

# Achieving a Healthier, Stronger Workforce through Inclusive Paid Leave

THE UNITED STATES IS THE ONLY INDUSTRIALIZED NATION in the world without some form of guaranteed paid leave. Currently, the federal Family and Medical Leave Act (FMLA) allows many American workers to take up to 12 weeks of unpaid, job-protected leave per year for significant family or medical events, including the birth and care of a newborn and the care of an immediate family member dealing with a serious health condition.<sup>1</sup> However, workers are often unable to take this federally-guaranteed time off because they cannot afford the loss of wages. Employees who take unpaid leave can be thrown into financial chaos and struggle to cover everyday expenses like groceries and rent. To truly allow workers to provide vital care for themselves and their loved ones, employers are increasingly offering paid leave benefits, which permit employees to take sufficient paid, job-secured time off.

## Paid Leave Is an LGBTQ+ Issue

LGBTQ+ people are particularly vulnerable in the absence of guaranteed paid leave, especially in states that lack explicit protections for employment discrimination based on sexual orientation and gender identity. LGBTQ+ people are more likely to be living in poverty,<sup>2</sup> mistreated in the workplace,<sup>3</sup> and discriminated against during the hiring process<sup>4</sup>—making a request for unpaid time off both impractical and unworkable. A 2018 study by the Human Rights Campaign Foundation found financial concerns to be the greatest factor keeping LGBTQ+ people from taking time off or forcing them back to work early.<sup>5</sup>

LGBTQ+ people may be unable to take time off to care for a loved one without “outing” themselves at work, an action that could put their jobs at risk. Some may fear stigmatization if they reveal they need HIV-related or transgender-specific care. Too many others, especially transgender people of color and those who are low-income, face other forms of anti-LGBTQ+ discrimination, housing instability and violence. These hardships compound each other, especially as individuals grapple with significant life events.

Though some employers have recognized the imperative of offering paid leave benefits in the absence of nationwide protections, these benefits are not always inclusive of LGBTQ+ people, diverse families or LGBTQ+ specific medical needs:

- Parental leave policies may not equally cover parents of all genders or those who become new parents through surrogacy, adoption or foster care.
- Family care leave may be restricted to legal guardians and their spouses, failing to cover domestic partners, close family members and other primary caregivers. **Only 41% of HEI 2022 participants offer FMLA-like leave for same- and different-sex domestic partners.**
- Employers may offer paid leave as a benefit but deny individual requests, forcing employees to take unpaid time off, even when seeking medically necessary care.

## Benefits of Inclusive Paid Leave

Enacting inclusive paid leave policies is not just the right thing to do, it also supports

<sup>1</sup> “Family and Medical Leave (FMLA)” <https://www.dol.gov/general/topic/benefits-leave/fmla>. Accessed 21 July 2020.

<sup>2</sup> The Williams Institute. “New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community.” <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>

<sup>3</sup> Out and Equal Workplace Advocates. “2017 Workplace Equality Fact Sheet.” <http://outandequal.org/2017-workplace-equality-fact-sheet>

<sup>4</sup> The Williams Institute. “Gender Identity and Sexual Orientation Discrimination in the Workplace: A Practice Guide.” <https://williamsinstitute.law.ucla.edu/wp-content/uploads/CH40-Discrimination-Against-LGBT-People-Sears-Mallory.pdf>

<sup>5</sup> Human Rights Campaign Foundation, “2018 U.S. LGBTQ+ Paid Leave Survey,” <https://www.hrc.org/resources/2018-u.s.-LGBTQ+-paid-leave-survey>

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the bottom line by helping attract and retain top talent, improving morale and increasing productivity. Prospective and current employees, including LGBTQ+ people, value workplaces that demonstrate a commitment to the health and well-being of all employees and their diverse families. When employees can take leave without jeopardizing their family's financial security, they are able to provide vital care for themselves and their loved ones, ultimately leading to healthier, happier workers.

### Creating Inclusive Paid Leave Policies

Healthcare employers are encouraged to begin the process of adding paid leave to their employee benefits, taking care to account for the unique concerns of LGBTQ+ employees and their diverse family structures. If an employer currently has a paid leave policy, Human Resources and Diversity & Inclusion leadership teams should review it to ensure full inclusivity. The following principles should guide the creation or alteration of paid leave policies.

- Paid leave policies should cover:
  - **Parental leave** to welcome children, including through childbirth, surrogacy, adoption, foster care, or other placement;
  - **Family care leave** to care for loved ones with serious medical conditions, including serving as a caregiver for a spouse, domestic partner, chosen family member, child, parent, or grandparent; and
  - **Medical leave** to manage their own health, including undergoing treatment for a serious health condition, recovering from a physical or mental illness, obtaining medically-necessary transition-related health care, and receiving HIV-related care.
- **Parental leave policies** should use inclusive language like “birth parent” and not focus solely on “birth mothers” (e.g., maternity leave). A focus on “birth mothers” excludes fathers, non-birth mothers, and adoptive or foster parents, all of whom are equally deserving of bonding time with a new child. Moreover, policies that offer additional time off and/or short-term disability for “birth mothers” to physically recover from childbirth leave out parents of other genders who also give birth, including transgender men, non-binary individuals, and people of other identities.
- **Family care leave policies** should be inclusive of diverse family structures.
  - Policies should define “spouse” to mean all legal spouses, including those of the same

sex, and also extend the same benefits to same- and different-sex domestic partners.

- Policies should be inclusive of all parent-child relationships. In many American families — and especially in LGBTQ+ families — individuals have parental responsibilities for children they are not legally or biologically related to. Employers should follow existing U.S. Department of Labor guidance for FMLA when offering paid or unpaid leave benefits, allowing all employees with parent-child relationships to claim parental and family care leave, regardless of legal or biological standing.
- Policies should include chosen family members. For a variety of reasons, there may be instances where an employee must take time off to care for a seriously ill loved one outside of the relationships listed above, including a grandparent, relative or close friend. LGBTQ+ people may be more likely to rely on and/or be responsible for care for such chosen family members, who may not have other immediate family able or willing to care for them.
- **Medical leave policies** should expressly cover employees who are seeking paid leave to undergo medically-necessary transition-related care (including gender affirmation surgery, hormone therapy, and other gender-affirming care) and employees who need time off to receive HIV-related health care (including adjusting to new medications or grappling with co-infections).

All paid leave policies should offer full or partial wage replacement during leave and these benefits should be clearly communicated to employees. Human resources staff should ensure paid leave policies are detailed in employee handbooks alongside other benefits and guidelines and be prepared to answer employee questions. Managers should support their team members who need to take leave and protect their privacy. Finally, if an employee needs additional accommodations to manage their health or care for loved ones after their paid leave period ends, employers should offer flexible work arrangements, including part-time or telework options.

For more on inclusive paid leave, see the Human Rights Campaign Foundation's “2018 U.S. Paid Family Leave Survey,” available at [hrc.org/resources/2018-u.s.-lgbtq+-paid-leave-survey](https://hrc.org/resources/2018-u.s.-lgbtq+-paid-leave-survey)