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US Sick Leave In Global Context: US Eligibility Rules Widen Inequalities Despite Readily Available Solutions

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ABSTRACT Research has demonstrated that paid sick leave reduces the spread of COVID-19 and other infectious diseases and improves preventive care and access to treatment across a wide range of conditions. However, the US has no national paid sick leave policy, and even unpaid leave via the Family and Medical Leave Act (FMLA) of 1993—often viewed as a foundation for new paid leave legislation—is often inaccessible to workers. We analyzed data from a nationally representative survey to determine the extent to which specific FMLA features produce gaps and disparities in leave access. We then used comparative policy data from 193 countries to analyze whether these policy features are necessary or prevalent globally, or whether there are common alternatives. We found that the FMLA’s minimum hours requirement disproportionately excludes women, whereas its tenure requirement disproportionately excludes Black, Indigenous, and multiracial workers. Latinx workers also face greater exclusion because of employer size requirements. Of the 94 percent of countries that provide permanent paid sick leave, none broadly restrict leave based on employer size, and 93 percent cover part-time workers without a minimum hours requirement. Enacting permanent paid sick leave that is accessible regardless of employer size, tenure, or hours is critical and feasible.

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As of August 5, 2021, the US had reported nearly 613,000 deaths from COVID-19 and more than 35 million cases.¹ As of July 16, 2021, risks of infection and hospitalization were 1.1 and 2.8 times higher, respectively, for Black Americans than for White Americans. Latinx Americans face 1.9 times the risk of infection and 2.8 times the risk of hospitalization of White Americans, whereas Indigenous Americans are 1.7 times more likely to be infected and 3.4 times more likely to be hospitalized.² An August 2020 analysis of ten major US metropolitan areas covering 158 counties found that both income and race predicted higher COVID-19 caseloads; counties with higher poverty rates

and a higher proportion of people of color reported infection rates that were approximately eight times higher.³ Working conditions play a key role in these disparities, with Black and Latinx adults making up substantial shares of front-line workers who cannot work remotely and face higher risks of exposure.^{4,5}

Both amid the COVID-19 pandemic and during a typical year, paid sick leave enables workers to recover from illness and reduces infectious disease spread.⁶⁻¹² Within early months of its passage during the pandemic, the provision of temporary, emergency paid sick leave prevented approximately one COVID-19 case per day for every 1,300 workers who newly had the option to take ten paid sick days.¹¹ Similarly, paid sick

leave provided at the state level has been found to reduce rates of seasonal influenza, which typically affects up to forty-five million Americans annually, by as much as 30 percent in the first years after its enactment.^{12,13} Beyond the individual impacts, by preventing the spread of illness to clients, coworkers, and the public, paid sick leave protects public health, boosts productivity, and benefits businesses, including by supporting retention.¹⁴⁻¹⁷

Paid sick leave also improves access to preventive care.¹⁸⁻²⁰ In New York City the provision of even a mere five days of paid sick leave reduced emergency department visits and increased access to cancer screenings, blood tests for diabetes management, and cholesterol monitoring.²¹ Workers without paid sick leave are three times more likely to forgo personal health care, exacerbating chronic conditions.²² Further, without job and income security from paid sick leave, workers are more likely to forgo pediatrician visits and send ill children to school or child care.²³

Paid sick leave likewise affects employment, a key social determinant of health. Health issues commonly threaten job security for low-wage and contingent workers,²⁴ and workers without paid sick leave are more likely to live in poverty and experience financial worries.²⁵⁻²⁷ Further, with medical costs the leading US cause of bankruptcy²⁸ and most US workers' health insurance tied to their employment, preventing job loss during illness or hospitalization offers important protection against financial devastation.

In the US the Family and Medical Leave Act (FMLA) of 1993 provides leave for serious health conditions. Although it offers job protection, FMLA leave is unpaid. Further, the FMLA covers only larger workplaces and limits eligibility to workers who meet minimum tenure and hours requirements. Meanwhile, the US has no permanent national sick leave policy providing coverage for shorter-term or routine illnesses.

As a result, the availability of paid sick leave largely depends on its voluntary provision by employers, creating substantial coverage gaps overall and contributing to inequalities in access. The most recently published data from employees on paid sick leave by race/ethnicity show that among all workers (in the public and private sectors), 54 percent of Latinx workers, 47 percent of Indigenous workers, 38 percent of Black workers, 37 percent of White workers, and 33 percent of Asian workers lacked access to paid sick leave as of 2016.²⁹ The lack of a permanent national policy also has implications for gender equality, given women's overrepresentation in both paid and unpaid caregiving roles. As they make up 76 percent of US health workers, wom-

en face high risks of exposure to COVID-19 and other infectious diseases.³⁰ The spread of infectious disease also disproportionately affects women who are the primary caregivers for their families, who face both greater exposure through providing care and a greater risk of economic consequences resulting from missing work to provide care.

Importantly, a growing number of US states, cities, and counties now provide some form of permanent paid sick leave; however, these policies sometimes exempt many from coverage on the basis of criteria similar to those in the FMLA.³¹⁻³³ For example, Connecticut, becoming in 2011 the first state to adopt its own paid sick leave law, covers a limited set of occupations and also exempts workplaces with fewer than fifty workers; several other states and cities set minimum thresholds of ten to thirty employees, whereas some provide a lower duration of leave to workers at smaller businesses.^{32,33} Likewise, a number of cities and states have minimum tenure or hours requirements, such as New Jersey's twenty-week employment threshold for leave.³³

Further, proposals to enact paid sick leave at the federal level often look to the FMLA as a model or use similar types of criteria for determining eligibility. Most recently, the Families First Coronavirus Response Act, which temporarily provided ten days of paid sick leave in response to the pandemic, fully exempted employers with 500 or more employees and allowed employers with 50 or fewer workers to seek exemptions from its family leave provisions.

Given the ongoing debates about how to design paid sick leave in the US, alongside the urgency of addressing persistent and widening racial and ethnic health disparities, it is critical to identify how commonly proposed and adopted eligibility criteria affect access and equity. In this study we examined the extent to which minimum firm size, minimum tenure, and minimum hours requirements as embodied in the FMLA contribute to racial, ethnic, and gender disparities in leave access and limit access to leave overall. We also drew on policy data from 193 countries to analyze the extent to which these policy features that are so common in the US appear in permanent paid sick leave policies globally. We discuss the implications of our findings for increasing equity in access to leave for US workers.

Study Data And Methods

STRUCTURE OF SICK LEAVE IN THE US

► **DATA AND SAMPLE:** We analyzed data from the 2018 Current Population Survey (CPS) Annual Social and Economic Supplement, a nationally representative survey of the nonelderly

noninstitutionalized US population.³⁴ Our sample includes adults ages 18–64 currently employed in the private sector, including employees ($n = 57,417$) and the self-employed ($n = 3,827$) working at least fifteen hours per week ($N = 61,244$). Further details and additional results are in the online appendix.³⁵

► **ANALYSES:** To understand which features of the FMLA contribute to racial/ethnic and gender intersectional disparities in access, we used data from the CPS Annual Social and Economic Supplement to determine the percentage of workers in each racial/ethnic group and of each gender who meet eligibility requirements for hours of work, employer size, and tenure. We also analyzed intersectional disparities across race/ethnicity and gender, building on past scholarship demonstrating how multiple forms of marginalization often compound one another.

► **VARIABLES/MEASURES:** We sought to examine leave access among workers across racial/ethnic groups in the US, with a focus on the groups that both have faced the highest COVID-19 exposure and mortality rates and have long experienced worse health outcomes because of structural racism: Black, Latinx, and Indigenous Americans.^{36,37} Race/ethnicity was defined as “Latinx” if the respondent self-identified as “Spanish, Hispanic, or Latino” irrespective of the race or multiple races they reported. If the respondent was not of Hispanic ancestry, race/ethnicity was coded based on how the respondent self-identified among the options provided: “Black/Negro,” “White,” “Asian,” “Hawaiian/Pacific Islander,” “American Indian/Aleut/Eskimo,” and an option for multiple races. “Indigenous” includes people who identified as “American Indian/Aleut/Eskimo” or “Native Hawaiian/Pacific Islander.” As different groups of multiracial people may have different experiences of discrimination, a disaggregated analysis would have been preferable but was not possible because of small sample sizes. For gender, the CPS only reports a binary measure indicating male or female.

To estimate whether a person met the tenure requirement of at least twelve months, we used the total number of weeks worked at any job in the preceding year and coded as eligible those with at least fifty weeks worked who reported having only one employer during the previous year. Our estimate of firm size used a question asking how many employees worked for the respondent’s employer, including all locations. Because the FMLA’s firm-size exemption excludes not only small businesses but also any locations in which a company has fewer than fifty employees within a seventy-five-mile radius, this method provides a lower-bound estimate of

those lacking coverage. To estimate whether a person met the requirement of hours of work eligibility and worked at least 1,250 hours in the past twelve months, we multiplied total number of weeks worked at any job last year by usual weekly hours at the main job. This provides a lower-bound estimate of workers not covered because some people coded as eligible may have had multiple jobs and might not have worked at their main job for all weeks reported.

► **APPROACHES IN OTHER NATIONS** To determine whether other countries’ paid sick leave policies include coverage gaps similar to those identified in US policies, we assessed permanent national approaches to paid sick leave across all 193 United Nations member states as of September 1, 2020. Although many countries have temporarily adopted or expanded paid sick leave during the pandemic, our analysis focused on permanent national approaches that will outlast COVID-19.

To capture the details of policies that apply to the majority of workers, we examined policies covering workers in the private sector.³⁸ Many countries, including the US, treat public- and private-sector workers differently in labor legislation, and public-sector workers’ benefits are often more generous. Although there are many important aspects of sick leave policies that vary across countries, in this study we focused on aspects of the policies that govern eligibility.

A multilingual research team reviewed and systematically assessed original labor, social security, and sector-specific legislation and global information on social security systems for each country by using a common coding framework. Countries with federal systems were only coded as having paid sick leave if they had a national-level policy covering the private sector. Further details on methods are in the appendix³⁵ and were published in a previous article by Jody Heymann and colleagues.³⁹

Study Results

► **US SICK LEAVE POLICY RESTRICTIONS** The US currently requires workers to spend twelve months in the same job to qualify for FMLA leave, excluding from this benefit workers who have recently changed jobs, new entrants to the labor force, and people finding work after involuntary periods of unemployment. As shown in exhibit 1, in 2018 self-identified multiracial workers were at particularly high risk of exclusion because of short tenure (27.7 percent) compared with White workers (19.0 percent; $p < 0.001$). Black workers also faced higher risks because of short tenure than White workers (22.0 percent; $p < 0.001$). Similar proportions

EXHIBIT 1

Percent of workers excluded by Family and Medical Leave Act (FMLA) eligibility requirements in the US, by race/ethnicity and gender, 2018

	Has less than 1 year of tenure			Works less than 1,250 hours per year			Employer has fewer than 50 employees		
	Women	Men	Total	Women	Men	Total	Women	Men	Total
White	21.2%	17.8%	19.0%	16.2%	8.4%	11.9%	34.6%	36.9%	35.9%
Black	23.1	21.4	22.0	15.7	12.7	14.2	21.4	27.6	24.4
Latinx	20.6	19.3	19.5	18.7	11.5	14.4	37.6	45.0	42.0
Asian	19.0	15.1	16.5	16.4	8.9	12.2	33.9	31.4	32.5
Indigenous	23.4	22.3	22.9	17.2	10.7	13.9	30.1	35.6	32.7
Multiracial	26.4	29.5	27.7	18.2	15.2	16.7	31.7	35.0	33.3
Total	21.3	18.7	19.9	16.6	9.6	12.7	33.3	37.2	35.4

SOURCE Authors' analysis of data from the Current Population Survey, 2018. **NOTE** Racial/ethnic groups (self-reported) are described in the text.

of Indigenous workers (22.9 percent) and Black workers were excluded because of short tenure. Tenure requirements excluded somewhat fewer Latinx (19.5 percent) workers and a smaller proportion of Asian workers (16.5 percent).

Eligibility for the FMLA also requires having worked at least 1,250 hours for the same employer in the preceding year, or approximately twenty-four hours per week. In 2018 this requirement excluded significantly higher shares of women than men (16.6 percent versus 9.6 percent; $p < 0.001$), as well as slightly higher proportions of multiracial (16.7 percent), Latinx (14.4 percent), and Black (14.2 percent) workers compared with White workers (11.9 percent; $p < 0.001$ for all groups). Latina women were the most likely to be excluded (18.7 percent). The minimum hours requirement also excluded 12.2 percent of Asian workers and 13.9 percent of Indigenous workers.

These restrictions limit access to paid sick leave not only for those who work part-time hours but also for those who work multiple part-time jobs for different employers, which may amount to working full-time hours without receiving full-time benefits. More than a million workers in the US hold multiple jobs but typically work fewer than twenty-four hours per week in each individual job. Based on CPS data, women are also overrepresented in this group, making up 45 percent of the workforce but 65.6 percent of those holding multiple part-time jobs.

Finally, the FMLA's exemption of workplaces with fewer than fifty employees disproportionately excluded Latinx workers in 2018: Among adults working at least fifteen hours a week, 42.0 percent of Latinx workers did not meet the FMLA fifty-employee firm-size requirement compared with 35.9 percent of White workers, 32.5 percent of Asian workers, and 24.4 percent of Black workers ($p < 0.001$ for all groups compared with Latinx workers). Latino men faced

the highest rates of exclusion by this rule (45.0 percent) (exhibit 1).

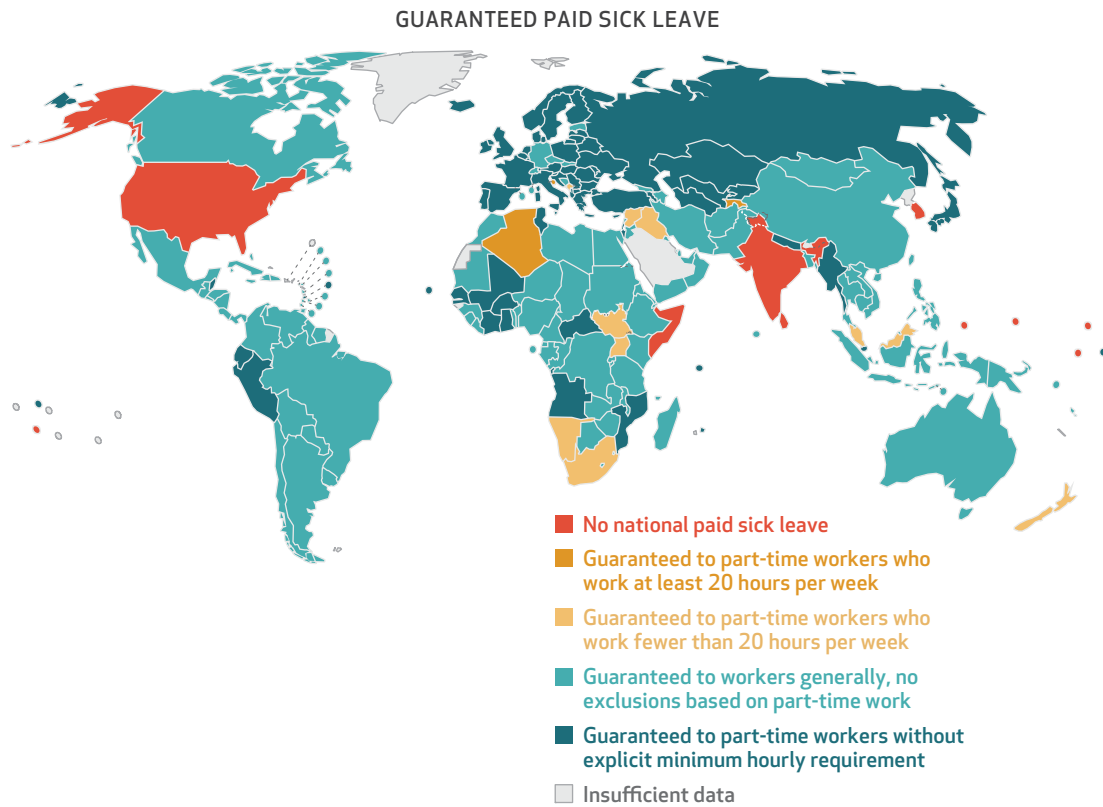
GLOBAL APPROACHES Globally, 94 percent of countries have guarantees of permanent, national paid sick leave; the US is one of just eleven countries that does not, alongside Somalia, Sri Lanka, six small Pacific Island states, India, and South Korea. However, India guarantees paid sick leave in sector-specific legislation that does not cover the full workforce, and South Korea guarantees workers three weeks of paid annual leave, which can be used as sick days.

► **RECENTLY HIRED WORKERS:** We found that 57 percent of countries that provide sick leave allow access to at least some paid benefits without explicitly requiring a minimum period with the same employer or minimum contributions to a social security fund. Thirty-nine percent have tenure or contribution requirements of less than twelve months. Only four countries explicitly limit paid leave benefits to workers with less than twelve months of tenure. Three additional countries require at least twelve months of contributions to social security systems, meaning that the eligibility of workers with recent job changes will depend on their previous employment.

► **PART-TIME WORKERS:** Among countries that provide paid sick leave, 96 percent of high-income countries and 93 percent of countries globally either explicitly cover part-time workers with no minimum hours requirement (53 percent of high-income countries, 35 percent of all countries with leave) or broadly cover all workers with no exclusion for part-time workers (43 percent of high-income countries, 58 percent of all countries with leave) (exhibit 2). Additional countries explicitly cover part-time workers subject to minimum hours thresholds: Nine countries require workers to work minimums that range between six and seventeen hours each week to qualify for sick leave (listed as "fewer than 20 hours per week" in the exhibit legend);

EXHIBIT 2

Guaranteed access to paid sick leave among part-time workers worldwide, 2020



SOURCE WORLD Policy Analysis Center, 2020.

two countries, Algeria and Tajikistan, require at least twenty hours; and just one country, San Marino, requires twenty-four hours per week, which is equivalent to the FMLA provision.

► **SMALL FIRMS, SELF-EMPLOYMENT:** As noted above, the FMLA in the US imposes a firm-size restriction on its guarantees of unpaid sick leave. Among all other countries, no country broadly restricts the availability of paid sick leave based on firm size (exhibit 3). In three countries there are narrow firm-size exemptions that apply to enterprises of fewer than ten agricultural or family workers. Uganda excludes family workers in enterprises of five or fewer workers, Bangladesh excludes agricultural workers employed at farms with fewer than ten workers, and Equatorial Guinea excludes family enterprises of fewer than five workers from employer-paid leave.

In many countries, providing paid sick leave is made more affordable for small businesses by sharing the responsibility between employers and social security programs. Specifically, we found that 52 percent of all countries that provide paid sick leave (including 67 percent of high-income countries) reduce the financial burden on employers by providing benefits during

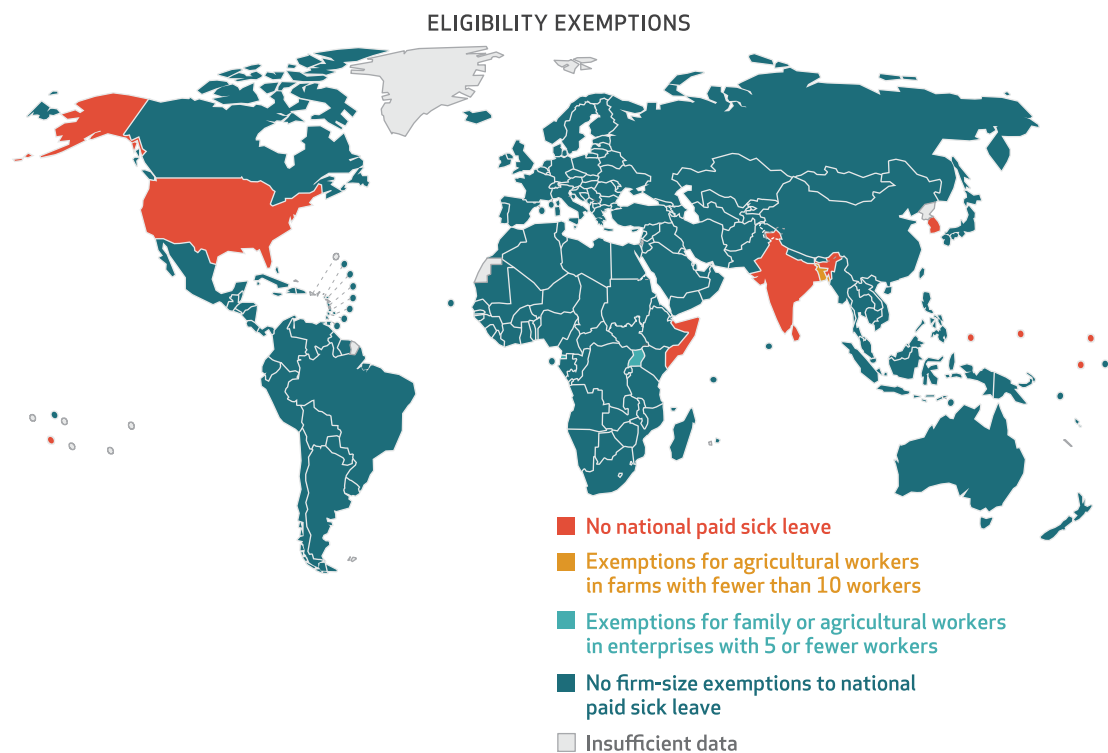
the first six weeks of illness in full or in part through social security systems.

Among countries that provide paid sick leave, 68 percent of high-income countries and 46 percent of all countries explicitly include self-employed workers in their national legislation guaranteeing paid sick leave.

► **MAKING LEAVE AFFORDABLE:** The US is the sole country to guarantee unpaid leave only. Among the 181 countries with available data that provide paid sick leave, 59 percent guarantee workers two weeks of leave paid at 80 percent or more of their previous wages after one year of tenure or contributions and any unpaid waiting periods to access leave; an additional 26 percent guarantee workers 60–79 percent of their previous pay (exhibit 4). Thirty-two percent of countries with paid sick leave guarantee at least six weeks at 80 percent or more of previous wages after one year of tenure or contributions and unpaid waiting periods, while an additional 30 percent guarantee workers 60–79 percent of wages for at least six weeks (detailed findings for two weeks are shown in exhibit 4; detailed findings for six weeks of leave are available on request).

EXHIBIT 3

Firm-size eligibility exemptions for paid sick leave in countries worldwide, 2020



SOURCE WORLD Policy Analysis Center, 2020.

Discussion

The US is one of just eleven countries in the world without a national guarantee of permanent, paid sick leave. Further, even the unpaid leave provided by the FMLA excludes millions through its eligibility criteria. First, the FMLA exempts workplaces with fewer than fifty employees. No other country has broad restrictions on sick leave eligibility based on employer size. Second, the FMLA requires a minimum of 12 months and 1,250 hours working for the same employer. Globally, 57 percent of countries that provide paid sick leave allow workers to access at least some paid sick leave regardless of employment history, and more than nine out of ten have no explicit minimum hours requirements. Finally, the FMLA is unpaid, making the US the only country with a national policy providing unpaid leave only. In contrast, 103 countries guarantee workers with one year's tenure at least two weeks of paid leave at a high wage replacement rate, ensuring both widespread access and affordability.

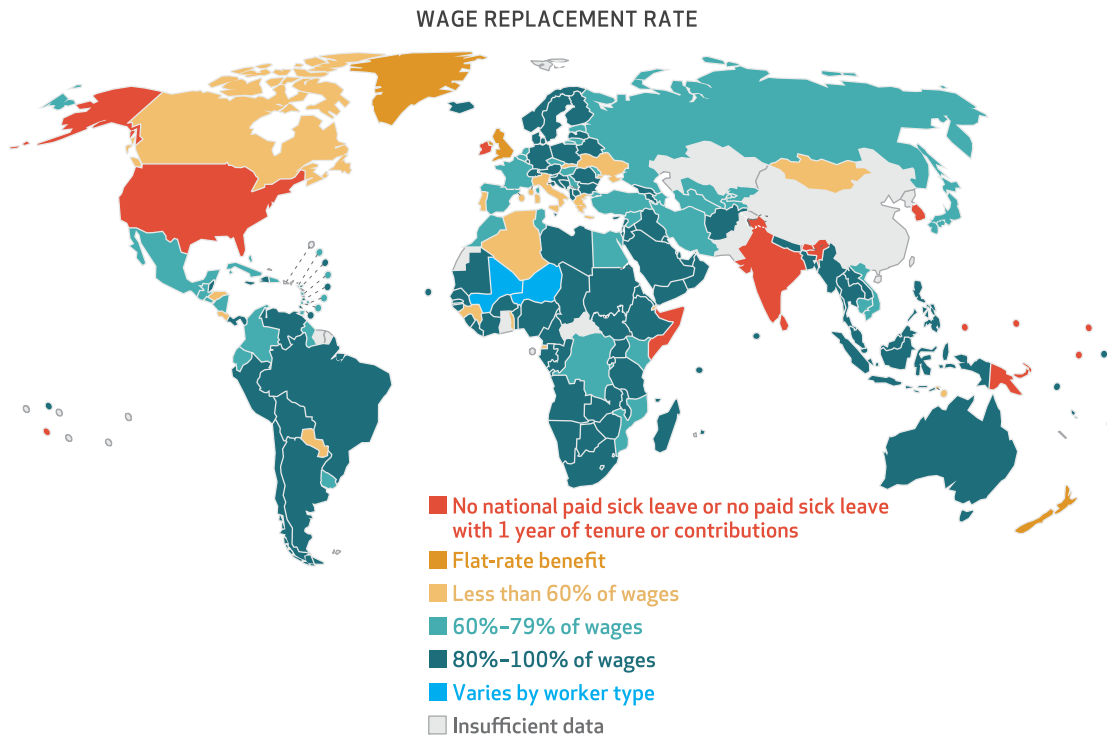
Altogether, we found that these features of the FMLA exclude 50.3 percent of private-sector and self-employed workers from receiving sick leave, even when we limited our analysis to workers working a minimum of fifteen hours per week.

Several specific eligibility criteria also lead to the disproportionate exclusion of certain groups. For example, the requirement to work a minimum of 1,250 annual hours for the same employer disproportionately affects women, and gaps widen further when one examines gender and race combined: The hours requirement excludes 18.7 percent of Latina women compared with 8.4 percent of White men. The minimum tenure requirement excludes 23.4 percent of Indigenous women and 29.5 percent of multiracial men compared with 17.8 percent of White men and 15.1 percent of Asian men. The minimum-firm-size requirement leaves large shares of workers across racial and ethnic groups uncovered but has the most significant consequences for Latino men, 45.0 percent of whom are excluded by this rule alone. Moreover, our estimates could be lower-bound estimates of the full scope of exclusion, particularly for firm size, because the survey reports total employees, not just those within the eligible FMLA radius.

In addition, these policy features often exacerbate intersectional forms of discrimination and exclusion. For example, as past research has shown, because the mandated leave is unpaid, the FMLA effectively excludes millions of low-wage workers from coverage, with disproportional

EXHIBIT 4

Wage replacement rate of paid sick leave in week 2 for workers with 1 year of tenure or contributions, 2020



SOURCE WORLD Policy Analysis Center, 2020.

tionate impacts on workers of color resulting from the persistence of racial/ethnic wage and wealth gaps.⁴⁰ The median White household in the US has a net worth eight times that of the median Black household and five times that of the median Latinx household, making it far less likely that Black and Latinx families can rely on savings to compensate for unpaid leave.⁴¹

Likewise, the exclusion of part-time workers not only disproportionately affects women and people of color but also exacerbates other labor-market inequalities. Although some workers work part time by choice, millions work part time for involuntary economic reasons such as slack business conditions or the inability to find full-time work. Altogether, going into the COVID-19 pandemic, more than 4.4 million workers were in involuntary part-time employment, which averaged twenty-three hours per week.⁴² As of 2016, Black and Latinx workers were nearly twice as likely as White workers to be working part time involuntarily.⁴³

Taken together, these features of US sick leave policy design represent a form of structural discrimination that exacerbates racial, ethnic, socioeconomic, and gender inequalities while worsening outcomes for all.

Areas For Further Research

This study examined the extent to which gaps in current US sick leave policies contribute to racial, ethnic, socioeconomic, and gender disparities in leave access. Given the COVID-19 pandemic’s outside impacts on marginalized communities, it is critical to examine sick leave coverage of each racial or ethnic group; however, existing data sources include only small samples of certain populations. Surveys that included more respondents from smaller population groups would allow for more precise analysis of health and economic disparities, as well as more analyses of dimensions of intersectional disparities.

Moreover, it’s important to note that at the same time as these structural disparities lead to inequalities in who has access to paid leave, the very groups with the least amount of leave are often employed in jobs with heightened exposure to infectious diseases. For example, in California Latinx workers experienced the highest increase in mortality (37 percent) due to COVID-19, with the most severe increase reported among Latinx food and agricultural workers (59 percent);⁴⁴ nationally, food service workers have among the lowest permanent sick leave coverage.⁴⁵ Future research should examine in

greater detail the disparities in paid sick leave access for workers facing particularly high health risks.

Conclusion

The availability of leave in the US largely depends on employers' discretion, and low-wage workers and workers of color are significantly less likely to receive employer-provided coverage. Further, even the unpaid leave available through the FMLA is conditioned on eligibility criteria that lead to widespread exclusion and often worsen disparities in access. These exclusions have severe consequences for the spread of both COVID-19 and seasonal illnesses such as influenza, and they threaten the health of people with other conditions.

Unlike 181 countries worldwide, the US has no national, permanent paid sick leave. Every other

high-income country provides paid sick leave to all workers regardless of firm size, nearly all countries with paid sick leave cover workers regardless of hours, and a majority do so regardless of tenure. Moreover, nearly half of countries globally cover the self-employed, extending eligibility to a substantial share of informal workers as well as those in the formal economy.

The US can fill these gaps effectively and equitably by adopting a permanent national sick leave policy that is adequately paid and job-protected; applies to workplaces of all sizes; has no minimum tenure or hours requirements; and explicitly covers the self-employed and other workers who are particularly vulnerable to exclusion, including gig economy, domestic, and agricultural workers. Comprehensive data from other countries demonstrate the feasibility of these approaches. ■

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