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A Proposal for Paid Family Leave in Utah

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A PROPOSAL FOR PAID FAMILY LEAVE IN UTAH

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December 15, 2021
Substantial Writing
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Introduction

When a woman gives birth, the arrival of that child will have a statistically significant negative impact on that woman's employment, earning potential, health, and overall wellbeing.¹ The arrival of a child has no statistically significant impact on men's employment, earning potential, or overall health and wellbeing.² The labor force experiences a drain of talent and productivity when mothers leave the market in large numbers after having a child.³ Many mothers who wish to remain the workforce after childbirth are faced with the impossible choice of their child's health or their own job and earning potential. Many fathers or partners who wish to participate more directly in childcare and child rearing are similarly faced with social or economic pressure to remain at work and leave the heavy burden of domestic care on the mother.

The United States is the only high-income country in the world that does not provide some form of paid parental and medical leave to its citizens.⁴ Parents in the U.S. therefore disproportionately burden an increasing work-family conflict that labor forces in other countries have social and economic support with. In the state of Utah, where families have consistently high fertility rates and large households⁵, people experience an enhanced form of this work-family conflict. While a national-level Paid Family Leave (PFL) program has long been discussed, its successful implementation will likely be far in the future. Parents and families in Utah need help now, and the state can respond with an economically feasible and socially beneficial PFL program of its own.

¹ Kelly Jones & Britni Wilcher, *Reducing Maternal Labor Market Detachment: A Role for Paid Family Leave* (Am. Univ. Working Paper Series, Working Paper 2019-07).

² *Id.* at 16.

³ *Id.* at 1.

⁴ KATHERINE T. BARTLETT, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 325 (8th ed. 2020).

⁵ Kem C. Gardner Policy Institute, *Fact Sheet: Utah at a Glance*, UNIV. OF UTAH 1 (2018) .
https://gardner.utah.edu/wp-content/uploads/UtahAtAGlance_20180207.pdf

The following will provide an overview of PFL internationally and in the United States, then examine the state of Utah specifically and the impact a PFL program could have on its local economy and families. This paper recommends Utah adopt an optional, employee-financed PFL program incentivized by a state-sponsored tax credit for businesses that opt into the program. Incentivizing more companies in the state to offer PFL will help support both employers and working women in the state and make Utah more competitive with its national and international competitors.

PART I: Paid-Family Leave Background

1. Historical Overview

The traditional American family structure was to function as a self-sustaining economic unit, with one partner acting as a laborer and breadwinner and the other acting as a caregiver.⁶ In the traditional patriarchal model, men were expected to be in the workplace where they would be compensated and secured for their fatherly labor outside the home. Women were expected to take on the heavy burden of domestic care labor alone, without compensation or security for their motherly labor. Traditional gender roles made male-female partnership the ideal economic relationship.

This traditional family structure no longer exists in America, but a long history of male domination in the workplace created an environment where only traditional male needs were considered when establishing workplace rules and policies.⁷ From 1969 to 1996, the number of married women with children in the workplace increased by 84%.⁸ By 1999, a majority of

⁶ Katherine Elizabeth Ulrich, *Insuring Family Risks: Suggestions for a National Family Policy and Wage Replacement*, 14 YALE J.L. & FEMINISM 1, 3 (2002).

⁷ *Id.*

⁸ *Id.*

mothers in America also worked outside of the home.⁹ As of 2019, over 70% of married women with children in the U.S. participate in the labor force.¹⁰ Unmarried women with children are even more likely to work, with labor force participation rates of over 78%.¹¹ Currently, the U.S. has one of the highest female labor force participation rates among industrialized countries.¹² But the traditional workplace model has been slow to adapt to the demographic changes in the labor force.

As the rate of female workforce participation has increased, there has been a mirrored increase in the frequency of work-family conflict experienced by American workers.¹³ Work-family conflict is a form of inter-role conflict that arises when the energy, time, or behavioral demands of one's work role directly conflicts with one's family or personal life roles.¹⁴ For example, a work-family conflict exists when certain demands of a job, like working late or traveling, conflict with the demands of having a family, like picking up a child after school or attending a child's soccer game.¹⁵ Prolonged and pervasive work-family conflict can cause negative work, family and personal outcomes.¹⁶ Every year, millions of families face significant economic losses when a work-family conflict results in the primary earner of the household temporarily leaving the work force in order to care for a child or sick family member.¹⁷ This

⁹ *Id.*; BLS Reports, *Women in the labor force: a databook*, U.S. BUREAU OF LABOR STATISTICS REPORT 1092 1, 1 (2021) <https://www.bls.gov/opub/reports/womens-databook/2020/pdf/home.pdf>.

¹⁰ BLS Reports, *supra* note 9.

¹¹ *Id.*

¹² Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C.L. Rev. 707, 709 (2000).

¹³ Ulrich, *supra* note 6.

¹⁴ Emily Ernst Kossek & Kyung-Hee Lee, *Work-Family Conflict and Work-Life Conflict*, OXFORD RESEARCH ENCYCLOPEDIAS 1, 2 (2017), <https://oxfordre.com/business/view/10.1093/acrefore/9780190224851.001.0001/acrefore-9780190224851-e-52>.

¹⁵ *Id.*

¹⁶ *Id.* at 1.

¹⁷ Ulrich, *supra* note 6 at 2.

work-family conflict takes a significant toll on employees and their families both mentally and economically.

Balancing responsibilities at home and work is especially challenging for women who carry, bear, and raise children. While the arrival of a new child has little or no effect on men's labor force participation¹⁸, women with children are 14% less likely than other women to participate in the labor force and earn 36% less when they do.¹⁹ In areas that lack substantive paid leave programs, 30% of working mothers will leave the workforce entirely following the birth of a child.²⁰ McKinsey & Company's 2020 Women in the Workplace report revealed that one in four working women in the United States is considering downshifting her career or dropping out the work force entirely.²¹ For women with young children, the number was one in three.²² The demands of balancing work and family is exacerbated for single-parent and low-income households. In 2018, one of every five low-wage working mothers reported losing a job in the past four years because they were sick or needed to care for a child or other family member.²³

McKinsey & Company's 2020 Women in the Workplace report also cited childcare-related attrition as a major issue for employers in the United States.²⁴ While families often suffer economically due to lack of accessible childcare and paid leave, the business community also incurs a significant cost from work-family conflict. The costs of employee turnover, lost talent,

¹⁸ Jones, *supra* note 1 at 16.

¹⁹ Jones, *supra* note 1 at 1.

²⁰ *Id.*

²¹ Jess Huang, et al., *For mothers in the workplace, a year (and counting) like no other*, MCKINSEY & COMPANY (May 5, 2021) <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/for-mothers-in-the-workplace-a-year-and-counting-like-no-other>.

²² *Id.*

²³ Tanya L. Goldman, *The Economic Necessity of Paid Family and Medical Leave*, THE CENTER FOR LAW AND SOCIAL POLICY (Mar. 30, 2018), <https://www.clasp.org/blog/economic-necessity-paid-family-and-medical-leave>.

²⁴ Caroline Colvin, *Paid leave proves critical for talent retention*, HRDIVE (Aug. 3, 2021) <https://www.hrdive.com/news/paid-family-leave-retention/604370/>.

recruitment, hiring, and training because of a lack of retention of parents, especially mothers, costs businesses millions of dollars annually.²⁵

A feasible paid leave program could ease these costs on businesses and lighten the heavy work-family burden on employees throughout the U.S.. Labor force statistics demonstrate that the traditional workplace model is ill-fitted to the work-family conflict many employees experience. Both businesses and families will continue to struggle against each other until the needs of this new labor force and new workplace model are addressed. State governments have a special role to play in finding efficient and feasible ways to address the increasing work-family conflict in their states. State action can work to support the local economy and strengthen local families. There are many possible solutions states could implement to address the work-family conflict, but the following is focused on the implementation of a paid-family leave policy to address this growing work-family conflict in America.

2. International PFL Implementation

High-income industrialized countries around the world have successfully implemented national paid leave policies. The Organization for Economic Co-operation and Development (OECD) Family Database provides cross-national indicators on family policies for OECD countries around the world.²⁶ Its research found that except for the U.S., all other OECD countries provide mothers with at least fourteen weeks of paid leave for childbirth.²⁷ On average, OECD countries offer eighteen weeks of paid maternity leave around childbirth, with some countries like the UK offering mothers up to nine months of paid leave.²⁸ Thirty-two of thirty-

²⁵ *Id.*

²⁶ OECD Family Database, *PF2.1. Parental Leave Systems*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 1, 2 (2019), <https://www.oecd.org/els/family/database.htm>.

²⁷ *Id.*

²⁸ *Id.*

four OECD countries guarantee paid leave to fathers as well.²⁹ While paid leave for fathers tends to be more limited than leave available for mothers, OECD countries offer an average of around eight weeks of paid paternity leave.³⁰ In terms of compensation, a majority of OECD countries provide at least 50% of an employee’s regular pay as a wage replacement during maternity leave, with thirteen countries offering mothers full compensation throughout their leave.³¹ Twenty-four of thirty-four OECD countries provide a maximum wage replacement rate of 80% for both mothers and fathers to support gender equality in care-taking.³²

a. Economic Benefits

The widespread and sustained implementation of PFL policies in different countries, cultures, and political systems around the world strongly suggests that PFL policies can be both economically feasible and beneficial. While PFL implementation comes with an initial cost, the OECD countries that provided at least six months of paid maternal and paternal leave had “no evident differences in GDP growth.”³³ Even countries with high wage replacement rates of 80% continued to experience consistent rates of economic growth.³⁴ Further, those countries experienced significantly higher rates of labor force participation.³⁵ Studies in Britain, the U.S., and Japan found that PFL helped with company’s talent retention by increasing probability that women returned to work for the same employer following leave-taking.³⁶ Studies across multiple OECD countries found that the more generous PFL policies helped lower the risk of poverty for

²⁹ Amy Raub, et al., *Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries*, WORLD POLICY ANALYSIS CENTER 1, 1 (2018),

https://www.worldpolicycenter.org/sites/default/files/WORLD%20Report%20-%20Parental%20Leave%20OECD%20Country%20Approaches_0.pdf; OECD Family Database, *supra* note 26 at 4.

³⁰ OECD Family Database, *supra* note 26 at 4.

³¹ *Id.* at 2.

³² Raub, *supra* note 29.

³³ Raub, *supra* note 29 at 7.

³⁴ *Id.* at 10.

³⁵ *Id.* at 7.

³⁶ *Id.* at 5.

two-parent households, and especially for single-parent households.³⁷ In the U.S. so far, states that have implemented PFL policies are experiencing similar economic results.

b. Social Benefits

PFL policies provide proven health and wellbeing benefits to children of working parents. The World Policy Analysis Center found that rigorous cross-national and longitudinal studies have consistently confirmed that availability of PFL is strongly associated with lower infant and child mortality.³⁸ Access to PFL decreases rates of pre-term and early-term births, increases exclusive breastfeeding rates which is strongly correlated to a decrease in child's risk of disease and death, and facilitates increased parent-child bonding in the critical months following a birth.³⁹ PFL's positive effects on a child's life can extend far beyond the first few months after birth. A large body of research has found that PFL available to both mothers and fathers promoted more equitable sharing of parenting responsibilities, and increased engagement of fathers in their child's lives long after their leave ended.⁴⁰ A study from Norway focused on paid leave entitlements for fathers in particular found that increased paternity leave was associated with increases in a child's test scores years later.⁴¹ In addition, a longitudinal study from Australia found that PFL was associated with violence prevention and a reduction in intimate partner violence, which has proven detrimental to both mother's and children's health and wellbeing.⁴²

³⁷ *Id.*

³⁸ *Id.* at 2.

³⁹ *Id.* at 2-3.

⁴⁰ *Id.* at 2; Jane Waldfogel, et al., *Paid Family and Medical Leave Improves the Well-Being of Children and Families*, SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT (July 2, 2019), <https://www.srcd.org/research/paid-family-and-medical-leave-improves-well-being-children-and-families>.

⁴¹ Raub, *supra* note 29 at 3.

⁴² *Id.*

Accessible PFL also benefits working parents, particularly working mothers, by improving maternal health and promoting gender equality in parenting. Numerous studies across multiple OECD countries have found that fathers who take leave following a child's birth take on a more childcare responsibilities and continue to be more involved in childcare and child rearing long after going back to work.⁴³ Studies in Norway and Quebec found that PFL also increased gender equity in the sharing of general household chores.⁴⁴ Increased sharing of domestic responsibilities has positive health implications for working mothers. Studies have suggested that maternal physical and mental health improves with longer maternity leave, including significantly decreased rates of postpartum depression in new mothers.⁴⁵

3. United States PFL Implementation

PFL policies are widely supported by the American people. A study conducted by Pew Research Center in 2017 found that 82% of Americans believe that mothers should have paid maternity leave, and 69% support paid paternity leave.⁴⁶ There is also broad support for paid leave for workers who have serious health problems or who need to care for a family member who is seriously ill.⁴⁷ Pew Research found that 79% of surveyed Americans who had recently taken family or medical were forced to use vacation days, sick leave, or paid-time off they had accrued prior to their leave.⁴⁸ In 2017, only 20% of the Americans surveyed said they had access to paid family or medical leave from their employer.⁴⁹ Despite broad support, Americans are

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ *Id.* at 4; Pinka Chatterji & Sara Markowitz, *Family leave after childbirth and the mental health of new mothers* 61 (J. of Mental Health Pol'y and Econ., Working Paper No. 14156, 2008).

⁴⁶ Juliana Menasce Horowitz, et al., *Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies*, PEW RSCH CTR. (Mar. 23, 2017), <https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

divided on whether government or employers should cover the cost of PFL, and whether it should be mandated or optional for employers.⁵⁰ The U.S. remains the only industrialized country in the world without a national paid-leave policy in place and was the last high-income country to adopt any sort of family leave law.⁵¹ The federal unpaid leave law currently in existence is the least generous family leave policy of any high-income country in the world.⁵²

a. Opposition to PFL

Although the idea of PFL is widely supported by Americans, there is still significant opposition to a federal paid family leave program. Critics of PFL often focus on warranted concerns over the costs of such programs on employers and its potential negative impact on women's workforce participation and families generally. A federal PFL program will likely create increased costs and disruptions for employers to manage.⁵³ Conservatives often argue that a competitive market will naturally create the most efficient outcome for paid leave, and that any sort of government intervention could significantly burden employers.⁵⁴ But despite years of public pressure and market forces, a significant number of top companies in the U.S. still don't offer paid parental leave to non-salaried workers, and smaller businesses simply do not have the means to offer such benefits on their own even if they wish to do so.⁵⁵

⁵⁰ *Id.*

⁵¹ Selmi, *supra* note 12 at 2.

⁵² *Id.*

⁵³ Harry J. Holzer, *Paid family leave: Balancing benefits and costs*, BROOKINGS INST. (Jan. 30, 2017), <https://www.brookings.edu/blog/social-mobility-memos/2017/01/30/paid-family-leave-balancing-benefits-and-costs/>.

⁵⁴ Hope Thomas, *Utah companies rethink paid paternity leave*, THE DAILY UNIVERSE (May 20, 2020), <https://universe.byu.edu/2020/05/20/utah-companies-rethink-paid-paternity-leave/>.

⁵⁵ Krystin Arneson, *Why doesn't the US have mandated paid maternity leave?*, BBC.COM (June 28 2021), <https://www.bbc.com/worklife/article/20210624-why-doesnt-the-us-have-mandated-paid-maternity-leave>

The Cato Institute argues that mandating paid family and medical leave could harm women’s workforce participation and hurt families.⁵⁶ Particularly long parental leave programs in Europe have been positively correlated with women leaving the labor force permanently, thus inadvertently decreasing women’s workforce participation.⁵⁷ A mandatory paid leave policy may lead employers to discriminate in hiring against women of child-bearing age in order to avoid the cost entirely.⁵⁸ Additionally, the Institute argues that PFL policies create a “strong market bias toward full-time work,” despite the importance of flexible part-time work arrangements that many parents may prefer.⁵⁹ A well-balanced PFL policy that takes into consideration the costs and benefits to both employers and its employees can effectively avoid these pitfalls often cited by critics and produce the much-needed benefits lauded PFL advocates. Current federal parental leave offerings in the U.S. imposes costs on employers but fails at addressing working parent’s most critical needs.

b. Federal Parental Leave Programs

Congress passed the Family and Medical Leave Act (FMLA) in 1993.⁶⁰ The act requires employers of fifty or more employees to allow up to three months of unpaid leave for the care of a new infant or an ill family member, with the right to return to the same or equivalent position.⁶¹ While a significant step in addressing the work-family conflict, the FMLA is only truly available to a small subset of the American workforce. Only 56% of employees in the U.S. are eligible for FMLA benefits⁶², and not all those eligible can feasibly take unpaid leave. Some studies show

⁵⁶ Nita Ghei, *The Argument Against Paid Family Leave*, CATO INST. (Aug. 5, 2009), <https://www.cato.org/commentary/argument-against-paid-family-leave>

⁵⁷ *Id.*

⁵⁸ Holzer, *supra* note 53.

⁵⁹ Ghei, *supra* note 56.

⁶⁰ BARTLETT, *supra* note 4 at 324.

⁶¹ *Id.*

⁶² Scott Brown, et al., *Employee and Worksite Perspectives of the FMLA: Who Is Eligible?*, U.S. DEPT. OF LABOR (2020)

that 88% of FMLA-eligible employees who need time off do not take it because they cannot afford to.⁶³ Other pressures may also be keeping leave-eligible employees in the workplace. For example, approximately a third of women and one half of men in a survey reported that they believed their workplace culture would penalize employees for taking advantage of FMLA benefits.⁶⁴ Because the FMLA is not widely accessible nor widely used, it has proven ineffective at tackling the pervasive work-family conflict that both men and women continue to face in the workplace. Studies on the effects of the FMLA found that it had very little effect on labor force participation, rate of employment, or wages.⁶⁵ Some studies even found that it had small negative effects on women's labor force participation and actually increased workplace disparities by only benefiting parents that could afford to take extended unpaid leave.⁶⁶ The FMLA was an important starting point for addressing the work-family conflict in the United States, but on its own is insufficient. The FMLA was intended to act as a floor or foundation for parental leave, that could be used by states to build off of for their own PFL programs.⁶⁷

In 2018, the Federal Government enacted Internal Revenue Code Section 45S, providing a tax credit for employers who provide paid family and medical leave to its employees.⁶⁸ The tax credit is available to eligible employers who provide at least 50% wage replacement to

https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHF_FMLA2018PB1WhoIsEligible_StudyBrief_Aug2020.pdf.

⁶³ BARTLETT, *supra* note 4 at 324.

⁶⁴ *Id.*

⁶⁵ Raub, *supra* note 29 at 8.

⁶⁶ *Id.*

⁶⁷ Brendan Williams, *The Slow Crawl of Paid Family Leave Laws*, 55 CAL. W.L. REV. 423, 425 (2019) (citing FMLA which states: "nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.").

⁶⁸ 26 U.S.C.S. § 45S (2021); *Section 45S Employer Credit for Paid Family and Medical Leave FAQs*, THE INTERNAL REVENUE SERV., <https://www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs> (last visited Dec. 14, 2021).

employees on family or medical leave for up to twelve weeks within a single year.⁶⁹ The code provides a tax credit of up to 25% of wages paid to qualifying employees who take family or medical leave.⁷⁰ To be eligible for the credit, an employer must have a written policy that guarantees at least two weeks of paid family and medical leave annually.⁷¹ The credit was enacted as a two-year pilot program under the Tax Cuts and Jobs Act of 2017 and was initially limited to only the 2018 and 2019 tax years,⁷² but has since been extended and will continue until December 31, 2025.⁷³ The temporary nature of the tax credit and the limited economic benefit derived by businesses make it a weaker incentive than a more comprehensive PFL policy or federal mandate. But there has yet to be significant data gathered regarding the tax credit's effectiveness or long-term effects.

A national PFL program is gaining momentum at both the state and federal levels. Public support for PFL is broad and mostly bipartisan. The Trump administration's FY 2018 Budget proposal included a six-week PFL program that would be run through the Unemployment Insurance system.⁷⁴ Similarly, the Biden administration is currently seeking to expand the FMLA to include twelve weeks of paid parental or family leave with an up to 80% wage replacement

⁶⁹ Matthew Geiszler & John McKinley, *New tax credit for paid family and medical leave*, J. OF ACCT. (Dec. 1, 2018), <https://www.journalofaccountancy.com/issues/2018/dec/tax-credit-paid-family-medical-leave.html>.

⁷⁰ Isabel V. Sawhill & Sarah Nzau, *What are the challenges to adopting a federal paid family leave program*, BROOKINGS INST. (Oct. 15, 2019), <https://www.brookings.edu/policy2020/votervital/what-are-the-challenges-to-adopting-a-federal-paid-family-leave-program/>.

⁷¹ Geiszler, *supra* note 69.

⁷² *Id.*; Sawhill, *supra* note 70.

⁷³ Geiszler, *supra* note 69; 26 U.S.C.S. § 45S(i).

⁷⁴ Jackson Brainerd, *Paid Family Leave in the States*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 2017), <https://www.ncsl.org/research/labor-and-employment/paid-family-leave-in-the-states.aspx>.

rate.⁷⁵ But federal efforts are slow and have yet to be successfully passed by the legislature.⁷⁶

Formulating and implementing PFL programs at the state-level allows states to experiment with programs that fit best with local demographics and its local economy.

c. State PFL Programs

Currently, nine states and the District of Columbia have implemented some sort of state-wide PFL program.⁷⁷ California and New Jersey were the first to successfully implement programs in the early 2000s. Massachusetts, New York, Rhode Island, Washington, and the District of Columbia followed shortly after. As of 2021, Colorado, Connecticut, and Oregon have all passed PFL policies, but their programs have yet to go into full effect.⁷⁸ Most of the states that have successfully implemented PFL policies have expanded existing short-term disability insurance programs to include funding for paid family leave.⁷⁹ Evidence from state programs demonstrate that implementing state-level PFL programs can be both economically feasible, and simultaneously benefit the state's economy and local families.

California became the first state in the U.S. to successfully enact paid leave legislation when it proposed and passed its Paid Family Leave Program. California enacted its PFL policy in 2002, with benefits officially becoming available to covered workers in the state in July of

⁷⁵ THE WHITE HOUSE, FACT SHEET: THE AMERICAN FAMILIES PLAN (2021) <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/>; Stephen Miller, *How President Biden's Paid FMLA Proposal Would Work*, SHRM (May 4, 2021), <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/how-bidens-paid-fmla-proposal-would-work.aspx>.

⁷⁶ Alana Wise, *Paid family leave gets slashed as Democrats try to reach consensus on spending plan*, NPR.COM (Oct. 29, 2021), <https://www.npr.org/2021/10/29/1050294669/paid-family-leave-gets-slashed-as-democrats-try-to-reach-consensus-on-spending-p>.

⁷⁷ *State Paid Family Leave Laws Across the U.S.*, BIPARTISAN POLICY CENTER (Feb. 10, 2020), <https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/>.

⁷⁸ *Id.*

⁷⁹ Aparna Mathur, et al., *The AEI-Brookings Working Group Report on Paid Family and Medical Leave: Charting a Path Forward*, AEI Brookings 1, 30-31 (2018) <https://www.aei.org/wp-content/uploads/2018/09/The-AEI-Brookings-Working-Group-Report-on-Paid-Family-and-Medical-Leave.pdf>.

2004.⁸⁰ The program provides up to eight weeks of paid leave for employees to “to care for a seriously ill family member, to bond with a new child, or to participate in a qualifying military event.”⁸¹ It is financed by workers who contribute to the program through the existing State Disability Insurance (SDI) benefit program, and provides a wage replacement rate of 60-70%.⁸² Employees contribute to the program through a state-mandated payroll deduction with a set annual contribution rate which is a fixed percent of the worker’s annual income.⁸³ The program covers all private sector employers, and some public employers.⁸⁴ Self-employed individuals and other public sector employers can choose to opt into coverage.⁸⁵

Workers who qualify for the program are eligible for up to eight weeks of PFL benefits, which are to be used within a twelve-month period.⁸⁶ The benefits can be paid consecutively or split up while the employee is working part-time or intermittently.⁸⁷ To qualify, workers must be part- or full-time employees who contribute to SDI through payroll deductions, or self-employed and contribute to the Disability Insurance Elective Coverage program.⁸⁸ Under the program, time off to bond with a new child is “available to parents welcoming a new child into the family through birth, adoption, or foster care placement within the past [twelve] months.”⁸⁹ The state

⁸⁰ *Overview of California’s Paid Family Leave Program*, STATE OF CAL. EMP. DEV. DEP’T 1, 5 (2021) https://edd.ca.gov/pdf_pub_ctr/de2530.pdf.

⁸¹ *Id.*; Jones, *supra* 1 at 3.

⁸² *Overview of California’s*, *supra* note 80 at 5, 18.

⁸³ *Id.* at 6.

⁸⁴ *State Paid Family & Medical Leave Insurance Laws Chart*, NAT’L P’SHIP FOR WOMEN & FAMILIES 1, 13 (2021) <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/state-paid-family-leave-laws.pdf>.

⁸⁵ *Id.*; Ward Williams, *Paid Family and Medical Leave (PFML) by State*, INVESTOPEDIA (Apr. 28, 2021), <https://www.investopedia.com/paid-family-and-medical-leave-by-state-5089907>.

⁸⁶ *Overview of California’s*, *supra* note 80 at 10.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

defines a parent as an “individual, spouse, or registered domestic partner who will be serving as a parent for the child.”⁹⁰

California’s PFL program has provided more than 18.7 million parents with paid leave to care for a new child or sick family member.⁹¹ After almost two decades of consistent program implementation, California is one of the few states from which significant statistical evidence has been gathered regarding the economic and social effects on state-level PFL programs in the United States.

California’s PFL had significant effects on the health and wellbeing of women and children. Following implementation of the PFL policy, use of maternity leave by women workers more than doubled in the state.⁹² The average length of leave also increased from an average of three to six weeks.⁹³ This increase in leave taking and parental time with newborns improved working mother’s mental health following birth, reduced low birth weight and premature births, increased rates of breastfeeding and on-time vaccinations, and contributed to an overall decline in infant mortality in the state.⁹⁴ Increased access to paid leave in California following implementation of its PFL program was associated with increased rate of exclusive and overall breastfeeding through the critical three, six, and nine months following birth.⁹⁵ A differences-in-

⁹⁰ *Id.*

⁹¹ *Id.* at 1.

⁹² Maya Rossin-Slater, et al., *The Effects of California’s Paid Family Leave Program on Mothers’ Leave-Taking and Subsequent Labor Market Outcomes*, 32 J. OF POL’Y ANALYSIS & MGMT. 224, 224 (2013).

⁹³ *Id.*; Charles L. Baum & Christopher J. Ruhm, *The Effects of Paid Family Leave in California on Labor Market Outcomes*, 35 J. OF POL’Y ANALYSIS & MGMT. 333, 338 (2016).

⁹⁴ Jones, *supra* note 1 at 5; Rossin-Slater, *supra* note 92; Baum, *supra* note 93.

⁹⁵ Raub, *supra* note 29 at 2; Huang, Rui, and Yang Muzhe, *Paid maternity leave and breastfeeding practice before and after California’s implementation of the nation’s first paid family leave program*, 16 ECON. & HUM. BIOLOGY, 45, 45 (2015).

differences study in the state found that implementation of the policy reduced child maltreatment and physical abuse.⁹⁶

While increasing women's time at home, California's PFL program also increased women's participation and productivity in the workplace. Multiple studies that examined California's labor statistics before and after implementation of the program found that the work hours of mothers with 1- to 3-year-old children increased with access to paid parental leave by 10-17%.⁹⁷ Access to leave was also strongly associated with higher work and employment probabilities for mothers nine to twelve months after the birth of a child.⁹⁸ In the year following a birth, mothers with access to PFL experienced 4.1% higher incomes and a 10.2% lower risk of poverty.⁹⁹ Prior to the state's PFL program, the birth of a child reduced the probability of a mother participating in the labor force by 28.5 percentage points.¹⁰⁰ Access to PFL for California mothers significantly increased labor market participation by more than 5% in the year of a birth, and remained significant for as long as five years after the birth.¹⁰¹ Statistically significant effects were strongest among women with higher levels of education. For example, women with a bachelor's degree or higher experienced positive increases in their labor market participation after the birth of a child that was sustained for up to eight years.¹⁰² The social and economic impacts of state-level PFL implementation are similarly striking in New Jersey.

⁹⁶ Raub, *supra* note 29 at 3; Joanne Klevens, et al., *Paid family leave's effect on hospital admissions for pediatric abusive head trauma*, 22 INJ. PREVENTION 442, 442 (2016).

⁹⁷ Raub, *supra* note 29 at 5; Rossin-Slater, *supra* note 92; Baum, *supra* note 93.

⁹⁸ Raub, *supra* note 29 at 5; Rossin-Slater, *supra* note 92; Baum, *supra* note 93.

⁹⁹ Jones, *supra* note 1 at 5.

¹⁰⁰ *Id.* at 10.

¹⁰¹ *Id.* at 1,13.

¹⁰² *Id.* at 13.

New Jersey enacted its Paid Family Leave Act in 2009, becoming the second state in the U.S. to successfully implement its own PFL policy.¹⁰³ The Act established a statewide Family Leave Insurance (FLI) program built on the state's Temporary Disability Insurance (TDI) program in place since 1948.¹⁰⁴ The law allows parents to take time off to bond with a baby in the first twelve months after a birth or placement, or care for a seriously ill child, spouse, domestic partner, civil union partner, or parent.¹⁰⁵ The program provides workers with up to six weeks of paid leave to care for a new child or sick family member, with a wage replacement maximum set at \$524 per week.¹⁰⁶ In 2020, FLI was updated to allow for twelve weeks of paid leave, with a wage replacement rate of 85% of their normal weekly pay, or a max of \$881 per week.¹⁰⁷ The program is funded by employee payroll deductions set at a rate of 0.28% and capped at \$386.96 a year.¹⁰⁸ FLI provides a monetary benefit, but no guarantee of job entitlement which is covered by the federal FMLA. The program covers all private and public sector employers.¹⁰⁹

Like California's, New Jersey's PFL program had a measurable impact on women, children, and employers in the state. While increasing use and length of leave, FLI had

¹⁰³ Susan K. Livio, *Gov. Corzine signs Paid Family Leave Act*, NJ.COM (Apr. 2, 2019), https://www.nj.com/news/2008/05/corzine_signs_family_leave_act.html; Washington State technically passed paid leave legislation in 2007, but it was unfunded and unable to be implemented until later. See Sharon Lerner & Eileen Appelbaum, *Business As Usual: New Jersey Employers' Experiences with Family Leave Insurance*, CTR. FOR ECON. & POL'Y RSCH 1, 7 (2014) <https://www.cepr.net/documents/nj-fli-2014-06.pdf>.

¹⁰⁴ Lerner, *supra* note 103 at 1.

¹⁰⁵ *Id.* at 7.

¹⁰⁶ *New Jersey Paid Family Leave Programs*, THE STANDARD, <https://www.standard.com/employer/pfl/new-jersey> (last visited Dec. 14, 2021).

¹⁰⁷ Samantha Marcus, *Paid family leave benefits just got more generous in N.J. Here are the details*, NJ.COM (Jul. 1, 2020), <https://www.nj.com/politics/2020/07/paid-family-leave-benefits-just-got-more-generous-in-nj-here-are-the-details.html>.

¹⁰⁸ *Family Leave Insurance FAQs*, STATE OF N.J. DIV. OF TEMP. DISABILITY AND FAM. LEAVE INS., <https://www.myleavebenefits.nj.gov/worker/fli/#:~:text=How%20the%20Program%20Is%20Funded,earned%20duri> (last visited Dec. 14 2021).

¹⁰⁹ *State Paid Family & Medical Leave Insurance Laws Chart*, *supra* note 84 at 13.

significant positive effects on women’s labor force participation.¹¹⁰ Access to paid leave in New Jersey offset 50% or more of the maternal labor market detachment for up to six years after the birth of a child.¹¹¹ For highly educated women, access to PFL increased labor force participation by as much as 22 percentage points. A New Jersey study examining employer’s experiences with the state’s FLI implementation found that no employer reported any negative effects on productivity or turnover following implementation.¹¹² Only two out of eighteen participating employers felt that the program negatively affected its profitability, but no employer felt that the program was abused or unduly increased administrative work.¹¹³

As of 2021, California and New Jersey are joined by seven other states and the District of Columbia in successfully passing and implementing PFL policies.¹¹⁴ Sixteen more states have PFL legislation currently pending.¹¹⁵ Around the world, the United States remains the single exception to the fact that all industrialized high-income countries provide paid leave for the critical need of childbirth and childrearing. In an increasingly virtual and competitive global market, states are realizing they do not want to be left behind in the international battle for talent and teams. Utah, however, is a unique state with unique demographics, history, politics, and values. Utah prides itself as a family-friendly state with a booming economy that is quickly becoming a safe haven for individuals and families fleeing overcrowded and dangerous coastal cities. However, Utah similarly should not be left behind in this international movement of addressing the work-family conflict. Part 2 will examine the state of women and the workforce in

¹¹⁰ Jones, *supra* note 1 at 14.

¹¹¹ Jones, *supra* note 1 at 14.

¹¹² Lerner, *supra* note 103 at 1.

¹¹³ *Id.* at 2.

¹¹⁴ *State Paid Family Leave Laws Across the U.S.*, *supra* note 77.

¹¹⁵ *Id.*

Utah and propose an economically feasible and economically necessary recommendation for PFL in the state.

PART II: Paid Family Leave in Utah

1. Utah: The Worst State for Women

For the past four consecutive years, Utah has ranked as the single worst state for women in the United States.¹¹⁶ In an annual, nationwide survey conducted by WalletHub, all fifty states are scored across seventeen key indicators of gender equality.¹¹⁷ The indicators compared states' treatment of women in three key areas: 1) workplace environment, 2) education and health, and 3) political empowerment.¹¹⁸ Based on total score, Utah fell into 50th place, making it the “worst state for women’s equality” in the nation.¹¹⁹ According to the study, Utah had the largest work hours gap between men and women, the largest educational attainment gap, the second largest political representation gap, and the fourth and fifth largest income and executive positions gap.¹²⁰

Utah has had one of the largest gender wage and work hours gaps in the country for more than three decades.¹²¹ Utah women on average make about 70% of what Utah men make, which is significantly lower than the gap nationally for women, which is around 82% of what men

¹¹⁶ Becky Jacobs, *Utah ranked worst state for women’s equality – again*, THE SALT LAKE TRIBUNE (Aug. 23, 2021), <https://www.sltrib.com/news/2021/08/23/utah-ranked-worst-state/>.

¹¹⁷ Adam McCann, *Best & Worst States for Women’s Equality*, WALLETHUB (Aug. 23, 2021), <https://wallethub.com/edu/best-and-worst-states-for-women-equality/5835>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Becky Jacobs, *Fact-checking Utah’s reputation as the worst state for women’s equality*, THE SALT LAKE TRIBUNE (July 7, 2021), <https://www.sltrib.com/news/2021/07/07/fact-checking-utahs/>.

make.¹²² More women in Utah than men live in poverty.¹²³ Although Utah women are more likely to work than the national average, age and marital status significantly impact women's employment rate in the state. Utah women's labor force participation falls well below the national average from ages 25-45, when many women begin having children.¹²⁴ Married women in Utah are similarly less likely to participate in the labor force than the national average.¹²⁵

While many women in the state may be voluntarily choosing to stay home with small children, state-focused research reveals a large population of women with children that would stay in the workforce if they could.¹²⁶ In a recent statewide poll conducted by the Utah Women and Leadership Project (UWLP), Utah women specified that both low wages and gender role expectations were their two primary challenges in the state.¹²⁷ Over 53% of survey respondents said that they believe women in Utah have an overall lower status than men.¹²⁸ In 2017, the Utah State Women in the Economy Commission conducted a series of focus groups in order to examine the experiences of Utah women in work and educational pursuits.¹²⁹ The research found that women's workforce participation was primarily dependent on the quality and availability of childcare, and access to flexible workplace policies and paid leave benefits.¹³⁰ The overall

¹²² Jenny Rollins, *Utah's gender wage gap one of the widest in the nation, USU study shows*, KSL.COM (Oct. 5, 2021), <https://www.ksl.com/article/50256062/utahs-gender-wage-gap-one-of-widest-in-the-nation-usu-study-shows>; Rebecca Winkel, et al., *Utah Gender Wage Gap: A 2021 Update*, UTAH WOMEN & LEADERSHIP PROJECT (2021), <https://www.usu.edu/uwlp/files/snapshot/31.pdf>.

¹²³ *Status of Women in the States: The Economic Status of Women in Utah*, INST. FOR WOMEN'S POL'Y RSRCH, <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-utah.pdf>.

¹²⁴ Susan R. Madsen, *Utah Women Stats: Labor Force Participation Among Utah Women*, UTAH WOMEN & LEADERSHIP PROJECT 1, 1 (2016), <https://www.usu.edu/uwlp/files/snapshot/17.pdf>.

¹²⁵ *Id.*

¹²⁶ Becky Jacobs, *Utah women work part time at highest rate in U.S.*, THE SALT LAKE TRIBUNE (Dec. 11, 2019), <https://www.sltrib.com/news/2019/12/11/utah-women-work-part-time/>.

¹²⁷ Winkel, *supra* note 122.

¹²⁸ Becky Jacobs, *More than half of Utah women think they have a lower status than men in the state*, THE SALT LAKE TRIBUNE (Nov. 20, 2019), <https://www.sltrib.com/news/2019/11/20/utah-women-say-cultural/>.

¹²⁹ Dianne Meppen & Anna Bergevin, *The Status of Women in Utah: Economic Choices and Challenges*, WOMEN IN THE ECON. COMM'N 1, 2-4 (2017) <https://www.utah.gov/women/documents/Status-of-Women-in-Utah-2017.pdf>.

¹³⁰ *Id.*

consensus was that women in Utah lacked affordable access to childcare and had difficulty finding flexible workplaces that allowed for paid medical or family leave. Compounded with particularly low wages, many Utah women who wish to work outside the home either leave the workforce or do not reenter the workforce due to the cost-prohibitive nature of childcare and lack of flexible leave policies.¹³¹

2. Utah-Specific Considerations

Implementing a PFL policy like that in California or New Jersey could effectively address the challenges Utah women face within the work-family conflict. However, Utah is not California or New Jersey. Utah is a unique state with a uniquely religious political history and values. It is also experiencing significant economic and demographic changes as the state grapples with the ongoing COVID-19 pandemic while continuing to be the fastest growing state in the nation.¹³² Some significant Utah-specific considerations that will influence implementation of a PFL policy include the influence of the LDS church, the development of Utah's Silicon Slopes, and the recession brought on by the COVID-19 pandemic.

a. LDS Church

The state of Utah was founded by members of the Church of Jesus Christ of Latter-day Saints (LDS Church).¹³³ Members of the LDS Church currently make up 68.55% of the state's total population.¹³⁴ In the legislature, that percentage is even greater, with Latter-day Saints taking up nine out of every ten seats.¹³⁵ The LDS Church is proudly pro-family. A Pew Research

¹³¹ *Id.*

¹³² Larry D. Curtis, *Utah is the fastest growing state, according to new census data*, KUTV.COM (Apr. 26, 2021), <https://kutv.com/news/local/utah-is-the-fastest-growing-state-according-to-new-census-data>.

¹³³ *Mormon Population by State 2021*, WORLD POPULATION REVIEW <https://worldpopulationreview.com/state-rankings/mormon-population-by-state> (last visited Dec. 14, 2021).

¹³⁴ *Id.*

¹³⁵ Lee Davidson, *Latter-day Saints are overrepresented in Utah's Legislature, holding 9 out of every 10 seats*, THE SALT LAKE TRIBUNE (Jan. 19, 2021), <https://www.sltrib.com/news/politics/2021/01/14/latter-day-saints-are/>.

Center survey found that 81% of members of the Church agreed that being a good parent is one of the most important things in life.¹³⁶ The Church has published a declaration on the family which proclaims that “family is ordained of God” and that “[h]usband and wife have a solemn responsibility to love and care for each other and for their children.”¹³⁷ The Church unequivocally promotes traditional family-centered gender roles, proclaiming that “fathers are to preside over their families . . . and are responsible to provide the necessities of life and protection for their families” while “[m]others are primarily responsible for the nurture of their children.”¹³⁸ But the proclamation continues by stating that mothers and fathers are to work together as equal partners.¹³⁹ The proclamation concludes by calling upon all “responsible citizens and officers of government” around the world to design and promote measures which “strengthen the family as the fundamental unity of society.”¹⁴⁰

While more conservative religious voices have not traditionally supported measures which help women stay in the workforce, the LDS Church’s beliefs on family and pro-family policies align well with the goals of paid family leave. The Church’s strong emphasis on family has likely contributed to Utah’s record high fertility rates for most of its history.¹⁴¹ While Utah’s fertility rate has begun to decline in recent years, the state still has the largest average household size in the nation and is generally younger and more fertile than other states.¹⁴² In addition to high fertility and average household size, Utah also has a particularly high percentage of women

¹³⁶ Aleksandra Sandstrom, *6 facts about U.S. Mormons*, PEW RSRCH CTR. (Sep. 30, 2016), <https://www.pewresearch.org/fact-tank/2016/09/30/6-facts-about-u-s-mormons/>.

¹³⁷ *The Family: A Proclamation to the World*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS <https://www.churchofjesuschrist.org/study/scriptures/the-family-a-proclamation-to-the-world/the-family-a-proclamation-to-the-world?lang=eng>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Kem C. Gardner Policy Institute, *Fact Sheet: Fertility in Utah: Recent Changes*, UNIV. OF UTAH 1 (2021), <https://gardner.utah.edu/wp-content/uploads/Fertility-FS-June2021.pdf?x71849>.

¹⁴² Kem C. Gardner Policy Institute, *supra* note 5.

who participate in the state’s labor force.¹⁴³ High fertility rates combined with a high labor force participation rate means that men and women in Utah experience a particularly high level of work-family conflict in their daily life. The LDS Church, one of the largest employers in the state, has keenly recognized this struggle and offers its own paid maternity and paternity leave benefits to all of its employees starting in 2017.¹⁴⁴ The updated benefit plan includes up to six weeks of paid maternity leave, one week of paid paternity leave, and a short-term disability plan.¹⁴⁵ A senior leader in the church, Elder Quentin L. Cook of the Quorum of the Twelve Apostles, said in a statement: “I would hope that Latter-day Saints would be at the forefront in creating an environment in the workplace that is more receptive and accommodating to both men and women.”¹⁴⁶

The LDS Church has thus demonstrated that its values and doctrines align with the provision of paid family and medical leave. The new paid parental leave benefit for employees of the church, while limited, will work to support mothers who choose to work outside of the home, rather than punishing them. The state of Utah, with a large population of LDS citizens and LDS legislators, is in a prime position to adopt a more comprehensive PFL policy for the entire state.

b. Silicon Slopes

In addition to the LDS Church, another significant social and economic influence in Utah is the growth of Utah Valley’s “Silicon Slopes.” Back in 2018, *Forbes* labeled Salt Lake City, Utah as “Tomorrow’s Tech Mecca”, and since then Utah has experienced an influx of business

¹⁴³ Madsen, *supra* note 124.

¹⁴⁴ Sarah Jane Weaver, *New Church Employee Benefits Include Paid Maternity Leave*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (June 28, 2017), <https://www.churchofjesuschrist.org/church/news/new-church-employee-benefits-include-paid-maternity-leave-dress-slacks-for-women?lang=eng>.

¹⁴⁵ *Id.*

¹⁴⁶ Sarah Pulliam Bailey, *Mormon Church starts offering paid maternity leave, changes dress code*, THE WASH. POST (June 28, 2017), <https://www.washingtonpost.com/news/acts-of-faith/wp/2017/06/28/mormon-church-starts-offering-paid-maternity-leave-changes-dress-code/>.

investment from various large, multinational corporations.¹⁴⁷ As an emerging competitor to California’s “Silicon Valley,” Utah’s expanding tech presence has attracted top tech businesses and top talent employees.¹⁴⁸ Just in the past three years, Utah has seen large tech corporations like Adobe and eBay break ground on new multi-million-dollar facilities in its state.¹⁴⁹ Individuals and families are migrating to Utah in large number to take advantage of the state’s strong business climate.¹⁵⁰ Utah has consistently been the fastest growing state in the nation over the past decade and continues to experience significant demographic shifts as highly educated and successful individuals and families from large coastal cities seek out a new lifestyle in the conservative interior state.¹⁵¹

The rise of Silicon Slopes has brought new ideologies to the state causing some tech industry leaders to ask for more socially inclusive legislation in the state. In 2021, Utah’s booming tech industry created its own political action committee – Slopes PAC – to help represent its interests in the Utah state legislature.¹⁵² The PAC will focus on supporting or opposing candidates for office, ballot initiatives, legislation, and policy focused on economic and workforce issues.¹⁵³ Tech industry lobbyist and CEO of the newly formed PAC, Sunny

¹⁴⁷ James Faris, *Why Salt Lake City is Being Coined “Silicon Slopes”*, CSQ (June 16, 2020), <https://csq.com/2020/06/why-salt-lake-city-is-being-coined-silicon-slopes/#.YYxRR73MI6V>.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See Curtis, *supra* note 132; Ron Starner, *Utah: The Best State for Business*, BUSINESS IN UTAH: BUSINESS ELEVATED GUIDE <https://siteselection.com/cc/utah/2018/business-climate-overview-utah-the-best-state-for-business.cfm>.

¹⁵¹ Faris, *supra* note 147; Chris Dorsey, *America’s Mass Migration Intensifies As “Leftugees” Flee Blue States And Counties For Red*, FORBES (Mar. 17, 2021), <https://www.forbes.com/sites/chrisdorsey/2021/03/17/americas-mass-migration-intensifies-as-leftugees-flee-blue-states-and-counties-for-red/?sh=3983efd63146>.

April 28). See also Robert J. DeBry & Associates, *Where are all the new Utah move-ins coming from? Here’s a breakdown*, KSL.COM (Apr. 28, 2021), <https://www.ksl.com/article/50155808/where-are-all-the-new-utah-move-ins-coming-from-heres-a-breakdown>.

¹⁵² Ben Winslow, *Silicon Slopes launches political action committee aimed at Utah’s Capitol Hill*, FOX13 SALT LAKE CITY (Aug. 2, 2021), <https://www.fox13now.com/news/local-news/silicon-slopes-launches-political-action-committee-aimed-at-utahs-capitol-hill>.

¹⁵³ *Id.*

Washington, has stated that she would like to see the state Capitol adopt more socially inclusive legislation to improve Utah’s reputation and image outside of the state.¹⁵⁴ Washington and Slopes Pac hope to see Utah’s tech industry continue to grow and compete with larger tech markets outside of the state, but realize that to do so Utah needs to be more welcoming to individuals and organizations that don’t fit the traditional Utah mold.¹⁵⁵

Many of Silicon Slope’s tech start-ups offer their own paid family and medical leave benefits in order to compete for talent within the market. Following tech giants like Netflix, Adobe, and Facebook¹⁵⁶, tech company Weave in Lehi, Utah began offering three months of paid maternity leave and six weeks of paid paternity leave in 2018.¹⁵⁷ Utah-based software startup Domo offers ten weeks of paid maternity leave and two weeks of paid paternity leave.¹⁵⁸ However, unlike large tech companies in California, Utah-based companies lack any sort of government support or incentive for offering paid parental or medical leave. Implementation of a state PFL policy could help address the Slopes PAC’s concerns over Utah’s lack of socially inclusive legislation, and remedy Utah’s reputation as the worst state for women employees. Additionally, a state PFL policy could help support Utah’s growing Silicon Slopes stay competitive with large coastal companies, and simultaneously make provision of such benefits more feasible for smaller startups.

c. COVID-19

¹⁵⁴ Sonja Hutson, *Tech Sees Bigger Opportunity in Utah – If the State Works on Its Image*, NPR.COM (May 4, 2021), <https://www.npr.org/2021/05/04/991943295/tech-sees-bigger-opportunity-in-utah-if-the-state-works-on-its-image>.

¹⁵⁵ *Id.*

¹⁵⁶ Barbara Ortutay, *After Netflix, Adobe extends parental leave policy*, KSL.COM (Aug. 10, 2015), <https://www.ksl.com/article/35892634/after-netflix-adobe-extends-parental-leave-policy>.

¹⁵⁷ Heather Simonsen, *Utah company pioneers family-friendly workplace with family leave package*, KSL.COM (Oct. 6, 2018), <https://www.ksl.com/article/46401809/utah-company-pioneers-family-friendly-workplace-with-family-leave-package>.

¹⁵⁸ *Our Benefits*, DOMO <https://www.domo.com/company/careers/culture> (last visited Dec. 14, 2021).

Like all U.S. states and countries around the world, the COVID-19 pandemic had a substantial impact on Utah’s economy which continues to be felt today. One significant result of the pandemic was the “mass exodus of women” from the Utah workforce.¹⁵⁹ In a statewide survey, the UWLP found that about 16% of working women in Utah over the age of twenty withdrew from the workforce.¹⁶⁰ Survey respondents cited employer hardship or the need to care for children or another household member as primary reasons for having to leave the workforce.¹⁶¹ Over 59% of the women surveyed stated that COVID-19 negatively affected their career advancement.¹⁶² The workforce impact of COVID-19 hit women in the state harder than it did men, with jobs held by women declining at more than twice the rate of men between 2019 and 2020.¹⁶³

As schools and childcare facilities closed, many working mothers and caregivers were forced to take on a greater burden of domestic care work while still trying to balance work expectation and requirements. State data illustrates that for thousands of Utah women, the work-family conflict was too much, requiring them to leave the workforce completely in order to care for their children and families. This gendered phenomenon has been coined the “pink-collar recession” in Utah.¹⁶⁴ Researchers predict that helping women return to the workforce will be vital for Utah’s economy to recover fully, but women will be hesitant to reintegrate completely

¹⁵⁹ Saige Miller, *Utah’s economy projected to bounce back, but not fully unless women return to workforce*, KSL.COM (Jan. 18, 2021), <https://kslnnewsradio.com/1941374/utahs-economy-projected-to-bounce-back-but-not-fully-unless-women-return-to-workforce/>.

¹⁶⁰ Jared Hansen, et al., *The Impact of COVID-19 on Utah Women and Work*, UTAH WOMEN & LEADERSHIP PROJECT 1, 2 (2021), <https://www.usu.edu/uwlp/files/briefs/30-impact-of-covid-19-on-utah-women-work-changes-burnout-hope.pdf>.

¹⁶¹ *Id.*

¹⁶² Becky Jacobs, *Thousands of Utah women left the workplace during COVID-19 pandemic, new report shows*, THE SALT LAKE TRIBUNE (Apr. 6, 2021), <https://www.sltrib.com/news/2021/04/06/thousands-utah-women-left/>.

¹⁶³ Kem C. Gardner Policy Institute, *Economic Insights: COVID-19 Impacts by Gender*, UNIV. OF UTAH 1, 1 (2021) <https://gardner.utah.edu/wp-content/uploads/C19Impacts-FS-Mar2021.pdf>.

¹⁶⁴ Miller, *supra* note 159.

unless the state and employers demonstrate greater support for working mothers and caretakers.¹⁶⁵

3. Utah Policy Recommendations

Utah can demonstrate its support for families, social inclusivity, and working women in the state by designing and implementing a feasible PFL program. The UWLP has extensively researched this policy area and published a white paper with clear and accomplishable recommendations for the State including: expanding pregnancy leave protections, protecting crime victims' right to return to their jobs, and developing a bipartisan working group to evaluate plans for paid family and sick leave.¹⁶⁶ UWLP reasons that conservative support for PFL is growing throughout the nation, and Utah state legislators “should make sure that this conversation does not only take place at the federal level.”¹⁶⁷

a. Past PFL Efforts

The Utah Legislature has drafted and considered proposals for a PFL program in the past. During the 2018 General Session, Representative Elizabeth Weight sponsored the Family Leave Amendments bill which would provide six weeks of paid, job-protected leave to state employees for the birth or adoption of a child.¹⁶⁸ Representative Weight hoped the bill would send a message that Utah supports its employees and families, saying: “I really like the idea of being able to say . . . we have a culture of supporting families and that the money invested in employee paid leave actually helps us portray the culture that we say we have.”¹⁶⁹ This bill modeled an

¹⁶⁵ *Id.*

¹⁶⁶ L. Jenna Gould, *Utah is Changing: Should Our Leave Laws Follow Suit?*, UTAH WOMEN & LEADERSHIP PROJECT 1, 7-8 (2021), <https://www.usu.edu/uwlp/files/wp/no-3.pdf>.

¹⁶⁷ *Id.*

¹⁶⁸ H.B. 156 Family Leave Amendments, 62nd Leg., Gen. Sess. (Utah 2018) <https://le.utah.gov/~2018/bills/static/HB0156.html>.

¹⁶⁹ Sarah Israelsen-Hartley, *Inside the movement for paid time off to have a baby – in Utah and beyond*, DESERET NEWS (Feb. 12, 2018), <https://www.deseret.com/2018/2/12/20639891/inside-the-movement-for-paid-time-off-to-have-a-baby-in-utah-and-beyond>.

expansion of the FMLA by adding six week of paid leave that could be used concurrently with FMLA benefits. The fiscal note accompanying the bill projected that enactment of the legislation would not materially impact state revenue, would not result in measurable costs for local governments, or impact expenditures or regulatory burden for local residents or businesses.¹⁷⁰ While direct impact on state revenue would be minimal since state employee salaries are already accounted for in the budget, the Fiscal Note did predict that the bill could cost state agencies an average of \$10,000 per person using the PFL due to potential forgone employee output.¹⁷¹ The bill failed to pass in the House.¹⁷²

During the same session, Representative Rebecca Edwards and Senator Lincoln Fillmore co-sponsored the Paid Family and Medical Leave Tax Credit.¹⁷³ The bill was designed to create a state tax credit for employers offering paid family and medical leave, meant to mirror and supplement the Federal employer tax credit enacted in 2018.¹⁷⁴ According to the bill's fiscal note, enactment of the bill would reduce the tax liability for employers qualifying for the tax credit by \$825,000, resulting in a reduction in revenue for the state's Education Fund in both FY 2019 and 2020.¹⁷⁵ The bill would not add any measurable costs for local governments, or change regulatory burdens for Utah residents or businesses.¹⁷⁶ The bill passed in the House, was revised in the Senate, then failed to pass for a second time in the House.¹⁷⁷

Paid leave initiatives have been slightly more successful on a local level. In 2017, Salt Lake City began offering all its full-time employees' access to six weeks of paid parental leave.

¹⁷⁰ H.B. 156, *supra* note 168.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ H.B. 278 Paid Family and Medical Leave Tax Credit, 62nd Leg., Gen. Sess. (Utah 2018)

<https://le.utah.gov/~2018/bills/static/HB0278.html>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

Mayor Jackie Biskupski announced the new policy by saying: “I am proud that Salt Lake City continues to be an example of progress. It is my hope our leadership will propel other cities in our state to act and live up to our shared values by expanding parental leave to all families.”¹⁷⁸ Other local municipalities have followed Salt Lake’s lead, including Salt Lake County and the Park City School District.¹⁷⁹

In Utah, 63% of working people still do not have access to any sort of parental leave, paid or unpaid.¹⁸⁰ The FMLA and local efforts have been unsuccessful at addressing the work-family conflict Utah individuals and families are facing. As Utah continues to grow and expand its economy, local Utah businesses will need to compete with national and international businesses that offer required paid leave and greater family and parental benefits. Utah will benefit greatly by crafting its own PFL program that aligns with state values and addresses state needs.

b. PFL Recommendations

A PFL policy for the state of Utah should be designed to promote the state’s pro-family values, support and not threaten the state’s pro-business environment, and remedy the workforce recession caused by the COVID-19 pandemic. The Utah State Legislature should be encouraged to consider UWLP’s recommendations and form its own bipartisan working group to develop a feasible and meaningful PFL program for the state. The following recommendations are based on existing research on both international and state-level PFL programs and are proposed as practical guidance for a Utah PFL program.

¹⁷⁸ Katie McKellar, *Salt Lake City employees now get paid parental leave*, DESERET NEWS (Jan. 5, 2017) <https://www.deseret.com/2017/1/5/20603497/salt-lake-city-employees-now-get-paid-parental-leave>.

¹⁷⁹ *Utah Needs Paid Parental Leave*, EARLY CHILDHOOD ALLIANCE (Oct. 14, 2020) <https://www.earlychildhoodalliance.net/blog/paid-parental-leave-is-right-for-utah>.

¹⁸⁰ *Paid Leave Means a Stronger Utah*, NAT’L P’SHP FOR WOMEN & FAMILIES 1, 1 (2021), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-utah.pdf>

i. The program should be government incentivized, not mandated.

Utah should design a PFL program that expands existing leave protections to provide an optional, employee-financed PFL program. To incentivize participation, the state should offer a state-sponsored tax credit incentive for employers that opt into the program. While Utah does not have an existing mandatory temporary disability insurance program like other states, it can expand the existing pregnancy leave protections under Utah's Anti-Discrimination Act to provide paid parental leave.¹⁸¹ The paid leave program should be modeled after California or New Jersey's insurance-style program funded by employee payroll contributions.¹⁸² This employee-financed model will pool premiums and risks across workers, keeping the payroll contribution minimal and the coverage broad.¹⁸³ The tax credit incentive should be modeled after the federal IRS 45S tax credit and could be focused on supporting small businesses and startups that need assistance providing competitive PFL benefits.

As a pro-family, pro-business, conservative state, Utah requires a PFL policy that is feasible for the state to enact, practical for the business community to employ, and effective at addressing the needs of its families. An FMLA-modeled mandated PFL program would likely be unpopular with the business community and unsuccessful in the conservative legislature. A state-sponsored tax credit incentive alone may garner more bipartisan support but would be much less effective at encouraging widespread adoption of PFL by employers. A feasible and effective PFL program for Utah could combine the employee-financed, insurance-style programs like that in California and New Jersey with an opt-in requirement that preserves business autonomy and the

¹⁸¹ Gould, *supra* note 166 at 3.

¹⁸² See *supra* Part I Section 3(c).

¹⁸³ Vicky Lovell & Allison Suppan Helmuth, *Briefing Paper: Parents as Child Care Providers: A Menu of Parental Leave Models*, INST. FOR WOMEN'S POL'Y RSRCH, 1, 1 (2009), <https://iwpr.org/wp-content/uploads/2020/11/A136.pdf>.

efficiencies of market forces. A state-sponsored tax credit could then be employed to incentivize program participation and offset some costs for small local businesses and startups. This combination method allows the cost of PFL to be equitably shared by the three invested parties: the state, the employer, and the employee. The state will finance the administrative costs of managing the social insurance-style program and provide a tax credit for participants, the employer will finance the costs of an employee's absence, and the employees will finance their paid leave entitlements. Making the program optional leaves room for businesses that offer their own competitive PFL programs based on market forces.

ii. Utah PFL should not be overly generous or too restrictive.

The implementation of a state-level PFL program must be thoughtfully balanced and comprehensive. A Utah state PFL program should use inclusive language defining family and a qualifying family or medical leave event in order to ensure the benefits of the program are available to those with nontraditional family structure. The program should provide at least three months, or twelve weeks, of paid leave in order to effectively address the needs of parents without overly burdening employers and harming workforce participation rates.

Programs that are too limited risk failing to address the heart of the work-family conflict. For example, PFL plans that limit leave to only biological parents of a newly born child fail to acknowledge the diversity of families' needs after the immediate birth of a child, including postpartum health problems for mothers or a child's sickness. Such a limited policy would also be meaningless for families created through adoption or foster care. It would also fail at addressing other important types of family leave like the need to care for a sick family member, spouse, or elderly relative. Offering leave that is too short also limits the program's effectiveness

at supporting parents and families, thereby limiting the benefits states and businesses can derive from the programs.

However, PFL programs that are too extensive or demanding can have negative effects on both employees and employers. Long-term entitlements of parental leave can have unintended negative consequences on young working women in particular, who employers may be disincentivated from hiring or look over for promotions and pay raises due to their long absences from the workplace.¹⁸⁴ International research on PFL programs suggest that leave entitlements between six to twelve months in length may have negative influences on women’s labor force experience.¹⁸⁵ A thoughtful balance must therefore be struck when constructing a comprehensive PFL program that provides enough benefits to effectively address the work-family conflict but not require so much that it fails to help women stay and succeed in the workplace and is highly unpopular with employers.

Research from state and international implementation of PFL programs suggest a potential “sweet spot” for PFL that is both economically feasible and socially beneficial. Research conducted on international and state-level PFL programs found that leave lasting at least three months, but not much more than six, produced the outcomes desired by both parents and employers.¹⁸⁶ While leave that is too long can harm parents and women workers, shorter leave entitlements can prevent individuals and governments from achieving the benefits of leave they intended in the first place. Prominent PFL economist and researcher at Stanford, Maya Rossin-Slater, cautioned that there exists no research-based reason to offer less than twelve

¹⁸⁴ Claire Cain Miller, *How to Build a Paid Family Leave Plan That Doesn’t Backfire*, THE NEW YORK TIMES (Sep. 29, 2021), <https://www.nytimes.com/2021/09/29/upshot/paid-family-leave-biden.html>;
Ivona Hideg, et al., *The Unintended Consequences of Maternity Leaves: How Agency Interventions Mitigate the Negative Effects of Longer Legislated Maternity Leaves*, 103 J. OF APPLIED PSYCH. 1155, 1155 (2018), <https://www.apa.org/pubs/journals/features/apl-apl0000327.pdf>.

¹⁸⁵ Raub, *supra* note 29 at 5.

¹⁸⁶ Miller, *supra* note 184.

weeks of PFL, since there is nothing to gain and much to lose in terms of benefits like increased rates of breastfeeding, improved maternal mental health, and increased child immunizations.¹⁸⁷ Countries that provided at least six months of paid parental leave had higher rates of labor force participation and no evident difference in unemployment rates or GDP growth.¹⁸⁸

iii. The program should be designed to help low-income employees.

A Utah PFL program should offer at least 80% wage replacement rate for employees using the leave to ensure use of the program by the most in-need employees. One significant problem with existing parental leave benefits is inaccessibility for low-income households. For example, the FMLA offers unpaid parental leave, which in effect makes it only available to those employees who can afford to go without a paycheck.¹⁸⁹ PFL programs which provide a low wage-replacement rate during an employee's paid parental leave are often not utilized by the most vulnerable employees because they cannot afford to take the leave. For example, when California's PFL wage replacement rate was 55%, one-third of eligible California workers surveyed said they could not afford to take leave with such a low wage replacement rate.¹⁹⁰ Data gathered from a range of OECD countries suggests a wage replacement rate of at least 80% or greater was most successful at keeping families out of poverty.¹⁹¹ A maximum wage replacement rate of 80% was consistently compatible with high labor force participation rates and low unemployment rates.¹⁹² Additionally, a wage replacement rate of at least 67% was necessary to achieve paternal take up of leave.¹⁹³

¹⁸⁷ *Id.*

¹⁸⁸ Raub, *supra* note 29 at 7.

¹⁸⁹ *See supra* Part I Section 3(b).

¹⁹⁰ Raub, *supra* note 29 at 8.

¹⁹¹ *Id.*

¹⁹² *Id.* at 10.

¹⁹³ *Id.* at 9.

iv. The program should be gender neutral.

A Utah PFL program should be gender neutral, making paid parental leave available to parents regardless of their gender. Offering leave targeted exclusively to women can exacerbate employer stereotypes about women and discourage employers from hiring young women of childbearing age.¹⁹⁴ Such leave also perpetuates the stereotype of women providing the majority of caregiving, forcing working women to take on a greater burden of domestic care work and excluding fathers from childcare and child rearing.¹⁹⁵ Gender-neutral paid leave programs have been associated with better developmental outcomes for infants and increased parent-child bonding.¹⁹⁶ Paid leave made available to both mothers and fathers more effectively supports the family unit as a whole and makes it ineffective for employers to discriminate against female employees.

c. Benefits of PFL for Utah

While implementation of a PFL program would come at a cost, it could greatly benefit Utah businesses by increasing talent retention and competitiveness. In a 2021 survey of top business executives by West Monroe Partners consulting group, 49% of executives stated that hiring and retention were top threats to their businesses, and 11% said that keeping up with the rate of attrition was a top concern.¹⁹⁷ Consistent turnover costs employers significantly.¹⁹⁸ One

¹⁹⁴ Holzer, *supra* note 53.

¹⁹⁵ See Lindsay Oncken, *Policy Recommendations: Paid Family Leave*, NEW AMERICA <https://www.newamerica.org/in-depth/care-report/policy-recommendation-paid-family-leave/> (last visited Dec. 14, 2021).

¹⁹⁶ Raub, *supra* note 29 at 3.

¹⁹⁷ *West Monroe's Quarterly Executive Poll – Q3 2021*, WEST MONROE <https://www.westmonroe.com/perspectives/report/quarterly-executive-poll-q3-2021> (last visited Dec. 14, 2021).

¹⁹⁸ See John Hall, *The Cost of Turnover Can Kill Your Business And Make Things Less Fun*, FORBES (May 9, 2019), <https://www.forbes.com/sites/johnhall/2019/05/09/the-cost-of-turnover-can-kill-your-business-and-make-things-less-fun/?sh=ef647b79437>.

report estimated that for every instance of employee turnover, the cost of hiring a replacement equated to about 30% of the employee's annual salary.¹⁹⁹

Women, and particularly women with children, have largely contributed to the high talent attrition and turnover rates within U.S. companies. According to the National Women's Law Center, women's labor force participation rate nationally was down to 57% in February 2021, the lowest it had reached since 1998.²⁰⁰ The state of Utah has experienced a similar drop in women's labor force participation as thousands of Utah women left the workforce completely in order to care for their children and families as the COVID-19 pandemic continues.²⁰¹ Without access to PFL, nearly 30% of new mothers nationally leave the workforce.²⁰² This is a significant population of talented and experienced workforce participants that businesses lose out on due to a lack of flexible leave policies for women with children.

Implementation of a PFL program in Utah could significantly increase the retention of top female talent in Utah-based companies. Following the implementation of PFL programs in California and New Jersey, women in those states were 10 percentage points more likely to be in the labor force following the birth of a child.²⁰³ Access to paid leave increased women's labor force participation significantly in those states, and that increase was sustained years after the birth.²⁰⁴ Studies conducted on the effects of PFL programs in the U.S., Britain, and Japan found that access to paid leave increased the probability that women with children returned to work for the same employer following their leave.²⁰⁵ Observations of PFL implementation reveal that the

¹⁹⁹ *See Id.*

²⁰⁰ Colvin, *supra* note 24.

²⁰¹ Miller, *supra* note 159.

²⁰² Jones, *supra* note 1 at 1.

²⁰³ *Id.* at 5.

²⁰⁴ *Id.* at 13.

²⁰⁵ Raub, *supra* 29 at 5.

strongest effects are experienced by highly-educated women.²⁰⁶ Women with at least a bachelor's degree experience the strongest draw back to the workforce after having a child if paid leave is available, and experience positive and significant effects in terms of pay, promotions, and overall work experience that are sustained until the child is at least eight years old.²⁰⁷ This suggests that the availability of PFL will attract the most productive and talented workers in the labor market.

As the public health environment continues to push more businesses to offer remote work, Utah women and men will have their pick of employment opportunities from businesses all over the country and all over the world. Including from states and countries that offer comprehensive and generous paid leave opportunities. Establishing its own PFL policy could help Utah remain competitive with out-of-state businesses and retain its top talent. Commerce Secretary for the United States recently stated that cities, states, and the U.S. as a whole simply “cannot be competitive if women can’t productively engage in the workforce because they don’t have access to childcare or care for their elderly loved ones We can’t compete globally if we’re the only industrialized nation without paid family leave, which severely underpins our workers’ productivity.”²⁰⁸ Implementing a state-level PFL program will enable Utah to increase talent retention and improve its competitive edge with out-of-state actors.

Part III: Conclusion

Parents in the U.S. are facing an ongoing work-family conflict that negatively impacts their careers, their health, and their personal lives. Women with children face significant

²⁰⁶ Jones, *supra* note 1 at 13.

²⁰⁷ *Id.*

²⁰⁸ James Doubek, *Commerce Secretary Gina Raimondo Calls for the U.S. to Counter China’s Economic Power*, NPR.COM (Sep. 28 2021), <https://www.npr.org/2021/09/28/1041082882/china-u-s-trade-gina-raimondo-commerce-secretary>.

challenges managing both work and family roles and suffer economically from a lack of flexible leave policies. In Utah, women with children face an enhanced form of this work-family conflict which severely undercuts their successful participation in the labor force. Businesses in Utah lose out on top female talent and shoulder the heavy cost of attrition as women with children leave the workforce in large number due to unmanageable work-family conflict. A practical and effective PFL program for the state of Utah can address the needs of both Utah parents and Utah businesses and provide much-needed support for the local economy and local families.