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Daniela Clark

Texas A&M University School of Law

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Keywords

HR Review, parental leave, FMLA, Family and Medical Insurance Leave Act, gender equality

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CORNELL HR REVIEW

THE FRONT LINES: EMPLOYER PROVIDED PAID PARENTAL LEAVE IN THE UNITED STATES

Daniela Clark, J.D.

Abstract

Parental leave has largely remained undiscussed in the United States since the late 1980s to early 1990s. The enactment of the Family and Medical Leave Act of 1993, which gave parents twelve weeks of unpaid parental leave, seemed to satiate scholarly writers. Encouragingly, the topic of parental leave has had a resurgence within the last election cycle. This article discusses the advances that employers are making to privately provide paid parental leave to their employees, the impact that makes on the employees, and explores the possibility of expanding the Family and Medical Leave Act to a paid parental leave policy. The United States has historically lagged behind other countries when it comes to parental leave policies, considering other countries began creating parental leave policies in the 1940s and 1950s after World War II. The United States continues to lag behind, as it is the only developed country that relies entirely on the private sector to provide paid parental leave.

Introduction

The United States is a top economic power.¹ However, the United States is falling behind the rest of the world when it comes to parental leave policies.² According to the United Nations' "2016 Human Development Report," the United States comes in at tenth place³ on the Human Development Index, which is a measurement comprised of factors such as gender equality and paid parental leave policies.⁴ According to the 2015 report, over the last twenty years, many countries have made vast improvements in their policies regarding human development (which includes their policies on paid parental leave).⁵ However, the United States is not progressing at the same rate as these other countries.⁶

The United States is the only industrialized country that does not have a federal law for paid maternity leave.⁷ All other industrialized countries recognize that parents should be afforded the opportunity to focus on child rearing during the child's critical first years, if the parents so choose, and in response have implemented paid parental leave laws.⁸ "Maternity protection is a fundamental labour right enshrined in key universal human rights treaties. The 1948 Universal Declaration of Human Rights (UDHR) states that motherhood and childhood are entitled to special care and assistance, as well as to social security."⁹ It is imperative that our nation's parents are afforded the opportunity to adequately care for their children in way that does not lead to gender inequality and the

unreasonable burden of loss of income.¹⁰ Every person has a “right to care for one's family.”¹¹

Under current federal law, many women in the United States are burdened with the impossible and unachievable “work-life balance” paradox that is worsened by having to take unpaid parental leave, or, if available, use all vacation and sick time for childbirth and the subsequent recovery.¹² In addition, women lose future career opportunities should they decide that they want to leave their job for longer than twelve weeks and focus on child-rearing.¹³ In fact, “When leave is too short, mothers might not feel ready to return to work and drop out of the workforce altogether.”¹⁴ Unless immediate changes are made to consciously reduce gender inequality and improve human development through a federal paid parental leave law, the United States will continue to fall further behind other developed countries.¹⁵

The International Labor Organization, a group comprised of 185 countries who are dedicated to creating and maintaining humane national and international labor policies, is instrumental in how many countries respond to gender equality and human development issues through their labor policies.¹⁶ The United States is currently the largest member and largest contributor (donor) to the International Labor Organization.¹⁷ However, the United States and Papua New Guinea are the only two countries of the 185 countries that do not have a paid parental leave policy.¹⁸ The United States claims to be a world leader in human development¹⁹ despite that fact that it is in the minority in terms of parental leave policies?²⁰

In 2000, the International Labor Organization met in Geneva for the most recent Maternity Protection Convention.²¹ At the convention, they released labor guidelines that specifying that countries should have parental leave policies that allow for fourteen weeks of paid protected parental leave after the birth of a child.²² The United States has yet to ratify these guidelines - sixteen years later.²³

This article will discuss how the United States came to develop the current unpaid parental leave policy. It will then deliberate how Germany arrived at its current paid parental leave law and the policy reasons behind Germany's current paid parental leave law. This article will then examine how the United States can achieve and will benefit from a federal paid parental leave law; funded through Social Security.

I. Background

Parental leave policies first became popular in the 1940s, following the population decline crises that most countries were facing after World War II.²⁴ However, the United States did not have this population problem. In fact, the United States had the opposite problem; it had the Baby Boom shortly after World War II.²⁵

A. American Parental Leave

In the United States, women have been fighting for rights in the workplace since the late 1800s.²⁶ The women who have fought for these rights have pioneered the way for this generation to enjoy the freedom to work in almost any field that women choose and in almost any level of seniority available in those particular fields.²⁷ However, much work remains to be done to guarantee equal work opportunities for women. One of the major obstacles that women face today is losing out on work opportunities because of the disproportionate amount of time they take off to raise their children, compared to men.²⁸ Of those who are eligible for parental leave under the Family and Medical Leave Act, nearly half are unable to financially afford to take the time off.²⁹

Feminist groups have been lobbying for maternity leave policies since the 1940s.³⁰ Certain groups called “Labor feminists” were lobbying for maternity leave and hospital insurance coverage for childbirth.³¹ However, corporate America was steadfastly against creating a federal parental leave policy.³² Historically, corporations did not want anyone who was not actively in the workforce to receive any accommodations from the government, let alone from the employer.³³ Despite corporate America’s best efforts, labor unions in the 1940s became successful in labor contract negotiations to lobby for maternity leave and placement in an equivalent job upon return.³⁴ The problem was that not every woman was represented by a union, and the few that were union members were not located in an area where the union successfully negotiated maternity leave.³⁵ These paid maternity leaves became common throughout the mid-1950s, but only gave partial pay reimbursement.³⁶ In 1949 Fried Miller spoke on behalf of House Bill 2893 which “proposed amending the Social Security Act to require an ‘insurance system for maternity protections’ for eight weeks before and eight weeks after birth.”³⁷ In the 1950s the federal Children’s Bureau fought for a three-month paid maternity leave, with job security, in order to align the United States with the maternity leave policies that other developed countries³⁸ had already implemented.³⁹ However, the Children’s Bureau was unsuccessful.⁴⁰

During the second wave of feminism in the 1960s under President Kennedy, the most progress was made for women’s rights in United States history; the President’s Commission on the Status of Women was created, the Equal Pay Act, Title VII of the Civil Rights Act and changes to the Fair Labor Standards Act were implemented.⁴¹

The Pregnancy Discrimination Act of 1978 amended Title VII, making it unlawful for an employer to discriminate based on “sex.”⁴² Under 42 U.S.C.A. § 2000e-2, entitled “Unlawful employment practices,” this means that it is unlawful to consider “sex” when hiring, firing, promoting, or providing benefits or accommodations to an employee.⁴³ Title VII defines “[t]he terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes.”⁴⁴

The Family and Medical Leave Act of 1993 gave both parents the right to take twelve weeks of unpaid leave from their job after the birth of a child.⁴⁵ The employee may choose or the employer may require the employee to use any accrued vacation or sick

time.⁴⁶ It also requires that the employee give the employer thirty days notices, if possible.⁴⁷ The employer may also require that the employee provide documentation from a physician if the employee is taking leave for medical reasons (not family leave after the birth of a child).⁴⁸ The FMLA protects the employee's position while they are on leave.⁴⁹ The employee is entitled “(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or (B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.”⁵⁰ The employee will also retain any employment benefits that accrued before the employee started the leave.⁵¹ However, employees are only covered by the Act if they have worked for their employer for at least 1250 hours over the last twelve months and their employer has at least fifty employees.⁵² This means that part-time employees and people who work for small companies are not covered by the Act.⁵³ The amount of leave and the fact that the leave can be unpaid, has not changed since its inception.⁵⁴

The Family and Medical Leave Act was not intended to limit parental leave policies that employers may provide.⁵⁵ In fact, Section 2653, entitled “Encouragement of more generous leave policies,” specifically states “Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act.”⁵⁶

The Family and Medical Insurance Leave Act (FAMILY Act) was introduced in Congress on March 18, 2015, “to provide paid family and medical leave benefits to certain individuals, and for other purposes.”⁵⁷ In order to fund these benefits, individuals would pay a 0.2% social security tax and employers will be required to pay an excise tax.⁵⁸ The paid parental leave period would be twelve weeks.⁵⁹ The amount of benefits would be equal to 67% of the employee's income.⁶⁰

During the most recent presidential election cycle, President Trump seemingly endorsed the FAMILY Act when he outlined a plan to federally provide for six weeks of paid parental leave.⁶¹ Unfortunately, the FAMILY Act officially failed in February of 2017, never having even been reviewed by a committee.⁶² Whether President Trump will continue as an advocate for paid parental leave is largely speculative, considering the fact that the Trump Organization does not provide paid parental leave to its employees.⁶³

B. Parental Leave in Other Developed Countries

Since the enactment of the FMLA of 1993, the rest of the developed world has been making a concerted effort to improve their parental leave policies, as a matter of gender equality and human development.⁶⁴ Many countries have increased the amount of allowable parental leave, have created or increased the amount of leave payments through a government system, and have encouraged fathers, or both parents, to take allowable leave, rather than just the mothers.⁶⁵ The United States’ parental leave policy, regarding the amount of allowable time, or creating a paid leave system through the government, however, has not changed since its inception, over twenty years ago.⁶⁶

For example, Norway is currently the world leader in paid parental leave.⁶⁷ Norway provides 49 weeks of paid parental leave at 100 percent payment coverage or 59 weeks at 80 percent payment coverage.⁶⁸ The mother may start the leave up to 3 weeks before her due date.⁶⁹

Furthermore, the current German federal law for parental allowance and parental leave (Elterngeld and Elternzeit)⁷⁰ allows for twelve months of paid leave for one parent, or fourteen months if both parents take leave,⁷¹ after the birth of a child,⁷² with up to three years of job protection.⁷³ “When parental leave ends, the employment relationship is automatically restored in the form in which it existed before the period of parental leave.”⁷⁴ Parental Allowance is based on the previous twelve months of income.⁷⁵ The parent is entitled to payment of 67% of former income, not to exceed 1800 Euro per month.⁷⁶ The current law encourages men to share child rearing responsibilities by creating an incentive with the potential for two months of extra parental leave if both parents take advantage of the leave.⁷⁷ “While about 8.8% of children born in 2007 had fathers that took parental leave, the percentage doubled to over 17% in 2008.”⁷⁸ Currently, 32% of German fathers are taking parental leave.

II. Reasons for change

The implications for the United States leaving our current parental leave policy unamended are far further reaching than only affecting parents within our country. The way the United States deals with the issue of parental leave impacts gender equality for all women in the United States as well as prevents both women and men from taking parental leave, but do not, because of the negative stigma attached to it.

A. Removing the Stigma

In *Women and Workplace Discrimination*, Raymond Gregor explores the experience of female attorneys after returning from parental leave.⁷⁹ He observed that after their return from maternity leave, “they were denied the more coveted work and case assignments.”⁸⁰ “Employees who make use of flexible work policies are often penalized and seen as less committed than their peers, and those penalties can be greater for mothers in professional jobs.”⁸¹ A stigma seemed to form that, because they had children to care for, they were unable to continue to fully dedicate their time to the firm.⁸² They were often discouraged or removed from “the partnership track.”⁸³ The stigma could be changed by a federal paid parental leave policy that allowed and encouraged parents to take leave.⁸⁴

If a paid parental leave policy were truly equal, and men were afforded the same opportunity to take time off as women, the United States would be able to remove some of the stigma surrounding parental leave.⁸⁵ If men were just as likely as women to interrupt their careers to spend time caregiving⁸⁶, it would equalize the gap in employment that the United States experiences in the 25-34 age range.⁸⁷ It would change employers’ perspectives when hiring and promoting, since there would be a decreased likelihood of a difference in work experience, the need for flexible schedules, and time

taken off for children.⁸⁸ We need to create a new norm where women are not disproportionately discriminated against for taking the time to raise their children and men⁸⁹ are not stigmatized⁹⁰ for wanting to take parental leave.⁹¹

B. Improving Gender Equality

Gender equality is still a problem in every country, not just the United States.⁹² However, gender equality could greatly be improved in the United States through equalizing gender roles. The most impactful way of achieving equal gender roles is by making sure that women who want to be in the workforce and also have children are able to do so even after the birth of a child; and by creating an environment where both men and women are able to equally share childrearing responsibilities.

According to the findings in the FAMILY Act, paid parental leave leads to worker retention by providing financial security to parents during leave.⁹³ This may be due to the fact that women are 50% more likely to be primary caregivers to young children⁹⁴ and therefore more likely to reduce the amount of time they spend at work (reducing to part-time or other similar arrangements) or dropping out of the workforce to care for them.⁹⁵ According to the Report on Gender Initiative, a difference between the number of men and women being hired and remaining in the workplace begins to become apparent in the 25-34 age range, which is when most people start having children.⁹⁶ This means that women “pay both short- and a long-term penalty in the labor market.”⁹⁷ In order to achieve gender equality and equal participation in the workforce, it is important that the government provide financial stability to new parents through a federal paid parental leave policy.⁹⁸

III. The Proposal: Why Employers Should Provide Paid Parental Leave

A. Current Trends

According to Working Mother Research Institute’s 2015 report, all of their top 100 companies offer paid maternity leave.⁹⁹ On average, the companies offer 8 weeks of leave.¹⁰⁰ 30 years ago, only 1 in 6 of their top 100 companies offered parental leave.¹⁰¹ Some of the companies included on the list are IBM (Top 10), LEGO, MasterCard, JP Morgan Chase, Johnson & Johnson, General Mills (Top 10), and L’Oréal.¹⁰²

The frontrunners in employers who provide paid parental leave have certainly been the tech champions, such as Google, Amazon, Apple, Facebook, and Netflix.¹⁰³ Google was one of the first companies to offer paid parental leave when they implemented their policy in 2001.¹⁰⁴ Google currently provides 18 weeks of fully paid parental leave.¹⁰⁵ Netflix currently provides 1 year of fully paid parental leave.¹⁰⁶ Following trend, in early 2016, tech companies Twitter and Etsy both implemented paid parental leave policies.¹⁰⁷ Twitter offers five months of paid parental leave for both birth and adoptive parents.¹⁰⁸ Etsy offers six months of fully paid parental leave.¹⁰⁹

However, while those who work for large companies “can rejoice, generous paid parental

leave is far from routine in the rest of the economy.”¹¹⁰ Employer paid parental leave policies only apply to 13% of United States workers.¹¹¹ In lower paying jobs, it is even worse; only 4% of workers are covered by an employer paid parental leave policy.¹¹² Historically, negotiating with employers has not been working. “Some female workers assume ‘Don’t rock the boat’ attitude, consciously deciding to endure the adverse conditions of their employment.”¹¹³

B. Benefits to the Employer

The trend for tech companies to offer paid parental leave may be due to the fact that “75% of the workforce will be made up of millennials in just a decade”.¹¹⁴ Millennials value personal fulfillment and work-life balance, which calls for flexible schedules.¹¹⁵ Most notably, millennials “cite paid parental leave as an important benefit.”¹¹⁶ This is no wonder, since millennials faced a harsh job market during the Great Recession, where many struggled to find work or were quickly laid off.¹¹⁷ As many as 37% say that they distrust big business.¹¹⁸ It’s important for employers to keep this mind when it comes to their millennial employees.¹¹⁹ It’s no wonder that millennials favor employers with parental leave policies that give them job protection during leave after the birth of a child.¹²⁰ If millennials have no trust big business, of course they would prefer a company that outlines a parental policy as a priority within their own policies and procedures.¹²¹ Therefore, paid parental leave policies are essential for employers to attract the best candidates and to be able to compete in the international markets.¹²²

According to the “The Report on Gender Initiative”, “[t]here is potentially a ‘business case’ for family-friendly workplace support,” as it reduces long term costs.¹²³ Employers that have paid parental leave policies have a reduction in turnover and sick leave.¹²⁴ By implementing a parental leave policy, employers may also motivate current staff, increase employee satisfaction, reduce workplace stress, and increase employee production.¹²⁵

Turnover especially can be a catastrophic expense to employers.¹²⁶ According to “Keeping the Millennials”, “turnover costs can easily range from 50 - 150 percent of an employee’s salary.”¹²⁷ In an example, “Keeping the Millennials” states that if Company X has only 20,000 employees, with an average salary of \$50,000 per year, and experiences a 10% turnover rate, Company X will experience an annual turnover cost of \$15 million.¹²⁸ In a real world example, through its paid parental leave policy, Google was able to reduce the quit rate of new mothers by 50 percent.¹²⁹ If, for example, we assume that Google is Company X, and Google’s new mother employees equal that of the 20,000 Company X employees, Google saved \$7.5 million in turnover costs by implementing a paid parental leave policy.¹³⁰

Therefore, the United States cannot rely on company goodwill alone, because only big companies can afford to or are even interested in providing these policies.¹³¹ Smaller companies are either unwilling or cannot offer any paid leave for childbirth on their own accord.¹³² Requiring employers to pay for parental leave may also create adverse effect, because it could discourage companies from hiring young women or young people in prime child rearing ages.¹³³

IV. Analysis

The advantages of the current laws in the United States are that it does provide for some protection for parents taking parental leave.¹³⁴ The disadvantages, however, are numerous. Many workers are not eligible for the existing parental leave under the Family and Medical Leave Act¹³⁵. Of those who are eligible, most are not able to afford to take the unpaid leave.¹³⁶

A. Disadvantages to the Current Approach in the United States

Most workers cannot afford to take the unpaid parental leave to care for their newborns.¹³⁷ Naturally, this is especially true for low income families and single moms.¹³⁸ Even if workers are eligible to take twelve weeks unpaid leave, they are often unable to take it because they cannot afford the loss of income.¹³⁹ Of those who are qualified for parental leave under the Family and Medical Leave Act, nearly half are financially unable to take the parental leave.¹⁴⁰ 60% of workers who do take leave have to return back to work early, due to financial difficulties.¹⁴¹

The current approach in the United States creates a reliance on employer goodwill. Unfortunately, employers are largely either unwilling or unable to provide paid parental leave as a company policy.¹⁴² Only 13% of United States workers have access to paid parental leave through their employer.¹⁴³ In low paying jobs, it is even worse; only 4% of United States workers have access to paid parental leave through their employer.¹⁴⁴ Of those who are eligible for unpaid parental leave under the Family and Medical Leave Act, only 40% are eligible for some type of short-term disability insurance policy¹⁴⁵ through their employer, which would give the covered parent short term disability payments during the twelve weeks of leave.¹⁴⁶

Women are disproportionately discriminated against for taking parental leave.¹⁴⁷ “Discrimination based on pregnancy, maternity and family responsibilities is endemic everywhere.”¹⁴⁸ “Pregnancy is often perceived by management as a disruptive event in the workplace and, as a consequence, women who announce their pregnancies often find they are less than welcome to continue in their positions.”¹⁴⁹ The Pregnancy Discrimination Act made it illegal for an employer to discriminate against sex, which includes pregnancy.¹⁵⁰ The Family and Medical Leave Act also made it a requirement that a parent's job is protected while the parent is on leave, which means that the employee is entitled to return to their same or similar position upon return from parental leave.¹⁵¹ Unfortunately, it is all too often that pregnant women would return from parental leave to find that the company has been “reorganized”, and their position, or one like it, has been eliminated.¹⁵²

V. Conclusion

"Who will take responsibility for raising the next generation? Women will only have true

equality when men share with them the responsibility of bringing up the next generation."
- Ruth Bader Ginsburg¹⁵³

Implementing paid parental leave policies should not be left to the private sector. Although employers have done a great deal so far to change our culture regarding parental leave, in terms of reducing gender equality, furthering human development, and making the United States a competitor in world labor policies, on a nationwide scale, the private sector scheme is a failure. A federal paid parental leave policy is needed in order to further gender equality, through a reduction of gender discrimination and equalizing women's participation in the workplace, and further human development by destigmatizing the taking of parental leave and allowing for both men and women to equally share child rearing responsibilities.¹⁵⁴ It is the government's responsibility to create a new law so that parents are not penalized for choosing to have and then rear their own children. Allowing parents the opportunity, if they so choose, to take time off for childbirth and for the crucial first year of a child's life should be status quo, not a luxury only a few can afford.

It is imperative that the United States implement a paid parental leave policy in the immediate future. Most other countries are beyond focusing on allowing mothers to take paid parental leave and are focusing on creating incentives for fathers to take advantage of parental leave, as well.¹⁵⁵ The United States has been last in the race for at least the last sixteen years.¹⁵⁶ If the United States continues down this path, it will get so far behind that it simply will not be in the race anymore. ✕

[Daniela Clark](#) is an attorney residing in Dallas-Fort Worth, licensed to practice law in the state of Texas. She first became interested in Parental Leave policies while studying Gender and the Law at Texas A&M University School of Law, from which she received her JD. While attending school, Daniela gained seven years of experience working in-house for software vendor companies DealerSocket, AutoStar Solutions, and SecureClose. She also holds a Bachelor's in Business Administration with a concentration in Management from the University of Texas in Arlington, AACSB.

¹ Rebecca Ray, Janet C. Gornick & John Schmitt, *Parental Leave Policies in 21 Countries Assessing Generosity and Gender Equality* 1 (rev. ed. 2009), available at http://cepr.net/documents/publications/parental_2008_09.pdf.

² *Id.* at 14.; Francine D. Blau & Lawrence M. Kahn, *Female Labor Supply: Why is the US Falling Behind?* 2, 3 (Nat'l Bureau of Econ. Research, Working Paper No. 18702, 2013), available at <http://www.nber.org/papers/w18702.pdf>.

³ Behind Norway, Australia, Switzerland, Germany, Denmark, Singapore, Netherlands, Ireland, and Iceland.

⁴ U.N. Dev. Programme, *Human Development Report 2016: Humand Development for Everyone* 198 (2017), available at http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf.

⁵ U.N. Dev. Programme, *Human Development Report 2015: Work for Human Development* 55 (2015), available at http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf.

⁶ *Id.* at 212.

⁷ Sheryl Sandberg, *Lean In* 23 (1st ed. 2013).

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- ⁸ Ida Oun & Gloria Pardo Trujillo, *Maternity at Work: A Review of National Legislation* 6 (2005); OECD Council at Ministerial Level, *Report on Gender Initiative: Gender Equality in Education, Employment and Entrepreneurship* 44 (2011), available at <http://www.oecd.org/education/48111145.pdf>.
- ⁹ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *Maternity and Paternity at Work: Law and Practice Across the World* 1 (2014), available at http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_242615/lang--en/index.htm.
- ¹⁰ Dorothy Sue Cobble, *The Other Women's Movement* 127 (2004); Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 116.
- ¹¹ Dorothy Sue Cobble, *supra* note 10, at 4.
- ¹² Ida Oun & Gloria Pardo Trujillo, *supra* note 9, at 1; Sheryl Sandberg, *supra* note 7, at 23.
- ¹³ Sheryl Sandberg, *supra* note 7, at 23.
- ¹⁴ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 8.
- ¹⁵ OECD Council at Ministerial Level, *supra* note 9; Francine D. Blau & Lawrence M. Kahn, *supra* note 2, at 4; Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8; U.N. Dev. Programme, *supra* note 5.
- ¹⁶ International Labor Organization [ILO], *About the ILO*, <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last visited May 15, 2016).
- ¹⁷ International Labor Organization [ILO], *The US: A Leading Role in the ILO*, <http://www.ilo.org/washington/ilo-and-the-united-states/the-usa-leading-role-in-the-ilo/lang--en/index.htm> (last visited May 15, 2016).
- ¹⁸ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 16. ; Even Syria, a war torn country, offers a fourteen week paid parental leave policy. *Id* at 17.
- ¹⁹ ILO, *supra* note 18.
- ²⁰ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8 at 16.
- ²¹ Ida Oun & Gloria Pardo Trujillo, *supra* note 9.
- ²² Convention Concerning the Revision of the Maternity Protection Convention (Revised), 1952 art. 4, May 30, 2000.
- ²³ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8 at 2.
- ²⁴ Dorothy Sue Cobble, *supra* note 10, at 123.
- ²⁵ *Id.*
- ²⁶ *Id.* at 7.
- ²⁷ Raymond F. Gregor, *Women and Workplace Discrimination* 85 (2003).
- ²⁸ Sheryl Sandberg, *supra* note 7, at 102.
- ²⁹ House Bill 1439, at §2(a)(3).
- ³⁰ Dorothy Sue Cobble, *supra* note 10, at 123.
- ³¹ *Id.*
- ³² *Id.*
- ³³ *Id.*
- ³⁴ *Id.* at 128.
- ³⁵ *Id.*
- ³⁶ *Id.* at 129.
- ³⁷ *Id.*
- ³⁸ We were already behind in the 1950s! This is an embarrassment that grows with each passing year.
- ³⁹ *Id.*
- ⁴⁰ *Id.*
- ⁴¹ Dorothy Sue Cobble, *supra* note 10, at 145.
- ⁴² 42 U.S.C.A. § 2000e-2 (1964)
- ⁴³ *Id.*
- ⁴⁴ *Id.*

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- ⁴⁵ Including adoption, which is not discussed further in this article; Family and Medical Leave Act (FMLA) of 1993 § 1, 29 U.S.C § 2612 (West, Westlaw through P.L. 114-115).
- ⁴⁶ Family and Medical Leave Act § 1
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
- ⁵² *Id.*
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ House Bill 1439.
- ⁵⁸ *Id.* at §7(a).
- ⁵⁹ *Id.* at §1(a).
- ⁶⁰ *Id.* at §5(a).
- ⁶¹ CNN, Trump Child Care, <http://money.cnn.com/2016/09/13/news/economy/trump-child-care/?iid=EL> (last visited March 14, 2017).
- ⁶² House Bill 1439
- ⁶³ CNN, Ivanka Trump Wrong About Trump Organization’s Leave Policy, <http://www.cnn.com/2016/09/14/politics/ivanka-trump-wrong-family-leave-policy/> (last visted March 14, 2017).
- ⁶⁴ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 16.
- ⁶⁵ *Id.* at 1.
- ⁶⁶ Family and Medical Leave Act § 1
- ⁶⁷ Norwegian Labor and Welfare Administration, *Parental Benefits*, <https://www.nav.no/en/Home/Benefits+and+services/Relatert+informasjon/parental-benefit#chapter-3> (last visited March 15, 2017).
- ⁶⁸ *Id.*
- ⁶⁹ *Id.*
- ⁷⁰ Both of these benefits are also fully available to parents of German children living in Liechtenstein, Switzerland, Norway Iceland and Turkey. Fed. Ministry of Labour and Soc. Affairs, *Social Security at a Glance 2015* 127 (2015), available at <http://www.bmas.de/EN/Services/Publications/a998-social-security-at-a-glance.html>.
- ⁷¹ “Parental leave may be taken from the child’s birth up until it reaches age three. Since parental leave is considered separately for each parent, the child’s mother or father may take their shares alone or both parents may take parental leave simultaneously.”*Id.*
- ⁷² Including adoption, which is not discussed further in this article.
- ⁷³ Bundesgesetzblatt [BGBL. I] [Legal Publications of the Federal Republic of Germany], Jan. 29, 2015, I S. 2325, translated by Andrea Clark; Dr. Elisabeth Botsch, European Parliament, *The Policy in Gender Equality in Germany* 19 (Ottavio Marzocchi, 2015), available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/510025/IPOL_IDA\(2015\)510025_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/510025/IPOL_IDA(2015)510025_EN.pdf); There is no minimum amount of hours that an employee must work before becoming eligible for parental leave. Bundesgesetzblatt [BGBL. I] [Legal Publications of the Federal Republic of Germany], Jan. 29, 2015, I S. 2325, translated by Andrea Clark.
- ⁷⁴ Fed. Ministry of Labour and Soc. Affairs, *supra* note 126; In Germany, under the Protection of Working Mothers Act - “ As an expectant mother in dependent employment, you enjoy special protection from workplace hazards and a special protection from dismissal from the beginning of your pregnancy to four months after the birth.” *Id.* at 14.

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- ⁷⁵ Bundesgesetzblatt [BGBl. I] [Legal Publications of the Federal Republic of Germany], Jan. 29, 2015, I S. 2325, *translated by* Andrea Clark
- ⁷⁶ *Id.*
- ⁷⁷ Fed. Ministry of Labour and Soc. Affairs, *supra* note 126, at 57.
- ⁷⁸ OECD Council at Ministerial Level, *supra* note 9, at 145.
- ⁷⁹ Raymond F. Gregor, *supra* note 47, at 74.
- ⁸⁰ *Id.*
- ⁸¹ Sheryl Sandberg, *supra* note 7, at 130.
- ⁸² Raymond F. Gregor, *supra* note 47, at 74.
- ⁸³ *Id.*
- ⁸⁴ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 118.
- ⁸⁵ *Id.*
- ⁸⁶ *Id.*
- ⁸⁷ OECD Council at Ministerial Level, *supra* note 9, at 39.
- ⁸⁸ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 118.
- ⁸⁹ “In order to achieve both women’s and men’s full potential in all realms, policies need to change traditional social attitudes and behaviours by recognizing men’s right to parenthood and actively encouraging a shift towards a model in which men act as active co-parents rather than helpers of their women partners. . . . Fathers who take leave are more likely to be involved with their young children, with positive effects for the development of the children.” Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 118.
- ⁹⁰ “A related issue is that traditional gender roles and labor-market outcomes work together to deprive men of the opportunity to participate actively in providing infant and child care.” Rebecca Ray, Janet C. Gornick & John Schmitt, *supra* note 1, at 1-2.
- ⁹¹ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 118.
- ⁹² *Id.* at 156; U.N. Dev. Programme, *supra* note 4, at 210.
- ⁹³ House Bill 1439 at §2(a)(12).
- ⁹⁴ OECD Council at Ministerial Level, *supra* note 9, at 41.
- ⁹⁵ Rebecca Ray, Janet C. Gornick & John Schmitt, *supra* note 1, at 1-2.
- ⁹⁶ OECD Council at Ministerial Level, *supra* note 9, at 39.
- ⁹⁷ Rebecca Ray, Janet C. Gornick & John Schmitt, *supra* note 1, at 1-2.
- ⁹⁸ OECD Council at Ministerial Level, *supra* note 9, at 41.
- ⁹⁹ Working Mother Research Inst., Working Mother 100 Best Companies Paid Family Leave Report 7 (2015) *available at* http://www.workingmother.com/sites/workingmother.com/files/attachments/2016/08/wm100bestpaidleavefinal_0.pdf.
- ¹⁰⁰ *Id.* at 9.
- ¹⁰¹ *Id.* at 7.
- ¹⁰² *Id.* at 5.
- ¹⁰³ Alicia Adamczyk, *These Are the Companies With the Best Parental Leave Policies*, TIME (Nov. 4, 2015), <http://time.com/money/4098469/paid-parental-leave-google-amazon-apple-facebook/>.
- ¹⁰⁴ Google, Inc., *How We Care for Googlers*, <https://careers.google.com/how-we-care-for-googlers/> (last visited March 14, 2017).
- ¹⁰⁵ Alicia Adamczyk, *supra* note 103.
- ¹⁰⁶ Netflix, *Starting Not at Netflix Unlimited Maternity and Paternity Leave*, <https://media.netflix.com/en/company-blog/starting-now-at-netflix-unlimited-maternity-and-paternity-leave> (last visited March 14, 2017).

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- ¹⁰⁷ Forbes, *These Companies All Boosted Paid Parental Leave in 2016*, <https://www.forbes.com/sites/clareoconnor/2016/12/30/these-companies-all-boosted-paid-parental-leave-in-2016/#3dcc424fa3d6> (last visited March 14, 2017).
- ¹⁰⁸ *Id.*
- ¹⁰⁹ *Id.*
- ¹¹⁰ Alicia Adamczyk, *supra* note 103.
- ¹¹¹ House Bill 1439, at §2(a)(4).
- ¹¹² *Id.*
- ¹¹³ Raymond F. Gregor, *supra* note 47, at 1.
- ¹¹⁴ Alicia Adamczyk, *supra* note 103.
- ¹¹⁵ *Id.*; Jessica Brack, *Maximizing Millennials in the Workplace 5* (2012), available at http://avds.com/images/blog/UNC_Millennials_Workplace_Study.pdf.
- ¹¹⁶ Alicia Adamczyk, *supra* note 103.
- ¹¹⁷ Jessica Brack, *supra* note 115.
- ¹¹⁸ *Id.*
- ¹¹⁹ *Id.*
- ¹²⁰ Alicia Adamczyk, *supra* note 103.
- ¹²¹ Jessica Brack, *supra* note 115.
- ¹²² OECD Council at Ministerial Level, *supra* note 9, at 44.; D. Azzopardi & J. Millar, *Realising and Expanding Opportunities in the United States 20* (2016), available at http://www.oecd-ilibrary.org/economics/realising-and-expanding-opportunities-in-the-united-states_5jlpq7t9vzbx-en.
- ¹²³ OECD Council at Ministerial Level, *supra* note 9, at 44.
- ¹²⁴ *Id.*
- ¹²⁵ *Id.*
- ¹²⁶ Joanne Sujansky & Jan Ferri-Reed, *Keeping The Millennials 5* (2009).
- ¹²⁷ *Id.*
- ¹²⁸ *Id.*
- ¹²⁹ Chicago Tribune, *Key Elements of a Good Parental Leave Policy*, <http://www.chicagotribune.com/business/success/inc/tca-key-elements-of-good-parental-leave-policy-20170116-story.html> (last visited March 14, 2017).
- ¹³⁰ *Id.*; Joanne Sujansky & Jan Ferri-Reed, *supra* note 126.
- ¹³¹ Alicia Adamczyk, *supra* note 103.
- ¹³² U.S. Department of Labor, *The 2000 Survey Report* (2000), available at <http://www.dol.gov/whd/fmla/chapter5.htm>.
- ¹³³ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 8.
- ¹³⁴ 42 U.S.C.A. § 2000e-2
- ¹³⁵ Family and Medical Leave Act § 1
- ¹³⁶ House Bill 1439, at §2(a)(3).
- ¹³⁷ *Id.* at §2(a)(1).
- ¹³⁸ Rebecca Ray, Janet C. Gornick & John Schmitt, *supra* note 1, at 4, 7.
- ¹³⁹ *Id.*
- ¹⁴⁰ House Bill 1439, at §2(a)(3).
- ¹⁴¹ *Id.*
- ¹⁴² *Id.* at §2(a)(2).
- ¹⁴³ *Id.*
- ¹⁴⁴ *Id.* at §2(a)(4).
- ¹⁴⁵ It is unclear whether these policies are affordable for parents and whether parents are opting for these disability insurance policies.

¹⁴⁶ *Id.* at §2(a)(2).

¹⁴⁷ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 116.

¹⁴⁸ *Id.*

¹⁴⁹ Raymond F. Gregor, *supra* note 47, at 21.

¹⁵⁰ 42 U.S.C.A. § 2000e-2

¹⁵¹ Family and Medical Leave Act § 1

¹⁵² See California Fed. Sav. and Loan Ass'n v. Guerra, 479 U.S. 272 (1987); Young v. United Parcel Serv., Inc., 784 F.3d 192 (4th Cir. 2015); Chambers v. Omaha Girls Club, Inc., 834 F.2d 697 (8th Cir. 1987).

¹⁵³ Kristin Choo, *Justice Ginsburg Recalls Bias, Expresses Concerns*, Women's eNews, <http://womensenews.org/2000/11/justice-ginsburg-recalls-bias-expresses-concerns/> (November 20, 2000).

¹⁵⁴ Raymond F. Gregor, *supra* note 47, at 2-3.

¹⁵⁵ U.N. Dev. Programme, *supra* note 5, at 123.

¹⁵⁶ Laura Addati, Naomi Cassirer, Katherine Gilchrist, *supra* note 8, at 16.