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# Inefficiency of United States Maternity Leave Policies

Kimberly Merkley

In the United States, many aspects of the workplace are incompatible with motherhood. These include lack of childcare facilities, inflexibility of workplace hours, and the large amounts of time required to attain top positions. One of the most widespread deficiencies in all industries and workplaces is maternity leave, which is neglected at both the state and federal level. Consequently, a woman is often given little or no job protection, let alone compensation or benefits, while focused on the birth and early nurturing of her child. The United States falls well behind other developed and developing countries in this area.

The term *maternity leave* is one of a number of different terms under the umbrella of parental leave. Parental leave also encompasses paternity, parental, adoptive, and family leave (Tanaka 7). Maternity leave is specifically used by mothers prior to and after the birth or adoption of a child, and indicates benefits or work protection for that period (Tanaka 7–8).

Numerous studies demonstrate that the United States' maternity policies fall behind equally advanced countries when it comes to length and benefits. The United States and Australia are the only developed economies in the world that provide no federally paid maternity leave (Brown). Yet even in Australia, women are still offered up to fifty-two weeks of unpaid leave with job protection, while US women are only offered twelve weeks under the Family and Medical Leave Act, the only nationwide policy covering maternity care. Countries with fully paid maternity leave policies include Serbia, Denmark, Sweden, and Bosnia, among others and countries with partially paid maternity leave include the United Kingdom, Japan, and Botswana. Countries with unpaid maternity leave policies include the United States, Somalia, Swaziland, and

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Zambia (Brown). It hardly seems feasible that the United States, the wealthiest country in the world and one that dominates the political and military scene, is on par with smaller, underdeveloped countries with regards to maternity leave policy.

The United Kingdom provides an interesting comparison because of its shared history with the United States. Both countries adopted democratic governments in similar eras and have been allies for over a century. In the United Kingdom, paid maternity leave is considered a right. The government website describing maternity leave policy clearly states that an employer who does not comply is liable for sex discrimination charges (NI Direct). By law in the United Kingdom, it is a woman's right to have 90 percent of her weekly salary paid for the first six weeks of her leave, and then for the next thirty-three weeks she should be paid the lower of either the average weekly payment or 90 percent of her weekly salary (NI Direct). Even women who are not citizens but are employed in the country are eligible for these benefits. In summary, women can take leave up to thirty-nine weeks with the knowledge that their jobs are protected. Conversely, in the United States it is difficult for citizens to get any kind of paid maternity leave, and even when paid leave is offered, job protection is not guaranteed. Consequently,

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Sweden is considered a progressive country regarding gender parity. Ann Crittenden, in *The Price of Motherhood: Why the Most Important Job in the World is Still the Least Valued*, details maternal care among Sweden's employed women. She explains that women are awarded generous

benefits surrounding the births of their children, including up to 480 days off with 80 percent of their salary and job protection. After Swedish women do return to work, they are given the option of working an 80 percent schedule until their children are out of preschool, allowing mothers to be more accessible to their children (Crittenden 247–48). Thus Swedish women are allowed to spend nearly four years with their new children, thanks to their country's generous maternal leave policy. This right extends to Swedish fathers as well, who are given the option of paid paternity leave with job protection for up to two months when there is a new child in the home.

The differences between policies in the United States and Sweden may stem from their differing philosophical backgrounds. As Martha Ozawa notes, there are philosophical differences between the way the US and Swedish governments see problems related to the family (Ozawa 301–302). Sweden's social policy assumes that "parents are individuals rather than...parts of an indivisible family unit" (Ozawa 301) while the United States has usually assumed that parents comprise a self-reliant unit that is responsible for managing both work and family. This

differs significantly from the United States' next-door neighbor, Canada, where recent rulings suggested that bearing children benefits the population as a whole. Courts in Canada decry "imposing all the costs of pregnancy on one half of the population" as inherently unequal (White 228). In the United States, however, there is still a perception that when individuals choose to have children, they must bear all the economic and opportunity costs of those children as well.

Scholars note other reasons why the United States lags so far behind other developed countries in maternity leave policy. Exceptionalism acknowledges that the United States naturally differs from other advanced countries and does not necessarily seek to follow their legal or social example (Levmore 209-10). For instance, the United States is less concerned about low fertility rates, which plague Sweden and other Nordic countries and result in workplace shortages. Countries with lower birthrates are incentivized to provide generous family leave in order to both encourage citizens to have children and also to return to the workplace. The United States is an exception among its developed neighbors in that it does not experience employee shortages or a disastrous birth rate (Levmore 209-10).

The federal Family and Medical Leave Act (FMLA) covers the minimum nationwide maternity leave offered in the United States. All states must abide by the act although they are also free to offer additional benefits. The act requires "some U.S. employers to offer maternity leave to women with qualifying employment histories" (Ruhm 175). Note that the law specifies that only "some" US employers are required by law to provide a measure of maternity leave to their female employees, and only those women with "qualifying employment histories" receive those benefits. FMLA was not passed until 1993, rather late in the twentieth century, and individual state legislatures had generally not acted prior to that time. The tumultuous history of the FMLA's passage is not surprising, given US economic and social attitudes toward maternity leave.

In the late 1960s, with the advent of the Civil Rights and feminist movements, many people favored establishing a federal law to provide maternity leave and more generous benefits for those raising families. In 1977, President Jimmy Carter began organizing the first White House Conference on Families. Prior to that national conference, community, state, and regional conferences encouraged discussion about family issues including childhood education, the supporting two-parent employment, and maternity leave. The White House Conference on Families was held in 1980 and was "so politically contentious that it stymied any federal development for almost a decade" (Borgenschein 1136), stalling family leave policies that had been a major concern of working mothers (Gilbert 628). In 1985, the first family leave bill was introduced in Congress, but hard lobbying was required before a later version of that bill was passed by Congress five years later, only to be vetoed by President George H. W. Bush. Finally, after twelve years of lobbying, both houses of Congress passed the Family and Medical Leave Act which was signed into law by President Bill Clinton (Monroe 46).

The Family and Medical Leave Act (FMLA) is administered by the Wage and Labor Division of the Department of Labor. This act, as its name suggests, mandates more than maternity care. It allows for twelve workweeks of leave within twelve months in order for the individual to care for a family member or for one's own sickness (United States Department of Labor). This leave is unpaid, but job protected. Only companies employing more than 50 people are bound by this legislation. An employee must also have worked with the same company for at least a year and must have worked for at least 1,250 hours. The employer has to continue paying health insurance benefits, but is not required to pay any of the salary unless the employee happens to live in one of the three states where those payments are part of state law (Ruhm 176). There are some circumstances in which a person's sick leave or vacation days must also be used to count for the paid time off. No firm is required by federal law to offer any kind of paid leave (Averett 404). The FMLA was certainly a step forward for family leave policies, but it did not mandate enough benefits to mothers and fathers who are often forced to choose between the essentials of work life and family life.

The FMLA has been praised for its gender neutrality, as it does not discriminate between fathers or mothers for leave eligibility (White 230) and because it can be used for a family or personal illness. However, its lack of focus on maternity leave means that it is not generous enough for women who want to both keep their jobs and have enough time to bond with and nurture their newborns. In 1997, American pediatricians recommended that each baby be breastfed for a year after birth to ensure proper growth and nutrition (Crittenden 258). Yet this

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recommendation may be impossible for millions of working women when they are only allowed twelve weeks off from work without pay, at best. Mothers who realize the importance of breast-feeding their children also realize that it may be impossible to do

so for a year and keep their jobs. Mothers are then forced to choose between their children's wellbeing and their ability to earn a living. Even though the passing of FMLA was a good first step for the United States, it does not provide enough compensation for the female laborers who cannot afford to take the twelve weeks of unpaid leave because of the economic consequences (Williams 237). Mothers often feel forced to go back to work early, cutting down on precious bonding and breast-feeding time with their newborns because staying home with no income is unsustainable for many women, married or not. The FMLA simply does not do enough for the majority of working women.

The FMLA does not even provide for almost half of the women who need maternity leave. As Christopher Ruhm discovered, only a maximum of around 55 percent of employed people are eligible for coverage under the FMLA. And the actual percentages of mothers who are able to use FMLA for maternity benefits are even lower. Only 63 percent of new mothers over the age of nineteen are

employed for one year before giving birth, and only 52 percent meet the FMLA tenure and hour requirements. In addition, only 59 percent work for a company employing more than fifty people. Because these groups overlap, it is estimated that only 19 percent of all new mothers (which includes those who stay at home and those in the workplace) are eligible for the (unpaid), job-protected maternity leave offered by FMLA (Ruhm 177). The FMLA is too limited in its scope if it can only assist 19 percent of the people who could appropriately benefit from it.

To evaluate the limited benefits of the FMLA, in 2005 the National Partnership for Women & Families compiled an in-depth report about the state of family leave policies in the United States. They evaluated each of the fifty states and gave each a grade based on the number of benefits the state gives under its leave policies, including parental leave. Points are awarded based on family leave benefits (twenty-five points), medical/maternity leave benefits (twenty points), flexible sick days (fifteen points), at-home infant care benefits (fifteen points), expanded job protection for family leave (twenty-five points), medical/maternity leave (twenty points), and state family leave laws (twenty points). The results reveal the dismal status of family leave policies in the United States. Thirty-two states received a grade of D+ or lower (Grant et al. 14–15). Although not all of these areas directly apply to maternity leave, the depressing quantity of failed grades demonstrates that overall, family leave policies within the United States are deficient. In the United States, maternity leave is considered a luxury rather than a right for working mothers.

US employers bemoan the high cost of generous leave, claiming tight budgets and diminishing profits. Yet evidence from US states that have implemented parental leave policies suggest ways to offer working men and women some kind of partially paid leave without employers bearing the entire cost. California, New Jersey, and Washington currently offer paid leave programs (Brown). A mother on maternity leave gets paid up to 55 percent of her salary for the weeks or months that she is off work to care for her newborn. In addition to the nationwide Family and Medical Leave Act there is the California Paid Family Leave, which is paid leave but without job protection. There is also the California Pregnancy Disabled Leave, which is paid, and the California Family Rights Act, which is unpaid but job-protected (State of California). The State Disability Insurance Program offers up to six weeks off of work for care of a family member. California's system functions so that this parental leave is paid by all employers, in a similar fashion to disability pay, and costs employees less than \$2.25 per month (Grant et al. 9). Lucky parents can cobble together all these options and come out with perhaps five or six months paid leave, depending on if they want to cash in sick days. Unfortunately, even Californians have less maternity leave and job security than non-citizens in other wealthy developed countries.

Systems in New Jersey and Washington are similar to California's. In New Jersey, a flat rate amount of 0.09 percent is deducted from each employee's paycheck. When employees wish to go on medical or parental leave, they are eligible to

receive up to two-thirds of their weekly salary for six weeks. Washington's policy is structured so that a parent receives up to \$250 per week for five weeks. As in California, this pay is considered disability pay (Brown). It should still be noted that mothers who work on a freelance basis or are employed with companies who employ fewer than fifty employees do not benefit. This qualification means that around 40 to 45 percent of workers are ineligible for coverage under the FMLA (Berger 333). Also, a woman must work a minimum number of hours for a specific company in order to qualify for benefits. For a country so economically strong as the United States, it seems incongruous to be so far behind other countries with respect to protecting the rights of parents who are raising the next generation of citizens.

Paid leave is often beneficial to businesses as it ensures employee loyalty and encourages working mothers to return to their positions. As pointed out earlier, a small amount can be deducted from each employee paycheck to be used for maternity leave, and that amount is minimal enough to cause negligible strain

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on any company or employee. Studies from companies abroad show that paid leave for parents helps keep parents working at that company because they know that they have a job to return to after taking their leave. "Wage replacement, not simply having time off work, increases the likelihood that women will work later into their pregnancies and return to work faster"

(Grant et al. 10). In the long run, if it does not cost much per paycheck to implement a paid leave system, it will be beneficial to companies to provide paid parental leave, which helps employers retain trained employees.

In addition to being beneficial to business, paid maternity leave is what most American mothers want. The National Partnership for Women and Children conducted a survey regarding Americans' opinions on parental leave. The study suggests that although 81 percent of working women think it is important to have paid leave for care of family members, only 43 percent have access to that kind of leave. Another telling fact is that 82 percent of employees ages eighteen to thirty-four—ages at which people are likely to have children—wish to see FMLA expanded to mandate paid leave (Grant et al. 10). If 82 percent of people prefer paid leave so that they can be both good parents and good workers, workplaces in the United States should seriously consider their preference. The FMLA should be expanded, possibly using a system similar to California's or New Jersey's where the financial burden is spread out over the state's employees. Such a plan is not too burdensome even in times of economic downturn and would encourage employee loyalty, support parents and children, and increase productivity.

Reasons why the United States still does not have a comprehensive maternity leave policy are nuanced. American sensibilities may resist rewarding workers who put their family before jobs, even temporarily. American “exceptionalism” may also impede the process. It is also possible that the United States has a tradition that the workplace is entirely separate from the family sphere. When one works, one is expected to be an ideal worker, giving full time and overtime commitment. Employees who take time off for childbearing or childrearing are punished through being denied access to the best of what the workplace has to offer (Williams 1). Yet we do not have to be constrained by our tradition. We can form a new tradition in which we celebrate families and parents by making the workplace more flexible and offering more generous paid parental leave. The US government should consider expanding the FMLA to meet the needs of working parents and catch up with the dozens of other developed countries that have already realized the benefits of providing for the parents of the next generation of laborers.

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