ESSAY

Paid Sick Leave's Payoff

*Jennifer Bennett Shinall**

Perhaps paid sick days have never been more valuable than during the COVID-19 pandemic. Yet even before COVID-19, seventeen states and the District of Columbia began passing legislative mandates that employers provide employees with paid sick leave ("PSL") days. Most of this legislation requires employers to provide up to one week of PSL for both full- and part-time employees, which they can utilize with few notice or documentation requirements. Using the 2017–2018 American Time Use Survey Leave and Job Flexibilities Module, I first demonstrate that workers in PSL states are less likely to go to work sick, which may, in turn, reduce concerns about the spread of infectious disease in the workplace. Next, I present evidence from the 2020–2021 Current Population Survey that workers in PSL states have enjoyed higher employment rates and labor market participation rates during the pandemic than have similarly situated workers in non-PSL states. By enabling employees to take short-term leave when either they or an immediate family member fall ill—without risk of job or income loss—PSL legislation may help stabilize employment and keep workers attached to the labor market.

* Professor of Law, Vanderbilt Law School, 131 21st Avenue South, Nashville, TN 37203. jennifer.shinall@vanderbilt.edu. The author would like to extend a special thanks to participants in the 2021 Colloquium on Scholarship in Employment and Labor Law, the University of Alabama at Birmingham Economics Faculty Workshop, the 2022 Conference on Empirical Legal Studies, and the University of California at Berkeley Law and Economics Workshop for helpful comments on earlier drafts. The author would also like to thank John Roberts and Ariana Boyd for their superb research assistance.

INTRODUCTION

Since the inception of the COVID-19 pandemic, few things inspire a sense of dread like the onset of fever, sore throat, or congestion. Navigating concerns about disease spread to vulnerable populations,[1] personal long-term health consequences,[2] and the ever-changing rules of quarantine[3]—not to mention the difficulties of finding

1. From the outset of the pandemic, public health measures like mask wearing and quarantining have been justified as a way to protect individuals most at risk of severe disease from COVID-19. *See, e.g.*, *Understanding Risk*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html (last updated Aug. 11, 2022) [https://perma.cc/C39J-ZPLB] (identifying age, pregnancy, and certain chronic health conditions as major risk factors for becoming severely ill with COVID-19); *see also* Allison Aubrey, *Want to Get Omicron and Just Get It Over With? Here's Why That's a Bad Idea*, NPR (Jan. 15, 2022, 5:00 AM), https://www.npr.org/sections/health-shots/2022/01/15/1073075753/get-omicron-symptoms-precautions [https://perma.cc/3SRJ-WMCW] (encouraging readers to avoid contracting the Omicron variant of COVID-19 because "[y]ou could spread the virus to vulnerable people").

2. *See* Melinda Wenner Moyer, *Long-Haul COVID Cases Could Spike After Latest Wave*, SCI. AM. (Feb. 3, 2022), https://www.scientificamerican.com/article/long-haul-covid-cases-could-spike-after-latest-wave/ [https://perma.cc/D7HD-J88N] ("[T]he majority of long-haul cases developed after mild infections . . . ."); Sumathi Reddy, *The New Clues About Who Will Develop Long Covid*, WALL ST. J. (Jan. 31, 2022, 5:30 AM), https://www.wsj.com/articles/the-new-clues-about-who-will-develop-long-covid-11643625003 [https://perma.cc/R6CT-SUDY] ("The variety of reasons one person might get long Covid and another might not also reinforce scientists' increasing belief that there won't be a single cause or treatment for the condition.").

3. *See CDC Updates and Shortens Recommended Isolation and Quarantine Period for General Population*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 27, 2021), https://www.cdc.gov/media/releases/2021/s1227-isolation-quarantine-guidance.html

a COVID-19 test[4]—can be overwhelming. Yet for some individuals, fears about the workplace-related consequences of contracting COVID-19, including losing income or, even worse, losing a job, may overshadow these other grave concerns.

Federal law does not guarantee workers the right to short-term, paid sick leave. Although the Families First Coronavirus Response Act ("FFCRA") provided some limited, short-term leave protections to workers at the beginning of the pandemic,[5] the Act's mandatory leave requirements expired at the beginning of 2021.[6] Moreover, the FFCRA's tax credit provisions, meant to incentivize employers to continue providing short-term leave to workers voluntarily, expired on September 30, 2021.[7] In the absence of the FFCRA, the only federal law

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[https://perma.cc/CZ4L-PENP] [hereinafter *CDC Update*]; *see also* Zeke Miller & Katie Foody, *New CDC Isolation and Quarantine Guidelines Confuse Some and Raise Questions,* PBS (Dec. 28, 2021, 4:11 PM), https://www.pbs.org/newshour/health/new-cdc-isolation-quarantine-guidelines-confuses-some-and-raises-questions [https://perma.cc/Y7V3-VB87] (noting that the CDC's recent shortening of the quarantine period "is drawing criticism from some medical experts and could create more confusion and fear among Americans"); Sophie Mellor, *10, 7 or 5 Days? Scientists Weigh in on the Best Length of COVID Isolation*, FORTUNE (Jan. 17, 2022, 7:22 AM), https://fortune.com/2022/01/17/covid-19-isolation-days-ideal-length-testing-infectious/ [https://perma.cc/AJG9-AJQ4] ("What we're going to do is run the risk of highly infectious people returning to work or school . . . . The bottom line with this is this is not a scientific change or policy that is based on scientific evidence at all. It is based on the need to get people back to work."); Carmine Gallo, *How the CDC Can Replace 'Muddled Messages' with Clear Action Plans*, FORBES (Jan. 9, 2020, 9:00 AM), https://www.forbes.com/sites/carminegallo/2022/01/09/how-the-cdc-can-replace-muddled-messages-with-clear-action-plans/?sh=364f9fef1139 [https://perma.cc/G63U-YVXD] ("The last thing an organization wants to be known for in a crisis is 'muddled messaging.' But that's exactly what happened to the Centers for Disease Control and Prevention this week as the agency faced a barrage of criticism from the public, media, the American Medical Association, and late-night talk show hosts.").

4. *See* Jaimie Ding, *Why Are Rapid Tests for COVID-19 in Such Short Supply?*, L.A. TIMES, https://www.latimes.com/business/story/2022-01-08/why-are-rapid-tests-for-covid-19-in-such-short-supply (last updated Jan. 10, 2022, 2:43 PM) [https://perma.cc/Z4TA-J5GH]; Gerrit De Vynck & Jacob Bogage, *Rapid Coronavirus Tests Are Hard to Find — Unless You Work for Google or Play in the NBA*, WASH. POST, https://www.washingtonpost.com/technology/2022/01/13/covid-tests-google-biden/ (last updated Jan. 13, 2022, 12:39 PM) [https://perma.cc/2QGQ-ATV8]; James Bovard, *Who Screwed up COVID-19 Testing? Blame Trump, Biden and Our Health Care Bureaucracy.*, USA TODAY (Jan. 27, 2022, 6:04 AM), https://www.usatoday.com/story/opinion/2022/01/27/covid-testing-shortage-blame-fda/9210788002/ [https://perma.cc/77PQ-SG43].

5. *See Families First Coronavirus Response Act: Employee Paid Leave Rights*, U.S. DEP'T OF LAB., https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave (last visited Sept. 14, 2022) [https://perma.cc/A52E-BXYW] (summarizing the FFCRA's protections).

6. *See id.* ("These provisions will apply from the effective date through December 31, 2020.").

7. *See COVID-19-Related Tax Credits for Paid Leave Provided by Small and Midsize Businesses FAQs*, IRS, https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-paid-leave-provided-by-small-and-midsize-businesses-faqs (last updated Feb. 24, 2022) [https://perma.cc/RW57-4NTP] (noting that the FFCRA employer tax credits were extended until September 30, 2021). For a comparison of the FFCRA's tax credits in 2020 versus 2021, see *Paid Sick and Family Leave Credit – 2020 vs 2021 Comparison Chart*, IRS, https://www.irs.gov/newsroom/paid-sick-and-family-leave-credit-2020-vs-2021-comparison-chart (last updated Sept. 29, 2022) [https://perma.cc/FWZ8-J57N].

that provides workers with any leave rights is the Family and Medical Leave Act ("FMLA").[8] Yet the FMLA is of little use to a worker who needs to take leave while they or an immediate family member are in quarantine. The FMLA's protections solely extend to workers with a "serious health condition,"[9] when more than eighty percent of COVID-19 cases are merely mild to moderate.[10] Even in the event of a severe or long-term COVID-19 case, new employees,[11] employees of small firms,[12] and most part-time employees[13] are excluded from FMLA coverage. Furthermore, the FMLA entitles workers to *unpaid* leave and does nothing to address concerns about income loss.[14] At best, the FMLA protects a worker's job during a health-related absence.[15]

Without additional legal protections, employees with fever, sore throat, or congestion may face a difficult choice—either go to work sick or stay home and lose their job. Despite the pandemic-era proliferation in telecommuting, remote work remains inaccessible to many low-wage workers.[16] The choice to go to work sick, a phenomenon known as presenteeism,[17] may have been lauded pre-pandemic as the model of

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8. *See* 29 U.S.C. §§ 2611-2654.

9. 29 U.S.C. § 2612(a)(1)(D); *see also* 29 U.S.C. § 2611(11) (defining the term "serious health condition").

10. *See* Vivian Wang, *Most Coronavirus Cases Are Mild. That's Good and Bad News.*, N.Y. TIMES, https://www.nytimes.com/2020/02/27/world/asia/coronavirus-treament-recovery.html (last updated Apr. 10, 2020) [https://perma.cc/L5SD-769W].

11. *See* 29 U.S.C. § 2611(2)(A)(i) (requiring employees to have at least twelve months' tenure to qualify for FMLA protections).

12. *See* 29 U.S.C. § 2611(2)(B)(ii) (requiring employees to work for an employer with at least fifty employees in a seventy-five-mile radius to qualify for FMLA protections).

13. *See* 29 U.S.C. § 2611(2)(A)(ii) (requiring employees to have worked at least 1,250 hours during the past year to qualify for FMLA protections).

14. *See* 29 U.S.C. § 2612(a)(1)(D).

15. The FMLA requires employers to reinstate employees returning from FMLA leave to "the position of employment held by the employee when the leave commenced" or "an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." 29 U.S.C. § 2614(a)(1)(A)-(B).

16. *See* Jennifer Bennett Shinall, *Without Accommodation*, 97 IND. L.J. 1147 (2022) (finding that low-wage workers in production occupations, building and grounds cleaning and maintenance, and food preparation and serving-related occupations are less likely to have access to remote work accommodations); *see also* Nicole Bateman & Martha Ross, *Why Has COVID-19 Been Especially Harmful for Working Women?*, BROOKINGS INST. (Oct. 2020), https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women/ [https://perma.cc/Z73S-W5UT] ("While many higher wage jobs could transition from an in-person to remote work environment, that is not the case for the majority of low-wage jobs that rely on interaction between customers and workers, such as retail sales and hospitality, two of the most common occupations among low-wage women.").

17. *See, e.g.*, Maria Karanika-Murray & Cary L. Cooper, *Presenteeism: An Introduction to a Prevailing Global Phenomenon*, *in* PRESENTEEISM AT WORK 9–34 (Cary L. Cooper & Luo Lu eds., 2018) (defining presenteeism as "attending work when one is unwell"); *see also* Bryan Lufkin, *Why Presenteeism Wins Out over Productivity,* BBC (June 7, 2021), https://www.bbc.com/worklife/article/20210604-why-presenteeism-always-wins-out-over-productivity [https://perma.cc/EFC8-

work ethic and professionalism.[18] Yet post-pandemic, going out in public while ill is viewed as irresponsible, raising serious public health concerns.[19] Protecting the health of vulnerable strangers is a tough sell, however, when it comes at the expense of feeding your family.[20]

Ethical arguments justifying mandatory paid sick leave for workers as a basic human right remain the same as ever before.[21] But the pandemic may have rendered public-health and economics-based arguments for mandatory paid sick leave more compelling. In theory, increased access to paid sick leave should reduce employees' incentives

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9W56] (defining presenteeism as "being physically in your seat at work just to look dedicated, no matter how unproductive").

18. In a 2019 survey by the Society for Human Resource Management, ninety percent of workers admitted to going to work sick, and one-third of workers admitted to "*always* go[ing] to the office with cold or flu symptoms." *See* Dana Wilkie, *9 in 10 Workers Admit Going to Work Sick*, SHRM (Nov. 7, 2019), https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/coming-to-work-sick-.aspx [https://perma.cc/2RYS-GCCR]. In justifying their presenteeism, many respondents cited concerns that their "manager might question his or her dedication or work ethic" if they missed work due to illness. *Id.*

19. *See* Rong-Gong Lin II, *COVID-19 Tests Are in High Demand with the Winter Surge. Here's How to Get Them,* L.A. TIMES, https://www.latimes.com/california/story/2021-12-20/covid-19-tests-are-in-high-demand-heres-how-to-get-them (last updated Dec. 20, 2021, 10:45 PM) [https://perma.cc/G2GS-YLYN] ("It's irresponsible for people who test positive to continue going out and leaving home without adhering to isolation requirements . . . ."); Aubrey, *supra* note 1 ("You've forced your decision on others, . . . and that decision could cause serious illness or even death.").

20. *See* Rae Ellen Bichell & Kaiser Health News, *With Federal COVID Sick Leave Gone, Ill Workers Feel Pressure to Go to Work,* FORTUNE (Nov. 30, 2021, 12:30 PM), https://fortune.com/2021/11/30/federal-covid-paid-sick-leave-ill-workers/ [https://perma.cc/MB3G-S9E6] ("[As] federal laws that offered COVID-related paid sick leave to workers have expired . . . [,] many sick workers across the country must wrestle with difficult financial and ethical questions when deciding whether to stay home."); Julie Cooper, *Communication Studies Professor Looks at How Presenteeism Affects Workers and Work Places,* TEX. STATE UNIV. (Aug. 3, 2021), https://news.txstate.edu/research-and-innovation/2021/how-presenteeism-affects-workers-and-work-places.html [https://perma.cc/72JQ-NB2L] ("One reason people engage in presenteeism is that they don't have paid sick leave . . . .").

21. Workers' rights organizations frequently laud mandatory paid sick leave as morally correct and a basic human right. *See, e.g.*, Hum. Rts. Project, *The Human Right to Paid Sick Leave: How the United States and New York City Fail Low-Income Women of Color*, URB. JUST. CTR. 1 (Oct. 2011), https://hrp.urbanjustice.org/wp-content/uploads/sites/8/2019/08/HRP-PolicyAnalysis-Paid-Sick-Leave.pdf [https://perma.cc/D3TP-E6JJ] ("Paid sick leave – the right to paid time off when a worker is too ill to work or to enable a worker to care for an ill family member – is enshrined under human rights law. Yet the United States fails its people in not mandating the human right to paid sick leave in its policies."); Ronald Newman & Louise Melling, *Why the Fight for Paid Sick Leave Is a Civil Rights Issue,* ACLU (Aug. 13, 2020), https://www.aclu.org/news/racial-justice/why-the-fight-for-paid-sick-leave-is-a-civil-rights-issue [https://perma.cc/6PSN-W2YU] (describing mandatory paid sick leave as "a civil rights fight we are proud to take on"); *Our Issues: Paid Sick Time*, A BETTER BALANCE, https://www.abetterbalance.org/our-issues/paid-sick-time/ (last visited Aug. 17, 2022) [https://perma.cc/8ESP-64LB] ("When you are sick, you shouldn't be forced to go to work. It's bad for you, your co-workers, your employer, and your community."); *see also* TOM W. SMITH, NAT'L OP. RSCH. CTR., PAID SICK DAYS: A BASIC LABOR STANDARD FOR THE 21ST CENTURY 2 (Aug. 2008), https://www.norc.org/PDFs/publications/PaidSickDaysReport.pdf [https://perma.cc/AR8L-GV4J] (presenting survey evidence that the majority of Americans regard paid sick leave as a "basic workplace standard" and a "basic worker's right").

to go to work sick and, in turn, reduce overall disease spread. To the extent that individual employers refuse to provide paid sick leave voluntarily—even though universal paid sick leave may be a net positive for the economy—it would constitute a market failure and justify governmental intervention.[22] Yet this argument for governmental intervention relies on a fundamental assumption—that paid sick leave legislation works as intended.[23] If workers continue to go to work sick, in spite of greater paid sick leave availability, then economics-based arguments cannot justify governmental intervention.

This Essay critically examines the assumption that paid sick leave legislation works as intended. Relying on two sources of publicly available labor market data, I present evidence that this assumption does indeed have merit. In the absence of federal legislation mandating paid sick leave, I exploit state-level variation in paid sick leave requirements to identify the effects of greater paid sick leave access for workers. First, I present evidence from the 2017–2018 American Time Use Survey Leave and Job Flexibilities Module ("ATUS Leave Module") that, even prior to the onset of COVID-19, workers in states that mandate paid sick leave ("PSL states") were less likely to go to work sick and, presumably, spread infectious disease in the workplace.

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22. According to neoclassical economic theory, market failure occurs in the employment context when an individual employer makes an economically rational decision (e.g., not voluntarily providing paid sick leave to workers) and that decision produces a negative externality (e.g., disease spread), which is harmful to society. *See* Tyler Cowen, *Public Goods and Externalities*, *in* FORTUNE ENCYC. ECON. 74–75 (David R. Henderson ed., 1993):

> Most economic arguments for government intervention are based on the idea that the marketplace cannot provide public goods or handle externalities. . . . Externalities occur when one person's actions affect another person's well-being and the relevant costs and benefits are not reflected in market prices. . . . A negative externality arises when one person's actions harm another. When polluting, factory owners may not consider the costs that pollution imposes on others.

23. Indeed, a notable body of empirical scholarship finds that some well-intentioned laws do *not* work as intended—and may even backfire. *See, e.g.*, Amanda Agan, Bo Cowgill & Laura Katherine Gee, *Do Workers Comply with Salary History Bans? A Survey on Voluntary Disclosure, Adverse Selection, and Unraveling*, 110 AEA PAPERS & PROC. 215, 215–19 (2020) (finding evidence that bans on asking salary history can be undermined by voluntary disclosure); Jennifer Bennett Shinall, *Anticipating Accommodation*, 105 IOWA L. REV. 621, 636–37 (2020) (presenting evidence that the ADA's ban on pre-offer discussions about applicants' disability increases employers' aversion towards hiring applicants with visible health conditions); Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 Q.J. ECON. 191, 226–27 (2018) (finding through an audit study that callbacks for Black applicants were lower in jurisdictions with Ban-the-Box legislation, likely due in part to increased reliance on statistical discrimination); J. Shahar Dillbary, Griffin Edwards & Fredrick E. Vars, *Why Exempting Negligent Doctors May Reduce Suicide: An Empirical Analysis,* 93 IND. L.J. 457, 486–93 (2018) (finding that legislative increases in liability for psychiatrists counterintuitively lead to an increase in suicide rates); Joni Hersch & Jennifer Bennett Shinall, *Something to Talk About: Information Exchange Under Employment Law*, 165 U. PA. L. REV. 49, 54–56 (2016) (demonstrating through an experimental vignette study that the EEOC's guidance restricting discussions about family obligations may hurt female job applicants).

Second, I present evidence from the 2016–2021 Current Population Survey ("CPS") to suggest that both employers and employees may be better off in PSL states, especially during the pandemic. On the employee side, the CPS indicates that workers in PSL states have benefitted from higher employment rates. On the employer side, the CPS indicates that businesses may have benefited from higher labor market participation rates. Taken together, the empirical evidence indicates that PSL laws help keep workers attached to their jobs, which is critical to reducing the staffing shortages that have become far too familiar during the COVID-19 era.[24]

In presenting this evidence that mandatory paid sick leave reduces presenteeism and has the potential to alleviate labor market supply issues that have become particularly acute during the pandemic, this Essay proceeds as follows. Part I reviews the existing state-level paid sick leave legislation as well as the prior, albeit limited, research on its efficacy. Part II details the datasets and methodology used in this project. Part III demonstrates what the ATUS Leave Module and the CPS can reveal about individual worker paid sick leave usage and the effects of PSL legislation on wages, employment, and labor market participation rates. The Essay concludes with a deeper reflection on this empirical evidence and its support for broader paid sick leave availability.

I. THE STATE OF PAID SICK LEAVE

As mentioned in the Introduction, federal law does not guarantee workers the right to short-term sick leave, either paid or unpaid. In the absence of a federal mandate, many states have passed PSL legislation, primarily during the past decade, in order to provide workers with some short-term protections from income and job loss. Part I.A briefly reviews the existing state PSL laws as well as their common features. Part I.B then considers the previous scholarship on

24. *See, e.g.*, Lauren Weber & Chip Cutter, *Worker Absences from Covid-19 Hold Back Companies' Growth*, WALL ST. J., https://www.wsj.com/articles/staff-shortages-fed-by-omicron-curbed-growth-in-fourth-quarter-11644143402 (last updated Feb. 6, 2022, 10:50 AM) [https://perma.cc/N6Z3-7YUV] ("[T]he rapid increase in COVID-19 cases has disrupted operations at a number of manufacturers, and some companies continue to experience staffing shortages."); Andrea Hsu, *Workers Are Calling Out Sick in Droves, Leaving Employers Scrambling*, NPR (Jan. 18, 2022, 7:01 AM), https://www.npr.org/2022/01/18/1073139544/staffing-shortages-omicron-grocery-hospital-workers-nurses-employers-covid [https://perma.cc/4WXX-KP8L] ("Omicron has left employers around the country short of workers. Sometimes very short."); *Staffing Shortages in America Are a Glimpse into Its Future*, ECONOMIST (Jan. 22, 2022), https://www.economist.com/united-states/staffing-shortages-in-america-are-a-glimpse-into-its-future/21807256 [https://perma.cc/DR8D-SALV] [hereinafter *Staffing Shortages*] ("Even as the pandemic ebbs, the pool of potential workers may be permanently smaller than once assumed[.]").

these innovative state laws, with an eye towards the fundamental question of this Essay—whether PSL laws achieve their legislative purpose.

A. The Fundamentals of Paid Sick Leave

Presently, seventeen states and the District of Columbia have paid sick leave legislation on the books. Table 1 lists the existing state PSL laws as well as their effective dates. In a previous article, I have already reviewed the contours of state PSL law in detail.[25] Thus, for the purposes of this Essay, I present a brief, updated overview of existing state laws and their major features. As outlined in Table 1, paid sick leave legislation is largely a phenomenon of the past decade, gaining particular momentum recently. Indeed, the District of Columbia enacted the earliest PSL law in 2008, and eleven of the seventeen laws have gone into effect since 2018.

25. *See* Jennifer Bennett Shinall, *Leave in the Time of COVID: Examining Paid Sick Leave Laws*, 59 U. LOUISVILLE L. REV. 393, 398–401 (2021).

TABLE 1: STATE PAID SICK LEAVE LAWS

State	Statutory Code	First Version Effective Date
Arizona	ARIZ. REV. STAT. ANN. §§ 23-364, 23-373 to -374	Dec. 9, 2016
California	CAL. LAB. CODE § 246	Jan. 1, 2015
Colorado	COLO. REV. STAT. ANN. § 8-13.3-403	Jan. 1, 2021
Connecticut	CONN. GEN. STAT. ANN. § 31-57s	Jan. 1, 2012
District of Columbia	D.C. CODE ANN. § 32-531.02	May 13, 2008
Maine	ME. REV. STAT. ANN. tit. 26, § 637	Jan. 21, 2021
Maryland	MD. CODE ANN., LAB. & EMPL. § 3-1305	Feb. 11, 2018
Massachusetts	MASS. GEN. LAWS ANN. ch. 149, §§ 148C-148D	July 1, 2015
Michigan	MICH. COMP. LAWS ANN. §§ 408.963-408.964	Mar. 29, 2019
Nevada[26]	NEV. REV. STAT. ANN. § 608.0197	Jan. 1, 2020
New Jersey	N.J. STAT. ANN. §§ 34:11D-2 to -3	Oct. 29, 2018
New Mexico	N.M. STAT. ANN. § 50-17-3	July 1, 2022
New York	N.Y. LAB. LAW § 196-b	Sept. 30, 2020
Oregon	OR. REV. STAT. ANN. § 653.606	Jan. 1, 2016
Rhode Island	28 R.I. GEN. LAWS ANN. §§ 28-57-5 to -6	Jul. 1, 2018
Vermont	VT. STAT. ANN. tit. 21, §§ 482-483	Jan. 1, 2017
Virginia[27]	VA. CODE ANN. §§ 40.1-33.3 to -33.6	July 1, 2021
Washington	WASH. REV. CODE ANN. §§ 49.46.180, .200	Jan. 1, 2017

26. The Nevada law is technically not a paid sick leave statute because it allows workers to use their short-term leave for *any* reason, not just illness. *See* NEV. REV. STAT. ANN. § 608.0197(2)(b) (West 2021) (amending NEV. REV. STAT. ANN. § 608.0197 (West 2021)) ("An employer shall allow an employee to use paid leave for any use . . . ."). Nonetheless, I categorize it as a paid sick leave law here because it shares most of the salient features of the other state paid sick leave laws. *See infra* Sections I.A.1–I.A.2. In the empirical estimates presented in Part III, I additionally perform robustness checks of all estimates that exclude the state of Nevada, but the results are not sensitive to Nevada's exclusion.

27. The Virginia law is quite narrow and applies to home health care workers only. *See* VA. CODE ANN. § 40.1-33.3 (West 2021) (" 'Employee' means a home health worker who works on average at least 20 hours per week or 90 hours per month."). As a result, the Virginia estimates presented here treat workers classified as "[h]ome health aides" (Census Occupation Code 3601) as the sole workers covered by the statutes; for the full list of Census occupation classifications

Over the past decade, many of the same states passing PSL legislation have also passed paid family leave legislation.[28] Although the two pieces of legislation are complementary, they are quite distinct in coverage. In the most basic terms, paid family leave protects workers' jobs and incomes during long-term health events,[29] while paid sick leave protects workers' jobs and incomes during short-term health events.[30] As a result, a typical paid family leave law provides job and income coverage for approximately three months,[31] but a typical PSL law provides coverage for only one week.[32] Both types of legislation allow workers to use their leave for their own health event or the health event of an immediate family member.[33] In the following Sections, I review the major employee- and employer-friendly features of state PSL legislation. Although each state's law has different nuances—no model legislation exists in this space—I focus below on the laws' common features, which look quite similar in practice.

1. Employee-Friendly Features

At first glance, PSL laws may appear to be a one-sided benefit to employees, and indeed, these laws do contain many employee-friendly elements. Most notably, PSL laws tend to cover far more workers and workplaces than do paid family leave laws. Family leave laws typically

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used in this study, see *Appendix 10: Occupation Classification,* U.S. CENSUS BUREAU (2018), https://www2.census.gov/programs-surveys/cps/methodology/Occupation%20Codes.pdf [https://perma.cc/X5HH-T6KD].

28. For a discussion of paid family leave legislation and a comparative chart of states with paid family leave laws, see Jennifer Bennett Shinall, *Protecting Pregnancy*, 106 CORNELL L. REV. 987, 995–98 (2021).

29. *See id.* (summarizing state paid family leave laws' coverage of major health events, such as pregnancy and childbirth).

30. *See* Shinall, *supra* note 25, at 397 (describing paid sick leave laws as "particularly relevant for workers who need short-term paycheck and job security guarantees in the context of COVID-19 and other contagious diseases").

31. The length of paid family leave periods varies between states; for example, Rhode Island and California provide five and eight weeks of paid family leave per year, respectively. *See Comparative Chart of Paid Family and Medical Leave Laws in the United States*, A BETTER BALANCE, https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/ (last updated July 1, 2022) [https://perma.cc/2S9S-RPF5] [hereinafter *Comparative Chart*] (giving an overview of medical leave laws and paid family leave laws in the United States). Nonetheless, the modal paid family leave period across jurisdictions is the same as the federal FMLA period (which merely provides unpaid leave) at twelve weeks. *See id.*; *see also* Jennifer Bennett Shinall, *The Pregnancy Penalty*, 103 MINN. L. REV. 749, 810–12 (2018) (discussing the comparison of state paid family leave laws).

32. *See* Shinall, *supra* note 25, at 406 (noting that "the mode cap length . . . is forty hours of paid sick leave annually").

33. *See id.* at 398–401 (detailing state paid sick leave laws' maximum annual duration); *see also Comparative Chart*, *supra* note 31 (comparing state paid family leave laws' maximum annual duration).

limit coverage to employees who work for larger employers and have earned a certain amount of income or worked for a certain amount of time during the previous year.[34] PSL laws, on the other hand, extend coverage based on the number of hours worked, bringing many part-time workers under their coverage.[35] In contrast to other employment protections—including antidiscrimination laws, which only cover employers with fifteen or more employees at the federal level[36]—PSL laws tend to cover most workplaces, even very small employers.[37]

More strikingly, PSL is far less onerous for employees to utilize than is paid family leave. In most states, employees can take advantage of their earned sick leave by notifying their employer of illness "as soon as practicable,"[38] and the notice can consist of a simple phone call or email from the employee.[39] Nevada, which has passed one of the more recent PSL laws, does not even require the employee to "provid[e] a reason to his or her employer" in order to take advantage of earned leave time.[40] Even in the PSL states that allow employers to ask for a

34. *See, e.g.*, Dep't of Lab. & Workforce Dev., *Family Leave Insurance*, STATE OF N.J., https://www.myleavebenefits.nj.gov/worker/fli/#:~:text=To%20qualify%20for%20Family%20Leave,quarters%20(the%20base%20year) (last visited Sept. 16, 2022) [https://perma.cc/77GK-CJW9] (requiring workers in New Jersey to have earned at least $240 per week for twenty weeks during the past calendar year in order to be eligible for family leave); Dep't of Lab. & Training, *Notice to Employees: Rhode Island Parental & Family Medical Leave Act*, STATE OF R.I., https://dlt.ri.gov/sites/g/files/xkgbur571/files/documents/requiredposters/familyleave.pdf (last updated June 2020) [https://perma.cc/8U9Q-7RJ3] (requiring workers in Rhode Island to have worked an average of at least thirty hours per week over the past year to be eligible for family leave).

35. *See* Shinall, *supra* note 25, at 398–401 (detailing that state PSL laws provide one hour of sick leave for every thirty to fifty-two hours actually worked by the employee, depending on the state).

36. Title VII of the 1964 Civil Rights Act and the Americans with Disabilities Act, for example, only apply to employers with fifteen or more employees. *See* 42 U.S.C. § 2000e(b); 42 U.S.C. § 12111(5)(A).

37. *See* Shinall, *supra* note 25, at 397–98 (noting that seven PSL laws apply to *all* employers in the state, regardless of size).

38. *See, e.g.*, CONN. GEN. STAT. ANN. § 31-57t(b) (West 2022); N.J. STAT. ANN. § 34:11D-3(5)(b) (West 2022); NEV. REV. STAT. ANN. § 608.0197(2)(d) (West 2022).

39. *See, e.g.*, ARIZ. REV. STAT. ANN. § 23-373(B) (2022) ("Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer."); COLO. REV. STAT. ANN. § 8-13.3-404(2) (West 2022) ("The request may be made orally, in writing, electronically, or by any other means acceptable to the employer."); 28 R.I. GEN. LAWS ANN. § 28-57-6(b) (West 2022) ("Such request may be made orally, in writing, by electronic means, or by any other means acceptable to the employer."); N.M. STAT. ANN. § 50-17-3(E) (West 2022) ("When the use of earned sick leave is not foreseeable, the employee shall notify the employer orally or in writing as soon as practicable.").

40. As mentioned previously, Nevada's law is more precisely characterized as a paid leave statute instead of a paid *sick* leave statute because it allows workers to use their short-term leave for *any* reason, not just illness. *See supra* note 26. Because Nevada's law provides at least as much coverage as other state paid sick leave laws, I treat it as a paid sick leave law for the purposes of the main specifications in this analysis (although the estimates are not sensitive to Nevada's inclusion). *See supra* note 26.

doctor's note for three or more days of sick leave, such a note need only contain verification that the employee is indeed ill, not details about the employee's illness.[41] Contrast paid family leave laws, which often require weeks of advance notice,[42] an extended application to a state agency,[43] and documentation from a health care provider about the qualifying health condition.[44]

The reduced documentation and notice requirements of PSL laws render them well suited to cover short-term, nonserious illnesses, such as the common cold, influenza, and mild cases of COVID-19. For full-time employees, most state PSL laws provide at least forty hours of sick leave per year,[45] which is enough to get them through the contagious period of most illnesses[46] and, under the current Centers for Disease Control and Prevention ("CDC") guidelines as of the time of

41. *See, e.g.*, 28 R.I. GEN. LAWS ANN. § 28-57-6(f) (West 2022) ("An employer may not require that the documentation explain the nature of the illness . . . ."); *see also* MASS. GEN. LAWS ANN. ch. 149, § 148C(f) (West 2022) (prohibiting employers from requiring the health care provider to reveal the employee's illness); N.J. STAT. ANN. § 34:11D-3(5)(b) (West 2022) (requiring only "documentation signed by a health care professional who is treating the employee or the family member of the employee indicating the need for the leave and, if possible, number of days of leave, shall be considered reasonable documentation").

42. *See, e.g.*, Dep't of Lab. & Workforce Dev., *Benefits & Protections for New & Expecting Parents Who Work in NJ*, STATE OF N.J. 3 (2022), https://www.myleavebenefits.nj.gov/labor/myleavebenefits/assets/pdfs/PR-150%20(1-22)%20New%20Parent%20Handout.pdf [https://perma.cc/W8DL-9PC8] (requiring New Jersey employees to provide at least thirty days' notice for foreseeable leave); Dep't of Lab. & Training, *supra* note 34 (requiring that "the employee must give at least 30 days notice of the intended date upon which the requested leave is to commence and terminate, unless prevented by medical emergency from doing so").

43. Many of the existing state paid family leave laws operate through the state's disability insurance program, so the state (as opposed to the employer) determines the employee's eligibility for paid leave. *See* Shinall, *supra* note 31, at 824 ("Because all existing state laws are operated through the state disability insurance program, it is the state—not the employer—who determines eligibility for paid leave."). In such states, the employee must apply to the applicable state agency in order to receive paid family leave. *See id.*; *see also, e.g.*, Dep't of Lab. & Workforce Dev., *supra* note 42, at 2 ("It can take 2-6 weeks to approve a claim and pay benefits once we have a complete application – including medical forms. Follow up with your medical provider to ensure timely processing."); Emp. Dev. Dep't, *Guide for Completing a Claim Form for Paid Family Leave (PFL) Benefits*, STATE OF CAL. 1–2, https://edd.ca.gov/pdf_pub_ctr/de2475.pdf (last updated Dec. 2020) [https://perma.cc/8B5A-D9XZ] (guiding California employees through the application process).

44. *See, e.g.*, Dep't Lab. & Workforce Dev., *supra* note 42, at 2 (notifying employees of required medical documentation); Dep't Lab. & Training, *supra* note 34 ("Employees may be requested to provide written certification from a physician . . . ."); Emp. Dev. Dep't, *Claim for Paid Family Leave (PFL) Care Benefits: Part C – Instructions for PFL Care Claims*, STATE OF CAL. 3, https://edd.ca.gov/pdf_pub_ctr/de2501fc.pdf (last updated Dec. 2020) [https://perma.cc/3LP4-YJWA] (requiring medical certification from a health care provider to be eligible for paid family leave in California).

45. *See* Shinall, *supra* note 25, at 398–401 (demonstrating that most paid sick leave laws allow workers to earn at least forty hours of paid sick leave per year).

46. *See, e.g.*, *Influenza (Flu): What You Need to Know*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/flu/about/keyfacts.htm (last updated Aug. 26, 2021) [https://perma.cc/4M5X-UVZC] ("People with flu are most contagious in the first 3-4 days after their illness begins.").

writing, through the full COVID-19 quarantine period.[47] Because all state PSL laws require employers to provide the required sick days at full pay, employees can take advantage of their statutorily required days while contagious, without fear of income loss.[48] Consequently, if these laws work as intended, workplace spread of infectious disease should be systematically lower in PSL states. In situations like the COVID-19 pandemic, reduced infectious disease spread could, in theory, have a meaningful effect on the state's public health situation.[49]

2. Employer-Friendly Features

Although state PSL laws have many employee-friendly elements, they are not without employer-friendly features. Often, the employer-friendly aspects of state PSL laws are the result of a legislative compromise, intended to address employers' concerns about the effects of increased legal protections on their bottom lines.[50] Earned-hours caps, limitations on carryover hours, and leave waiting periods represent the three most obvious employer-friendly features of state PSL laws. All but one PSL law (in the state of Washington) limit the number of paid sick leave hours an employee can earn each year, no matter how much the employee works.[51] The modal earned-hours cap is forty hours per year (i.e., an average work week).[52]

Annual limitations on employee carryover hours further protect employers' bottom lines. Typically, state PSL laws do not allow workers

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47. *See CDC Update*, *supra* note 3 ("People with COVID-19 should isolate for 5 days and if they are asymptomatic or their symptoms are resolving (without fever for 24 hours), follow that by 5 days of wearing a mask when around others to minimize the risk of infecting people they encounter.").

48. Paid family leave laws typically provide only a portion of an employee's wages while on leave. *See* Shinall, *supra* note 31, at 821–24. In contrast, PSL laws provide full pay while the employee is on sick leave. *See generally* Shinall, *supra* note 25.

49. Indeed, mitigating workplace spread of COVID-19 was a major justification behind the (now retracted) Occupational Safety and Health Administration COVID-19 regulations targeting businesses with more than one hundred employees. *See generally Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, OCCUPATIONAL SAFETY & HEALTH ADMIN., https://www.osha.gov/coronavirus/safework (last updated June 10, 2021) [https://perma.cc/5VKP-2BK7]. Some early scholarship has also confirmed the important role that COVID-19 workplace spread plays in the local public health situation. *See, e.g.*, Michelle Murti, Camille Achonu, Brendan T. Smith, Kevin A. Brown, Jim Hee Kim, James Johnson, Saranyah Ravindran & Sarah A. Buchan, *COVID-19 Workplace Outbreaks by Industry Sector and Their Associated Household Transmission, Ontario, Canada, January to June, 2020*, 63 J. OCCUPATIONAL & ENV'T MED. 574, 574–80 (2021) (demonstrating that workplace spread increased the illness burden in Ontario, Canada by fifty-six percent).

50. *See* Shinall, *supra* note 25, at 405 ("[A]dditional protections built into existing state laws serve to mitigate any remaining employer cost concerns.").

51. *See id.* at 398–401.

52. *See id.*

to carry over more than forty unused sick leave hours to the next calendar year, mitigating concerns that long-standing employees can bank weeks of unused paid sick leave to be used at a later date.[53] On the flip side, leave waiting periods of three to four months prevent new employees from immediately using their PSL until more established at their jobs.[54] Taken together, earned-hours caps, carryover hours limitations, and leave waiting periods represent particularly crucial protections since employers entirely shoulder the financial burden of these laws. Unlike state paid family leave, state PSL legislation is not financed through a payroll tax, nor do employers receive a tax credit for PSL compliance.[55]

Because the financial burden of PSL falls on employers, many state laws acknowledge that some employers are more capable of handling this burden than others through phase-in provisions. Although phase-in provisions can take several forms, they all mandate more stringent requirements for employers better able to support PSL for their employees. The laws in Arizona, D.C., and New York, for instance, have higher earned-hours caps for larger employers.[56] Connecticut and Michigan limit their PSL requirements to only the largest employers.[57] Vermont does not subject employers in their first year of business to the state's PSL requirements,[58] while Virginia limits PSL coverage to a single occupational category—home health work.[59]

A final nod to employers' needs comes in the form of the litigation limits and preemption clauses that are common in state PSL laws. Six states do not allow employees to sue their employers directly for violations of the PSL law; rather, employees must pursue a (typically cheaper) remedy through a state administrative agency.[60] Two other states require employees to file an administrative complaint before filing a lawsuit, again with the goal of resolving disputes more quickly and cheaply outside of the courtroom.[61] Finally, six states incorporate preemption clauses into their PSL laws, which prohibit cities and

53. *See id.*

54. *See id.* at 406–07 (reporting that thirteen states with PSL laws incorporate leave waiting periods).

55. *See generally id.* In sharp contrast, employers earned a substantial tax credit for complying with the temporary paid sick leave provisions of the FFCRA. *See* U.S. DEP'T OF LAB., *supra* note 5 (outlining the provisions of the Families First Coronavirus Response Act).

56. *See* Shinall, *supra* note 25, at 398–401.

57. *See id.*

58. *See id.*

59. *See* VA. CODE ANN. § 40.1-33.3 (West 2022) (limiting coverage to "home health worker[s]").

60. *See* Shinall, *supra* note 25, at 409 (listing the six states as California, Connecticut, Maine, New York, Rhode Island, and Vermont).

61. *See id.* (comparing the mandatory administrative complaint-filing processes in Colorado and Michigan to the federal Equal Employment Opportunity Commission charge-filing process).

counties within the state from passing more generous local PSL laws.[62] Such preemption clauses ease administrative burdens for employers, particularly small employers, by making PSL standards uniform across the state.[63] In the absence of a preemption clause, localities can pass their own PSL ordinances, leaving employers located in multiple cities to navigate a "maze of conflicting paid leave laws" across the same state.[64] In sum, state PSL laws commonly retain multiple employer-friendly elements—even if they are, at bottom, laws to protect employees. With these common characteristics of state PSL laws in mind, the next Section reviews the small, prior literature evaluating their effects.

B. Evaluating Paid Sick Leave

At first glance, paid sick leave legislation appears to be all about protecting employees. Yet these laws could ultimately benefit employers too. A single worker who goes to the office with a contagious disease could spread the disease to the rest of his coworkers. If the employer could have prevented the sick worker from coming in the first place, the employer would only have to deal with diminished productivity from one worker. Once that worker infects the rest of his

62. *See* Shinall, *supra* note 25, at 398–401.

63. H. Elizabeth Peters, John Marotta & Emily Bramhall, *State Preemption of Local Paid Sick Days Ordinances: Lessons from a Pandemic*, URB. INST., 3 (Oct. 2020), https://www.urban.org/sites/default/files/publication/103150/state-preemption-of-local-paid-sick-days-ordinances_0.pdf [https://perma.cc/SQC6-WADH]. Note that seventeen states have passed preemption legislation without an accompanying PSL law. *Id.* at 2. Conservative groups like the American Legislative Exchange Council and the Koch brothers have championed (and funded) this preemption-without-PSL legislation as a business-friendly policy that reduces financial burdens on employers. *See* Alayna Alvarez Stateline.org, *Cities, States Clash over Paid Sick Leave*, AKRON BEACON J. (Oct. 23, 2016, 2:43 PM), https://www.beaconjournal.com/story/business/2018/10/23/cities-states-clash-over-paid/9476523007/ [https://perma.cc/G4Y8-JV4S]; Renée Feltz, *Koch-Backed Group Fights Paid Sick Leave Laws as Flu Sweeps US*, GUARDIAN (Feb. 11, 2018, 6:00 AM), https://www.theguardian.com/us-news/2018/feb/11/paid-sick-leave-koch-brothers-nfib [https://perma.cc/CB2N-X9VA]. For criticism of preemption-without-PSL legislation (particularly its effects on cities during the pandemic), see, for example, *id.*; Elise Gould & David Cooper, *COVID-19 Pandemic Makes Clear That We Need National Paid Sick Leave Legislation*, ECON. POL'Y INST.: WORKING ECON. BLOG (Mar. 13, 2020, 3:04 PM), https://www.epi.org/blog/covid-19-pandemic-makes-clear-that-we-need-national-paid-sick-leave-legislation/ [https://perma.cc/UQ6F-Y9MT]; and Lori Riverstone-Newell, *The Rise of State Preemption Laws in Response to Local Policy Innovation*, 47 PUBLIUS 403 (2017).

64. *See* Allen Smith, *HR Asks Congress for Relief from Growing Number of Paid Leave Laws*, SOC'Y FOR HUM. RES. MGMT. (Dec. 7, 2017), https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/hr-asks-congress-for-relief-from-growing-number-of-paid-leave-laws.aspx#:~:text=HR%20Asks%20Congress%20for%20Relief%20from%20Growing%20Number%20of%20Paid%20Leave%20Laws,-House%20of%20Representatives&text=The%20Society%20for%20Human%20Resource,requiring%20paid%20leave%2C%20they%20said [https://perma.cc/AR68-UF74] ("The patchwork of rigid mandates, now a total of 40, is difficult to navigate, both for large multistate employers but also for small to mid-sized companies . . . .").

coworkers, however, the employer has to deal with diminished productivity from the entire staff.[65] Moreover, the sick worker could further infect customers, leading to a reduction in sales or even liability costs for the employer.[66]

In theory, an employer could avoid an office full of sick workers by sending home any employee who appears to be ill. From a legal perspective, an employer would not have to pay the worker for the time spent at home recovering (unless the employer had contractually agreed to such an arrangement).[67] But the strategy of sending home visibly sick workers is highly imperfect, given the asymmetric information inherent in employee illness. First, it is often difficult to tell whether an employee is sick, especially if the employee attempts to hide the illness, which the employee has every incentive to do if she fears loss of job or income for missing work.[68] Second, even if an employer knows an employee is sick, it is equally difficult to tell whether an employee is contagious in the absence of an official diagnosis from a health care provider.[69] Third,

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65. *See, e.g.*, Robert Drago & Kevin Miller, *Sick at Work: Infected Employees in the Workplace During the H1N1 Pandemic*, INST. FOR WOMEN'S POL'Y RSCH. 1 (Feb. 2010), https://iwpr.org/wp-content/uploads/2020/11/B284.pdf [https://perma.cc/PB8D-C25K] ("[E]mployees who attended work while infected with H1N1 are estimated to have caused the infection of as many as 7 million co-workers."); *see also* Shinall, *supra* note 25, at 415 ("Workers with contagious diseases can cost employers far more than just their individual loss of productivity due to illness. If they spread their disease to their coworkers, they can cost employers an entire office full of productivity loss due to illness.").

66. *See, e.g.*, L. Rand Carpenter et al., *Food Worker Experiences with and Beliefs About Working While Ill*, 76 J. FOOD PROT. 2146, 2146 (2013) ("Handling of food by an infected person or a carrier of pathogens is a contributing factor in up to two-thirds of restaurant-related foodborne outbreaks."); Charleen Hsuan, Suzanne Ryan-Ibarra, Kat DeBurgh & Dawn M. Jacobson, *Association of Paid Sick Leave Laws with Foodborne Illness Rates*, 53 AM. J. PREVENTIVE MED. 609, 610 (2017) ("70% of foodborne norovirus outbreaks with an identified source originate from infectious food workers.").

67. Unless an employer contractually commits to paying an employee for a certain number of hours worked per week, regardless of the number of hours the employee actually worked, the employer need not pay a worker unearned compensation. *See generally* Fair Labor Standards Act of 1938, 29 U.S.C. § 203 (defining "employer" and "employee").

68. *See* Paul Hemp, *Presenteeism: At Work—But out of It*, HARV. BUS. REV. (Oct. 2004), https://hbr.org/2004/10/presenteeism-at-work-but-out-of-it [https://perma.cc/ZY6Z-HXFU] ("You know when someone doesn't show up for work, but you often can't tell when—or how much—illness or a medical condition is hindering someone's performance."). More concerningly, workers who lack paid sick leave tend to be disproportionately concentrated in frontline jobs. *See* JENNY XIA, JEFFREY HAYES, BARBARA GAULT & HAILEY NGUYEN, INST. FOR WOMEN'S POL'Y RSCH. PAID SICK DAYS ACCESS AND USAGE RATES VARY BY RACE/ETHNICITY, OCCUPATION, AND EARNINGS, 5 (2016), https://iwpr.org/wp-content/uploads/2020/08/B356-paid-sick-days.pdf [https://perma.cc/5ZVP-SA53].

69. *See, e.g.*, *How to Handle Communicable Diseases in the Workplace*, SOC'Y FOR HUM. RES. MGMT. 1 (Mar. 25, 2020), https://www.ilca.net/wp-content/uploads/2020/04/Topic-2-How-to-Handle-Communicable-Diseases-in-the-Workplace.pdf [https://perma.cc/5W4Y-M64N] ("If an employee does not tell his or her employer that he or she has a communicable disease, the employer's options are much more limited. Suspicion of a communicable disease is not enough to justify inquiry or a medical exam.").

even an honest employee may not know she is contagious. For example, an employee may think congestion is due to noncontagious, seasonal allergies, when in fact it is due to influenza or COVID-19.[70]

Consequently, if PSL legislation works as intended, it could plausibly benefit both sides of the labor market. Whether PSL legislation works as intended is an empirical question, albeit a difficult one, given the realities of the available data. To address the initial question of whether PSL legislation reduces workplace presenteeism requires observing both workers' health status and their attendance at work. Yet none of the major labor market datasets provide meaningful insight on either issue. The most relevant information that can be obtained from common sources like the American Community Survey ("ACS") and Current Population Survey ("CPS") is information on the number of weeks worked last year,[71] the number of hours worked last week,[72] and whether the worker was absent from work last week.[73] But neither dataset asks whether a worker was sick with a communicable

70. *See, e.g.*, *COVID-19, Cold, Allergies and the Flu: What Are the Differences?*, MAYO CLINIC (Mar. 3, 2022), https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/covid-19-cold-flu-and-allergies-differences/art-20503981 [https://perma.cc/L5NS-JKBX] ("COVID-19, the common cold, seasonal allergies and the flu have many similar signs and symptoms."); *How Long Am I Contagious? Better, but Still Spreading*, NW. MED., https://www.nm.org/healthbeat/healthy-tips/how-long-am-i-contagious (last updated Dec. 2021) [https://perma.cc/XU79-LAHF] ("[C]ommon viruses and bacterial infections are contagious for longer than you think.").

71. *See* Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren & Michael Westberry, *WKSWORK2*, INTEGRATED PUB. USE MICRODATA SERIES, CURRENT POPULATION SURV.: VERSION 9.0, https://cps.ipums.org/cps-action/variables/WKSWORK2#codes_section (last visited Aug. 17, 2022) [https://perma.cc/RZ97-NNMY]; Steven Ruggles, Sarah Flood, Ronald Goeken, Megan Schouweiler & Matthew Sobek, *WORKEDYR*, IPUMS USA: VERSION 12.0, https://usa.ipums.org/usa-action/variables/WORKEDYR#codes_section (last visited Aug. 17, 2022) [https://perma.cc/Z6LM-FUYD].

72. *See* Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren & Michael Westberry, *AHRSWORKT*, INTEGRATED PUB. USE MICRODATA SERIES, CURRENT POPULATION SURV.: VERSION 9.0, https://cps.ipums.org/cps-action/variables/AHRSWORKT#codes_section (last visited Aug. 17, 2022) [https://perma.cc/7T7X-F77Z]; Steven Ruggles, Sarah Flood, Ronald Goeken, Megan Schouweiler & Matthew Sobek, *HRSWORK1*, IPUMS USA: VERSION 12.0, https://usa.ipums.org/usa-action/variables/HRSWORK1#codes_section (last visited Aug. 17, 2022) [https://perma.cc/6JD3-UMA5].

73. Steven Ruggles, Sarah Flood, Ronald Goeken, Megan Schouweiler & Matthew Sobek, *ABSENT*, IPUMS USA: VERSION 12.0, https://usa.ipums.org/usa-action/variables/ABSENT#codes_section (last visited Aug. 17, 2022) [https://perma.cc/38GA-SX4G] [hereinafter *ABSENT*]; *see* Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren & Michael Westberry, *WHYABSNT*, INTEGRATED PUB. USE MICRODATA SERIES, CURRENT POPULATION SURV.: VERSION 9.0, https://cps.ipums.org/cps-action/variables/WHYABSNT#codes_section (last visited Aug. 17, 2022) [https://perma.cc/A2H5-K989] [hereinafter *WHYABSNT*] (providing data on reasons for absence from work).

disease,[74] nor does either dataset directly ask about paid leave availability.[75]

As a result, prior empirical research on PSL laws is limited, and what limited research exists is largely based on survey data. A large survey of almost 13,000 workers in the state of Washington found that its 2018 PSL law increased access to paid sick leave by twenty-eight percentage points and decreased presenteeism by eight percentage points.[76] On the employer side, a survey of employers in San Francisco found high rates of satisfaction, in spite of some increased costs, with the city's local paid sick leave ordinance.[77] Several surveys in the public health literature have additionally shown that workers with access to PSL are more likely to seek preventative health services, which could have long-term implications for a worker's ability to remain on the job.[78]

The two prior papers based on observational data that do exist provide some positive insight into the effects of PSL laws, even in spite of data limitations. The first paper, which comes from the economics literature, utilizes Google influenza data to show that worker access to

74. The closest the CPS comes is allowing respondents to report whether they were absent from work last week due to "own injury/illness/medical problems." *See WHYABSNT*, *supra* note 73. Unfortunately, this observation does not provide a great deal of insight since it is impossible to distinguish whether a worker answering yes to this question has a long-term, noncommunicable disease like cancer, a highly contagious disease like COVID-19, or a physical injury. The ACS is even less specific, allowing workers to report absence from work last week due to "vacation, illness, labor dispute, etc." *See ABSENT*, *supra* note 73.

75. The CPS does ask its March Annual Social and Economic Supplement respondents whether they were paid if absent from work last week, but answering yes to such a question could mean that a worker had been injured on the job and was being paid through workers' compensation, as opposed to the worker having access to paid sick leave. *See* Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren & Michael Westberry, *PAYIFABS,* INTEGRATED PUB. USE MICRODATA SERIES, CURRENT POPULATION SURV.: VERSION 9.0, https://cps.ipums.org/cps-action/variables/PAYIFABS#codes_section (last visited Aug. 18, 2022) [https://perma.cc/SN92-A7CL].

76. Daniel Schneider, *Paid Sick Leave in Washington State: Evidence on Employee Outcomes, 2016-2018*, 110 AM. J. PUB. HEALTH 499, 500, 502 (2020).

77. *See* Carrie H. Colla, William H. Dow, Arindrajit Dube & Vicky Lovell, *Early Effects of the San Francisco Paid Sick Leave Policy*, 104 AM. J. PUB. HEALTH 2453, 2455 (2014).

78. *See, e.g.*, LeaAnne DeRigne, Patricia Stoddard-Dare, Cyleste Collins & Linda Quinn, *Paid Sick Leave and Preventive Health Care Service Use Among U.S. Working Adults*, 99 PREVENTIVE MED. 58 (2017) (finding that workers without PSL access were less likely to have received six common preventative health services); Hansoo Ko & Sherry A. Glied, *Associations Between a New York City Paid Sick Leave Mandate and Health Care Utilization Among Medicaid Beneficiaries in New York City and New York State*, 2 JAMA HEALTH F. e210342 (2021) (finding a decrease in emergency room services and an increase in preventative care screenings among Medicaid recipients after New York City enacted its PSL law); Rashmi Lamsal, Krishtee Napit, Adam B. Rosen & Fernando A. Wilson, *Paid Sick Leave and Healthcare Utilization in Adults: A Systematic Review and Meta-Analysis*, 60 AM. J. PREVENTIVE MED. 856 (2021) (finding consistent evidence from a review of prior literature that PSL access had positive effects on worker receipt of preventative health services).

a PSL law decreases local influenza rates.[79] Without additional data, the authors could only speculate about the mechanism, but their results certainly suggest that PSL laws reduce workplace presenteeism, which, in turn, reduces the spread of contagious disease in the entire locality.[80]

The second paper, also from the economics literature, uses CPS data to demonstrate that workers were *less* likely to report being absent from work last week due to illness, injury, or other medical problems after gaining access to a PSL law.[81] Due to data limitations, the authors admittedly could not distinguish between worker absences from short-term illness, long-term illness, or physical injuries; as a result, these authors too could only speculate on mechanism and causation.[82] Still, their results are suggestive that PSL laws reduce presenteeism, which leads to less disease spread in the workplace and fewer workers overall calling out sick from work.[83]

In sum, a small body of previous research has suggested that PSL laws work as intended, but data limitations have severely limited scholars' ability to investigate whether access to PSL actually changes a worker's mind about going to work sick. Without a clear answer to that initial question, it is difficult to attribute convincingly any other positive, observed labor market effects to a PSL law. Fortunately, new data exist that can address this initial question squarely. The next Part turns to introducing these data, as well as additional data, to investigate how PSL laws have performed during the COVID-19 pandemic.

II. DATA AND METHODOLOGY

A. ATUS

As discussed in the last Part, the principal barrier to investigating the effects of PSL on the decision to go to work sick has been a lack of data. Yet a recently released cross-sectional dataset has

79. *See* Stefan Pichler & Nicolas R. Ziebarth*, The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Noncontagious Absenteeism Behavior*, 156 J. PUB. ECON. 14, 27 (2017).

80. *See id.*

81. *See* Jenna Stearns & Corey White, *Can Paid Sick Leave Mandates Reduce Leave-Taking?*, 51 LAB. ECON. 227, 240 (2018).

82. *See id.* at 228–30 ("It is possible, therefore, that in aggregate, large scale PSL policies may actually *reduce* illness related work absences by limiting the spread of disease. Why might this be the case? Only some workers gain access to PSL through the implementation of a mandate."); *see also WHYABSNT*, *supra* note 73 (discussing the limitations of CPS data to investigate the effects of PSL on worker behavior and labor market outcomes).

83. *See* Stearns & White, *supra* note 81, at 240.

the potential to fill this void.[84] In 2017 and 2018, the ATUS administered a Leave Module to all respondents who were employed wage and salary workers.[85] Unlike other publicly available datasets, the Leave Module directly questions respondents on leave access, leave usage, work schedule, and workplace flexibility.[86] The ATUS, which has been administered by the Bureau of Labor Statistics ("BLS") since 2003, is primarily focused on understanding how individuals spend their time.[87] The BLS selects a subset of former CPS respondents for participation in the ATUS, deliberately oversampling minority-identifying households and households with children.[88] Within each selected household, the BLS randomly chooses one person over the age of fifteen to answer ATUS questions via a telephone interview, which primarily concern their time use during the previous day.[89]

For a nationwide, cross-sectional dataset, the ATUS Leave Module's level of detail on leave availability and usage is unparalleled.[90]

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84. Because the ATUS Leave Module is so new, only two other papers have used the Leave Module thus far to compare working conditions, leave access, and leave usage. *See* Alexandre Mas & Amanda Pallais, *Alternative Work Arrangements*, 12 ANN. REV. ECON. 631, 644–46 (2020) (comparing alternative work arrangements and work intensity of men and women); Shinall, *supra* note 16 (comparing leave access and usage of workers with and without disabilities).

85. Self-employed workers were excluded from participating in the module. *American Time Use Survey (ATUS) Data Dictionary: 2017-18 Leave and Job Flexibilities Module Data, Variables Collected in the Module*, U.S. BUREAU OF LAB. STAT. 3 (Sept. 2019), https://www.bls.gov/tus/lvmintcodebk1718.pdf [https://perma.cc/U57G-XQDA] [hereinafter *Leave & Job Flexibilities Data*].

86. For other papers using these elements of the new ATUS Leave Module, see *supra* note 84.

87. ATUS response rates in 2017 and 2018 were between forty-two and forty-six percent. *American Time Use Survey User's Guide, Understanding ATUS 2003 to 2021*, U.S. BUREAU OF LAB. STAT. 13–14 (June 2022), https://www.bls.gov/tus/atususersguide.pdf [https://perma.cc/V62A-6UNA].

88. *See id.* at 11–13.

89. *See id.* at 11–18.

90. The National Longitudinal Survey of Youth panel data do provide some information on participants' access to paid leave and flexible schedules. The shortcomings of these data are the small sample sizes, combined with the fact that they only examine a limited cohort of individuals from year to year (NLSY79 respondents were born between 1957 and 1964, and NLSY97 respondents were born between 1980 and 1984). *See National Longitudinal Surveys*, *NLSY79 Data Overview*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/nls/nlsy79.htm (last visited Sept. 24, 2022) [https://perma.cc/C38A-4MFX] ("The NLSY79 is a nationally representative sample of 12,686 young men and women born during the years 1957 through 1964 and living in the United States when the survey began."); *National Longitudinal Surveys*, *NLSY97 Data Overview*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/nls/nlsy97.htm (last visited Sept. 24, 2022) [https://perma.cc/Q7KE-WXBT] ("The NLSY97 consists of a nationally representative sample of 8,984 men and women born during the years 1980 through 1984 and living in the United States at the time of the initial survey in 1997."). Including a broad range of ages is meaningful when studying leave-taking and workplace flexibility since the motivations for needing these workplace benefits and usage level are likely to vary significantly by age. *See generally National Longitudinal Surveys*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/nls (last visited Aug. 18, 2022) [https://perma.cc/AV4F-AKKW] (providing data on family, education, and labor market activities

Indeed, the only shortcoming of the ATUS Leave Module dataset is its small size. The Leave Module is a subsample (employed wage and salary workers) of a subsample (the ATUS), leaving about 5,000 observations annually.[91] Although the number of respondents is relatively low, the questions asked of them are directly on point. Leave Module respondents answer questions about whether they have access to paid leave at their job[92] and whether they have ever taken unpaid leave from their job.[93] Even more instructively, respondents identify whether they took leave in the past week due to illness[94] and whether they failed to take leave in the past month despite a perceived need to do so.[95] Respondents' answers to these ATUS Leave Module questions allow for a direct investigation into 1) whether PSL legislation increases overall PSL availability and 2) whether PSL availability affects workplace presenteeism.

B. CPS

The ATUS can provide a great deal of insight regarding the initial question of how PSL legislation affects PSL access and how access, in turn, affects workers' decisions to go to work sick. During the COVID-19 pandemic, reducing the number of workers who go to work when ill seems more crucial than ever. If the ATUS Leave Module does indeed suggest a relationship between PSL access and workplace presenteeism, then a follow-up question naturally follows: How do changes in workplace presenteeism affect employers and employees? As discussed in Part I.B, increased PSL access could provide both job and income security for sick employees and, in theory, discourage them from going to work when they are knowingly ill. That, in turn, could reduce the spread of infectious disease in the workplace, which could ultimately improve both employers' and employees' bottom lines.

A common way of evaluating the labor market effects of protective employee legislation is to examine changes in labor market

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of different generations). As discussed previously, the CPS data have a few questions that get at leave usage and availability, but lack of specificity render these data unable to identify the precise mechanism (if any) through which workers respond to PSL availability. *See supra* note 75.

91. *See Leave & Job Flexibilities Data*, *supra* note 85, at 3 ("There are fewer Leave Module respondents than ATUS respondents because the module was asked of wage and salary workers only . . . .").

92. *See id.* at 29 ("Do you receive paid leave on your (main) job?").

93. *See id.* at 30 ("In your current job, have you ever taken unpaid leave . . . ?").

94. *See id.* at 28 ("Why did you need to take off work? . . . Own illness or medical care.").

95. *See id.* at 29 ("Why did you decide not to take leave?").

participation rates,[96] employment rates,[97] and hourly wage rates[98] after passage. These measures offer informative clues as to how relevant legislation affects employees' willingness to sell their services (labor supply) as well as employers' willingness to pay for these services (labor demand).[99] The standard bearer dataset for measuring labor market outcomes is the CPS.[100] Consequently, in the second part of the data analysis, I will examine changes in labor market outcomes within the CPS data for workers covered by state PSL laws. Because of COVID's well-documented effects on both labor supply and labor demand,[101] I will separately examine pre-COVID data (January 2016–February

96. Changes in labor market participation rates may provide insight into the problem of discouraged workers or workers who are so frustrated with their labor market prospects that they cease looking for work altogether. *See, e.g.*, GEORGE BORJAS, LABOR ECONOMICS 23 (8th ed. 2020) ("Because it is so hard to find work, many laid-off workers have become discouraged with their futile job search activity, dropped out of the labor market, and stopped being *counted as* unemployed.").

97. Economists typically define employment rate in the same manner as the BLS, which divides the number of people employed by the combined number of people employed or actively looking for work. *See Labor Force Statistics from the Current Population Survey: Concepts and Definitions*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/cps/definitions.htm#lfpr (last updated Oct. 21, 2021) [https://perma.cc/EB6T-XH6Q]. Workers who have not actively searched for a job during the last four weeks are excluded from the measure. *Id.*

98. Hourly wage rate is a superior measure of the equilibrium price of labor to annual income since hourly wage rate takes into account underlying differences in workers' labor supply. For example, imagine two employees who both earn $41,600 total per year, but one works forty hours per week, while the other works only twenty hours per week. These employees would look identical according to an annual income measure. Yet hourly wage takes into account that the second employee (who earns $40 per hour) works half as much as the first (who earns $20 per hour).

99. For examples of previous papers analyzing the effects of protective employee legislation on labor market participation, employment rates, and hourly wage rates, see Shinall, *supra* note 28, at 1008–18, examining the effects of protective pregnancy legislation on employment, hourly wages, and labor market participation of pregnant women; Christopher S. Carpenter, *The Effects of Employment Protection for Obese People*, 45 INDUS. RELS. 393 (2006), examining the effects of ADA caselaw on labor market outcomes of individuals with obesity; Kenneth Y. Chay, *The Impact of Federal Civil Rights Policy on Black Economic Progress: Evidence from the Equal Employment Opportunity Act of 1972*, 51 INDUS. & LAB. RELS. REV. 608, 631 (1998), documenting an improvement in the labor market outcomes of Black men after the expansion of Title VII to smaller employers; and William J. Collins, *The Labor Market Impact of State-Level Anti-discrimination Laws, 1940–1960*, 56 INDUS. & LAB. RELS. REV. 244, 266–67 (2003), finding a larger effect of state fair employment practice laws from the 1940s and 1950s on Black women's labor market outcomes than on Black men's labor market outcomes.

100. *Current Population Survey (CPS)*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/cps.html (last updated July 28, 2022) [https://perma.cc/4X9P-ZLJU] ("The Current Population Survey . . . is the primary source of labor force statistics for the population of the United States.").

101. *See* Matthew Dey, Harley Frazis, David S. Piccone Jr. & Mark A. Loewenstein, *Teleworking and Lost Work During the Pandemic: New Evidence from the CPS*, MONTHLY LAB. REV., July 2021, at 1, 1 (noting that the pandemic affected labor demand by "eliminating millions of jobs, especially in the early months"); Brad J. Hershbein & Harry J. Holzer, *The COVID-19 Pandemic's Evolving Impacts on the Labor Market: Who's Been Hurt and What We Should Do*, IZA INST. OF LAB. ECON. 2 (Feb. 2021), https://docs.iza.org/dp14108.pdf [https://perma.cc/X5ER-A2SZ] (noting that the pandemic affected labor supply, as seen by the drop in labor force participation).

2020) and post-COVID data (March 2020–December 2021). All CPS data presented rely on respondents in the outgoing rotation group ("ORG")—that is, either in their fourth or eighth CPS interview—when the CPS asks respondents about their usual weekly hours and earnings.[102] Additionally, the post-COVID CPS data present relevant evidence from special CPS questions asked between May 2020 and December 2020 about the ability to work and look for work during the pandemic.[103]

C. Methodology

To identify the effects of state PSL legislation on presenteeism (using the ATUS data) and labor market outcomes more generally (using the CPS data), I primarily rely on difference-in-differences ("DD") regression. The idea of DD methodology is to compare the outcome of interest inside and outside the jurisdictions that passed a PSL law, before and after each law's passage.[104] The resulting before-and-after difference of the inside-and-outside differences should reveal the estimated effect of passing a PSL law. More formally, I rely on the DD model below:

$$Y_{ist} = X_{ist}\beta + \gamma L_{st} + \delta_s + \tau_t + \varepsilon_{ist}.$$[105]

In this model, Y_{ist} is the outcome variable of interest (such as taking leave due to illness, labor market participation, employment, and log of hourly wages) for individual i in state s in year t. X_{ist} is a vector of individual characteristics, including age (squared) as well as

102. Respondents participate in the CPS for four consecutive months, take an eight-month break, then participate for another four consecutive months. *Methodology for Measuring Wages and Benefits*, ECON. POL'Y INST., https://www.epi.org/data/methodology/ (last updated Feb. 21, 2019) [https://perma.cc/RWS5-RMLE]. When respondents are in their fourth and eighth months, they are considered "outgoing" and are asked additional questions by the CPS—most notably, questions about their usual weekly hours and earnings. *See id.*

103. Background and summary statistics for these special questions are reported in Dey et al., *supra* note 101.

104. Recent, well-executed examples of articles using DD analysis to identify the effects of legislation include Benjamin J. McMichael, *Stealing Organs?*, 97 IND. L.J. 135, 201 (2022), finding evidence that health care providers in certain locations are more likely to manipulate the waitlist priority of their patients in need of a transplant, increasing existing inequities in organ receipt; Griffin Edwards, Stephen Rushin & Joseph Colquitt, *The Effects of Voluntary and Presumptive Sentencing Guidelines*, 98 TEX. L. REV. 1, 32–56 (2019), identifying the effect of voluntary and presumptive sentencing guidelines on criminal sentencing outcomes; and Stephen Rushin & Griffin Edwards, *De-policing*, 102 CORNELL L. REV. 721, 759–67 (2017), finding that police departments subjected to federally mandated legislative reform experienced increased crime rates immediately thereafter.

105. Hereinafter *Equation (1)*.

indicator variables for highest level of education, race, ethnicity, marital status, presence of a child in the household, part-time hours, industry (at the two-digit level), and occupation (at the two-digit level). L_{st} is an indicator variable equal to one if the individual lives in a jurisdiction with a PSL law in effect within state s in year t, making γ the coefficient of interest. Finally, the model includes state of residence (δ_s) and year (τ_t) fixed effects.[106]

The coefficient of interest, γ, provides the average treatment effect of living in a jurisdiction with a PSL law in place.[107] If PSL laws work as intended, then the expected sign of γ will be negative for regressions examining the effects of these laws on presenteeism. In other words, a well-functioning PSL law should expand access to paid leave, making employees *less* likely to go to work sick. For regressions examining the effects of PSL laws on labor market outcomes, the expected sign of γ will be positive. Expanded access to paid leave should help workers to maintain their income, to keep their job, and even to remain attached to the labor market. In the next Part, I will test the above hypotheses, evaluating whether PSL laws have real, measurable effects on worker presenteeism and labor market outcomes.

III. PSL LAWS BY THE NUMBERS

In this Part, I turn to the primary contribution of this Essay, which separately analyzes two sources of data to assess whether PSL laws work as intended. In Part III.A, I examine the 2017–2018 ATUS Leave Module data, which provide unique insight into the effects of PSL laws on leave access and worker leave-taking behavior. In Part III.B, I turn to the 2016–2021 CPS data to examine the effects of PSL laws on labor market outcomes before and after the COVID-19 pandemic. Additionally, I take advantage of a special set of pandemic-related questions in the CPS to examine the effects of PSL laws on workers' ability to remain at work during COVID-19.

106. State and year fixed effects help account for underlying differences in geographic location and time that are not otherwise taken into account via the other control variables. As a result, state fixed effects help address the concern that a state with a PSL law is fundamentally different than a state without a PSL law.

107. To the extent that different states' PSL laws have heterogeneous effects, the coefficient of interest will mask this heterogeneity and average the laws' effects. For a discussion of this potential issue in DD analysis, see Andrew Goodman-Bacon, *Difference-in-Differences with Variation in Treatment Timing*, 225 J. ECONOMETRICS 254 (2021).

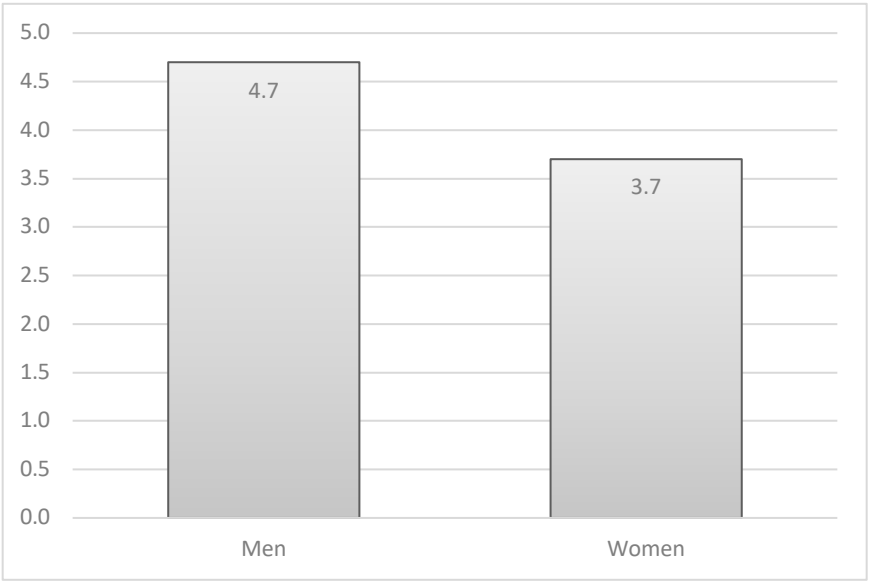
A. ATUS Data

1. Decreasing Unpaid Leave

Before evaluating the effects of PSL laws on presenteeism and labor market outcomes, a more obvious question merits initial attention: Do PSL laws actually increase the availability of paid leave? A PSL law might increase paid leave availability in two important ways. First, it could provide workers with newfound *access* to paid leave—that is, bestowing newfound paid leave where none existed before. Second, it could provide workers with an increased *amount* of paid leave—that is, increasing the number of paid sick leave days available to workers, regardless of whether they had any such days prior to the legislative mandate. Detecting an effect of PSL laws on PSL availability requires that these laws increased either access to or the amount of leave in some meaningful way. If enough employers were already providing workers with sufficient paid leave days prior to a state legislative mandate, then a new PSL law would have little to no observable effect on paid leave availability (or presenteeism or labor market outcomes, for that matter).

Figure 1 presents some evidence that PSL laws do indeed increase worker access to paid leave. According to the 2017–2018 ATUS Leave Module data, both male and female workers in PSL states were more likely to report having any paid leave days available to them in their main job, with a slightly higher difference for male workers (4.7 percentage points) than for female workers (3.7 percentage points). Both differences are statistically significant at the 5 percent level.

FIGURE 1: RAW PERCENTAGE POINT DIFFERENCE IN PAID LEAVE ACCESS FOR WORKERS IN PSL STATES



Notes: Sample includes all men (N=4,493) and women (N=4,434) ages 18 to 65 from the 2017–2018 ATUS Leave Module who are employed for wages or salary. All estimates use the ATUS Leave Module sample weight.

Note that Figure 1 provides the *raw* differences in means between paid leave access for workers in PSL and non-PSL states. The differences in Figure 1 are not regression-adjusted, and in fact, when they are regression-adjusted using the model presented in *Equation (1)*,[108] the differences between paid leave access in PSL states and non-PSL states become statistically insignificant.

The fact that raw paid leave access differences are statistically significant—but adjusted paid leave access differences are not—does not necessarily mean that PSL laws are a failure.[109] Besides increasing access to paid leave, PSL laws may also increase the amount of paid leave available to workers. Unfortunately, the ATUS Leave Module

108. *See Equation (1)*, *supra* note 105 and accompanying text. That is, when access to paid leave is the dependent variable, the coefficient on residing in a state with a PSL law is statistically insignificant (after controlling for education, race, ethnicity, marital status, presence of a child, part-time hours, industry, occupation, and state and year fixed effects).

109. *See id.* Henceforth, I use the term "raw" to indicate raw differences in means between workers in PSL states and non-PSL states (i.e., the estimate does not take into account underlying differences in other worker characteristics). I use the term "adjusted" to indicate regression-adjusted difference in means between workers in PSL states and non-PSL states (i.e., using the model presented in *Equation (1)*, the estimate takes into account underlying differences in worker education, race, ethnicity, marital status, presence of a child, part-time hours, industry, occupation, and state and year fixed effects).

lacks a direct question on the number of paid leave days that respondents have available from their main job. Still, as seen in the figures below, PSL laws do seem to change workers' leave-taking behavior in a way that stands up to regression adjustment. Taken together, these results suggest that PSL laws may primarily work through the channel of increasing the amount of, as opposed to access to, paid leave.

Along these lines, in all the figures that follow, the difference in means presented *is* regression-adjusted, meaning that the estimate takes into account other underlying differences between workers in PSL and non-PSL states, including education, race, ethnicity, marital status, presence of a child, part-time hours, industry, and occupation.[110] In Figure 2, I present the regression-adjusted difference in unpaid leave-taking between workers in PSL and non-PSL states. Perhaps studying this metric is not obvious, given that PSL, by definition, involves *paid* leave. Yet greater access to and availability of paid leave may naturally allow a worker to substitute away from unpaid leave towards paid leave when ill.

On the left-hand side of Figure 2, I present the regression-adjusted difference in unpaid leave-taking for the entire ATUS Leave Module Sample. In the middle, I present the regression-adjusted difference in unpaid leave-taking for low-wage workers only (defined here as $15 per hour or less).[111] The rationale for isolating low-wage workers is that, in the absence of a legal mandate, employers have been historically unlikely to provide such workers with paid leave. Finally, on the right-hand side, I present the regression-adjusted difference in unpaid leave-taking for workers who spend more than the median number of minutes per day on childcare (160 minutes).[112] The rationale for isolating workers with high childcare responsibilities is that they

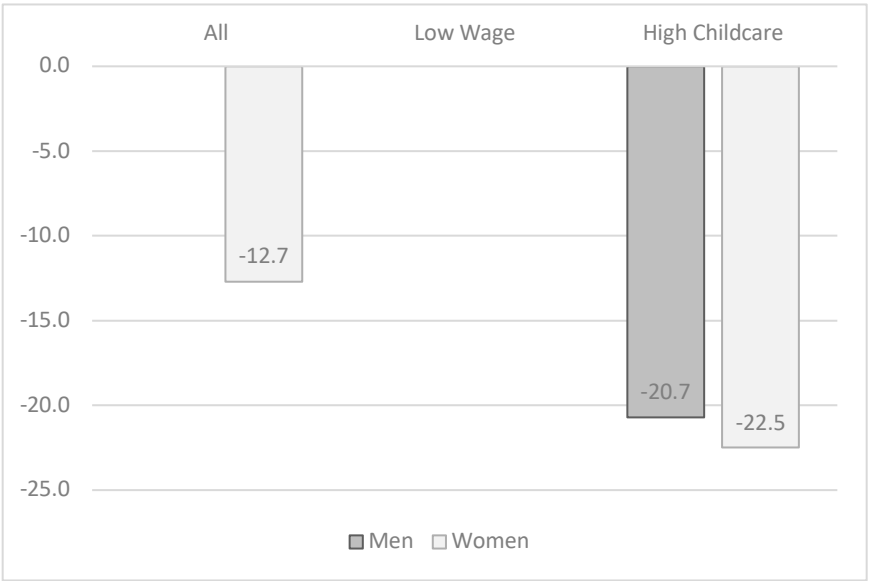
110. In other words, all subsequent figures present the estimate of γ from *Equation (1)*. *See id.*

111. Here, I choose $15 as the threshold for low-wage workers since a major workers' movement seeks to increase minimum wage to this target number nationwide. *See* FIGHT FOR $15, https://fightfor15.org/ (last visited Sept. 24, 2022) [https://perma.cc/5ECT-BMBV].

112. 2017–2018 ATUS Leave Module respondents in the fiftieth percentile of childcare provision spent 160 minutes on childcare per day. Because the ATUS is primarily concerned with time use, the ATUS contains extensive information on household caretaking responsibilities, including time spent on childcare. *See SCC_OWN: Total Time Spent on Secondary Childcare of Own Children*, IPUMS TIME USE, https://www.atusdata.org/atus-action/variables/SCC_OWN#description_section (last visited Feb. 22, 2022) [https://perma.cc/3769-8AE8]. For research more directly investigating the relationship between childcare and labor market outcomes using the ATUS, see Joni Hersch, *Home Production and Wages: Evidence from the American Time Use Survey*, 7 REV. ECON. HOUSEHOLD 159 (2009).

are more likely to be the parent who stays home when a child is ill or when schools are closed.[113]

FIGURE 2: ADJUSTED PERCENTAGE POINT DIFFERENCE IN EVER TAKING UNPAID LEAVE FOR WORKERS IN PSL STATES



Notes: Sample includes all men (N=4,493) and women (N=4,434) ages 18 to 65 from the 2017–2018 ATUS Leave Module who are employed for wages or salary. Estimates report the regression coefficient γ from *Equation (1)* whenever statistically significant at the 10% level. All estimates use the ATUS Leave Module sample weight. Regression results are reported in Appendix Table 1.

As revealed in Figure 2, living in a PSL state is associated with much lower rates of taking unpaid leave for female workers in particular. Female workers in PSL states are 12.7 percentage points less likely to have ever taken unpaid leave than female workers in non-PSL states. That number almost doubles (to 22.5 percentage points) for female workers with high childcare responsibilities. Moreover, men with high childcare responsibilities in PSL states also have far lower rates of taking unpaid leave than do their male counterparts in non-PSL states—a difference of 20.7 percentage points. In other words, Figure 2 indicates that PSL legislation enables workers with high childcare responsibilities to substitute away from unpaid leave,

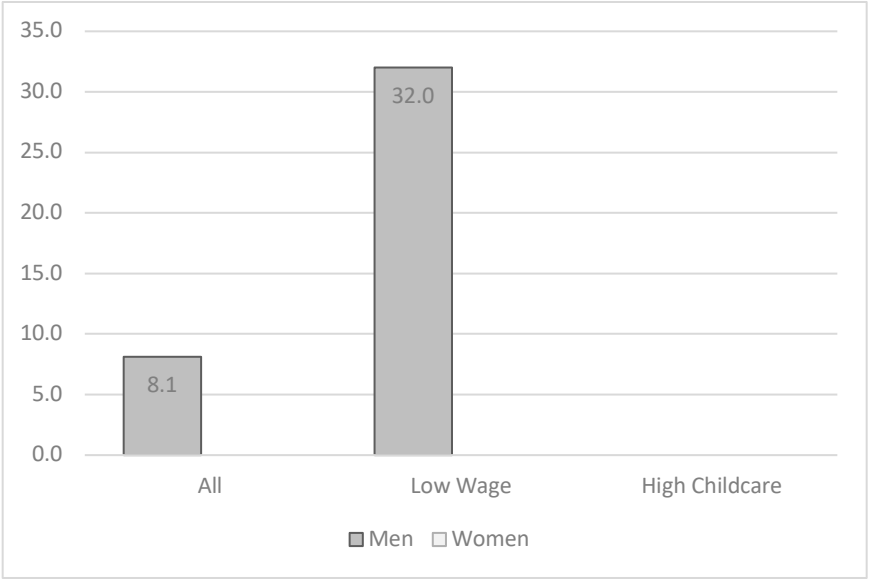
113. In households with two opposite-gendered parents, women continue to have disproportionately high childcare responsibilities. *See, e.g.*, Hersch, *supra* note 112, at 159 ("The total time spent by women on home production activities dominates the time spent by men . . . .").

presumably towards paid leave, when they need to stay home with their children.

2. Decreasing Workplace Presenteeism

Figures 3, 4, and 5 address the presenteeism hypothesis more directly using the ATUS Leave Module data. Figure 3 presents the regression-adjusted difference between workers in PSL and non-PSL states who took leave last week because they were sick. Like Figure 2, Figure 3 presents the estimated coefficients for the entire sample, low-wage worker sample, and high-childcare sample. As seen below, PSL legislation appears to make a significant difference for male workers, especially low-wage male workers. Low-wage male workers in PSL states are 32.0 percentage points more likely to have taken leave from their job last week due to own illness than are low-wage male workers in non-PSL states. At least prior to the pandemic, PSL legislation appears to have been sufficient to nudge male workers to stay home when they might have otherwise gone into the office sick.

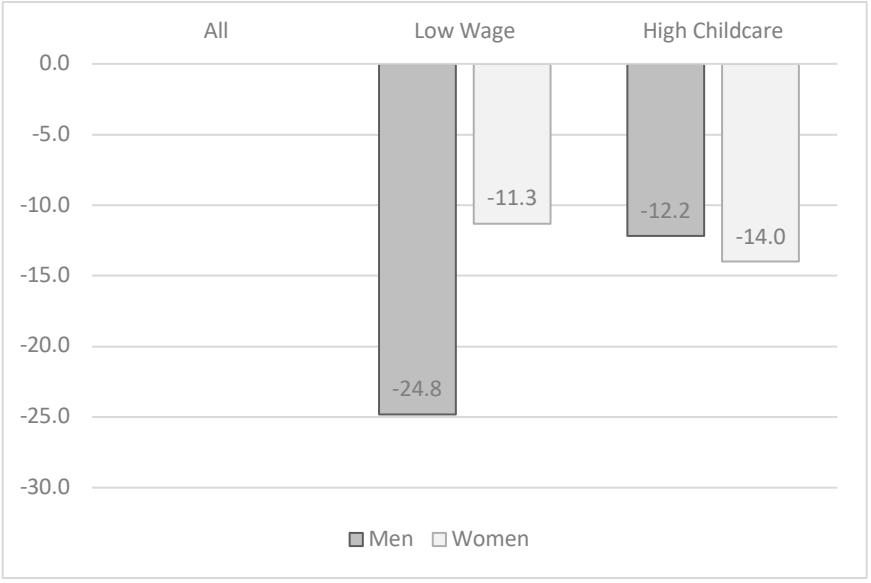
FIGURE 3: ADJUSTED PERCENTAGE POINT DIFFERENCE IN TAKING LEAVE LAST WEEK BECAUSE WORKER WAS SICK IN PSL STATES



Notes: Sample includes all men (N=4,493) and women (N=4,434) ages 18 to 65 from the 2017–2018 ATUS Leave Module who are employed for wages or salary. Estimates report the regression coefficient γ from *Equation (1)* whenever statistically significant at the 10% level. All estimates use the ATUS Leave Module sample weight. Regression results are reported in Appendix Table 1.

Although no statistically significant effects appear for women in Figure 3, effects for women do appear in Figures 4 and 5, which address the presenteeism issue from a slightly different angle. In addition to asking about leave-taking last week because of own illness, the ATUS asks whether respondents *refrained from taking leave last month*, despite a perceived need to do so.[114] Figure 4 presents the regression-adjusted differences for answers to this question by workers in PSL and non-PSL states. As seen below, both low-wage workers and high-childcare workers in PSL states are far less likely to report failing to take leave last month than are their counterparts in non-PSL states. The differences are substantial—between 11.3 and 24.8 percentage points—and at least as big for male workers as for female workers.

FIGURE 4: ADJUSTED PERCENTAGE POINT DIFFERENCE IN FAILING TO TAKE LEAVE LAST MONTH, DESPITE NEED, FOR WORKERS IN PSL STATES



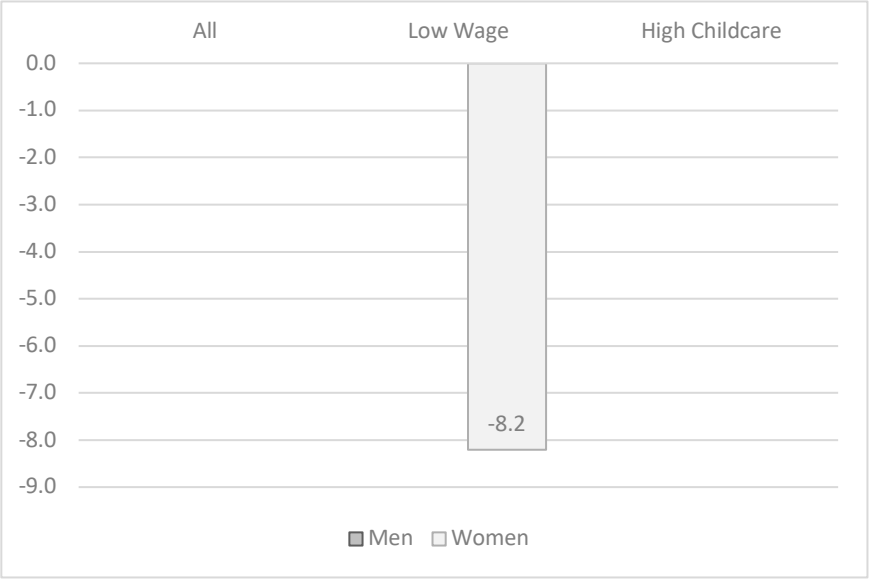
Notes: Sample includes all men (N=4,493) and women (N=4,434) ages 18 to 65 from the 2017–2018 ATUS Leave Module who are employed for wages or salary. Estimates report the regression coefficient γ from *Equation (1)* whenever statistically significant at the 10% level. All estimates use the ATUS Leave Module sample weight. Regression results are reported in Appendix Table 1.

Finally, ATUS respondents are asked a follow-up question about *why* they perceived the need to take leave last month but ultimately

114. *Leave & Job Flexibilities Data*, *supra* note 85, at 14.

failed to do so.[115] One of the possible responses to this follow-up question is own illness; the regression-adjusted differences between workers in PSL and non-PSL states for this question are presented in Figure 5. Figure 5 indicates that low-wage, female workers in PSL states are more likely to have taken leave in the past month for their own illness than are low-wage, female workers in non-PSL states. When evaluated alongside Figure 3, Figure 5 adds additional support to the presenteeism hypothesis—this time for women—and suggests that, at least prior to the pandemic, low-wage workers in non-PSL jurisdictions were more likely to go to work sick than were low-wage workers in PSL jurisdictions.

FIGURE 5: ADJUSTED PERCENTAGE POINT DIFFERENCE IN FAILING TO TAKE LEAVE LAST MONTH, DESPITE OWN ILLNESS, FOR WORKERS IN PSL STATES



Notes: Sample includes all men (N=4,493) and women (N=4,434) ages 18 to 65 from the 2017–2018 ATUS Leave Module who are employed for wages or salary. Estimates report the regression coefficient γ from *Equation (1)* whenever statistically significant at the 10% level. All estimates use the ATUS Leave Module sample weight. Regression results are reported in Appendix Table 1.

Although the ATUS Leave Module data entirely predate the COVID-19 pandemic, the findings in the above figures have significant implications for the present time. Low-wage workers of both genders

115. *Id.* at 14–16.

are less likely to go to work sick in the presence of a statutory PSL mandate. Although the ATUS data cannot completely explain the mechanism behind this relationship, the data are suggestive that PSL laws increase the amount of paid leave available. The job and income protection that this additional paid leave provides is sufficient to convince low-wage workers, in particular, to stay home when ill. Although not all illnesses are contagious, many are, so PSL laws may reduce workplace spread of contagious disease.[116]

Moreover, workers with high childcare responsibilities are less likely to use unpaid leave in the presence of a statutory PSL mandate. While this finding does not speak directly to the issue of presenteeism, it becomes particularly relevant in light of the COVID-19 pandemic. For almost two years, schools and childcare centers have experienced severe disruption;[117] total and partial closures due to COVID-19 outbreaks have become the new norm.[118] For working parents with children, the realities of pandemic childcare (or lack thereof) have only increased the need for workplace leave.[119] To the extent that PSL laws enable working parents to shift away from using unpaid leave, PSL mandates may provide a significant source of income protection during the pandemic.

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116. In 2018, for example, 7.2 million doctor's office visits and 3.4 million emergency room visits were caused by communicable diseases. *See* Nat'l Ctr. for Health Stat., *Infectious Disease*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/nchs/fastats/infectious-disease.htm (last updated Sept. 13, 2021) [https://perma.cc/D3VQ-UA88].

117. Since March 2020, U.S. schools have partially reopened, but they have never totally reopened. *See* COVID-19 Education Response, *Global Monitoring of School Closures Caused by COVID-19*, UNESCO INST. FOR STAT., https://covid19.uis.unesco.org/global-monitoring-school-closures-covid19/country-dashboard/ (last updated Mar. 2022) [https://perma.cc/6SCV-9P8N] (choose "United States of America" from dropdown). U.S. schools have been partially open since the first quarter of 2021. *Id.*

118. The most complete data currently being collected on U.S. school response to COVID-19 come from a team of academic researchers (Emily Oster, Galit Alter, Susan Johnson, and Lindsay Shultz), who have developed the National COVID-19 School Response Dashboard as part of their larger project, COVID Explained. *See* COVID EXPLAINED, https://explaincovid.org/ (last visited Sept. 24, 2022) [https://perma.cc/3FRB-7DJ9]. According to their school dashboard data, no more than sixty-two percent of tracked students were attending school in-person at any given time during the 2020–2021 school year. *See COVID-19 School Response Dashboard*, QUALTRICS, https://statsiq.co1.qualtrics.com/public-dashboard/v0/dashboard/5f78e5d4de521a001036f78e#/dashboard/5f78e5d4de521a001036f78e?pageId=Page_c0595a5e-9e70-4df2-ab0c-14860e84d36a (last visited Sept. 24, 2022) [https://perma.cc/EGS6-2V6W].

119. *See* Alison Green, *Your Co-workers with Kids Are Not OK*, SLATE (Feb. 14, 2022, 5:50 AM), https://slate.com/human-interest/2022/02/working-kids-pandemic-stress-mothers-struggling.html [https://perma.cc/HJ3C-8JQD] ("[M]y daycare keeps closing for either positive cases or exposures. Every time this happens I'm left to work from home or take unpaid leave."); Juliana Kaplan & Jason Lalljee, *Lower-Income Americans Were Twice as Likely to Lose Pay Because of COVID Than More Affluent People, and It Shows How the Pandemic Revealed Long-Running Inequities*, BUS. INSIDER (Feb. 17, 2022, 1:45 PM), https://www.businessinsider.com/lower-income-americans-people-of-color-more-impacted-by-covid-2022-2 [https://perma.cc/9XB8-9TUD] ("Childcare closures and lack of paid leave have kept parents, especially mothers, from returning to work.").

B. CPS Data

The ATUS Leave Module data presented in the prior Section indicate that PSL laws may change some workers' minds about going to work sick. These laws may also allow some workers the ability to shift away from unpaid leave and presumably towards greater income security. Consequently, in this Section, I turn to a follow-up question: Do the reduced presenteeism and decreased use of unpaid leave associated with enactment of a PSL law translate to improved labor market outcomes? To answer this question, I turn to the much larger, monthly CPS ORG data. As discussed in Part II.B, I separate my analysis of the CPS data pre- and post-COVID. Given the ostensibly greater need for leave since the onset of the pandemic—whether that leave is to quarantine personally or to care for a family member who is quarantining—demand for paid leave has almost certainly shifted for workers since March 2020.[120] Additionally, tolerance for being sick in public has almost certainly shifted.[121] As such, the effects of PSL mandates may have different effects pre- and post-pandemic in a way that merits separate analysis.

1. PSL Laws Can Help Workers Remain on the Job

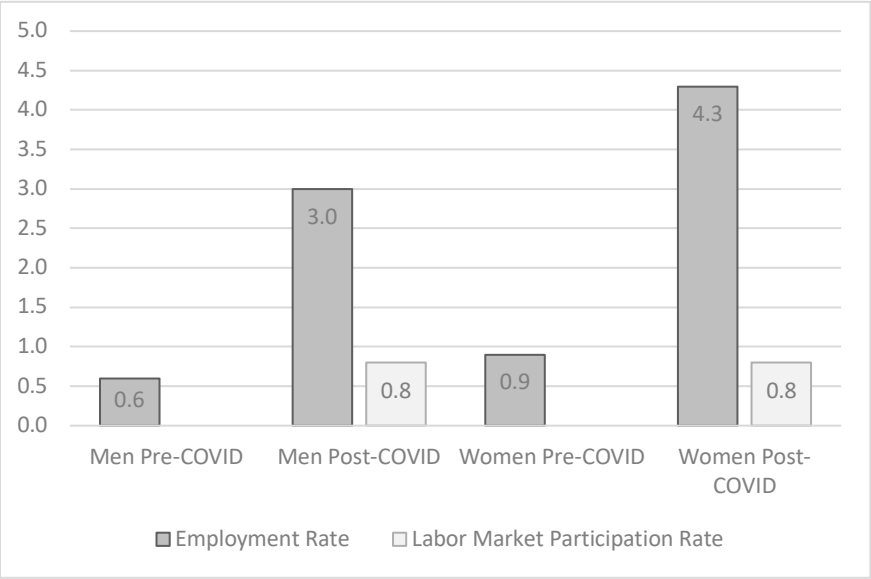
Figure 6 presents the estimated percentage point differences in employment rates between workers in PSL and non-PSL states. Prior to the onset of COVID-19, the differences in employment rates were notable, if somewhat modest, for both men (0.6 percentage points) and women (0.9 percentage points) in PSL states. Yet after the onset of COVID-19, the differences in employment rates between workers in PSL and non-PSL states have become enormous—3.0 percentage points for men and 4.3 percentage points for women. To put these differences

120. Indeed, this perceived greater need for leave to quarantine personally or care for a family member who is quarantining was a major impetus behind passage of the (now expired) FFCRA. *See* U.S. DEP'T OF LAB., *supra* note 5 (providing eighty hours of paid sick leave to workers for self-quarantine or caring for a quarantining family member at the beginning of the pandemic).

121. The number of shock-value pieces published in the media about workers being encouraged to come to work sick during COVID is emblematic of how much public opinion has turned against individuals who knowingly spread an infectious disease. *See, e.g.*, Ben Cost, *Sick Workers Reportedly Told to 'Just Wear a Mask and Don't Tell Anyone*,*'* N.Y. POST (Jan. 27, 2022, 3:15 PM), https://nypost.com/2022/01/27/sick-people-are-reportedly-going-to-work-dont-tell-anyone/ [https://perma.cc/MA4N-H6XV] (detailing a health department complaint filed by workers at a California Jack in the Box who were told to keep working with COVID); Dana Griffin, *'Shocking' Study Finds Employees Went to Work Sick Because of Pressure from Management, No Sick Pay*, NBC NEWS 7 SAN DIEGO, https://www.nbcsandiego.com/news/local/shocking-study-finds-employees-went-to-work-sick-because-of-pressure-from-management-no-sick-pay/2852417/ (last updated Jan 28, 2022, 10:55 PM) [https://perma.cc/BAW3-BG8G] ("There's an alarming trend, researchers have found among service workers: going to work sick during the pandemic.").

in perspective, employment rates declined by approximately 10 percentage points nationwide during the peaks of both the COVID-19 Recession and the Great Recession.[122] Accordingly, the estimates in Figure 10 suggest that PSL legislation may have muted these employment declines by approximately one-third.[123]

FIGURE 6: ADJUSTED PERCENTAGE POINT DIFFERENCE IN EMPLOYMENT AND LABOR MARKET PARTICIPATION RATES FOR WORKERS IN PSL STATES



Notes: Pre-COVID employment sample includes all men (N=404,397) and women (N=372,396) ages 18 to 65 from the January 2016–February 2020 CPS ORG who are in the labor market. Post-COVID employment sample includes all men (N=152,923) and women (N=140,210) ages 18 to 65 from the March 2020–December 2021 CPS ORG who are in the labor market. Pre-COVID labor market sample includes all men (N=500,228) and women (N=535,275) ages 18 to 65 from the January 2016–February 2020 CPS ORG who are not in the armed forces or group quarters. Post-COVID employment sample includes all men (N=190,967) and women (N=202,415) ages 18 to 65 from the March 2020–December 2021 CPS ORG who are not in the armed forces or group quarters. Estimates report the regression coefficient γ from *Equation (1)* whenever statistically

122. *See, e.g.*, Rakesh Kochhar, *Unemployment Rose Higher in Three Months of COVID-19 than It Did in Two Years of the Great Recession*, PEW RSCH. CTR. (June 11, 2020), https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/ [https://perma.cc/C4YF-BTDB] (reporting that overall unemployment rose to 14.4 percent during the peak of the COVID-19 recession and 10.6 percent during the peak of the Great Recession).

123. Recall that all regression estimates include state fixed effects, which should account for underlying differences between PSL and non-PSL states.

significant at the 10% level. All estimates use the CPS sample weight. Regression results are reported in Appendix Table 2.

A tremendous amount of anecdotal evidence exists to support this finding.[124] Media accounts of workers (particularly low-wage workers) during the pandemic recount multiple instances of being terminated after staying home while in COVID-19 quarantine, while caring for a family member with COVID-19, or while a child was not able to attend school due to COVID-19.[125] For workers with access to PSL, the choice to stay home is not so dire, leading to longer-term attachment to their current job. Moreover, employers should be less likely to terminate a worker for taking leave since PSL laws impose financial penalties on employers who retaliate against employees who utilize the leave to which they are legally entitled.[126] Taken together, all of these factors should translate to the higher employment rates in states with PSL laws seen in Figure 6.

2. PSL Laws Can Help Workers Remain Attached to the Labor Force

Turning again to Figure 6, the post-COVID CPS data reveal higher labor market participation rates that are statistically significant for both male and female workers in PSL states. During COVID, men and women in PSL states have had labor market participation rates approximately 0.8 percentage points higher than their counterparts in non-PSL states. To put in perspective how significant this difference is—the biggest overall drop in labor market participation rates on record is 2.4 percentage points, which occurred during the first few

124. *See, e.g.*, Alexander Nieves & Eleanor Mueller, *States Take on COVID Sick Leave with Federal Help Nowhere in Sight*, POLITICO (Feb. 6, 2022, 7:00 AM), https://www.politico.com/news/2022/02/06/california-covid-sick-leave-00005374 [https://perma.cc/4BMU-ZJRL] ("Employees who have already exhausted their sick days or are among the 33 million workers who lack any paid sick leave benefits have been forced to give up paychecks or return to work sick . . . ."); Olga Khazan, *A Hidden COVID-19 Risk Factor: Your Boss*, ATLANTIC (June 1, 2020), https://www.theatlantic.com/health/archive/2020/06/sick-leave-covid-time-off/612361/ [https://perma.cc/MA7B-XJ6J] ("As unemployment remains high and companies have more workers to choose from, more people may find themselves losing their jobs if they get sick."); Alexia Fernández Campbell, *Sickened by COVID-19, Low-Wage Workers Lose Jobs. Others Are Denied Paid Leave.*, NBC NEWS (Aug. 3, 2020, 4:00 AM), https://www.nbcnews.com/business/economy/sickened-covid-19-low-wage-workers-lose-jobs-others-are-n1235515 [https://perma.cc/7KLZ-8MET] (recounting a story of an employee who was fired for taking leave while sick with COVID-19); *see also* sources cited *supra* note 121 (recounting how many workers have been going to work while actively sick with COVID-19 due to lack of paid leave).

125. *See, e.g.*, sources cited *supra* note 124.

126. Many state PSL laws contain explicit antiretaliation provisions, and others may have antiretaliation provisions implied by courts. *See, e.g.*, *Paid Sick Day Statutes*, NAT'L P'SHIP WOMEN & FAMS. 16–18 (July 2022), https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/paid-sick-days-statutes.pdf [https://perma.cc/DT5K-RETU] (listing explicit antiretaliation provisions in Connecticut, Arizona, Colorado, and New Mexico).

months of COVID-19.[127] As in the case of employment rates, PSL laws may have muted a drop in labor market participation rates in covered states by approximately one-third.

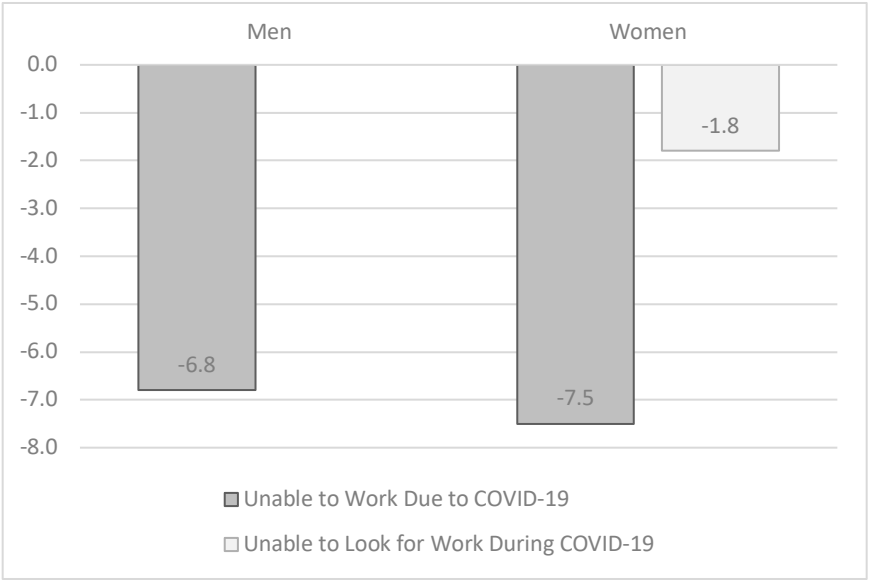
Figure 7 offers additional supporting evidence that PSL laws encourage labor market participation. As mentioned in Part II.B, the CPS asked respondents a special series of COVID-19-related questions from May 2020 until December 2020. Particularly relevant here are respondents' answers to two questions: first, whether they were "unable to work during the previous four weeks" due to the COVID-19 pandemic,[128] and second, whether the COVID-19 pandemic prevented them from "looking for work during the past four weeks."[129] The regression-adjusted differences between workers' answers to these questions in PSL and non-PSL states are presented in Figure 7.

127. *See* Miguel Faria e Castro, *The COVID Retirement Boom*, ECON. RSCH. FED. RSRV. BANK ST. LOUIS (Oct. 15, 2021), https://research.stlouisfed.org/publications/economic-synopses/2021/10/15/the-covid-retirement-boom#:~:text=The%20labor%20force%20participation%20rate,the%20second%20quarter%20of%202020 [https://perma.cc/6SM4-WUXC] ("The labor force participation rate registered its largest drop on record in 2020, falling from 63.2 percent in the fourth quarter of 2019 to 60.8 percent in the second quarter of 2020.").

128. *See* Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren & Michael Westberry, *COVIDUNAW,* INTEGRATED PUB. USE MICRODATA SERIES, CURRENT POPULATION SURV.: VERSION 9.0, https://cps.ipums.org/cps-action/variables/COVIDUNAW#description_section (last visited Aug. 18, 2022) [https://perma.cc/6RJH-3TPJ].

129. *See* Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren & Michael Westberry, *COVIDLOOK,* INTEGRATED PUB. USE MICRODATA SERIES, CURRENT POPULATION SURV.: VERSION 9.0, https://cps.ipums.org/cps-action/variables/COVIDLOOK#description_section (last visited Aug. 18, 2022) [https://perma.cc/5TYS-DEVM].

FIGURE 7: ADJUSTED PERCENTAGE POINT DIFFERENCES IN ABILITY TO WORK AND LOOK FOR WORK IN PSL STATES



Notes: Sample includes all men (N=174,912) and women (N=185,220) ages 18 to 65 from the May 2020–December 2020 CPS ORG who answered the special COVID questions. Estimates report the regression coefficient γ from *Equation (1)* whenever statistically significant at the 10% level. All estimates use the CPS sample weight. Regression results are reported in Appendix Table 2.

Both male and female workers in PSL states were significantly less likely to report an inability to work due to COVID-19 than were their counterparts in non-PSL states. The magnitudes are quite large: a 6.8 percentage point difference for male workers, and a 7.5 percentage point difference for female workers. Moreover, women in non-PSL states were also 1.8 percentage points more likely to report an inability to look for work due to COVID-19 than were their counterparts in PSL states. Both of these results suggest that access to paid leave helped prevent workers—and especially female workers—from becoming discouraged during COVID-19.[130]

The labor market participation results are particularly striking, given what a problem participation has been for women in particular throughout the pandemic.[131] Since the onset of COVID-19, 1.1 million

130. For insight into the meaning of "discouraged worker" as used in labor economics, see BORJAS, *supra* note 96, at 71–72.

131. *See, e.g.*, BETSEY STEVENSON, BROOKINGS INST.: THE HAMILTON PROJECT, WOMEN, WORK, AND FAMILIES: RECOVERING FROM THE PANDEMIC-INDUCED RECESSION 1 (Sept. 2021), https://www.brookings.edu/wp-

women have dropped out of the labor force entirely.[132] The available evidence suggests that much of this growing gender gap in participation is due to COVID-related childcare closures,[133] which disproportionately burden female workers.[134] Consequently, to the extent that PSL laws have served to mute that effect, they become a crucial intervention to dampen the widening gender gap in labor market participation.

3. Long-Run Earnings Effects of PSL Laws Remain Unclear

If PSL laws work as intended, they should provide protected workers with greater income security. Figure 2 presented evidence that PSL laws may help workers shift away from using unpaid leave from their jobs. In addition, Figure 5 presented evidence that PSL laws may help workers retain their jobs. Both forces would suggest greater income stability for workers in PSL states.

Figure 8 investigates this hypothesis but finds mixed evidence from examining real hourly wage rates. Some evidence exists to support the hypothesis that, prior to the COVID-19 pandemic, PSL laws improved the real hourly wages of protected workers. Although the regression coefficient on living in a PSL state is positive for both men and women pre-COVID,[135] the coefficient is only statistically significant for women. As seen in Figure 8, the estimates suggest that, prior to the

content/uploads/2021/09/20210929_Hamilton_stevenson_womenWorkFamilies.pdf [https://perma.cc/4NPN-6UF4] ("Women have borne the brunt of job loss from the very first days of the pandemic."); *see also* Stacey Vanek Smith, *Women, Work and the Pandemic*, NPR (June 9, 2021, 3:01 PM), https://www.npr.org/2021/06/09/1004892039/women-work-and-the-pandemic [https://perma.cc/S5X6-A38D] ("Millions of women left their jobs during the pandemic because of childcare."); *Staffing Shortages*, *supra* note 24 (decrying a "permanently smaller" pool of U.S. workers post-pandemic).

132. *See* Matt Gonzales, *Nearly 2 Million Fewer Women in Labor Force*, SOC'Y FOR HUM. RES. MGMT. (Feb. 17, 2022), https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/pages/over-1-million-fewer-women-in-labor-force.aspx [https://perma.cc/H5VK-CHDV] (reporting that 1.1 million women ceased participating in the labor market between February 2020 and January 2022).

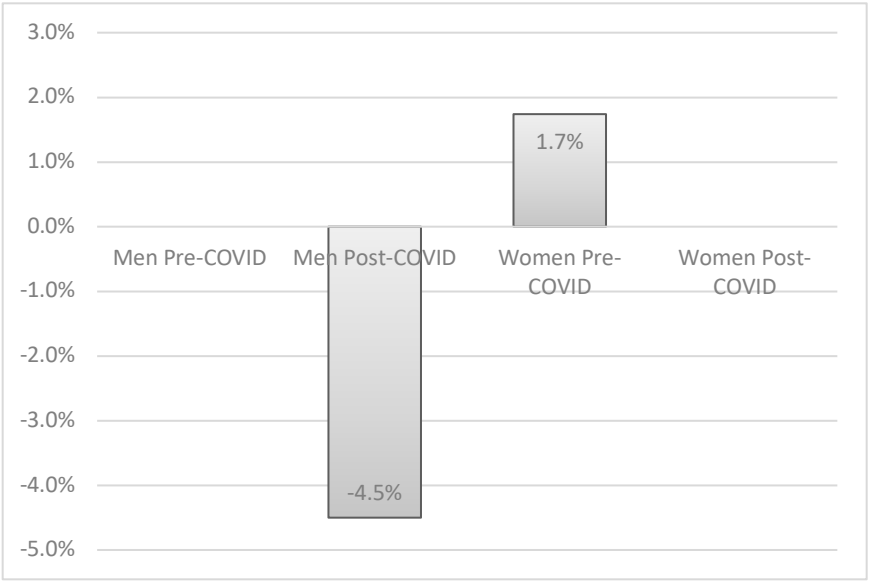
133. *See, e.g.*, Jason Furman, Melissa Schettini Kearney & Wilson Powell, *The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID-19 Pandemic*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 28934, 2021), https://www.nber.org/system/files/working_papers/w28934/w28934.pdf [https://perma.cc/9SEY-UHPN] (finding that "mothers with young children have experienced a larger decline in employment"); Kairon Shayne D. Garcia & Benjamin W. Cowan, *The Impact of School and Childcare Closures on Labor Market Outcomes During the COVID-19 Pandemic*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 29641, 2022), https://www.nber.org/system/files/working_papers/w29641/w29641.pdf [https://perma.cc/W796-8E66] (finding evidence that childcare closures affected working parents' ability to work full-time); *see also* Gonzales, *supra* note 132 ("Two years into the pandemic, that instability continues as kids are out of school or care for weeks at a time due to quarantine. . . . Women are still the ones that are likely to step in to fill the gap.").

134. *See* Hersch, *supra* note 112, at 159 (noting that working women in two-parent households spend disproportionately more time on housework and childcare than do men).

135. *See infra* app. Table 2.

onset of COVID-19, women in PSL states earned real hourly wages that were about 1.7 percent higher than the wages earned by their female counterparts in non-PSL states.

FIGURE 8: ADJUSTED PERCENT DIFFERENCE IN REAL HOURLY WAGES FOR WORKERS IN PSL STATES



Notes: Pre-COVID sample includes all men (N=377,256) and women (N=344,997) ages 18 to 65 from the January 2016–February 2020 CPS ORG who are employed and earn hourly wages ≥$1. Post-COVID sample includes all men (N=139,708) and women (N=126,997) ages 18 to 65 from the March 2020–December 2021 CPS ORG who are employed and earn hourly wages ≥$1. Estimates report the regression coefficient γ from *Equation (1)* whenever statistically significant at the 10% level. Reported percent differences are transformed from the original regression coefficient using the method outlined by Halvorsen and Palmquist.[136] All estimates use the CPS sample earnings weight. Regression results are reported in Appendix Table 2.

After COVID-19, however, the real hourly wage results flip. The regression coefficient on living in a PSL state is negative for both men and women post-COVID,[137] although the coefficient is only statistically significant for men. As seen in Figure 8, the estimates suggest that after the onset of COVID-19, men in PSL states earned real hourly wages

136. *See* Robert Halvorsen & Raymond Palmquist, *The Interpretation of Dummy Variables in Semilogarithmic Equations*, 70 AM. ECON. REV. 474, 474 (1980).

137. *See infra* app. Table 2.

that were about 4.5 percent lower than the wages earned by their male counterparts in non-PSL states.

The wage results are difficult to explain, if not also troubling. Although attempts to explain these results are speculative, two possible candidate explanations emerge. First, and most concerning, is the possibility that lower hourly wages in PSL states reflect employers passing on the costs associated with increased paid leave to their workers. Undoubtedly, paid sick leave was more costly for employers in 2020 and 2021 than ever before because of COVID-19.[138] Major employers that voluntarily provided workers with sick leave in the past have announced their intentions to reduce this benefit due to soaring costs.[139] To the extent that the costs of paid sick leave are overwhelming employers—especially to the extent they must pass on these costs to employees—the wage results may provide empirical support for the maximum earned-hours caps seen in virtually all PSL laws. Major employers who have recently cut their voluntarily provided paid leave have moved from two weeks of paid leave down to one week,[140] which is in line with the maximum hours caps in most state PSL laws. As such, future research should compare real hourly wage differentials for PSL states with the modal earned-hours cap (forty hours)[141] versus higher earned-hours caps.

Second, the COVID-19 pandemic has been an era of record inflation.[142] The results presented in Figure 8 take inflation into account, with all reported wages adjusted to their value in December

138. Indeed, both Walmart and Amazon have announced that paid sick leave policies have cost millions of dollars more than anticipated during COVID-19, and as a result, both companies have reduced their paid leave policies to one week. *See* Lauren Debter, *Walmart, Amazon Say Covid Sick Leave Has Cost Them a Fortune*, FORBES (Feb. 17, 2022, 10:55 AM), https://www.forbes.com/sites/laurendebter/2022/02/17/walmart-amazon-say-covid-sick-leave-has-cost-them-a-fortune/?sh=31206db8429e [https://perma.cc/T3U2-7C9M] ("Both companies offered paid leave for up to two weeks for those who had tested positive or were in mandated quarantine. . . . Walmart and Amazon scaled back their sick leave policies earlier this year, offering just one week of paid leave rather than two.").

139. *See id.*; *see also* Chris Marr & Paige Smith, *As Amazon, Walmart Cut Covid Sick Days, Paid Leave Push Revives*, BLOOMBERG L. (Jan. 14, 2022, 9:45 AM), https://news.bloomberglaw.com/daily-labor-report/as-amazon-walmart-cut-covid-sick-days-paid-leave-push-revives [https://perma.cc/ND8T-LBZZ] ("[B]usiness groups instead are ready to scale back the coronavirus-related leave that many major employers have offered since 2020 . . . .").

140. *See* Debter, *supra* note 138 and accompanying text.

141. *See* Shinall, *supra* note 25, at 406.

142. *See, e.g.*, Reade Pickert, *U.S. Inflation Hits 39-Year High of 7%, Sets Stage for Fed Hike*, BLOOMBERG, https://www.bloomberg.com/news/articles/2022-01-12/inflation-in-u-s-registers-biggest-annual-gain-since-1982 (last updated Jan. 12, 2022, 8:30 AM) [https://perma.cc/5FH7-KPCF] (reporting that the "consumer price index climbed 7% in 2021, the largest 12-month gain since June 1982").

2021 dollars using the U.S. Consumer Price Index ("CPI").[143] But the CPI's inflation adjustment is for *average* inflation across the United States.[144] If non-PSL states experienced systematically greater-than-average inflation during the post-COVID period (and wages reflected as such), then using the CPI would undercorrect for inflation in non-PSL states and overcorrect for inflation in PSL states.[145] In fact, evidence exists that non-PSL states did in fact experience higher-than-average inflation post-COVID due to the fact that many people moved to warmer states during the pandemic, particularly in the Southeast and the West, which lack PSL laws.[146] Thus, at least some of these real wage results may be driven by a failure to appropriately correct for regional variation in wage inflation rates, which should also form the basis of future PSL research.

CONCLUSION

Paid sick leave legislation has received remarkably little prior attention from the empirical literature. This lack of attention has been due, at least in part, to the lack of observational data on leave access, amount, and usage among U.S. workers.[147] Yet this gap in the empirical literature has become more noticeable than ever during the COVID-19 pandemic. Since March 2020, employees' need for a contingency plan, job security, and income stability when unable to work has become acute. Indeed, it seems nearly impossible to have avoided a COVID-related work disruption over the past two years. COVID-19 is so widespread that at least one in three Americans are estimated to have already contracted it by the end of 2020.[148] Until very recently, a COVID

143. Reported hourly wages are converted to real hourly wages using the BLS's monthly CPI Calculator. *See CPI Inflation Calculator*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm (last visited Aug. 18, 2022) [https://perma.cc/WW49-2CMU].

144. *See id.*

145. In fact, another problem has already been documented with respect to the traditional method of using the CPI to adjust for inflation. Because COVID-19 has also changed consumers' spending patterns, and the CPI has not adjusted to reflect this change, this change may introduce an additional source of bias into estimates. *See* Alberto Cavallo, *Inflation with COVID Consumption Baskets* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27352, 2020), https://www.nber.org/system/files/working_papers/w27352/w27352.pdf [https://perma.cc/B7GE-3EY8].

146. *See* Danny Dougherty & Gwynn Guilford, *Where Inflation Is Highest in U.S.*, WALL ST. J. (Nov. 10, 2021, 6:12 PM), https://www.wsj.com/articles/where-inflation-is-highest-in-u-s-11636585950 [https://perma.cc/YM9E-6QYZ] (reporting that only two PSL states had above average inflation rates of 7.0 to 7.5 percent in 2021, and twenty-one of the twenty-three states with above-average inflation rates of 6.5 to 7.5 percent in 2021 lacked a PSL law).

147. *See supra* notes 71–75 and accompanying text.

148. *See One in Three Americans Already Had COVID-19 by the End of 2020*, COLUM. MAILMAN SCH. PUB. HEALTH, https://www.publichealth.columbia.edu/public-health-

diagnosis meant automatic quarantine, resulting in work disruptions.[149] In the time before widely available vaccinations, mere exposure to COVID also meant automatic quarantine, resulting in work disruptions.[150] For working parents of young children ineligible for vaccination, mere exposure to COVID can still mean automatic quarantine for the child, resulting in work disruptions.[151] And for working parents of children, young and old, COVID-related school and daycare closures still abound, resulting in work disruptions.[152]

At a time when work disruptions lurk around every corner, the need for a gap filler like PSL legislation seems particularly dire. Without a gap filler, the default rule of employment at will operates,[153] leaving workers without job or income security unless their employer voluntarily provides paid leave. Still, any legislative gap filler must work as intended. As this Essay has suggested, PSL legislation is more than just an empty promise; it functions particularly well as an assurance of job security. Workers in states with PSL mandates have weathered the COVID-19 pandemic with systematically higher employment and labor market participation rates than have their counterparts in states without PSL mandates. Not to mention the fact that workers in states with PSL mandates are also less likely to go to work sick and potentially proliferate the spread of COVID-19.

Worker protections are never an easy sell to legislators, but perhaps the case for PSL legislation is presently as strong as ever. In a time of severe labor staffing shortages, legislation that can ameliorate these shortages becomes particularly appealing. In a time when everyone (even the boss) has experienced work disruptions, understanding workers' occasional need for leave may be at an all-time

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now/news/one-three-americans-already-had-covid-19-end-2020 (last updated June 7, 2022, 12:14 PM) [https://perma.cc/3MXM-UPF3].

149. *See supra* note 3 and accompanying text.

150. *See COVID Exposure Guidelines: Here's How Long to Quarantine After Close Contact, Testing Positive,* NBC CHI., https://www.nbcchicago.com/news/coronavirus/covid-exposure-guidelines-heres-how-long-to-quarantine-after-close-contact-testing-positive/2877577/ (last updated July 9, 2022, 12:25 PM) [https://perma.cc/9PKC-Q9T4] ("If you come into close contact with someone with COVID-19, you should quarantine if you are not up to date on COVID-19 vaccines or are unvaccinated.").

151. *See, e.g.*, Lindsey Bever & Frances Stead Sellers, *Overwhelmed by Chaos and Uncertainty, Families with Kids Under 5 Are on a Vaccine Roller Coaster*, WASH. POST (Feb. 21, 2022, 3:16 PM), https://www.washingtonpost.com/health/2022/02/21/parents-kids-under-5-vaccine/ [https://perma.cc/96S6-D38H] ("They've missed work and paychecks. Some have even changed careers when day-care closures forced them to work remotely.").

152. *See supra* notes 117–119 and accompanying text.

153. Employment at will is the strong default rule that operates throughout the United States, which holds that employers can terminate an employee "for a good reason, a bad reason, or no reason at all"—including for missing work due to illness. *See generally* Steward J. Schwab, *Life-Cycle Justice: Accommodating Just Cause and Employment at Will*, 92 MICH. L. REV. 8, 8 (1993).

high. Moreover, given how common workplace disruptions have become over the past two years, employers may be in a particularly good position to understand how to make paid sick leave work for their business. In the end, the COVID-19 pandemic may have made the winning argument for the passage of widespread PSL legislation.

APPENDIX TABLE 1: ATUS LEAVE MODULE OLS REGRESSION RESULTS: COEFFICIENT ON PSL LAW

	Dependent Variable				
Sample	Receives Paid Leave	Ever Took Unpaid Leave	Took Leave Last Week Because Sick	Failed to Take Leave Last Month, Despite Need	Failed to Take Leave Last Month, Despite Own Illness
Men					
All	0.047	0.039	0.081+	-0.056	-0.005
	(0.061)	(0.064)	(0.044)	(0.040)	(0.009)
Low-Wage (≤$15/hr)	0.132	0.221	0.320*	-0.248+	0.019
	(0.208)	(0.172)	(0.145)	(0.148)	(0.035)
High-Childcare (>160 mins)	0.056	-0.207*	0.014	-0.122*	-0.041
	(0.098)	(0.105)	(0.021)	(0.062)	(0.032)
Women					
All	0.037	-0.127+	0.035	-0.045	-0.036
	(0.048)	(0.072)	(0.032)	(0.032)	(0.024)
Low-Wage (≤$15/hr)	0.090	-0.252	0.051	-0.113*	-0.082+
	(0.108)	(0.164)	(0.065)	(0.053)	(0.047)
High-Childcare (>160 mins)	0.144+	-0.225+	0.033	-0.140+	-0.108
	(0.084)	(0.134)	(0.049)	(0.078)	(0.068)

+ significant at 10%; * significant at 5%; ** significant at 1%

Notes: Sample includes all men (N=4,493) and women (N=4,434) ages 18 to 65 from the 2017–2018 ATUS Leave Module who are employed for wages or salary. Estimates report the regression coefficient γ (on the indicator variable of interest, presence of a PSL law) from *Equation (1).* All estimates control for age (squared), as well as indicator variables for highest level of education, race, ethnicity, marital status, presence of a child in the household, part-time hours, industry (at the two-digit level), occupation (at the two-digit level), state fixed effects, and year fixed effects. Heteroskedasticity-robust standard errors reported in parentheses below the estimate. All estimates use the ATUS Leave Module sample weight.

APPENDIX TABLE 2: CPS OLS REGRESSION RESULTS: COEFFICIENT ON PSL LAW

	Dependent Variable				
Sample	Ln(Wage) ($Dec. 2021)	Employed	In the Labor Market	Unable to Work Due to COVID-19	Unable to Look for Work Due to COVID-19
Men					
Pre-COVID	0.010	0.006*	-0.0002	---	---
	(0.009)	(0.002)	(0.002)		
Post-COVID	-0.046*	0.030**	0.008*	-0.068**	-0.003
	(0.022)	(0.006)	(0.004)	(0.006)	(0.003)
Women					
Pre-COVID	0.017+	0.009**	0.002	---	---
	(0.010)	(0.002)	(0.002)		
Post-COVID	-0.032	0.043**	0.008*	-0.075**	-0.018**
	(0.021)	(0.007)	(0.004)	(0.006)	(0.003)

+ significant at 10%; * significant at 5%; ** significant at 1%

Notes: Pre-COVID wage sample includes all men (N=377,256) and women (N=344,997) ages 18 to 65 from the January 2016–February 2020 CPS ORG who are employed and earn hourly wages ≥$1. Post-COVID wage sample includes all men (N=139,708) and women (N=126,997) ages 18 to 65 from the March 2020–December 2021 CPS ORG who are employed and earn hourly wages ≥$1. Pre-COVID employment sample includes all men (N=404,397) and women (N=372,396) ages 18 to 65 from the January 2016–February 2020 CPS ORG who are in the labor market. Post-COVID employment sample includes all men (N=152,923) and women (N=140,210) ages 18 to 65 from the March 2020–December 2021 CPS ORG who are in the labor market. Pre-COVID labor market sample includes all men (N=500,228) and women (N=535,275) ages 18 to 65 from the January 2016–February 2020 CPS ORG who are not in the armed forces or group quarters. Post-COVID employment sample includes all men (N=190,967) and women (N=202,415) ages 18 to 65 from the March 2020–December 2021 CPS ORG who are who are not in the armed forces or group quarters. Unable to work and unable to look for work samples include all men (N=174,912) and women (N=185,220) ages 18 to 65 from the May 2020–December 2020 CPS ORG who answered the special COVID questions. Estimates report the regression coefficient γ (on the indicator variable of interest, presence of a PSL law) from *Equation (1)*. All estimates control for age (squared), as well as indicator variables for highest level of education, race, ethnicity, marital status, presence of a child in the household, part-time hours, industry (at the two-digit level), occupation (at the two-digit level), state fixed effects, and year fixed effects. Heteroskedasticity-robust standard errors reported in parentheses below the estimate. All estimates use the CPS sample weight.