



2019

## Mandatory Paid Vacation and Mental Health Leave for All Employees: Better for the Economy, Employers and Employees

Abigail Mansfield

Follow this and additional works at: <https://scholarworks.law.ubalt.edu/lf>



Part of the [State and Local Government Law Commons](#)

### Recommended Citation

Mansfield, Abigail (2019) "Mandatory Paid Vacation and Mental Health Leave for All Employees: Better for the Economy, Employers and Employees," *University of Baltimore Law Forum*: Vol. 50 : No. 1 , Article 3. Available at: <https://scholarworks.law.ubalt.edu/lf/vol50/iss1/3>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [hmorrell@ubalt.edu](mailto:hmorrell@ubalt.edu).

## COMMENT

---

### MANDATORY PAID VACATION AND MENTAL HEALTH LEAVE FOR ALL EMPLOYEES: BETTER FOR THE ECONOMY, EMPLOYERS AND EMPLOYEES

By: Abigail Mansfield\*

#### INTRODUCTION

The United States is the only developed country in the world that does not legally require employers to offer paid leave for employees.<sup>1</sup> Yet, the country is shifting as many states have begun requiring employers offer their employees such benefits.<sup>2</sup> Legislatures are beginning to realize that it is necessary to allow employees to take time off without being burdened by the fear of not getting paid.<sup>3</sup> As the law moves in this direction, the country, and specifically Maryland, should not only require employers to provide paid leave but also require employees to use this paid leave. Currently, Maryland law requires employers provide a minimum of 40 hours of paid leave for employees to be used explicitly for personal or family medical reasons.<sup>4</sup> However, this allotted time is not sufficient, as it does not provide for paid vacation time, mental health, or additional sick leave.

This comment will analyze several reasons why Maryland should implement mandatory paid vacation, mental health, and sick leave in the amount of 130 hours per year for all employees. The First Section will look at the history of leave laws, beginning with the federal Family and Medical Leave Act (“FMLA”).<sup>5</sup> It will then discuss Maryland’s history of paid leave

---

\* Abigail Mansfield: J.D. Candidate, 2020, University of Baltimore School of Law. I am honored to be recognized for my comment and would like to thank the staff of the *University of Baltimore Law Forum* for their hard work during the editing process. I would also like to thank my faculty advisor, Michael Hayes for his knowledge, encouragement and thoughtful critiques. Lastly, I would like to thank my family and friends for always supporting me and keeping me strong throughout law school.

<sup>1</sup> Christopher Ingraham, *The World’s Richest Countries Guarantee Mothers more than a year of paid Maternity Leave. The U.S. Guarantees them Nothing*, WASH. POST (Feb. 5, 2018),

<https://www.washingtonpost.com/news/wonk/wp/2018/02/05/the-worlds-richest-countries-guarantee-mothers-more-than-a-year-of-paid-maternity-leave-the-u-s-guarantees-them-nothing/>.

<sup>2</sup> See *infra* p. 9.

<sup>3</sup> See *infra* p. 21 and note 118.

<sup>4</sup> MD. CODE ANN., LAB. & EMPL. § 3-1304 (West 2018).

<sup>5</sup> 29 U.S.C.A. § 2612 (West 2009).

compared to other states as well as other nations' paid leave laws.<sup>6</sup> Section Two will discuss the issues surrounding the economic benefits and consequences of mandatory paid leave.<sup>7</sup> This section will also acknowledge and dispute proposed rationale for not requiring paid leave. Section Three will further explain why Maryland should require mandatory paid leave, including leave for extended family care, mental health and vacation time. Additionally, Section Three will discuss the potential benefits employers may incur by requiring mandatory paid leave.<sup>8</sup> Finally, Section Three will address how the application of leave laws can have different effects on businesses depending on their size.<sup>9</sup> Last, this comment will offer a solution and proposed legislation that Maryland should enact.<sup>10</sup>

## I. HISTORICAL DEVELOPMENT

### A. History of Paid Leave in the United States

#### 1. Federal Leave Act

In 1993 President Bill Clinton signed into law the Family and Medical Leave Act ("FMLA"), guaranteeing employees up to 12 weeks of leave under certain qualifying circumstances.<sup>11</sup> Although the passage of the statute was a huge breakthrough for employees, winning was not easy.<sup>12</sup> The Women's Legal Defense Fund was the first to propose legislation in favor of work-family policy change in 1984.<sup>13</sup> The proposed bill introduced the concept of allowing employees to take unpaid leave without consequences from their employer.<sup>14</sup> It was not until 1991 and 1992 that Congress passed such

---

<sup>6</sup> See *infra* pp. 2-11.

<sup>7</sup> See *infra* p. 13.

<sup>8</sup> See *infra* p. 17.

<sup>9</sup> See *infra* p. 21.

<sup>10</sup> See *infra* pp. 22-23.

<sup>11</sup> 29 U.S.C.A. § 2612(a)(1)(2009). (In 2012, the Court held, in *Coleman v. Court of Appeals of Maryland* that the self-care provision of FMLA (29 U.S.C.A. § 2612(a)(1)(D)) entitling an employee to take up to 12 weeks of unpaid leave per year for the employee's own serious health condition, when the condition interferes with the employee's ability to perform at work, it does subject states to suit for violations based on gender discrimination). *Coleman v. Court of Appeals of Maryland*, 566 U.S. 30 (2012). (Furthermore, the court held that states under the self-care provision are barred by sovereign immunity.) *Id.* at 33.

<sup>12</sup> *History of the FMLA*, NAT'L PARTNERSHIP FOR WOMEN AND FAMILIES, <http://www.nationalpartnership.org/our-work/economic-justice/history-of-thefmla.html> (last visited Nov. 17, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (This bill did not propose pay during leave, only that when taking leave employees would not be retaliated against.)

legislation; however, President George H.W. Bush vetoed the leave without consequences bill both times.<sup>15</sup> Opponents of the bill, along with President Bush, believed that this legislation would be too costly to businesses and would undermine the competitive economic position of the United States worldwide.<sup>16</sup> Finally, nine years after the Women's Legal Defense Fund introduced the first bill, Clinton was elected President and after perseverance from thousands of activists, the Bill was enacted.<sup>17</sup> Prior to the FMLA, employees, specifically women, would often lose their jobs due to absence from a pregnancy, a serious illness or a family member's serious illness.<sup>18</sup> The FMLA provides minimum workplace accommodations to prevent employees from losing a job due to circumstances outside of their control or reasonable family obligations.<sup>19</sup>

While at the time this was a great victory for thousands of employees who had or were planning to have families, the statute continues to lack in providing all the necessary and reasonable accommodations for employees, even after 25 years. Employees are required to meet very particular circumstances in order to qualify for leave under the FMLA, and employers are not required to provide them with any pay during this time.<sup>20</sup> In order for employees to be entitled to up to 12 workweeks of leave, they must be employed for at least 12 months and have worked for at least 1,250 hours during those 12 months.<sup>21</sup> This is reasonable; however, the employee must be able to show a qualifying exigency in order to be eligible for leave under the FMLA.<sup>22</sup> This includes circumstances such as to care for the birth of their own child, the placement of a child with the employee from foster care or adoption, care for an immediate family member due to serious health condition, a serious health condition of the employee or other circumstances that arise from an immediate family member serving in the Armed Forces.<sup>23</sup> The FMLA provides only for the most pressing conflicts and therefore excludes many other situations requiring leave, such as childcare for non-serious illnesses and help with other family members outside of those

---

<sup>15</sup> *Id.*

<sup>16</sup> Donna R. Lenhoff & Lissa Bell, *Government Support for Working Families and for Communities: Family and Medical Leave as a Case Study*, NAT'L PARTNERSHIP FOR WOMEN AND FAMILIES 3, <http://www.nationalpartnership.org/our-work/resources/workplace/fmla/fmla-case-study-lenhoff-bell.pdf> (last visited Dec. 29, 2018).

<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> 29 U.S.C.A. § 2612 (West 2009).

<sup>21</sup> 29 U.S.C.A. § 2611 (West 2009).

<sup>22</sup> 29 U.S.C.A. § 2612 (West 2009).

<sup>23</sup> *Id.*

immediately related to the employee.<sup>24</sup> Such explicit, hard to meet limitations has led to ongoing discussions within the legislature.<sup>25</sup> Many organizations, such as the National Partnership for Women and Families, seek to amend and expand the Act.<sup>26</sup> The FMLA was just the beginning of the discussion of mandatory leave granted to employees by their employers.

## 2. History of Maryland's Paid Leave Act

Professor Michael J. Hayes said in his 2009 article, "Maryland law is not quite a blank slate for employee leave rights - but it is close."<sup>27</sup> While other states such as Oregon, California, Florida and New York were enacting legislation to provide leave rights for domestic violence victims, break times for breastfeeding, and Family and Medical Leave Acts, Maryland remained silent.<sup>28</sup> It was not until 2007 that a bill was introduced in Maryland that would require most employers to provide a minimum amount of paid sick leave; however, both the Senate and House Economic Committees reported this bill as unfavorable.<sup>29</sup> In 2008, legislators enacted the Maryland Flexible Leave Act, which stated that an employer who provided leave with pay must allow the employee to use their leave to care for an ill child, spouse, or parent.<sup>30</sup> The Flexible Leave Act was the first step Maryland took toward requiring paid leave for all employees.

Finally, in 2016, Governor Larry Hogan was the first Republican governor in the United States to propose new legislation allowing for paid leave.<sup>31</sup> Similar to the Federal statute, this breakthrough legislation did not come through easily.<sup>32</sup> Despite a series of revisions and debates over the specifics of the Bill, the General Assembly and Governor Hogan were not able to agree to a compromise.<sup>33</sup> It was not until two years later that Maryland passed the

---

<sup>24</sup> See Lenhoff & Bell, *supra* note 16, at 1-2.

<sup>25</sup> See *Id.* at 14.

<sup>26</sup> *Id.*

<sup>27</sup> Michael J. Hayes, *Leaving Maryland Workers Behind: A Comparison of State Employee Leave Statutes*, 9 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 19 (2009).

<sup>28</sup> *Id.*

<sup>29</sup> H.B. 832/ S.B. 828, Gen. Assemb., Reg. Sess. (Md. 2007).

<sup>30</sup> See MD. CODE ANN., LAB & EMPL. § 3-802 (West 2009) (the law applies to employers with 15 or more employees).

<sup>31</sup> Press Release, Office of Governor Larry Hogan, Governor Larry Hogan Introduces Paid Leave Compromise Proposal (Nov. 28, 2017), <https://governor.maryland.gov/2017/11/28/governor-larry-hogan-introduces-paid-leave-compromise-proposal/>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

Healthy Working Families Act, in February of 2018.<sup>34</sup> Governor Hogan attempted to veto this Act; however, the General Assembly passed it by overriding the Governor's veto and replacing the Paid Leave Compromise Act that he proposed just one month before.<sup>35</sup> Opponents of the new Healthy Working Families Act argued that it was complicated, burdensome and strict.<sup>36</sup> Governor Hogan and other opponents argued that it would place small business owners at risk of a financial loss due to the new leave requirements and implementation of tracking the accumulation of hours of employees.<sup>37</sup>

The Healthy Working Families Act requires all employers with more than 15 employees to provide a minimum of 40 hours of paid leave to each employee per year.<sup>38</sup> This amount accrues at the rate of one hour per every 30 hours an employee works after an initial period of 106 hours.<sup>39</sup> This Act permits leave for care or treatment of family members, maternity leave and paternity leave.<sup>40</sup> Other circumstances include necessary absence due to medical or mental health treatment related to domestic violence, sexual assault, or stalking against the employee or employee's family member.<sup>41</sup> "Family member" has a broader definition in this statute that extends to grandparents, siblings and legal guardians.<sup>42</sup> This statute requires employers to keep records of all employees' accrual and usage of leave and imposes civil penalties for non-compliance.<sup>43</sup> The Commissioner of the Division of Labor and Industry may inspect records up to three years prior and may impose a civil fine for failure to keep accurate records.<sup>44</sup> Employees may also file a written complaint to the Commissioner if they believe that an employer has violated the requirements of the Act.<sup>45</sup> An employer may not take adverse action, discriminate against, or interfere with an employee for exercising

---

<sup>34</sup> Scott Dance, *As Maryland Regulators and Businesses Scramble Over New Paid Sick Leave Law, Delegates Block Push to Delay*, BALTIMORE SUN (Feb. 1, 2018, 10:00 AM), <http://www.baltimoresun.com/news/maryland/politics/bs-md-paid-sick-leave-delay-20180130-story.html>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> MD. DEP'T OF LABOR, LICENSING AND REGULATION, COMM. ON PAID LEAVE POLICY, FINAL REPORT (2017),

<https://www.dlir.state.md.us/paidleave/paidleavereport.pdf>.

<sup>38</sup> MD. CODE ANN., LAB. & EMPL. § 3-1304 (West 2018).

<sup>39</sup> *Id.*

<sup>40</sup> MD. CODE ANN., LAB. & EMPL. § 3-1305 (West 2018).

<sup>41</sup> *Id.*

<sup>42</sup> MD. CODE ANN., LAB. & EMPL. § 3-1301(g)(West 2018).

<sup>43</sup> MD. CODE ANN., LAB. & EMPL. § 3-1307 (West 2018).

<sup>44</sup> *Id.*

<sup>45</sup> MD. CODE ANN., LAB. & EMPL. § 3-1308(a) (West 2018).

these rights in good faith.<sup>46</sup> Employees can receive criminal punishment for bringing an action against an employer in bad faith.<sup>47</sup>

Prior to the Maryland legislature's enactment of the Healthy Working Families Act, certain counties in Maryland had enacted their own ordinances requiring employers to provide paid leave for employees.<sup>48</sup> Montgomery County enacted the Earned Sick and Safe Leave Act in October of 2016 that provided a minimum of 56 hours paid leave accruing at one hour per 30 hours worked for employers with more than five employees, and a minimum of 32 hours for employers with less than five employees.<sup>49</sup> In addition, Prince George's County enacted an Earned Sick and Safe Leave Act in October 2017.<sup>50</sup> Only a year later statewide, the Healthy Working Families Act was enacted which was very similar to the Acts adopted by the counties.<sup>51</sup>

### 3. History of Other States' Paid Leave Acts

States began to move toward paid sick and family leave in order to provide compensation to employees during difficult and unexpected times.<sup>52</sup> This reform toward paid leave provided a more supportive environment for working families.<sup>53</sup> Employees are more likely to return to and stay with an employer longer when they are given the benefit of paid leave.<sup>54</sup> In order to encourage hard-working and dedicated employees, states began to implement paid leave laws.<sup>55</sup>

Similarly to Maryland, 13 additional states, the District of Columbia and the Commonwealth of Puerto Rico have enacted paid sick leave statutes.<sup>56</sup> In 2002 California became the first state to enact a statewide law providing for

---

<sup>46</sup> MD. CODE ANN., LAB. & EMPL. § 3-1309(c) (West 2018).

<sup>47</sup> MD. CODE ANN., LAB. & EMPL. § 3-1310(b) (West 2018).

<sup>48</sup> MD. CONST. art. XI-A, § 2. (granting cities and counties the power to enact their own laws, provided they do not conflict with the Constitution and the laws of the State).

<sup>49</sup> MONTGOMERY COUNTY, MD., EARNED SICK AND SAFE LEAVE art. XIII, § 27-76 (2018), [https://www.montgomerycountymd.gov/humanrights/Resources/Files/Clean\\_Art\\_XIIIEarnedSafeandSickLeave.pdf](https://www.montgomerycountymd.gov/humanrights/Resources/Files/Clean_Art_XIIIEarnedSafeandSickLeave.pdf).

<sup>50</sup> Inez N. Glaggett, *Fiscal Impact*, PRINCE GEORGE'S CNTY. COUNCIL (Oct. 16, 2017), <https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=3150330&GUID=D9D7690E-BFD9-48BF-8ABF-88B3BAEF1718&FullText=1>.

<sup>51</sup> *Id.*

<sup>52</sup> Hayes, *supra* note 27, at 14.

<sup>53</sup> Lenhoff, *supra* note 16, at 5.

<sup>54</sup> Gillian Lester, *A Defense of Paid Family Leave*, 28 HARV. J.L. & GENDER 1, 48 (2005).

<sup>55</sup> *Id.*

<sup>56</sup> PAID SICK LEAVE STATE AND LOCAL LAWS CHART: OVERVIEW para. 2 (2019), Westlaw 4-597-3867.

family and medical leave<sup>57</sup>, followed by Washington in 2007 and progressively followed by many additional states and local jurisdictions.<sup>58</sup> In 2014, D.C. enacted a statute even broader than Maryland, stating an employer with more than 100 employees has to provide accrual of one hour of paid leave for every 37 hours worked.<sup>59</sup> Leave is capped at 40 hours with smaller allowances for employers with less than 100 employees, and leave usage and accrual begins after 90 days of employment.<sup>60</sup> Connecticut enacted a law in 2012 that has a similar 40-hour cap for employees' annual leave, but leave can only be used after a period of 680 working hours, which is approximately 17 workweeks on a full-time schedule.<sup>61</sup> In 2015, California enacted a statewide law that requires employers to give an annual 24 hours of paid leave that is front-loaded at the beginning of the year and then an additional one hour for every 30 hours worked, which is capped at an additional 24 hours or three days per year.<sup>62</sup> California also has nine counties that have enacted ordinances, narrowing the scope of the statewide law.<sup>63</sup>

This progression shows that states recognize the necessity of a paid leave requirement for employees. This trend, however, does not account for any paid leave for matters outside of sickness or emergency family situations. When compared to the paid leave that many European and other countries offer, the United States laws are drastically different.

#### *B. A Brief Look Into Other Countries' Paid Leave Requirements*

Maryland's and the United States' paid leave statutes do not offer leave comparable to what is offered to employees in European countries. Ranking number one for the most paid leave, France's Labor Code provides for a minimum of five weeks paid holiday a year in addition to 11 paid public holidays.<sup>64</sup> In the United Kingdom since 2003, under its Statutory Leave Entitlement, employers are legally required to give between five and six weeks or 28 days of paid holiday leave per year to their employees.<sup>65</sup>

---

<sup>57</sup> *Paid Family Leave Report*, EMPLOYMENT DEVELOPMENT DEPARTMENT, 1 [https://www.edd.ca.gov/Disability/pdf/Paid\\_Family\\_Leave\\_10\\_Year\\_Anniversary\\_Report.pdf](https://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_10_Year_Anniversary_Report.pdf) (Last visited Nov. 25, 2019).

<sup>58</sup> PAID SICK LEAVE STATE AND LOCAL LAWS CHART, *supra* note 56.

<sup>59</sup> D.C. CODE ANN. § 32-531.02 (West 2017).

<sup>60</sup> *Id.*

<sup>61</sup> CONN. GEN. STAT. ANN. § 31-57s (West 2015).

<sup>62</sup> Cal. Lab. Code § 246 (West 2018).

<sup>63</sup> *Supra*, note 56 at 1.

<sup>64</sup> JOËL GRANGÉ, EMPLOYMENT AND EMPLOYEE BENEFITS IN FRANCE: OVERVIEW § 10 (2019), WESTLAW 0-503-0054, <https://uk.practicallaw.thomsonreuters.com/0-503-0054>.

<sup>65</sup> *Holiday Entitlement*, GOV.UK, <https://www.gov.uk/holiday-entitlement-rights> (last visited Mar. 16, 2019).



Employee's leave is offered in a "leave year" which is specified by the employer and accrues by one-twelfth each month during the individual's first year of employment.<sup>66</sup> Holidays can be used for any reason at the discretion of the employee; however, employees are required to notify their employer in advance, prior to their requested time off, by double the amount of time the employee intends to take off.<sup>67</sup> After such employee notice, the employer, with good reason, can refuse the leave request, so long as that requested leave is granted at a different time.<sup>68</sup> Additionally, the United Kingdom's holiday entitlement is not affected by maternity, paternity, or adoption leave for which employees are entitled to additional paid leave.<sup>69</sup> Bank or public holidays may be included as a part of an employee's statutory annual leave at the employer's discretion.<sup>70</sup> Similarly, in Switzerland, adult employees are entitled to four weeks or 20 days of statutory paid leave.<sup>71</sup> Many other countries in Europe have similar paid leave statutes for holidays and additional time for maternity/paternity leave.<sup>72</sup>

The United States ranks last among economically advanced countries for the amount of guaranteed paid vacation for its employees.<sup>73</sup> Canada, which is the third-worst country for paid leave, offers its employees two weeks of paid vacation days a year.<sup>74</sup> The two weeks of vacation can be used at the employee's discretion so long as notice is provided to the employer.<sup>75</sup> In addition to vacation time, Canada also implements statutory holidays on which employees still receive pay.<sup>76</sup> Canada ranks just above Japan, where employees are offered ten days paid vacation but do not have any statutory paid holidays.<sup>77</sup> The reform for paid leave has proven to be slow-moving and has faced disfavor mainly for economic reasons, which is also evident in the United States' FMLA not providing for any leave compensation.

---

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* (Doubling the amount of time prior would be 2 weeks if employee requested one week off).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Reto Gysi von Wartburg, Swiss Enjoy More and More Paid Annual Leave, SWISSINFO.CH, (Jul. 2, 2018, 17:00),* [https://www.swissinfo.ch/eng/business/jetting-off\\_swiss-enjoy-more-and-more-paid-annual-leave/44221002](https://www.swissinfo.ch/eng/business/jetting-off_swiss-enjoy-more-and-more-paid-annual-leave/44221002).

<sup>72</sup> Ingraham, *supra* note 1.

<sup>73</sup> Rebecca Ray ET AL., *No-Vacation Nation Revisited*, CTR. ECON. & POLICY RESEARCH NO-VACATION NATION REVISITED, 3 (2013), <http://cepr.net/documents/no-vacation-update-2014-04.pdf>.

<sup>74</sup> Canada Labour Code, R.S.C. 1970, c. L-1, s. 40 (1985).

<sup>75</sup> *Id.*

<sup>76</sup> Ray, *supra* note 73.

<sup>77</sup> *Id.*

## II. ISSUE

The trend of offering paid leave in the United States, and specifically in Maryland does not begin to compare to the time and qualifications of paid leave in other countries.<sup>78</sup> If history is any indication of change, the next step for Maryland is to broaden the statute to allow for paid leave for reasons outside of sickness and familial matters.

The underlying truth of why the United States or, more specifically, Maryland, has not implemented mandatory paid leave requirements comes down to the issue of money.<sup>79</sup> How much money will employers lose if they are required to give their employees three weeks paid leave every year? How would this affect businesses, especially small, locally owned businesses? Will employees take advantage of this leave? These questions are just a sampling of the problems legislatures and committees are trying to resolve before they transition to mandatory paid leave.

Legislative committees tasked with researching these issues, have attempted to answer many of these questions. Many of the outcomes show that paid leave does not cause any undue interruptions in the workplace.<sup>80</sup> In fact, many paid leave policies have shown to be beneficial to businesses by creating a work environment that promotes employee loyalty to their employer.<sup>81</sup> The average cost of replacing an employee is approximately 21% of an employee's salary.<sup>82</sup> When employees are offered paid leave and therefore stay at a position longer, this cost is substantially reduced because of a lower turnover rate.<sup>83</sup> Overall the economy benefits from providing paid leave because when employees stay longer at their jobs, they become more developed in their skills.<sup>84</sup> This confidence increases their productive and workforce participation, and in turn stimulates economic growth.<sup>85</sup>

Additionally, studies following the implementation of state policies for paid leave show that most businesses reported almost no negative effect on profitability.<sup>86</sup> Over twenty years ago, in 1998, the *Business Work-Life Study*

---

<sup>78</sup> *Id.* at 1.

<sup>79</sup> U.S. COUNCIL OF ECON. ADVISORS, EXEC. OFFICE OF THE PRESIDENT, THE ECONOMICS OF PAID AND UNPAID LEAVE 16 (2014), [https://obamawhitehouse.archives.gov/sites/default/files/docs/leave\\_report\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/leave_report_final.pdf).

<sup>80</sup> *Id.* at 16-17.

<sup>81</sup> *Id.* at 17.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> STAFF OF JOINT ECON. COMM., 114TH CONG., REP. ON THE ECONOMIC BENEFITS OF PAID LEAVE: FACT SHEET 2, [http://www.jec.senate.gov/public/\\_cache/files/646d2340-dcd4-4614-ada9-be5b1c3f445c/jec-fact-sheet---economic-benefits-of-paid-leave.pdf](http://www.jec.senate.gov/public/_cache/files/646d2340-dcd4-4614-ada9-be5b1c3f445c/jec-fact-sheet---economic-benefits-of-paid-leave.pdf).

<sup>85</sup> *Id.*

<sup>86</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 79, at 17.

found that 80% of firms that were surveyed found that paid leave proved to be cost-neutral.<sup>87</sup> After California's Paid Family Leave Act, over 90% of businesses reported either positive or no noticeable effects on profitability, turnover and morale.<sup>88</sup> Businesses in Connecticut were shown to only have a 0 – 2% increase in costs.<sup>89</sup> Another study in San Francisco found that the implementation of its 2007 paid sick leave showed no negative effect on the economy.<sup>90</sup> Paid leave also introduces a healthier work environment because employees are more likely to take leave when they are feeling ill rather than go to work and infect others in the office.<sup>91</sup> After the 2009 H1N1 flu epidemic, businesses that offered paid leave were found to have less overall absences than those who did not.<sup>92</sup> Evidence has also shown that employees do not abuse their given paid sick leave by taking extraneous sick days.<sup>93</sup>

So why not require employers to provide more than 40 hours of paid leave? Many critics say that offering paid leave will require employers to reduce other benefits or compensation or that in the employee's absence, they will have to hire a temporary employee, increasing the employer's costs.<sup>94</sup> As shown in the studies above, these costs and concerns of employers, have not proven to be true. Employers often look to the short-term costs instead of fully understanding the long-term benefits.<sup>95</sup> However, according to studies in Connecticut, only two-thirds of employees even took their paid leave days, and of those who took their leave, they only used about half of the days provided.<sup>96</sup> Studies have found no negative effects on the economy and in fact, found that the number of businesses and the employment rate increased in cities where paid leave was required compared to their surrounding areas.<sup>97</sup> Despite this, many businesses are also slow to experiment and adapt to new policies, even when such modernization has proven to increase long-term profits.<sup>98</sup>

Although Maryland offers 40 hours of paid leave for employees, this time is not enough. Paid leave should not only apply to family and physical health

---

<sup>87</sup> *Id.*

<sup>88</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 79, at 17.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Lisa McKinney, *The Economics of Paid Family Leave*, CAPITOL IDEAS, Sept.-Oct. 2017, at 14

[https://www.csg.org/pubs/capitolideas/2017\\_may\\_june/CI\\_Sep\\_Oct\\_2017\\_96.pdf](https://www.csg.org/pubs/capitolideas/2017_may_june/CI_Sep_Oct_2017_96.pdf).

<sup>95</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 79, at 18.

<sup>96</sup> See STAFF OF JOINT ECON. COMM., 114TH CONG., REP. ON THE ECONOMIC BENEFITS OF PAID LEAVE: FACT SHEET at 4.

<sup>97</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 79, at 17.

<sup>98</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 79, at 18.

matters, but should extend to those relating to personal and mental health as well. There is little evidence to show a negative effect resulting from offering paid leave.<sup>99</sup> In addition, when employers require mandatory leave, employees are able to make use of this time without feeling guilty of burdening their employers.<sup>100</sup>

In 2015, President Obama gave federal employees the ability to take six weeks of paid parental leave.<sup>101</sup> Obama's State of the Union Address in 2015 referred to paid leave as a "crucial economic matter."<sup>102</sup> The allotted time of 40 hours per year that Maryland offers is not enough time to allow for sick leave, family leave, mental health leave, childcare leave, and vacation leave. Without more time of paid leave, employees are forced to go to work sick, provide for outside childcare, not take vacation or mental health time or, more drastically, file for bankruptcy when they are forced to take additional leave without pay.<sup>103</sup>

### III. SOLUTION

#### A. *Family and Mental Health Effects*

There are many additional benefits to mandatory paid leave for both employers and their employees, such as providing for better mental health, allowing families to spend more uninterrupted time together and increasing the time that family members can devote to caring for their loved ones in time of need. Paid leave allows parents to avoid choosing between their families and keeping their jobs.<sup>104</sup> By providing longer and mandatory paid leave, Maryland will ensure that workers are able to take an extended leave to care for their children during a time of sickness or to participate in extracurricular activities in their families' lives.<sup>105</sup> Studies have also shown that extended parental leave can boost a child's long-term health and development, and can even increase their academic skill level and future earning outcomes.<sup>106</sup>

---

<sup>99</sup> Christopher Ruhm, *The Economic Consequences of Parental Leave Mandates: Lessons from Europe*, 113 Q. J. OF ECON. 285, 317 (1998).

<sup>100</sup> See STAFF OF JOINT ECON. COMM., 114TH CONG., REP. ON THE ECONOMIC BENEFITS OF PAID LEAVE: FACT SHEET at 1.

<sup>101</sup> Claire Cain Miller, *The Economic Benefits of Paid Parental Leave*, N. Y. TIMES, Jan. 30, 2015, <https://www.nytimes.com/2015/02/01/upshot/the-economic-benefits-of-paid-parental-leave.html>.

<sup>102</sup> *Id.*

<sup>103</sup> See STAFF OF JOINT ECON. COMM., 114TH CONG., REP. ON THE ECONOMIC BENEFITS OF PAID LEAVE: FACT SHEET at 1.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

Shifts in societal norms have led to an increase in single parents, and approximately 65% of all single parents' state they must work full-time to provide for their children.<sup>107</sup> This provides an additional need for extended mandatory paid leave for employees who are single parents. The dynamic changes in family life have shown that 44% of women and 48% of men have said that work interferes with their family life and nine out of ten employees believe that they would be able to do their work better if employers provided more flexibility to meet their families' needs.<sup>108</sup>

In addition to providing time to care for family members, mandatory paid leave will help increase employees' overall mental health.<sup>109</sup> Research by the University of Iowa's Department of Sociology has shown that work and family life tensions are linked to physical and mental health ailments, depression, sleep disorders, decreased concentration, marital tension and decreased companionship.<sup>110</sup> This research has shown that reduced work hours and flexible schedules increase mental health and reduce depression, anger and anxiety while also reducing work turnover and increasing productivity.<sup>111</sup> This is not to say that employers should lower the amount of hours employees work weekly, but rather that extended and mandatory paid leave will help to increase the mental health of the employees who regularly work a forty-hour workweek.<sup>112</sup>

Furthermore, America has been referred to as the "no vacation nation," and this is no surprise as the United States is the only industrialized nation without a minimum annual leave statute.<sup>113</sup> A total of 137 other countries, including all developed countries, have statutory paid vacation leave.<sup>114</sup> A study by the University of Toronto School of Management recently found that 41% of North American employees reported high levels of anxiety in the workplace.<sup>115</sup> Americans are twice as likely as Europeans to suffer from anxiety and depression and much of this is linked to being overworked.<sup>116</sup>

---

<sup>107</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 79, at 6.

<sup>108</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 79, at 7.

<sup>109</sup> Deborah J. Anthony, *The Hidden Harms of the Family and Medical Leave Act: Gender-Neutral Versus Gender-Equal*, 16 AM. U. J. GENDER SOC'Y. POL'Y & L. 459, 502 (2008).

<sup>110</sup> *Id.*

<sup>111</sup> Jennifer L. Glass & Sarah Beth Estes, *The Family Responsive Workplace*, 23 ANN. REV. SOC. 289, 293 (1997).

<sup>112</sup> *Id.*

<sup>113</sup> John de Graaf, *The Case for Paid Vacation*, TAKEBACKYOURTIME.ORG, <https://takebackyourtime.org/the-case-for-paid-vacation/> (last visited Jan. 1, 2019); John de Graaf, *Many Feel Trapped By Work*, TAKEBACKYOURTIME.ORG, (Sept. 5, 2014, 4:00 PM) <https://takebackyourtime.org/many-feel-trapped-by-work/>.

<sup>114</sup> *Id.*

<sup>115</sup> Jim Folk and Marilyn Folk, *Anxiety Effect on Society Statistics*, ANXIETY CENTRE (Jan. 1, 2019), <https://www.anxietycentre.com/anxiety-statistics-information.shtml>.

<sup>116</sup> de Graff, *supra* note 113.

Vacations have been proven to reduce depression, increase sleep, and increase work productivity upon return.<sup>117</sup> Vacations have also been shown to reduce stress and burnouts at work, which because of absenteeism, turn over, diminished productivity and medical, legal and insurance costs, have cost the United States economy over \$300 billion a year.<sup>118</sup> Studies show that this amounts to at least a two-week vacation period.<sup>119</sup>

Unfortunately, only about one-third of employed Americans take the vacation days that they are entitled to.<sup>120</sup> Although this is similar in countries in Europe, those employees are entitled to far more leave and receive approximately a month of paid vacation a year.<sup>121</sup> Many European countries, however, have policies set in place to ensure that employees take their allotted leave each year.<sup>122</sup> For example, the United Kingdom forbids employers from incentivizing employees from not taking paid leave and require employees to take a minimum requirement of paid leave before the end of the year.<sup>123</sup> Requiring a portion of the leave to be mandatory ensures that employees receive the benefits that vacation days provide. Critics of the mandatory requirement may say that it is not enforceable; however, the nudging effect of this law ensures employees the right to fight for their paid leave and be able to take necessary action if they are not receiving the required allotted time.<sup>124</sup> For these reasons, it is in the best interest for Maryland to enact a statute that not only provides paid leave but also requires that a portion of the leave is mandatory for employees to take.

### B. *Large Businesses v. Small Businesses*

Critics say that mandatory paid leave will negatively affect small businesses, but how will these changes actually affect small businesses? According to the Family and Work Institute, small businesses are defined as employing 50 to 99 employees, and large businesses are defined as employing 1,000 employees.<sup>125</sup> Governor Hogan proposed a Compromised

---

<sup>117</sup> Alina Tugend, *Take a Vacation, For Your Health's Sake*, N.Y. TIMES (June 8, 2008), [https://www.nytimes.com/2008/06/08/business/worldbusiness/08iht-07shortcuts.13547623.html?pagewanted=all&\\_r=0](https://www.nytimes.com/2008/06/08/business/worldbusiness/08iht-07shortcuts.13547623.html?pagewanted=all&_r=0).

<sup>118</sup> *Workplace Stress*, THE AMERICAN INSTITUTE OF STRESS, <https://www.stress.org/workplace-stress> (last visited Nov. 25, 2019).

<sup>119</sup> de Graff, *supra* note 113.

<sup>120</sup> de Graff, *supra* note 113.

<sup>121</sup> de Graff, *supra* note 113.

<sup>122</sup> Ray, *supra* note 73, at 6-7.

<sup>123</sup> Ray, *supra* note 73, at 6-7.

<sup>124</sup> See generally Richard H. Thaler & Cass R. Sunstein, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2008).

<sup>125</sup> Kenneth Matos ET AL., SOC'Y FOR HUMAN RES. MGMT., NATIONAL STUDY OF EMPLOYERS 10 (2016), <https://www.shrm.org/hr-today/trends-and->

Paid Leave Act in 2018 that would have allowed for small businesses, who could prove to be in financial hardship to have a waiver of the required 40 hours of paid leave.<sup>126</sup> This was an unsuccessful and in response, the General Assembly enacted the Healthy Working Families Act.<sup>127</sup> Though it was believed that Hogan's act would have provided the greater benefit to small employers, paid leave has actually been proven to benefit both small employer and large employers.<sup>128</sup> According to the 2016 National Study for Employers, small employers offer more flexibility when it comes to adjusting start and end times at the office, control over when to take breaks and ability to take time out of the workday to attend personal or family needs without the loss of pay.<sup>129</sup>

Small employers are also more likely to provide replacement pay for employees taking parental leave.<sup>130</sup> The replacement pay is generally a percentage of the employee's annual salary.<sup>131</sup> This goes to show showing that economically, small employers have not been disadvantaged due to offering this paid leave.<sup>132</sup> Small and large employers are both equally as likely to offer time off to allow employees to care for their elderly parents.<sup>133</sup> This evidence does not suggest that there are no differences between what large and small employers offer, but to show that many times, small employers often allow for more flexibility and, therefore, adjusting to a mandatory paid leave law would not be such a big transition. Additionally, increased benefits lead to a lower turnover rate, increased productivity and an overall increase in the employees' satisfaction with their job.<sup>134</sup>

### C. Proposed legislation

The legislation that is proposed here would require all Maryland employers to provide a minimum of 130 hours or three workweeks of paid leave. This time off would be given to all full-time employees and would begin to accrue after they have worked for a period of 24 weeks. Forty hours of this time will

---

forecasting/research-and-surveys/Documents/National%20Study%20of%20Employers.pdf (Data from medium size employers ((100 to 999 employees)) is excluded because results fall between same and large size employers showing a linear relationship).

<sup>126</sup> Press Release, Office of the Governor, *supra* note 31. (Hogan defined small businesses as businesses with under 50 employees).

<sup>127</sup> MD. CODE ANN., LAB. & EMPL. § 3-1301 (West 2019).

<sup>128</sup> Matos, *supra* note 125, at 14.

<sup>129</sup> Matos, *supra* note 125, at 14.

<sup>130</sup> Matos, *supra* note 125, at 26.

<sup>131</sup> Matos, *supra* note 125, at 26.

<sup>132</sup> Matos, *supra* note 125, at 27.

<sup>133</sup> Matos, *supra* note 125, at 35.

<sup>134</sup> Matos, *supra* note 125, at 56.

be mandatory for employees to take per year. The mandatory 40 hours is a modest request that can be broken up or taken all at once to ensure that employees use and receive the benefit of their leave. This time may be taken for any reason with a requirement that the employee provides their employer with a week's notice, except in cases of emergency. Unused hours may be carried over to the following year, with a maximum of 40 hours to be carried over. This solution offers a middle ground of paid leave that is not as high as other countries but is a significant amount of time to allow for relaxing vacations, mental health days and any personal or family situations that may arise.

This solution would be made mandatory for all employers to follow. To assist small employers (as defined by Governor Hogan of 50 or fewer employees), a section could be added to lower the required leave for small employers to 80 hours or two work weeks, with all the other qualifications as above. Although the effects have proven to be cost-neutral, until this policy has been implemented to provide updated statistics, this would allow for financial security for smaller businesses.<sup>135</sup> This policy should be re-evaluated every five years. This legislation will be successful in Maryland because the benefits substantially outweigh the costs and will contribute to the growth and success of the state as a whole.<sup>136</sup>

Additionally, mandatory paid vacation is currently making its way to federal legislation within the United States. Congress, through the Green New Deal and other proposals, has supported a list of economic stimulus programs in the United States that aim to address mandatory paid vacation, among many other economic and climate proposals.<sup>137</sup> A part of this proposal would provide for the establishment of a National Investment Employment Corps that would provide universal voluntary job coverage for all adult Americans.<sup>138</sup> Offered in this proposal for employees are paid family and sick leave and an additional one-week paid vacation for every three months worked.<sup>139</sup> This would be a national breakthrough in employment rights and would take the proposed legislation above to a federal level.

#### IV. CONCLUSION

There are many reasons why Maryland needs a mandatory paid leave statute outside of the sick and health leave provisions provided within the

---

<sup>135</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 74, at 17.

<sup>136</sup> U.S. COUNCIL OF ECON. ADVISORS, *supra* note 74, at 17.

<sup>137</sup> S.J., Res. 8, 116th Cong. (2019).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*



current statute. The 40 hours that are provided are not enough to cover the employees' well-being and family companionship. Mandatory paid leave is vital to creating a more productive and healthy work environment. Maryland needs to require employers to allow their employees to take time away from work, for reasons apart from individual or family illness. Creating a mandatory paid leave in Maryland will benefit the economy, increase work/life balance and productivity and increase the health and well-being of employees. Not only will Maryland benefit from this legislation, but the country as a whole would receive the same benefits if it were to be enacted federally. When hard work is rewarded with providing employees with a reasonable amount of paid leave, the country will begin to move in a direction where citizens are healthier, happier and overall more successful. From the wise words of Nobel Peace Prize nominee, Bryant McGill, "Your calm mind is the ultimate weapon against your challenges. So relax."<sup>140</sup> Mandatory paid vacation would not only give employees the peace of mind of knowing they have the time off when needed, but would afford them the opportunity to take the time and relax. In the lifestyle of instant satisfaction and overachieving, it is important that our citizens have the opportunity to relax.

---

<sup>140</sup> Bryant McGill, *Quotes*, BRYANTMCGILL.COM, <https://bryantmcgill.com/quotes?search=relax> (last visited Mar. 16, 2019).