



Dallas College  
Faculty Association

# Briefing Paper

May 2022

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## Parental Leave: New Paradigms for the 21<sup>st</sup> Century

*Action needed now to avert legal and ethical liabilities*

*Parental leave is a missed opportunity for Dallas College to reflect their institutional values. An updated parental leave system is needed to align our practice with current Dallas College rhetoric of diversity, equity, inclusion and belonging.*

*Please see the areas of opportunity outlined below to address gaps in the current parental leave policies:*

- **Equity and Paid Parental Leave:**
  - To **improve institutional outcomes**, Dallas College must expand its current **Paid Parental Leave policy** to remove gendered language, offer multiple paths to additional needed time for appropriate child and family care, remove discriminatory policies and procedures, and improve leave compensation models to better reflect current economic and financial needs.
- **Parental Leave and Discrimination:**
  - Provide a comprehensive, online guide covering **all resources** available to employees requiring leave for pregnancy, childbirth, adoption, surrogacy, or foster care.
- **Broadening Paid Parental Leave to Paid Family Leave:**
  - Provide an equitable, **Paid Family Leave Policy** to broaden this leave category to care of **family members**, and to help alleviate and prevent economic, psychological, societal, legal, medical, and caregiving stressors for all employees to **improve institutional outcomes**.

### Dallas College Faculty Association

The mission of the DCFA is to represent and advocate on behalf of faculty in all areas that position faculty better to serve students and improve student outcomes, and to partner with the Chancellor, the Board of Trustees, administrators, students, staff, and all other interested stakeholders to work for an ethical, diverse, inclusive, and equitable culture in Dallas College.

DCFA Briefing Papers present information, analysis and recommendations on key policy and shared governance issues.



ACCESSIBLE

### Equitable Changes to Parental Leave

Current Dallas College practices do not outline **all options** available to expectant parents. Dallas College employees requiring leave for pregnancy, childbirth, adoption, surrogacy, or foster care must be provided with a full accounting of all resources available to them by law. A simple guide, similar to that provided by the **National Institutes of Health**, can serve as a powerful tool in the prevention of legal, ethical, financial and reputational liabilities created by employees unfamiliar with current EEOC guidelines as well as state and federal law.

To avoid legal and ethical liabilities surrounding **disparate impact**, Dallas College should also amend their current **Paid Parental Leave policy**. According to **EEOC guidance**, “policies that restrict leave... disproportionately impact pregnant women. For example, a 10-day ceiling on sick leave and a policy denying sick leave during the first year of employment have been found to disparately impact pregnant women. Therefore, due to court **precedent**, the 36 month requirement should be removed from current **parental leave policy**. And to further align with the **Federal Employee Paid Leave Act (FEPLA)**, and **FMLA**, Dallas College Paid Parental Leave should be extended to 12 weeks.

Dallas College should likewise ensure their **current sick leave policy** is honored as part of Parental Leave for the illness of a family member, family emergency, and birth or placement of a child within the first year after the child’s birth, adoption, or foster placement. This will help to expand Parental Leave to encompass a greater length of time, and afford parents more time to care for children new to the home. Likewise, allowing for fully online accommodations for

positions which would not present an undue burden to the institution, similar to those made for disabled employees during the COVID-19 pandemic, would provide needed financial and caregiving relief for families squeezed by time, economic, psychological, societal, legal, medical, and caregiving stressors and present a truly equitable solution that would benefit both the family and the **institution**.

Similarly, as Dallas College has not updated its compensation since the 2015-2016 academic year, and raises have not kept pace with **inflation**, the **Consumer Price Index** or the rising cost of **renting** or **owning homes** in Dallas County, it is important to consider that faculty are dependent on extra service opportunities to attempt to make ends meet to provide shelter and feed their families. As a result, it is essential to look at extra service compensation in addition to base salaries when calculating leave benefits. A 3-year average income for faculty will make certain that Dallas College adequately addresses the financial needs for parents and ensures there are no punitive financial elements associated with their parental leave.

Additionally, all Dallas College employees experiencing **pregnancy related conditions** that temporarily inhibit their ability to perform their jobs must be provided with a full accounting of **all** resources available to them under existing disability law—including **ADA disability accommodations** and short-term disability leave. According to **EEOC** and **Texas Workforce guidelines**, “if an employee is temporarily unable to perform her job due to pregnancy, the employer must treat them the same as any other temporarily disabled employee;



for example, by providing modified tasks, alternative assignments, disability leave or leave without pay. Pregnant employees must be permitted to work as long as they are able to perform their jobs...Employees with pregnancy related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases and temporary disability benefits."

## Parental Leave and Discrimination

As related in the [EEOC Guidance on Pregnancy Discrimination and Related Issues](#), "prior to the enactment of the ADA Amendments Act of 2008 (ADAAA), some courts held that medical conditions related to pregnancy generally were not impairments within the meaning of the ADA, and so could not be disabilities.<sup>[141]</sup> Although pregnancy itself is not an impairment within the meaning of the ADA,<sup>[142]</sup> and thus is never on its own a disability,<sup>[143]</sup> some pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA, as amended. An impairment's cause is not relevant in determining whether the impairment is a disability.<sup>[144]</sup> Moreover, under the amended ADA, it is likely that a number of pregnancy-related impairments that impose work-related restrictions will be substantially limiting, even though they are only temporary."<sup>[145]</sup>

"Some impairments of the reproductive system may make a pregnancy more difficult and thus necessitate certain physical restrictions to enable a full-term pregnancy, or may result in limitations following childbirth. Disorders of the uterus and cervix may be causes of these complications.<sup>[146]</sup> For instance, someone with a diagnosis of cervical insufficiency may require bed rest during pregnancy. One court has concluded that multiple physiological impairments of the reproductive system requiring an employee to give birth by cesarean section may be disabilities for which an employee was entitled to a reasonable accommodation."<sup>[147]</sup>

"In applying the ADA as amended, a number of courts have concluded that pregnancy-related impairments may be disabilities within the meaning of the ADA, including: pelvic inflammation causing severe pain and difficulty walking and resulting in a doctor's recommendation that an employee have certain work restrictions and take early pregnancy-related medical leave;<sup>[149]</sup> symphysis pubis dysfunction causing post-partum complications and requiring physical therapy;<sup>[150]</sup> and complications related to a pregnancy in a breech presentation that required visits to the emergency room and bed rest.<sup>[151]</sup> In another case, the court concluded that there was a triable issue on the question of whether the plaintiff had a disability within the meaning of the amended ADA, where her doctor characterized the pregnancy as "high risk" and recommended that the plaintiff limit her work hours and not lift heavy objects, even though the doctor did not identify a specific impairment."

As a result, Dallas College is at risk of serious legal and ethical liabilities when only offering two options to pregnant employees—Paid Parental Leave, or Family Medical Leave. Per EEOC guidelines, "pregnancy discrimination may take

the form of disparate treatment (pregnancy, childbirth, or a related medical condition is a motivating factor in an adverse employment action) or disparate impact (a neutral policy or practice has a significant negative impact on women affected by pregnancy, childbirth, or a related medical condition, and either the policy or practice is not job related and consistent with business necessity or there is a less discriminatory alternative and the employer has refused to adopt it)."

## Disparate Treatment

"The PDA defines discrimination because of sex to include discrimination because of or on the basis of pregnancy. As with other claims of discrimination under Title VII, an employer will be found to have discriminated on the basis of pregnancy if an employee's pregnancy, childbirth, or related medical condition was all or part of the motivation for an employment decision. Intentional discrimination under the PDA can be proven using any of the types of evidence used in other sex discrimination cases. Discriminatory motive may be established directly, or it can be inferred from the surrounding facts and circumstances.

The PDA further provides that discrimination on the basis of pregnancy includes failure to treat women affected by pregnancy "the same for all employment related purposes . . . as other persons not so affected but similar in their ability or inability to work." Employer policies that do not facially discriminate on the basis of pregnancy may nonetheless violate this provision of the PDA where they impose significant burdens on pregnant employees that cannot be supported by a sufficiently strong justification."<sup>[62]</sup>

## Disparate Impact

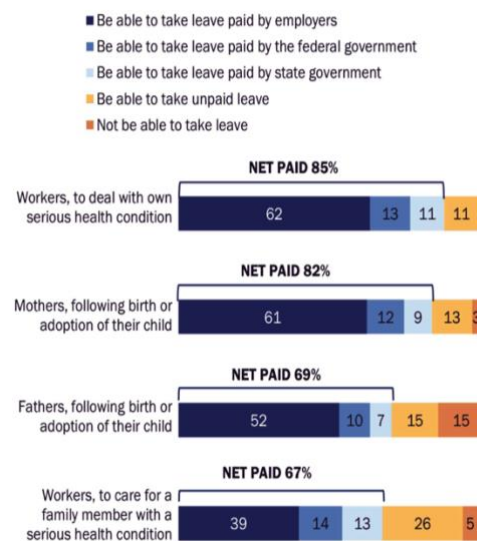
"Title VII is violated if a facially neutral policy has a disproportionate adverse effect on women affected by pregnancy, childbirth, or related medical conditions and the employer cannot show that the policy is job related for the position in question and consistent with business necessity.<sup>[88]</sup> Proving disparate impact ordinarily requires a statistical showing that a specific employment practice has a discriminatory effect on workers in the protected group. However, statistical evidence might not be required if it could be shown that all or substantially all pregnant women would be negatively affected by the challenged policy."<sup>[89]</sup>

The employer can prove business necessity by showing that the requirement is "necessary to safe and efficient job performance."<sup>[90]</sup> If the employer makes this showing, a violation still can be found if there is a less discriminatory alternative that meets the business need and the employer refuses to adopt it.<sup>[91]</sup> The disparate impact provisions of Title VII have been used by pregnant plaintiffs to challenge, for example, weight lifting requirements,<sup>[92]</sup> light duty limitations,<sup>[93]</sup> and restrictive leave policies.<sup>[94]</sup>

As a result, to prevent disparate impact and disparate treatment, Dallas College employees with pregnancy related conditions that require an accommodation must be allowed to work remotely if their job requirements allow, or any other

## Most Americans say workers should receive paid family and medical leave

% saying people in each situation should ...



Note: Share of respondents who didn't offer an answer not shown. NETs calculated before rounding. Source: Survey of U.S. adults conducted Nov. 17-Dec. 1, 2016. "Americans Widely Support Paid Family and Medical Leave, but Offer Over Specific Policies"

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combination of modified or light duty assignment as agreed to during their ADA iterative process.

## Evolving the Parental Leave Paradigm

Dallas College must evolve its current [Paid Parental Leave](#) policy to a [Paid Family Leave](#) Policy. The New York Times warns, "the boomer generation is turning 70 at a rate of 10,000 per day and living years longer than when the safety net was originally built," said Ai-jen Poo, a co-director of Caring Across Generations, a coalition of advocacy groups. What's more, demand for care is growing. The burden of care for aging relatives is reshaping the lives of millions of others. About 15 percent of women and 13 percent of men 25 to 54 years old spend time caring for an older relative, [according to the Labor Department](#). Among those 55 to 64, the share rises to one in five Americans. And 20 percent of these caregivers also have children at home.

Per the Kaiser Family Foundation, "the [Bureau of Labor Statistics](#) data found that less than one in four (23%) workers have access to paid family leave in 2021. Data on the share of workers with access to paid medical leave for a longer, serious illness are limited, but BLS also estimates that 40% of workers have access to short-term disability insurance." This is one of many reasons [paid family leave](#) has been reintroduced this year before the 117<sup>th</sup> Congress.

"Proponents of a national paid family and medical program leave urge that it would provide employees with greater financial security when they must take an extended leave for medical reasons or to care for an ailing family member or new child. Research indicates that access to paid family and medical leave is associated with improved [physical](#) and mental health for new parents, decreased [infant mortality](#), [financial security](#) for caregivers in the short- and long-term, and improved connections to the [workforce](#), particularly for women, who are more likely than men to be caregivers for [children](#) and [older adults](#)."

# Proposed Paid Family Leave Policy:

Parental leave is a missed opportunity for Dallas College to reflect their institutional values. Currently Dallas College paid parental leave policies fail to account for the unique nature of academic and instructional work, and remains out of alignment with institutional philosophies, policies, and stated values. An updated, paid family leave system is needed to align our practice with current Dallas College rhetoric of diversity, equity, inclusion and belonging.

Please see the areas of opportunity outlined below to address gaps in the current parental leave policies:

- Equity and Paid Parental Leave:
  - To [improve institutional outcomes](#), Dallas College must expand its current [Paid Parental Leave policy](#) to remove gendered language, offer multiple paths to additional needed time for appropriate child and family care, remove discriminatory policies and procedures, and improve leave compensation models to better reflect current economic and financial needs.
    - Expand Parental Leave to 12-16 weeks
    - Expand Parental Leave salary from base to average of highest 3 years historic pay
    - Allow accommodation of fully online teaching schedules for up to 1 year after birth/adoption/foster placement
    - Remove the 36 consecutive month employment requirement ([disparate impact](#))
  
- Parental Leave and Discrimination:
  - Provide a comprehensive, online guide covering [all resources](#) available to employees requiring leave for pregnancy, childbirth, adoption, surrogacy, or foster care. These should include, but are not limited to:
    - Paid Parental Leave
    - Sick Leave (for those with pregnancy related conditions or sick child)
    - Leave Bank
    - Family Medical Leave (with or without sick leave)
    - [ADA Disability Accommodations](#) (for those with pregnancy related conditions)
    - Short-Term Disability (for those with pregnancy related conditions)
  - Provide improved professional development and compliance training for all employees covering ADA, EEOC, FMLA, and Leave Policies.
  
- Broadening Paid Parental Leave to Paid Family Leave:
  - Provide an equitable, broadened [Paid Family Leave Policy](#) to help alleviate and prevent economic, psychological, societal, legal, medical, and caregiving stressors for all employees to [improve institutional outcomes](#).
    - Allows for the care of family members:
      - Aging parents
      - Disabled family members
      - Family Member's military service
    - Brings policy in line with [FMLA](#)



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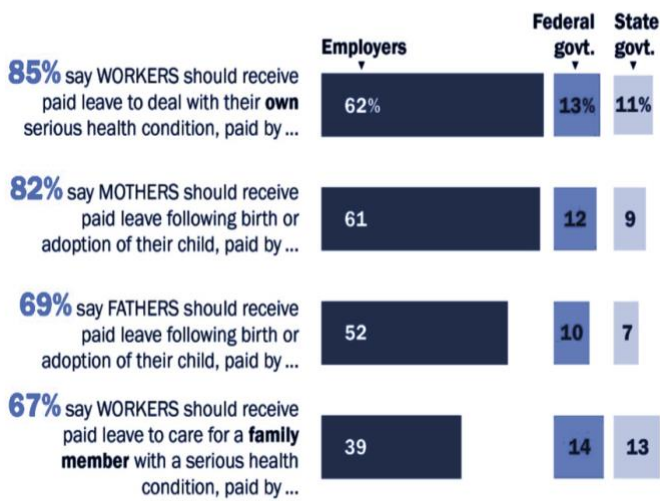
## References

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| <p><i>Five Benefits to Paid Parental Leave</i></p> <p><i>National Institutes of Health Guide to Parental Leave</i></p> <p><i>Texas Workforce Commission EEOC Fact Sheets</i></p> <p><i>EEOC Enforcement Guidance on Pregnancy and Discrimination Related Issues</i></p> <p><i>The Family Act</i></p> <p><i>The MetLife Study of Caregiving Costs to Working Caregivers: Double Jeopardy for Baby Boomers Caring for Their Parents</i></p> <p><i>DEC(LOCAL) – Compensation and Benefits: Leaves and Absences</i></p> <p><i>The Impact of Paid Maternity Leave on the Mental and Physical Health of Mothers and Children: A Review of the Literature and Policy Implications</i></p> <p><i>Prices in D-FW rose 9% from March 2021 to March 2022</i></p> <p><i>Report: DFW rents have shot up 25%</i></p> <p><i>NYTimes - Why Aren't Women Working? They're Caring for Parents</i></p> <p><i>Paid Leave in the US</i></p> <p><i>Caregiving in the US</i></p> | <p><i>Real-Time Market Monitoring Finds Signs of Brewing U.S. Housing Bubble</i></p> <p><i>Consumer Price Index, Dallas-Fort Worth-Arlington area – March 2022</i></p> <p><i>Family and Medical Leave Act</i></p> <p><i>National Institutes of Health Paid Parental Leave Information</i></p> <p><i>Paid Family and Medical Leave by State</i></p> <p><i>National Compensation Survey:</i></p> <p><i>Employee Benefits in the United States, March 2021</i></p> <p><i>A paid family leave policy could be coming to the U.S. Here's what it would look like</i></p> <p><i>The impact of paid family leave in the United States on birth outcomes and mortality in the first year of life</i></p> <p><i>Difficult Tradeoffs: Key Findings on Workplace Benefits and Family Health Care Responsibilities from the 2020 KFF Women's Health Survey</i></p> <p><i>Reducing Maternal Labor Market Detachment</i></p> <p><i>Unpaid Eldercare in the US</i></p> |
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## Most Americans say workers should receive paid family and medical leave

% saying each group should receive paid leave from ...



Note: Net support for paid leave calculated before rounding. Percent saying workers should be able to take unpaid leave or should not be able to take leave and share of respondents who didn't offer an answer not shown.

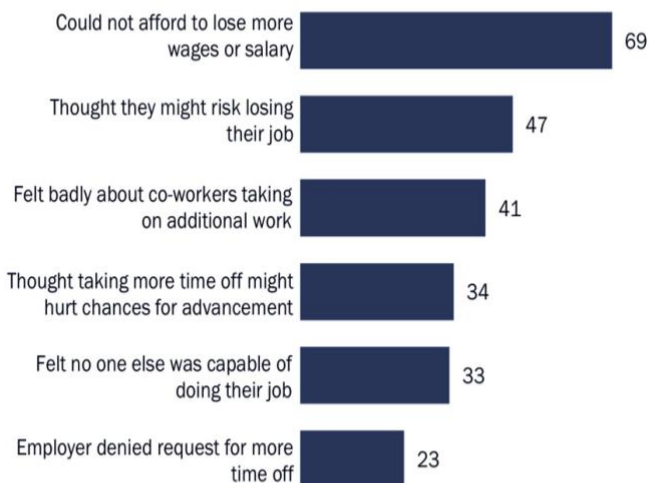
Source: Survey of U.S. adults conducted Nov. 17-Dec. 1, 2016.

"Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies"

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## Most who took less time off than they needed or wanted to cite loss of wages or salary as a reason

% of leave takers who took less time off than they needed or wanted to saying each is a reason why this happened



Note: "Leave takers" refers to those who have taken time off for parental, family or medical reasons in the past two years.

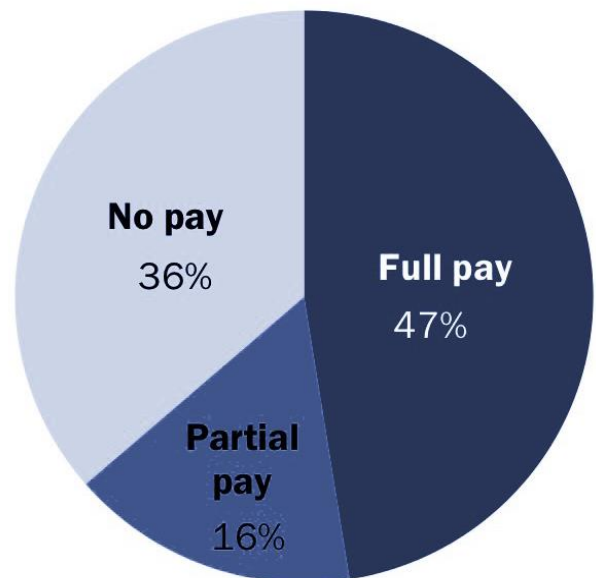
Source: Survey of U.S. adults who took or needed/wanted to take leave conducted Nov. 17-Dec. 14, 2016.

"Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies"

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## About half of workers say they received full pay when they took time off from work for parental, family or medical reasons

% of leave takers who say they received \_\_\_ when they took time off from work for parental, family or medical reasons



Note: Fewer than 0.5% of respondents didn't offer an answer. "Leave takers" refers to those who have taken time off for parental, family or medical reasons in the past two years.

Source: Survey of U.S. adults who took or needed/wanted to take leave conducted Nov. 17-Dec. 14, 2016.

"Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies"