

Chasing a New American Dream: Paid Family Leave Opportunities in the Workforce

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I. INTRODUCTION

Despite being one of the most developed and industrialized countries in the world, the United States is one of only two countries that does not offer federally mandated paid maternity leave.¹ By contrast, the U.S. joins a number of countries that do not offer any mandated form of paid paternity leave.² This lack of paid leave is particularly egregious considering how “experts have found overwhelming benefits to paid leave—for *both* moms and dads.”³ Without a paid family leave program, parents are put in a difficult position: they must choose either taking the time to care for their family, or maintaining the job security necessary to provide for their family.⁴

This article will explore various aspects of paid family leave. In Part II, this article will examine the status of paid family medical leave in the U.S. Additionally, it will mention some variations of paid parental leave as it applies abroad. Part III will discuss the costs, actual and perceived, associated with paid parental leave. This article asserts that any associated costs of paid parental leave are far outweighed by the benefits, and that the U.S.

1. Brigid Schulte, *The U.S. Ranks Last in Every Measure when it Comes to Family Policy*, in *10 Charts*, WASH. POST (June 23, 2014), https://www.washingtonpost.com/blogs/she-the-people/wp/2014/06/23/global-view-how-u-s-policies-to-help-working-families-rank-in-the-world/?utm_term=.d74d237806b5. The other country that does not offer paid maternity leave is Papua New Guinea. See also Tom Spiggle, *The Case for Paid Parental Leave in the United States*, SPIGGLE LAW FIRM, <http://www.spigglelaw.com/employment-blog/the-case-for-paid-parental-leave/> (last visited July 29, 2018).

2. Jack Linshi, *See How Much Paternity Leave New Dads Get by Country*, TIME (June 10, 2015), <http://time.com/3916511/parental-leave-map/>. In this article, the phrase “paternity leave” is used to refer to leave for fathers. Whereas, the phrase “maternity leave” is used to refer to leave for mothers.

3. Andrew Lord, *8 Countries that put U.S. Paternity Leave to Shame*, HUFFINGTON POST, https://www.huffingtonpost.com/2015/06/17/best-countries-for-patern_n_7595946.html (last updated Dec. 6, 2017) (emphasis added).

4. Seth K. Kornfeld, Note, *A Need Not Being Met: Providing Paid Family and Medical Leave for All Americans*, 56 FAM. CT. REV. 165 (2018) In this article, the phrases “family leave” and “parental leave” are used to refer to leave for both mothers and fathers.

ought to expand the Family Medical Leave Act (“FMLA”)⁵ by enacting nationwide mandated paid medical and family leave.

II. THE STATUS QUO OF PAID FAMILY LEAVE

While general acceptance and implementation of paid family leave has increased across the globe over the years, the policy is treated quite differently from one country to another. For instance, there is significant variation as to how much time off is permitted, what rate of pay is available during leave, and who is eligible for paid leave benefits. Even within the U.S., the way that states and private companies handle paid leave policies varies extensively.

A. The United States’ Policies on Parental Leave Beyond the FMLA

Currently, the U.S. does not offer any far-reaching form of paid parental leave at the federal level. Although the FMLA provided a stepping stone for individuals to protect their families’ interests, it does not go far enough and should be expanded to include *paid* leave for both women and men alike. Currently, a meager 10% of the U.S. workforce has access to paid leave.⁶ Only four states—California,⁷ Rhode Island,⁸ New York,⁹ and New Jersey¹⁰—

5. 29 U.S.C. § 2601 (1993) (providing qualifying employees with 12-weeks of *unpaid* family medical leave). *See also* Claire Cain Miller, *The Economic Benefits of Paid Parental Leave*, N.Y. TIMES (Jan. 30, 2015), <https://www.nytimes.com/2015/02/01/upshot/the-economic-benefits-of-paid-parental-leave.html>. The restrictions under the FMLA make it such that its benefits are not accessible to a large portion of the U.S. workforce as a whole.

6. DOUGLAS E. ABRAMS ET AL., CONTEMPORARY FAMILY LAW 192 (4th ed. 2015).

7. Kornfeld, *supra* note 4, at 169. California’s paid leave program went into effect in 2004.

8. Dory Devlin, *What Would it Cost to Have Mandatory, Paid Parental Leave?*, FORTUNE (Feb. 5, 2015), <http://fortune.com/2015/02/05/paid-parental-leave-costs/>. Rhode Island’s paid leave program is about four years old.

9. Kornfeld, *supra* note 4, at 169. New York’s paid leave program was passed in April 2016.

10. Devlin, *supra* note 8. New Jersey’s paid leave program was implemented in 2009.

have adopted and implemented paid maternity and paternity leave laws.¹¹ Washington and the District of Columbia have also enacted maternity and paternity leave laws, but have yet to implement them.¹² By contrast, in lieu of offering paid maternity leave, Nebraska “allows state employees to donate [their personal] vacation days specifically for [their] coworkers’ maternity leave.”¹³

California’s, Rhode Island’s, New York’s, and New Jersey’s paid family and medical leave laws offer four to eight weeks off, usually with partial pay.¹⁴ These states offer paid leave “to both mothers and fathers on an equal basis,”¹⁵ and all of these states finance their paid leave programs “through payroll taxes that pay into the states’ existing temporary disability insurance programs.”¹⁶

In addition, major private corporations have begun to recognize the need for paid parental leave.¹⁷ In total, approximately 1,000 businesses across the U.S. offer 58% of the women who are employed by them some form of paid maternity leave, while only offering around “14[%] of men paid paternity leave.”¹⁸ Google, Facebook, Spotify, Zillow, Netflix, and Nestlé are among some of the big names who have recently “expanded their leave policies”

11. Cain Miller, *supra* note 5. See also *Why Parental Leave for Fathers is so Important for Working Families*, DEP’T OF LABOR, <https://www.dol.gov/asp/policy-development/PaternityBrief.pdf> (last visited Feb. 17, 2018) [hereinafter DEP’T OF LABOR].

12. Steven Findlay, *Paid Parental Leave may be the Idea that Transcends Politics*, USA TODAY, <https://www.usatoday.com/story/news/nation/2017/07/22/paid-parental-leave-idea-could-transcend-politics/501967001/> (last updated July 23, 2017, 5:27 PM).

13. Libby Watson, *Coworkers Gifting Their Days off so a New Mom Could take Maternity Leave is not a Feel Good Story*, SPLINTER NEWS, <https://splinternews.com/coworkers-gifting-their-days-off-so-a-new-mom-could-tak-1827718018> (last visited July 22, 2018).

14. Spiggle, *supra* note 1.

15. DEP’T OF LABOR, *supra* note 11.

16. Cain Miller, *supra* note 5.

17. Spiggle, *supra* note 1.

18. Schulte, *supra* note 1.

in an effort to compensate the growing demand for work-life balance.¹⁹ Work-life balance in the U.S. is of particular concern given that Americans generally work significantly more hours than individuals in other countries.²⁰

Nonetheless, the amount of time-off offered for paid leave lacks uniformity and varies from one business to the next. For instance, Hilton offers two weeks off, while Virgin Group enacted an expansive paid parental leave policy allowing for new fathers and new mothers to *each* receive 12 months of “fully paid leave.”²¹ Netflix offers “as much time as a new parent needs in the first year” after their child’s birth.²²

The current level of access to paid family leave in the U.S. is severely lacking. This is especially true considering that four states, as described above, have already demonstrated that paid leave can be successfully implemented within U.S. borders. Moreover, the U.S. is behind the curve when it comes to paid family leave, maternity leave in particular, on the international stage.

B. Global Treatment of Paid Family Leave

Essentially every industrialized nation in the world, except the U.S., offers some variation of paid maternity leave.²³ According to one report, 19 out of the 41 nations studied allocate the majority of “paid leave available” to mothers.²⁴ In six of those countries, “maternity

19. Spiggle, *supra* note 1.

20. G.E. Miller, *The U.S. is the Most Overworked Developed Nation in the World*, 20 SOMETHING FINANCE, <https://20somethingfinance.com/american-hours-worked-productivity-vacation/> (last updated Jan. 2, 2018) (“Americans work 137 more hours per year than Japanese workers, 260 more hours per year than British workers, and 499 more hours per year than French workers.”).

21. Linshi, *supra* note 2.

22. *Id.*

23. Schulte, *supra* note 1.

24. Gretchen Livingston, *Among 41 Nations, U.S. is the Outlier When it Comes to Paid Parental Leave*, PEW RES. CTR. (Sept. 26, 2016), <http://www.pewresearch.org/fact-tank/2016/09/26/u-s-lacks-mandated-paid-parental-leave/> (“[T]he

leave accounts for all available paid leave related to the birth or care of a child. No leave is available for new fathers.”²⁵ In a different study consisting of 185 countries, all but two offered a federally mandated maternity leave, while 79 included “paternity leave entitlements, nearly all of which are paid.”²⁶

In countries that do offer paid parental leave, the time-off allocated is “relatively modest—about two weeks or less.”²⁷ Some of the exceptions to this include Norway, where mothers welcoming a new family member are offered “46 weeks of full paid leave or 56 weeks with 80% salary” and fathers are similarly offered generous paid leave.²⁸

Sweden has been recognized “as having the most comprehensive paid leave system” in the world.²⁹ Swedish mothers and fathers are “entitled to 480 days (16 months) of paid leave *per child* when the child is born or when the child is adopted.”³⁰ The days that qualify for “paid leave can be used at any time by *either parent* until the child turns eight or until the child completes their first year of school.”³¹ Once those 480 days have been used, “mothers can reduce their working hours by 25% until their child turns eight.”³²

The method in which Swedish parents may take leave is also flexible.³³ For example, parents may choose “to take the full amount of leave immediately, extend the leave benefits

U.S. is the only country among [these] 41 nations that does not mandate paid leave for new parents.”).

25. *Id.* (the six countries were “Cyprus, Israel, Turkey, Ireland, Switzerland, and New Zealand.”).

26. Linshi, *supra* note 2. The U.S. and Papua New Guinea were the only countries that did not offer paid maternity leave.

27. Livingston, *supra* note 24.

28. Spiggle, *supra* note 1.

29. Kornfeld, *supra* note 4, at 167.

30. *Id.* (internal quotations omitted) (emphasis added).

31. *Id.* (emphasis added).

32. *Id.*

33. *Id.*

over a longer period by reducing their work hours, or take temporary blocks of leave with temporary benefits for a shorter amount of time.”³⁴ These benefits are also offered to “legal guardians and individuals who have taken a child for permanent care and fosterage.”³⁵ Sweden’s family leave policies have been credited as benefiting “families by allowing them to spend time with loved ones” and contributing to an increase of employment by Swedish women, who enjoy an employment rate of 72%.³⁶

This section demonstrates that countries across world, as well as states and corporations within the U.S., have managed to do what the U.S. federal government has not by creating mandated paid family leave programs that are so desperately needed, regardless of the associated costs.

III. COSTS AND SAVINGS OF PAID FAMILY LEAVE

Opponents of federally mandated paid leave insist that it would be “an economic burden that can be expensive for businesses, which do not need more mandates from the government on how to operate their enterprises.”³⁷ However, the states that have adopted paid medical and family leave laws *do not* require the employer to pay any amount for their employees’ wages while on leave.³⁸ Economists have also observed that more employees are able to take time off when they have access to such leave.³⁹ This is especially true for “low-income parents who may have taken no leave or dropped out of the work force after [a child’s] birth. [However], [p]aid leave *raises* the probability that mothers [will] return to employment later, and then work *more* hours and earn *higher* wages.”⁴⁰

34. *Id.*

35. *Id.* (internal quotations omitted).

36. *Id.*

37. Cain Miller, *supra* note 5.

38. *Id.*

39. *Id.*

40. *Id.* (emphasis added).

In fact, according to one professor of economics, paid leave actually “reduces disparities in leave-taking between low and high socioeconomic groups, and [it] does so without damaging these women’s later labor market prospects.”⁴¹ According to this study, California mothers who take paid leave are more likely to return to work than those who did not.⁴² This is especially noteworthy because of the declining levels of women in the workforce.⁴³ New Jersey mothers returning from paid leave following the birth of a child have also worked “15 to 20[%] *more* hours during the second year of their child’s life than those who did not take” time off.⁴⁴ Moreover, for the mothers who took paid leave their “hourly wages *increased* about [five] percent.”⁴⁵ The majority of surveyed New Jersey employers indicated that offering paid leave did not have any impact on their companies’ finances, and most of them felt that it had a positive impact on the returning employees’ work performance.⁴⁶

Economists have concluded that paid leave does not seem to harm businesses or impose a big burden on the employers.⁴⁷ In California, “89 to 99[%] of employers say it has had no effect . . . on productivity, profitability, turnover, and morale.”⁴⁸ While 87% indicated that it “has not increased costs,” and “[9%] say they *saved* money because of decreased turnover

41. *Id.*; see generally, Maya Rossin-Slater, Christopher J. Ruhm & Jane Waldfogel, *The Effects of California’s Paid Family Leave Program on Mothers’ Leave-Taking and Subsequent Labor Market Outcomes* (Nat’l Bureau of Econo. Research, Working Paper No. 17715, 2011), <http://www.nber.org/papers/w17715>.

42. Cain Miller, *supra* note 5. See generally, Rossin-Slater, Ruhm & Waldfogel, *supra* note 41.

43. Cain Miller, *supra* note 5.

44. *Id.*

45. *Id.* (emphasis added).

46. Bryce Covert, *How Everyone Benefits When New Fathers Take Paid Leave*, THINK PROGRESS (Feb. 13, 2015, 2:40 PM), <https://thinkprogress.org/how-everyone-benefits-when-new-fathers-take-paid-leave-862836d2f843/>.

47. Cain Miller, *supra* note 5.

48. *Id.*

or benefit payments.”⁴⁹ In a different study, “93% of employers report[ed] positive or neutral effects on employee turnover, 91% report[ed] positive or neutral effects on profitability or performance, [and] 89% report[ed] positive or neutral effects on employee morale.”⁵⁰

Blue State Digital, a consulting firm that has increased its paid leave for women and men to six weeks, noted the importance of paid parental leave in helping increase retention, reduce turnover, and achieve other long-term benefits: “[i]f you lose someone, you might need to spend more time and energy and money on recruiting someone than you would obviously if you’re able to retain excellent employees.”⁵¹ Although the company acknowledged that there are short-term costs associated with covering “employees who are gone [on leave] longer,” Blue State Digital asserts that any short-term costs of paid leave “will absolutely” be outweighed by the long-term benefits of offering paid leave to its employees.⁵² The expectation is that “higher retention and productivity as well as the ability to retain excellent employees” will overcome any short-term associated costs in offering expanded paid leave.⁵³

Another example of successful, cost-saving retention rates resulting from paid maternity leave comes from Google. “When Google increased its paid maternity leave from 12 weeks to 18 weeks . . . its employee retention rate for mothers went up by 50%.”⁵⁴ The CEO of YouTube, a former Google employee herself, commented that the move by Google was “beneficial to Google’s bottom line: it allowed the company ‘to avoid costly turnover and retain the valuable expertise skills’” of its employees.⁵⁵

49. *Id.* (emphasis added).

50. Kornfeld, *supra* note 4, at 168.

51. Covert, *supra* note 46.

52. *Id.*

53. *Id.*

54. Spiggle, *supra* note 1.

55. *Id.*

Additionally, providing paid leave to parents is “an important way to signal to employees that the company is investing in them . . . [which translates] into a deeper commitment [and productivity] from employees.”⁵⁶ The rationale for this is that employees “feel their company is committed to them in the long term, [and] that their happiness and wellbeing [are] prioritized over short-term profit.”⁵⁷

Paid leave is also significant in helping employers, such as technology companies like Blue State Digital, stay competitive by acquiring and maintaining talented employees.⁵⁸ A survey conducted of 1,000 employed fathers resulted in positive reviews: 90% said that it was “important for a new employer to provide paid leave [and] 60[%] . . . said it’s extremely or very important.”⁵⁹ Around 50% of these fathers explained that “they don’t get to spend enough time with their children.”⁶⁰

The Center for a New American Dream has reevaluated what the “American Dream” means in today’s society and proclaims that it is “a focus on more of what really matters, such as creating a meaningful life, contributing to the community and society, valuing nature, and spending time with family and friends.”⁶¹ The reality is that most parents in the United States must work.⁶² Consequently, if these parents are not afforded the employment

56. Covert, *supra* note 46.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Kimberly Amadeo, *What is the American Dream Today?*, BALANCE, <https://www.thebalance.com/what-is-the-american-dream-today-3306027> (last updated Sept. 12, 2017).

62. *Children Benefit When Parents Have Access to Paid Leave*, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES (March 2015), <http://www.nationalpartnership.org/research-library/work-family/paid-leave/children-benefit-when-parents.pdf> (“Most children live in household with a single parent or parents who both hold jobs.”).

protection of paid parental leave, they “face an impossible choice between their child’s health and their incomes or jobs.”⁶³

IV. CONCLUSION

It is clear that paid family leave programs are a necessity for working Americans. The U.S. should create such a policy at the federal level similar to those policies already enacted in New York, California, Rhode Island, and New Jersey. “[P]arents should not have to risk their family’s economic security to meet caregiving obligations. Helping mothers *and* fathers reduce tensions between their work and family responsibilities improves [their] children’s health and strengthens parental involvement,” while simultaneously securing economic benefits for the family.⁶⁴ Paid family leave for women and men alike is just one of many steps that ought to be taken. This effort will provide a number of benefits: (1) it will help employers to better provide for their employees, which leads to better quality employees for their respective companies; (2) it will build momentum to break down gender stereotypes in family dynamics; and (3) it will facilitate families towards achieving their own American Dream. If the federal government implemented a mandated paid medical and family leave program, it would bring families one step closer to seeing their American Dream fulfilled.

63. *Id.*

64. *Id.* (emphasis added).