AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
AUGUST 6-7, 2018
RESOLUTION
RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to enact legislation providing employees with job-guaranteed paid sick days and job-guaranteed paid family and medical leave.
There is a growing consensus that current workplace structures do not recognize the realities of the family and work lives of workers today, most notably the fact that most families no longer have one partner who is able to stay at home and care for the family and household. As of 2012, 42% of women were sole or primary breadwinners, earning at least half of family earnings. Twenty-two point four percent of women were co-breadwinners, bringing home 25% to 49% of family earnings. In addition, the vast majority of adults with custodial children are in the labor force. Working men and women struggle to meet the caregiving needs of their children and parents while maintaining employment. U.S. labor standards and workplace policies must be updated to reflect the reality of the 21st century workforce and to ensure that the nation’s public policies are in line with the needs of today’s working families. Adoption of this resolution will put the ABA on record in support of legislation that provides paid and job-guaranteed sick leave and paid, job-guaranteed family and medical leave legislation to enable caregivers to meet the needs of their families, and to guarantee paid sick leave when employees themselves are ill.

In 1993, President Bill Clinton signed the Family and Medical Leave Act (FMLA) into law. The FMLA entitles employees who have worked for at least one year and a minimum of 1250 hours in the past year for an employer with at least 50 employees working within a 75 mile radius of the employee, to take unpaid, job-guaranteed leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. An eligible employee working for a covered employer may take up to 12 workweeks of leave in a 12-month period for any of the following circumstances: the birth of a child and to care for the newborn child within one year of birth; the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement; to care for the employee’s spouse, child, or parent who has a serious health condition; a serious health condition that makes the employee unable to perform the essential functions of his or her job; any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.” The FMLA also provides for 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member’s spouse, son, daughter, or parent or next of kin.

For those who are eligible, the FMLA has provided significant assistance, enabling workers to avoid job loss when they need to take time off work to care for a family member or for their own illness. However, less than 50% of workers are eligible for FMLA leave, and many more who are eligible are unable to take FMLA leave because they cannot afford unpaid leave. Only 14% of workers in the U.S. have access to paid family leave through their employers, and less than 40% have access to personal medical leave through employer-provided short-term disability insurance.

Recognizing the need for workers to have access to paid leave from work for family and medical caregiving needs, California (2002), Rhode Island (2013), New Jersey (2008) and New York (2016) have adopted legislation providing paid family and medical leave
that enables workers to receive partial income replacement when they take time away from work to address a serious health condition, including pregnancy, care for a family member with a serious health condition, or care for a newborn, newly-adopted, or newly-placed foster child. In addition, Washington state and the District of Columbia have passed paid family and medical leave laws that will go into effect in 2020. These laws provide up to 12 weeks of leave for these purposes in a 12 month period.

A 2011 study found that workers and businesses report positive effects of the California law providing paid family and medical leave.¹ Following this lead, Representative Rosa DeLauro (D-CT) and Senator Kirsten Gillibrand (D-NY) introduced the Family and Medical Insurance Leave Act (S. 337/H.R. 947), which would provide workers with up to 12 weeks of partial income replacement when they take time away from work to care for their own serious health conditions, including pregnancy and childbirth recovery; the serious health condition of a child, parent, spouse, or domestic partner; the birth or adoption of a child; and/or for particular military caregiving and leave purposes.

Separately, there has been a very fast-spreading movement in support of paid sick and safe days legislation. Beginning with the Healthy Families Act which was first introduced by Senator Kennedy in 2005, many states and localities have now adopted similar legislation that would mandate that employers of a certain size or larger provide up to 7 days of job guaranteed paid sick leave per year to employees. The length of this leave and its purposes complements the paid, job guaranteed family and medical leave laws described above because it is for different purposes and shorter time spans – more for short term emergencies rather than longer term medical needs and family caregiving responsibilities.

As of January 2018, ten states (Arizona, California, Connecticut, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont and Washington) and the District of Columbia have adopted legislation requiring employers to provide paid sick leave to their employees.² These laws vary in terms of the size of employer, the type of employee (part-time, full-time, years of employment, among others), and the amount of leave time allowed the employee. All of the laws permit the worker to take the paid sick leave to care for their own illness or that of specified family members, including children and spouses, same-sex domestic partners, domestic partners, and a person with whom the worker has a committed relationship, depending on the state. Some of these laws are considered “Paid Sick and Safe Day” laws because a worker is also permitted to use the leave to address the impacts of domestic violence, sexual assault, and/or stalking suffered by the worker, and in some states, where the worker’s family member is the victim.

In addition, at least 30 cities and counties have adopted paid sick leave ordinances or laws that require employers to provide similar types of leave to their workers.³

On September 7, 2015, President Barack Obama signed Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors and on September 30, 2016, the U.S. Department of Labor issued regulations to implement the EO.⁴ The EO requires certain employers that contract with the federal government to provide their employees with up to 7 days of paid sick leave annually. The employee may use the paid sick leave if s/he is absent because of his/her own physical or mental illness, injury, or medical condition; to obtain a diagnosis, care, or preventative care from a health care provider; to care for his or her child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, who has any of the conditions or need for diagnosis, care, or preventative care described, or is otherwise in need of care; or to address the impact of domestic violence, sexual assault, or stalking victimization on themselves to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or to assist an individual related to the employee as defined.

Paid, job guaranteed sick leave and paid, job guaranteed family and medical leave legislation each have broad popular support and are the logical and necessary to ensure maximum opportunities for all workers to maintain employment and meet their family, medical, and caregiving responsibilities.

The American Bar Association has a long history of supporting equality in the workplace through laws and policies that promote gender equality and equal opportunity in employment.

The ABA supports the Paycheck Fairness Act to strengthen gender-based pay discrimination protection under the Equal Pay Act of 1964. The ABA also adopted a resolution endorsing the Model Workplace Policy on Employer Responses to Domestic Violence, Sexual Violence, Dating Violence and Stalking, and encouraged all employers to enact workplace policies that address, prevent, and provide assistance to employees who experience violence and to hold perpetrators accountable. At the 2018 Midyear Meeting, the House of Delegates overwhelmingly adopted a resolution urging employers to adopt and enforce policies and procedures that prohibit, prevent, and promptly redress harassment and retaliation based on sex, gender, gender identity, sexual orientation, and the intersectionality of sex with race and/or ethnicity.

In light of its long history of supporting equitable employment practices, particularly when the burdens fall disproportionally on women, the ABA should be at the forefront of advocacy for this long overdue legislation.

Respectfully submitted,

Robert N. Weiner
Chair, Section of Civil Rights and Social Justice
August 2018
GENERAL INFORMATION FORM

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Robert N. Weiner, Chair, Section of Civil Rights and Social Justice

1. Summary of Resolution(s). The resolution urges federal, state, local, territorial, and tribal governments to enact legislation providing employees with paid sick days and paid family and medical leave.


3. Has this or a similar resolution been submitted to the House or Board previously? No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? The American Bar Association has a long history of supporting equality in the workplace through laws and policies that promote gender equality and equal opportunity in employment.

Specifically, the ABA supports the Paycheck Fairness Act to strengthen gender-based pay discrimination protection under the Equal Pay Act of 1964. The ABA also adopted a resolution endorsing the Model Workplace Policy on Employer Responses to Domestic Violence, Sexual Violence, Dating Violence and Stalking, and encouraged all employers to enact workplace policies that address, prevent, and provide assistance to employees who experience violence and to hold perpetrators accountable. And at the 2018 Midyear Meeting, the House of Delegates overwhelmingly adopted a resolution urging employers to adopt and enforce policies and procedures that prohibit, prevent, and promptly redress harassment and retaliation based on sex, gender, gender identity, sexual orientation, and the intersectionality of sex with race and/or ethnicity.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A


7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. We will work with relevant stakeholders within and outside of the American Bar Association and the Governmental Affairs Office to implement the policy.
8. **Cost to the Association.** (Both direct and indirect costs) Adoption of this proposed resolution would result in only minor indirect costs associated with Section staff time devoted to the policy subject matter as part of the staff members’ overall substantive responsibilities.

9. **Disclosure of Interest.** (If applicable) There are no known conflicts of interest.

10. **Referrals.** By copy of this form, the Report with Resolution will be referred to the following entities:
    - Section of Administrative Law and Regulatory Practice
    - General Practice, Solo and Small Firm Division
    - Section of Litigation
    - Section of State and Local Government Law
    - Commission on Mental and Physical Disability Law
    - Section of Business Law
    - Section of Health Law
    - Section of Family Law
    - Section of Labor and Employment
    - Client Protection Committee
    - Joint Committee on Employee Benefits

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges federal, state, local, territorial, and tribal governments to enact legislation providing employees with paid sick days and paid family and medical leave.

2. Summary of the Issue that the Resolution Addresses

There is a growing consensus that current workplace structures do not recognize the realities of the family and work lives of workers today, most notably the fact that most families no longer have one partner who is able to stay at home and care for the family and household. U.S. labor standards and workplace policies must be updated to reflect the reality of the 21st century workforce and to ensure that the nation’s public policies are in line with the needs of today’s working families.

Paid sick leave and family and medical leave have broad popular support and are the logical and long-awaited extension of the Family and Medical Leave Act, which was signed in 1993—25 years ago. The FMLA has provided many workers with job security in challenging times, but paid leave will enable many more workers to actually take leave and will address one of the contributors to the pernicious gender and racial wage gap.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The ABA, with its long history of supporting equitable employment practices, particularly when the burdens fall disproportionally on women, should be at the forefront of advocacy for this long overdue legislation.

Adoption of this resolution will put the ABA on record in support of legislation that provides paid and job-guaranteed family and medical leave to enable caregivers to meet the needs of their families, and to guarantee paid sick leave when employees themselves are ill.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No minority views or opposition have been identified.