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# Making Paid Leave Work for Every Family

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# Introduction and summary

In the past five years, more than 35 local and state paid sick time laws have been passed in the United States, guaranteeing workers a minimum amount of paid sick time for personal and family health needs. Four states have passed paid family and medical leave programs that provide extended paid time off to bond with a new child or recover from, or care for a loved one with, a serious health condition.

As momentum for paid sick time and paid family and medical leave laws continues to build, there has been a growing effort for these laws to define “family” in ways that are realistic and inclusive. Our analysis shows that state and local victories in the last half of 2016 will provide nearly 7 million people access to paid sick time with an inclusive family definition.<sup>1</sup> The government uses the construct of family to make determinations about access to rights, resources, and benefits. Inconsistent and often restrictive family definitions have marginalized a host of different types of families, including but not limited to extended, single-parent, and blended families; families headed by same-sex couples; and chosen families, which are characterized by mutually supportive structures outside of blood or legal relationships. These restrictive family definitions often reinforce structural inequities—including those based on race, gender, sexual orientation, citizenship, age, and ability—and disproportionately affect individuals and families living at the intersections of these identities.

Historically, family definitions in law and policy have often failed to meet the needs of families in the United States, and they frequently fall short today. The overwhelming majority of households—more than 80 percent, according to the United States Census—depart from the so-called nuclear family model of a married couple and their minor children. In addition, 85 million people—disproportionately people of color—lived in extended families as of 2014, up from 58 million in 2001. People have a broad array of loved ones who are often central to their notions of family and their caregiving responsibilities.

In particular—although the lesbian, gay, bisexual, transgender, and queer, or LGBTQ, movement successfully achieved nationwide marriage equality in 2015—LGBTQ individuals and families continue to experience the collateral consequences of narrow family definitions in local, state, and federal policy and would gain significantly from more inclusive definitions of family in workplace leave policies. Many LGBTQ individuals forge close relationships with friends and informal support networks—known as chosen families—especially since LGBTQ people too often face extreme stigma within their biological families and communities. These relationships become paramount when needing to take time off from work to recover from illness or care for sick loved ones.

While there are a range of policy areas where improved definitions of family would more appropriately capture the diverse realities and needs of many families, this report focuses specifically on the importance of inclusive definitions in workplace leave policies, especially for LGBTQ families. A growing number of jurisdictions have passed and implemented paid leave policies that are accessible to a wider range of family types. To ensure these benefits are not restricted by one's ZIP code, this report recommends that all levels of government should:

- Enact paid leave laws and policies that cover extended relatives and chosen family
- Pass comprehensive nondiscrimination protections that protect people on the basis of sexual orientation and gender identity
- Improve data collection and research on chosen families and LGBTQ communities

These policies are critical steps necessary to ensure that all families get the support they need to balance work and family and to thrive in all aspects of their lives.

### Terrie's story

"My family is a safety net that protects an entire community. When my brother is ill, my other brother cares for him. My sisters and I share caregiving for our mother. I am there for my partner's two children with whom I have no legal relationship. I provide care for the child of my friend who lives with me. When finances are tight, the extended family ensures that collectively we are not spiraling out of control. And when my same sex-partner experienced cancer, we all had to pitch in. A broad definition of family in work-leave policy ensures that my family can do its job—caring for each other."<sup>2</sup>

# Public policy shapes ideas about families

Policymakers explicitly and implicitly define the construct of family through public policy and political discourse on a range of issues and at all levels of government. Such definitions intentionally or unintentionally restrict or expand access to rights, resources, and recognition for families and individuals.<sup>3</sup>

Throughout history, definitions of family have reflected both cultural and political circumstances. Between 1911 and 1919, nearly 40 states created pension programs to support orphaned and fatherless children—but in many cases unmarried mothers and women who worked outside the home did not qualify.<sup>4</sup> During the 1930s, policies spearheaded by President Franklin Roosevelt were frequently based on the idea that working families deserved government support in the face of the economic devastation of the Great Depression and that state programs supporting the poor should be supported with federal money as states faced bankruptcy.<sup>5</sup> Yet many poor families and families of color did not benefit from the New Deal, particularly from programs that allowed states to continue to set eligibility criteria.

One example from the New Deal is the federal Aid to Dependent Children, or ADC, program, later renamed Aid to Families with Dependent Children, or AFDC. The ADC—which was enacted to replace state programs referred to as “mothers’ pensions” programs—provided states with federal matching funds in order to provide cash assistance to mothers who lost husbands due to death or desertion, so that they could focus on housekeeping and childrearing.<sup>6</sup> However, in distributing that cash assistance, states often used subjective criteria that enabled them to discriminate on the basis of race and exclude mothers based on assessment of moral character—a standard that often resulted in denial of assistance to women who had borne children outside of marriage.<sup>7</sup> The criteria for the program shifted over time, but the AFDC was repealed and replaced in 1996 with the Temporary Assistance to Needy Families, or TANF, program, which rewarded married different-sex couples and stigmatized families who did not mirror that supposed ideal. In fact, one purpose explicitly articulated in the act establishing TANF was to “encourage the formation and maintenance of two-parent families.”<sup>8</sup>

Also in 1996, Congress enacted the Defense of Marriage Act, or DOMA, which explicitly defined marriage as the union of one man and one woman for the purposes of the federal government. This law excluded same-sex partners from the numerous rights and benefits of civil marriage at the federal level until the Supreme Court ruled DOMA unconstitutional in 2013. Later, in 2015, the Supreme Court's *Obergefell v. Hodges* ruling established marriage equality nationwide. However, many LGBTQ families continue to be excluded from narrow family definitions in local, state, and federal policy.

This is not to say that all government actions have restricted family definitions. For example, federal regulations were issued in 1969, during the Vietnam War, allowing federal employees to take funeral leave for the combat-related death of immediate relatives, including anyone they were related to by “blood or affinity whose close association with the employee is the equivalent of a family relationship”; this family definition was later expanded to other benefit programs for federal workers, including paid sick time.<sup>9</sup> But far too many policies, ranging from immigration laws to workplace leave, currently rely on definitions that favor particular families.<sup>10</sup> As currently constructed, such policies often reflect society’s existing biases—such as those based on race, gender, sexual orientation, citizenship, age, and ability—and particularly harm those living at the intersections of these identities.

# Caregiving and family

The need for inclusive family definitions is generated from two realities. First, kinship networks outside of the nuclear family have always been part of the U.S. social fabric—both as a cultural norm within certain communities and as an economic means of survival for low-income people.<sup>11</sup> Second, it reflects a larger shift in cultural, economic, and social norms. According to the United States Census, more than 80 percent of households today depart from the nuclear family model of a married couple and their minor children, compared with 57 percent in 1950.<sup>12</sup> These so-called non-nuclear family households include families such as those with children older than age 18, families not headed by married couples, and households occupied by one individual or a group of individuals unrelated by blood, marriage, or adoption.<sup>13</sup>

Changes in family structures are shaped by a variety of social trends. People in the United States are generally waiting longer to marry or opting not to marry at higher rates than in past decades.<sup>14</sup> A growing number of people are living with a partner to whom they are not legally married and raising children outside of marriage; the prevalence of these relationships shows the importance of covering unmarried partners and broadly defining “child” in workplace leave policies.<sup>15</sup> Many others who do not have a spouse or partner have structured their families and lives in ways that depart from the nuclear family model. In addition, 85 million people were living in extended families in 2014—up from 58 million in 2001.<sup>16</sup> Extended families, which include families such as those who have taken in a grandparent or have adult children living at home, are disproportionately people of color.<sup>17</sup> Thus, workers’ relationships with grandparents, grandchildren, and other cross-generational relatives are often central to their notions of family and their caregiving responsibilities. And caregiving extends to those outside the household as well, with many people also providing care to biological relatives or nonbiological chosen family outside their home.<sup>18</sup> These relationships should be recognized in workplace leave laws and policies.

An inclusive definition of family in workplace leave policies would benefit many different types of families, but is particularly important for LGBTQ families. As most government surveys and administrative datasets do not collect data about sexual orientation and gender identity, it is difficult to assess the family and household structures and support networks of LGBTQ individuals in the same way other families are analyzed. However, academic studies suggest that many LGBTQ individuals forge close relationships with chosen families, especially due to stigma within their biological families and communities.<sup>19</sup> There may be differential positive benefits for specific subgroups within the LGBTQ community as well. One study showed that gay and bisexual men rely heavily on other members of the LGB community for certain forms of social support, even more so than lesbian and bisexual women.<sup>20</sup> Transgender people also frequently form close ties with networks unrelated to their biological or families of origin.<sup>21</sup>

### The continued relevance of domestic partnership benefits

Recognition of domestic partnerships remains important, even in the wake of *Obergefell v. Hodges*, the Supreme Court's 2015 landmark decision establishing marriage for same-sex couples as a constitutionally protected right. Thousands of couples—both same-sex and different-sex—have already ordered their lives under a local or state domestic partnership law, and many couples may still choose not to marry for practical, philosophical, cultural, or financial reasons. An inclusive definition of “family” must therefore include domestic partners, and not only legally married spouses, even as all couples now enjoy the legal right to marry.

These chosen families can develop at an early age, sometimes out of necessity. For example, an estimated one-third of LGBTQ youth in foster care report having been abused by family members because of their sexual orientation or gender identity.<sup>22</sup> Thirty-seven percent of LGBTQ youth in juvenile justice settings report having been homeless because of family rejection, compared with 17 percent of heterosexual and gender-conforming youth.<sup>23</sup> Family conflict is one of the most common reasons for all youth homelessness, and LGBTQ youth appear to be disproportionately represented among youth experiencing homelessness.<sup>24</sup> Youth of color are overrepresented within this group—though this overrepresentation may be due to economic conditions and other structural inequities facing families

rather than increased levels of family rejection in communities of color. A 2014 survey of human service providers serving the youth homeless population found that nearly half of their LGBTQ clients identified as nonwhite, a rate greater than for the population as a whole: 31 percent identified as African American or black, 14 percent as Latino/Hispanic, 1 percent as Native American, and 1 percent as Asian or Pacific Islander.<sup>25</sup>

Research shows that LGBTQ older adults, who are significantly more likely to be childless and living without a partner than non-LGBTQ older adults, also develop and maintain strong relationships with chosen family.<sup>26</sup> One survey of LGBTQ baby boomers, who are age 45 to 64, found that these individuals are nearly twice as likely as non-LGBTQ-identified baby boomers to live alone—33 percent versus 18 percent.<sup>27</sup> They are less than half as likely as the general population to say they would rely on an adult child caregiver—16 percent versus 7 percent—and are less likely to expect a spouse or partner to care for them—47 percent versus 39 percent.<sup>28</sup> Thus, LGBTQ older adults may be less likely to have family support when they need care and often rely on families of choice, or support networks that are comprised of close relationships that are the equivalent of family. Sixty-four percent of LGBTQ baby boomers said that they have a “chosen family,” defined in the survey as “a group of people to whom you are emotionally close and consider ‘family’ even though you are not biologically or legally related.”<sup>29</sup> Forty-two percent of LGBTQ baby boomers said that they would depend on close friends in an emergency, compared to 25 percent of the general population.<sup>30</sup>

While more data are needed, existing research underscores that LGBTQ workers generally have a heightened need for inclusive leave policies that account for the chosen family members they are likely to rely on for care and support. Of course, LGBTQ individuals are not the only ones for whom it is essential that we adopt inclusive family definitions in paid leave policies—their chosen family members, many of whom are non-LGBTQ, also need paid leave with realistic family definitions in order to balance their work and caregiving responsibilities.

The country’s social fabric includes a variety of family formations—blended families with step-relatives, single-parent families, multigenerational families, LGBTQ families, and others—that our workplace laws and policies often do not account for. Many people, both LGBTQ and non-LGBTQ, live with or depend on family members beyond their parent, spouse, and biological children. In particular, people increasingly rely on chosen family for care and support in times of need and serious illness. As our families evolve, so too must our workplace laws and policies.

## Family definitions in other policy areas

Workplace leave is just one of many areas where family definitions play a crucial role in determining the rights of individuals and families—healthcare, housing, domestic violence services, childcare, other employment-related rights and more may be shaped by who is included within one’s family. As a result, workplace leave policies are not the only area where policymakers are increasingly recognizing the importance of defining family in a realistic and inclusive manner. For example, eligibility for the Supplemental Nutrition Assistance Program is determined using a household definition of people who live under one roof who purchase and prepare food together, ensuring the benefit is not unfairly limited by blood or legal relationships and reaches those most in need.<sup>31</sup>

The American College of Physicians, or ACP, highlighted family definitions in a 2015 position paper on how to achieve equity for LGBTQ people in the United States in the health care system. ACP recommends that family definitions for hospital visitation definition policies “should be inclusive of those who maintain an ongoing emotional relationship with a person, regardless of their legal or biological relationship.” To support their recommendation, the ACP position paper emphasizes that hospital visitation policies that narrowly define family “are discriminatory against LGBT patients, their visitors, and the millions of others who are considered family, such as friends, neighbors, or nonrelative caregivers who can offer support to the patient.”<sup>32</sup>

Family definitions can also play a role in nondiscrimination law. In 2015, the New York City Council made it illegal to discriminate against workers because they provide care to a broad range of family members including children, spouses, domestic partners, parents, siblings, grandchildren, grandparents, and anyone who lives with a worker/caregiver and relies on that person for medical care or to meet the needs of daily living. Notably, the City Council expressly authorized the agency responsible for enforcing the law to expand coverage to other relatives not captured by the law’s family definition through regulations.<sup>33</sup>

Such developments are promising, and lawmakers, policymakers, and advocates should continue to work together to explore other areas where family definitions have a profound impact on public policy. That said, a family definition that successfully benefits individuals and families in one area—like workplace leave or nondiscrimination law—may not do so in another, and this report is not meant to suggest that a one-size-fits-all approach to defining “family” is appropriate for a range of policy issues. Rather, policymakers should review and research the ways in which family definitions differ across public policy areas and develop tailored policy and legal solutions to support *all* family formations.

# Lack of paid leave is dangerous and costly

Despite recent gains made at the city, state, and federal level, workers commonly suffer from inadequate workplace leave laws and policies.<sup>34</sup> Thirty-six percent of workers in the U.S. private sector lack even a single paid sick day, with the lowest-wage earners even less likely to receive paid sick time.<sup>35</sup> While there is a dearth of data on LGBTQ individuals, data from the 2014 National Health Interview Survey suggest there are differences in access to paid sick time by sexual orientation—55 percent of lesbian and bisexual women report having access to paid sick time, compared to 60 percent of heterosexual women.<sup>36</sup> Only 13 percent of U.S. private sector workers receive paid family leave—extended time off to bond with a new child or care for a seriously ill family member—through their employers.<sup>37</sup> Moreover, workers of color are less likely than white workers to have access to any paid leave or workplace flexibility, with Latino/a workers least likely of any racial or ethnic group to have access to paid sick time or paid family leave.<sup>38</sup>

Even workers who receive sick time or family leave often face limitations in their ability to use that time to care for loved ones—especially extended family and chosen family. The single federal law regulating private employers in this area, the Family and Medical Leave Act, or FMLA, excludes about 40 percent of workers in the United States and has significant shortcomings.<sup>39</sup> While the law allows eligible workers to take up to 12 weeks of job-protected time off to bond with a new child or care for a family member with a serious health condition, the FMLA does not require employers to provide paid time off, and defines “family” narrowly, limiting the term to include a child who is under 18 years of age or has a disability, a spouse, or a parent.<sup>40</sup> A number of states have passed unpaid leave laws that expanded upon the FMLA’s family definition by covering domestic partners, adult children, and/or additional relationships like grandparents, grandchildren, parents-in-law, and siblings.<sup>41</sup>

A lack of paid leave is enormously costly for workers and their loved ones—lack of access to paid family and medical leave costs workers \$20.6 billion each year in lost wages.<sup>42</sup> These staggering costs do not even incorporate reduced savings and retirement income, nor do they account for lower wage growth among workers who took time off to care for family.

Access to paid sick time matters not only for workers' pocketbooks but also for their and their families' health—as well as that of the public overall. The ability of a parent to care for an ill child improves the child's health and reduces the spread of disease to other children.<sup>43</sup> Adults who work while they are ill are more likely to spread disease and delay medical care, harming their health and the health of those around them.<sup>44</sup>

New parents benefit from taking sufficient paid family leave. Both biological parents and adoptive parents experience stress, sleep deprivation, and physical exhaustion when welcoming a new child. For new birth mothers, having less than 12 weeks of family leave is associated with increased symptoms of postpartum depression.<sup>45</sup> Adoptive parents also experience uniquely stressful events including infertility, financial issues, and evaluation for parental fitness.<sup>46</sup>

Providing sufficient paid family leave for new parents also improves child health outcomes. Children whose mothers do not return to work full-time in the first 12 weeks are more likely to receive medical checkups and important vaccinations.<sup>47</sup> For foster children, the first few months are a critical adjustment period in the transition to a new placement, during which children need time to bond with their foster parents.<sup>48</sup> A longer period of leave will improve the mental health of new parents and facilitate attachment with an adopted child.

Paid leave is critical for the wellbeing of individuals, families, communities, and the economy. Putting adequate and inclusive policies in place is essential to ensure that people can meet their work and caregiving obligations.

## Yee Won's story

"I was born and raised in Malaysia, but came to the U.S. so that I could safely express my sexual orientation, gender identity, and political beliefs. Separated from my 'blood family' by 8,000 miles, I have created a strong chosen family. My chosen family celebrated with me when I became a U.S. citizen three years ago, took care of me when I was recovering from my gender transition surgery, and are named in my living will and my health care directives. In creating my home in the U.S. I left behind Malaysia's guaranteed paid sick days for all wage earners. As I am currently in the process of surviving and healing from cancer, the need for me and my chosen family to have access to paid work leave is a stark reality."<sup>49</sup>

# Inclusive paid leave policies are especially important for LGBTQ people

LGBTQ people face a variety of unique challenges related to the marginalization of their sexual orientations and gender identities. These challenges—which include health disparities, elevated risk of violence, and employment insecurity—are due in part to insufficient supports and inadequate nondiscrimination protections. Inclusive paid leave is part of a suite of policy changes that would help address these difficulties.

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## Health disparities

Improving leave policies is particularly critical for LGBTQ communities, who experience well-documented health disparities as a result of many factors, including high uninsurance rates, lack of cultural competency among health care providers, and stress associated with stigma and discrimination.<sup>50</sup> A robust and growing body of research shows the negative impact of stigma on both the mental and physical health of LGBTQ communities, and discrimination by health care providers and insurance companies contribute to a lack of health care access and utilization and higher negative health status indicators.<sup>51</sup> As a result of these disparities, LGBTQ people are likely in higher need of paid leave programs than their non-LGBTQ peers.

The Affordable Care Act has improved health insurance coverage for LGBTQ people, with uninsurance rates for LGBTQ people with income less than 400 percent of the federal poverty level dropping 8 percentage points in its first year.<sup>52</sup> However despite these gains, the community is still significantly more likely to be uninsured than the general population.<sup>53</sup> The average uninsurance rate for LGBTQ people is 22 percent across all income ranges, compared to an average of 16 percent for their non-LGBTQ counterparts.<sup>54</sup> And these gains have not been equally distributed across the LGBT community. For example, in the 2014 study of low-

and middle-income people, transgender people had a higher uninsurance rate (35 percent) compared to gay (27 percent), lesbian (21 percent), and bisexual people (27 percent).<sup>55</sup> Similarly, one-third of black and Hispanic LGBT people were uninsured in 2014, compared to 23 percent of white LGBT people.<sup>56</sup>

Lack of insurance is not the only contributing factor to health disparities in the LGBTQ community. High rates of discrimination within health care settings may make LGBTQ people less likely to utilize health care even when it is available, which contributes to health disparities. According to national data, 70 percent of transgender and gender-nonconforming survey respondents and nearly 56 percent of LGB survey respondents report experiencing at least one instance of discrimination or patient profiling when attempting to access health services.<sup>57</sup> LGBTQ people of color and low-income people report even higher instances of discrimination. According to the same data, approximately one in three low-income transgender and gender-nonconforming respondents reports being refused necessary medical care because of their gender identity.<sup>58</sup> Among LGB survey respondents, nearly 11 percent of low-income respondents and respondents of color were refused care compared to almost 8 percent of all LGB people surveyed.<sup>59</sup> Another survey found that 24 percent of all transgender respondents were denied equal treatment at a doctor's office or hospital and that 13 percent were denied equal treatment in emergency rooms.<sup>60</sup>

## Joanna's story

Many transgender individuals have unique health needs that may require medical or surgical procedures. Transgender people who are able to access these surgeries need adequate time off of work and care from loved ones in order to recover safely. Joanna, who moved to Washington, D.C. for a higher quality of life and to have access to gender-affirming health care, knows firsthand the importance of family support—from both biological and chosen family—when recovering from surgery. In 2015, Joanna flew across the country for a medical procedure. During her recovery, Joanna's mother and two members of her chosen family—a roommate and a loved one who did not live with her—took time off of work to be there for Joanna, helping her do laundry, cook, shower, and pick up her prescriptions, and making sure she was taking her medication when she needed to. Unfortunately, Joanna's mother, who lives in Florida, could only take five days off from work to take care of her, providing intensive, invaluable care: "In the coming days she tended to me as if I was a newborn experiencing life for the first time: She helped me walk, use the bathroom, and, yes, even changed my pad." Joanna emphasizes that "many within the trans community do not have the privilege to take weeks off work to recover from a medical procedure and, due to the pervasiveness of family rejection, our familial constructs are often not recognized by employers or the state. This places trans people in a precarious and vulnerable position."<sup>61</sup>

Discrimination within healthcare settings makes LGBTQ people less likely to undergo screenings to prevent future illness, increasing their risk of disease. For example, lesbian and bisexual women have an increased risk of breast cancer when compared to heterosexual women.<sup>62</sup> A 2012 study by the Centers for Disease Control and Prevention found that lack of paid sick time is another potential barrier to obtaining cancer screenings and preventive medical care. The study found that workers who have access to paid sick time are significantly more likely to undergo routine cancer screenings and to visit a doctor or obtain other medical care; women workers with paid sick time are more likely to receive mammograms and Pap tests at suggested intervals; and adult workers with paid sick time are more likely to undergo a colonoscopy or sigmoidoscopy.<sup>63</sup>

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## Experiences of domestic violence and sexual assault

LGBTQ workers also have a significant need for paid leave laws—with inclusive family definitions—that allow paid time off to address domestic violence or sexual assault or to assist a loved one experiencing violence. Research has shown that lesbian women and gay men report intimate partner and sexual violence at rates that are equal to or higher than heterosexual individuals, while bisexual women report significantly higher lifetime rape, sexual violence, and/or intimate partner violence compared to both lesbian and heterosexual women.<sup>64</sup> Although data on rates of intimate partner violence among transgender people in the United States remain limited, available research suggests that transgender and gender-nonconforming individuals experience higher rates of intimate partner violence than the population at large.<sup>65</sup>

Many workers who experience domestic violence or sexual assault need time off from work to ensure safety, like obtaining a restraining order, finding new housing, or simply escaping violence.

According to the Bureau of Justice Statistics, 36 percent of rape or sexual assault survivors lost more than 10 days of work after their assault.<sup>66</sup> On an annual basis, victims of domestic violence are forced to miss nearly 8 million days of paid work, costing more than \$700 million annually due to victims' lost productivity in employment.<sup>67</sup>

Fortunately, an increasing number of paid sick time laws in the United States provide for safe time as well, which is the ability to use paid sick time to address needs related to personal or family domestic violence. It is important that these

laws define family to include extended relatives and chosen family. Research shows that informal support networks—often comprised of neighbors, coworkers, close friends, and other loved ones—provide crucial help and assistance to individuals who need to obtain safety.<sup>68</sup>

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## Employment insecurity

One factor driving health disparities between LGBTQ individuals and non-LGBTQ individuals is a lack of nondiscrimination protections. A majority of LGBT people live in the roughly 30 states that still lack clear and explicit sexual orientation and gender identity discrimination protections, and many live in jurisdictions—such as North Carolina—where state legislatures are actively fighting to pass and enforce statewide legislation that prohibits localities from passing LGBT-inclusive protections.<sup>69</sup> The lack of statutory LGBTQ nondiscrimination protections at the federal level, and in most states, means that even when LGBTQ communities do have access to paid leave, they are still vulnerable to being fired or discriminated against with impunity and without the legal recourse available to their non-LGBTQ peers if an employer disapproves of their identity as an LGBTQ person, or their role as caretaker to an LGBTQ-identified person.<sup>70</sup>

Without strong protections that are appropriately enforced, LGBTQ communities experience a high incidence of employment discrimination and mistreatment.<sup>71</sup> Experiences of workplace discrimination and subsequent job insecurity contribute to higher rates of poverty in the entire LGBTQ community, particularly in transgender communities and communities of color. Transgender people are four times more likely to report living on an income of less than \$10,000 per year compared with the general population. They also report experiencing unemployment at twice the rate of the general population, with the rates being four times higher for transgender people of color.<sup>72</sup> African Americans in same-sex relationships report more than twice the poverty rate of African Americans in different-sex marriages as a result of intersecting experiences of discrimination on the basis of both sexual orientation and race.<sup>73</sup> African American women in same-sex couples—who experience wage disparities as a result of race, gender, and sexual orientation—are more than three times as likely to live in poverty than white women in same-sex relationships.<sup>74</sup> African American men in same-sex relationships are six times more likely to live in poverty than white men in same-sex relationships.<sup>75</sup>

LGBTQ people are more likely than their peers to live in poverty, experience workplace discrimination, and have higher rates of unemployment than their peers. Recognizing that LGBTQ people already experience stigma and job insecurity, it is vital that when employers do offer paid leave, those programs recognize the reality of LGBTQ families, so that LGBTQ people and their families are protected from further job insecurity when the need for leave arises.

### Frederick's story

"I am a licensed Cosmetologist and have a teaching certificate through the Board of Education. I teach full-time at a private cosmetology school. The school provides a stipend for health insurance and no paid sick days. I purchased my health insurance through the Affordable Care Act."

Brian, my partner of more than five years, is a cook at restaurant owned by a national chain. He has no health insurance and no paid sick days. We live paycheck to paycheck. When I had surgery and had to miss a week of work, I spent the next few months working extra jobs on the weekends to ensure we could pay the bills. My company also discouraged me from joining Brian at the hospital when he had a cyst surgically removed. I was told 'it was not life-threatening enough.' Brian and I are not alone in our desire and need to care for each other during sickness and in health. Our current policies hurt low wage families like ours."<sup>76</sup>

# What works: Model policies and legislative wins

There are numerous examples of inclusive paid family leave policies at the federal, state, and local levels.

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## Federal policy

The federal government—our nation’s largest employer with nearly 2.2 million workers—has recognized the chosen family members of its own employees for nearly fifty years.<sup>77</sup> In 1969, following the deadliest year in the Vietnam War, the now defunct United States Civil Service Commission issued regulations allowing federal employees to take funeral leave for the combat-related death of an immediate relative.<sup>78</sup> Notably, “immediate relative” was defined to include “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”<sup>79</sup> In other words, the federal government set a new standard by expanding the definition of family to include close loved ones even in the absence of a legal or biological relationship. Since then, the federal government has expanded application of the “blood or affinity” standard to a number of other benefits programs for its own employees, such as voluntary leave transfers and sick leave.<sup>80</sup>

In 1994, Congress passed the Federal Employees Family Friendly Leave Act, authorizing covered federal government workers to use sick leave for family care or more general family bereavement purposes.<sup>81</sup> The Act explicitly provides that “family member” must be defined as it is under existing federal workforce regulations governing voluntary leave transfer, such as on the basis of blood or affinity.<sup>82</sup> Three years later, the U.S. Office of Personnel Management, or OPM, delivered a favorable report to Congress, concluding that employees who take paid time off for family care and bereavement are “better able to deal with the financial and personal strains caused by a family member’s medical needs or death.”<sup>83</sup> The report found that even after the act’s implementation, employees used, on average, less than one-third of the sick leave available to them, quelling agency managers’

concerns about employee absences following the family definition expansion.<sup>84</sup> In fact, OPM’s report found an overall positive impact on employee productivity and morale: “When an employer demonstrates support of its employees through this means, it fosters goodwill and creates a more compassionate family friendly workplace, resulting in a more productive workforce.”<sup>85</sup>

The momentum for inclusive family definitions at the federal level has continued in recent years. In September 2015, President Barack Obama signed an executive order to guarantee that employees of federal contractors can also earn paid sick and safe time for personal or family health and domestic violence needs. The order, which will provide additional sick leave to 1.15 million workers, defines family to include chosen family using the blood or affinity model.<sup>86</sup> The U.S. Department of Labor, or DOL, which is implementing the executive order, issued final rules that further clarify that this blood or affinity model “means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.”<sup>87</sup>

As discussed earlier, the Family and Medical Leave Act is the only federal law that guarantees paid family and medical leave to eligible public and private sector employees. Despite its many shortcomings and narrow family definition, the range of covered parent-child relationships provides an instructive example. Under the FMLA, eligible workers are able to use their leave to both bond with a new child and care for a child with a serious health condition—if they are under 18 years of age or incapable of self-care due to a physical or mental disability. Although this age restriction represents a major gap for parents caring for a seriously ill adult child, the law otherwise inclusively defines “son or daughter” as a biological, legally-adopted, or foster child; a stepchild; a legal ward; or a child of a person standing *in loco parentis*—one who is acting in the place of a parent. The FMLA’s *in loco parentis* standard is a functional parenting test that does not require joint residency, primary legal custody, or other factors that do not reflect the reality of many parent-child relationships.

During President Obama’s administration, the DOL specifically stated that *in loco parentis* relationships can include an LGBTQ parent who is raising a child but has no biological or legal relationship to the child.<sup>88</sup> Many LGBTQ parents face legal barriers to obtaining a second-parent adoption when they are not married to—or are separated from—the other legal or biological parent, as only 15 states and Washington, D.C., clearly allow under state law for LGBTQ parents to petition for second-parent adoption.<sup>89</sup> Even in the states that clearly allow for second-parent

adoption by LGBTQ parents, individuals may be discouraged due to the cost and complexity of the process. The FMLA's *in loco parentis* language, which now exists in the vast majority of state and local paid leave laws as well, ensures that the lack of a biological or legal connection is not a barrier to caring for a child.

There are also opportunities to make the FMLA even more inclusive. In June 2016, Rep. Carolyn Maloney (D-NY), introduced a bill that would allow all FMLA-eligible employees to take time off to care for seriously ill siblings, adult children, domestic partners, and other family members not currently provided for in the law, as well as any individual related by blood or affinity to the employee.<sup>90</sup>

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## State policy

At the state level, a number of legislatures across the country have adopted inclusive definitions of “family” in their laws governing leave benefits for both public and private sector employees. More states should act to guarantee that workers can take leave to care for relatives outside the so-called traditional nuclear family, including domestic partners, extended family, and other relatives not related biologically, legally, or through marriage to the worker.

On November 8, 2016, voters in Arizona approved a paid sick and safe time law by a nearly three-to-two margin. The law defines family inclusively using the blood or affinity model, thereby ensuring that workers can use their paid sick and safe time to care for chosen family.<sup>91</sup> Arizona’s paid sick and safe time law—the first statewide paid leave law to cover chosen family—will cover nearly 2.6 million workers.<sup>92</sup>

New York’s paid family leave law, which was signed into law by Gov. Andrew Cuomo (D) in April 2016 and takes effect in January 2018, will guarantee most workers in New York paid time off to bond with a new child or care for a seriously ill family member including a domestic partner. Domestic partners are broadly defined in the law; the relationship does not have to be registered or legally formalized, does not necessarily need to be a romantic relationship, and does not require that the individuals live together in order to qualify as covered relatives under the law. Rather, the law defines “domestic partner” broadly to include dependence or mutual interdependence with the employee, which may be evidenced by a range of factors including, but not limited to, common ownership or common property, a common residence, children in common, an intent to marry, shared budgets, and/or length of relationship.<sup>93</sup>

West Virginia law provides family leave for eligible state government employees to care for family members with a serious health condition. The law defines family to include children, spouses, parents, and people who either live with the employee or are dependent upon the employee's income, regardless of a blood relationship.<sup>94</sup>

Maine, Wisconsin, and the District of Columbia all have family and medical leave laws that apply more broadly than the federal FMLA—which presently limits qualifying relatives to parents, minor children, and spouses—by including unregistered domestic partners and/or certain chosen family. Maine's Family and Medical Leave Law includes an employee's unregistered domestic partner, as well as an unregistered domestic partner's children, provided certain criteria are met.<sup>95</sup> Wisconsin's Family and Medical Leave Law includes any person related by blood, marriage, or adoption to either the employee *or* the employee's spouse or partner when that person's close association with the employee is the equivalent of a family relationship.<sup>96</sup> The District of Columbia's Family and Medical Leave Law goes further to include any person to whom the employee is related by "blood, legal custody, or marriage," whether the employee enjoys a close relationship with that person or not, and also includes certain other individuals not related by blood, legal custody, or marriage.<sup>97</sup> The District's paid sick time law also recognizes certain chosen family—defining family to include individuals who live with and share a committed relationship with a worker.<sup>98</sup>

## The labor movement's role in securing paid leave

Although laws are a powerful way to recognize chosen families, the legislative process is not the only way to do so. Many unions have a long history of fighting narrow, unrealistic family definitions and have won recognition of chosen family through the collective bargaining process. Even when the legislative progress is stalled, unions can negotiate for workplace leave policies that cover a range of family relationships, including extended relatives and chosen family. By establishing higher labor standards and organizing workers on this issue, the labor movement can set an example for non-unionized workplaces, bring more power to coalitions on the ground in passing public policies, and influence legislators to adopt such protections for all workers.<sup>99</sup>

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## Local policy

A growing number of localities have passed laws guaranteeing workers paid sick time to recover from their own illness or care for sick family members.<sup>100</sup> Many have defined “family members” broadly, in recognition of today’s varied and dynamic family structures. For example, multiple cities in California—San Francisco, Oakland, Emeryville, and Berkeley—have paid sick time laws that allow workers without a spouse or domestic partner to designate an additional person of their choice whom they may use sick time to care for.<sup>101</sup>

In 2016, the nation’s second and third most populous cities both passed paid sick time laws that define family broadly to include chosen family members. Los Angeles’ paid sick time law defines family using the blood or affinity model used by the federal government.<sup>102</sup> The Chicago paid sick and safe time law also covers chosen family, although it uses slightly different language. Rather than using the word “affinity,” the law’s family definition includes “any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.”<sup>103</sup> Cook County—which includes the city of Chicago and is the most populous county in Illinois—later passed a countywide paid sick and safe time law with the same family definition.<sup>104</sup>

These family definitions will have a significant effect on the workforce in Los Angeles and the Chicago metropolitan area. For example, a Los Angeles County Health Survey in 2007 found that 1.2 million residents in Los Angeles County provide informal, unpaid care to adults who are aging, ill, or have a disability. Of these caregivers, more than 23 percent—or approximately 284,000 people—reported that they provide care for close friends or extended family members—who are defined as family members other than a child, parent, parent-in-law, spouse, domestic partner, grandparent, or sibling.<sup>105</sup> The Los Angeles paid sick time law will provide critical new rights to many of these individuals who care for chosen family and extended relatives.

The twin cities in Minnesota have also both recognized the importance of guaranteeing paid sick and safe time that can be used to care for chosen family. Saint Paul passed a paid sick and safe time law with the model blood or affinity language, covering all chosen family members.<sup>106</sup> Although not going as broad as Saint Paul, Minneapolis also passed a paid sick and safe time law that recognizes some chosen

family; the Minneapolis paid sick and safe time law is the first in the country to cover all members of the employee's household.<sup>107</sup> The Minneapolis paid sick and safe time law reflects the reality that many individuals turn first to others in their household for care and support when an illness or emergency strikes.

In recent months, millions of people in the United States have won the right to take paid sick time to care for chosen family. Approximately 4.2 million people work in Los Angeles, Cook County, and Saint Paul, and another nearly 2.6 million workers live in Arizona.<sup>108</sup> A number of other states and cities are building on this momentum and working to pass paid leave laws that inclusively define family. Advocates in a diverse set of states—including Oregon, New Mexico, Montana, Colorado, Michigan, Pennsylvania, North Carolina, Georgia, and others—are organizing in communities, educating elected officials, conducting new research, and collecting stories to highlight the importance of inclusive family definitions. In the months and years ahead, this organizing work will lead to more legal recognition for chosen family and greater awareness that families come in all shapes and sizes.

## Building movements for inclusive paid leave

As this report documents, there is growing momentum in states and communities across the country to support workers and families by passing or improving upon workplace leave policies. These winning campaigns are a testament to the power of organizing and worker-centered campaign strategies as well as diverse and robust coalition building. At their core, campaigns to provide workplace leave are about the people and the families who are most likely to struggle to make ends meet on a day-to-day basis—so advocates must define policy victory through the lens of equitable outcomes for all families.

Campaigns that win reforms, as well as intentionally address larger goals of shifting power away from corporate interests and building resilient communities that leave no one behind—create the potential for alliances between organizations and communities that have not always worked in solidarity. These campaigns require LGBTQ, labor, work-family, reproductive justice, and aging advocates to work together, to intentionally integrate a racial equity focus, to amplify the leadership of women of color who are disproportionately impacted by the lack of paid leave laws, and to challenge the anti-immigrant sentiments fomented by those who profit from division within the progressive base.

Family Values @ Work, or FV@W, and A Better Balance, or ABB, recognized an opportunity within paid leave campaigns to advance an agenda that would support all families and build progressive power. Jared Make, a Senior Staff Attorney at ABB, shares:

*In 2014, we brought together 35 organizational leaders from work-family, LGBTQ, labor, reproductive justice, and aging organizations and formed a national network, now called the Family Justice Network (FJN). Since 2014, members of the FJN—including the organizations that authored this report—have formed numerous taskforces to develop model family definitions, share resources and lessons across campaigns, and strengthen state and local organizing efforts around the need to recognize chosen family.<sup>109</sup>*

Wendy Chun-Hoon, the D.C. director of FV@W, describes the impact of the FJN in this way:

*Now, when a FV@W state partner is launching a campaign, I can connect them with LGBTQ, reproductive justice, and labor leaders who have already had the experience of building support and fighting for inclusive family definitions. As a result, we are supporting more effective paid leave campaigns that will include all families.<sup>110</sup>*

Oregon is one of many states where the movement-building strategy is having an impact. In 2015, as the state legislature was poised to pass a comprehensive paid sick time law, Family Forward Oregon, or FFO, included a definition of family that covered all chosen family. Andrea Paluso, executive director of FFO recalls, "We saw an opportunity to ensure that the most economically marginalized families, including LGBTQ families, could care for themselves and each other when they were sick, without the fear of losing a paycheck." But the conditions were not yet ripe. In the end, the legislature passed one of the most comprehensive sick leave laws in the country, yet it did not include all families.

So advocates celebrated but also got back to work. Led by Forward Together, and with the support of the FJN, organizations representing the diversity of families in Oregon came together to ensure that future paid leave campaigns and other public policies do not leave anyone out based on family formation. Oregon advocates expect to pursue a bill in 2017 to establish a statewide paid family and medical leave program. As Kalpana Krishnamurthy, senior policy director at Forward Together describes, "As we look toward 2017, powerful policy organizations including organized labor, small business advocates, and advocates for seniors are aligned with LGBTQ, immigrant, and people of color community-based organizations in our efforts to leave no families behind."

Similar movement-building work is happening across the country. At the local, state, and national level, advocates from a range of communities and social justice movements are working together on the need to recognize chosen family.

# Policy proposals

There are a number of ways in which policymakers can better address the concerns and challenges of diverse families, including providing individuals with chosen families the protections they need and deserve to ensure they are stable, secure, and healthy. Three key recommendations are to enact paid leave policies that cover chosen family; pass comprehensive nondiscrimination legislation; and improve data collection and research on chosen families. Taking these steps would help ensure that the needs of all families are met.

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## 1. Enact paid leave laws and policies that cover chosen family

When passing paid leave laws, it is essential to recognize that families come in all shapes and sizes. Workers should have the right to care for loved ones beyond just their immediate family members—rather, we need to enact paid leave laws that define family to cover the full spectrum of family relationships, including adult children, domestic partners, extended relatives, and chosen family. Such family definitions will benefit all workers, given the diversity of family structures in the United States. As discussed in this report, the ability to care for chosen family is particularly important to LGBTQ individuals, who may be more likely than non-LGBTQ individuals to rely on chosen family for support and care.

Too many people are forced to make impossible choices when they are sick, welcoming a new child, or providing care to a loved one. At all levels of government, there is an urgent need to pass laws that guarantee paid leave to workers—both paid sick time for day-to-day health and domestic violence needs and paid family and medical leave for more extended time off to bond with a new child or address a personal or family member’s serious health condition. Although paid leave laws provide significant benefits to all workers, these policies are critically important for LGBTQ workers and their loved ones, given the LGBTQ health disparities, poverty rates, and employment insecurity discussed in this report.

We recommend that advocates and policymakers look to the federal government’s long-standing model for defining “chosen family” as “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”<sup>111</sup> This model language has also been included in paid sick time laws passed in Arizona, Los Angeles, and Saint Paul. Chicago and Cook County, Illinois, also present a slight variation on this model that can be used as well, defining family to include “any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.”<sup>112</sup> Although these model policies are the most inclusive options, other language that recognizes some chosen family—like unmarried couples, household members, and other types of close relationships—in paid leave policies can offer an important first step forward.

While a growing number of employers have recognized that paid leave and inclusive family definitions benefit both workers and employers, the United States must adopt national paid sick time and paid family leave laws.<sup>113</sup> A strong national paid leave program should be available to all workers, inclusive of diverse families, and available without adverse employment consequences.

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## 2. Pass comprehensive nondiscrimination protections

Passing comprehensive nondiscrimination protections that ban discrimination based on sexual orientation and gender identity in employment, public accommodations, housing, credit, and government funding can help protect LGBTQ people from discrimination and the economic and health disparities it can cause.<sup>114</sup> To achieve this goal at the federal level, Congress should pass The Equality Act but state and local governments can also extend these protections. Comprehensive nondiscrimination protections and paid leave policies are both needed to ensure LGBTQ workers and their families do not have to choose between economic security and caring for their loved ones.

LGBTQ people lack comprehensive nondiscrimination protections in most states and face discrimination in many areas of life, including housing, healthcare, and employment. Discrimination leads to disproportionate rates of unemployment, poverty, homelessness, and health disparities for LGBTQ people and their families.<sup>115</sup>

The ability to take paid leave to care for chosen family is one way to improve economic and employment security for LGBTQ workers. In order to truly benefit from such inclusive and comprehensive paid leave policies, however, it is important that LGBTQ workers cannot be fired or subject to retaliation simply for being part of an LGBTQ family. Without employment nondiscrimination protections for sexual orientation and gender identity, many LGBTQ workers will fear disclosing their family caregiving responsibilities and taking paid leave to care for loved ones.

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### 3. Improve data collection and research on chosen families

Available research shows that a large percentage of people provide care for extended relatives and chosen family, a trend that is even more pronounced among LGBTQ individuals. However, there is a need for more data and research on family composition and caregiving support in the United States. There is also an important role for governments to collect this information more systematically and to integrate questions about chosen family into existing data collection efforts. In addition, greater numbers of federal surveys and administrative datasets must begin to ask questions about sexual orientation and gender identity in order for researchers, advocates, and government entities to have the data they need to fully map eligibility for, access to, and utilization of paid leave policies among LGBTQ communities.<sup>116</sup>

For example, only six federal surveys ask questions that would allow for identification of the needs of transgender people and none of these surveys provide a complete picture of caregiving and workplace needs.<sup>117</sup> Given rampant discrimination against transgender people and the unique health care needs of the population, transgender communities may be more likely than the general population to benefit from these improved paid leave policies.

The focus of this report is on the growing paid leave movement. But there is also a need to develop similar research on how family definitions factor into other policy areas as well. On issues including immigration and family resettlement, criminal justice and prison visitation, public assistance and veteran benefits, housing rights, and medical decision making, laws and policies often depend on who is defined as “family.” Although recognition of chosen family may not work in every single policy context, there are certainly many areas where these definitions would be beneficial. These opportunities should be identified, researched, and pursued.

# Conclusion

The constitutional right of individuals to receive equal treatment and be free from discrimination has been historically undermined when policymakers define access to rights, resources, and recognition based on rigidly prescribed definitions of family formation. To advance equal treatment and decrease discrimination for all families, family definitions in public policy must reflect both the diversity of families in the United States and the right to self-determination.

Despite tremendous success in recent years, far too many workers in the United States still lack adequate paid leave, due in part to restrictive definitions of family. Defining family inclusively and appropriately recognizes the diverse needs of families and provides them the resources to balance their work and caregiving responsibilities.

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## Endnotes

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- 96 “Family member” means a spouse or domestic partner of an employee; a parent, child, sibling, including a foster sibling, brother-in-law, sister-in-law, grandparent, step-grandparent, or grandchild of an employee or of an employee’s spouse or domestic partner; or any other person who is related by blood, marriage, or adoption to an employee or to an employee’s spouse or domestic partner and whose close association with the employee, spouse, or domestic partner makes the person the equivalent of a family member of the employee, spouse, or domestic partner. Wis. Stat. Ann. § 103.10 (1m)(b)(4). The law further defines domestic partners according to a list of factors; the partnership does not have to be formalized or legally registered. Wis. Stat. Ann. §§ 103.10(1)(ar); 40.02(21c)-21(d).
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