

# 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 due to 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> In addition

to the private sector, FMLA covers all public agencies, which includes municipalities and their constituent departments.

Despite the availability of this limited FMLA leave, many municipal workers are unable to take time off to care for themselves or family members because they cannot afford the loss of wages, which are all the more important during significant family events and health crises. To truly allow workers the ability to take time off to provide vital care for

themselves or loved ones, employers are increasingly offering employees paid leave benefits, which permit employees to take sufficient paid, job-secured time off for significant life events like the birth or adoption of a child and the emergence of significant health issues. Paid leave not only helps ensure the health and well-being of employees and their families, but also improves employee productivity and satisfaction and helps employers attract and retain top talent by giving them a competitive edge.

## Paid Leave is an LGBTQ Issue

Without access to paid leave, municipal employees who take unpaid leave can be thrown into financial chaos and struggle to cover everyday expenses like groceries and rent without a steady income. According to a 2018 survey conducted by the Human Rights Campaign, financial concerns are the greatest factor forcing LGBTQ people to return to work early after taking leave—or forcing them to forgo taking time off entirely.<sup>2</sup> The negative consequences of this loss of income is severely compounded in the context of leave-qualifying events like the serious illness of an employee's loved one or the employee's own life-threatening diagnosis.

LGBTQ people are particularly vulnerable in the absence of guaranteed paid leave. This is especially true 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>3</sup> mistreated in the workplace,<sup>4</sup> and discriminated against during the hiring process<sup>5</sup>—making a request for unpaid time off, without clear and enforceable protocols, both impractical and un navigable.

LGBTQ people may also be unable to take time off to care for a loved one without “outing” their identities or relationships at work, which may

result in adverse treatment and could cost them their jobs. Some fear the stigma they could face if they reveal the need to take time off for HIV-related care or transgender-specific treatment. Too many others, especially transgender people of color and those who are low-income, may face other forms of anti-LGBTQ discrimination, housing instability, and violence. These hardships are likely to compound each other, especially as individuals lose their steady source of income and grapple with significant life events.

Moreover, while it is encouraging that a number of cities have recognized the imperative of offering paid leave benefits in the absence of nationwide

<sup>1</sup> “Family and Medical Leave Act - Wage and ....” <https://www.dol.gov/whd/fmla/>. Accessed 24 May, 2019

<sup>2</sup> [https://assets2.hrc.org/files/assets/resources/2018-HRC-LGBTQ-Paid-Leave-Survey.pdf?\\_ga=2.195338661.800741352.1568654239-1505457067.1540225167](https://assets2.hrc.org/files/assets/resources/2018-HRC-LGBTQ-Paid-Leave-Survey.pdf?_ga=2.195338661.800741352.1568654239-1505457067.1540225167), Page 10.

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>4</sup> Out and Equal Workplace Advocates. “2017 Workplace Equality Fact Sheet.” <http://outandequal.org/2017-workplace-equality-fact-sheet>

<sup>5</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>



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paid leave protections, these benefits may not always be inclusive of LGBTQ people, our diverse families, or our 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. Other employer policies may restrict family care leave to legal guardians and their spouses, while failing to cover domestic partners, other close family members, and other primary caregivers for a child, senior, or person with a disability. Finally, in

the absence of guaranteed protections under the law, employers may offer paid leave as a benefit but deny individual paid leave requests, forcing employees to take unpaid time off, even when they are seeking medically necessary care.



## Diverse Family Structures

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For many LGBTQ people, some of whom face rejection from their biological or adoptive families, the term family takes on a broader meaning than that ascribed by most. Close friends, for instance, can be considered family and may provide support that traditionally comes from biological or adoptive families. Because of pervasive societal and familial discrimination, LGBTQ people are often more vulnerable during life's unexpected challenges and rely on diverse networks of support during leave-qualifying life events like severe illness. The individuals that form these diverse support networks—which include other family members,

friends, neighbors, or loved ones who share a deep bond similar to that of marriage, blood, or adoption—are sometimes called “**chosen family**.” According to HRC's 2018 Paid Leave Survey, fifty-eight percent of respondents indicated that they anticipate needing to serve as caregiver for at least one chosen family member should they experience a serious health condition. Moreover, some LGBTQ people opt to enter into domestic partnerships with their significant others and many form families through various assisted reproductive technologies. All of these diverse family and family-forming structures should be accounted for in paid leave policies.

## Benefits of Paid Leave

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Enacting inclusive paid leave policies is not just the right thing to do. These policies also benefit employers. Inclusive paid leave helps municipalities attract top talent. Prospective employees, including prospective LGBTQ employees, value workplaces that demonstrate a commitment to the health and well-being of all employees

and their diverse families. Paid leave can also improve employee retention. By allowing city employees to take paid leave without jeopardizing their family's financial security, municipal workers are able to provide vital care for themselves and their loved ones, ultimately leading to healthier, happier employees who are more likely to remain loyal. For

similar reasons, inclusive paid leave policies also contribute to higher productivity and employee morale. Taken together, the benefits associated with offering inclusive paid leave helps cities accomplish the central goal of effectively serving residents and visitors.

# Creating Inclusive Paid Leave Policies

Municipalities should begin the process of adding paid leave to city employee benefits, taking care to account for the unique concerns of LGBTQ employees as well as their diverse family structures. If a city currently has a paid leave policy, city officials should review its terms to ensure its full inclusivity. The following principles should guide the creation or alteration of paid leave policies.

## PAID LEAVE POLICIES SHOULD COVER:

- **PARENTAL LEAVE** to allow employees to welcome children into their families, including through childbirth, surrogacy, adoption, foster care, or other placement;
- **FAMILY CARE LEAVE** to enable employees 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 allow employees 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 utilize inclusive language and not focus solely on “birth mothers”

(e.g., maternity leave), which excludes fathers, non-birth mothers, and adoptive or foster parents, who are all equally deserving of the time needed to bond with a new child.

- Moreover, policies that offer additional time off and/or short-term disability for “birth mothers” to allow for physical recovery from childbirth may inadvertently leave out parents of other genders who may also give birth, including transgender men, non-binary individuals, and people of other identities. Policies should use the inclusive term “birth parent” instead.

## FAMILY CARE LEAVE POLICIES

should define “spouse” to include all legal spouses, which includes spouses of the same-sex. Policies should also include both same- and different-sex domestic partners.

- Many American families—and especially LGBTQ families—have parental relationships and responsibilities that are outside of a legal and/or biological relationship. Municipalities should follow existing U.S. Department of Labor guidance for FMLA when offering paid or unpaid leave benefits, which allows all employees with parent-child relationships to claim parental and family care leave for one another, regardless of legal or biological standing.
- 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 who are able or willing to care for them. Family care leave policies should allow employees to access paid leave for the care of chosen family members.

## MEDICAL LEAVE POLICIES

should expressly cover employees who are seeking paid leave to undergo medically-necessary transition-related care (like 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).

Moreover, paid leave policies should offer full or partial wage replacement during leave and should be clearly outlined in city employee handbooks alongside other benefits and guidelines. Human resources staff should be prepared to answer questions regarding paid leave policies, and managers should be prepared to support their team members who need to take leave. Finally, employers should offer flexible work arrangements, including part-time or telework options, if an employee needs additional accommodations to manage their health or care for loved ones once their paid leave period ends.

# Addressing Other Barriers to Accessing Paid Leave

As noted earlier, even where paid leave policies exist, LGBTQ employees may hesitate to request leave if the request has the potential of “outing” the employee. For example, employees may fear the stigma they may face if they reveal the need to take time off to care for a same-sex spouse or to receive HIV-related or transgender-specific health care. Due to a patchwork of local and state non-discrimination protections, and a lack of express federal protections, many “outed” employees may face the risk of being fired simply because of who they are.

Cities should take additional steps to ensure that employees are not at risk of adverse employment actions if paid leave requests have the potential of “outing” them. Municipalities should ensure that their city employment non-discrimination policies expressly cover sexual orientation and gender identity (which is assessed in Part II(A) of the MEI scorecard). City officials should also ensure that workers and their families are comprehensively protected from discrimination based on sexual orientation and gender identity in employment, housing, and public

spaces (assessed in Part I(A)-(C)). Furthermore, in order to foster a more inclusive and respectful workplace, all city employees should regularly undergo LGBTQ-inclusive diversity training (assessed in Part II(C) of the MEI scorecard) and municipalities should ensure that employee health care plans provide express coverage for medically-necessary transition-related care (including gender-affirming surgeries, hormone therapy, and related mental health care).

## Conclusion

Although municipal employees have access to unpaid FMLA leave, unpaid leave is a luxury many city employees and their families simply cannot afford. LGBTQ people stand to uniquely benefit from job-secured paid leave, given that LGBTQ people are more likely to be living in poverty and more likely to be mistreated or discriminated against in the workplace. Cities and businesses are increasingly enacting inclusive paid leave policies because they realize that it is not only the right thing to do, but also beneficial to them

as employers. By allowing employees to take paid leave without jeopardizing their family's financial security or their long-term job security, municipal workers are able to provide vital care for themselves and their loved ones, ultimately leading to healthier, happier employees who are more likely to remain loyal, be productive, and report high levels of satisfaction. In crafting or updating paid leave policies, municipalities should be deliberate in utilizing inclusive language that takes into account the unique concerns of

LGBTQ employees and their diverse family structures. Moreover, cities should contemporaneously work to holistically safeguard LGBTQ employees and their families from discrimination in public and private employment, housing, and public spaces.

*For more on this inclusive paid leave, see the Human Rights Campaign Foundation's report entitled "2018 U.S. Paid Family Leave Survey," available at [www.hrc.org](http://www.hrc.org).*