions are quite straightforward and simply require basic arithmetic. Because PFML benefits are structured as wage replacement programs intended to support economic security through the promotion of labor force attachment – rather than programs in other countries intended to increase birth rates, for example – all of the PFML programs in the United States provide some percentage of normal wages. In the Connecticut statute, the same definition of base earnings is used to determine program eligibility and the wage replacement rate. This is consistent with the actions in all other state PFML programs, which also use the same definition and data sources to establish eligibility and benefit payments.

Payment Processing.

The majority of governmental programs providing cash benefits to individuals have eliminated the use of paper checks in favor of the electronic transfer of funds. The result is lower administrative costs and a streamlined process that simplifies and expedites the receipt of benefits. Federal law dictates that individuals cannot be required "to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of ... receipt of a government benefit," and direct deposit of benefits funds should always be the first choice due to its efficiency and cost effectiveness.[10] The data shows this to be true, as California's PFML program estimated that it would save $4 million as a result of its switch from mailing checks to the use of debit cards.[11] Connecticut ceased the use of paper checks for UI benefits and contacted with Chase Bank to provide debit cards for same cost saving reasons.

The state paid family and medical leave programs already paying benefits in California, New Jersey, and Rhode Island use preloaded debit cards to disperse wage replacement to leave-takers who do not have their benefits direct deposited. California and New Jersey have contracts with Bank of America to provide debit cards, while Rhode Island contracts with Chase Bank. In all three states, these are also the same cards that are used to disperse UI benefits to eligible workers.

Employer Coordination.

An effective program will include a process to ensure that government benefits are appropriately coordinated with employer-provided leave benefits. In the same way that an individual cannot receive unemployment insurance benefits after they start working at a new job, the Connecticut statute stipulates that individuals should not be able to "double-dip" and receive government provided paid leave benefits if they are still working or are receiving paid leave benefits from their employer that would bring their total benefit to

[10] CC, Consumer Compliance. "Electronic Fund Transfer Act." 2014. Available at http://www.federalreserve.gov/boarddocs/caletters/2008/0807/08-07_attachment.pdf.
[11] State of California Employment Development Department, "New Debit Cards Replacing Benefit Checks for Those on Disability." 2011. Available at http://www.edd.ca.gov/about_edd/pdf/nwsrel11-02.pdf.

more than their normal rate of pay. While the exact processes look slightly different, in both California and Rhode Island the paid leave administering agencies coordinate benefits with employers to ensure that workers are receiving an appropriate benefit level.

Rhode Island, for example, provides financial statements to leave-takers detailing the length of leave they are eligible for and their benefit level. Rhode Island provides roughly 2/3-wage replacement through their leave programs up to a cap of approximately $850 per week, and some employers chose to "top off" the benefit payments to bring their workers up to 100 percent wage replacement. In these instances leave-takers can share their official financial statement with their employer in order to make the appropriate payroll adjustments. California has similar processes in place, and employers can directly contact the Employment Development Department which administers paid family leave and temporary disability insurance in order to correctly coordinate their own policies with the state program. This has the potential to create considerable cost-savings for employers who currently self-fund their own temporary disability or paid family leave plans.

Administrative Overhead.

To build out the infrastructure for a paid family and medical leave program in Connecticut, there are a number of lessons that can be learned from other states, as well as already existing efficiencies within the state government that can be built upon.

The exact start-up costs necessary for Connecticut to establish a paid family and medical leave program will be dependent upon the administering agency and the application processes and IT infrastructure, among other factors. The ongoing administrative costs associated with administering a paid family and medical leave program can also differ depending on the exact nature of the program structure. Administrative overhead should be kept to a minimum, while ensuring that the employees who are funding the system have access to paid leave when they need it. In the existing state paid family leave and temporary disability insurance programs, administrative costs represent less than 5 percent of total benefit payments. There are a variety of options for how the administration of the Connecticut Paid Family and Medical Leave Insurance program can be structured, and the Authority should strive to maintain similarly low overhead costs while ensuring a high level of user ease for claim applicants and that vital functions such as fraud prevention and a robust appeals process are in place.