

Low-Income Workers' Eligibility for Emergency Paid Family Leave

By Erica Meade and Pamela Winston

May 2020

In response to the COVID-19 pandemic, in March 2020 Congress enacted emergency paid family leave (Emergency Family and Medical Leave Expansion Act (EFMLEA)), as well as emergency paid sick leave (Emergency Paid Sick Leave Act (EPSLA)). Both programs were established by the Families First Coronavirus Response Act—the EFMLEA as a temporary amendment to the 1993 Family and Medical Leave Act and emergency paid sick leave as a new temporary program. The paid *sick leave* program provides two weeks of paid time off and the paid *family leave* program provides up to an additional 10 weeks of paid time off to employees who must take time away from work (and are unable to telework) because their children's schools or child care providers are closed for reasons related to COVID-19, with certain exceptions.¹ Both leave programs are slated to end on December 31, 2020.

Family leave hours are paid at two-thirds of the employee's regular rate of pay, with a maximum of \$200 per day or \$12,000 total. Because the benefits are less than actual pay and are time-limited, workers have a financial incentive to return to their jobs as soon as feasible.² Importantly, research has found that paid parental leave policies can increase labor force participation, earnings, and economic growth.³ Employers under EFMLEA receive dollar-for-dollar reimbursement from the federal government through tax credits for all qualifying leave wages paid under the legislation. The U.S. Department of Labor (DOL) administers both programs, and offers [resources](#) for employers and workers with detailed information about them.

Many human services agencies, educators, and other organizations that serve poor and low-income working parents are well-positioned to conduct outreach to clients and their employers about the program to facilitate their participation. This brief provides information about the potential benefits of such outreach, estimating eligibility for the emergency paid family leave program under different participation scenarios, with an emphasis on poor and low-income working parents. It follows an [earlier brief](#) that highlights lessons for facilitating participation in the EFMLEA program by lower-income families and their employers. ***We find that a substantial proportion of these families may benefit from the emergency family leave program, especially if the businesses they work for are able to participate at relatively high levels.*** Lower-income families are least likely to have other types of paid leave through their jobs, making this program especially important for supporting the well-being of poor and low-income working families as they navigate this difficult time.⁴

Poor and low-income workers are disproportionately likely to work in small businesses.⁵ One of the key factors influencing working parents' eligibility for paid family leave is participation in the program by these types of organizations. Both the EPSLA and EFMLEA provide that a business with fewer than 50 employees may be exempt from providing an employee leave requested because their child's school or place of care is closed or child-care provider is unavailable due to a COVID-19 related reason, if providing the leave would jeopardize the viability of the business as a going concern.⁶ We estimate eligibility under different assumptions of small business participation, as well as by geography. It is intended to clarify the role of these factors in the eligibility for emergency paid family leave of working parents, highlighting the urgency of helping poor and low-income parents and their employers participate in the program to the extent feasible. The methods and assumptions informing our analysis are in the technical notes at the end of this brief.

¹The emergency paid sick leave is also available to workers to isolate themselves or care for others who are isolated due to public health requirements

² Recipients are not eligible for unemployment insurance because they are still employed.

³ See <https://www.aei.org/wp-content/uploads/2020/04/The-American-dream-in-2020-How-to-strengthen-it.pdf>.

⁴ <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/private/table31a.pdf>

⁵ ASPE analysis of CPS ASEC microdata; Acs, Gregory and Austin Nichols. 2007. *Low Income Workers and Their Employers: Characteristics and Challenges*. The Urban Institute: <https://www.urban.org/sites/default/files/publication/46656/411532-Low-Income-Workers-and-Their-Employers.PDF>.

⁶ While the federal government funds the leave program through reimbursement of businesses' payroll taxes, the businesses themselves must administer it and continue to function while staff are on leave.

Eligibility for the Emergency Paid Family Leave Program

Who is eligible: Employees are entitled to take emergency paid family leave if they are unable to work or telework (even if the employer and position would allow for telework) because they are caring for their children whose school or child care provider is closed or unavailable due to COVID-19. Generally, workers in private (for-profit or non-profit) organizations with fewer than 500 employees are covered, unless they work for a small business (fewer than 50 employees) that claims exemption from the program. All nonfederal public employees are covered, including those in organizations of more than 500 workers. Employees must have worked for their employer at least 30 days. Temporary workers are also covered.

Who is not eligible: Workers in the health care and emergency response fields are exempt if they are deemed essential by their employers. With some exceptions, federal workers are generally not eligible.⁷ Employees in large private organizations (over 500) are also excluded. Some workers in small businesses are also likely to be excluded, depending on the rate of small business exemption.⁸ Employees who have been laid off or furloughed are also not eligible because one must be employed to receive paid leave.⁹

Eligibility Estimates for the Emergency Paid Family Leave Program

We estimate a range of eligibility rates using three scenarios of small employer participation; presumably, actual eligibility is within this range. Overall, this analysis found that higher small business participation increases the share of working parents who are eligible. This is particularly the case for poor working parents. Geographic variation made less difference. These findings highlight one opportunity that small employers have to help working families cope with the COVID-19 pandemic.

The participation of small businesses in the program will disproportionately affect poor (i.e., below poverty) and low-income (i.e., 100 to 150 percent of poverty) working parents because they more likely to be employed in small businesses. We estimate that about 70 percent of eligible working poor and low-income parents work for businesses with fewer than 50 employees. By comparison, 55 percent of eligible higher income parents work for small employers.

If *all* small businesses participated in the EFMLEA program, about half of working parents—and a majority of poor and low-income parents—would be eligible for paid family leave.

Table 1. Estimated Eligibility for EFMLEA among Working Parents*

All Income Levels	48%
Poor (Below 100% Poverty)	55%
Low-Income (100-150% Poverty)	59%
Above 150% Poverty	47%

*Estimates assume all small employers participate

Participation in EFMLEA by the full range of potential covered employers will improve access for families in need. Almost half of *all* workers with children could be eligible for the program if all small employers participated—we estimate that 48 percent of working parents could qualify (see Table 1).

About half of all working parents above 150 percent of poverty are estimated to be eligible for emergency paid family leave if all small businesses participate. Poor and

low-income workers have a higher likelihood of eligibility. As Table 1 indicates, about 55 to 59 percent of working parents with incomes less than 150 percent of poverty are estimated to qualify for the program.

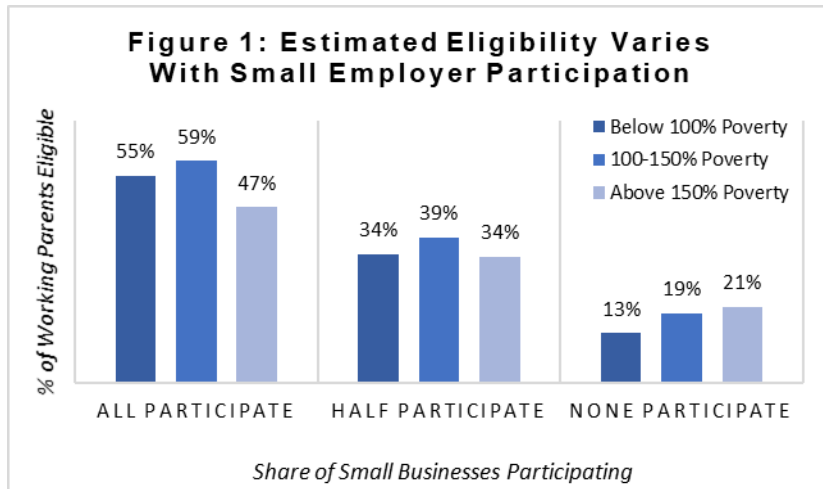
⁷ The EFMLEA amended Title I of the FMLA; most federal employees are covered instead by Title II of the FMLA. As a result, only some federal employees are covered by the EFMLEA, and the vast majority are not. See Question 53: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. Federal employees are, generally, eligible for emergency paid sick leave unless otherwise exempt.

⁸ If a small firm determines that providing leave would threaten its ongoing viability (meeting three basic criteria), an officer of the firm documents this determination and maintains records to this effect. The firm is not required to submit the determination to DOL. See Question 58: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

⁹ Individuals may not receive paid family leave and collect unemployment insurance benefits. See Question 29: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Greater participation of small businesses, even at lower levels, would increase the share of working parents who are eligible, particularly for those who are poor.

All working parents. If *half* of small businesses participate in the emergency paid family leave program, we estimate that the share of all eligible working parents would be just over one-third (see Figure 1). If *no* small businesses participate, about 20 percent of all working parents are estimated to be eligible for the program.



Poor and low-income working parents. If *half* of small businesses participate in the emergency paid family leave program, roughly one in three poor and low-income parents are estimated to be eligible. As Figure 1 indicates, 34 percent of poor working parents would be eligible in this scenario. About 39 percent of low-income working parents are estimated to be eligible under these circumstances. If *no* small businesses participate in the EFMLEA program, few poor and low-income working parents would be eligible. In this case, about 13 percent of poor working parents are estimated to be covered.

The working parents potentially reached by the emergency paid family leave program represent a considerable share of all American workers.

We estimate that the working parents potentially eligible for the EFMLEA represent about one in five of total U.S. workers, if all small employers participate. We estimate eligibility rates among poor and low-income workers to be somewhat higher, between 26 and 30 percent, as Table 2 illustrates.

There is little significant variation in estimated eligibility by geographic region or urbanicity.

Estimated eligibility for emergency paid family leave among working parents varies only minimally by geographic region, ranging from 46 to 52 percent.¹⁰ The highest rate of estimated eligibility is in the Pacific region, where just over half of working parents are estimated to be eligible.¹¹ Finally, we saw little difference in eligibility by the urbanicity of parents' residence. Poor and low-income workers who live outside of a central city are more likely to be eligible than those who live in the central city, though the magnitude of the difference is small.

Table 2. Estimated EFMLEA Eligibility Among All Workers*

All Income Levels	20%
Poor (Below 100% Poverty)	26%
Low-Income (100-150% Poverty)	30%
Above 150% Poverty	20%

*Estimates assume all small employers participate.

¹⁰ We use Census divisions as the geographic unit for this analysis. [Census divisions](#) are groupings of states that are subdivisions of the four Census regions (the Northeast, the Midwest, the South, and the West).

¹¹ Pacific Division states are Alaska, California, Hawaii, Oregon, and Washington.

Technical notes

We estimate eligibility using the public-use microdata from the 2019 Current Population Survey Annual Social and Economic Supplement (CPS ASEC), incorporating the survey design and weights, and the 2018 CPS ASEC for firm size data because the 2019 CPS ASEC does not have an “Under 50” category. We estimate the share of all eligible workers who are in firms with fewer than 50 employees and apply those proportions to the 2019 CPS ASEC eligibility estimates to adjust for assumptions about the share of small employers that participate in the program. Of note, EFMLEA refers to number of employees working for a firm, not an establishment. This distinction is important because firms may have multiple establishments.

Workers are defined as individuals who were in the labor force and employed or had a job but were on leave. Eligible workers were defined as: Workers, with one of more of their “own children” under 18 present in the household (own child as defined by the CPS). We exclude as ineligible hospital and health care services workers (CPS industry classification codes 7970-8290), who are generally considered essential workers with a high likelihood of being excluded from the program by their employers. We also exclude federal employees because the EFMLEA only amended Title I of the FMLA. Most federal employees are instead covered FMLA Title II, so the vast majority would not be eligible. Further, OMB has authority to exclude certain other federal employees.¹²

We assume that all schools and child care arrangements are closed. At the time we conducted this analysis, every state had either mandated school closures, or strongly recommended that they close. We recognize that parents of children whose schools are closed as of the summer because the academic year has ended (rather than because of the pandemic) may not be eligible for EFMLEA, but assume that a substantial share of them may nonetheless face continued closure of child care arrangements over the summer. The estimates do not attempt to adjust for the potential differential in closures at the end of the school year. Estimates assume participation by a similar number of small businesses as were in operation prior to the pandemic. We do not adjust for changes in total employment due to COVID-19 (e.g., layoffs, closures, furloughs), or in the number of employers that may have closed temporarily or permanently. One study found that a quarter of businesses with fewer than 500 employees had temporarily closed before April 3, 2020 due to the pandemic, and that 40 percent of the remaining businesses surveyed of similar size predicted they would close by mid-April.¹³ The inability to account for this evolving instability may influence the accuracy of our estimates.

Detailed eligibility estimates are provided in an accompanying appendix table, available at aspe.hhs.gov/pdf-report/emergency-paid-leave-eligibility.

¹² <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

¹³ <https://www.uschamber.com/report/special-report-coronavirus-and-small-business>