a better balance
the work and family legal center

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Testimony of A Better Balance: The Work and Family Legal Center
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Submitted to the New York State Legislature
At the Joint Legislative Budget Hearing
on Workforce Development

Re: Inclusion of An Act to Amend the Workers' Compensation Law, in Relation to Expanding Eligibility for Temporary Disability Insurance and Paid Family Leave Benefits (S2821B / A4053B) in the Senate Budget Proposal

January 26, 2024

A Better Balance ("ABB") is grateful for the opportunity to testify in support of strengthening New York's paid medical and family leave benefits in the FY 2024–2025 state budget.

ABB is a national legal services and advocacy organization, headquartered in New York, which uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. We run a free and confidential legal helpline through which we hear from thousands of workers a year, including hundreds of New Yorkers who need paid family and medical leave.

We also led advocacy efforts to pass groundbreaking work-family protections in New York State, including paid family leave, paid sick time, emergency paid sick time, pregnancy accommodations, and lactation protections. Most recently, we published a landmark report documenting the serious problems with New York's paid family and medical leave program and proposing reforms to fix it.[1]

We write to urge the Senate to include Senate Bill S2821B (A4053B) in its FY 2024–2025 budget. We also write to address the Governor's prenatal care proposal and to offer recommendations for how the Senate may incorporate such a proposal in its budget, while avoiding unintended consequences for pregnant workers.

[1] MEGHAN RACKLIN & MOLLY WESTON WILLIAMSON, WITH CONTRIBUTION FROM SHERRY LEIWANT, DINA BAKST, AND CASSANDRA GOMEZ, THE TIME IS NOW: BUILDING THE PAID FAMILY AND MEDICAL LEAVE NEW YORKERS NEED (2023), https://www.abetterbalance.org/the-time-is-now.

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I. Introduction

We urge the legislature to include Senate Bill S2821B (A4053B) in its FY 2024–2025 budget.

Currently, New Yorkers are one cancer diagnosis, car accident, or difficult pregnancy away from losing their job, health insurance, and financial security. That is because New York's paid medical leave benefit ("temporary disability insurance" or "TDI") provides workers who need time off to care for their own health a mere $170 per week—and no job protection. New York's TDI benefit is wildly inequitable compared both to its peer states (nearly all of which allow workers to earn over $1,000 per week) and its own paid family leave benefit, which New Yorkers use to care for seriously ill loved ones and to bond with a new child (and through which workers can earn over $1,151 per week). In New York, if your father breaks his leg, you can care for him and receive $1,151 per week and full job protection; if you break your leg and need to be out of work, you will receive only $170 per week and no job protection.

Fortunately, S2821B/A4053B, sponsored by Senators Ramos and Assembly Member Solages, would fix that. The legislation would raise benefits, install a progressive wage replacement rate, and protect workers' jobs and guarantee their health insurance during medical leave, among other essential reforms. The bill enjoys broad support from unions, health advocacy groups, and legal services providers, including 1199SEIU, RWDSU, Teamsters, UAW Region 9, March of Dimes, the American Heart Association, the American Cancer Society, the National Alliance for Mental Illness NYS, the National MS Society, and the Legal Aid Society.[2]

The Governor in her proposed budget takes steps to improve medical leave, but her proposal does not go far enough. While we applaud the Governor for recognizing the dire need to fix the program—and particularly her recognition that the amount of TDI benefits is unacceptable, and that job protection and health insurance continuation are essential—her proposal remedies the problem far too slowly, failing to meet the needs of New Yorkers in this moment. Notably, her proposal would: phase-in benefit increases slowly over the course of five years; permanently freeze benefits for the latter part of a TDI claim at $280 per week, without regard to inflation; fail to institute progressive wage replacement, which is critical to ensuring those who need benefits will have enough to live on; fail to permit intermittent leave for New Yorkers who need to take time for treatments like chemotherapy and mental health therapy; and abandon new employees and freelance employees in need of paid family leave.

Accordingly, we urge the Senate to incorporate in its budget Senator Ramos's S2821B—the proposal that best synchronizes New York's paid family and medical leave benefits, modernizes New York's leave program, and, most importantly, meets New Yorkers' needs at a moment of soaring housing costs and daily costs of living.

[2] For a full list of current supporters, see Appendix A.

II. New York's Program Requires Eight Key Reforms

A. New Yorkers need a livable paid medical leave benefit amount—and they need this increase to go into effect now.

i. The Need

New York's weekly paid medical benefit ("TDI") was set at $170 in 1989 and has not budged since. In inflation-adjusted dollars, today's TDI benefit would only have been worth some $73 in 1989—less than half of what the legislature authorized. And today, a worker who earns New York State's average weekly wage of $1,688 would receive a mere 10% of their weekly wages while on paid medical leave, due to the $170 cap on benefits.

In 2024, $170 is an unlivable amount for a family to survive on anywhere in New York State. This is particularly true for low-wage workers, who are disproportionately women of color. On our legal helpline, we hear routinely from workers in need of time off to address serious pregnancy complications, recover from chemotherapy or surgery, or receive mental health treatment. Many of these callers tell us they are struggling to survive on TDI, becoming food insecure or even homeless when they can no longer make rent. Others forego the medical care and time off they need because they simply cannot live on the pittance that is TDI.

For example, on our helpline we have heard from:

- Ruth, a janitor on Long Island, who contacted our helpline because she needed time off to recover from childbirth. She told us, "Surviving on $170 is hard. What I make isn't anything compared to what it takes to sustain a household. So, imagine giving birth and then only receiving $170 for 5 weeks. There needs to be a change to better support mothers. I consider it unfair when you work hard and pay your taxes, only to be told that there is little to nothing available to help you through such a significant life event."

- Delia,*[3] a domestic worker, who called our helpline because she needed time off to recover from surgery. She was distressed to learn that she would be eligible for only $170 a week, and had no idea how she would pay her rent and other bills on such a small amount of money. Things got even worse when her employer laid her off—a devastating yet predictable consequence of the fact that TDI provides workers no job protection.

- Denis, who called our helpline to ask what benefits his wife could receive while taking a two-week medical leave urged by her therapist. Her employer agreed to provide a week's worth of pay, but suggested that, beyond that, she might only be entitled to TDI benefits of $170 per week. "That's not even going to buy us groceries for a week," Denis told us. "I'm unemployed currently and collecting unemployment and the TDI benefit is less than half of what I'm getting from

[3] Asterisks denote pseudonyms used to protect workers' anonymity.

unemployment, which I don't understand. It is a very detrimental thing to my family that is going to make it detrimental for my wife to take the time that she needs to get better."

- Michelle, a worker in New York City, contacted us because she was struggling with serious complications from COVID-19 and, ultimately, long-COVID. She was shocked to learn that TDI was capped at $170 a week, an amount that would not be nearly enough to cover her rent, let alone food, utilities, and other basic living expenses. She was ultimately able to access a federal paid benefit—which has since expired—instead of needing to rely on TDI.

  She told us: "I was shocked that [New York's] disability benefits are so low. How do you survive on those minimal amounts? I hope TDI benefit amounts increase, to save people from being in even worse situations while they [are already struggling with] an illness."

- Bethany,* a pregnant worker in New York City, reflected on the absurdity of the TDI benefit amount in 2024. "Living on $170 per week is unrealistic, and I believe that lawmakers can do more to address this issue," she told us. "I can barely afford to grocery shop with $170, and I live in a low-income building with a rent of $1,065. $170 isn't even a month's rent. I'd need to be paid TDI for 7 weeks just to cover one month's rent. There must be more that can be done. This isn't a realistic benefit."

- Countless other callers to our helpline have been forced to forego much-needed medical treatment and recovery because it is simply impossible to pay rent, bills, and groceries on TDI.

No one struggling with serious illness, injury, or pregnancy complications should have to survive on $170 a week. Indeed, New York's peer states provide paid medical benefits *at least* five times higher than New York's:[4]

Cap on weekly benefits for workers' own health (January 2023)

NY	CT	DE*	MD*	RI	NJ
$170	$840	$900	$1,000	$1,007	$1,025
D.C.	**MA**	**CO***	**WA**	**OR***	**CA**
$1,049	$1,129.82	$1,100	$1,427	$1,590.29	$1,620

*The paid family and medical leave insurance programs in Oregon, Colorado, Maryland, and Delaware will begin paying benefits in September 2023, January 2024, January 2025, and January 2026, respectively.

[4] RACKLIN & WESTON WILLIAMSON, THE TIME IS NOW, at 11.

Moreover, in its paid family leave program, New York already recognizes the necessity of providing workers more than $170 a week to live on. PFL provides workers who need time off to care for a seriously ill loved one up to $1,151 per week—a benefit nearly *seven times* that which the seriously ill workers themselves can receive. In other words, a worker who needs time off to care for loved one with cancer can earn almost seven times as much as the cancer patient themself—a striking inequity.[5]

	Benefit for one's own serious health condition	Benefit for paid family leave
Wage replacement rate	50% of the worker's average weekly wage	67% of the worker's average weekly wage
Cap on benefits	$170/week	67% of the statewide average weekly wage $1,131.08/week starting in 2023

New York stands alone in the disparity between its paid family and paid medical leave benefits. Of the 13 states and the District of Columbia that have paid family and medical leave programs, not one of them distinguishes between family leave and medical leave in the cap on benefits provided.[6]

Finally, the TDI benefit amount hits pregnant workers particularly hard. Nearly 30% of New York TDI claims are pregnancy-related, including for prenatal appointments, hospital stays or mandated bedrest, and recovery from pregnancy loss.[7] In the midst of the Black maternal health crisis, sufficiently-paid medical leave is crucial to reduce Black maternal mortality and morbidity.[8]

ii. <u>The Solution</u>

S2821B would fix the problem, eliminating the TDI cap and bringing TDI in line with New York's paid family leave benefit. It would do so promptly, going into effect in January 2025.

By contrast, while we applaud Governor Hochul for recognizing the need to increase the TDI benefit amount, her budget proposal has three key problems:

[5] *Id.* at 15. Note that this chart reflects the 2023 PFL maximum benefit amount of $1,131. The PFL maximum benefit amount for 2024 has increased to $1,151. The TDI benefit amount has remained static, stuck at its 1989 level.
[6] *See* Appendix B, Memorandum Re: Improving New York's Temporary Disability Insurance and Paid Family Leave Programs.
[7] RACKLIN & WESTON WILLIAMSON, THE TIME IS NOW, at 2.
[8] *Id.* at 9.

1. First, it would phase-in changes to the TDI benefit slowly, over the course of five years. Her proposal would force New Yorkers to continue struggling to get by on an already untenable amount for even longer. Workers have been struggling since 1989; they cannot afford to wait any longer, nor should they have to.

2. Second, the Governor's proposal would eliminate the cap on the TDI benefit for only 12 weeks, far short of the 26-week maximum for which disabled workers are eligible for TDI. Cancer does not abide by a 12-week timeframe. Multiple sclerosis does not become less expensive at week 13. New York workers deserve a stable, consistent benefit they can count on if and when they need it.

   Further, the length of time a worker may receive TDI is already curtailed by virtue of the benefit being available for only as long as a medical provider certifies that it is medically necessary; that is, a worker may not receive TDI for the full 26 weeks unless it is medically necessary for them to do so.

3. Third, for weeks 13 through 26 of TDI, Governor Hochul's cap of $280 would remain static over time, regardless of inflation and rising costs of living. Her proposal would recreate the very same problem we are here to fix: an arbitrary benefit cap that does not keep pace with inflation and quickly becomes unsustainable, forcing the legislature to have to repeatedly enact amendments to raise it.

In sum, we urge the Senate to eliminate the TDI cap and synchronize the TDI benefit with PFL promptly, beginning in 2025. S2821B would do so.

B. New Yorkers need a progressive wage replacement rate to ensure that all workers can make rent, pay bills, and put food on the table.

i. <u>The Need</u>

In addition to capping New Yorkers' paid medical leave at $170 a week, TDI currently pays out at only 50% of a worker's average weekly wage. This wage replacement rate—a relic of the 1949 enactment of the program—is not nearly enough for many workers to pay rent, utilities, and groceries, let alone medical expenses. As housing costs and other living expenses have skyrocketed in recent years, even paid family leave's 67% wage replacement rate has become woefully outdated.

New York's flat wage replacement rate is an outlier among modern paid family and medical leave programs. Nearly all of the paid family and medical leave laws passed since New York's 2016 paid family leave law use a progressive wage replacement rate. That means that all workers receive a higher percentage of their wages up to a point, and a lower percentage of their wages after that point, up to the total benefits cap. Progressive wage replacement benefits all workers while ensuring that lower-income workers—those already most likely to be living paycheck to paycheck, and thus least likely to be able to save up for unexpected medical emergencies—receive a higher overall percentage of their wages.

For example, the following states have instituted a progressive wage replacement rate:[9]

- Oregon provides 100% of workers' wages up to a certain amount and 50% of the wages above that threshold amount.
- Connecticut provides 95% of workers' wages up to a certain amount and 60% of workers' wages above that amount.
- Minnesota will provide 90% of workers' wages up to a certain amount, 66% of workers' wages above that amount and within a certain range, and 55% of workers' wages above that range.
- Maine will provide 90% of workers' wages up to a certain amount and 66% of workers' wages above that amount.
- Washington, D.C., Washington State, Colorado, and Maryland each provide or will provide 90% of workers' wages up to a certain amount and 50% of workers' wages above that amount (though their thresholds vary).
- Massachusetts provides 80% of workers' wages up to a certain amount and 50% of workers' wages above that amount.
- California currently provides workers with between 60% and 70% of their wages, depending on their income. Beginning in 2025, California will provide workers with between 70% and 90% of their average weekly wage, depending on their income.

ii. <u>The Solution</u>

S2821B would install a progressive wage replacement rate, allowing all New York workers to receive 90% of their average weekly wage up to an amount equal to 50% of the statewide average weekly wage, and, thereafter, 67% of their average weekly wage (up to an overall cap). It would transform New York's program into one on par with modern paid family and medical leave programs across the country. And it would make a profound difference in the lives of New Yorkers, especially those already living paycheck to paycheck.

The Governor's proposal, by contrast, would leave New Yorkers struggling. Under her proposal, the TDI wage replacement rate would gradually increase to 67% over the course of five years, and then stop. Workers earning minimum wage, such as fast-food workers and housekeepers, for instance, would be forced to pay rent, make car payments, feed their families, and keep up with medical bills on a mere $400 per week—an amount on which few families can survive amidst New York's housing crisis and soaring cost of living. It would almost certainly result in thousands of low-wage workers foregoing taking the time they need—and for which they have paid, through their paycheck contributions—solely because they cannot afford it.

We urge the Senate to incorporate S2821B's progressive wage replacement rate in its budget.

[9] *See* Appendix B.

C. New Yorkers need a paid medical leave program that guarantees job-protection and health insurance continuation during medical leave.

i. The Need

Raising the TDI benefit rate is not enough. Workers also need guaranteed job protection and maintenance of health insurance coverage in order to safely take the medical leave they need without risk to their livelihood.

Currently, TDI—unlike paid family leave—does not require employers to hold a worker's job, or continue their health insurance benefits, while they are on leave. As a result, unless they happen to be covered by another law that prohibits retaliation or termination while on leave, workers can be legally fired while they are away from work due to their own serious health condition. For too many workers, the lack of job protection is a complete barrier to using TDI and getting the medical treatment and recovery time they need.

We regularly hear from workers on our helpline who are, understandably, too afraid of job loss to take TDI—as well as those who are in fact terminated for doing so. For example:

- Rachel,* a customer service representative in western New York, contacted us because she was struggling to get accommodations from her employer for ongoing health issues. Eventually, she put in a request for medical leave. She was approved to receive TDI benefits, but her employment was terminated the very same day.

- Delia,* a domestic worker, was abruptly laid off after informing her employer she would need time off to recover from surgery and TDI. She was unable to get another job until months after recovering from the surgery, causing her significant stress, anxiety, and financial hardship.

One particularly common fact pattern we hear is from pregnant workers, who disclose their pregnancy to their longtime employer, only to be then promptly terminated or effectively pushed out of work when they attempt to take time off for their pregnancy-related health needs. These workers often struggle to find new employment due to being visibly pregnant; even if they succeed in getting hired, they are shocked to learn that they are then ineligible for paid medical and bonding leave at their new job, due to being too new an employee (discussed further below)—and despite having funded TDI and PFL throughout their time in the workforce. For example:

- Jackie,* a worker on Long Island, was terminated shortly after informing her employer she was pregnant and would need TDI. When she ultimately was able to get a new job—a challenge, given that she was visibly pregnant—she worked for nearly two months before giving birth to her baby. Despite having paid into the paid family leave program throughout her time in the workforce, including at both of her most recent jobs, she was too new to qualify for PFL bonding leave at

her new employer. (The problem of the tenure requirement for taking PFL is further explored below.)

- Sarah,* a food services worker, had a very difficult pregnancy and experienced severe nausea. When she explained to her employer that she was struggling to work due to pregnancy, her employer told her to quit her job and reapply when she was feeling better. TDI did not require her employer to hold her job, so she did quit, in the hopes that leaving on good terms would encourage her employer to bring her back later. (It did not.)

- Tamara,* a pregnant call representative, was told she should resign to give birth because TDI did not require her employer to hold her job (and she was too new an employee to be eligible for job protection under paid family leave). Without income, Tamara lost her housing and became homeless—all while struggling to raise a newborn.

- Melanie,* a pregnant social worker, told us that the lack of job protection created an impossible—and impossibly stressful—choice for her: "If my benefits don't protect my job, my boss is going to fire me. My pregnancy is high risk and I feel so sick. But I have to take care of my family, so I have to keep my job."

Indeed, the fear of termination keeps many workers from accessing the TDI benefits to which they are entitled. Low-wage workers, like those in service-sector industries such as grocery, pharmacy, and delivery, as well as Black and Latinx workers, commonly cite fear of losing their job as the reason they do not take any or enough leave.[10] Black and Latinx mothers are particularly likely to be terminated after taking leave.[11] And while some New Yorkers enjoy job protection under the unpaid federal Family and Medical Leave Act ("FMLA"), roughly 44% of workers in the private sector are not protected by the FMLA—disproportionately low-income workers and part-time workers (including those who cobble together multiple part-time jobs to make ends meet).[12]

A medical leave program with no guarantee that one's job will be there when they return is no leave program at all. Indeed, New York clearly recognizes the necessity of job protection because its paid family leave law entitles workers to job protection when they take leave to care for a seriously ill loved one. Again, the inequity is baffling: under New York law, a worker who takes leave to care for a spouse with severe post-traumatic stress disorder is guaranteed a job to return to, while their spouse struggling with PTSD is not.

Similarly, under current law, New York guarantees a worker receiving PFL benefits the right to continuation of their health insurance (if they receive health insurance through their employer); it does not guarantee the same to those taking leave for their own serious health needs. As a result, a parent who takes time off to bond with a new baby has the right to keep their health insurance, while a worker who needs leave to recover from a serious accident has no

[10] RACKLIN & WESTON WILLIAMSON, THE TIME IS NOW, at 23.
[11] *Id.*
[12] *Id.* at 24.

equivalent right. Without such protection, many seriously ill or injured workers are forced to risk their health insurance coverage at the very moment they need it most.

ii. The Solution

S2821B fixes the problem, guaranteeing job protection and health insurance continuation to seriously ill workers. It would do so on the same terms New York law already provides to caregivers and new parents under paid family leave. Thankfully, Governor Hochul's proposed budget likewise affords both protections, as well.

We urge the Senate to incorporate S2821B into its budget.

D. New Yorkers need a paid family leave benefit that protects them when they need it, no matter how long they have (a) worked for their current employer or (b) been self-employed.

i. The Need

Currently, a worker does not become eligible to take paid family leave until they have worked for their current employer for roughly six months. This "six-month clock" applies even to workers who have been in the workforce for years—dutifully paying into paid family leave—if they have been at their current job for less than six months. Each time they move to a new job, they must start the six-month clock over from scratch. If they are laid off or their job ends, they lose their benefits altogether, even if they had been eligible for, and funding, benefits for years.

This six-month clock is profoundly unfair: Because New York paid family leave benefits are funded entirely by workers through their paycheck contributions, forcing workers to restart the clock at each new job results in workers losing credit for contributions they have made throughout their working lives. It also locks workers into abusive work environments, trapping victims of sexual or racial harassment from leaving bad workplaces, out of fear of losing their hard-accrued PFL benefits. And it frustrates workers' career advancement prospects, particularly those of women seeking to move up the career ladder but tied to their current workplace to maintain PFL eligibility for family caregiving purposes.

The six-month tenure bar is also out of step with the changing nature of work. Many workers today, especially low-wage workers, move from job to job, piece together income from multiple sources, and face periods of unemployment.[13] For example, on our helpline we have heard from:

- Daniel, who has worked for the same trucking company since 2014. In 2022, he left his job, but returned ten weeks later at the owner's request. Two months after restarting his job, Daniel's partner needed major surgery. In spite of his previous tenure with the employer, Daniel did not meet the 6-month tenure requirement, so he could not take paid family leave for his partner while she recovered.

[13] *Id.* at 26.

- Maya,* who ran operations for a fast-food retailer's franchisees. She was moved from restaurant to restaurant to help each new restaurant get set up and running. As a result, even though she did the same job for the same fast-food retailer for many years, she never worked for the same franchisee-employer long enough to meet the six-month eligibility requirement. She was devastated to learn that despite her years of faithful service, she could not take paid family leave to bond with her baby.

Moreover, the PFL six-month clock is inconsistent with *TDI's* tenure requirement. To qualify for TDI benefits, workers generally must have been employed for at least four consecutive weeks by a single employer, and previously-qualified workers qualify immediately upon the start of employment with a new covered employer. Workers can also receive TDI during certain periods of unemployment. Not so with PFL.

New York's paid family leave law is also an outlier among other paid family and medical leave programs throughout the country. Nearly all other states with paid family and medical leave programs provide some portability through the ability to combine multiple jobs to meet eligibility requirements.[14] For example, in most other jurisdictions, eligibility follows the worker, rather their employment with a particular employer.[15] In addition, all thirteen of the other jurisdictions with paid family and medical leave programs apply the same eligibility criteria to their paid family leave program as to their paid medical leave program.[16] It is long past time New York did the same.

Separately, New York's paid family leave benefit largely locks out self-employed workers, including many low-paid gig workers (who are often misclassified), as well as the many women who choose to work for themselves so they can dictate their own work schedules while managing family caregiving responsibilities. New York recognized the importance of this sector of the workforce when, in 2016, it allowed self-employed workers to voluntarily opt into PFL coverage if they wanted—making New York just the second state in the country to provide this critical option.

Regulatory choices by the Department of Financial Services, however, imposed a restrictive timeline for self-employed workers to opt into coverage, requiring them to purchase an insurance policy within 26 weeks of becoming self-employed. Those who do not meet that deadline may still theoretically opt in, but must pay for coverage for a full *two years* before they can access PFL benefits.

Unsurprisingly, we hear on our helpline from many self-employed workers who are unable—or simply did not know—to opt in, causing them to miss the deadline and be unable to access the PFL benefits they were promised by law. For example, on our helpline, we heard from:

[14] *Id.* at 30.
[15] Appendix B.
[16] *Id.*

- A self-employed New Yorker, who told us, "After being furloughed from my job due to the COVID-19 pandemic, I eventually started my own business. I applied for PFL through an approved insurance agency provided by the state, which assured me it offers policies to small business owners—only to tell me six months into underwriting me that they do not offer such a policy. At that point, I was no longer within the 26-week grace period to file and now face a 2-year wait for benefits. My child is due this year."

- Another self-employed worker, who called us to ask if he could take PFL to bond with his new baby. Unfortunately, he had never heard of the required opt-in for self-employed workers and thus had missed the window to opt in. Now, he would need to wait two years before being able to access benefits—placing him firmly out of luck to get time to bond with his new child.

The two-year waiting period, during which workers pay premiums but receive no benefits, even when their loved one has a serious need for medical care, is unreasonable and unfair. It is also out of step with other states' programs. Nearly all other jurisdictions with paid family and medical leave laws around the country allow self-employed workers to opt into the program.[17]

ii. <u>The Solution</u>

S2821B would solve both problems. First, it would synchronize the PFL tenure requirement with that for TDI, allowing a worker to qualify for PFL after roughly one month of work, rather than six months, and permitting workers to use PFL during certain periods of unemployment. Second, it would clarify that self-employed workers may purchase PFL/TDI policies and become eligible to use benefits within one month, as long as they then pay into the program for at least one year thereafter.

The Governor's proposal solves neither of these problems. We urge the Senate to incorporate these provisions from S2821B into the budget.

E. New Yorkers need a paid family leave law that recognizes the broad diversity of family forms.

i. <u>The Need</u>

Currently, the paid family leave law defines "family member" relatively narrowly, to include only certain blood relatives such as spouses, children, parents, and siblings. But families in New York take diverse forms. Due to cultural, economic, and social forces, the overwhelming majority of households today depart from the "nuclear family" model of a married couple and their biological children. Instead, they are blended,[18] LGBTQ, and increasingly include close

[17] *See* Appendix B.

[18] According to the U.S. Census Bureau, 16% of children live in "blended families," or households with a stepparent, stepsibling, or half-sibling. *Parenting in America: Outlook, Worries, Aspiration Are Strongly Linked to*

loved ones who are not biologically or legally related.[19] People in New York are waiting longer to marry (if they choose to do so at all), and many New Yorkers live with or depend on non-related loved ones. In particular, people increasingly rely on "chosen family," or loved ones with whom they have no biological or legal relationship, for care and support in times of need. Ensuring that there is a broad family definition of "family member" in PFL is especially important for many LGBTQ adults—particularly older adults—who do not have accessible relationships with biological relatives for several reasons, such as moving to a more LGBTQ-friendly area away from biological family, LGBTQ stigma within biological families, and family planning choices. Many aging adults rely on a wide network of relationships for episodic, short-term, and long-term caregiving. Many caregivers are partners, neighbors, or friends. Caregivers may provide care to several individuals and may not share a home with the person for whom they are providing care.

The statistics on New York and U.S. families speak for themselves in making the case for a broad definition of family to be included in New York's PFL program:

- More than 2.4 million households in New York, or approximately 31.2% of all households in the state, consist of an individual who lives alone.[20] In an emergency or during an illness, many of these individuals rely on care from chosen family—like close friends and loving neighbors—or extended family.
- More than 630,000 New York residents live with nonrelatives—such as significant others or close friends.[21] When an individual is sick or has a medical emergency, they often rely on individuals they live with, even absent a blood or legal relationship, for help and caregiving.
- In a 2023 national survey, 52% of people in the United States reported that they were relied upon to provide care for a chosen family member.[22] This rate is even higher among LGBTQ individuals, 58% of whom reported being relied upon to care for a close friend or chosen family member.[23]
- Fifty-three percent of Americans who care for an older adult provide that unpaid care to a friend or loved one other than a spouse or parent.[24] Therefore, the U.S.

Financial Situation, Pew Res. Ctr. 19 (2015), https://www.pewresearch.org/wp-content/uploads/sites/3/2015/12/2015-12-17_parenting-in-america_FINAL.pdf.

[19] In a 2016 national survey, 32% of people in the U.S. reported that they took time off work to provide care for a chosen family member. Katherine Gallagher Robbins *et al.*, *People Need Paid Leave Policies That Cover Chosen Family*, Ctr. for Am. Progress 2 (2017), https://cdn.americanprogress.org/content/uploads/2017/10/26135206/UnmetCaregivingNeed-brief.pdf.

[20] *See Selected Social Characteristics in the United States: New York*, U.S. Census Bureau, 2022 American Community Survey 1-Year Estimates, Table DP02 https://data.census.gov/table/ACSDP1Y2022.DP02?g=010XX00US_040XX00US36 (last accessed Nov. 20, 2023). This figure is derived from the sum of male householders living alone and female householders living alone.

[21] *Id.*

[22] Caroline Medina & Molly Weston Williamson., *Paid Leave Policies Must Include Chosen Family*, Center for American Progress (Mar. 1, 2023), https://www.americanprogress.org/article/paid-leave-policies-must-include-chosen-family/.

[23] *Id.*

[24] *Navigating the Demands of Work and Eldercare*, U.S. Department of Labor 25 (2016), https://ecommons.cornell.edu/bitstream/handle/1813/78429/Navigating_the_Demands_of_Work_and_Eldercare.pdf?sequence=1&isAllowed=y (referring to unpaid, nonprofessional caregivers).

Department of Labor stated in 2016 that "[t]o ensure [paid leave laws] meet the needs of caregivers of the elderly, state- and local-level programs should allow care for a variety of family members and other loved ones, defined broadly to encompass those who lack marital or blood relationship."[25]

- Among Americans who provide care to an adult age 65 or older, more than 23% care for a friend, neighbor or other unrelated person, while more than 24% care for a relative *other than* a spouse, unmarried partner, parent, or grandparent.[26]
- Eighty-three percent of individuals who provide care to an adult age 65 or older do not live with the care recipient.[27]

New York is quickly falling behind other states in its definition of family member. States around the country with paid leave laws cover chosen and extended family in the definition of family care. For example, paid family and medical leave laws in New Jersey, Connecticut, Oregon, Colorado, Washington State, Minnesota, and Maine provide leave to care for loved ones with whom a worker has a close relationship equivalent to a family relationship.[28]

ii. <u>The Solution</u>

S2821B would recognize the diverse forms New York families take by expanding the definition of "family member" to include other blood relatives not already covered by paid family leave as well as chosen family (defined as someone with whom the employee has a "close association" that is "the equivalent of a family relationship"). Doing so would ensure that all New Yorkers are able to use paid family leave to care for their loved ones.

By contrast, the Governor's proposal does not address the need for a more expansive definition of "family member" under the PFL law.

We urge the Senate to incorporate S2821B's broader definition of family into its budget.

F. New Yorkers need a paid family and medical leave program that allows them to take leave flexibly.

i. <u>The Need</u>

Currently, workers are unable to use their TDI intermittently, such as in hours or a day here and there, rather than as a continuous block of leave. That means workers who need to attend routine prenatal appointments, receive chemotherapy, or obtain outpatient treatment for mental illness or substance abuse cannot receive the paid time off they need.

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[25] *Id.*
[26] *Unpaid Eldercare in the United States (2017-2018): Data from the American Time Use Survey*, U.S. Department of Labor, Bureau of Labor Statistics (Nov. 22, 2019), https://www.bls.gov/news.release/pdf/elcare.pdf.
[27] *Id.*
[28] *Comparative Chart of Paid Family and Medical Leave Laws in the United States*, A Better Balance, https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/ (last accessed Nov. 20, 2023).

Likewise, paid family leave can be taken intermittently but only in increments of days, not hours, causing workers who only need an hour off to take a child to their medical appointment to exhaust their PFL much more quickly than needed.

Here again, New York's paid family and medical leave program is out of step with other states. Twelve of the 13 other jurisdictions with paid family and medical leave programs allow workers to take leave related to their own health needs or a loved one's health needs on an intermittent basis.[29] New York should catch up.

ii. The Solution

S2821B would permit workers to take TDI intermittently and allow workers to use both TDI and PFL in increments of time as short as one hour. In so doing, the S2821B would allow workers to obtain the healthcare needed for their, or their loved one's, medical condition.

The Governor's proposal would not fix either problem.

G. New Yorkers need strong protections against interference and retaliation for exercising their rights under New York's paid family and medical leave program.

i. The Need

Currently, New York's paid family and medical leave program provides insufficient protection against retaliation for exercising one's rights under the law and no protection against interference with one's exercise of their rights. The consequences are dire. On our helpline, we frequently hear from workers punished for seeking TDI, threatened for seeking to exercise their rights under PFL, or denied the information they need to actually access benefits under the programs. For example:

- We regularly hear from workers whose employers did not inform them, or misinformed them, of their rights to TDI benefits.
- We also frequently hear from workers whose employers refused or failed to provide them the name of the employer's insurance carrier. In New York, TDI and PFL are administered by private insurance carriers the employer has chosen; a worker must submit their applications to these specific carriers, but are often not told by their employer the name or contact information for the carrier. As a result, workers are forced to spend many weeks or months chasing down the name of the carrier, causing them to be unable to submit their applications on time—or at all.
- We also routinely hear from workers whose supervisors falsely assured them that they would submit their paid family leave form to the employer's paid family leave insurance carrier—a necessary step for workers to actually receive the PFL benefit—only then to learn they never did so. Often, workers do not realize that

[29] *See* Appendix B.

their application was never submitted until many months later, when they have not received their benefits—at which point it is often too late to apply.
- Still other workers tell us they did not apply for benefits because they worried their employer would punish them for doing so or were afraid of the immigration consequences of applying.

ii. The Solution

S2821B would strengthen and expand protections against interference and retaliation under the paid family and medical leave program. For example, the bill would make it unlawful for an employer to threaten to penalize an employee for taking leave, such as by reporting or threatening to report their suspected citizenship or immigration status. It would also be unlawful for an employer to fail to complete the required paperwork necessary for an employee's PFL or TDI application—a barrier we hear about all too often on our helpline.

The Governor's budget does not strengthen or expand protections against interference and retaliation—a glaring absence in her proposal. We urge the Senate to include S2821B's interference and retaliation protections in its budget, so that workers can safely exercise their rights to New York's paid family and medical leave program.

H. New Yorkers who experience a pregnancy loss or neonatal loss need an automatic conversion of their family leave claim into a medical leave claim.

i. The Need

We and others have heard from many parents who have suffered the loss of their pregnancy or the loss of their child after they applied for paid family leave to bond or were already receiving benefits under PFL. When a pregnancy ends or a child passes away, these parents lose eligibility for PFL, but remain eligible for TDI benefits to recover medically from pregnancy loss and to address mental health consequences arising from pregnancy or neonatal losses. Currently, such parents have to go through the burden of submitting an entirely new application—under TDI—while grieving their loss. They shouldn't have to.

ii. The Solution

In cases of neonatal loss or stillbirth, S2821B would automatically convert a worker's paid family leave bonding claim to a TDI claim. The Governor's proposal, by contrast, does not address this issue at all.

We urge the Senate to incorporate these provisions of S2821B in the budget, so that no family suffering a pregnancy or neonatal loss has to go through a new application process at such a difficult moment.

III. The Governor's Prenatal Care Proposal Is Promising But Requires Modification to Avoid Serious Unintended Consequences to Pregnant Workers

Finally, we turn to the Governor's budgetary proposal to add 40 hours to the paid family leave law for a worker to use to receive prenatal care during their pregnancy. We wholeheartedly support the intent of this proposal, which will benefit the pregnant workers we hear from every day.

As currently drafted, however, the proposed statutory text will have serious unintended consequences. Accordingly, we urge the Senate to take a different approach in three key respects.

Our overarching recommendation is that the additional 40 hours for prenatal care be added as a separate bucket of available paid time to the state's paid sick time law (rather than to the paid family leave law). We note that the Governor's budget repeals COVID paid sick time, which has been required since April 1, 2020. Requiring 40 hours of sick time for prenatal care could easily be substituted for COVID sick time if repealed, as sick time for COVID purposes was also additional to other existing sick time requirements.

Our specific concerns and recommendations are as follows:

1. First, the proposed statutory text defines "prenatal care" broadly but might be read to cabin workers to only 40 hours of it. The text defines prenatal care as "the health care received by an employee during pregnancy related to such pregnancy…" This language could include ordinary prenatal visits but also broad swaths of healthcare that a worker with a medically-complicated pregnancy might need to receive. For the latter worker, 40 hours may not be nearly enough time. The TDI program, which offers up to 26 weeks of benefits for a serious illness documented by a health care provider, should be available to such a worker as needed. The way in which the Governor's proposal has defined "prenatal care," however, leaves it ambiguous whether a pregnant worker could access more than 40 hours of prenatal care even if more time is medically necessary to keep the worker and the pregnancy healthy.

   We do not believe the Governor intended to cap a pregnant worker's pregnancy-related healthcare to 40 hours; accordingly, we recommend clarifying that additional time is available as needed. The cleanest way to do so would be to add the 40 hours of paid leave to the New York State paid sick leave law (rather than to the paid family leave law), as an additional 40-hour bucket of sick time available to pregnant workers; and then to state expressly that any time needed beyond the 40 hours may be drawn from the worker's TDI allotment.

   In the alternative, this particular problem could also be resolved by a clear statement in the law that (1) the full weekly allotment under TDI remains available to a pregnant worker if it is needed and that (2) TDI is available for ordinary prenatal appointments.

2. Second, applying for paid family leave benefits is an administratively complicated process. A worker must themselves complete pages of paperwork, obtain pages of documentation from their health provider, get their boss to complete still more paperwork, figure out who their employer's paid family leave insurance carrier is, determine how to submit their completed application to that entity—and on and on. On our helpline, we hear routinely from workers struggling to navigate this multi-step, often confusing process, even when they only need to apply for a single continuous block of leave. Imagine how challenging it would be for a worker to have to apply each time they need to attend a prenatal appointment or seek other pregnancy-related care.

   Here again, adding the 40 hours to the New York State sick time law, rather than the paid family leave law, is the cleanest solution. A worker using sick time need only inform their employer of their need for such time. They do not need to submit a formal application, involve a third-party insurance carrier, or obtain medical documentation (unless their absence will exceed three consecutive days). Paid sick time is also employer-funded, unlike paid family leave, ensuring that workers do not shoulder the cost of the Governor's proposal.

3. Definitionally, paid family leave is leave used to care for another person, whether it be a sick parent or a new baby. It is not leave to care for oneself. (That, of course, is paid medical leave.) Because prenatal care is care for oneself, it is inappropriate, as a conceptual matter, to place in the paid family leave statute. This is not merely an academic point: Treating prenatal care as leave to care for one's "family" could be weaponized by anti-abortion advocates in the service of fetal personhood arguments (wherein the fetus is the person the pregnant worker is taking "family" leave to care for), both in New York State and beyond. It should be avoided.

   Here, as elsewhere, the cleanest fix would be to place the 40 hours in the paid sick time law or, in the alternative, the TDI law.

IV. Conclusion

We urge you to include S2821B/A4053B in the FY 2024–2025 budget. New Yorkers need and deserve a modern paid family and medical leave program that meets their needs and enables them to care for themselves and their loved ones without sacrificing their economic security, health, or peace of mind. They should not have to wait for one day longer.

APPENDIX A

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Labor/ Worker Justice
1199SEIU
RWDSU
Teamsters
UAW Region 9
Worker Justice Center of NY
Freelancers Union
Laundry Workers Center

Legal:
Equality New York
Family Equality
Gender Equality Law Center
Legal Aid Society
Legal Momentum
The Women's Legal Defense and Education Fund
New York Civil Liberties Union
SAGE

Health:
Ancient Song Doula Services
American Heart Association
American Cancer Society/American Cancer Network
Bronx Breastfeeding Coalition
Center for Independence of the Disabled, NY
National Alliance for Mental Illness NYS
#ME Action
Long Covid Justice
National MS Society
New York City Breastfeeding Leadership Council, Inc.
New York Statewide Breastfeeding Coalition, Inc.
March of Dimes
The WIC Association of NYS, Inc.

Children:
March of Dimes
Citizens' Committee for Children
The Education Trust—NY
Prevent Child Abuse

Advocacy:
Community Service Society
League of Women Voters of St. Lawrence County
National Association of Social Workers NY
Schuyler Center for Analysis and Advocacy

APPENDIX B

Improving New York's Temporary Disability Insurance and Paid Family Leave Programs

An early adopter of both temporary disability insurance (TDI) and paid family leave, New York has long been a national leader in providing essential paid leave rights to workers throughout the state. However, in the decades since TDI was enacted and in the years since paid family leave was enacted in 2016, many states, inspired in part by New York's leadership on this issue, have enacted innovative paid family and medical leave programs, which have surpassed the rights and protections currently available to New Yorkers. This document breaks down how New York's program compares to other paid family and medical leave programs throughout the country.

I. Core Components in Other State Paid Family and Medical Leave Programs

Progressive wage replacement: The wage replacement rate is the proportion of their own wages that workers will receive in benefits. Wage replacement rate is especially important for low-wage workers, who need to use all their income to cover their basic needs. We strongly recommend a progressive wage replacement rate, which allows workers to receive a higher proportion of their wages up to a certain amount, and a lesser proportion of their wages above that amount. This protects the most vulnerable workers, ensuring they will have enough to live on if they need to take time away from work. It is a far better method for determining benefits than New York's current flat wage replacement rate of 67% of wages (up to a cap) in Paid Family Leave and 50% of wages in Temporary Disability Insurance (up to the current $170 a week cap).

Ten of the thirteen other jurisdictions with paid family and medical leave programs provide or will provide progressive wage replacement rates to workers while receiving benefits. This progressive wage replacement rate is used for all purposes, i.e., paid family leave and paid medical leave.

- Oregon provides 100% of workers' wages up to a certain amount and 50% of the wages above that threshold amount.
- Connecticut provides 95% of workers' wages up to a certain amount and 60% of workers' wages above that amount.
- Minnesota will provide 90% of workers' wages up to a certain amount, 66% of workers' wages above that amount and within a certain range, and 55% of workers' wages above that range.
- Maine will provide 90% of workers' wages up to a certain amount and 66% of workers' wages above that amount.
- Washington, D.C., Washington State, Colorado, and Maryland each provide or will provide 90% of workers' wages up to a certain amount and 50% of workers' wages above that amount (though their thresholds vary).
- Massachusetts provides 80% of workers' wages up to a certain amount and 50% of workers' wages above that amount.

- California currently provides workers with between 60% and 70% of their wages, depending on their income. Beginning in 2025, California will provide workers with between 70% and 90% of their average weekly wage, depending on their income.

Eligibility requirements: All paid family and medical leave programs specify criteria that workers must meet to be able to receive program benefits. Currently, New York's paid family leave program is an outlier amongst other paid family and medical leave programs throughout the country. To qualify for TDI benefits, workers generally must have been employed for at least 4 consecutive weeks by a single employer; previously qualified workers qualify immediately upon the start of employment with a new covered employer. However, to qualify for paid family leave benefits, workers generally must have been employed by their ***current*** employer for at least 26 consecutive weeks; those who work less than 20 hours per week must have worked at least 175 days for their current employer. We recommend revising the paid family leave eligibility requirements to match the eligibility requirements pursuant to the TDI law.

All thirteen of the other jurisdictions with paid family and medical leave programs (including those with TDI programs) utilize the same eligibility criteria for both paid family leave and paid medical leave. In all but one of those jurisdictions, eligibility is attached to the worker, rather than to their employment with a particular employer.

Further, while nine of the thirteen other jurisdictions with paid family and medical leave programs specify a small earnings requirement that workers must meet over a certain period of time prior to accessing paid family and medical leave benefits, the remaining four measure a worker's eligibility against the amount of time they have been employed.

- While exact amounts vary, Rhode Island, California, New Jersey, Massachusetts, Connecticut, Oregon, Colorado, Minnesota, and Maine all require or will require workers to have earned a certain dollar amount prior to qualifying for paid family and medical leave benefits. Typically, the specified dollar amount must have been earned within the year before leave begins.
- Washington, D.C., Washington State, Maryland, and Delaware all require or will require workers to have been employed for a certain amount of time prior to qualifying for paid family and medical leave benefits.
    - Washington, D.C. requires workers to have been employed by a covered employer during at least some of the 52 weeks preceding the event that precipitated their need for leave.
    - Maryland will require workers to have worked for at least 680 hours in qualifying employment in the 12-month period immediately preceding their leave.
    - Washington State requires workers to have worked at least 820 hours during the first 4 of the 5 most recently completed quarters or the 4 most recently completed quarters.
    - Delaware will require workers to have been employed 1) by their employer for at least 12 months and 2) for at least 1,250 hours of service with their employer during the previous 12- month period.

- Delaware is the only other jurisdiction with a paid family and medical leave program where workers must meet the specified eligibility requirement through their employment with a singular employer.

Waiting period before workers can get benefits: Many of the older state TDI programs and a couple of paid family and medical leave programs utilize a waiting period, which requires the worker to have been on leave for a certain number of days prior to receiving benefits. It is critical to ensure that workers are able to access their benefits immediately upon certifying their need for leave, because many families cannot afford to go without wage replacement, even for a short period. New York has a 7-day waiting period in TDI but not in paid family leave.

Eight of the thirteen other jurisdictions with paid family and medical leave programs do not utilize any waiting period, and allow workers to access benefits on the first day of leave. Three of the thirteen other jurisdictions with paid family and medical leave programs take an approach that is similar to New York's and require a 7-day waiting period for leave in relation to the worker's own serious health condition, but not family leave. One state requires a 7-day waiting period for many leave needs, and one state requires a 7-day waiting period for all leave needs.

- Rhode Island, Washington, D.C., Connecticut, Oregon, Colorado, Maryland, Delaware, and Minnesota do not or will not require a waiting period for any type of leave.
- California, New Jersey, and Maine, require or will require workers to fulfill a 7-day waiting period prior to receiving benefits for leave in relation to the worker's own health needs, but **do not** require any such waiting period for family leave. However, in New Jersey, workers who are eligible for benefits for 3 consecutive weeks after the waiting period can receive benefits during the waiting period.
- Washington State requires workers to fulfill a 7-day waiting period prior to receiving benefits for most instances where the worker needs leave for their own health (except for following the birth of a child), as well as for most family leave needs (except bonding with a new child and military family leave).
- Massachusetts requires workers to fulfill a 7-day waiting period prior to receiving benefits for any type of leave.

Covering chosen family: We strongly recommend providing as inclusive a family definition as possible, to reflect and protect the diversity of modern families. The gold standard definition utilized in S2821/A4053 would amend New York's paid family and medical leave law to cover "chosen family"—loved ones to whom a worker may not necessarily have a legal or biological relationship.

Seven of the thirteen other jurisdictions with paid family and medical leave programs cover all of a worker's loved ones, regardless of legal or biological relationship.

- In New Jersey, Connecticut, Oregon, Colorado, Washington State, Minnesota, and Maine, workers can take leave to care for certain loved ones—whether biologically

related or not—with whom the worker has a close association, personal bond, and/or caregiving relationship, though their exact family definitions have some differences.

Intermittent leave: Intermittent leave allows workers to take leave in separate chunks of time, rather than one continuous block. It is critical to allow workers to take paid family and medical leave on an intermittent schedule so that they can balance their work and caregiving needs according to their specific circumstances. In New York, intermittent leave is currently available under paid family leave but not under TDI disability leave, so workers who need chemotherapy or outpatient treatment for mental illness or substance abuse cannot take the time they actually need.

Twelve of the thirteen other jurisdictions with paid family and medical leave programs allow workers to take leave related to their own health needs on an intermittent basis. Additionally, twelve of the thirteen other jurisdictions with paid family and medical leave programs allow workers to take family leave on an intermittent basis. Specific requirements to certify the need for intermittent leave may vary by state.

- In Rhode Island, California, Washington, D.C., Washington State, Massachusetts, Connecticut, Oregon, Colorado, Maryland, Delaware, Minnesota, and Maine, workers may be able to take medical leave on an intermittent schedule.
- In California, New Jersey, Washington, D.C., Washington State, Massachusetts, Connecticut, Oregon, Colorado, Maryland, Delaware, Minnesota, and Maine, workers may be able to take family leave on an intermittent schedule.

Coverage of self-employed workers: In today's economy, rather than working in traditional employer/employee relationships, many workers are self-employed as independent contractors, freelancers, or sole proprietors. The best practice, which is already followed in the vast majority of paid family and medical leave programs, is to allow self-employed workers to voluntarily opt in to coverage if they choose.

Eleven of the thirteen other jurisdictions with paid family and medical leave programs allow self-employed workers to opt in to coverage. In one state, Massachusetts, some self-employed workers may be automatically covered. In all but one of these states, the system is protected against manipulation by requiring a worker to stay in the program for a period of time, **not by requiring self-employed workers to pay into the program for an extensive period of time (2 years in NY) before being covered.** We have proposed eligibility after 4 weeks with one year of required coverage after that, but recognize that other states require a longer pay in. The important thing would be to change the law to allow immediate coverage of self-employed workers with a required coverage period subsequent to opt in. (Note: the original regulations had no waiting period and required that the worker remain in the program for 2 years; those regulations were changed without opportunity for those most affected to comment when the regulations were finalized.)

- California and Minnesota require or will require self-employed workers who opt in to the program to continue for a minimum of 2 years.

- Washington State, Massachusetts, Connecticut, Oregon, Colorado, Maryland, and Maine all require or will require self-employed workers who opt in to the program to continue enrollment for a minimum of 3 years.
- In Washington, D.C., only self-employed workers who do not opt in to the paid family and medical leave program during the first open enrollment period after they have become self-employed may be required to continue enrollment for a minimum of 3 years.

Automatic conversion of claims in cases of stillbirth or neonatal loss: It is unclear whether other states allow for paid family leave claims to automatically convert to medical leave claims (or temporary disability insurance claims) following a stillbirth or pregnancy loss.

Currently, the only state paid family and medical leave program that provides leave following a neonatal loss is Washington State, which allows workers up to take up to 7 days of leave "following the loss of a child if [the worker] . . . would have qualified for prenatal or postnatal medical leave for the birth of [their] child. . .; [] would have qualified for family leave to bond with [their] child during the first 12 months after birth, or [the worker] had a child under the age of 18 placed in [their] home and qualified for bonding leave within the first 12 months of placement."[1] Workers who take such leave following the loss of a child in Washington State must provide documentation sufficient to verify the child's death.[2]

Further, in New Jersey, when a worker applies for TDI in relation to pregnancy, the claim is automatically processed as an application for paid family leave, such that the worker only has to submit one application unless the worker explicitly opts out of paid family leave.[3]

II. Many State Paid Family and Medical Leave Programs Cover Prenatal Care

While all paid family and medical leave programs include pregnancy within the scope of serious health conditions that are covered, the following state paid family and medical leave programs explicitly cover any prenatal care. All of these laws either cover prenatal care as part of the medical/disability insurance part of their program or as a separate type of leave (as in Washington, D.C.):

- Washington State: "'Serious health condition' means an illness, injury, impairment, or physical or mental condition that involves: . . . [a]ny period of incapacity due to pregnancy, or for prenatal care . . . ."[4]
- Washington, D.C.: "'Qualifying leave event' means . . . a qualifying pre-natal leave event . . . ."[5]
- Massachusetts: "Continuing Treatment by a Health Care Provider. Includes . . . [a]ny period of incapacity due to pregnancy, or for prenatal care."[6]
- Connecticut: "Continuing Treatment by a Healthcare Provider is Defined as Any One or More of the Following: Pregnancy . . . [which] means any period of incapacity due to pregnancy, including pre-natal appointments."[7]

- Oregon: ""Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that: [i]nvolves any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care . . . ."[8]
- Minnesota: "'Medical care related to pregnancy' includes prenatal care or incapacity due to pregnancy or recovery from childbirth, stillbirth, miscarriage, or related health conditions."[9]

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[1] "What is family leave?," Washington Paid Family & Medical Leave, https://paidleave.wa.gov/question/what-is-family-leave/ (last accessed Jan. 22, 2024). *See* Wash. Rev. Code § 50A.05.010(10)(d).
[2] Wash. Admin. Code § 192-610-025.
[3] N.J. Stat. Ann. § 43:21-39.5.
[4] Wash. Rev. Code 50A.05.010(23)(a)(ii)(B).
[5] D.C. Code Ann. § 32-541.01(13A).
[6] 458 Mass. Code Regs. 2.02.
[7] "I am Experiencing my Own Serious Health Condition," Connecticut Paid Leave, https://www.ctpaidleave.org/how-ct-paid-leave-works/qualifying-reasons/my-own-serious-health-condition?language=en_US (last accessed Jan. 22, 2023).
[8] Or. Admin. R. 471-070-1000(21)(h).
[9] Minn. Stat. § 268B.01(31).