



UNITED STATES

# Failing its Families

Lack of Paid Leave and Work-Family Supports in the US

HUMAN  
RIGHTS  
WATCH



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## Summary

Having children was a source of great joy for Anita R., a veterinary technician and mother of three. But it was a source of considerable problems too.

Anita said her office manager was “upset” and “very unhappy” about her pregnancy. Two days after Anita told her she was pregnant, the manager cut Anita’s hours and reduced her pay by hundreds of dollars a month. Anita’s supervisor complained about the maternity leaves she took when working there, amounting to just three weeks off after one baby was born and four after the other. Colleagues appeared revolted by Anita’s attempts to pump breast milk at work, and complained about her taking “breaks” to do so. Her employer offered no paid sick days, no paid family leave, and just one week of vacation per year. Anita’s husband, an arborist with no paid leave, was unable to secure any time off after their third baby was born. “Our debt went up when I had unpaid leave,” Anita said. “We got behind on bills, like credit card bills and our car payment.... Food was tighter.” Anita added that she wishes that paid leave and other work-family supports had been available to mitigate the difficulties of being working parents. “Any bit would definitely help,” she said. “It’s challenging working full time, having young children, and trying to make it all work.”

Around the world, countries have responded to the massive growth of women in the workforce over the past century by crafting public policies to help reconcile work and family obligations. These supports, which workers and employers in most countries have come to accept as standard and necessary for working families, include paid leave for new parents, flexible scheduling, breastfeeding and pumping accommodations, paid sick days that can be used for family care, and prohibitions on workplace discrimination based on family responsibilities. One of the most common work-family supports, paid maternity leave, is practically universal: academic research covering 190 countries shows that as of 2011, 178 countries guarantee paid maternity leave under national law. In nine of the 190 countries, the status of paid leave for new mothers was unclear. Just three countries definitively offer no legal guarantee of paid maternity leave: Papua New Guinea, Swaziland—and the United States.

This lack of paid leave under law in America is at odds with a workforce revolution in which female participation in paid labor skyrocketed over the past century, especially among those with young children. In the US more than 19 million families with children now have a mother as the primary or co-breadwinner, and 70 percent of children live in households in which all adults are in the labor force. Married women with children under age six were almost four times more likely to be in the paid workforce in 2008 as they were in 1950.

Yet US law provides only the most meager supports to enable workers to fulfill their work and family obligations, leaving the availability of such provisions largely up to employers' generosity. The idealized notion is that private markets will foster such supports as employers compete for good workers. In reality, however, huge swaths of the workforce have no such supports, and there are enormous disparities in access.

For example, leaving decisions about whether to offer paid family leave—including for new parents—mostly up to employers has resulted in just 11 percent of civilian workers having such benefits, according to the US Bureau of Labor Statistics. Lower-income and part-time workers—mainly women—are far less likely to have paid family leave than other workers. Some new parents can use paid sick or vacation days, or other forms of paid leave after childbirth or adoption. But about one-third of the workforce has no such benefits.

The federal Family and Medical Leave Act (FMLA) enables workers with new children or family members with serious medical conditions to take unpaid job-protected leave, but only covers about half the workforce. Only California and New Jersey have state paid family leave insurance programs, and six jurisdictions have temporary disability insurance programs offering biological mothers partial pay during the “disability” of pregnancy and childbirth. The law largely neglects workplace flexibility in scheduling, policies to support pumping breast milk or breastfeeding for workers at all levels, and protections against discrimination for workers with family responsibilities.

Based on interviews with 64 parents nationwide, this report examines work-family supports in the United States, and the disparate access that employees have to such supports. It compares paid leave and other work-family policies in the US with those of other countries and the standards firmly established in international law. It also considers the health, financial, and career impacts of becoming a parent in America, where legally guaranteed paid leave is either limited or entirely absent and workplace attitudes are frequently hostile toward workers with family responsibilities.

Human Rights Watch heard consistent accounts of the harmful consequences of inadequate paid family and sick leave after childbirth or adoption, employer reticence to offer breastfeeding support or flexible schedules, and career fallout from becoming parents. Parents with short and unpaid leaves described delaying immunizations and health care visits for babies; physical and mental health problems for parents; short periods or early cessation of breastfeeding and dismal conditions for pumping; financial hardship; debt; demotion; and denials of raises or promotions. Same-sex partners of biological mothers were almost all denied even unpaid FMLA leave. Most interviewees said that work-family supports—even a few

weeks of paid leave for themselves or their partners—would have significantly eased these difficulties. Human Rights Watch also interviewed several parents who benefited from flexible work policies and paid family leave and were intensely loyal to their employers as a result. They provided strikingly different accounts to those who lacked such supports.

For example, many parents described how lack of paid leave and flexible work conditions jeopardized their health and that of their children. Samantha B. returned to work eight weeks after having a Cesarean section even though she was in pain from an infected wound and had trouble walking. Her few days of sick pay were depleted and she could not afford more unpaid leave. Hazel C. hemorrhaged due to a retained placenta and lost one-third of her blood six weeks postpartum, but was on the job one week later because she too could not afford more unpaid time off. Hazel had used her two weeks of paid sick time right after birth, and was not entitled to more. Diana T. had such severe postpartum depression that she despised her baby. But her employer threatened to fire her when she tried to use the small number of paid sick days to which she was entitled, and she never sought treatment. Some families delayed or missed health visits and immunizations for their babies because their employers would not give them time off after maternity or paternity leaves, or because they lost health insurance during unpaid leave. Dozens of women said they wanted to continue breastfeeding for the health of their babies, but workplace conditions for pumping were so difficult that they gave up nursing early.

Financial distress due to work leave with little or no pay was also a major issue for parents. Christina S. was a psychologist working two jobs when her baby was born, with two weeks leave from one job and eight from the other, mostly unpaid. She worked extra hours when pregnant to save money. But losing income during maternity leave led her to incur credit card debt, have trouble paying rent, and resort to a food bank. Juliana E., a single mother, had partial pay during her eight-week maternity leave. But money was so tight she ended up borrowing from family and friends, missing car payments, getting food stamps, and going on welfare for a few months. For those who lost health insurance during leave and had to purchase their own, high premiums together with lost income devastated their finances. This was the case for Isabella V., a teacher who could not afford food and her mortgage during maternity leave and resorted to food stamps and other public assistance.

Another major theme in the interviews was workplace discrimination and career damage related to taking leave and having new family responsibilities. Many women said that merely revealing they were pregnant and requesting leave triggered tensions with employers, and sometimes demotions or pay cuts. Kimberley N.'s employer was hostile to her maternity leave request, and gave her a terrible performance review after returning to work, utterly

different from the glowing reviews of prior years. Abigail Y.'s employer said it was imperative that no one get the impression she was taking maternity leave, and insisted that she teach all her college class hours before giving birth. Many women, including Kimberley and Abigail, consequently quit their jobs and wound up in far less senior, lucrative, or rewarding positions. US law does protect against discrimination on the basis of sex, including pregnancy, but proving such discrimination is not easy, and women said they feared that pursuing discrimination claims would endanger their jobs or careers.

Polls show overwhelming public support for policies to assist working families and protect workers' rights. In a 2010 survey of registered voters, 76 percent of respondents endorsed laws that would provide paid leave for family care and childbirth, 69 percent endorsed paid sick day laws, and 82 percent said they would support legislators who would work for stronger laws against discrimination and unfair treatment at work.

Still, reform has been painfully slow. Although skeptics of work-family supports say they burden business, employers could benefit from such reforms through reduced turnover, savings on recruitment and training costs by retaining experienced employees, and increased productivity by loyal workers. Small businesses whose employees could tap into a pooled public family leave insurance fund (such as exists in California and New Jersey) would be on more equal footing with larger companies that offer paid leave, and better placed to recruit talented employees. Employers whose workers access such funds would save on payroll, enabling them to hire substitutes if they wish. While some administrative burdens on employers exist when workers take leave, they already exist for FMLA-covered employers, and most businesses report that FMLA administration is easy. According to new research on the California paid family leave program, most businesses found the program had minimal impact on their operations; paid family leave had either a positive effect or no noticeable effect on productivity, profitability, turnover, and employee morale; and small businesses were less likely than large ones to report any negative effect.

Skeptics also assert these supports may be costly to government, and thus taxpayers. But studies show the overall costs of maternity, paternity, and parental leave relative to population and gross domestic product are modest, even in countries with generous leave benefits. Public expenditures on maternity leave, for example, are estimated to amount to an average of 0.3 percent of GDP in countries in the European Union and the Organization for Economic Co-Operation and Development. The diversity of approaches in other countries shows there is no single prescription for paid leave and work-family policy, and the US could take many different paths to establish work-family supports in line with the needs of its economy, regulatory structure, and workforce. This makes it difficult to estimate the financial

cost of such supports. But other countries' experiences indicate they are not daunting, and that the social, physical, and emotional toll of failing to offer such support is itself significant.

Empirical research from around the world underscores the need for work-family supports, including paid and sufficiently long leave for new parents. Studies have shown lesser rates of immunization and health visits for babies when maternity leaves are short, higher infant mortality where parental leave is unpaid, lower rates of breastfeeding connected with early return to work, and increased risk of depression among mothers with short leaves. Data on poverty provides evidence of the financial importance of paid family leave after childbirth or adoption. The entry of families into poverty has been shown to be strongly associated with childbirth, especially in female-headed households.

America's deficient work-family policies are not just a human concern; they are a human rights concern. International treaties contain concrete provisions on protections for workers with family care-giving responsibilities, and call for an array of work-family policies, including paid leave for new parents. The US is not a party to the treaties dealing most directly with work-family supports, and thus is not in violation of them. But it is failing its workers and families by ignoring these rights. As a result, it should not only adopt policies to support working families but also ratify the treaties that embody these rights, including the Convention on the Elimination of All Forms of Discrimination against Women.

Human Rights Watch recommends the US establish paid family leave in connection with childbirth and adoption, and for workers to care for family members with serious health conditions. National paid family leave policy would provide the most efficient and equitable framework, but with federal legislation looking doubtful, states should establish paid family leave insurance programs funded through small payroll tax contributions, as has happened successfully in California and New Jersey. The length of paid leave currently proposed in state bills, generally about six weeks, would be a positive start. But states should consider moving toward wage replacement for the three months guaranteed under the FMLA—or longer.

Human Rights Watch also recommends that federal and state governments establish other work-family supports, including promoting flexible schedules and work conditions, expanding coverage of workers protected under breastfeeding laws, and amending anti-discrimination laws to explicitly ban discrimination based on family responsibilities. It should also enact minimum standards for paid sick days, and ensure workers can use them to care for ill family members or new children.

## Profiles of Parents Lacking Work-Family Supports

### *Diana T.*

Diana T. was 18 and worked full-time at a large retail store when her first daughter was born. Her manager was unhappy about her pregnancy, and forced Diana to pick items off the floor late in her pregnancy, even if other staff was available to do so. Diana took a six-week leave with no pay when her first daughter was born since her employer did not allow her to use accrued sick pay. She had a nine-week leave when her second daughter arrived: six paid at 60 percent of her salary (of less than \$30,000 per year), and one paid in full through accrued paid time off. Diana fell into credit card debt and had trouble paying rent during her unpaid leave. She also needed two surgeries shortly after the second birth. She requested, but was denied, a week off to heal and returned to work three days after surgery. Lacking a space at work to pump, Diana breastfed her first baby for two months, well short of the four to twelve months she had originally hoped. Diana had post-partum depression after both children, but especially after her first baby, who was ill. Diana's employer regularly threatened to replace her if she took time off for the baby's frequent medical appointments and often switched her to night work, which was especially difficult for her as a single parent. Diana went without health insurance for more than a year, and was therefore never treated for her depression.

### *Samantha B.*

When her son was born, Samantha B. worked at a non-profit organization that helped formerly incarcerated people find jobs. She took eight weeks of leave, four paid with accrued vacation and sick leave, and four unpaid. Samantha's husband got two days of paid parental leave, and took two weeks of vacation. Returning to work was difficult. Samantha could not work a late shift due to limited child care hours, and for several months suffered abdominal pains and could not walk easily due to an infected C-section wound. She was laid off a few months after returning to work, and told that someone was needed with a more flexible schedule. Samantha nursed for three months but stopped shortly after going back to work because there was no private or feasible place to pump (her employer suggested using a heavily trafficked public restroom with no electric outlets and just two stalls). The unpaid leave took a financial toll. Samantha and her husband—who took on freelance work to supplement his full-time job—went into debt, deferred her student loans, and dipped into savings to pay rent. Her credit cards went into default and she received public assistance for months.

*Sarah O.*

Sarah O. had no paid maternity leave from her college teaching jobs after her first two children were born. She had only about three weeks off, once from a semester break and once by arranging for a substitute. She could not afford to take the unpaid leave to which she was entitled with her third child, and was back on the job after taking some sick days and the week of spring break. Her husband had no paid paternity leave, and even had to leave Sarah when she was in labor with one baby to go to work. Sarah's breastfeeding was adversely impacted by returning to work when her babies were about three weeks old: she was unable to establish breastfeeding at all with her first child, and could only sustain it for about three months with the other two. One of Sarah's employers told her that he hoped she would not have more children, and she was informed that she is unlikely to get tenure. She believes having children diminished her tenure chances.

*Theresa A.*

Theresa A. has three adopted children. She had no leave at all for the first two adoptions because she was not entitled to FMLA leave with one employer, and later could not afford unpaid leave even when entitled to time off under the FMLA. For her first adoption, Theresa returned home with her son from Russia, put him to bed at 5 a.m., and was at work by 11 a.m. With the second, Theresa took half a day off, and her partner had two weeks off. With the third adoption, Theresa's boss allowed her to take 12 weeks off under the FMLA: eight weeks paid through accrued annual leave and four weeks unpaid. Theresa would have taken leave for the first and second adoptions if it had been paid and she had been eligible. Both of her sons had behavior and emotional problems that leave time would have helped to address. The first, who was 29-months-old when he was adopted, was behind in skills and had an eating disorder. He was terrified to be away from her, and it took four people at day care to hold him so she could leave each day. Theresa's second child, who had been through 13 foster placements, had severe behavior problems.

*Marissa R.*

Marissa R. and her same-sex partner have a toddler son and twin babies. Marissa is the biological mother of the children and was not working when her twins were born. Her partner's employer refused to grant her family leave when the children were born. The twins were born premature and spent weeks in the hospital, and Marissa needed an emergency surgery and months of painful treatment when her C-section wound became infected. Her partner was unable to take leave to support her during this time.

*Hannah C.*

Hannah C. worked close to 38 hours a week in a bank when she became pregnant—just short of full-time. As a result she had no benefits, and did not take a day off during her nine months of pregnancy even though she was ill throughout. Instead, she was allocated the station closest to the restroom so that she could take two steps to throw up, freshen up, and come back out. Hannah was not offered paid maternity leave and she left her job when her son was born. She started babysitting other children and doing odd jobs when her baby was about a month old, and struggled for many months after the birth to pay for rent and food. She eventually resorted to food stamps.

*Abigail Y.*

Abigail Y. was working as a college professor when she gave birth to her daughter and had no maternity leave. She did have a few weeks off, but only by teaching all her class hours before giving birth, including leading a sea kayaking trip when she was seven months pregnant. Abigail's employer was very negative about her pregnancy, and told her it was imperative there be no perception that she had taken maternity leave. She had previously been promoted and was in good standing with the college. Abigail returned to work when her baby was eight-weeks-old, even though she did not feel sufficiently recovered from her difficult labor. She resigned three weeks later due to the hostility she felt after having her baby, and inflexibility around her schedule. Abigail's second child was uninsured from ages 12-20 months, and Abigail herself was almost hospitalized for pneumonia because of a delayed a doctor visit during this time. The family went into debt, paid the mortgage late a few times, and almost had its utilities cut off.

*Helen N.*

Helen N., a nurse practitioner who worked more than 50 hours a week, requested a reduced schedule when she was pregnant with her second child. She was refused and quit her job. Helen took work as a contract nurse, which enabled her to work fewer hours but without benefits, so she had no paid leave at all when her child was born. After seven weeks she took a temporary full-time job because the family could not manage without her income. She now works part-time as an on-call contract nurse. Taking some unpaid leave and shifting to an on-call schedule has been difficult financially. The money that she and her husband saved during her pregnancies was not enough, and foreclosure on their home was only averted with help from their parents. Helen's mother gives her grocery money, and she and her husband buy health insurance with minimal coverage. In 2009 they had \$13,000 in pregnancy-related medical bills not covered by health insurance.

*Paula R.*

Paula R., an attorney, asked for a reduced or flexible schedule after her son was born. She was refused, contributing to her decision to quit. When her daughter was born two years later, Paula worked 30 hours a week at a small firm and had no benefits. She took a five week maternity leave, all unpaid. Her husband had no paternity leave, but had a somewhat flexible schedule. When Paula went back to work, she found that her employer had hired a new attorney and given away her office. In the year after her daughter was born, Paula had a chronic fever and trouble walking, and her hands were blue and swollen. Her daughter had constant ear infections and colds, and Paula used her scarce time off for her children's health care rather than her own. Months later, she was diagnosed with a serious autoimmune illness. Paula breastfed her son for one year and pumped in the bathroom at work, which was uncomfortable. She stopped breastfeeding her daughter after six weeks, even though she had hoped to do so for six months, because she had trouble establishing breastfeeding and could not sustain it when back to work five weeks after childbirth.

*Juliana E.*

Juliana E. works in sales and marketing. When her daughter was born, she took an eight-week leave, with four weeks of short-term disability pay, two weeks of sick and vacation pay, and two weeks unpaid. She could not afford more unpaid leave and was still tired and weak from a C-section when she went back to work. She also had post-partum depression (which she thinks was related to the stress of putting her daughter in day care at just eight weeks), and stopped breastfeeding after three to four weeks because of her short leave. Juliana's daughter, who developed a serious respiratory illness when she was four months old, needed to be treated with a nebulizer every four hours for several months. Juliana took unpaid leave to be with her for a short time, and needed intermittent time off for the baby's doctor visits. Her employer claimed she was not entitled to time off under the FMLA and took disciplinary action against her for the time she took to go to the doctor. Juliana has some debt, in part from her unpaid leave, and needed financial help from family and friends. She was also late on car payments and received food stamps and other public assistance for a few months. The baby's father took a second job and offers some financial help.

*Kimberly N.*

Kimberly N. had a senior position at a charitable organization when her son was born. She planned for a six-week maternity leave, but her son was born with a life-threatening condition, and she ended up taking 12 weeks with partial pay. Kimberly's supervisor was unhappy that she took such a long leave and refused to let her work part-time or from home. After going back to work, Kimberly had a terrible performance evaluation that contrasted sharply with her previous positive evaluations. She soon left her job, which significantly impacted family finances. Savings quickly dwindled, debts grew, and Kimberly filed for bankruptcy. A few months later, she found a part-time job at a lower level with no benefits but was laid off when the recession hit. She worries that future employers will question her period of unemployment.

*Anita R.*

Anita R. works in a veterinary practice which offers no paid maternity leave benefits. After one of her children was born, Anita took three weeks off and used accrued vacation time. With another, she took four weeks of leave, three unpaid and one with vacation pay. She has no sick leave benefits. Anita's husband had no paid paternity leave, and could not take time off when the children were born. When Anita discussed her last pregnancy and leave with her employer, the office manager cut her hours and pay. She subsequently filed a pregnancy discrimination claim but dropped it for fear of losing her job. Pumping breast milk at work was difficult. Anita's co-workers seemed horrified at the idea of a pump, and were critical of her taking short breaks to express milk. Anita's family fell behind on credit card bills and car payments during her unpaid leave, and money for food was tight.

## Methodology

This report is based on interviews with parents, health providers, educators, academic experts, work-family policy advocates, and state and federal government officials from November 2009 through October 2010.

Human Rights Watch interviewed 64 parents. Some of these interviewees were identified through direct connections with organizations, including groups that provide parents with services and information related to parenting, childcare, and healthcare issues; work-family advocacy organizations; groups that advocate for the rights of same-sex parents; local parenting support groups in several states; and grassroots working women organizations. Other subjects volunteered to be interviewed after seeing announcements in online parenting discussion sites, blogs, or listservs for parents.

Interviewees lived in Arizona, California, Colorado, Connecticut, Florida, Massachusetts, Minnesota, New Hampshire, New York, North Carolina, Maryland, Oregon, Pennsylvania, Texas, Washington, DC, Washington State, and Wisconsin. Many of these states were included because they had pending legislation on paid family leave, whereas others were included because state civil society groups are promoting work-family policy reforms. Most interviews were done by telephone, which intermediary organizations recommended due to working parents' busy schedules. All interviews were in English.

We also conducted extensive background research, including reviewing existing laws and bills, statistics from government sources, academic research by authorities in the work-family policy field, and a wide range of studies produced by international organizations (including the International Labour Organization and the Organization for Economic Co-Operation and Development) and US civil society groups.

The names of all parents featured in the report have been replaced with unrelated names and initials in order to protect their privacy and to avoid potential employer retaliation. Identifying information for health professionals has also been withheld when requested. Where ages of children are mentioned, this is as of the date of the interview.

US policy shortcomings for working families extend far beyond the issues covered in this report, and include lack of affordable quality childcare, limits on mandatory overtime, and other supports needed by caregivers of elderly and disabled family members. We chose to focus on paid leave for new parents, workplace flexibility for parents after childbirth or

adoption, and discrimination against working parents because these areas provide a particularly sharp contrast with international human rights law and global trends, and because they illuminate the distinct workplace disadvantages that women with young children—a fast-growing segment of the workforce—face.

The terminology relating to work leave varies in different jurisdictions. For this report, the terms below have the following meanings:

“Family leave” is an over-arching term referring to several family-related reasons for taking time off from work. It includes leave for childbirth, care for and bonding with a newborn or adopted child, and care for a family member with a serious health condition. It includes maternity, paternity, and parental leave.

“Maternity leave” is leave available to mothers in connection with birth or adoption. It is generally shorter than subsequent parental leave.

“Parental leave” is supplemental leave available to mothers or fathers to care for a new child, generally after a period of maternity or paternity leave, and in many countries is much longer than maternity or paternity leave. In common usage, this term may also refer to any leave for parents, including maternity and paternity leave.

“Paternity leave” is leave available to fathers in connection with birth or adoption. It is generally shorter than subsequent parental leave.

## I. Background: US Workforce Changes and Gender Inequality

During the past century, the number of women in the US workforce and families in which both parents are employed has increased dramatically. In addition, the care needs of increasing number of families are being met by family members—typically women—who are in the paid labor force.

In 1900 only 18 percent of women—and just 5 percent of married women—in the United States were in the paid workforce.<sup>1</sup> By 1969, women comprised one third of the labor force, rising to roughly 50 percent today.<sup>2</sup> Workforce participation by married women with children under six has soared from 12 percent in 1950,<sup>3</sup> to nearly 40 percent in 1975, and 64 percent by 2008.<sup>4</sup> As of 2009, 39 percent of mothers were primary breadwinners, and 63 percent were co-breadwinners who contributed at least one quarter of the family earnings.<sup>5</sup> More than 19 million families with children in the US have a mother who is the primary or co-breadwinner, and 70 percent of children live in households where all adults are employed.<sup>6</sup>

But while the sexes are equally represented in the workforce, care-giving responsibilities still fall disproportionately to women: according to a 2009 survey, women make up 66 percent of unpaid family caregivers in the US.<sup>7</sup> The last major survey on the Family and Medical Leave Act (from 2000) found women constituted over 58 percent of FMLA leave-takers.<sup>8</sup>

Nor has the growing presence of women in the labor force eliminated a significant gap in earnings, especially for mothers. As of 2009 the ratio of women's and men's median annual

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<sup>1</sup> Janet Gornick and Marcia Meyers, *Families that Work: Policies for Reconciling Parenthood and Employment* (New York: Russell Sage Foundation, 2003), p. 26.

<sup>2</sup> Heather Boushey, "The New Breadwinners," in Maria Shriver and the Center for American Progress, *The Shriver Report: A Woman's Nation Changes Everything* (Washington, DC: Center for American Progress, October 2009), p. 33.

<sup>3</sup> Elizabeth Waldman, "Labor Force Statistics from a Family Perspective," *Monthly Labor Review*, December 1983, <http://www.bls.gov/opub/mlr/1983/12/art2full.pdf> (accessed December 6, 2010), table 2, p. 18.

<sup>4</sup> Boushey, "The New Breadwinners," pp. 32 and 35

<sup>5</sup> *Ibid.*, p. 32.

<sup>6</sup> Heather Boushey, Jessica Arons, and Lauren Smith, "Families Can't Afford the Gender Wage Gap," Center for American Progress, April 2010, p. 2; Joan Williams and Heather Boushey, "The Three Faces of Work-Family Conflict: The Poor, the Professionals, and the Missing Middle," Center for American Progress and WorkLife Law, January 2010, p.4.

<sup>7</sup> National Alliance for Caregiving and AARP, "Caregiving in the U.S. 2009," November 2009, p. 4. The study defined caregivers as those who provide unpaid care to an adult or to a child with special needs.

<sup>8</sup> David Cantor, et al., "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys," Department of Labor (DOL), 2000, <http://www.dol.gov/asp/archive/reports/fmla/toc.htm> (accessed October 27, 2010), section 2.1.3. The DOL will be updating the FMLA surveys in 2011.

earnings was 77.0 for full-time, year-round workers.<sup>9</sup> Even when controlling for factors such as experience, education, industry, and hours, a wage gap remains.<sup>10</sup> Mothers experience a wage penalty of roughly three percent per child after taking into account reductions in work hours, shifts to more family-friendly jobs, and loss of experience during interruptions for childbearing.<sup>11</sup> One analysis of Department of Labor data found that mothers earn just 60 cents for every dollar that fathers earn.<sup>12</sup>

The wage gap goes hand in hand with women's broader economic insecurity. Women hold approximately 59 percent of low-wage jobs.<sup>13</sup> Women's lower average earnings contribute to them being 32 percent more likely than men to be poor (based on 2009 data).<sup>14</sup>

Although women are making gains in US management overall, a glass ceiling still exists at senior levels. A 2009 study found women held only 20 percent of senior management positions at private companies, and 35 percent of private companies have no women in senior management at all.<sup>15</sup> Women head only 2.6 percent of Fortune 500 companies and hold only 15 percent of those companies' board seats.<sup>16</sup> They represent just over 8 percent of the highest paid positions among companies in Standard and Poor's 100 Index.<sup>17</sup>

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<sup>9</sup> Institute for Women's Policy Research (IWPR), "The Gender Wage Gap: 2009," Fact Sheet, September 2010, <http://www.iwpr.org/index.cfm> (accessed October 8, 2010). The wage gap lowers women's lifetime earnings so much that a typical woman is estimated to lose \$431,000 in pay over a 40-year career. Boushey, Arons, and Smith, "Families Can't Afford the Gender Wage Gap," p. 2.

<sup>10</sup> Economists use "regression-adjusted" estimates of pay to analyze the gender wage gap, controlling for measurable productivity-related characteristics of workers. Economists Francine Blau and Lawrence Kahn found that educational attainment levels lowered the discrepancy in pay between men and women, and that other productivity-related factors, such as experience, occupation, and industry widened the gap. They found that 27.4 percent of the gender pay gap can be explained by differences in occupations, 21.9 percent can be explained by industry, and 10.5 percent can be explained by labor force experience. In total, 59.8 percent of gender pay inequity can be explained by these factors, leaving 41.1 percent of the pay gap as not explainable by anything that can be measured. Testimony of Heather Boushey, Senior Economist, Center for American Progress Action Fund, before the U.S. Senate, Committee on Health, Education, Labor, and Pensions, "Strengthening the Middle Class: Ensuring Equal Pay for Women," March 11, 2010, [http://www.americanprogressaction.org/issues/2010/03/pdf/Boushey\\_testimony.pdf](http://www.americanprogressaction.org/issues/2010/03/pdf/Boushey_testimony.pdf) (accessed December 10, 2010).

<sup>11</sup> Michelle Budig, Testimony before the US Congressional Joint Economic Committee, "New Evidence on the Gender Pay Gap for Women and Mothers in Management," September 28, 2010, p. 4.

<sup>12</sup> Ibid.

<sup>13</sup> IWPR, "Women and Unemployment Insurance: Outdated Rules Deny Benefits That Workers Need and Have Earned," January 2008, p. 1.

<sup>14</sup> Legal Momentum, "Reading Between the Lines: Women's Poverty in the United States, 2009," September 2010, <http://www.legalmomentum.org/assets/pdfs/reading-between-the-lines.pdf> (accessed October 22, 2010).

<sup>15</sup> Grant Thornton LLP, "Global survey: Women still hold less than a quarter of senior management positions in privately held businesses," April 21, 2009, <http://www.granthornton.com/portal/site/gtcom/menuitem.550794734a67d883a5f2ba40633841ca/www.internationalbusinessreport.com> (accessed October 20, 2010).

<sup>16</sup> Catalyst, "Targeting Inequity: The Gender Gap in US Corporate Leadership," September 2010, [http://www.catalyst.org/etc/Catalyst\\_Written\\_Testimony\\_To\\_JEC\\_With\\_Appendix.pdf](http://www.catalyst.org/etc/Catalyst_Written_Testimony_To_JEC_With_Appendix.pdf) (accessed October 25, 2010), pp. 3-4.

<sup>17</sup> Calvert Investments, "Examining the Cracks in the Ceiling: A Survey of Corporate Diversity Practices of the S&P 100," October 2010, p. 4.

### Women's Workplace Inequality

- As of 2009, the ratio of women's and men's median annual earnings was 77.0 for full-time, year-round workers.
- An analysis of Department of Labor data found that mothers earn just 60 cents for every dollar that fathers earn.
- Women hold approximately 59 percent of low-wage jobs.
- Women hold only 20 percent of senior management positions at private companies, and 35 percent of private companies have no women in senior management at all.
- Women head only 2.6 percent of Fortune 500 companies and hold only 15 percent of those companies' board seats.
- Women represent just over 8 percent of the highest paid positions among companies in Standard and Poor's 100 Index.
- A 2007 study assessed how evaluators in a laboratory experiment and actual employers responded to fictitious, equally qualified job-applicants if they were parents or non-parents. It found:
  - Mothers were far less likely than non-mothers to be recommended for hire (47 of mothers recommended, and 84 percent of non-mothers).
  - The recommended starting salary for mothers was an average of \$11,000 less than for non-mother women.
  - Mothers were judged to be significantly less competent (10 percent lower) and committed (15 percent lower) than women without children.
  - Mothers were held to stricter performance and punctuality standards, and needed a significantly higher score on the management exam than childless women before being considered hireable.
  - Actual employers called back 2.1 times more childless women than mothers for interviews.
  - In contrast, fathers were offered a significantly higher salary, were seen as more committed to work and slightly more competent, were considered more promotable, and were more likely to be recommended for hire than childless men.
- EEOC data show an increase in pregnancy discrimination charges received from 3,977 in fiscal year 1997 to 6,196 in fiscal year 2009.

Women who are mothers face particularly severe hiring and promotion bias. A 2007 study on discrimination against mothers published in the *American Journal of Sociology* found they were significantly less likely to be recommended for hire, were less likely to be rated as promotable or recommended for management, and were offered significantly lower starting salaries than non-mothers.<sup>18</sup> The study involved two elements: a laboratory experiment to

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<sup>18</sup> Shelley Correll, Stephen Benard, and In Paik, "Getting a Job: Is There a Motherhood Penalty?," *American Journal of Sociology*, vol. 112, no. 5, March 2007, pp. 1279-1338.

measure how evaluators rated applicants in terms of perceived competence, workplace commitment, hireability, promotability, and recommended salary; and an audit study of actual employers to measure positive responses to applicants based on the number of interview callbacks. In both studies, participants evaluated application materials for a pair of same-gender equally qualified job applicants who differed on parental status but were otherwise similar.

The laboratory study found that mothers were judged to be significantly less competent (10 percent lower) and committed (15 percent lower) than women without children. Mothers were also held to stricter performance and punctuality standards, and needed a significantly higher score on the management exam than non-mother women before being considered hireable. The recommended starting salary for mothers was an average of \$11,000 less than for non-mother women. They were rated as less promotable and were less likely to be recommended for management. While participants recommended 84 percent of female non-mothers for hire, they recommended only 47 percent of mothers. In a pre-test where there was no motherhood status manipulation, there were no significant differences in women applicants' ratings, suggesting that motherhood status produced the lower ratings in the laboratory study. The study also compared ratings of fathers with male non-fathers, and found that fathers were offered a significantly higher salary than non-fathers, were seen as more committed to work and slightly more competent, were considered more promotable, and were more likely to be recommended for hire.<sup>19</sup>

In the audit study, resumes and cover letters from a pair of fictitious, equally qualified, same-gender applicants (male and female) were sent to employers advertising for entry- and mid-level marketing and business jobs. The researchers sent two fictitious same-gender applications, one reflecting that the applicant was a parent and the other not, and monitored whether gender and parental status impacted the odds of being called for an interview. The two applicants had uninterrupted work histories and equally strong educational credentials and professional experience. The fictitious parent applicant listed things like participation in elementary school parent-teacher associations. The results suggested that real employers do discriminate against mothers. Childless women received 2.1 times as many call-backs for interviews as equally qualified mothers. Fathers were called for interviews at a slightly higher rate than non-fathers, although the difference was not significant.<sup>20</sup>

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<sup>19</sup> Correll, Benard, and Paik, "Getting a Job: Is There a Motherhood Penalty?," pp. 1315-1323.

<sup>20</sup> Ibid., pp. 1327-1330.

The rising numbers of women in the labor force coupled with their persistent disadvantage, especially as mothers, has contributed to an increase in pregnancy discrimination claims. The US Equal Employment Opportunity Commission (EEOC) publishes annual data on pregnancy discrimination charges filed with them and with state and local fair employment agencies. Recent data shows an increase in charges received from 3,977 in fiscal year 1997 to 6,196 in fiscal year 2009.<sup>21</sup>

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<sup>21</sup> Equal Employment Opportunity Commission (EEOC), "Pregnancy Discrimination Charges, EEOC & FEPAS Combined: FY 1997 - FY 2009," undated, <http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm> (accessed November 15, 2010).

## II. US Work-Family Supports and Disparate Access

In the United States, laws to support workers with family care obligations are minimal. There is no federal guarantee of paid family leave. Just two states offer such leave, and six jurisdictions offer temporary disability insurance to pregnant women and new mothers. There is no national law establishing minimum standards for paid sick days. While there is some progress in the law when it comes to other work-family supports, such as workplace accommodation for breastfeeding, significant gaps remain. Moreover, explicit legal protections against discrimination on the basis of family care-giving responsibilities are absent in federal law and only slowly emerging in state and local laws.

Many reform proposals are under discussion, and there is considerable public support for change. Opinion polls indicate that most Americans want policy reform to alleviate the conflict between work and family responsibilities. A 2010 survey of registered voters found that 76 percent of respondents endorsed laws to provide paid leave for family care and childbirth, 69 percent endorsed paid sick day laws, and 82 percent said they would support legislators who worked for stronger laws against discrimination and unfair treatment at work. Sixty-four percent of all respondents supported policies to give workers the right to request a flexible schedule, as did 70 percent of women, and 71 percent of parents.<sup>22</sup> Older surveys show similar levels of support: 76 percent of respondents in a 2007 national survey favored expanding the Family and Medical Leave Act (FMLA) to offer paid leave.<sup>23</sup>

### Federal Laws and Bills

The federal Family and Medical Leave Act of 1993 guarantees only *unpaid* family leave for the birth and care of a newborn child, for adoption and foster-care placement of a child, to care for an immediate family member (spouse, child, or parent) with a serious health condition, and for an employee to take their own medical leave.<sup>24</sup> The maximum leave period is 12 weeks per year (recently extended to 26 weeks for military families). It applies to all public agencies, public and private elementary and secondary schools, and companies with 50 or more employees. Employees are eligible if they have worked for their employer for

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<sup>22</sup> IWPR, "Majority of Voters Support Workplace Flexibility, Job Quality, and Family Support Policies," October 29, 2010, [http://www.iwpr.org/pdf/PressReleaseRock\\_WorkFam\\_28Oct2010.pdf](http://www.iwpr.org/pdf/PressReleaseRock_WorkFam_28Oct2010.pdf) (accessed November 15, 2010). Women and parents with children under 18 voiced even stronger support for work-family support policies across the board.

<sup>23</sup> National Partnership for Women and Families, "Key Findings from Nationwide Polling on Paid Family and Medical Leave," September 25, 2007, [http://www.nationalpartnership.org/site/DocServer/Paid\\_Family\\_Leave\\_Poll\\_Results\\_2007.pdf?docID=2521](http://www.nationalpartnership.org/site/DocServer/Paid_Family_Leave_Poll_Results_2007.pdf?docID=2521) (accessed October 12, 2010).

<sup>24</sup> Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2601.

a total of 12 months, at least 1,250 hours over the past year, and at a location where the company employs 50 or more employees within 75 miles. Leave under this act is job-protected and group health insurance benefits must be maintained during leave.

Only about half of the US workforce is eligible for FMLA leave, and some estimates show that only about 20 percent of new mothers work for covered employers and are eligible for FMLA leave.<sup>25</sup> In 2010 the Department of Labor issued an interpretation that clarified that an employee who assumes the role of caring for a child “in loco parentis” has a right to FMLA leave regardless of the legal or biological relationship.<sup>26</sup> This is particularly significant for parents in same-sex relationships, who have often been denied leave to care for their family. However, unmarried same-sex partners (even those in legally recognized civil unions or domestic partnerships) are still not entitled to FMLA leave to care for one another. Moreover, employer compliance with the FMLA is problematic: a 2008 national survey of employers found that between 18 and 21 percent of respondents were not in compliance.<sup>27</sup>

The Pregnancy Discrimination Act of 1978 does not require paid family or maternity leave, and provides no job protection after leave. Instead, it regulates employers who provide disability benefits for workers on leave, including temporary disability insurance.<sup>28</sup> It mandates that if disability insurance is offered for other purposes, it must cover pregnancy, childbirth, and pregnancy-related medical conditions. The act also makes it unlawful for employers to fire, refuse to hire, deny a promotion, or deny fringe benefits to a woman because she is pregnant. An employee or applicant seeking to prove a case of pregnancy discrimination must show that the employer knew of the pregnancy, and, because of the pregnancy, took some adverse employment action or denied some benefit afforded to other employees. Charges must be filed with the Equal Employment Opportunity Commission (EEOC) within a short time limit (generally 180 days).

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<sup>25</sup> Sarah Fass, “Paid Family Leave in the States: A Critical Support for Low-Wage Workers and Their Families,” National Center for Children in Poverty, Mailman School of Public Health, Columbia University, March 2009, p. 5.

<sup>26</sup> DOL, “Administrator’s Interpretation No. 2010-3,” June 22, [http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAl2010\\_3.pdf](http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAl2010_3.pdf) (accessed October 19, 2010) (stating: “day-to-day care or financial support may establish an in loco parentis relationship where the employee intends to assume the responsibilities of a parent with regard to a child.” See also DOL, “Fact Sheet # 28: The Family and Medical Leave Act of 1993,” February 2010, <http://www.dol.gov/whd/regs/compliance/whdfs28.htm> (accessed October 19, 2010).

<sup>27</sup> Ellen Galinsky, James Bond, and Kelly Sakai, “2008 National Study of Employers,” Family and Work Institute, 2008, p. 6. The FMLA includes enforcement measures, including civil actions by employees for damages or equitable relief and administrative or civil actions by the Secretary of Labor, for companies failing to comply with the law. FMLA, section 2617.

<sup>28</sup> Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000(e) et seq., amending Title VII of the Civil Rights Act of 1964. See also EEOC, “Facts About Pregnancy Discrimination,” September 2008, <http://www.eeoc.gov/facts/fs-preg.html> (accessed October 19, 2010).

Federal anti-discrimination law does not explicitly prohibit discrimination on the basis of family responsibilities, though cases have been brought under other legal theories (including discrimination on the basis of sex under Title VII of the Civil Rights Act of 1964).<sup>29</sup> Under an executive order, the federal government does prohibit employment discrimination against federal government employees on the basis of their “status as a parent.”<sup>30</sup> In addition, the EEOC has issued guidance explaining how discrimination against workers on the basis of their family care-giving responsibilities might constitute discrimination based on sex, disability, or other characteristics protected by federal employment discrimination laws.<sup>31</sup>

Federal law does little to promote workplace flexibility for workers with family responsibilities, such as protecting workers from retaliation for requesting flexible schedules or other accommodations.<sup>32</sup> Breastfeeding support made progress in 2010 with the adoption of the national health care act.<sup>33</sup> This requires that employers provide reasonable break time to express breast milk for one year after childbirth and provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public” for expressing milk. Employers with fewer than 50 employees are not subject to the break time requirement if compliance would impose an undue hardship. The law covers only workers who are not exempt from the Fair Labor Standard Act (FLSA) minimum wage and overtime laws, and thus covers mainly hourly workers (e.g. retail workers, factory workers, and restaurant workers). FLSA exempt workers, often managerial level, are not covered.<sup>34</sup>

From January 2009 to January 2010 the 111<sup>th</sup> Congress (and many prior sessions) saw bills that would establish important work-family supports, including three (see below) related to paid family leave. The sponsors maintained that these were needed in a recession to protect workers’ incomes during family leaves, and to support family health and competitive business.

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<sup>29</sup> WorkLife Law, a leading academic center on workplace discrimination, defines “family responsibilities discrimination” as discrimination against workers who have family caregiving responsibilities, such as pregnant women, mothers and fathers of young children, parents of disabled children, and workers who care for their aging parents or sick spouses and partners. A factsheet on this form of discrimination is available from the center at <http://www.worklifelaw.org/FactSheet.html> (accessed January 10, 2011).

<sup>30</sup> Executive Order 13152, May 2, 2000, <http://archive.eeoc.gov/federal/eo11478/eo13152.html> (accessed November 15, 2010).

<sup>31</sup> EEOC, “Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities,” 2007, <http://www.eeoc.gov/policy/docs/caregiving.html> (accessed November 15, 2010).

<sup>32</sup> No law prohibits such retaliation. One narrow law covering only federal employees *authorizes* scheduling flexibility programs, including compressed schedules, but does not require them. Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. § 6120.

<sup>33</sup> Patient Protection and Affordable Care Act (PPACA), P. Law 111-148, effective March 23, 2010.

<sup>34</sup> PPACA, section 4207, excerpted at <http://www.usbreastfeeding.org/Portals/o/Workplace/HR3590-Sec4207-Nursing-Mothers.pdf> (accessed October 20, 2010). This provision of the PPACA was based on the Breastfeeding Promotion Act, HR 2819, sponsored by Rep. Carolyn Maloney (see below). A summary of the law’s provisions on breaks for expressing breast milk is available at DOL, “Fact Sheet #73: Break Time for Nursing Mothers under the FLSA,” July 2010, <http://www.dol.gov/whd/regs/compliance/whdfs73.htm> (accessed October 20, 2010).

- The Family Leave Insurance Act would guarantee workers up to 12 weeks of paid leave for time off under the FMLA.<sup>35</sup> The bill calls for wage replacement on a sliding scale funded by employer and employee contributions of 0.1 to 0.2 percent of the employee's income. It would cover all non-federal employers with two or more workers.
- The Family Income to Respond to Significant Transitions (FIRST) Act would provide up to \$1.5 billion for grants to states to develop and implement paid family and medical leave programs.<sup>36</sup> The grants would fund paid family leave of at least six weeks.
- The Federal Employees Paid Parental Leave Act would guarantee federal employees four weeks of full pay while on FMLA leave for the birth or adoption of a child.<sup>37</sup>

These bills garnered few Republican co-sponsors, and after the 2010 congressional elections, prospects for enactment appear bleak.

Bills to promote workplace flexibility in recognition of work-family conflicts, and to protect workers requesting flexible work conditions, were also introduced in the 111<sup>th</sup> Congress. These include the Working Families Flexibility Act, which would establish a right to request flexible work terms and conditions, including hours, times, and locations for work, for some employees working for establishments with at least 15 employees. The law would govern processes for employers to consider such requests, and would prohibit discharge or discrimination against employees making a flexibility request.<sup>38</sup>

Other bills were tabled that would help mitigate work-family conflicts and related gender inequality. One was the Breastfeeding Promotion Act, which would establish that breastfeeding and expressing breast milk at work are protected conduct under anti-discrimination laws and provide tax incentives to employers providing appropriate conditions for breastfeeding or pumping.<sup>39</sup> Another is the Healthy Families Act, which would enable workers to earn up to seven paid sick days per year to recover from short-term illness, to care for a sick family member, to pursue routine medical care, or to seek assistance related to gender-based violence.<sup>40</sup> A third bill, which passed the House but failed in the

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<sup>35</sup> Family Leave Insurance Act of 2009, HR 1723, introduced March 25, 2009, sponsored by Rep. Fortney (Pete) Stark.

<sup>36</sup> Family Income to Respond to Significant Transitions (FIRST) Act, HR 2339, introduced May 7, 2009, sponsored by Rep. Lynn Woolsey.

<sup>37</sup> Federal Employees Paid Parental Leave Act, H.R. 626 and S. 354, introduced in the Senate on January 29, 2009 and passed by the House of Representatives on June 4, 2009. Sponsored by Rep. Carolyn Maloney and Sen. Jim Webb.

<sup>38</sup> Working Families Flexibility Act, S. 3840, introduced September 24, 2010, and H.R. 1274, introduced March 3, 2009. Sponsored by Sen. Robert Casey and Rep. Carolyn Maloney.

<sup>39</sup> Breastfeeding Promotion Act of 2009, H.R. 2819 and S. 1244, introduced June 11, 2009. Sponsored by Rep. Carolyn Maloney and Sen. Jeff Merkley.

<sup>40</sup> Healthy Families Act, S. 1152, introduced May 21, 2009, and H.R. 2460, introduced May 18, 2009. Sponsored by Sen. Edward Kennedy and Rep. Rosa DeLauro.

Senate, was the Paycheck Fairness Act, which would have allowed victims of gender-based wage discrimination to receive compensatory and punitive damages, ensured that women can access the same remedies available for other forms of wage discrimination, and increased transparency about salary information.<sup>41</sup>

The Obama administration supports many of these bills and has stated that promotion of workplace flexibility is a priority.<sup>42</sup> The White House Council on Women and Girls hosted a forum on workplace flexibility with business owners, corporate leaders, workers, policy experts, and labor leaders in 2010, and the Department of Labor is hosting a national dialog on workplace flexibility throughout the country in 2011.<sup>43</sup> The White House Middle Class Task Force includes improving work-family balance as one of its top five priorities.<sup>44</sup> The Department of Labor will also update its surveys on the FMLA in 2011.

## State Laws and Bills

National reforms would offer more coherent work-family supports, but in the current political environment, state reforms are more realistic. Several important work-family reforms have occurred at the state level and other proposals are gaining momentum, yet state law is far from providing comprehensive or equitable work-family supports.

In terms of paid leave for new parents, a handful of states offer some form of wage replacement through state programs. Temporary disability insurance (TDI) programs in California, New Jersey, New York, Rhode Island, Hawaii, and Puerto Rico allow biological mothers to draw on public insurance for pregnancy and childbirth. Since TDI programs cover the “disability” of pregnancy-related complications, giving birth, and recovering from childbirth, fathers and adoptive mothers are generally not eligible for this insurance to care for a new baby. The programs are funded through payroll tax contributions, and benefits are

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<sup>41</sup> Paycheck Fairness Act, S. 182, introduced January 8, 2009, and H.R. 12, introduced January 6, 2009 and passed in the House on January 9, 2009. The bill failed to pass the Senate by two votes on November 17, 2010. Sponsored by Sen. Hillary Clinton and Rep. Rosa DeLauro.

<sup>42</sup> For example, in October 2010, President Obama issued a statement on National Work and Family Month, stating in part, “There are steps we can all take to help – implementing practices like telework, paid leave, and alternative work schedules – and my Administration is committed to doing its part to help advance these practices across the country.” See “Statement of the President on National Work and Family Month,” October 25, 2010, <http://www.whitehouse.gov/the-press-office/2010/10/25/statement-president-national-work-and-family-month> (accessed December 6, 2010).

<sup>43</sup> See Council on Women and Girls, “Continue the Conversation on Workplace Flexibility,” <http://www.whitehouse.gov/administration/eop/cwg/work-flex-kit/home> (accessed November 15, 2010). The workplace flexibility measures discussed included alternative work schedules, teleworking, part-time work, and paid leave; Women’s Bureau, DOL, “National Dialog on Workplace Flexibility,” undated, <http://www.dol.gov/wb/media/natldialogue2.htm> (accessed December 6, 2010).

<sup>44</sup> See “About the Middle Class Task Force,” undated, <http://www.whitehouse.gov/strongmiddleclass/about> (accessed December 7, 2010).

typically calculated as a capped percentage of weekly wages. The maximum weekly benefits ranged from just over \$100 in Puerto Rico to almost \$1,000 in California in 2010. Benefit duration for pregnancy or childbirth is generally about six weeks or slightly longer depending on the medical circumstances.

In addition, California and New Jersey offer state paid family leave insurance. These programs are major innovations in the United States. Washington State also adopted a paid parental leave program, but has not yet implemented it.<sup>45</sup> California enacted paid family leave in 2002 and implemented its program in 2004.<sup>46</sup> Workers covered by California disability insurance can get up to six weeks of pay during leaves to care for a seriously ill child, spouse, parent, or registered domestic partner, or to bond with a new child. The act covers part-time workers and small business employees. The weekly benefit amount is approximately 55 percent of earnings, up to a cap of \$987 per week (as of 2010). The program is financed together with California's broader short-term disability insurance through a 1.1 percent withholding tax on employees (not employers). All employees who pay into the short-term disability fund also pay into the family leave fund.

New Jersey's paid family leave insurance program was enacted in 2008 and became operational in 2009. Workers there are entitled to six weeks of paid leave to care for a new baby or seriously ill family member. They can receive two-thirds of their weekly pay, up to \$561 (as of 2010). This program is funded by employee payroll taxes of .0012 percent of the taxable wage base, capped at \$35.64 per year in 2010. The New Jersey program also covers part-time workers and small business employees.<sup>47</sup>

In both California and New Jersey, the paid family leave insurance programs faced fierce opposition when proposed, especially from business lobby groups. But a few years into their implementation, the opposition has largely disappeared. New research on the California paid family leave program, involving a survey of 500 workers and 253 establishments, found that businesses reported largely positive or neutral effects. The vast majority of establishments responded that the program had minimal impacts on their business

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<sup>45</sup> Washington State did not have a pre-existing temporary disability insurance system, so the state has the additional challenge of setting up the administrative infrastructure to manage paid leave. Once operational, workers will be entitled to five weeks of paid leave to spend time with a newborn or newly adopted child. Employees who work at least 35 hours per week will receive \$250 per week, and part-time workers will be eligible for pro-rated benefits.

<sup>46</sup> California Employment Development Department, "Paid Family Leave," [http://www.edd.ca.gov/Disability/Paid\\_Family\\_Leave.htm](http://www.edd.ca.gov/Disability/Paid_Family_Leave.htm) (accessed October 19, 2010).

<sup>47</sup> State of New Jersey, Department of Labor and Workforce Development, "Family Leave Insurance," <http://lwd.dol.state.nj.us/labor/fli/fliindex.html> (accessed October 20, 2010).

operations.<sup>48</sup> They said that the program had a “positive” or “no noticeable” effect on productivity (88.5 percent), profitability and performance (91 percent), turnover (92.8 percent), and employee morale (98.6 percent).<sup>49</sup> Smaller establishments were less likely to report negative effects than large ones.<sup>50</sup> Most (86.9 percent) said that the program had not resulted in any cost increases.<sup>51</sup>

### **California Paid Family Leave Insurance Program Results**

Research published in 2011 on the California paid family leave program, based on a survey of 500 workers and 253 establishments, found largely positive or neutral effects:

- The majority of establishments responded that the program had minimal impacts on their business operations.
- Business establishments said that the program had a “positive” or “no noticeable” effect on:
  - productivity (88.5 percent)
  - profitability and performance (91 percent)
  - turnover (92.8 percent)
  - employee morale (98.6 percent)
- Smaller establishments were less likely to report negative effects than large ones.
- Most establishments (86.9 percent) said that the program had not resulted in any cost increases.
- Among workers with “low-quality” jobs, 83 percent of those who received paid leave benefits returned to their employer, compared to 74 percent of those who did not.
- The median duration of breastfeeding doubled for all new mothers who used the program, from five to eleven weeks for mothers in “high-quality” jobs and from five to nine weeks for those in “low-quality” jobs.
- The program increased the likelihood of breastfeeding initiation among women with “low quality” jobs: 92.5 percent of those who used the program initiated breastfeeding, compared to 83.3 percent of those who did not get paid leave.

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<sup>48</sup> Eileen Appelbaum and Ruth Milkman, “Leaves that Pay: Employer and Worker Experiences With Paid Family Leave in California,” January 2011, [http://www.irle.ucla.edu/publications/pdfs/LeavesThatPay\\_FINAL.pdf](http://www.irle.ucla.edu/publications/pdfs/LeavesThatPay_FINAL.pdf), (accessed January 25, 2011), pp. 4-5.

<sup>49</sup> Ibid., p. 8.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

The official in charge of New Jersey's paid family leave insurance program said that when he asks business leaders about burdens of the program, the response is "deafeningly silent."<sup>52</sup> In fact, he said many employers are now enthusiastic: "It comes up a lot that people say they would give time off anyway.... They say, 'as a good employer I would do this [grant leave] to help employees. It's nice to see they can get a few dollars as well.'"<sup>53</sup>

There is now momentum for state-level paid family leave or parental leave in other states. In 2010, bills on paid leave were introduced in 10 states: Arizona, Hawaii, Massachusetts, Missouri, New Hampshire, New York, Oregon, Pennsylvania, Texas, and Vermont.<sup>54</sup> Most proposals would establish four to six weeks of paid leave with wage replacement of a few hundred dollars per week or a capped percentage of the worker's wage. Federal grants to support such initiatives were under consideration in 2010, with the Senate appropriations committee voting in favor of a \$10 million grant program.<sup>55</sup> Civil society groups, such as the National Partnership for Women and Families, 9to5, Momsrising, the Family Values @ Work Consortium, and A Better Balance support these initiatives, and several have drawn up a model paid family leave law.<sup>56</sup>

There is also some progress at the state level when it comes to legislation for other forms of work-family supports. For example, two dozen states have laws on breastfeeding and the workplace.<sup>57</sup> As of late 2010, six states were considering legislation on flexible work hours and conditions, and 30 states were considering legislation on sick leave, mostly to guarantee paid sick days.<sup>58</sup>

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<sup>52</sup> Human Rights Watch telephone interview with Chris Longo, director – Temporary Disability Insurance, New Jersey Department of Labor and Workforce Development, June 3, 2010.

<sup>53</sup> *Ibid.*

<sup>54</sup> For a summary of the bills, see National Partnership for Women and Families, "2010 State Action on Paid Family and Medical Leave," July 2010, [http://www.nationalpartnership.org/site/DocServer/Paid\\_Leave\\_Tracking\\_2010\\_-\\_07\\_19\\_10\\_\\_2\\_.pdf?docID=1921](http://www.nationalpartnership.org/site/DocServer/Paid_Leave_Tracking_2010_-_07_19_10__2_.pdf?docID=1921) (accessed October 20, 2010).

<sup>55</sup> See statement of Debra Ness, "Work/Family Expert Hails Senate Appropriations Committee Vote To Provide \$10 Million to Help States Begin Paid Leave Programs," July 30, 2010, [http://www.nationalpartnership.org/site/News2?page=NewsArticle&id=25415&security=2141&news\\_iv\\_ctrl=1741](http://www.nationalpartnership.org/site/News2?page=NewsArticle&id=25415&security=2141&news_iv_ctrl=1741) (accessed October 20, 2010). The fate of this program is uncertain since Congress had not yet passed a budget as of January 2011.

<sup>56</sup> The National Partnership for Women and Families and A Better Balance have written a model law and are available for technical support to states considering paid family leave laws. See "Model State Paid Family Leave Statute," [http://www.nationalpartnership.org/site/DocServer/Paid\\_Leave\\_State\\_Statute\\_June\\_2010\\_Final.pdf?docID=6761f](http://www.nationalpartnership.org/site/DocServer/Paid_Leave_State_Statute_June_2010_Final.pdf?docID=6761f) (accessed October 25, 2010).

<sup>57</sup> See National Conference of State Legislatures (NCSL), "Breastfeeding Laws," September 2010, <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingLaws/tabid/14389/Default.aspx> (accessed October 20, 2010).

<sup>58</sup> See NCSL, "2010 Legislation on Telecommuting, Flexible Schedules or Alternative Work Weeks, September 8, 2010, <http://www.ncsl.org/?tabid=21268> (accessed November 15, 2010); NCSL, "2010 Legislation on Sick Leave," September 9, 2010, <http://www.ncsl.org/default.aspx?tabid=21272> (accessed November 15, 2010).

Only Alaska and the District of Columbia have explicit state legislation to protect workers against employment discrimination on the basis of family care-giving responsibilities, although other states are considering such legislation.<sup>59</sup> There are municipal or other local laws on family responsibilities discrimination in at least 22 states, and an increasing number of lawsuits.<sup>60</sup> Nineteen states were considering bills on equal pay for men and women as of late 2010.<sup>61</sup>

## Opposition to Law Reform and Counterarguments

The main arguments against law reform to establish work-family supports—especially paid family leave—is that it could be expensive for employers or taxpayers and diminish productivity by encouraging absences. However, there is strong evidence to refute these arguments, including empirical research from other countries.<sup>62</sup>

### Benefits to Business and the Economy of Paid Leave

- One study found that 94 percent of leave-takers who received full pay during family leave returned to the same employer, compared to 76 percent of employees who took unpaid leave.
- Paid leave can avoid the cost of employee turnover, which can range from 20 percent of annual pay for younger workers to 40 percent for more senior employees.
- A study on productivity growth in 19 Organization for Economic Co-Operation and Development (OECD) countries from 1979 to 2003 found that paid parental leave had a significantly greater positive effect on productivity than unpaid leave.
- Instituting 15 weeks of paid maternity leave in countries (such as the US) without paid leave could increase multifactor productivity by 1.1 percent.

Employers need not shoulder the direct cost of funding paid family leave. If states follow the lead of California and New Jersey, there would be no employer contribution to the leave insurance funds. In those states, and in most of the bills under consideration, family leave insurance is exclusively financed via employee-paid small payroll tax deductions. Employer,

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<sup>59</sup> WorkLife Law, “WorkLife Law’s State FRD Legislation Tracker,” November 1, 2010, <http://www.worklifelaw.org/pubs/StateFRDLegisTracker.pdf> (accessed November 15, 2010).

<sup>60</sup> Stephanie Bornstein and Robert Rathmell, “Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination,” WorkLife Law, December 2009, <http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf> (accessed December 6, 2010), p. 1.

<sup>61</sup> NCSL, “2010 Legislative Bills on Equal Pay,” September 9, 2010, <http://www.ncsl.org/default.aspx?tabid=21269> (accessed November 15, 2010).

<sup>62</sup> For an overview of costs and benefits of a range of work-family policies in other countries, see Janet Gornick and Ariane Hegewisch, “The Impact of ‘Family-Friendly Policies’ on Women’s Employment Outcomes and on the Costs and Benefits of Doing Business,” Commissioned Report for the World Bank, forthcoming 2011. Manuscript on file with Human Rights Watch.

and even government, contributions are certainly a possibility. But California and New Jersey have shown that paid family leave insurance can be financed with no employer contribution.

In fact, work-family supports like paid family leave can benefit, rather than burden, employers. Studies show, for example, that pay during family leave increases the chance a worker will return to the same employer. One study found that 94 percent of leave-takers who received full pay during family leave returned to the same employer, compared to 76 percent of employees who took unpaid leave.<sup>63</sup> Another study of US women workers found that lengthier childbearing leave (combined paid and unpaid leave) had a strong deterrent effect against women quitting the labor force or changing jobs postpartum.<sup>64</sup> New research on California's paid family leave program found it improved employee retention. The study distinguished between workers with "high quality" jobs that paid more than \$20 per hour and had employer-paid health insurance, and "low quality" jobs that did not meet those criteria. It found workers with high quality jobs were more likely to return to the same employer. Among those with low-quality jobs, 83 percent of those who received paid leave benefits returned to their employer, compared to 74 percent of those not paid.<sup>65</sup>

Employers can also avoid recruitment and training expenses by reducing turnover that results from workers quitting due to insufficient work-family supports.<sup>66</sup> While varying widely across fields and job positions, many estimates find turnover to be costly—ranging from 20 percent of annual pay for younger, less experienced, workers to 40 percent for more senior employees.<sup>67</sup> Estimates from before the most recent financial downturn were even higher: one study from 2006 estimated that turnover costs for hourly workers amounted to 50 to 75 percent of annual pay, and 150 percent of salaried workers' pay.<sup>68</sup>

Work-family support policies can also foster employee loyalty and commitment, which may in turn boost productivity and profitability. For example, one study on productivity growth in

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<sup>63</sup> Lisa Bell and Sandra Newman, "Paid Family & Medical Leave: Why We Need It, How We Can Get It," Policy Brief, Family Caregiver Alliance, September 2003, p. 4.

<sup>64</sup> Jennifer Glass and Lisa Riley, "Family Responsive Policies and Employee Retention Following Childbirth," *Social Forces*, vol. 76(4), June 1998, p. 1426. The study also found that job retention was impacted by the ability to avoid mandatory overtime, supervisor and coworker support, and other factors.

<sup>65</sup> Appelbaum and Milkman, "Leaves that Pay," p. 5.

<sup>66</sup> When California enacted its paid family leave law in 2002, one estimate projected that employers would save up to \$89 million a year in turnover costs alone. Arindrajit Dube and Ethan Kaplan, "Paid Family Leave in California: An Analysis of Costs and Benefits," June 19, 2002, <http://www.paidfamilyleave.org/pdf/dube.pdf> (accessed November 17, 2010), p.5.

<sup>67</sup> Email communication with Kevin Miller, senior research associate, Institute for Women's Policy Research, December 14, 2010. For an overview of studies estimating turnover costs in a variety of industries, see Kevin Miller, Allison Suppan Helmuth, and Robin Farabee-Siers, "The Need for Paid Parental Leave for Federal Employees: Adapting to a Changing Workforce," IWPR, 2009, pp. 8-9.

<sup>68</sup> Jodie Levin-Epstein, "Getting Punched: The Job and Family Clock," Center for Law and Social Policy, July 2006, p. 9.

19 Organization for Economic Co-Operation and Development countries from 1979 to 2003 found that paid parental leave had a significantly greater positive effect on productivity than unpaid leave. The study also estimated that instituting 15 weeks of paid maternity leave in countries (such as the US) without paid leave could increase multifactor productivity by 1.1 percent in the long run.<sup>69</sup>

Although the FMLA does not require paid leave, there are valuable lessons to be learned from how even unpaid leave has impacted employers. In the 2000 FMLA survey, 90 percent of covered establishments reported that the FMLA had either a positive or neutral effect on profitability and growth.<sup>70</sup> Of the businesses that experienced cost savings from the FMLA, 77 percent said decreased turnover was the number one reason for the savings.<sup>71</sup> The majority of employers surveyed said that implementation was “easy” or “somewhat easy.”<sup>72</sup>

Although opponents of work-family supports cite particular burdens on small businesses, there are clear benefits for them as well. For example, where paid family leave insurance programs are available through a state fund, as in California and New Jersey, small employers benefit from a leveled playing field with larger employers for recruitment. Larger employers are usually better placed to directly fund paid leave.<sup>73</sup> Enabling workers at small businesses to access a state family leave insurance fund would give employers a better chance to recruit talented employees. Employers will also save on salary costs during leave if employees can access state insurance funds, freeing up funds to hire substitutes. As noted above, the 2011 survey on California’s paid family leave system found that small businesses were even less likely than businesses with over 100 employees to report any negative effects of the program.<sup>74</sup>

## Low and Disparate Access

Since US law does so little to establish work-family supports, their availability is left largely to employers. The idealized notion is that private markets will foster such supports as

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<sup>69</sup> Andrea Bassanini and Danielle Venn, “The Impact of Labour Market Policies on Productivity in OECD Countries,” *International Productivity Monitor*, vol. 17, 2008, p. 11. Multifactor productivity is the measure of changes in output per unit of combined inputs.

<sup>70</sup> Cantor, et al., “Balancing the Needs of Families and Employers,” section 6.2.3.

<sup>71</sup> Ibid., section 6.2.4.

<sup>72</sup> Ibid., section 6.2.2.

<sup>73</sup> For example, the 2008 National Study of Employers by the Families and Work Institute found that larger companies were significantly more likely to offer some pay during maternity leave than small employers. Galinsky, Bond, and Sakai, “2008 National Study of Employers,” p. 19.

<sup>74</sup> Appelbaum and Milkman, “Leaves that Pay,” p. 8.

employers compete for good workers. In reality, however, huge swaths of the workforce have no such supports, and there are enormous disparities in access.

#### **Low and Disparate Access to Paid Leave**

- According to the US Bureau of Labor Statistics, only 11 percent of “civilian” workers had paid family leave as of March 2010.
- Civilian workers in the highest 25 percent of average wages are three times more likely to have paid family leave benefits than workers in the lowest 25 percent.
- Civilian workers in the highest 10 percent of wages are six times more likely to have paid family leave than those in the lowest 10 percent.
- Full-time civilian workers are more than twice as likely as part-time workers to have paid family leave.
- Only 67 percent of US civilian workers (22 percent for the lowest income workers) have paid sick leave, and more than a quarter lack paid vacation days.
- The percentage of employers reporting that they offered full pay during leave after childbirth fell from 27 percent in 1998 to 16 percent in 2008.

Data on access to paid family leave—one of the most important work-family supports—show that overall coverage is low and that disparities among workers are enormous. According to the US Bureau of Labor Statistics (BLS), only 11 percent of “civilian” workers (which it defines as those in the private nonfarm economy except those in private households, and workers in the public sector, except the federal government) had paid family leave as of March 2010.<sup>75</sup> This figure reflects benefits specifically identified as paid family leave, rather than all forms of paid leave that might be applied during time off work to care for family (such as paid sick and vacation days). Some workers are also eligible for temporary disability insurance, which covers pregnancy and childbirth related “disability,” but just 37 percent of civilian workers have access to such insurance.<sup>76</sup>

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<sup>75</sup> DOL, Bureau of Labor Statistics (BLS), National Compensation Survey: Employee Benefits in the United States, March 2010, Table 32, Leave Benefits: Access, civilian workers, <http://www.bls.gov/ncs/ebs/benefits/2010/printing.htm> (accessed October 8, 2010). Among private industry workers, the rates are even lower. Just 10 percent of private industry workers have paid family leave benefits. DOL, BLS, National Compensation Survey: Leave benefits: Access, private industry workers, Table 32, March 2010, <http://www.bls.gov/ncs/ebs/benefits/2010/ownership/private/table21a.pdf> (accessed December 27, 2010).

<sup>76</sup> DOL, BLS, National Compensation Survey: Insurance Benefits: Access, Participation, and Take-Up Rates, Civilian Workers, March 2010, Table 17, <http://www.bls.gov/ncs/ebs/benefits/2010/ownership/civilian/table12a.pdf> (accessed November 12, 2010). Among private industry workers, the rate is slightly higher, with 39 percent having access to short-term disability insurance benefits. DOL, BLS, National Compensation Survey, Insurance benefits: Access, Participation, and Take-up Rates, Private Industry Workers, Table 17, March 2010, <http://www.bls.gov/ncs/ebs/benefits/2010/ownership/private/table12a.pdf> (accessed December 27, 2010).

For the many workers not entitled to temporary disability insurance or to paid leave for childbirth or adoption, benefits such as paid sick or vacation time offer the only prospect of pay during leave to care for a new child. Unfortunately, only 67 percent of US civilian workers (22 percent for the lowest income workers) have paid sick leave, and more than a quarter lack paid vacation days.<sup>77</sup>

Trends on employers voluntarily offering paid family leave are not encouraging. A national study of employers found that the percentage of employers reporting that they offered full pay during leave after childbirth fell from 27 percent in 1998 to 16 percent in 2008.<sup>78</sup> A 2009 survey by the Society for Human Resource Management found that 25 percent of its member respondents provided paid family leave, compared to 30 percent in 2005.<sup>79</sup>

The disparities in access to paid family leave between low-income and high-income workers are profound. According to the BLS, civilian workers in the highest 25 percent of average wages are three times more likely to have paid family leave benefits than workers in the lowest 25 percent.<sup>80</sup> Workers in the highest 10 percent of wages are six times more likely to have such paid leave than those in the lowest 10 percent.<sup>81</sup> Access to pay during maternity leave through temporary disability insurance is also far less available to low-income civilian workers. Only 18 percent of workers in the lowest 25 percent of average wages have access to such insurance, compared to 49 percent of workers in the highest 25 percent.<sup>82</sup>

Disparities between full and part-time workers in accessing paid family leave are also glaring. Full-time civilian workers are more than twice as likely as part-time workers to have paid family leave.<sup>83</sup> Only 15 percent of part-time workers have temporary disability insurance compared to 43 percent of full-time workers.<sup>84</sup> Women make up the bulk (65 percent) of the

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<sup>77</sup> DOL, BLS, National Compensation Survey, Leave Benefits: Access, civilian workers, Table 32. As noted above, data on “civilian” workers covers public and private sector workers (defined in the table as “workers in the private nonfarm economy except those in private households, and workers in the public sector, except the federal government.”) Data on private industry workers alone shows even lower levels of access to paid sick leave: just 62 percent of private industry workers have this benefit. DOL, BLS, National Compensation Survey: Leave benefits: Access, private industry workers, Table 32, March 2010, <http://www.bls.gov/ncs/ebs/benefits/2010/ownership/private/table21a.pdf> (accessed December 27, 2010).

<sup>78</sup> Galinsky, Bond, and Sakai, “2008 National Study of Employers,” p. 19.

<sup>79</sup> Society for Human Resource Management, “2009 Employee Benefits: Examining Employee Benefits in a Fiscally Challenging Economy,” June 2009, p. 27.

<sup>80</sup> DOL, BLS, National Compensation Survey, Table 32. Among those earning the highest 25 percent of average wages, 17 percent have paid family leave, compared to 5 percent of those earning the lowest 25 percent of average wages.

<sup>81</sup> Ibid. Among those earning the highest 10 percent of average wages, 18 percent have paid family leave, compared to 3 percent of those earning the lowest 10 percent of average wages.

<sup>82</sup> DOL, BLS, National Compensation Survey, Table 17.

<sup>83</sup> Ibid. Among full-time civilian workers, 13 percent have paid family leave, compared to 6 percent of part-time workers.

<sup>84</sup> DOL, BLS, National Compensation Survey, Table 17.

part-time workforce and thus suffer disproportionately from the lack of part-time parity.<sup>85</sup> As of 2009 women who worked part time made up 26 percent of all female wage and salary workers, compared to just 13 percent of men.<sup>86</sup>

Disparities between men and women in access to paid and unpaid leave after childbirth or adoption are mixed. According to a 2004 report analyzing data from the Urban Institute's 2002 National Survey of American Families, women were more likely to have access to maternity leave than men were to paternity leave (89.3 percent versus 71.9 percent of respondents). However, men were more likely to have paid leave (83.5 percent compared to 76.2 percent of women respondents).<sup>87</sup> Among working parents with some paid leave, women were more likely to have one workweek or less, and men were more likely to have more than three workweeks of paid leave.<sup>88</sup> According to the 2000 FMLA survey, male leave-takers were more likely to receive pay (70.4 percent) than female leave-takers (62.5 percent) during their longest leave (which may include leave for their own medical reasons or to care for family).<sup>89</sup> On the other hand, when it comes to pay during just maternity leave and paternity leave, research has found that more women workers get pay during maternity leave than men during paternity leave. A 2008 national study of employers found that 52 percent said they offer some pay to women on maternity leave, compared to 16 percent offering paid leave to men on paternity leave.<sup>90</sup> The study did not specify whether these employers offered paid leave to employees at all levels, or only select employees.

Gender differences also arise with respect to *unpaid* FMLA leave. The 2000 FMLA survey found that among workers with young children, men were more likely to be *eligible* for FMLA leave than women (67 percent of men and 56 percent of women).<sup>91</sup> Yet in the 18 months prior to the survey, more women (76 percent) than men (45 percent) with young children took some leave.<sup>92</sup> This is undoubtedly due to social expectations of women as caregivers and because women's income, lower on average than men's, is easier for families to sacrifice when the only choice is unpaid leave.

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<sup>85</sup> National Economic Council, "Jobs and Economic Security for America's Women," October 2010, p. 4.

<sup>86</sup> DOL, "Highlights of Women's Earnings in 2009," July 2010, p. 2.

<sup>87</sup> Katherine Ross Phillips, "Getting Time Off: Access to Leave among Working Parents," Urban Institute, April 2004, p. 2.

<sup>88</sup> *Ibid.*

<sup>89</sup> Cantor, et al., "Balancing the Needs of Families and Employers," section 4.2.2, and Table A2-4.1 at <http://www.dol.gov/asp/archive/reports/fmla/appendixa-2.pdf> (accessed November 12, 2010).

<sup>90</sup> Galinsky, Bond, and Sakai, "2008 National Study of Employers," p. 19. Similarly, US Census Bureau data indicate that in the years 2001 to 2003, just 49 percent of workers who took maternity leave received some paid leave benefits. US Census Bureau, "Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2003," February 2008, p. 18.

<sup>91</sup> Jane Waldfogel, "Family and Medical Leave: Evidence from the 2000 Surveys," *Monthly Labor Review*, September 2001, p. 21.

<sup>92</sup> *Ibid.*

### III. Global Trends and Country Comparisons

The United States is an extreme outlier in the area of work-family policy. Throughout the tumult of the global economy in recent decades—including the economic downturn of recent years—countries have adopted and expanded policies to enable workers to meet their work and family obligations in recognition of the utterly changed composition of the workforce.

A striking example of this trend, explored in this chapter, is in the area of paid leave for new parents and for family caregivers.<sup>93</sup> Since 2008, in most countries that have seen changes to maternity, paternity, or parental leave, the change did not reduce benefits, but rather made them more generous or entailed structural changes without lowering benefits.<sup>94</sup> Workers and employers in most countries have come to accept paid leave as a standard and necessary social support for working families.

Appendix I contains a chart with examples of paid maternity, paternity, parental, and additional family leave benefits in other countries.

#### Paid Leave Trends and History

For more than a century, the most widespread form of paid family leave—paid maternity leave—has proliferated to the point of being almost universal in developed and developing countries. In 1883, Germany enacted the first paid maternity leave law. Others soon followed: by the First World War, 13 other countries offered it as well.<sup>95</sup> By the 1940s, nearly all European countries had established a range of social welfare policies, including maternity benefits.<sup>96</sup> Paid paternity and parental leave laws followed, starting with Sweden in 1974. By the mid-1990s, most European countries had adopted paid paternity and parental leave

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<sup>93</sup> Comparative information on other types of work-supports (such as paid sick days, flexible scheduling, and breastfeeding accommodations) is available from other sources, including publications and databases of the International Labour Organization (ILO) and the Organization for Economic Co-Operation and Development, and from studies by academic experts and work-family advocates. See, e.g., Jody Heymann and Alison Earle, *Raising the Global Floor: Dismantling the Myth That We Can't Afford Good Working Conditions for Everyone* (Stanford: Stanford University Press, 2010); Gornick and Meyers, *Families that Work*; Arianne Hegewisch and Janet Gornick, "Statutory Routes to Workplace Flexibility in Cross-National Perspective," IWPR, 2008; and Gornick and Hegewisch, "The Impact of 'Family-Friendly Policies' on Women's Employment Outcomes and on the Costs and Benefits of Doing Business."

<sup>94</sup> Anne H. Gauthier, "The Impact of the Economic Crisis on Family Policies in the European Union," European Commission, February 15, 2010, <http://www.thefamilywatch.org/doc/doc-0092-es.pdf> (accessed October 29, 2010), pp. 12-13.

<sup>95</sup> Shiela Kamerman and Peter Moss (eds.), *The Politics of Parental Leave Policies: Children, Parenting, Gender and the Labour Market* (Bristol: The Policy Press, 2009), p. 1.

<sup>96</sup> Gornick and Meyers, *Families that Work*, p. 37. The other core welfare policies included health and sickness benefits; family allowances; workers compensation; pensions for old age, disability, and survivors; and unemployment compensation.

policies.<sup>97</sup> Since then, countries have moved toward longer leaves and incentives for fathers to take leaves.<sup>98</sup>

In 2010, a major global survey on paid leave and other workplace benefits was published by Dr. Jody Heymann of McGill University and Dr. Alison Earle of Northeastern University, leading experts on labor conditions and social policies around the world. Out of 190 countries included in the survey, 177 guaranteed paid leave for new mothers, and four did not guarantee any pay during maternity leave (Swaziland, Papua New Guinea, the United States, and Australia). Nine lacked sufficient information.<sup>99</sup> Australia instituted paid parental leave in January 2011, bringing the global tally to 178 countries with laws on paid leave for new mothers. The International Labour Organization (ILO) also published a report in 2010 on national laws on maternity protection in 167 countries, and found that 97 percent offered paid maternity leave.<sup>100</sup> While enforcement of these laws is not perfect, and workers in the informal sector may not always be covered, these laws generally benefit an enormous proportion of women workers worldwide.

Paternity leave for fathers is also gaining ground. At least 49 countries provide some form of leave that fathers can use around the birth of a child, according to the ILO.<sup>101</sup> The number was higher when counting paid parental leave available to either parent. The Heymann and Earle study, which covered more countries, found that 54 guarantee paid paternity leave. That study also determined that 67 percent of the most competitive countries offer paid leave for new fathers, compared to 33 percent of the least competitive countries.<sup>102</sup>

The Heymann and Earle study found that 33 countries provide workers with paid leave to care for sick family members, mostly in Europe and Central Asia.<sup>103</sup>

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<sup>97</sup> Kamerman and Moss, *The Politics of Parental Leave Policies*, p. 2

<sup>98</sup> *Ibid.*, p. 262.

<sup>99</sup> Heymann and Earle, *Raising the Global Floor*, p. 111. The nine countries where insufficient information was available were Bhutan, Liberia, Tuvalu, Samoa, Sierra Leone, Bosnia-Herzegovina, Marshall Islands, Micronesia, and Suriname. Email communication with Professor Alison Earle, February 20, 2010.

<sup>100</sup> ILO, *Maternity at Work: A Review of National Legislation* (Geneva: International Labour Office, 2010), p. 17. By the ILO's count, the five countries not offering paid maternity leave were Australia, Lesotho, Papua New Guinea, Swaziland, and the United States. This differs from the Heymann and Earle study by including Lesotho. This appears to be out of date, as Heymann and Earle received notification that Lesotho offers two weeks of paid maternity leave. Email communication from Jody Heymann to Human Rights Watch, October 30, 2010.

<sup>101</sup> ILO, *Maternity at Work*, p. x.

<sup>102</sup> Heymann and Earle, *Raising the Global Floor*, p. 63. The study assessed the competitiveness rankings assigned by the World Economic Forum (WEF) between 1999 and 2008. The WEF publishes rankings of country competitiveness in its annual Global Competitiveness Report. The rankings are based on a comprehensive index that captures microeconomic and macroeconomic foundations of national competitiveness, and the WEF defines competitiveness as the set of institutions, policies, and factors that determine the level of productivity of a country.

<sup>103</sup> *Ibid.*, p. 135.

## Length of Leave and Transferability

The length of paid leave ranges from a few days (for fathers) in some countries to years in others. Maternity leave tends to be longest. Of the 167 countries covered by the ILO's maternity leave survey, 51 percent provide at least 14 weeks, 20 percent provide 18 or more weeks, and 35 percent provide 12 or 13 weeks of maternity leave. Only 14 percent provide less than 12 weeks of maternity leave, down from 19 percent in 1994.<sup>104</sup>

In most countries, maternity leave duration has increased or stayed steady over the past 15 years.<sup>105</sup> OECD countries provide on average 18 weeks of maternity leave, of which an average of 13 are paid at 100 percent of last earnings (excluding additional paid parental leave).<sup>106</sup> The Heymann and Earle study found that 101 countries offered 14 weeks or more paid leave for new mothers, and 29 guaranteed one year or more.<sup>107</sup> They found the average duration of paid leave for new mothers in the most competitive countries was 43 weeks, compared to 25 weeks in the least competitive nations.<sup>108</sup>

Paternity leave benefits tend to be shorter. Nonetheless, the combined paternity and parental leaves in many countries are substantial. For example, Austria, the Czech Republic, France, Germany, and Sweden guarantee a year or more of paid leave for fathers (paternity and parental leave combined).<sup>109</sup> Thirty-one countries offer 14 or more weeks of paid leave to new fathers.<sup>110</sup>

Some countries have non-transferable portions of leave to encourage fathers to take time off work (and thus promote equality in care giving), sometimes referred to as “daddy days” or “use-it-or-lose-it” leave. Iceland, for example, offers nine months of parental leave divided into thirds: one-third for the mother, one-third for the father, and one-third to be split as the parents wish.<sup>111</sup> Countries that offer leave benefits for fathers for long enough and with high enough wage replacement have quickly seen take-up increase, especially when the benefits are non-transferable. For example, close to 90 percent of fathers are

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<sup>104</sup> ILO, *Maternity at Work*, pp. 6 and 10.

<sup>105</sup> *Ibid.*, p. 10.

<sup>106</sup> OECD, “Gender Brief,” March 2010, <http://www.oecd.org/dataoecd/23/31/44720649.pdf> (accessed October 18, 2010).

<sup>107</sup> Heymann and Earle, *Raising the Global Floor*, p. 111.

<sup>108</sup> *Ibid.*, p. 63.

<sup>109</sup> *Ibid.*, p. 84 and Moss, ed., “International Review of Leave Policies and Related Research 2010.” Employment Relations Research Series 115, Department for Business Innovation and Skills, 2010, <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/i/10-1157-international-review-leave-policies.pdf> (accessed January 25, 2011).

<sup>110</sup> *Ibid.*, p. 143.

<sup>111</sup> ILO, *Maternity at Work*, p. 44.

reported to take paid paternity leave in Denmark, Iceland, Sweden, The Netherlands, and Norway, and at least two-thirds do so in Finland, France, and Germany.<sup>112</sup>

Policymakers have voiced concern that long maternity or parental leaves may lower women's wages. However, this is a minimal risk when the leave policy fits within certain parameters. Recent research on 22 countries found substantial wage penalties related to motherhood in countries that offer more than 18 months of leave for new parents, and even more extreme motherhood wage penalties in countries that guarantee *no* paid leave for new parents. It also found that the motherhood wage penalty is lower in countries that offer about one year of job-protected leave.<sup>113</sup> Other research has shown that paid leaves of between three and six months have no or negligible impact on women's wages, whereas one study found some wage depression for leaves of nine months or more.<sup>114</sup> On the other hand, there is also evidence that where longer leaves are job-protected, gains in women's seniority and developing job-specific human capital may compensate for reduced wages.<sup>115</sup>

## Benefit Levels

The amount of wage replacement during paid leave varies widely. The amounts paid are sometimes a flat rate (e.g., the minimum wage), sometimes a capped percentage of prior earnings, or full pay. The 2010 ILO report found that 42 percent of the 167 countries reviewed provide at least 14 weeks of leave paid at two-thirds of earnings or more, and 34 percent pay 100 percent for at least 14 weeks.<sup>116</sup> Heymann and Earle found that 41 countries offer 100 percent of usual wages for at least some portion of paternity leave.<sup>117</sup>

## Financing and Economic Impacts

Financing for paid leave can be done in many ways, but the trend in most developed countries is away from requiring employers to directly pay wages during leave, and toward establishing social insurance funds (often financed with payroll tax contributions or through general tax revenues) that employees can access during leave. This public financing

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<sup>112</sup> Moss, ed., "International Review of Leave Policies and Related Research 2010," pp. 30-31 and country chapters.

<sup>113</sup> Michelle J. Budig, Joya Misra, and Irene Boeckmann, "The Cross-National Effects of Work-Family Policies on the Motherhood Wage Penalty: Findings from Multilevel Analyses," unpublished manuscript, on file with Human Rights Watch, p. 27. Budig and Misra are sociology professors and Boeckmann is a graduate student at the University of Massachusetts-Amherst.

<sup>114</sup> See Gornick and Hegewisch, "The Impact of 'Family-Friendly Policies' on Women's Employment Outcomes and on the Costs and Benefits of Doing Business," p. 11.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, p. ix and 20. For this calculation, the ILO was using a sub-set of 152 of the total countries studied, excluding 15 others due to ambiguity about their leave policy or because they were not in full compliance with the standards of the ILO maternity protection convention.

<sup>117</sup> Heymann and Earle, *Raising the Global Floor*, p. 143.

approach helps mitigate discrimination by private employers in the labor market by reducing the disincentive to hire workers they consider likely to have children and take leave. Of the countries included in the 2010 ILO study, 53 percent financed maternity benefits through social security, 20 percent relied on joint contributions from employers and social security, and 26 percent required employers to cover the full amount (down from 31 percent in 1994).<sup>118</sup>

The costs of maternity, paternity, and parental leave relative to population and gross domestic product are modest, even in countries with generous leave policies. Public expenditures on maternity leave are estimated to amount to an average of 0.3 percent of GDP for leave payments in countries in the European Union and the OECD.<sup>119</sup>

In terms of broad economic impacts of paid family leave, the Heymann and Earle study found that there is no relationship between unemployment rates and family-friendly policies like paid leave.<sup>120</sup> It found that countries guaranteeing leave to care for personal or family health had the highest levels of economic competitiveness.<sup>121</sup>

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<sup>118</sup> ILO, *Maternity at Work*, pp. ix and 34.

<sup>119</sup> Henning Lohmann, et al., "Towards a Framework for assessing family policies in the EU Final Report," DIW Berlin and SFI Copenhagen, April 2009, <http://thefamilywatch.org/doc/doc-0077-es.pdf> (accessed October 29, 2010), p. 58.

<sup>120</sup> Heymann and Earle, *Raising the Global Floor*, p. 111.

<sup>121</sup> *Ibid.*, pp. 14-15 and 27-29.

## IV. Real Families, Real Harms from Work-Family Policy Failings

The parents interviewed for this report recounted serious harms related to the meager policy supports for US working families. They described struggling with the lack of paid leave, and reported negative effects on their careers, on family finances, or on their children's health. Many also confronted inflexible workplaces after leave, including with respect to requests for flexible hours or reduced schedules, and concerning pumping breast milk at work.

Many interviewees said that becoming parents (especially mothers) resulted in curtailed professional development opportunities, promotions being delayed or denied, and stagnating salaries. The financial strain on those who took unpaid leave resulted in many families accumulating debt or resorting to public assistance. These hardships affected parents across a broad range of economic and professional circumstances.

Empirical studies on the impact of work-family policies, especially research on having or lacking paid family, have findings strikingly similar to the experiences of these parents.

### Empirical Data at a Glance: Impacts of Paid and Sufficiently Long Leave

#### *Health and Breastfeeding*

- A 2005 national US study found that taking longer maternity leave was associated with fewer and less frequent depressive symptoms among mothers: increasing leave by one week was associated with a six to seven percent decline in depressive symptoms.
- A study of 18 OECD countries covering more than three decades found that extending the number of weeks of job-protected *paid* leave was associated with a significant decrease in infant mortality, but *unpaid* leave was not. A 10-week extension in paid leave was associated with a decrease in post-neonatal mortality rates of 4.1 percent, and *unpaid* leave was unrelated to infant and child mortality.
- A study of 16 European countries from 1969 to 1994 found that a 50-week entitlement to paid parental leave was associated with about a 20 percent decline in post-neonatal deaths and a 15 percent drop in fatalities between ages one and five.
- A 2010 study found that the US could prevent the deaths of nearly 900 infants and save \$13 billion dollars per year if 90 percent of mothers breastfed exclusively for their babies' first six months of life. Only 43 percent of babies in the US are still breastfed at six months
- A study on Canada found that breastfeeding duration increased by over a month and the proportion of women attaining six months of exclusive breastfeeding increased

nearly 40 percent when paid leave benefits were increased from six months to about one year in most provinces.

- A US study found that women who returned to work full-time within 12 weeks were 14 percentage points less likely to breastfeed than those who did not.
- The California paid family leave program doubled the median duration of breastfeeding for all new mothers who used it.

#### *Family Economic Security*

- In families with a new baby, 12.9 percent become poor in the month the event occurred, increasing to 24.6 percent when a female heads the household.
- Approximately 8.6 percent of poverty entries happen when a child is born, and one out of every five temporary poverty spells for children begin this way.
- In 2000, 8.7 percent of FMLA leave takers resorted to public assistance due to loss of income during leave.
- One study of over 1,700 bankruptcy cases found 7 percent of the debtors identified the birth of a baby as a reason for filing for bankruptcy.

## **Health Impacts**

Three-quarters of the 64 individuals interviewed for this report said that they felt the lack of paid leave or inflexible work conditions was harmful to their or their children's health. Many mothers said they lacked time to physically recover from childbirth because they had little or no paid family leave or sick leave, and could not afford longer unpaid leaves. Others said their short leaves contributed to postpartum depression. Some parents said the deficient work-family supports compromised their children's health.

### *Physical Recovery from Childbirth*

Many mothers interviewed said they had not physically recovered from childbirth when they returned to work, especially those who had Cesarean sections.

Even those women who had a few days or weeks of paid sick days tended to use them up long before they had physically recovered. Samantha B. had eight weeks of maternity leave after giving birth by Cesarean section, with a few weeks of sick and vacation pay from her job assisting formerly incarcerated individuals. Her health was still poor when she went back to work, but her employer told her, "You need to be back at the end of eight weeks, or you may have to look for other alternatives." Samantha said it took months to recover from the surgery, and that a longer leave would have facilitated her recovery. "I had abdominal pains and was still taking medication [after returning to work]," she said. "I had a minor infection

from the staples. I wasn't able to stand or walk for long periods."<sup>122</sup> Juliana E., who works in sales and marketing, also had a difficult recovery from her Cesarean section in 2009. She returned to work eight weeks after the surgery, but needed to take a few sick days shortly after her return. Her employer took disciplinary action against her for doing so.<sup>123</sup> Juliana contacted the US Department of Labor about her situation, but still feared she would lose her job if she took any more time off.

Some women had postpartum medical complications but were either not granted or could not afford more unpaid time off. When Hazel C.'s second child was born, she took a seven-week unpaid maternity leave. At six weeks postpartum, she hemorrhaged due to a retained placenta and lost one-third of her blood. She was weak and anemic and needed more time to recover, but she needed her income even more. One week later, she was back on the job at an Oregon government agency. "I was able to work, but shouldn't have done so," she said.<sup>124</sup> Diana T. was bleeding and in pain throughout her nine-week maternity leave, as well as after returning to work at a health insurance company. "I had the placenta left in me," Diana said, adding:

I was in pain and bleeding excessively. I was bleeding at work because they pressured me to come back in. I went back to work in June, and a week after that I had emergency surgery to have the placental polyps removed. I had another surgery right before I went back, a D&C [dilation and curettage, involving the surgical removal of part of the lining of the uterus], and I had no time to heal. I wanted a week off, but that was denied. I went back to work three days later.<sup>125</sup>

Health care workers in several states told Human Rights Watch that they see many patients return to work earlier than is medically advisable after childbirth because they do not have paid family or sick leave, and cannot afford or are not entitled to unpaid leave. For example, Doctor Cat Livingston, a family medicine clinician teacher in Oregon, said, "I've seen lots of cases where women go back to work after two weeks. It's really inadequate. Healing usually takes six weeks."<sup>126</sup>

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<sup>122</sup> Human Rights Watch telephone interview with Samantha B., New York, April 13, 2010.

<sup>123</sup> Human Rights Watch telephone interview with Juliana E., Texas, July 13, 2010.

<sup>124</sup> Human Rights Watch telephone interview with Hazel C., Oregon, November 13, 2009.

<sup>125</sup> Human Rights Watch telephone interview with Diana T., New Hampshire, March 25, 2010.

<sup>126</sup> Human Rights Watch telephone interview with Dr. Cat Livingston, clinician teacher, Oregon Health & Science University, March 18, 2010.

Lack of paid leave for partners also impacted the postpartum health of mothers interviewed. Many felt their physical recovery from childbirth would have been immeasurably helped if their partners had more, or in some cases any, paid time off. Alyssa I. had Cesarean sections with both her children, now four and 21-months, and her husband had just a day or two off both times. She said:

Having to manage two kids while recovering from major surgery was physically very difficult. If my husband could have had at least two weeks, I'd probably have felt better at four weeks.... I think it would have allowed for some basic recovery. It's major surgery, and your body is not anywhere near ready, physically or emotionally, to handle all the challenges [alone].<sup>127</sup>

Among same-sex parents interviewed for this report, virtually none of the partners who did not give birth could take family leave, whether paid or unpaid. This made the biological mothers' recovery all the more difficult. Marissa R.'s twins were born prematurely at 32 weeks, and she had Cesarean section complications. Her wound got infected and burst open, requiring emergency surgery. For several months, Marissa had to visit a clinic three times a week to have old gauze removed and new gauze inserted into the wound. She was in pain the entire time, and had to manage virtually alone with her toddler and premature twins. "[My partner] was not able to support me for any of it.... She had to continue working," Marissa said.<sup>128</sup> Even though Marissa and her partner were legally married in California, their home state of Arizona did not recognize them as spouses, so her partner's employer refused to grant FMLA leave from her job as a physician. She could not take vacation days because her employer requires long advance notice for such leave, and the premature births were not anticipated. Their children were all born on weekends, and by Monday Marissa's partner was back to work. When Marissa had surgery on the infected wound, her partner could visit for only a few minutes during rounds at the hospital. Marissa recalled:

It was incredibly stressful.... We had three kids, two were premies [premature]. I had to feed them every two to two and a half hours around the clock. I had to do it all solo. The three weeks in the NICU [Neonatal Intensive Care Unit] were stressful.... Seeing our babies with the monitoring wires attached was stressful, and I really couldn't turn to my wife for support because she had to work.... It was emotionally hard not being together to go through this process, not having someone to lean on. If she wasn't at work, it

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<sup>127</sup> Human Rights Watch telephone interview with Alyssa I., New York, April 14, 2010.

<sup>128</sup> Human Rights Watch telephone interview with Marissa R., Arizona, May 4, 2010.

would have given us some time to be together and to go to the NICU and be with the babies. Even a week off for her to be home to help me recover and a week to get us on our feet would have been awesome.<sup>129</sup>

Paige V., who had an exhausting labor and then Cesarean section, said her partner, a physician's assistant, was not able to take FMLA leave to support her during her painful recovery since they were same-sex partners. "For the physical recovery, it was hard not to have my partner home for more time," Paige said. "She was out a week, but I was still in the hospital for a few days. Then I was home alone with the baby crying, and I couldn't walk. It was awful.... It was the most difficult period of my life."<sup>130</sup>

Leila M., also in a same-sex relationship, said she was distressed that she could not support her partner and care for their new baby by taking FMLA leave from her job as a high-school guidance counselor. "It was terrible," Leila said. She added:

The baby had reflux and was in and out of the emergency room.... I would have loved to be home at least the first month. It would have been great to have two months. Since I didn't have the baby, I didn't have the physical issues, but I would have liked to have been there. We had a lot of doctors' appointments to deal with because of his stomach.... He'd scream for three hours then sleep for 20 minutes. He vomited up every bottle for the first few weeks. It was a month before he slept more than 20 minutes at a time.<sup>131</sup>

Even where physical recovery from childbirth was not as difficult, families with same-sex parents struggled with exclusion from FMLA leave. When Amelia S. and Maya T. had their first baby, Amelia's employer refused to grant her FMLA leave, and only begrudgingly let her take one week of accrued sick time from her job as a college professor. Amelia said:

I have a tremendous sense of loss. I felt very torn.... It was horrible to go back after one week. I had a hard time focusing. Maya had problems, the baby had reflux. We felt robbed and scared.... I was torn because Maya was home with our screaming kid, and I was literally down the block.<sup>132</sup>

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<sup>129</sup> Ibid.

<sup>130</sup> Human Rights Watch telephone interview with Paige V., New York, May 7, 2010.

<sup>131</sup> Human Rights Watch telephone interview with Leila M., New York, April 22, 2010.

<sup>132</sup> Human Rights Watch telephone interview with Amelia S., Colorado, May 5, 2010.

For the few biological mothers we interviewed whose partners did have paid paternity, parental, or family leave, their partners' ability to stay home and support them made an enormous difference. Jessica F.'s husband, who worked for a finance company, had one month of paternity leave paid by his employer at 60 percent of his salary, which she said eased her recovery from a Cesarean section.<sup>133</sup>

### *Postpartum Mental Health*

Lack of work leave when a new baby arrives can have mental health implications. In 2005, a national US study found that taking longer maternity leave was associated with fewer and less frequent depressive symptoms among mothers: increasing leave by one week was associated with a six to seven percent decline in depressive symptoms.<sup>134</sup> Another study published in 1996 found that a maternity leave of six weeks or less, when combined with other factors such as a troubled marriage, was a risk factor for depression among mothers. Leaves of 12 weeks or more were associated with lower levels of depression.<sup>135</sup>

Postpartum mental health disorders, such as postpartum depression, afflicted a dozen mothers who were interviewed.<sup>136</sup> Some firmly believed that the depression stemmed from, or was worsened by, the financial strain of unpaid leave, the emotional toll of going back to work too early because they needed income or their employers refused longer leaves, or inflexible or hostile workplaces upon return.

Diana T. had postpartum depression after both her children were born. It was more severe the first time, when she was 18 and worked full-time at a retail store. When Diana returned to work after an unpaid six-week maternity leave, her employer threatened to replace her when she asked to use her accrued sick days for her baby's appointments for asthma and suspected cystic fibrosis. They switched her schedule frequently, giving her night shifts with little notice. The combination of a short leave, having no pay during leave, her sick baby, and her employer's poor treatment took a toll on Diana, who became depressed.

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<sup>133</sup> Human Rights Watch telephone interview with Jessica F., New York, March 31, 2010.

<sup>134</sup> Pinka Chatterji and Sara Markowitz, "Does the Length of Maternity Leave Affect Maternal Health?," *Southern Economic Journal*, vol. 72, no. 1, 2005, p. 38.

<sup>135</sup> Janet Hyde, et al., "Parental Leave: Policy and Research," *Journal of Social Issues*, vol. 52(3), 1996, pp. 96 and 103.

<sup>136</sup> Postpartum depression is a serious mental health problem characterized by a prolonged period of emotional disturbance, occurring at a time of major life change and increased responsibilities in the care of a newborn infant. According to the American Psychological Association (APA), an estimated 9 to 16 percent of postpartum women experience postpartum depression. APA, "Postpartum Depression," undated, <http://www.apa.org/pi/women/programs/depression/postpartum.aspx> (accessed November 12, 2010).

I got to the point where I despised [the baby] for a while. I didn't feel great. I was so stressed about trying to make money, having a job with a bunch of jerks, and [the baby] was sickly. I didn't have time for doctor visits. I was despising her because she was so sick and I had to take her to the doctor and I didn't have time off of work.<sup>137</sup>

Diana never got treatment for her depression because she had so little ability to get time off work. She also had no health insurance and no means to pay out of pocket for therapy. She said:

At that age [having paid family leave] would have given me more self-confidence and I could have provided better for my child.... Having paid time off would help for a single mother with depression.... At the time it would have made a world of difference because I wouldn't have been so frustrated and upset with the baby.<sup>138</sup>

Postpartum mental health problems affected several mothers when their partners, who often had very little time off, went back to work. Maria J. had postpartum depression for three months, starting shortly after the baby was born. She had a traumatic three-day labor and an emergency Cesarean section, and she and the baby were in the hospital for a week. Maria's husband could take only a few days off from his carpentry job while she and the baby were hospitalized and none when they went home. Maria was in pain and exhausted, and felt alone. She said:

My husband didn't have any more days off, so I had to adjust myself.... Even having my husband home for just like a week would have made everything better.... The baby needed so much, and I couldn't take a break. I got postpartum depression.... I was alone. It would have made a huge difference [to have my husband home on paid leave]. More time would help, but even just a week. I think there should definitely be paid leave.<sup>139</sup>

Maria's husband, William K., said the family was in a financial crisis because their private insurance would not cover all the birth costs, leaving him no choice but to work. They had a \$10,000 hospital bill which they had to put on credit cards, and ultimately declared

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<sup>137</sup> Human Rights Watch telephone interview with Diana T., New Hampshire, March 25, 2010.

<sup>138</sup> Ibid.

<sup>139</sup> Human Rights Watch interview with Maria J., Minnesota, February 6, 2010.

bankruptcy. “We were financially digging a hole because of the insurance not covering us, which meant I had to have money coming in.... I felt helpless,” William said.<sup>140</sup>

Caitlin A. said she had postpartum psychosis when her husband went back to work.<sup>141</sup> She had a grueling labor and then a Cesarean section, and her wound was infected. Her husband took two weeks of vacation leave. “Before my husband went back to work, it was more the regular baby blues,” Caitlin said. “It wasn’t the same as when he went back to work and I felt so lonely and so alienated. I think 12 weeks [leave for partners] is needed. I needed help. It was really, really, really tough.”<sup>142</sup>

Partners of women with postpartum depression told Human Rights Watch that not having sufficient paid family leave or work flexibility to care for their partners was deeply upsetting. Tom H., whose wife was hospitalized for a week with psychotic postpartum depression a few months after childbirth, took some sick time when her illness was at its most extreme, but wished he could have had more time. “Having family leave for when [my wife] got sick would have been good. It was pretty stressful,” he said.<sup>143</sup>

Medical doctors told Human Rights Watch that the lack of adequate paid leave after childbirth can contribute to postpartum depression. Dr. Cat Livingston said, “When you go back to work early you may not have enough time to bond. You’re so exhausted. A number of women seem to have postpartum depression from this,” she said.<sup>144</sup> Dr. Elizabeth Steiner Hayward, a physician and president-elect of the Oregon Academy of Family Physicians, said there was “no question” that short and unpaid family leave contribute to postpartum depression. She said she has “seen increased stress levels and increased anxiety” for those with unpaid family leave and early return to work after childbirth.<sup>145</sup>

### *Health Impacts on Parents Prior to Birth or Adoption*

Health problems related to or exacerbated by inflexible workplaces and little or no paid leave can start even before a baby is born or adopted. Both biological and adoptive parents

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<sup>140</sup> Human Rights Watch interview with William K., Minnesota, February 6, 2010.

<sup>141</sup> Postpartum psychosis is a term that covers a group of mental illnesses with the sudden onset of psychotic symptoms following childbirth. It is closely linked with manic depressive (bipolar) disorder.

<sup>142</sup> Human Rights Watch telephone interview with Caitlin A., New York, May 13, 2010.

<sup>143</sup> Human Rights Watch telephone interview with Tom H., Minnesota, January 25, 2010.

<sup>144</sup> Human Rights Watch telephone interview with Dr. Cat Livingston, clinician teacher, Oregon Health & Science University, March 18, 2010.

<sup>145</sup> Human Rights Watch telephone interview with Dr. Elizabeth Steiner Hayward, president-elect, Oregon Academy of Family Physicians, March 30, 2010.

told Human Rights Watch that they had neglected their own health and wellbeing in order to save whatever paid sick days they had for when the baby arrived.

Amanda H. had high blood pressure and borderline gestational diabetes when pregnant with her son, but kept working in order to save her sick pay for her maternity leave. “My health care provider urged me to stop work earlier than I did,” she said. “I knew I had only so many days of paid [sick] leave and wanted to keep them for when the baby was there.”<sup>146</sup> Julia P. did not take a day off from her job at a university for two years prior to adopting in order to have some paid leave after the adoption, despite her own chronic health problems.<sup>147</sup> Christina S., a psychologist, said:

If I wasn't feeling well I pushed myself to save the time. During my pregnancy it was a huge concern not to take time off ahead of the birth.... Paid leave would have reduced my angst about if I were sick or my family was sick.<sup>148</sup>

Some parents interviewed had no paid sick leave to save. Hannah C. worked at a bank that limited her to about 38 hours per week, just under the level for paid leave benefits. She was nauseous and vomited for nine months, but never took a day off throughout her pregnancy. “They put me at the end of the [teller] line closest to the bathroom. I could take two steps to throw up, refresh my face, and come back out,” she said.<sup>149</sup>

Some parents hoped to stockpile paid sick days but had health issues so severe during pregnancy they had to take time off. Olive D. had complications at 28 weeks of pregnancy and was on bed rest for five weeks. “We set up a plan for how to [have a baby] and maintain solvency,” she said.<sup>150</sup> But the plan involved her sick leave pay, which was nearly wiped out when she was on bed rest, resulting in almost wholly unpaid maternity leave.

### *Child Health*

Parents' ability to cope with health problems of newborn or newly adopted children, as well as to obtain standard immunizations and health check-ups for their babies, can be compromised when parents have short or unpaid leaves or inflexible working conditions. This relates to many factors, such as parents having inadequate time or money for health

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<sup>146</sup> Human Rights Watch telephone interview with Amanda H., Oregon, April 5, 2010.

<sup>147</sup> Human Rights Watch telephone interview with Julia P., New York, April 9, 2010.

<sup>148</sup> Human Rights Watch telephone interview with Christina S., New Hampshire, March 24, 2010.

<sup>149</sup> Human Rights Watch telephone interview with Hannah C., Connecticut, April 13, 2010.

<sup>150</sup> Human Rights Watch telephone interview with Olive D., location withheld, November 13, 2009.

care, losing insurance during unpaid leave for those not covered by the FMLA, and having too little time for bonding and developing skills to care for babies.

Cross-national studies have found that extended parental leave is associated with lower infant and child mortality.<sup>151</sup> A study of 18 OECD countries covering more than three decades found that extending the number of weeks of job-protected *paid* leave was associated with a significant decrease in infant mortality. It found that a 10-week extension in paid leave was associated with a decrease in post-neonatal mortality rates of 4.1 percent.<sup>152</sup> By contrast, it found that *unpaid* leave policy was unrelated to infant and child mortality, positing that losing pay made leave impossible for many parents. Another study of 16 European countries from 1969 to 1994 found that more generous paid parental leave reduced deaths of infants and young children: a 50-week entitlement to paid parental leave was associated with about a 20 percent decline in post-neonatal deaths and a 15 percent drop in fatalities between ages one and five.<sup>153</sup>

Empirical studies have also examined how infant health care, including well-baby visits and immunizations, is affected by leave length. One study published in 2005 compared children whose mothers were still on leave 12 weeks after childbirth with those who returned to work earlier, and found that short leaves had a negative impact, albeit small. Children whose mothers returned to work earlier were 2.4 percent less likely to receive well-baby care and 3.4 percent less likely to receive all of their immunizations than children whose mothers took more than 12 weeks of leave.<sup>154</sup>

Among the parents interviewed for this report, most managed—with difficulty—to have timely immunizations and health checks for their babies. For some, this caused friction with their employers. Diana T., whose daughter had severe asthma and suspected cystic fibrosis, said her employer threatened her when she took time for doctor visits. She said:

At work they'd hassle me. They'd say, 'Well you know, if you really don't want to work we'll replace you. You need to be here. You can't take so much time off.... They switched me to night work, which is really hard to do with a baby and when you're a single parent. Sometimes they switched my shifts and I'd

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<sup>151</sup> See Wen-Jui Han, Christopher Ruhm, and Jane Waldfogel, "Parental Leave Policies and Parents' Employment and Leave-Taking," *Journal of Policy Analysis and Management*, vol. 28(1), 2009, pp. 29-54.

<sup>152</sup> Sakiko Tanaka, "Parental Leave and Child Health Across OECD Countries," *Economic Journal*, vol. 115, 2005, p. F26.

<sup>153</sup> Christopher Ruhm, "Parental Leave and Child Health," *Journal of Health Economics*, vol. 19, 2000, p. 947.

<sup>154</sup> Lawrence Berger, Jennifer Hill, and Jane Waldfogel, "Maternity Leave, Early Maternal Employment and Child Health and Development in the US," *Economic Journal* 115(2005), pp. F39-40.

have to work eight days in a row. I said no, and they'd say I won't have a job. My baby was sick, but I had to go in because I needed the job. They really did bully me into doing things I didn't want to do. It was much more than with other people. They knew I was a single mom and needed the job.<sup>155</sup>

Some parents could not manage timely health care for their children because their employers resisted granting them time off for doctor visits after short leaves. Andrea N.'s baby had an extreme form of reflux requiring frequent doctor visits. "It was really stressful to go back to work at six weeks," she said. "The problem lasted a long time. We had six months of stress."<sup>156</sup> Andrea's work schedule as a research coordinator made it difficult to get to doctors' appointments, and some visits were delayed as a result. "Some immunizations came late.... About three times, but no more, we were late on immunizations," she said.<sup>157</sup> Mary B. also delayed her baby's immunizations due to unpaid maternity leave from her job as a community health nurse, during which she lost her health insurance.<sup>158</sup>

Medical providers said that many of their patients stop or delay bringing in their children for health care if they have short periods of leave or inflexible workplaces. Dr. Cat Livingston, whose family practice serves many low-income families, said, "Parents may not bring children for months when they can't get off work."<sup>159</sup> For her low-income patients, the lack of paid family leave was particularly problematic. "The lack of paid family leave is a reason people make decisions that can lead to disastrous health consequences," she said, adding:

It boils down to people making choices based on finances rather than health. This undermines what I do as a doctor.... We should get on board with the rest of the developed world. We need to recognize that having a healthy population means investing in parents and caregivers. This country is still functioning in the 19th century.... We need policies to maximize health. We don't have that.<sup>160</sup>

Dr. Elizabeth Steiner Hayward, physician and president-elect of the Oregon Academy of Family Physicians, said:

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<sup>155</sup> Human Rights Watch telephone interview with Diana T., New Hampshire, March 25, 2010.

<sup>156</sup> Human Rights Watch telephone interview with Andrea N., Pennsylvania, April 8, 2010.

<sup>157</sup> Ibid.

<sup>158</sup> Human Rights Watch telephone interview with Mary B., Oregon, November 10, 2009.

<sup>159</sup> Human Rights Watch telephone interview with Dr. Cat Livingston, clinician teacher, Oregon Health & Science University, March 18, 2010.

<sup>160</sup> Ibid.

I routinely talked to patients about how much leave they would take, and encouraged them to take long leaves. They were often confronted with the financial realities of their lives. They'd say, 'Our family can't afford more than four weeks off.'<sup>161</sup>

The parents interviewed who did have substantial paid leave after childbirth, such as Valery Y. with her four-month partially paid leave, said this facilitated health visits. "It was a help to have time off," she said. "It was nice to be able to know I could make appointments when they were available."<sup>162</sup>

### *Children's Severe Illnesses*

Paid family leave and workplace flexibility for working parents are important for all families, but they are essential for families with severely ill babies or children.

Research shows that parental presence positively affects recovery time and reduces anxiety for ill children. Parents with paid leave are at least five times more likely to care for their sick children than those without.<sup>163</sup> A series of studies have demonstrated faster recovery times when parents are present, and one study found that having parents room-in with hospitalized children reduced hospital stays by 31 percent.<sup>164</sup> Parental presence is linked to a lower incidence of cross-infection, a decrease in post-operative complications, less stress for the child, less anxiety for parents, and improved post-discharge care.

Several parents interviewed for this report had premature babies with major health problems, and some had children who developed serious illnesses a few months into life. They described the extraordinary pressure of trying to retain their jobs, keep their family financially afloat, and care for their ailing babies, and said having a few months of paid family leave or flexible schedules upon return to work would have helped immensely.

Kimberley N. worked for a charitable organization and had planned a six-week maternity leave. Her son was born with hypopituitarism, a life-threatening condition in which the

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<sup>161</sup> Human Rights Watch telephone interview with Dr. Elizabeth Steiner Hayward, president-elect, Oregon Academy of Family Physicians, March 30, 2010.

<sup>162</sup> Human Rights Watch telephone interview with Valery Y., California, May 11, 2010.

<sup>163</sup> Jodie Levin-Epstein, "Getting Punched: The Job and Family Clock," p. 4.

<sup>164</sup> For references to various studies, see Jody Heymann, Sara Toomey, and Frank Furstenberg, "Working Parents: What Factors Are Involved in Their Ability to Take Time Off From Work When Their Children Are Sick?" *Archives of Pediatrics & Adolescent Medicine*, vol. 163, no. 8, August 1999, footnotes 4 through 25, and Sarah J. Palmer, "Care of Sick Children By Parents: A Meaningful Role," *Journal of Advanced Nursing*, vol. 18, 1993, p. 188; R. Taylor and P. O'Connor, "Resident Parents and Shorter Hospital Stay," *Archives of Disease in Childhood*, vol. 64, 1989.

pituitary gland does not produce hormones needed to regulate the organs. He was in critical condition when born, and needed constant monitoring. She ended up taking a 12-week leave, most of it unpaid after a couple of weeks of accrued sick and vacation pay. She said:

If I had had paid leave it would have been so much better. I worked and we saved and saved. Had we not put money away we would have been in really big trouble. Twelve weeks [of pay] would have been such a tremendous help. Had we not had money in savings, it would have broken us. We used it all.<sup>165</sup>

Julia P. adopted a baby girl, now two years old, who was born four months premature. She weighed just 1.5 pounds and had to be resuscitated when she was born. Julia saved her vacation and sick leave for two years ahead of the adoption, and between that and the partial pay provided by her employer for parental leave, took seven weeks of paid leave. Julia's baby was on oxygen and a cardiac monitor for almost four months after coming home, and could not attend day care. Julia rationed her vacation time down to the hour to coordinate tag-team child care with her partner. "It was a narrowing funnel of extreme pressure on my vacation time, and I was using it up by being off several afternoons a week," Julia said. Frequent doctor visits added to the stress. Julia said:

I'm trying to hold it all together...Over the past year, we've had 191 doctor appointments. I'm trying to keep my marriage together, to keep my wife having a job, and me keeping a job.<sup>166</sup>

Although Julia's boss was flexible about her work schedule, she wishes she could have simply had more than seven weeks of leave.

A few interviewees did have paid family leave that allowed them time to be with their severely ill babies, and felt grateful and loyal to their employers because of it. Jasmine K.'s first son was born six weeks early and spent weeks in intensive care. She was fortunate: her employer, a union, paid her full salary for three months of maternity leave, partly from accrued vacation leave, but mostly through parental leave pay. "I just moved into the hospital for two and a half weeks," she said. "I think I left the building once."<sup>167</sup> She also had three months of paid maternity leave with her second child, and her employer now offers all employees full pay for twelve weeks as a parental leave benefit.

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<sup>165</sup> Human Rights Watch telephone interview with Kimberley N., Florida, April 28, 2010.

<sup>166</sup> Ibid.

<sup>167</sup> Human Rights Watch telephone interview with Jasmine K., Washington State, April 21, 2010.

Jasmine's second child was diagnosed with cancer (neuroblastoma) when he was six months old. Jasmine again took paid family leave intermittently for several weeks at a time to manage the treatment. "I was so blessed to have this job," she said. "You'd see those kids there [at the hospital] with no mommy or daddy. They had to work for health insurance. How sad to see those little babies, and I was there with mine 24/7."<sup>168</sup>

Several medical professionals said that the lack of paid family leave or flexible work schedules was devastating for families of hospitalized babies and children. One nurse practitioner said it was common at her hospital for parents to be absent:

It happens all the time. If the baby is premature, and the family has no savings or is low wage, they have to go back to work so they can have time when the baby goes home.... We had a little baby born with a birth mark taking up half of her body.... She was in the NICU for at least a month, up to two.... The mom tried to be there as much as she could, but the dad had to work, and someone had to take care of the sibling. The baby wasn't doing very well. She had multiple surgeries to quell the things that were happening. She ended up dying. If you have a baby, whether they live or die, you want to be there.... No one was there to hold their poor little sweet baby....

It's just accepted that two parents can't be at the bedside when a child is in the intensive care unit. Some people don't seem bothered by it, but it does bother me. Fifty percent of our patients have their parents away.... I see this all the time in the pediatric ICU.... For the lower wage workers, the employer would be pissed off if they took just two days off.... I remember a gorgeous 10-month-old baby boy, and neither parent was there.... This was at the height of the baby's stranger anxiety. He had a million tubes coming out of him, multiple IVs, arm boards, and he was restrained. It broke my heart that he couldn't have a parent with him.... We put toddlers in what we call a cage. It's a crib with a top so there's no way for them to jump or crawl out. We put them in there if the parents can't be there.<sup>169</sup>

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<sup>168</sup> Ibid.

<sup>169</sup> Human Rights Watch telephone interview with a nurse practitioner (name withheld), Oregon, March 16, 2010.

### *Emotional Health of Adopted Children*

Adoptive parents said that the lack of paid leave at the point of adoption made it difficult to manage their children's emotional needs during the transition to their new homes. Adoptive parents often confront not only the lack of paid family leave, but also huge adoption fees that put unpaid leave out of reach. Ted M., who works in product marketing, said:

Money was a factor in not taking more leave. As a single person with a lot of expenses around the adoption, unpaid leave would have been an additional [hardship]. You're in the range of \$30,000 to \$50,000 for a foreign adoption, and I was on the upper end. I had debt already, and was then taking on child care. Babies are not cheap, and I didn't want to take unpaid leave and incur more costs.<sup>170</sup>

Ted adopted his son, now three years old, from Guatemala. He wanted to take more time off when he brought his son home but had no more accrued leave. "I would have liked to have done more," said Ted. "I was adopting a child internationally, bringing him to a new environment with a different language, a new house, new child care, new faces, everything." Ted said his company's policy treated adoptive parents differently from biological parents, giving them a small cash benefit but no time off. He said:

You need time to get them adjusted, just the same as any other family....You may not have the same [physical] recovery... but you need the bonding time, to get a routine set, and to get child care set.... Paid time off to get this sorted out just seems fair.<sup>171</sup>

Adoptive parents who are not eligible for FMLA leave may have no time off at all to help their children adapt to their new lives. Theresa A. has three adopted children. For the first two adoptions, Theresa could not take any leave from her work as an attorney. For the first adoption, she travelled to Russia to collect her son, and worked while there. "I got home late Saturday night. I got my new son to bed at 5 a.m., and by 11 a.m. I was working. The next few weeks I did a combination of working at the office with my son and working from home. Within one month I had him in day care," she said.<sup>172</sup> Theresa needed more time to help her son, 29-months-old at the time, adjust and to seek specialist care for his eating disorder and developmental delays. But her small firm was not required to give her FMLA leave.

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<sup>170</sup> Human Rights Watch telephone interview with Ted M., Texas, April 29, 2010.

<sup>171</sup> Ibid.

<sup>172</sup> Human Rights Watch telephone interview with Theresa A., Maryland, March 25, 2010.

My son had such a fragile attachment.... He was completely shut down. He was a tough kid. He was very bonded to me, and terrified to be away from me. It would take four people at his day care to hold him so I could leave. It was traumatic for him and for me.<sup>173</sup>

When Theresa got custody of her second child, she could only take a half day off. She said, “He came to us as a result of an adoption that didn’t work, and he had 13 foster placements before that. He had severe behavior problems.... If I had leave time I wouldn’t have panicked.... It would have been a lot less stressful.”<sup>174</sup> In contrast, when Theresa adopted her third child, her employer gave her a three-month, partially paid leave, which Theresa said was vital for all of them to make the emotional adjustment to having a new baby. “It would have been a disaster not to have leave,” she said.<sup>175</sup>

### *Lack of Health Insurance during Leave*

The precarious health insurance situation for many US workers impacts their ability to take leave to care for a new baby or sick family member. The FMLA requires that employers maintain health benefits during family leave, but about half of the workforce is not eligible for FMLA leave. An enormous number of workers lose not just income, but also health insurance, if they take non-FMLA leave or leave longer than the 12 weeks allowed under the FMLA. This can endanger the health of both children and parents.

Mary B. did not qualify for FMLA leave after giving birth to her first child because she had been at her nursing job for less than one year, nor after her second child since she worked part time. At the time of the interview, the family—including their toddler and four-month-old baby—was without health insurance while she was on leave, as they could not afford the premium. Mary was worried:

I’m trying to get by without health insurance during leave. Health insurance is the biggest struggle.... Even though I’m a nurse and can make fairly good decisions about when to bring the kids in, it adds stress. We have no feeling of safety.... My toddler got the H1N1 flu. I hoped the baby wouldn’t.... I’ve been delaying check-ups. The baby is due for her four-month check-up. I’m not doing it until I have insurance. Immunizations will be delayed a bit. They

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<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

do DTaP, Polio, Rotavirus, and Hib [vaccinations] with the four-month visit, and she didn't get them.<sup>176</sup>

Several parents took shorter leaves than they would have liked in order to maintain health insurance. Amanda H. said she took three weeks off after giving birth by Cesarean section, then worked six hours a week for a few weeks, and resumed full-time work when the baby was six weeks old to maintain her insurance. She said, "At six weeks I went back to work because I didn't want to lose my health benefits and I needed to be paid."<sup>177</sup>

## Breastfeeding

Breastfeeding may be curtailed or abandoned when a mother's leave after childbirth is very short (which often results from lack of pay). Breastfeeding also suffers when employers forbid or offer inadequate conditions for pumping milk or breastfeeding babies at work, refuse flexible scheduling to accommodate nursing workers, or display hostility toward lactating workers. This in turn can impact children's and mothers' health and public health generally. Some progress was made on legal support for expressing breast milk at work through the 2010 health care act, but the new protections do not cover all workers, and it remains to be seen how employers will implement the new requirements.

The American Academy of Pediatrics (AAP) recommends exclusive breastfeeding for six months and continued breastfeeding for at least the first year of life.<sup>178</sup> According to the AAP, benefits of breastfeeding include decreased incidence or severity of many infectious diseases, reduced infant mortality, decreased rates of sudden infant death syndrome, reduced incidence of diabetes, lymphoma, leukemia, Hodgkin disease, obesity, asthma, and other diseases, and slightly enhanced cognitive development.<sup>179</sup> Maternal health benefits include reduced postpartum bleeding, decreased risk of breast and ovarian cancer, and possibly decreased risk of osteoporosis, among other things.<sup>180</sup> A 2010 study found that the US could prevent the deaths of nearly 900 infants and save \$13 billion dollars per year if 90

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<sup>176</sup> Human Rights Watch telephone interview with Mary B., Oregon, November 10, 2009.

<sup>177</sup> Human Rights Watch telephone interview with Amanda H., Oregon, April 5, 2010.

<sup>178</sup> American Academy of Pediatrics, "Policy Statement: Breastfeeding and the Use of Human Milk," *Pediatrics*, vol. 115, no. 2, February 2005, p. 499.

<sup>179</sup> *Ibid.*, pp. 496–97.

<sup>180</sup> *Ibid.*, p. 497.

percent of mothers breastfed exclusively for their babies' first six months of life.<sup>181</sup> Unfortunately, only 43 percent of babies in the US are still breastfed at six months.<sup>182</sup>

New research on California's paid family leave insurance program shows positive impacts on breastfeeding. The program doubled the median duration of breastfeeding for all new mothers who used it, from five to eleven weeks for mothers in "high-quality" jobs and from five to nine weeks for those in "low-quality" jobs.<sup>183</sup> It also increased the likelihood of breastfeeding initiation among women with "low quality" jobs: 92.5 percent of those who used the program initiated breastfeeding, compared to 83.3 percent of those who did not get paid leave.<sup>184</sup> Similarly, a study on maternity leave and breastfeeding in Canada showed a sharp jump in breastfeeding duration when Canada increased paid leave benefits from six months to about one year in most provinces. The study found that breastfeeding duration increased by over a month and the proportion of women attaining the public health benchmark of six months of exclusive breastfeeding increased nearly 40 percent.<sup>185</sup> A study on the US found that women who returned to work full-time within 12 weeks were 14 percentage points less likely to breastfeed than those who did not.<sup>186</sup> Another study in southern California showed that a maternity leave of six weeks or less resulted in mothers being four times more likely to not establish breastfeeding and three times more likely to cease breastfeeding early compared to women who did not return to work at that time.<sup>187</sup>

Virtually all biological mothers interviewed for this report said they tried to continue breastfeeding after returning to their jobs, and most tried pumping at work. A small number had private offices in which they could pump, hygienic conditions, refrigerators to store milk, reliable break times, and supportive co-workers and bosses. But several dozen said they struggled with one or all of these factors.

Some women said breastfeeding was not solidly established before they returned to work, and although they tried to pump, the start of work signaled the end of nursing. Sarah O. was

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<sup>181</sup> Melissa Bartick and Arnold Reinhold, "The Burden of Suboptimal Breastfeeding in the United States: A Pediatric Cost Analysis," *Pediatrics*, vol. 125, May 2010, p. 1048.

<sup>182</sup> Centers for Disease Control, "Three Out of Four New Moms Initiate Breastfeeding; However, Only 43 Percent of Babies Still Being Breastfed at Six Months of Age," Press Release, September 14, 2010, <http://www.cdc.gov/media/pressrel/2010/r100913.htm> (accessed September 23, 2010).

<sup>183</sup> Appelbaum and Milkman, "Leaves that Pay," p. 5.

<sup>184</sup> *Ibid.*, p. 29.

<sup>185</sup> Michael Baker and Kevin Milligan, "Maternal Employment, Breastfeeding, and Health: Evidence from Maternity Leave Mandates," *Journal of Health Economics*, vol. 27, 2008, pp. 872 and 884.

<sup>186</sup> Berger, Hill, and Waldfogel, "Maternity Leave, Early Maternal Employment and Child Health and Development in the US," pp. F39-40.

<sup>187</sup> Sylvia Guendelman, et al., "Juggling Work and Breastfeeding: Effects of Maternity Leave and Occupational Characteristics," *Pediatrics*, vol. 123, 2009, p. e45.

a graduate student teaching college courses and waitressing when she had her first baby. She tried to breastfeed, but the baby was not nursing reliably when Sarah returned to work three weeks after childbirth. Pumping did not work due to space and time constraints. “It was very difficult,” Sarah said. “I was working two jobs, and had no office at the time.... [Pumping] was time consuming, and I didn’t produce much. I probably did this a month. I couldn’t pump at my waitress job. There was no place to go there, and it wasn’t a good atmosphere.” She stopped nursing when the baby was a few months old. “Ideally I would have liked to [breastfeed] at least a year if not longer. I was most traumatized by that with the first one. I really wanted it to work.”<sup>188</sup>

Physical conditions for pumping milk were dismal for many women interviewed. They described pumping in bathrooms, copy rooms, shared kitchens, bulk closets, a gymnasium, a phone booth, an equipment storage room, a photography studio, a mail truck, and an exam room. In some cases, pumping spaces employers designated were so uncomfortable or unhygienic that women cut short breastfeeding. After an eight-week maternity leave, Samantha went back to her job with an organization that helps formerly incarcerated people find work. Her employer said the only place she could pump was a heavily-trafficked public restroom with two stalls and no electric outlet. Samantha said, “I nursed until I went back to work. There was no private place to pump. I stopped because of work. I wanted to continue for six or eight months, or until the baby got his first teeth.”<sup>189</sup> Paula R. returned to her job five weeks after her daughter was born. She had hoped to nurse for six months, but found pumping at her law firm’s bathroom too difficult, and stopped at six weeks.<sup>190</sup>

Some employers offered no space for pumping whatsoever. Diana T. took a six-week maternity leave from her job at a store, and stopped nursing a few weeks after her return. She said:

I stopped at two months because of the difficulty between work and getting it [pumping] done.... I had no way to go anywhere to get milk. It was very discouraging. Breastfeeding would have been best for [the baby]. My work was not adaptable.<sup>191</sup>

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<sup>188</sup> Human Rights Watch telephone interview with Sarah O., Arizona, April 9, 2010.

<sup>189</sup> Human Rights Watch telephone interview with Samantha B., New York, April 13, 2010.

<sup>190</sup> Human Rights Watch telephone interview with Paula R., Pennsylvania, April 9, 2010.

<sup>191</sup> Human Rights Watch telephone interview with Diana T., New Hampshire, March 25, 2010.

She said that if she had been able to pump, she “would have definitely done at least four months if not the whole first year. Pumping was not in any way encouraged.”<sup>192</sup>

One woman told us that the lack of pumping accommodation at work was a major factor in deciding to quit her job. Lori M., who worked for a non-profit health organization, said, “Part of the reason I wanted to leave my job is that there’s no place to pump. They said I could use a utility closet.”<sup>193</sup>

Critical attitudes of employers and coworkers also defeated some women’s attempts to pump milk and continue breastfeeding. Carolyn J. said that when she returned to work as a teacher after a six-week maternity leave, she had to pump in a room with a copy machine and a refrigerator. “It took the administration four days to get me a space to pump,” she said. They told her she should pump in a space used regularly by other staff. She said her colleagues “are angry because they can’t get coffee because I’m pumping.”<sup>194</sup> She pumps less often than she would like, and has breast pain by the end of the day. Anita R. also faced negative workplace attitudes about pumping:

When I returned to work after my second [baby], my employer was frightened to even think about a breast pump. She was horrified. She was like a deer in the headlights about it. It was such a pain. It’s hard to pump because I don’t take a break for lunch. I get comments like, ‘you have to be pumping to get a break around here!’<sup>195</sup>

All of the health care providers interviewed for this report stressed that paid and sufficiently long family leave as well as work accommodations for pumping are critical for breastfeeding. Dr. Cat Livingston said, “Sometimes we see them after one or two weeks go back [to work]. This is a critical time for breast pain. If you’re going back to work in this painful time, it’s much less likely you’ll breastfeed. Lots of employers have bad facilities for pumping breast milk. Lots of people do this in toilet stalls.... This may rapidly decrease how much women are willing to breastfeed.” Similarly, Dr. Francis Biagioli told us, “I see a lot of stopping of breastfeeding when mothers go back to work.... My patients go back to work sooner when they don’t have paid leave.... Almost all of the women I see who go back to work give up

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<sup>192</sup> Ibid.

<sup>193</sup> Human Rights Watch telephone interview with Lori M., New York, April 8, 2010.

<sup>194</sup> Human Rights Watch telephone interview with Carolyn J., Wisconsin, April 6, 2010.

<sup>195</sup> Human Rights Watch telephone interview with Anita R., Colorado, March 18, 2010.

breastfeeding within a month or two.”<sup>196</sup> Dr. Elizabeth Steiner Hayward, president-elect of the Oregon chapter of the American Academy of Family Physicians said:

We know that women who stay home longer breastfeed longer. This has substantial health implications for the mother and baby, and in the long term for public health. If every baby in the country was breastfed for six months, we’d have a substantial decrease in autoimmune disorders and obesity problems.... Even though the FMLA covers 12 weeks and even though employers must give breaks to pump, you still see women giving up breastfeeding.<sup>197</sup>

Women who had longer maternity leaves told us this helped them establish breastfeeding, and that positive workplace conditions for pumping helped them continue. Valery Y. had a four-month maternity leave, with three months paid through the California family leave and a temporary disability insurance program and one month paid with accrued sick time. She initially had trouble getting her baby to nurse, but by about five or six weeks, it was going well. “The leave I had was helpful because by the time I was back to work, she was eating and sleeping,” Valery said. “If I went back super early, with breastfeeding I would have been more stressed. I pumped at work.... They had a great space and gave flexibility to take 15 minutes twice a day.”<sup>198</sup>

## Financial Hardship of Unpaid Leave

Wage replacement during leave has obvious benefits for family finances. Research on poverty and bankruptcy related to childbirth suggests that paid family leave could help avert or minimize family financial crises.

According to a 2008 report, approximately 8.6 percent of the instances when households enter into poverty in the US happen when a child is born, and one out of every five temporary poverty spells for children begin this way.<sup>199</sup> The report also found that in families with a new baby, 12.9 percent become poor in the month the event occurred, and this increases to 24.6

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<sup>196</sup> Human Rights Watch telephone interview with Dr. Francis Biagioli, associate professor, Oregon Health & Science University, March 30, 2010.

<sup>197</sup> Human Rights Watch telephone interview with Dr. Elizabeth Steiner Hayward, president-elect, Oregon Academy of Family Physicians, March 30, 2010.

<sup>198</sup> Human Rights Watch telephone interview with Valery Y., California, May 11, 2010.

<sup>199</sup> Amy Rynell, “Causes of Poverty: Findings from Recent Research,” Heartland Alliance Mid-America Institute on Poverty, October 2008, p. 13.

percent when a female heads the household.<sup>200</sup> When the 2000 FMLA survey was done, 8.7 percent of leave takers overall resorted to public assistance due to loss of income during leave.<sup>201</sup> Paid leave may also help some families avoid bankruptcy, which for many families happens around childbirth. One study of over 1,700 bankruptcy cases found 7 percent of the debtors identified the birth of a baby as a reason for filing for bankruptcy.<sup>202</sup>

More than half of the parents interviewed said they faced significant financial hardship when their children were born or adopted due to lack of paid leave.

### *Difficulty Meeting Basic Needs*

Some interviewees had trouble meeting their monthly expenses and paying for basic needs immediately after childbirth or adoption. Christina S. saved money by working extra hours while she was pregnant, but struggled financially when her child was born:

It was very stressful. We used a food bank when we had my third son.... [Paid leave] would have reduced my worry about finances, and whether we were going to make it. It would have given some security, emotional and financial.<sup>203</sup>

Patricia D. had an eight-week leave from her job at a retail store when her son was born, three of them with vacation and sick leave pay. She said, “By the end of my leave, we were deciding do we pay the light bill or pay for formula.... It’s not like parents want a month in Maui. A baby has been born. You need to have money coming in. You can’t just rely on vacation and sick time.”<sup>204</sup> Ruth A., a teacher, took a three-month unpaid leave when her child was born, and had to rely on her husband’s parents for financial support. Ruth said: “We barely broke even every month.... We changed our lifestyle completely.... We used heat less, and bundled up in the house.”<sup>205</sup>

Losing income during unpaid family leave was particularly hard on single parents. Diana T. is the single mother of two girls, the first born when she was 18 and living with her parents. Diana had no paid leave after her first child was born, and 60 percent of her salary (of less

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<sup>200</sup> Ibid.

<sup>201</sup> Cantor, et al., “Balancing the Needs of Families and Employers,” Table 4.8.

<sup>202</sup> Melissa Jacoby and Elizabeth Warren, “Beyond Hospital Misbehavior: An Alternative Account of Medical-Related Financial Distress,” *Northwestern University Law Review*, vol. 100, 2006, p. 548.

<sup>203</sup> Human Rights Watch telephone interview with Christina S., New Hampshire, March 24, 2010.

<sup>204</sup> Human Rights Watch telephone interview with Patricia D., New Hampshire, March 29, 2010.

<sup>205</sup> Human Rights Watch telephone interview with Ruth A., Oregon, November 9, 2009.

than \$30,000 per year) for six weeks when her second child was born. After her first baby was born, she said: “I had nothing.... I had no money for food, diapers, or clothes. I didn’t have a room in [my parents] house. I lived in the dining room behind a sheet. We put the crib up there.”<sup>206</sup> Although she had partial pay after her second child was born, the costs of having a new baby were high, and she incurred credit card debt. She also struggled to pay rent. A few months later, Diana was homeless.

Juliana E., a single mother of an infant, and had an eight-week leave with partial pay. She said, “I did the math to see [if I could take a longer leave]. I could only do eight weeks because I couldn’t pay the bills.”<sup>207</sup> Losing some of her income during this period forced her to seek financial help from family and friends, and she was late on car payments. She went on food stamps and welfare for a few months. She said that having consistent pay during maternity leave would have helped her avoid falling behind financially.<sup>208</sup>

Costly health insurance or COBRA premiums during unpaid leave were a major burden for those not covered by the FMLA. Isabella V. took a six-month maternity leave from her teaching job, much of it unpaid, and had to pay \$3,000 to \$4,000 over a few months in COBRA premiums. Between that extra expense and losing her income, Isabella said:

We couldn’t pay the mortgage and buy food.... Our pediatrician suggested WIC [the Women, Infants and Children’s government assistance program]. I qualified for that and food stamps. It helped not to have to worry about food.... Having a little extra vegetables and milk was such a big help. We had already cut everything out of our budget.<sup>209</sup>

Many parents interviewed had saved money ahead of their leaves, but still struggled. Saving money was difficult for those with lower incomes, and for those with other children and childcare costs. Helen N. and her husband saved money throughout her second pregnancy, but it was not enough to enable a longer leave or financial security. She took seven weeks off, unpaid, then began working in a temporary nursing position without benefits. “I went back to work because we needed the money,” she said. Her parents and in-laws helped them financially, including through a debit account for groceries. “Without help from our parents we would have been foreclosed on long ago,” Helen said.<sup>210</sup>

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<sup>206</sup> Human Rights Watch telephone interview with Diana T., New Hampshire, March 25, 2010.

<sup>207</sup> Human Rights Watch telephone interview with Juliana E., Texas, July 13, 2010.

<sup>208</sup> Ibid.

<sup>209</sup> Human Rights Watch telephone interview with Isabella V., New York, April 11, 2010.

<sup>210</sup> Human Rights Watch telephone interview with Helen N., Oregon, March 16, 2010.

The fortunate parents who did have paid leave said wage replacement made longer leaves feasible. Valery Y., who had a four-month maternity leave partially paid through California's family leave program, said:

Wage replacement ... definitely made me more comfortable. It helped knowing when we were about to pay day care, during leave we could pay the bills. Psychologically it helped. I was taking time to do what was important, but by being paid I felt a connection to the work world. It was very, very, very valuable to have this.... If I didn't have paid leave, most likely I would have chosen to go on a shorter leave. We would have been hard pressed to take unpaid leave. It would change my thinking.<sup>211</sup>

Carmen B. had an eight-week maternity leave fully paid by her employer, a child-care agency. She said, "[Paid leave] takes a lot of burden off, not having to worry when you're off work.... If I hadn't been paid, I probably would have taken two weeks. I wouldn't have been able to live without pay."<sup>212</sup>

Professionals who work with low-income families also told Human Rights Watch that paid family leave would make a big difference to their clients. A manager of a Head Start preschool program serving low-income families said:

Oh my god, with paid leave I think some could get out of the cycle of poverty they're stuck in.... If they could get support they would do better. You'd see better parenting choices and opportunities.... Kids could form solid attachments and do better in life.<sup>213</sup>

### *Debt and Bankruptcy*

Two dozen parents interviewed landed in debt after taking childbirth or adoption leave with little or no pay. Losing income during leave coincided with new or greater costs from medical expenses, meeting a baby's needs, or starting day care. Wage replacement during leave may not have averted debt entirely for these families, but they all said that having some wage replacement would have helped enormously.

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<sup>211</sup> Human Rights Watch telephone interview with Valery Y., California, May 11, 2010.

<sup>212</sup> Human Rights Watch telephone interview with Carmen B., Massachusetts, May 13, 2010.

<sup>213</sup> Human Rights Watch telephone interview with Lisa Couture, developmental service manager, Tri-County Head Start, New Hampshire, January 18, 2010.

Many parents incurred credit card debt or defaulted on credit card payments during unpaid leave after childbirth or adoption. Samantha B. said, “We went into debt. I put my student loans on deferment.... Both our credit cards went into 30-day or 60-day default. We had some savings but just to pay the rent. With the cost of getting diapers and necessities for the baby, I put that first.”<sup>214</sup> Anna G., a nurse, had a four-week unpaid maternity leave. She said, “We had to run up our credit cards to stay afloat. We put our groceries on our credit card.”<sup>215</sup>

Several interviewees said they took out private loans to afford unpaid leave. Paige V. had a 12-week maternity leave, half of it unpaid. She said:

This whole FMLA thing is nice, but most people can’t afford not to be paid for 12 weeks. I think it’s ridiculous.... We went into debt, and couldn’t stay out. We couldn’t meet our expenses. We had to use our credit card and get a loan.... I had to ask my parents for money, and I think my partner borrowed against her retirement. This happened at the time of my unpaid leave to cover the six weeks. It was a big deal not to get that [money] for that time.... We’re still paying off the debt.<sup>216</sup>

Linda F. also took out a private loan at a high interest rate to enable her to take an unpaid maternity leave.<sup>217</sup>

Five parents had no choice but to declare bankruptcy due to debt incurred during family leave, in some instances combined with medical costs uncovered by insurance. Olive D. and her husband saved money during her pregnancy, but their son was born prematurely with major health complications. She ended up taking a longer unpaid leave than planned, and the family went into debt from the loss of income and thousands of dollars of health care costs not covered by insurance. “We filed for bankruptcy as a result. It was such a stressful year,” she said. “Any money that could have come in [as paid leave] would have helped. If only we weren’t struggling to pull money out of nothing.... We didn’t want to declare bankruptcy.”<sup>218</sup> Olive noted that government-sponsored paid leave may have been a better deal for the public than bankruptcy: “The community [taxpayers] paid for it one way or another,” she said. “They would have spent less on me if I got paid leave.”<sup>219</sup>

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<sup>214</sup> Human Rights Watch telephone interview with Samantha B., New York, April 13, 2010.

<sup>215</sup> Human Rights Watch telephone interview with Anna G., Oregon, March 31, 2010.

<sup>216</sup> Human Rights Watch telephone interview with Paige V., New York, May 7, 2010.

<sup>217</sup> Human Rights Watch telephone interview with Linda F., Oregon, January 22, 2010.

<sup>218</sup> Human Rights Watch telephone interview with Olive D., [location withheld], November 13, 2009.

<sup>219</sup> Ibid.

### *Extra Work to Offset Unpaid Leave*

Some parents worked additional hours or jobs to prepare for unpaid leave and stockpile savings before the baby arrived. Hannah C. worked at a bank during a pregnancy accompanied by severe nausea for nine months. She said, “When I was pregnant and learned that I had no paid parental leave, I felt, ‘How the heck will I pay the bills?’ That’s why I didn’t stop working. I worked a lot before I gave birth. I used to nanny as well. So on days I wasn’t at the bank, even though I was sick, I tried to rack up the money because there would be none for a while.”<sup>220</sup> Other parents took odd jobs shortly after giving birth to make up for losing pay during leave. Ruth A. provided day care in her home for several children during her unpaid maternity leave while also caring for her newborn and toddler. “I had to do this to pay the bills and buy groceries,” she said.<sup>221</sup>

Several interviewees said that their partners took on extra work after their babies were born, leaving the other parent to cope alone with the newborn. When Linda F. was on unpaid maternity leave, her husband took a fishing job in Alaska. “To cover expenses, my husband had to go fishing in Alaska,” she said, adding:

I had no support. He had to make money. It was really stressful... If I had [paid leave] in that time my husband could have stayed with me and the kids instead of going away. When you have kids there is stress if the partner is away, and he doesn’t bond with the kids.<sup>222</sup>

### **Career Impacts of Taking Leave and Becoming a Parent**

Some parents interviewed confronted negative workplace attitudes, and in some cases discrimination, in reaction to their pregnancies, work leaves, or new family responsibilities. Several said their employers acted as if they were traitors for becoming pregnant and requesting leave, or as if working parents were not truly committed to their jobs. As noted in Chapter II, US law does provide some remedies for employment discrimination, but many interviewees were unaware of their rights, afraid that seeking a remedy would endanger their jobs, or, sometimes with good reason, doubted that they had a sufficiently strong claim to prove discrimination.

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<sup>220</sup> Human Rights Watch telephone interview with Hannah C., Connecticut, April 13, 2010.

<sup>221</sup> Human Rights Watch telephone interview with Ruth A., Oregon, November 9, 2009.

<sup>222</sup> Human Rights Watch telephone interview with Linda F., Oregon, January 22, 2010.

### *Workplace Reactions to Pregnancy*

Disclosing pregnancy and discussing leave with employers was daunting for many parents because they feared employer bias against workers, especially mothers, with family responsibilities. Some saw swift negative reactions to their pregnancies. Anita R. said her employer was “very unhappy” on hearing of her pregnancy, and within two days cut her hours and pay.<sup>223</sup> Anita filed a pregnancy discrimination claim, which she later dropped. “I do need my job,” she said. “Especially being pregnant makes it harder to find another job.”<sup>224</sup>

In several cases, women felt their employers intentionally made their jobs more difficult during pregnancy, and seemed to hope they would quit before taking maternity leave. Diana T. worked at a store while pregnant, and said, “There was a manager who didn’t like the fact that I was pregnant. She’d force me to go around and pick things up off the floor. People had to help me back up. She wouldn’t make any exceptions.”<sup>225</sup> Charlotte W. said:

I’m a letter carrier, and most of my route is walking. There are lots of stairs and hills. As I got bigger, I got slower and was more exhausted. I got a doctor’s note restricting me to eight hours of work a day.... The first day I brought in the note, [my boss] said I’d better learn to move fast, and walked away. I had to argue every day to get help to get my route done in eight hours.<sup>226</sup>

Many women said that the atmosphere at work changed when they revealed they were pregnant. Sarah O., a college professor, said, “I was the first in the department that had ever been pregnant. The [chair] said, ‘I hope you’re not having any more!’... He said it in a laughing manner ... but it was half serious.”<sup>227</sup> Another college professor, Abigail Y., said her employer was bitter about her pregnancy:

They said I had to figure out how I would teach the class and keep up my credit hours. I was due the week before Thanksgiving, and was able to crunch a lot of hours before.... Through the whole [pregnancy] it appeared and felt like I was causing huge damage to the college, to my coworkers, and to my career to have a baby.... It was like it was a huge inconvenience and a

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<sup>223</sup> Human Rights Watch telephone interview with Anita R., Colorado, March 18, 2010.

<sup>224</sup> Ibid.

<sup>225</sup> Human Rights Watch telephone interview with Diana T., New Hampshire, March 25, 2010.

<sup>226</sup> Human Rights Watch telephone interview with Charlotte W., North Carolina, May 10, 2010.

<sup>227</sup> Human Rights Watch telephone interview with Sarah O., Arizona, April 9, 2010.

problem.... I led a sea kayaking trip [for the university] at seven months pregnant. There was huge pressure not to drop anything. I carried the backpack, loaded the sea kayak. I did all of it. I wanted to carry my weight. I had a difficult labor. I don't know if it was related to the schedule I kept.<sup>228</sup>

Several women said their colleagues' critical attitude toward their pregnancy was subtle, but apparent. Leah H., an attorney, said "My pregnancy with my son was in the middle of a trial. I was tired and nauseous all the time. I had to tell them when I was six weeks pregnant because I couldn't carry the heavy litigation bags. Having to tell them so early was stressful.... It affected their perception of my performance.... It's hard to explain, but they just treat you differently.... I felt I was viewed as someone who wouldn't give their all."<sup>229</sup> Michelle E., a physician who took a two-month maternity leave, said, "There was a sense of I was doing something behind their backs, like I was evil for leaving them in the cold. I felt bad for getting pregnant in the first place. That was the sense I had."<sup>230</sup> As a result, Michelle quit her job.

### *Workplace Reactions to Taking Leave*

Some interviewees also faced workplace hostility when they requested leave after childbirth or adoption. Abigail Y.'s employer essentially denied her any maternity leave by forcing her to make up all her teaching time before the baby was born late in the semester. Abigail said:

The dean said it was imperative that there not be any perception that I took any maternity leave. I did all the [class] time in advance.... I probably did at least 50 to 55 hours of additional time before my 'leave.' The whole time they treated it like it was a problem.<sup>231</sup>

Negotiating leave was particularly challenging for workers not covered by the FMLA. Maya T. missed the FMLA eligibility cut-off by 40 or 50 hours. She asked for a three-month maternity leave to get breastfeeding established, but her employer granted only two months, and said she could be terminated if she did not return then.<sup>232</sup>

Several parents in same-sex marriages or partnerships endured scathing employer reactions to requests for leave when their partners gave birth. The employers did not consider the

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<sup>228</sup> Human Rights Watch telephone interview with Abigail Y., North Carolina, April 12, 2010.

<sup>229</sup> Human Rights Watch telephone interview with Leah H., New York, April 14, 2010.

<sup>230</sup> Human Rights Watch telephone interview with Michelle E., Oregon, March 30, 2010.

<sup>231</sup> Human Rights Watch telephone interview with Abigail Y., North Carolina, April 12, 2010.

<sup>232</sup> Human Rights Watch telephone interview with Maya T., Colorado, May 5, 2010.

babies of the non-biological parent to be “family” for purposes of their leave policies (in violation of the FMLA). Amelia S., formerly a college professor, said her employer was so hostile to her leave request that she was effectively driven from her job. Amelia had a federal document verifying that she was the parent of her baby, though she was not the biological mother, and she pressed her employer to grant her family leave. They refused. Amelia said:

They hauled me in and told me I couldn’t take leave.... They said, ‘If you want to take leave you’ll have to sue us.’ They told me I was expected to be there full time, and if absent there would be ramifications.... They also told me I wouldn’t be getting tenure because I had raised a stink. I had unbelievable reviews and student evaluations. That summer I was getting ready to put together my tenure documents. They said the board of trustees wouldn’t approve it. I left.<sup>233</sup>

A few women said their employers seemed sure that if they took maternity leave they would soon quit their jobs, even going so far as to make permanent hires to replace them. Paula R., an attorney, took just five weeks of unpaid maternity leave when her daughter was born. But when she returned to work, her boss had hired another employee and given him Paula’s office. Her boss asked her to work in the conference room and then to share his office. “I think once you’ve taken a leave as a working mother you’re always viewed as a flight risk. Like you’re not really putting your job first,” she said.<sup>234</sup>

Several women said their male partners also feared taking family leave due to workplace attitudes about leave-takers, and many took less than they were entitled to. Paula R. said her husband was entitled to FMLA leave, but felt it would not look good to take the full leave when their child was born. “No man had done it and he wasn’t going to be the first,” she said. “After delivery, he went in to teach classes.”<sup>235</sup>

### *Impacts on Promotions, Salary Increases, and Development*

It is difficult to distinguish exactly what leads an employer to deny promotions, raises, or development opportunities, but some mothers we interviewed were convinced that having children and taking leave were the prime reasons they were passed over. Some said that clearer work-family support policies and better enforcement of anti-discrimination laws might help diminish bias against working parents when it comes to career advancement.

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<sup>233</sup> Human Rights Watch telephone interview with Amelia S., Colorado, May 5, 2010.

<sup>234</sup> Human Rights Watch telephone interview with Paula R., Pennsylvania, April 9, 2010.

<sup>235</sup> Ibid.

Andrea N. said becoming a mother delayed promotions by several years: “By my third child I could feel a difference. You sort of like hit the wall. There was one promotion that took two years longer to get than I would have wanted. My employer never said anything. It didn’t have to be said.”<sup>236</sup> Sarah O. said becoming a parent hurt her career as a professor and her prospects for tenure. “I think just even being seen with my children was detrimental,” she said, adding:

Most people who work here don’t have kids, and those who do feel impacts on their career. One [colleague] told me I shouldn’t put a photo of my kids on my website. I’m up for tenure, and was told I probably won’t get it. I feel it’s due to having three young kids.... I think I would receive tenure if I had no kids.<sup>237</sup>

For Linda F., becoming a mother coincided with being sidelined from leadership opportunities and promotions in her work as a nurse practitioner. Linda said, “Even if I’m respected, I’m not requested to be in positions of power.... There were some promotions I wanted but people got them who didn’t have kids. I really think that’s a factor.”<sup>238</sup>

Several women said they were demoted upon returning from maternity leave, sometimes after requesting a flexible or reduced schedule. Susan A., a writer and editor, was allowed only a six-week maternity leave when her son, now a toddler, was born. She was officially on a part-time schedule when she returned to work, but was given as much work as full-time employees and clocked full-time hours most weeks. She was nonetheless demoted and took a pay cut.<sup>239</sup>

Some women said that the act of taking leave led employers to withhold raises or development opportunities. Judith K., who worked for an Oregon state agency, had a three-month leave with no pay other than accrued sick and vacation time. She said:

My boss kept referring to this great gift [of leave] he’d given me. “You’ve been off for three months,” he’d say. This persisted for a year after.... He just felt like he’d done some great service to society allowing me a three-month unpaid leave. He would make comments. It was frustrating. I was an awesome employee and he knew it.... They gave pay increases to others, and felt giving three months off was enough for me. They didn’t send me to conferences.

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<sup>236</sup> Human Rights Watch telephone interview with Andrea N., Pennsylvania, April 8, 2010.

<sup>237</sup> Human Rights Watch telephone interview with Sarah O., Arizona, April 9, 2010.

<sup>238</sup> Human Rights Watch telephone interview with Linda F., Oregon, January 22, 2010.

<sup>239</sup> Human Rights Watch telephone interview with Susan A., Texas, March 26, 2010.

People think you're not committed to work or a dependable employee. There's so much stigma that you're not reliable because you now have a child. Taking time off, I worried from a career standpoint. If there were a policy, and employers expected [family leave], then I'd have easily taken six months.<sup>240</sup>

### *Derailed Careers*

Several women told of career meltdowns directly related to inflexible workplace policies, including the lack of paid leave and scheduling flexibility for new parents. Many felt they had no choice but to quit their jobs, and ended up unemployed or in far less senior, lucrative, and rewarding jobs. As one interviewee put it, "The economy loses a lot of work power and a lot of talented women this way."<sup>241</sup>

Negotiating leave or flexible work arrangements caused some parents such friction with employers that they quit. Kimberley N. left a senior position in a charitable organization after they refused to let her work from home or on a flexible schedule after her son was born with a life-threatening illness. Shortly after her request and right after returning from maternity leave, they gave her a terrible performance evaluation, in contrast to years of positive reviews before. She said:

I was blindsided. Where did this come from? In my mind I had just given birth and was coping with a new reality. Coming back to work was ugly. I didn't feel they helped me integrate back in. I felt like an outsider. I sucked it up and then quit. My evaluation was night and day different [from before having a child].... I was really pissed at how I was treated. All I did was have a baby.<sup>242</sup>

After a few months, Kimberley found a part-time job at lower pay and with no benefits, but was laid off when the recession hit. "This whole scenario has detrimentally impacted my career," she said. "It leaves questions on my resume. I can somewhat get around them, but on-ramping is hard.... There are questions: 'Where have you been?'... It makes it harder to get back in [to employment]."<sup>243</sup>

Other women also left rewarding or high-paying careers for much lower-level more flexible positions, derailing their financial and career goals. Abigail Y. quit her job as a professor

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<sup>240</sup> Human Rights Watch telephone interview with Judith K., Washington State, April 7, 2010.

<sup>241</sup> Human Rights Watch telephone interview with Madelyn P., Oregon, April 29, 2010.

<sup>242</sup> Human Rights Watch telephone interview with Kimberley N., Florida, April 28, 2010.

<sup>243</sup> Ibid.

because the university denied her maternity leave and scheduling flexibility. She did consultancy work on and off for a few years, then took a lower-level job at a nonprofit group. This devastated her family's finances, and at times they were late on mortgage payments and close to having their utilities cut off. Abigail said:

I had been teaching at the college level. This is a dramatic difference. I wasn't going to be able to be hired back after four or five years out of teaching.... All this has really retarded my financial earnings, my pension, and social security. My annual income dropped significantly. I had to choose to either be a professional or be the kind of mom I want to be. Losing four years of your career and starting over is not the most financially sound thing to do.<sup>244</sup>

Victoria G. said her dream of a publishing career came to an abrupt halt when she had a baby. She was granted only a six-week leave, and her employer refused the flexible schedule Victoria wanted to facilitate breastfeeding. Victoria quit her job, and was deeply disappointed to leave publishing. "By taking this time now I have to abandon that goal. [Having a baby] has redirected my career options."<sup>245</sup> Victoria now does side jobs, like teaching yoga and working part-time at a bookstore during hours when she does not need child care.

She said:

If leave policy were set in such a way as allowed more human time to adapt to babies, giving parents more time to take care of the child without losing their ability to support themselves, I wouldn't have made the same choices.<sup>246</sup>

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<sup>244</sup> Human Rights Watch telephone interview with Abigail Y., North Carolina, April 12, 2010.

<sup>245</sup> Human Rights Watch telephone interview with Victoria G., New York, April 14, 2010.

<sup>246</sup> Ibid.

## V. International Human Rights and Labor Standards

International human rights and labor treaties, as well as authoritative interpretations of those treaties, address a range of work-family supports. International law unequivocally promotes paid maternity, paternity, and parental leave (as well as broader family leave under the right to social security), non-discrimination against family caregivers, and work-family supports generally.

The US has not ratified the treaties that most directly address work-family policy although it has signed several of them, thus committing to at least refrain from acts that would defeat the object and purpose of the treaties.<sup>247</sup>

This chapter describes relevant international law and interpretations not to suggest that the US is in violation of all of these standards, but rather to show how far out of step US policy is with international norms.

While ratifying treaties is far from a panacea, it would be an important step for the United States toward having work-family policies that respect human rights. The US should, at a minimum, ratify several key human rights treaties: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>248</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>249</sup> It should do so without reservations that would defeat the object and purpose of the treaties.

### Rights to Paid Leave

Several international human rights and labor treaties explicitly call for paid maternity leave. In the decades since these treaties were adopted, expert bodies have interpreted these provisions as also calling for paternity and parental leave, and for them to cover leave in connection with adoption. The clearest provisions are in CEDAW, the ICESCR, and International Labour Organization Convention No. 183:

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<sup>247</sup> Vienna Convention on the Law of Treaties, adopted May 23, 1969, UN Doc. A/Conf.39/27, 1155 UNTS 331, entered into force January 27, 1980, art. 18.

<sup>248</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. The US signed CEDAW in 1980 but has not ratified.

<sup>249</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976. The US signed the ICESCR in 1977 but has not ratified.

- CEDAW provides in article 11(2)(b) that states parties “shall take appropriate measures ... [t]o introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.” The Committee on the Elimination of Discrimination against Women (the CEDAW Committee), in dozens of concluding observations from the past few years alone, has encouraged governments to enforce maternity, paternity, and parental leave policies, ensure that they cover both the private and public sectors, and increase incentives for men to take paternity leave.<sup>250</sup>
- The ICESCR states in article 10(2) that “Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”
- International Labour Organization Convention No. 183 concerning Maternity Protection (revised) requires that member states ensure that employed women are entitled to at least 14 weeks of maternity leave with adequate social assistance funds or cash benefits of not less than two-thirds of their previous earnings, that they receive medical benefits during that period, and that they be entitled to return to the same or an equivalent position at the end of the leave.<sup>251</sup> A non-binding ILO recommendation urges states to extend maternity leave to at least 18 weeks, to raise cash benefits to the full amount of previous earnings, and to grant fathers or mothers parental leave after the expiry of maternity leave.<sup>252</sup> It also recommends that in countries with adoption regimes, that adoptive parents be entitled to the same leave and other rights covered by the convention.<sup>253</sup>

Several international treaties also contain the right to social security, and authoritative interpretations establish that this right covers a variety of forms of paid family leave, including leave after childbirth or adoption. The ICESCR provides in article 9 that states parties to the covenant “recognize the right of everyone to social security, including social insurance,” and General Comment No. 19 of the Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the ICESCR, describes the nine principal branches of social security as including maternity leave.<sup>254</sup> ILO Convention No. 102, the

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<sup>250</sup> See, e.g., UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), concluding observations on country reports of Denmark (CEDAW/C/DEN/CO/7, paras. 26 and 27), Japan (CEDAW/C/JPN/CO/6, paras. 47 and 48), Switzerland (CEDAW/C/CHE/CO/3, paras. 37 and 38), Germany (CEDAW/C/DEU/CO/6, paras. 37 and 38), Canada (CEDAW/C/CAN/CO/7, para. 6), Belgium (CEDAW/C/BEL/CO/6, paras. 13 and 14), the United Kingdom (CEDAW/C/GBR/CO/6, paras. 286 and 287), and Sweden (CEDAW/C/SWE/CO/7, paras. 26 and 27), and France (CEDAW/C/FRA/CO/6, paras. 26 and 27).

<sup>251</sup> ILO Convention No. 183 concerning Maternity Protection (Revised), 2000, adopted June 15, 2000, 40 I.L.M. 2, entered into force February 7, 2002, arts. 1, 6, and 8.

<sup>252</sup> ILO Recommendation Concerning Maternity Protection, June 15, 2000, ILO No. R191, paras. 1 and 10(3).

<sup>253</sup> *Ibid.*, para. 10(5).

<sup>254</sup> Committee on Economic, Social and Cultural Rights, General Comment 19, The Right to Social Security, E/C.12/GC/19 (2008), para. 19.

Social Security (Minimum Standards) Convention, addresses social security for a range of reasons, including for maternity leave purposes.<sup>255</sup>

Several regional human rights instruments include similar provisions. For example, the American Declaration of the Rights and Duties of Man (which is treated as binding on the United States as a member of the Organization of American States) provides that “all women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”<sup>256</sup> The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador), which the US has not ratified, states that the right to social security shall cover “paid maternity leave before and after childbirth.”<sup>257</sup> Under African regional human rights law, countries have committed to “guarantee adequate and paid pre and post-natal maternity leave in both the private and public sector.”<sup>258</sup>

European law also has strong provisions on paid maternity, paternity, and parental leave. The Council of Europe’s European Social Charter requires member states “to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks” and includes provisions on job protection during pregnancy and leave. It also requires states “to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.”<sup>259</sup> In the European Union, Council Directive 92/85/EEC requires EU member states to offer at least 14 weeks of maternity leave with “maintenance of payment” or an “adequate allowance.”<sup>260</sup> In addition, Council Directive 2010/18/EU requires

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<sup>255</sup> ILO Convention No. 102, Social Security (Minimum Standards) Convention, adopted June 28, 1952, art. 50. Article 52 states that social security benefit payments for maternity leave may be limited to 12 weeks.

<sup>256</sup> American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992), art. VII.

<sup>257</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, O.A.S. Treaty Series No. 69 (1988), signed November 17, 1988, art. 9(2).

<sup>258</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005, art. 13(i).

<sup>259</sup> European Social Charter (Revised), CETS No. 163, entered into force July 1, 1999, art. 8.

<sup>260</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, paras. 8 and 11(2)(b). As of 2010, self-employed workers are also entitled to maternity leave benefits. See “New EU Law: Self-Employed Workers Obtain Maternity Leave Right,” EUBusiness, June 7, 2010, <http://www.eubusiness.com/news-eu/self-employed-benefits.706/> (accessed October 22, 2010). A proposal to expand paid leave benefits to 20 weeks and amend this directive won the approval of the European Parliament in October 2010, but was rejected by EU member states. However, discussions on an extension to 18 weeks of paid leave are expected in 2011. “EU ministers reject 20-week maternity leave plan,” BBC News, December 7, 2010, <http://www.bbc.co.uk/news/world-europe-11936218> (accessed December 10, 2010).

member states to grant parental leave of at least four months with job protections, and to make one of the four months non-transferable between parents.<sup>261</sup>

## Rights to Non-discrimination and Equality

Many human rights treaties require that countries eliminate discrimination on the basis of certain prohibited grounds, and require equal protection of the law. Some treaties and international instruments include specific provisions on non-discrimination against workers with family responsibilities, and promote non-discrimination (often phrased as “parity”) for part-time workers.

The International Covenant on Civil and Political Rights (ICCPR), which the US has ratified, requires that states guarantee all persons equal and effective protection from discrimination.<sup>262</sup> It also provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination.<sup>263</sup> The UN Human Rights Committee (HRC), which monitors implementation of the ICCPR, has explained that this applies to laws generally, not just laws relating to specific ICCPR provisions, and applies to discrimination in law or in fact in fields regulated by public authorities.<sup>264</sup> The HRC has made clear that sexual orientation is a status protected against discrimination under the ICCPR.

Several treaties addressing non-discrimination between men and women specifically address the need for work-family supports and measures to combat women’s disadvantage in the workplace, including with respect to remuneration and promotions. For example, CEDAW requires that states take appropriate measures to eliminate discrimination against women in the field of employment and to guarantee “the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value.”<sup>265</sup> The ICESCR requires “equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work” and “equal opportunity for everyone to be promoted in his employment to an

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<sup>261</sup> Council Directive 2010/18/EU of March 8, 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, Official Journal of the European Union, L 68/13, March 18, 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:EN:PDF> (accessed December 5, 2010), clause 2.

<sup>262</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, article 2. The US ratified the ICCPR in 1992.

<sup>263</sup> *Ibid.*, art. 26.

<sup>264</sup> HRC, General Comment No. 18: Non-Discrimination, 37th Session, 1989, para. 12.

<sup>265</sup> CEDAW, art. 11(1)(d).

appropriate higher level.”<sup>266</sup> The ILO Discrimination (Employment and Occupation) Convention, as well as other ILO conventions, also prohibits sex discrimination in employment.<sup>267</sup>

The right to be free from discrimination on the basis of family responsibilities also appears in international and regional treaties. ILO Convention No. 156, the Workers with Family Responsibilities Convention, requires national policies to enable workers with family responsibilities to work without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. The convention calls for measures to take the needs of workers with family responsibilities into account in terms and conditions of employment and social security.<sup>268</sup> An ILO recommendation states that either parent should have the possibility, within a period immediately following maternity leave, of obtaining a leave without relinquishing employment and with employment rights being safeguarded and social security benefits being available.<sup>269</sup> The European Social Charter also contains a provision on the rights of workers with family responsibilities, which requires that states “provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child” and to ensure that family responsibilities are not a valid reason for termination of employment.<sup>270</sup>

Rights to non-discrimination for part-time workers, establishing that part-time workers should receive equivalent conditions (including for work-family supports) to full-time workers proportional to hours of work or earnings, are set out in ILO instruments and European Union directives. ILO Convention No. 175, the Convention Concerning Part-Time Work, requires that member states take measures to ensure that part-time workers receive conditions equivalent to full-time workers with respect to maternity protection and social security, proportional to hours of work or earnings.<sup>271</sup> ILO Recommendation No. 165 calls for

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<sup>266</sup> ICESCR, art. 7(a) and (c).

<sup>267</sup> ILO Convention No. 111 concerning Discrimination in Respect to Employment and Occupation, adopted June 25, 1958, 362 U.N.T.S. 31, entered into force June 15, 1960. The US has not ratified these conventions, but as a member of the International Labour Organization, it has a duty under the ILO Declaration on Fundamental Principles and Rights at Work to respect, promote, and realize the fundamental right to the elimination of discrimination in respect of employment and occupation. The ILO Declaration states that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the [ILO] Constitution, the principles concerning the fundamental rights which are the subject of those conventions.” International Labour Conference, ILO Declaration on Fundamental Principles and Rights at Work, 86<sup>th</sup> Session, Geneva, June 18, 1998.

<sup>268</sup> ILO Convention No. 156 concerning Workers with Family Responsibilities, adopted June 23, 1981, arts. 3 and 4. The convention covers men and women workers with responsibilities in relation to their dependent children, and in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in, or advancing in economic activity. *Ibid.*, art. 1(1)-(2).

<sup>269</sup> ILO Recommendation Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, paras. 21, 22, 23, and 27.

<sup>270</sup> European Social Charter (Revised), art. 27.

<sup>271</sup> ILO Convention No. 175, Convention Concerning Part-Time Work, adopted June 1994, arts. 6 and 7.

part-time workers to have terms and conditions of employment equivalent to those of full-time workers to the extent possible.<sup>272</sup> The European Union requires that member states ensure that part-time workers are not subject to discrimination with respect to work conditions under the Framework Agreement on Part-Time Work in Council Directive 97/81/EC (1997) and under the EU directive on parental leave.<sup>273</sup>

## Related Rights

International treaties contain additional rights that are relevant to minimizing work-family conflict. For example, CEDAW calls for social services to enable parents to combine family obligations with work responsibilities and participation in public life, and establishes a right to protection of health and safety in working conditions, including “safeguarding the function of reproduction.”<sup>274</sup> The ILO recommendation on workers with family responsibilities calls on countries to promote flexible work schedule arrangements<sup>275</sup> and to generally promote measures to lighten the burdens of workers with family responsibilities.<sup>276</sup>

The right to health is also at issue given the ways that short or unpaid leave and inflexible workplaces can contribute to poor health. Treaties including the ICESCR, CEDAW, and the Convention on the Rights of the Child (CRC)<sup>277</sup> set forth a right to the highest attainable standard of health.<sup>278</sup> The CRC specifically mentions the importance of breastfeeding in relation to the right to health,<sup>279</sup> and the ILO maternity protection convention establishes minimum protections for breaks to support breastfeeding.<sup>280</sup> Moreover, in a review of one country’s compliance with the ICESCR, the Committee on Economic, Social and Cultural Rights said that a bill to reduce subsidized leave from work for parents to care for ill children constituted a violation of the right to health and was a retrogressive measure affecting the minimum standards of the right to health.<sup>281</sup>

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<sup>272</sup> ILO Recommendation concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, ILO R165, 1981, para. 21(2).

<sup>273</sup> Council Directive 97/81/EC (1997) and Council Directive 2010/18/EU on parental leave.

<sup>274</sup> CEDAW, art. 11(2)(c) and 11(1)(f).

<sup>275</sup> ILO Recommendation No. 165, para. 18.

<sup>276</sup> *Ibid.*, para. 32.

<sup>277</sup> Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GOAR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, article 24.

<sup>278</sup> ICESCR art. 12 and CEDAW art. 12.

<sup>279</sup> CRC, art. 24 (2)(e).

<sup>280</sup> ILO Convention No. 183, art. 10.

<sup>281</sup> CESCR, concluding observations on Chile, E/C.12/1/Add.105 (2004), para. 28.

## VI. Recommendations

### To the Federal Government

#### *To the US Department of Labor*

- Ensure that the 2011 DOL-sponsored national dialog on workplace flexibility addresses paid family leave, part-time parity, and flexible work conditions for parents returning from maternity or paternity leave. Ensure that marginalized and disadvantaged workers actively participate in the dialog forums, including workers with same-sex partners, part-time workers, and low-income workers.
- Publish data on compliance with the new legal requirements on employer accommodation of breastfeeding, and promote awareness of the law among employers and employees.
- Amplify outreach to workers and employers to raise awareness of FMLA rights and obligations, including with respect to the definition of “son or daughter” as it applies to workers “in loco parentis” to a child.

#### *To the US Congress*

- Enact legislation to guarantee national paid family leave. The legislation should ideally establish wage replacement for at least the period of leave allowed under the FMLA, offer sufficient wage replacement to make leave a realistic possibility for men and women, prohibit discrimination against workers requesting leave, cover all employees (including those working part time), enable self-employed individuals to opt in, and include meaningful penalties for employer non-compliance. Financing should be through a public family leave insurance mechanism, most likely funded through payroll tax deductions.
- In the interim, expand access to unpaid FMLA leave, including by decreasing the firm size for FMLA coverage and expanding worker eligibility by lowering the length of tenure and hours-worked requirements. Also extend eligibility to reflect the care-giving needs of extended families and families with same-sex partners.
- Enact legislation to establish a grant program to help states provide wage replacement to workers on family leave through public family leave insurance programs. In the interim, include funds in the federal budget for the Department of Labor to offer grants to states for paid leave programs.
- Enact the Federal Employees Paid Parental Leave Act in accordance with aims to have the federal government act as a model employer.

- Amend federal anti-discrimination legislation to explicitly make it illegal for employers to discriminate on the basis of family care-giving responsibilities.
- Enact other bills that would provide supports for working families and promote gender equality, including the Working Families Flexibility Act, the Healthy Families Act, and legislation to better address the gender wage gap.
- The Senate should approve the ratification of key treaties that include rights to paid family leave and work-family supports, especially the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights, without harmful reservations.

#### *To the White House*

- Continue efforts to catalyze state innovation on paid leave by including the state paid leave grant fund in the FY 2012 and subsequent budgets.
- Continue to speak out publicly about the need for paid family leave, work-family supports, and protections against discrimination for workers with family responsibilities.

#### *To the Equal Employment Opportunity Commission (EEOC)*

- Closely monitor and publish data on cases of discrimination against workers with family responsibilities, and amplify efforts to inform employers about the ways that discrimination against family caregivers can violate federal law.
- Commission a study on the increasing numbers of pregnancy discrimination charges. Increase efforts to enforce the Pregnancy Discrimination Act and sanction violators. Amplify efforts to raise awareness among workers and employers about their rights and duties under the Act, and to assist victims in pursuing discrimination claims.

### **To State Governments**

- Enact state paid family leave laws. The legislation should offer sufficient wage replacement, include job protections and prohibit discrimination against workers requesting leave, cover all employees, enable self-employed individuals to opt in, and include meaningful penalties for employer non-compliance. Financing should be through a public family leave insurance mechanism, most likely funded through payroll tax deductions.
- Establish multi-sector task forces or other bodies to study feasible approaches to providing work-family supports, including paid leave, and provide adequate resources for their work. Include government representatives, lawmakers from all major political

parties, nongovernmental experts, healthcare professionals, business and labor leaders, and worker representatives.

- In states without such laws, enact legislation on workplace accommodations for pumping or breastfeeding at work, in particular to cover the workers not covered by the federal health care law's provisions on breastfeeding accommodation.
- Enact laws on other work-family supports, including laws on paid sick days and laws to protect employees requesting flexible working conditions from retaliation.
- Enact or amend state anti-discrimination laws to explicitly prohibit discrimination on the basis of family care-giving responsibilities. State authorities charged with enforcing anti-discrimination laws should ensure that cases of employment discrimination on the basis of family care-giving responsibilities are investigated and prosecuted under existing legal theories.
- States with existing paid family leave insurance programs should increase efforts to raise public awareness about the programs, and funds should be allocated for outreach. They should also gather data on access to paid family leave benefits by disadvantaged classes of workers. The laws establishing the programs should be amended to include job protections for leave-takers.
- State officials and lawmakers should convene discussions within multi-state policy forums on work-family legislation options, including on paid leave, flexible work arrangements, and protections against discrimination on the basis of family responsibilities.

## **VII. Acknowledgements**

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## Appendix: Country Comparisons of Paid Leave Benefits

The chart below includes information on paid maternity, paternity, parental, and other family care-giving leave required under law in countries that are members of the Organization for Economic Co-Operation and Development (OECD) and a selection of other countries with relatively high levels of gross national income.

The sources for the information in this chart were:

- the International Labour Organization Database of Conditions of Work and Employment Laws (<http://www.ilo.org/dyn/travail/travmain.home>) (with many entries last updated in 2009);
- the International Review of Leave Policies and Related Research 2010 (Peter Moss, ed.) (<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/i/10-1157-international-review-leave-policies.pdf>);
- a March 2010 OECD Gender Brief (<http://www.oecd.org/dataoecd/23/31/44720649.pdf>); and
- government websites for several countries.

The chart does not cover the full array of social benefits offered to workers with family responsibilities, but rather focuses on paid leave benefits related to employment, especially for parents of newborn or adopted children. It does not include information on additional unpaid leave entitlements. There were discrepancies among these sources; the chart reflects what appeared to be the most current information. The leave schemes for all countries have many variations or complexities beyond what was feasible to describe in this chart (e.g., minimum and maximum benefits, additional benefits for multiple or premature births, variations for adoption leave, rules related to transferability of portions of parental leave, extended leave in case of disability, variations for single parents, differential benefits for high income workers, and additional benefits through collective bargaining agreements). Currency conversion rates are as of January 25, 2011.

	Maternity Leave		Paternity Leave		Parental Leave		Additional Family Leave		Funding Sources	Comments
	Pay	Duration	Pay	Duration	Pay	Duration	Pay	Duration		
Argentina	100%	90 days	100%	2 days	-	-	100%	1-10 days*	Employer / Family Allowance Fund	*Leave for bereavement, marriage, and other events; amount of leave depends on event.
Australia	-	-	-	-	Fixed amount*	18 weeks**	-	-	General taxation	*Paid at the level of the national minimum wage. **If the primary caregiver returns to work before the expiry of this period, they can transfer the unused paid leave to their partner.
Austria	100%	16 weeks	-	-	Variable*	2 years	-	-	Statutory health insurance/ general taxation / employer contributions	* Parents can choose between flat rate options or an income-related option.
Bangladesh	100%	16 weeks	-	-	-	-	-	-	Employer	
Belgium	75%*	15 weeks	100%**	10 days	Fixed amount***	12 weeks*** *	Fixed amount*****	1 year (time credit system)	Federal health insurance, general taxation, and employee and employer contributions	*82% for first 30 days, then 75% **100% for 3 days then 82% ***Approx. EUR 653 (US \$892) per month net of taxes ****To be extended to 4 months by end 2011 *****Approx. EUR 592 (US \$809) per month
Brazil	100%	17 weeks*	100%	5 days	-	-	-	-	Social security and employer**	*Employer can extend for another 12 weeks ** Employer is reimbursed, except for the extended weeks, which are tax deductible. Employer pays for paternity leave.
Canada	55%	15-18 weeks*	-	-	55%	37 weeks	100%	3 days**	Employer and federal and state employment insurance program	* Varies by province. **Leave for bereavement
Chile	100%	18 weeks	100%	5 days	-	-	100%	3-7 days*	Social security	*Leave for bereavement
China	100%	13 weeks	-	-	-	-	100%	1-3 days*	Social security	*Leave for marriage or bereavement
Colombia	100%	12 weeks	100%	4-8 days	-	-	-	-	Social security	
Czech Republic	60%	28 weeks	-	-	Variable*	3 years	-	-	Social security/ health insurance/ general taxation	*Fixed amounts that vary according to length of leave
Denmark	100%	18 weeks	100%	2 weeks	100%	32 weeks*	-	-	Sickness benefit scheme/ employers and municipalities through pooled leave funds	*The leave period may be extended if the worker returns to work part-time, and the payment is then spread over the longer period. In certain sectors, fathers are entitled to additional non-transferable leave.
Egypt	100%	12 weeks	-	-	-	-	-	-	Social security / employer	
Estonia	100%	20 weeks	-	-	Variable*	3 years	80%	14 days**	Social security/ general taxation	*Flat rate for 3 years or 100% of earnings for 62 weeks **Leave for care of sick child
Ethiopia	100%	13 weeks	-	-	-	-	-	-	Employer	

	Maternity Leave		Paternity Leave		Parental Leave		Additional Family Leave		Funding Sources	Comments
	Pay	Duration	Pay	Duration	Pay	Duration	Pay	Duration		
<b>Finland</b>	Variable*	21 weeks	70%	3-6 weeks	Variable**	158 working days	Variable***	3 years****	Health insurance / municipal taxes	*90% for first 56 days, then 70% **75% for first 30 days, then 30% ***Depends on number of children ****Home care leave
<b>France</b>	100%	16 weeks	100%	2 weeks	Variable*	3 years	Variable**	3 years	Social security / health insurance / family allowance fund	* Entitled to leave or to work part time until the child is 3 years old. Varying flat-rate payments depending on size of family and leave circumstances. **Leave to care for seriously ill or disabled family member. Amount of pay depends on length of employment and family circumstances.
<b>Germany</b>	100%	14 weeks	-	-	67%*	12-14 months**	80%	10 days***	General taxation/ statutory health insurance / employer****	*If spread over 28 months, half of this amount is paid per month. ** A mother or father can receive parental leave pay for up to 12 months. An additional two months of pay is available if the other partner takes leave. May be taken over longer period with lesser pay. ***Leave for care of an ill child ****Depends on the amount to be paid while on leave and whether the worker is eligible to receive statutory health insurance.
<b>Greece</b>	100%	17 weeks*	100%	2 days	-	-	100%	3.75 months**	Social security and other government sources/ employer funding of paternity leave	*An additional 6 months of paid leave is available with minimum wage pay after maternity leave. Public sector maternity leave is longer. **Through flexible working scheme. Longer leave available in public sector.
<b>Hungary</b>	70%	24 weeks	100%	5 days	Variable*	2-3 years**	70%	Variable***	Health insurance / general taxation	*Flat rate for uninsured parents, 70% of earnings for insured parents. **Depends on whether parents are insured. ***Leave length depends on age of child.
<b>Iceland</b>	80%	3 months	80%	3 months	80%	3 months	-	-	Social insurance fund with employee and employer contributions	
<b>India</b>	100%	12 weeks	-	-	-	-	-	-	Employer	
<b>Indonesia</b>	100%	13 weeks	100%	2 days	-	-	-	-	Employer	
<b>Ireland</b>	80%/ fixed amount*	26 weeks	-	-	-	-	100%	3 days**	Social insurance fund	*Whichever is greater **Leave for family illness or injury
<b>Israel</b>	100%	14 weeks	100%	8 weeks*	-	-	-	-	Social security	* If mother returns to work before 14 weeks, partner can take up her maternity leave entitlement after 6 weeks of maternity leave.

	Maternity Leave		Paternity Leave		Parental Leave		Additional Family Leave		Funding Sources	Comments
	Pay	Duration	Pay	Duration	Pay	Duration	Pay	Duration		
Italy	80%*	20 weeks	-	-	30%**	6 months	-	-	Social security	*100% for public sector workers and for workers covered by some collective bargaining agreements **100% for public sector workers for first 30 days
Japan	60%	14 weeks	-	-	30%*	1 year	40%	3 months	National health insurance / employment insurance	*Returning job allowance also given upon return to work after parental leave
Luxembourg	100%	16 weeks	100%	2 days	Fixed amount*	6 months	100%	2-4 days**	National health fund, through general taxation / employer for paternity leave	*1,778 EUR (US \$2,431)/ month full time or less for part-time leave. **Leave to care for an ill or disabled child. Can be extended to 52 weeks for exceptional illness.
Malaysia	100%	60 days	-	-	-	-	-	-	Employer	
Mexico	100%	12 weeks	-	-	-	-	-	-	Social security / employer	
The Netherlands	100%	16 weeks	100%	2 days	-	-	70% / Variable*	10 days**	Unemployment fund / employer	*Workers taking parental leave are entitled to a tax deduction of about half the minimum wage per hour. **Leave to care for a sick close relative. Additional parental leave available, with length based on number of working hours.
New Zealand	100%	14 weeks	100%*	1-2 weeks	-	-	100%	5 days**	General taxation	* Paid if the partner transfers the statutory entitlement after taking less than 14 weeks of maternity leave. **Leave to care for ill dependant
Nigeria	50%	12 weeks	-	-	-	-	-	-	Employer	
Norway	80% / 100%*	9 weeks	80% / 100%*	10 weeks	80% / 100%*	27-37 weeks for either parent	Fixed amount**	10 days***	General taxation / employer	*Depends on length of leave **Paid at rate of sickness benefit ***Leave to care for an ill child
Pakistan	100%	12 weeks	-	-	-	-	-	-	Employer	
Poland	100%	22 weeks	100%	1 week	Fixed amount	3 Years	80%	14 days*	Social insurance fund / general taxation	* Leave to care for an ill family member
Portugal	80% / 100%*	120-150 days	100%	20 days	25%	3 months**	65%	30 days***	Social security / general taxation	*Depends on leave length **Per parent, non-transferable ***Leave to care for an ill child
Russia	100%	140 days	-	-	40%	18 months	Variable*	60 days	Social insurance fund / employer	*Depends on duration of employment
Saudi Arabia	50% / 100%*	10 weeks	-	1 day	-	-	-	-	Employer	*Depends on duration of employment
Slovak Republic	55%	28 weeks	55%	22 weeks*	Fixed amount	128 weeks	-	-	Social insurance / general taxation	*For the period the mother does not take maternity leave due to illness, death, or waiving her rights.
Slovenia	100%	15 weeks	100% / Fixed amount*	13 weeks	100%	37 weeks	80%	15 days**	Social security / general taxation	* 100% of wages for the first two weeks, then social security benefits **Leave to care for an ill dependant

	Maternity Leave		Paternity Leave		Parental Leave		Additional Family Leave		Funding Sources	Comments
	Pay	Duration	Pay	Duration	Pay	Duration	Pay	Duration		
South Africa	Variable*	4 months	-	-	-	-	100%	3 days**	Unemployment insurance fund / employer	*31% to 59% of earnings, depending on duration of employment and level of public sector workers. **Family responsibility leave. Available for bereavement or illness of family member, as well as for fathers at time of childbirth or adoption. Paid by employer.
South Korea	100%	13 weeks	-	-	Fixed amount	1 year	-	-	Employment insurance fund / employer	
Spain	100%	16 weeks	100%	15 days	-	-	100%	2-5 days**	Social security / employer	*Depends on the amount contributed to the social security scheme **Leave for bereavement, serious illness or marriage.
Sri Lanka	86% / 100%*	12 weeks	-	-	-	-	-	-	Employer	*Employees covered by the Shop and Offices Employees Act receive 100% paid maternity leave
Sweden	80%	50 days	80%	10 days	80%	480 days*	80%	120 days**	Social insurance	*60 days for mother, 60 days for father, and rest is a family entitlement. **Leave to care for an ill child
Switzerland	80%	14 weeks	-	-	-	-	-	-	Social insurance	
Turkey	66.6%	16 weeks	-	-	-	-	-	-	Social security	
United Arab Emirates	50% / 100%*	45 days	-	-	-	-	-	-	Employer	*100% after one year of continuous employment
United Kingdom	90% / Fixed amount*	52 weeks	Variable**	2/26 weeks***	-	-	-	-	Employer****	* 90% for 6 weeks and then 124.88 GBP/week or 90% of weekly earnings, whichever is less. **Two weeks paid at a rate adjusted according to weekly earnings. Father receives 124.88 GBP (US \$197)/week or 90% of weekly earnings, whichever is less, if caring for the child during maternity leave not taken by mother. ***Up to 26 weeks to care for the child if the mother returns to work within the first year without using all of her maternity leave. ****Employer is reimbursed 92% of statutory paternity pay.

## Failing its Families

### Lack of Paid Leave and Work-Family Supports in the US

Millions of US workers—including parents of newborn or adopted children—are suffering health, financial, and career harms from weak work-family policies. They have virtually no legal guarantees of paid family leave or sick days; meager support for pumping breast milk at work; and little protection against workplace discrimination on the basis of family care-giving responsibilities.

Based on interviews with 64 parents, this report documents the health and financial impacts of the US's inadequate work-family policies. Parents recounted how lacking work-family supports contributed to delaying immunizations and health visits for babies, postpartum depression and other health problems, and early cessation of breastfeeding. During unpaid leave, many went into debt, and some resorted to welfare. Some were driven out of their jobs.

Work-family policies benefit not just families, but also business and the economy. Research shows that paid family leave boosts productivity and decreases turnover costs. In California, one of two states with public paid family leave, employers report that the program has had a positive or neutral effect on productivity, profitability, turnover, and employee morale. Public health also benefits from work-family supports. Research shows that paid leave for new parents is associated with reduced infant mortality and postpartum depression, and increased breastfeeding.

Other countries—and international treaties—have long recognized the need to support working families. At least 178 other countries have national law guarantees of paid leave for new mothers, and more than 50 guarantee paid leave for new fathers.

In a time when workers and families are under tremendous economic strain, leaving them exposed to further harm when they have a new baby or family health crisis is inhumane and illogical. Basic work-family supports can help them hold onto their jobs, keep their families afloat, and contribute to the productivity and growth that the US sorely needs.



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