

## NOTE

### A DIGRESSION IN OUR ADVANCING SOCIETY: A LACK OF PROTECTION AND CONSIDERATION FOR MODERN FAMILIES

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#### I. A THIRD-WORLD PROBLEM

For decades, work-life balance has been an ongoing issue with American families. Even with protections from federal and state laws, many mothers and fathers are still struggling with balancing work and family life. While there is legislation, parents are not guaranteed accommodations and job security while they request time off to meet the needs of their children. This issue has been prevalent for previous generations, but as new generations begin to enter into the workforce, there is a sense of disregard among young employees to want to make time for a balance between their work lives and personal lives. With recent declines in the job market and higher educational requirements by employers, Americans have been working harder by furthering their education and dedicating more time to pursue their careers.<sup>1</sup>

Even after entering into a career, there are difficulties that surface with being able to balance your career and work life. In a sense, taking time off from your career is almost discouraged and thoughts of anything outside of your career are deprioritized. For those daring enough to start a family, federal law does not provide accommodations necessary to guarantee job security. Not getting paid time off, time off, and job security are some of the many things that many future parents will have to contemplate before they can even plan for children. Becoming a parent should be an exciting and positive experience, but with these insecurities, it continues to be difficult for individuals to want to make anything other than their careers a priority. An employee's decision to be a parent should not be discouraged by the limitations from their employers in taking time off to

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1. Alexia Elejalde-Ruiz, *No College Degree? That's a Growing Hurdle to Getting Hired*. CHICAGO TRIBUNE (Mar. 19, 2016), <http://www.chicagotribune.com/business/ct-employers-raise-education-requirements-0320-biz-20160318-story.html> [<https://perma.cc/5PDD-F957>].

prepare for the process. Many countries have attempted to remedy this issue by establishing legislation that guarantees mothers and fathers parental leave and paid parental leave.<sup>2</sup> As one of the most developed countries in the world, the United States does not guarantee paid parental leave for mothers and fathers.<sup>3</sup> Specifically, the United States is one of four countries out of the world's 196 that does not have a federally mandated policy giving new parents paid time off.<sup>4</sup>



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Currently, the Family Medical Leave Act (FMLA) guarantees parents twelve weeks of unpaid leave after birth or adoption.<sup>6</sup> The FMLA also guarantees an employee the same job or “equivalent job” upon return.<sup>7</sup> An employee’s job is not secured, since the employee’s actual job prior to the leave is not guaranteed.<sup>8</sup> The

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2. Gretchen Livingston, *Among 41 Nations, U.S. is the Outlier When it Comes to Paid Parental Leave*, PEW RES. CTR. (Sept. 16, 2016), <http://www.pewresearch.org/fact-tank/2016/09/26/u-s-lacks-mandated-paid-parental-leave/> [<https://perma.cc/B87Z-LH9E>].

3. *Id.*

4. Chris Weller, *These 10 Countries Have the Best Parental Leave Policies in the World*, BUS. INSIDER (Aug. 22, 2016), <http://www.businessinsider.com/countries-with-best-parental-leave-2016-8> [<https://perma.cc/4DSA-ZJZK>].

5. Jessica Deahl, *Countries Around the World Beat the U.S. On Paid Parental Leave*, NPR (Oct. 6, 2016), <http://www.npr.org/2016/10/06/495839588/countries-around-the-world-beat-the-u-s-on-paid-parental-leave> [<https://perma.cc/MA4H-5348>].

6. Family Medical Leave Act (FMLA) of 1993, 29 U.S.C. § 2612(a)(1) (2006).

7. *The Employer’s Guide to the Family and Medical Leave Act*, WAGE AND HOUR DIVISION: U.S. DEP’T OF LAB., 64. <https://www.dol.gov/whd/fmla/employerguide.pdf> [<https://perma.cc/AGG9-M6HE>].

8. *Id.* at 64.

uncertainty with wages and lack of job security are dilemmas that new parents should not be concerned with.

The vagueness in the FMLA leaves the decisions to employers to apply the minimum requirements set out in the FMLA or expand on the requirements in their leave policies. Employers can “adopt, retain, or amend leave policies, including policies that provide more generous leave, as long as they comply with the FMLA.”<sup>9</sup> Because the FMLA only establishes a minimum requirement, the burden is on employers to provide leave policies.<sup>10</sup> This task creates inconsistencies in leave policies throughout employers in the United States and could be a detriment to an employer. In a sense, employers that have desirable leave policies will have better applicant pools of employees, since their leave policies would be more appealing to potential parents. Wouldn’t all employers want to have desirable leave policies then? Since there isn’t a federal mandate requiring paid parental leave, employers don’t have to extend their policies as long as they meet the FMLA minimum standards. Even with this mandate, it is estimated that only “12 percent of U.S. private sector employees have access to paid family leave through their employer.”<sup>11</sup>

Additionally, employees tend to underutilize FMLA leave because it is unpaid.<sup>12</sup> According to the U.S. Department of Labor’s 2012 surveys, workers’ inability to afford unpaid leave is the most common reason for not taking leave; specifically, 46 percent of those who were eligible for FMLA leave did not take it.<sup>13</sup> It was found that 62 percent of employees found it difficult to make ends meet during their time away from work.<sup>14</sup> Also, 50 percent of workers that received partial to no pay took short leaves, since they could not afford to take more time off.<sup>15</sup>

The lack of specificity and clarity within current legislation also raises potential issues of discrimination and confirming outdated stereotypes. Traditional family styles place women as the primary caregivers for children and men as the breadwinners.<sup>16</sup> However, these traditional notions have changed as society has evolved. According to the U.S. Department of Labor, 70 percent of

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9. *Id.* at 70.

10. Weller, *supra* note 4.

11. *DOL Factsheet: Paid Family and Medical Leave*, U.S. DEP’T OF LAB. (2015), <https://www.dol.gov/wb/paidleave/PDF/PaidLeave.pdf> [<https://perma.cc/34SB-URF3>].

12. Julie C. Suk, *Are Gender Stereotypes Bad for Women? Rethinking Discrimination Law and Work-Family Conflict*, 110 COLUM. L. REV. 1 (2010).

13. *A Look at the U.S. Department of Labor’s 2012 Family and Medical Leave Act Employee and Worksite Surveys*, NAT’L P’SHIP FOR WOMEN & FAMILIES 2 (2013), <http://www.nationalpartnership.org/research-library/work-family/fmla/dol-fmla-survey-key-findings-2012.pdf> [<https://perma.cc/NNS7-NFE7>].

14. *Id.*

15. *Id.*

16. Kerry Anne Hoffman, *The Work/Family Balance: New York’s Struggle to Harmonize Domestic and Employment Spheres*, 16 CARDOZO J.L. & GENDER 93, 94 (2009).

women with children under the age of 18 participate in the workforce.<sup>17</sup> With more women entering the workforce, traditional gender roles have shifted since both mothers and fathers are working and typical parental roles must be reevaluated. Working women who are mothers tend to face more challenges from their employers and co-workers.<sup>18</sup> Some women are faced with difficult work environments that do not offer flexible scheduling or options that would make employment more viable during motherhood.<sup>19</sup> Many fathers are placed in the same position. The FMLA no longer provides the necessary support for modern American families, which “encompass several models for parenting, including single parents, same-sex parents, adoptive parents, and other less traditional structures.”<sup>20</sup> Specifically, with same-sex parents, the traditional family structure of having a mother and a father is outdated. With single parents, one parent has the potential of a greater risk of financial hardship since there is only one income stream.

With the lack in a federal mandate to ensure paid parental leave, the United States falls into the minority of countries that don't have an interest in maintaining work-life balance for their employees.<sup>21</sup> Countries, such as the United Kingdom, France, Australia, and the Netherlands, have implemented laws to guarantee paid parental leave for both mothers and fathers and to ease some of the burdens of parenting while working.<sup>22</sup> In light of the laws set by other countries, the United States should follow suit and revisit the Family Medical Leave Act to extend requirements to accommodate the needs and challenges that plague modern families. An important and necessary accommodation would include provisions guaranteeing paid time off to working parents to ease financial burdens and ensure better child development. This initiative is imperative for the United States to continue to be a progressive nation within the employment law realm and to improve work-life balance. Ultimately, revisions and amendments with the current laws will ease many of the burdens future working parents will encounter, improve work-life balance efforts, and aid Americans in living their lives as working parents.

This Note will further discuss the importance of attaining paid parental leave and possible resolutions to achieve this initiative. Section II will discuss current legislation and the flaws associated with them. In Section II, subsection A, this Note will discuss the discrimination and stereotyping that mothers and fathers experience from employers because of the lack of support from the federal law. In subsection B, this Note will discuss how employers are affected and the labor

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17. *Data & Statistics: Women in the Labor Force*, U.S. DEP'T OF LAB., [https://www.dol.gov/wb/stats/stats\\_data.htm](https://www.dol.gov/wb/stats/stats_data.htm) [<https://perma.cc/SG63-B5CA>].

18. Rania Stewart, *The Right Ways to Keep Mothers in The Workforce*, FORBES (Jan. 29, 2013), <http://www.forbes.com/sites/forbeswomanfiles/2013/01/29/the-right-ways-to-keep-mothers-in-the-workforce/#7671d2209f93>.

19. *Id.*

20. Hoffman, *supra* note 16, at 94.

21. Livingston, *supra* note 2.

22. *Id.*

market. Following that discussion, Section III will analyze current states and employers that have taken an initiative to create more viable policies for working parents. These states include California, New Jersey, Rhode Island, and New York. Section IV will then discuss the current policies of other countries that have adopted federal mandates for paid parental leave, such as Sweden. In Section V, this Note will reiterate the importance of this issue and the need for a federal mandate in a suggested reform plan. It will look at two concerns and solutions that will decrease the amount of possible pushback from critics. Lastly, Sections VI, VII, VIII, and IX, address the main positive outcomes and areas that are positively affected by paid parental leave.

## II. CURRENT LEGISLATION IN THE UNITED STATES

The Family and Medical Leave Act of 1993 was an attempt to meet the “demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.”<sup>23</sup> Further, the FMLA allows employees to take reasonable leave for medical reasons, for the birth or adoption of a child, as well as to protect employees’ Equal Protection Rights from the Fourteenth Amendment and minimize potential employment discrimination.<sup>24</sup> Specifically, employees are allotted twelve weeks of unpaid leave each year.<sup>25</sup> The “Findings” section of the Act addresses Congress’ findings on the matter and states:

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly; (2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions; (3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting; (4) there is inadequate job security for employees who have serious health conditions that prevent them from working temporary periods; (5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working live of men; (6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.<sup>26</sup>

Even with this language in the statute, there is not a distinction between maternal and paternal leave. There is also a discrepancy, since the same amount

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23. FMLA, 29 U.S.C.A § 2601 (2008).

24. *Id.*

25. *Id.*

26. *Id.*

of time off is given for an employee's own medical illness and parental leave.<sup>27</sup> There are still constraints for employees, since there are not specific distinctions. It also presents issues with inflexibility and being limited, since the requirements set out in the statute excludes many employees from being eligible for FMLA leave. To be eligible, an employee must have worked for their employer for at least twelve months with at least 1,250 hours over the past twelve months, and work at a location where the company employs fifty or more employees within 75 miles.<sup>28</sup> Even if an employee is eligible to FMLA leave, many do not take the time off or shorten their time because of the fact that it is unpaid. Sixty-two percent of employees have reported that taking leave without pay resulted in financial difficulties, and 30 percent reported that it was very difficult.<sup>29</sup> Eighty-four percent of employees reported that they have to limit their spending and 48 percent reported having to use their savings.<sup>30</sup> Thirty percent of employees resorted to borrowing money and 15 percent had to go to public assistance.<sup>31</sup> In addition, 31 percent of employees admitting to cutting their leave time short because of financial strains of reduced pay or no pay.<sup>32</sup>

#### *A. Issues with Gender Discrimination and Employer Discrimination*

At the time of its enactment, the Act supported the idea that because women gave birth and are given the primary role as caretaker, they should be guaranteed twelve weeks of work leave.<sup>33</sup> This view exemplifies the stereotypical gender role of women and men. In today's society, women and men are engaging more in the workforce and traditional notions of gender roles have evolved. More women are entering the workforce as more men are taking on household responsibilities. Even though society has evolved, traditional notions of gender responsibilities are still prevalent within society and have lead to discrimination within the workforce. It was found that in almost half of two-parent households, both parents work full-time and in 40 percent of all families with children, the mothers are the sole or primary providers.<sup>34</sup> In *Nevada Dept. of Human Resources v. Hibbs*, the Supreme Court of the United States stated:

Stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. Because employers continued to regard the family as the woman's domain, they often denied men similar accommodations or discouraged them from taking leave. These mutually reinforcing stereotypes created

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27. Suk, *supra* note 12, at 7.

28. *FMLA: Family & Medical Leave*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/topic/workhours/fmla>.

29. *Id.*

30. *Id.*

31. *Id.*

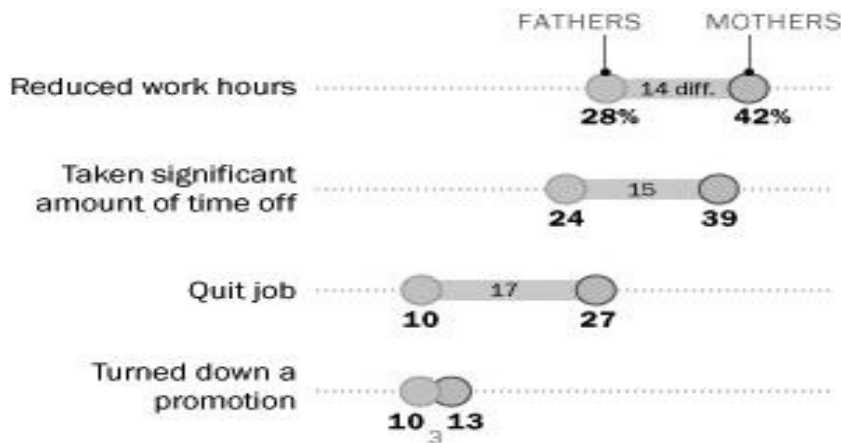
32. *Id.*

33. Suk, *supra* note 12, at 7

34. Livingston, *supra* note 2.

a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver, and fostered employers' stereotypical views about women's commitment to work and their value as employees.<sup>35</sup>

According to the Bureau of Labor Statistics, in 2015, 64 percent of mothers with children younger than six are in the work force and 72 percent of those mothers work full time.<sup>36</sup> Additionally, the Pew Research Center conducted a survey in 2013 of mothers and fathers that experience career interruptions.<sup>37</sup> In regards to reduced hours, 42 percent of mothers reported that they had to reduce their work hours in order to provide childcare or care for a family member during a point in their career.<sup>38</sup> It was reported that those who took a significant amount of time off from work hurt their professional career.<sup>39</sup>



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With women making more adjustments to their work life than men, protected maternity leave is as imperative as ever to allow women to accomplish better work-life balance and to allow women to continue with economic growth.<sup>41</sup>

Where it was not common a decade ago, there has been a higher rate of stay-at-home fathers.<sup>42</sup> “The stereotypes can take many forms: That women who get

35. Julia Campins, *Modern Accommodation*, 44 LAW & EMP. L.: A.B.A. 3 (2006).

36. Kim Parker, *Women More than Men Adjust Their Careers for Family Life*. PEW RES. CTR. (October 1, 2015), <http://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life/>.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. Parker, *supra* note 36.

42. Jessica Dickler, *Stay-at-home Dads: More Men Choosing Kids over Career*, CNN:

pregnant will not or should not want to return to work. That women who return to work will not have the time to do the job right. That men who care for children aren't real men."<sup>43</sup> With the change in society, the need for fathers to be more involved with the caretaking of their children has only evolved. If anything, it is desired more in our society today. "Employed men in the United States are reporting higher levels of conflict between their work and family obligations than in the past. They even report higher levels of conflict than women. And men express increasing interest in becoming more involved in their children's lives."<sup>44</sup> By not guaranteeing paternity leave, fathers have been unable to contribute as much as they should be. Without enforceable public policies, men are unable to take leave to care for their children, which fuels the conflict between work and caregiving responsibilities.<sup>45</sup> The study also analyzes that when fathers take leave after a child's birth, they are more likely to be involved in the direct care of their children long term.<sup>46</sup>

Another study of U.S. families shows that fathers who took two or more weeks off after the birth of their children were involved in the direct care of their children at higher rates nine months later than fathers who took no leave.<sup>47</sup> It is imperative, now more than ever, that fathers hold importance to the development of their children and should be allotted the necessary time to spend with their children. "Studies have shown that dad's involvement is just as important to a child's cognitive and social development as the impact of mom," Dr. Jody Heymann, co-author of "Raising the Global Floor: Dismantling the Myth That We Can't Afford Good Working Conditions for Everyone," told *National Geographic* in 2010.<sup>48</sup> Heymann explained that when fathers take time off work when babies are born, children fare better developmentally and mothers are less likely to suffer from depression.<sup>49</sup> A recent video was released by *attn.*, an online forum that provides video commentary on several news topics, discusses the urge for reform to include parental leave.<sup>50</sup> The commentators in the video discuss how important it is within the first couple months of a child to have both parents there.<sup>51</sup> They also discuss the societal importance of guaranteeing paternity leave

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MONEY (April 30, 2012), <http://money.cnn.com/2012/04/30/pf/stay-at-home-dad/>.

43. Campins, *supra* note 35, at 3.

44. *Dads Expect Better: Top States for New Dads*, NAT'L PARTNERSHIP FOR WOMEN & FAM., 2 (2012), [http://go.nationalpartnership.org/site/DocServer/Dads\\_Expect\\_Better\\_June\\_2012.pdf?docID=10581](http://go.nationalpartnership.org/site/DocServer/Dads_Expect_Better_June_2012.pdf?docID=10581).

45. *Id.*

46. *Id.* at 5.

47. *Id.* at 3.

48. Jessica Samakow, *Best and Worst States for Working Mothers: A State-by-State Analysis*, HUFFINGTON POST (May 11, 2012), [http://www.huffingtonpost.com/2012/06/18/paternity-leave-states\\_n\\_1600472.html](http://www.huffingtonpost.com/2012/06/18/paternity-leave-states_n_1600472.html).

49. *Id.*

50. ATTN.; *Taking Care of a Child isn't Just a Woman's Job*, YOUTUBE (Sept. 22, 2016), <https://www.youtube.com/watch?v=LKv6Ad94qGA>.

51. *Id.*



as well.<sup>52</sup> If the federal law were to guarantee leave for fathers, more fathers could be inclined to take leave.<sup>53</sup> This ripple effect could be monumental for setting the new norm for fathers to be more involved with their children.

The equal protection rights of transgender and homosexual individuals has been a contested topic in our society. The extension of rights also blurs the lines of traditional gender roles. The current Act does not support the extension of these rights. Within a homosexual relationship, it would be unreasonable to ask individuals to identify as the mother or father of a child. Specifically, with homosexual male couples, neither parent would be guaranteed time off if they both identified as a child's father. Within transgender relationships, it would be unfair to make these individuals identify with a gender if they are technically considered both or in the process of transitioning. The current situation forces individuals to identify with a gender to be able to claim the protections under the Family and Medical Leave Act.

Even with FMLA protections, workers are still hesitant to request time off.<sup>54</sup> With the increase in workforce participation, there has been more pressure from employers to contribute more time to work, which creates a culture where employees should not take time off or prioritize family.<sup>55</sup> According to David Ballard, assistant executive director for organizational excellence at the American Psychological Association, "if what's available conflicts with the culture of the organization, people are going to feel uncomfortable using it."<sup>56</sup> This type of culture can be known as "work-only" culture.<sup>57</sup> The negative connotations employees focus on are centered around the fear that taking time off would negatively reflect on their commitment to their employer.<sup>58</sup> The "stigma" around taking time off is predominant within the American workforce and is exhibited when employees sustain career penalties.<sup>59</sup> Even with FMLA protections, an employee's position is not fully protected, which could add to an employee's hesitation to take time off. In addition to the fear of career penalties, employees also face stresses that come with taking time off, such as an accumulation of work and catching up on work.<sup>60</sup> These fears and concerns play a significant role in affecting work-life balance. The Organisation for Economic Co-operation and Development (OECD) is a council of many nations with a focus on helping member nations develop economic growth and social development.<sup>61</sup> In 2011, the

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52. *Id.*

53. *Id.*

54. Kimberly Leonard, *Employees Tend Not to Use Generous Benefits*, U.S. NEWS (Sept. 4, 2015), <https://www.usnews.com/news/articles/2015/09/04/americans-still-struggle-with-work-life-balance>.

55. *Id.*

56. *Id.*

57. *Id.*

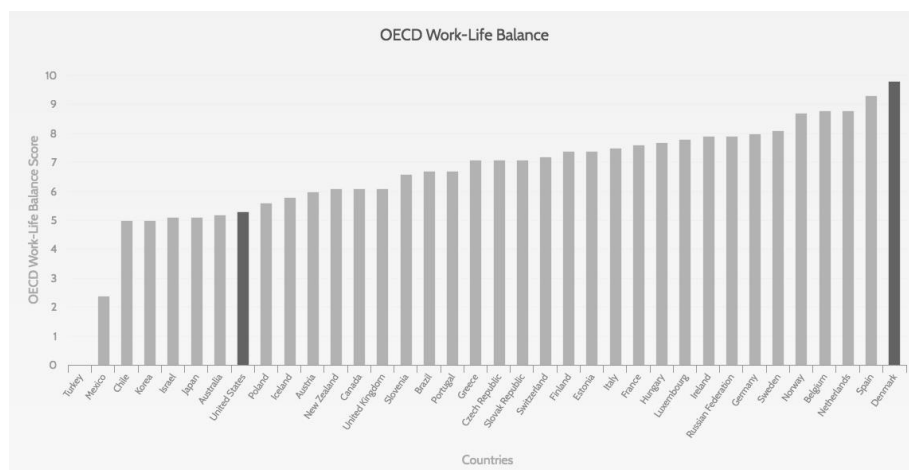
58. *Id.*

59. Leonard, *supra* note 54.

60. *Id.*

61. *About the OECD*, OECD, <http://www.oecd.org/about/>.

OECD created a Better Life Index to measure the quality of life in member nations.<sup>62</sup> In 2015, the United States ranked low on work-life balance, scoring 29<sup>th</sup> out of the 36 nations surveyed.<sup>63</sup> Other nations, like those in Europe, rank higher in work-life balance and offer protections such as flexible work hours, paid parental leave, and universal childcare.<sup>64</sup> It is observed that the United States scored high among highest income and wealth, highest in housing conditions, jobs, and earnings, yet work-life balance suffers.<sup>65</sup>



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The OECD's assessment recommends several changes to better increase the quality of life for working families.<sup>67</sup> To aid working families to reduce poverty rates and strengthen services and benefits for children, the OECD suggests the United States pass legislation on paid parental leave and build on child education and care services.<sup>68</sup> It is noted that laid leave is significant to benefit not only the well-being of children with working parents, but also the labor market.<sup>69</sup>

### *B. Effects on Labor Market*

There are also inconsistencies within the labor market as well. The Family Medical Leave Act requires all businesses to adopt the standards as a bare

62. Kristen Doerer, *U.S. Has a Lousy Work-life Balance*, PBS: NEWSHOUR (July 3, 2015), <http://www.pbs.org/newshour/updates/u-s-lousy-work-life-balance/>.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Work-Life Balance*, OECD: BETTER LIFE INDEX, <http://www.oecdbetterlifeindex.org/topics/work-life-balance/>.

68. *Id.*

69. *Id.*

minimum. “Seventy-seven percent of adults in the United States – including 70 percent of men and 83 percent of women who hold jobs – say they believe that businesses should be required to provide paid family and medical leave.<sup>70</sup> Nearly eight in 10 adults in the United States (78 percent) say that family and maternity leave is a ‘very important’ labor standard for workers.”<sup>71</sup> Although this is the regulation, many businesses have extended the standard on their own. Some businesses have adopted their own policies to include paternal leave as well as paid parental leave. In August of 2015, Netflix allowed new mothers and fathers to take off as much as they needed during the first year after their child’s birth or adoption.<sup>72</sup> Employees at the Bill & Melinda Gates Foundation can take up to one year of paid time off with their child after birth or adoption.<sup>73</sup> Another company, Etsy, allows employees up to 26 weeks of fully paid leave that can be allotted over two years following the birth or adoption of their child.<sup>74</sup>

The OECD also discussed the importance of work retention among parents.<sup>75</sup> It is vital that mother’s return to work to create economic stability in the United States.<sup>76</sup> The OECD assessed the decline in female employment, despite the increase in career prospects for women.<sup>77</sup> The correlation is evident between employment and economic stability within the United States.<sup>78</sup> Paid parental leave would allow new mothers better job security and allow mothers to return to work, which ultimately contributes to economic stability.<sup>79</sup>

Because of the laissez faire economy, it is left to businesses to make their own decisions regarding this matter. Should it be left up to capitalism? Certain issues arise when it comes to the free market. There could be competition when it comes to hiring individuals, because businesses with expanded parental policies will have preference since they will attract more candidates. Even though this is fair competition within business markets, all businesses should be held to a minimum standard that encompasses both parents. There is something to be said that some businesses are more progressive than others when it comes to public policy. As one nation, there should be a sense of uniformity when it comes to equal protection under the laws.

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70. *The Need for Paid Family Leave*, A BETTER BALANCE, <http://www.abetterbalance.org/web/ourissues/familyleave>.

71. *Id.*

72. Rachel Gillett, *19 Companies that Offer Some of the Best Parental Leave Policies in America*, BUSINESS INSIDER (May 7, 2016), <http://www.businessinsider.com/the-best-parental-leave-policies-in-america-2016-5>.

73. *Id.*

74. *Id.*

75. *Work-Life Balance*, *supra* note 67.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

## III. CURRENT STATES AND COMPANIES EXPANDING ON LEAVE POLICIES

National Partnership for Women & Families conducted a state-by-state analysis of current policies that are beneficial to working parents.<sup>80</sup> This grading system looked at current policies and allotted points if the state contained certain provisions in their leave policies. The points encompassed: Paid family leave insurance laws that apply to men and women (30 points), Paid sick leave laws that make paid sick days available to men and women (15 points), Family leave laws that offer a longer period of unpaid, job-protected family leave than the FMLA (10 points), Family leave laws that offer a longer period of unpaid, job-protected family leave than the FMLA (10 points), Family leave laws that make unpaid, job-protected family leave available to workers in businesses that have fewer than 50 employees (not currently covered by the FMLA) (10 points), Family leave laws that make unpaid, job-protected family leave available to employees who have worked fewer than 1,250 hours in the previous year (required by the FMLA) (10 points), Family leave laws that permit workers to take leave to care for the children of domestic or civil union partners or same-sex spouses (10 points), and Flexible use of sick leave so that workers who earn paid sick days from their employers can use that time to care for family members (15 points).<sup>81</sup>

From the analysis, numerous states received a variation of scores and grades. For instance, the District of Columbia implemented laws that include six of seven possible policies to help new fathers and mothers by expanding FMLA access to workers in smaller businesses and those with less time on the job and offering a longer period of FMLA leave.<sup>82</sup> The District of Columbia also enacted the nation's second paid sick leave law.<sup>83</sup> California created the nation's first family leave insurance law and permits workers to take unpaid family leave to care for the child of a domestic partner.<sup>84</sup> California also guarantees "flexible" use of sick leave to allow workers who earn sick leave through their employers to use that leave to care for an ill child or spouse.<sup>85</sup> Overall, only six states received a "B" grading or higher.<sup>86</sup> This analysis shows the need for reform and for states to expand on paid family leave. According to the parental leave advocacy group, MomsRising, only 13 percent of people in the U.S. have access to paid family leave.<sup>87</sup> Of newly employed mothers, 33 percent take no formal time off, according to the National Center for Health Statistics.<sup>88</sup>

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80. *Expecting Better: A State-by-State Analysis of Laws That Help Expecting and New Parents*, NAT'L P'SHIP FOR WOMEN & FAM., 4th ed. (2016), <http://www.nationalpartnership.org/research-library/work-family/expecting-better-2016.pdf>.

81. *Id.*

82. *Id.* at 5.

83. *Id.*

84. *Expecting Better*, *supra* note 80.

85. *Id.*

86. Samakow, *supra* note 48.

87. *Id.*

88. Megan Holohan, *The Problem with Parental Leave in the US and How Other Policies*

### *A. California's Paid Leave Policy*

California, New Jersey, and Rhode Island are three states that have taken the initiative to mandate paid maternity leave.<sup>89</sup> In 2002, California became the first state to create the Paid Family Leave program (PFL).<sup>90</sup> PFL is a family leave insurance program that “provides income replacement to eligible workers for family caregiving or bonding with a new child.”<sup>91</sup> Employees are eligible for PFL if they pay into the State Disability Insurance (SDI) program and need to take leave to bond with a newborn baby, newly adopted or foster child, or to care for a parent, child, spouse, or registered domestic partner with a serious health condition.<sup>92</sup> Employees may receive up to six weeks of leave and receive up to 55 percent of their weekly wages up to a maximum weekly benefit amount.<sup>93</sup> One flaw is that PFL does not have any provisions on job protection and recommends for employees to also apply for FMLA leave to have a better sense of job security.<sup>94</sup> The program specifically given to mother is the Pregnancy Disability Leave (PDL) that gives employed women the right to take job-protected unpaid leave for a pregnancy-related condition.<sup>95</sup> Pregnant employees are eligible if they are disabled due to pregnancy, childbirth, or related medical conditions and work for an employer who employs at least five employees.<sup>96</sup> Eligible employees are given up to four months of leave and employers must make reasonable accommodations at work.<sup>97</sup> Even though it is unpaid, this policy emphasizes the importance of motherhood and how women deserve the necessary accommodations in order to go through pregnancy.

### *B. New Jersey's Paid Leave Policy*

In 2009, New Jersey passed a state law guaranteeing paid family leave.<sup>98</sup> The State passed the Family Leave Insurance, which allows employees to bond with a *newborn* child during the first 12 months after the child's birth and 12 months

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*Compare*, TODAY (Nov. 20, 2015), <http://www.today.com/health/problem-parental-leave-u-s-t38701>.

89. *Id.*

90. *What is Paid Family Leave?*, PAID FAMILY LEAVE CALIFORNIA: CALIFORNIA WORK & FAMILY COALITION, <http://paidfamilyleave.org/ask-us/what-is-paid-family-leave>.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Know Your Rights! Family Leave Laws in California*, CAL. WORK & FAM. COAL. 6 (2013), <https://las-elc.org/sites/default/files/media/LPWF-Know-Your-Rights.pdf>.

95. *Id.*

96. *Id.*

97. *Id.*

98. Susan K. Livio, *You Probably Don't Know N.J. Allows Paid Family Leave, Study Says*, NJ.COM (Mar. 30, 2016), [http://www.nj.com/politics/index.ssf/2016/03/paid\\_family\\_leave\\_law\\_works\\_but\\_few\\_know\\_about\\_it.html](http://www.nj.com/politics/index.ssf/2016/03/paid_family_leave_law_works_but_few_know_about_it.html).

after an adopted child's placement.<sup>99</sup> To be eligible, employees must have either worked twenty calendar weeks in a year earning \$168 or more in a week, or earned \$8,400 or more during the base year.<sup>100</sup> The program requires a distinction from employees who wish to submit a claim to differentiate the type of leave from "bonding" or "care of a seriously ill family member."<sup>101</sup> If eligible, employees may receive six weeks of Family Leave benefits, which benefit amounts vary depending on the employee's weekly wages with a daily benefit rate at one-seventh of the weekly benefit rate.<sup>102</sup> Similar to California's Paid Family Leave program, those who choose to claim this insurance are not guaranteed job protection.<sup>103</sup> If an employee's employer subject to FMLA, then the employee is recommended to apply for FMLA leave as well.<sup>104</sup> Unlike California, this program still allows employers to regulate paid time off by requiring an employee to use additional sick leave, vacation time, or other paid time off.<sup>105</sup> Even with this program, the requirements and benefits seem to be somewhat detrimental and not as viable for employees.

### *C. Rhode Island's Paid Leave Policy*

Similar to New Jersey, Rhode Island passed the Temporary Caregiver Insurance (TCI) that gives protection to employees that pay into an insurance pool.<sup>106</sup> Eligible employees are allotted four weeks of paid leave with 4.62 percent of wages in the highest earning quarter of the base year up to a cap of \$817 per week.<sup>107</sup> Unlike California and New Jersey, TCI provides protections to job security of all employees that take leave for a new child, to care for a seriously ill family member, or personal illness.<sup>108</sup> It permits employees to take up to four weeks of paid leave with job protections during the time off.<sup>109</sup> This distinction is particularly important, since it expands on the initiative further by providing job protections. It requires that an employee is restored to the position the

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99. Div. Temporary Disability Ins., *Your Guide to Family Leave Insurance in New Jersey*, N.J. DEP'T OF LAB. [http://lwd.dol.state.nj.us/labor/forms\\_pdfs/tdi/WPR-119%20\(1-16\).pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WPR-119%20(1-16).pdf).

100. *Id.* at 2.

101. *Family Leave Insurance*, N.J. DEP'T OF LAB., <http://lwd.dol.state.nj.us/labor/fli/fliindex.html>.

102. *Id.*

103. *Id.* at 1.

104. *Id.*

105. *Id.*

106. Ellen Bravo, *Rhode Island Becomes the Third State with Paid Family Leave*, FAM. VALUES AT WORK (July 3, 2013), <http://familyvaluesatwork.org/blog/family-values-at-work/rhode-island-poised-to-be-third-state-with-paid-family-leave>.

107. *Overview of Paid Family Leave Laws in the United States*, A BETTER BALANCE (Sept. 21, 2016), [http://www.abetterbalance.org/web/images/stories/Documents/familyleave/fact\\_sheets/familyleavechart.pdf](http://www.abetterbalance.org/web/images/stories/Documents/familyleave/fact_sheets/familyleavechart.pdf).

108. Bravo, *supra* note 106.

109. R.I. GEN. L. § 28-41-35.

employee held before leave or to a comparable position.<sup>110</sup>

#### *D. New York's Paid Leave Policy*

New York is at the forefront of this movement with the most progressive mandate out of the other states. The program allows employees to take up to eight weeks of paid time off and will cover 50 percent of an employee's average pay.<sup>111</sup> Upon full implementation, the policy will expand to twelve weeks of leave with 67 percent of an employee's average weekly wages covered.<sup>112</sup> Prior to the state mandate, New York City passed the Paid Parental Leave Personnel Order, which provides employees up to six weeks of paid leave for maternity, paternity, adoption, or foster care leave.<sup>113</sup> Employees will receive up to 100 percent of salary compensation.<sup>114</sup> This makes New York City the most generous out of state and city policies in the United States.<sup>115</sup>

With all the different variations of paid leave mandates established by states and cities, some states seem more favorable in terms of leave policies. Washington has also passed a law in 2006 that guarantees five weeks of paid leave, but without a clear funding route, implementation has not begun.<sup>116</sup> These cities and states present the possibility of viable legislation that could expand the federal law. With further insight on these established mandates, successful expansion and revision of current FMLA requirements could be achievable.

#### IV. OTHER COUNTRIES' PAID PARENTAL LEAVE POLICIES

There seems to be a consensus from numerous studies that the United States is behind in regards to establishing a federal mandate guaranteeing paid paternity leave. Other countries have varied paid parental leave programs with differences between specification to a certain parent, weeks allotted, and amount of wages covered.<sup>117</sup> Some countries only guarantee maternity leave, while others guarantee both paternal and maternal leave.<sup>118</sup> The amount of leave allotted varies from 84

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110. Bravo, *supra* note 106.

111. Rebecca Traister, *New York Just Created a Revolutionary New Family-Leave Policy*, NYMAG.COM (Apr. 1, 2016), <http://nymag.com/thecut/2016/03/new-york-revolutionary-family-leave-paid-time-off.html>.

112. Camilla Domonoske, *A Big Week for Parents: New York State, San Francisco Establish Paid-Leave Laws*, NPR (Apr. 6, 2016), <http://www.npr.org/sections/thetwo-way/2016/04/06/473226596/a-big-week-for-parents-new-york-state-san-francisco-establish-paid-leave-laws>.

113. *Mayor de Blasio Signs Paid Parental Leave Personnel Order for NYC Workers*, NYC.GOV (Jan. 7, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/025-16/mayor-de-blasio-signs-paid-parental-leave-personnel-order-nyc-workers#/0>.

114. *Id.*

115. *Id.*

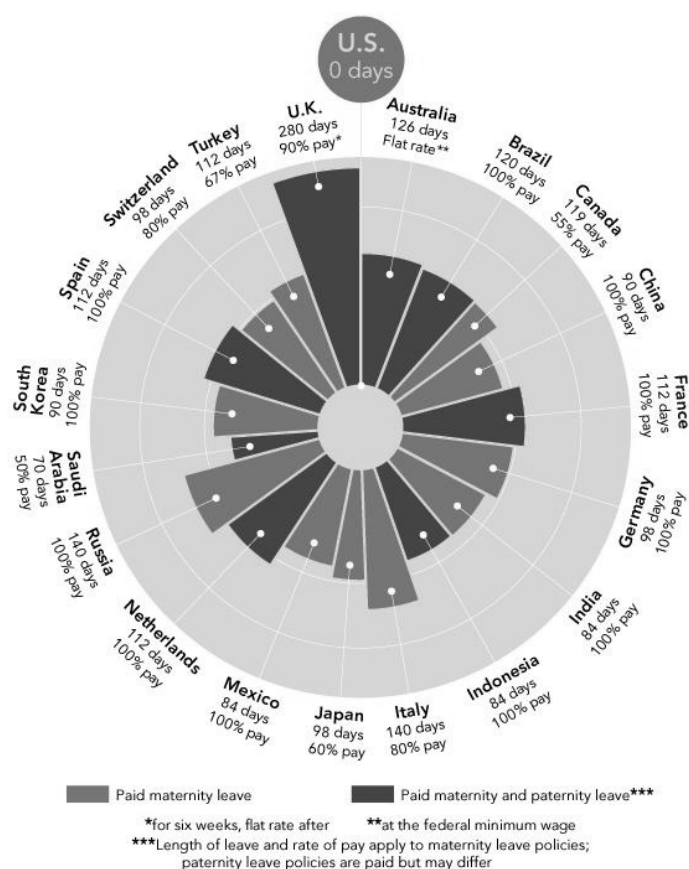
116. A BETTER BALANCE, *supra* note 107.

117. Katy Hall, *Paid Parental Leave: U.S. vs. The World*, HUFFINGTON POST (Feb. 21, 2013), [http://www.huffingtonpost.com/2013/02/04/maternity-leave-paid-parental-leave-\\_n\\_2617284.html](http://www.huffingtonpost.com/2013/02/04/maternity-leave-paid-parental-leave-_n_2617284.html).

118. *Id.*

days to 280 days of paid leave.<sup>119</sup> The percent of compensation during leave also varies from a flat rate to 100 percent of wages paid in full on leave.<sup>120</sup> Additionally, some countries lead the world in terms of how beneficial the policies are for working parents.

As shown below, the infographic exhibits the amount of days allotted by legislation for paid maternity and paid paternity leave, as well as, the rate of applicable pay under maternity leave policies. The data was gathered through a research study conducted by the International Labour Organization, which assessed the laws and practices of maternity and paternity leave across the world.<sup>121</sup>



119. *Id.*

120. *Id.*

121. *Maternity and Paternity at Work: Law and Practice Across the World*, INT'L LAB. ORG. (2014).[http://ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_242615.pdf](http://ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf).

122. *Id.*



Within the different paid leave policies, there are several variations of paid leave programs since these programs were implemented at different times with different goals for each of these countries.<sup>123</sup> For example, some programs were developed to increase the birth rates, to increase women's participation in the workforce, and in other countries, other specific reasons.<sup>124</sup> These policies and programs were also influenced by different social and economic circumstances upon their implementation.<sup>125</sup> This explains why some policies are more advanced than others. These international policies are commonly structured in three ways: employer required programs, social insurance programs, and publicly funded programs.<sup>126</sup> With the first model, international experience with maternity leave demonstrates that requiring employers to provide paid leave to mothers can have several negative results, especially with the lack of workplace protections.<sup>127</sup> With this model, employers are required to provide paid leave to their employees and must finance the leave themselves.<sup>128</sup> In countries where maternity leave is an employer mandate, employers are often less likely to hire, promote, and retain women employees.<sup>129</sup> Even with the potential for negative results, the positive effects outweigh the negative effects as shown by the countries discussed below.

#### A. Sweden

One of the most exemplified policies belongs to Sweden. Over forty years ago, Sweden became the first country in the world to introduce a gender-neutral paid parental-leave allowance.<sup>130</sup> This policy involved paying 90 percent of wages for 180 days per child, and parents were free to divvy up the days between them in whatever way they pleased.<sup>131</sup> Sweden's purpose at the time was to strategically increase the number of women in the workforce in the 1960s, during a time when other countries relied heavily on men.<sup>132</sup> But the policy was hardly a hit with dads; in the scheme's first year, men took only 0.5 percent of all paid parental leave.<sup>133</sup> During the implementation, Sweden had gone further than many countries, but still faced the traditional notion that women were supposed to take parental leave because their pay was lower and men were discouraged from

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123. Sarah Jane Glynn, *Administering Paid Family and Medical Leave*, CTR. AM. PROGRESS, 8 (Nov. 2015), <https://cdn.americanprogress.org/wp-content/uploads/2015/11/19060022/PaidLeaveProposal-report-11.19.15.pdf>.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Glynn, *supra* note 123, at 9.

129. *Id.* at 10.

130. INT'L LAB. ORG., *supra* note 121.

131. S.H., *Why Swedish Men Take so Much Paternity Leave*, ECONOMIST (Jul. 23, 2014), <http://www.economist.com/blogs/economist-explains/2014/07/economist-explains-15>.

132. Katrin Bennhold, *In Sweden, Men Can Have It All*, N.Y. TIMES (Jun. 9, 2010), <http://www.nytimes.com/2010/06/10/world/europe/10iht-sweden.html>.

133. S.H., *supra* note 131.

staying home with their baby.<sup>134</sup> To combat these traditional notions, Sweden introduced “daddy leave” in 1995, where fathers were encouraged to stay home and would lose one month of subsidies if he did not.<sup>135</sup> In 2002, an additional second nontransferable father month was implemented and proved to increase the number of men taking leave and the amount of time they take.<sup>136</sup> A study published by the Swedish Institute of Labor Market Policy Evaluation in 2010, showed that these daddy months made an impact in several areas.<sup>137</sup> For instance, it increased a mother’s future earnings to an average of seven percent for every month the father takes leave.<sup>138</sup>

To promote both parents to raise their children, Sweden has mandated that 60 of the 480 days be “daddy months” or “partner months.”<sup>139</sup> If the 60 daddy days are not used, they are lost, reducing the maximum leave to 420 days.<sup>140</sup> The country also created a “gender equality bonus”: the more days that parents share the leave equally, they get a bonus that could total up to €1,500, or \$1,649.<sup>141</sup> The policy was expanded in 2002 so that if each parent took at least two months’ leave, the family would get two extra months.<sup>142</sup> Some politicians now want to go further, proposing that the current system of shared leave be turned into one of individual entitlements, under which mothers should be allowed to take only half of the family’s total allowance, with the rest reserved for fathers.<sup>143</sup> Currently, Swedish parents are entitled to 480 days of paid parental leave, which 90 of these days are reserved for fathers.<sup>144</sup> The right to leave applies regardless of whether the parent takes out parental benefits or not.<sup>145</sup> Thereafter, the parent has the right to leave in connection with taking out parental benefits that he or she has left and temporary parental benefits to take care of a sick child.<sup>146</sup> The parent also has the right to shorten his or her working hours by up to one fourth of the normal working hours until the child has turned eight or until the child has finished the first year of school.<sup>147</sup>

Sweden features near the top of most gender-equality rankings.<sup>148</sup> Children

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134. Bennhold, *supra* note 132.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Michael Martinez, *Dads Cherish Sweden’s Parental Leave*, CNN (Apr. 5, 2015), <http://www.cnn.com/2015/04/05/living/cnnphotos-swedish-dads-parental-leave/>.

140. *Id.*

141. *Id.*

142. *Id.*

143. Bennhold, *supra* note 132.

144. *Quick Facts: Childcare, Equality*, SWEDEN, <https://sweden.se/quick-facts/parental-leave/#shortfact-parental-leave>.

145. S.H., *supra* note 131.

146. *Id.*

147. *Id.*

148. Bennhold, *supra* note 132.

have the right to both of their parents according to the UN Convention on the Rights of the Child, which Sweden signed in 1990.<sup>149</sup> If an employer makes it easier for their employees to share the responsibility for children, they become a more attractive employer.<sup>150</sup> The World Economic Forum rates Sweden as having one of the narrowest gender gaps in the world.<sup>151</sup> But Sweden is not only a good place to be a woman: it also appears to be an idyll for new fathers.<sup>152</sup> Close to 90 percent of Swedish fathers take paternity leave.<sup>153</sup> In 2013, some 340,000 fathers took a total of 12 million days' leave, equivalent to about seven weeks each.<sup>154</sup> Women take even more leave days to spend time with their children, but the gap is shrinking.<sup>155</sup> In reality, only 12 percent of Swedish couples equally share the 480 days of leave, Bavman said, with women continuing to lead the way as the stay-at-home parent and men as the careerist.<sup>156</sup>

Another benefit that parents are guaranteed is prenatal care. Expectant mothers receive prenatal care through free or subsidized courses that prepare them for motherhood.<sup>157</sup> Expecting mothers that work in physically strenuous jobs or risky work environments are entitled to additional pregnancy benefits that allow them to take time off work earlier during their pregnancy.<sup>158</sup> These benefits can be paid leave as early as sixty days into the pregnancy and up to eleven days before birth.<sup>159</sup> The amount paid during this leave is approximately 80 percent of the expecting mother's daily pay and is paid by the Swedish Social Insurance Agency.<sup>160</sup> As an added convenience, many Swedish hospitals have accommodations for new mothers and their partners to stay for two or three days after birth, meals included, and monitoring by nurses for the mothers and to provide postnatal care for newborns.<sup>161</sup>

Upon having children, the Swedish government provides an additional monthly child allowance until the child is sixteen years old.<sup>162</sup> This allowance is for parents to use to help with the costs of caring for their children.<sup>163</sup> With more than one child, the family could receive extra family supplement, which increases

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149. S.H., *supra* note 131.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. Lola Akinmade-Åkerström, *10 Things That Make Sweden Family-Friendly*, SWED. INST., <https://sweden.se/society/10-things-that-make-sweden-family-friendly/>.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

with each additional child.<sup>164</sup> Additionally, children can be sent to preschool at a subsidized price and families can choose to use their monthly child allowance to offset any costs.<sup>165</sup> Children from the age of six to nineteen can attend school free of charge with free lunches.<sup>166</sup>

Overall, with its vast array of coverage for parents and children, Sweden proves to maintain its title as a country that values family and work-life balance. Even though Swedish government differs from the United States, policymakers would benefit from assessing Sweden's laws and incorporating beneficial aspects to current U.S. laws. To achieve the coverage that Swedish parents are given, the United States should keep this as a future goal. To reach that goal, the United States must first begin with passing legislation to guarantee paid parental leave.

### *B. Adverse Policies*

Even though many developed countries have laws to protect working parents, traditional stereotypes and gender discrimination remains. In China, many mothers experience workplace discrimination after taking maternity leave despite laws that prohibit it.<sup>167</sup> "Although the labor law forbids the employer to fire female employees in one year after giving birth, the bosses can find ways to let the employee feel uncomfortable," says Meng Meng, a mother who lives in China.<sup>168</sup> Another mother, Lama Dossary of Saudi Arabia, discussed how taking paid leave changed how she was treated at work.<sup>169</sup> In Saudi Arabia, mothers receive ten weeks of paid time off, while fathers get three days.<sup>170</sup> "When I went back I did feel like it did affect how I was looked at, how I was treated," Dossary said.<sup>171</sup> She continued:

My promotions got stopped for a while. I wasn't given the same amount of work, I wasn't given the same amount of responsibility. I don't know how it would affect things, but I do think that maybe if other people were able to take such leave off — whether to take care of their older parents or a father maybe has to take some time off because he has a child that needs special care for a while — I think that would at least change the perception.<sup>172</sup>

Even with the protections of the laws, it is important that citizens are taught acceptance and the significance behind these laws. It is vital upon implementation that the laws are abided by for the purpose of the laws to be fulfilled. U.S. policymakers should look upon these countries to avoid the same trend and to

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164. *Id.*

165. *Id.*

166. *Id.*

167. Deahl, *supra* note 5.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

have a better understanding on creating and implementing a successful paid leave policy.

#### V. SUGGESTED REFORM PLAN

As the only developed country in the world that does not have legislation on paid paternity leave, the United States must take action to improve work-life balance for its citizens. It is also important to further develop legislation to insure citizens are receiving similar basic protections that other countries insure to their citizens.<sup>173</sup> Even with the implementation of the Family Medical Leave Act, there are restrictions that exempt citizens from being able to qualify for leave.<sup>174</sup> For example, to qualify, the employee's place of employment must have fifty employees and the employee must work at least twenty-five hours a week.<sup>175</sup> With the ongoing demand for reform from the evolving workforce, it is imperative that FMLA be expanded or create a paid leave program to make it easier for employees to access leave, to develop a system to fund paid leave, to positively influence economic growth, to better the physical and mental health of employees, and to create more equality between genders.

In a literature review conducted for the development of a paid leave policy for the District of Columbia, it analyzes several studies that have looked at paid leave policies that have been implemented by California and New Jersey.<sup>176</sup> Through this review, three main themes have been discussed: access to employees, employer benefits, and the overall improvement to mental and physical health of employees with paid leave.<sup>177</sup> Overall, the consensus is that there is a positive result with these policies and proven with data conducted within these states. Still, there are critics that are mainly concerned with how employees don't even utilize leave now and how it is a large burden on employers. The wide range of studies is proven to be beneficial in all these categories and can be influential models in creating a paid leave program. It is important to discuss these concerns to better develop current policies and to aid in developing a sufficient national paid leave program.

#### *A. Concern #1: Utilization and Access to Employees*

The first concern would encompass the limited utilization and access that employees encounter. Data collected in California revealed that some employees with the greatest need for paid leave are either not using it or do not have access

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173. Rebecca J. Rosen, *How Can the U.S. Make Life Less Draining for Workers?*, ATLANTIC (Mar. 23, 2016), <https://www.theatlantic.com/business/archive/2016/03/work-life-balance/474255/>.

174. *Id.*

175. Jennifer Ludden, *FMLA Not Really Working for Many Employees*, NPR (Feb. 5, 2013), <http://www.npr.org/2013/02/05/171078451/fmla-not-really-working-for-many-employees>.

176. Devin Rae McBrayer, *Paid Family and Medical Leave: Research and Lessons for the District of Columbia*, INST. WOMEN'S POL'Y RES. 1,1 (2015), <https://www.dol.gov/wb/media/DC%20Paid%20Leave%20Literature%20Reviews.pdf>.

177. *Id.* at 8.

to it.<sup>178</sup> Low-income employees and part-time employee were less likely to have access to either paid or unpaid leave because of the lack of policy.<sup>179</sup> Additionally, researchers found lower than expected utilization of paid leave among primary caregivers and parents of children with special healthcare needs.<sup>180</sup> A notable difference is between primary caregivers and secondary caregivers. Primary caregiver is defined as the parent with more childcare responsibilities, where the secondary has less childcare responsibilities.<sup>181</sup> One study found that primary care providers have less access to paid leave than secondary care providers because of gender and employment differences.<sup>182</sup> Another study revealed that some parents are not utilizing the benefit at the same rate as other parents, which suggests gaps in accessibility or coverage.<sup>183</sup> Specifically, parents of children with special health care needs polled were less likely to be aware of their paid leave benefit.<sup>184</sup> Parents that did indicate awareness of the benefit also reported that it was difficult to apply for or to utilize paid leave.<sup>185</sup> Most of the parents of children with special healthcare needs expressed the need for parents to have better assistance with understanding how the program works, either through their employers or health care service providers.<sup>186</sup> It was also discovered that even when employees were aware of the program, they believed the process to be confusing and difficult to navigate.<sup>187</sup> Employers polled in California also found the policy difficult to navigate and implement, but strongly supported the policies.<sup>188</sup> Similar in New Jersey, increased awareness and utilization was an issue.<sup>189</sup> A poll that was taken in August of 2012 found that after three years after the paid leave policy went into effect, less than half were not aware of its existence or whether they would benefit from it.<sup>190</sup>

### *B. Solution: Education Plan*

In December 2013, Congress introduced the FAMILY Act, which acts as a

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178. *Id.* at 6.

179. *Id.*

180. *Id.*

181. *Id.*

182. Paul J. Chung et al., *Access to Leave Benefits for Primary Caregivers of Children with Special Health Care Needs: A Double Bind*, ACAD. PEDIATRICS 222, 222-228 (2013).

183. McBrayer, *supra* note 176, at 6.

184. *Id.*

185. *Id.*

186. *Id.* at 7.

187. *Id.*

188. Deanna S. Gomby & Dow-Jane Pei, *Newborn Family Leave: Effects on Children, Parents, and Business*, DAVID & LUCILE PACKARD FOUND. (2009).

189. McBrayer, *supra* note 176, at 7.

190. Linda Houser & Karen White, *Awareness of New Jersey's Family Leave Insurance Program Is Low, Even as Public Support Remains High and Need Persists*, RUTGERS CTR. WOMEN & WORK 1, 7 (Oct. 2012).

more thorough mandate than the FMLA.<sup>191</sup> Similar to the mandates passed by the California, New Jersey, and Rhode Island, this legislation would create an insurance fund to insure employees receive paid parental leave.<sup>192</sup> In regards to easier access for employees, the legislation proposed coverage for employees in all companies, regardless of the size.<sup>193</sup> It would allow younger, part-time, lower-wage, and contingent workers to be eligible for coverage and benefits.<sup>194</sup> In today's workforce, some workers are holding more than one job to support their lifestyles. With the time requirement that employees must work at least twenty-five hours to qualify for leave, many workers are exempt because of the status of their employment, either being part-time, or because they hold multiple jobs.<sup>195</sup> This addition to the mandate ensures that regardless of the number of hours a person works and the size of their place of employment, they would still be able to have paid leave if needed.

Even with the development of an adequate national paid leave program such as the FAMILY Act, upon implementation, a strong education plan is important to explain the program and its benefits.<sup>196</sup> Awareness of the paid leave insurance program was low in populations that might benefit from it the most.<sup>197</sup> Specifically, low-earners and part-time employees might be aware of the policy's existence, but be unaware of their ability to benefit from it.<sup>198</sup> Low-earners and part-time workers are the least likely to have access, but with a program similar to California's, the eligibility requirements for the program would be so low that nearly all employees qualify.<sup>199</sup> An effective education plan is fundamental to increase awareness of the program for the populations that will benefit from it the most.<sup>200</sup>

Additionally, the education plan would need to be accompanied by an entity that will assist people in obtaining the benefits.<sup>201</sup> Parents of children with special healthcare needs that have limited awareness of the policy might have other problems before determining whether they qualify for paid leave and face a complicated process to utilize the program. Ultimately, employers would be the best agents to help their employees navigate through the process when they need

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191. Barbara Gault et al., *Paid Parental Leave in the United States: What the Data Tells us About Access, Usage, and Economic and Health Benefits*, INST. WOMEN'S POL'Y RES. 1, 1 (Mar. 2014), [https://www.dol.gov/wb/resources/paid\\_parental\\_leave\\_in\\_the\\_united\\_states.pdf](https://www.dol.gov/wb/resources/paid_parental_leave_in_the_united_states.pdf).

192. *Id.*

193. *Id.*

194. *The Family and Medical Insurance Leave (FAMILY) Act*, NAT'L P'SHIP WOMEN & FAM. (Sept. 2017), <http://www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf>.

195. *Id.*

196. McBrayer, *supra* note 176, at 15.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

to take leave to care for their child, welcome a new child, or care for a sick parent.<sup>202</sup> Employers serve as a better avenue to educate their employees about their access to paid leave and because nearly all workers will need to take leave at some point, employers should be more prepared to help their employees navigate through that time.<sup>203</sup>

### *C. Concern #2: Pushback from Employers*

Another concern stems from employers and the unknown costs that would become more of a burden than a benefit. Larger businesses that the FMLA fully support have the luxury of providing paid leave policies of their own because of the wide-range of resources available to them. Smaller businesses that don't have access to the FMLA typically cannot afford to offer paid leave to their employees.<sup>204</sup>

### *D. Solution: Employee Funded Paid Leave*

The FAMILY Act legislation discusses the creation of an insurance fund that can be paid into to allow all workers benefits of paid leave while caring for their child.<sup>205</sup> Similar to the mandates implemented by California and other states, employees would have to pay into an insurance program that would insure wage replacement benefits when an employee takes leave. This would enable workers to earn up to 66 percent of their monthly wages.<sup>206</sup> Funding would come from small employee and employer payroll contributions of two-tenths of one percent each.<sup>207</sup> The proposed model, spreads the cost of leave, which would reduce the burden on individual employers and allow for more employees to access paid leave.<sup>208</sup>

Jody Heymann, the director of the World Policy Analysis Center at UCLA, assessed other countries' government systems and showed the parallels that this model was constructed from.<sup>209</sup> Heymann analyzed, "contributions to the government may come from employers, employees and the government's general revenue, but they pay it through a social insurance system, so that no business has a heavy burden."<sup>210</sup> These governments rely on the insurance structure where contributions create the fund that workers can access when they need to take

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202. *Id.*

203. *Id.*

204. *Taking Care of Business: The Business Benefits of Paid Leave*, NAT'L P'SHIP WOMEN & FAM. (Mar. 2011), [http://www.genderprinciples.org/resource\\_files/W\\_F\\_Taking\\_Care\\_of\\_Business\\_March\\_Update.pdf](http://www.genderprinciples.org/resource_files/W_F_Taking_Care_of_Business_March_Update.pdf).

205. *The Family and Medical Insurance Leave (FAMILY) Act*, *supra* note 194.

206. *Id.*

207. *Id.*

208. *Id.*

209. Deahl, *supra* note 5.

210. *Id.*



leave.<sup>211</sup> These payroll contributions would cover both insurance benefits and administrative costs.<sup>212</sup> The new Office of Paid Family and Medical Leave would be implemented within the Social Security Administration and would retain the administration responsibilities.<sup>213</sup> With this insurance fund, smaller businesses do not have to invest their own limited resources into paid leave. The initial investments are not necessary, since it is funded through employee payroll taxes.<sup>214</sup>

#### VI. BENEFITS FOR EMPLOYERS

The buy-in from employers is another route to ensure successful implementation of a paid leave program.<sup>215</sup> Employers have a lot to gain from paid leave programs similar to the ones structured in California and New Jersey.<sup>216</sup> Paid leave programs offer tremendous benefits to employers that range from reducing absenteeism, increasing productivity, increasing morale, and improving overall employee wellness.<sup>217</sup> The overall data conducted from the policies implemented in California show a greater amount of employee retention in lower-wage jobs.<sup>218</sup> From a study conducted by the National Partnership for Women and Families, retention of employees with access to paid family and medical leave increased by 10 percent in lower-income jobs since implementation.<sup>219</sup> Other studies have shown that first-time mothers are more likely to return to work if they have access to paid maternity leave.<sup>220</sup> At Google, it was reported that by implementing a paid leave policy, retention of women employees who gave birth increased by 50 percent. The research takes a close look at the resources that employers must use to replace employees and the results prove how expensive it can be. Employers must use resources in searching for, recruiting, training, and supervising new employees.<sup>221</sup> These costs are often greater than the resources required to offer current employees access to paid leave.<sup>222</sup>

#### VII. IMPROVED HEALTH OUTCOMES

Data collected from studies of existing paid leave programs show an improvement on employee mental and physical health. Currently, if employees

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211. *Id.*

212. *The Family and Medical Insurance Leave (FAMILY) Act*, *supra* note 194.

213. *Id.*

214. *Taking Care of Business: The Business Benefits of Paid Leave*, *supra* note 204.

215. Chung et al., *supra* note 182.

216. McBrayer, *supra* note 176, at 15.

217. *Id.*

218. *Taking Care of Business: The Business Benefits of Paid Leave*, *supra* note 204.

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

cannot access FMLA, they utilize their paid time-off to provide care for their family member to maintain their wages while on leave.<sup>223</sup> Access to paid leave allows working caregivers to not use their own sick leave or vacation time for family needs, which allows employees to utilize their paid time-off for themselves.<sup>224</sup> Employers should be promoting employees to take necessary time to be able to return to work and be optimal employees.<sup>225</sup>

Working mothers are affected in more ways than one. Women working full-time only three months after childbirth are more prone to depression and other health problems.<sup>226</sup> Any amount of work three months after childbirth is associated with parenting stress.<sup>227</sup> Any amount of work involving shift alternation six months after childbirth is associated with both depressive symptoms and parenting stress as well.<sup>228</sup> Additionally, having a spouse that did not take leave after the birth of a baby is correlated with high levels of depressive symptoms for mothers.<sup>229</sup>

Evidence has shown that newborn family leave also has significant positive effects on the health of young children, rates of breastfeeding, and fathers' involvement with their babies.<sup>230</sup> With the opportunity to stay at home longer, studies suggest that new working mothers are more likely to breastfeed for longer than new mothers that return to work within the first six weeks after childbirth.<sup>231</sup> Additionally, longer maternity leaves are associated with higher odds of breastfeeding among full-time workers.<sup>232</sup>

The studies also suggest that paid leave may also improve utilization and compliance with baby preventative care.<sup>233</sup> Mothers with access to a form of paid leave, such as paid-time off, often took their leave to take their children to baby visits than other working mothers that did not have a form of paid time-off.<sup>234</sup> Lack of paid sick leave can be a significant barrier to receiving preventative care for adults as well.<sup>235</sup> One study showed that workers with access to paid sick leave were significantly more likely to receive preventative care over a course of a year than those without it.<sup>236</sup> The study concluded that by expanding access to paid leave, this could substantially increase flu vaccinations, resulting in fewer work

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223. McBrayer, *supra* note 176, at 12.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* at 13.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

days lost to influenza and savings in healthcare costs.<sup>237</sup> Ultimately, parents could experience less stress returning to work, which results in better emotional and mental health to sufficiently provide childcare.<sup>238</sup>

#### VIII. SECURITY OF ECONOMIC GROWTH

With the possibility of implementation, the new legislation would bring more security to mothers and fathers within the workforce. The Institute for Women's Policy Research conducted a research study showing the contributions of paid leave policies to economic growth.<sup>239</sup> The study shows that paid family leave may increase labor force participation, increased fertility rates, increased likelihood of return to work after childbirth, improvement on employee morale, and improvement on family incomes.<sup>240</sup> The legislation securing paid leave could relieve employees of their fears and concerns with job security. With paid leave, it enables working parents to afford to take time off from work to give adequate childcare. This would also affect employee retention rates as more parents would feel comfortable returning to work. With the implementation of this legislation, employers would have to abide by the federal mandate and positively affect work culture. In turn, this would lead to economic growth with more participation from parents in the workforce.

Paid leave is correlated with stronger labor force attachment and receiving low levels of public assistance in the year after the birth of their child.<sup>241</sup> Women who reported taking paid leave after childbirth were more likely to be working nine to twelve months later compared to women who did not take leave at all.<sup>242</sup> Additionally, women who took paid leave were forty percent less likely to be receiving food stamps and thirty-nine percent less likely to receive forms of public assistance in the year after the birth of a child than a woman who returned to work without taking any form of leave.<sup>243</sup>

A concept that United States policymakers have grappled with is free childcare and education. In countries with paid leave, such as Sweden, childcare and education is paid for by the government. In the United States, the cost of childcare is considered expensive and for some families, which creates scenarios in which one parent may have to stay at home to provide childcare.<sup>244</sup> This results in families with low budgets and limitations on affording childcare.<sup>245</sup> By making childcare more affordable for families, there could be indirect benefits in the future. With affordable childcare, this could reduce the amount of time a parent

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237. *Id.*

238. Gault et al., *supra* note 191, at 15.

239. *Id.*

240. *Id.*

241. McBrayer, *supra* note 176, at 10.

242. *Id.*

243. *Id.*

244. Rosen, *supra* note 173.

245. *Id.*

needs to work to pay for childcare and allow parents to return to the workforce.<sup>246</sup> With the current difficulty with passing paid leave legislation, affordable childcare is not at the forefront of protections that the United States should focus on, but it should be a topic discussed in future reforms and improvements, once paid leave is implemented.

#### IX. EQUALITY BETWEEN GENDERS

The total amount of lost wages, pensions, and social security as a result of unpaid leave taken by employees is estimated to be about \$3 trillion.<sup>247</sup> These lost wages experienced by caretakers in the workforce disproportionately affect women over their lifetime.<sup>248</sup> It is estimated that mothers as breadwinners or co-breadwinners in two-thirds of families.<sup>249</sup> With gender stereotypes and discriminations, the new legislation would aid in bridging the equality gap. Studies show that a father's role in a child's first few months are vital to bonding and childcare.<sup>250</sup> With paid leave, this would give fathers more of an incentive to spend quality time with their children during the crucial months after childbirth. With a federal paid parental leave mandate, it would allow both mothers and fathers to engage in caregiving and provide job security in doing so. There is not a guarantee of decreased gender discrimination among employers, but with more job security, there is more of an incentive to take the necessary time off. This would also apply to non-traditional family structures as well, since the mandate would allow paid leave for anyone to take time off to care for a child. In order to meet the needs of working parents in the United States workforce, a national paid family and medical leave program should be developed with purposes of supporting women's labor force attachment and involvement, promoting gender equality, and reducing inequality.<sup>251</sup>

#### X. A MONUMENTAL STEP IN THE RIGHT DIRECTION

For a national paid leave program to be effective, the program must be universal, accessible, comprehensive, affordable, and inclusive.<sup>252</sup> With the positive results exhibited from those states and cities with implemented paid leave programs, they provide excellent models in constructing an effective national program. Across the board, these paid leave programs have had a positive impact on not only the lives of working caregivers, but have proven beneficial for employers that buy into a paid leave insurance programs. These benefits and improvements contribute to an overall better economy.

By looking at international policies, it is evident how the United States lacks

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246. *Id.*

247. McBrayer, *supra* note 176, at 10.

248. *Id.*

249. *Id.*

250. Gault et al., *supra* note 191, at 7.

251. McBrayer, *supra* note 176, at 10.

252. Glynn, *supra* note 123, at 6.

in valuing family time and promoting work-life balance for its citizens. Sweden's policy, with the most effective paid leave program for parents, sets the standards that every country in the world should strive to accomplish. Other policies throughout Europe have adequate policies that provide various forms of paid paternity leave. Many policies are similar, where many of them differ between the time allotted, the amount of wages covered, and forms of funding for paid leave. Regardless, the international policies provide a form of paid leave to working parents, while the United States does not have any paid paternity leave policies implemented.

When paid leave was implemented in California, more employees chose to take leave. Since implementation of paid leave insurance, there has been a 43.4 percent increase in leave claims filed, and there has been an 87.5 percent increase in benefits paid to employees.<sup>253</sup> About 90 percent of all of the claims filed were to bond with a child and the remaining 10 percent were filed for employees caring for an ill family member.<sup>254</sup> Overall, claims filed by men increased by more than 400 percent and one study found that the use of maternity leave doubled from three weeks to six weeks.<sup>255</sup>

The possibility for positive impact is prevalent. The United States cannot wait any longer for public policies to honor new parents and their children.<sup>256</sup> Despite the imperative – for workers and families, for businesses and for communities – to adapt our nation's policies to the realities of the 21st century workforce, progress is painfully slow.<sup>257</sup> Some states have begun to adapt to working parents' needs by providing more support to more workers through public policies than federal law requires.<sup>258</sup> If policymakers are responsive to the needs of working families, if they take note of the research that demonstrates the enormous benefits of family friendly policies to working families, businesses and communities, and if they understand the breadth and depth of public support for policies that support new parents and working families, they will respond with the policies that our nation needs.<sup>259</sup> Chief among these policies are paid family leave insurance and guaranteed earned sick days, and greater access to job-protected leave for family care and children's needs.<sup>260</sup>

With each passing day, American society continues to evolve and expand. With the shifting economy, there are prevalent economic pressures on Americans to contribute more time and effort to their jobs to sufficiently provide for themselves and their families. Cost-of-living will continue to increase and demands on workers will rise. With current FMLA protections, accessibility to

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253. McBrayer, *supra* note 176, at 5.

254. *Id.*

255. *Id.*

256. *Dads Expect Better: Top States for New Dads*, *supra* note 44.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

these benefits are limited to a small percentage of Americans and are not used.<sup>261</sup> With reform and new legislation, the United States would join the world in protecting the importance of family and work-life balance. As the only developed country in the world without a paid leave mandate, this creates a negative stigma that the United States does not value the importance of quality family time and creating a better balance for working Americans. “We urgently need to catch up in the United States,” Heymann stated.<sup>262</sup> “For a high-income country, we have some of the worst outcomes for our infants. We have some of the highest rates of infant mortality. We have huge health inequalities.”<sup>263</sup> “The problem is the fact that it’s unpaid means it’s unaffordable to many Americans,” Heymann says.<sup>264</sup> “And all of the caveats that come with the Family [and] Medical Leave Act that have to do with how many hours you’ve worked, how big your employer is, etc., means that millions of Americans aren’t covered.<sup>265</sup> So we need to take that basis, make it paid and ensure that all Americans are covered.”<sup>266</sup>

The stress that many Americans face correlates with the growth and demands of society. By providing these basic protections and insuring paid parental leave, working parents would have the incentives to take time off and have fewer financial and job insecurities. This would create better mental and emotional health for working parents and directly affects the quality of childcare they would provide. With a better mentality, workers would also be able to return to work and provide quality contributions. Overall, this would benefit the United States’ economic growth and stability.<sup>267</sup>

As a leading nation, the United States cannot prolong this issue any further. The evolution of family structures and gender roles have made current mandates difficult to apply and are outdated. The possibility of progression is evident with the few states that have implemented their own mandates. The basis of these mandates could surely be a foundation for the development of a federal mandate. The United States is closer than ever to joining the rest of the world in protecting paid leave with the new FAMILY Act. If approved, this mandate will provide a basis of protection for American families to develop better work-life balance.

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261. Leonard, *supra* note 54.

262. Deahl, *supra* note 5.

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. Gault et al., *supra* note 191.