



A GUIDE TO IMPLEMENTING

PAID FAMILY LEAVE

LESSONS FROM CALIFORNIA

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ACKNOWLEDGEMENTS

This Guide was written with assistance from Angela Clements and Jenya Cassidy. It is based, in part, on interviews with Catherine Albiston, UC Berkeley School of Law, Stephanie Bornstein, Center for Worklife Law, Janet Botill and Linda Fredericksen, California Employment Development Department, Noreen Farrell, Equal Rights Advocates, Elizabeth Kristen, Employment Law Center—Legal Aid Society, Kim Kruckel, Parent Voices, Ruth Milkman, City University of New York, Jennifer Richard, former aide to State Senator Sheila Kuehl, Rona Sherriff, formerly Senate Office on Research, Pat Shiu, formerly Employment Law Center—Legal Aid Society (ELC-LAS) and Sharon Terman, ELC-LAS. Thank you for your generosity of time and assistance in making this possible. We also thank Jenny Erwin and Kelly Jenkin-Pultz, US Department of Labor Women’s Bureau, for their invaluable comments.

We also wish to thank the staff and leadership of the Disability Insurance Branch of the California Employment Development Department for their partnership and their commitment to making Paid Family Leave a successful program. We especially thank Sandra Poole, Deputy Director and Janet Botill, Chief of Staff of the Disability Insurance Branch for going above and beyond in both their leadership of the program and collaboration with the advocates.

And finally we commend the commitment and hard work of former Senator Sheila Kuehl, the California Labor Federation and the activists in the California Work and Family Coalition who won the right to Paid Family Leave benefits in 2002 and continue to advocate for working families to both have a job and care for their families.

Funding for this Guide was provided by

Alfred P. Sloan Foundation

Rosenberg Foundation

Family Values @ Work, a Multi-State Consortium

This research publication was developed by the Labor Project for Working Families in partnership with the Berkeley Center on Health, Economic & Family Security at UC Berkeley School of Law with partial funding from the US Department of Labor Women’s Bureau under contract number DOLB10J420835. The opinions expressed herein do not necessarily reflect the position of the U.S. Department of Labor and no official endorsements by that agency should be inferred.

This report is based on the research and analysis of the authors. Any mistakes are theirs alone. Any opinions expressed herein are also theirs alone and do not necessarily reflect the opinions of their funders.

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In memory of **JOANNIE CHANG** (1969 – 2010) who played a leading role in the fight for paid family leave and was a true champion of working families everywhere.

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INTRODUCTION

In 2004, California started its Paid Family Leave program, becoming the first state in the Nation to provide paid benefits to workers on leave from their jobs to bond with a newborn, newly adopted child, or newly placed foster child, or to care for a seriously ill family member. In the first six years of the program, more than one million Californians benefited from Paid Family Leave¹—gaining necessary financial security while taking leave from their jobs during these critical life events.

In the past several years, the demographics of today’s workers and families have shifted so that more and more workers are combining work with family responsibilities. As a result, interest in paid family leave at the state and federal level has increased. Last year, New Jersey became the second state in the nation to offer paid family leave benefits to its workers.² In addition, Washington State passed, but has not yet implemented, a paid parental leave program.³ State legislatures in many other states are considering paid family leave legislation.⁴ President Obama’s FY2011 budget included a request that Congress provide funds for a “State Paid Leave Fund” to help states with start up costs associated with paid family leave programs.⁵ This is a signal that the federal government is interested in supporting and encouraging state action.

This Guide is intended to **provide key lessons learned in passing and implementing California’s Paid Family Leave program.** To draw these lessons, we interviewed a core group of individuals who were involved in passing the legislation and in the early implementation of the program. This group included legislative aides, attorneys, work/family advocates, researchers and the state agency that administers the program. In addition, we carefully reviewed the legislative and regulatory history of the program.

This Guide includes information about the **basic components** of California’s Paid Family Leave program and **the history of how the bill was passed** in California. The Guide also includes a background on five areas crucial to successful implementation and key lessons learned in each of these areas: **outreach and education, administration, employer issues, policy issues, and research, evaluation and data collection.**





Major Findings

Successes of California Paid Family Leave Program	
[✓]	a well administrated program
[✓]	the involvement of a diverse work and family coalition, including labor unions, caregivers and senior organizations, child care and other grassroots groups, legal advocates and women’s organizations, and community empowerment groups
[✓]	the strong, cooperative relationship between advocates and the administrative agency
[✓]	the use of existing structures to quickly build the program.

Challenges	
[✓]	the lack of job protection
[✓]	the confusing relationship to other state and federal family leave laws
[✓]	the narrow definition of family member
[✓]	the lack of awareness and the difficulties in accessing the benefit
[✓]	the lack of comprehensive data and research on what is working and not working.

CALIFORNIA PAID FAMILY LEAVE LAW—THE BASICS⁶

Foundation Paid Family Leave (PFL) was built on top of an important foundation in California—its temporary disability insurance program. Five states and one territory—California, Hawaii, Rhode Island, New York, New Jersey and Puerto Rico—have statewide temporary disability insurance programs. These government insurance programs provide temporary disability insurance benefits to workers who are unable to work because of their own non-work-related illnesses or injuries, including disabilities related to pregnancy, child birth and recovery from child birth.⁷

California's program, called **State Disability Insurance**, has been in operation since 1946 and has fully covered pregnancy disability since the late 1970s. The program is entirely funded through a payroll tax paid by employees. When a worker becomes injured or disabled, the worker applies for benefits through the state agency that administers the program—the Employment Development Department. Workers can receive up to 55 percent of their average weekly wages up to a maximum level of \$987 per week in 2011 for as long as the injury or disability lasts, but not longer than 52 weeks.

The California Paid Family Leave program was specifically built on top of this program. The payroll tax paid by employees now covers both the State Disability Insurance program and the California Paid Family Leave program. **Paid Family Leave is administered by the same state agency—the Employment Development Department (EDD)—that administers the State Disability Insurance program, as well as the state's Unemployment Insurance (UI) program.**

Basic Benefit Paid Family Leave provides **partial pay for up to six weeks per year** of leave to care for a relative with a serious health condition, or for the birth, adoption or foster placement of a child. The wage replacement is 55 percent of the individual's average weekly salary up to a cap of \$987 per week in 2011. Leave does not need to be taken consecutively: the minimum increment of leave is one day, but employees can take intermittent leave over the course of a 12-month period.

Eligibility **All employees who pay into the State Disability Insurance Fund are covered by PFL.** There are no minimum work hours or time-of-service requirements, but there is an earnings floor: individuals must have earned at least \$300 in wages during the previous 12 months. For the purposes of PFL, **“family member” is defined as a “child, parent, spouse, or domestic partner.”** The family member's health condition must require care-taking by the employee taking the leave.

Funding PFL is **entirely funded by employee contributions** to the State Disability Fund. Workers pay contributions at a rate determined annually by the EDD Director. In 2010, the combined payroll tax for SDI and PFL was 1.1 percent of the employee's wages.

Taxation PFL benefits in excess of the contributions paid through payroll taxes are considered taxable income by the Internal Revenue Service.⁸ But the benefit is not taxable by the State of California. Whether paid leave benefits in other states will be taxed by the IRS will depend on a number of factors, including whether the program is funded by employers or employees. States should also consider their local tax rules.⁹

Limitations There is a **waiting period of seven days**, during which time the employee must be unable to perform work and does not receive benefits. Employers are permitted to require that employees use up to two weeks of accrued vacation leave before they begin receiving benefits.

Workers' Rights Paid Family Leave **provides partial wage replacement, not job-protected leave.** Thus employees who take PFL are only guaranteed the right to return to their job if they are covered by another law such as the Family and Medical Leave Act (FMLA). PFL does not, in and of itself, create a right to take leave or return to one's job once the leave is completed. However, for women who give birth, many first receive wage replacement through the State Disability Insurance program and are protected by the Pregnancy Disability Leave Act—a California law protecting all pregnant workers (working for employers with five or more employees) from job discrimination. In addition, because the PFL is an insurance benefit and not an employer provided program, even those workers who voluntarily leave their jobs, or are fired from their jobs, are still eligible to collect the benefit as long as they meet the basic eligibility rules of the program, and have earned \$300 during the previous 12 months.

Employers' Duties Employers do have some duties under PFL. First, they are **required to provide notice about PFL** to employees hired after January 1, 2004, and to those who are taking a leave that might be eligible for PFL benefits. Second, if employers offer their employees a private family leave insurance plan and allow their employees to opt out of the state PFL program, the employer must demonstrate that their coverage exceeds the state plan in at least one respect.



Photo courtesy of:
Family Values @ Work

California’s Paid Family Leave (PFL) program was signed into law on September 23, 2002.¹¹ The genesis began nearly two decades before when the National Partnership for Women and Families¹² (National Partnership) worked to pass the Family and Medical Leave Act of 1993 (FMLA). After its passage, studies showed that many lower-wage workers were unable to exercise their rights because the leave was unpaid.¹³ In response, the National Partnership launched the Campaign for Family Leave Income to push for paid leave programs in the states.

California advocates had been working locally since the early 1990s to educate organized labor and other constituencies on FMLA. Advocates had already won some victories in the State Legislature: notably, **the passage of the California Family Rights Act of 1991 (CFRA), a state-level version of the FMLA.**

In the late 1990s, then-State Senator Hilda Solis began urging the Legislature to pass a bill to **increase the State Disability Insurance benefit level and to study and report to the Legislature on the fiscal impact of extending State Disability benefits to individuals absent from work due to family needs.**¹⁴ In 1999, this bill passed and in 2000, the study was released, projecting that disability insurance could be extended to cover family-related leave for a payroll tax increase of just 0.1%, with total output of around \$217 million paid out in claims in the first two years.¹⁵

To help capitalize on this forward momentum, the Labor Project for Working Families received support from the David and Lucile Packard Foundation to develop the **Work and Family Coalition.** This Coalition included:

[✓]	American Civil Liberties Union	[✓]	Congress of California Seniors
[✓]	Asian Law Caucus	[✓]	Employment Law Center-Legal Aid Society
[✓]	California Labor Federation	[✓]	Equal Rights Advocates
[✓]	California Child Care Resource & Referral Network	[✓]	Family Caregivers Association
[✓]	Center for Policy Alternatives	[✓]	Labor Project for Working Families
[✓]	California National Organization for Women	[✓]	Older Women’s League
[✓]	California Women’s Law Center	and many others.	



“The PFL program was very important to me especially being a first time Mom. If it were not for this program, I would have to go to work right after meeting my child. But I was able to stay home and really bond and care for our new baby.” —A Working Mother

The California Labor Federation, the **state’s AFL-CIO, became the main sponsor of paid family leave legislation.** State Senator Sheila J. Kuehl, a longtime progressive advocate, became the author of the bill, SB1661, which was introduced in February 2002. The original bill included 12 weeks of leave to match state and federal unpaid job-protected leave, and included cost-sharing measures to balance the financial burden between employers and employees.¹⁶

In the following months, the Coalition and its members advocated strongly for the legislation. Then in June 2002, two important events occurred: the bill passed the Senate in a party-line vote, and U.C. Berkeley released a cost/benefit analysis of providing paid family leave.¹⁷ With the bill heading to the Assembly and the results of the cost/benefit study newly available, public discourse on the legislation heated up rapidly.¹⁸

Over the summer, **the Coalition mobilized its grassroots and union partners to send thousands of postcards and faxes to Assembly members, staffed tables at conferences of coalition members, distributed literature at union meetings, conducted extensive media outreach, and joined forces with advocacy organizations to disseminate information via the internet.** At the same time, the state’s business groups, led by the California Chamber of Commerce, were conducting similarly strong advocacy against the bill, warning that the already-slumping economy would take an even greater dive if a paid family leave bill were enacted.¹⁹

Once SB 1661 arrived in the Assembly, significant changes were suggested by a cadre of moderate representatives. Rather than risk having to reintroduce the bill in the subsequent post-gubernatorial-election session, the bill’s author negotiated compromises with the moderates that would appease business interests while retaining the legislation’s substantive assistance for working families. **The negotiated bill cut the benefit’s duration from 12 weeks to 6 weeks, removed the employer contribution, and allowed employers to require their employees to use up to two weeks of employer-provided vacation before receiving state benefits.**²⁰ With these compromises in place, the bill moved through the Assembly and back through the Senate in a matter of days.²¹

But the success of SB 1661 was still not assured: Governor Gray Davis was in the middle of a tight reelection battle, and he had not been a vocal supporter of the legislation.²² But **after nearly a month of concerted pressure by the Coalition, the Labor Federation, unions, and celebrities,**²³ **the Governor signed the bill on September 23, 2002.**²⁴ **Once he signed it into law, Governor Davis frequently referred to the legislation as one of his first term’s major accomplishments.**²⁵

The bill was only able to pass and be enacted because of the support of:

[✓]	an active, diverse coalition, including strong labor support and grass roots organizations
[✓]	a committed, experienced and strategic legislator who shepherded the bill through the legislature and
[✓]	a governor who was willing to sign the legislation.



Passing Paid Family Leave in California was just the beginning. It was clear from the start that success would hinge on successful implementation. In this section, we begin by examining three areas that have been critical in the implementation of the program: **outreach and education, administration and employer issues.** We then examine two areas in which there have been gaps that have led to challenges in successful implementation: **policy issues and research, evaluation and data collection.** In each of these sections, we offer lessons learned that can aid other states in the design and implementation phases.

OUTREACH & EDUCATION

Outreach Campaign by State Agency

In 2003-2004, the Employment Development Department (EDD), the state agency administering the program, conducted a **one year public education campaign** including:

[✓]	promotional billboards near heavily trafficked public highways and hospitals
[✓]	informational brochures and posters available in a number of languages (including Vietnamese, Chinese, Spanish, and Tagalog) and
[✓]	direct outreach to clinics and community centers in major urban areas including Fresno, San Diego, the San Francisco Bay Area, and Los Angeles.

Unfortunately, EDD's efforts to educate Californians about the new paid family leave benefit were hampered by several factors:

1. **Only \$1 million of EDD funds was used for an initial statewide advertising campaign.** In the years after that, public funds for outreach and education were nearly nonexistent, and the Coalition's attempts to access substantial foundation or other outside funding were unsuccessful.
2. **The change in governance in California affected the implementation of the program.** The program was implemented the year after Governor Davis, who signed the bill, had lost a statewide recall. The next governor, Governor Schwarzenegger, scaled back and redirected outreach efforts.
3. **The name of the benefit was officially changed from Family Temporary Disability Insurance to Paid Family Leave.** It appears that the new name of the program led to confusion because it may give the false impression that the program requires job protected leave, rather than partial wage replacement during times of family leave.

In 2007, the Work and Family Coalition advocated, along with the State Legislature’s Women’s Caucus and Senator Kuehl for more PFL outreach through EDD. As a result, in late 2007, **EDD redirected staff to create a new outreach unit for the SDI program including PFL.** While there is no dedicated financial amount for outreach, the unit is part of the administrative function of SDI. They are able to do trainings and outreach to employers, medical staff and targeted community organizations.

Ongoing outreach efforts are critical to the program’s success. EDD maintains an **excellent website** (<http://www.edd.ca.gov>) with statistics, frequently asked questions with examples and good, clear information about accessing the program. **Brochures are downloadable** on the website and **available in several languages.** In addition, **applications can be ordered in bulk** by employers, health facilities and advocacy organizations to make them available to the public.

Existing Advocacy Structures

Paid Family Leave outreach received a significant boost from existing advocacy structures, including the Legal Aid Society—Employment Law Center, Equal Right Advocates and the Labor Project for Working Families. These groups together with the Asian Law Caucus and the California Women’s Law Center provided legal advice and information on the new law through their hotlines and legal clinics. Although formal outreach and education efforts by EDD were significantly limited, the **Coalition raised foundation funds to provide trainings on PFL** to advocates and union representatives through multiple organizations over several years.

Lessons Learned	
[✓]	It is critical to build funds into the legislation for a multi-year, diversity-inclusive public awareness campaign.
[✓]	Outreach and education are far more effective if tied to an existing assistance infrastructure (such as an advocacy or legal organization).
[✓]	The administering agency should have ongoing outreach tools such as a website, materials in multiple languages and training staff.
[✓]	The name of the program should be assessed as it impacts outreach.

ADMINISTRATION

The Employment Development Department (EDD), charged with administering PFL, has been able to effectively and efficiently administer the program largely because **it has relied upon the infrastructure and skills of personnel within EDD who run the State Disability and Unemployment Insurance (UI) programs.** By using simple forms and focusing on the quick administration of benefits, EDD has generally provided high-quality service for those Californians able to access PFL.



Family Caregiver Alliance, used with permission. Photo by Nita Winter

“My mother had Stage IV breast cancer and Paid Family Leave allowed me to take the time off of work to take care of her during her final months. I could never have afforded it otherwise. The huge relief this provided cannot be fully explained in words. I am grateful that I live in a state that offers these benefits!” —Caregiver of Parent

Collaboration with Advocates

Of equal importance has been EDD’s positive, open and **collaborative relationship with work-family advocates**. This includes legislative aides, labor unions, caregivers and senior organizations, child care and grassroots groups, legal advocates and women’s organizations. This relationship, formed during the law’s implementation, has been vital to PFL’s success. **Through quarterly meetings with the senior staff running the PFL program, this partnership keeps advocates informed of EDD’s next steps and continuing challenges. It allows EDD to remain aware of the obstacles people face when accessing the program.** Examples include:

[✓]	having access to key staff at the agency to report problems (such as when the EDD hotlines were unavailable)
[✓]	addressing problems and working cooperatively for solutions
[✓]	creating innovative outreach ideas (such as including information on PFL in State Disability checks)
[✓]	working together to develop better information for the website
[✓]	developing ways to improve the application form
[✓]	advocating for funding to support good administration of the program (such as making the case that furloughing state workers caused problems for PFL claimants and did not save the state money).

Administrative Hurdles

There have, however, been **some significant administrative hurdles** to providing PFL to Californians. At the beginning, EDD had problems getting **adequate staff** on board for claims processing due to a hiring freeze. In addition, adjustments had to be made to reflect whether PFL was **taxable at the state and federal level**. It is recommended that **adequate time be allowed for implementation and changes**.

In addition, EDD has been hampered by a **lack of technology**. Claimants cannot currently apply for (or download an application form) benefits on-line. However, EDD expects to have an on-line application available for claim filing by the end of 2011.

Accessibility

EDD maintains a **toll free hotline** to answer questions on PFL. California agencies are required by law to provide services in **English and Spanish**. However they now also provide services in **Cantonese, Vietnamese, Armenian, Punjabi and Tagalog**. When a non-English speaker contacts the program, the representative tries to determine the language needed, contacts a translator and then conducts a three-way conversation to assist the customer. However, advocates report that at the beginning of the program, individuals who spoke a language other than English or Spanish had difficulty receiving these services.

Lessons Learned	
[✓]	Building paid family leave on top of an existing infrastructure such as temporary disability insurance or unemployment insurance programs is very helpful.
[✓]	A strong partnership between advocates and the agency administering the program can be an effective tool.
[✓]	There needs to be well funded technology and telephone infrastructure to answer claimants' questions (often in several languages) and process claims.
[✓]	The possibility of hiring freezes and state furloughs and its effects must be considered in all phases of the program.

EMPLOYER ISSUES

From the start, the Chamber of Commerce opposed the Paid Family Leave program and continued to fight against it even after implementation. In fact, some business interests tried to use the development of state regulations to advocate for substantially weakening the law.²⁷ Despite this opposition from the business lobby, employers in California are required by law to provide information about the Paid Family Leave to new employees and to employees needing leave for one of the purposes of the program.

Overall, employers have struggled to understand Paid Family Leave. Some were confused about whether it required them to provide job-protected leave to their employees given the name of the program. Others provided inaccurate information due to the confusion of different family leave laws. Advocates found that some employers did not provide the required information to employees.

Some employers do proactively encourage their employees to use the program because they understand the benefit of an employee paid family leave program. Such a program can relieve the employers from paying the full cost of family leave (a cost which they may have been paying in full prior to the implementation of the state program).

Lessons Learned	
[✓]	Those working on PFL programs should find ways to productively engage the business community early on.
[✓]	Employers that already provide paid family leave can benefit by allowing their workers to access the state program and then offering additional benefits.
[✓]	Employers should be provided with adequate training on Paid Family Leave programs.

POLICY ISSUES

Although the passage and implementation of California’s PFL program is an extraordinary step in the creation of a family-friendly workplace,²⁸ there are still **three central, interrelated policy concerns that continue to hamper the program’s widespread effectiveness:**

1. the lack of job protection
2. the confusion caused by overlapping laws providing job protection for pregnancy disability and family and medical leave
3. the limited definition of family member.

While each of these issues have caused problems, it is important to note that neither job protection nor an expanded definition for family member was included in early versions of the bill.

Job Protection

First, **the lack of job protection prevents many workers from exercising their rights under the PFL program.** Attorneys and outreach workers alike have reported that the lack of job protection is a central hurdle to workers taking PFL. Legal advocates staffing employment law hotlines report receiving calls from employees who took PFL with the false belief that their job was protected, only to find that they were no longer employed. The employer is not obligated to notify the employee that there is no job protection when they take leave, nor are they obligated to provide notice of an impending termination due to leave.

Although the law does not offer job protection, it does provide a critical form of financial support for working parents and caregivers who may leave their jobs, or change jobs after a leave. Using State Disability and Paid Family Leave can offer these workers some financial security during this transition in their lives.

Coordination with Other Leave Laws

The second central policy issue remains **the problematic coordination of PFL with other state and federal leave laws providing rights to workers to take job-protected pregnancy disability and family and medical leave.** Some coordination has been moderately successful: workers who are covered by the California Family Rights Act (CFRA) or the Family and Medical Leave Act (FMLA) can take PFL and have that leave “count” as job-protected; indeed, the statute requires employees covered by job-protected leave laws to take PFL concurrently with that leave.²⁹ And for women who take state SDI for pregnancy-related disability, the transition to PFL for post-birth baby bonding works well, as women are automatically notified of their ability to take PFL after their pregnancy-related SDI leave runs out.

But in general, confusion remains about whether leaves are job protected, how to transition from one kind of leave to another and whether multiple kinds of benefits can be used simultaneously.

Narrow Definition of Family

Finally, **the narrow definition of family member continues to be a pressing policy concern.** Around 10 percent of PFL claims are rejected because the employee sought to take leave to care for a family member not covered by the statute.³⁰ And this number likely underestimates the number of employees who would take PFL to care for grandparents, in-laws, siblings, or other close relations but who do not even apply because they know it is not covered. Families today are less likely than ever to consist of the traditional two-parent structure. Non-traditional families are even more common in low-income and minority communities. So until the PFL definition of family member reflects the real structure of today’s families, many workers will be unable to take leave to care for their loved ones.

Lessons Learned	
[✓]	Family leave laws should be as consistent as possible to prevent confusion for the worker.
[✓]	Greater requirements for employers are needed to inform employees of their rights to paid family leave benefits and job protection.
[✓]	The need for job protection for workers who take paid family leave should be addressed.
[✓]	Paid Family Leave programs should include expanded definitions of families.

RESEARCH, EVALUATION AND DATA COLLECTION

PFL does not have any requirements for collecting certain data or for evaluating the effectiveness of the program. As a result, **very limited information is collected about beneficiaries of the program**. In fact, the only data provided by the EDD about program beneficiaries is the reason for leave (i.e. bonding with a newborn or caring for a seriously ill family member) and their gender.

The administration and overall effectiveness of the program could be improved by **knowing more about those currently accessing PFL benefits**. For example, the EDD does not collect information on:

- the income-level of beneficiaries
- the industries in which they work
- the size of their employer
- marital status
- educational level and
- for whom they are caring.

The EDD also does not collect good information about **how beneficiaries are using their benefits**. For example, there is no information on:

- workers taking intermittent leave and for how long
- employers that require the use of paid vacation days before employees can collect PFL benefits and
- whether workers return to their previous jobs.

In 2009, the Coalition helped to secure foundation as well as EDD funds for researchers at UCLA and Rutgers University to do a broad survey of workers and employers on PFL five years after implementation. This research is now available at www.cepr.net.

Lessons Learned	
[✓]	Information-collection systems should be built into the legislation.
[✓]	Information should be collected on who is using the benefit and how and why they take it.
[✓]	Information should be collected in a format that can be shared with academics, protecting workers' confidentiality, in order to conduct further research.

RECOMMENDATIONS

California's Paid Family Leave program has provided economic security to more than 1 million Californians who had to take a leave from their job to welcome a new baby into their family or care for a seriously ill family member. This alone makes it a stunning success.

Those who accessed this program benefited from the hard work of the author of the bill, the Governor who signed it, the government administrators who implemented it, the employers who informed and encouraged their employees to take advantage of it, and the cadre of lawyers and advocates across the state who pushed and prodded to make it better.

But it is not perfect. If there were just three recommendations we could make to other states interested in designing a paid family leave program, we'd recommend:

1. Work to expand your state's job protection laws so that workers who have access to wage replacement for family leave will have a job to return to.
2. Build in an outreach and education campaign that is robust, ongoing, and reaches underserved communities.
3. Form a close working relationship between advocacy organizations and the program's administrative agency, working together to make the program succeed.



“Fathers are commonly not seen as important enough to grant time off to. BOTH parents are important for children. Without California’s paid family leave, I would not be able to take the time to bond with my child and help establish a healthy family environment.” —A Working Father

ENDNOTES

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