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PAID LEAVE IN MISSISSIPPI: ANALYSIS AND RECOMMENDATIONS

Harvard Law School Mississippi Delta Project

Economic Development Team^{*}

February 2014

^{*} This report was prepared by the following students on the Economic Development Team of the Mississippi Delta Project: Tara Norris (team leader), Jacob White (team leader), Lina Kaisey, Peter Koziol, Linda Liu, Joe Milner, Kate Monks, and Grace Signorelli-Cassady, under the supervision of Emily Broad Leib, Director of the Harvard Food Law and Policy Clinic and Ona Balkus, Clinical Fellow in the Harvard Food Law and Policy Clinic. Thank you to Desta Reff, Harvard Law School/Mississippi State University Delta Fellow, and Rahel Mathews, Research Associate at the Social Science Research Center at Mississippi State University, for their ideas and feedback on this report.

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I. Introduction

Although federal law guarantees many workers the right to take unpaid medical leave,¹ workers currently have no federal right to *paid* leave.² This means that many workers cannot afford to take leave to recover from an illness or seek medical care for themselves or their dependents. The lack of paid leave also poses significant costs for communities by discouraging the use of preventative care, spreading disease, decreasing employee performance, and increasing employee turnover. While some state and local governments around the country have tried to address these problems by passing laws that require employers to provide paid sick leave, Mississippi law does not require that employers provide any leave beyond the federal baseline.³ In fact, in early 2013, the Mississippi legislature passed a bill that prohibits local governments from passing employment ordinances that might create a paid leave program or requirement.⁴ Although this bill does not prevent the passage of statewide paid leave legislation, it increases the challenges that paid leave advocates face in Mississippi in expanding workers' access to paid leave on either the state or local level. However, there are still avenues

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for advocacy and policy change at the state and local level.

This white paper is intended to educate potential supporters of a paid leave law in Mississippi by explaining the importance of paid leave policies and describing some options for how to structure a paid leave law. Specifically, it will outline the potential benefits that paid leave legislation could have in Mississippi, with a particular focus on how such a policy would affect low-income employees working for an hourly wage who are the most impacted by paid leave policies.

First, this paper will explore some potential problems that paid leave legislation could address. Currently, employees in Mississippi who need to take medical or family leave are only covered by minimal

federal Family Medical Leave Act (FMLA) protections or not covered at all.⁵ In addition to disproportionately burdening low-income workers, the lack of access to paid leave has been linked to substantial costs in healthcare and decreased productivity.⁶

Second, this paper will provide an overview of some possible features of a policy that would expand access to paid leave, drawing on the policies that have been proposed and implemented in other states. While different

states may find that different paid leave policies best suit their needs, there are a variety of options that may be both effective and politically feasible in Mississippi.

Third, this paper will describe the legal status of paid leave in Mississippi and propose recommendations for designing a paid leave law in the state. Currently, local governments in Mississippi are prohibited from passing employment legislation designed to increase protections for workers, including mandatory paid leave.⁷ When the state passes such a law that restricts the law-making power of local governments, this is called “preemption.” Although this preemption legislation can be disheartening to paid leave advocates, it does not foreclose the possibility of passing paid leave legislation in Mississippi. The preemption law would still allow for the passage of statewide paid leave legislation. Alternatively, repealing this state law could be a possible “first step” as it would allow paid leave advocates to pass paid leave laws on the local level. Successful local paid leave laws could strengthen support for a statewide paid leave law by illustrating how such a policy could strengthen a local economy and benefit public health. Local laws would also demonstrate voter and community support for paid leave policies.

II. Paid Leave in the Workplace: A Necessary Step

Mississippi workers currently have no legal right to paid leave. This does not only burden workers when they or their family members become ill—it also creates additional costs for employers and the community. In contrast, laws that require employers to provide paid leave strengthen communities and commerce by: (1) making workers more likely to use time off when they are sick by decreasing the financial burden of doing so; (2) increasing protections for workers who are not covered by the FMLA, who currently have no guaranteed time off, if the law has a broader scope than the FMLA; and thus (3) increasing worker performance and decreasing medical and administrative costs for businesses.

A. Workers Do Not Take Unpaid Leave When They Are Sick.

The lack of access to paid leave is a significant barrier for workers—particularly low-income workers—who become sick. The Family Medical Leave Act (FMLA) establishes a federal right for qualifying workers to take leave for up to twelve weeks for medical reasons or to care for a family member without losing their job.⁸ However, the FMLA suffers from several weaknesses. First, the FMLA does not cover all workers, as it exempts those who work for employers with fewer than fifty employees.⁹

Further, even workers who qualify for FMLA leave are often unable to take advantage of their guaranteed leave because doing so would impose an unmanageable financial burden as they would not be paid during their leave; one study found that 78% of workers eligible for and in need of FMLA leave did not do so because of the financial strain of a smaller paycheck.¹⁰

The absence of mandatory paid leave statutes at the federal and state level disproportionately affects low-income workers, who are the least likely to be able to absorb a lost paycheck. To make matters even worse, low-income workers are less likely to be offered paid sick leave. A 2002 survey reported that working parents whose income was below the federal poverty level were approximately half as likely (45.8%) as those at more than double the federal poverty level (83.6%) to have access to paid leave.¹¹ Further, the high correlation between low income and poor health worsens the burden on those workers who do not have access to paid leave, since they are likely to become ill more frequently and for longer amounts of time.¹²

***B. Lack of Access to Paid Leave
Contributes to Public Health Problems.***

When workers do not have access to paid sick leave, public health problems get worse. Workers without access to paid leave are significantly more likely to report going to work sick than those with paid sick leave,¹³

which delays recovery¹⁴ and spreads sickness to customers and co-workers.¹⁵ Because their income depends on their physical presence in the workplace, workers in low-paid, hourly wage positions feel significant pressure to go to work even when they are ill (a phenomenon referred to as “presenteeism”¹⁶). Paid leave has been associated with better adherence to public health standards for seasonal and pandemic flu prevention, such as avoiding public places and not using public transportation when ill.¹⁷

The problem of presenteeism increases the occurrence of disease outbreak, particularly when the workers come into contact with members of the general public. The presence of sick employees in the workplace is particularly problematic in the restaurant industry, in which approximately 73% of workers lack access to any paid sick leave.¹⁸ Food service workers can—and do—pass on their illnesses to the public at large. In one frequently cited example from Kent County, Michigan, a single sandwich shop employee—who did not have any paid sick time—went to work while sick and infected more than 100 customers.¹⁹ Perversely, because food service businesses tend to rely on workers who are paid low hourly wages and do not have any paid sick leave,²⁰ even workers who are exhibiting serious symptoms like vomiting or diarrhea have strong incentives to go to work.²¹ This contributes to foodborne

disease outbreaks. In restaurants and institutional settings, “food handling by an infected person or carrier of a pathogen” is a “contributing cause” of nearly a quarter (24%) of cases of foodborne illness and for approximately 14% of total outbreaks.²² Public health research supports the finding that requiring paid leave would decrease the number of foodborne illnesses that are traced back to restaurants.²³ In other institutionalized settings, such as hospitals, schools, or nursing homes, presenteeism among workers without paid sick leave has similarly harmful impacts.²⁴

Workers without access to paid leave remain sick longer, and sick workers are less productive than healthy ones, costing businesses money.

C. Paid Leave Could Decrease Medical and Administrative Costs.

When low-wage workers do not have access to paid leave, the community bears additional medical costs. Workers without access to paid leave are unlikely to seek preventative medical care because they are concerned about missing work.²⁵ These workers are also more likely to go to hospital emergency rooms (or take their children to emergency rooms) for medical care because they cannot go to a doctor’s appointment during normal business hours²⁶ or to be hospitalized for a condition that could have been prevented by seeking preventative or primary care at an earlier stage.²⁷ The overreliance on emergency

room care drives up healthcare costs for everyone.²⁸ Further, alternate strategies to decrease reliance on emergency room use (most notably the expansion of healthcare insurance under the Affordable Care Act and the increased coverage for preventative care services) may be less effective without expanding access to paid leave to allow workers to take advantage of their new coverage.²⁹

Presenteeism also poses direct costs on businesses by spreading sickness within the workplace, which increases accident risk and decreases worker productivity. Workers without access to paid leave remain sick longer,³⁰ and sick workers are less productive than healthy ones, costing businesses money.³¹ As described above, providing paid leave decreases the likelihood that illness will spread through a workplace.³² In fact, one study attributes “the largest component of the overall costs of absenteeism, productivity losses, and short-term disability” to presenteeism.³³ Sick workers are also more likely to suffer serious workplace injuries than healthy workers, probably because their concentration and decision-making abilities are compromised by stress, sleep troubles, or medication.³⁴ Lastly, making paid sick leave accessible to all workers may increase worker retention because

employees are less likely to become so sick that they need to quit their jobs, thus decreasing costs associated with high turnover rates.³⁵

Although one might imagine that profit-seeking businesses will offer paid sick leave to employees without a legislative mandate if it is a cost-saving measure, according to at least one source, “it might not be easy for employers to assess the business value of paid sick leave or the relationship between profits and paid sick leave.”³⁶ Many of the costs of denying paid leave are external to the employer and are borne by the society at large, such as the cost of increased sickness within the community or higher emergency room utilization. Also, losses in worker productivity are difficult to measure and thus employers do not realize the amount of lost potential revenue. Further, because the cost of illness is borne by the entire community, businesses have little incentive to offer paid leave to their own employees, particularly if other businesses are not offering paid leave. While a single business offering paid leave might not significantly decrease the amount of illness in a community, a policy that requires all businesses to do so could. Thus, a coordinated legislative solution is necessary to fill in the gap between FMLA protections and what would realistically meet the needs of workers and communities.

III. Paid Leave Policy Options and Examples from Other States

In light of the unmet needs and potential benefits described above, state- and local-level governments across the United States have implemented paid leave statutes. These laws vary as to which (if any) employers are exempt from the paid leave requirement, the circumstances in which an employee’s leave is covered, the amount of leave guaranteed, the checks used to prevent employee fraud in the use of their paid leave, and the funding models utilized. The purpose of this paper is not to provide a comprehensive review of paid leave legislation through the nation; instead, our goal is to focus on state and local models and analyze the benefits and drawbacks of those policies. There is no “one size fits all” model paid leave legislation. Instead, Mississippi policymakers must, in light of their goals and political obstacles, choose from an array of policy options when crafting paid leave legislation. A brief comparison of existing paid leave laws is attached as Appendix A.³⁷

A. Employer Coverage

No existing paid leave policy covers every employer within its mandate. Instead, policymakers in the states and cities that have passed paid leave legislation make choices about which employers will be required to provide paid leave to employees. From the

point of view of business owners, a major concern is that paid leave obligations will raise labor costs, which in turn could lead to decreased hiring and hurt the overall economy.³⁸ Although paid leave programs tend to provide long-term economic benefits, concern over the short-term cost to employers is one of the largest obstacles to the enactment of paid leave policies. In jurisdictions that have passed paid leave legislation, some policymakers have chosen to lower the short-term cost of paid leave policies by limiting the number of employers required to provide paid leave. However, a paid leave policy with a limited scope will be less effective in the long-run than a more inclusive policy, since fewer workers will have access to paid leave.

Multiple jurisdictions have implemented employee coverage requirements that hinge upon the size of the business that employs the worker. In particular, many states follow the FMLA model, which means that employers with large numbers of employees are required to provide paid leave, and small businesses are not. The marginal cost of providing paid leave to employees is lower for a large employer, so these limitations may be more easily rationalized as cost-saving measures.³⁹ Therefore, policymakers have a viable cost rationale for excluding small businesses from paid leave policies. Small businesses will most likely support these exemptions, even though

paid leave saves costs in the long run. Furthermore, many jurisdictions limit the industries covered by paid leave legislation. Industry-specific employer coverage requirements give policymakers the flexibility to only address sectors where reform is badly needed. We examine both “size” and “type” employer coverage requirements below.

(i) Size-Based Employer Coverage

There are many ways to divide businesses by size, and the size-based limitations on paid leave policies adopted throughout the United States reflect the inherent flexibility of this policy option. Generally, there are two ways to divide employers by size: (1) “floor” rules, which only require employers with more than a certain number of employees to provide paid leave, and (2) “tiered” limit rules, which require all employers to provide paid leave, but relax the requirements for smaller businesses.

1. “Floor” Limit Rules

A “floor” rule establishes a dividing line (typically measured by number of employees) between businesses that must provide paid leave and those not required to do so. Policymakers may set limiting “floors” at any level. These floors are commonly set by exempting whatever the legislature defines as “small businesses” from the paid leave law.

Among jurisdictions with paid leave policies, there is no consensus on a “correct” floor level. Connecticut’s Public Act No. 11-52 requires

employers with 50 or more employees to provide paid leave to their employees.⁴⁰ On May 8, 2013, the New York City Council passed the New York City Earned Sick Time Act, requiring all businesses with 20 or more employees within the city to provide paid leave to their employees, beginning April 1, 2014.⁴¹ Additionally, New York City's law requires the floor to drop to 15 employees or more on October 1, 2015.⁴² Jersey City recently passed its own Paid Sick Time Ordinance with a floor of 10 employees.⁴³ Portland, Oregon's paid leave ordinance requires all employers with six or more employees to provide paid leave.⁴⁴

Policymakers will have to consider many factors when setting a floor, including the labor force, affected industries, and political obstacles. Whatever the jurisdiction, it will always be true that size-based floors are a relatively simple way to differentiate between businesses that can afford paid leave and those that cannot. The administrative costs of floor policies are low, since it is simple for both businesses and enforcement agencies to determine who is covered under the law. However, these floors are inevitably under-inclusive to some businesses. By definition, floor plans exclude the smallest businesses. Unfortunately, small businesses, such as restaurants, are the ones who stand to gain the most from the benefits of paid leave, which include reduced turnover and presenteeism.

Therefore, policymakers must determine if administrative simplicity offsets the shortfalls of floor rules.

2. "Tiered" Limit Rules

Some jurisdictions have approached near-universal paid leave coverage through the use of "tiered" employee limit rules. Tiered systems require all employers to provide paid leave to their employees, but allow smaller employers to provide reduced paid leave benefits. The rationale for using tiers is that the marginal cost of providing paid leave is smaller for larger employers, yet employees of smaller employers should still have access to some paid leave to seek medical care or stay home when needed. A tiered system aims to reduce the burden for small businesses in order to compensate for the higher marginal costs of providing paid leave.

The District of Columbia's Accrued Sick and Safe Leave Act of 2008 illustrates a tiered employer system.⁴⁵ Unlike "floors," DC's paid leave law has three tiers:

- (1) Employers with 100 or more employees must provide each employee at least 1 hour of paid leave for every 37 hours worked, and;
- (2) Employers with 25 to 99 employees must provide each employee at least 1 hour of paid leave for every 43 hours worked, and;
- (3) Employers with 24 or less employees must provide each employee at least 1 hour of paid leave for every 87 hours worked.⁴⁶

Other jurisdictions have similarly designed tiers, but use different numbers. Seattle's tier system divides businesses between those with employees numbering between 4 to 49, 50 to 249, and 250 and above.⁴⁷ San Francisco's Paid Sick Leave Ordinance permits employees of employers with 10 or more employees to accrue up to 72 hours of paid leave per year; employees of smaller businesses are limited to 40 hours.⁴⁸

Tiered classifications provide policymakers with the flexibility to calibrate paid leave policies to the relative capacity of employers. Tiered systems are more complex though, and depending on how many tiers exist in a policy, the costs of compliance and enforcement may be large. Over and under-inclusiveness are not entirely eliminated by tiered systems, but tiered systems are relatively more targeted than floor rules. Tiered systems also offer less incentive for businesses to fire employees once a paid leave policy is enacted, since the obligation to provide paid leave exists, in some form, regardless of the number of employees. Finally, tiered systems have the advantage of granting employees of small businesses at least some paid leave.

3. Evaluating Employer Size

Both floor and tiered employer eligibility systems classify employers by the number of employees they employ. Since employers commonly administer paid leave policies, they

need to know how many employees they have in order to comply with their paid leave obligations. Although employers do generally know how many workers they employ, in order to prevent abuse and reduce administrative costs, policymakers must establish straightforward physical and temporal limits for counting employees for purposes of enforcing the law.

Connecticut's floor system counts every employee, full or part-time, that an employer employs within Connecticut.⁴⁹ If, in at least one of the preceding four quarters, the employer has exceeded the 50 employee floor, they must provide paid leave.⁵⁰ Jersey City, Seattle, and San Francisco have similar systems, counting all employees, within the jurisdiction and determining employer size by the average number of employees in the preceding calendar year.⁵¹ Seattle is slightly different in that it calculates the average number of full-time equivalent employees that an employer had in the preceding calendar year.⁵² New York City counts all employees who work in the city, and calculates chains and franchises as one business.⁵³ In DC's tiered system, the size of a business is determined by the average monthly number of full-time equivalent employees that were employed in the prior calendar year.⁵⁴ Portland counts full-time, part-time, and temporary employees, but calculates the

number of employees at the beginning of every quarter.⁵⁵

The system for evaluating employer size is critical because it will directly influence hiring decisions by businesses. Although paid leave policies are cost-neutral in the long-run, businesses may react to the enactment of legislation by firing workers in order to avoid paid leave obligations. Thus, Mississippi policymakers should create a counting system that would not reward drastic reductions in the number of employees. Systems that determine the number of employees by looking to the preceding calendar year would reduce the incentive for employers to fire their workers.

(ii) Type-Based Employer Restrictions

Some policymakers also restrict paid leave coverage by the industry in which the employer is engaged. Type-based restrictions give policymakers the flexibility to identify industries where a lack of paid leave puts workers or the public at a greater risk; conversely, policymakers can exempt industries where worker protections are already adequate. By focusing on certain industries and exempting others, policymakers can focus paid leave on labor forces with little protection, while simultaneously making paid leave legislation easier to pass.

The most expansive paid leave policies do not exempt any industries: these policies exist in Portland and Jersey City.⁵⁶ In Connecticut,

only “service workers,” as defined by the Bureau of Labor Statistics, must be provided with paid leave.⁵⁷ Both Connecticut and New York City exempt manufacturers, defined as those employers that fall into certain sectors of the North American Industry Classification System (“NAICS”).⁵⁸ Several jurisdictions, such as DC and Seattle, exempt work-study students from paid leave policies.⁵⁹ Government workers (federal, state, and local) are exempted in Seattle, New York City, and Hawaii.⁶⁰ Some cities, such as Seattle and San Francisco, explicitly exempt telecommuters and persons making deliveries to those cities from paid leave requirements.⁶¹ Interestingly, San Francisco includes provisions that expressly allow collective bargaining agreements to trump paid leave policies.⁶² Of course, special-interest politics have led to strange exemptions, such as child-care workers in Connecticut,⁶³ restaurant wait staff in DC,⁶⁴ occupational therapists in New York City,⁶⁵ and vacuum cleaner salesmen in Hawaii.⁶⁶

Some of these exemptions are the result of careful policy analysis, while others are the products of political deal-making.

Unfortunately, the politically voiceless may be the ones who suffer the most from type-based exemptions; DC’s exemption for restaurant wait staff is a particularly worrisome example because of the public health risk of exempting employees that are very likely to have frequent

contact with the public. On the other hand, some type-based exemptions are clearly beneficial. Exempting government employees makes sense, since public employees have the unique opportunity to bargain with the government for paid leave within their employer-employee framework. The exemption for collective bargaining agreements may encourage employers to allow their employees to unionize. If policymakers want to exempt certain types of employees, they should use Connecticut and New York's policies as models, as they rely upon reliable federal categories such as the Bureau of Labor Statistics and NAICS, which may be less likely to be challenged in litigation.⁶⁷ Type-based exemptions should be minimized as much as possible in order to maximize the benefits of paid leave policies.

B. Employee Usage Requirements

In addition to the variation regarding the employers required to offer paid leave, state and local paid leave laws vary widely regarding the circumstances under which employees may use their paid leave. Americans that work for larger employers (50 or more employees) are guaranteed unpaid leave by the FMLA, which protects workers who take time because of a serious health condition, either for the worker, or their spouse, child, or parent.⁶⁸ While some paid leave policies do not allow paid leave for all of the circumstances covered by the FMLA,⁶⁹ other policies go far beyond the FMLA. The

scope of the covered circumstances varies depending upon the goals of the proposed policy and political hurdles faced by the policymakers.

At a minimum, every jurisdiction with a paid leave policy provides some protection to the worker when that worker is ill. Most paid leave policies allow leave for any mental or physical illness, injury, or medical condition.⁷⁰ Some jurisdictions also cover preventative care and diagnostic services,⁷¹ which can help avoid the problem of unnecessary hospitalizations. New York City and Seattle use different statutory formulations, simply referring to the worker's "health needs" and "personal illness."⁷² Several jurisdictions also recognize the need to provide coverage for workers who are victims of domestic battery, sexual assault, or stalking.⁷³ In particular, Connecticut guarantees paid leave to workers who, because of an assault, must engage in victim's services, relocation, or legal proceedings.⁷⁴

Many paid leave policies also protect workers who provide care for family members, although who qualifies as a "family member" varies by jurisdiction. DC's paid leave policy has an expansive definition of family, and allows employees to take paid leave if individuals such as "spouses of siblings" or "children living with the employee and for whom the employee permanently assumes and discharges parental responsibility" become sick.⁷⁵ Jersey City even

includes the spouses of grandparents.⁷⁶ Other jurisdictions have less expansive definitions: Connecticut defines family members as an employee's spouse or child.⁷⁷ In that state, "child" is defined as "an employee's biological, adopted, or foster child, stepchild, legal ward, or a child of an employee acting instead of a parent, when the child is either under 18 years old or over 18 but incapable of self-care due to mental or physical disability."⁷⁸ Most jurisdictions with paid leave policies also include domestic partners in their definition of family. San Francisco has a unique provision for employees who do not have spouses: the employee may designate one person for whom the employee may use paid leave to provide care.⁷⁹ Employees in San Francisco have the option to change the designation once a calendar year.⁸⁰

Unfortunately, any definition of "family" will be underinclusive; families come in all shapes and sizes, so inevitably someone will be denied protection. To prevent workers from taking leave unnecessarily, however, paid leave policies must establish a limit. One possible solution is to expand San Francisco's innovation: give the employee the option to either count their biological family, or have a certain number of "slots," and let the employee define their own "family." Alternatively, policymakers may establish a "baseline" in terms of who is included in a family (i.e.

children and spouses), and grant the employee one or two slots for chosen family members in addition to the baseline. This model would allow legislators to dodge the politically loaded task of defining a "family."

C. Amount of Leave Guaranteed

Another area where state and local paid leave policies differ is the amount of paid leave available to an eligible employee. The amount of leave that an eligible employee can use in a given time period affects the employee's incentives to take leave. With those considerations in mind, policymakers have created a wide variety of mechanisms by which workers earn paid leave.

In jurisdictions with paid leave, workers earn paid leave according to the number of hours worked. However, there is little conformity concerning the amount of hours earned per time worked. Eligible employees in Connecticut and Seattle earn 1 hour of leave for every 40 hours worked.⁸¹ In several other jurisdictions, including Portland, Jersey City, New York City, and San Francisco, workers earn 1 hour of leave for every 30 hours worked.⁸² Tiered systems are more complicated – in DC, employees of large employers earn more leave per hour worked than those working at small businesses (see Section III(A)(i)(2) of this report for more details on the DC tiering system).⁸³ In addition to varying ways of measuring accrual, there are other aspects of paid leave statutes

that can affect the number of hours of leave to which an employee is entitled. Such policies include yearly leave maximums, paid leave partial compensation, and new employee exceptions.

(i) Yearly Leave Maximums

Every mandatory paid leave policy has a yearly maximum for the amount of leave eligible workers may earn. Yearly maximums provide businesses with predictable paid leave costs, and give employees the ability to plan how they will use their paid leave. Several jurisdictions limit employees to 40 hours of paid leave a year, including Connecticut, Portland, Jersey City, and New York City.⁸⁴ Tiered paid leave policies have different maximums for each tier. For example, in Seattle, employees of small businesses may only earn up to 40 hours per year, while employees of the largest businesses may earn up to 72 hours per year.⁸⁵

Similar to yearly maximums, all paid leave policies include provisions on “excess leave,” or accrued paid leave time that is not used by the end of the year. Allowing accrued leave to “carry over” into the next year prevents periods of time at the beginning of the year where employees may not have any accrued paid leave time to use in the case of personal or family illness. Paid leave policies address these concerns in a variety of ways. Connecticut, Portland, and Jersey City allow employees to carry over a maximum of 40 hours,⁸⁶ while DC,

Seattle, and San Francisco allow all unused leave to carry over to the next year.⁸⁷ In the jurisdictions that neglected to include a limit on how much leave can be used in a given year, it is unclear how much paid leave may be used when unused leave carries over into the next year. Jersey City explicitly acknowledges this ambiguity, noting that employers have the choice whether to cap carry over at 40 hours a year.⁸⁸ Policymakers should take care to avoid ambiguity by either creating a yearly cap or explicitly allowing employers to set their own cap of how much leave can carry over into the next year.

(ii) Paid Leave Compensation

Not all paid leave policies guarantee that the employee will receive their full pay when they take leave. Instead, state and local paid leave statutes vary in the amount of compensation that employees may earn during paid leave. Providing less-than-full compensation for paid leave helps create an incentive for the employee to return to work. Also, partial-pay encourages employers to support paid leave policies. Yet providing full pay to employees while on paid leave is the only way to ensure that employees will take time to seek medical care or stay home when necessary. Policymakers must balance the rate of paid leave compensation with other components of the policy, such as employer and

employee eligibility, to control the upfront costs of a paid leave policy on businesses.

Some paid leave policies, such as those in Connecticut and New York City, guarantee employees their normal wage when they take paid leave.⁸⁹ Connecticut and San Francisco also guarantee that every worker will receive at least the minimum wage for paid leave – this policy is meant to protect those who work for tips.⁹⁰ Another issue is determining the hourly rate of pay, even partial pay, for a non-hourly wage worker. San Francisco’s paid leave ordinance is the only paid leave policy to directly address salaried employees. In order to calculate a salary worker’s paid leave hourly wage, the employee’s salary is divided by 52, then divided again by the number of hours the employee is regularly scheduled to work (there is a presumption of 40 hours per week).⁹¹

(iii) *New Employee Exceptions*

Most paid leave policies have special rules for new employees. These new employee “exceptions” prohibit new employees from immediately taking leave. New employee exceptions serve two purposes: (1) ensuring that businesses are able to see if an employee will work out; and (2) preventing employees from abusing the system by working solely to get paid leave.

DC is one of the few jurisdictions with paid leave that does not have a new employee exception – leave accrual starts on the first day,

and is immediately accessible.⁹² Many other jurisdictions begin accrual immediately, but use is forbidden until some point in the future.

Connecticut requires a new employee to work 680 hours before accrued leave is available.⁹³

Jersey City requires a 90 day employee waiting period before the leave may be used.⁹⁴ Several jurisdictions, including Seattle and New York City, allow a rehired employee to recover previously accrued paid leave.⁹⁵ Portland even mandates that the paid leave be transferable, as long as the employee remains in Portland.⁹⁶

New employee exceptions seem to be a regrettable necessity because the labor market includes individuals willing to abuse paid leave. These policies reduce an employee’s ability to take resources from employers before contributing to the business. At the same time, these exceptions are over-inclusive because they punish employees with pure motives. To balance these concerns, we suggest providing paid leave to new employees, but using a lower partial-pay rate for the initial “new employee” period to reduce abuses.

D. Employee Accountability

The risk of employee fraud is a serious concern for employers. Employers worry that employees will take paid leave even when they are not sick, and have thus sought protections to prevent dishonest employees from using paid leave for a paid vacation. Although employers believe that protections are

generally necessary to prevent abuse, policymakers should be careful not to set the bar too high and inadvertently prevent honest employees from taking earned paid leave. Statutes often require that the employees provide outside verification and notice to the employer.

(iv) Verification

Every jurisdiction with a paid leave policy requires that employees provide documentation, generally a doctor's note, when they take a long leave. The rule in Connecticut, DC, Portland, Jersey City, Seattle and New York City is that employees do not have to provide documentation unless they take three or more consecutive days of paid leave.⁹⁷ Seattle allows the employer to request documentation for leave that lasts less than three consecutive days if there is a pattern of abuse.⁹⁸ Obviously, the definition of "pattern of abuse" will greatly affect an employer's discretion. In San Francisco's implementing rule, a pattern of abuse is described as: "(a) taking paid sick leave on days when an employee's request for vacation leave has been denied; (b) a pattern of taking paid sick leave on days when the employee is scheduled to work a shift that may be perceived as undesirable; and (c) a pattern of taking paid sick leave on Mondays or Fridays or immediately following a holiday."⁹⁹

Some policies take steps to make it easier and less intrusive for a worker to provide

documentation. To respect the worker's privacy, Jersey City's ordinance notes that an employer cannot require that the documentation explain the nature of the illness.¹⁰⁰ Furthermore, in Seattle, employers that do not offer health insurance are required to pay 50% of the cost of producing documentation.¹⁰¹

Certain situations necessitate that verifications come from sources other than doctors. In DC and Seattle, which provide paid leave for sexual assault, domestic assault, and stalking, verification may come in the form of a police report.¹⁰² DC also accepts signed statements from victim and witness advocates, domestic violence counselors, and court orders as sufficient documentation.¹⁰³ Connecticut allows documentation signed by an attorney.¹⁰⁴ Still, requiring verification in such sensitive cases may encroach upon the privacy of the employee.

Even if there is little employee abuse of paid leave, verification is likely a political necessity because the appearance of lax enforcement could prevent legislation from passing. However, to protect the privacy of victims, Mississippi legislators should develop a "model form" that would be presumptively acceptable to employers, which would require documentation such as a doctor's note or a police report, but without requiring details that violate the employee's privacy.

(v) Notice to Employer

Employers are rightfully concerned about employees claiming sickness at the last minute. A last minute vacancy is much harder for an employer to fill, so the risk of reduced productivity is greater. At the same time, many illnesses take hold quickly and without much warning. Although compromise on this issue is possible, policymakers should draw a line between legitimately “last minute” illnesses and the kind that must be disclosed before leave may be taken.

Many jurisdictions divide notice requirements according to whether the need for paid leave is foreseeable. Connecticut and New York City require seven days’ notice with foreseeable need.¹⁰⁵ DC and Seattle require 10 days if the need is foreseeable.¹⁰⁶ As for unforeseeable need, almost all jurisdictions require notice “as soon as practicable” or “as soon as possible.” DC is more specific, requiring notice within 24 hours of the unforeseeable need arising or before the next work shift, whichever is sooner.¹⁰⁷ San Francisco goes even further, allowing employers to define “as soon as practicable” as two hours.¹⁰⁸ It is inevitable that any classification will be over and under-inclusive with regard to certain illnesses, but clearly delineated policies will make both employers and employees certain that they have been treated fairly. In fact, Portland, Jersey City, and San Francisco all require

employers to post notices explaining to employees how to request paid leave.¹⁰⁹

As with other workplace regulations, there should be rules about where and in what form such a notice will be posted. In San Francisco, for example, the municipal government provides a pre-printed notice that employers must post in the workplace. Regardless of whether Mississippi legislators use a standard form or not, they should make sure to be precise when dictating the form and location of notices. Transparent procedures will minimize conflict between employers and employees regarding the paid leave policy.

E. Temporary Disability Insurance

Temporary disability insurance (“TDI”) is an alternative to the paid leave policies that this paper has examined. To create a TDI program, a state creates a government office that pays out claims to employees who have had to miss work because of illness or disability. States with TDI programs build public infrastructure to administer the programs rather than relying on employers to continue to pay workers who take paid leave. Employer and employee contributions feed the insurance fund, much like Social Security, although some states also contribute public funds. The amount contributed by an employer compared to that contributed by an employee varies between states. For example, TDI programs in California and Rhode Island are funded almost entirely by

employee contributions,¹¹⁰ whereas contributions to New Jersey's TDI program are evenly split between employers and employees.¹¹¹ Such a program could benefit a broad cross-section of workers by alleviating some of the financial pressures of illness and distributing the risk of illness between all employers and employees. Additionally, because TDI frequently covers longer periods than paid leave, it is well-suited for illnesses that require more than a few days to recover.

However, TDI programs would not offer many of the benefits of paid leave legislation. First, because TDI is often funded in part or in full by employee contributions, it imposes additional costs on workers. Additionally, because workers would have to wait for their claim to be processed until after they make the decision to take leave, TDI programs may be insufficient to incentivize workers to take leave when they are ill. TDI programs are also typically targeted toward medium-term illnesses and may not provide adequate coverage for workers who need only a day or two to recover. Thus, TDI programs may not address workers' most common need—leave when they are suffering from a short-term, acute illness. Nor would it reduce the public health costs of sick employees coming to work as significantly as a paid leave policy would reduce those costs.

III. Paid Leave Legislation in Mississippi

In order to secure the benefits described in Part I, Mississippi must pass paid leave legislation. Policymakers have immense flexibility in creating the structure of a paid leave policy, and Mississippi legislators should attempt to create the most robust policy possible. Although there will be immense pressure to compromise, advocates should recall that paid leave more than pays off in the long term, both for affected businesses and the public. However, if policy is watered down, fewer employees will take leave and there will be fewer long term benefits for companies and the public. Thus, watering down paid leave policies will result in a self-fulfilling prophecy: the policy will be less effective, and actually live up to the expectations of its detractors.

Consistent with these concerns, this paper recommends that Mississippi legislators pass paid leave legislation as soon as possible. The following recommendations, while not exclusive, are the framework of a law that would protect workers, save costs, and enhance quality of life in Mississippi.

1. **Mississippi legislators should create a tiered system that covers employers of all sizes.** The amount of paid leave earned should be adjusted downward for employees of small businesses.
2. **When evaluating the size of a business, all employees, including full-time, part-time, and temporary employees should be counted.** For businesses with fluctuating size, the number of employees should be calculated by the average number of employees that an employer had in the preceding calendar year.
3. **Employees should be allowed to use earned paid leave for illness, injury, medical conditions, and preventative care.** Use should also be allowed for victims of domestic battery, sexual assault, or stalking. Furthermore, leave should be allowed when employees, because of an assault, must engage in victim's services, relocation, or legal proceedings.
4. **Employees should be allowed to use paid leave when family members are ill.** "Family member" should be defined as spouses, parents of spouses, children, spouses of children, parents, siblings, and spouses of siblings. In addition, every employee should be given the opportunity to choose two other individuals to be included as a family member.
5. **Employees should be allowed to earn and use up to 40 hours of leave a year, and excess leave should carry over into a new year.**
6. **Employees should be guaranteed their full wage when taking paid leave.** In order to calculate a salaried worker's paid leave hourly wage, the employee's salary should be divided by 52, then divided again by the number of hours the employee is scheduled to work.
7. **Paid leave should begin accruing the first day an employee works,** but for the first thirty days of employment, partial pay should be given for any leave taken.
8. **Employers should be allowed to ask for verification from employees,** either in the form of a police report or a doctor's note. However, employers should only be allowed to ask for verification if the employee takes over three consecutive days of leave. The only exception should be where there has been a pattern of abuse by the employee.
9. **If the leave is foreseeable, then an employee should give the employer at least 10 days' notice.** If the leave is unforeseeable, then employees should give notice as soon as possible.

The final paid leave law would consist of more components than are listed above, but these recommendations form the superstructure of a policy that will provide the greatest benefit to Mississippi.

With so many options for designing a paid leave law, local governments have experimented with a variety of policy design options. Because passing labor rights legislation on the federal or state level takes substantial resources, advocates have targeted local governments to enact paid leave laws.¹¹² Thus, cities like San Francisco, DC, Portland, and Seattle have passed paid leave laws.¹¹³

However, paid leave advocates cannot target local governments in Mississippi right now. A Mississippi law passed in 2013 prohibits any county or municipal government from “establishing a mandatory, minimum living wage rate, minimum number of vacation or sick days, whether paid or unpaid, that would regulate how a private employer pays its employees.”¹¹⁴ This means that only the Mississippi legislature has the power to regulate employment policies, such as expanding FMLA protections or enacting a paid leave policy in Mississippi. It also eliminates the possibility of a local government innovating by passing its own paid leave law and experimenting with different models to see what works best in that locality. This is unfortunate, as these local pilot programs and evaluation would, in turn, be

valuable information for the state as it develops its policy.

Mississippi’s preemption legislation is part of a coordinated multi-state effort to block paid leave initiatives.¹¹⁵ In recent years, responding to the difficulty in passing paid leave on the federal or state level, cities around the U.S. have passed legislation creating a right to paid leave.¹¹⁶ The American Legislative Exchange Council, a business-friendly organization that drafts and distributes “model” legislation, disseminated a model bill that would force these kinds of labor reforms to be enacted at the state level¹¹⁷—creating a much more significant financial, organizational and political challenge for paid leave advocates. Preemption laws like Mississippi’s have received support from corporate groups, particularly the National Federation of Independent Business and the National Restaurant Association.¹¹⁸ Fourteen states have introduced similar laws in 2013, and seven of these states, including Mississippi, have passed them.¹¹⁹

Although Mississippi’s preemption law does not directly block statewide paid leave legislation, paid leave advocates may want to consider organizing to repeal the law as a first step. The success of local paid leave laws indicates that establishing the right to paid leave on the local level may be a more feasible route than establishing a statewide program, particularly in a state like Mississippi, which

currently offers no state-level expansion of federal FMLA protections. Since this bill passed with very little public discussion, a concentrated effort to coordinate workers' rights and public health groups might be sufficient to force the legislature to reconsider, or to pass statewide paid leave legislation and bypass the preemption legislation entirely.

IV. Conclusion

Paid leave legislation can create positive benefits for a municipality or state. Lack of access to paid leave is connected to higher rates of disease, workplace accidents, and preventable emergency room visits and hospitalizations. Low-income workers, despite facing more health problems than higher-paid workers, disproportionately lack access to paid leave. Research indicates that paid leave reduces public health risks, saves money, and lightens the financial burden that workers face when they become ill.

There are significant variations between existing paid leave laws at the state and local level, illustrating the myriad of policy options available to stakeholders interested in advocating for a paid leave policy. Some of these options, such as limiting coverage to large employers, may limit the effectiveness of a paid leave law by leaving large swaths of workers uncovered. Although the passage of the Mississippi law preempting local paid leave legislation creates a roadblock for local paid

leave policies, advocates should push for either repealing this law and then advocating for local paid leave ordinances or passing a statewide paid leave law in Mississippi.

Endnotes

¹ Family Medical Leave Act, 29 U.S.C.A § 2601 (West 2013).

² This paper will use the term “paid leave” to describe compensated leave when either the employee or a family member is ill or needs medical care.

³ The Family Medical Leave Act establishes a federal right for qualifying workers to take leave for up to twelve weeks for medical reasons or to care for a family member without losing their job. 29 U.S.C.A § 2601 (West 2013).

⁴ Prohibition from Establishing a Mandatory, Minimum Living Wage Rate and Minimum Number of Vacation or Sick Days, MISS. CODE ANN. § 17-1-51 (2013) [hereinafter Mississippi Preemption Statute].

⁵ Cf. *State Family Medical Leave and Parental Leave Laws*, NAT’L P’SHIP FOR WOMEN & FAMILIES (Dec. 2012), <http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx> (describing various paid leave programs in U.S. states and cities).

⁶ See generally, e.g., *A Health Impact Assessment of the Healthy Families Act of 2009*, HUMAN IMPACT PARTNERS (June 11, 2009),

http://go.nationalpartnership.org/site/DocServer/WF_PSD_HFA_HealthImpactAssessment_HIA_090611.pdf?docID=5101 [hereinafter *Health Impact Assessment*].

⁷ Prohibition from Establishing a Mandatory, Minimum Living Wage Rate and Minimum Number of Vacation or Sick Days, Mississippi Preemption Statute, *supra* note 4.

⁸ Family Medical Leave Act, 29 U.S.C.A § 2601 (West 2013), at § 2612.

⁹ *Id.* at § 2611.

¹⁰ *2000 Survey Report: Chapter 2, Wage and Hour Division*, U.S. DEP’T OF LABOR 2.2.4,

<http://www.dol.gov/whd/fmla/chapter2.htm>.

¹¹ Katherin Ross Phillips, *Getting Time Off: Access to Leave Among Working Parents*, THE URBAN INST. 4 (Apr. 2004), http://www.urban.org/UploadedPDF/310977_B-57.pdf.

Workers in the lowest income quartile, workers without a college degree, and workers without health insurance all are more likely to lack paid sick leave than their counterparts in the U.S. workforce. *Health Impact Assessment, supra* note 6, at 19; See Sarah Fass, *Paid Leave in the States*, NAT’L CTR. FOR CHILDREN IN POVERTY 5 (Mar. 2009),

http://www.nccp.org/publications/pdf/text_864.pdf (reporting that low-income workers are less likely to take family leave than salaried and higher-income workers).

¹² *Health Impact Assessment, supra* note 6, at 19-20.

Additionally, parents without paid leave are more likely than those with it to have children with health problems that require routine care. *Id.*

¹³ One study reports that workers without any paid leave are one and a half times more likely to go to work with a contagious illness, like the flu. See *Fact Sheet: Paid Sick Days Lead to Cost Savings for All*, NAT’L P’SHIP FOR WOMEN & FAMILIES 2 (Apr. 2013),

<http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-lead-to-cost-savings-savings-for-all.pdf>.

¹⁴ *Health Impact Assessment, supra* note 6, at 25-26.

¹⁵ *Everyone Gets Sick, Not Everyone Has Time to Get Better: A Briefing Book on Establishing a Paid Sick Days Standard*, NAT’L P’SHIP FOR WOMEN & FAMILIES 4 (July 2011), http://go.nationalpartnership.org/site/DocServer/PSD_Briefing_Book.pdf [hereinafter *Everyone Gets Sick*] (describing the increased length of the H1N1 pandemic among workplaces in which there was no paid sick leave available).

¹⁶ *Id.* at 6.

¹⁷ *Health Impact Assessment, supra* note 6, at 6, 32–33; see also Supriya Kumar, Sandra Crouse Quinn, Kevin H. Ki, Laura H. Daniel & Vicki S. Freimuth, *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness Incidence During the 2009 H1N1 Pandemic*, 102 AM. J. OF PUB. HEALTH 134 (2012), available at

<http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2011.300307>.

¹⁸ *Everyone Gets Sick, supra* note 15, at 5.

¹⁹ *Health Impact Assessment, supra* note 6, at 37.

²⁰ *Everyone Gets Sick, supra* note 15, at 5; see also *Health Impact Assessment, supra* note 6, at 36.

²¹ See, e.g., *Health Impact Assessment, supra* note 6, at 36–37 (describing several outbreaks of illness that originated from ill service workers who did not have access to paid sick days); *Everyone Gets Sick, supra* note 15, at 5.

²² *Health Impact Assessment, supra* note 6, at 37.

²³ *Id.* at 6. More than 38 million illnesses are caused by restaurant-related foodborne illness outbreaks each year in the U.S. *Id.* at 36.

²⁴ See, e.g., *Health Impact Assessment, supra* note 6, at 37–39.

²⁵ “The percentage of workers who underwent mammography, Pap test, endoscopy at recommended intervals, had seen a doctor during the prior 12 months or had at least one visit to a health care provider during the prior 12 months was significantly higher among those with paid sick leave as compared to those without sick leave.” Lucy A. Peipins, Ashwini Soman, Zahava Berkowitz & Mary C. White, *The Lack of Paid Sick Leave as a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, 12:520 BIOMED CENTRAL PUBLIC HEALTH 1, 1 (2012), available at <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>.

²⁶ Adults without paid leave are twice as likely to use emergency room medical care for themselves and five times more likely to take a child or family member to the emergency room for medical care because they cannot take time off during work hours. *Everyone Gets Sick, supra* note 15, at 5.

²⁷ Although no data is currently available relating the accessibility of paid sick days to preventable

hospitalizations, the lower rates of preventative or primary care among workers without access to paid leave indicates that this relationship exists. *See Health Impact Assessment, supra* note 6, at 28–29.

²⁸ *Everyone Gets Sick, supra* note 15, at 5 (citing Smith, T. & Kim, J., *Paid Sick Days: Attitudes and Experiences*, NAT'L OPINION RESEARCH CTR. AT THE U. OF CHICAGO FOR THE PUB. WELFARE FOUND. (2010), <http://www.publicwelfare.org/resources/DocFiles/psd201Ofinal.pdf>).

²⁹ *Expanding Insurance Alone May Not Decrease Emergency Department Use*, ROBERT WOOD JOHNSON FOUNDATION (Oct. 28, 2013), <http://www.rwjf.org/en/about-rwjf/newsroom/newsroom-content/2013/10/expanding-insurance-alone-may-not-decrease-emergency-department-.html>; *see also Health Impact Assessment, supra* note 6, at 80 (describing the interdependent relationship between sick leave and health insurance; workers reported that they were reluctant to seek preventative care if they did not have both paid sick days and access to affordable care).

³⁰ *Health Impact Assessment, supra* note 6, at 13.

³¹ *See* Jill Jusko, *The Price Tag of Poor Health*, 251 *INDUSTRY WEEK*, Aug. 1, 2002, *available at* 2002 WLNR 11629695.

³² *Health Impact Assessment, supra* note 6, at 32.

³³ Ron Z. Goetzel, Stacey R. Long, Ronald J. Ozminkowski, Kevin Hawkins, Shaohung Wang & Wendy Lynch, *Health, Absence, Disability, and Presenteeism Cost Estimates of Certain Physical and Mental Health Conditions Affecting U.S. Emp'rs*, 46 *J. OCCUP. ENVIRON. MED.* 398, 411 (2004).

³⁴ Abay Asfaw, Regina Pana-Cryan & Roger Rosa, *Paid Sick Leave and Nonfatal Occupational Injuries*, 102 *AM. J. OF PUB. HEALTH* e59, e59 (2012), *available at* <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2011.300482>. This is not limited to workers who are themselves sick: the same study found that a family member's hospitalization increased a worker's likelihood of "severe occupational injury" by 9%. *Id.*

³⁵ *Taking Care of Business: The Business Benefits of Paid Leave*, NAT'L P'SHIP FOR WOMEN & FAMILIES, 3 (Mar. 2011), <http://www.nationalpartnership.org/research-library/work-family/taking-care-of-business.pdf> (estimating turnover costs at 25-200% of a business's annual compensation costs). In California, low-wage worker retention increased by 10% following the implementation of a state paid family leave program. *Id.*

³⁶ Abay Asfaw, Regina Pana-Cryan & Roger Rosa, *Paid Sick Leave and Nonfatal Occupational Injuries*, 102 *AM. J. OF PUB. HEALTH* e60 (2012), *available at* <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2011.300482>.

³⁷ *Overview of Paid Sick Time Laws in the United States*, A BETTER BALANCE (Oct. 2013), <http://www.abetterbalance.org/web/images/stories/Documents/sickdays/factsheet/PSDchart.pdf>.

³⁸ *See* MICHAEL J. CROW, NFIB RESEARCH FOUND., *The Economic Impact of H.R. 2460 and Mandatory Paid Sick Leave on U.S. Small Businesses* 14–15 (April 2010), *available at* <http://www.nfib.com/LinkClick.aspx?fileticket=PWRtuuzDJto%3d&tabid=1340>.

³⁹ CARL GIBSON, WASHINGTON POLICY CTR., *ANALYSIS OF SEATTLE'S PAID SICK LEAVE ORDINANCE* 9 n.13 (June 2011), *available at* <http://www.washingtonpolicy.org/sites/default/files/mandatory-paid-sick-leave.pdf>.

⁴⁰ CONN. GEN. STAT. § 31-57r (4) (West 2013).

⁴¹ N.Y.C., N.Y., Local Law 2013/046 § 7 (June 26, 2013).

⁴² *Id.* at § 7(1)(b).

⁴³ Jersey City, N.J., City Ordinance 13.097 (Sept. 25, 2013).

⁴⁴ Portland, Or., Ordinance 185,926, Ex. A, 9.01.030(A) (Mar. 13, 2013).

⁴⁵ Accrued Sick and Save Leave Act of 2008, D.C. CODE § 32-131 (2009).

⁴⁶ *Id.* at § 32-131.02(a)(1)-(3).

⁴⁷ SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §10(T)(1)-(4) (2013).

⁴⁸ San Francisco's paid leave policy is actually a hybrid floor-tier system because employers with fewer than 4 employees do not have to provide paid leave. S.F., CAL., ADMIN. CODE ch. 12W, § 3(c) (2013).

⁴⁹ *See* CONN. GEN. STAT. § 31-57r (4); Jackson Lewis LLP, *Connecticut's Paid Sick Leave Law Questions and Answers* 4 (2011)

<http://www.jacksonlewis.com/media/pnc/2/media.1712.pdf> (last visited Jan. 30, 2014).

⁵⁰ CONN. GEN. STAT. § 31-57r (4).

⁵¹ Jersey City, N.J., City Ordinance 13.097, § 3-52; SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §10(T)(4); Donna Levitt, Office of Labor Standards Enforcement, Rules Implementing the San Francisco Paid Sick Leave Ordinance 14 (2007) (calculating the average number of employees by counting the number of employees in every week of the year, then dividing by 52), *available at* <http://sfgsa.org/modules/ShowDocument.aspx?documentid=1611>.

⁵² SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §10(T)(4).

⁵³ N.Y.C., N.Y., Admin. Code § 20-912(g).

⁵⁴ D.C. CODE § 32-131.02(a)(5) (calculating the number of employees "by the average monthly number of full-time equivalent employees for the prior calendar year. The average monthly number shall be calculated by adding the total monthly full-time equivalent employees for each month and dividing by 12.")

⁵⁵ Portland, Or., Protected Sick Time Administrative Rules, SL 4.02(1), *available at*

<http://www.portlandonline.com/fritz/index.cfm?c=55242&a=469250>; Amy R. Alpern & Sebastian Chilco, *Final Regulations Clarify and Expand Portland Sick Leave Law Requirements*, MONDAQ, <http://www.mondaq.com/unitedstates/x/271834/employee+rights+labour+relations/Final+Regulations+Clarify+and+Expand+Portland+Sick+Leave+Law+Requirements> (last visited Jan. 30, 2014).

⁵⁶ See Jersey City, N.J., City Ordinance 13.097; Portland, Or., Ordinance 185,926.

⁵⁷ CONN. GEN. STAT. § 31-57r (7) (defining “service worker” as “an employee primarily engaged in an occupation with one of the following broad or detailed occupation code numbers and titles, as defined by the federal Bureau of Labor Statistics Standard Occupational Classification system or any successor system: (A) 11-9050 Food Service Managers; (B) 11-9110 Medical and Health Services Managers; (C) 21-1020 Social Workers; (D) 21-1093 Social and Human Service Assistants; (E) 21-1094 Community Health Workers; (F) 21-1099 Community and Social Service Specialists, All Other; (G) 25-4020 Librarians; (H) 29-1050 Pharmacists; (I) 29-1070 Physician Assistants; (J) 29-1120 Therapists; (K) 29-1140 Registered Nurses; (L) 29-1150 Nurse Anesthetists; (M) 29-1160 Nurse Midwives; (N) 29-1170 Nurse Practitioners; (O) 29-2020 Dental Hygienists; (P) 29-2040 Emergency Medical Technicians and Paramedics; (Q) 29-2050 Health Practitioner Support Technologists and Technicians; (R) 29-2060 Licensed Practical and Licensed Vocational Nurses; (S) 31-1011 Home Health Aides; (T) 31-1012 Nursing Aides, Orderlies and Attendants; (U) 31-1013 Psychiatric Aides; (V) 31-9091 Dental Assistants; (W) 31-9092 Medical Assistants; (X) 33-9032 Security Guards; (Y) 33-9091 Crossing Guards; (Z) 35-1010 Supervisors of Food Preparation and Serving Workers; (AA) 35-2010 Cooks; (BB) 35-2020 Food Preparation Workers; (CC) 35-3010 Bartenders; (DD) 35-3020 Fast Food and Counter Workers; (EE) 35-3030 Waiters and Waitresses; (FF) 35-3040 Food Servers, Nonrestaurant; (GG) 35-9010 Dining Room and Cafeteria Attendants and Bartender Helpers; (HH) 35-9020 Dishwashers; (II) 35-9030 Hosts and Hostesses, Restaurant, Lounge and Coffee Shop; (JJ) 35-9090 Miscellaneous Food Preparation and Serving Related Workers; (KK) 37-2011 Janitors and Cleaners, Except Maids and Housekeeping Cleaners; (LL) 37-2019 Building Cleaning Workers”).

⁵⁸ *Id.* at § 31-57r (4); N.Y.C., N.Y. Admin. Code § 20-912(g)(iv); NAICS Code Description: Sector 31-33 – Manufacturing, NAICS Ass’n, <http://www.naics.com/free-code-search/naicsdescription.php?code=31> (last visited Dec. 3, 2013).

⁵⁹ D.C. CODE § 32-131.01(2)(B)(ii); Seattle, Wa., Mun. Code tit. 14, ch. 16, §10(J).

⁶⁰ SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §10(K)(1)-(3); N.Y.C., N.Y. Admin. Code § 20-912(f)-(g).

⁶¹ *Id.* at §10(J); Levitt, *supra* note 51, at 13.

⁶² S.F., CAL., ADMIN. CODE ch. 12W, § 9.

⁶³ CONN. GEN. STAT. § 31-57r (4).

⁶⁴ D.C. CODE § 32-131.01(2)(B)(iv).

⁶⁵ N.Y.C., N.Y. Admin. Code § 20-913(2)(f)(iv).

⁶⁶ D.C. CODE § 32-131.01(2)(B)(iv) (LexisNexis 2013); Conn. Gen. Stat. § 31-57r (4).

⁶⁷ CONN. GEN. STAT. § 31-57r (7).

⁶⁸ *Fact Sheet #28: The Family and Medical Leave Act*, DEP’T OF LABOR (2012) (noting that FMLA leave is available for birth, adoption, and serious health conditions), *available*

at

<http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.

⁶⁹ *Id.*

⁷⁰ *E.g.*, D.C. CODE § 32-131.02(b)(1).

⁷¹ *Id.*

⁷² N.Y.C., N.Y. Admin. Code § 20-914(1); Seattle, Wa., Mun. Code tit. 14, ch. 16, §3(A)(1).

⁷³ CONN. GEN. STAT. § 31-57t (3); D.C. CODE § 32-131.02(b)(4).

⁷⁴ CONN. GEN. STAT. § 31-57t (3).

⁷⁵ The D.C. paid leave policy defines family members as “spouses; parents of spouses; children (including foster or grandchildren); spouses of children; parents; siblings; spouses of siblings; children living with the employee and for whom the employee permanently assumes and discharges parental responsibility; or a person who has shared with the employee for at least 12 months a mutual residence and a committed relationship.” D.C. CODE § 32-131.01(4).

⁷⁶ Jersey City, N.J., City Ordinance 13.097, § 3-50.

⁷⁷ CONN. GEN. STAT. § 31-57r (4), (9)

⁷⁸ *Id.* at § 31-57r (1).

⁷⁹ S.F., CAL., ADMIN. CODE ch. 12W, § 4(a).

⁸⁰ *Id.*

⁸¹ CONN. GEN. STAT. § 31-57s (a)(2); SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §2(B); Section A(i)(2).

⁸² Portland, Or., Ordinance 185,926, Ex. A, 9.01.030(A); Jersey City, N.J., City Ordinance 13.097, § 3-52(A)(1); N.Y.C., N.Y. Admin. Code § 20-913(3)(b); S.F., CAL., ADMIN. CODE ch. 12W, § 3(b).

⁸³ D.C. CODE § 32-131.02(a)(1)-(3).

⁸⁴ CONN. GEN. STAT. § 31-57s (a)(3); Portland, Or., Ordinance 185,926, Ex. A, 9.01.030(F); Jersey City, N.J., City Ordinance 13.097, § 3-52(A)(2); N.Y.C., N.Y. Admin. Code § 20-913(3)(b).

⁸⁵ SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §2(C).

⁸⁶ CONN. GEN. STAT. § 31-57s (a)(3); Portland, Or., Ordinance 185,926, Ex. A, 9.01.030(G); Jersey City, N.J., City Ordinance 13.097, § 3-52(A)(6).

⁸⁷ D.C. CODE § 32-131.02(c)(2); SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §2(G); S.F., CAL., ADMIN. CODE ch. 12W, § 3(c).

⁸⁸ Jersey City, N.J., City Ordinance 13.097, § 3-52(A)(6).

⁸⁹ SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §1(P); N.Y.C., N.Y. Admin. Code § 20-912(k).

⁹⁰ CONN. GEN. STAT. § 31-57s (d); Levitt, *supra* note 51, at 11.

⁹¹ Levitt, *supra* note 51, at 11.

⁹² See D.C. CODE § 32-131.02(c)(1).

⁹³ CONN. GEN. STAT. § 31-57s (b).

⁹⁴ Jersey City, N.J., City Ordinance 13.097, § 3-52(A)(5).

⁹⁵ SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §2(L) (if the employee returns within 7 months); N.Y.C., N.Y. Admin. Code § 20-913(2)(j) (2013) (if the employee returns within 6 months).

⁹⁶ Portland, Or., Ordinance 185,926, Ex. A, 9.01.030(I).

⁹⁷ CONN. GEN. STAT. § 31-57t (b); D.C. CODE § 32-131.03; Portland, Or., Ordinance 185,926, Ex. A, 9.01.040(K); SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §3(E); Levitt, *supra* note 51, at 7-8.

⁹⁸ Seattle Paid Sick and Safe Time Ordinance Summary, <http://www.seattle.gov/civilrights/documents/PSSTgeneralsummary.pdf> (last visited Dec. 5, 2013).

⁹⁹ Levitt, *supra* note 51, at 7.

¹⁰⁰ Jersey City, N.J., City Ordinance 13.097, § 3-52(C)(6).

¹⁰¹ SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §3(E).

¹⁰² D.C. CODE § 32-131.04(a)(2)(A); SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §3(F)(2)(a).

¹⁰³ D.C. CODE § 32-131.04(a)(2)(A)-(D).

¹⁰⁴ CONN. GEN. STAT. § 31-57t (b).

¹⁰⁵ CONN. GEN. STAT. § 31-57t (b); N.Y.C., N.Y., Admin. Code § 20-914(3)(b).

¹⁰⁶ D.C. CODE § 32-131.03; SEATTLE, WA., MUN. CODE tit. 14, ch. 16, §3(B)(1).

¹⁰⁷ D.C. CODE § 32-131.03.

¹⁰⁸ Levitt, *supra* note 51, at 5.

¹⁰⁹ Portland, Or., Ordinance 185,926, Ex. A, 9.01.040(H); Jersey City, N.J., City Ordinance 13.097, § 3-52.2; S.F., CAL., ADMIN. CODE ch. 12W, § 5.

¹¹⁰ Nina Fendel et al., *California's New Paid Family Leave Law: Family Temporary Disability Insurance (FTDI)*, 161 CPER JOURNAL 10, 11 (August 2003); *Temporary Disability Insurance: Frequently Asked Questions - Question 25*, RI DEP'T OF LABOR AND TRAINING, <http://www.dlt.ri.gov/tdi/tdifaqs.htm> (last visited Nov. 20, 2013) (noting that TDI is entirely employee-financed).

¹¹¹ *Cost to the Worker – State Plan*, STATE OF NEW JERSEY DEP'T OF LABOR AND WORKFORCE DEVELOPMENT, http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_cost.html (last visited Jan. 30, 2014).

¹¹² Stephanie Mencimer, *Forced to Work Sick? That's Fine with Disney, Red Lobster, and Their Friends at ALEC*, MOTHER JONES (June 28, 2013), <http://www.motherjones.com/politics/2013/06/paid-sick-leave-florida-disney-alec>.

¹¹³ D.C. CODE § 32.131.01-32.131.16; Portland, Or. Mun. Code § 9.01.010-9.01.1560; S.F., Cal., Admin. Code ch. 12W.1-12W.16; Seattle, Wa., Mun. Code tit. 14.16.010-14.16.130.

¹¹⁴ Mississippi Preemption Statute, *supra* note 4, at (1).

¹¹⁵ Mencimer, *supra* note 112.

¹¹⁶ *Id.*

¹¹⁷ *Id.*; see also *Living Wage Mandate Preemption Act*, American Legislative Exchange Council (Jan. 28, 2013), <http://www.alec.org/model-legislation/living-wage-mandate-preemption-act/>.

¹¹⁸ *Id.*; Kenneth Quinnell, *ALEC Says No Sick Days (or Democracy) for You*, AFL-CIO NOW (Nov. 7, 2013), <http://www.aflcio.org/Blog/In-The-States/ALEC-Says-No-Sick-Days-or-Democracy-for-You>.

¹¹⁹ Quinnell, *supra* note 118.