Congressional Research Service
Informing the legislative debate since 1914

Access to Short-Term Disability Plans: In Brief

October 28, 2021

Congressional Research Service
https://crsreports.congress.gov
R46948

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R46948

October 28, 2021

William R. Morton
Analyst in Income Security

Access to Short-Term Disability Plans: In Brief

Short-term disability—also known as *paid medical leave*—provides temporary wage replacement benefits for eligible workers who are unable to perform their duties in the near term due to non-work-related disabilities, including pregnancy and childbirth. To qualify, workers must generally meet certain premium, earnings, or employment-duration requirements. Short-term disability usually replaces 50%-80% of a worker's regular wage or salary, up to a maximum amount. The maximum duration of benefits typically varies between 12 and 52 weeks, with the median being 26 weeks (or six months). Short-term disability differs from *paid sick leave*, which typically provides full-wage replacement payments for a specified number of days per year for illnesses, injuries, or routine care needs. To coordinate between the two, short-term disability often imposes a one- to two-week waiting period before benefits are first payable.

Short-term disability can be provided through private short-term disability insurance (STDI) policies, which are purchased individually or on a group basis through an employer or organization (e.g., union, professional association). In some cases, employers self-fund their plans (self-insure) instead of purchasing STDI policies from insurance companies. Short-term disability can also be provided through mandatory state temporary disability insurance (TDI) or paid medical leave (PML) programs. In most cases, the state TDI/PML program is part of a larger state program of paid family and medical leave. State TDI/PML programs are funded by contributions, which are paid either solely by employers, solely by employees, or by both employers and employees. Some state TDI/PML programs allow employers to use private plans in lieu of state-run ones. In 2021, state TDI/PML programs operate in California, the District of Columbia, Hawaii, Massachusetts, New Jersey, New York, Puerto Rico, Rhode Island, and Washington.

Due to a lack of comprehensive administrative data, researchers often use survey data to evaluate worker access to short-term disability. However, relatively few surveys capture data on short-term disability access. One of the few surveys to do so is the National Compensation Survey (NCS), which is conducted by the Bureau of Labor Statistics at the Department of Labor. According to the latest version of the NCS, 42% of private-industry workers had access to short-term disability in March 2021. (Workers who have *access* to short-term disability plans may not necessarily meet the minimum requirements needed to be *eligible* for benefits in the event of a qualifying disability.) Short-term disability access was higher for private-industry workers who worked full-time, for higher wages, or at larger firms, while access was lower for private-industry workers who worked part-time, for lower wages, or at smaller firms.

A sometimes overlooked caveat to the NCS is that it includes only short-term disability plans financed partially or wholly by employers. In other words, it excludes employee-only financed plans, such as individual STDI policies, plans purchased through organizations, and state TDI/PML programs that are financed solely by employees (e.g., California's TDI/PML program). Consequently, the access data in the NCS understate the overall share of private-industry workers with access to *any type* of short-term disability plan, regardless of who finances it. Nevertheless, even after accounting for this understatement, it appears that a marked share of private-industry workers do not have access to short-term disability.

A number of different proposals have been put forth recently to increase access to short-term disability and other types of paid leave. Some proposals would establish a national paid family and medical leave program, such as the recent reconciliation bill, known as the "Build Back Better Act" (H.R. 5376; 117th Congress), as reported. Other proposals would extend existing employer tax credits for paid family and medical leave, such as the Relief for Working Families Act (H.R. 5231; 117th Congress).

Contents

Introduction 1
Overview of Short-Term Disability 1
Background 1
Provision and Financing 3
Private Insurance Policies 3
Self-Funded Plans 4
Mandatory State Programs 4
Administrative Data on Short-Term Disability Access 5
Survey Data on Short-Term Disability Access 6
Background on the NCS 6
Data in the NCS 7
Caveats to the NCS 8
Understatement at the Regional Level 8
Understatement at the National Level 10
Conclusion 11

Figures

Figure 1. Share of Private-Industry Workers with Access to Short-Term Disability in the NCS, by Selected Characteristics, March 2021 7
Figure 2. Comparison of the Share of Private-Industry Workers with Access to Any Employer-Financed, Short-Term Disability in the NCS to the Share of Private-Industry Workers Covered Under State TDI/PML Programs in the QCEW, Pacific Division, March 2021 10

Figure A-1. Comparison of the Share of Private-Industry Workers with Access to Any Employer-Financed, Short-Term Disability in the NCS to the Share of Private-Industry Workers Covered Under State TDI/PML Programs in the QCEW, Middle Atlantic Division, March 2021 12

Tables

Table 1. States with Mandatory Temporary Disability Insurance/Paid Medical Leave (TDI/PML) Programs in the Pacific Division, 2021 9

Appendixes

Appendix. Short-Term Disability Access in the Middle Atlantic Division in the NCS 12

Contacts

Author Information..... 13

Introduction

Short-term disability (also called paid medical leave) provides eligible workers with temporary wage-replacement benefits in the event they are unable to work for at least one to two weeks due to non-work-related disabilities. In examining access to short-term disability, particularly among private-industry workers, researchers typically use data from the National Compensation Survey (NCS)—conducted by the Bureau of Labor Statistics (BLS)—which is one of the few surveys that provides estimates of access to short-term disability plans.[1] According to the latest version of the NCS, 42% of private-industry workers had access to short-term disability in March 2021.[2]

A sometimes overlooked caveat to the NCS is that it includes only short-term disability plans financed partially or wholly by employers. In other words, it excludes short-term disability plans financed solely by employees, such as California's mandatory temporary disability insurance program, and private insurance policies purchased directly by individuals or through organizations. Consequently, the access data in the NCS understate the overall share of private-industry workers with access to *any type* of short-term disability plan, regardless of who finances it. That said, even after accounting for this understatement, it appears that a marked share of private-industry workers do not have access to short-term disability.

In support of Congress's potential consideration of legislation to expand access to paid family and medical leave, this report examines what is known about the current level of access to short-term disability among U.S. workers, particularly those in private industry. The report begins with an overview of short-term disability, including the provision and financing of benefits. Next, it provides selected administrative data on short-term disability plan access, which apply to various categories of workers (e.g., private-industry, government, self-employed). After that, the report discusses the availability of survey data, with a focus on short-term disability plan access among private-industry workers in the NCS. Finally, the report examines various caveats to the NCS, including its exclusion of employee-only financed plans.

Overview of Short-Term Disability

Background

Short-term disability—also known as *paid medical leave*[3]—provides time-limited cash benefits for eligible workers who are unable to perform their duties in the near term due to non-work-related disabilities (i.e., illnesses or injuries not incurred in the course of employment).[4] To qualify, workers must meet certain minimum requirements, such as regularly paying their premiums, earning a minimum amount within a specified period, or working for a minimum amount of time within a specified period. Most types of impairments are covered by short-term

[1] See, for example, Angela Rachidi and Christopher J. Ruhm, eds., *Paid Leave for Illness, Medical Needs, and Disabilities: Issues and Answers*, AEI-Brookings Paid Leave Project, November 17, 2020, https://www.aei.org/research-products/report/paid-leave-for-illness-medical-needs-and-disabilities-issues-and-answers/.

[2] U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS), *National Compensation Survey: Employee Benefits in the United States, March 2021*, September 2021, Table 17, p. 251, https://www.bls.gov/ncs/ebs/benefits/2021/employee-benefits-in-the-united-states-march-2021.pdf#page=251.

[3] See CRS Report R44835, *Paid Family and Medical Leave in the United States*.

[4] Illnesses or injuries incurred in the course of employment are typically covered under workers' compensation. See CRS Report R44580, *Workers' Compensation: Overview and Issues*.

disability, although some plans prohibit coverage if the impairments are self-inflected, stem from certain criminal acts, or are based on preexisting conditions.[5] Short-term disability usually replaces 50%-80% of a worker's regular wage or salary, up to a maximum amount.[6] The maximum duration of benefits typically varies between 12 and 52 weeks, with the median being 26 weeks (or six months).[7]

Short-term disability differs from *paid sick leave*, which usually provides full-wage replacement payments for a specified number of days per year for illnesses, injuries, or routine care needs.[8] To coordinate between the two, short-term disability typically imposes a one- to two-week waiting period before benefits are first payable.[9] Some employers use extended paid sick leave plans that can be used in lieu of separate paid sick leave and short-term disability plans. However, because of the one- to two-week waiting period, short-term disability plans generally cannot be used as paid sick leave for immediate medical or routine care needs.

The most common reason for using short-term disability is pregnancy, which typically makes up about one-quarter of all claims.[10] Short-term disability plans generally provide benefits for up to two to four weeks before childbirth and for up to four to eight weeks after childbirth (or possibly longer if there are complications).[11] According to one insurance company, Coronavirus Disease 2019 (COVID-19) was the third most common reason for short-term disability use in 2020 (about 10% of claims).[12] Other top reasons include musculoskeletal disorders, accidents and injuries, cancer, digestive disorders, and mental and behavioral disorders.

---

[5] Federal requirements that prohibit preexisting condition exclusions in private health insurance policies do not apply to private disability insurance policies. (For more information on federal requirements for private health insurance plans, see CRS Report R45146, *Federal Requirements on Private Health Insurance Plans*.) Preexisting condition exclusions in private short-term disability policies typically apply for only the first year of coverage.

[6] BLS, *NCS-Benefits March 2021*, Table 27, pp. 103, 291, and 475, https://www.bls.gov/ncs/ebs/benefits/2021/home.htm; Alera Group, *2020 Healthcare and Employee Benefits Benchmarking Survey: Aggregate Summary Results*, October 2020, p. 22, https://rba.aleragroup.com/wp-content/uploads/sites/145/2021/03/2020_EB_Benchmarking_Survey_Book.pdf. Some employers provide full-wage replacement benefits under their short-term disability plans.

[7] BLS, *NCS-Benefits March 2021*, Excel dataset, Insurance benefits: Short-term disability: Duration of benefits. Alera Group, *2020 Healthcare and Employee Benefits Benchmarking Survey*, p. 23. Some short-term disability plans pay benefits for more than 52 weeks. Historically, six months has been the demarcation line between short-term and long-term disability.

[8] Some paid sick leave plans provide partial-wage replacement payments. In addition, paid sick leave may be provided as part of a consolidated leave plan, which provides a single amount of paid time off that can be used for multiple reasons (e.g., sickness, vacation, personal).

[9] Integrated Benefits Institute (IBI), *IBI Health and Productivity Benchmarking: Short-Term Disability Program: Calendar-Year Data: 2019*, September 10, 2020, p. 3, https://www.ibiweb.org/benchmarking/#benchmarking-tool (see "Sample Reports" under "Industry Summary"). The waiting period is also known as the *elimination period*.

[10] IBI, *IBI Health and Productivity Benchmarking*, pp. 13-14. For a summary of the IBI data, see Council for Disability Awareness, "Disability Statistics," September 30, 2021, https://disabilitycanhappen.org/disability-statistic/. For additional data on selected state temporary disability insurance (TDI) or paid medical leave (PML) programs, see State of California, Employment Development Department, *Disability Insurance Program Statistics*, https://www.edd.ca.gov/About_EDD/pdf/qsdi_DI_Program_Statistics.pdf; and State of New Jersey, Department of Labor and Workforce Development, *Temporary Disability Insurance Work in 2019: Summary Report*, August 2020, Table 5, p. 14, https://www.myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/TDI%20Report%20for%202019.pdf.

[11] For data on the frequency and duration of pregnancy claims by type, see IBI, *Benchmarking Analytics: Costs and Durations of Short-Term Disability Claims for Pregnancy*, November 1, 2017, https://www.ibiweb.org/resource/costs-and-durations-of-short-term-disability-claims-for-pregnancy/.

[12] Unum, "COVID-19 Is a top Cause of Disability for U.S. Workers," June 30, 2021, https://www.unum.com/about/

Short-term disability is available to various categories of workers.[13]

- **Private-industry workers.** Workers who work for private-sector employers or nonprofit organizations (i.e., employers other than governments).
- **Government workers.** Workers who work for the federal government, state or local governments, or instrumentalities of governments.[14]
- **Self-employed individuals.** Individuals who own their own businesses (either incorporated or unincorporated) or otherwise work for themselves.

This report focuses on private-industry workers, because they constitute more than three-quarters of the workforce.[15] However, where appropriate, the report discusses the applicability of terms and data to government workers and self-employed individuals.[16]

Provision and Financing

Short-term disability coverage is typically provided through one of three means: (1) private insurance policies, (2) self-funded plans, or (3) mandatory state programs.[17]

Private Insurance Policies

Insurance companies offer coverage through private short-term disability insurance (STDI) policies, which are divided into two basic types: group and individual. *Group STDI policies* are sponsored by employers and certain organizations (e.g., unions, professional associations) to provide access to coverage for their employees or members. *Individual STDI policies* are purchased directly from insurers by individuals who do not have other coverage (e.g., self-employed individuals) or who seek to supplement their existing group coverage.

Group STDI policies sponsored by employers are often funded entirely by the employers, although some are funded partially or wholly by employees.[18] Group STDI policies sponsored by organizations are typically funded entirely by those members who opt to purchase them. Individual STDI policies are funded entirely by the individual policyholders.

---

newsroom/2021/June/COVID-19-is-a-top-cause-of-disability.

[13] U.S. Department of Commerce, Bureau of the Census, "Class of Worker," https://www.census.gov/topics/employment/industry-occupation/about/class-of-worker.html.

[14] Federal workers are not covered under short-term disability plans through their employing agencies, although they may use paid sick leave or other accrued paid leave for short-term disability needs in some cases. Federal workers may also purchase private short-term disability insurance policies from insurance companies or through organizations.

[15] U.S. Department of Commerce, Bureau of the Census, "Class of Worker by Sex for the Civilian Employed Population 16 Years and Over," 2019 American Community Survey 1-Year Estimates, https://data.census.gov/cedsci/table?q=class%20of%20worker&tid=ACSST1Y2019.S2408&hidePreview=true.

[16] For more information on self-employed individuals, see Steven F. Hipple and Laurel A. Hammond, *Self-Employment in the United States*, BLS, March 2016, https://www.bls.gov/spotlight/2016/self-employment-in-the-united-states/home.htm.

[17] In addition, railroad workers are covered in the event of short-term disability through sickness benefits under the Railroad Unemployment Insurance Act. This report does not examine railroad sickness benefits under the act, because there are relatively few workers in railroad-covered employment (an average of 197,000 workers in 2020). See CRS Report RS22350, *Railroad Retirement Board: Retirement, Survivor, Disability, Unemployment, and Sickness Benefits*. See also Railroad Retirement Board, *Average Railroad Employment: January 2020-August 2021*, September 2021, https://rrb.gov/sites/default/files/2021-09/avgemp.pdf.

[18] BLS, *NCS-Benefits March 2021*, Table 24, pp. 91, 279, and 463.

Self-Funded Plans

Some employers elect to self-fund their short-term disability plans (self-insure) instead of purchasing private policies from insurance companies. Under self-funded plans, employers assume all of the risk and expense. These plans may take the form of *unfunded salary continuation*, where the employer funds the plan from operating revenue, or *non-commercially insured plans*, where the employer is required to have sufficient assets to cover the plan's projected liability and the plan must meet certain federal requirements.[19] Larger employers are more likely to self-fund their short-term disability plans.[20]

Mandatory State Programs

Some states provide coverage through mandatory state temporary disability insurance (TDI)[21] or paid medical leave (PML) programs.[22] Under these programs, participation is compulsory for workers and employers who meet the coverage requirements of state law. Coverage is often provided through a state-run plan with the option for employers to use private plans (STDI or self-funded) in lieu of the state-run plan.[23] However, in some cases, coverage is provided solely through a state-run plan or solely through private plans under an employer mandate. State TDI/PML programs cover nearly all private-industry workers who work in states with such programs. In addition, some state TDI/PML programs cover certain state and local government workers or self-employed individuals who elect coverage voluntarily.

---

[19] According to BLS, non-commercially insured plans "must be registered with the Department of Labor and are guaranteed by" the Employee Retirement Income Security Act. See BLS, *NCS-Benefits March 2021*, Glossary of Employee Benefit Terms, Short-Term Disability, https://www.bls.gov/ncs/ebs/national-compensation-survey-glossary-of-employee-benefit-terms.htm#short_term_disability.

[20] BLS, *NCS-Benefits March 2021*, Table 23, pp. 87-88, 275-276, and 459-460. See also Milliman, *Short-Term Disability; To Be or Not to Be (Self-Funded)?*, March 2014, https://www.milliman.com/-/media/milliman/importedfiles/uploadedfiles/insight/periodicals/bp/pdfs/bp_032014_stdisability.ashx.

[21] DOL, *Comparison of State Unemployment Laws 2020*, Chapter 8: Temporary Disability Insurance, https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/disability.pdf. See also Social Security Administration, *Annual Statistical Supplement, 2016*, May 2017, Temporary Disability Insurance Program Description and Legislative History and Table 9.C1, https://www.ssa.gov/policy/docs/statcomps/supplement/2016/index.html.

[22] Luisa Altmann and Anne Wallace, *State Paid Family and Medical Leave Laws*, Colorado Legislative Council Staff, January 28, 2021, https://leg.colorado.gov/sites/default/files/other_state_pfml_laws_memo.pdf. Mandatory programs established before 1970 are generally referred to as *state TDI programs*, while mandatory programs established within the last few years are typically referred to as *state PML programs*. (No state TDI/PML programs were established and implemented between 1970 and the late 2010s.) In states with more recent programs, PML is provided as part of larger state paid family and medical leave programs. States with TDI programs (except for Hawaii and Puerto Rico) also operate state paid family leave programs, which were established many decades after the state TDI programs. Due to the increasingly popularity of the term *PML*, state TDI programs are sometimes referred to as state PML programs. For more information on the history of state TDI programs, see Molly Weston Williamson, "Structuring Paid Family and Medical Leave: Lessons from Temporary Disability Insurance," *Connecticut Public Interest Law Journal*, vol. 17, no. 1 (Fall-Winter 2017), https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2019/06/Structuring-Paid-Family-and-Medical-Leave-Lessons-from-Temporary-Disability-Insurance-by-Molly-Weston-Williamson.pdf.

[23] For more information on the structure of state TDI/PML programs, see Benjamin W. Veghte et al., *Designing Universal Family Care: State-Based Social Insurance Programs for Early Child Care and Education, Paid Family and Medical Leave, and Long-Term Services and Supports*, National Academy of Social Insurance, Chapter 2: Paid Family and Medical Leave, June 2019, https://www.nasi.org/research/designing-universal-family-care-state-based-social-insurance-programs-for-early-child-care-and-education-paid-family-and-medical-leave-and-long-term-services-and-supports/. For more information on private plan use in state TDI/PML programs, see Chantel Boyens, Jack Smalligan, and Patricia Bailey, *Paid Family and Medical Leave and Employer Private Plans*, Center for Law and Social Policy, July 2021, https://www.clasp.org/sites/default/files/publications/2021/08/2021_PFML%20and%20Employer%20Private%20Plans.pdf.

State TDI/PML programs are funded by contributions, which are paid either solely by employers, solely by employees, or by both employers and employees. The contribution rate is levied on the earnings of covered workers, up to a maximum annual amount. In 2021, state TDI/PML programs operate in California, the District of Columbia, Hawaii, Massachusetts, New Jersey, New York, Puerto Rico, Rhode Island, and Washington. (This report does not examine state TDI/PML programs in Colorado, Connecticut, and Oregon, which are not yet fully implemented.)

Administrative Data on Short-Term Disability Access

There is no comprehensive source of administrative data on short-term disability plan access. Below are selected administrative data on private STDI policies and state TDI/PML programs. (CRS was unable to find administrative data on self-funded plans.) These data apply to various categories of workers and thus are not directly comparable with the survey data on private-industry workers discussed in the next section of the report.

Administrative Data on Short-Term Disability Plan Access in 2020

- **Private insurance policies:** 32.3 million workers covered under group STDI policies and 3.5 million covered under individual STDI policies.
- **Self-funded plans:** data not available.
- **State TDI/PML programs:** 30.7 million covered workers.

Note: Data are not mutually exclusive and apply to various categories of workers (private-industry, government, self-employed).

With respect to private STDI policies, the National Association of Insurance Commissioners—which represents the chief insurance regulators of the 50 states, the District of Columbia, and five U.S. territories—publishes an annual report on accident and health policy experience based on data from the financial annual statements of insurance companies. According to its latest report, at the end of 2020, 32.3 million workers were covered under group STDI policies, and 3.5 million were covered under individual STDI policies.[24] Group STDI policies typically cover private-industry workers, although state or local governments may cover their employees through group plans. Individual STDI policies are available to all categories of workers (private-industry, government, self-employed).

With respect to mandatory state programs, there were approximately 30.7 million workers, on average, covered under state TDI/PML programs in 2020.[25] (This figure excludes workers covered under Massachusetts's program, which started paying benefits in 2021.) More than 90% were private-industry workers.

The figures above are not mutually exclusive, which means they cannot be added together to produce the total number of unduplicated workers with access to private STDI policies or state TDI/PML programs. For example, some workers covered under group STDI policies from their employers may choose to supplement their coverage with individual STDI policies. In this case, such workers would be counted under both the group STDI policy figure and the individual STDI policy figure. In addition, some employers covered under state TDI/PML programs elect to cover

[24] National Association of Insurance Commissioners, *2020 Accident and Health Policy Experience Report*, July 2021, pp. 15 and 17, https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf.

[25] CRS analysis of state legislative, budget, and other documents. Due to a lack of recent administrative data on state TDI/PML program coverage for certain states, CRS used the Quarterly Census of Employment and Wages (QCEW) to bring older administrative data for such states up to 2020 levels.

their employees under private plans via STDI policies. As a result, their workers would be counted under both the group STDI policy figure and the state TDI/PML program figure.

Survey Data on Short-Term Disability Access

Due to a lack of comprehensive administrative data, researchers often use surveys to obtain data on access to short-term term disability. However, relatively few surveys collect data specifically on short-term disability access. Over the years, the Department of Labor (DOL) has sponsored special surveys[26] or supplements to existing surveys[27] to capture data on access to paid leave for a worker's own illness or medical care. However, these DOL surveys do not distinguish between paid sick leave and short-term disability.[28] In addition, certain organizational surveys capture data on access to paid leave, but they typically do not separate out short-term disability from other types of paid leave.[29] Consequently, researchers often turn to the NCS.

Background on the NCS

The NCS is an establishment-based survey that provides estimates of employer costs for employee compensation and the incidence and features of employer-sponsored benefits in the 50 states and the District of Columbia.[30] The benefits component of the NCS, also known as the Employee Benefits Survey, provides estimates of access to short-term disability plans among private-industry workers, state and local government workers, and civilian workers (i.e., private-industry workers and state and local government workers combined).[31] The short-term disability data reflect private insurance policies, self-funded plans, and certain state TDI/PML programs (see "Caveats to the NCS").

---

[26] DOL, "2018 Employee and Worksite Perspectives of the Family and Medical Leave Act National Surveys," https://www.dol.gov/agencies/oasp/evaluation/fmla2018.

[27] BLS, "American Time Use Survey (ATUS) 2017-18 Leave and Job Flexibilities Module," https://www.bls.gov/tus/lvdatafiles.htm.

[28] DOL, *Access to Paid Family and Medical Leave for People with Disabilities*, September 2021, Appendix 5, pp. 20-21, https://web.archive.org/web/20211020204218/https:/www.dol.gov/sites/dolgov/files/ODEP/pdf/Access-to-PFML-for-People-with-Disabilities_508c_.pdf. See also Isabel V. Sawhill, Sarah Nzau, and Katherine Guyot, *A Primer on Access to and Use of Paid Family Leave*, Brookings Institution, December 5, 2019, https://www.brookings.edu/research/a-primer-on-access-to-and-use-of-paid-family-leave/. According to DOL's 2018 Worksite Survey (which was one of the 2018 Family and Medical Leave Act surveys), 23% of private-industry employees worked at worksites where paid disability leave was offered to *all employees*, and 25% worked at worksites where paid disability leave was offered to *some employees*. See Scott Brown et al., *Employee and Worksite Perspectives of the FMLA: Paid Leave*, DOL, July 2020, https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018PB3PaidLeave_StudyBrief_Aug2020.pdf.

[29] See, for example, Angela Rachidi, *Employment and Safety Net Survey, Wave II: Does the US Need a National Paid Leave Law After the Pandemic?*, American Enterprise Institute, April 2021, p. 3, https://www.aei.org/research-products/report/employment-and-safety-net-survey-wave-ii-does-the-us-need-a-national-paid-leave-law-after-the-pandemic/. See also Juliana Horowitz et al., *Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies*, Pew Research Center, March 23, 2017, p. 38, https://www.pewresearch.org/social-trends/2017/03/23/views-of-paid-leave-relative-to-other-workplace-benefits/.

[30] BLS, "National Compensation Survey," https://www.bls.gov/ncs/. This report uses the term *employer-sponsored plans* to refer to the focus of the NCS generally. The report does not use the term *employer-sponsored plans* to refer to short-term disability plans that are included in the NCS, because employer-sponsored plans may be financed wholly by employees, which are excluded from the NCS. In addition, this report does not use the term *employer-provided plans* because some state TDI/PML programs are financed by employers but the benefits are provided by state-run plans (i.e., the benefit payments are issued by a state agency rather than the employer).

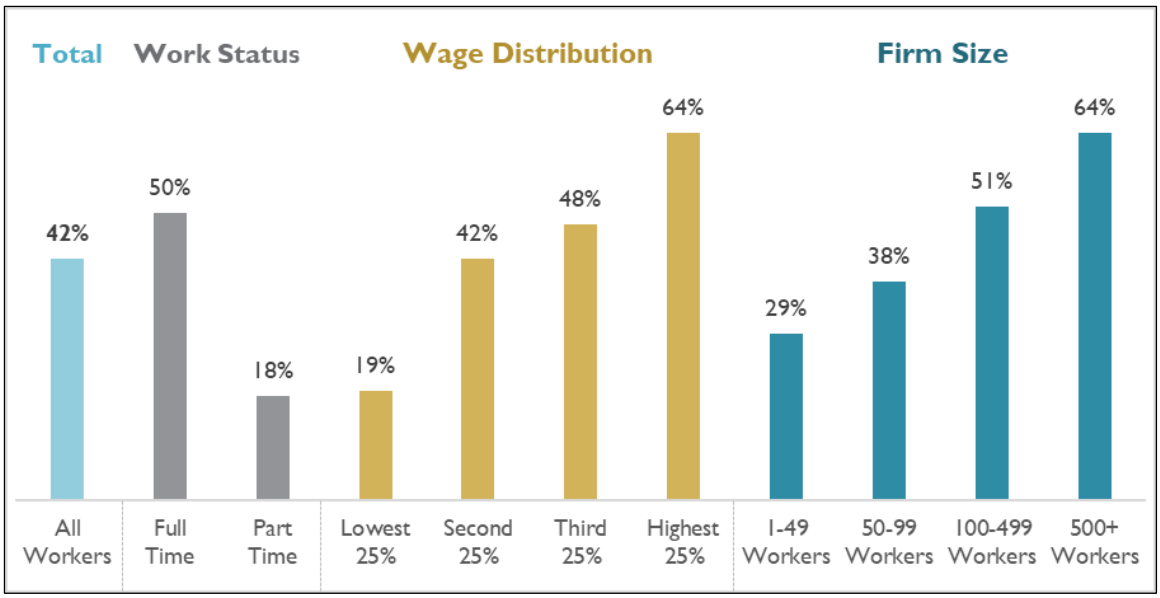
[31] BLS, "Employee Benefits Survey," https://www.bls.gov/ncs/ebs/benefits/.

The NCS excludes federal workers, military personnel, self-employed individuals, domestic workers in private homes, agricultural workers, and certain other categories of workers. It also does not capture data on workers in U.S. territories. Because benefit plans for state and local government workers are often structured differently from those for private-industry workers, the remainder of the report focuses exclusively on private-industry workers.

Data in the NCS

According to the latest version of the NCS, 42% of private-industry workers had access to short-term disability in March 2021 (**Figure 1**).[32] Employees had access to such plans if they were available for their use.[33] (Workers who have *access* to short-term disability plans may not necessarily meet the minimum requirements needed to be *eligible* for benefits in the event of a qualifying disability.[34]) Short-term disability access was higher for private-industry workers who worked full-time, for higher wages, or at larger firms, while access was lower for private-industry workers who worked part-time, for lower wages, or at smaller firms.

Figure 1. Share of Private-Industry Workers with Access to Short-Term Disability in the NCS, by Selected Characteristics, March 2021



Source: CRS analysis of U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2021*, September 2021, Table 17, pp. 251-252, https://www.bls.gov/ncs/ebs/benefits/2021/employee-benefits-in-the-united-states-march-2021.pdf#page=251.

[32] BLS, *NCS-Benefits March 2021*, Table 17, p. 251.

[33] BLS, *NCS-Benefits March 2021*, Glossary of Employee Benefit Terms, Overview, https://www.bls.gov/ncs/ebs/national-compensation-survey-glossary-of-employee-benefit-terms.htm#overview.

[34] Workers with access to voluntary short-term disability plans must elect to participate in such plans in order to be covered. (Plan participation is mandatory for workers in states with TDI/PML programs who meet the coverage requirements of state law.) According to the March 2021 NCS, the take-up rate for all private-industry workers with access to employer-financed, short-term disability was 98%. See BLS, *NCS-Benefits March 2021*, Table 17, p. 251.

Caveats to the NCS

As an establishment-based survey designed to capture employer costs and benefit provisions, the NCS includes only short-term disability plans financed partially or wholly by employers. It therefore excludes employee-only financed plans, such as individual STDI policies and plans purchased through organizations. In addition, a 2015 BLS article notes that "some state TDI plans are funded entirely by employees and therefore are not included in the NCS data."[35] State TDI/PML programs in California and Rhode Island do not require employer contributions at all, and state TDI/PML programs in Washington and Massachusetts do not require employer contributions for firms with fewer than 50 and 25 covered workers, respectively.[36] If no other employer-financed, short-term disability coverage were available, then private-industry workers with employee-only financed plans in these states would be excluded from the NCS's 42% estimate.

Further, employer-financed plans that provide short-term disability may be counted in the NCS as either paid sick leave or short-term disability, depending on the features of the plans.[37] For example, an employer may provide an extended paid sick plan that can be used in lieu of separate paid sick leave and short-term disability plans. If this extended plan meets the NCS's definition of *paid sick leave*, then the plan is categorized as paid sick leave, even though it can also be used for short-term disability needs.[38]

Understatement at the Regional Level

To illustrate the understatement of the access data in the NCS with respect to state TDI/PML programs, **Table 1** shows the availability of such programs in the Pacific division in 2021.[39] Among the five states in this division, California, Hawaii, and Washington have active state TDI/PML programs in 2021. Because it includes only short-term disability plans financed partially or wholly by employers, the NCS *includes* Hawaii's program and part of Washington's program but *excludes* California's program and the other part of Washington's program. Unless affected employers in California and Washington elect to pay some or all of the employee

---

[35] William J. Wiatrowski, "Pay Protection During Temporary Absences from Work: What We Know and What We Don't Know," *Monthly Labor Review*, BLS, September 2015, https://www.bls.gov/opub/mlr/2015/article/pay-protection-during-temporary-absences-from-work.htm. The article notes

> New York's and New Jersey's TDI plans (including those in which employees share the cost of the plan) are included in the NCS as short-term disability plans. BLS estimates that 17 percent of workers with short-term disability benefits are covered by these legally required plans. California and Rhode Island also have TDI plans, although they are funded entirely by employees through mandatory payroll deductions. Because these plans do not include any employer funding, they are not counted as short-term disability plans in the NCS.

[36] See EY, "2021 State Disability and Paid Family and Medical Leave Insurance Wage Base and Rates," December 10, 2020, https://taxnews.ey.com/news/2020-2831-2021-state-disability-and-paid-family-and-medical-leave-insurance-wage-base-and-rates.

[37] Wiatrowski, "Pay Protection During Temporary Absences from Work."

[38] Wiatrowski, "Pay Protection During Temporary Absences from Work." The article notes that for NCS purposes, paid sick leave "is provided on a per-year basis, usually expressed in days, and is never insured." Short-term plans for non-work-related illnesses or injuries that do not meet the NCS's definition of *paid sick leave* are classified as short-term disability. Extended paid sick leave plans are typically classified in the NCS as short-term disability rather than paid sick leave if they are not insured and provide benefits "over a long time (such as 26 weeks)" and "on a per-disability basis (i.e., benefits renewed with each new absence)."

[39] For more information on the grouping of states in the NCS by division, see BLS, *Handbook of Methods: National Compensation Measures*, December 15, 2017, https://www.bls.gov/opub/hom/ncs/concepts.htm.

contributions under the state TDI/PML programs or provide employer-financed supplemental coverage, their workers would be excluded from the NCS.

Table 1. States with Mandatory Temporary Disability Insurance/Paid Medical Leave (TDI/PML) Programs in the Pacific Division, 2021

Pacific Division	Active TDI/PML Program in 2021?	Financing: Employer-Contribution Requirement (Included in NCS)	Financing: Employee-Only Contribution Requirement (Excluded from NCS)
Alaska	No	—	—
California	Yes	—	✓
Hawaii	Yes	✓	—
Oregon	No	—	—
Washington	Yes	✓ (Firms with 50+ Workers)	✓ (Firms with < 50 Workers)

Source: CRS analysis of applicable state statutes, regulations, and websites.

Notes: "—" indicates not applicable. Oregon's PML program is scheduled to be fully implemented in September 2023. State of Oregon, Employment Department, "Program Timeline," https://www.oregon.gov/employ/PFMLI/Pages/PFMLI-Timeline.aspx.

To identify private-industry workers in the division covered under state TDI/PML programs (regardless of who finances them), CRS used the Quarterly Census of Employment and Wages (QCEW), which is a BLS database derived from administrative data from state unemployment insurance (UI) programs.[40] Because UI-covered employment is virtually identical to TDI/PML-covered employment, nearly all private-industry workers in the QCEW who work in states with TDI/PML programs should be covered under these programs and thus have access to them. (Participation is mandatory for these workers.)

Figure 2 compares the share of private-industry workers in the Pacific division with access to any employer-financed, short-term disability in the March 2021 NCS to the share of private-industry workers in the division covered under state TDI/PML programs in the March 2021 QCEW, regardless of who financed them. In the NCS, 32% of private-industry workers in the division had access to any employer-financed, short-term disability.[41] However, in the QCEW, 91% of private-industry workers in the division were covered under state TDI/PML programs (i.e., the share of private-industry workers in the division who worked in California, Hawaii, or Washington).[42]

The marked gap between the two measures is due primarily to the NCS's exclusion of employee-only financed state TDI/PML programs in California and part of Washington.[43] If the NCS had included *all types* of short-term disability plans (regardless of who financed them), then the share in NCS would theoretically be *at least* equal to the share in the QCEW, if not higher. (See the Middle Atlantic division in the **Appendix** for such an example.) This understatement is not an

[40] BLS, "Quarterly Census of Employment and Wages," https://www.bls.gov/cew/. See also BLS, *Handbook of Methods: Quarterly Census of Employment and Wages*, https://www.bls.gov/opub/hom/cew/home.htm.

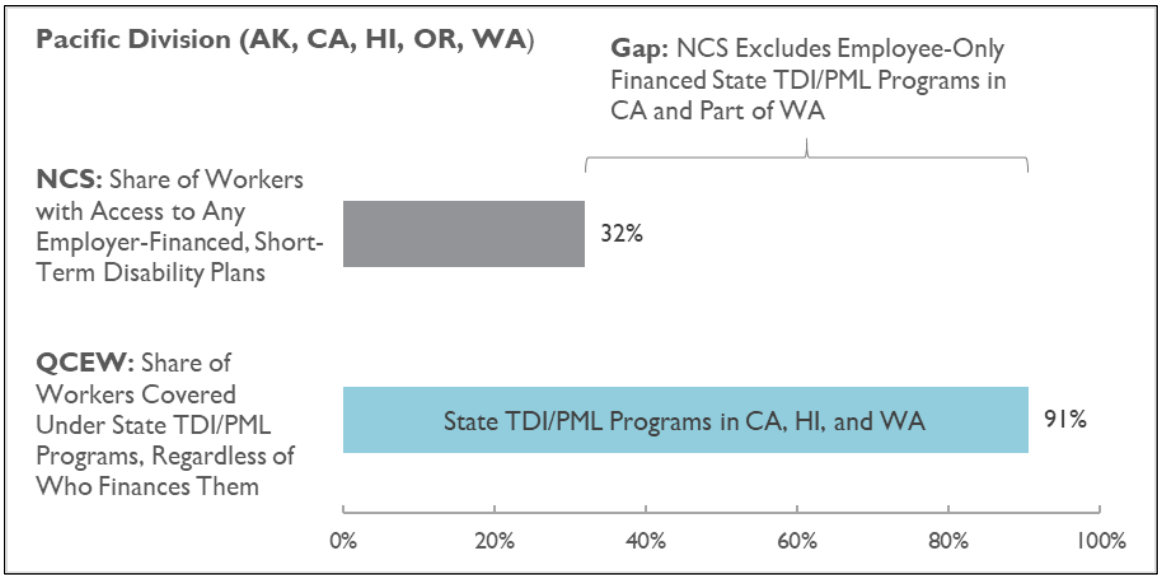
[41] BLS, *NCS-Benefits March 2021*, Table 17, p. 252.

[42] CRS analysis of the March 2021 QCEW. Data are preliminary.

[43] Some private plans under Hawaii's TDI/PML program are classified in the NCS as paid sick leave rather than short-term disability. See Wiatrowski, "Pay Protection During Temporary Absences from Work."

error but an intentional design feature of the NCS, as the purpose of the survey is to provide estimates of access to *employer-financed* benefit plans—not all benefit plans.

Figure 2. Comparison of the Share of Private-Industry Workers with Access to Any Employer-Financed, Short-Term Disability in the NCS to the Share of Private-Industry Workers Covered Under State TDI/PML Programs in the QCEW, Pacific Division, March 2021



Source: CRS analysis of the March 2021 NCS and QCEW.

Notes: TDI = temporary disability insurance. PML = paid medical leave. NCS = National Compensation Survey. QCEW = Quarterly Census of Employment and Wages. QCEW data are preliminary.

Understatement at the National Level

In March 2021, an estimated 48.1 million private-industry workers in the NCS had access to short-term disability (42% of the 114.5 million total).[44] That same month, a combined 16.5 million private-industry workers in the QCEW worked in California or Rhode Island—or worked in Washington or Massachusetts for employers with fewer than 50 or 25 covered workers, respectively—and thus were potentially excluded from the NCS.[45] These two figures are not directly comparable due to methodological differences between the data sources.[46] Further, an unknown number of potentially excluded workers in these states had access to some form of employer-financed coverage and thus were ultimately included in the NCS.

That said, the size of the potentially excluded population in these states suggests that the access data in the NCS noticeably understate the overall share of private-industry workers with access to any type of short-term disability plan, regardless of who finances it. This understatement is even greater after accounting for the NCS's exclusion of an unknown number of private-industry workers whose only source of coverage was individual STDI policies (3.5 million workers

[44] BLS, *NCS-Benefits March 2021*, Table 17, p. 251, and Appendix 2, https://www.bls.gov/ncs/ebs/benefits/2021/home.htm#appendix2.

[45] CRS analysis of the March 2021 QCEW. Data are preliminary.

[46] For example, the total private-industry worker population in the NCS for March 2021 was 114.5 million, while the total private-industry worker population in the QCEW for March 2021 was 119.2 million. (Data for both surveys reflect private-industry workers in the 50 states and the District of Columbia.)

covered at the end of 2020) or whose short-term disability plans were classified in the NCS as paid sick leave rather than short-term disability.

Conclusion

Due to the lack of comprehensive administrative data, survey data from the NCS are often used to evaluate access to short-term disability among U.S. workers, particularly those in private industry. As an establishment-based survey, the NCS generally does what it was designed to do: provide estimates of the share of private-industry workers with access to *employer-financed*, short-term disability (42% in March 2021).[47] However, these estimates do not reflect the level of access to short-term disability among the entire private-industry worker population, because millions of private-industry workers have access to *employee-only financed* short-term disability. Consequently, using the access data in the NCS to represent the entire private-industry worker population understates the overall share with access to any type of short-term disability plan, regardless of who finances it. That said, even after accounting for this understatement, it appears that a marked share of private-industry workers do not have access to short-term disability.

Whether and how to address access to short-term disability has been of particular interest to Congress over the past several years.[48] A number of different proposals have been put forth recently to increase access to short-term disability and other types of paid leave. Some proposals would increase access by establishing a mandatory national paid family and medical leave program that would cover nearly all U.S. workers (private-industry, government, self-employed).[49] Other proposals would increase access on a voluntary basis by extending existing employer tax credits for paid family and medical leave or establishing new tax-advantaged savings accounts for workers to use during such leave.[50]

---

[47] The NCS also provides estimates of the share of state and local government workers with access to employer-financed, short-term disability.

[48] See, for example, U.S. Congress, House Committee on Ways and Means, Subcommittee on Worker and Family Support, *Universal Paid Leave and Guaranteed Access to Child Care*, 117th Cong., 1st sess., May 27, 2021, https://waysandmeans.house.gov/legislation/hearings/worker-and-family-support-legislative-subcommittee-hearing-universal-paid-leave; U.S. Congress, Senate Committee on Health, Education, Labor, and Pensions, *Paid Leave for Working Families: Examining Access, Options, and Impacts*, 117th Cong., 1st sess., May 18, 2021, https://www.help.senate.gov/hearings/paid-leave-for-working-families-examining-access-options-and-impacts; and U.S. Congress, Senate Committee on Finance, *Paid Leave Proposals in the COVID Era*, 116th Cong., 2nd sess., June 18, 2020, https://www.finance.senate.gov/hearings/paid-leave-proposals-in-the-covid-era.

[49] See, for example, the recent reconciliation bill, known as the "Build Back Better Act" (H.R. 5376; 117th Congress), as reported, and U.S. Congress, House Committee on Ways and Means, "Chairman Neal Announced Markup of Build Back Better Act," September 27, 2021, https://waysandmeans.house.gov/media-center/press-releases/chairman-neal-announces-markup-build-back-better-act. The federal-run plan for paid family and medical leave under H.R. 5376, as reported, would presumably not be included in the NCS, because it would not require any employer contributions (see CRS In Focus IF11922, *Provisions Related to Universal Paid Family and Medical Leave Developed by the House Committee on Ways and Means in Response to Reconciliation Directives*). In addition, H.R. 5376, as reported, would repeal the employer tax credit for paid family and medical leave two years earlier than is scheduled under current law (see CRS Report R46923, *Tax Provisions in the "Build Back Better Act:" The House Ways and Means Committee's Legislative Recommendations*). For more information on proposals from the 116th Congress, see CRS Report R46390, *Paid Family and Medical Leave: Current Policy and Legislative Proposals in the 116th Congress*.

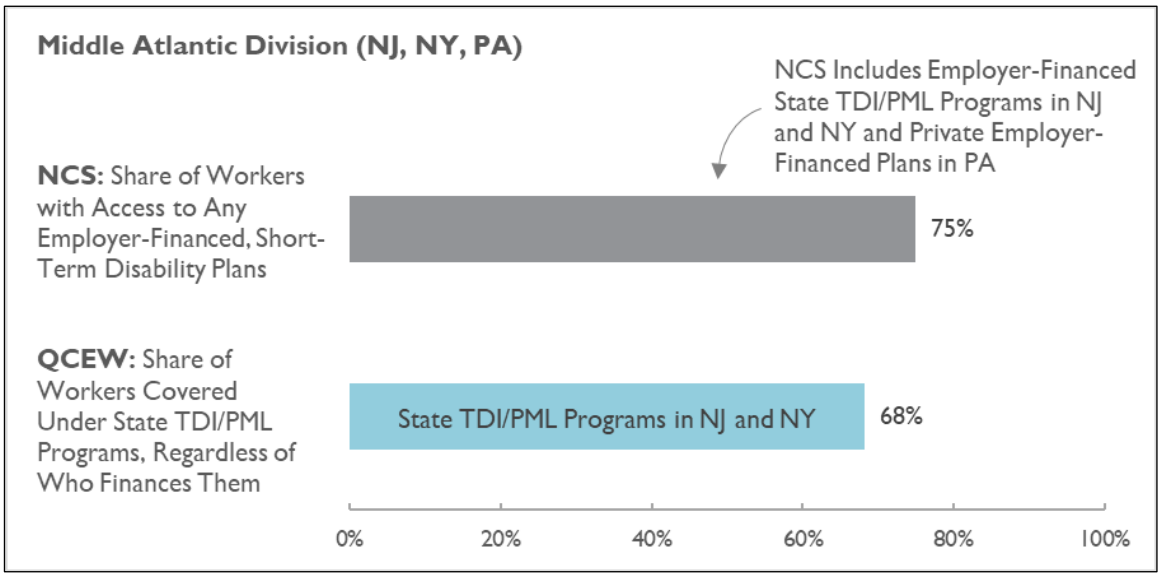
[50] See, for example, U.S. Congress, House Committee on Ways and Means, "Brady, Walorski Unveil New Family Leave and Child Care Package," May 27, 2021, https://gop-waysandmeans.house.gov/brady-walorski-unveil-new-family-leave-and-child-care-package/. See also the Relief for Working Families Act (H.R. 5231; 117th Congress) and CRS In Focus IF11141, *Employer Tax Credit for Paid Family and Medical Leave*. As noted in the previous footnote, H.R. 5376, as reported, would repeal the employer tax credit for paid family and medical leave two years earlier than is scheduled under current law.

Appendix. Short-Term Disability Access in the Middle Atlantic Division in the NCS

The Middle Atlantic division is comprised of New Jersey, New York, and Pennsylvania. Of these three states, two—New Jersey and New York—have active state TDI/PML programs in 2021. Both are financed by employers, which means that all state TDI/PML programs in the Middle Atlantic division are included in the NCS. This situation is different from the Pacific division, where only certain state TDI/PML programs (or portions of such programs) are financed by employers and thus included in the NCS (see **Figure 2** in the body of the report).

Figure A-1 compares the share of private-industry workers in the Middle Atlantic division with access to any employer-financed, short-term disability in the March 2021 NCS to the share of private-industry workers in the division covered under state TDI/PML programs in the March 2021 QCEW, regardless of who financed them. In the NCS, 75% of private-industry workers in the division had access to any employer-financed, short-term disability. In the QCEW, 68% of private-industry workers in the division were covered under state TDI/PML programs (i.e., the share of private-industry workers in the division who worked in New Jersey or New York). The share was *higher* in the NCS relative to the QCEW because the NCS captures both employer-financed state TDI/PML programs in New Jersey and New York and private employer-financed plans in Pennsylvania, whereas the QCEW captures only state TDI/PML programs in New Jersey and New York.

Figure A-1. Comparison of the Share of Private-Industry Workers with Access to Any Employer-Financed, Short-Term Disability in the NCS to the Share of Private-Industry Workers Covered Under State TDI/PML Programs in the QCEW, Middle Atlantic Division, March 2021



Source: CRS analysis of the March 2021 NCS and QCEW.

Notes: TDI = temporary disability insurance. PML = paid medical leave. NCS = National Compensation Survey. QCEW = Quarterly Census of Employment and Wages. QCEW data are preliminary.

Author Information

William R. Morton
Analyst in Income Security

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.